



# **NL Ministry of Finance**

## **Confidentiality of taxpayer information**

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## Part A

### 1. Introduction

The Ministry of Finance of the Netherlands (MoF) has commissioned IBFD to look into the confidentiality of information relating to taxpayers in selected countries. The MoF would like to know what the legal provisions as well as the practice are in the following situations:

1. A taxpayer is seeking publicity regarding his tax position and the treatment he/she received from the tax administration;
2. The tax affairs of a well-known individual are discussed in the media; and
3. Parliament is asking questions about the taxation and/or the conduct of the tax administration in a specific situation.

Also cross-border aspects may play a role.

Based on the request made by the MoF, the following questions were formulated and sent to the various country specialists in IBFD.

1. What legislation or policy does the country have to ensure confidentiality of tax information?
2. How is this confidentiality implemented in practice? I.e.
  - a. To what extent are the tax authorities allowed to comment publicly on statements that a taxpayer has made about their own tax file in the media?
  - b. To what extent are the tax authorities allowed to comment publicly on the tax file of a (famous) person if that file is described in the media in response to a criminal or tax investigation?
  - c. To what extent may tax authorities inform parliament about specific individual tax files?
3. How does national policy relate to international obligations of confidentiality on tax information such as tax treaties, tax information exchange agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters?

The countries that have been selected to be included in this comparative study are:

1. Belgium
2. Finland
3. France
4. Germany
5. Ireland
6. Luxembourg
7. Norway
8. United Kingdom
9. United States.

## 2. Short summary of the findings and conclusions

From the answers relating to the selected countries, it appears that all countries included in the survey have legislation in place which guarantees the confidentiality of taxpayer information. Just as is the case in the Netherlands, the tax authorities of the selected countries are not at liberty to publicly react to articles in the media regarding a specific taxpayer. This applies also in cases where it was the taxpayer that sought publicity. Even if they may have some room to manoeuvre, as may be the case in Norway, the tax authorities appear to be rather hesitant to comment publicly on statements made by taxpayers. From the research undertaken, it appears that tax administrations regularly provide general information in response to taxpayers seeking publicity.

In Finland, a significant amount of taxpayer information is publicly released. This approach is unique when compared to the other countries included in the research,

Further, like is the case in the Netherlands, there seems tension in many countries between the legal provisions regarding taxpayer information confidentiality and the rights of the parliament to be informed. An interesting situation in this respect occurs in France where the president and the general reporter of both the Finance Committee of the National Assembly and their equivalents in the senate are granted access to all information obtained by the tax authorities. In the US, the approach is rather similar to that of the Netherlands and the Committees of Congress may receive detailed information regarding a specific taxpayer in a closed session. However, in the US the taxpayer is required to consent with the disclosure in writing.



## Part B

### Belgium

#### 1. What legislation or policy does the country have to ensure confidentiality on tax information?

The confidentiality principle is incorporated in article 337(1) of the Income tax Code (*Wetboek inkomstenbelastingen/Code des impôts sur les revenus*) (ITC) providing that:

"Any person who, in any capacity, intervenes in the application of the tax laws or who has access to the offices of the administration in charge of the establishment or the one in charge of collection and recovery of taxes is obliged to keep the most absolute secrecy with respect to all matters of which he has become acquainted as a result of the performance of his duties."<sup>1</sup>

Similar provisions are included in Article 93bis of the VAT Code, Article 212 of the Code on Various Levies and Duties (CLD), Article 164bis of the Inheritance Tax Code (InhTC), Article 236bis of the Registration Duties Code (RDC) and Article 320 of the Code on Customs and Excise Duties (CCED). Their text and scope is similar to the provision in the Income tax Code.

Article 337/1(1) of the ITC provides that requests for information transmitted by the foreign authorities and the answers provided to these authorities, as well as any other correspondence between the competent authorities, may not be disclosed as long as the investigation of the foreign authority has not been completed and insofar as disclosure would be detrimental to the needs of the aforementioned investigation, unless the foreign authority has expressly agreed to this disclosure.<sup>2</sup>

Article 337/1(2) makes clear that the agreement referred to in subparagraph 1 is acquired if the foreign authority does not react within 90 days from the sending of the request for

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<sup>1</sup>Hij die, uit welken hoofde ook, optreedt bij de toepassing van de belastingwetten of die toegang heeft tot de ambtsvertrekken van de administratie der directe belastingen, is, buiten het uitoefenen van zijn ambt, verplicht tot de meest volstrekte geheimhouding aangaande alle zaken waarvan hij wegens de uitvoering van zijn opdracht kennis heeft.

<sup>2</sup>In afwijking van artikel 4 van de wet van 11 april 1994 betreffende de openbaarheid van bestuur, mogen de verzoeken om inlichtingen van buitenlandse autoriteiten en de antwoorden verstrekt aan die autoriteiten evenals elke andere correspondentie tussen de bevoegde autoriteiten niet openbaar worden gemaakt zolang het onderzoek van de buitenlandse autoriteit niet is afgesloten en voor zover de openbaarmaking nadelig zou zijn voor het voormelde onderzoek, tenzij de buitenlandse autoriteit haar uitdrukkelijk akkoord heeft gegeven voor deze openbaarmaking.

Het in het eerste lid bedoelde akkoord wordt geacht te zijn bekomen wanneer de buitenlandse autoriteit niet reageert binnen een termijn van 90 dagen te rekenen vanaf het verzenden door de Belgische Staat van de vraag tot inzage, en de informatie niet verschaft dat de vertrouwelijkheid van de uitgewisselde gegevens en de correspondentie volgens de voorwaarden van dit artikel moet voortduren, wanneer de persoon in wiens hoofde het onderzoek door de buitenlandse Staat wordt gevoerd uitdrukkelijk deze toegang aan de Belgische Staat heeft gevraagd.

disclosure by the Belgian State and does not provide information that the confidentiality of the data and correspondence exchanged under the conditions of this Article must be maintained. This applies when the person on whose behalf the investigation is conducted by the foreign State has expressly requested this access from the Belgian State.

Similar provisions are included in article 93bis/1 of the VAT Code, Article 212/1 of the Code on Various Levies and Duties, Article 164bis/1 of the Inheritance Tax Code; Article 236bis/1 of the Registration Duties Code and Article 320/1 of the Code on Customs and Excise Duties.

## 2. How is this confidentiality implemented in practice? I.e.

- a. **To what extent are the tax authorities allowed to comment publicly on statements that a taxpayer has made about their own tax file in the media?**
- b. **To what extent are the tax authorities allowed to comment publicly on the tax file of a (famous) person if that file is described in the media in response to a criminal or tax investigation?**

The confidentiality principle is strictly applied and information may only be exchanged with:

- i. the administrative services of the State, the Communities and the Regions;
- ii. the public prosecutor's offices and clerks of courts, tribunals and all jurisdictions; and
- iii. the institutions, companies, associations, establishments, and offices whose administration involves the State, a Community, or a Region. Institutions to which the State, a Community, or a Region provides a guarantee, whose activity is monitored by the State, a Community, or a Region or whose management personnel is appointed by the Federal Government or a Community or Regional Government.

This means that the tax administration is neither allowed to comment publicly on statements made by taxpayers nor allowed to comment publicly on the tax file of a (famous) person if information is described in the media.

A breach of the confidentiality is a criminal offence. Article 453 of the ITC provides that the violation of professional secrecy stipulated in Article 337 is punished in accordance with Article 458 of the Penal Code with imprisonment of 1 to and/or a fine of EUR 100 to EUR 1,000.<sup>3</sup>

- c. **To what extent may tax authorities inform parliament about specific individual tax files?**

Based on the control function embedded in articles 100 and 101 of the Belgian constitution. Members of Parliament are authorized to request information from the government.<sup>4</sup>

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<sup>3</sup> De schending van het bij artikel 337 bepaalde beroepsgeheim wordt gestraft overeenkomstig artikel 458 van het Strafwetboek.

<sup>4</sup> [https://www.dekamer.be/kvvcr/pdf\\_sections/jurid/actionN.pdf](https://www.dekamer.be/kvvcr/pdf_sections/jurid/actionN.pdf).



However, based on article 122 of the statutes of the chamber, restrictions apply with respect to the information which can be requested. All information requested must be of general interest and may, in principle, not concern private interests or personal cases. This means that information requests regarding individual tax files will be declared inadmissible. Questions regarding the interpretation of a fiscal provision which are used in dispute or a court case, will also be held inadmissible.

Moreover, the tax administration is not authorized to disclose data about individual cases.

### 3. How does national policy relate to international obligations of confidentiality on tax information such as tax treaties, tax information exchange agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters?

The tax authorities are only allowed to exchange information with other countries on the basis of international agreements and other international instruments such as European regulations, directives and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. In the event that these agreements and instruments are not applicable, the tax authorities are not allowed to share information with and receive information from foreign tax authorities.

Belgian domestic law does not contain a provision restricting exchange of information other than those included in the international agreements and instruments. There is also no provision in domestic law prohibiting the Federal Public Service of Finances to exchange information if there is no guarantee that the same secrecy is upheld in the other contracting state.

The Federal Public Service of Finances may, however, refuse to exchange information on the basis of the grounds included in the respective international instruments. This includes the situation that that information is not obtainable under the domestic law of administrative practice of the requesting state or if that information would disclose a trade secret.

With respect to tax treaties Belgium follows the OECD Model Convention. Any information received will be treated as secret in the same manner as information obtained under the domestic laws. The information will only be disclosed to authorities and persons involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes convention, and it cannot be used for other purposes (principle of speciality).

This means that information may be exchanged which is 'foreseeably relevant' for purposes of the application of the convention or for the administration or for the application of any domestic laws of the contracting states on all taxes to the extent that the tax to which the domestic laws apply to is not contrary to the convention. However, no information will be exchanged which cannot be obtained under domestic law.

## Finland

### 1. What legislation or policy does the country have to ensure confidentiality of tax information?

The confidentiality of tax matters is regulated by Law on Publicity and Confidentiality of Tax Data ([Laki verotustietojen julkisuudesta ja salassapidosta](#), 30.12.1999/1346). In relevant parts also the Law on Publicity of Activity of Authorities ([Laki viranomaisten toiminnan julkisuudesta](#), 21.5.1999/621) applies.

As a starting point, all documentation related to taxpayers' taxes is primarily confidential. However, the present law provides detailed provisions which enable some documents and registered tax data for public release. These provisions are intended to promote openness and public discussion on taxation.

According to Section 5 of Law on Publicity and Confidentiality of Tax Data, tax information, which is publicly available after the tax assessment has become final is:

#### For individuals:

- ▶ the name of the taxpayer;
- ▶ year of birth of the taxpayer;
- ▶ the municipality in which the taxpayer resides;
- ▶ taxable *employment* income for *national* tax purposes;
- ▶ taxable *capital* income for *national* tax purposes;
- ▶ taxable income for *municipal* tax purposes;
- ▶ taxes paid in pre-collection (this item will no longer apply with effect from 1 September 2024);
- ▶ total amount of taxes payable (includes national and municipal tax and other charges due); and
- ▶ taxes still payable/refunded amount.

#### For corporate taxpayers:

- ▶ the name of the taxpayer;
- ▶ the municipality in which the taxpayer is resident;
- ▶ business identification number (*Y-tunnus*, in Finnish);
- ▶ taxable income;
- ▶ taxes paid in pre-collection (this item will no longer apply with effect from 1 September 2024);
- ▶ total amount of taxes due; and
- ▶ taxes still payable/refunded amount.

The above-mentioned information becomes public in the beginning of November of the calendar year following the tax year. For example, tax information regarding tax year 2023, becomes public in November 2024. The list of facts and information is from the day when the tax assessment process was completed. Any appeals or tax readjustments that may be made later are not released for public disclosure.



Public information on income taxation is subject to public release under the law. Hence, the Tax Administration cannot remove any taxpayer's data from the public information.

Further, the tax authorities share public information about individual taxpayers' tax assessment with the media for journalistic purposes every year. The media may request information on individuals whose taxable income has been at least EUR 100,000 in the tax year in question. The tax authorities provide such information in electronic form in order to facilitate transparency.

The media publishes such tax information annually and makes different lists of taxpayers (e.g. heirs and executives). Furthermore, the media publishes also lists of celebrities although their taxable income has been lower than EUR 100,000 in the tax year in question.

Furthermore, anyone can access the public tax information on any taxpayer by visiting work stations at the local tax office. Such information is not directly available online.

In 2019–2022, taxpayers were able to oppose the disclosure of their data to the media under the EU General Data Protection Regulation (GDPR). According to the Supreme Administrative Court's judgment in *KHO:2022:146* of 21 December 2022, this is no longer possible. Accordingly, an individual cannot prevent his public tax information to be given to the media. This practice is authorized by Section 21 of the Law on Publicity of Activity of Authorities.

## 2. How is this confidentiality implemented in practice? I.e.

- a. **To what extent are the tax authorities allowed to comment publicly on statements that a taxpayer has made about their own tax file in the media?**
  - b. **To what extent are the tax authorities allowed to comment publicly on the tax file of a (famous) person if that file is described in the media in response to a criminal or tax investigation?**
  - c. **To what extent may tax authorities inform parliament about specific individual tax files?**
- a. Tax authorities do not comment publicly individual cases. They may, however, state on a general level how a certain tax issue will be handled. E.g. if a taxpayer tells that he has made a typing error in his tax return, the tax administration may comment in the media on how taxpayers may correct such errors, in general. Only after there is a judgment from the Supreme Administrative Court, the tax administration usually publishes a clarifying guidance which is in accordance with the delivered judgement.
  - b. See above. The same applies in case of criminal cases or cases under a tax investigation.
  - c. It is not customary, for the parliament to pose questions on individual tax files. Furthermore, the tax administration does not inform parliament about individual tax files.

There is the Chancellor of Justice of the Government of Finland (*oikeuskansleri*, in Finnish), which may either based on a complaint or out of his own initiative, start an investigation on a specific case. The Chancellor of Justice oversees the legality of actions taken by the authorities, including tax administration. The Chancellor of

Justice is entitled to receive any necessary information from authorities and other public bodies for the purpose of ensuring the legality of their actions. This right to access information also extends to confidential information. The Chancellor of Justice may, inter alia, propose the competent authority to correct an error that has occurred. The Chancellor of Justice, however, cannot solve the issue himself. Until 1 October 2022, such tasks were entrusted to the Parliamentary Ombudsman (*eduskunnan oikeusasiamies*).

### 3. How does national policy relate to international obligations of confidentiality on tax information such as tax treaties, tax information exchange agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters?

The national policy is in accordance with the international obligations.

Under Section 30 of the Law on Publicity of Activity of Authorities, tax authorities may provide information about a confidential document to a foreign authority or an international institution, if cooperation between a foreign authority and a Finnish authority is stipulated in an international agreement or act binding Finland.

There has been a case in the European Court of Human Rights regarding the publicity of tax information. The case *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* (Application No. 931/13) was however more focused on the right to commercially publish tax information in large scale. Two Finnish companies had collected and published information about the earned and unearned income and taxable net assets of 1.2. million natural persons in Finland (i.e. one third of all taxable persons in Finland at that time), first through a newspaper and later through a text-messaging service by which people could text someone's name to a service number and receive that person's taxation information. The Finnish courts and authorities had prohibited the companies from processing personal tax data in such a manner. In its judgment of 27 June 2017, the Grand Chamber of the European Court of Human Rights found no violation of the right to freedom of expression as the Court could not find that the publication of the tax data en masse in this case contributed to a debate of public interest.



## France

### 1. What legislation or policy does the country have to ensure confidentiality of tax information?

The confidentiality of tax information obtained by the French tax authorities is ensured by article L 103 of the Code of Tax Procedures (Livre des procédures fiscales, LPF), which provides that members of the tax authorities are subject to "professional secrecy" rules set forth by the Criminal Code (Code pénal, articles 226-13 and 226-14). Any breach of these rules may result in an imprisonment penalty (up to 1 year) and/or a fine (up to EUR 15,000).

Several exceptions to professional secrecy rules are provided for by the Code of Tax Procedures (e.g. for judicial authorities, tax authorities of other states, administrative panels, etc.). There is no exception for members of Parliament (composed of two chambers: the National Assembly and the Senate), except for two members of each chamber who have specific responsibilities (see 2.c. below).

Confidentiality rules apply to any information obtained by the tax authorities through tax returns filed by taxpayers, tax audits, payment operations, etc. Confidentiality is considered as breached when any third party obtains the confidential information, irrespective of the intention of the person disclosing the information or the existence of a damage for the taxpayer (see tax authorities guidance: BOI-DJC-SECR-10-10 no. 70 and 80).

Furthermore, members of the tax authorities are subject to an obligation of professional discretion for any facts or information they are aware of in the context of their professional duties, pursuant to rules generally applicable to civil servants (article 26 of Law 83-634 of 13 July 1983). Any breach of the obligation may result in professional sanctions.

### 2. How is this confidentiality implemented in practice? I.e.

#### **a. To what extent are the tax authorities allowed to comment publicly on statements that a taxpayer has made about their own tax file in the media?**

Pursuant to professional secrecy rules mentioned above, the tax authorities are not allowed to comment publicly the situation of a specific taxpayer (individual or company), even where this taxpayer makes public comments on his/her/its own tax file. In practice, to our knowledge, such situation did not happen in recent years.

#### **b. To what extent are the tax authorities allowed to comment publicly on the tax file of a (famous) person if that file is described in the media in response to a criminal or tax investigation?**

Pursuant to professional secrecy rules mentioned above, the tax authorities are not allowed to comment publicly the situation of a specific taxpayer (individual or company), even where the file of this taxpayer is described in the media following a leak. As a consequence, the tax authorities systematically refuse to officially comment on individual situations, even when a specific case is reported in the media (press, TV, etc.).

In practice, there are frequently press reports describing the file of certain taxpayers (multinational companies or famous high net worth individuals), which suggests that some members of the tax authorities or judicial authorities unofficially provide information to certain journalists (e.g. investigation journalists such as *Le Canard Enchaîné*). For example, it is rather frequent that search-and-seizure procedures ("dawn raids") made in the premises of certain multinational companies are reported in the press. Such kind of "leak" of confidential tax information is contrary to the professional secrecy rules that apply to the tax administration and its staff. However, the source of such leaks may be hard to identify, in so far as journalists are not obliged to disclose their sources (pursuant to the principle of secrecy of journalistic information sources). In practice, it seems that journalists are not questioned on their sources as far as tax is concerned (it is sometimes the case with diplomatic or defence issues: e.g. French journalist Ariane Lavrilleux who was kept in custody because she published classified military information regarding Egypt).

However, the tax authorities as such usually do not provide any official comment on these procedures. The National Financial Prosecutor follows a different policy as it sometimes publishes press releases regarding specific criminal procedures (e.g. recent search-and-seizure procedures targeting certain banks in the context of investigations on the CumEx scandal). However, these press releases remain very general and do not provide details on individual tax situations.

### **c. To what extent may tax authorities inform parliament about specific individual tax files?**

As a general rule, the tax authorities are not allowed to provide confidential information to members of parliament, pursuant to professional secrecy rules mentioned above. In other words, members of Parliament do not have a privileged access to tax information and may not access individual files of taxpayers. This has been criticized a few years ago (in 2017) by some members of Parliament who upheld that they should have access to the list of the 100 most wealthy individuals resident in France in order to have a better overview of the effect of the net wealth tax applicable back then (*impôt de solidarité sur la fortune, ISF*).

As an exception, however, the president and the general reporter (*rapporteur général*) of the Finance Committee (*Commission des finances*) of the National Assembly, as well as their equivalents in the Senate, are granted a general access to all information obtained by the tax authorities, including on individual taxpayers' files. These prerogatives are guaranteed by article 57 of the Organic Law on Finance Laws (Law no. 2001-692 of 1 August 2001), which sets the constitutional framework of public finances. However, any information on individual cases obtained by these 4 members of Parliament must be kept confidential. If they disclose the information, they may be subject to the sanctions applicable in case of breach of professional secrecy (1-year imprisonment sentence and/or EUR 15,000 fine).

The underlying idea to provide all information obtained by the tax authorities to the president and the general reporter of the Finance Committees of the National Assembly and the Senate is that parliament has the constitutional power to control the executive power (being the government), which justifies that (some) members of the parliament should have a general access to all the information owned by the tax authorities. However, in order to avoid the risk of "leaks" (especially by political opponents), this power is granted to a few persons only, i.e. the most prominent members of the Finance Committee of both chambers. Also, these Committee regularly publish information reports (available to the general public), either on draft bills or on any other topics, and they sometimes need the support of the tax authorities to obtain certain specific information.



In practice, there is a general political agreement that the 4 members of Parliament may not use their powers to disclose confidential tax information. There was a debate in that respect in July 2022 when the Finance Committee of the National Assembly elected its new president (member of the leftist party La France Insoumise). Following this debate, the new president committed to abide by confidentiality rules.

### 3. How does national policy relate to international obligations of confidentiality on tax information such as tax treaties, tax information exchange agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters?

As regards "outbound" information, the law explicitly allows the French tax authorities to exchange tax information with other EU members states (article 114 A of the Code of Tax Procedures) and other states with which France signed an administrative assistance treaty (article 114 of the Code of Tax Procedures). Therefore, tax authorities are released from professional secrecy rules with respect to their foreign counterparts (i.e. the international exchange of information is an exception to professional secrecy rules).

As regards "inbound" information, the domestic professional secrecy rules apply to any information obtained by French tax authorities, including information obtained by the French tax authorities from foreign tax authorities through tax information exchange mechanisms.

## Germany

### 1. What legislation or policy does the country have to ensure confidentiality on tax information?

The confidentiality principle regarding data of taxpayers is incorporated in Section 30(1) of the General Tax Act (GTA, *Abgabenordnung*) which provides that public officials are obliged to strictly observe tax secrecy.<sup>5</sup>

Civil Servants are obliged to maintain secrecy about the official affairs of which they become aware during or on the occasion of their official duties. This also applies in case of change of employer and after termination of the civil service relationship. This is regulated for federal civil servants in Section 67 (1) of the Federal Civil Servant Act (*Bundesbeamtengesetz*) (FCSA) and for civil servants of the Länder and municipalities in Section 37 (1) of the Civil Servant Status Act (*Beamtenstatusgesetz*) (CSSA). Exceptions to the duty of confidentiality are standardised in Section 67 (2) FCSA and Section 37(2) (CSAA). Those include:

- a) communications required for the exercise of the civil servants official function;
- b) data that is obvious or does not require secrecy based on its importance;
- c) a factually founded suspicion of a corruption offense under Sections 331 to 337 of the Criminal Code is reported to the competent supreme service authority, a criminal prosecution authority or another authority or external agency determined by state law; and
- d) information is passed on or disclosed to a responsible reporting office under the requirements of the Whistleblower Protection Act.

### 2. How is this confidentiality implemented in practice? I.e.

- a. **To what extent are the tax authorities allowed to comment publicly on statements that a taxpayer has made about their own tax file in the media?**
- b. **To what extent are the tax authorities allowed to comment publicly on the tax file of a (famous) person if that file is described in the media in response to a criminal or tax investigation?**

The confidentiality principle is strictly applied.

The disclosure of tax data is only allowed in an exhaustive list of situations mentioned in Section 30(4)-6) of the GTA.

Section 30(4) of the GTA allows the disclosure or use of protected data in the following situations:

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<sup>5</sup> Amtsträger haben das Steuergeheimnis zu wahren.

- 1) to carry out an administrative or auditing procedure or judicial or criminal tax proceedings;
- 2) the data is used for processing by the tax authorities for the development, review or modification of automated procedures, conducting regulatory impact assessments or it is necessary for exercising the supervisory, control and disciplinary powers of the tax administration;
- 3) the data is used for imposing administrative fines within the scope of the GTA based on Article 83 of the Data Protection Regulation (EU) 2016/679;
- 4) such disclosure or use is expressly permitted by federal law.
- 5) such disclosure or use is prescribed or permitted by European Union law;
- 6) the disclosure serves to fulfil the statutory tasks of the Federal Statistical Office or serves the fulfilment of federal laws by the Federal Statistical Office;
- 7) to assess the impact of a law and the determination whether requirements for further regulatory impact assessments are met.
- 8) to secure, use and scientifically exploit archival material from the tax authorities by the Federal Archives;
- 9) the data subject agrees;
- 10) to carry out criminal proceedings for an act that is not a tax offense if the data was obtained in proceedings concerning a tax offense or tax misdemeanour.

However, this provision does not apply to:

- a) facts which the taxpayer disclosed without knowing that criminal proceedings or offence proceedings were initiated or which became known in the tax proceedings before criminal proceedings or offence proceedings were initiated; or
  - b) data obtained without the existence of a tax obligation or by waiving a right to refuse the submitting of information;
- 11) There is a compelling public interest in such disclosure or use. A definition of compelling public interest is included in article 30(5)(a)-(c) of the GTA and includes the following situations:
    - a) the disclosure is necessary to avert significant harm to the common good or a threat to public safety, defense or national security or to prevent or to prosecute crimes and intentional serious offenses against life and limb or against the state and its institutions,
    - b) economic crimes are or are to be prosecuted which, due to the manner in which they were committed or because of the extent of the damage they cause, are likely to significantly disrupt the economic order or undermine the public's trust in the honesty of commercial transactions or in the proper work of the authorities and the to significantly shake public institutions; and



c) the disclosure is necessary to correct untrue facts that have been spread to the public and are likely to significantly undermine trust in the administration; the decision is made by the responsible highest financial authority in agreement with the Federal Ministry of Finance; The taxpayer should be heard before the correction is made. A decision to disclose the information is made by the competent Supreme Financial Authority in agreement with the Federal Ministry of Finance. However, the taxpayer must be heard before the disclosure is made.

Due the fact that all the three defined situations are very extreme, disclosure of information in these situations so far has not happened in practice.

Section 30(5) of the GTA authorizes the law enforcement authorities to disclose deliberately false information provided by an individual.

Finally, Section 30(6) of the GTA stipulates that the retrieval of protected data stored in an automated file system for an administrative or audit procedure or a judicial procedure in tax matters, a criminal tax procedure, or a tax offence procedure is only permitted if it is necessary to carry out such procedure or to disclose protected data by a tax authority to a person concerned or third parties.

To maintain tax secrecy, the Federal Ministry of Finance is authorized to determine with the consent of the Federal Council (*Bundesrat*) which technical and organizational measures are to be taken to prevent unauthorized access to data. In particular, the Ministry may issue more detailed regulations about the type of data that can be retrieved and about the group of officials who are authorized to retrieve such data.

The tax administration is neither allowed to comment publicly on statements made by taxpayers nor allowed to comment publicly on the tax file of a (famous) person if information is described in the media. A correction statement may only be made if a compelling public interest exists.

A breach of the confidentiality is a criminal offence. Section 355(1) of the Criminal Code (*Strafgesetzbuch*) provides that unauthorized disclosure or use of data will be punished with imprisonment of up to two years or with a fine.

### **c. To what extent may tax authorities inform parliament about specific individual tax files?**

Sections 20(2)(2) and 38 (1)(2) of the German Constitution grant the members of parliament the right to obtain information and to ask questions. Members of parliament are only authorized to ask questions about facts that are the responsibility of the Federal Government. No information has to be provided when the rights of third parties are involved or public interest requires secrecy.<sup>6</sup>

A Parliamentary Enquiry Committee is entitled to obtain tax information for exercising their control function.<sup>7</sup> However, information may only be obtained with respect to closed cases and not for cases which are not yet decided or under negotiation. The information remains confidential within the committee as decision indicates that the information must be provided to the committee if sufficient guarantees exist that the information does not become public.

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<sup>6</sup> Constitutional Court decision, BVerfG NVwZ 2014, 1652, 1657 and

<sup>7</sup> Constitutional Court BStBl 84, 634.



### 3. How does national policy relate to international obligations of confidentiality on tax information such as tax treaties, tax information exchange agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters?

Section 117(2) of the GTA allows the sharing of information with foreign states on the provision of international treaties, directly applicable EU law and the German law on administrative assistance within the EU (*EU-Amtshilfegesetz*).

The tax authorities are allowed to exchange information with other countries on the basis of international agreements and other international instruments such as European regulations, directives and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. For EU law this follows explicitly from Section 30(4) of the GTA which allows the disclosure or use of data which is prescribed or permitted by European Union law.

With respect to tax treaties Germany follows the OECD Model Convention. Any information received will be treated as secret in the same manner as information obtained under the domestic laws. The information will only be disclosed to authorities and persons involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes. Besides these restrictions German tax treaties often give the data-supplying agency an information entitlement to control the use restriction and the data exchange is limited to the responsible agencies.

Section 117(3) of the GTA allows a unilateral discretionary sharing of information if:

- 1) the foreign state is willing and able to share information with Germany in a similar quantity and quality;
- 2) the information may only be used by the competent authorities for tax and criminal procedures; and
- 3) the information exchange may not infringe German public order or disclose business or professional secrets in an inappropriate manner.

## Ireland

### 1. What legislation or policy does the country have to ensure confidentiality of tax information?

- ▶ Section 4 Official Secrets Act 1963 (see [here](#))
- ▶ Section 851A Taxes Consolidation Act (TCA) 1997 (see [here](#))
- ▶ Tax and Duty Manual Guide to Exchange of Information under Council Directive 2011/16/EU, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (see [here](#))
- ▶ Paragraph 7.3 Civil Service Code of Standards and Behaviour (see [here](#))

### 2. How is this confidentiality implemented in practice? I.e.

#### a. To what extent are the tax authorities allowed to comment publicly on statements that a taxpayer has made about their own tax file in the media?

- i. The Irish Revenue Commissioners (tax authorities) abide by strict confidentiality rules under the Taxes Consolidation Act 1997. These rules aim to protect taxpayers' privacy and ensure the confidentiality of their tax affairs. Therefore, the tax authorities must refrain from making public comments about individual taxpayers' filings or statements made in the media.
- ii. Except in the case of criminal proceedings or other legal proceedings concerned with tax, a Revenue officer is not be required to give or produce evidence in connection with any legal proceedings (Section 851A(4)).
- iii. The authorised disclosure of tax payer information is included in Section 851A(8).

#### b. To what extent are the tax authorities allowed to comment publicly on the tax file of a (famous) person if that file is described in the media in response to a criminal or tax investigation?

- i. In situations where there is a criminal or tax investigation involving a (famous) person, the Irish tax authorities may have more latitude to comment publicly on the tax file. However, it's important to note that the specific circumstances and legal proceedings surrounding the case would dictate the extent of their public comments.
- ii. The Irish Revenue Commissioners (tax authorities) may provide general information about the investigative process or confirm the existence of an investigation when necessary. This is done to ensure transparency and maintain public trust in the fairness of the tax system. However, they are still bound by confidentiality requirements and must be cautious not to disclose sensitive taxpayer information beyond what is required for the investigation or permitted by law (see above).

- iii. If the tax file of a famous individual becomes a subject of media attention, the tax authorities may issue statements limited to confirming or denying the existence of an investigation, clarifying the general nature of the investigation, or responding to inaccuracies in media reports without divulging specific details unless authorized by law.
- iv. It's important to remember that each case is unique, and the level of public commentary can vary depending on factors such as the stage of the investigation, legal constraints, and privacy considerations. Consulting a legal or tax professional well-versed in Irish tax laws would be advisable for accurate and up-to-date information on this matter.

**c. To what extent may tax authorities inform parliament about specific individual tax files?**

- i. Under the Taxes Consolidation Act 1997, the tax authorities are required to maintain the confidentiality of taxpayer information. This means that they cannot disclose specific details about an individual's tax affairs, including their tax file, to the Irish parliament without a valid reason or legal basis (Section 851A(2)).
- ii. However, there may be situations where more general information or statistics related to tax matters can be provided to the parliament for legislative or policy purposes. These would typically be aggregate data that does not identify specific individuals and ensures the protection of taxpayer confidentiality.

### 3. How does national policy relate to international obligations of confidentiality on tax information such as tax treaties, tax information exchange agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters?

Taxpayer information is confidential and may only be exchanged by persons authorised by the Board of the Revenue Commissioners to affect such exchanges. Certain staff in the Exchange of Information Branch are so authorised. Every exchange of information, whether incoming to Ireland or going out from Ireland, must be affected by such an authorised person in the Exchange of Information Branch.

The Irish authorities have published the Guide to Exchange of Information under Council Directive 2011/16/EU, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the Guide) which was last updated in July 2023. The Guide provides general guidelines regarding the role of the Exchange of Information Branch in the International Tax Division in relation to exchange of information.

According to the Guide, Ireland needs to respond to requests for information received from other states when the requests are valid requests. In other words, when the requests received fulfil the requirements of Directive 2011/16/EU, the requirements included in the exchange of information articles in double taxation conventions, TIEAs or the OECD/Council