

News Analysis: Controversy Over Belgian Finance Ministry's Taxpayer Database

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A recently published act on the creation of a Ministry of Finance central database has drawn controversy because of a rule that bars a taxpayer from looking at his personal data if he is the subject of a tax audit or investigation or one is being prepared.

The Act of August 3, 2012, on the processing of personal data by the MOF was published in the Belgian State Gazette on August 24. The law is the culmination of a four-year process. In 2009 the tax codes were amended to allow the use of tax information for the administration of other taxes, which would require compiling all information into one central database that could be used by all divisions within the tax administration for the assessment and recovery of all taxes. The only thing missing was a general framework for the tax authorities' processing of information in accordance with the Privacy Act of December 8, 1992. This is what the new law provides. It will enter into force on January 1, 2013, unless an earlier date is set by Royal Decree.

Collection and Exchange of Information

The law authorizes the MOF to collect and process all taxpayers' personal data as necessary to enable the tax administration to carry out its task. Departments of the administration will be allowed to exchange personal data once authorized by a special division established by royal decree to organize the exchange of information. This division will also decide what types of personal data can be exchanged, either "in a systematic or in a punctual manner."

The data collected can be put together to set up a "data warehouse." This will enable the tax administration to carry out targeted audits based on risk indicators, as well as to analyze "relational data" from different departments or divisions of the MOF. To secure the privacy of the taxpayer, the personal data will be encoded "where possible" and will only be decoded when there is a risk of an infringement of a law or regulation that is monitored by the MOF.

The law contains other measures to secure taxpayers' privacy. The right to access the database will be granted on an individual and personal basis, based on the profile of the individual administrator that cannot be transferred and for which the individual will be personally liable. Access to information will be restricted to authorized individuals and to the information they need to carry out their work. Further, access to the files, data, or electronic applications will be monitored by a system that monitors the identities of the individuals who request access and whether this access complies with their profile; in other words, the system will record who accesses what personal information.

Exception to Rights Under Privacy Act

The Privacy Act of December 8, 1992, gives every person whose personal information is stored in a database the right to be informed of his records, to access his data, and to have them corrected if necessary.

However, the new law creates an exception: Taxpayers are not entitled to access their data during a tax audit or investigation or when preparatory activities for an audit or investigation are underway.

However, when the audit or investigation is terminated, this exception must be withdrawn and the taxpayer must be immediately informed thereof.

The exception has caused some commotion in the press. Finance Minister Steven Vanackere said that the exception is necessary for the tax administration to successfully combat fraud and to carry out audits to ensure correct tax collection. Anti-fraud efforts could be compromised if tax evaders had access to the information in the administration's possession, he said.

However, Vanackere said the administration must not abuse these powers and erode taxpayer rights under the Privacy Act by invoking the possibility that an audit will take place. Access can only be denied if a tax audit or an investigation is pending or is being prepared. Therefore, the tax administration must be able to prove that the investigation was initiated when it denies a citizen access to his personal information.

In any event, the taxpayer will always have access to his tax file's basic information via the website www.minfin.be, even during an investigation.

Finally, based on the law on access to public data of 1994 (*Wet openbaarheid van bestuur*), a taxpayer will have access to his data when a notification about an amendment is received or when a tax assessment is imposed.

Marc Quaghebeur, De Broeck Van Laere & Partners, Brussels