



Report on the cross-border exchange of tax data

For the purpose of the administrative approach
to organised crime



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General description

Taxation is the foundation of all modern government activities. For the purpose of proper tax administration, the Belgian, German and Dutch tax administrations have a wealth of information about the financial situation of individuals and companies at their disposal. This information can also be very useful for administrative bodies in the framework of the approach to organised crime. It follows that EURIEC regularly encounters situations where the administrative body in one country needs tax information from another country. Tax data is generally subject to a strict duty of confidentiality. Nevertheless, the tax administrations also have an interest in tackling organised crime as effectively as possible, since this almost always involves tax evasion or money laundering.

Tax data is understood to mean: all (personal) data that the national tax administrations process in the framework of the effective performance of their duties. This data is collected and regulated in all three countries in accordance with national legislation, meaning that significant differences exist between the different countries. Germany, for example, has a very strict duty of confidentiality regarding tax data.¹ There are also European and bilateral laws and regulations, however, that regulate the cross-border exchange of tax data. Implementation of these European and bilateral legislation and regulations in national legislation creates a certain degree of uniformity.

The national options to exchange tax data between the different authorities are generally different from the cross-border exchange of tax data. Within the framework of EURIEC case histories (data exchange for administrative bodies), tax data can be exchanged in three possible ways:

1. Provision of tax data by (the mayor of) one municipality to the (mayor of the) other foreign municipality
2. Provision by the tax administration of one country to a (mayor of a) municipality of another country
3. Provision by the tax administration of one country to the tax administration of another country for the purpose of the administration, for the administrative approach to organised crime.

In the following, international, and in particular European, legal frameworks for the exchange of tax data will be discussed. Next, the domestic options for exchanging tax data for the benefit of the administration in Belgium, Germany and the Netherlands are explained. In addition, the cross-border options for information exchange for the administrative approach to organised crime are discussed in more detail for each country. Subsequently, the practical consequences of these legal findings are discussed in more detail. Finally, the main results are highlighted in the conclusion.

¹ § 30 Tax Code.



1 Legal framework

This section starts by explaining the main European and international legal texts that have created a supranational and international framework for the exchange of tax data. This is followed by a description of the individual transposition of this framework in the individual national legal systems. Next, a description follows of the national and international exchange options in Belgium, the Netherlands and Germany in view of the administrative approach to combating organised crime.

1.1 European regulations and bilateral treaties

There are several European legislative acts and agreements under international law that lay down rules regarding tax data. Some of the main legal texts are briefly discussed below:

- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures²
- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC³
- Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax⁴
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data: General Data Protection Regulation
- Convention between the Kingdom of the Netherlands and the Federal Republic of Germany for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income⁵
- Agreement between the Kingdom of Belgium and the Federal Republic of Germany for the avoidance of double taxation and for the settlement of certain other matters relating to taxes on income and on capital, including corporation tax and land taxes.⁶

1.1.1 Use of tax data for non-tax purposes

These legal frameworks do not regulate the use of tax data for the administrative approach to combating organised crime. In other words, a provision regulating this use is not expressly included. Some legal texts and treaties, however, allow data provided for tax purposes to be used for other purposes, provided that:

1. The original transmitting authority authorises the provision of the data
2. The national law of both the sending and receiving states permits such further use.

1.1.2 Mutual Assistance Directive, Regulation on VAT Cooperation and Bilateral Treaties

The EU directive on mutual assistance provides for mutual cooperation in tax matters. Under this Directive, Member States may request mutual assistance in tax matters in general on the one hand, and assistance in the recovery of claims on the other. Claims are understood to mean taxes and duties of all kinds.⁷ On the other hand, levies in general and contributions under the Social Code do not fall under the enforcement guidance.⁸ Moreover, criminal sanctions are only covered if they are related to the recovery of a tax or excise tax claims.⁹

Firstly, harmonisation regarding taxation allows for the exchange of information through a system of central liaison offices in the Member States. More specifically, Member States may initiate exchange of information through individual requests and, in some cases, through automated communications, for example, about taxpayers' pensions.¹⁰ This allows for the exchange of information that may be important for the collection of a claim. Finally, the participating authorities of the Member States provide assistance with the service of the respective claims, and even with the

² <https://eur-lex.europa.eu/legal-content/NL/ALL/?uri=CELEX-%3A32010L0024>

³ <https://eur-lex.europa.eu/legal-content/nl/TXT/?uri=CELEX-%3A32011L0016>

⁴ <https://eur-lex.europa.eu/legal-content/NL/ALL/?uri=CELEX-%3A32010R0904>

⁵ <https://wetten.overheid.nl/BWBV0005862/2016-12-31>

⁶ https://www.fdfa.be/sites/default/files/atoms/files/910_Dubbelbelastingverdrag%20van%201967%20in%20het%20Nederlands.pdf

⁷ Art. 2 I a) Directive 2010/24/EU.

⁸ Art. 2 III a), b) Directive 2010/24/EU.

⁹ Art. 2 II a) Directive 2010/24/EU.

¹⁰ Art. 5 Directive 2010/24/EU, Art. 5, 8 Directive 2011/16/EU.

recovery itself.¹¹ In addition, a separate regulation on VAT states directly binding rules on cooperation between tax administrations regarding VAT information.¹²

The double taxation conventions between the Federal Republic of Germany and the Kingdoms of the Netherlands and Belgium also provide for exchange of information and mutual administrative assistance. This provides a legal ground for the exchange of information between tax administrations on cross-border matters.

1.1.3 General Data Protection Regulation

The processing of tax data also takes place within the scope of Regulation (EU) 2016/679, the so-called General Data Protection Regulation. In particular, the purpose limitation principle creates a legal restriction on the exchange of such information. Consequently, any further processing of data must, in principle, be compatible with the original purpose of the data collection.¹³

1.1.4 National transposition of laws and regulations

In Belgium and Germany, the international and European regulations mentioned above have been transposed into several laws. This is in contrast to the Netherlands, where legislation on the international exchange of tax information has been included in a single legal framework. For example, the procedure regarding the recovery of outstanding tax debts is included in the Act Transposing Council Directive 2010/24/EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures.¹⁴ For requests for the exchange of tax information with competent authorities of other Member States, the Central Liaison Office is the single point of contact for the management of mutual requests for recovery assistance. Directive 2011/16/EU has, on the other hand, been transposed into the Act Transposing the Directive on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.¹⁵

In the Netherlands, the international, European and interregional regulations are performed in the Act on International Assistance in the Levying of Taxes (WIBB). This law does not apply to sales tax and excise duties. European regulations

that have direct effects apply to sales tax and excise duties. In the Netherlands, the Tax and Customs Administration/Central Liaison Office (CLO) Almelo has been designated as the Central Liaison Office.^{16/17} The CLO is responsible for the exchange of information with competent authorities from other Member States.¹⁸ To this end, Common Communication Network/Common System Interface (CNN/CSI) is used.^{19 20} In response to a request, the Dutch authority will provide all information that is expected to be relevant for the levying of taxes.²¹ Certain categories of income and wealth data about residents of another Member State are provided automatically in accordance with international, European and interregional agreements.²² Finally, the competent authority may decide to provide information spontaneously, in the event of a suspicion of unjustified taxation, for example.²³

In Germany, the provisions of EU legislation and bilateral treaties have been transposed via the Administrative Assistance Act and the Recovery Act and a provision in the Tax Act.²⁴ This enables information exchange via individual requests²⁵ and partly also via automated communications.²⁶ Support and assistance with recovery, as well as supporting information for the recovery of claims can be provided in this way.

11 Art. 10 Directive 2010/24/EU.

12 Art. 7,13, 25 Regulation 904/2010.

13 Art. 5 I No. b), 6 IV GDPR.

14 Act of 9 January 2012 transposing Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

15 Act of 17 August 2013 transposing Council Directive 2011/16/EU of 16 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

16 Art. 2 paragraph 1 under i Act on International Assistance in the Levying of Taxes (WIBB).

17 Advance Course on Dutch International Tax Law, art. 2 WIBB, note 2.

18 Parliamentary Papers II 2011/12, 33246, no. 3, p. 5.

19 Parliamentary Papers II 2011/12, 33246, no. 3, p. 5.

20 VIJLBRIEF, J, *Reactie op verzoek commissie over de beveiliging van gegevensuitwisseling met belastingdiensten van andere EU-lidstaten, Response to a request from the committee on the security of data exchange with tax administrations of other EU Member States*, 2020-0000034510, dated 20-2-2020.

21 Art. 5 Act on International Assistance in Tax Matters.

22 Section 2 Act on International Assistance in Tax Matters.

23 Art. 7 paragraph 1 under a Act on International Assistance in Tax Matters.

24 Act on the implementation of administrative assistance for the recovery of claims arising from certain taxes, duties and other measures between the Member States of the European Union., Law on the application of mutual administrative assistance in tax matters between the Member States of the European Union and § 117 II AO.

25 §§ 4,6,8,9 Law on the application of mutual administrative assistance in tax matters between the Member States of the European Union.

26 §§ 7 Law on the application of mutual administrative assistance in tax matters between the Member States of the European Union.

1.2 Belgium

1.2.1 National use of tax data in the framework of the administrative approach

When sharing tax information for the administrative approach to organised crime, a trade-off will always have to be made between the right to privacy and a government that must have the opportunity to combat fraud efficiently. Belgium generally has a high level of privacy protection regarding tax data. After all, the Belgian Federal Government Department (FGD) of Finance, of which the Tax and Customs Administration is a part, attaches great importance to the privacy of Belgian citizens. The federal states also have certain powers regarding tax matters, whereby they also pay a great deal of attention to privacy protection.

As a result, tax administration officials are bound by professional secrecy.²⁷ Citizens should be able to trust that the information they provide to the tax administration is treated confidentially and is not disclosed to third parties. The FGD of Finance only processes personal data that is necessary for the performance of its legal tasks in the public interest, or to comply with legal obligations.²⁸ Professional secrecy is not absolute, however. Tax administration officials remain within the scope of their duties if they provide other administrative services of the State and of the Communities and Regions with information that is necessary for the implementation of legal or regulatory provisions entrusted to them. Thanks to these provisions, Belgian cities and municipalities can, in certain cases, have access to certain data from the tax administration. After all, local authorities also have certain powers regarding taxation. This is illustrated, for example, by the fact that the municipalities are the creditors of property tax. As a result, Belgian municipalities cannot be regarded as third parties when establishing and collecting surcharges²⁹ on the property tax.³⁰ The officials of the municipalities who receive data from the FGD of Finance are also bound by professional secrecy and are only allowed to use the data in the framework of their legal tasks.³¹

There is no provision in Belgian legislation, however, that explicitly states that information about a taxpayer's income can be passed on to the municipality in the framework of administrative procedures, for example, in the context of license applications.³² This means there is a potential for violation of jurisdiction and authority if information were processed by officials who are not charged with establishing, collecting and levying taxes.³³

Nevertheless, one could argue that in the framework of the administrative approach, in certain cases there is also a link with the establishment, collection and levying of taxes.³⁴ One example of this is whether or not a license is granted. If this approach were taken, sharing information for the purpose of administrative enforcement would not constitute a breach of professional secrecy. In order to be able to take a clear position on this, authorisation will be required from the sectoral committee for the Federal Government, which can verify whether the conditions for lawful passing on of data have been met. Only if such authorisation is obtained in the future, can the processing of tax data by local authorities be lawful. A few Belgian local authorities are trying to solve this lack of information by including a financial investigation into the origin of the financing of the activity that requires a license in the Police Regulations of their municipality.³⁵ These police regulations stipulate, inter alia, that the person concerned must be able to demonstrate the legal origin of their financial resources. In this regard, they may demand that the applicant for the license submit a copy of the tax bill. In addition, the municipality may investigate whether the person concerned has paid any municipal invoices owed and whether severe indications of fraud are present. These measures are based on a broad interpretation of Belgian legislation and case law, and it is therefore still uncertain whether the Council of State will also follow this broad interpretation. Partly as a result of this uncertainty, Belgian municipalities are asking for a clear legal framework, which is currently lacking.³⁶

The exchange between the Belgian tax administration and the local authorities is therefore very limited. For their part, the local authorities may always tip the tax administration about certain suspicions of tax irregularities in a particular

27 Art. 337 Income Tax Code.

28 RD of 17 February 2002 establishing the FGD of Finance.

29 Surcharges are the portion of property tax revenue that goes to the municipalities and provinces.

30 Council of State 13 October 2017, no. 239.399, Municipality of Schaerbeek; Council of State 13 October 2017, no. 239.400, Municipality of Engis; Council of State 13 October 2017, no. 239.402, Municipality of Sambreville; Council of State 13 October 2017, no. 239.403, City of Andenne; Council of State 13 October 2017, no. 239.404, Municipality of Oreye; T. Bonne, S. Keunen, Additional tax competence of local administrations. *Exchange of Information*, NJW 2018, Ep. 387, 620; S. Lefèvre, 'Ontheffing van onroerende voorheffing en beroepsgeheim van de FOD Financiën: recente rechtspraak' [Real estate tax exemption and professional secrecy of the FGD of Finance: recent case law], *Brulocalis* 2018.

31 Art. 6 Law containing provisions regarding the processing of personal data by the FGD of Finance in the framework of its tasks.

32 R. Saelens, 'De informatie: essentiële bron van bestuurlijke aanpak van criminaliteit' [The information: essential source of the administrative approach to crime], commissioned by the FGD for Home Affairs 2010, 171.

33 Commission for the Protection of Privacy, Opinion No 29/2009 of 28 October 2009.

34 R. Saelens, 'De informatie: essentiële bron van bestuurlijke aanpak van criminaliteit' [The information: essential source of the administrative approach to crime], commissioned by the FGD for Home Affairs 2010, 171.

35 For example, the Turnhout police regulations (art. 3.4 Police regulations).

36 R. Saelens, 'De informatie: essentiële bron van bestuurlijke aanpak van criminaliteit' [The information: essential source of the administrative approach to crime], commissioned by FGD for Home Affairs 2010.

case. The tax administration can then decide whether or not to further investigate this matter.

1.2.2 Provision of tax data by (the mayor of) the Belgian municipality to (the mayor of) the German/Dutch municipality

As described above, the Belgian municipalities and mayors generally do not have fiscal data at their disposal regarding the fight against organised crime and administrative enforcement. Even if Belgian legislation were to be amended in the future to enable the exchange of tax data between the Tax Administration and the Belgian municipality, this would not necessarily mean that the employees of the municipalities would in turn be allowed to share this data with another local or foreign municipality. After all, just like the employees of FGD of Finance, municipality employees would be bound by professional secrecy. As a result, they would only be able to use the data in the context of their legal assignments.³⁷ After all, Belgian legislation and regulations do not have a provision that offers municipalities options to cooperate with other municipalities regarding administrative enforcement.

If such an exchange of information were desired in the future, the legislation that should make the exchange of tax data to a Belgian municipality possible would need to be amended first. Secondly, the municipality would also need to be given powers to cooperate with other local and foreign municipalities with a view to combating organised crime through administrative enforcement.

1.2.3 Direct provision by the Belgian tax administration to a (mayor of a) German/Dutch municipality

Data about Belgian taxpayers may, in principle, be exchanged with foreign authorities if this is determined by a national and/or international law standard. Such regulations would ensure that the exchange of tax data does not conflict with legal provisions and international conventions on data protection and the confidential treatment of information.³⁸ However, no international texts have yet been concluded with foreign authorities other than foreign tax administrations. As a result, direct provision by the Belgian tax administration to a foreign local government is not possible.

1.2.4 Provision by the Belgian tax administration to the German/Dutch tax administration, whereby permission is given for data to be passed on to and used by the administration for the purpose of the administrative approach to organised crime (U-turn)

The FGD of Finance is aware of the need to cooperate with foreign tax administrations. This type of data exchange is, after all, essential to achieve efficient levying of taxes and an efficient fight against fraud. For example, all data that can be linked to income can be exchanged with partner states. This usually happens on request, but it can also happen spontaneously.³⁹

In principle, tax information may only be passed on to foreign persons or foreign authorities that have been designated for tax collection. These persons or authorities may also only use this information for these purposes.⁴⁰ However, the information sent to foreign tax administrations may also be used for other purposes.⁴¹ To this end, two conditions must be met:

- The information may be used for the other purposes according to the legislation of the providing party
- The competent authority of the providing party must authorise the use for other purposes.

If these conditions are applied to the provision of information by the Belgian tax administration to foreign tax administrations, it becomes clear that a provision for purposes other than tax purposes is currently impossible. After all, as described in paragraph 1.2.1, current legislation in Belgium creates uncertainty as to whether tax information may also be used for administrative purposes. In addition, there is no explicit legal provision that determines who decides whether certain tax information may be used for other purposes.

³⁷ Art. 6 Law containing provisions regarding the processing of personal data by the FGD of Finance in the framework of its tasks.

³⁸ Court of Audit, 'Internationale automatische uitwisseling van fiscale gegevens: eerste evaluatieverslag op verzoek van de Panamacommissie' [International automatic exchange of tax data: first evaluation report at the request of the Panama Commission], December 2019, 6.

³⁹ D. Van Damme, 'FOD Financiën scoort Europees met applicatie voor gegevensuitwisseling' [FGD of Finance scores in Europe with application for data exchange], Knack 07/02/2014.

⁴⁰ Art. 22, 2 Convention on Mutual Administrative Assistance in Tax Matters.

⁴¹ Art. 22, 4 Convention on Mutual Administrative Assistance in Tax Matters, Art 3, §18 Law Transposing Council Directive 2011/16/EU of 16 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

1.3 Germany

1.3.1 National use of tax data in the framework of the administrative approach

Data from the tax administration is subject to particularly strict protections in Germany, the so-called tax secrecy.⁴² The background to this comprehensive protection is to promote taxpayers' willingness to provide full insight into their affairs in order to ensure the correctness of tax grounds.⁴³

German tax secrecy can only be violated by disclosure in a limited number of cases, in particular:

- If a separate authorisation for this purpose is given by federal law.⁴⁴ Various federal laws and regulations provide the opportunity to inspect information that is subject to tax secrecy. Only a limited number of provisions relate to municipal tasks. One example of this is art. 6 II *Bundesmeldegesetz*, which obliges the authorities to inform the authority maintaining a population register in the event of indications of incorrect information in the population register
- As part of the tax determination procedure or for statistical purposes⁴⁵
- In order to notify competent authorities about money laundering proceedings⁴⁶
- In order to combat illegal employment or undeclared work or to enable another body to decide on the granting, recovery, reimbursement, continuation or maintenance of benefits from public funds⁴⁷ or if the disclosure of the tax information serves an overriding public interest.⁴⁸ However, an overriding public interest requires special relevance, for example, if there were significant disadvantages for the public interest or to avert a threat to public security.⁴⁹ An overriding public interest also exists if the tax administration has information that indicates that a trader is unreliable under commercial law.⁵⁰ In this case, however, there must be significant tax unreliability, such as significant tax debts. Only in such a case would the tax administration be able to send a signal to the *Gewerbebehörden*, thereby violating the tax secrecy. Given the special conditions required here, disclosure of tax information is often not possible.

For example, a licensing procedure does not, in principle, justify the disclosure of information⁵¹

- For conducting criminal proceedings, but in principle only in the event of a tax offence.⁵² Use is possible for other criminal proceedings, provided that the findings have been obtained in the framework of tax-related criminal proceedings or the person concerned has waived the right to refuse access.⁵³

As a result, due to tax data being comprehensively protected by tax secrecy, only certain authorities can access tax data of a taxpayer in special cases in the domestic area. In particular, passing data on to the commercial authorities (*Gewerbebehörde*) is allowed, to assess whether a trader is unreliable under commercial law. This applies in the case of significant tax violations or back taxes that indicate such unreliability. In all other respects, however, the options for transfer to the municipal authorities in particular are very limited.

As explained in the first section, there are three conceivable ways of exchanging this domestic tax data for the administrative approach to the fight against organised crime.

1.3.2 Provision of tax data by (the mayor of) the German municipality to (the mayor of) the Belgian/Dutch municipality

As elaborated above, a German municipality is only allowed to have access to tax data in a limited number of cases. Even if a German municipality has such data at its disposal, it may not simply pass it on. If data that is subject to tax secrecy is provided to other government authorities, this data may also be used or passed on only for the specific purpose for which the tax administration provided it to the respective government authority.⁵⁴

In addition, the purpose limitation principle of the General Data Protection Regulation must also be observed here, which limits provision for an entirely different purpose.⁵⁵ Finally, the passing on of data by a German municipality may only be considered if there is a legal ground for the passing on of data itself. According to the settled case-law of the *Bundesverfassungsgericht* (Constitutional Court of the Federal Republic), any processing, such as the passing on of data as personal data, requires a legal ground since it is a separate infringement of fundamental rights.⁵⁶

42 § 30 Tax Code, the provisions of the General Data Protection Regulation are applicable as well.

43 Klein/Rüsken, 15. Aufl. 2020, § 30 Tax Code, Rn. 5 ff; Koenig/Intemann, 3. Aufl. 2014, § 30 Tax Code, Rn. 1.

44 § 30 IV Nr. 2 Tax Code.

45 § 30 IV Nr. 1, 2b Tax Code

46 § 31b I Tax Code.

47 § 31a I Nr. 1 a), b) bb).

48 § 30 IV Nr. 5 Tax Code.

49 § 30 IV No. 5 a) Tax Code.

50 BFH, Judgment of 10 February 1987- VII R 77/84, NVwZ 1988, 474, 476 f.

51 BFH, Judgment of 10 February 1987- VII R 77/84, NVwZ 1988, 474, 477.

52 § 30 IV No. 1 iVm II No. 2 b) Tax Code.

53 § 30 IV No. 4 a), b) Tax Code.

54 § 30 XI 1 No. 2 Tax Code.

55 Art. 5 I No. b), 6 IV GDPR.

56 BVerfG, Judgment of the First Senate of 19 May 2020, - 1 BvR 2835/17 -, Rn. 212 f.

In general, it is very difficult to exchange the data in question because either there is no corresponding legal ground, the passing on of data would violate tax secrecy, or the respective purpose of the intended processing would differ too much from the purpose of tax collection in the individual case, which is contrary to the provisions of the General Data Protection Regulation.

1.3.3 Direct provision by the German tax administration to a (mayor of a) Belgian/Dutch municipality

German legislation does not provide a legal ground for the direct provision of tax information by a German tax administration to a Belgian or Dutch municipality. EU legislation only provides for the direct provision of tax information by tax administrations. This mutual administrative assistance in tax matters is largely harmonised between the Member States of the European Union (see European regulations and bilateral treaties above). These treaties and international law regulations do not, however, provide for the option to exchange information directly between the German tax administration and foreign municipalities and, as a result, only concern the provision to foreign tax administrations.

1.3.4 Provision by the German tax administration to the Belgian/Dutch tax administration whereby permission is given for data to be passed on to and used by the administration for the purpose of the administrative approach to organised crime (U-turn)

Information provided by the German tax administration to a Belgian or Dutch tax office in the context of general administrative assistance and administrative assistance in the recovery of claims, as well as in the context of informal cooperation in the field of VAT between the Member States of the European Union, may, in principle, also be used for purposes other than tax administration.⁵⁷ For example, the exchange of information under the double taxation conventions also provides for the provision of information for other purposes. However, this is subject to two conditions. The provision must be in accordance with the legislation of both countries, and the competent authority that originally provided the information must consent to its further use. As a result, using the data for certain administrative tasks of a foreign municipality may be possible under certain conditions.⁵⁸

This type of passing on of German tax information, on the one hand, requires a formal request from the Dutch or Belgian tax administration to the competent German authority to use the data for a different, specifically mentioned purpose. Secondly, such further processing for a purpose similar to the additional purpose pursued by the foreign authority must be allowed by German law.⁵⁹ Consequently, the same requirements as in the purely domestic situation apply (see above). As a result, a transfer can be considered only rarely, and in special situations. Examples of cases in which the use of the data by the municipalities could be considered are:

- For the correction of incorrect information in the population register
- For the notification of violations of the tax legislation provisions by a foreigner to the foreign authority if criminal proceedings have been initiated or if a fine of at least €500 has been imposed for the violation
- In social procedures where the municipality acts as the social authority, for example, in case of benefits for which enquiries must be made about the income situation of the beneficiary (if the procedure so requires), by way of requesting the information known to the tax administration about the assets and income situation of the applicant or the beneficiary, insofar as the social procedure so requires.

The possibility to obtain information for decisions on granting a benefit or bringing a claim for restitution of a benefit from public funds in the event of incorrect granting is of particular importance for Dutch municipalities under the BIBOB Act, but also for Belgian or Dutch municipalities in the procedure for granting a public benefit.⁶⁰ As a result, it is possible to provide relevant information regarding the granting of government benefits in individual cases to Dutch or Belgian municipalities, insofar as necessary for the respective assessment and to the extent permitted by Belgian and/or Dutch legislation. According to the explanatory memorandum to the Act, this information may be provided prior to the granting of a government benefit. The tax administration does not need to check before the contribution whether the data actually enables the collection of a benefit. However, the information available must be appropriate, in the opinion of the tax administration, for combating abuse of benefits, i.e. the information must be relevant for the decision in accordance with the relevant legislation.⁶¹

⁵⁷ § 15 I Act on the Implementation of Mutual Administrative Assistance in Tax Matters between the Member States of the European Union., § 21 II Act on the implementation of mutual assistance for the recovery of claims relating to certain taxes, duties and other measures between the Member States of the European Union., Art. 55 III VO 904/2010.

⁵⁸ BGBl. 2012 II, No. 38 v. 10.12.2012, 1414, Art. 27 II 4, BGBl. 2010 II, No. 33 v. 23.11.2010, 1278, Art. 26 II 4.

⁵⁹ § 15 I Act on the Implementation of Mutual Administrative Assistance in Tax Matters between the Member States of the European Union., § 21 II Act on the implementation of mutual assistance for the recovery of claims relating to certain taxes, duties and other measures between the Member States of the European Union., Art. 55 III VO 904/2010.

⁶⁰ In particular § 31a I Nr. 1 b) bb) Tax Code.

⁶¹ BFH, Judgment of 4. 10. 2007 - VII B 110/07, DStR 2007, 2009, 2010.

Consequently, a request from a foreign authority should specifically indicate on which legal ground the information may be relevant for a decision. Suitable recipients of the information include all authorities that are responsible for combating misuse of benefits.⁶²

In addition, information may also be passed on if there are facts to indicate the unreliability of a trader as a result of significant violations of tax obligations.

⁶² Koenig/Intemann, 3. Aufl. 2014, § 31a Tax Code, Rn. 16.

1.4 The Netherlands

1.4.1 National use of tax data in the framework of the administrative approach

Tax data is subject to a strict duty of confidentiality.⁶³ People who have access to such data in the course of their work are bound by this duty of confidentiality. The law provides for a few exceptions to the duty of confidentiality, i.e. Dutch municipalities may also have tax information at their disposal under certain conditions. This is the case when:

- A legal requirement obliges to disclose⁶⁴
- A ministerial regulation determines that disclosure is necessary for the proper fulfilment of a public-law task of an administrative body.⁶⁵

For example, the tax administration is legally obliged to provide tax information to the College of Mayor and Aldermen when requested to do so in the context of decision-making regarding social security benefits.⁶⁶

Furthermore, it has been determined by ministerial regulation that the duty of confidentiality does not apply when the tax administration provides information to a municipality in the context of:

- The collection of municipal taxes⁶⁷
- Preventing permanent occupation of recreational homes⁶⁸
- Licensing and supervision under the Environmental Management Act⁶⁹
- To ensure effective and efficient cooperation in the framework of the integral application and enforcement of government regulations, insofar as this is based on a covenant (e.g. the RIEC covenant)⁷⁰
- The implementation of collaborative projects via intervention teams to prevent and reduce violations of labour legislation and the related abuses, inter alia.⁷¹

1.4.2 Provision of tax data by (the mayor of) a Dutch municipality to (the mayor of) a Belgian/German municipality

The tax data obtained by the Dutch mayor or another recipient is subject to a duty of confidentiality.⁷² In other words, the mayor may not independently pass on this data

to other (foreign) authorities. Furthermore, the (U) GDPR applies to data provision by a mayor. If a Dutch mayor wishes to provide tax information known to them to a Belgian or German administrative body, the duty of confidentiality under the General State Taxes Act (AWR) and the (U) GDPR should be considered.

The mayor is only authorised to pass on the data received if there is a legal obligation to do so or if this has been explicitly regulated by ministerial regulation.⁷³ There is no legal provision that permits the further passing on of tax data by the mayor to another (foreign) municipality. Nor is there a ministerial regulation based on which the mayor may pass on tax data to other (foreign) municipalities.

The mayor may, however, indicate during discussions that an administrative decision is *based* on tax data or that a decision has been taken *in connection* with tax data,⁷⁴ as long as one does not go into the content of the tax data. In a limited number of cases, it is also possible to share administrative information, particularly where legal entities are involved. More information about the sharing of administrative information is included in the EURIEC memorandum on the cross-border exchange of administrative data. This memorandum also addresses the informal exchange of information and the exchange of information based on public sources (e.g. media).

1.4.3 Direct provision by the Dutch Tax Administration to a (mayor of a) Belgian/German municipality

Tax data is subject to a strict duty of confidentiality.⁷⁵ Provision of tax data is only possible if there is a legal obligation to do so or if this is explicitly provided for by ministerial regulation.⁷⁶ There is no legal provision that obliges the tax administration to pass on tax data to another foreign municipality. Nor is there a ministerial regulation based on which the tax administration may pass on tax data to foreign municipalities.

1.4.4 Provision by the Dutch Tax Administration to the Belgian/German Tax Administration, for the benefit of the administration for the administrative approach to organised crime

Tax data is subject to a legal duty of confidentiality.⁷⁷ Provision of tax data is only possible if there is a legal obligation to do so or if this is explicitly provided for by ministerial

63 Art. 67g paragraph 1 General State Taxes Act (AWR).

64 Art. 67 paragraph 2 sub a General State Taxes Act.

65 Art. 67 paragraph 2 sub b General State Taxes Act.

66 Art. 64 paragraph 1 sub c Participation Act.

67 Art. 43c sub j part 3 Implementation Regulation AWR.

68 Art. 43c sub j part 4 Implementation Regulation AWR.

69 Art. 43c sub j part 7 Implementation Regulation AWR.

70 Art. 43c sub m Implementation Regulation AWR.

71 Art. 43c sub w Implementation Regulation AWR.

72 Art. 67 paragraph 1 General State Taxes Act.

73 Art. 67 paragraph 2 sub a and b General State Taxes Act.

74 Model privacy protocol for intra-municipal data sharing, p. 38.

75 Art. 67 paragraph 1 General State Taxes Act.

76 Art. 67 paragraph 2 sub a and b General State Taxes Act.

77 Art. 67 paragraph 1 General State Taxes Act.

regulation.⁷⁸ As described in paragraph 1.1, several European and bilateral instruments provide for the cross-border exchange of tax data.⁷⁹ This has also been implemented in Dutch national legislation. For example, the cross-border collection of municipal tax claims takes place based on the Mutual Assistance Act in the European Union for the collection of tax debts and some other claims.⁸⁰ Cross-border exchange of tax data is, in principle, only possible for tax purposes.^{81 82} After a cross-border exchange of tax information for tax purposes has taken place, under certain conditions the receiving authority may pass on the data for purposes other than tax. To check whether the provision of tax data by the Dutch tax administration to the Belgian/German tax administration for the benefit of the Belgian/German administration for the administrative approach to organised crime is possible, the following step-by-step plan can be used:

→ **Step 1:** Fiscal exchange

An exchange of tax data for tax purposes must first take place in the framework of an international or bilateral tax treaty.^{83/84} In other words, there should be a tax interest to justify the cross-border exchange of the data. The Dutch tax administration subsequently provides the tax data to the Belgian/German designated authority in accordance with European or bilateral regulations.

→ **Step 2:** Passing on data for administrative purposes

After reception of the Dutch tax data, the receiving country (Belgium/Germany) must assess whether the forwarding of this data is allowed in accordance with national legislation for the intended (administrative) purposes in the framework of the administrative approach to organised crime.⁸⁵ This means that passing on Dutch tax data to administrative authorities is only possible if this would also be possible in a strictly Belgian/German situation.

→ **Step 3:** Consent for cross-border use for administrative purposes by the Dutch competent authority

If passing on data is possible under Belgian/German national legislation (step 2), the receiving Belgian/German authority must request permission from the Dutch providing author-

ity before the data is passed on.^{86/87} In the case of direct taxation, the competent Dutch authority is obliged to give permission if the tax data can be used for similar purposes in the Netherlands.⁸⁸ There is no obligation to give permission when it comes to tax data relating to indirect taxation. However, discussions between EURIEC and the Dutch Central Liaison Office show that permission is usually also given for indirect taxes if the tax data can be used for similar purposes in the Netherlands.

Paragraph 1.4.1 also clarifies in which cases the use of tax data for administrative purposes is permitted in the Netherlands. As a result, the use of Dutch tax data is possible for the administrative approach to organised crime in Belgium/Germany in the cases described in paragraph 1.4.1, provided that such use is also possible based on Belgian/German national legislation. Such passing on of data can only take place if the data has first been provided for tax purposes.

78 Art. 67 paragraph 2 sub a and b General State Taxes Act.

79 Directive 2011/16/EU (direct taxes), Regulation 904/2010 (indirect taxes), Directive 2010/24/EU (claims recovery).

80 Act on mutual assistance in the European Union for the recovery of tax debts and some other claims 2012.

81 For direct taxes: art. 16 paragraph 1 Directive 2011/16/EU in conjunction with art. 14 paragraph 1 International Assistance in the Levying of Taxes.

82 For indirect taxes: Art. 55 paragraph 1 Regulation No. 904/2010.

83 For direct taxes: art. 16 paragraph 1 Directive 2011/16/EU in conjunction with art. 14 paragraph 1 International Assistance in the Levying of Taxes.

84 For indirect taxes: Art. 55 paragraph 1 Regulation No. 904/2010.

85 Art. 16 paragraph 2 Directive 2011/16/EU.

86 For direct taxes: art. 16 paragraph 2 Directive 2011/16/EU in conjunction with art. 17 paragraph 2 International Assistance in the Levying of Taxes.

87 For indirect taxes: Art. 55 paragraph 3 Regulation No. 904/2010.

88 Art. 17 paragraph 2 Act on International Assistance in the Levying of Taxes.

2 Practical consequences

EURIEC has experienced the practical issues associated with the legislation mentioned above in a variety of cases.

When a person is suspected of money laundering or links to organised crime, cross-border exchange of tax data is usually required, including with local authorities. This is apparent, for example, in the case of licensing for catering operators or traders who are possibly associated with organised crime. Tax information would be useful in such cases to decide whether or not to grant a license. For example, information about arrears and taxes could be useful in the context of licensing in many cases. In addition, in a case that involved migrant workers who lived in Germany and worked in the Netherlands, it was examined whether exchanging data from the German tax administration would be possible in order to enable the tracing of persons under the Infectious Diseases Act via their personal data and, in particular, their address.

Requests for a possible use of data from the tax administration are often made in practice and there is much need for exchange. As a rule, however, this type of exchange is challenging due to the considerable legal barriers. In this regard, consideration should first of all be given to the principle of purpose limitation for the provision of tax data for non-tax purposes.

Harmonisation under EU legislation has resulted in intensive exchanging of information between tax administrations. This exchange is often limited, however, to the exchange between tax administrations and, in most cases, cannot simply be passed on to other authorities, such as local authorities. In theory, some of the tax treaties offer options for passing on information, provided that this is actually possible in a purely domestic situation. However, national regulations often do not allow for the provision of data to local authorities, as a result of which this is also impossible in cross-border cases. In practice, the legal barriers also lead to reluctance among tax administrations to exchange information with non-tax authorities.

As a result, the cases the EURIEC has handled show that, in general, a (cross-border) exchange of tax data is not possible within the framework of the administrative approach.

3 Conclusion

The increasing harmonisation driven by EU legislation has considerably facilitated the international exchange of information between the tax administrations of the EU Member States. Nevertheless, the use of tax data for the administrative approach to organised crime encounters significant legal obstacles, which, in practice, in many cases lead to the inadmissibility of a transfer.

Although many of these obstacles also apply to exchanges between the tax administration and local authorities in a purely domestic situation, these barriers also apply to cross-border exchanges as a result of harmonisation. These barriers at the national level will need to be resolved first in order to facilitate exchanges with foreign local authorities in the long term.

In the three countries examined, the options for the domestic exchange of tax data within the framework of the administrative approach are severely limited as things stand. Direct exchange of tax data between domestic municipalities or between domestic tax administrations and foreign municipalities is usually not possible due to a lack of clear legal grounds. However, the tax administrations in the Netherlands and Germany can, in some cases, after a transnational exchange of data between tax administrations, give permission for further use of the data for purposes other than the tax procedure. This is currently not possible in Belgium.

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E: euriec.rik.limburg@politie.nl

T: 088 – 1687380

W: euriec.eu

P: Postbus 1992, 6201 BZ Maastricht