

# 12 France

## Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

### Tax crime legislation

472. France's General Code of Taxes (CGI) sets out a series of tax crime offences, all of which require criminal intent (*mens rea*). The below table lists examples of tax offences in France and their maximum sentences.

**Table 12.1. Tax offences in France and maximum sentences**

Offence	Maximum sentence
Fraudulent tax evasion (CGI, art. 1741, 1 <sup>st</sup> part)	Five years' imprisonment + fine of double the profit made by committing the offence
Aggravated fraudulent tax evasion (CGI, art. 1741, 2 <sup>nd</sup> part)	Seven years' imprisonment + fine of double the profit made by committing the offence

473. France notes that, apart from criminal offences, the CGI also sets out a series of "tax administrative penalties", which are investigated and settled in the non-criminal sphere. It also notes there are some general offences in the Criminal Code (CP) that apply to breaches of tax law (e.g. VAT scam is treated as a general scam in the terms of art. 313-1 of the CP).

474. French law also provides for "naming and shaming" as a complementary sentence for tax crimes, whereby the court can order that an offender's name is published in the media for a period not exceeding two months (CGI, art. 1741).

475. **Statute of limitations:** Tax crime offences have a six-year limitation period in France. The limitation period starts on the day on which the offence was committed and can be interrupted through different types of measures taken by the public prosecution service and by the courts (arts. 8 and 9-2 of the French Code of Criminal Procedure (CPP)).

476. **Complicity:** According to articles 1742 of the CGI and articles 121-6 and 121-7 of the CP, accomplices of tax crimes can be sentenced to the same maximum penalties as the main offenders. French law sets the definition of "accomplice" as the individual who knowingly, through aide or assistance, facilitated the preparation or the commission of the crime, and the individual who, by employing threats, promises or orders instructed or provoked somebody else to commit a crime.

477. **Attempt and conspiracy:** Attempt and conspiracy to commit tax crimes are criminal offences in France (CGI, art. 1741).

478. **Territorial and nationality jurisdiction:** France has jurisdiction over any crime committed wholly or partly inside French territory. It also has jurisdiction the offence damaged the budget of France and was committed by a French resident, even outside French borders.

479. **Legal persons:** In France, legal persons can be held criminally liable for any criminal offence (CP, art. 121-2). Regarding tax crimes, the court can charge both the natural and legal persons for the same act. The maximum sentence applied to legal persons is a fine amounting to five times the maximum sanction available for natural persons.

480. **Professional enablers:** Professional enablers may be charged with complicity in tax fraud (cf. supra §5). France also has a non-criminal sanction regime for professional enablers (CGI, art. 1740 A bis).

### **Enforcement of tax crime**

481. The below table shows the number of natural persons convicted of tax crime offences in France in the tax years ending 2014-18.<sup>1</sup>

**Table 12.2. Enforcement of tax crimes in tax years ending 2014-18**

Tax years ending	Number of court cases the resulted in criminal conviction
2014	722
2015	712
2016	616
2017	650
2018	738 (provisional data)

482. The below table shows the amount and types of sanctions imposed to tax crime offenders in France in tax years ending 2014-18.

**Table 12.3. List of sanctions imposed in tax years ending 2014-18**

Sanction	2014	2015	2016	2017	2018*
<b>Imprisonment</b>	605, of which 481 with suspended prison time	569, of which 411 with suspended prison time	503, of which 381 with suspended prison time	507, of which 386 with suspended prison time	604, of which 465 with suspended prison time
<b>Fine</b>	182	220	186	195	220
<b>Prohibition of practising certain professions/activities</b>	176	195	218	207	284
<b>Community service</b>	0	1	1	0	1
<b>Day-fines</b>	8	9	3	8	10
<b>Broadcasting/publication in the media of sentence</b>	19	23	7	9	8

483. France notes that almost all individuals sentenced to imprisonment for tax offences under Articles 1741 and 1743 of the CGI from 2014-15 received less than three years of jail time. Of these, the vast majority (82%) were in prison for less than one year.

484. The below table lists the type and number of sanctions imposed in France in tax years ending 2015-18.

Table 12.4. List of other sanctions imposed in tax years ending 2015-18

Length of prison sentence	>0 – 6 months	>6 months – 1 year	>1 – 2 years	>2 – 3 years	>3 – 5 years
Number of times imposed in 2014	41	55	26	2	
Number of times imposed in 2015	61	68	27	2	
Number of times imposed in 2016	59	42	13	4	4
Number of times imposed in 2017	39	60	20	2	
Number of times imposed in 2018 (provisional data)	53	65	18	2	1

485. **Availability of settlements:** France allows for settlements in tax crime cases, provided the offender pleads guilty to the offence and accepts the length and type of sentence requested by the prosecution. Where France enters into a settlement with a legal person for tax crimes cases the legal person must pay an extra fine of up to 30% of its annual turnover and adopt a compliance programme under the supervision of the French Anti-Corruption Agency (CPP, arts. 41-1-2 and 180-2). France notes that the possibility of settling tax crime cases has allowed for a successful and effective settlement in two complex cases involving legal persons in 2019.

486. **Availability of tax deductions for civil and criminal sanctions:** Sanctions, including criminal sanctions and the costs linked to an asset that was seized or confiscated, are non-deductible in France (CGI, 39, 39-2).

487. **Tax gap:** The European Commission estimated France's VAT gap for 2018 at over EUR 8 billion, or 5% of the VAT total tax liability (Center for Social and Economic Research, 2019<sup>[8]</sup>).

## Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

488. **Tax Crime Strategy:** France's policy for addressing tax crimes includes a "whole-of-government" approach, set out yearly by the Parliament as an annex of the Budget Law.<sup>2</sup> This includes the co-operation between tax crime investigators, the tax authority, the public prosecution service and other government agencies, most notable those housed within the Ministry of Justice.

489. France's tax crime strategy is orientated towards fighting the most serious offences, as laid out in a 2014 official paper that acts as the guide for all law enforcement and prosecution agencies, and in the Law on Fighting Tax Fraud (Law No. 2018-898 of 23 October 2018).<sup>3</sup> For the 2016-19 period, the French government's strategy for fighting tax crime focused on adapting the investigative process to new, international threats, optimising the management and security of digital information, reinforcing the fight against identity theft, mapping risks, and improving techniques for investigation, sanctioning and recovering assets.

490. France notes that in 2019, its Judiciary Police created a Directorate on Financial Crimes, which deals with the most complex tax crime investigations. For example, in 2019 a tax crime investigation against a digital services company was concluded by settling for a fine of EUR 965 million.

491. **Threat Assessment:** France's national tax crime strategy is assessed on a yearly basis by the Ministry of Justice, using information transmitted by the courts and the prosecution service. Successive assessments conducted by the Court of Auditors and by the Parliament examine the actions and the strategy implemented by the French Government and suggest improvement measures. Other threat assessments include a report on trends and analysis on terrorism financing and money laundering

published every year by TRACFIN, France's FIU, and research and programming reports published by different government agencies.

492. **Communication Strategy:** France notes that in serious cases of tax fraud, it has issued press releases to inform the media about the results. The Ministry of Budget also issues regular publications regarding tax fraud prevention that are posted on its website: <https://www.economie.gouv.fr/presse/communiqués>

### Box 12.1. Example of a successful implementation of tax crime strategy: France

Following a large investigation carried out jointly by over 100 agents of the tax administration and the specialised police forces of the Ministry of Interior, a distribution channel for a specific computer programme, designed to suppress revenue and which was being used in the pharmaceutical sector, was dismantled in spring 2015. This unprecedented operation allowed the investigators to search the premises of the developer of the cash management software, and those of some of its resellers and users. This was the first time a judicial order was granted to search and seize the premises of a software developer on a criminal case.

Also, in 2015, the tax authority carried out another large-scale operation on over 200 users of another software programme, which was designed to hide revenue, this time in the retail sector. This operation used, for the first time on a large scale, the new procedure of “unannounced computer control”, which allows the tax administration to seize online documents and use them for assessing the tax damage.

Both operations were the subject of a press release on 4 May 2015.

## Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

493. The below table shows the powers of the tax crime investigation agency of France.

**Table 12.5. Investigative powers of tax crime investigation agency (Public Prosecution Service and Judicial Police)**

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	<b>Full direct power</b> Court order required
Obtain documents from third parties	<b>Full direct power</b>
Interview	<b>Full direct power</b>
Inquiry powers (e.g. power of coercion)	<b>Full direct power</b>
Intercept mail and telecommunications	<b>Indirect power</b> In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.
Conduct covert surveillance	<b>Full direct power</b> In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud and after authorised by a judge.
Conduct undercover operations	<b>Full direct power</b> In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.

Search and seize computer hardware, software and electronic storage media	Full direct power Court order required
Arrest	Full direct power Court order required

494. **Legal professional privilege:** Legal professional privilege in France is governed by article 66-5 of Law 71-1330, of 31 December 1971, which states that conversations, mail and, more generally, any communications between a lawyer and his/her client and between lawyers are subject to professional secrecy. This privilege extends to accountants. However, France notes that legal privilege does not apply to certain tax information, including the identity of the client, the amount, date and form of payments done by the client and supporting evidence (art. L.81 of the Tax Procedure Code).

### Principle 4: Freezing, seizing and confiscating assets

Tax crime investigation agencies should have the ability to freeze / seize assets in the course of a tax crime investigation, and the ability to confiscate assets.

495. **Legal basis:** The Platform for the Identification of Criminal Assets (PIAC) of France, which operates within the framework of the Judicial Police, is in charge of identifying criminal assets and may conduct investigations under the supervision of a judicial authority. The PIAC is also tasked with centralising all the information related to assets that are the proceeds of crime and subject to French jurisdiction, both for assets located in France and abroad. France notes that the PIAC is usually asked to intervene jointly with other criminal investigation agencies in order to manage the asset-related aspects of tax crime investigations.

496. France notes that PIAC is the national contact point for all countries that wish to initiate “police to police” co-operation regarding the identification of criminal assets. Thus, in 2018, PIAC replied to 136 requests coming from other members of the European Asset Recovery Offices network and sent 395 outgoing requests. In the same manner, PIAC replied to 20 requests coming from members of the CARIN network (Camden Asset Recovery Interagency Network), another asset recovery network that includes non-European countries.

497. Besides playing a key role in international co-operation related to asset recovery, PIAC is also in charge of centralizing statistics at a national level regarding all criminal assets identified by law enforcement agencies. In 2018, the total amount of criminal assets for which a seizure request was addressed by French LEA to judicial authority reached EUR 645 338 072.

498. **Rapid freezing of assets:** French law does not provide a minimum period for freezing assets, which must be authorised by the courts. Therefore, when a rapid freezing of assets is applied by investigators, the measure must be immediately confirmed by the judge.

499. **Non-conviction-based confiscations are not allowed in France.** However, case law has set out that France may enforce non-conviction-based confiscations orders issued by foreign courts.

500. Concerning the restitution of objects placed under judicial control, French law provides that the restitution does not proceed when the seized object was the instrument or the result of a crime (Code of Criminal Procedure, arts. 41-4, 99, 373 and 481).

501. France allows **extended confiscations** for crimes with a minimum sanction of over five years’ imprisonment, only if the offender cannot justify the origin of the assets. A general confiscation of assets (“*confiscation générale du patrimoine*”) is only allowed in cases of money laundering **including when tax crimes are the predicate offences** (Criminal Code, art. 324-7).

502. **Value-based confiscations**, known in France as “seizure by equivalence”, are allowed under French law (articles 131-21, paragraph 9, of the Criminal Code, and 706-141-1 of the Code of Criminal Procedure). The law also allows for **third-party confiscations** provided the third party is not a bona fide possessor of the asset (article 131-21 of the Criminal Code).

503. The below table shows the number and total monetary value of seizures conducted by the National Brigade for the Repression of Tax Crimes (BNRDF) in tax crime cases between 2011 and 2020.

**Table 12.6. Number and monetary value of seizures conducted in tax crime cases by the BNRDF between 2011-20**

Year	Number of seizures	Total value
2011	12	EUR 2 141 373
2012	20	EUR 20 850 855
2013	28	EUR 17 211 092
2014	50	EUR 6 266 456
2015	30	EUR 13 415 659
2016	25	EUR 6 770 844
2017	52	EUR 8 196 979
2018	22	EUR 18 144 271
2019	37	EUR 13 955 677
2020	6	EUR 17 892 697
<b>TOTAL</b>	<b>282</b>	<b>EUR 124 845 903</b>

Note: Data for 2020 amounts for the first semester only.

504. **Agency responsible for asset recovery**: The Agency for Management and Recovery of Confiscated and Seized Assets (AGRASC) of France operates within the framework of the Ministries of Justice and of Budget and is tasked with facilitating the seizure and confiscation of assets in criminal investigations. During 2018 it facilitated the confiscation of assets worth EUR 36 million, of which 8.8 million were transferred to the state budget.

505. **Foreign freezing, seizing and confiscation in practice**: French law allows and facilitates the enforcement of foreign court orders in regard to seizure and confiscation of assets. French case law provides precedents for enforcing confiscation and seizure orders emanating from a foreign jurisdiction. The procedure differs if the order was issued by a European Union member state or by a non-EU member country.

## Principle 5: Organisational structure with defined responsibilities

A jurisdiction should have an organisational model with defined responsibilities for fighting tax crime and other financial crime.

### **Agencies responsible for investigation and prosecution of tax crimes**

506. The *Direction Générale des Finances Publiques* (DGFIP) is responsible for conducting tax audits aimed at detecting and combating serious tax frauds. Fraud detection within DGFIP is tasked to the Task Force VAT and to the National Direction of Tax Investigations (DNEF) and its several regional offices. Where a tax fraud is suspected, the auditor must establish both the acts and intent that constitutes the criminal offence and have this approved by the *Commission des Infractions Fiscales* (CIF), which is an independent administrative authority. Once approved, the CIF refers the case to the Public Prosecutor,

who will then examine the referral and determine whether to proceed with prosecution in accordance with the provisions of Article 40-1 of the Code of Criminal Procedure. In cases deemed suitable for prosecution, the Public Prosecutor will then direct an investigation conducted by judicial police, with the exception of the most serious cases, which are directed by an examining judge.

507. France has a number of judicial police forces, which are competent to investigate tax offences. For example, the *Brigade Nationale de Répression de la Délinquance Fiscale* (BNRDF), which is composed of police officers and of officers of the DGFIP and hold the same powers as judicial police officers, are mandated to investigate alleged fiscal offences. Similarly, the *Brigade Nationale d'Enquêtes Économiques* (BNEE) is composed of tax inspectors working within the judicial police and assists with the detection and investigation of tax crimes. Those tax inspectors are not tax police officers; they provide technical support and expertise. They assist the judicial police in their investigations by providing them with the financial and tax expertise. However, BNEE's main focus is on the fight against financial crimes such as the misappropriation of assets, fraud, breach of trust, corruption, favouritism, influence peddling, embezzlement, illegal workers and money laundering. The BNEE also acts as a liaison between the judicial police services and the DGFIP.

508. While the BNRDF is a full law enforcement agency and only leads criminal investigations dedicated to serious tax crimes, the BNEE assists regular police officers of the judicial police with tax and accountancy competencies during criminal investigations opened under other offences. Tax agents of the BNEE do not have judicial powers while the BNRDF agents do, authorizing them to arrest people or search premises.

509. The Judicial Investigation Service of Finances (SEJF), also known as the "Tax Police", was created on July 2019 within the Ministry of Finance. This new service increases the investigative capacity available to the judicial authority in tax and customs matters. Placed under the joint supervision of the Director General of Customs and Indirect Taxes and the DGFIP, this new service is headed by a magistrate from the Judiciary. It may be asked to participate, in particular by the National Financial Prosecutor's Office (PNF) in cases requiring tax, customs or financial expertise. The SEJF is composed of 280 authorized investigators, including 241 judicial customs officers and 39 judicial tax officers. These officers are specially authorised to carry out judicial police missions and have all the prerogatives made available to them by the Code of Criminal Procedure.

510. France notes that since 2013, complex tax crimes are prosecuted by a dedicated office at the service of public prosecutions, namely the Office of the Prosecutor for Financial Crimes (*Parquet national financier, PNF*). The PNF has jurisdiction over cases of suspected aggravated tax fraud and handled 244 cases in 2019. France highlights that through this special office it has been more effective and diligent at prosecuting complex cases of tax and financial crimes. All other tax crimes are prosecuted by regional or local offices.

511. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of France's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).<sup>4</sup>

**Table 12.7. Agencies responsible for investigating financial crimes in France**

Agency	Role with respect to financial crime
General Direction of Public Finance (DGFIP)	Responsible for conducting tax audits, including detecting and combating serious tax frauds and referring these for investigation and prosecution.
The Task Force on VAT	Housed within DGFIP, the Task Force on VAT is in charge of the oversight of tax fraud on VAT and may suggest policy measures and action plans to other agencies. It also monitors trends and risks in other areas such as internet sales (marketplaces, etc.), particularly when the seller is non-EU legal person.
Tax Police (SEJF)	Placed under the supervision of DGFIP and the Customs Direction and composed of judicial customs

	officers and judicial tax officers, it may be asked to participate, in particular by the National Financial Prosecutor's Office (PNF) in cases requiring tax, customs or financial expertise
<b>National Brigade for the Repression of Tax Criminality (BNRDF)</b>	Housed within Police, the BNRDF is composed of police officers and of officers of the DGFIP with judicial powers and is responsible for investigating serious tax frauds such as undeclared foreign accounts, and complex illegal structures under the supervision of the Public Prosecutor.
<b>National Brigade of Economic Investigations (BNEE)</b>	Composed of tax inspectors working within the judicial police – BNEE assists police officers and with detection and investigation of tax crimes, however, its main focus is on the fight against other non-tax financial crimes.
<b>General Directions of Customs and Excise (DGDDI)</b>	Responsible for administration and collection of customs and excise tax and protection and security through combating all kinds of trafficking, including drugs, weapons and explosives, and animal and plant species threatened with extinction
<b>Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFI)</b>	In charge of tackling corruption at national and international levels, infringements of corporate law, complex tax fraud and money laundering, as well as electoral fraud and financing of political parties. The above mentioned BNRDF is part of OCLCIFI. OCLCIFI belongs to the central directorate of the judicial police, inside the Ministry of Interior.
<b>Public Prosecutor</b>	Local or regional territorial jurisdiction. Directs tax and other financial crime investigations conducted by judicial police, with the exception of the most serious cases, which are directed by an examining judge.
<b>Public Prosecutor for Financial Crimes (<i>Parquet national financier</i>)</b>	Has national jurisdiction to prosecute economic and financial crimes, in particular tax fraud, corruption and offences related to the stock exchange.
<b>TRACFIN</b>	French national Financial Intelligence Unit, receives and analyses Suspicious Transaction Reports submitted under anti-money laundering legislation, and refers these to the Public Prosecutor for investigation of possible money laundering or terrorist financing.
<b>French Anti-Corruption Agency</b>	In charge of controlling the implementation of preventive anti-corruption measures taken by big companies, responsible for investigating and monitoring anti-corruption compliance programmes by large companies, including court-ordered compliance programmes.
<b>Prudential Supervisory Authority</b>	Responsible for the authorisation and supervision of banks and insurance agencies.
<b>Financial Markets Authority (AMF)</b>	Regulates participants and products in the French financial market.

### ***Independence of tax crime investigations and prosecutions***

512. The independence of the prosecution service in France is ensured by its Constitution (*arts. 64 and 65*) and by a series of statutes and judicial precedents.<sup>5</sup>

## **Principle 6: Adequate resources**

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

### ***Resources for combatting tax crime***

513. The Office of the Prosecution for Financial Crimes had 36 staff in 2017 and 38 staff in 2018, 17 of which were prosecutors. Its budget is allocated annually together with that of the rest of the prosecution service of Paris.

514. France reports that the BNRDF had 45 staff in 2015, 42 agents in 2016, 48 in 2017, 42 in 2018 and 43 in 2019. At the end of 2020, the BNRDF should have 44 agents, which include 21 police officers and 23 tax agents with judicial powers. In addition, the BNRDF also include two agents dedicated to support tasks, who are not investigators. Simultaneously, the new "Tax Police" (SEJF), created in 2019, has 25 agents dedicated to complex tax crime cases, with budget allocated for hiring 25 more in 2020.

515. The below table shows the databases and sources of information available to tax crime investigators in France.

Table 12.8. Databases and sources of information available to public prosecutors in France

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Access on Request and Direct Access The investigative authority has direct access to only 4 databases; access to any other tax database must be requested.
Customs databases	Access on Request
Police databases	Access on Request / Direct Access Direct access to the criminal records database
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Direct Access / Access on Request The list of accounts held by a person is accessible on direct access, but not its balance or transactions, which are only accessible on request
Car registry	Direct Access
Boat registry	Access on Request
Endowment Contracts Database	Direct Access
Property Value Estimation Database	Direct Access

### Training for tax crime investigators

516. France notes that all its prosecutors undergo a three-year course at the National School for Magistrates (ENM) and continuous training throughout their careers. This includes specific training on tax crimes for prosecutors within the MNF and JIRS. France also provides police with a series of trainings dedicated to financial and tax crimes that usually last between 5 and 8 weeks a year, in addition to specialised training for investigators housed within the BNRDF and the SEJF.

## Principle 7: Predicate offences

Countries should designate tax crimes as one of the predicate offences for money laundering.

517. **Legal basis:** France adopts an “all crimes” approach to money laundering whereby all offences are predicate offences to money laundering (Criminal Code, art. 324(1)). France reports that since adopting this approach in 1996, criminal investigations in tax offences have been more efficient and straightforward.

518. **Enforcement of money laundering predicated on tax crimes:** France also notes that there is ongoing communication between the tax authority and the FIU and that the tax authority received 2351 reports from TRACFIN regarding tax crimes as predicate offences for money laundering in the 2016-19 period, with the flow of referrals growing year after year. Of these reports, only 3% did not lead to a tax audit or to the commencement of a criminal investigation.

## Principle 8: Inter-agency co-operation

Countries should have an effective legal and administrative framework to facilitate collaboration between tax authorities and other law enforcement agencies.

### **Reporting of suspected financial crimes by civil tax authority to law enforcement authorities**

519. As outlined under principle 5 above, tax auditors must investigate all suspected tax frauds. Where the auditor can confirm both the act and intent, two cases may arise: 1) compulsory submission to the public prosecutor of tax inspections leading to tax recalls of more than EUR 100 000; 2) cases below that amount are subject to the procedure set in article L-228 of France's Law of Tax Procedure which means that the tax administration must refer its findings to the CIF for approval. Upon approval, the CIF will then transmit the case to the public prosecutor for further investigation and possible prosecution.

520. However, where an auditor suspects tax evasion was committed under certain special circumstances (use of offshore shell companies, false documents etc.), they are allowed to immediately refer the case to the public prosecution service for investigation (as opposed to the tax auditor conducting the preliminary investigation themselves). The entire procedure has been subject to reforms, most notably in 2018, to limit CIF's discretionary powers.

521. France notes that it has **compulsorily** referred 965 civil tax audits for criminal investigations in 2019, and that the CIF has allowed for the commencement of further 672 criminal investigations in cases of tax evasion below EUR 100 000. These figures are double the number of investigations commenced in 2018.

522. France's referral programme is a two-way system in which the judicial authorities must also refer cases of suspected civil tax offences back to the DGFIP for civil investigation (article L-101 of the Tax Procedure Code).

### **Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime**

523. The table below shows the models for sharing information related to tax crime and other financial crimes in France. A more detailed analysis of France's information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of the Rome Report.<sup>6</sup>

**Table 12.9. Models for sharing information related to tax crime and other financial crime**

		Authority receiving information					
		Tax administration for civil tax assessments	Tax crime investigation agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		DSS <sup>(a)</sup>	DSS	MSS	DSS	MSS
	Customs administration	DSS	DSS <sup>(b)</sup>		MSS	DSS	MSS
	Police or public prosecutor	DSS	DSS <sup>(b)</sup>	MSS		DSS	Direct Access
	Financial Intelligence Unit	DSS <sup>(c)</sup>	DSS	DSS	MSS		MSS

	<b>Corruption investigation authority</b>	DSS	Direct Access	DSS	Direct Access	DSS	
	<b>Financial regulator</b>	Sharing Prohibited	MSS <sup>(d)</sup>	Sharing prohibited	MSS <sup>(a)</sup>	MSS <sup>(d)</sup>	MSS <sup>(a)</sup>

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) The DGFIP has the ability to provide information spontaneously to police conducting tax investigations, but is not under an obligation to do so. Tax officials seconded to the Brigade Nationale d'Enquetes Economiques (BNEE), which is under the supervision of the Ministry of the Interior, have direct access to databases held by the DGFIP, including the national register of bank accounts (FICOBA). By working within the judicial police, BNEE officers facilitate sharing of information between the two agencies.

(b) Tax offences may be conducted by a number of police forces acting as judicial police under the direction of a Public Prosecutor or examining judge. However, a number of forces are more specialised in financial investigations and in 2010 the Brigade National de Répression de la Délinquance Fiscale was established as an agency with specific police and tax skills to combat serious tax offences. French police forces do not generally grant direct access to information for offices in other police forces. However, they are able to share information spontaneously where this is relevant to an offence under investigation by another force.

(c) TRACFIN sends monthly reports to DGFIP by email or mail. Reports of particular importance or urgency can be transmitted immediately without delay.

(d) Financial regulators are obliged to provide information spontaneously to the Public Prosecutor with respect to any sums or transactions that they suspect relate to criminal offences punishable by more than one year's imprisonment, or to the financing of terrorism.

524. The below table shows the availability of enhanced forms of co-operation in combatting tax crimes in France.

**Table 12.10. Availability of enhanced forms of co-operation in combatting tax crimes**

Mechanism	Description
<b>Co-operation agreements</b>	France reports that a co-operation agreement between the tax administration and customs administration plays a key role in the fight against tax evasion; allowing the receipt of information by the tax administration upon request and spontaneous communication by customs to the tax authorities of all information and documents collected in the course of their duties
<b>Disclosure of foreign trusts</b>	Yes
<b>Joint operations and taskforces</b>	Task Force on VAT: DGFIP, TRACFIN, Police, Prosecution Services and Customs Authority, BNEE, SEJF, BNRDF, OCLTI, DGCCRF, Gendarmerie Nationale.
<b>Parallel investigations</b>	Parallel investigations are allowed in France.
<b>Joint intelligence centres</b>	France has three intelligence centres on tax crime issues, all of which operate jointly since 2019 in regard to research goals and information sharing.
<b>Secondments and co-location of staff</b>	France makes active use of secondments between the tax authority and law enforcement agencies.
<b>Ability to review tax affairs of persons sanctioned for other serious financial crimes</b>	Yes (article L-101 of the Law of Tax Procedure)
<b>Multi-agency training</b>	Training for tax crime investigators in France includes instructors from other government agencies such as the customs authority.

## Principle 9: International co-operation

Tax crime investigation agencies must have access to criminal legal instruments and an adequate operational framework for effective international co-operation in the investigation and prosecution of tax crimes.

525. **Legal basis:** France may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. To date, it has

entered into exchange of information relationships with more than 140 jurisdictions through over 110 bilateral tax treaties and over 25 Tax Information Exchange Agreements.<sup>7</sup> It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows France's tax authorities to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorization is provided. As a member of the European Union, France also co-operates with other EU member states in accordance with EU law.

526. **Competent Authority:** The Office for Mutual International Criminal Assistance (BEPI) of the Ministry of Justice is France's central authority for sending and receiving MLA requests related to all crimes, including tax crime, in regard to countries that are not members of the European Union. Intra-EU requests are handled directly by the courts.

527. **International Co-operation in practice:** BEPI has originated 38 requests for assistance in 2017 and 41 such requests in 2018, while it has received 12 requests in 2017 and 17 in 2018.

## Principle 10: Fundamental rights of a suspect or accused person

Taxpayers suspected or accused of committing a tax crime need to be able to rely on basic procedural and fundamental rights.

528. **Legal basis:** France provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by a series of international human rights treaties signed by France and, in domestic law, by the Declaration of the Rights of the Man and of the Citizen of 1789 and the Preamble of the Constitution of 27 October 1946.

529. In France, a civil tax matter becomes a criminal tax matter when the civil tax authorities refer a case to the public prosecutor, and the latter begins the criminal investigation.

Table 12.11. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until sentence
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From indictment
remain silent	Yes	From indictment
access and consult a lawyer and/or entitlement to free legal advice	Yes	From indictment
interpretation and translation	Yes	From indictment
be advised of the particulars of what one is accused of	Yes	From indictment
access documents and case material, also known as a right to full disclosure	Yes	From indictment
a speedy trial	Yes	During trial
protection from ne bis in idem (Double Jeopardy)	Yes	During trial

## Highlights

### Successful practices

- Comprehensive tax crime strategy and periodic threat assessment
- Effective asset recovery measures
- Concrete examples of international co-operation

### Room for improvement

- Lack of a pre-defined communications strategy which fosters voluntary compliance

## References

Center for Social and Economic Research (2019), *Study and reports on the VAT gap in the EU-28 Member States: 2019 Final Report*, European Commission, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vat-gap-full-report-2019\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-full-report-2019_en.pdf).

## Notes

<sup>1</sup> The number of convictions relates to the number of offenders (they may have been sentenced for having committed more than one offence). Data for 2018 is provisory.

<sup>2</sup> The 2019 version is available in French from: [https://www.performance-publique.budget.gouv.fr/sites/performance\\_publique/files/files/documents/dpt-2019/DPT2019\\_fraude\\_fiscale.pdf](https://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/files/documents/dpt-2019/DPT2019_fraude_fiscale.pdf).

<sup>3</sup> [http://circulaire.legifrance.gouv.fr/pdf/2014/05/cir\\_38332.pdf](http://circulaire.legifrance.gouv.fr/pdf/2014/05/cir_38332.pdf) (in French).

<sup>4</sup> See Rome Report, Chapter 5 – Country Information – France. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

<sup>5</sup> Constitutional Council, Decision 2017-680 QPC, of 8 December 2017. Available in French from: [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/decisions/2017680qpc/2017680qpc.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2017680qpc/2017680qpc.pdf).

<sup>6</sup> See Rome Report, Chapter 5 – Country Information – France. Available at [www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf](http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf).

<sup>7</sup> See <http://www.eoi-tax.org> for up-to-date figures.