



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Mbakiso Magwape, Postdoctoral Fellow at the *International Center for Tax and Development* and OPTR National Reporter of Botswana.

This set of questionnaires comprises the National Reporter's assessment of the country's practice during 2024 in protecting taxpayers' rights and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "The Practical Protection of Taxpayers' Fundamental Rights."

OPTR - 2024 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 a wide range of 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.

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 2024, until no later than 10 January 2025. 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 Sam van der Vlugt
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: *

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Botswana

Affiliation *

☐ Taxpayers / Tax Practitioners

☐ Tax Administration

☐ Judiciary

☐ (Tax) Ombudsperson

☒ Academia

☐ Other:

Questionnaire 1 - Country Practice

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. For assertive questions, please answer with "yes" or "no" by clicking on the corresponding button.
3. For questions that require you to specify a period of time (namely, Q. 26 and Q. 45), please select the time applicable in your country to carry out the procedures indicated in the questions in practice, within the options provided.
4. For questions with more than one possible answer (namely, Q. 56), please check all necessary boxes to reflect better the practical situation of your country regarding the issue, by clicking on them.
5. When completed, please submit the survey.
6. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.

7. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
8. An option to quit the survey and save your answers is provided at the end of each section.
9. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.
10. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.
11. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

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

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

☒ Yes

☐ No

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

☐ Not applicable (click here if you answered "No" to the previous question)

☒ Yes

☐ No

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

☐ Yes

☒ No

5A. 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

6. Are compliance obligations imposed on third parties subject to limits that ensure they are necessary and proportionate? *

☒ 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

7A. Are there special arrangements in circumstances of force majeure? *

☐ Yes

☒ No

7B. If yes to 7A, do said arrangements operate automatically? *

☒ Not applicable (click here if you answered "No" to question 7A)

☐ 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 and data protection

N.B. From 2024 all questions of this area also refer to data protection

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

☒ Yes

☐ No

11A. Do data protection rights apply to all information held by tax authorities? *

☐ Yes

☒ No

11B. If yes to 11A, does it include the right to access data and correct inaccuracies? *

☐ Yes

☐ No

☒ Not applicable (click here if you answered "No" to question 11A)

11C. If yes to 11A, is all data (at some point) destroyed once its purpose has been fulfilled? *

- ☐ Yes
- ☐ No
- ☒ Not applicable (click here if you answered "No" to question 11A)

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

14A. If yes to 14, are victims of an unauthorised disclosure entitled to be informed and paid a *
compensation?

- ☐ Yes
- ☒ No
- ☐ Not applicable (click here if you answered "No" to question 14)

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

- ☐ Yes
- ☒ No

15A. Are tax officials entitled to work remotely? *

- ☐ Yes
- ☒ No

15B. If yes to 15A, are equivalent measures taken to ensure confidentiality and data
protection to the ones that apply when the official is working from a tax office? *

- ☐ Yes
- ☐ No
- ☒ Not applicable (click here if you answered "No" to question 15A)

15C. If yes to 15B, are those measures audited? *

☐ Yes

☐ No

☒ Not applicable (click here if you answered "No" to question 15A & 15B)

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

☐ Yes

☒ No

16A. If yes to 16, is access limited only to those who have a legitimate interest? *

☐ Yes

☐ No

☒ Not applicable (click here if you answered "No" to question 16)

16B. Can information held by tax authorities be supplied to other authorities? *

☒ Yes

☐ No

16C. If yes to 16 B, is the supply to other public authorities permitted only when authorised by law and with appropriate safeguards? *

- ☒ Yes
- ☐ No
- ☐ Not applicable (click here if you answered "No" to question 16B)

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

- ☐ Yes
- ☒ No

17A. If yes to 17, is personal data that places the individual at risk not disclosable? *

- ☐ Yes
- ☐ No
- ☒ Not applicable (click here if you answered "No" to question 17)

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

18A. Is there legislation that protects whistleblowers that disclose confidential information held by revenue authorities (or third parties holding data for tax purposes)? *

☒ 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

20A. Are there mandatory disclosure requirements (e.g. mandatory disclosure of tax planning arrangements)? *

☐ Yes

☒ No

20B. If yes to 20A, are those mandatory disclosure obligations so drafted as not to affect the relations with professional advisers? *

☐ Yes

☐ No

☒ Not applicable (click here if you answered "No" to question 20A)

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

23A. If yes to 23, does this principle also apply to online meetings? *

☒ Yes

☐ No

☐ Not applicable (click here if you answered "No" to question 23)

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? *

 Dropdown

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

2. 1-3 months

3. 4-6 months

4. 7-9 months

5. 10-12 months

6. 13-15 months

7. 16-18 months

8. 19-21 months

9. 22-24 months

10. More than 24 months

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

29A. Once a tax audit is completed, are there rules that prevent further evidence being collected, further arguments being put forward and no further tax charges being brought? *

☐ 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

38A. Does access to bank information for tax purposes require prior judicial authorisation? *

☐ 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

39A. If evidence is collected as a result of a search that was not authorised by the judiciary is ^{*} that evidence admissible?

☐ Yes

☒ No

39B. If digital data is copied or removed, are there provisions to ensure that this does not ^{*} affect the normal operation of the electronic information system?

☐ 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

40A. Do taxpayers have an alternative of taking an appeal to an arbitration tribunal in place of the tax courts? *

☐ 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? *

 Dropdown

1. There is no limit (click here if you answered "No" to question 44)
2. 1-3 months
3. 4-6 months
4. 7-9 months
5. 10-12 months
6. 13-15 months
7. 16-18 months
8. 19-21 months
9. 22-24 months
10. More than 24 months

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

☐ Yes

☒ No

46A. Does a taxpayer have the right to request an online hearing or object to it? *

☐ 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

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

58A. Is there a legislative cap to prevent interest, penalties and surcharges to exceed the amount of tax due? *

- ☒ 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

65A. If information is sought from a third party, does that third party have the right to challenge the legality of the request before the judiciary? *

☐ Yes

☒ No

65B. Is exchange of information prohibited with any state if it is foreseeable that the data would be used in a way that is repressive or that it would undermine the protection of fundamental rights? *

☐ Yes

☒ No

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

☐ Yes

☒ No

66A. In the event of a leak of confidential information, is exchange of information with that state suspended? *

☐ Yes

☒ No

66B. Are there time-limits after which data that has been exchanged are to be destroyed or anonymously archived? *

☐ 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

68A. Does a taxpayer have a right to be given a statement of reasons how a solution was reached through mutual agreement procedures? *

☐ 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

83. 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

84. 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

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

- ☐ Yes
- ☒ No

86. 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 85)
- ☐ Yes
- ☐ No

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

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

Do you want to save your results and quit? *

If "Yes", please submit the form. 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 13 - Artificial Intelligence (AI)/Automated Analytical Systems (AAS)

88. Are taxpayers who are subject to a tax compliance procedure that involves AI/AAS informed of that fact? *

☐ Yes

☒ No

☐ Not applicable (in case no AI/AAS is used)

89. In communications between a tax authority and a taxpayer that employs AI/AAS, is it stated that the tax authorities is represented only by a machine? *

☐ Yes

☒ No

☐ Not applicable

90. If a decision relating to tax administration has been taken by the use of AI/AAS, is the taxpayer provided with basic details of the procedure applied? *

- ☐ Yes
- ☒ No
- ☐ Not applicable

91. Do the tax authorities publish details of the type of AI/AAS employed with specific information about the purpose for which they are used? *

- ☐ Yes
- ☒ No

92. Does a system exist for voluntary registration of AI/AAS? *

- ☐ Yes
- ☒ No

93. If yes to 92, does the tax authority register all AI/AAS tools or algorithms with that system? *

- ☐ Yes
- ☐ No
- ☒ Not applicable (click here if you answered "No" to question 92)

94. Are decisions that may have a significant impact on a taxpayer taken exclusively by AI/AAS? *

- ☐ Yes
- ☒ No
- ☐ Not applicable

95. If decisions impacting a taxpayer are taken by AI/AAS, are they overseen by a suitably qualified individual before the decision is notified? *

- ☐ Yes
- ☐ No
- ☒ Not applicable

96. If an audit employs material generated by AI/AAS, is that material available to taxpayers and their advisors? *

- ☐ Yes
- ☒ No
- ☐ Not applicable

97. If yes to 96, is an explanation provided and does the taxpayer have an effective remedy against unlawful or inaccurate use of AI/AAS? *

- ☐ Yes
- ☐ No
- ☒ Not applicable (click here if you answered "No" to Question 96)

98. Do tax authorities publish guidance notes explaining the way in which they use AI/AAS? *

- ☐ Yes
- ☒ No

99. If revenue authorities use AI/AAS, do they publish guidelines and points of contact for taxpayers who have questions or concerns about those procedures? *

- ☐ Yes
- ☒ No
- ☐ Not applicable

100. Does the tax administration appoint a senior official with overriding responsibility for AI/AAS in the tax administration? *

- ☐ Yes
- ☒ No
- ☐ Not applicable

Google Forms

OPTR - 2024 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 2024 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 2024 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 2024, until no later than 10 January 2025. 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 Sam van der Vlugt
Scientific Coordinator
IBFD Observatory on the Protection of Taxpayers' Rights.

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

Email *

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Reporters' info

Name: *

Mbakiso Magwape

Country: *

Botswana

Affiliation *

☐ Taxpayers / Tax Practitioners

☐ Tax Administration

☐ Judiciary

☐ (Tax) Ombudsperson

☒ Academia

☐ Other:

Instructions

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

2. All questions are two or three-tiered (namely, either with parts "MS" and/or "BP", and "S"). They comprise a minimum standard (MS) and /or a best practice (BP), and a "summary of relevant facts in 2024" (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 2024. 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 2024", 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 2024".

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. (BP) Methods of identifying taxpayers should employ the highest levels of identification security, including dual authentication (without imposing an excessive burden on taxpayers to log in when accessing private information or engaging in communication with the revenue authorities) *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

1 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 2024

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

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

7 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

9 (MS). Compliance obligations on third parties should only be imposed where necessary and in all cases the burden imposed on third parties should be proportionate and not excessive *

- ☒ No Changes
- ☐ Shifted away
- ☐ Shifted towards

9 (S). Summary of relevant facts in 2024.

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

10 (MS). In circumstances of force majeure (e.g. pandemics / natural disasters), mechanisms should automatically apply to relieve taxpayers of compliance obligations that have become excessively difficult due to the circumstances. The point at which such circumstances start to apply and cease to apply should be clearly and publicly announced *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

10 (S). Summary of relevant facts in 2024.

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

11 (BP). Tax compliance obligations should be designed so as to ensure that taxpayers can fulfil their compliance obligations without excessive cost and without the compulsory use of a tax agent, due regard being had to the type of taxpayer (individual / corporate / others) and to the complexity of the taxpayer's tax affairs *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

11 (S). Summary of relevant facts in 2024.

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Compliance obligations on third parties should only be imposed where necessary *
and in all cases the burden imposed on third parties should be proportionate and not excessive

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

12 (S). Summary of relevant facts in 2024.

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

13 (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

13 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Use e-filing to speed up assessments and correction of errors, particularly systematic errors

*

- ☐ No changes
- ☐ Shifted away
- ☒ Shifted towards

14 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

Increased drive and publication to utilize e-services, which also includes publication drives and increasing the tax threshold to reduce the tax-base to focus e-filing on targeted taxpayers.

15 (MS). Where a tax assessment indicates a repayment is due, that repayment should be made without undue delay or unnecessary formalities. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

15 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 3 - Confidentiality and data protection

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.

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

*

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

16 (MS). Encrypt information held by a tax authority about taxpayers to the highest level attainable.

*

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

16 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Introduce an offence for tax officials covering up unauthorised disclosure of confidential information. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

17 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

18 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Data protection rights apply to all information held by tax authorities. This includes rights to access data and correct inaccuracies and the destruction (or anonymous archiving) of all data once its purpose has been fulfilled. *

- ☐ No changes
- ☒ Shifted away
- ☐ Shifted towards

19 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

The Data Protection Act entered into legal effect in 2024, which limits legal effect to tax related information, which means that the competent authority (the Revenue Service) may request for exclusion of coverage on a case-by-case basis.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

20 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Introduce administrative measures emphasizing confidentiality to tax officials. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

21 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Where tax officials are permitted to work remotely (e.g. from home), equivalent measures should be taken to ensure confidentiality and data protection as if the official were working from a tax office. The measures taken to ensure confidentiality and data protection should be audited on a regular basis. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

22 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Appoint data protection/privacy officers at senior level and local tax offices. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

23 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

24 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

25 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Taxpayers who are victims of unauthorised disclosure of confidential information * should be entitled: a) to be informed as soon as possible of the unauthorised disclosure; and b) to full compensation, including damages (in cases where tax authorities and third parties have not maintained adequate standards of data protection).

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

26 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted. Data held by tax authorities (or third parties for tax purposes) should only be accessible to those who can show a legitimate interest in access to that data *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

27 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Information held by a tax authority (or by third parties for tax purposes) should not be supplied to other public authorities unless the transfer is authorised by law and there are appropriate safeguards (e.g. a requirement of judicial authorisation). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

28 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

29 (BP). If “naming and shaming” is employed by any governmental body on the basis of tax information, then personal data that places the individual at risk (e.g. the individual’s home address) should not be disclosed. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

29 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Legislation should protect whistleblowers in appropriate cases (including where the information disclosed demonstrates that a crime has been committed), in particular where the whistleblower discloses breaches of confidentiality and data protection by revenue authorities (and by third parties holding data for tax purposes). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

30 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). No disclosure of confidential taxpayer information to politicians, or where it might be * used for political purposes.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

31 (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

31 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Freedom of information legislation should allow a taxpayer to access information relevant to the tax system and how it impacts on that taxpayer (including all information about themselves). 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

32 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). If published, tax rulings should be anonymised and details that might identify the taxpayer removed. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

33 (BP). Anonymised tax rulings should be published to allow taxpayers to understand administrative practices. This should be subject to exceptions where publication would be potentially damaging to the taxpayer concerned *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

33 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Anonymise all tax judgments and remove details that might identify the taxpayer. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

34 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (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

35 (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

35 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

36 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Mandatory disclosure requirements (if adopted) should be clearly drafted and only * apply to cases in which such disclosure is strictly necessary and proportionate. The disclosure obligation should not operate to adversely affect the relationship with professional advisors and other third parties to a disproportionate extent.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

37 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

38 (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

38 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

39 (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

39 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (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

40 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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. This should apply equally to on-line meetings. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

41 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). In application of nemo tenetur, the right to remain silent should be respected in all tax audits. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

42 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Tax audits should follow a pattern that is set out in published guidelines. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

43 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). A manual of good practice in tax audits should be established at the global level. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

44 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Taxpayers should be entitled to request the start of a tax audit (to obtain finality). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

45 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Where tax authorities have resolved to start an audit, they should inform the taxpayer *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

46 (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

46 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Taxpayers should be informed of information gathering from third parties. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

47 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). For normal audits there should be a limitation period for the start of the audit; this * should only be extended where information comes to light that could not reasonably have been obtained previously. Once an audit has commenced, it should be conducted with a view to achieving certainty and finality as soon as reasonable, and adequate resources should be devoted to achieving that objective.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

48 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

49 (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

49 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 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

50 (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

50 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Once a tax audit is completed, no further evidence should be collected or included, *
no further arguments brought forward by the tax authorities, and no further tax charges
brought, unless in exceptional circumstances (e.g. where information comes to light that the
taxpayer has concealed).

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

51 (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

51 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

52 (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

52 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

53 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Entering premises should be authorised by the judiciary. Judicial supervision of the search should be available at all times. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

54 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

55 (BP). Evidence obtained as a result of a search that was not authorised by the judiciary * should not be admissible.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

55 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

56 (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

56 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Access to bank information for tax purposes (including automatically-supplied information) should require judicial authorisation. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

57 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

58 (MS). Authorisation by the judiciary should be necessary for the interception of telephone communications and monitoring of internet access. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

58 (BP). Specialised offices within the judiciary should be established to supervise the interception of telephone communications and monitoring of internet access. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

58 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Seizure of documents or data held on computer drives should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when the documents and data will be returned; seizure should be limited in time. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

59 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

60 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). If digital data is copied or removed, it should be done in a way that does not prevent or affect the normal operations of the electronic information system. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

61 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

62 (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

62 (S). Summary of relevant facts in 2024

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

Do you want to save your results and quit? *

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

- ☐ Yes
- ☒ No

Area 6 - Reviews and appeals

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

63 (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

63 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). The right to appeal should not depend upon prior exhaustion of administrative ^{*} reviews.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

64 (BP). Taxpayers may have an alternative of taking an appeal to an arbitration tribunal in place of the tax courts. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

64 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Taxpayers should have a remedy to accelerate or terminate (including through reference to mediation or ADR) reviews and appeals in cases of excessive delay. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

65 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Audi alteram partem should apply in administrative reviews and judicial appeals. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

66 (BP). The review or appeal of tax decisions should not place on the taxpayer an excessive or impossible burden of evidence. This should apply, in particular, where the burden is on the taxpayer to prove a negative (e.g. to prove the absence of motive) or to prove facts that occurred significantly in the past (e.g. more than 10 years previously).

*

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

66 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

67 (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

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

67 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). The state should bear some or all of the costs of an appeal, whatever the outcome. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

68 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Legal assistance should be provided for those taxpayers who cannot afford it. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

69 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

70 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Taxpayers should have the right to request an online hearing or to object to an online hearing. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

71 (BP). If tax judgments are published, the taxpayer should be able to ensure anonymity (or at least the removal of confidential information). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

71 (S). Summary of relevant facts in 2024

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

Do you want to save your results and quit? *

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

- ☐ Yes
- ☒ No

Area 7 - Criminal and administrative sanctions

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

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

72 (BP). The cumulative effect of penalties, interest and surcharges should not exceed the amount of tax due (and should only reach this amount in cases of the most serious violations). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

72 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

73 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Voluntary disclosure should lead to reduction of penalties. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

74 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.

*

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

75 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

☒ No changes

☐ Shifted away

☐ Shifted towards

76 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Authorisation by the judiciary should be required before seizing assets or bank accounts *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

77 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

78 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

79 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

80 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 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.

81 (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

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

81 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). The taxpayer should have a right to bring a legal challenge to test the legality of the request for exchange of information. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

82 (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

82 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (BP). Provisions should be included in tax treaties setting specific conditions for exchange *
of information.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

83 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

84 (MS). If information is sought from third parties, judicial authorisation should be *
necessary and the third party should have a right to bring a legal challenge to test the legality
of the request for exchange of information (on the same grounds as the taxpayer).

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

84 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 (MS). In the case of exchange of information on request, the taxpayer should be given access to information received by the requesting state (unless there are good justifications for not doing so). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

85 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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). 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

86 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

87 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

88 (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

88 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

89 (MS). In the event of a leak of confidential information or data held by the tax authority of a requesting state, all exchange of information with that state should be suspended until verifiable evidence has been provided that the cause of the leak has been permanently rectified. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

89 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

90 (MS). Data protection safeguards should apply to all exchanges of information. *

- ☐ No changes
- ☒ Shifted away
- ☐ Shifted towards

90 (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

90 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

91 (MS). The taxpayer should be notified of an exchange of information and given sufficient time to exercise data protection rights (including the right to correct inaccurate data). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

91 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

92 (MS). Time limits should apply to the retention of data that is exchanged (and the data should be destroyed or anonymously archived within this time limit). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

92 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

93 (MS). No exchange of information should be permitted with respect to any state if it is reasonably foreseeable that the recipient state will use the data in a way that is repressive or that would undermine the protection of fundamental rights. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

93 (BP). No exchange of information should be permitted with respect to any state if that state does not guarantee adequate data protection in its law and in practice. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

93 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

94. (BP). Where mutual agreement procedure (or arbitration following mutual agreement procedure) reaches a solution or fails to reach a solution, the taxpayer should be given a statement of reasons how that solution was reached (or why no solution was reached). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

94 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

95 (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

95 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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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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.

96 (MS). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail (and that respect the rule of law and the principle of legitimate expectation). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

96 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

97 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

98 (MS). All tax legislation should be reviewed on a regular basis to ensure that it supports the gradual realisation of the rights set out in the International Covenant on Economic Social and Cultural rights. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

98 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

99 (MS). All tax legislation should be reviewed on a regular basis to ensure that it is consistent with the realisation of the UN Sustainable Development Goals.

*

- ☒ No changes.
- ☐ Shifted away
- ☐ Shifted towards

99 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

100 (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

100 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

101 (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

101 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

102 (MS). Where a state has a system of advance rulings, they should be binding on the tax authorities (unless based on an incorrect presentation of the relevant circumstances). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

102 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

103 (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

103 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

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

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

104 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

105 (BP). A charter or statement of taxpayers' rights should be legally enforceable. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

105 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

106 (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

106 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

107 (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

107 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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 13 - Artificial intelligence / Automated analytical systems

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.

108 (MS). All taxpayers who are subject to a tax compliance procedure that involves artificial intelligence or automated analytical systems should be informed that such procedures will be applied. *

☒ No changes

☐ Shifted away

☐ Shifted towards

108 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

109 (MS). All communications between a tax authority and a taxpayer that employ artificial intelligence / automated analytical systems (e.g. via “chatbots” or automated correspondence) should state whether the tax authority is represented only by a machine or whether there is (or has been) human intervention. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

109 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

110 (MS). Where any decision relating to tax administration has been taken in respect of a taxpayer by the use of artificial intelligence / automated analytical systems, the taxpayer should be informed of that fact together with basic details of the procedure that has been applied. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

110 (BP). Where any decision relating to tax administration has been taken in respect of a taxpayer by the use of artificial intelligence / automated analytical systems, the taxpayer should be given full details of the criteria and algorithms that were used to reach that decision. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

110 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

111 (BP). Tax authorities should publish details of the types of artificial intelligence / automated analytical systems employed by the revenue authority with specific details about the purposes for which the artificial intelligence / automated analytical systems are being used. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

111 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

112 (BP). Where a system exists for voluntary registration of artificial intelligence / automated analytical systems tools or algorithms the tax authority should register all such tools and algorithms it employs. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

112 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

113 (MS). No decisions that may have a significant impact on a taxpayer may be taken exclusively by artificial intelligence/automated analytical systems. All decisions affecting a taxpayer should be overseen by a suitably qualified individual before the decision is notified. This applies both to decisions by the tax authorities and by judicial authorities. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

113 (BP). No decisions impacting a taxpayer should be taken exclusively by artificial intelligence / automated analytical systems. All decisions affecting a taxpayer should be overseen by a suitably qualified individual before the decision is notified. This applies both to decisions by the tax authorities (in connection with audits and reviews) and by judicial authorities. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

113 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

114 (MS). When an audit (or a more intense audit) employs any material generated by artificial intelligence / automated analytical systems, the material generated should be made available to taxpayers and their advisers, together with an explanation of how the material was derived by artificial intelligence / automated analytical systems. The taxpayer's legal remedies should be effective against unlawful or inaccurate use of artificial intelligence / automated analytical systems. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

114 (BP). Where artificial intelligence / automated analytical systems are to be employed by a tax authority (e.g. to identify under-declarations or evasion of tax), any taxpayers who may be impacted (which may include all taxpayers) should be given prior warning of the proposed action and given an opportunity to make voluntary disclosure (without any additional potential penalty). *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

114 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

115 (MS). All revenue authorities should publish guidance notes explaining the ways in which they use artificial intelligence / automated analytical systems in connection with tax compliance and administration, together with guidelines for the use of those procedures and points of contact for taxpayers who have questions or concerns about those procedures. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

115 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

116 (MS). Algorithms used by tax authorities should not use criteria that are foreseeably likely to have a discriminatory or distortive or disproportionate effect on the decisions taken as a consequence of the use of those algorithms. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

116 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

117 (MS). Where the use of artificial intelligence / automated analytical systems by a tax authority risks infringing any fundamental rights (e.g. the right to privacy) additional safeguards for those should be required. *

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

117 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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.

118 (MS). All tax administrations should appoint a senior official with overriding responsibility *
for the use of artificial intelligence / automated analytical systems in tax administration by
that tax authority.

- ☒ No changes
- ☐ Shifted away
- ☐ Shifted towards

118 (S). Summary of relevant facts in 2024

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer 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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GUIDELINES ON THE INCOME TAX (AMENDMENT) ACT, 2024

A		PURPOSE OF THE GUIDELINES
	A1	<p>The purpose of the guidelines is to give the public information on the latest Income Tax Act Amendment that came into effect on 15 January 2024. The guidelines are given for information purposes only and have no force in law. They do not bind the Commissioner General nor restrict the taxpayers' rights of objection or appeal as provided for under the Income Tax Act.</p>
	A2 ITA Amendment, 2024	<p>In January 2024 the Income Tax Act was amended to:</p> <ol style="list-style-type: none">1. Increase the tax-free threshold for pension fund commutable amounts, gratuity, severance and retrenchment payments.2. Introduce an exemption for amounts accessed by deferred pension fund members for medical reasons and settlement of loans.3. Provide an exemption to cover members who have retired from employment on medical reasons, who wish to access pension amounts to settle their mortgage loans. <p>The purpose of the Amendment was to align the Income Tax Act with the changes introduced by the Retirement Funds Act of 2022, which increased the amount of pension commutable at retirement and introduced enhancements to encashment by deferred members for purposes of settling medical bills and loans owed.</p> <p>The Income Tax Amendment Act, 2024 commenced on 15 January 2024. The Act is amended at Section 32 and Part II of the Second Schedule.</p>

B		<p align="center">INCREASE IN TAX-FREE THRESHOLD OF SPECIFIED PAYMENTS</p>
	<p>B1</p> <p>SECTION 32</p>	<p>At Section 32, the Amendment Act seeks to increase the tax-free threshold applicable to pension fund commutable amounts, gratuity and severance payment, and retrenchment package from one third to 50 per cent.</p>
	<p>B2</p> <p>SECOND SCHEDULE</p>	<p>The Second Schedule is amended in Part II to:</p> <ul style="list-style-type: none"> a) Increase exemption threshold for specified amounts and b) Introduce new exemptions.
	<p>B2.1</p>	<p align="center">INCREASE IN EXEMPT AMOUNT FROM ONE THIRD TO 50 PER CENT</p>
	<p>B2.1.1</p>	<p>Paragraph xxvii - Where under any law in force in Botswana an employee is permitted to commute a portion of his or her pension, an amount not exceeding 50 per cent of the pension entitlement at the time of retirement shall be exempt from tax.</p> <p>Example 1:</p> <p><i>Mr. Moruisi has worked in the public service since 2006. He has just celebrated his 45th birthday. He now wishes to retire from public service and pursue farming in his home village of Moletemane through the Temo Letlotlo programme.</i></p> <p><i>In terms of the Public Service Act, a public officer may voluntarily retire after attaining the age of 45. Mr. Moruisi has applied for voluntary retirement, which application has been duly approved by the employer. Mr. Moruisi has been a member of the Botswana Public Officers Pension Fund (BPOPF) until his retirement on 28 January 2024. The BPOPF rules allow Mr. Moruisi to commute an amount up to 50 per cent of his pension entitlement.</i></p>

Mr. Moruisi elects to commute the maximum of 50 per cent of his entitlement on retirement. Mr. Moruisi shall therefore be entitled to a 50 per cent exemption under the Income Tax Act and the remaining 50 per cent will be taxable over his remaining life (years) when paid as pension income.

Example 2:

Mr. Lesole enlisted with the Botswana Defence Force (BDF) in 2004 at the age of 18, and has completed 20 years of pensionable service in the force. According to the BDF Act, a soldier may retire at any time upon or after completing 20 years pensionable service.

Mr. Lesole, now 38, has indicated his intention to retire from the force to venture into other opportunities. He has been a contributing member of the BPOPF until his retirement on 27 February 2024. The BPOPF rules allow Mr. Lesole to commute an amount up to 50 per cent of his pension entitlement.

Mr. Lesole elects to commute 50 per cent of his pension entitlement on retirement, and therefore the 50 per cent shall be exempt from tax under the Income Tax Act. The remaining 50 per cent will be taxable over the years when he receives pension income.

B2.1.2

Paragraph xxviii - Any person other than the one subject to paragraph (xxvii), who, being entitled to a pension or annuity on retirement, elects to receive a part of such pension or annuity as a commuted lump sum, an actuarially calculated sum representing a commutation of not more than **50 per cent** of his or her full entitlement at the date of his or her retirement shall be exempt from tax;

Example 3:

Ms. Makepe has worked for Botswana Merchant Services (Pty) Ltd (BMS) for 27 years. She decided to retire from employment on 16 February 2024 upon reaching the age of 57.

BMS has entered into an arrangement with Pitse-E-Sule Insurance Company to provide pension benefits for its employees. Ms. Makepe

			<p><i>is entitled to a pension on retirement payable by the Insurer. Under the insurance scheme rules, BMS employees can retire from the age of 50 and Ms. Makepe is entitled to receive up to 50 per cent of her full entitlement.</i></p> <p><i>Ms. Makepe elects to commute 50 per cent of her entitlement. She will therefore be entitled to a 50 per cent exemption under the Income Tax Act. The remaining 50 per cent will be taxable over the years when she receives pension income.</i></p>
		B2.1.3	<p>INCREASE IN EXEMPT AMOUNT FROM P500 TO P20 000</p>
			<p>Paragraph xxix - Where a person other than a person referred to in paragraphs (xxvii) and (xxviii) is entitled bona fide to an annual pension or annuity of not more than P20 000, an actuarially calculated sum representing the commutation of that pension or annuity shall be exempted from tax.</p> <p>Example 4:</p> <p><i>Ms. Selapong worked in a cleaning company, Clean Hands (Pty) Ltd (CH) for 9 years, and retired on 19 January 2024 after attaining 56 years. CH purchased annuity with an insurance company for its employees. At the time of retirement, Ms Selapong is entitled to annuity from the insurance company.</i></p> <p><i>The Insurance company upon receiving Ms Selapong's notification of retirement, performed calculations on how much she is entitled to receive annually. The Insurer calculates the amount from the total credit that Ms Selapong is entitled to, being P235 200, and she will be able to receive a total of P16 800 annually as annuity for the next 14 years.</i></p> <p><i>Since the projected or calculated entitlement of her annual annuity is less than P20 000.00 per annum, Ms. Selapong will be entitled to</i></p>

			<i>commute the full credit (P235 200) to a single lump sum, and the entire amount will be exempt from tax.</i>
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	B2.2	
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		INSERTION OF NEW PARAGRAPHS (XLIV) AND (XLV) OF PART II OF THE 2ND SCHEDULE
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	B2.2.1	
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Paragraph xliv - Any amount withdrawn by a deferred member under the Retirement Funds Act from the pension entitlement, for purposes of medical treatment shall be exempt from tax.

This provision allows for exemption of benefits accessed by deferred pension fund members to pay for medical treatment in respect of terminal ailments or chronic diseases.

Example: 5

Mr. Benson was a pensionable employee of Reform Services (Pty) Ltd (RS) and resigned on 31st August 2023. Unfortunately, he received a terminal disease diagnosis in December 2023. He proceeded to utilize his medical aid benefit for hospital treatments.

On 23rd February 2024, the medical aid provider informed him that his medical aid benefit was exhausted. At that time, he still had to undergo four (4) further treatments, totaling an amount of P50 000.

Mr. Benson approached his previous employer's pension fund, RS Pension Fund, to withdraw the required P50 000 for his hospital treatments. His fund credit with the RS Pension Fund was P300 000. Upon application to the pension fund board to settle his medical treatments, he was approved and allowed to withdraw the required amount of P50 000.

The new provision allows Mr. Benson to withdraw the amount required to settle the medical bill without any tax payable.

B2.2.2

Paragraph xlv – Where a deferred pension fund member withdraws an amount from their pension entitlement for purposes of settling a loan, they shall be entitled to 50 per cent tax exemption on the amount withdrawn, and the remaining 50 per cent being taxable. Where, due to tax payable, the amount withdrawn is not enough to settle the loan payable, the whole amount shall be exempt from tax.

The provision allows for 50 per cent exemption on amounts accessed by deferred members to pay for loans. Where the tax is payable on the remaining amount and the balance could not settle the loan in full because of the tax, the whole amount withdrawn will be exempt from tax.

The exemption also applies to deferred pension fund members who have retired due to medical reasons and wish to access their benefits to settle mortgage loans.

Example 6:

Mr. Mark, a 34 year-old former employee of Enlist Services Limited (ESL), was retrenched on 31 July 2023. Despite receiving a retrenchment package, he found himself burdened with a loan balance of P450 000 with his bank. The amount of his pension fund credit at the time of his retrenchment was P459 000. He is currently unemployed and without any promising job prospects.

On 16 January 2024, a former colleague from ESL who works in the Human Resources department alerted him of the latest amendments to the Income Tax Act. Mr. Mark had been aware of the Retirement Funds (Amendment) Act of 2022, which allowed a deferred member to withdraw any amount from their pension fund benefit to settle any loan, upon meeting specified requirements.

His former colleague explained to him that the latest Income Tax Amendment Act allows tax exemptions on any amounts withdrawn by a deferred pension fund member to settle any loan, as from 15 January 2024.

Mr. Mark has made the application to the pension fund board to settle his loan after being unemployed for six consecutive months. Mr. Mark was approved by the pension fund board to withdraw the loan settlement amount of P450 000. 50 per cent of the amount withdrawn will be exempted from tax and the other 50 per cent will be taxable.

The tax amount calculated on the taxable 50 per cent for Mr. Mark was more than the amount remaining in his fund and would reduce the amount of P450 000 withdrawn if tax is deducted thereby making the withdrawn amount not enough to settle the loan payable. For this reason, there will no tax charged on the P450 000 withdrawn from the fund as the amount will not be enough to settle the loan payable as a result of the tax payable on the withdrawn amount, and the amount of the fund credit is not enough to settle the loan and also pay the tax on the taxable amount of 50 per cent.

Example 7:

In July 2023, Ontiretse who is 42 years of age, resigned from his job as a nurse, to pursue other opportunities. He had a loan balance of P150 000 with his bank. The amount of his pension fund credit at the time of his resignation was P600 000. The new opportunity he wanted to pursue did not materialize and he has remained unemployed since his resignation.

Ontiretse made an application to his previous employer's pension fund to access his pension fund amounts to settle his loan. He was approved by the pension fund board after meeting all the requirements.

Ontiretse's pension fund credit is sufficient to settle the loan balance together with the tax payable on the taxable amount of 50 per cent of the withdrawn amount.

The pension fund will settle Ontiretse's loan of P150 000 with the bank and remit the tax payable to the Commissioner General, i.e. 50per cent of the P150 000 (P75 000) will be exempted from tax and the pension fund will calculate and withhold tax on the remaining 50 per cent of the withdrawal amount.

		B2.2.3	<p>Deferred Member:</p> <p>A member of a fund who no longer contributes to the fund, but who has benefits preserved and has preserved pension rights with the fund (Retirement Funds Act, 2022).</p>
D			IMPLEMENTATION OF THE AMENDMENT
	D1		<p>APPLICATIONS SUBMITTED WITH THE COMMISSIONER GENERAL:</p> <ul style="list-style-type: none"> • The 50 percent exemption shall apply to payments made on or after 15 January 2024. • All payments made to pension fund members and/or individuals prior to 15 January 2024 are not affected by the amendment. • Employers are reminded to submit tax calculations for purposes of direction by the Commissioner General in the prescribed form (form ITW6 and 6A). • Applications to access pension fund amounts for medical treatment or settlement of loans are processed by the pension fund boards, and BURS will receive complete and approved applications, with calculations, from the pension fund boards. <p>NB: An "employer" means any person who pays remuneration to any employee and includes the trustee of an approved superannuation fund.</p>

E	FURTHER INFORMATION
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	For further information or clarification on the tax exemptions above, please contact the office of the Botswana Unified Revenue Service (BURS), Domestic Taxes Division through e-mail domestictaxesdivision@burs.org.bw and telephone on 3639604, or the BURS Call Centre on toll free number 17649
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Issued by:

**Acting Commissioner, Domestic Taxes
Private Bag 0013
Gaborone**

 Segametse Radibe-Michael Acting Commissioner, Domestic Taxes	<u>22.03.2024</u> Date
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Bill No. 19 of 2024

DATA PROTECTION BILL, 2024
(Published on 26th July, 2024)

MEMORANDUM

1. A draft of the above Bill, which it is intended to be presented to the National Assembly, is set out below.

2. The object of this Bill is to repeal and to re-enact with amendments the Data Protection Act (Cap. 43:14). The Bill seeks to provide for protection of personal data obtained in the processing of an individual's personal information; to outline incidences where personal data is to be processed and the necessary security safeguards required in the processing of personal data.

3. Part I of the Bill sets out preliminary provisions and the scope of application of the Act. In particular, clause 4 (1) extends the application of the Act to processing of personal data by automated means and manual processing, if personal data is contained or intended to be contained in a filing system. Clause 4 (2) further extends the application of the Act to a data controller who is not established in Botswana but whose processing activities take place in Botswana or relate to the offering of services and services to data subjects in Botswana. Clause 5 provides that the Act binds the State and thus extends the application of the Act to the Government. The Act does not apply to processing of personal data by a natural person in the course of a purely personal or household activity.

4. Part II of the Bill continues the Information and Data Protection Commission, with amendments to its structures as provided for in clause 7 and by expanding its mandate to include access to information. The Part reaffirms, in clause 12, the operational independence of the Commission.

5. Part III of the Bill retains some of the functions and powers that were provided for in the previous section 5. In order to ensure clarity in the powers and functions of the Commission, the Part further distils competencies of the Commission, its investigative, corrective and advisory powers under clauses 14, 15, 16, and 17, respectively.

6. Parts IV to VI of the Bill retains some of the requirements for processing under the repealed Part IV and further provides additional conditions for lawfulness of processing such as data minimisation under clause 21, accuracy under clause 22, storage limitation under clause 23 and accountability under clause 25.

7. Part V makes provision for legal basis for processing personal data in clauses 26 to 29.

8. Under Part VI of the Bill, clause 30 specifies rules for processing of sensitive personal data.

9. In order to reconcile public access to official documents with the right to the protection of personal data, Part VII of the Bill provides for processing and public access to official documents under clause 34 or processing for archiving, research or statistical purpose under clause 35.

B.118

10. Part VIII of the Bill provides for the rights of data subjects, transparency and modalities of exercising the data subject's rights, including transparency in providing information under clause 37, and facilitating, in terms of clause 38, the data subjects in exercising their rights under the Act. In order to ensure transparency in processing personal data, the Part provides for the provision of information to the data subject when personal data is collected from the data subject under clause 39, when the data controller intends to further process personal data under clause 40 and information to be provided when personal data is not obtained from the data subject under clause 41. The Part further makes provision for the right to rectification, erasure and restriction of processing under clauses 43 to 45. Moreover, the Part provides for the right to data portability under clause 44. In addition, the Part provides for the right to object to processing for direct marketing purposes under clause 48 and the right under clause 49 not to be subject to a decision based solely on automated processing which produces legal effects or significantly affects the data subject.

11. Part IX of the Bill allows legal restrictions which may restrict the scope of the obligations under Part VIII, provided such restrictions correspond to the rights and obligations under Parts IV to VI.

12. PART X of the Bill provides for the obligations of the data controller and data processor, including maintaining a record of processing activities under clause 60 and cooperation with the Commission under clause 61.

13. Part XI of the Bill provides for the appropriate technical and organisational measures required to ensure the security of personal data. The Part further provides for notification of personal data breach to the Commission and communication to the data subject concerning the personal breach.

14. Part XII provides for carrying out a data protection impact assessment prior to processing in order to assess the risks of such processing activities.

15. Part XIII of the Bill provides for the designation of data protection officer, their position in the data controller and their duties with respect to processing of personal data.

16. Part XIV deals with transfers of personal data to third countries or international organisations on the basis of an adequacy decision, and in the absence of an adequacy decision, the appropriate safeguards that should be taken into account when transferring personal data including binding corporate rules.

17. Part XV provides for the right to lodge a complaint with the Commission, the right to compensation, conditions for imposing administrative fines and the offences and penalties.

18. Part XVI provides for the continuation of the Appeals Tribunal.

19. Part XVII provides for miscellaneous provisions, which include the protection of the officers of the Commission from personal liability for matters or things done or omitted to be done *bona fide*, regulation making powers of the Minister, the repeal of the Data Protection Act and transitional and savings provisions.

KABO N. S. MORWAENG,
Minister for State President.

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A Bill
— entitled —

An Act to make provision for the continuation of the Information and Data Protection Commission; to regulate the protection of personal data and to ensure that the privacy of individuals in relation to their personal data is maintained; and to provide for all matters incidental thereto.

Date of Assent:
Date of Commencement:
ENACTED by the Parliament of Botswana.

PART I — *Preliminary Provisions*

- | | |
|------------------------------|--|
| Short title and commencement | 1. This Act may be cited as the Data Protection Act, 2024 and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i> , appoint. |
| Interpretation | 2. In this Act, unless the context otherwise requires —
“binding corporate rules” means personal data protection policies which are — |

- (a) adhered to by a data controller or data processor established in Botswana or another country for the transfer or a set of transfers of personal data to a data controller or data processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity; and
 - (b) approved by the Commission in terms of section 77;
- “biometric data” means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- “child” has the meaning under the Children’s Act;
- “Commission” means the Information and Data Protection Commission continued under section 6;
- “Commissioner” means the Commissioner of the Information and Data Protection Commission appointed in terms of section 8;
- “consent” means any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her and given in terms of section 27 or 29;
- “data controller” means a person or public authority which, alone or jointly with others, and in accordance with Part XII, determines the purposes and means of the processing of personal data;
- “data processor” means a person who processes personal data on behalf of the data controller in terms of sections 55 and 56;
- “data protection officer” means a person designated as such under section 69;
- “data subject” means a natural person who is the subject of personal data;
- “Deputy Commissioner” means a Deputy Commissioner appointed in terms of section 8;
- “filing system” means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis, regardless of its format or media;
- “genetic data” means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- “information society services” means any service provided for remuneration, at a distance, by electronic means and at the request of the person receiving such service;

“international organisation” means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

“personal data” means any information relating to an identified or identifiable natural person, or data subject and an identifiable natural person is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

“personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

“processing” means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, and includes collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

“profiling” means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a person, in particular to analyse or predict aspects concerning that person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

“pseudonymisation” means processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information:

Provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data is not attributed to an identified or identifiable natural person;

“public authority” has the meaning assigned to it under the Public Authorities (Functions) Act;

“recipient” means a natural or legal person, or a public authority, to which personal data is disclosed, whether a third party or not;

“representative” means a natural or legal person established in Botswana who, designated by the controller or processor in writing in terms of section 54,

represents the controller or the processor with regard to their respective obligations under this Act;

“restriction of processing” means the marking of stored personal data with the aim of limiting their processing in the future;

“sensitive personal data” means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation and includes personal data relating to a data subject which reveals —

- (a) commission or any alleged commission by him or her of any offence;
- (b) any proceedings for any offence committed or alleged to have been committed by him or her, the disposal of such proceedings, or the sentence of any court in such proceedings; and
- (c) genetic data, biometric data, and personal data of a minor in terms of sections 30; and

“third party” means a natural or legal person, or public authority, other than the data subject, data controller, data processor and persons who, under the direct authority of the data controller or data processor, are authorised to process personal data.

3. The objects of this Act are to —

Objects of the Act

- (a) lay down the rules relating to the —
 - (i) protection of natural persons with regard to the processing of personal data, and
 - (ii) free flow of personal data in the provision of goods and services; and
- (b) protect fundamental rights and freedoms of natural persons insofar as they relate to privacy and the protection of personal data.

4. (1) This Act shall apply to —

Application

- (a) automated processing of all or part of personal data by a data controller or data processor established in Botswana; and
 - (b) non-automated processing, by a data controller or data processor established in Botswana, of personal data contained in a file or intended to form part of a filing system.
- (2) In the case of a data controller or data processor who is not established in Botswana, this Act shall apply where —
- (a) the activities of an establishment of the data controller or data processor are in Botswana, irrespective of whether such processing takes place in Botswana; or
 - (b) processing activities relate to the —
 - (i) offering of goods or services to data subjects in Botswana, irrespective of whether payment by a data subject is required, or

	<p>(ii) monitoring of data subjects' behaviour, insofar as the behaviour takes place within Botswana.</p> <p>(3) This Act shall not apply to processing by a natural person in the course of a purely personal or household activities.</p> <p>5. This Act binds the State.</p>
Act binds state	

PART II — *Continuation of Information and Data Protection Commission*

Continuation of Information and Data Protection Commission Cap. 26:01	<p>6. (1) There shall continue to be a body known as the Information and Data Protection Commission.</p> <p>(2) The Commission shall be a public office, and the provisions of the Public Service Act shall with such modifications as may be necessary, apply to the Commissioner, Deputy Commissioners and officers of the Commission.</p> <p>(3) The Commission shall consist of —</p> <p>(a) a Commissioner;</p> <p>(b) such number of Deputy Commissioners as may be necessary for purposes of section 7 (1); and</p> <p>(c) such other officers of the Commission, as may be necessary for the proper performance of the functions of the Commission.</p>
Divisions of Commission	<p>7. (1) There shall be —</p> <p>(a) a Data Protection Division of the Commission which shall be responsible for data protection in the execution of the functions of the Commission under this Act;</p> <p>(b) an Access to Information Division of the Commission which shall be responsible for access to information in the execution of the functions of the Commission under the Access to Information Act; and</p> <p>(c) such other divisions of the Commission as may be necessary for the proper performance of the functions of the Commission under this Act.</p> <p>(2) Each of the divisions of the Commission under subsection (1) shall be —</p> <p>(a) headed by a Deputy Commissioner who shall be the administrative head of the division; and</p> <p>(b) subject to the control and directions of the Commissioner, be responsible for the efficient management, administration and control of the division.</p>
Act. No. ... of 2024	
Appointment of Commissioner	<p>8. (1) The Commissioner and Deputy Commissioners shall be appointed by the President acting on the advice of the Minister who shall have —</p> <p>(a) the qualifications, experience and skills, in particular in the area of data science, information technology, law or any field related to the protection of personal data and access to information;</p>

(b) eligibility conditions for appointment and re-appointment:

Provided that in advising the President, the Minister shall not recommend a person unless such person holds a master's degree from a recognised university in any field under paragraph (a);

(2) The Commissioner shall be responsible for the direction and administration of the Commission.

(3) A person appointed as Commissioner shall hold office for a five year renewable term or until he or she attains the age of 60 years, whichever is the earlier.

(4) A person holding the office of the Commissioner may be removed from office for —

(a) inability to perform the functions of his or her office arising from infirmity of body, mind or any other cause;

(b) gross misconduct; or

(c) incompetence.

(5) The provisions of section 113 (3), (4) and (5) of the Constitution shall apply with necessary modifications to the removal of a person holding office of Commissioner.

9. The Commissioner, the Deputy Commissioner, every officer and support staff on being appointed to the Commission shall, before assuming the duties of his or her office, make and subscribe to the oaths or affirmations as may be prescribed —

Oath of
secrecy

(a) in the case of the Commissioner and Deputy Commissioner, before the President; and

(b) in the case of any other officer, before the Commissioner.

10. (1) The Commission shall act with complete operational independence in performing its functions and exercising its powers in accordance with this Act.

Operational
independence
of Commission

(2) The Commissioner, Deputy Commissioner and officers of the Commission shall —

(a) in the performance of their duties, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from any person; and

(b) refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

(3) Any decision, including investigations by the Commissioner shall not be subject to the direction and control of any person or authority.

11. The Commissioner, Deputy Commissioner and any officer of the Commission shall —

Confidentiality

(a) during their term of office, maintain confidentiality of any confidential information acquired in the discharge of their duties under this Act; and

(b) not disclose any information from which an individual can be identified which is acquired by the Commission in the course of carrying out its functions except where such disclosure is necessary —

- (i) to enable the Commission to carry out its functions,
- (ii) for the prevention or detection of a criminal offence,
- (iii) for the discharge of any international obligation to which Botswana is subject, or
- (iv) pursuant to an order of court.

(3) A Commissioner, Deputy Commissioner or officer of the Commission who contravenes this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.

PART III — *Competence and Powers of the Commission*

Competence of
Commission

12. The Commission shall be the national supervisory authority responsible for ensuring effective application of, and compliance with, this Act.

Duties of
Commission

13. (1) Without prejudice to section 12, the Commission shall —

- (a) monitor and enforce the application of this Act;
- (b) promote public awareness and understanding of the risks, rules, safeguards and rights of data subjects, and in particular the risks, rules and safeguards where the data subject is a child, in relation to processing;
- (c) pursuant to section 17, advise public authorities and other entities on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
- (d) promote the awareness of data controllers and data processors of their obligations under this Act;
- (e) upon request, provide information to any data subject concerning the exercise of their rights under this Act;
- (f) handle complaints lodged by a data subject in accordance with section 80, and investigate, to the extent necessary, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, as may be prescribed;
- (g) conduct investigations on the application of this Act;
- (h) monitor relevant developments, insofar as they have an impact on the protection of personal data, and in particular the development of information and communication technologies and commercial practices;
- (i) establish and maintain a list processing operations which are subject to the requirement for a data protection impact assessment in terms of section 66;
- (j) keep internal records of contraventions of this Act and of measures taken in accordance with section 16; and
- (k) perform any other duties related to the protection of personal data.

(2) The Commission shall facilitate the submission of complaints under subsection (1) (f) in such manner as may be prescribed.

(3) The performance of the duties under this section shall be free of charge for the data subject.

14. The Commission shall have powers to —

Investigative
powers of
Commission

- (a) order the data controller and data processor, and where applicable, the data controllers or processors representative to provide any information it requires for the performance of its duties;
- (b) carry out investigations in the form of data protection audits;
- (c) notify the data controller or data processor of an alleged contravention of this Act;
- (d) obtain, from the data controller and the data processor, access to all personal data and to all information necessary for the performance of its duties; and
- (e) obtain access to any premises of the data controller and data processor, including to any data processing equipment and means.

15. (1) Subject to subsection (2), an officer of the Commission who is duly authorised by the Commissioner may, pursuant to section 14, enter any premises for the purpose of conducting a search and may seize any item during the course of an investigation.

Powers of
search, seizure
and detention

(2) The authorised officer shall not enter, conduct a search or seize any item in terms of subsection (1) unless he or she has obtained —

- (a) the consent, in writing, of the owner or of the person in charge of the premises; or
- (b) a search warrant.

(3) The authorised officer shall carry at all times and present an identity card issued by the Commission, as may be prescribed.

(4) Any person who obstructs or interferes with the authorised officer in the performance of his or her functions under this section commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding ten years or to both.

16. The Commission shall have powers to —

Corrective
powers of
Commission

- (a) issue a warning to a data controller or data processor that the intended processing operations are likely to contravene the provisions of this Act;
- (b) issue a reprimand to a data controller or data processor where processing operations contravene the provisions of this Act;
- (c) order the data controller or the data processor to comply with the data subject's requests to exercise his or her rights pursuant to this Act;
- (d) order, where appropriate, the data controller or data processor to bring processing operations into compliance with the provisions of this Act in a specified manner and within a specified period;
- (e) order the data controller to communicate a personal data breach to the data subject;
- (f) impose a temporary or definitive restriction, including a ban on processing;

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- Authorisation and advisory powers of Commission
- (g) order the rectification or erasure of personal data or restriction of processing pursuant to sections 43 to 45 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to section 46;
 - (h) impose an administrative fine pursuant to section 83, in addition to measures under this section; and
 - (i) order the suspension of data flows to a recipient in a third country or to an international organisation.
- 17.** The Commission shall have powers to —
- (a) advise the data controller in accordance with the prior consultation procedure under section 68;
 - (b) approve draft codes of conduct pursuant to section 73;
 - (c) develop and issue standard contractual clauses in terms of section 59 and adopt standard data protection clauses in accordance with section 76 (2) (c);
 - (d) authorise administrative arrangements under section 76 (3) (b); and
 - (e) to approve binding corporate rules pursuant to section 77.
- Activity reports
- 18.** (1) The Commission shall, within a period of six months after the end of the financial year, or such extended period as the Minister may direct —
- (a) draw up an annual report on its activities, which may include a list of types of contraventions notified and types of measures taken in accordance with section 16; and
 - (b) submit the annual report to the Minister in such form and manner as may be prescribed.
- (2) The Minister shall lay the annual report before the National Assembly within three months of receipt.

PART IV — *Principles Relating to Processing of Personal Data*

- Lawfulness, fairness and transparency
- 19.** Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.
- Purpose limitation
- 20.** Personal data shall be collected for a specified, explicit and legitimate purpose, and shall not be further processed in a manner that is incompatible with the initial purpose:
- Provided that further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with section 35 shall not be considered incompatible with the legitimate purpose.
- Data minimisation
- 21.** Personal data shall be adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed.
- Accuracy
- 22.** (1) Personal data shall be accurate and, where necessary, kept up to date.

(2) Pursuant to subsection (1), a data controller or data processor shall take reasonable steps to ensure that personal data that is inaccurate, having regard to the purpose for which it is processed, is erased or rectified without delay.

23. (1) A data controller or data processor shall ensure that personal data is kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the personal data is processed.

Storage
limitation

(2) Notwithstanding subsection (1), and subject to implementation of the appropriate technical and organisational measures required in section 62 to safeguard the rights and freedoms of the data subject, personal data may be stored for an extended period where such personal data will be processed in terms of section 35 solely for —

- (a) archiving purposes in the public interest;
- (b) scientific or historical research purposes; or
- (c) statistical purposes.

24. Personal data shall be processed using the appropriate technical or organisational measures required in section 62 and in a manner that ensures the appropriate security of the personal data, including protection against —

Integrity and
confidentiality

- (a) unauthorised or unlawful processing; and
- (b) accidental loss, destruction or damage.

25. A data controller shall be responsible for, and be able to demonstrate, compliance with sections 19 to 24.

Accountability

PART V — *Legal Basis for Processing of Personal Data*

26. Processing shall be lawful only to the extent that at least one of the following applies —

Lawfulness of
processing

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the data controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the performance of a duty carried out in the public interest or in the exercise of an official authority vested in the data controller; or
- (f) processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party, except where —
 - (i) such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child, or
 - (ii) processing is carried out by a public authority when performing its functions.

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Conditions for consent

27. (1) Where processing is based on consent, the data controller shall demonstrate that the data subject has consented to the processing of his or her personal data.

(2) If the data subject's consent is given in the form of a written declaration which also concerns other matters, the request for consent shall be presented —

(a) in a manner which is clearly distinguishable from the other matters; and

(b) in an intelligible and easily accessible form using clear and plain language.

(3) Any part of a declaration under subsection (2) which contravenes the provisions of this Act shall not be binding.

(4) Where the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract or provision of that service, the consent shall, notwithstanding that it is freely given, be deemed invalid.

Right to withdraw consent

28. (1) The data subject shall have the right to withdraw his or her consent at any time.

(2) The withdrawal of consent pursuant to subsection (1) shall —

(a) not affect the lawfulness of processing based on consent before its withdrawal; and

(b) be done in like manner, and in all respects, as the same might have been done when giving consent.

(3) Prior to obtaining consent, the data controller shall inform the data subject of his or her right under subsection (1).

Conditions applicable to children in relation to information society services

29. (1) Where processing of personal data of a child relates to the offer of information society services, such processing of personal data shall be lawful only to the extent that consent is given or authorised by a parent or person who has parental duties over the child in terms of the Children's Act:

Provided that where the child is 16 years of age, such child may give consent in such manner as may be prescribed.

(2) For purposes of subsection (1), the data controller shall, where appropriate and taking into account available technology, make reasonable efforts to verify that consent is given jointly by the child and the parent or person who has parental duties over the child.

PART VI — *Processing of Sensitive Personal Data*

Processing of sensitive personal data

30. (1) Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

- (2) Subsection (1) shall not apply if —
 - (a) the data subject has given explicit consent to the processing of his or her personal data for one or more specified purposes, except where the law to which the data controller is subject provides that the prohibition in subsection (1) may not be lifted by the data subject;
 - (b) processing is necessary for purposes of carrying out the obligations and exercising specific rights of the data controller or data subject in employment and social protection insofar as it is authorised by law or a collective agreement, and subject to the appropriate safeguards for fundamental rights and interests of data subject;
 - (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
 - (d) processing relates to personal data which is manifestly made public by the data subject;
 - (e) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
 - (f) processing is necessary for reasons of substantial public interest, on the basis of a law that —
 - (i) is proportionate to the aim pursued, respects the essence of the right to data protection, and
 - (ii) provides for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
 - (g) processing is necessary for —
 - (i) the purposes of preventive or occupational medicine,
 - (ii) the assessment of the working capacity of an employee,
 - (iii) medical diagnosis,
 - (iv) the provision of health or social care or treatment, or
 - (v) the management of health or social care systems and services;
 - (h) processing is necessary for reason of public interest in the area of public health, including —
 - (i) protection against serious cross-border threats to health, and
 - (ii) ensuring high standards of quality and safety of health care and of medicinal products or medical devices;
 - (i) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes;
 - (j) processing is carried out in the course of elections for purposes of compiling data on political opinions by a political party, candidate for election or holder of a political office.
- (3) For purposes of —
 - (a) subsection (2) (h), personal data in subsection (1) may be processed when such data is processed by or under the responsibility of a professional subject to the obligation of professional secrecy or rules established by a professional body in accordance with the law regulating that profession; and

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	<p>(b) subsection (2) (i) and (j), personal data shall be processed when such processing is proportionate to the aim pursued, respects the essence of the right to data protection and provide suitable and specific measures to safeguard fundamental rights and interests of the data subject.</p>
Processing of sensitive data by entities	<p>31. (1) A body of persons or an entity, not being a commercial body or entity, which has political, philosophical, religious or trade union objects may, in the course of its legitimate activities and with appropriate guarantees, process sensitive personal data relating to the political, philosophical, religious or trade union objects, whichever is applicable, concerning —</p> <p>(a) the members or former members of that body;</p> <p>(b) any other person who by reason of the objects of the body or entity, the body or entity regularly exchanges information with.</p> <p>(2) The sensitive personal data processed under subsection (1) may be provided to a third party only on the written consent of the data subject.</p>
Processing of personal data relating to criminal convictions and offences	<p>32. (1) Where processing of personal data is carried out for purposes of —</p> <p>(a) preventing, investigating, detecting or prosecuting a criminal offence, or</p> <p>(b) executing a criminal penalty, including safeguarding against and preventing threats to national security, the rules or provisions for processing operations shall be those to which the data controller is subject.</p> <p>(2) Subsection (1) shall apply only to the extent that the law to which the data controller is subject provides appropriate safeguards for the rights and freedoms of the data subject.</p>
Processing which does not require identification	<p>33. (1) Where the purpose for which a data controller processes personal data does not or no longer requires the identification of a data subject by the data controller, the data controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject.</p> <p>(2) Where in terms of subsection (1), the Controller is able to demonstrate that it is not in a position to identify the data subject, the data controller shall inform the data subject accordingly, if possible.</p> <p>(3) Notwithstanding subsection (2), sections 42 to 49 shall not apply except where the data subject for the purpose of exercising his or her rights under those sections, provides additional information enabling his or identification.</p>

PART VII — *Provisions Relating to Specific Processing Situations*

Processing and public access to official documents	<p>34. In order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Act, personal data in official documents held by a public authority or other entity for the performance of a duty carried out in the public interest may be disclosed by the public authority or other entity in accordance with the law to which the public authority or private body is subject.</p>
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35. Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to the appropriate safeguards for the rights and freedoms of the data subject and technical and organisational measures in order to ensure respect to the principle of data minimisation.

Processing
for archiving,
research or
statistical
purposes

36. An obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy, shall apply only with regard to personal data which the data controller or data processor has received as a result of or has obtained in an activity covered by that obligation of secrecy.

Obligations of
secrecy

PART VIII — *Rights of Data Subjects*

37. (1) Where any information is specifically addressed to a data subject, the data controller shall take appropriate measures to provide information relating to processing in a concise, transparent, intelligible and easily accessible form using clear and plain language.

Transparent
information and
communication

(2) The information in subsection (1) shall be provided in writing, including where appropriate, by electronic means.

(3) When requested by the data subject, the information may be provided orally:

Provided that the identity of the data subject is proven.

38. (1) The data controller shall facilitate the exercise of data subject rights under sections 42 to 49.

Modalities
for exercising
rights of data
subject

(2) The data controller shall, in relation to section 35 (2), not refuse to act on the request of the data subject, except where the data controller is able to demonstrate under section 33 (1) and (2) that it is not in a position to identify the data subject.

(3) The data controller shall, on request being made by the data subject, provide information on any action taken under section 42 to 49 to the data subject without undue delay, and in any event within one month of receipt of the request or such lesser period as may be determined by the Commission.

(4) The period in subsection (3) may, taking into account the complexity and number of the requests and with the approval of the Commission, be extended by a period not exceeding two months.

(5) The data controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay.

(6) Where the data subject makes the request by electronic means, the information shall be provided by electronic means, unless the data subject requests otherwise.

(7) If the data controller does not take action on the request of the data subject, the data controller shall inform the data subject without delay, and at the latest within one month of receipt of the request, of the —

Information provided when personal data is collected from data subject

- (a) reasons for not taking action; and
- (b) data subject's right to lodge a complaint with the Commission and to seek a judicial remedy.

(8) No charge shall be levied by the data controller for information provided under sections 39 to 41 or any communication and action taken under sections 42 to 49:

Provided that where requests from a data subject are manifestly unfounded or excessive, because of their repetitive character, the data controller may —

- (i) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested, or
- (ii) refuse to act on the request.

(9) The data controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

39. (1) Where personal data relating to a data subject is collected from the data subject, the data controller shall, at the time when personal data is obtained, provide the data subject with —

- (a) the identity and contact details of the data controller and where applicable the controller's representative;
- (b) the contact details of the data protection officer;
- (c) the purpose of processing for which personal data is intended and the legal basis for processing;
- (d) where processing is based on section 26 (f), the legitimate interests pursued by the data controller or a third party; and
- (e) the recipients or categories of recipients of the personal data, if any.

(2) In addition to subsection (1), the data controller shall, where applicable, inform the data subject —

- (a) that the data controller intends to transfer personal data to a third country or international organisation; and
- (b) of the existence or absence of an adequacy decision in terms of section 75.

(3) In the case of transfers under sections 76, 77 or 78 (1), the data controller shall provide the data subject with —

- (a) reference to the appropriate or suitable safeguards; and
- (b) the means by which to obtain a copy, if the safeguards are made available.

Further information to ensure transparent processing

40. (1) In addition to the information under section 39, the data controller shall, at the time when personal data is obtained from the data subject, provide the data subject with the following further information necessary to ensure fair and transparent processing —

- (a) the period personal data will be stored, or if that is not possible, the criteria that will be used to determine that period;
- (b) the existence of the right to request from the data controller —
 - (i) access to, rectification or erasure of personal data under sections 42 to 44, or
 - (ii) restriction of processing under section 45;

- (c) the existence of the right to data portability under section 47 and the right to object to processing under section 48;
 - (d) where —
 - (i) processing is based on consent in terms of section 26 (a), or
 - (ii) the data subject has given explicit consent in terms of section 30 (2) (a),
 the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - (e) the right to lodge a complaint with the Commission under section 80;
 - (f) whether, in terms of section 30 (2) (b) or (f), the provision of personal data is a statutory or contractual requirement, and whether the data subject is obliged to provide the personal data and the possible consequences of failure to provide such data;
 - (g) the existence under section 49 of automated decision-making, including —
 - (i) profiling and meaningful information about the logic involved, and
 - (ii) the significance and the envisaged consequences of such processing for the data subject.
- (2) Where the data controller intends to further process personal data for a purpose other than that for which the personal data was collected, the data controller shall provide the data subject, prior to that further processing, with information on that other purpose and with any relevant further information in section 41.
- (3) Section 39 and this section shall not apply where, and insofar as, the data subject already has the information.
- 41.** (1) Where personal data is not obtained from the data subject, the data controller shall provide the data subject —
- (a) with the information specified in sections 39 and 40;
 - (b) specify from which source the personal data originate, and if applicable, whether it came from a publicly accessible source; and
 - (c) with the categories of personal data concerned.
- (2) The data controller shall provide the information in subsection (1) —
- (a) within a reasonable period after obtaining the personal data, but not exceeding one month, having regard to the specific circumstances in which the personal data is processed;
 - (b) if the personal data is to be used for communication with the data subject, at the time of the first communication to that data subject; or
 - (c) if a disclosure to another recipient is envisaged, when the personal data is first disclosed.
- (3) Where the data controller intends to further process the personal data for a purpose other than the initial purpose, the data controller shall, prior to that further processing, provide the data subject with information on that other purpose and with any relevant further information under section 40.

Information provided when personal data is not obtained from data subject

- (4) Subsections (1) to (3) shall not apply where, and insofar as —
 - (a) the data subject already has the information;
 - (b) the provision of such information —
 - (i) proves impossible or would involve a disproportionate effort in relation to section 35, or
 - (ii) the obligations under subsections (1) to (3) are likely to render impossible or seriously impair the achievement of the objectives of that processing,
 - (c) obtaining or disclosure is expressly provided by law; or
 - (d) where the personal data remains confidential subject to an obligation of professional secrecy, including a statutory obligation of secrecy pursuant to section 30 (3).

(5) For purposes subsection 4 (b), the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available.

42. (1) The data subject shall have the right to obtain from the data controller confirmation as to whether personal data concerning him or her is being processed, and, where that is the case, access to the personal data and the information relating to —

- (a) the purpose of processing;
- (b) the categories of personal data concerned;
- (c) the recipient or categories of recipients to whom the personal data has been or will be disclosed, and in particular recipients in third countries or international organisations;
- (d) the envisaged period for which the personal data will be stored, or if not possible the criteria used to determine the period;
- (e) the existence of the right to object to processing of personal data or to request from the data controller —
 - (i) rectification or erasure personal data,
 - (ii) restriction of processing of personal data;
- (f) the existence of the right to lodge a complaint;
- (g) the source of information, where the personal data is not collected from the data subject; and
- (h) the existence of automated decision-making, including profiling and meaningful information about the logic involved as well as the significance and the envisaged consequences of such processing for the data subject.

(2) Where personal data is transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to section 76.

(3) The data controller shall provide a copy of the personal data undergoing processing:

Provided that for any further copies requested by the data subject, the data controller may charge a reasonable fee based on administrative costs.

(4) Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

(5) The right to obtain a copy under subsection (3) shall not adversely affect the rights and freedoms of other persons.

43. The data subject shall have the right —

Right to
rectification

- (a) to obtain from the data controller, without undue delay, the rectification of inaccurate personal data concerning him or her; and
- (b) taking into account the purpose of processing, to have incomplete personal data completed, including providing a supplementary statement.

44. (1) The data subject shall have the right to obtain from the data controller the erasure of personal data concerning him or her without undue delay, and the data controller shall have the obligation to erase the personal data without undue delay where one of the following grounds applies —

Right to
erasure

- (a) personal data is no longer necessary in relation to the purpose for which it was collected or otherwise processed;
- (b) the data subject withdraws consent pursuant to sections 28 and 40 (1) (d) and there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to section 48 and there are no overriding legitimate grounds for the processing;
- (d) personal data has been unlawfully processed; or
- (e) personal data has to be erased in compliance with a legal obligation to which the data controller is subject.

(2) Where the data controller has made personal data public and is obliged pursuant to subsection (1) to erase the personal data, the data controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform data controllers which are processing the personal data that the data subject has requested the erasure by such data controllers of any links to, or copy or replication of, the personal data.

(3) Subsections (1) and (2) shall not apply where processing is necessary —

- (a) for exercising the right of freedom of expression and information;
- (b) for compliance with a legal obligation to which the data controller is subject or for the performance of a duty carried out in the public interest or in the exercise of official authority vested in the data controller;
- (c) for reasons of public interest in the area of public health pursuant to section 30 (2) (g) to (i) and (3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes pursuant to section 35, insofar as the right referred to in subsection (1) is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (e) for the establishment, exercise or defence of legal claims.

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Right to
restriction of
processing

45. (1) The data subject shall have the right to obtain from the data controller restriction of processing where one of the following applies —

- (a) the accuracy of the personal data is contested by the data subject: Provided that the data controller is given a reasonable time to verify the accuracy of the personal data;
- (b) processing is unlawful and the data subject opposes the erasure of the personal data, but requests the restriction of the use of personal data instead;
- (c) the data controller no longer needs the personal data for the purpose of processing, but the data subject requires the personal data for the establishment, exercise or defence of legal claims pursuant to subsection (2) (b); or
- (d) the data subject has objected to processing pursuant to section 48 (2) pending the verification whether the legitimate grounds of the data controller override those of the data subject.

(2) Where processing has been restricted under subsection (1), such personal data shall, with the exception of storage, only be processed —

- (a) with the data subject's consent;
- (b) for the establishment, exercise or defence of legal claims;
- (c) for the protection of the rights of another natural or legal person; or
- (d) in the public interest.

(3) A data subject who has obtained restriction of processing under subsection (1) shall be informed by the data controller before the restriction of processing is lifted.

Notification
obligation for
rectification
or erasure of
personal data
or restriction of
processing

46. (1) The data controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with sections 43, 44 or 45 to each recipient to whom the personal data has been disclosed, unless this proves impossible or involves disproportionate effort.

(2) The data controller shall, on a request made by the data subject, inform the data subject about the recipients under subsection (1).

Right to data
portability

47. (1) The data subject shall have the right to receive personal data concerning him or her, which he or she has provided to a data controller, in a structured, commonly used and machine-readable format and have the right to transmit such data to another data controller without hindrance from the data controller to which the personal data has been provided, where —

- (a) processing is based on consent or a contract pursuant to section 26 (a) or (b) or section 30 (2) (a); and
- (b) processing is carried out by automated means.

(2) In exercising his or her right to data portability pursuant to subsection (1), the data subject shall, where technically feasible, have the right to have the personal data transmitted directly from one data controller to another.

- (3) The exercise of the right in subsection (1) shall —
 - (a) be without prejudice to the right to erasure under section 44;
 - (b) not apply to processing necessary for the performance of a duty carried out in the public interest or in the exercise of official authority vested in the data controller; and
 - (c) not adversely affect the rights and freedoms of other persons.

48. (1) The data subject shall have the right to object at any time, on grounds relating to his or her particular situation, to processing of personal data concerning him or her which is based on section 26 (e) or (f), including profiling based on those provisions. Right to object

(2) Where the data subject objects to processing pursuant to subsection (1), the data controller shall not process the personal data unless the data controller demonstrates compelling legitimate grounds for processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

(3) Where personal data is processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, including profiling related to such direct marketing.

(4) Where the data subject objects to processing for direct marketing purposes, his or her personal data shall not be processed for such purposes.

(5) At the time of the first communication with the data subject, the rights under subsections (1) and (2) shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.

(6) Where personal data is processed for scientific or historical research purposes or statistical purposes pursuant to section 35 the data subject shall, on grounds relating to his or her particular situation, unless the processing is in public interest, have the right to object to processing of personal data concerning him or her.

49. (1) The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or significantly affects him or her. Automated individual decision-making, including profiling

- (2) Subsection (1) shall not apply if the decision is —
 - (a) necessary for entering into, or performance of, a contract between the data subject and a data controller under section 26 (b);
 - (b) based on the data subject's explicit consent under section 30 (2) (a); or
 - (c) authorised by a law under sections 26 (c) or 30 (2) (f).

(3) For purposes of subsection (2) (a) and (b), the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, including the right to obtain human intervention on the part of the data controller, to express his or her point of view and to contest the decision.

PART IX — *Legal Restrictions*

50. (1) A law to which the data controller or data processor is subject may restrict the scope of the obligations and rights provided for in Parts VIII to X insofar as its provisions correspond to the rights and obligations provided for in Part IV to VI.

(2) The restriction in subsection (1) shall respect the essence of the fundamental rights and freedoms and be a necessary and proportionate measure in a democratic society to safeguard —

- (a) national security;
- (b) public defence;
- (c) public interest;
- (d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to national security;
- (e) other objectives of general public interest, including —
 - (i) the economic or financial interest of Botswana,
 - (ii) monetary, budgetary and taxation matters, or
 - (iii) public health and social security;
- (f) the protection of judicial independence and judicial proceedings;
- (g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (h) monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority under paragraphs (a) to (e) and (g);
- (i) the protection of the data subject or the rights and freedoms of others; or
- (j) the enforcement of legal claims.

(3) The measures under subsection (2) shall, where relevant, contain specific provisions relating to the —

- (a) purpose of processing or categories of processing;
- (b) categories of personal data;
- (c) scope of the restrictions introduced;
- (d) safeguards to prevent abuse or unlawful access or transfer;
- (e) specification of the data controller or categories of data controllers;
- (f) storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- (g) risks to the rights and freedoms of data subjects; and
- (h) right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

(4) In the event of any conflict or inconsistency between the provisions of this Act and any other legislation, the provisions of this Act shall take precedence insofar as the conflict or inconsistency relates to the obligations and rights under Part IV to VI.

PART X — *Data Controller and Data Processor*

51. (1) The data controller shall, taking into account the nature, scope, context and purposes of processing and the risks of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with the provisions of this Act.

Responsibility
of data
controller

(2) The measures in subsection (1) shall where —

(a) proportionate in relation to processing activities, include the implementation of appropriate data protection policies by the data controller; and

(b) necessary, be reviewed and updated.

(3) Pursuant to subsection (1), the data controller may use adherence to an approved code of conduct under section 73 to demonstrate compliance with the obligations of the data controller under this Act.

52. (1) The data controller shall, at the time of the determination of the means for processing and the time of the processing, taking into account the state of the art, cost of implementation and the nature, scope, context and purpose of processing and the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, implement appropriate technical and organisational measures, designed to —

Data protection
by design and
by default

(a) implement data protection principles under Part IV in an effective manner; and

(b) integrate the necessary safeguards into the processing in order to meet the requirements of this Act and protect the rights of data subjects.

(2) The data controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which is necessary for each specific purpose of the processing is processed.

(3) The obligation in subsection (2) shall apply to the amount of personal data collected, the extent of the processing of that personal data, and the period of storage and accessibility of that personal data:

Provided that such measures shall ensure that, by default, personal data is not made accessible without human intervention to an indefinite number of natural persons.

53. (1) Where two or more data controllers jointly determine the purpose and means of processing, they shall be joint data controllers.

Joint data
controllers

(2) The joint data controllers shall, in a transparent manner and by means of an arrangement between them, unless the respective responsibilities of the data controllers are determined by law in terms of section 52, determine their respective responsibilities —

(a) for compliance with the obligations under this Act; and

(b) as regards the exercising of the rights of the data subject and their respective duties to provide the information under Parts VIII to XI.

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(3) The joint data controllers may, in the arrangement under subsection (2), designate a contact point for data subjects.

(4) The arrangement in subsection (2) shall —

(a) duly reflect the respective roles and relationships of the joint data controllers in relation to the data subjects; and

(b) be made available to the data subject.

(5) Notwithstanding the terms of the arrangement in this section, the data subject may exercise his or her rights under this Act in respect of and against each of the data controllers.

Representatives
of controllers or
processors not
established in
Botswana

54. (1) Where section 4 (2) applies, the controller or the processor shall designate in writing a representative in Botswana.

(2) The obligation laid down in subsection (1) shall not apply to —

(a) processing which is occasional, does not include, on a large scale, processing of special categories of data as referred to in section 30 or processing of personal data relating to criminal convictions and offences referred to in section 32, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing; or

(b) a public authority or body.

(3) A representative shall be established in Botswana where the data subjects, whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is monitored, are.

(4) A representative shall be mandated by the controller or processor to be addressed in addition to or instead of the controller or the processor by, in particular, supervisory authorities and data subjects, on all issues related to processing, for the purposes of ensuring compliance with this Act.

(5) The designation of a representative by the controller or processor shall be without prejudice to legal actions which could be initiated against the controller or the processor themselves.

Data processor

55. (1) Where processing is carried out on behalf of a data controller, the data controller shall use only a data processor who provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing shall meet the requirements under section 62.

(2) The data processor shall not engage another data processor without prior specific or general written authorisation of the data controller.

(3) In the case of a general written authorisation, the data processor shall, giving the data controller the opportunity to object to such changes, inform the data controller of any intended changes concerning the addition or replacement of other data processors.

Data processor
governed by
contract or law

56. (1) Processing by a data processor shall be governed by a contract or law, that is binding on the data processor with regard to the data controller and that sets out the —

(a) subject-matter and duration of processing;

- (b) nature and purpose of processing;
 - (c) type of personal data and categories of data subjects; and
 - (d) obligations and rights of the data controller.
- (2) The contract or law in subsection (1) shall, in particular, provide that the data processor —

- (a) processes the personal data only on documented instructions from the data controller, including with regard to transfers of personal data to a third country or an international organisation, unless the data processor processes the personal data in terms of section 50;

Provided that where processing is carried out in terms of section 50, the data processor shall inform the data controller of any restriction before processing;

- (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) respects the conditions under section 53 (2) and (3) for engaging another data processor;
 - (d) takes all measures required pursuant to section 62;
 - (e) taking into account the nature of the processing, assists the data controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the data controller's obligations set out in Parts VIII to IX;
 - (f) taking into account the nature of processing and the information available to the data processor, assists the data controller in ensuring compliance with the obligations under Parts XI and XII;
 - (g) at the choice of the data controller, deletes or returns all the personal data to the data controller after the end of the provision of services relating to processing, and deletes existing copies unless the law requires storage of the personal data; and
 - (h) makes available to the data controller all information necessary to demonstrate compliance with the obligations under this section and allow for and contribute to audits, including inspections, conducted by the data controller or an auditor authorised by the data controller.
- (3) For the purposes of subsection (2) (h), the data processor shall immediately inform the data controller if, in its opinion, an instruction contravenes this Act.

57. (1) Where, with the approval of the data controller, a data processor engages another data processor for carrying out specific processing activities on behalf of the data controller pursuant to section 55 (2) and (3), the data protection obligations set out in Part IV shall be imposed on that other data processor by way of a contract or law, as may be applicable.

(2) Where the other data processor fails to fulfil its data protection obligations, the initial data processor shall remain fully liable to the data controller for the performance of that other data processor's obligations.

Data processor
engaging
another data
processor

Contract to be in writing	<p>(3) The provisions of sections 58 to 61 shall with the necessary modifications apply to a data processor.</p> <p>(4) Adherence of a data processor to a code of conduct approved pursuant to section 73 may be used to demonstrate compliance with the measures and obligations under sections 52 and 57.</p> <p>58. (1) Without prejudice to an individual contract between the data controller and the data processor, the contract or law under section 56 may be based, in whole or in part, on standard contractual clauses under section 59.</p> <p>(2) The contract shall be in writing, including in electronic form.</p> <p>(3) Without prejudice to sections 81 to 84, where a data processor determines the purposes and means of processing in contravention of the provisions of this section, the data processor shall be considered a data controller in respect of that processing.</p>
Standard contractual clauses	<p>59. (1) The Commission may lay down standard contractual clauses for purposes of section 57.</p> <p>(2) A data controller may, for purposes of section 57, adopt standard contractual clauses under subsection (1).</p>
Records of processing activities	<p>60. (1) Each data controller and, where applicable, the controller's representative shall maintain a record of processing activities under its responsibility.</p> <p>(2) The record in subsection (1) shall contain the following information —</p> <ul style="list-style-type: none"> (a) the name and contact details of the data controller and, where applicable, the joint data controllers, the controllers representative and the data protection officer; (b) the purpose of processing; (c) a description of the categories of data subjects and of the categories of personal data; (d) the categories of recipients to whom the personal data is or will be disclosed including recipients in third countries or international organisations; (e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfer under section 80, the documentation of suitable safeguards; (f) where possible, the envisaged time limits for erasure of the different categories of data; (g) where possible, a general description of the technical and organisational measures under section 62. <p>(3) A data processor and, where applicable, the processor's representative shall maintain a record of all categories of processing activities carried out on behalf of a data controller, containing —</p> <ul style="list-style-type: none"> (a) the name and contact details of the data processor or data processors and of each data controller on behalf of which the data processor is acting, and where applicable the controller or processor's representative the data protection officer;

- (b) the categories of processing carried out on behalf of each data controller;
 - (c) where applicable, information under subsection (2);
 - (d) where possible, a general description of the technical and organisational measures under section 62.
- (4) The records in subsections (1) and (3) shall be in writing, including in electronic form:

Provided that the obligations in subsections (1) and (3) shall not apply to an enterprise or organisation employing less than 250 persons unless the processing it carries out —

- (i) is likely to result in a risk to the rights and freedoms of data subjects,
- (ii) is not occasional, or
- (iii) includes sensitive personal data in terms of section 30 (1) or personal data relating to criminal convictions or offences under section 32.

(5) The data controller or data processor and, where applicable, the controller or processor's representative shall make the record available to the Commission on request.

61. The data controller and data processor and where applicable their representatives shall cooperate, on request, with the Commission in the performance of its duties.

Cooperation
with
Commission

PART XI — *Security of Personal Data*

62. (1) The data controller and the data processor shall, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including as appropriate —

Appropriate
technical and
organisational
measures

- (a) the pseudonymisation or encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

(2) In assessing the appropriate level of security, account shall be taken of the risks that are presented by processing, including accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

(3) Adherence to an approved code of conduct under section 73 may be used to demonstrate compliance with the requirements set out in this section.

Notification of
personal data
breach

(4) The data controller and data processor shall take steps to ensure that any natural person acting under the authority of the data controller or the data processor who has access to personal data does not process them except on instructions from the data controller, unless he or she is required to do so by law under section 50.

63. (1) In the case of a personal data breach, the data controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the Commission, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of the data subject.

(2) Where the notification under subsection (1) is not made within 72 hours, it shall be accompanied by reasons for the delay.

(3) The data processor shall notify the data controller without undue delay after becoming aware of a personal data breach.

(4) The notification under subsection (1) shall —

(a) describe the nature of the personal data breach, including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

(b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;

(c) describe the likely consequences of the personal data breach; and

(d) describe the measures taken or proposed to be taken by the data controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

(5) Where, and insofar as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

(6) The data controller shall document any personal data breaches, comprising the facts relating to the personal data breach, its effects and the remedial action taken.

(7) The documentation in subsection (5) shall be provided in such manner as to enable the Commission to verify compliance with this section, as the Commission may determine.

Communication
of personal data
breach to data
subject

64. (1) Where a personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the data controller shall communicate the personal data breach to the data subject without undue delay.

(2) The communication to the data subject under subsection (1) shall describe in clear and plain language the nature of the personal data breach and contain the information and measures under section 63 (4) (b) to (d).

(3) The communication to the data subject under subsection (1) shall not be required if any of the following conditions are met —

- (a) the data controller has implemented appropriate technical and organisational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
- (b) the data controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects in subsection (1) is no longer likely to materialise; or
- (c) it would involve disproportionate effort:

Provided that there shall, instead, be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.

(4) Where the data controller fails to inform the data subject of the personal data breach, the Commission, having considered the likelihood of the personal data breach resulting in a high risk, may require the data controller to do so or may decide that any of the conditions under subsection (3) are nonetheless met.

PART XII — *Data Protection Impact Assessment and Prior Consultation*

65. (1) Where a type of processing uses new technologies, and taking into account the nature, scope, context and purpose of processing, is likely to result in a high risk to the rights and freedoms of natural persons, the data controller shall, prior to processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data:

Data protection
impact
assessment

Provided that a single assessment may address a set of similar processing operations that present similar high risks.

(2) The data controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.

(3) A data protection impact assessment under subsection (1) shall be required where —

- (a) a systematic and extensive evaluation of personal aspects relating to natural persons is based on automated processing, including profiling, and decisions that produce legal effects concerning the natural person or significantly affect the natural person;
- (b) processing of sensitive personal data or personal data relating to criminal convictions and offences under sections 30 or 32 is carried out on a large scale; or
- (c) a systematic monitoring of a publicly accessible area is carried out on a large scale.

66. (1) The Commission shall establish and publish a list of processing operations for which a data protection impact assessment is required.

List of
processing
operations
subject to data
protection impact
assessment

(2) Notwithstanding subsection (1), the Commission may establish and publish a list of processing operations for which no data protection impact assessment is required.

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Contents of
data protection
impact
assessment

67. (1) The data protection impact assessment shall contain, at least —
(a) a systematic description of the envisaged processing operations and the purpose of processing, including, where applicable, the legitimate interest pursued by the data controller;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purpose;

(c) an assessment of the risks to the rights and freedoms of data subjects under section 65; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Act taking into account the rights and legitimate interests of data subjects and other persons concerned.

(2) Compliance with approved codes of conduct under section 73 by a data controller or data processor shall be taken into account when assessing the impact of processing operations performed by such data controller or data processor.

(3) The data controller may, where appropriate and without prejudice to the protection of commercial or public interests or the security of processing operations, seek the views of data subjects or their representatives on the intended processing.

(4) Sections 65 to 67 shall not apply where —

(a) processing is carried out pursuant to section 26 (c) or (e), and the law regulates the specific processing operation or set of operations in question; and

(b) a data protection impact assessment has been carried out as part of a general impact assessment in the context of the adoption of that law.

(5) The data controller shall, when there is a change in the risk represented by processing operations, carry out a review of the risk in accordance with section 65.

Prior
consultation

68. (1) Where a data protection impact assessment under section 65 indicates that, in the absence of measures to mitigate the risk, processing would result in a high risk, the data controller shall consult the Commission prior to processing.

(2) Where the Commission considers that the intended processing under subsection (1) would contravene this Act, and that the data controller has insufficiently identified or mitigated the risk, the Commission —

(a) shall, within eight weeks of receipt of the request for consultation, provide written advice to the data controller or data processor; and

(b) may exercise any of its powers under sections 14 to 17.

(3) The Commission may extend the period under subsection (1) by six weeks, taking into account the complexity of the intended processing.

(4) The Commission shall inform the data controller or data processor of the extension under subsection (3), and the reasons for delay, within one month of receipt of the request for consultation.

(5) The periods under subsections (2) to (4) may be suspended until the Commission has obtained information under subsection (6).

(6) When consulting the Commission, the data controller shall provide the Commission with the —

- (a) respective responsibilities of the data controller, joint data controllers and data processors involved in the processing within a group of undertaking;
- (b) purpose and means of the intended processing;
- (c) measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to section 62;
- (d) contact details of the data protection officer, where applicable;
- (e) data protection impact assessment in terms of section 65; and
- (f) other information requested by the Commission.

PART XIII — *Data Protection Officer*

69. (1) The data controller and the data processor shall designate a data protection officer where —

Designation of
data protection
officer

- (a) processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
- (b) the core activities of the data controller or data processor consist of processing operations which, by virtue of their nature, scope and purpose, require regular and systematic monitoring of data subjects on a large scale; or
- (c) the core activities of the data controller or data processor consist of processing of —
 - (i) sensitive personal data on a large scale; or
 - (ii) personal data relating to criminal convictions and offences under section 32.

(2) In cases other than those under subsection (1), a data controller or data processor or an association representing categories of data controllers or data processors may designate a data protection officer to act for the association:

Provided that the data controller shall display the contact details of the data protection officer in the premises and inform the Commission, in writing, of such contact details.

70. (1) A data protection officer shall be designated on the basis of —

Qualification
for designation

- (a) professional qualities, expert knowledge on data protection law and practices; and
- (b) proven ability to fulfil duties under section 72.

(2) The data protection officer may be a staff member of the data controller or data processor, or may fulfil the duties on the basis of a service contract.

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Position of
data protection
officer

(3) Upon designation, the data controller or data processor shall submit the name and contact details of the data protection officer to the Commission in such manner as may be prescribed.

71. (1) The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of those duties and he or she shall not be dismissed or penalised by the controller or the processor for performing his or her duties.

(2) The data protection officer shall directly report to the highest management level of the data controller or the data processor.

(3) Pursuant to subsection (1), the data controller and data processor shall —

- (a) ensure that the data protection officer is, properly and in a timely manner, involved in all issues relating to the protection of personal data;
- (b) support the data protection officer in performing the duties under section 72 by providing the resources necessary to —
 - (i) carry out those duties and access to personal data and processing operations, and
 - (ii) maintain the data protection officer's expert knowledge; and
- (c) that the data protection officer has functional independence.

(3) Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Act.

(4) The data protection officer shall be bound by secrecy or confidentiality concerning the performance of his or her duties.

(5) The data protection officer may, in addition to the duties under section 72 carry out other functions of the data controller or data processor:

Provided such functions and duties do not result in a conflict of interest.

Duties of data
protection
officer

72. (1) The data protection officer shall —

- (a) inform and advise the data controller or the data processor, including the officers of the data controller or data processor who carry out processing, of their obligations under this Act;
- (b) monitor compliance with —
 - (i) this Act and data protection provisions provided for elsewhere in the law, and
 - (ii) the policies of the data controller or data processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of officers involved in processing operations and related audits;
- (c) provide, upon request, advice on the data protection impact assessment and monitor its performance pursuant to sections 65 to 67;
- (d) act as the contact point for the Commission on issues relating to processing, including the prior consultation under section 68; and

(e) consult or cooperate with Commission on any other matter as may be necessary for purposes of this Act.

(2) The data protection officer shall, in performing the duties under subsection (1), have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purpose of processing.

73. (1) Data controller or data processor, or an association or body representing a category of data controllers or data processors, may, taking into account the specific features of the various processing sectors and specific needs of micro, small and medium-sized enterprises, draw up a code of conduct to ensure the proper application of, and adherence to, this Act.

Code of
conduct

(2) The code of conduct in subsection (1) may set out —

- (a) the measures and standards for fair and transparent processing;
- (b) the legitimate interests pursued by the data controller in a specific context;
- (c) procedures for the collection of personal data and the means for protecting such data or pseudonymisation of personal data;
- (d) the procedures for providing information to the public and to data subjects;
- (e) the procedures for notification of personal data breaches to the Commission and communication of such personal data breaches to data subjects;
- (f) the transfer of personal data to third countries or international organisations;
- (g) dispute resolution procedures for resolving disputes between data controllers and data subjects with regard to processing; or
- (h) any other matter as may be necessary to ensure the proper application of this Act.

(3) A code of conduct drawn up under subsection (1) shall be submitted to the Commission for approval.

(4) The Commission shall, upon approval, register and publish the code of conduct.

PART XIV — *Transfers of Personal Data to Third Countries or International Organisations*

74. In order to ensure that the level of protection of natural persons guaranteed by this Act is not undermined, any transfer of personal data from a data controller or data processor in Botswana to a data controller, data processor or other recipient in a third country or an international organisation, including onward transfer to another third country or international organisation, shall be carried out subject to the provisions of this Part.

General
principle for
transfers

Transfers on
basis of
adequacy
decision

75. (1) A transfer of personal data to a third country or an international organisation may take place where the —

- (a) Commission decides that the third country, a territory or one or more specified sector within that third country, or the international organisation in question ensures an adequate level of protection; and
 - (b) Minister, on recommendation of the Commission and by Order published in the *Gazette*, designates the transfer of personal data to any country or international organisation listed in the Order.
- (2) When assessing the adequacy of the level of protection, the Commission shall take into account the —
- (a) relevant legislation and access of public authorities to personal data, including the —
 - (i) implementation of such legislation, data protection rules, professional rules and security measures,
 - (ii) rules for onward transfer of personal data to another third country or international organisation, and case-law, and
 - (iii) administrative and judicial redress for the data subjects whose personal data is being transferred, in the third country or international organisation concerned;
 - (b) existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, including adequate enforcement powers, for —
 - (i) assisting and advising the data subjects in exercising their rights, and
 - (ii) cooperation with the other supervisory authorities; and
 - (c) international commitments in relation to the protection of personal data that the third country or international organisation concerned has entered into and other obligations arising from —
 - (i) legally binding conventions or instruments, and
 - (ii) its participation in multilateral or regional systems.
- (3) After assessing the adequacy of the level of protection pursuant to subsection (2), the Commission may decide by means of an implementing act that a third country, a territory or one or more specified sectors within the third country, or an international organisation ensures an adequate level of protection within the meaning of this section.
- (4) The implementing act in subsection (3) shall —
- (a) subject to subsections (5) and (6) provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation;
 - (b) specify its territorial and sectorial application and, where applicable, identify the supervisory authority in subsection (2) (b); and
 - (c) be adopted in such form and manner as may be prescribed.

(5) The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the decision adopted pursuant to subsection (3).

(6) Where available information reveals that a third country or an international organisation no longer ensures an adequate level of protection within the meaning of this section, the Commission shall, to the extent necessary, repeal, amend or suspend the decision in subsection (3):

Provided that the Commission may enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to this subsection.

(7) A decision pursuant to subsection (5) shall be without prejudice to transfers of personal data to the third country or the international organisation in question pursuant to section 76.

(8) The Commission shall publish, on its website or such medium as it may determine, a list of third countries and international organisations designated in terms of subsection (1).

76. (1) In the absence of an adequacy decision pursuant to section 75, a data controller or data processor may transfer personal data to a third country or an international organisation —

Transfers
subject to
appropriate
safeguards

(a) only if the data controller or data processor has provided appropriate safeguards; and

(b) on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

(2) The appropriate safeguards under subsection (1) may be provided for, without requiring any specific authorisation from the Commission, by —

(a) a legally binding and enforceable instrument between public authorities;

(b) binding corporate rules in accordance with section 77;

(c) standard data protection clauses adopted by the Commission; or

(d) an approved code of conduct pursuant to section 73, including binding and enforceable commitments of the data controller or data processor in the third country to apply the appropriate safeguards.

(3) The appropriate safeguards under subsection (1) shall require specific authorisation from the Commission if provided for by —

(a) contractual clauses between the data controller or data processor and the data controller, data processor or the recipient of the personal data in the third country or international organisation; or

(b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

77. (1) The Commission shall approve binding corporate rules:

Binding
corporate rules

Provided that the rules —

- (i) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees,
- (ii) expressly confer enforceable rights on data subjects with regard to the processing of their personal data, and
- (iii) fulfil the requirements laid down in subsection (2).
- (2) The binding corporate rules under subsection (1) shall specify —
 - (a) the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;
 - (b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;
 - (c) their legally binding nature, both internally and externally;
 - (d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;
 - (e) the rights of data subjects in regard to processing and the means to exercise those rights and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;
 - (f) the acceptance by the data controller or data processor for any breach of the binding corporate rules;
 - (g) the duties of any data protection officer designated in accordance with section 69 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, including monitoring training and complaint handling;
 - (h) the complaint procedures;
 - (i) the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules:

Provided that —

 - (i) such mechanisms include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject,
 - (ii) the results of such verification are communicated to the data protection officer person or entity under paragraph (g) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and

- (iii) such mechanisms and the results of verification are available, upon request, to the Commission;
 - (j) the mechanisms for reporting and recording changes to the rules and reporting those changes to the Commission;
 - (k) the cooperation mechanism with the Commission to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity;
 - (l) the mechanisms for reporting to the Commission any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and
 - (m) the appropriate data protection training to personnel having permanent or regular access to personal data.
- (3) The Commission may specify the format and procedures for the exchange of information between data controllers and data processors for binding corporate rules.

78. (1) In the absence of an adequacy decision, appropriate safeguards or binding corporate rules, a transfer of personal data to a third country or an international organisation shall take place on one of the following conditions —

Derogations
for specific
situations

- (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
- (b) the transfer is necessary for the performance of a contract between the data subject and the data controller or the implementation of pre-contractual measures taken at the data subject's request;
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the data controller and another natural or legal person;
- (d) the transfer is necessary in the public interest;
- (e) the transfer is necessary for the establishment, exercise or defence of legal claims;
- (f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent;
- (g) the transfer is made from a register which according to the law is intended to provide information to the public and which is open to consultation by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by the law for consultation are fulfilled in the particular case; or
- (h) the transfer is necessary for the purpose of compelling legitimate interests pursued by the data controller which are not overridden by the interests or rights and freedoms of the data subject.

(2) A transfer pursuant to subsection (1) (g) shall not involve the entirety of the personal data or entire categories of the personal data contained in the register:

Provided that where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

(3) Subsection (1) (a), (b), (c) and (h), and subsection (2), shall not apply to activities carried out by public authorities in the exercise of their official duties.

(4) The data controller or data processor shall document the assessment and the appropriate safeguards under subsection (1) (a) in the records under section 62.

International
cooperation

79. The Commission shall, in relation to third countries and international organisations take appropriate steps to —

- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
- (b) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data; and
- (c) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

PART XV — *Compensation, Administrative Fines and Penalties*

Right to lodge
complaint with
Commission

80. (1) Without prejudice to any other administrative or judicial remedy, a data subject shall have the right to lodge a complaint with the Commission if the data subject considers that the processing of personal data relating to him or her contravenes this Act.

(2) The Commission shall inform the complainant on the progress and the outcome of the complaint.

Right to
compensation
and liability

81. (1) Any person who suffers material or non-material damage as a result of a contravention of this Act, shall have the right to receive compensation from the data controller or data processor for the damage suffered.

(2) Any data controller involved in processing shall be liable for the damage caused by processing which contravenes this Act.

(3) A data processor shall be liable for the damage caused by processing where the data processor has —

- (a) not complied with obligations specifically directed to the data processor under this Act; or
- (b) acted outside or contrary to lawful instructions of the data controller.

(4) Where more than one data controller or data processor, or both a data controller and a data processor, are involved in the same processing and are responsible for any damage caused by processing, each data controller or data processor shall be held liable for the entire damage in order to ensure effective compensation of the data subject.

(5) Where a controller or processor has, in accordance with subsection (4), paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers and processors involved in the same processing that part of the compensation corresponding to their part of their part of responsibility for the damage, in accordance with conditions set out in subsection (3).

82. (1) The Commission shall ensure that the imposition of an administrative fine in respect of any contravention of this Act shall in each individual case be effective, proportionate and dissuasive.

General
conditions
for imposing
administrative
fines

(2) An administrative fine under subsection (1) shall be —

- (a) imposed in addition to the corrective measures under section 16; and
- (b) in addition to and not in derogation of any criminal liability under this Act.

(3) When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine, the Commission shall consider —

- (a) the nature, gravity and duration of the contravention taking into account the nature, scope or purpose of the processing concerned, and the number of data subjects affected and the level of damage suffered by them;
- (b) the intentional or negligent character of the contravention;
- (c) any action taken by the data controller or data processor to mitigate the damage suffered by data subjects;
- (d) the degree of responsibility of the data controller or data processor taking into account technical and organisational measures implemented by them;
- (e) any relevant previous contraventions by the data controller or data processor;
- (f) the degree of cooperation with the Commission, in order to remedy the contravention and mitigate the possible adverse effects of the contravention;
- (g) the categories of personal data affected by the contravention;
- (h) the manner in which the contravention became known to the Commission, in particular whether, and if so to what extent, the data controller or data processor notified the contravention;
- (i) where corrective measures under section 16 have previously been ordered against the data controller or data processor concerned with regard to the same subject-matter, compliance with those measures;
- (j) adherence to approved codes of conduct; and
- (k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the contravention.

83. (1) Where a data controller or data processor intentionally or negligently, for the same or linked processing operations, contravenes several provisions of this Act, the total amount of the administrative fine shall not exceed the amount specified in subsection (2) for the gravest contravention.

Gravity of
contravention
and
administrative
fines

Offences and penalties

(2) An administrative fine not exceeding P10 000 000, or in the case of an undertaking, not exceeding two per cent of the total worldwide annual turnover of the preceding financial year, whichever is higher, shall apply to a contravention of the obligations of the data controller and data processor under sections 29 and 52.

(3) An administrative fine not exceeding P50 000 000, or in the case of an undertaking, not exceeding four per cent of the total worldwide annual turnover of the preceding financial year, whichever is higher, shall apply to a contravention of —

- (a) the basic principles for processing, including conditions for consent, under Parts IV to VI;
- (b) the data subjects' rights under Part VIII;
- (c) the transfers of personal data to a recipient in a third country or an international organisation under Part XIV;
- (d) any obligations pursuant to law adopted under Part VII;
- (e) an order or a temporary or definitive restriction on processing or the suspension of data flows by the Commission under section 16
- (f) or failure to provide access in contravention of section 14 (1) (d) and (e); and
- (f) an order by the Commission under section 16.

(4) Where both an administrative fine and a criminal penalty is applicable, the administrative fine shall prevail.

84. (1) Where a data controller does not implement the security safeguards under Part XI, the data controller shall be liable to a fine of P500 000 or to imprisonment for a term not exceeding nine years, or to both.

(2) A person who sells personal data commits an offence and is liable to a fine of P500 000 or to a term of imprisonment not exceeding nine years, or to both.

(3) A person who contravenes a provision of this Act commits an offence and is liable, where a penalty is not provided for, to a fine not exceeding P500 000 or to imprisonment for a term not exceeding nine years, or to both.

PART XVI — *Continuation of Appeals Tribunal*

Continuation of Appeals Tribunal

85. The Information and Data Protection Appeals Tribunal as established under the repealed Act shall continue to exist as if established under this Act.

Composition of Tribunal

- 86.** (1) The Minister shall appoint, as a member of the Tribunal —
- (a) a President, who shall be a legal practitioner who qualifies to be appointed as a High Court judge;
 - (b) a Vice President who shall be a legal practitioner who qualifies to be appointed as a High Court judge;
 - (c) three other persons who have knowledge and experience in the areas of data protection and access to information laws; and

(d) two other persons who, in the opinion of the Minister, represent the interests of data subjects and data controllers.

(2) A person shall not qualify for appointment as a member of the Tribunal if he or she is an employee of the Commission.

(3) The Minister may, where he or she is satisfied that a person meets the requirements to be appointed under subsection (1), appoint a person to sit on the Tribunal as an alternate to any of the substantive member of the tribunal appointed under subsection (1).

(4) The Minister shall by notice in the *Gazette*, publish the appointments of members of the Tribunal or their alternates, specifying the dates of their appointments and the period for which they are appointed.

87. (1) The Tribunal shall adjudicate over matters brought before it for breach of any of the provisions of this Act.

Jurisdiction of
Tribunal

(2) Without prejudice to the generality of subsection (1), the Tribunal shall have the jurisdiction to —

(a) consider appeals lodged by a —

- (i) data subject or his or her representative,
- (ii) parent, guardian or carer, in the case of the data subject who is a minor or a person with disability, or
- (iii) data controller, against any action or decision of the Commissioner; or

(b) review any decision of the Commissioner brought before it by —

- (i) a data subject; or
- (ii) a parent or guardian in the case of a minor or a person with physical or mental impairment.

(2) In taking decisions, the Tribunal shall exercise its discretion with independence and impartiality.

88. The President and other members of the Tribunal shall hold office for a period not exceeding five years, and shall be eligible for re-appointment for only one further term not exceeding five years.

Tenure of office
for members
of Tribunal

89. (1) A person shall not qualify for appointment as a member or continue to hold office, if he or she —

Disqualification,
suspension
and removal
of member of
Tribunal

(a) has, in terms of any law in force in any country —

- (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, or
- (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside; or

(b) has, within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted —

- (i) in Botswana, of a criminal offence which has not been overturned on appeal or in respect of which he or she has not received a free pardon, or
- (ii) outside Botswana, of an offence, which in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for one month or more without the option of a fine, whether that sentence has been suspended or not, and which conviction has not been overturned on appeal and in respect of which he or she has not received a free pardon.

(2) The Minister may suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without an option of a fine may be imposed, and while the member is so suspended, such member shall not carry out any functions under this Act or be entitled to any remuneration or allowances.

(3) The Minister shall remove a member from office, if the member —

- (a) becomes subject to a disqualification under subsection (1);
- (b) contravenes a provision of this Act or otherwise misconducts himself or herself to the detriment of the functions of the Tribunal;
- (c) has been convicted of an offence under this Act, or under any other Act and after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of the conviction, he or she is sentenced to imprisonment for a term of six months or more without an option of fine;
- (d) is absent, without reasonable cause, from three consecutive meetings of which that member has had notice; or
- (e) is found to be physically and mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a medical certificate to that effect.

Vacation of
office by
member of
Tribunal

90. A member shall vacate his or her office and such office shall become vacant —

- (a) if he or she is disqualified, suspended or removed, in terms of section 89;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) upon his or her death;
- (d) upon the expiry of such time as the Minister may specify in writing, notifying the member of his or her removal from office by the Minister;
- (e) upon the expiry of one month's notice in writing to the Minister of his or her intention to resign from office;
- (f) if he or she becomes physically or mentally incapable of performing his or her duties efficiently and a medical doctor has issued a medical certificate to that effect;
- (g) if he or she is convicted of an offence under this Act or any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine; or
- (h) if he or she is summarily dismissed from the Tribunal by the Minister for contravening this Act.

Resignation
from Tribunal

91. A member may resign from his or her appointment by giving one month's notice, in writing, to the Minister.

92. (1) Where the office of a member becomes vacant before the expiry of the member's term of office due to death, resignation or removal from office, the Minister shall, in accordance with section 89 of this Act and within four months from the date the vacancy occurs, appoint another person to be a member.

Filling of
vacancy

(2) The person appointed under subsection (1) shall —

- (a) take the place of the member who has vacated office; and
- (b) be appointed on a new or full term.

(3) Notwithstanding subsection (2), a person appointed under subsection (1) may hold office for such period as the Minister may, subject to section 88, specify.

93. A member of the Tribunal shall be paid such remuneration and allowances as the Minister may determine.

Remuneration
of members of
Tribunal

94. (1) The Minister shall appoint a Registrar and such other employees of the Tribunal as may be necessary, who shall provide secretarial services to the Tribunal.

Appointment
of Registrar of
Tribunal

(2) The Registrar shall —

- (a) register all orders and decisions made by the Tribunal;
- (b) maintain and keep a proper record of all proceedings and correspondence of the Tribunal;
- (c) compile and register statistics of all adjudicated cases; and
- (d) carry out such other duties as the Minister may, from time to time, determine.

95. (1) A person who is aggrieved by a decision of the Commissioner under this Act or the Access to Information Act may, within 30 days of such decision, appeal to the Appeals Tribunal.

Appeals to
Tribunal

(2) In determining an appeal, the Tribunal may —

- (a) dismiss the appeal; or
- (b) reverse, amend or vary the decision of the Commissioner.

96. (1) The Tribunal shall sit as and when it receives a complaint.

Proceedings
of Tribunal

(2) The Tribunal may call such witnesses or request the production of such documents as is necessary for the conduct of the proceedings before the Tribunal.

(3) A witness appearing before the Tribunal shall be entitled to the same allowances as those of a witness in proceedings before a magistrates' court.

(4) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.

97. A party who is aggrieved by the decision of the Tribunal may appeal to the High Court against such decision.

Appeal against
decision of
Tribunal

PART XVII — *Miscellaneous Provisions*

98. No matter or thing done or omitted to be done by the Commissioner, Deputy Commissioner or any officer of the Commission shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Commission, render the Commissioner, Deputy Commissioner or officer or any person acting under the direction of the Commissioner, personally liable to an action, claim or demand.

Protection
from personal
liability

B.164

Regulations

99. The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary for the better carrying out of the objects and purposes of this Act or to give force and effect to its provisions.

Repeal of Cap. 43:14

100. The Data Protection Act is hereby repealed.

Transitional and savings provisions

101. (1) Notwithstanding the effect of the repeal under section 100, any subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, insofar as such legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

(2) Any legal proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Commission in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(3) Any investigations commenced under the repealed Act shall continue as if made under this Act.

(4) Any decisions made under the repealed Act shall be binding as if they were made under this Act.

(5) Any appeal or disciplinary proceedings which, prior to the coming into operation of this Act, were pending shall be continued as if they would have been continued before the coming into operation of this Act.

(6) The administrative structures of the Commission in existence under the repealed Act immediately before the commencement of this Act shall, to the extent that their continued existence is not inappropriate or inconsistent with this Act, continue in existence.

(7) Any person who is an officer or employee of the Commission immediately before the coming into operation of this Act shall continue in office for the period for which, and be subject to the conditions under which, he or she was appointed.