

Disclosure of information by the tax authorities

Exemption from the obligation to secrecy under Dutch privacy law

As a result of technological and social developments, government tasks now give rise to more extensive and complex data traffic. Key issues in this context are fraud prevention, increased efficiency, monitoring and tracing - all with a pro-active approach. The combined effect of these developments, however, is liable to give the citizen the growing feeling of being 'tracked' by the authorities.

In the midst of these developments, the tax authorities receive more and more requests from organizations wishing to access their wealth of fiscal information, and they feel an obligation to respond to these requests within the applicable legal framework. In doing so they must consider the interests which the law governing fiscal secrecy serves to protect. The obligation to fiscal secrecy must be able to justify the tax authorities' extensive powers to gather information. Should this obligation fail to assure the public that disclosed data are not being used for other purposes, this will have consequences on the willingness of tax subjects to provide information. It is precisely this willingness that the Dutch tax authorities wish to promote with their compliance strategy, which emphasizes a convincing and customer-friendly approach. In theory, such a lack of willingness could result in the tax authorities being forced to implement even more severe measures to obtain the personal information they need, which in turn could further restrict the individual's personal privacy.

The preparations for this study revealed that the tax authorities are aware that this situation could mark the start of an unwelcome vicious circle. They maintain that when disclosing information they act with reservation and respect their legal obligations [55], and that their powers of disclosure are only used after careful consideration of the interests involved. They refer to the importance of the regulation on disclosure of information (Voorschrift Informatieverstreking - VIV 1993) to illustrate the justification and unity of fiscal policy and to underline that all interests are carefully considered. The Dutch tax authorities are of the opinion that the VIV 1993 regulation sets the Minister of Finance's discretionary power in a public framework which provides for all the necessary conditions and restrictions applicable to the disclosure of information. Furthermore, they maintain that only the current system offers enough flexibility to allow for adequate, legitimate information disclosure measures which unexpected circumstances may necessitate. They do not consider detailed legal regulations to be a good solution, regarding them as unnecessary and even unwelcome.

The tax authorities are convinced that careless disclosure of information can have negative consequences, and their powers are indeed clearly laid out in the VIV 1993. However, the tax authorities' standpoint, which they claim has sufficient legal grounding, is no longer tenable in the light of this study. When viewed against privacy laws and the principle of legality, the relevant legal regulation on the disclosure of data by the tax authorities, based as it is on a system of exemptions, is no longer up to date. It has no adequate legal basis, which in effect means that insufficient legal safeguards are in place to prevent undesired encroachment on the basic right to the protection of personal privacy.

The legislation must therefore be changed. With regard to the fundamental right to privacy protection, legislation must fulfil certain requirements, meaning that:

- it must be sufficiently specific;
- the legislator must provide for the necessity of disclosing data in connection with certain social interests;

- the role of the tax authorities must be clear within the required balance between tasks and responsibilities;
- information must be provided on the main features of data traffic; and
- a policy of maximum transparency must be applied with regard to data disclosure.
- The requirements of subsidiarity and proportionality play an important role in these considerations.

There is still an increasing need for data exchange between government bodies. The greater the interests at stake, the greater the justification for a legally founded system of regulations to govern the necessary disclosure of data by the tax authorities. These regulations should meet national and international legal standards of privacy protection while also allowing for the necessary flexibility.