

ANNEX 2: PART 2

PART 2 – LEGAL FRAMEWORK

Tax Administrations around the world have at least one common goal: to increase tax revenue. In the digital era, it is safe to say that it is very difficult, if not impossible, to achieve such a goal without the inclusion or improvement of digital processes and elements in the services provided by Tax Administrations. This Guide proposes to look specifically at the considerations, essential elements and possible stages and contextual analysis in the process of digitalizing a Tax Administration.

In this unavoidable context of the “4th Industrial Revolution”, which has been substantially disruptive for workflow processes and structures of all kinds, traditional ways of collecting taxes, registering and communicating with taxpayers, protecting and increasing countries’ expected tax revenues, protecting taxpayer rights, and enforcing tax laws have been dramatically changing in the last decades. Governments in general and Tax Administrations specifically, are globally concerned with and already in some stage of addressing these changes through introducing or improving existing digital processes and tools in their operations and structure.

Every substantial change through history demanded from lawmakers major legal developments and adaptations on institutions’ standards and regulations. In the pursuit to digitalizing its Tax Administrations, different countries may face several hurdles depending on the level and structure of their IT’s infrastructures, connectivity and energy supplies. Thus, challenges in digitalizing Tax Administrations and the approaches taken to address such challenges will differ from country to country. Strong domestic laws create a strong framework for a Tax Administration to have a successful digitalization process, as all existing and new processes and tools must be legally bound to safeguard its effectiveness, especially if they are aligned with the Government’s administrative and constitutional principles but aligned with the modern digital business models and needs.

This part is focused on addressing the possible legal framework adjustments and considerations a Tax Administration is to undergo when intending to digitalize (or increase its digitalization levels) responding to the needs of the current and future digitalized global economy. It comprises of two chapters, that is, 3.) Review of existing Laws and 4.) New and Updated Laws.

CHAPTER 3: REVIEW OF EXISTING LAWS

3.1. Introduction

Tax Administrations around the world have at least one common goal: to increase tax revenue. In the digital era, it is safe to say that it is very difficult, if not impossible, to achieve such a goal without the inclusion or improvement of digital processes and elements in the services provided by Tax Administrations. In this unavoidable context of the “4th Industrial Revolution¹”, which has been substantially disruptive for workflow processes and structures of all kinds, traditional ways of collecting taxes, registering and communicating with taxpayers, protecting and increasing countries’ expected tax revenues, protecting taxpayer rights, and enforcing tax laws have been dramatically changing in the last decades. Governments in general and Tax Administrations specifically, are globally concerned with and already in some stage of addressing these changes through introducing or improving existing digital processes and tools in their operations and structure. Therefore, creating a legal infrastructure for legal issues is critical to ensure that the necessary regulatory framework exists to enable digital transformation while protecting citizens' rights and define the standards of "what can and cannot be done".

Every substantial change through history demanded from lawmakers major legal developments and adaptations on institutions’ standards and regulations. In the pursuit of digitalizing its Tax Administrations, different countries may face several hurdles depending on the level and structure of their IT’s infrastructures, connectivity and energy supplies. Thus, challenges in digitalizing Tax Administrations and the approaches taken to address such challenges will differ from country to country. Strong domestic laws create a strong framework for a Tax Administration to have a successful digitalization process, as all existing and new processes and tools must be legally bound to safeguard its effectiveness, especially if they are aligned with the Government’s administrative and constitutional principles but aligned with the modern digital business models and needs.

Notwithstanding the expected challenges in this process, digitalization does not require extensive designated legislation, rather, legislation to ensure the recognition of electronic identities/signatures and electronic documents. This can be done through special laws or amendment to existing laws, like administrative and criminal procedure legislation and contract law, including the necessary attention to the protection of taxpayer rights and privacy, including

¹ Fourth Industrial Revolution has been named by WEF’s Chair, Klaus Schwab, to describe the process of rapid social, industrial and tech patterns disruption derived from smart automation and huge interconnectivity. Main known features are data, genetic and robotic sciences advances, and their effects in the world shape.

specifically data protection.² This section is focused on addressing the possible legal framework adjustments and considerations a Tax Administration is to undergo when intending to digitalize (or increase its digitalization levels) responding to the needs of the current and future digitalized global economy.

3.2. Government Functions and Tax Authorities’ “centrality” within this process.

As tax authorities are in most of the countries specially professionally shaped and technologically advanced agencies within the Administration, it is also common that digitalization processes at any stage are being leaded or at list strongly assisted by these. As public digitalization is a process following the actual digitalization of the economy, several items arise when it comes on how other administrative agencies or areas has to interact with citizens “outside” the tax authorities. Usually it takes sooner or later the need for a central government policy effort.

3.2.1. Tax Authorities’ structure and functions overhaul

New staff profiles are needed (data analysts, etc.) and new structures to rely on need to be built (data warehouse administration, international cooperation experts, etc.). This may lead to a new legal environment for the tax authorities. As digitalization envisages every aspect of people in their relationships (economical, political, even taxing life) it may be necessary to look at the Legal environment holistically and thus Law and Human Rights issues become more and more relevant.

In this environment, transparency emerges as a major feature to be guaranteed by tax authorities in the process of legal reform. Being transparent assures Administrations’ efficiency, accuracy and goal driven activity, alongside with safeguard for Human Resources.

3.2.2. Risk assessment:

- Upstream compliance activities: (i) facilitate tax compliance; (ii) information – filing’s faster processing; (iii) fast appealing resolution/verdict/ruling.
- Downstream compliance activities: (i) real time control/ enablement for filing/registering/submitting requests, etc; (ii) [Big Data/AI/Machine Learning

3.2.3. Data/Information management/governance:

During the past Century, regulations in the use of data for tax authorities s were mostly related to fiscal secrecy concerns. Recently, some new challenges and controversial situations (e.g.,

² https://ega.ee/wp-content/uploads/2019/04/eGA_Final-Report-Research-analysis-guidelines-and-roadmap-for-full-deployment-of-e-governance-systems-in-Af.pdf

International Tax Dodging by wealthy people or MNEs, terrorism and other crimes, social policies research or implementation activities addressed by using available tax information) have led to reconsider the use of data by tax authorities. Alongside, Tax Cooperation Instruments usually charge tax authorities on mandatory secrecy rules regarding the information surrounding cooperation activities (i.e., exchange of information, documentation validation, cross-border debt recovery, etc.).

Now then, big data and other IT tools have produced *new* data from inside the tax authorities –e.g., risk profiles, behavioural insights data- and outside tax authorities –e.g., standardized public financial information; global behavioural warnings about taxpayers, etc.-. That *new data* is not contained in taxpayers' files and is therefore not subject to tax secrecy rules in many Countries. A guidance on digitalization for tax authorities may address this to advise them on the new issues they have to deal with. Special approach when confidentiality, use and exchange of information and IT tools (AI, big data, etc.) interact is expected to be an outcome if this chapter.

3.3. Constitutional and Human Rights considerations

With a change in framework frequently come situations that relate to data usage, sharing and management, and alongside will come human and confidentiality rights' concerns, especially regarding the avoidance of arbitral situations or situations where sensitive information is handled. Taxpayer's information and tax administration data in general are subject to regulatory frameworks usually under the country's domestic laws, which includes the Constitution. The main guarantees and rights are amongst many, non-discrimination rules, right to petition the authorities, recognition of legal personality, full exercise of economic rights.

These rights must be guaranteed in a digital environment too (e.g., necessary fulfilment requisites over documentation required to make an e-submission are usually settled so petition is not deemed as submitted before several verification [programs] are correctly [running]. On the other hand, Administrations' digital processes are designed and developed to better gather information/revenue from taxpayers *with less human resources interaction costs*. There is a need for guarantee both the right to be heard and the tax authorities' efficiency work and revenue protection.

3.4. Preliminary research on existing legal framework

Prior to reviewing legal systems and deciding on how to go about or the extent of possible changes to the legal framework of the administration of tax revenues, it is essential that Tax Administrations consider important aspects of their current framework against intended changes, such as:

- a. Current guidance on tax law compliance and deadlines.
- b. Current guidance on filing and payment deadlines (manual and e-filing).
- c. Existing data protection rules.
- d. Existing information sharing regulations.
- e. Existing e-invoicing and e-payment regulations.
- f. Hardware and software requirement rules.

Specific analysis of legal frameworks relating to the levels of digitalization of countries around the world, are not readily available. However, the World Economic Forum has dedicated separate efforts to highlighting the importance of regulatory environments in their Global Information Technology Report 2016³. Although the Report is not tax specific, Annex 9 depicts the analysis of the performance of the regulatory environment of African countries, and its index measures the quality of regulations pertaining to ICTs, the capacity and the role of ICTs in driving innovation and represents the level of sophistication for ICT related laws in a country.

3.5. Phasing Off Legislation

In the transformative journey towards digitalization of revenue authorities, a critical step involves a meticulous review of existing legislation. This chapter focuses on specific laws that demand scrutiny and potential elimination to pave the way for a more agile and technologically adept revenue management system.

Below are steps in the process of eliminating legislation in the process of digitalization of the Revenue Administrations:

3.5.1. Identifying Outdated Laws

In the transformative journey towards digitalization of revenue authorities, a critical step involves a meticulous review of existing legislation. This chapter focuses on specific laws that demand scrutiny and potential elimination to pave the way for a more agile and technologically adept revenue management system.

³ <http://reports.weforum.org/global-information-technology-report-2016/>

3.5.2. Legacy Tax Codes

The digitization process should be undertaken hand in hand with legal compliance, such that technologies and procedures implemented do not infringe on taxpayer guarantees and are generally law abiding. The process for ensuring legal compliance should thus begin with the assessment of the tax codes and applicable regulations designed for a pre-digital era. Revenue Administrations should strive to identify clauses and provisions that may hinder the smooth transition to digital processes.

Once identified, eliminating outdated laws is crucial for the successful digitalization of revenue authorities. Some examples of categories of laws that may need review or elimination to facilitate the process:

a. Paper-Dependent Laws:

In this process Revenue Administrations identify and eliminate laws that mandate or heavily rely on paper documentation for tax filing and record-keeping. On the other hand, Revenue Administrations introduce legislation which encourages the adoption of electronic documentation.

b. Inflexible Reporting Requirements:

Revenue Administrations revise laws that stipulate rigid reporting formats and frequencies. The aim is to allow for more flexible reporting requirements that can accommodate digital systems and real-time data.

c. Obsolete Technology Standards:

Revenue Administrations evaluate laws that specify outdated technology standards. It is essential to update these standards to align with modern technology, especially ensuring compatibility with digital systems to be implemented as the Revenue Administrations moves towards digitalization.

d. Manual Verification Mandates:

Requirements for manual verification of transactions are also reviewed in the digitalization process. Revenue Administrations move towards implementing laws that support the use of advanced technologies such as AI and machine learning for efficient and accurate verification processes. This is discussed in further detail in Chapter 8.

e. Geographical Constraints:

As Revenue Administrations become more digitalized, its services may experience an extension of reach beyond geographical limits, optimizing on technology that allows for joint

cross-border audits, exchange, and processing of information from taxpayers' global operations, transfer pricing audits, dispute resolution and many more services. These services may, however, be conditioned by geography or jurisdictional legal restrictions. Before laws can be updated to permit expansion of the services of a Revenue Administration to cross-border services, such laws that limit revenue authorities to specific geographical locations are to be reassessed. This is to say, within the bounds of its tax sovereignty. Ideally, Revenue Administrations will foster laws that enable remote access and digital collaboration and function beyond physical boundaries.

f. Non-Interoperable Systems:

Another important concern is to address laws that contribute to the existence of non-interoperable systems within the revenue authority. This will promote legislation that mandates compatibility and seamless integration between different digital platforms.

g. Bureaucracy and complexity of Tax Codes:

To ensure efficiency in the digitalization process, it is essential to simplify and streamline tax codes in order to make them more understandable and adaptable to digital processes. This involves eliminating unnecessary complexity that may hinder the implementation of user-friendly digital interfaces.

h. Lack of Electronic Signature Recognition:

A crucial step is to include or modify laws that recognize and accept electronic signatures as legally binding. This can enable the use of digital signatures for authentication in electronic transactions.

i. Outdated Security Standards:

Laws that prescribe outdated cybersecurity standards should ideally be eliminated. Revenue Administrations therefore seek to adhere to legislation that permits the use of the latest cybersecurity measures against cyber threats.

j. Manual Audit Requirements:

Laws that mandate manual audits should also be revised, to promote the use of data analytics and digital tools that facilitate more efficient and accurate auditing processes.

k. Limited Cross-Agency Data Sharing:

Cross-agency data sharing can be pivotal in making business processes more efficient in a digital Revenue Administration. Where possible, it is ideal to remove legal barriers that hinder the sharing of relevant data between revenue authorities and other government agencies.

Consequently, countries ought to foster a legal framework that supports secure and authorized information exchange, within the regulatory and constitutional taxpayer information protection.

This list is not exhaustive, and the specific laws to be eliminated or amended will depend on the existing legal framework of the jurisdiction in question. It's essential to conduct a thorough legal review in collaboration with legal experts to identify and address the most pertinent issues.

3.6. Key Considerations for Legislative changes towards Digitalization

Finally, resulting from the analysis of the considerations above, Revenue Administrations may find the need to eliminate certain legislation, a necessary step to modernizing and digitalizing its business. In deciding which laws are to be eliminated, below are some considerations to be made in the analysis of the current status of the regulatory framework:

3.6.1. Relevance Assessment:

Digitalization calls for a thorough examination of existing legislation to determine its relevance in the contemporary landscape. Assessing the alignment of current laws with digital processes is paramount. Legislation that impedes the seamless integration of technology or lacks compatibility with emerging digital platforms should be flagged for reconsideration.

3.6.2. Flexibility and Adaptability:

An essential criterion for legislation survival in the digital era is its flexibility and adaptability. Laws that demonstrate rigidity and inhibit the swift adoption of technological advancements may hinder progress. The chapter explores strategies for identifying and amending such inflexible regulations to create a legal framework that accommodates innovation and rapid changes in the digital landscape.

3.6.3. Cybersecurity and confidentiality:

Cybersecurity and confidentiality are key elements of legal compliance in any process that is data and information intensive. As such, robust measures must be in place to safeguard both the transition for digitalization, as well as the new digitalized structure the Revenue Authority will be expected to have at the end of this process. This is especially the case of the protection of sensitive taxpayer identification and financial information. Countries which in general observe a large number of cyber protection legislation, may be particularly interested in reviewing the extent and relevance of such a framework against the backdrop of digital integration and innovation.

According to The Global Information Technology Report 2016⁴, several African countries have designated data protection legislation, often designed similarly to European laws (which are similar between European countries, based on EU rules as well as common principles provided by other organizations). Others may have data protection as part of general privacy rules, for instance as constitutional provisions, in various laws or in sub-legal acts, A majority of African countries have no designated legislation or authorities for data protection and in many countries, the number of provisions in other (non-specific) legislation is also limited.

3.6.4. Enhancing Operational Efficiency:

The digitalization process aims at enhancing operational efficiency within revenue authorities. Legislation that introduces unnecessary bureaucratic processes or impedes the smooth flow of digital operations may need reconsideration. This chapter discusses how streamlining legislation can contribute to a more efficient and responsive revenue management system.

3.6.5. Stakeholder Consultation and Communication:

A crucial aspect of eliminating legislation is engaging with stakeholders to ensure a transparent and inclusive decision-making process. The chapter explores effective communication strategies and methodologies for obtaining feedback from key stakeholders, including tax professionals, legal experts, and the general public, in order to make informed decisions about which laws to eliminate.

3.6.6. Legal Risk Mitigation:

The digitalization process introduces new legal risks and challenges. This section provides insights into identifying potential legal pitfalls and crafting strategies for mitigating risks associated with eliminating legislation. It also addresses the importance of creating a legal framework that aligns with international best practices and standards.

3.6.7. Accessibility and Inclusivity

Some key considerations with regard to accessibility and inclusivity would be:

- How can digitalization enhance accessibility and inclusivity?
- What amendments can be proposed to promote the development of user-friendly interfaces and services accessible to a broad demographic?

⁴ <http://reports.weforum.org/global-information-technology-report-2016/>

3.6.8. Collaboration and Information Sharing

It is important to ensure that the Laws in place facilitate collaboration and information sharing between revenue authorities, government agencies, and private entities, and in the event that they do not, plan to incorporate these elements when overhauling the legal framework. Further it is important to break down silos for a more interconnected financial ecosystem and therefore a review of the laws to determine the bureaucracies is vital.

3.6.9. Training and Capacity Building

Frequent regulatory changes may cause a dynamic scenario within implementing agencies such as Revenue Administrations. Although these changes to tax codes may be advisable and necessary for digital transformation, it is crucial that staff are capacitated regularly, as the ultimate agents to use such policies in their daily operations. The increase of staff adequate ICT skills is an essential step for the success of the digitalization process and ensuring its longevity.

3.7. Outdated Tax Codes:

The digital landscape often outpaces the evolution of traditional tax codes. This section emphasizes the importance of revisiting and updating tax laws to accommodate the complexities of digital transactions, e-commerce, and emerging business models. Outdated tax codes can hinder the effective implementation of digital systems, and their elimination is crucial for maintaining relevance in a rapidly evolving economic environment.

3.7.1. Paper-Centric Regulations:

Laws that mandate paper-based documentation and manual record-keeping processes can impede the efficiency gains promised by digitalization. This part of the chapter explores the necessity of eliminating regulations that require physical paperwork and encourages the adoption of digital record-keeping practices, facilitating a smoother transition into a digital revenue management framework.

3.7.2. Obsolete Compliance Procedures:

The digitalization process demands streamlined and efficient compliance procedures. This section identifies laws that impose outdated or overly complex compliance requirements, hindering the agility of revenue authorities. By eliminating such regulations, revenue administrations can enhance compliance processes, making them more accessible, transparent, and user-friendly for taxpayers.

3.7.3. Rigid Data Protection Laws:

With the rising importance of data in revenue management, laws governing data protection need to be dynamic and adaptable. This chapter segment explores the need for reviewing and eliminating rigid data protection laws that may stifle the implementation of innovative digital solutions. Crafting legislation that balances data privacy with the efficiency of digital processes is essential for a successful digitalization strategy.

3.7.4. Bureaucratic Approval Processes:

Cumbersome approval processes and bureaucratic red tape can impede the swift adoption of digital technologies. The chapter delves into identifying laws that contribute to unnecessary delays in decision-making and explores strategies for eliminating or streamlining approval processes, fostering a more responsive and agile revenue administration.

3.8. Legacy Systems Compatibility:

Laws that mandate the use of legacy systems or hinder the integration of modern technologies pose significant challenges to the digitalization agenda. This section underscores the importance of reviewing and eliminating legislation that inhibits the compatibility of revenue systems with state-of-the-art technologies, ensuring a seamless transition to a digitally empowered revenue framework.

By examining these considerations, revenue authorities can navigate the complex task of eliminating outdated legislation, paving the way for a streamlined and effective digitalization process that aligns with the demands of the modern era. By focusing on these specific laws, revenue authorities can strategically eliminate barriers that hinder the full potential of digitalization.

CHAPTER 4: NEW AND UPDATED LAWS

Updating laws is essential for revenue authorities undergoing digital transformation to ensure the effective and secure handling of taxpayer information. The transition to digital systems brings about significant changes in how tax information is collected, processed, and stored. By addressing technological challenges, enhancing data protection measures, and promoting compliance with international standards, updated laws play a crucial role in building trust, facilitating cross-border cooperation, and promoting innovation in tax administration.

4.1. Necessity For Legislative Overhaul

4.1.1. Technology's Impact on Taxation

Advancements in technology have reshaped business models and financial transactions. force vis a vis the technology in place and technology to be installed. The technology in use can have a direct impact on the efficiency of services provided by the tax administration and ultimately on the revenue collected. The elimination of manual tax filing increases exponentially the number of submissions and reduces compliance costs, while improving the relationship between the Tax Administration and the taxpayer, who can comply from the comfort of their home. Another example is before the advent of the internet, tax registration, collection, data processing and audits were much more location specific and information sharing was more cumbersome. The interconnection between tax offices and portal document submissions have allowed taxpayers to comply from different locations within the same jurisdiction and even cross-border audits through exchange of information mechanisms between jurisdictions.

As such, most tax systems' technology used in 2000 can generally be considered obsolete in 2024 and it is not realistic to expect governments and their regulatory frameworks to be changed at the same rate. However, there must at least be a strategy for periodic reviews of the laws in Integrated databases that connect different government agencies such as immigration services, tax authority and employee portals, for example, may optimize taxpayer registration, audits and risk reduction. Tax Administrations meet the challenge of the urgent need for legislation to reflect these changes in the tax landscape.

4.1.2. Enhancing Compliance and Efficiency

Enacting and updating legislation is an essential element which contributes to improved compliance mechanisms and the overall efficiency of tax authorities, ensuring they keep pace with the rapidly evolving digital environment.

In the pursuit of digitalizing tax authorities, the implementation of new laws or the update of existing ones plays a pivotal role in enhancing compliance and efficiency. These legislative measures aim to align taxation frameworks with the dynamic landscape of digital transactions

and business models. The introduction of real-time reporting requirements ensures that tax authorities have access to accurate and up-to-date financial information, promoting transparency and minimizing the risk of tax evasion. Furthermore, the adaptation of digital taxation policies addresses cross-border transactions, virtual business establishments, and the taxation of digital services, fostering a fair and equitable tax framework. By incorporating these legal advancements, tax authorities can streamline processes, encourage taxpayer compliance, and leverage technology to create a more efficient and responsive tax administration system in the digital age.

4.1.3. Digital Taxation Policies:

In a pursuit to address the recent technological developments which have changed business operations, allowing for commercial activities and service provision to be fully remote or with little to no physical presence, Tax Administrations have considered new policy solutions beyond the traditional and many have or are considering the introduction of laws such as taxes on digital services, taxing electronic transactions or industry-specific policies for telecommunications and computing/software, VAT on e-commerce, etc. Tax Administrations, therefore, aim to introduce comprehensive policies that specifically address the taxation of digital services, cross-border transactions, and virtual business establishments.

The introduction of new taxes or the broadening of the scope of a tax code is in most cases a grave political decision and its considerations go beyond revenue collection objectives. However in the current business environment, these policies can help in creating a fair and equitable tax framework for businesses operating in the digital space and protection of the tax base of source state jurisdictions.

Inadequate laws may result in procedural or technological duplication and redundancies, weak standardization of payment portals or methods, or limited transparency and accountability. Inadequate tax laws may also expose public servants and IT specialists to legal liability, especially if they unwittingly implement payment programmes that contravene existing laws and regulations.⁵

4.1.4. Real-time Reporting Requirements:

Real-time reporting of e-invoicing information refers to the instantaneous transmission and availability of electronic invoice data to relevant stakeholders. It involves the continuous and immediate exchange of invoice details between businesses, tax authorities and other authorized

⁵https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/17783/ICTD_WP152.pdf?sequence=1&isAllowed=y

entities.⁶ E-invoicing is the electronic generation, transmission, and receipt of invoices in a structured digital format. Real-time reporting enhances the traditional e-invoicing process by enabling instant visibility and access to invoice information as soon as it is generated or updated. This approach allows tax authorities and other relevant parties to monitor and verify invoice transactions in real-time, improving tax compliance, reducing fraud, and streamlining administrative processes.

It is crucial to implement laws mandating, defining and regulating real-time reporting of financial transactions for tax compliance, which ensures that tax authorities have access to accurate and up-to-date information, reducing the risk of tax evasion and allowing for more proactive enforcement.

4.1.5. Remote payment systems (cardholder not present - CNP) transactions:

Digital transformation inevitably leads (or should least) to the elimination of cash payments, and a shift to payments solutions completely within the banking umbrella, and more especially and for more efficiency, to digital payments. Digital payments relieve governments of many burdens associated with cash, and thus reduce administrative costs and reduce risk. This includes the manual processes involved in collecting, counting, recording, and transporting cash. Digital payments include automated clearing house transfers directly between financial accounts, payments made by credit and debit cards, wire transactions, mobile money transactions, and other non-cash payments.⁷

Effective digital P2G payment systems are inevitably dependent on appropriate legal and regulatory frameworks. These frameworks are often necessary to permit administrative reforms, including the simplification of tax procedures to enable digital payments. Adequate and context-specific laws and regulations clarify the rules, standards, and procedures governing the various technical or institutional functions of the payment systems. These functions could include the use of digital signatures and data encryption, as well as consumer protection and data privacy.⁸

⁶ <https://dddinvoices.com/learn/what-is-an-e-invoice/>

⁷ <file://C:/Users/erita/Downloads/9781484315224-ch013.pdf>

⁸ https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/17783/ICTD_WP152.pdf?sequence=1&isAllowed=y

4.1.6. Data Protection and Privacy Legislation:

Enough cannot be said about the importance of data protection and privacy laws in the digital era. Tax Authorities should strive to strengthen laws related to data protection and privacy, especially considering the increased reliance on digital data. This helps in building trust among taxpayers by ensuring that sensitive information is handled securely and in compliance with international standards. This Guide expounds on this topic in Part 3 on the Data Governance Framework.

4.1.7. Collaboration with Stakeholders and Technology Providers:

Legal reform for digitalization also includes laws or regulations clarifying the roles of various stakeholders, including the tax administration itself, payment service providers and vendors, ministries of finance, and the central bank, among others. These also facilitate cross-border collaboration between tax authorities. The legal framework is to be reviewed with a goal to encourage the integration of advanced technologies such as artificial intelligence and blockchain, which can enhance the efficiency of tax administration processes.

4.1.8. Adaptability and Flexibility:

Laws should be drafted with adaptability and flexibility in mind. The legal framework for digital transformation in any field should be capable of accommodating future technological developments and changes in business practices, ensuring that the legislation remains relevant over time, thus a degree of flexibility and adaptability are essential. The new laws therefore should be future proof.

4.1.9. Catering for Emerging Technologies

Digitalization often involves the adoption of new technologies such as cloud computing, big data analytics, and artificial intelligence. Laws need to be updated to regulate the use of these technologies in handling taxpayer information effectively and securely. The legal framework within a jurisdiction should accommodate the use of emerging technologies such as artificial intelligence and machine learning algorithms in tax assessments, ensuring a balance between automation and human oversight. In this process of legal review, legislation is revised to make legal considerations for the use of these technologies as well as other like blockchain in ensuring the integrity of tax records and facilitating secure and transparent transactions.

4.1.10. Continuous Monitoring and Feedback Mechanisms:

It is important to establish mechanisms for continuous monitoring and feedback. This allows tax administrations to identify any challenges or loopholes in the legislation promptly, enabling timely adjustments and improvements. By addressing these aspects through legislation, tax

administrations can create a supportive legal framework that not only improves compliance but also enhances the overall efficiency of tax administration processes in the digital age.

4.2. Key Components of New Laws

In an ideal scenario of digitalization of Tax Administrations, legal frameworks create the playing field for tax administration processes to happen in a fluid and effect manner and protect taxpayer's rights and create the appropriate circumstances for taxpayer obligations to be performed, all within the technological platforms that are up to date with the digital economy. As such, this ideal scenario can be seen with the following characteristics⁹:

- tax rule design and drafting increasingly becomes a co-creative effort between policy and administrative experts and governmental and private stakeholders;
- a shift from mere translation of tax rules from paper into system designs, to incorporation of “rules as code” with transparency and testing framework in place; and
- migrating from centralized execution of tax rules within the tax administration to a more decentralized network of ‘tax agents’ in that the tax administration provides the technical rules and information needed for elements of tax processing to take place within taxpayers’ natural systems.

In this ideal scenario it can be said that *“Tax law is increasingly being designed via a rules-as-code principle, allowing for direct importation into taxpayers’ natural systems. There is a transparency and testing framework in place, supported by AI. Assurance that taxpayers’ systems have implemented tax law correctly is increasingly done through remote processes involving AI, as is the identification and resolution of remaining areas of tax uncertainty.”*¹⁰

Some areas of possible innovation are:

- a. Digital taxpayer registration and management systems (use of forms and e-forms)
- b. Legal framework for inter-institutional database sharing (e.g., Immigration services and Tax Administration)
- c. Legal framework for database management systems
- d. Legal requirements for digital signatures
- e. New technology handling

⁹ <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/digital-transformation-maturity-model.pdf> - page 27

¹⁰ <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/digital-transformation-maturity-model.pdf> - page 28

- f. Guidance on handling and taxation of Big data
- g. Technology for compliance
- h. Guidance on handling and taxation of Cloud computing

The building blocks of this new laws can be said to include:

4.2.1. Confidentiality

Confidentiality of taxpayers' information is a cornerstone of modern taxation systems. It ensures trust between taxpayers and tax authorities, encourages compliance, and upholds fundamental rights to privacy. Therefore, when drafting new tax laws, policymakers must prioritize mechanisms to safeguard taxpayer confidentiality effectively.

Taxpayer confidentiality serves various critical purposes in a taxation system:

- a. **Privacy Protection:** Taxpayers have a legitimate expectation of privacy regarding their financial affairs. Confidentiality shields them from unwarranted scrutiny and prevents unauthorized access to sensitive information.
- b. **Compliance and Trust:** Maintaining confidentiality fosters trust between taxpayers and tax authorities. When individuals believe their information is secure, they are more likely to comply willingly with tax obligations, reducing the likelihood of tax evasion and fraud.
- c. **Legal and Ethical Obligations:** Many jurisdictions have laws and regulations mandating the protection of taxpayer information. Upholding these legal and ethical obligations is essential to maintain the integrity of the taxation system and respect individual rights.

Despite its importance, taxpayer confidentiality faces several challenges:

- a. **Technological Advancements:** The digitalization of tax systems has increased the volume and complexity of taxpayer data. Cybersecurity threats, such as hacking and data breaches, pose significant risks to confidentiality.
- b. **Cross-border Transactions:** In an interconnected global economy, taxpayers engage in cross-border transactions, making it challenging to enforce confidentiality across jurisdictions with varying legal frameworks and enforcement mechanisms.
- c. **Data Sharing Initiatives:** Governments may implement data sharing initiatives among agencies for purposes such as combating financial crimes. While these initiatives aim to enhance compliance and enforcement, they also raise concerns about maintaining confidentiality and preventing misuse of taxpayer information.

To address some of these challenges, the following strategies may be adopted.

- a. ***Clear Legal Frameworks:*** New tax laws should include clear provisions outlining the obligations of tax authorities regarding the confidentiality of taxpayer information. These provisions should be aligned with existing privacy laws and international standards.

- b. ***Robust Data Protection Measures:*** Incorporating robust data protection measures, such as encryption, access controls, and regular audits, can help mitigate cybersecurity risks and prevent unauthorized access to taxpayer data. Laws should establish robust provisions for the protection of taxpayer data, outlining strict requirements for its collection, storage, processing, and sharing. This includes measures to safeguard against unauthorized access, breaches, and misuse, as well as protocols for notifying affected individuals in the event of a data breach. Compliance with relevant data protection and privacy regulations should be emphasized.

- c. ***Cross-border Cooperation:*** Enhancing cooperation and information exchange mechanisms between tax authorities across borders can facilitate the enforcement of confidentiality standards in an increasingly globalized tax environment.

- d. ***Public Awareness and Education:*** Educating taxpayers about their rights regarding confidentiality and the measures in place to protect their information can promote trust and compliance while also empowering individuals to safeguard their data.

- e. ***Independent Oversight Mechanisms:*** Establishing independent oversight bodies tasked with monitoring compliance with confidentiality requirements and investigating breaches can enhance accountability and reinforce public trust in the taxation system.

4.2.2. Cybersecurity

Given the increasing prevalence of cyber threats, laws should address cybersecurity concerns by mandating the implementation of comprehensive cybersecurity measures. This includes requirements for regular risk assessments, security audits, encryption of sensitive data, and the establishment of incident response plans to mitigate and address cyber-attacks effectively.

4.2.3. Electronic Transactions and Signatures

New laws should recognize the validity and enforceability of electronic transactions and signatures in tax-related processes. This involves establishing legal frameworks for the electronic filing of tax returns, the issuance of electronic invoices, and the authentication of taxpayer identities through digital means, such as digital signatures or biometric authentication.

4.2.4. Digital Recordkeeping

To accommodate the transition from paper-based to electronic recordkeeping systems, laws should outline requirements for the creation, maintenance, and retention of digital records. This includes specifying the formats, standards, and storage methods for electronic records, as well as the duration for which records must be retained to comply with tax regulations.

4.2.5. Interoperability and Integration

Laws should promote interoperability and integration among different digital systems used by revenue authorities, as well as with external stakeholders such as taxpayers, financial institutions, and other government agencies. This involves establishing standards for data exchange, APIs (Application Programming Interfaces) for system integration, and mechanisms for sharing taxpayer information securely and efficiently.

4.2.6. Taxpayer Rights and Obligations

New laws should reaffirm taxpayer rights and obligations in the context of digital tax administration, ensuring transparency, fairness, and accountability in the treatment of taxpayers. This includes provisions for informing taxpayers about their rights and responsibilities, providing access to digital tax services and resources, and offering avenues for recourse in case of disputes or grievances.

4.2.7. Compliance Monitoring and Enforcement

To maintain the integrity of the tax system, laws should empower revenue authorities with enhanced tools and capabilities for monitoring compliance and enforcing tax laws in the digital environment. This may include leveraging data analytics, machine learning, and other advanced technologies to detect non-compliance, identify tax evasion schemes, and initiate enforcement actions effectively.

4.2.8. Capacity Building and Training

Recognizing the importance of human resources in digital transformation, laws should allocate resources and mandate training programs to equip tax officials with the necessary skills and knowledge to adapt to new digital tools and processes effectively. This includes training on cybersecurity best practices, data privacy regulations, and the use of digital tax administration platforms. This training should also be extended to taxpayers and other stakeholders to allow for buy-in.

By incorporating these key components into new laws, revenue authorities can more effectively navigate the challenges and opportunities presented by digitalization, assisting the transition to

modern, technology-driven tax administration processes while upholding taxpayer rights and maintaining compliance with regulatory standards.