

**Cross-border
exchange of
financial data for
the purpose of
the administrative
approach**



Cross-border crime and the role of local government

- Within the European Union, **living and working across borders** has become a significant advantage and a matter of course.
- However, **crime doesn't stop at the border!** Criminals consciously use **borders** to stay under the administrations' radar.
- A **good information position** is essential for Belgian, German and Dutch local government bodies in order to deploy **administrative enforcement tools** in the approach to organised crime.
- For the administrative approach, a **proper information position** is essential.
- **Financial data from another country can be crucial for a local government in order to halt abuse of legal structures.**

CASE: As part of the assessment of a license application, the applicant's fiscal reliability is sometimes examined as well. In the case of foreign applicants, tax data from abroad is also required to allow a full investigation.

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How can a local government obtain foreign financial data?

1 Cross-border exchange of financial data between municipalities

The cross-border exchange of financial data between municipalities is generally not possible in the three countries: there is no legal ground for the exchange or the exchange is contrary to the purpose limitation principle of the General Data Privacy Regulation (GDPR) or to specific duties of confidentiality.

Tip: *In the Netherlands, administrative decisions may state that an administrative decision is based on, or has been taken in connection with, tax data. This means that, in highly exceptional cases, it is possible to disclose such decisions across borders, although the principles of GDPR must always be considered in doing so.*

2 Direct provision by the tax administration to foreign municipalities

The absence of a legal ground prevents the exchange of tax information between the tax authorities and foreign municipalities as well. In Belgium, Germany and the Netherlands, there are no legal provisions that allow this type of exchange.

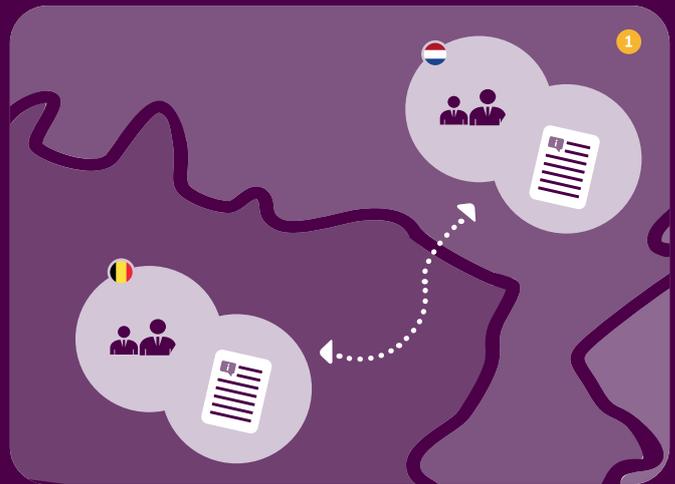
3 Provision by the tax administration via the foreign tax administration to the foreign municipality (U-turn)

Under EU and international law, financial data may be provided to foreign tax administrations in certain cases. This information may be passed on to other services, including for other purposes. Certain conditions must be met to this end.

As a minimum, the legislation of the country that originally provided the information should allow its use for non-tax purposes and the authority that provided the information originally should agree to its further use.

As a result, in practice, passing on tax data for non-tax purposes is generally not possible. After all, the three countries' legal systems allow use of tax data for their own administrative authorities only in very exceptional cases.

Consequently, providing the relevant information is impossible in Belgium due to existing uncertainty about domestic use for non-tax purposes. Nevertheless, opportunities for exchange are available. In the Netherlands, for example, tax data may also be passed on for purposes of license granting. Tax data may be passed on to the *Gewerbebehörde* in Germany, provided there are specific facts that indicate the unreliability of the operator of a *Company*.





Possibilities

- Under EU and international law, tax data provided to other tax authorities may, in principle, also be used for purposes other than tax procedures.
- In the Netherlands, administrative decisions may stipulate that an administrative decision is based on, or has been taken in connection with, tax data. This means that, in highly exceptional cases, it is possible to transfer such decisions across borders, although the principles of GDPR must always be considered in doing so.



Barriers

- In the Netherlands, Belgium and Germany, there is no explicit legal ground for domestic municipalities to provide tax data to foreign municipalities or for tax authorities to provide tax data directly to foreign municipalities.
- In Belgium, a lack of regulations prevents the provision or passing on of tax information.
- In the Netherlands and Germany, tax data may only be exchanged in a handful of narrowly defined cases. Consequently, virtually no options are available to use tax data for administrative purposes after a transfer from the domestic to the foreign tax authorities.



In short/conclusion

Barring a few exceptions, cross-border exchange of financial data for the purpose of the administrative approach is not possible.

For a detailed legal explanation, please download the EURIEC memorandum 'Cross-border Provision of Financial Data' on www.euriec.eu.

If you have other questions or need support as a municipality with cross-border exchange of information, please contact the EURIEC via: euriec.rik.limburg@politie.nl.