



of Europe Convention on Mutual Administrative Assistance in Tax Matters, Ireland is obliged to exchange the requested information.

To access the Guide, please see [here](#).

## Luxembourg

### 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 Article 22(1) of the General Tax Act (GTA) which provides that public officials are obliged to strictly observe tax secrecy which is inviolable unless Article 22(2) applies.<sup>8</sup>

Article 22(2) of the GTA stipulates that breach of confidentiality exists in the following situations:

- 1) anyone who discloses circumstances of a taxpayer that have become known to him as a public official or officially consulted expert in taxation proceedings, in criminal tax proceedings or on the basis of a notification from a tax authority in another procedure;
- 2) anyone who discloses the content of negotiations in tax matters in which he was involved as a public official or as an officially consulted expert without authorization;
- 3) anyone who uses without authorization a business or trade secret that has been entrusted to him or has become accessible to him as a public official or officially consulted expert in taxation proceedings or criminal tax proceedings.

Furthermore, the Data Protection Law applies to tax information exchanged. As a result, data processing is only allowed in the following situations:

- 1) the processing is necessary for compliance with a legal obligation to which the controller is subject;
- 2) the processing is necessary for the performance of public duties or the exercise of official authorities of a controller or a third party or parties to whom the data are transferred;
- 3) the processing is necessary for the performance of a contract to which the data subject is party or for the implementation of pre-contractual measures;
- 4) the processing is necessary to achieve the legitimate interests pursued by the controller or a third party or parties to whom the data is disclosed, except where the interests and fundamental rights of freedoms of the individual prevail;
- 5) the processing is necessary to safeguard the vital interests of the person concerned; and
- 6) if the individual has given consent.<sup>9</sup>

Acting in breach with the confidentiality requirement can be punished with imprisonment from 6 months up to 5 years (in case of intent) and/or a fine (Article 412 GTA).

### 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?**

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<sup>8</sup> Das Steuergeheimnis ist unverletzlich.

<sup>9</sup> Article 5 of the Data Protection Law.

The confidentiality principle is strictly applied.

Information may be exchanged with the judicial authorities in criminal proceedings, based on Article 16 of the Law of 19 December 2008 on the cooperation between administrations.<sup>10</sup>

This law also creates the legal framework for data exchange between tax authorities and the General Inspection of Social Security ('Statec'), the Social Security common center, the Ministry of Transport, the Fund of National Family Benefits, the national Solidarity Fund and the Labour Inspection and the Mines.

Moreover, article 179 of the GTA provides that the confidentiality principle does not apply to the exchange of information between the tax administration and the state or municipal governments and their respective officials.

Finally, section 189 GTA provides a general obligation of denunciation by all government agencies and their officials in the event tax fraud is discovered, subject only to the inviolability of the secrecy of correspondence and communications.

As regards VAT, Article 70 of the VAT Law also provides a general obligation of communication and information to third parties for the agents of the administration of registration to enable the recognition of breaches of the legislation on VAT or to verify the correct collection of the tax.<sup>11</sup>

Tax administrations are, however, 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. The term 'compelling public interest' implies a high threshold. For example, such statement may be made when the trust in the tax administration is significantly undermined.

Pursuant to article 412 of the GTA, a breach of the confidentiality is a criminal offence. Acting in breach with the confidentiality requirement can be punished with imprisonment of up to 3 years and/or a fine of EUR 251 to EUR 125,000.

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

Articles 79 to 84 of the statutes of the Luxembourg parliament grant its members the right to ask questions to members of the government. The president of the chamber has to decide if the questions are admissible. The right on information of the Members of parliaments is governed by articles 84bis to article 84septies of the statutes of the Luxembourg parliament. Article 84ter (3) specifically indicates that personal data included in such information must be blackened unless they are vital for the control function of the parliament.

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<sup>10</sup> Loi du 19 décembre 2008 ayant pour objet la coopération interadministrative et judiciaire et le renforcement des moyens de l'Administration des contributions directes, de l'Administration de l'enregistrement et des domaines et de l'Administration des douanes et accises

<sup>11</sup>Loi du 12 février 1979 modifiant et complétant la loi du 5 août 1969 concernant la taxe sur la valeur ajoutée..

### 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 Luxembourg tax law contains no provision allowing the tax administration to disclose information to foreign tax authorities. Under Article 3 of the GTA, the powers given to national tax authorities can be exercised only for domestic tax purposes.

This restriction has the following consequences:

- 1) the administration cannot respond to any request coming from abroad; and
- 2) the administration cannot transmit to a foreign authority information covered by tax secrecy.

However, 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.

With respect to tax treaties, Luxembourg 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.

## Norway

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

The legal obligation to keep taxpayer information confidential is included in § 3-1 of the Norwegian Tax Administration Act (Skatteforvaltningsloven; NTAA). The tax authorities in Norway are subject to a strict duty of confidentiality in the law, which limits what information about persons and companies can be handed out. The provision states the main rule on confidentiality for the tax authorities, including who has a duty of confidentiality, to whom the duty of confidentiality applies, what information the duty of confidentiality covers, and what the duty of confidentiality does not cover.

The duty of confidentiality includes information about any assets or income or other financial, business or personal matters. In the preparations for the provision, (Ot.prp.nr. 29 (1978-79) p. 73), it appears that the duty of confidentiality does not prevent the passing on of information that is generally known or easily available elsewhere, or that is given in such a form that it cannot be traced back to any individual, company or similar.

Disclosure of confidential information is further regulated in chapter 3 of the NTAA.

#### Disclosure of information to public authorities

To what extent tax authorities may inform public authorities is regulated in § 3-3 NTAA.

The provision entered into force on 1 October 2019 and is based on a request from the Parliament that the tax authority should be given a better opportunity to provide information to other public authorities in order to combat economic crime and tax evasion (Prop. 1 LS (2018-2019) point 17.5.3). In the amendment, it was decided that the provision should be given a more general design than previously.

The wording must be understood so that the tax authorities can, not that the information must be disclosed to public authorities. Access is limited to where it is "necessary" to carry out tasks in accordance with the law, or to prevent business from being carried out in an irresponsible manner. Considerations for privacy have been attempted here in that only "necessary" information is published. It follows from the second paragraph that the assessment of whether information should be disclosed requires an assessment of proportionality.

As a protection for the taxable person and their information, the receiving authority must have a legal basis for receiving and using the information in its own regulations cf. Prop. LS (2018-2019) point 17.5.3.

The provision's second paragraph states that disclosure according to the first paragraph requires a proportionality assessment. The authorities' need to share information with other public authorities must be assessed against the disadvantages the disclosure entails for the individual taxpayer, in the form of interference with privacy and the risk of information of competitive importance going astray, cf. second paragraph. The privacy principles expressed in the privacy regulation must be considered when the issue of disclosure is assessed (Prop. 1 LS (2018-2019) point 17.5.3). Emphasis must be placed on the purpose of the processing of information by the recipient authority, whether the recipient is subject to

a duty of confidentiality, which information must be disclosed and the number of people who have access to the information.

The tax authorities must, for example, assess how closely related there is between the purpose for which the information is collected and the purpose for which it is to be used by the recipient. The factors may lead to information that is important to a public authority not being disclosed because the disclosure would involve a disproportionate intrusion into privacy, or the risk of competitively sensitive information going astray.

Paragraph 3-3-1, first subparagraph, of the Tax Administration Regulations states that when assessing whether the requirement for proportionality in this provision has been met, emphasis must be placed on whether the receiving body will be able to make a correct decision or carry out a more efficient and appropriate one service than if it had not received the information. Emphasis must also be placed on the purpose of the processing of information by the recipient, whether the recipient is subject to a duty of confidentiality, which information must be disclosed and the number of people who have access to the information.

The Tax Administration Regulations mention in § 3-3-1, second subparagraph a large number of cases where the conditions for disclosure must always ("regardless") be considered fulfilled without further assessment. Examples include:

- ▶ Authorities that enforce rules on compulsory occupational pensions, import and export of goods, accounting obligations, auditing, lotteries, limited liability companies and foundations.
- ▶ Public authorities for statistical purposes
- ▶ To the police and public prosecutor's office for use in criminal proceedings
- ▶ To Økokrim (the National Authority for Investigation and Prosecution of Economic and Environmental Crime)<sup>12</sup> on request due to a suspicious transaction.

#### The limitations of the obligated confidentiality

Norway's legal framework protects the confidentiality of taxpayer information. Paragraph 1 of Section 3-1 of the Norwegian Tax Administration Act (NTAA) imposes general obligations for anyone holding or carrying out or having held or carried out an office, position or assignment relating to the tax authorities to prevent unauthorised access to, or knowledge of, what they in their work have been informed of in regard to circumstances relating to someone's wealth or income, or economic, business or personal relationships.

The provision in § 3-7 NTAA specifies the limits of the duty of confidentiality cf. § 3-1. According to this provision, the duty of confidentiality shall not prevent information from being released in specific cases where there is no need for protection.

The duty of confidentiality according to § 3-1 does not prevent confidential information from being made known when there is consent from those who have a right to confidentiality. The preparatory work, Prop. 38 L (2015–2016) point 9.4.8, establishes that for the assessment of when there is consent according to Section 3-7 letter a, Personal Data Act's definition of consent shall apply, including "any voluntary, specific, informed and unequivocal statement of intent from the data subject where the person concerned, by means of a declaration or a

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<sup>12</sup><https://okokrim.no/oekokrim-in-english.549343.no.html>

clear confirmation, gives his consent to the processing of personal data concerning the person concerned', cf. the data protection regulation article 4 no. 11.

The obligation of confidentiality does not prevent the release of information, which is initially subject to confidentiality, when the need for protection is considered to be met by the information being considered to be sufficiently anonymized. The limitation in the confidentiality obligation under letter b must consider the possibility of linking risk, that is, the possibility that confidential information can be revealed by linking the information with information that is available elsewhere.

The decisive factor for whether a document containing confidential information can be released in anonymized form is whether the possibilities of linking the information to the person to whom it relates have effectively been removed.

## 2. How is confidentiality implemented in practice?

### 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 media?

In general, as already stated, the tax authorities in Norway are subject to a strict duty of confidentiality in the law cf. § 3-1 NTAA, which limits what information about persons and companies can be handed out. This means that the, as a general rule, Norwegian tax authorities are not allowed to comment publicly on statements a taxpayer has made about their own tax file in media.

However, the duty of confidentiality for the Norwegian tax authority is limited when there is no need for protection cf. the § 3-7 NTAA, as already stated. The duty of confidentiality does not therefore prevent the tax authority from commenting on information when its already generally known or generally available elsewhere. If the taxpayer has provided incorrect information to the media, the tax authority cannot correct this in the media, as the actual information is not already generally known or generally available elsewhere.

In other words, if the taxpayer has revealed confidential information or the information is by other reasons already publicly known, this would be a situation where there is no longer need for protection of this information, cf. § 3-7 NTAA. However, the tax authorities would normally choose to continue to treat the information as confidential and would therefore refrain from commenting publicly on statements. Often, the tax authorities will instead give general comments on the tax regulations which the individual tax case concerns. For instance, if the individual case concerns whether a certain income in kind is taxable or not, the tax authorities would typically comment on how income in kind is generally taxed.

If the taxpayer gives consent for the tax authorities to provide information to the media, the tax authorities' policy is to ask the taxpayer to provide the information to the media himself.

**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 media in a response to a criminal or tax investigation?**

As stated previously, the tax authority can share information with the police and Økokrim upon request. If information about the case or the tax file is described in media, and the information is already generally known or generally available elsewhere cf. § 3-7 NTAA, the duty of confidentiality cf. § 3-1 does not prevent the tax authorities from commenting publicly. However, the tax authorities are bound by the duty of confidentiality for information that is not generally known.

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

In Norwegian legislation, there is no provision that gives the tax authority access to inform the parliament on specific individual tax files. This would be in breach of the strict duty of confidentiality the Norwegian tax authorities are subject to. However, as mentioned earlier, The Tax Administration Regulations in § 3-3-1 regulates situations where tax authority can provide information to other public authorities, but this often applies in more general cases of information sharing or in connection with police investigations.

Paragraph 75 f of the Norwegian Constitution provides the Norwegian Parliament (Stortinget) the right to access public authorities' documents. Reportedly, the provision has not been in use since 1959. However, should the Norwegian parliament pursuant to this paragraph 75 f of the Constitution decide to request documents from the tax authorities, the confidentiality provisions in the NTAA § 3-1 would not prevent this as the Norwegian Constitution is *lex superior* to the NTAA.

If the Norwegian Parliament has not requested information based on the paragraph 75 f of the Norwegian Constitution, the § 3-1 (1) NTAA would restrict the tax authorities from disclosing confidential information. There is no exemption from the confidentiality provisions that allows the tax authorities to disclose confidential information to the Parliament. If Parliament was to be informed about specific tax cases, this would require that it is possible to eliminate individualising characteristics, cf. § 3-7 NTAA.

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?

Norway's legal framework ensures the confidentiality and appropriate use of exchanged information in line with its international exchange agreements, which comprise Double Taxation Conventions (DTC), the Nordic Convention on Mutual Administrative Assistance in Tax Matters, and the Convention on Mutual

Administrative Assistance in Tax Matters. All those instruments (except the Nordic Convention) include a provision substantially similar to Article 26, paragraph 2, of the OECD Model Tax Convention or Article 8 of the OECD Model Tax Information Exchange Agreement (TIEA) requiring exchanged information to be treated as secret in the same manner as domestic information, and imposing restrictions on the use and disclosure of the information, i.e. the information can only be used for tax purposes, unless otherwise agreed between the parties to the agreement.

In general, we would also like to add that in the event of a conflict between Norwegian law and international law, Norway applies as a general rule the “dualistic principle”, which means that Norwegian law takes precedence over international law. However, to avoid contradiction, Norway practices to a certain extent the “principle of presumption”, which means that Norwegian law is presumed to be in accordance with our obligations under international law. This is supported by rulings of the Supreme Court in various cases.

The wording "public authorities" in § 3-3 NTAA does not delimit foreign authorities. In Ot.prp. no. 21 (1991-92) point 4.6.3.2, it is stated that "The Department has also interpreted the provision so that it can apply to foreign public authorities". The Ministry justifies this extradition access in the need to cooperate across national borders. Based on the statement in the preparatory work, information can be disclosed to foreign authorities. Normally, it is only information according to the tax administration regulations § 3-3-1 second paragraph letter a that is applicable to hand over to foreign authorities. In addition to the access to disclosure in § 3-3 NTAA, the Norwegian authorities have entered into several agreements on the exchange of information across national borders. Information is typically exchanged with the authorities of foreign countries on the basis of tax agreements entered into on the basis of the Double Taxation Agreements Act, where such agreements are entered into with the consent of the Parliament cf. § 1. Article 26 of the OECD model convention requires that the tax treaty countries can exchange information, and tax agreements concluded according to such a pattern will thus typically contain provisions on the exchange of information.

## United Kingdom

To provide some background to the question of taxpayer confidentiality in the UK, a spokesperson for the UK tax authority, His Majesty's Revenue and Customs (HMRC) said: "Taxpayer confidentiality is the bedrock of the UK's tax administration system and effective functioning of HMRC depends on its customers being able to trust the information held on them is appropriately protected and disclosed only in controlled, limited circumstances."

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

Section 3 of the Commissioners for Revenue and Customs Act 2005 (CRCA 2005) contains a declaration of confidentiality as follows:

"(1) Each person who is appointed under this Act as a Commissioner or officer of Revenue and Customs shall make a declaration acknowledging his obligation of confidentiality under section 18.

"(2) A declaration under subsection (1) shall be made:

(a) as soon as is reasonably practicable following the person's appointment; and  
(b) in such form, and before such a person, as the Commissioners may direct."

Section 17 of CRCA 2005 says: "Information acquired by the Revenue and Customs in connection with a function may be used by them in connection with any other function." This is subject to any provision restricting or prohibiting the use of information contained in the Act, any other enactment, or an international or other agreement to which the UK or His Majesty's Government is party.

Section 18 of CRCA 2005 again reiterates the obligation not to disclose information but with the following exceptions for disclosures:

- ▶ made for the purposes of a function of the Revenue and Customs that do not contravene any restriction imposed by the Commissioners;
- ▶ made in accordance with section 20 (public interest disclosure) or section 21 (disclosure to a prosecuting authority);
- ▶ made for the purposes of civil proceedings relating to a matter in respect of which the Revenue and Customs have functions;
- ▶ made for the purposes of a criminal investigation or criminal proceedings relating to a matter in respect of which the Revenue and Customs have functions;
- ▶ made in pursuance of an order of a court;
- ▶ made to His Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27 (which allows HMRC powers to be conferred on such inspectors);
- ▶ made to the Director General of the Independent Office for Police Conduct, or a person acting on the Director General's behalf, for the purpose of the exercise of a function by virtue of section 28 (which allows HMRC powers to be conferred on such persons);
- ▶ made with the consent of each person to whom the information relates;
- ▶ made to Revenue Scotland or the Welsh Revenue Authority in connection with the collection and management of a devolved tax within the meaning of the Scotland Act 1998 or the Government of Wales Act 2006 respectively.

Contravention of section 18 can result in imprisonment for up to two years, a fine or both. Such misconduct could also affect employment.

There are exceptions to the above non-disclosure rules in sections 20 and 21 of CRCA 2005 for the prevention of criminal activity, to comply with an obligation under international or other agreements relating to the movement of persons, goods or services and some other matters.

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

The general principles of confidentiality and non-disclosure are reinforced by HMRC's Professional Standards Committee (which oversees the administration of the tax system and applies policies in accordance with its values). There is also a code of governance for resolving tax disputes and a policy and legal framework document on confidentiality and the disclosure of information by HMRC.

HMRC's internal guidance on this subject is contained in its Information Disclosure Guide. There is also an English common law principle supporting a duty of confidentiality on a public authority. If personal or confidential information is obtained in the exercise of a legal power or public duty, the Marcel principle (*Marcel v Commissioner of Police of the Metropolis* [1992] Ch 225) will apply. Generally, the recipient of the information will owe a duty to the person who provided the information or to whom it relates, not to use it for other purposes. Although the principle may be overridden by explicit statutory provisions, these should be interpreted as narrow exceptions.

HMRC is also a data controller under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 which imposes statutory provisions on the use and protection of information.

HMRC did argue that disclosures made to the press in relation to tax arrangements in the case of *R (on the application of Ingenious Media Holdings Plc and another v HMRC* [2016] UKSC 54 related to its ancillary functions and was therefore within section 18(2), CRCA 2005. It argued that the disclosure of confidential taxpayer information was to establish good relations with the financial press, to publicize the department's view of complex avoidance schemes, and to try to obtain information from journalists. However, the UK Supreme Court rejected this argument and held that a clear breach of taxpayer confidentiality had occurred. The case of *Mark Mitchell & Anor v The Commissioners for HMRC* [2023] EWCA Civ 261 provides an example of a situation where HMRC was able to disclose information about one taxpayer's affairs to another because it was, first, "for the purposes of a function of HMRC" and secondly "for the purposes of civil proceedings".

HMRC's Information Disclosure Guide has a summary section that may be useful. Under the heading "How can I disclose information outside the Department in a lawful way?", the manual says:

"Disclosing information to persons outside of HMRC is only permitted in the circumstances detailed below:

- ▶ For the purposes of HMRC's functions. An example is where it is necessary to advise a bailiff of a taxpayer's name and address in order that the bailiff can enforce collection of overdue tax, see IDG40400.
- ▶ Where the person or organisation that the information is about has given their consent, see IDG40210. An example could be a taxpayer who provides authorization for an agent, accountant or other third party to receive confidential information.

- ▶ Where the duty of confidentiality is specifically overridden by legislation that permits the disclosure of information to a particular third party. These are often known as 'legal' or 'information' 'gateways'. See [IDG40320](#).
- ▶ Where HMRC receives a court order that is binding on the Crown which instructs HMRC to disclose information. See [IDG40500](#).
- ▶ Where disclosure is made for the purposes of a prosecution being pursued by HMRC. See [IDG54300](#).
- ▶ Where disclosure is in the public interest. The term 'public interest' implies a high threshold because such disclosures should be made only if no other statutory gateway exists. Furthermore, the authority to make public interest disclosures is narrowly drawn by the Commissioners for Revenue and Customs Act 2005 (CRCA). If information is shared not in accordance with that Act, the individual may be personally liable to a criminal sanction. (See HMRC's Information Disclosure Guide at [IDG60100](#).)

The situations when a public interest disclosure can be made are set out in [section 20\(2\) to \(7\)](#) of the Commissioners for Revenue and Customs Act 2005:

(2) To a person exercising public functions to prevent or detect crime in accordance with an obligation under an international or other agreement.

(3) To a regulatory body regarding misconduct by a member relating to a function of the Revenue and Customs.

(4) To a constable exercising functions relating to the movement of persons or goods into or out of the UK or to prevent or detect crime.

(5) To the National Criminal Intelligence Service for a purpose connected with its functions under section 2(2) of the Police Act 1997 (criminal intelligence).

(6) To a person exercising public functions relating to public safety or health for the purposes of those functions.

(7) To the Secretary of State to enable information to be entered in a computerised database which relates to (i) a person suspected of an offence, (ii) a person arrested for an offence, (iii) the results of an investigation, or (iv) anything seized.

- ▶ Disclosure to the relevant prosecuting authorities. See [IDG54300](#). See [IDG40120](#) for more information on disclosing information with lawful authority."

Looking at the specific questions raised:

**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?**

Given the Supreme Court ruling in the *Ingenious Media* case, it seems unlikely that HMRC would comment publicly. HMRC's spokesperson said: "This isn't a disclosure that challenges HMRC's duty of confidentiality. A taxpayer can say what they like about their own affairs." Given the restrictions of the Commissioners for Revenue and Customs Act 2005, it is very

unlikely that HMRC would comment on an individual case. Instead, HMRC would simply state general departmental practice and policy.

**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?**

Again, public comment would be unlikely, but information could be disclosed to relevant bodies under the CRCA 2005. An HMRC spokesperson said: "In accordance with our duty of confidentiality we would not normally comment on a criminal investigation. Any criminal proceedings which follow that investigation should be accessible to the public and open to media reporting."

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

It is unlikely that disclosures would be made publicly to Parliament regarding individual circumstances. However, HMRC does have a memorandum of understanding with the honours secretariat in the Cabinet Office whereby HMRC provides very limited information on the risk that a nominee might pose to the integrity of the honours system, because of their tax affairs. Basically, this consists of rating the nominee as low, medium or high risk. HMRC can also disclose information if it has the taxpayer's consent, but I believe that this would not be in Parliament generally. On this subject, an HMRC spokesperson said: "We do not treat MPs any differently to anyone else asking about specific customers. HMRC doesn't comment on a specific case unless it is reasonably necessary for the purposes of HMRC's tax collection and management functions. We do sometimes release a press statement following a successful prosecution for tax fraud. That is to raise awareness and aims to deter people from tax evasion."

### 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?

Disclosure of relevant information is possible here because it would fall under the exception relating to carrying out HMRC's functions. As stated above, section 17 of CRCA 2005 says: "Information acquired by the Revenue and Customs in connection with a function may be used by them in connection with any other function." However, this is subject to any provision restricting or prohibiting the use of information contained in the Act, any other enactment, or an international or other agreement to which the UK or His Majesty's Government is party.

## United States

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

Section 6103 of the US Internal Revenue Code (IRC) provides rules to protect the confidentiality of taxpayer information and to prevent its disclosure. The confidentiality requirement applies to US officers and employees, which would include all US tax officials.

The provisions of Section 6103 are lengthy and detailed, but a summary of the most relevant to the MoF inquiry is below. (Underscoring is by the author of the report for the attention of the reader.)

Section 6103(a) provides that no officer or employee of the United States shall disclose any tax return or tax return information obtained by him in any manner in connection with his service as an officer or an employee of the United States or otherwise.

The implementing definitions are quite broad.

For example, a tax return is defined as any tax return or tax information return that is filed under the IRC, including all amendments, supplements, and supporting schedules, attachments, and lists which are supplemental or part thereof (IRC Section 6103(b)(1)).

In addition, tax return information is defined to include, inter alia, a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary of the Treasury with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense (IRC Section 6103(b)(2)).

The Taxpayer Bill of Rights (TBOR) by issued by the US Internal Revenue Service (IRS) also protects the right of taxpayers to confidentiality. Section 8 of the TBOR provides in relevant part as follows:

*IRS Publication 1, Your Rights as a Taxpayer, includes a full list of taxpayers' rights.*

*It includes **The Right to Confidentiality.***

*Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the*



*right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.*

*What you can expect:*

- ▶ *In general, the IRS may not disclose your tax information to third parties unless you give us permission. (Example: You request that we disclose information for a mortgage or student loan application.)*
- ▶ *In general, the IRS can't contact third parties such as your employer, neighbours or bank, to get information to adjust or collect the tax you owe unless it gives you reasonable notice in advance.*
- ▶ *Generally, the same confidentiality protection that you have with an attorney also applies to certain communications with someone who is authorized to practice before the IRS, such as a certified public accountant or enrolled agent.*

*Confidential communications are those that:*

- ▶ *Advise you on tax matters (other than tax return preparation) within the scope of the practitioner's authority to practice before the IRS,*
- ▶ *Would be confidential between an attorney and you, and*
- ▶ *Relate to noncriminal tax matters before the IRS, or*
- ▶ *Relate to noncriminal tax proceedings brought in federal court by or against the United States.*

*If tax preparers knowingly or recklessly disclose or use your tax information for any reason other than for tax return preparation, they may face criminal fines and prison.*

### Penalties

Penalties may be imposed on officers or employees of the United States for wilfully disclosing tax return or tax return information in violation of the provisions of the IRC. The penalties vary depending on the nature of the violation but may be in an amount of up to USD 5,000 and/or for imprisonment of up to 5 years (IRC Section 7213(a) and IRC Section 7213A).

In addition, a taxpayer whose information has been disclosed by a US officer or employee, or by other persons, either knowingly or by reason of negligence, in violation of Section 6103, may bring a civil action for damages against the United States government (IRC Section 7431). In general, the damages can be the greater of: (1) USD 1,000 for each unauthorized disclosure; or (2) the sum of: (i) the actual damages sustained by the taxpayer, and (ii) punitive damages in the case of wilful disclosure or disclosure resulting from gross negligence.



## 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?

As noted above, Section 6103(a) makes all tax returns and tax return information confidential and prohibits any officer or employee of the United States from disclosing it, except as otherwise authorized by statute.

Also as noted, Section 6103(b)(2) defines “return information” broadly to include anything relating to taxes gathered by or furnished to the Secretary of the Treasury or a designate, under whom the IRS operates. This includes not only tax forms and documents, but also most importantly, whether a return is under audit or whether an individual is under examination or criminal tax investigation.

It is the practice of the Department of Justice (DoJ) and the IRS not to comment publicly on any litigation or investigation in progress – disclosure of the fact of an investigation is expressly prohibited by Section 6103. That said, the DoJ and IRS routinely issue press releases upon the handing down of indictments, verdicts, and judgments in civil and criminal cases, and sentencing in criminal cases. That information is derived from court records, and is considered outside the scope of Section 6103, as the records do not come from the Treasury Department.

To this point, information about a person’s taxes that is not obtained by the Secretary of Treasury or a designate is not covered by Section 6103 – for example, the US Federal Ninth Circuit Court of Appeals has held (with other Federal Circuit Courts of Appeal agreeing) that tax returns obtained by the Naval Investigative Service during a search of a seaman’s bunk are not “return information” and not subject to Section 6103. Finally, there is a split in the Federal Circuit Courts of Appeal as to whether Section 6103 covers “return information” that is in the public domain when disclosed by an officer or employee of the United States – the better reasoned view is that it does not (but it does in the US Tenth Circuit Court of Appeals).

### 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?

As noted above, Section 6103(a) prevents public comments that would disclose tax returns or tax return information. And as mentioned, it is DoJ’s and IRS policy not to comment on ongoing matters. That said, Section 6103(a) does not prohibit disclosures of court records or proceedings in open court, provided that they are the source of the information disclosed. Often, DoJ and IRS will respond to press inquiries simply by referring to the indictment or court judgment.



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

IRC Section 6103 permits the disclosure of tax information to committees of the US Congress, to the President, and to the media, in specified circumstances, as follows:

Disclosure to Committees of Congress

Tax authorities may disclose general tax information to a committee of the US Congress, upon written request from such committee, but tax returns or tax return information about specific taxpayers may not be disclosed to a committee unless the committee is in closed executive session or the taxpayer consents in writing to such disclosure.

This applies to the Committee of Ways and Means of the US House of Representatives (i.e. the tax and budget committee of the US House of Representatives), the Committee on Finance of the US Senate, the Joint Committee on Taxation of the US Congress, and other committees of the US Congress.

As an example, IRC Section 6103(f)(1) provides as follows:

**DISCLOSURE TO COMMITTEES OF CONGRESS.**

- (1) COMMITTEE ON WAYS AND MEANS, COMMITTEE ON FINANCE, AND JOINT COMMITTEE ON TAXATION. Upon written request from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

Disclosure to the President

Information concerning a particular taxpayer may be disclosed to the President of the United States by the Secretary of the Treasury upon the written request of the President, signed personally by him.

IRC Section 6103(g)(1) provides in this regard as follows:

**DISCLOSURE TO PRESIDENT AND CERTAIN OTHER PERSONS.**

- (1) IN GENERAL. Upon written request by the President, signed by him personally, the Secretary [of the Treasury] shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with



respect to any taxpayer named in such request. Any such request shall state--

- (A) the name and address of the taxpayer whose return or return information is to be disclosed,
- (B) the kind of return or return information which is to be disclosed,
- (C) the taxable period or periods covered by such return or return information, and
- (D) the specific reason why the inspection or disclosure is requested.

#### Disclosure to the Media and Other Persons

Section 6103(m)(1) permits taxpayer identify information, i.e. the mailing address of a taxpayer, to be disclosed to the media and to certain other persons and agencies in the following limited circumstances:

#### DISCLOSURE OF TAXPAYER IDENTIY INFORMATION

- (1) TAX REFUNDS - The Secretary [of the Treasury] may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

#### Disclosure in Other Situations

Section 6103 permits disclosure of tax returns and tax return information in other specified situations provided the required conditions in each case are satisfied:

- ▶ Disclosure to a Designee of the Taxpayer (IRC Section 6103(c));
- ▶ Disclosure to US State Tax Officials and US State and Local Law Enforcement Agencies (IRC Section 6103(d));
- ▶ Disclosure to Persons Having a Material Interest (IRC Section 6103(e));
- ▶ Disclosure to Certain Federal Officers and Employees for Purposes of Tax Administration (IRC Section 6103(h));
- ▶ Disclosure to Federal Officers or Employees for Administration of Federal Laws Not Relating to Tax Administration (IRC Section 6103(i));
- ▶ Statistical Use (IRC Section 6103(j));
- ▶ Disclosure of Certain Returns and Return Information for Tax Administration Purposes (IRC Section 6103(k));
- ▶ Disclosure of Returns and Return Information for Purposes Other than Tax Administration (IRC Section 6103(l));
- ▶ Disclosure of Tax Identity (IRC Section 6103(m));
- ▶ Certain Other Person (IRC Section 6103(n)); and
- ▶ Disclosure of Returns and Return Information with Respect to Certain Taxes (IRC Section 6103(o)).

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 6105 of the US Internal Revenue Code (IRC) provides rules that apply to protect the confidentiality of information under tax conventions and to prevent its disclosure.

Section 6105(a) provides the general rule that tax convention information shall not be disclosed.

Section 6105(b) provides a number of exceptions that permit tax convention information to be disclosed, as follows:

Section 6105(b) – EXCEPTIONS. Section 6105(a) shall not apply to –

- (1) to the disclosure of tax convention information to persons or authorities (including courts and administrative bodies) which are entitled to such disclosure pursuant to a tax convention,
- (2) to any generally applicable procedural rules regarding applications for relief under a tax convention,
- (3) to the disclosure of tax convention information on the same terms as return information may be disclosed under paragraph (3)(C) or (7) of section 6103(i) [relating to disclosure in the case of terrorist activities], except that in the case of tax convention information provided by a foreign government, no disclosure may be made without the written consent of the foreign government, or
- (4) in any case not described in paragraphs (1), (2), or (3), to the disclosure of any tax convention information not relating to a particular taxpayer if the Secretary of the Treasury determines, after consultation with each other party to the tax convention, that such disclosure would not impair tax administration.

Section 6501(c) defines tax convention information and tax conventions.

(1) TAX CONVENTION INFORMATION means:

- (A) any agreement entered into with the competent authority of one or more foreign governments pursuant to a tax convention,
- (B) any application for relief under a tax convention, background information related to such agreement or application,
- (D) any document implementing such agreement, and
- (E) any other information exchanged pursuant to a tax convention which is treated as confidential or secret under the tax convention.

(2) TAX CONVENTION means:

- (A) any income tax or gift and estate tax convention, or
- (B) any other convention or bilateral agreement (including multilateral conventions and agreements and any agreement with a possession of the United States) providing for the avoidance of double taxation, the prevention of fiscal evasion, non-discrimination with respect to taxes, the exchange of tax relevant information with the United States, or mutual assistance in tax matters.