



**EXCHANGE OF TAX INFORMATION
FOR THE PURPOSES OF CRIMINAL PROCEEDINGS**



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domestic legislation

I. general presentation of the national systems

- administrative sanctions
- criminal sanctions

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domestic legislation

II. powers of investigation of the tax authorities / of the
judicial authorities

- statute of limitation
- extent of the screening

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Investigation power	BE	NL	LUX
Statute of limitation			
- Tax authorities	7 years (signs of fraud)	5/12 years (foreign aspects)	10 years
- Judicial authorities	No explicit limitation (forgery)	12 years	5/10 years

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Investigation power	BE	NL	LUX
Extent of the screening	"Relevant information"	"Relevant information"	"Relevant information"
- Tax authorities	Cooperation of taxpayer needed (copy of files, access to professional premises, ...)	Obligations to cooperate.	Cooperation of taxpayer needed (copy of files, access to professional premises, ...)
- Judicial authorities	Cooperation not needed (seizure of documents, search warrant, ...)	Cooperation not needed (seizure of documents, search warrant, ...)	Cooperation not needed (seizure of documents, search warrant, ...)



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III. the tax authorities initiate a judicial procedure

- *ne bis in idem*
- complaint – plainte -
- claim as private prosecutor – partie civile

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Initiation of criminal prosecution	BE	NL	LUX
Ne bis in idem	Una via overruled Const. Court 61/2014 Ne bis in idem (administrative or criminal sanctions)	Una via (administrative or criminal prosecution)	Una via not applicable Ne bis in idem depending on the penalty
Complaint	Not necessary (close cooperation b/w prosecutors and tax authorities) With the authorization of the regional tax director	Not necessary (close cooperation b/w prosecutors and tax authorities)	Usual procedure Obligation to notify criminal offenses to the public prosecutor

Initiation of criminal prosecution	BE	NL	LUX
Private prosecutor	Cass., 09.12.1997 Cass., 30.05.1997 Cass., 08.09.1999	Unknown	Unusual
Transmission by other authorities	Money laundering CTIF/CFI → public prosecutor	Money laundering (new)	Money laundering is dealt with by the public prosecutor's office



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IV. tax authorities' access to criminal files

- they initiated the judicial procedure
- they did not

Access of the tax authorities to criminal files	BE	NL	LUX
The tax authorities initiated the procedure	Even if they informed the public prosecutor, prosecutor grants access to criminal files As civil prosecutor : the examining magistrate grants access	FIOD (tax police) is part of the tax authorities Public prosecutor grants access to criminal files	Information must be shared (§427 AO)
The tax authorities did not initiate the procedure	L. 28.04.1999	Public prosecutor grants access to criminal files	Information must be shared (§427 AO)



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V. judicial authorities' access to the tax authorities' files

Prosecutor's access to administrative files	BE	NL	LUX
	The public prosecutor and the examining magistrate have legal access to the file	FIOD and the public prosecutor have legal access to the file	The examining magistrate has access to the file

Segregation of functions	BE	NL	LUX
	Belgian art. 463 WIB 1992 : Tax authorities only as witness in criminal procedures; exception for officials seconded to the prosecutor's office	Tax authorities write to the judicial authorities to state the tax debt under oath	Tax inspectors may act as police officers (<i>officiers de police judiciaire</i>) and their reports have the same value (§23a AO)



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VI. use of information found in criminal files to assess or collect taxes

- statute of limitation in tax matters
- Importation of statute of limitation in criminal matters into tax procedure

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Use of criminal proceedings to assess tax	BE	NL	LUX
Statute of limitation in tax matters	12 months after the final decision (comp. 7 years in VAT matters)	5 years/12 years in case foreign aspects	10 years in case of inaccurate returns
Importation of SOL in criminal matters into tax procedure	Cass., 08.09.1999 no, however other means to collect the amount of tax (confiscation)	No (see however confiscation)	No



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VII. use of information found in criminal files to assess
or collect taxes

- confiscation ordered by the judge as an alternative to tax assessment

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Alternatives to tax assessment	BE	NL	LUX
Damages	Cass., 08.09.1999		In addition to the tax
Confiscation	Not compulsory in case of tax fraud Compulsory in case of money laundering as a result of tax fraud (money laundering Concealment)	Not in case of tax fraud In case of money laundering (as a result of tax fraud)	Not relevant



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international cooperation

I. exchange of information by tax authorities

- instruments
- limitations

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	Info may be used in criminal procedure	Info may be used to initiate criminal procedure
Art. 26 DTC		
TIEAs		
Multilateral convention (1988-2010)		
EU Directives		

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Taxpayer's protection	BE	NL	LUX
		No (longer) legal remedy in administrative law. If a taxpayer knows about the intention to exchange information he could present his case before civil courts	



**EXCHANGE OF TAX INFORMATION
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international cooperation

II. exchange of information for prosecution purposes

- instruments
- limitations

	Info may be used for tax purposes
<p>Convention on Mutual assistance in criminal matters (20.04.1959 – 17.03.1978)</p> <p>European Evidence Warrant (18.12.2008)</p> <p>Belgian Rechtshulpwet (09.12.2004)</p> <p>Belgian art. 463 WIB 1992</p> <p>Luxembourg Laws 08.08.2000 and 27.10.2010</p>	

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Taxpayer's protection	BE	NL	LUX
		In case an examining magistrate is involved : case before the court. Ne bis in idem	