Observatory on the Protection of Taxpayers' Rights

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

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.

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

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Questionnaire 1 - Country Practice

Instructions:

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

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

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

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

5. When completed, please submit the survey.

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

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

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

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

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

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

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

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

- (●) Yes
- ( ) No

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

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

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

- (●) Yes
- ( ) No

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

- (●) Yes
- ( ) No

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

- (●) Yes
- ( ) No

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 tight 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
- [x] 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

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

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 ©

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- [ ] 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
- [x] 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) *

- [x] 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.

In the Consultation outcome on "Simplifying and modernising HMRC's Income Tax services through the tax administration framework review: Summary of responses" dated 15 February 2024, HMRC states that "From February 2024, HMRC will make it easier for customers to view all activity on their account and report anything suspicious", see https://www.gov.uk/government/consultations/simplifying-and-modernising-hmrcs-income-tax-services-through-the-tax-administration-framework/outcome/0f337cdb-341c-4476-8f65-ff9af7be5fbe (last accessed 18 December 2024). However, it is not clear what steps HMRC has taken in this regard.

Further, according to HMRC's "Accessing HMRC online services using GOV.UK One Login" publication dated 27 February 2024 (https://www.gov.uk/guidance/accessing-hmrc-online-services-using-govuk-one-login - accessed 18 December 2024), taxpayers will be able to access HMRC services via the One Login platform which allows for dual authentication. One Login is a central point to access all UK government services. From November 2024, taxpayers can now access about 50 different UK Gov services thus removing the burden of having to sign in onto different platforms hosted by different government agencies.

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.

In the Consultation outcome on "Simplifying and modernising HMRC's Income Tax services through the tax administration framework review: Summary of responses" dated 15 February 2024, HMRC states that "From February 2024, HMRC will make it easier for customers to view all activity on their account and report anything suspicious", see https://www.gov.uk/government/consultations/simplifying-and-modernising-hmrcs-income-tax-services-through-the-tax-administration-framework/outcome/0f337cdb-341c-4476-8f65-ff9af7be5fbe (last assessed 18 December 2024). However, it is not clear what steps HMRC has taken in this regard.

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.

From April 2024 individuals can once again volunteer to participate in the Making Tax Digital for Income Tax pilot program (see https://www.gov.uk/guidance/use-making-tax-digital-for-income-tax/introduction - accessed 18 December 2024) the primary objection being to close the tax gap.

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.

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.

However note the Upper Tribunal's ("UT") recent decision in HMRC v Detorri [2024] UKUT 00012 (TCC) overruling the First-tier Tribunal's ("FTT") earlier decision granting the taxpayer's application for private proceedings and anonymity. The UT reiterated the principle of open justice and held that there were no justifications, on the facts of this case, for the grant for privacy and anonymity. Further, the FTT's decision was not proportionate in the circumstance.

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

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However note the Upper Tribunal's ("UT") recent decision in HMRC v Detorri [2024] UKUT 00012 (TCC) overruling the First-tier Tribunal's ("FTT") earlier decision granting the taxpayer's application for private proceedings and anonymity. The UT reiterated the principle of open justice and held that there were no justifications, on the facts of this case, for the grant for privacy and anonymity. Further, the FTT's decision was not proportionate in the circumstance.

Do you want to save your results and quit? *

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- ( ) Yes
- (●) No

Area 7 - Criminal and administrative sanctions

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

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

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. *

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

80 (S). Summary of relevant facts in 2024

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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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- ( ) 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.

In HMRC's Privacy Notice dated 9 October 2024 (see https://www.gov.uk/government/publications/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you - last accessed 18 December 2024), HMRC states,

"If you are subject to an automated decision, we have appropriate measures in place to safeguard your rights. You will be notified in writing at the time, including the reasons for the decision and any associated consequences. You will have 30 days to request a reconsideration or a new decision not based solely on automated processing. Where appropriate you should provide additional information relevant to your circumstances and HMRC will inform you in writing of the reviewed decision.

If we make an automated decision based on any particularly sensitive personal information, we must have either your explicit written consent or it must be justified in the public interest, and we must also put in place appropriate measures to safeguard your rights."

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.

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"If you are subject to an automated decision, we have appropriate measures in place to safeguard your rights. You will be notified in writing at the time, including the reasons for the decision and any associated consequences. You will have 30 days to request a reconsideration or a new decision not based solely on automated processing. Where appropriate you should provide additional information relevant to your circumstances and HMRC will inform you in writing of the reviewed decision.

If we make an automated decision based on any particularly sensitive personal information, we must have either your explicit written consent or it must be justified in the public interest, and we must also put in place appropriate measures to safeguard your rights."

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.

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"If you are subject to an automated decision, we have appropriate measures in place to safeguard your rights. You will be notified in writing at the time, including the reasons for the decision and any associated consequences. You will have 30 days to request a reconsideration or a new decision not based solely on automated processing. Where appropriate you should provide additional information relevant to your circumstances and HMRC will inform you in writing of the reviewed decision.

If we make an automated decision based on any particularly sensitive personal information, we must have either your explicit written consent or it must be justified in the public interest, and we must also put in place appropriate measures to safeguard your rights."

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

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"If you are subject to an automated decision, we have appropriate measures in place to safeguard your rights. You will be notified in writing at the time, including the reasons for the decision and any associated consequences. You will have 30 days to request a reconsideration or a new decision not based solely on automated processing. Where appropriate you should provide additional information relevant to your circumstances and HMRC will inform you in writing of the reviewed decision.

If we make an automated decision based on any particularly sensitive personal information, we must have either your explicit written consent or it must be justified in the public interest, and we must also put in place appropriate measures to safeguard your rights."

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.

In Peter Marano v HMRC [2023] UKUT 00113 (TCC), the UT, interpreting the provisions of section 103 of Finance Act 2020 (which applied retrospectively), held that an automated notice issued by HMRC is as valid as if issued by an officer of HMRC. Therefore, it is no longer required or necessary for HMRC to prove that one of its officers authorised the use of an automated computer to send such automated notices e.g. notices to file or penalty assessments to taxpayers.

Section 103(1) provides that anything or function capable of being done or performed by an officer of HMRC may be done by HMRC "(whether by means involving the use of computer or otherwise)".

The concern, following from the decision, is that HMRC could rely on automated processes e.g determination of liability and issuance of a penalty assessment without the need to show or prove that human interaction was involved.

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.

In HMRC's Privacy Notice dated 9 October 2024 (see https://www.gov.uk/government/publications/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you - last accessed 18 December 2024), HMRC states,

"If you are subject to an automated decision, we have appropriate measures in place to safeguard your rights. You will be notified in writing at the time, including the reasons for the decision and any associated consequences. You will have 30 days to request a reconsideration or a new decision not based solely on automated processing. Where appropriate you should provide additional information relevant to your circumstances and HMRC will inform you in writing of the reviewed decision.

If we make an automated decision based on any particularly sensitive personal information, we must have either your explicit written consent or it must be justified in the public interest, and we must also put in place appropriate measures to safeguard your rights."

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.

Dear Team

Find attached, further to my comments in number 113 of Questionnaire 2, the decision in *Marano v HMRC [2023] UKUT 00113 (TCC)*. Also find attached further to my comments in numbers 34 and 71 of the same form, the decision in *HMRC v Dettori [2024] UKUT 00012 (TCC)*

Best regards

Olamide

Neutral Citation: [2024] UKUT 00012 (TCC)

Case Number: UT/2022/000070

UPPER TRIBUNAL
(Tax and Chancery Chamber)

The Royal Courts of Justice, Rolls Building, London

INCOME TAX – case management direction that "preliminary proceedings in this matter shall be heard in private" – whether direction justified in order to prevent prejudice to the interests of justice – appeal allowed

Heard on: 21 November 2023
Judgment date: 10 January 2024
Republished: 9 December 2024

Before

MRS JUSTICE BACON
JUDGE THOMAS SCOTT

Between

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

and

LANFRANCO DETTORI

Respondent

Representation:

For the Appellants: Hui Ling McCarthy KC and Barbara Belgrano, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

For the Respondent: Michael Firth, instructed by Morr & Co LLP

NOTE: THIS DECISION WAS ORIGINALLY PUBLISHED IN ANONYMISED FORM AND IS NOW REPUBLISHED WITHOUT ANONYMISATION

DECISION

INTRODUCTION

1. Pursuant to directions issued by the Upper Tribunal (Judge Richards) on 19 December 2022, the proceedings in this appeal have been anonymised. While the hearing before us was in public, in accordance with the direction for anonymity the Respondent is referred to in this decision as the "Taxpayer", and we do not provide details in this decision which would enable the Respondent to be identified.

2. The Appellants ("HMRC") appeal against a direction issued by the First-tier Tribunal (Tax Chamber) (the "FTT") on 15 September 2021.That direction was that "preliminary proceedings in this matter shall be heard in private". The reference to "this matter" was to the Taxpayer's substantive appeal against the denial by HMRC of certain tax deductions which he had claimed.

PROCEDURAL BACKGROUND

3. It is helpful to set out the procedural background, both because none of the relevant directions and decisions has been published and because it is material to the issues which we have to determine.

4. The Taxpayer appealed to the FTT against certain decisions which HMRC had made denying him deductions for income tax purposes. The deductions which had been claimed were said to arise in relation to arrangements which had been challenged by HMRC and which were the subject of two other lead cases (the "Lead Appeals").

5. On 23 December 2019, the Taxpayer applied to the FTT for a direction that his appeal be stayed behind the Lead Appeals (the "Stay Application"). HMRC opposed the application.

6. On 13 July 2021, the Taxpayer made an application to the FTT for the following:

   (1) A direction of the Tribunal that the Appeal be heard in private and that the Tribunal's decision be anonymised.

   (2) A direction of the Tribunal that the Appellant is to be anonymised in continuing proceedings.

   (3) A direction of the Tribunal that the hearings will be held in private.

   (4) A direction of the Tribunal that the preliminary proceedings in this matter be heard in private and anonymised.

   (5) A direction that there be a non-reporting restriction in these proceedings.

   (6) An order restricting publication of information.

7. We refer below to this application as "the Privacy and Anonymity Application".

8. Both the Stay Application and the Privacy and Anonymity Application were considered by the FTT (Judge Sukul) at a hearing which took place in private on 19 July 2021. The FTT released its decision on the applications on 15 September 2021 (the "September 2021 Decision").

9. In the September 2021 Decision, the FTT described the reasons given for the directions sought by the Privacy and Anonymity Application as follows:

(1) That they are necessary to protect the taxpayer's private or family life.

(2) It is necessary to maintain the confidentiality of sensitive information.

(3) It will avoid prejudice to the interests of justice.

10. The FTT issued the following directions in the September 2021 Decision:

> 1. This appeal shall be stayed, under Rule 5(3) of the Tribunal Rules, until 60 days after the Tribunal disposes of either of the appeals (the 'Lead Appeals') of [two identified appeals before the FTT] whether the appeals are disposed of by the Tribunal releasing a decision, the appeals being withdrawn or otherwise.
>
> 2. Either party may apply at any time for this stay to be lifted.
>
> 3. Preliminary proceedings in this matter shall be heard in private.
>
> 4. Both parties shall provide to the Tribunal and each other their final representations on the Appellant's application for anonymity not later than 21 days before the substantive hearing.

11. In this decision, we shall refer to the third and fourth directions above as Direction 3 and Direction 4 respectively.

12. The FTT gave its reasons for Directions 3 and 4 as follows:

> 16. HMRC strongly oppose the application, submitting that the application does not provide any good reason for displacing the strong presumption in favour of public hearings or departing from the fundamental principle of open justice.
>
> 17. HMRC do not however object to the Appellant's proposal that the Tribunal defer consideration of the application to closer to the substantive hearing date (although they do not concede that interim proceedings should remain anonymised if the application is ultimately refused). I agree with that approach and I have therefore directed, in the interest of fairness and justice, that preliminary proceedings in this matter shall be heard in private to prevent the Appellant's outstanding anonymity application being rendered futile.

13. Following the September 2021 decision, there were various further applications by the parties, in the course of which the FTT set aside these directions, and then reinstated them.

14. HMRC sought permission to appeal against Direction 3. Permission was refused by the FTT but ultimately granted by the Upper Tribunal (Judge Richards). Permission to appeal was granted on the grounds that the FTT erred in law:

(1) By directing that "preliminary proceedings" were to be in private without having received any evidence from the taxpayer dealing with the need for such a direction.

(2) By failing to take into account, or by failing properly to apply, common law on the principle of "open justice" which indicated that such proceedings should be in public.

(3) By failing to consider alternatives to Direction 3 that were more proportionate having regard to the principle of open justice.

15. By directions released on 19 December 2022, accompanied by detailed and comprehensive reasons, Judge Richards directed that the appeal before this Tribunal should be anonymised, and that all parties and the Tribunal should refer to the Respondent as the Taxpayer.

AN APPEAL AGAINST A CASE MANAGEMENT DECISION

16. An appeal to this Tribunal lies only on a point of law[1]. In addition, the direction under appeal resulted from an exercise by the FTT of its case management powers. In the decision of the Supreme Court in *BPP Holdings v HMRC* [2017] UKSC 55 ("*BPP*") Lord Neuberger, delivering the judgment of the Court, said this, at [33]:

> In the words of Lawrence Collins LJ in *Walbrook Trustee (Jersey) Ltd v Fattal* [2008] EWCA Civ 427, para 33:
>
> > "[A]n appellate court should not interfere with case management decisions by a judge who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge."
>
> In other words, before they can interfere, appellate judges must not merely disagree with the decision: they must consider that it is unjustifiable.

17. Earlier in his judgment, at [21], Lord Neuberger said:

> However, it would nonetheless be appropriate for an appellate court to interfere with [the FTT's decision], if it could be shown that irrelevant material was taken into account, relevant material was ignored (unless the appellate court was quite satisfied that the error made no difference to the decision), there had been a failure to apply the right principles, or if the decision was one which no reasonable tribunal could have reached.

18. We have applied this guidance in reaching our decision.

FTT RULES

19. Direction 3 was made by the FTT pursuant to Rule 32 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273) (the "FTT Rules"). The relevant parts of Rule 32 state as follows:

> **Public and private hearings**
>
> 32. (1) Subject to the following paragraphs, all hearings must be held in public.
>
> (2) The Tribunal may give a direction that a hearing, or part of it, is to be held in private if the Tribunal considers that restricting access to the hearing is justified—
>
> (a) in the interests of public order or national security;

[1] Section 11(1) Tribunals, Courts and Enforcement Act 2007.

(b) in order to protect a person's right to respect for their private and family life;

(c) in order to maintain the confidentiality of sensitive information;

(d) in order to avoid serious harm to the public interest; or

(e) because not to do so would prejudice the interests of justice.

…

(6) If the Tribunal publishes a report of a decision resulting from a hearing which was held wholly or partly in private, the Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

20. As regards matters relating to anonymity covered by Direction 4, Rule 32(6) concerns the anonymity of published decisions. Wider powers in relation to anonymity exist under Rule 14 of the FTT Rules, which provides as follows:

Use of documents and information

14. The Tribunal may make an order prohibiting the disclosure or publication of—

(a) specified documents or information relating to the proceedings; or

(b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

HEARINGS IN PUBLIC AND THE PRINCIPLE OF OPEN JUSTICE

21. The powers contained in Rules 32 and 14 do not fall to be exercised in a vacuum. The starting point in tax cases is that all hearings must be in public. Article 6 of the Human Rights Convention states that "everyone is entitled to a fair and public hearing" in the determination of their civil rights and obligations. That principle is also reflected in Rule 32(1) of the FTT Rules.

22. In *A v British Broadcasting Corporation (Scotland)* [2014] UKSC 25, Lord Reed, delivering the judgment of the Supreme Court, described the rationale for the common law principle of open justice in this way:

> It is a general principle of our constitutional law that justice is administered by the courts in public, and is therefore open to public scrutiny. The principle is an aspect of the rule of law in a democracy. As Toulson LJ explained in *R (Guardian News & Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)* [2012] EWCA Civ 420; [2013] QB 618, para 1, society depends on the courts to act as guardians of the rule of law. *Sed quis custodiet ipsos custodes*? Who is to guard the guardians? In a democracy, where the exercise of public authority depends on the consent of the people governed, the answer must lie in the openness of the courts to public scrutiny.

23. In *Global Torch Ltd v Apex Global Management Ltd* [2013] EWCA Civ 819 ("*Global Torch*"), the Court of Appeal referred to the decision of the House of Lords in *Scott v Scott* [1913] AC 417 as continuing to embody the common law approach, at [13]:

> This year marks the centenary of the decision of the House of Lords in *Scott v Scott* [1913] AC 417. It was and remains a beacon of the common law. Outside three exceptional areas of wardship, lunacy and trade secrets (the third being a precursor of CPR r 39.2(3)(a)), the House of Lords emphasised the paramountcy of open justice. Almost every page of the speeches underwrites that principle…Viscount Haldane LC stated, at p 438:
>
> > "But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with the by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as of turning, not on convenience, but on necessity."

24. Where a taxpayer brings a tax appeal, the principle of open justice will inevitably result in some intrusion into the taxpayer's privacy. However, that is a necessary price in most cases, as explained by Henderson J in *HMRC v Banerjee* [2009] EWHC 1229 (Ch) in the context of an application for anonymisation of a judgment which (as in this appeal) related to the deductibility of payments for income tax, as follows, at [35]:

> …taxation always has been, and probably always will be, a subject of particular sensitivity both for the citizen and for the executive arm of government. It is an area where public and private interests intersect, if not collide; and for that reason there is nearly always a wider public interest potentially involved in even the most mundane-seeming tax dispute. Nowhere is that more true, in my judgment, than in relation to the rules governing the deductibility of expenses for income tax. Those rules directly affect the vast majority of taxpayers, and any High Court judgment on the subject is likely to be of wide significance, quite possibly in ways which may not be immediately apparent when it is delivered. These considerations serve to reinforce the point that in tax cases the public interest generally requires the precise facts relevant to the decision to be a matter of public record, and not to be more or less heavily veiled by a process of redaction or anonymisation. The inevitable degree of intrusion into the taxpayer's privacy which this involves is, in all normal circumstances, the price which has to be paid for the resolution of tax disputes through a system of open justice rather than by administrative fiat.

25. In relation to hearings before the FTT, in *Moyles v HMRC* [2012] UKFTT 541 (TC) ("*Moyles*"), another case concerning the deductibility of payments, the then president of the FTT, Judge Bishopp, cited with approval the above passage from *Banerjee*. Having described the presumption that hearings would be in public as "nowadays stronger than it might have been perceived even a few years ago", Judge Bishopp emphasised (at [14]):

> …There is an obvious public interest in its being clear that the tax system is being operated even-handedly, an interest which would be compromised if hearings before this tribunal were in private save in the most compelling of circumstances.

DIRECTIONS 3 AND 4

26. It is necessary to determine the precise meaning and scope of Direction 3 and (since the only reason given by the FTT for Direction 3 was Direction 4) Direction 4.

27. As regards Direction 3, we note that it does not provide for anonymity of any preliminary proceedings (although if the FTT published a decision regarding any such proceedings it would be necessary to comply with Rule 32(6)). Any such proceedings would therefore be listed on the FTT list of forthcoming hearings as taking place in private but showing the taxpayer's identity, absent any successful application for anonymity.

28. Direction 3 applies to "preliminary proceedings". As we discuss below, one of the difficulties with Direction 3 is that it does not allow for any distinction to be drawn between different types of preliminary proceedings. So, an application by HMRC in this case to strike out the taxpayer's appeal, or the determination of a preliminary issue, would be in private pursuant to the direction, even though they would be much more significant, and of greater interest to the public, than (say) a stay application. Mr Firth sought in response to questions from us to suggest that a strike-out or preliminary issue determination would not be regarded as "preliminary proceedings", but that is plainly wrong.

29. As regards the breadth of Direction 4, what is meant by the Appellant's "application for anonymity"? As we have seen, the Privacy and Anonymity Application covered several matters, and, in particular, sought directions relating to both preliminary proceedings and the continuing proceedings more generally (which would include the substantive hearing). Ms McCarthy said that the "application for anonymity" referred to in Direction 4 was only the application regarding the hearing of the substantive appeal. Mr Firth initially suggested that by making Direction 4, the FTT was deciding to defer *any* consideration by it of possible "harm" to the Taxpayer in terms of the justifications listed in Rule 32(2), both in relation to preliminary proceedings and the substantive hearing.

30. Fortunately, a transcript was taken of the hearing before Judge Sukul on 19 July 2021. It is clear from that transcript that Ms McCarthy's interpretation of Direction 4 is to be preferred. Mr Firth (who also represented the Taxpayer before the FTT) presented his application to the FTT as follows (emphasis added):

> Within that application, it is actually a composite of three -- at least three different applications in terms of there are three aspects of the proceedings that will need to be considered in terms of their application. **The first is the final hearing, if and when that happens, so a full hearing, with the substantive issues, with live evidence before the FtT at some point in the future. That is number one**. Number two is the application to lift the stay and number three is the application for anonymity itself. My submission **on the first issue** is that you should defer or the tribunal should defer consideration of whether to grant anonymity and a private hearing in respect of the final substantive hearing until the outset of the final substantive hearing. So the application is there but the appropriate time to consider it, in my submission, will be at the beginning of that hearing.

31. The application so presented was what HMRC responded to in the hearing before Judge Sukul. Judge Sukul referred to "the question of anonymity at the substantive hearing, which we have decided will not be addressed now". The following exchange between Judge Sukul and Ms Belgrano, who appeared for HMRC, makes the position clear:

> JUDGE SUKUL: To clarify, if we were to keep the matters in the three headings that Mr Firth has suggested, then I think that that may be helpful because I think we are clear that both parties agree that the application for anonymity in respect of the substantive hearing should be heard closer to the substantive hearing. As I understand it, Miss Belgrano, that is where you began with your submission
>
> MISS BELGRANO: Yes.

32. We consider it clear that Direction 4, while loosely worded, relates only to the hearing of the Taxpayer's application for anonymity (and possibly privacy) in respect of the hearing of the substantive appeal. The reason given by the FTT for making Direction 3 must therefore be considered by reference to Direction 4 so construed. That is logical, because if Mr Firth's suggested interpretation were correct, that would result in deferral of any consideration of the issues relating to the privacy/anonymity of proceedings which, by the date of the consideration, had already taken place.

33. Indeed, as Ms McCarthy pointed out, Direction 4 not only says nothing about what is to be done in relation to preliminary proceedings, it goes no further than setting a deadline for final representations by the parties on the application in relation to the substantive hearing.

THE TAXPAYER'S SUBMISSIONS

34. Mr Firth raised a number of arguments to support the proposition that the FTT's decision to make Direction 3 was reasonable and involved no error of law. In summary, those arguments were as follows:

(1) The reason for the FTT's decision was that if Direction 3 was not made, Direction 4 would become futile. That reason fell squarely within Rule 32(2)(e), namely that not to order privacy in respect of preliminary proceedings would "prejudice the interests of justice", because it would render Direction 4 futile. Unlike a decision to order privacy on the basis of any of the factors identified by paragraphs (a) to (d) of Rule 32(2), this required no evidence of potential harm to the Taxpayer to be before the FTT or considered by it, because the prejudice to the interests of justice was plain, and followed necessarily from the futility which would otherwise arise.

(2) Direction 3 could not permissibly be argued to be wrong on the basis that Direction 4 was wrong. HMRC had not appealed against Direction 4, so Direction 4 must be assumed to stand and to have been properly made by the FTT.

(3) In applying the principle of open justice, there is a spectrum of hearings in the tax field, with a hearing of the substantive appeal at one end of the spectrum. Open justice carries less weight in relation to hearings further down the spectrum.

(4) In particular, as illustrated by the decision in *Kandore Ltd v HMRC* [2021] EWCA Civ 1082 ("*Kandore*"), open justice does not apply with full force to the preliminary stages of a tax appeal, which involve merely procedural matters. At those stages, the legitimate interest in keeping the confidential tax affairs of a taxpayer private carry significant weight, prior to any judicial adjudication on those tax affairs.

(5) Open justice applies with less force to proceedings in the FTT than in the courts: see *Cider of Sweden v HMRC* [2022] UKFTT 76 (TC) ("*Cider of Sweden*").

(6) The FTT's decision was consistent with a number of decisions regarding anonymity of appeals against privacy or anonymity decisions, and in particular with comments made in *A v Burke and Hare* [2022] IRLR 139 ("*Burke and Hare*").

(7) Direction 3 had a limited effect on the principle of open justice given that the preliminary stages of a tax dispute are normally not public in any event.

DISCUSSION

35. Where an application for privacy is based on the justifications set out at Rule 32(2)(a) to (d), there will in practice be an onus on the applicant to produce cogent evidence. The FTT must consider that evidence and must carry out a balancing exercise between the various Articles of the European Convention on Human Rights which must be respected by the FTT by virtue of section 6 of the Human Rights Act 1988. In particular, there will often be a tension to be resolved in that balancing exercise between Article 6, which in this context provides a right to a public hearing (from which the applicant will in effect be seeking a derogation), and Article 8, which provides a right to respect for private and family life.

36. However, Rule 32(2)(e) also provides the FTT with power to direct that a hearing should be held in private "if the Tribunal considers that…is justified… because not to do so would prejudice the interests of justice". As Ms McCarthy pointed out, the wording referring to prejudice to the interests of justice is also found in Article 6, though we do not accept her submission that this means one should read across to Rule 32(2)(e) the specific qualifications and restrictions in that respect spelt out in Article 6.

37. Where privacy is directed by the FTT in reliance on Rule 32(2)(e), the need for "cogent evidence" in the sense relevant where privacy is sought under paragraphs (a) to (d) is not directly applicable. However, that does not mean that the FTT can properly direct a hearing in private under Rule 32(2)(e) without rational and persuasive reasons for departing from the principle of open justice. It is critical in considering an application under paragraph (e) to keep in mind the presumption, set out in Rule 32(1), that all hearings before the FTT will be in public unless the FTT directs otherwise. Additionally, the FTT may only make a direction under paragraph (e) where it considers that a public hearing *would* (not might, or be likely to) prejudice the interests of justice.

38. In this case, the only reason given by the FTT for making Direction 3 was that "in the interest of fairness and justice…preliminary proceedings in this matter shall be heard in private to prevent the Appellant's outstanding anonymity application being rendered futile". As we have explained, the "outstanding anonymity application" meant the application for the substantive appeal to be anonymised (and possibly heard in private).

39. We consider that in making Direction 3 for this reason the FTT erred in law.

40. The critical error made by the FTT was its conclusion that omitting to make Direction 3 would have rendered the application in relation to the substantive hearing futile. The FTT also erred in failing to consider whether Direction 3 was proportionate, taking into account its practical effect.

41. We deal first with futility. In principle, prejudice to the interests of justice could rationally be found to arise in two categories of futility relevant to this appeal. The first is where the subject-matter of the hearing is itself an application for privacy or anonymity, where a hearing in public would effectively prejudge the application and thereby render that

hearing futile. The second is where a public and/or unanonymised hearing of (or decision on) a particular matter would render futile or nugatory an outstanding appeal against an existing decision regarding privacy and/or anonymity.

42. Examples of the first category include *EGC v PGF NHS Trust* [2022] EWHC 1908 (QB) ("*EGC")* and *Burke and Hare*. Examples of the second category include the decisions in *EGC, JK v HMRC* [2019] UKFTT 411 (TC) and (as regards anonymity) the hearing of this appeal.

43. *EGC* merits some discussion. It illustrates both categories, and it was particularly relied on by Mr Firth in justifying the FTT's making of Direction 3. The claimant had applied for anonymisation of the parties in litigation he had brought against his former employer (the "Anonymity Application"). He had sought an injunction against his former employer to prevent the proposed disclosure of certain confidential information, and argued as follows (see [12] of the decision):

> i) Without these orders being granted, the bringing of the proceedings would defeat their purpose; in other words, the litigation process would destroy that which the Claimant seeks to protect. In particular, without appropriate restrictions to access to the Court file, the Confidential Information (or parts of it) would be open to public inspection and the confidentiality that the Claimant is seeking to protect thereby lost.
>
> ii) It would be inevitable that, at any interim and/or final hearing, there would be need to discuss the confidential information in open court which would also threaten to destroy the confidence in the information…
>
> iii) Anonymisation of the Claimant (and the making of associated orders to enforce that anonymity) are necessary to protect the Claimant's Article 2 and Article 8 rights.

44. Nicklin J noted at [29] that orders anonymising parties and directions that a hearing should be in private were "derogations from the principle of open justice that require justification". Relevantly to this appeal, he stated as follows, at [34]:

> Derogations from open justice can be justified as necessary on two principal grounds: maintenance of the administration of justice and harm to other legitimate interests: *Various Claimants -v- Independent Parliamentary Standards Authority* [36]-[40].
>
> > i) In the first category (recognised expressly in CPR 39.2(3)(a)) fall the cases – such as claims for breach of confidence – in which, unless some restrictions are imposed, the Court would by its process effectively destroy that which the claimant was seeking to protect. There is no general exception to the principles of open justice in cases involving alleged breach of confidence/misuse of private information. However, it is well recognised that this type of case may well justify some derogation. The challenge is usually to ensure that the measures imposed are properly justified; that they are tailored to the facts of the individual case; and that they are proportionate, i.e. the least restrictive measure(s) necessary to protect the engaged interest…
> >
> > ii) The second category consists of cases in which the anonymity order is sought on the grounds that identification of the party (or witness) would interfere with his/her Convention rights. In that case, the Court must assess the engaged rights and, if appropriate, perform the conventional balancing exercise…

45. Nicklin J had ordered that the hearing of the application should take place in private, as "a public hearing would have immediately defeated the Anonymity Application": [3]. Although he refused the Anonymity Application and refused permission to appeal, Nicklin J noted that the Claimant could apply for permission to the Court of Appeal. In that regard, his view was that "to preserve the position, pending any renewed application, the ring must be held. That means that my judgment refusing the Anonymity Application must remain private until such time as any appeal has been finally resolved": [2]. The former decision was an illustration of futility in the first category, and the latter an illustration of futility in the second category.

46. Mr Firth argued that in this case the FTT was adopting the same approach as in *EGC*. We consider that, to the contrary, the material differences between the situation in this case and that in *EGC* highlight how the FTT fell into error. In *EGC*, the holding of a public and/or unanonymised hearing would have rendered futile the very question at issue in the hearing, and the failure to anonymise the decision for a specified period would have rendered nugatory any appeal against that decision. In this case, there had been no decision regarding anonymity or privacy as a result of Direction 4 or otherwise; all that existed was an application for privacy, unsupported by evidence, and which would not be considered or determined by the FTT until some unspecified date close to the substantive hearing, assuming that the substantive hearing took place. A situation within the first category would be scrutinised and decided at the hearing itself, and in the second a decision had already been taken. This case fell within neither category; neither the application unsupported by evidence nor Direction 4 gave rise to a "ring" to hold.

47. The fact that the situation in this case did not fall within either of the categories we have described did not mean that it was necessarily unjustified or irrational for the FTT to have directed open-ended privacy for all preliminary proceedings in reliance on Rule 32(2)(e). However, it did mean that the FTT should have recognised the material difference, and it should as a result have considered carefully whether a failure to make Direction 3 *would* have prejudiced the interests of justice. We do not consider that the FTT could rationally have concluded that it would.

48. The wording of Rule 32(2)(e) means that in order to answer that question the FTT needed to have considered what the position would have been if they did not make Direction 3. Mr Firth's submissions assumed (in large part) that the counterfactual position would have been that the preliminary proceedings would have been in public. But that is not correct. Absent Direction 3, the Taxpayer the Taxpayer would have needed to make an application for privacy/anonymity for the relevant preliminary proceedings, supported by evidence. It is hard to see that such an outcome would have rendered Direction 4 futile, or otherwise prejudice the interests of justice, particularly given that Direction 4 related only to privacy in the substantive appeal.

49. Further, an assessment of privacy for the purposes of preliminary proceedings would not in any event have prejudged the assessment to be made of privacy for the substantive hearing. The two decisions would not inevitably have been the same, as they would call for consideration of different facts at different times, and, therefore, different balancing exercises. Unlike cases such as *EGC*, it would not have been the case that by failing to make Direction 3 the very purpose of Direction 4 would have been defeated.

50. We consider that the FTT also erred in not considering the practical consequences of Direction 3, and whether those consequences were proportionate to any risk to the interests of

justice. We endorse the comments of Nicklin J in *EGC*, set out above, that where (as was said to be the case in this case) a derogation from the principle of open justice is justified on the basis of the interests of justice "the challenge is usually to ensure that the measures imposed are properly justified; that they are tailored to the facts of the individual case; and that they are proportionate…".

51. As we have observed, Direction 3 extended to all preliminary proceedings. A direction that a strike-out hearing, for example, be held in private would in our view be a significant derogation from the principle of open justice, and the assumption in Rule 32(1). The FTT should have explained why it thought such a blanket derogation was justified, by Direction 4 or otherwise.

52. We summarised Mr Firth's submissions at paragraph 34 above. We have explained why we reject his central argument that Direction 3 was reasonable and justified for the reason stated by the FTT. As regards Mr Firth's other arguments, our conclusions are as follows:

(1) In reaching our decision, we have proceeded on the basis that there is no challenge to Direction 4. However, the issue in this appeal was not whether Direction 4 was correct, but whether the reason given for Direction 3 was an error of law.

(2) We do not agree that in applying the principle of open justice there is a "spectrum" of tax hearings, with the principle carrying more weight the closer one gets to a substantive appeal hearing and less weight the further one is from that hearing. Rule 32(1) applies to "all hearings", not to certain types of hearing or hearings at certain stages. The exercise which must be carried out by the FTT in considering any application for privacy or anonymity is fact-sensitive, and different considerations will arise in different types of case, but there is no general principle of the sort suggested by Mr Firth. To take only one example, a hearing of an application to strike out an appeal (or debar HMRC) may take place well before the substantive appeal is to be heard, but there is no reason why the principle of open justice should as a result carry less weight at that stage than in relation to the substantive appeal hearing.

(3) The decision of the Court of Appeal in *Kandore* does not support the proposition that open justice applies with less force to preliminary proceedings. That case related to the very particular circumstances of a hearing before the FTT of an application by HMRC seeking approval by the FTT of an information notice under Schedule 36 to the Finance Act 2008. In relation to such applications, a private *ex parte* hearing will usually be appropriate because the application is made in the course of an HMRC investigation, before any appealable decision by HMRC has even been made. At that very preliminary stage, and in the context of the particular statutory scheme, it is easy to see why materially different considerations would apply to the privacy of such a hearing. The decision of the Court of Appeal makes quite clear that the rationale for a different approach to open justice stems not from such a hearing arising at a preliminary stage of an appeal, but from it arising at an investigatory stage before there has been any decision to be appealed. See, for example, the following at [102] and [105]-[106]:

> 102 No one doubts the importance of the principle of open justice but the above authorities…were concerned with the typical judicial hearing, in which a court or tribunal adjudicates on a dispute between parties. As I have set out earlier, the nature of the process under Schedule 36 to the 2008 Act is

> entirely different; it consists of the judicial monitoring of a step in an investigation into the affairs of a taxpayer by HMRC.
>
> …
>
> 105 In this context it must be recalled that the private affairs of taxpayers will be discussed at this preliminary stage of an investigation. Very often it would not be in the public interest for those to be discussed in public.
>
> 106 Furthermore, it must be recalled that sometimes the investigation will end in no further action being taken, for example because the position of the taxpayer is vindicated. There would be a real risk of injustice if in the meantime questions had been raised in public over whether they had, for example, been illegally avoiding or evading tax when they had not in fact been doing so.

(4) We firmly reject the submission that the principle of open justice applies with less force in the tribunals than in the courts. In the FTT, Rule 32(1) replicates the common law position that the default position is that proceedings will take place in public. Mr Firth relied on statements made by the FTT in *Cider of Sweden.* That case related to an application by a third party for access to documents filed in an appeal where there had been no hearing of any type in relation to the appeal and no appeal was listed or likely to take place in the near future: see [1] of the decision. While the FTT did balance open justice against the interests of the parties in confidentiality at such an early stage, that was a balancing exercise in the fact-specific context of an application by a third party for disclosure of certain documents, at a stage "before there has been any judicial involvement in the substance of [the] dispute or effective hearing of it": [54]. In the present case, the issue is the extent of confidentiality that is justified at a stage where there *is* a hearing before the FTT. Moreover, the statements to which we were referred go to the uncontroversial proposition that the specific rules of the CPR cannot simply be read across to the FTT, such that in that respect the FTT differs from the courts. Nevertheless, as the FTT correctly stated at [39] of *Cider of Sweden*, " "Open justice" is a constitutional principle which applies to all courts and tribunals exercising the judicial power of the state…This clearly includes the FTT."

(5) Mr Firth relied on paragraph [69] of the decision of the Employment Appeals Tribunal in *Burke and Hare* as demonstrating that the principle of open justice carries less force in the preliminary stages of a dispute than at the final substantive hearing. We do not agree. That case was a "first category" case, in which a preliminary application was made for anonymity by the claimant and the EAT had to decide whether to anonymise its decision on that anonymity application. The comments made by the EAT relate to that situation and were made in that context.

(6) Mr Firth argued that Direction 3 did not really offend against open justice because the preliminary stages of a tax dispute are not usually visible to the public in any event. In fact, while decisions taken on the papers are obviously not in public, the weekly FTT website lists all hearings by taxpayer name (without identifying their subject-matter), which are by default open to the public.

53. In conclusion, if one steps back it is clear that something has gone awry as a result of the FTT's directions. The Taxpayer has obtained the benefit of privacy for all preliminary proceedings, without having produced any evidence of harm or prejudice, for an open-ended period, in a situation where, should he decide to withdraw or settle his appeal and not pursue the Privacy and Anonymity Application, that benefit would not be reversible. That position

cannot rationally be justified solely by reference to Direction 4. Nor is it an outcome which should be open to taxpayers, since it results in a blanket derogation from open justice by the backdoor.

DISPOSITION

54. We have found that there were material errors of law in the FTT's decision in relation to Direction 3, and we therefore set that decision aside. We remake the decision so as to set aside Direction 3.

55. We should mention that Mr Firth said that he was "not wedded to any particular form of Direction 3". That has no relevance to the meaning of Direction 3 for the purposes of this appeal, which we discuss above. Insofar as it impliedly invites us to replace Direction 3 with some slightly different formulation which nevertheless achieves the same result, it follows from our decision that that we decline to do so.

56. The Taxpayer may choose to make a further application relating to privacy and/or anonymity in relation to preliminary proceedings. Such an application would fall to be determined by the FTT on its merits, and by reference to the evidence submitted, and could not simply be justified by reference to the fact that an application for privacy and/or anonymity in relation to the substantive appeal hearing remained to be determined by the FTT.

GUIDANCE IN RELATION TO PRIVACY AND ANONYMITY APPLICATIONS

57. This case illustrates the difficulties which can arise where an application by a taxpayer for privacy and/or anonymity is delayed. The practical effect of deferring the substantive application has been that the taxpayer has been able to avoid the open justice principle for all preliminary proceedings for over two years, without any consideration having been given to his reasons for seeking privacy or anonymity.

58. In general, such applications should be dealt with promptly by the FTT when they are made, and should not be deferred.

59. In addition, as Martin Spencer J said in *Zeromska-Smith v United Lincolnshire Hospitals* [2019] EWHC 552 (QB) (at [21]), "an application for anonymity should be made well in advance of the trial". As explained in that case, an applicant may wish to take into account a refusal of anonymity in considering whether to pursue an appeal, and the timetable for hearing the substantive appeal should not be at risk because of an appeal by either party against a decision on an application for privacy or anonymity.

60. The determination of a privacy or anonymity application need not be a protracted affair. In *Global Torch*, the Court of Appeal referred to Lord Steyn's comment[2] that "where the values under [Articles 6 and 8] are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary", and, in the context of the rules of the CPR, observed as follows, at [27]:

> …Lord Steyn's reference to "an intense focus" does not mean that every time a litigant waves an Article 8 flag in support of an application for a private hearing there will have to be a protracted and expensive hearing to determine

[2] *In re S (a child)* [2005] 1 AC 593, at [17].

> the issue. Often, indeed usually, experience suggests that the application can be determined very quickly. It also shows that, in most cases falling outside the area of recognized exceptional circumstances…the open justice principle will prevail.

61. We respectfully endorse those comments in relation to privacy or anonymity applications made to the FTT.

ANONYMISATION OF THIS DECISION

62. In their skeleton arguments, the parties set out their respective positions as to when and whether we should anonymise this decision, and if so on what terms. In advance of the hearing, we sought comments from counsel for each party on the terms of a draft of our proposed decision in this respect. We have repeated that exercise in sending each party an embargoed draft of this decision. We are grateful to counsel for confirming their agreement to the approach which follows, which we consider is consistent with the case-law discussed above relating to anonymisation of decisions on appeals against privacy or anonymity orders.

63. The appeal by HMRC having been allowed, this decision will initially be published in anonymised form. Thereafter:

(1) The decision will remain in anonymised form if permission to appeal the decision is granted by either this Tribunal or the Court of Appeal, subject to paragraph (2).

(2) If (i) time for applying to the Court of Appeal for permission to appeal expires without any such application having been made, or (ii) both the Tribunal and the Court of Appeal refuse permission to appeal, or (iii) the onward appeal(s) (if any) are finally determined against the Taxpayer, then the decision will be republished in unanonymised form on the expiry of two weeks after the occurrence of (i), (ii) or (iii), as relevant, subject to any further application that may be made to the Tribunal by the parties during that two-week period.

64. The parties have liberty to apply for further directions.

MRS JUSTICE BACON
JUDGE THOMAS SCOTT

Release date: 09 December 2024

Neutral Citation Number: **[2023] UKUT 00113 (TCC)**

Case No: UT/2020/000246

IN THE UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER
On appeal from the First-tier Tribunal (Tax Chamber)
[2020] UKFTT 199 (TC)

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 17 May 2023

PROCEDURE (i) automated notices requiring returns – effect of s 103 FA 2020, (ii) whether service provisions of s 115 TMA 1970 are the only means of giving notice of penalty assessments PENALTIES (i) whether computation of tax geared penalties under paras 5 and 6 Schedule 55 FA 2009 should take into account prepayments of tax, (ii) scope of "special circumstances" justifying penalty reduction

Appeal allowed in part

Before :

MR JUSTICE FANCOURT
UPPER TRIBUNAL JUDGE TILAKAPALA

- -

Between :

Peter Marano	**Appellant**
- and -	
Commissioners for HM Revenue & Customs	**Respondents**

- -
- -

Representation

For the Appellant: Keith Gordon, Counsel instructed by RSM UK Tax

For the Respondents: Sadiya Choudhury, Counsel instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

Hearing date: 7 February 2023

- -

DECISION

1. This is an appeal by the taxpayer, Mr Marano, from a decision of the First-tier Tribunal ("FTT") dated 23 April 2020 ("the Decision"), which confirmed a discovery assessment in the amount of £5,744,219 and upheld a series of penalties issued under Schedule 55 to the Finance Act 2009 ("Sched 55") for the failure by Mr Marano to file a self-assessment tax return for the tax year 2012-13.

2. The penalties issued by HMRC upheld by the FTT included two large "tax-geared" penalties, issued on 14 March 2017 under Sched 55 paras 5 and 6, for continuing default in filing six and twelve months after the penalty date. By 2017, Mr Marano had belatedly filed a tax return, too late to be assessed as such but which enabled HMRC to calculate and issue a discovery assessment. This assessment was based on a taxable capital gain, which Mr Marano's accountants had previously disclosed to HMRC and which Mr Marano had in fact voluntarily paid during the 2012/13 tax year. Penalty assessments in the aggregate sum of £574,422 were then issued, representing 5% of the discovery assessment under each of Sched 55 paras 5 and 6. The penalty assessment did not take account of the voluntary prepayment, or of payments on account of his 2012/13 tax liability in the sum of £29,993.69 made under s.59A TMA. The FTT decided that the voluntary disclosure and prepayment did not amount to special circumstances under Sched 55 para 16 justifying a reduction in the amount of the penalties.

3. Permission to appeal was granted by Upper Tribunal Judge Jonathan Richards on 1 December 2020, there were four grounds of appeal that were argued before us, raising the following issues:

i) Whether a valid notice to file a tax return had been issued to Mr Marano by an officer of HMRC for the tax year in question, in accordance with s.8 TMA, and the penalty assessments had been validly issued on behalf of HMRC under Sched 55 para 18. These both turn on the same issue about the necessary degree of involvement of an individual officer of HMRC in issuing the notices. The FTT held that some authorisation by an officer of HMRC could be inferred from the known facts and that the notices had been validly issued.

ii) Whether the penalty notices issued on 3 March 2015 and 14 March 2017 and received by Mr Marano had been properly given to him, as they were not served personally or left at or sent by post to his usual or last-known place of residence or business. This is an issue about whether the service provisions set out in s.115 TMA are the only permitted means of giving notice of such assessments. The FTT found as a fact that the s.8 notice was sent to the last-known place of residence and held that the penalty notices were validly given to Mr Marano at a different address, pursuant to the terms of reg. 75 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, or alternatively were sufficiently given to Mr Marano as a result of his receiving the notices indirectly, which it found as a fact that he did.

iii) Whether the "tax-geared" penalties under Sched 55 paras 5 and 6 should be based on the amount of tax that would have been due (in the sense of being then outstanding and payable) had an accurate return been filed on the filing date, or on the amount of the liability for tax that would have been shown for the tax year in question in the return (with the consequence that any voluntary payment and payments on account for that tax year would not be deducted in calculating the amount of the penalty). The FTT held that it was the latter, so that Mr Marano's voluntary payment and payments on account, exceeding the amount that would have been shown on a return, were irrelevant in calculating the amount of the penalties.

iv) Whether, if the issue in Ground (iii) above was correctly decided by the FTT, the FTT was nevertheless wrong to hold that "special circumstances" justifying a reduction in the amount of the penalty could not include the fact of early notification of the tax liability accompanied by a voluntary payment on account of the amount of the liability, and to reject an argument of disproportionality based on the large amount of the penalties.

4. Given the circumscribed nature of the issues live on this appeal, it is unnecessary to set out at any length the factual background to the penalty assessments and the FTT decision. The material facts, as found by the FTT – to which there is no challenge on appeal – will be addressed under each of the separate grounds of appeal.

Ground 1: insufficient evidence of authorisation by HMRC officer

5. A notice to file a self-assessment tax return for 2012-13 (in the form of a full return) was sent to Mr Marano at his last-known residential address on 6 April 2013. That fact was disputed before the FTT but the FTT's finding adverse to Mr Marano is not challenged on appeal. The FTT's finding was made on the basis of HMRC's microfiche record of sending a return to the right address, an internal return summary on Mr Marano's taxpayer account, and an eventual admission by Mr Marano that he had received a return for 2012/13.

6. The issue on this appeal relating to the notice to file is whether the notice in the form of the full return was given to Mr Marano "by an officer of the Board" within the meaning of s.8 TMA. Previous decisions of the FTT and this Tribunal, culminating in *Rogers and Shaw v HMRC* [2019] UKUT 406 (TCC), establish that there must be sufficient evidence of authorisation by an officer of HMRC. What is sufficient depends on whether the issue is disputed by the taxpayer.

7. The same issue in substance is raised in relation to all the penalty assessments that were notified to Mr Marano, albeit the language of the relevant statutory provision under Sched 55 is somewhat different.

8. In view of legislative change (in the form of s.103 of the Finance Act 2020) that came into force after the Decision but with retrospective effect, the precise questions that the FTT decided have been overtaken by a new legal test. However, as there is dispute about what that new test amounts to and the pre-existing law is important background, we will deal first with the basis on which the FTT decided the issues. We then turn to deal with the new test under s.103 at [32] below.

9. Mr Marano had expressly put HMRC to proof of sufficient involvement of an officer of HMRC in the process, but HMRC did not file evidence relating to that issue until after the decision in the *Rogers and Shaw* case, shortly before the FTT hearing. No objection was taken to the late evidence and the FTT heard argument and decided the point.

10. The evidence before the FTT relating to the s.8 notice was limited to a microfiche record of sending of a full return and a record of Mr Marano's tax affairs in HMRC's self-assessment system. The microfiche was described in the supplementary witness statement of Louise McGovern dated 7 January 2019 as a printed record of a computer output, and as being "maintained in all cases where a Notice to Complete a Tax return is issued automatically by the computer in line with default HMRC Retention of CY6+1". The microfiche shows a date of 6 April 2013, Mr Marano's name and residential address, and his unique taxpayer reference number. The computer record of Mr Marano's self-assessment return for 2012/13 records a full return as having been issued on 6 April 2013. It was agreed that the full return was received by Mr Marano. Despite HMRC having been put to proof of officer involvement, nothing was said in the evidence on behalf of HMRC to explain in what way or ways any officer was involved in or authorised sending out the full return on 6 April 2013.

11. The evidence relating to the issued penalty assessments was essentially the same: a microfiche record showing the addressee, the address and the amount of the assessment, and a screen shot of a computer record of Mr Marano's 2012-13 self-assessment showing the assessed penalties. The evidence in Ms McGovern's first witness statement was that the two 2017 "tax-geared" late

filing penalties were "raised automatically in self-assessment" and "issued by the self-assessment system" based upon the discovery assessment issued by HMRC in March 2017. There was therefore no evidence of the involvement of any officer of HMRC in making the penalty assessments.

12. The FTT nevertheless concluded, in agreement with HMRC's litigator, that "the only reasonable conclusion from the evidence before us is that HMRC officers approved and authorised the issuance of Notices to File in 2012-13, using the parameters and machinery in existence at that time, and that the officers required that the issuance of the Notices be recorded within HMRC's computer systems" ([126]); an officer of HMRC was simply any or all members of HMRC's staff appointed for the purposes of exercising the Commissioners' functions, and so included any staff who program HMRC's computers. The FTT then stated:

> "129. We have found as facts that a full return, including a Notice to File, was issued to Mr Marano, and that its issuance and posting was recorded by HMRC's systems. The only reasonable conclusions from that evidence are that the return was issued because HMRC's system was programmed to carry out that task, and that the programme was authorised by HMRC officers, as defined.
>
> 130. As Mr Vallis said, the alternative would be that HMRC's computer system had been either (a) programmed by persons other than HMRC staff, or (b) programmed without any human intervention. There is no evidence that HMRC's computer system had been hacked, and it is not reasonable or credible to find that in 2013 HMRC's computer system was being controlled

by some sort of artificial intelligence, capable of deciding its own parameters without the need for a human being to programme it."

13. The FTT therefore inferred from the evidence before it, to the effect that computers had issued the full return and had recorded doing so, that HMRC's computers were used and that HMRC officers programmed them so that the return was sent to Mr Marano.

14. In relation to the penalty assessments, the FTT pointed out that it was not necessary to provide evidence that an HMRC officer personally decided to issue penalties in the individual case but that a generic policy decision would suffice. It then pointed out that the quantum of the penalties was fixed by statutory provisions and not a matter for decision by HMRC and said at [145]:

> "There is no dispute that the penalties actually issued by HMRC's computer system accurately reflect those provisions. The only reasonable conclusion is that HMRC staff designed the computer programs which implement the legislation. As Mr Vallis said, the alternative would be for us to find that HMRC's computer had been hacked, or the computer was writing its own programs, but nevertheless still managed to ensure that the penalties actually issued reflect the statutory requirements."

15. It is notable that in both extracts from the Decision the FTT assumed that it was HMRC's computer system that sent out the notices. However, the evidence in *Rogers and Shaw* was that certain functions were outsourced by HMRC. Although that was not evidence before the FTT, it nevertheless illustrates that it was not a safe assumption for the FTT to make.

16. In *Rogers and Shaw v HMRC*, this Tribunal rejected an argument that a notice to file had to be signed by a named officer or that it had to be made clear in evidence that a particular named officer was giving the notice. It said at [32]:

> "In our judgment, properly construed, s.8 does not impose a requirement that an officer of the Board is identified in the notice as the giver of the notice. Rather, it imposes a substantive requirement that the giving of a notice must have been under the authority of an officer of HMRC. Therefore, if a police constable, for example, purported to require a taxpayer to submit a tax return that would not be a lawful request under s.8 (unless the police constable happened also to be an officer of HMRC). Instead, the requirement is that whoever requires the notice to be given, whether identified or not, has the status of an HMRC officer."

17. The FTT's decision in *Rogers and Shaw* had gone procedurally wrong, in that the FTT took the point about absence of evidence of officer involvement in writing its decision, without the point having been raised and without HMRC having had an opportunity to address it. The evidence before the FTT in that case was similar to the evidence in this case, comprising extracts from computer records, namely a return summary, indicating that a notice to file was issued, and a computer record of its being sent to the appellant at his address. The FTT held that that was insufficient to prove officer involvement and therefore allowed the taxpayer's appeal.

18. The Upper Tribunal (Zacaroli J and Judge Jonathan Richards) allowed the further appeal, but on the basis of much fuller evidence about how HMRC's automated computer system for sending out s.8 notices worked. It confirmed

that HMRC must prove that a valid s.8 notice was served and quoted a paragraph from its previous decision in *Christine Perrin v HMRC* [2018] UKUT 156 (TCC) before explaining the requirement for sufficient evidence:

> "69. Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant events in a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on a balance of probabilities, the penalty must be cancelled without any question of 'reasonable excuse' becoming relevant

50. It follows that, if HMRC fail to provide any evidence at all to the effect that a s.8 notice was served, they will have failed to demonstrate a crucial fact on which their entitlement to a penalty hinges and the FTT will necessarily set aside the penalties charged for alleged failure to comply with that notice.

51. Where HMRC have given some evidence that a s.8 notice was served, it will then be a matter for the FTT to determine whether that evidence is sufficiently strong to discharge HMRC's burden of proof. The FTT's assessment of the evidence should take into account the extent to which the taxpayer is disputing receiving a s.8 notice. Evidence to the effect that HMRC's systems record a s.8 notice as having been sent is, on its own, relatively weak evidence (since it does not itself demonstrate that a s.8 notice was actually sent, and may not itself demonstrate the address to

which it was sent). However, the FTT may nevertheless regard such evidence as sufficient if the taxpayer is not disputing having received a notice to file. By contrast, as the Upper Tribunal (Nugee J and Judge Herrington) identified at [56] of *Barry Edwards v HMRC* [2019] UKUT 131 (TCC), if the taxpayer is disputing having received a notice, the Tribunal is unlikely to accept weak evidence consisting only of a record that HMRC's systems record a s.8 notice as having been sent to an unspecified address."

19. Although this passage is addressing the issue of whether a s.8 notice was sent and served, the context and the rest of the decision in *Rogers and Shaw* shows that the principle is applicable too where the issue is whether "an officer of the Board" gave a s.8 notice to the taxpayer. Having reviewed the fuller evidence about officer control of its automated systems that HMRC adduced on the appeal, the Upper Tribunal said:

> "The taxpayers also argued that HMRC's evidence did not even demonstrate that HMRC officers generally had authorised the giving of s.8 notices (since the actual selection exercise was performed by computer and hard copy notices were physically despatched by Communisis). We reject those submissions. HMRC officers decided on applicable criteria and taxpayers meeting those criteria received s.8 notices. The fact that a computer performed the task of identifying taxpayers who met the criteria does not alter the conclusion that HMRC officers authorised the giving of notices to taxpayers who were so identified. Nor does it matter that Communisis physically sent out hard copy s.8 notices. The legislation does

not require officers personally to place stamped letters in post-boxes. It is enough that officers have decided the criteria to be satisfied for a taxpayer to receive a s.8 notice, leaving the implementation of that decision to administrative staff and contractors."

20. The evidence before the FTT in this case, which we have already described, falls well short of the evidence adduced before the Upper Tribunal in *Rogers and Shaw*. It is what the Upper Tribunal in that case characterised as weak evidence that a s.8 notice had been sent, which was insufficient where the fact of sending was challenged by the taxpayer. Since the microfiche and self-assessment return record purport to record the sending of a full return by automated process, that evidence is even weaker evidence that the sending of a full return was authorised by an HMRC officer, or officers generally. It says nothing about how the decision to send a full return to Mr Marano was taken.

21. The FTT nevertheless concluded that "the only reasonable conclusion from the evidence before us is that HMRC officers approved and authorised the issuance of Notices to File in 2012-13, using the parameters and machinery in existence at that time, and that the officers required that the issuance of the Notices be recorded within HMRC's computer systems". In our view, that inferential conclusion could not properly be drawn from the primary evidence, which was that HMRC had a computerised record of a s.8 notice having been sent. It was no more than speculation about how the automated system was set up and operated, or alternatively an assumption that HMRC officers had control over its own systems and so had authorised what was done.

22. We agree with Mr Gordon that an inferential conclusion of fact has to be soundly based on primary facts found or admitted: it cannot just be an assumption. There was no evidence before the FTT on this occasion capable of justifying the inference that officers of HMRC decided the criteria on the basis of which computers were programmed to give effect to them, resulting in the service of the full return on Mr Marano. We are unclear how the FTT managed to reject the possibility, posited by Mr Vallis, that the computer had been programmed by persons other than HMRC staff; or indeed that the function had been outsourced.

23. So far as the penalty assessments are concerned, the statutory provision is different and is found in Sched 55 para 18:

> "(1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must –
>
> (a) assess the penalty,
>
> (b) notify P, and
>
> (c) state in the notice the period in respect of which the penalty is assessed.

This therefore does not refer to an officer of HMRC directly. "HMRC", as referred to in para 18(1), is defined as meaning Her Majesty's Revenue and Customs: Sched 55 para 27(3). Pursuant to Interpretation Act 1978 s.5 and Sched 1, Her Majesty's Revenue and Customs has the meaning given by Commissioners for Revenue and Customs Act 2005 ("CRCA") s.4, which reads, so far as material:

> "(1) The Commissioners and the officers of Revenue and Customs may together be referred to as Her Majesty's Revenue and Customs."

Pursuant to Interpretation Act 1978, s.10, all statutory references to Her Late Majesty are now to be construed as a reference to His Majesty the King.

24. In accordance with these rather tortuous compound definitions, "HMRC" in Sched 55 para 18(1) therefore means the Commissioners and officers of Revenue and Customs. The Upper Tribunal held in the *Rogers and Shaw* case that there was no distinction, in the context of penalty assessments based on s.8 notices, between functions delegated to an officer of HMRC and decisions to be taken by HMRC:

> "We therefore do not see the 'clear distinction' for which the taxpayers argue. On the contrary, "the Commissioners" (or "HMRC") and the officers of Revenue & Customs are simply different manifestations of the persons required and authorised to exercise the statutory function of collecting tax." ([35])

25. Accordingly, the assessment of a penalty under Sched 55 para 18 and the notification of the assessment had to be proved to have been done under the authority of an officer (or Commissioner) of HMRC.

26. The evidence that led the FTT to conclude that officers authorised the penalty assessments was the copy of the microfiche record of posting and the self-assessment return record for Mr Marano, showing the dates and amounts of the penalty assessments. The FTT said that the fact that the amount of the penalty had been correctly calculated (on HMRC's interpretation of Sched 55) was

evidence that officers of HMRC must have programmed the computer that sent out the assessment.

27. The question on appeal is whether it was proper for the FTT to infer from the primary facts that the penalties were assessed and notified under the authority of an officer of HMRC. It did so on the basis that it could be inferred that HMRC staff designed the computer programs, and that it was not reasonable to infer that the computer had been hacked or had written its own programme. However, there was no evidence about whose computers produced the outputs that were recorded in HMRC's data.

28. In our judgment, design of the relevant computer programs by an officer of HMRC was not the only reasonable inference to be drawn from the evidence. It was a reasonable possibility that a consultant had been provided with the necessary inputs to create an automated program to send out penalty assessments, and that this had been done by someone on behalf of HMRC without authority to decide the applicable criteria for sending out penalty assessments. The automated system might have been outsourced and run by a third party, with HMRC having access to it. Whether in any such circumstances there was sufficient officer authorisation of the input criteria or control over the operation of the system would be likely to depend on the particular facts.

29. The very slight evidential material was in our judgment insufficient to enable the FTT to draw the inference that it did, on a contested factual issue of whether an officer authorised assessment and notification of the penalties. Each individual appeal of this kind must be decided on the evidence that HMRC

places before the FTT, not on the basis of the FTT's experience or an understanding gained from evidence adduced in other appeals.

30. Had the applicable law remained the same as it was when the FTT made its decision, we would for the reasons given respectfully have disagreed with the conclusions reached in the Decision on whether HMRC had proved that an officer or officers authorised the sending of the full return or the making and sending of the penalty assessments.

31. However, on 22 July 2020 s.103 of the Finance Act 2020 became law and it thereupon had full retrospective effect, subject to certain transitional provisions that do not apply in this case. The material parts of the section are:

> "(1) Anything capable of being done by an officer of Revenue and Customs by virtue of a function conferred by or under an enactment relating to taxation may be done by HMRC (whether by means involving the use of a computer or otherwise).
>
> (2) Accordingly, it follows that HMRC may (among other things)—
>
> > (a) give a notice under section 8, 8A or 12AA of TMA 1970 (notice to file personal, trustee or partnership return) …..
>
> (3) Anything done by HMRC in accordance with subsection (1) has the same effect as it would have if done by an officer of Revenue and Customs (or where the function is conferred on an officer of a particular kind, an officer of that kind).
>
> (4) In this section—

"HMRC" means Her Majesty's Revenue and Customs;

references to an officer of Revenue and Customs include an officer of a particular kind, such as an officer authorised for the purposes of an enactment."

(5) This section is treated as always having been in force.

……."

The remaining sub-paragraphs of subsection (2) include various determinations, assessments or notices under enactments relating to taxation, but the power conferred by s.103 is not limited to those cases: they are non-exclusive examples, probably referred to because in terms they confer powers on "an officer of the Board" or "an officer of Revenue and Customs".

32. It can be inferred from the reference to the use of computers and the retroactive effect that the section has, that it was intended to validate existing or previous automated functions carried on by HMRC, and to remove the focus on whether an officer, or a specified kind of officer, carried out the function in question. How much further than that it goes is in dispute on this appeal. Mr Marano submits that it does not dispense with the need for HMRC to prove by evidence that the automated functions were carried out under the authority of an officer of HMRC. HMRC submit that there is no longer a requirement to prove the authority of an officer or Commissioner: all that is required is to prove that HMRC issued or sent the notice.

33. Part of the background to the section is a series of cases determined by the FTT in which taxpayers challenged penalty assessments on the basis that HMRC had

failed to prove that an officer authorised the notice to file: *Rogers v HMRC* [2018] UKFTT 312 (TC); *Shaw v HMRC* [2018] UKFTT 381 (TC) and *Smith v HMRC* [2018] UKFTT 461 (TC). The *Rogers* and *Shaw* cases went on appeal to the Upper Tribunal, which published its decision on 30 December 2019 and emphasised the need for proof that automated notices were issued under the authority of an officer. In other cases heard by the FTT in 2018, the issue was whether penalty assessments under Sched 55 and penalties issued under s.100 TMA issued by a computer were invalid because they were not issued by a human being, or by a named officer of HMRC. There were therefore different types of challenge raised in these appeals, not simply a challenge to the use of computers.

34. On 31 October 2019, the Financial Secretary to the Treasury made a written ministerial statement announcing the legislation later enacted in the form of s. 103:

> "The Government is committed to doing what is necessary to protect the Exchequer, maintain fairness in the tax system and give certainty to taxpayers. Therefore, the Government is announcing today that legislation will be brought forward in the next Finance Bill to put the meaning of the law in relation to automation of tax notices beyond doubt. Specifically, that legislation will put beyond doubt that HMRC's use of large-scale automated processes to give certain statutory notices, and to carry out certain functions is, and always has been, fully authorised by tax administration law. This measure will have effect both prospectively and retrospectively."

35. A Technical Note issued by HMRC on the same day noted that it had long used automated processes to carry out routine tasks, where it would be impractical and unnecessary for individual decisions to be made; and that these practices had been challenged in the courts on the basis that they were not justified by legislation.

36. The legislation was introduced as clause 100 of the Finance Bill 2020, and the published Explanatory Notes on the clause stated:

> "8. HMRC has historically used automated processes to carry out repetitive, labour intensive administrative tasks, including issuing certain statutory notices. This reduces costs and creates efficiencies.
>
> 9. To avoid any doubt, this clause confirms that the rules already in place work as they are widely understood to work and as they have been applied historically over many years.
>
> 10. It makes clear that any function capable of being done by an individual officer may be done by HMRC, using a computer or other means, with the same legal effect.
>
> 11. Action resulting from, and as a consequence of, automated notices can therefore take place without ambiguity.
>
> 12. The clause will help to ensure that the tax system applies fairly to all and that tax payers will have certainty over their tax affairs."

37. The statement, note and the Explanatory Notes are all admissible as aids to identify the contextual scene of s.103 and the mischief at which it is aimed: see

Westminster City Council v National Asylum Support Service [2002] UKHL 38 at [5], and *Christianuyi v HMRC* [2019] EWCA Civ 474 as an example of the use for that purpose of consultation documents published by HM Treasury and HMRC.

38. The mischief that the legislation was intended to remedy is doubt about the validity of fully automated functions, as used by HMRC in 2019 and previously, on the basis that they were not functions performed by an officer of HMRC.

39. Mr Gordon, on behalf of Mr Marano, submitted that s.103 does not remove the need for HMRC to prove that the notices were authorised by an officer or Commissioner of HMRC. He pointed out the importance of s.103(4), which by defining "HMRC" as "Her Majesty's Revenue and Customs" brings in the definition from s.4 CRCA and means that what is being referred to is the officers and Commissioners of Revenue and Customs, i.e. a group of individual persons, not a body with separate identity. He explained the apparently circular effect of interpreting HMRC in that way by pointing out that it authorised Commissioners to take steps that previously only officers were authorised to do, and there might be good reasons for that. But the important point was, he said, that by reason of the definitional provisions it was not departing from the need for individuals employed by HMRC to perform or authorise functions. There was no longer doubt, as a result of s.103, that they could use computers or other automation to perform the function, but there still needed to be officer (or Commissioner) authorisation, as decided in *Rogers and Shaw* under the old law. Accordingly, HMRC still had to adduce *evidence* to prove that officers had

decided the criteria to apply and had authorised the system that would give effect to them. The evidence in this case failed to do so.

40. On behalf of HMRC, Ms Choudhury accepted that the effect of s.103 is not that HMRC can perform functions on a fully automated basis, without human involvement. She submitted that there needs to be human involvement, in the sense of a human emanation of HMRC, but that s.103 "does away with the need to prove that a human was involved". She submitted that the section introduces a "limited deeming", which enables a notice issued by an automated process to be treated as issued by HMRC and therefore to be valid. The relevant question therefore is whether the notice has been issued by HMRC and it is unnecessary to receive evidence of officer involvement in the process. However, she then submitted that it was necessary to have evidence not just that the notice was sent out by HMRC's computer but that it was programmed to HMRC's instruction. We observe that if this were right the appeal would have to be allowed, because there was no such evidence before the FTT, nor could those facts be inferred from the limited evidence that was before it. HMRC submitted nevertheless that the evidence of Mr Marano's self-assessment record for 2012/13 was sufficient to prove that HMRC sent the full return and issued the penalty assessments.

41. We start by considering the natural meaning of the language of the section, bearing in mind the identified mischief. The following points arise.

    i) First, the intended effect of s.103 is very broad and general: HMRC may do "anything capable of being done by an officer of Revenue and Customs". The examples given in subsection (2) are non-exclusive.

ii) Second, there is to be no distinction between the effect of things done by HMRC and things done by an officer, or by an officer of a particular kind: subsection (3).

iii) Third, subsections (1) and (3) draw a clear conceptual distinction between an officer (or officers) of Revenue and Customs and "HMRC" itself, and between an officer performing a function and HMRC doing it. If "HMRC" here means little more than the aggregate of the officers of HMRC it would be virtually meaningless.

42. We are unimpressed by Mr Gordon's argument that the purpose of referring to HMRC was to import the definition in s.4 CRCA and thereby extend the range of those on whom statutory functions are conferred so as to include the Commissioners. It seems to us that the Commissioners would impliedly have the necessary authority to act in any event, but there is nothing in the background to this enactment to suggest that problems were being caused by challenges to the ability of Commissioners to discharge functions of officers. If indeed that was the intended purpose of the section, it is obvious that very much clearer and simpler language would have been used to achieve it. In our view, HMRC is being referred to here as the body or department itself, albeit a body comprised of the Commissioners and officers of Revenue and Customs. That is because it is recognised that notices, determinations and assessments are sent out on a fully automated basis in the name of HMRC, not in the name or with the specific authority of an officer. The words in parenthesis, "whether by means involving the use of a computer or otherwise" indicate the intended effect

of the legislative change. They are obviously not there merely to permit an officer of HMRC to use a computer to assist them with their work.

43. A fourth point is that the section goes further than stating that an act capable of being done by an officer may be done by HMRC and that it has the same effect: it also provides that something only capable of being done by an officer of a particular kind may be done by HMRC and has the same effect. Even on Mr Gordon's argument, that would mean that officers and Commissioners of Revenue and Customs generally and not only specified officers are capable of authorising that action. The section on any view therefore makes a more far-reaching change than merely precluding an argument that fully-automated functions are unauthorised by statute. That conclusion suggests that a restrictive interpretation of the section – which would leave HMRC having to prove in every appeal that an officer of Revenue and Customs provided the criteria for and authorised the establishment and use of the automated function – is unlikely to be the right interpretation. The more likely interpretation is that Parliament intended to validate the exercise of functions by HMRC in its own name, including its fully automated functions.

44. As far as we are aware, the issue of the true meaning and effect of s 103 has been before the Upper Tribunal on only one previous occasion to date: in *Assem Allam v HMRC* [2021] UKUT 291 (TCC). In that appeal, the validity of closure notices issued by HMRC were challenged based on alleged invalidity of automated notices to file sent to Dr Allam for two tax years. Closure notices are issued by HMRC under s.28A TMA at the conclusion of an inquiry into a return under s.9A TMA, but the inquiry is (subject to s.12D TMA) only valid if

the notices to file are validly sent. In that appeal, Ms Choudhury appeared for HMRC and is recorded as arguing that automated notices to file are valid without any requirement to prove that an officer of HMRC decided the criteria for receipt of such notices, provided that it is accepted or proved that HMRC issued the notice.

45. The Upper Tribunal (Edwin Johnson J and Judge Jonathan Cannan) said at [36]:

> "We are satisfied that Parliament intended to validate all the notices referred to in s 103(2) where they are issued by HMRC as a department, including such notices issued using a computer. The reference to HMRC in this context is plainly to HMRC as a department. It is difficult to see what useful purpose Mr Ridgeway's narrow construction would serve. There has been no suggestion that individual Commissioners have exercised the functions of officers of HMRC in circumstances where there has been doubt as to their power to do so. If, as Mr Ridgeway submits, Parliament simply intended to authorise individual Commissioners to carry out the statutory function of officers of HMRC then it would have said so in much more straightforward language. It would not have used the term "HMRC" in s 103(1) before going on to define HMRC as "Her Majesty's Revenue and Customs". It would simply have referred to "a Commissioner of Her Majesty's Revenue and Customs".

The Tribunal then referred to the Explanatory Notes with the Finance Bill 2020 – to the extent that these explained the contextual scene and background to the legislation and cast light on the mischief – to support its conclusion.

46. We are far from persuaded that the decision in *Assem Allam* on the construction of s.103 was wrong. Mr Gordon said that it was obviously wrong and had failed to take into account s.103(4). However, the argument based on s.103(4) is recorded in [31] and answered in the paragraph that we have set out above. The effect of that decision and our own preferred construction of s.103 is that a notice issued by HMRC, whether by automated computer function or otherwise, is as valid as if issued by an officer of HMRC. It is therefore no longer necessary, as it was in *Rogers and Shaw*, for HMRC to adduce evidence that an officer of HMRC authorised the criteria for and the establishment and use of an automated computer to send notices to file or penalty assessments. What is required is for HMRC to prove that the notice was its notice. In most cases, that is likely to be accepted by the taxpayer and to be obvious on the face of the notice and, if not, will be corroborated by HMRC's records of a notice having been sent or an assessment or determination made and sent. That of course does not preclude a taxpayer from raising a case that the notice it has received is not a genuine HMRC notice, or that it was invalid for any other reason.

47. In this appeal, there was no dispute that Mr Marano received the full return at his residential address but (oddly) there remained a dispute as to whether HMRC had issued the notice. Unsurprisingly, the FTT said at [112] that the only possible conclusion was that the notice (contained in the full return) was correctly issued and served. There was ultimately no dispute that Mr Marano received the penalty assessments, in the case of the 2017 assessments via a firm referred to in the Decision as PCP, of 76 New Cavendish Street, London. The question of whether they were validly served on him is considered under Ground 2 below.

48. It is not the case, therefore, that Mr Marano challenges the authenticity of the s.8 notice or the notices of penalty assessment, or (save for the s.8 notice) that they had been issued and sent by or on behalf of HMRC. The challenge was based on the validity of HMRC's notices given the absence of evidence of involvement or authorisation by an officer. Had it been disputed that these notices emanated from HMRC, we would have held that the microfiche record of the computer output held by HMRC and its own computer record of Mr Marano's self-assessment (together with Mr Marano's receipt of the notices) are sufficient evidence that HMRC issued and sent the notices to Mr Marano or caused them to be issued and sent. It is inherently improbable that HMRC would have a record on its self-assessment system of notices having been issued and of the correct amount of the penalties assessed unless HMRC issued the notices.

Conclusion on Ground 1

49. For these reasons, we dismiss Mr Marano's appeal on issue 1, on the basis of the retrospective effect of s.103.

Ground 2: Improper notification of the tax related penalties

50. Sched 55 para 18(1)(b) requires HMRC to notify a taxpayer of a penalty assessment. We have set out its provisions at [23] above.

51. The two tax-geared penalty notices, issued on 3 March 2015 and 14 March 2017 respectively, were addressed to Mr Marano not at his personal address but at the registered address (as published on the Companies House website) of a limited liability partnership ("the LLP") of which he was a member.

52. The FTT found that Mr Marano was likely to have received both penalty notices as they were forwarded to him by the firm of accountants that occupied the premises given as the LLP's registered address. It was not disputed that Mr Marano was also informed of the penalty notices by his accountants, who in their capacity as his tax agent had received copies of them from HMRC.

53. The issue for us to determine on this appeal is whether the penalties were properly "notified" to Mr Marano, as required under Sched 55 para 18 for the purpose of the penalty assessment provisions.

54. The FTT held that the penalties were validly notified as the notices had been sent to the address published for Mr Marano on the Companies House website, which was a valid address for service under section 1140 of the Companies Act 2006 as modified by regulation 75 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009. ("the LLP Regulations"). In summary it found that the effect of these provisions is that a document may be validly served on an LLP member if sent to the LLP's registered address even if unrelated to partnership business. This was because the Companies Act service provisions, as modified, apply "whatever the purpose of the document in question".

55. The FTT also referred to *Albert House Property Finance PCC Ltd v HMRC* [2019] UKFTT at [165] and noted the case law principle that a statutory provision about giving notice to a taxpayer must be interpreted so as to give effect to its purpose, namely whether the taxpayer has been notified, and so "actual notice and/or knowledge of HMRC's decision is sufficient for notice to

have been given, even if the notice or information has not been given directly to the taxpayer".

56. Mr Gordon on behalf of Mr Marano contends that sending the notices to the LLP address did not satisfy the statutory requirements for notification under the Taxes Acts. His reasoning was as follows:

i) bar express statutory authority to the contrary a notice to be given to a taxpayer must be given personally;

ii) s.115(2) TMA (s. 115(2)) relaxes these rules by making provision for postal service and setting out which addresses may be used;

iii) bar any other statutory exceptions, s.115(2) is exhaustive – there are no other ways in which service of notices under the Taxes Acts can be made; and

iv) the LLP Regulations, contrary to the FTT decision, do not represent a statutory exception to the rule in s.115(2).

57. S.115(2) TMA provides, so far as relevant, that:

> "Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person-
>
> (a) at his usual or last known place of residence, or his place of business or employment, or
>
> (b) in the case of a company, at any other prescribed place, and in the case of a liquidator of a company, at his address for the purposes of the liquidation or any other prescribed place."

Discussion on Ground 2

58. Our starting point here is the wording of Sched 55 para 18. As drafted (see [23] above) there are two requirements for notification. The first is that P must be notified by HMRC. The second is that the notice must state the period in respect of which the penalty is issued.

59. We note the FTT's reference to the consideration of case law principles relating to notification set out in the FTT judgment in *Albert House*, a decision upheld subsequently by this Tribunal (see *Albert House Property Finance PCC Ltd v HMRC* [2020] UKUT 0373 (TCC)).

60. The case concerned Finance Act 2003, Sched 10 para 37(4)(b) which, so far as relevant, requires HMRC to "give the appellant notice in writing" of their objection to the withdrawal of their appeals. The relevant issue to be determined was whether HMRC had "notified" the appellants of HMRC's objection to the withdrawal of their appeals.

61. HMRC had written to the Tribunal with their objection but had failed to write to the appellants (although it was not disputed that the Tribunal had passed the information on to the appellants). The appellants claimed that HMRC's failure to notify them directly meant that HMRC had not objected to the appeals.

62. The FTT (and on appeal this Tribunal) considered several cases involving a range of notification and service provisions which included: notices of enquiry, notices of assessment, partner payment notices, and service of a document list.

63. We do not intend to set out the analysis of the cases as that has been done by the FTT and this Tribunal in *Albert House*. But, in summary the key principles which can be drawn from those cases are:

(i) The starting point, as with any statutory provision, is a consideration of the terms, context and purpose of the relevant provision: *HMRC v Raftaopoulou* [2018] EWCA Civ 818 per David Richards LJ at [33].

(ii) Some provisions are likely to have different interpretations to others; there is no one standard interpretation that will fit all notification provisions.

(iii) There may be situations where a provision requires a particular or special formality for the giving of notice: per Lady Smith in *R (Spring Salmon and Seafood Ltd) v IRC* [2004] STC 444 at [32] and per David Richards LJ in *Raftaopoulou* at [36].

(iv) There is also a category of cases where the purpose of service of a notice can be recognised as being simply to see to it that the recipient is informed.

(v) As long as the statutory purpose has been achieved, a failure to follow the literal wording of the provision does not invalidate a notice: *Hastie & Jenkerson v McMahon* [1990] 1 WLR 1575 and *Ralux N.v./S.a. v Spencer Mason* (The Times 18 May 1989).

(vi) When considering whether the statutory purpose has been achieved it is necessary to look at the question from the perspective of the taxpayer, HMRC's intentions in giving the notice are not relevant: see *R (Sword Services Ltd) v HMRC* [2016] EWHC 1473 and *Flaxmode Ltd v HMRC* [2008] STC (SCD) 666.

(vii)The reality of a situation should be taken into account and, in cases where notification requires no particular formality, evidence of actual notice having

been received or of a taxpayer being made clearly aware of the subject matter of the notification directly or indirectly, may be sufficient for notice of it to have been given, even if the notice has not been given directly to the taxpayer (*Sword Services*).

64. Although none of these cases involved consideration of notices of tax penalties, and the consequences of receiving a penalty notice are not the same as, for example, receiving notice of an enquiry, we consider that they provide useful guidance in relation to interpreting notification provisions generally.

65. Taking this approach, and considering Sched 55 para 18, its purpose is to ensure that once HMRC makes a penalty assessment, the taxpayer is made aware of two facts: first, that they have been so assessed and second, the period to which that assessment relates. This then enables the taxpayer to consider their position and determine how to react, including whether to appeal. There is nothing in the wording of Sched 55 para 18 or its context to indicate that any special formality is required in order for a penalty notice to be valid, provided that the notification conveys the required information.

66. We then consider whether the statutory purpose of notification was achieved.

67. There is no dispute as to Mr Marano's awareness of the penalty notices. As we have already mentioned, the FTT found that he was likely to have been forwarded the penalty notices and it was not disputed that his accountants had received copies and informed Mr Marano accordingly.

68. We conclude, therefore, that Mr Marano was notified of the penalty notices (albeit partly by indirect transmission of the HMRC correspondence) within the meaning and for the purpose of Sched 55 para 18.

69. The FTT recorded the argument based on *Albert House* but decided the issue against Mr Marano under the LLP Regulations. Mr Marano's appeal against that decision treats s.115(2) as a statutory exception to a principle that personal service of a notice from HMRC to a taxpayer is required. We are unable to accept his argument. No such principle is to be found in s.115 and no authority for the assertion was cited by Mr Gordon. It would be flatly contrary to the principles explained in *Albert House*, which we have summarised above.

70. The provisions of s.115 are permissive, not mandatory. The word "may" is used repeatedly in subsections (1) and (2). It clearly means "may", not "must", where used in subsection (2). This is because subsection (1) contains other service options for service on a person, and because Parliament cannot have intended that a notice or document given to a taxpayer by HMRC must be sent by post. The purpose of subsection (2) is to engage the presumption of due service in Interpretation Act 1978, s.7 where a notice is sent by prepaid post to a prescribed address. Other methods of service are permitted, but the risk of non-delivery is then on the sender rather than the recipient.

71. We therefore reject the first three steps in Mr Gordon's argument on this ground of appeal. It follows that there is no need for us to decide whether the FTT was correct in its interpretation of the LLP regulations. The penalty notices were notified to Mr Marano regardless of the answer to that.

<u>Conclusion on Ground 2</u>

72. For these reasons we dismiss Mr Marano's appeal on Ground 2 on the basis of the improper notification of the tax-geared penalties.

Ground 3 – should the tax-geared penalties take into account tax already paid?

73. The tax-geared penalties were imposed under Sched 55 paras 5 and 6, which provide as follows:

> "5(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
>
> (2) The penalty under this paragraph is the greater of—
>
> (a) 5% of any liability to tax which would have been shown in the return in question, and
>
> (b) £300.
>
> 6(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
>
> (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
>
> ….
>
> (5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—
>
> (a) 5% of any liability to tax which would have been shown in the return in question, and
>
> (b) £300."

The "failure" referred to in paras 5(1) and 6(1) is the failure to make or deliver a return on or before the filing date (Sched 55 para 1).

74. Sched 55 para 24, which is headed "Determination of penalty geared to tax liability where no return made", provides (so far as relevant) as follows:

> "24(1) References to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the filing date, would have been shown to be due or payable by the taxpayer in respect of the tax concerned for the period to which the return relates.
>
> (2) In the case of a penalty which is assessed at a time before P makes the return to which the penalty relates—
>
> > (a) HMRC is to determine the amount mentioned in sub-paragraph (1) to the best of HMRC's information and belief, and
> >
> > (b) if P subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return)."

75. The issue is whether in determining for the purposes of paras 5 and 6 "any liability to tax which would have been shown in the return in question" account is to be taken of payments on account of tax made by a taxpayer.

76. The FTT held that the natural reading of paras 5 and 6, in the light of the definition in para 24(1), is that the penalties are to be based on what is "shown in the return" not on

the amount of tax found to be payable by the taxpayer after recognising payments on account.

77. In reaching its conclusion the FTT considered the statutory wording and the scheme of the legislative provisions in Sched 55, including consideration of the mischief intended to be addressed by the provisions.

78. Mr Gordon on behalf of Mr Marano argues that the FTT's conclusion was incorrect for a number of reasons.

79. His primary argument is that the FTT misread the definition, in para 24(1), of the phrase "liability to tax which would have been shown in a return" by failing to focus on the requirement for the tax in question to be what would have been "due or payable" on the date on which the return should have been filed. In essence his argument is that these words have a particular meaning in the context of the administration of tax generally and in the context of the TMA.

80. We were referred to *Whitney v IRC* (1925) 10 TC 88, in which Lord Dunedin outlined what he saw as the three stages in the imposition of a tax. These are: the declaration of liability; the assessment to tax, which establishes what the person liable has to pay; and then recovery – to the extent that the tax is not paid. In his speech, Lord Dunedin referred to how "assessment particularises the exact sum which a person liable has to pay". Mr Gordon sees this as indicating that in determining what is "due and payable" by a taxpayer, account should be taken of the overall facts including payments on account.

81. Mr Gordon went on to explain what he saw as the particular meaning of the words "due" and "payable" within the context of the TMA, the terms being consistent again

with amounts of tax unpaid rather than a taxpayer's generic liability for a tax year. We were taken specifically to Parts VA and VI of that Act, which are headed respectively "Payment of Tax" and "Collection and Recovery", and which Mr Gordon explained make it clear that references to tax being due or payable exclude payments of tax which have been made on account.

82. Other points made by Mr Gordon included the following:

(i) The FTT gave undue weight to the words "shown in the return" which, though used in para 18, are not used in the para 24(1) definition.

(ii) The FTT was wrong to see para 24(2) as support for its interpretation of the phrase "due and payable".

(iii) The FTT was wrong to dismiss the relevance of the TMA and its use of the words "due" and "payable", given that the TMA and Sched 55 are intended to operate in tandem.

(iv) The FTT did not fully understand the pre-Sched 55 regime – under which the provisions which qualified penalties by reference to the tax liability were similarly worded. In particular, under former s.93(9) TMA, it was accepted that penalties could be avoided by paying the tax due by the date on which the return was due.

(v) The FTT gave undue consideration to pre-legislative materials – which, given the clarity of the statutory language, was not justified.

Discussion on Ground 3

83. In our judgment, Mr Gordon's interpretation of Sched 55 para 24 places undue focus on the words "due" and "payable" to the exclusion of the rest of the wording in that

paragraph, and particularly by seeking to deny the words "shown in the return in question" in Sched 55 paras 5(2) and 6(5) any significance.

84. We consider it clear that the definition in para 24(1) of "a liability to tax which would have been shown in a return" requires, on a natural reading, an analysis of what would appear on a hypothetical tax return. The hypothetical return for this purpose being the return that would have been submitted by the taxpayer had they submitted their return on the correct filing date for the tax year in question. The words "shown to be due and payable" in para 24(1) clearly connote the amount shown to be due and payable in the hypothetical tax return.

85. We agree with the FTT that the amount "shown in a return" is not, necessarily, the same as the amount of tax which is "due" and/or "payable" by the taxpayer for the period covered by that return.

86. As well as being the natural reading of the definition, this interpretation is consistent with the intention of Sched 55, which is to penalise failure "to make or deliver a return … on or before the filing date". It is not surprising, given that intention, for the tax-geared penalty for failure to be set by reference to the tax amounts shown (or which would have been shown) in the return in question. This is in contrast to Sched 56, which penalises failure to pay tax on time and which provides (see paras 3(3) and 3(4)) for the tax-geared penalties to be computed by reference to any amount of the tax which is "unpaid" after the end of the relevant period. The difference in language is striking. If liability under Sched 55 was nevertheless by reference to the amount of tax unpaid, there would be duplicated liability under Scheds 55 and 56 in many cases.

87. This approach is consistent also with the architecture of the self-assessment tax return system itself. We note here the provisions of s. 9 TMA, one of the core provisions governing submission of self-assessment tax returns. This provides that a self-assessment return must include:

> "9(1)
>
> (a) an assessment of the amounts in which, on the basis of the information contained in the return and taking into account any relief or allowance a claim for which is included in the return, the person making the return is chargeable to income tax and capital gains tax for that year of assessment; and
>
> (b) an assessment of the amount payable by him by way of income tax, that is to say, the difference between the amount in which he is assessed to income tax under paragraph (a) above and the aggregate amount of any income tax deducted at source".

88. As well as containing in (b) another definition of "payable" (a point noted by Ms Choudhury), this makes it clear that the sums shown in a tax return are determined by reference only to items included in that return, with an exception being made for withholding tax suffered.

89. With that introduction, we go on to consider Mr Gordon's various arguments.

The FTT's failure to focus on the requirement for the tax in question be "due or payable"or to take into account the particular meaning given to those words in the context of tax administration generally and in the context of the TMA

90. Although the words "due" and "payable" might have a particular interpretation in other tax contexts, we agree with the FTT that there is no basis for those interpretations to be imported into Sched 55 paras 5 and 6.

91. The definition in para 24(1) is, as a matter of interpretation, clear and self-contained, the use of the words "shown in a return" and "shown to be" requiring attention to be paid to the content of a hypothetical tax return (or under para 24(2) to the actual return) and not to the amount of tax that might actually be payable by the taxpayer. In the three-stage process in *Whitney*, this would be the "liability" stage rather than the "assessment" stage.

92. Mr Gordon took us to Parts VA and VI of the TMA. However, we do not agree that they help his arguments. Both parts operate only once a taxpayer's liability has been determined. For Part VI this is self-evident - as that Part deals specifically with collection and recovery. For Part VA this was made clear by the Court of Appeal in *Hoey v HMRC* [2022] 1 WLR 4113.

93. In that case (which considered, *inter alia*, whether a PAYE credit formed part of the amounts payable under an assessment), the Court described clearly how the provisions in sections 59A and 59B TMA (the key provisions of Part VI) operate. A helpful explanation was given of how the adjustments required as a result of the interaction between the two sections operate only after the assessment stage under sections 8 and 9 TMA (the sections under which a taxpayer is required to prepare his or her personal tax return):

> "As for section 59B of TMA, it is clear from the structure of the TMA, the position of sections 59A and 59B within that structure (in a section dealing with payments, after assessments and appeals, but before

collection and recovery) and its language, that the adjustments in section 59B do not form part of or take place at the assessment stage under sections 8 and 9 of TMA. To conclude otherwise would mean that section 59B simply replicates the calculation in sections 8(1) and 9(1)(b), and we can see no reason for it to do so. Rather, section 59B takes the assessment as a starting point (referring back to the "chargeable" and "payable" amounts as defined in section 8(1AA)(a) and (b) and 9(1)(a) and (b) of TMA, consistently with the assessment stage having been completed) and transforms a taxpayer's "liability to tax" (at the assessment stage) into an amount to be paid (a debt due) to HMRC by stipulating certain adjustments to the amounts to be paid. The absence of any cross reference in sections 8 and 9 to section 59B provides further support for this conclusion. So far as the PAYE credit is concerned, the adjustments made by section 59B operate as a set off against the taxpayer's (already assessed) liability to tax, rather than being deducted at the assessment stage to assess what the liability is. Section 59A provides for payments on account of the debt due and plainly operates at that later collection stage. In other words, sections 59A and 59B do not concern or have effect at the assessment stage. They concern the collection stage." [123]

94. It is s. 59B TMA that requires any payment on account to be deducted from the amount of the liability in a self-assessment return. Such payments are not deducted at the earlier stage, unlike PAYE deductions.

The FTT were wrong to regard paragraph 24(2) as support for their interpretation of section 24(1)

95. Mr Gordon contends that para 24(2) is not support for the FTT's interpretation of para 24(1) as excluding payments made on account of tax, nor does it change his preferred analysis, which requires attention to be given to what would actually be due and payable by a taxpayer.

96. We disagree. In our judgment para 24(2) provides that where a penalty has been determined in circumstances where no return has been submitted then, should a return for the period be submitted subsequently, the penalty must be recomputed to reflect what is shown on the actual return. This is, as we see it, just a mechanical provision ensuring that an actual return covering the penalty period will take precedence over a hypothetical one for that period.

97. However, para 24(2)(b) expressly states that if the penalty is re-assessed it is done "by reference to the amount of tax shown to be due and payable *in that return*", subject to any amendments or corrections. This supports the reading of para 24(1) as referring to the amount that would have been shown to be due and payable in a hypothetical return.

98. We agree, however, that the particular reason why the FTT thought that para 24(2) supported HMRC's case, namely that there was no express provision in relation to payments on account, is not persuasive. There is no such provision in para 24(1) either, and the words "subject to any amendments or corrections to the return" simply reflect that there is an actual return under para 24(2) that may have to be corrected by HMRC.

The relevance of the previous, similarly worded, statutory provisions (section 93(7) and (9) TMA 1970)

99. The provisions referred to are in the now repealed s. 93 TMA (failure to make return for income tax and capital gains tax) and in particular sections 93(7) and (9) TMA. They stated:

> "(7) If the taxpayer proves that the liability to tax shown in the return would not have exceeded a particular amount, the penalty under subsection (2) above, together with any penalty under subsection (4) above, shall not exceed that amount.
>
> (9) References in this section to a liability to tax which would have been shown in the return are references to an amount which, if a proper return had been delivered on the filing date, would have been payable by the taxpayer under section 59B of this Act for the year of assessment."

100. We do not regard these historical provisions as relevant in determining the application of the current penalty system in Sched 55, save for the point that Sched 55 and Sched 56 provide a more onerous regime for those who fail to file returns and pay their tax than previously existed.

101. The wording of s.93 TMA is materially different from the wording of the current provisions in Sched 55, which quantify the penalty by reference to the tax liability. There is also no reference in the relevant provisions of Sched 55 to the amount payable under s.59B TMA. As we have already noted, the mechanics of s.59B upon which s.93(9) relied are not relevant to Sched 55 paras 5 and 6.

The FTT gave undue consideration to pre-legislative materials notwithstanding the limitations on recourse to such materials.

102. Mr Gordon objects to what he saw as undue consideration placed by the FTT on pre-legislative materials, in this case the Finance Bill Explanatory Notes for Sched 55 and the consultation documents referred to in those notes.

103. We have already noted that Explanatory Notes to a statute can in certain circumstances be admissible aids to construction of that statute and that weight can be given to a consultation document or cognate material that underpin a statute, when interpreting it.

104. However, in the present case it is not necessary to consider the appropriateness of the consideration given to these materials by the FTT. The FTT made it clear [191] that it had reached its decision on the basis of the natural reading of paras 5 and 6 in the light of the definition in para 24, as do we.

Conclusion on Ground 3

105. It follows that we dismiss Mr Marano's appeal on Ground 3.

Ground 4 – failure by the FTT to consider relevant factors in deciding whether there are special circumstances justifying a reduction in the penalties

106. Sched 55 para 16 permits a penalty to be reduced where "special circumstances" exist. It states as follows:

> "(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
>
> (2) In sub-paragraph (1) "special circumstances" does not include -
>
> (a) ability to pay, or
>
> (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another".

107. Para 22(3) allows the FTT or this Tribunal to substitute its own decisions for HMRC's, relying on para 16, but it can only do so to a different extent if it considers HMRC's decision in respect of the application of para 16 to be flawed in light of the principles applicable in proceedings for judicial review.

108. The FTT found that HMRC's decision was flawed [224] and it went on to substitute that with its own decision. We consider that the FTT was right to do so.

109. Mr Gordon however claims that the FTT's conclusions were also flawed, as it failed to take into account three factors that should have been taken into account. These factors were: the fact that the tax in issue had been paid early by Mr Marano ("Factor 1"), the fact that HMRC had been made aware of the quantum

of the capital gain long before the tax return in question was due ("Factor 2"), and the size of the penalties ("Factor 3").

Discussion on Ground 4

110. The principles applicable in proceedings for judicial review are well established. It follows that the FTT's failure to include the three Factors may render its decision flawed if any of those Factors are relevant considerations.

111. The term "special circumstances" is not defined (the legislation simply lists in para 16(2) two specific exclusions) but has been considered judicially on several occasions, in various contexts. In *Barry Edwards v HMRC* [2019] UKUT 0131 (TCC), this Tribunal cited and agreed with the statement made by Judge Vos in *Advanced Scaffolding (Bristol) Limited v HMRC* [2018] UK FTT 0744 (TC) at [101] and [102]:

> "101. I appreciate that care must be taken in deriving principles based on cases dealing with different legislation. However I can see nothing in schedule 55 which evidences any intention that the phrase "special circumstances" should be given a narrow meaning.
>
> 102. It is clear that, in enacting paragraph 16 of Schedule 55, Parliament intended to give HMRC and, if HMRC's decision is flawed, the Tribunal a wide discretion to reduce a penalty where there are circumstances which, in their view, make it right to do so. The only restriction is that the circumstances must be "special". Whether this is interpreted as being out of the ordinary, uncommon, exceptional, abnormal, unusual, peculiar or distinctive does not really take the debate any further. What matters is

whether HMRC (or, where appropriate the Tribunal) consider that the circumstances are sufficiently special that it is right to reduce the amount of the penalty."

112. Judge Vos added (as cited in the FTT decision) at [225] that:

> *"*The right approach for the Tribunal is to look at all the relevant circumstances and consider whether, in the particular case in question those circumstances are special. I see no reason to limit this to circumstances which ... operate on the particular taxpayer in question as opposed to those which could affect a larger number of taxpayers. It is up to HMRC or, where relevant, the Tribunal to decide based on all of the facts of the particular case whether the circumstances in question are, in that case, special.*"*

113. It is, accordingly, for HMRC or the tribunal to assess the particular facts of a case and having considered those facts to then determine, in its discretion but subject to the two exclusions in para 16(2), whether special circumstances justify reduction in the amount of the penalty.

114. Turning to the question of whether the FTT failed to take into account relevant considerations when remaking HMRC's decision we look at each of the Factors raised by Mr Gordon.

Factor 1 – early payment of the tax in issue

115. The FTT dismissed this in the following terms:

> "The penalties imposed under Sch 55 are for late filing of the return; whether or not a person has paid the related tax is not relevant. In Edwards

the taxpayer had no tax liability at all, and the UT found that having no liability was not a special circumstance, see [86] of that judgment, cited at [218]. Furthermore, the reason Mr Marano paid before the due date was to obtain a tax reduction in the US" [229].

116. Three reasons were given here; the purpose of the legislation, the decision in *Barry Edwards*, and the motive for Mr Marano's early payment (his desire to obtain a US tax benefit).

117. Respectfully, we disagree with the FTT's dismissal of early payment as irrelevant and see this as an error of law.

118. First, we consider that the FTT incorrectly regarded *Barry Edwards* as authority for the proposition that early payment cannot be a special circumstance or a factor to be taken into account in determining whether special circumstances exist.

119. *Barry Edwards* concerned a taxpayer with no tax liability at all and the appeal focused on the proportionality of the penalties imposed (in that case the statutory minimum of £1,300) in those circumstances. This Tribunal noted at [76] that "the only matter advanced as constituting special circumstances is the fact that the penalties are disproportionate in the light of the amount of tax due.".

120. We see the fact that Mr Marano made an early payment of the tax due as distinct from the question as to the proportionality of the tax payable and the size of the penalty levied. *Barry Edwards* does not provide support for the FTT to treat early and full payment as irrelevant. It is also not a factor which is excluded from consideration by para 16(2).

121. In refusing permission to appeal on this point, the FTT emphasised that the penalties were for late filing and so the question of payment or non-payment was irrelevant. Although it is clear that the penalties are for late filing and so the payment of tax is (as we have held) irrelevant to the quantification of the penalty under paras 5 and 6, it does not follow that it is irrelevant to a different issue, namely the question of whether special circumstances exist to justify a discretionary reduction of that penalty under para 16. The relevance of early payment of the tax due must be considered in the light of the fact that the penalty is imposed for late or non-filing of the return, but that does not mean that the FTT should have refused to take it into account at all.

122. We note also the additional reason given by the FTT for dismissing early payment as a factor, which is that Mr Marano only paid the tax early in order to obtain a US tax benefit. We cannot determine what weight was put on this fact by the FTT. We agree, however, with Mr Gordon that this fact cannot be sufficient to justify dismissing early payment as a factor if it is otherwise relevant. The motive for early payment is of no consequence to HMRC and does not alter the fact that early payment was made.

123. What weight is to be given to such a factor in determining whether special circumstances justify a penalty reduction is for HMRC or the FTT to decide. It clearly cannot justify rescinding the penalty, otherwise Sched 55 would have no effect separate from Sched 56, but what if any reduction is appropriate is a matter for properly exercised discretion.

Factor 2 – HMRC's awareness of the quantum of the capital gain long before the tax return in question was due

124. The FTT refused to take this factor into account on the basis that it was not raised during the hearing, and on the basis that:

> "The penalty is for failing to file a return; merely informing HMRC of a liability by letter before the issuance of a return is not a special circumstance which would justify reducing a penalty imposed because the taxpayer subsequently fails to file the return" [31]

125. We accept Mr Gordon's contention that this factor was raised in the original hearing and is not new. This is clear in extracted paragraphs from Mr Gordon's skeleton argument before the FTT, in which he asked the FTT to recognise that HMRC were expressly told about the CGT liability in December 2012 but failed to take that information into account.

126. For the same reasons given in relation to the FTT's dismissal of the early payment of tax as a factor, we consider that the FTT was wrong to dismiss this fact in its entirety as being irrelevant, particularly as notification was followed by full payment.

Factor 3 - the size of the penalty

127. Mr Gordon argued before the FTT that HMRC's decision in relation to the penalties was flawed as, so far as relevant, "no reasonable decision maker could have decided that the penalties were proportionate". The FTT dismissed this in the following terms "unsustainable, see Edwards at [86]." [223]

128. The FTT's reasoning for dismissing proportionality as a factor to be taken into account appears to rely entirely on the decision in *Barry Edwards*.

129. We do not see *Barry Edwards* as authority for the proposition that a penalty in excess of the minimum penalty can never be disproportionate (and therefore a special circumstance) for the purposes of Sched 55.

130. In that case, this Tribunal was determining a specific question in the context of particular circumstances, that question being:

> "whether the amounts of the penalty imposed [in this case] for failure to file self-assessment returns on time in circumstances where no tax is payable is a relevant circumstance that HMRC should have taken into account when considering whether there were special circumstances in this particular case which justified a reduction in the penalty" [67].

131. The Tribunal found, taking into account the aim of Sched 55 and the design of the penalty regime, that:

> "there is a reasonable relationship of proportionality between this legitimate aim and the penalty regime which seeks to realise it. The levels of penalty are fixed by Parliament and have an upper limit. In our view the regime establishes a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer who does not comply with the statutory requirement will have to bear" [85].

132. On this basis the Tribunal concluded that:

> "A penalty imposed in accordance with the relevant provisions of Schedule 55 FA 2009 cannot be regarded as disproportionate in circumstances where no tax liability is ultimately found to be due. It follows that such a circumstance cannot constitute a special circumstance for the purposes of

paragraph 16 of Schedule 55 FA with the consequence that it is not a relevant circumstance that HMRC must take into account when considering whether special circumstances justify a reduction in penalty" [86].

133. It seems to us that a key element of the case was that no tax was payable and, therefore, the penalties imposed were at the statutory minimum level.

134. In its discussion of proportionality, the Tribunal referred to its previous consideration of the same question (albeit in relation to the VAT default surcharge regime) in *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC), acknowledging at [82] that the principles identified in that case applied equally to Sched 55.

135. The VAT surcharge scheme provides for penalties to be levied on a fixed percentage basis (by reference to outstanding VAT) for failure, in certain circumstances, to deliver VAT returns (see s.59 of the VAT Act 1994 and, in particular, the "*specified percentage*" provisions in s.59(5)).

136. In *Total Technology* the Tribunal considered that the percentage-based penalty approach meant that there was in effect no maximum penalty or upper limit on penalties. When considering proportionality in the context of that penalty regime, the Tribunal saw this as a flaw in the legislation, noting that any analysis of proportionality would have to take into account the absolute amount of the penalty (see [93] of that case).

137. Ultimately, the Tribunal did not need to consider where the upper limit on penalties should be – as the actual penalty in question (£4,260) could not in its view be regarded as "not merely harsh but plainly unfair" (as per Simon Brown LJ in *International Transport Roth GmbH v Home Secretary* [2003] QB 729 (at [26])). It is, however,

clear that the Tribunal considered itself able to find the penalty disproportionate had the circumstances warranted it. The Tribunal also made it clear that in determining proportionality it was necessary to consider both the individual penalty and the penalty regime itself, commenting that "even if …. the architecture, as we have called it, of the regime is unobjectionable, it remains necessary that the resulting penalty in a particular case is proportionate to the gravity of the infringement" [77].

138. It follows that although *Barry Edwards* states that proportionality cannot be a special circumstance in cases where there is no liability and a minimum penalty is levied, proportionality might, where a tax-geared penalty is levied, be a special circumstance depending on the particular facts of that case.

139. We find therefore that the FTT was incorrect on the basis of *Barry Edwards* to dismiss the size of the penalties as a factor to be taken into account in determining whether special circumstances existed.

Conclusion on Ground 4

140. We find that the FTT erred in law in its determination of whether "special circumstances" existed for the purpose of Sched 55 para 16 by failing to take into account three relevant considerations: the fact that Mr Marano had paid the tax early, the fact that HMRC had been notified in detail as to the tax liability some time before the return was due, and the size of the penalty.

141. We are satisfied that had the error not been made and the three Factors taken into account, there might have been a difference in the decision reached by the FTT. On that basis we consider that the decision should be set aside.

142. We emphasise here that while we consider the materiality of the error as sufficient to set aside the decision on the basis that it might have been different, it is entirely possible that a tribunal might reach the same decision as originally reached by the FTT.

143. Under section 12(2) of the Tribunal Courts and Enforcement Act 2007, where a decision of the FTT is set aside we must either remit the case to the FTT with directions for its reconsideration or remake the decision ourselves.

144. Mr Gordon has invited us to remake the decision. We consider, taking into account the possible need for additional fact finding, that it is appropriate for that task to be undertaken by the FTT.

145. We also consider that the matter should be determined before a new panel. This is not in any way a criticism of the original FTT panel but is simply to avoid any concern that a dispassionate observer would consider the panel to be subconsciously influenced by its earlier decision (see *Revive Corporation Limited v HMRC* [2020] UKUT 320 TC (at [42])).

146. We, therefore, remit the matter back to the FTT with the following directions:

i) The remitted appeal must be heard by a differently constituted tribunal (to be selected by the FTT President);

ii) The FTT shall consider the single issue of whether for the purposes of Sched 55 para 16, special circumstances exist which justify a reduction in the tax-geared penalties imposed on Mr Marano, and if so the FTT shall redetermine the amount of those penalties accordingly;

iii) The FTT shall take into account as relevant facts in its determination of whether special circumstances exist Factors 1-3 (as we have defined them in this

judgment), although the weight to be given to those factors shall be a matter entirely for the FTT to determine; and

iv) The FTT shall make whatever directions it sees fit in respect of the format of the hearing, such as the manner and timing of submissions from the parties on the significance of Factors 1-3.

Disposition

147. We have dismissed three of the four grounds of appeal argued before us. Those that have been dismissed are:

Ground 1 – the insufficiency of authorisation by an HMRC officer of Mr Marano's notice to file a self-assessment return and penalty notices.
Ground 2 – the inadequate notification of the tax-geared penalty notices.
Ground 3 – whether the tax geared penalties should take into account the tax already paid by Mr Marano.

148. We have upheld Ground 4 – the failure by the FTT to take into account relevant considerations when determining whether there were special circumstances justifying a reduction in the amount of the tax geared penalties.

149. Mr Marano's appeal is, therefore, allowed on Ground 4 only. The appeal is remitted for a decision by a new FTT panel in accordance with our directions above at [146].

Mr Justice Fancourt

Judge Vimal Tilakapala

Release date: 18 May 2023