# Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in Folajimi Olamide Akinla, Tax Lawyer at *PwC* and OPTR National Reporter of United Kingdom.

This set of questionnaires comprises the National Reporter's assessment of the country's practice during 2023 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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Country: *

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Affiliation *

- [x] Taxpayers / Tax Practitioners
- [ ] Tax Administration
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- [ ] (Tax) Ombudsperson
- [ ] Academia
- [ ] Other:

## Questionnaire 1 - Country Practice

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.

2. For assertive questions, please answer with “yes” or “no” by clicking on the corresponding button.

3. For questions that require you to specify a period of time (namely, Q. 26 and Q. 45), please select the time applicable in your country to carry out the procedures indicated in the questions in practice, within the options provided.

4. For questions with more than one possible answer (namely, Q. 56), please check all necessary boxes to reflect better the practical situation of your country regarding the issue, by clicking on them.

5. When completed, please submit the survey.

6. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.

7. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.

8. An option to quit the survey and save your answers is provided at the end of each section.

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

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

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

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

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

- (●) Yes
- ( ) No

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

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

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

- (•) Yes
- ( ) No

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

- (•) Yes
- ( ) No

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

- (•) Yes
- ( ) No

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

- ○ Not applicable (click here if you answered "No" to question 5)
- ◉ Yes
- ○ No

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

- ◉ Yes
- ○ No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

Area 2 - The issue of tax assessment

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

- (●) Yes
- ( ) No

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

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

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

- (●) Yes
- ( ) No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 3 - Confidentiality

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

- ◉ Yes
- ○ No

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

- ◉ Yes
- ○ No

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

- ○ Not applicable (click here if you answered "No" to question 12)
- ○ Yes
- ◉ No

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

- ◉ Yes
- ○ No

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

- ○ Yes
- ◉ No

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

- ○ Yes
- ◉ No

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

- (●) Yes
- ( ) No

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

- ( ) Yes
- (●) No

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

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

- (●) Yes
- ( ) No

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

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

- ( ) Not applicable (click here if you answered "No" to question 19)
- ( ) Yes
- (•) No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (•) No

## Area 4 - Normal audits

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

- ( ) Yes
- (•) No

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

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

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

- (●) Yes
- ( ) No

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

- ( ) Yes
- (●) No

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

- ( ) Yes
- (●) No

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

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

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

- (●) Yes
- ( ) No

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

- (●) Yes
- ( ) No

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

- (●) Yes
- ( ) No

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

- ○ Yes
- ◉ No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 5 - More intensive audits

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

- ◉ Yes
- ○ No

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

- ○ Not applicable (click here if you answered "No" to question 31)
- ◉ Yes
- ○ No

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

- ○ Not applicable (click here if you answered "No" to question 31)
- ○ Yes
- ◉ No

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

- ◉ Yes
- ○ No

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

- ○ Not applicable (click here if you answered "No" to question 34)
- ◉ Yes
- ○ No

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

- ◉ Yes
- ○ No

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

- ◉ Yes
- ○ No

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

- ◉ Yes
- ○ No

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

- ○ Yes
- ◉ No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 6 - Reviews and appeals

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

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

- ◉ Yes
- ○ No

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

- ○ Yes
- ◉ No

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

- ◉ Yes
- ○ No

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

- ○ Yes
- ◉ No

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

- ○ Yes
- ◉ No

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

There is no limit (click here if you answered "No" to question 44)

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

- (●) Yes
- ( ) No

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

- ( ) Yes
- (●) No

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

- (●) Yes
- ( ) No

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

- (●) Yes
- ( ) No

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

- ( ) Not applicable (click here if you answered "No" to question 49)
- (●) Yes
- ( ) No

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

- ( ) Yes
- (●) No

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

- (●) Not applicable (click here if you answered "No" to question 51)
- ( ) Yes
- ( ) No

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

- (●) Yes
- ( ) No

54. Are judgments of tax tribunals published? *

- (●) Yes
- ( ) No

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

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

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 7 - Criminal and administrative sanctions

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

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

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

- ○ Not applicable (click here if you answered "No" to question 56)
- ○ Yes
- ◉ No

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

- (●) Yes
- ( ) No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (●) No

## Area 8 - Enforcement of taxes

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

- ( ) Yes
- (●) No

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

- (●) Yes
- ( ) No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (●) No

## Area 9 - Cross-border situations

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

- ( ) Yes
- (●) No

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

- ○ Yes
- ◉ No

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

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

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

- ○ Yes
- ◉ No

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

- (●) Yes
- ( ) No

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

- ( ) Yes
- (●) No

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

- ( ) Yes
- (●) No

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

- ( ) Yes
- (●) No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 10 - Legislation

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

- ○ Yes
- ◉ No

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

- ○ Not applicable (click here if you answered "Yes" to question 69)
- ◉ Yes
- ○ No

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

- (●) Yes
- ( ) No

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

- (●) Yes
- ( ) No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (●) No

## Area 11 - Revenue practice and guidance

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

- (●) Yes
- ( ) No

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

- ( ) Yes
- (●) No

75. If yes, is it legally binding? *

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

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

- (●) Yes
- ( ) No

77. If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)? *

- ○ Not applicable (click here if you answered "No" to question 76)
- ◉ Yes
- ○ No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

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

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

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

- ◉ Yes
- ○ No

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

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

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

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

- ◉ Yes
- ○ No

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

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

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

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

# OPTR - 2023 Questionnaire 2 - Standards of Protection

Dear National Reporter,

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

This form collects the information on developments occurred in 2023 regarding the implementation of 57 minimum standards and 44 best practices, distributed into 86 benchmarks, for the practical protection of taxpayers' rights as monitored by the OPTR.

We kindly ask you to provide an impartial, non-judgmental summary of events occurred in 2023 that in your opinion affect the level of compliance of a given minimum standard/best practice in your country. These events may include, without limitation, legislation enacted, administrative rulings and/or circulars issued, case law and tax administration practices implemented, among others, as requested by this form.

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

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

This form should be filled in as soon as any of the events mentioned above occurs and edited as many times as necessary to cover all relevant developments occurred in 2023, until no later than 12 January 2024. We appreciate very much your cooperation in this regard.

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

Kind regards,

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

_____

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

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## Reporters' info

Name: *

Folajimi Olamide Akinla

Country: *

United Kingdom

Affiliation *

- [x] Taxpayers / Tax Practitioners
- [ ] Tax Administration
- [ ] Judiciary
- [ ] (Tax) Ombudsperson
- [ ] Academia
- [ ] Other:

## Instructions

1. Please answer all questions. The form will not allow you to continue/submit your responses until you

have answered all questions.

2. All questions are two or three-tiered (namely, either with parts "MS" and/or "BP", and "S"). They comprise a minimum standard (MS) and /or a best practice (BP), and a "summary of relevant facts in 2023" (S). The latter is a space for providing a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way.

3. Please Indicate, by clicking on the corresponding button, whether there was an improvement or a decrease of the level of compliance of the relevant standard/best practice in your country in 2023. If there were no changes, please indicate so by clicking on the corresponding button.

4. In ALL cases where an assessment of either improvement or decrease is reported, please refer the relevant novelties in the space provided under "summary of relevant facts in 2023", for each question. Please give a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. In case there is nothing to report for a given minimum standard/best practice, please answer "no changes".

5. If any, make additional, non-judgmental commentaries at the space provided under “summary of relevant facts in 2023”.

6. In ALL cases back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcomed to send us these materials to our email: optr@ibfd.org.

7. When completed, please submit the survey.

8. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.

9. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.

10. An option to quit the survey and save your answers is provided at the end of each section. This survey has 12 sections, as many as those identified by Baker and Pistone in their 2015 IFA General Report.

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

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

13. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you

have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

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

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

2 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

3 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

4 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

5 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- ○ No changes
- ○ Shifted away
- ◉ Shifted towards

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

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

HMRC communicates through its website. In June 2023, HMRC updated its guidance on " Keeping your HMRC log in details safe". The guidance now includes information on "Secure sign in" which provides that HMRC online services are only available to taxpayers who register their details with HMRC. Per the updates, taxpayers are now expected to enter their User ID and password before they can access services. HMRC may also ask taxpayers to change their passwords where there are suspicious sign-in attempts. Most HMRC accounts are protected by multi-factor authentication.

In September 2023, HMRC updated its guidance on how it uses QR codes. HMRC uses QR codes in (a) letters and correspondence only to direct recipients to guidance on the GOV.UK site and (b) to redirect taxpayers to bank log in pages. HMRC does not use QR codes to direct taxpayers to pages where personal information may be input.
QR codes used by HMRC can also be seen on HMRC contact pages. HMRC has also provided an email address to which suspicious emails containing QR codes may be forwarded - phishing@hmrc.gov.uk.

In November 2023, HMRC updated its guidance in relation to sending text messages to persons receiving Cost of Living Payments in November 2023. This update relates specifically to payments made in November 2023.

At different times from 8 February 2023 to 28 November 2023, HMRC provided updates alerting taxpayers on specific information it has communicated to taxpayers by email. These information include communication on Managing Pension Schemes, Making Tax Digital, Pillar 2, Tax Credit and Self Assessment requirements, Gift Aid and Tax Free Childcare.

In relation to phone calls, HMRC set out specific times within which it would contact, by phone, taxpayers on specific issues. These issues relate to Enterprise Investment Schemes, Single Trade Window user testing, Debt Management and sundry matters relating to Coronavirus Job Retention Scheme.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

7 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

8 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 2 - The issue of tax assessment

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

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

- ○ No changes
- ○ Shifted away
- ◉ Shifted towards

9 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

In September 2014 HMRC updated its Code of Governance for Resolving Tax Disputes by providing greater clarity and transparency on its processes. The updates also includes a link to the remits for its dispute resolution boards - https://www.gov.uk/government/publications/dispute-resolution-governance-board-remits/tax-disputes-resolution-board-remit

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

- ○ No changes
- ○ Shifted away
- ◉ Shifted towards

10 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

In 2023, The Income Tax (Pay As You Earn) (Amendment) Regulations 2023 and The Social Security (Contributions) ( Amendment No. 2) Regulations 2023 were introduced. These amendments mandate employers to deliver returns (P11D and P11D(b)) electronically.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 3 - Confidentiality

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

11 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

12 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

13 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

14 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

15 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

16 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

17 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

18 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- ( ) No changes
- (●) Shifted away
- ( ) Shifted towards

19 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

In March 2023, the Court of Appeal in Mitchell and Bell v R & C Commrs [2023] BTC 6 / [2023] EWCA Civ 261 held that HMRC did not require the permission of the First Tier Tax Tribunal before disclosing taxpayer information to another taxpayer. The Court, upholding HMRC's arguments, held that HMRC could disclose such information under section 18(1) of the Commissioners for Revenue and Customs Act 2005. It must be stated, however, that in that case both taxpayers disputed who was liable to the tax in question so HMRC took the view that such disclosure was in order and was within HMRC's functions. In addition, the Court of Appeal noted that such disclosures could be made in the course of civil proceedings.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

20 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

21 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

22 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

23 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

24 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (•) No

## Area 4 - Normal audits

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

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

- (•) No changes
- ( ) Shifted away
- ( ) Shifted towards

25 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

26 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shift away
- ( ) Shift towards

27 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

28 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

29 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

30 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

31 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

32 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

33 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

34 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

35 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

36 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

37 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

38 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (●) No

## Area 5 - More intensive audits

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

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

39 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

40 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

41 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

42 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

43 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

44 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

45 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

46 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

47 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

48 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

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- ○ Yes
- ◉ No

## Area 6 - Reviews and appeals

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

49 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

50 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

51 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

52 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

53 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

54 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

55 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

56 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

57 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

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- ○ Yes
- ◉ No

## Area 7 - Criminal and administrative sanctions

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

58 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

59 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

60 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

61 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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- ( ) Yes
- (●) No

Area 8 - Enforcement of taxes

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

62 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

63 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

64 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

65 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

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- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

66 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ○ Yes
- ◉ No

## Area 9 - Cross-border situations

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

67 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

68 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

69 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

70 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

71 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

72 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

73 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

74 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

75 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

76 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

77 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- ( ) Yes
- (●) No

## Area 10 - Legislation

Please provide separately (via optr@ibfd.org)

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

78 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

79 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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- ( ) Yes
- (●) No

## Area 11 - Revenue practice and guidance

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

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

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

80 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

81 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

82 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

83 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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- ( ) Yes
- (•) No

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

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

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

- (•) No changes
- ( ) Shifted away
- ( ) Shifted towards

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

84 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

85 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- (●) No changes
- ( ) Shifted away
- ( ) Shifted towards

86 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Neutral Citation Number: [2023] EWCA Civ 261

Case No: CA-2021-003418

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM UPPER TRIBUNAL**
**TAX AND CHANCERY CHAMBER**
**UPPER TRIBUNAL JUDGE JONATHAN RICHARDS**
**UPPER TRIBUNAL JUDGE JONATHAN CANNAN**
**[2021] UKUT 0250 (TCC)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 March 2023

**Before :**

**LORD JUSTICE ARNOLD**
**LADY JUSTICE CARR**
and
**LADY JUSTICE WHIPPLE**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **(1) MARK MITCHELL** | **Appellant/ Respondent** |
| **(2) PAUL BELL** | **Appellant** |
| **- and –** | |
| **THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS** | **Respondents** |

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- - - - - - - - - - - - - - - - - - - - -

**Barrie Akin** (instructed by **Hill Dickinson LLP**) for the **Appellant (Mr Bell)**
**Julian Hickey and Rebecca Sheldon** (instructed by **Levy & Levy Solicitors**) for the **Respondent (Mr Mitchell)**
**James Puzey, Jenny Goldring and Aparna Rao** (instructed by **Solicitor to HM Revenue and Customs**) for the **Respondents (HMRC)**

Hearing date: 25 January 2023

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# Approved Judgment

**LADY JUSTICE WHIPPLE:**

## Introduction

1. By this appeal, Mr Bell challenges the UT's determination that he is not entitled to see certain documents which are in the possession of HMRC and which HMRC wish to disclose to him. The documents arise out of HMRC's investigation into the tax affairs of another taxpayer, Mr Mitchell. Mr Mitchell's objection to the disclosure of at least some of those documents was successful in the FTT and UT. The issue for this Court is whether Mr Mitchell's objections lie on solid ground and should be upheld. This appeal is brought with the leave of this Court.

## Legislation

2. To resolve the issue, it is necessary to have regard to the Commissioners' statutory powers under the Commissioners for Revenue and Customs Act 2005 ("CRCA"), and to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, SI 2009/273 (the "FTT Rules"). Relevant parts of the legislation and the FTT Rules are set out in the Appendix to this judgment. What follows is an overview of the key provisions which relate to this appeal.

3. Section 5(1) of the CRCA sets out HMRC's functions, which include the collection and management of tax. Section 51(2)(a) defines a function as any power or duty (including a power or duty that is ancillary to another power or duty). Section 17 confers powers on HMRC to use information acquired in connection with a function in connection with any other function. Section 18 is headed "Confidentiality". By section 18(1), HMRC are prohibited from disclosing information which is held in connection with their functions. But that prohibition does not extend to categories of disclosure listed in section 18(2), which include (a) disclosure made for the purposes of a function of HMRC which does not contravene any restriction imposed by HMRC; and (c) disclosure for the purposes of civil proceedings relating to a matter in respect of which HMRC have functions. Disclosure in pursuance of a court order is also permitted, see section 18(2)(e).

4. Section 18 was considered by the Supreme Court in *R (Ingenious Media Holdings plc) v Revenue and Customs Commissioners* [2016] UKSC 54, [2016]1 WLR 4164. The Court acknowledged the general and long-established principle of confidentiality owed to taxpayers (at [22]). Lord Toulson, with whom the other members of the Court agreed, said this at [23]:

> "… I take section 18(1) to be intended to reflect the ordinary principle of taxpayer confidentiality referred to in para 17, to which section 18(2)(a)(i) creates an exception by permitting disclosure to the extent reasonably necessary for HMRC to fulfil its primary function."

5. The FTT has powers to manage proceedings before it. Those powers are subject to the overriding objective of dealing with cases fairly and justly (Rule 2). Disclosure for standard or complex cases in the FTT is governed by Rule 27, and in particular

Rule 27(2)(b) which requires each party to serve a list of documents which that party intends to "rely on or produce" in the proceedings. A party can apply for specific disclosure under Rule 5(3)(d) which empowers the FTT "permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party". Rule 15(2)(a) empowers the FTT to admit evidence and Rule 15(2)(b) empowers the FTT to exclude evidence which would otherwise be admissible, including where admission of that evidence would be unfair (see Rule 15(2)(b)(iii)). By Rule 25, a respondent to an appeal in the FTT (which will typically be HMRC) is required to send or deliver a statement of case which sets out the respondent's position in relation to the case (Rule 25(2)(b)).

6. This Court has held that the FTT Rules are made for "important as well as simple cases" and has emphasised the narrow approach to disclosure under the FTT Rules, contrasting Rule 27(2), which extends only to documents which a party intends to "rely on or produce", with standard disclosure in civil proceedings which extends not only to documents upon which a party relies but in addition to documents which adversely affects a party's own case, adversely affect another party's case, and/or support another party's case (see CPR 31.6 and the commentary in the White Book, *E Buyer UK Ltd v Revenue and Customs Commissioners* [2017] EWCA Civ 1416, [2018] 1 WLR 1524 per Vos LJ at [94], and *HMRC v Smart Price Midlands Ltd* [2019] EWCA Civ 841, [2019] 1 WLR 5070 per Rose LJ at [15]). That narrow approach is just a starting point and the interests of fairness and justice, encapsulated in the overriding objective, may require disclosure in the FTT to be drawn more broadly in any particular case: see *Smart Price Midlands* per Rose LJ at [40], [53] and [56], a case concerning a taxpayer's appeal to the FTT against a finding by HMRC that he was not a "fit and proper person" to sell controlled liquor wholesale in which the Court of Appeal confirmed that disclosure corresponding to standard disclosure under the CPR was appropriate.

## Background

### *The PLNs*

7. In or around 2013, HMRC commenced an investigation into the personal and business tax affairs of Mr Mitchell under Code of Practice 9 ("COP 9"). As part of that investigation, HMRC conducted interviews with Mr Mitchell. One area of questioning extended to the tax affairs of two companies, Universal Payroll Services Ltd ("Payroll") and Universal Project Services Ltd ("Project"), of which Mr Mitchell had been a director.

8. On 8 December 2017, HMRC issued separate personal liability notices, or "PLNs" against each of Mr Mitchell and Mr Bell. The PLNs were issued under para 19 of Schedule 24 to the Finance Act 2007 and by them HMRC sought to recover from Mr Mitchell and Mr Bell penalties which HMRC asserted were due from Payroll and Project for VAT periods between 2010 and 2014. Payroll and Project had by that time both gone into liquidation and HMRC pursued Mr Mitchell and Mr Bell on the basis that at the material time they were both "shadow directors" of those companies to whom deliberate inaccuracies in the VAT returns of Payroll and Project could be attributed. The amount of penalties said to be owed was around £12m and HMRC sought half of that sum from each of Mr Mitchell and Mr Bell.

9. Mr Mitchell and Mr Bell requested HMRC to undertake an internal review. That review concluded on 12 February 2018 and upheld both PLNs, in part relying on evidence obtained from the COP 9 investigations conducted by HMRC.

***The Appeals***

10. Mr Mitchell and Mr Bell appealed to the First-tier Tribunal ("FTT") against the PLNs. Mr Bell's Notice of Appeal was dated 19 February 2018. In it, he denied liability for the tax. He said he had resigned as a director of Payroll and Projects and although he remained a shareholder, he took no active role in running Payroll or Project, that the VAT assessments in question fell outside the period when he was a director and that he was unaware of how the VAT returns were prepared. He said he had not seen the evidence on which HMRC relied in the PLN, which evidence was extracted by way of the COP 9 interviews, and he reserved the right to amend his Notice of Appeal once that evidence became available. Mr Mitchell's Notice of Appeal to the FTT was dated 1 March 2018; it contained a denial of liability and a denial that he was a shadow director of Payroll or Project at the material time.

11. On 9 May 2018 the FTT directed the appeals of both Mr Mitchell and Mr Bell to be heard together and directed HMRC to serve a single Statement of Case addressing both appeals. The appeals were categorised as complex. On 9 July 2018, HMRC served their Statement of Case, summarising the facts and issues and setting out their contentions. In relation to Mr Mitchell, HMRC asserted that he was a shadow director of Payroll and Project at the material time, relying on evidence obtained in the course of the COP 9 investigation. In relation to Mr Bell, HMRC asserted that he too was a shadow director of Payroll and Project at the material time, relying in part on an extract from Mr Mitchell's COP 9 interview where Mr Mitchell had said that Mr Bell made all the decisions in both companies. The Statement of Case referred to a number of documents and classes of documents which had come into HMRC's possession as part of the COP 9 investigation, including meeting notes between HMRC and Mr Mitchell and outline disclosure volunteered to HMRC by Mr Mitchell as part of the COP 9 process. Mr Bell's representatives asked HMRC to disclose all of those documents.

12. HMRC asked Mr Mitchell to consent to the disclosure of those documents to ensure transparency between the parties to the combined appeals, but Mr Mitchell's representatives responded by letter dated 22 October 2018 saying that material should only be disclosed "to the extent that it is relevant to the appeals" and suggested that any "non-relevant personal information should be redacted".

13. On 31 October 2018, HMRC served their List of Documents. This was a single list to address both appeals. Included on that list were the documents which had been obtained as part of the COP 9 investigation into Mr Mitchell. By letter dated 7 December 2018, his representatives wrote to HMRC objecting to the disclosure of some of these documents on grounds that they were irrelevant: "…Within HMRC's list are a number of documents which relate either to Mr Mitchell personally, or other companies of which he is a Director/Shareholder. These have no relevance to the matter."

***The Applications to the FTT***

14. On 21 December 2018, HMRC applied to the FTT for a direction that they should be permitted to disclose the COP 9 documents listed on its list of documents to Mr Bell ("HMRC's application"). That was an application under Rule 5(3)(d) of the FTT Rules for an order that HMRC be permitted to disclose documents to Mr Mitchell and Mr Bell. It set out the background referred to rule 27 of the FTT Rules and sections 5, 17 and 18 of the CRCA. In their application, HMRC asserted that the appeals related to the PLNs which were within one of HMRC's functions, and so the disclosure fell within section 18(2) CRCA (see below and the Appendix to this judgment) but that "due to the procedural complexity of the two appeals … [HMRC] request the Tribunal's permission to disclose Mark Mitchell's COP 9 investigation documents to Paul Bell".

15. On 18 January 2019, Mr Mitchell filed a cross-application ("Mr Mitchell's application"). He applied for a direction under Rules 2, 5, 6 and 15(2)(b)(iii) of the FTT Rules for a direction that HMRC's application should be refused on the basis that the scope of the proposed disclosure included documents which were not relevant to the dispute between the parties; alternatively, that those documents should be excluded from evidence because it would be unfair to admit them. Mr Mitchell's application listed 18 documents contained in HMRC's list which Mr Mitchell said should not be disclosed to Mr Bell. These are the "Disputed Documents".

## The Tribunal Decisions

### *FTT Decision*

16. The applications came before Judge Barbara Mosedale sitting in the FTT on 22 May 2019. All parties were represented by counsel at that hearing. The FTT heard submissions from all three parties at a public hearing and then Mr Bell and his advisors withdrew to allow HMRC and Mr Mitchell to advance arguments at a private hearing. The FTT's decision was delivered in two versions: first, in a published version which marked certain passages which had been redacted, and secondly in an unredacted format to which only HMRC and Mr Mitchell had access. This Court has been provided with the redacted and the unredacted versions of the FTT decision.

17. In her written decision (both versions) issued on 30 October 2019, the Judge recorded that there was no dispute on the legal principles to be applied. She started with Rule 15(2)(b) which gave the FTT the power to exclude evidence and noted Rule 5(3)(d) which conferred power on the FTT to order disclosure. She recorded HMRC's view that they had no power to disclose the Disputed Documents to Mr Bell without Mr Mitchell's consent, citing section 18 CRCA and *R (Ingenious Media Holdings plc and another) v HMRC* [2016] UKSC 54. In response, she said that:

> "22. In my view, in ordinary tax litigation, HMRC neither obtain nor need to obtain an order from this Tribunal before they are able to rely in the proceedings on documents to which s 18(1) CRCA applies. They may rely on them because defending appeals against assessments (and similar litigation) is a function of HMRC and such disclosure (in the sense of relying on the documents in open court) is permitted under s 18(2)(a). Such disclosure is also covered by s 18(2)(c) as long

> as it is for the purpose of the civil proceedings, which would include proceedings in the tax tribunal."

18. She went on to identify the issue as "whether HMRC should be permitted to rely on the documents or part of them" and held that "that was to be determined by relevance" (see [24]). She recorded the parties' agreement that "evidence should be admitted in the appeal if it was relevant" ([25]), that irrelevant evidence should be excluded, citing *HMRC v Infinity Distribution Ltd* [2016] EWCA Civ 1014 where Nugee J held at [11] that the "admission of evidence which is irrelevant is detrimental to the economical and proportionate conduct of Tribunal proceedings" ([26]), and that in some circumstances relevant evidence could be excluded if it there was some compelling reason to do so ([29], [30] and [32]) relying on *HMRC v IA Associates* [2013] EWHC 4382 (Ch) per Nugee J at [35]:

> "one starts with asking the question whether the evidence is admissible. It is admissible if it is relevant. It is relevant if it is potentially probative of one of the issues in the case. One then asks, notwithstanding that it is admissible evidence, whether [there] are good reasons why the court (or the tribunal in this case) should nevertheless direct that it be excluded".

19. The Judge noted that Mr Mitchell's and Mr Bell's interests were "not aligned" and that Mr Mitchell objected to disclosure of the Disputed Documents to Mr Bell as well as HMRC's reliance on them ([33]). She divided the Disputed Documents into various levels, 1 to 4 (with Level 2 split into three sub-levels). She decided that Levels 1, 2A and 2C contained relevant documents that should be disclosed. No issue arises in relation to those Levels on appeal. However, that left the following levels for determination:

    **i)** Level 2B: this comprised documents where there was mention of interaction between Payroll or Project and other companies controlled or allegedly controlled by Mr Mitchell or Mr Bell;

    **ii)** Level 3: this comprised documents which went to show Mr Mitchell's interactions with other companies which he controlled or allegedly controlled, and in particular his interactions with companies which had dealings with Payroll or Project.

    **iii)** Level 4: anything which went to Mr Mitchell's or Mr Bell's credibility generally and in particular the credibility with which they presented the affairs of companies which they controlled or allegedly controlled. This level also appears to have covered documents which related to Mr Mitchell's personal tax affairs.

20. I leave Level 3 documents on one side, because it turns out that there are no documents in that category. So far as the remaining Disputed Documents are concerned:

    **i)** In relation to Level 2B, the Judge said:

> "49. … it is only to the extent that the disputed document contained evidence about companies mentioned in HMRC's statement of case that it contained Level 2B evidence which is relevant to these appeals. To that extent only Level 2B material [is] admissible and should be admitted into the appeal and copied to Mr Bell."

That meant that Disputed Documents which contained evidence about companies controlled by Mr Mitchell which were not mentioned in HMRC's Statement of Case were not required to be disclosed, on grounds (by inference) that those documents were irrelevant.

**ii)** In relation to Level 4, the Judge held that Mr Mitchell's credibility was to some extent in issue, because HMRC's Statement of Case expressly stated that HMRC did not accept the credibility of all that he had said to them in respect of Payroll and Project, and that Mr Bell's credibility was also in issue by implication from HMRC's Statement of Case (see [61]). But, she said, "there is no statement that their credibility in general is in issue" ([62]) and held that:

> "64. In the absence of any pleaded case that Mr Mitchell's statements about his other tax affairs were unreliable … I find L4 material not relevant."

That meant that Disputed Documents which contained evidence about Mr Mitchell's handling of his own tax affairs or the tax affairs of other companies with which he was associated, were not required to be disclosed, on grounds that they were irrelevant.

21. Her overall conclusion was that only relevant documents were to be disclosed and the remainder (some Level 2B and 4 documents) were to be redacted to the extent not relevant.

22. Both Mr Mitchell and Mr Bell sought permission to appeal, which permission was granted by Judge Mosedale on 21 February 2020. HMRC did not seek to appeal, even though HMRC's application was one of the applications which had given rise to the judgment under appeal.

***UT Decision***

23. The matter came before the UT (Judge Jonathan Richards and Judge Jonathan Cannan) on 20 and 21 July 2021. Their decision was handed down on 8 October 2021 ([2021] UKUT 0250 (TCC)). Mr Mitchell had appealed in relation to the FTT's decision that Disputed Documents falling within Levels 2C and 3 should be disclosed. Mr Mitchell contended the FTT was in error because these documents were irrelevant and prejudicial. The argument about Level 3 fell away, for reasons I have explained, leaving 2C. The UT dismissed Mr Mitchell's appeal. He does not renew his appeal to this Court and it is not necessary to set out the UT's reasons for reaching that decision.

24. Mr Bell had appealed against the FTT's decision that Disputed Documents failing within Levels 2B (to some extent, at least), 3 and 4 should not be disclosed. The

argument about Level 3 fell away leaving Levels 2B (to some extent) and 4 in dispute. HMRC served a Response under Rule 24 of the UT Rules (SI 2008/2698) in which they supported Mr Bell's appeal.

25. The UT said that Mr Bell's appeal was against the FTT's case management decision with which the UT should not interfere if the FTT had applied the correct principles in exercising its discretion, referring to *HMRC v Ingenious Games LLP* [2014] UKUT 0062 (TCC) (a different *Ingenious* case) at [56]. They referred to Rules 2, 5, 15, 25 and 27 of the FTT Rules. They held that the FTT was entitled to take the view that the question whether Mr Bell should have sight of the Level 2B documents (to the extent they remained in dispute) and Level 4 documents was co-extensive with the question whether HMRC were entitled to rely on them, a position with which Mr Bell had agreed in the FTT ([81]-[82]). There was "some potential relevance" in the Level 2B documents ([91]). But the FTT was not "plainly wrong" to decline to give Mr Bell sight of the Level 2B Disputed Documents, in circumstances where Mr Bell had not mentioned in his grounds of appeal to the FTT that he would be making a positive case against Mr Mitchell; further, he was not permanently deprived of sight of those documents because he could make an application for disclosure at an appropriate point ([83], [92]). In relation to Level 4 Disputed Documents, the UT doubted that many of the documents on HMRC's list could properly be said to be relevant to credibility at all; the FTT was entitled to require a satisfactory explanation of why such a potentially broad category of documents should be included on HMRC's list and the FTT had not been satisfied that these documents were of "sufficient relevance" ([95]); there was nothing wrong with the FTT's conclusion that the relevance of the Level 4 Disputed Documents was "not sufficient" ([96]). The UT rejected Mr Bell's argument that the Level 4 Disputed Documents had the potential to assist him in the preparation of his appeal because, they reasoned, Mr Bell's own case lacked relevant detail and in any event Mr Bell could make an application for specific disclosure of his own ([98]). The UT dismissed Mr Bell's appeal ([99]).

**Appeal and Respondent's Notice**

26. Mr Bell now appeals to this Court. His grounds of appeal are that the UT was wrong to refuse him sight of the Disputed Documents falling in Levels 2B and 4. HMRC supports Mr Bell's appeal and has filed a Respondent's Notice which formalises that position and seeks no relief or outcome different from that sought by Mr Bell.

27. Mr Mitchell resists Mr Bell's appeal and has lodged a Respondent's Notice by which he seeks to uphold the UT's decision for the reasons given by the UT and in addition for the reasons given by the FTT (to the extent that the FTT differed in its reasoning from the UT). He asserts that no documents are disclosable to Mr Bell unless they are relevant to the facts and allegations pleaded in HMRC's Statement of Case, and that Level 2B documents (to the extent they refer to companies not mentioned in HMRC's Statement of Case) and Level 4 documents are not relevant and therefore not disclosable by HMRC (see paragraph 6.5 of Mr Mitchell's Respondent's Notice).

**Parties' Submissions**

28. We are grateful to all counsel and their legal teams for their very helpful submissions, both in writing and at the hearing. Before summarising the points advanced, it is important to observe that the focus of argument before this Court appears to have

shifted, as a result of or in coincidence with the arrival of Mr Puzey to lead HMRC's legal team. HMRC's submissions to this Court invite a close analysis of HMRC's statutory powers under section 18 CRCA, a provision which appears not to have been given much airtime below. In light of the changed emphasis of HMRC's submissions and the fundamental issues raised by them, we invited Mr Puzey, supported by Ms Goldring and Ms Rao who had appeared in the UT but not the FTT, to address the Court first in sequence.

***HMRC***

29. HMRC maintained that Mr Bell should be provided with disclosure of all the Disputed Documents, including those in Levels 2B and 4, because they had the potential to assist him in the substantive appeal and fairness required that he should see them. HMRC were permitted to make disclosure of these Disputed Documents under the primary legislation: section 18(2)(a) permits HMRC to make disclosure of documents for the purposes of their functions which would include prosecuting an appeal in the FTT and section 18(2)(c) permits HMRC to make disclosure of information held in connection with a function of HMRC for the purposes of civil proceedings. HMRC did not require the FTT's authorisation to make disclosure. With the benefit of hindsight, HMRC's application to the FTT had been unnecessary.

30. Mr Puzey strongly disputed Mr Mitchell's submission that the FTT retained power to supervise the exercise of HMRC's powers to make disclosure under section 18(2). He argued that there was no jurisdiction in the FTT to do so. The FTT Rules do not confer any such jurisdiction and the only route for challenging HMRC's proposed disclosure under section 18(2) was by way of judicial review. Mr Puzey also disputed Mr Mitchell's suggestion that section 18(2) only conferred power on HMRC to disclose documents to the extent that they were relevant to the pleaded case of a party to an FTT appeal; Mr Puzey said that section 18(2) could not be read down in that way, on its face it was a broad permission to disclose, in the context of enabling HMRC to carry out its function of collection and management of tax; the only limits on HMRC flowed from HMRC's status as a public authority subject to general principles of public law.

31. In any event, the FTT had erred in its approach, even assuming it did have jurisdiction to determine the issues before it, because the FTT (and the UT and Mr Mitchell) had wrongly conflated the concept of disclosure with the concept of admissibility. Those were separate issues which arose at different stages in the litigation and involved different considerations. He referred us to the notes in the White Book 2022 to CPR Part 31, Rule 6 which emphasises the distinction. Further, the FTT had been wrong to conclude these documents were not relevant. The Disputed Documents might well assist Mr Bell or undermine Mr Mitchell in the context of likely "cut-throat" defences being run by both of them, and in that sense they were relevant. It was vital that Mr Bell should have access to any exonerating material which might be in the hands of HMRC. It was no answer to suggest, as the UT had done, that Mr Bell could make an application for specific disclosure because he did not know what the Disputed Documents contained.

32. Finally, there was inconsistency between the position taken by the FTT that the Level 2B and 4 documents in question were irrelevant and the apparent position of the UT that they were of some but insufficient relevance. The UT was right to find the

documents were relevant and that should have caused the UT to reverse the FTT rather than uphold it.

33. In all the circumstances, Mr Puzey invited the Court to allow this appeal: the FTT decision could not stand, and nor could the UT decision which upheld the FTT.

***Mr Bell***

34. Mr Bell, represented in this Court as below by Mr Akin, supported HMRC's submissions. He noted the discrepancy between the FTT's view that the Level 2B and 4 documents were irrelevant and the UT's conclusion that they were of some relevance. He argued that the UT had been in error in refusing to overturn the FTT's decision. He emphasised that Mr Bell could not make an application for specific disclosure because he did not know what was in the Disputed Documents in Level 2B and 4. Further, "general" credibility was very much in issue in Mr Bell's appeal, even though it was not pleaded: credibility was necessarily a general concept and it was artificial for the FTT to seek to confine evidence going to credibility in the way it had done; Mr Mitchell's honesty or lack of it in relation to his own tax affairs or in relation to other companies with which he had dealings was obviously relevant to that wider question.

***Mr Mitchell***

35. Mr Mitchell, represented in this Court as below by Mr Hickey and Ms Sheldon, maintained his objection to HMRC's proposed disclosure of Level 2B (to the extent that the FTT had refused permission) and Level 4 documents. He sought to uphold the reasoning of the UT, alternatively and to the extent that it differed, the reasoning of the FTT. Mr Mitchell submitted that disclosure is determined by relevance, and relevance is to be assessed by reference to HMRC's Statement of Case, relying on *Burns v FCA* [2018] 1 WLR 4161. HMRC's case against both Mr Mitchell and Mr Bell depended on showing a "deliberate inaccuracy" (para 19 of Schedule 24 to the Finance Act 2007) which was tantamount to an allegation of fraud (*Tooth v HMRC* [2021] UKSC 17, [2021] 1 WLR 2811), and that needed to be pleaded clearly and with particularity (*Belmont Finance Corp Ltd v Williams Furniture Ltd* [1979] Ch 250 at 268 per Buckley LJ). The extent to which documents can be relied on by a party turns first and foremost on whether the document is admissible, which is answered by reference to whether it is relevant in the context of the parties' pleadings, see *Infinity Distribution* at [11] and *IA Associates* at [35].

36. Section 18(2) did not override the fundamental concepts of taxpayer confidentiality protected by section 18(1), nor did it confer an unbounded power on HMRC to disclose such documents as they saw fit. The common law still applied to any exercise by HMRC of those powers and could only permit disclosure to the extent that the relevance criterion was met, judged by reference to the parties' pleaded cases.

37. The FTT did have jurisdiction over HMRC's exercise of section 18 powers of disclosure, pursuant to Rules 5 and 15, and specifically under Rule 15(2)(b)(iii). The

FTT had a wide discretion when it came to case management and the FTT's decision that these documents were not relevant was ultimately a case management decision with which this Court should be slow to interfere; Mr Bell could not reach the high hurdle of showing that the UT and FTT decisions were "unjustifiable", see *BPP Holdings Ltd v Commissioners for HM Revenue and Customs* [2017] 1 WLR 2945 (Ch) at [33]. So far as Level 2B was concerned, HMRC did not name the other companies with which Mr Mitchell was associated in their Statement of Case, and the FTT was therefore entitled to conclude that Disputed Documents, to the extent they concerned the other companies, were not relevant. So far as Level 4 was concerned, HMRC had not itself sought to rely on documents relating to Mr Mitchell's own tax affairs or the tax affairs of other companies with which he was associated; HMRC made no allegation of bad character, or propensity, or similar fact, in relation to those matters, and therefore asserted no link between these documents and the appeals against the PLNs. Mr Bell was on a 'fishing expedition' for documents which were not relevant and which he was not entitled to see.

## Discussion

38. This appeal raises a number of issues. I have grouped the issues under the following heads which I will address in the following sequence:

**i)** The nature and scope of HMRC's powers under section 18 CRCA.

**ii)** FTT's jurisdiction in relation to section 18 CRCA.

**iii)** HMRC's application.

**iv)** The appeal against the FTT's decision on relevance.

### *i) The nature and scope of HMRC's powers under Section 18 CRCA*

39. The CRCA brought together into a single tax collecting authority the two bodies which had previously existed, namely the Inland Revenue and HM Customs and Excise. The CRCA sets out the functions and powers of the new unitary authority, HMRC, and is the statutory foundation for that body. Section 5 lists the functions of HMRC, including the function of collecting and managing the tax. That function (previously commonly referred to as "care and management") has for many years existed; immediately prior to the CRCA, it was contained in the Taxes Management Act 1970 in relation to the Inland Revenue and the Customs and Excise Management Act 1979 in relation to HM Customs and Excise. It was famously described as conferring on the tax authority a "wide managerial discretion" as to the best means of obtaining for the national exchequer the highest net return that is practicable from the taxes committed to the charge of that authority, having regard to the staff available to them and the cost of collection, see *R v Inland Revenue Commissioners, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 (the "*Fleet Street Casuals*" case) at p 636 per Lord Diplock, confirmed in *R (Wilkinson) v Inland Revenue Commissioners* [2005] UKHL 30, [2005] 1 WLR 1718 per Lord Hoffmann at [20]. The duty of confidence which HMRC owes to taxpayers has also long been recognised as part and parcel of the care and management function, see as examples the *Fleet Street Casuals* case per Lord Wilberforce at p 632, and *Ingenious Media Holdings* at [22]-[23] per Lord Toulson, referred to at para 4 above.

40. Section 18(2) contains three exceptions to the duty of confidence which are potentially relevant in this appeal. The first is section 18(2)(a) which permits HMRC to make disclosure for the purposes of a function of HMRC which does not contravene any restriction imposed by the Commissioners. In this case, HMRC wished to disclose the Disputed Documents to Mr Bell so that he could have knowledge of them as he prepared for his FTT appeal, and as a matter of fairness. I would readily accept that the disclosure of documents in HMRC's possession, which HMRC considers to be required out of fairness in the context of ongoing tax litigation, is part of HMRC's function of collection and management of the tax. It has not been suggested that for HMRC to have disclosed the Disputed Documents would have contravened any restriction imposed by HMRC.

41. Mr Hickey says that as a matter of common law, in the context of an ongoing dispute before the FTT, there is a further condition to be read into section 18(2)(a), namely that the proposed disclosure must be relevant to the issues raised in the parties' pleaded cases. I reject that submission. Section 18(2)(a) contains no such condition on its face. Nor does the scheme and purpose of section 18 require it: section 18 balances the individual's right to confidentiality against the desirability of disclosure in certain instances, in the context of HMRC fulfilling their statutory functions which are themselves functions of a public nature conducted by a public body in the public interest. There may very well be instances where HMRC wishes to disclose material even though that material is not strictly relevant to an issue pleaded in the course of an FTT appeal but HMRC considers that disclosure would be in the wider public interest. For example, HMRC may be in possession of material which might exonerate a taxpayer in the context of that taxpayer's FTT appeal but the issue to which that material goes remains unpleaded because the taxpayer is not aware of its existence or content. The contrary conclusion, that HMRC should be prohibited from disclosing such material because the pleadings do not raise the precise issue to which that document might go, is inimical to the public interest and would be an absurd outcome. I accept the general proposition that HMRC's discretion to make disclosure is not unbounded: limits exist in the terms of section 18(2) itself, and the ordinary obligations imposed by public law would apply, so, for example, HMRC could not make disclosure exercising its powers under section 18(2)(a) if to do so would be irrational. For these reasons I reject Mr Hickey's submission that relevance to the pleaded case is a condition of section 18(2)(a). I conclude that section 18(2)(a) would apply, at least in principle, if HMRC wished to make disclosure of the Disputed Documents to Mr Bell.

42. I reach a similar conclusion in relation to section 18(2)(c). That permits HMRC to make disclosure for the purposes of civil proceedings. The term "civil proceedings" is not defined in the CRCA but Mr Puzey submits that the term extends to FTT appeals, a proposition with which no one takes issue, and which I do not doubt. Section 18(2)(c) seems particularly apt on the facts of this appeal, where civil proceedings are extant and where HMRC wishes to make disclosure to assist one of the parties to those proceedings. Mr Hickey maintains his submission that this provision too is subject to an implied condition that the documents which HMRC proposes to disclose must be relevant to the issues pleaded by the parties in the course of the civil proceedings; for reasons similar to those I have already articulated in the context of section 18(2)(a), I disagree. The language does not suggest the existence of such a condition and the scheme and purpose of section 18 does not warrant such a

condition being read in. Indeed, the apparent purpose of the provision, to enable HMRC to make disclosure of confidential documents in fulfilment of their statutory functions, would be thwarted if such a condition was read in. In the context of civil proceedings, the example of HMRC wishing to disclose potentially exculpatory material is even stronger. It shows that section 18(2)(c) can operate as a safeguard where the procedural code of the tribunal (or other litigation forum) contains a narrow disclosure rule – for example, in the FTT, where the basic rule under Rule 27(2) is limited to disclosure of documents on which a party intends to rely - but HMRC is in possession of documents on which HMRC do not wish to rely but which would assist another party to that appeal. I conclude that section 18(2)(c) would apply, at least in principle, if HMRC wished to make disclosure of the Disputed Documents to Mr Bell.

43. Section 18(2)(e) operates where disclosure is ordered by "a court" which I would accept includes a tribunal, as Mr Puzey submits. In this case, at least so far as the disputed Level 2B (some) and Level 4 documents are concerned, disclosure has not been ordered and this exception is not engaged. However, to the extent that the FTT has ordered disclosure to Mr Bell of other levels of Disputed Documents, this exception is engaged, because HMRC will make disclosure of those documents pursuant to the FTT's order.

44. In summary, I am satisfied that HMRC are in principle empowered to disclose the Level 2B and 4 documents, which are the subject of this appeal, pursuant to either or both of section 18(2)(a) and section 18(2)(c). Section 18(2)(e) is not engaged on the facts of this appeal.

***ii) FTT's jurisdiction in relation to s 18 CRCA***

45. The FTT was established by the Tribunals, Courts and Enforcement Act 2007. It derives its jurisdiction from statute. We were shown no provision which might confer jurisdiction on the FTT to adjudicate the exercise of powers by HMRC under section 18(2)(a) and/or (c). That is not a matter of surprise, at least not to me: challenges to HMRC's decisions made in pursuance of their wide managerial discretion are ordinarily for the Administrative Court rather than the FTT.

46. Mr Hickey argued that the FTT had power (by which, possibly, he should be taken to mean jurisdiction) to prohibit HMRC's disclosure under section 18(2), by virtue of FTT Rules 5 and 15. Rule 5 concerns the FTT's case management powers and permits the FTT to regulate its own procedure "*subject to … any other enactment"* (see Rule 15(1)). The first and obvious point to make in answer to Mr Hickey's submission is that the CRCA is "an enactment" to which Rule 5 is subject, not the other way around. The CRCA is, as I have noted, the founding statute for HMRC, and it would be unexpected, to say the least, to find that HMRC's functions (or the exercise of powers conferred by the statute in connection with those functions) were subject to the scrutiny of the FTT through Rule 5, which simply concerns case management. Secondly, Rule 5 is concerned with case management of appeals, but the powers of disclosure under section 18(2)(a) and (c) are not limited to appeals in the FTT, they have a much wider potential ambit. It would make no sense for Rule 5 to confer jurisdiction over the exercise of HMRC's powers under section 18(2)(a) or (c) in circumstances where there was an appeal in progress, but not otherwise. Thirdly, Rule 5 does not, on its face, permit the FTT to *prohibit* disclosure which a party wishes to make. Rule 5(3)(d) empowers the FTT to permit or require

disclosure, and so in an appropriate case the FTT could direct HMRC to disclose documents (and that would engage the exception in s 18(2)(e) to which I have already referred), but Rule 5 does not on its face permit any restriction on what a party may disclose in reliance on other legislation or simply as a voluntary act. I would accept that the FTT has some power to restrict disclosure by a party to an appeal in exercise of its general case management powers under Rule 5(1), for example, if a party proposed disclosure within the FTT regime which was abusive in some way, then the FTT could, I think, prevent that; but that extreme example does not reflect the present case. I am not persuaded that Rule 5 confers any jurisdiction on the FTT to interfere in the exercise by HMRC of its discretionary powers under section 18(2)(a) or (c).

47. Rule 15 is concerned with the FTT's power to make directions about evidence and submissions. Specifically, Rule 15(2) permits the FTT to admit evidence which would not otherwise be admissible or exclude evidence which would otherwise be admissible on grounds including unfairness (see Rule 15(2)(b)(iii)). Rule 15(2) deals with admissibility of evidence; it does not deal with disclosure. The distinction was emphasised by the commentary to the Civil Procedure Rules in the "White Book" 2023, a passage brought to the Court's attention by Mr Puzey:

> "31.6.6 It is important to note that disclosure of documents and admissibility of evidence are two distinct concepts. It is not a ground for refusing disclosure that the document would not be admissible in evidence, and so the existence of potentially inadmissible documents should still be disclosed. See eg *O'Rourke v Derbyshire* [1920] AC 581 at 624, 630-631 (relating to the pre-CPR position)."

48. *Infinity Distribution* and *IA Associates* concerned questions of admissibility of witness evidence; those cases, and the other authorities upon which Mr Hickey relied, are not of assistance in relation to disclosure. In this case, the FTT may have to decide, at some future point, whether the evidence which Mr Bell hopes to obtain from HMRC if he succeeds in this appeal is admissible as evidence in the appeals. The FTT will use Rule 15 to decide that issue. But that will be at a future point after disclosure has occurred. I am not persuaded that Rule 15 confers any power on the FTT to regulate disclosure by the parties to an appeal.

49. In summary, in my view the FTT lacks jurisdiction to adjudicate proposed disclosure by HMRC pursuant to powers contained in s 18(2)(a) or (c). I agree with Mr Puzey that the only route for challenge to a disclosure decision under either of those provisions is by way of judicial review.

***iii) HMRC's application***

50. HMRC reached the conclusion that Mr Bell should see the Disputed Documents for reasons which would at first blush, at least, appear reasonable. HMRC thought that fairness required disclosure, to enable Mr Bell to prepare his case for the FTT. There was an obvious possibility, based on these documents, of a cut-throat defence being run by each of them. HMRC listed the Disputed Documents on their list of documents which was served pursuant to the FTT's directions in the appeals. I have no difficulty with HMRC intimating an intention to disclose the Disputed Documents in that way: Rule 27 requires a party to list not only those documents on which a party intends to rely (and HMRC did intend to rely on some of the Disputed Documents in

its own case against Mr Mitchell and Mr Bell), but also those documents which that party *intends to produce* in the proceedings, and HMRC did intend to produce the Disputed Documents in the sense of disclosing them to Mr Bell.

51. HMRC invited Mr Mitchell to consent to disclosure and when Mr Mitchell withheld his consent, HMRC applied to the FTT for an order. Their application was in these terms: "The Respondents HEREBY apply for an Order under Rule 5(3)(d) of the [FTT Rules] that the Respondents be permitted to disclose documents to … Mr Bell." HMRC's application referred to sections 5, 17 and 18 of the CRCA and seemed to acknowledge that the proposed disclosure fell within HMRC's existing powers under section 18(2)(c) (see paras [26] and [27] of HMRC's application) but in light of the complexity of the matter (para [28]) sought the FTT's direction for disclosure.

52. HMRC did not need Mr Mitchell's consent to their proposed disclosure, nor did HMRC need the FTT's permission to make that disclosure, because HMRC possessed powers under section 18(2)(a) and (c) to make that disclosure quite independently of the FTT Rules. A question arises as to why HMRC made their application to the FTT at all. It seems that HMRC wanted the protection of an order of the FTT before making disclosure in light of Mr Mitchell's objections to disclosure. Mr Puzey says that with hindsight HMRC's application was not necessary. I agree. But HMRC did make their application and the FTT did adjudicate it, and it is that sequence of events that gives rise to this appeal. HMRC's application was defective on its face by referring to section 18(2)(c) as the proposed basis for making disclosure and then inviting the FTT to make an order under Rule 5(3)(d): the FTT has *no* jurisdiction over the exercise of HMRC's powers under s 18(2)(c). But the FTT was not thereby deprived of its own powers to order disclosure under the FTT Rules in an appropriate case. The two regimes co-exist and can provide alternative routes to disclosure in the context of an FTT appeal.

53. I can see no reason in principle why HMRC should not have asked the FTT to exercise its case management powers under Rule 5 in relation to disclosure of the Disputed Documents. HMRC's mistake was to connect the exercise of those case management powers with section 18(2)(c). But if section 18(2)(c) is excised from the equation, there is no difficulty in terms of jurisdiction. To the extent that the FTT made orders for disclosure under Rule 5 in relation to other levels of Disputed Documents, those orders are binding on the parties to the FTT appeal and find recognition in section 18(2)(e).

54. It would obviously have been much better if HMRC had been clearer, from the outset, about what they were asking for and on what basis; the way they went about their application seems to have left Mr Mitchell and Mr Bell under the impression that the issue of disclosure of the Disputed Documents was a matter over which the FTT had exclusive jurisdiction, when that was not the case.

55. When the matter came before the FTT, the FTT acknowledged that HMRC did not need the permission or direction of the FTT to make disclosure of confidential documents under section 18(2)(a) or (c) (see [22], set out at para 17 above). But the FTT then said that the question for it was whether HMRC should be permitted to rely on the documents or part of them ([24]); further, that question was to be determined by relevance ([24]); relevance meant admissibility judged by reference to the pleaded

cases ([25]-[32]); and some Level 2B and 4 documents were not relevant, in that sense ([49] and [[64]).

56. The FTT's conclusion was in these terms:

> "64. … For reasons given above, it is appropriate to redact the disputed documents so that only the relevant material may be relied on by HMRC and disclosed to Mr Bell. The parties must agree the redactions in line with the principles I have outlined above …"

57. For reasons already discussed, the FTT had no jurisdiction over HMRC's exercise of powers under section 18(2)(a) and/or (c). If the FTT was purporting, in this passage, to prohibit HMRC from disclosing the Disputed Documents (all or any of them) under any of its powers, then it was exceeding its jurisdiction.

58. However, I think that the better way of understanding this passage is that the FTT was simply responding to HMRC's application by declining to make an order directing HMRC to disclose those documents which the FTT had concluded were not relevant, namely some of the Level 2B and all of the Level 4 documents, in exercise of its case management powers under Rule 5(3)(d). HMRC had sought an order under that provision and power to make or refuse such an order lay within the FTT's jurisdiction. The FTT had noted the limits of its jurisdiction in relation to section 18(2) at an earlier stage of the decision (see [22], set out at para 17 above), but went on to adjudicate HMRC's application anyway. I understand the FTT to have done that as a matter of case management under Rule 5. Properly understood, the FTT was not purporting to prevent HMRC from exercising its powers under section 18(2)(a) or (c).

59. This is my preferred reading of the FTT's decision, and it follows that it is open to HMRC now, as it has always been, to exercise their powers under either or both of section 18(2)(a) or (c) and to make disclosure of the Level 2B and 4 Disputed Documents to Mr Bell, if they consider that to be appropriate. If Mr Mitchell wishes to challenge that decision, he will need to apply for judicial review.

### *(iv) The appeal against the FTT's decision*

60. Finally, then, I come to the appeal against the FTT's decision. In truth, the outcome of the appeal is of modest significance in light of my conclusions so far, because this appeal will not determine whether HMRC can disclose the Level 2B and 4 Disputed Documents to Mr Bell; HMRC have and always have had the power to do that anyway. Mr Mitchell seeks to uphold the FTT's decision (and the UT's endorsement of it) for the reasons given by each tribunal. I cannot accept that submission. It seems to me that the FTT erred in its approach to the disclosure issue raised by HMRC's application, and that its conclusion that some of the Level 2B and 4 documents did not need to be disclosed in the context of this FTT appeal was wrong. I reach that conclusion for the following three reasons.

61. First, the FTT materially misstated the question it had to resolve. At [24] the FTT said that the "question for the hearing was whether HMRC should be permitted to rely on the documents or part of them and that was to be determined by relevance". But the question was not whether HMRC could *rely o*n the Disputed Documents; rather,

the question was whether HMRC should be permitted to *produce* those documents at the hearing by way of disclosure to Mr Bell. True it was that HMRC wished to rely on some of them in their own case against Mr Mitchell and Mr Bell respectively; but the real point of HMRC's application was to enable HMRC to show those documents to Mr Bell to assist him in his appeal. The two limbs of Rule 27(2) are different and HMRC's application arose under the second limb, not the first limb as the FTT seems to have thought; the FTT should have recognised the true character of HMRC's application and examined the reasons for it. Secondly, the FTT was wrong to suggest that the decision about disclosure to Mr Bell was to be resolved by reference to relevance which it went on to define in terms of admissibility. That was not the right test. I accept Mr Puzey's submission that the FTT, like Mr Mitchell, wrongly conflated disclosure with admissibility: see the discussion at paras 31 and 47 above. Thirdly, in determining what approach to disclosure it should apply, the FTT appears to have lost sight of the overriding objective which requires the FTT to ensure that the proceedings are fair and just. The FTT did not engage with HMRC's case that fairness required disclosure of Level 2B and 4 Disputed Documents to Mr Bell because they had the potential to assist his appeal. The FTT limited the scope of disclosure going to credibility, when credibility is necessarily a general concept, and was an obvious line of argument for Mr Bell. The FTT suggested that Mr Bell could make an application for specific disclosure in due course, but that was not realistic given that he did not know what was in the Level 2B and 4 Disputed Documents. The point which the FTT should have had in mind was that Rule 27(2) provided only the starting point for disclosure, but the rule is flexible and can be varied in appropriate circumstances to meet the fairness and justice of the case. That was the point made by the Court of Appeal in *Smart Price Midlands* (see para 6 above). In many cases before the FTT that starting point is adequate as an end point too, because HMRC and the taxpayer already have all the documents which relate to the dispute. But this case was different, because it involved two appellants with apparently divergent cases, in circumstances where HMRC held documents relating to the tax affairs of one of them, which documents could have real significance to the other. The FTT needed to consider whether the scope of disclosure should be broadened to something closer to the standard rule under the CPR.

62. I conclude that the FTT decision erred in its approach to HMRC's application. Accepting the high threshold which applies when considering an appeal from a case management decision (see *BPP Holdings* on which Mr Mitchell relies), I conclude that this is a case where the FTT's case management decision, to the extent that it dismissed HMRC's application in relation to some Level 2B and Level 4 documents, must be set aside. To the extent that the UT upheld FTT in relation to those documents (on grounds, essentially, that it was a case management decision with which the UT would not interfere), the UT was wrong and that part of the UT's decision must also be set aside.

63. That reasoning leads to this end point: to the extent that the FTT (upheld by the UT) allowed HMRC's application, the FTT's order is untouched by this appeal and remains in place; to the extent that the FTT refused HMRC's application and upheld Mr Mitchell's cross application, the FTT was in error and the FTT's decision must be set aside and to that extent, the UT's decision must also be set aside; it would not, however, be appropriate for this Court to re-take the decision itself as to whether the Level 2B and 4 documents should be disclosed under Rule 5(3)(b), although it has

power to do so (by CPR 52.20(1)), because this Court has not considered the documents closely and anyway disclosure is properly part of the FTT's case management function; but there is no good reason to remit this matter to the FTT for it to reconsider HMRC's application, to the extent that it related to Level 2B and 4 documents, given that, as is now clear, HMRC have the powers to disclose the Disputed Documents anyway and do not need the permission of the FTT, the UT or this Court to do so. I therefore conclude that this appeal should be allowed and that "no order" should be substituted for the FTT's refusal of those parts of HMRC's application which are under appeal to this Court.

**Disposal of the Appeal**

64. Mr Mitchell seeks to uphold the FTT's decision (and the UT's endorsement of it) for the reasons given by each tribunal. I cannot accept that submission. It seems to me that the FTT erred in its approach to the disclosure issue raised by HMRC's application and its conclusion that some of the Level 2B and 4 documents did not need to be disclosed in the context of this FTT appeal was wrong.

65. In summary, I conclude that:

i) The Disputed Documents were covered by taxpayer confidentiality under section 18(1) CRCA.

ii) Two exceptions to section 18(1) were engaged on the facts and HMRC could have relied from the outset (and can in principle rely now) on either exception to disclose the Disputed Documents to Mr Bell. Those exceptions are contained in section 18(2)(a) and s 18(2)(c) CRCA.

iii) The FTT lacks jurisdiction to adjudicate an exercise by HMRC of its powers under section 18(2)(a) or s 18(2)(c). Any challenge to such an exercise would have to be by way of judicial review.

iv) The FTT did have jurisdiction to determine issues of case management using powers under Rule 5 (Rule 5(3)(d) in particular). The FTT exercised those powers in determining HMRC's application, as it was entitled to do. The two regimes (Rule 5 and s 18(2)) exist entirely independently of each other.

v) To the extent FTT decided that HMRC's application should be dismissed (in relation to some Level 2B and all Level 4 documents) on grounds of irrelevance, the FTT made material errors and that part of the FTT's decision must be set aside.

vi) The UT decision which upheld the FTT's dismissal of those parts of HMRC's application was wrong and to that extent the UT decision must also be set aside.

vii) This Court should substitute "no order" on those parts of HMRC's application which sought permission to disclose some Level 2B and all Level 4 documents.

66. I would allow this appeal.

***Post-Script***

67. Since writing my judgment, I have had the advantage of reading My Lord, Lord Justice Arnold's judgment in draft. He and I agree that the FTT lacked jurisdiction to adjudicate any question relating to HMRC's exercise of their statutory powers under s 18(2)(a) and (c). But we differ in our analysis after that common point. The difference between us goes to the jurisdiction of the FTT to determine HMRC's application at all. Arnold LJ considers that the FTT lacked jurisdiction to adjudicate HMRC's application because that application referred to section 18(2)(c), and that Mr Mitchell's cross application responded to that application and also lay outside the FTT's jurisdiction. By contrast, I think the FTT had jurisdiction to consider HMRC's application under its case management powers contained in Rule 5.

68. I accept that HMRC's application was unclear and contradictory. But two important facts take primacy in the analysis, in my view: (i) whatever else it said, HMRC's application invited an order under Rule 5(3)(d); and (ii) the FTT did in fact adjudicate HMRC's application. So, the question for this Court is whether the FTT had jurisdiction to do that, and I think it did. I do not share Arnold LJ's scepticism about a party applying for an order against itself which I consider to be possible under Rule 5(3)(d).

69. Arnold LJ's analysis leads to rather dramatic consequences. First, on his analysis, the FTT's (and the UT's) decisions must (as it seems to me) be set aside in their entirety on grounds that the FTT lacked jurisdiction. It is not possible to preserve part of the FTT's order and make no order on the remainder, as I have suggested. Secondly, his analysis results in HMRC being on a different footing in terms of access to the FTT's case management powers, by comparison with Mr Bell and Mr Mitchell, both of whom could on his approach have made applications for or against disclosure under Rule 5. Thirdly, on his approach, the FTT would be left in a situation where it had to question HMRC's intentions under section 18(2) in any case where disclosure was in issue, because if HMRC did wish to make disclosure under section 18(2), the FTT would lack jurisdiction. I think that would be an unwelcome complication for the FTT when exercising its ordinary powers of case management, and it would undermine the central and agreed proposition that Rule 5 should operate entirely independently of section 18(2).

70. Returning to my Lord's judgment, I make two final comments. First, I do not accept my Lord's view that Rule 27(2) "regulates the exercise" of HMRC's powers under section 18(2)(a) or (c), even in the context of an extant appeal in the FTT (see para 81). I think the better view is that HMRC can, as it did in this case, choose to list proposed disclosure under section 18(2) on their list of documents prepared for an FTT appeal, but the FTT cannot require HMRC to do it that way, because the FTT lacks jurisdiction over any aspect of the exercise of HMRC's statutory powers under section 18(2). Secondly, I would not wish to encourage Mr Mitchell to apply for judicial review if HMRC now decide to disclose the remaining Disputed Documents to Mr Bell in exercise of their section 18(2)(a) or (c) powers; but in fairness to Mr Mitchell, I think that questions about the legality in public law terms of HMRC's actions should be left to the Administrative Court. The rationality of HMRC's proposed exercise of their section 18(2) powers did not arise for decision in this appeal and I did not understand Mr Hickey to offer any concession which should bind

him in future on that matter (in contrast to what Arnold LJ says at paras 81 and 82 below).

**LADY JUSTICE CARR:**

71. I agree that the appeal should be allowed. I have had the benefit of reading the judgment of Arnold LJ in draft and see that he also agrees that the appeal should be allowed. However, he reaches that conclusion by a different route to that of Whipple LJ.

72. All three of us agree that Rule 5 of the FTT Rules does not confer any jurisdiction on the FTT to interfere with the exercise by HMRC of its powers under section 18 of the CRCA. HMRC did not need Mr Mitchell's consent, or any court order, to make disclosure under section 18.

73. It is at this stage that the views of Arnold LJ and Whipple LJ diverge. Arnold LJ concludes that, on the facts of this case, the FTT therefore had no jurisdiction to make the order that it did. In particular, he relies on the wording of HMRC's application (which referred to the seeking of "permi[ssion]" to disclose and cited section 18(2)(c)). There was, in Arnold LJ's view, no jurisdiction under Rule 5 either to permit or prevent HMRC from disclosing the documents under section 18. Whipple LJ, on the other hand, agrees that HMRC's application was misconceived in so far as it relied on (or referred to) section 18, but finds that that mistake did not deprive the FTT of its ordinary case management powers, including under Rule 5. However, the FTT judge erred in its approach to the exercise of that jurisdiction.

74. I prefer the reasoning of Whipple LJ, including at paras 67 to 70 above. As she says at para 52, the two regimes (under s. 18 and Rule 5) can co-exist independently and provide alternative routes to disclosure in the context of a FTT appeal. The FTT Judge was well alive to the limits of her jurisdiction in relation to section 18 (see [22] of her judgment), and Rule 5(3)(d) was fairly and squarely in play on the face of HMRC's application. I see no difficulty in principle with the FTT Judge exercising her (very broad) case management powers under Rule 5 so as to assist the parties and progress the appeal in accordance with the overriding objective in Rule 2 of the Rules.

75. I would add only this. Whilst, as set out above, HMRC did not need consent or a court order in order to make disclosure under section 18, and to this extent their application was poorly drafted (or ill thought-out), I nevertheless have some sympathy with HMRC's position. This is a highly-charged appeal involving serious allegations against Mr Mitchell and Mr Bell; large sums of money are at stake; and Mr Mitchell and Mr Bell are apparently running cut-throat defences, with Mr Mitchell objecting to disclosure of the documents in question. However rational a decision by HMRC to disclose the documents (under section 18) might be, I can see why in all the circumstances HMRC might have felt it appropriate not to proceed without more. It seems to me counter-intuitive in the context of the overriding objective (and unduly prescriptive) to suggest that the FTT Judge did not have jurisdiction to make the orders that she did.

**LORD JUSTICE ARNOLD:**

76. I agree that the appeal should be allowed. I am largely, but not entirely, in agreement with the reasoning of Whipple LJ. Both for that reason and because we are disagreeing with two specialist tribunals, I will explain the reasons why I consider that the appeal should be allowed in my own words.

77. HMRC applied under Rule 5(3)(d) for an order that they "be *permitted* to disclose documents to Mr Mitchell and Mr Bell [emphasis added]". HMRC's application notice recited that Mr Mitchell's solicitors had objected to HMRC disclosing documents concerning Mr Mitchell to Mr Bell. It relied upon sections 5(1), 17 and 18(2) of the Commissioners for Revenue and Customs Act 2005 in support of the proposition that "[HMRC] may disclose information for the purposes of civil proceedings relating to a matter in respect of which [HMRC] have functions". It then asserted that HMRC's defence of the appeals "clearly falls within one of [HMRC's] functions and therefore the documents included on [HMRC's] List of Documents are disclosable". It also specifically confirmed that the documents included in HMRC's list of documents were (a) documents which HMRC had in their possession, the right to possess or the right to take copies of and (b) documents which HMRC intended to rely upon or produce in the proceedings, in accordance with Rule 27(2) of the Rules. It concluded: "[HMRC] request the Tribunal's *permission* to disclose Mark Mitchell's COP 9 investigation documents to Paul Bell [emphasis added]".

78. Mr Mitchell cross-applied for a direction under Rules 2, 5, 6 and 15(2)(b)(iii) of the Rules that HMRC's "application for disclosure … is refused". HMRC were not making an application for disclosure, however. They were seeking, in effect, a determination that Mr Mitchell could not validly object to HMRC voluntarily disclosing the documents to Mr Bell for the purposes of the appeals. In the alternative Mr Mitchell sought a direction that the documents be excluded from evidence on the basis that it would be unfair to admit the evidence.

79. It is worth noting that there was no application by Mr Bell for an order for specific disclosure by HMRC. If there had been, the FTT would clearly have had jurisdiction to make an order under Rule 5(3)(d), and HMRC could then have disclosed any documents they were ordered to disclose pursuant to section 18(2)(e).

80. Despite HMRC's clear invocation of section 18(2)(c) in its application notice, at the hearing before the FTT counsel then appearing for HMRC submitted that (as Judge Mosedale recorded the submission at [21]) "[HMRC] had no power to disclose the documents to Mr Bell without an order from the tribunal because Mr Mitchell had refused to consent to the disclosure and they were documents which were affected by [section 18(1)]". Judge Mosedale rejected that submission at [22] (quoted by Whipple LJ in paragraph 17 above). She nevertheless accepted at [24] the common position of the parties that the question she had to decide was whether the HMRC should be permitted to rely on the documents and that was to be determined by relevance. The effect of this was not only to contradict her own analysis of HMRC's powers, but also to conflate disclosure of documents with admissibility. The UT adopted essentially the same approach.

81. The FTT and the UT therefore did not ask themselves the right questions, which were whether the FTT had power to prevent HMRC from voluntarily disclosing the documents to Mr Bell for the purposes of the appeals, and if so whether Mr Mitchell had any valid ground for invoking such power. Counsel for Mr Mitchell accepted in

this Court that HMRC have a rational belief that the documents are potentially relevant to the issues which are likely to arise on the appeals, and in particular that they may be of assistance to Mr Bell. It follows that the answer to the first question is no. As Judge Mosedale said, HMRC had power to disclose the documents by virtue of section 18(2)(a) and (c). In the context of disclosure for the purposes of proceedings before the FTT, Rule 27(2) regulates the exercise of that power in that, unless there is a direction to contrary, it requires a list of documents to be produced and empowers the FTT to control the timing of lists of documents; but it goes no further than that. In the absence of any public law challenge by Mr Mitchell to HMRC's decision voluntarily to disclose the documents, the FTT had no power which Mr Mitchell could invoke to prevent HMRC from disclosing the documents. Rule 15(2)(b)(iii) empowers the FTT to exclude evidence from the proceedings on the ground of unfairness, but that has nothing to do with whether HMRC may voluntarily disclose documents to a party. Rule 5(3)(d) empowers the FTT, among other things, "to permit or require a party … to provide documents … to the Tribunal or a party", but HMRC did not need the FTT's permission. What Rule 5(3)(d) does not do is to empower the FTT to prevent a party from voluntarily disclosing documents to the Tribunal and another party which the first party has the power to disclose, at least where there is no abuse of that power. Even if Rule 5(3)(d) did empower the FTT to prevent HMRC from voluntarily disclosing the documents, the answer to the second question is no. Mr Mitchell had no valid ground for invoking that power.

82. Whipple LJ considers that, even though the FTT has no jurisdiction under Rule 5 to prevent HMRC from disclosing documents in the exercise of HMRC's powers under section 18(2)(a) or (c), the FTT nevertheless had power to make or refuse the order which HMRC sought under Rule 5(3)(d). I respectfully disagree with this proposition, which seems to me to be contradicted by Whipple LJ's own analysis in paragraphs 39 to 49 (with which I agree) of HMRC's powers under section 18(2)(a) and (c) and of the FTT's powers under Rule 5. What HMRC asked the FTT for was permission to disclose the documents, but as Whipple LJ says in paragraph 52 HMRC did not need the FTT's permission. HMRC did not ask the FTT for an order compelling HMRC to disclose the documents, which is hardly surprising since a party cannot ask for a compulsory order against itself, nor should any court or tribunal make such an unnecessary order. The FTT should have dismissed both HMRC's application and Mr Mitchell's primary application because the FTT had no power to make any order under Rule 5(3)(d) either permitting HMRC to disclose the documents or preventing HMRC from disclosing the documents. Given the subsequent course of events, however, I see no objection to Whipple LJ's proposal that there be no order on the parts of HMRC's application which sought permission to disclose some Level 2B and all Level 4 documents, since the effect is the same. It is not clear to me that, in relation to the Level 1, 2A, 2C and the remaining Level 2B documents, the FTT positively ordered HMRC to disclose the documents. If it did, then I also see no objection to that order standing, even though no party applied for such an order and even though it was not necessary, because, as Whipple LJ says in paragraphs 43 and 46, the FTT would have had jurisdiction to make such an order under section 18(2)(e) and Rule 5(3)(d). As for Mr Mitchell's alternative application, the FTT should have dismissed that as being premature for the reasons explained below.

83. Although the question is academic for the reasons given above, in my opinion the FTT also erred in determining, by reference to HMRC's statement of case, that the

Level 2B and 4 documents were irrelevant. The issues have not yet crystallised, and it is difficult to be certain at this stage what documents will prove to be relevant. In my view this is a case in which the FTT should exercise its power to direct the service of statements of case by Mr Bell and Mr Mitchell in reply to HMRC's statement of case in order to ascertain what the issues are. The UT, by contrast, was correct to find that the documents were "of some potential relevance" (as the UT expressly held in relation to the Level 2B documents at [91] and impliedly held in relation to the Level 4 documents by purporting to agree with the FTT that they were "not … of *sufficient* relevance [emphasis added]" at [95]-[96]). I would comment in relation to the Level 4 documents (documents going to Mr Mitchell's credibility) that the fact that Mr Bell probably could not obtain an order for specific disclosure of such documents does not mean that HMRC cannot disclose them voluntarily. As I have said, it is accepted that HMRC have a rational belief that such documents are potentially relevant, and in particular that they may assist Mr Bell. I also consider that the UT erred in upholding the FTT's decision as being within the FTT's discretion as to case management when, upon the UT's own analysis, the FTT's decision was predicated upon an erroneous assessment of relevance.

84. I would add three points for completeness. First, what HMRC ought to have done in this case, once they had served their list of documents in accordance with Rule 27(2) and Mr Mitchell had objected to HMRC disclosing Mr Mitchell's COP 9 documents to Mr Bell, was to invite Mr Mitchell to apply within a specified period to the Administrative Court for judicial review of HMRC's decision to disclose the documents to Mr Bell. If Mr Mitchell had applied for permission to seek judicial review, obviously HMRC should have awaited the outcome of that application. Assuming that Mr Mitchell had either made no application within the period specified by HMRC or had applied and either been refused permission or failed to obtain judicial review, HMRC could then have proceeded to disclose the documents to Mr Bell without reference to the FTT.

85. Secondly, counsel for Mr Mitchell suggested that Mr Mitchell's concern was that the documents would enter the public domain. I am sceptical that this was the real motive for his application, but in any event confidentiality of documents is no answer to an order for disclosure of documents, let alone a decision voluntarily to disclose documents. If documents contain information which is truly confidential, then that may justify the imposition of restrictions upon inspection of the documents, and potentially other measures to protect the confidentiality of the information, but that is a different issue.

86. Thirdly, as counsel for Mr Bell accepted, it remains open to Mr Mitchell to apply for an order under Rule 15(2)(b)(iii) excluding evidence on the ground of unfairness; but it will only be possible to determine such an application once the parties have clarified their cases and decided what evidence they wish to adduce. It should be noted, however, that information which is confidential (but not privileged) may still be admitted in evidence even if it was unlawfully obtained by the person seeking to rely upon it: see in particular *Imerman v Tchenguiz* [2019] EWCA Civ 908, [2011] Fam 116.

# Appendix

***CRCA 2005***

**5. Commissioners' Initial Functions**

(1) The Commissioners shall be responsible for-

(a) The collection and management of revenue for which the Commissioners of Inland Revenue were responsible before the commencement of this section,

(b) The collection and management of revenue for which the Commissioners of Customs and Excise were responsible before the commencement of this section, and

(c) The payment and management of tax credits for which the Commissioners of Inland Revenue were responsible before the commencement of this section.

…

**17. Use of Information**

(1) Information acquired by the Revenue and Customs in connection with a function may be used by them in connection with any other function.

(2) Subsection (1) is subject to any provision which restricts or prohibits the use of information and which is contained in –

(a) This Act,

(b) Any other enactment, or

(c) An international or other agreement to which the United Kingdom or Her Majesty's Government is party.

…

**18. Confidentiality**

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

(2) But subsection (1) does not apply to a disclosure-

(a) Which –

(i) Is made for the purposes of a function of Revenue and Customs, and

(ii) Does not contravene any restriction imposed by the Commissioners,

…

(c) Which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

…

(e) Which is made in pursuance of an order of a court.

**51. Interpretation**

…

(2) In this Act –

(a) "function" means any power or duty (including a power or duty which is ancillary to another power or duty), and

(b) a reference to the functions of the Commissioners or of officers of Revenue and Customs is a reference to the functions conferred –

(i) by or by virtue of this Act, or

(ii) by or by virtue of any enactment passed or made after the commencement of this Act.

…

(3) In this Act a reference to information acquired in connection with a matter includes a reference to information held in connection with that matter.

***The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009***

**Overriding objection and parties' obligation to co-operate with the Tribunal**

2. – (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

…

**Case management powers**

5. – (1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

…

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction-

…

(d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;

…

**Evidence and Submissions**

15.

…

(2) The Tribunal may-

…

(b) exclude evidence that would otherwise be admissible where –

(i) the evidence was not provided within the time allowed by a direction or a practice direction;

(ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction;

(iii) It would otherwise be unfair to admit the evidence.

**Respondent's statement of case**

25. – (1) A respondent must send or deliver a statement of case to the Tribunal, the appellant and any other respondent so that it is received -

…

(2) A statement of case must –

(a) in an appeal, state the legislative provision under which the decision under appeal was made; and

(b) set out the respondent's position in relation to the case.

…

**Further steps in a Standard or Complex case**

27. – (1) This rule applies to Standard and Complex cases.

(2) Subject to any direction to the contrary, within 42 days after the date the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the Tribunal and to each other party a list of documents-

(a) of which the party providing the list has possession, the right to possession, or the right to take copies; and

(b) which the party providing the list intends to rely upon or produce in the proceedings.

(3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list (except any documents which are privileged).