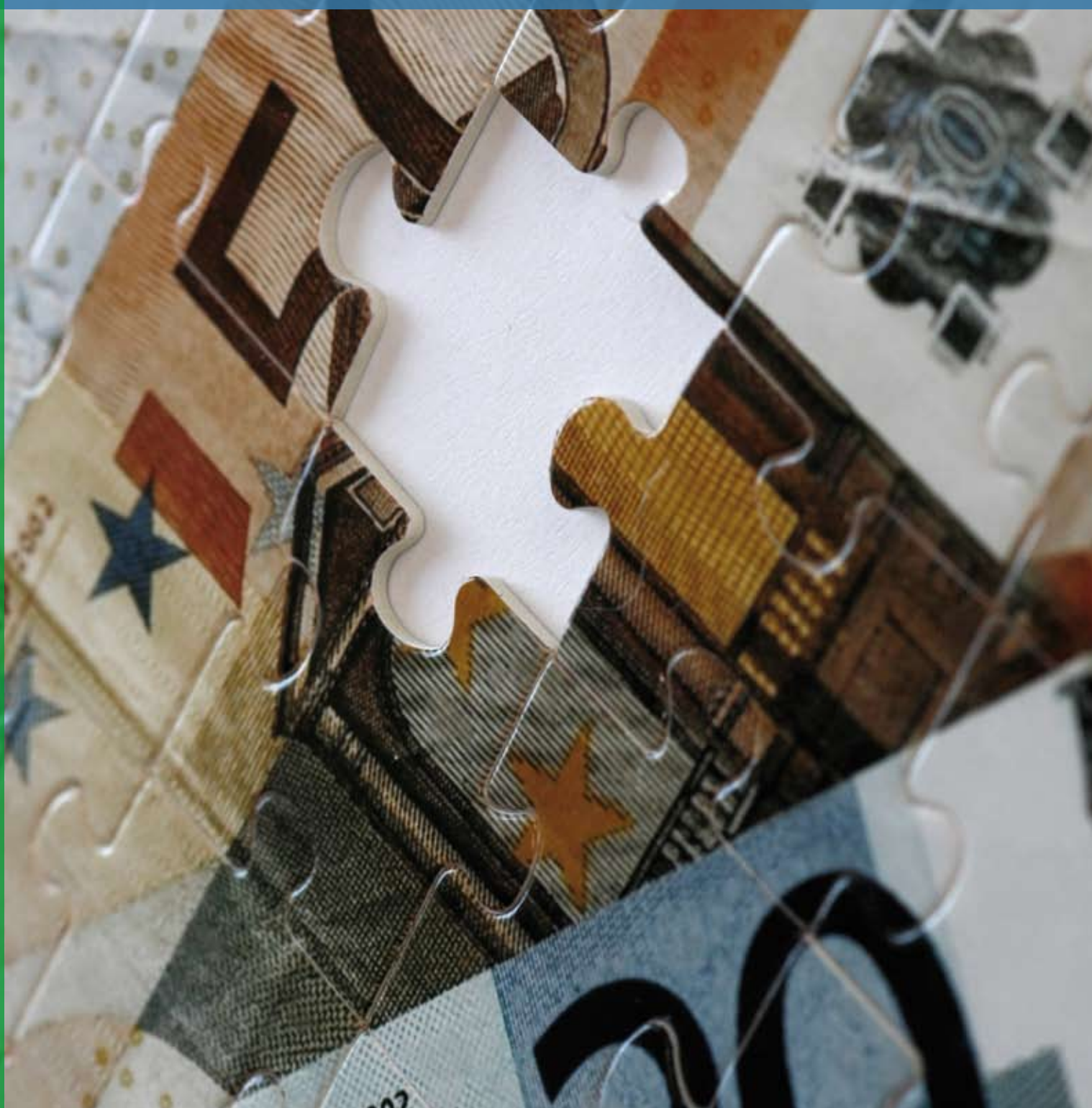




Intra-Community VAT Fraud



Intra-Community VAT fraud

Joint report

Preface

Estimates suggest that every year roughly €100 billion are lost due to VAT fraud in the European Union. In line with the free trade principle neither border controls on the movement of goods nor VAT claims of the country of origin in case of business to business transactions constrict the European Union's internal market. However, the system set up to implement this principle shows substantial flaws.

Supreme Audit Institutions in the European Union have long addressed these systemic deficiencies. Yet, given the international dimension of VAT fraud, such initiatives are most effective through multilateral cooperation. The Supreme Audit Institutions of the Netherlands, Germany and Belgium have engaged in such an exercise. Their closely coordinated investigation takes a three-tier approach and looks into how the prevention, detection and repression of intra-Community VAT fraud can be improved. This joint report presents the findings of this effort and recommends courses of action on how to effectively combat VAT fraud.

Acknowledgements

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Contents

1	Introduction	5
1.1	Background to the joint audit	5
1.2	Explanation of intra-Community VAT fraud	5
1.3	Anti-VAT fraud initiatives at EU level	6
1.4	Audit framework	7
1.5	Structure of the report	7
2	Prevention	8
2.1	Introduction	8
2.2	Conclusions/recommendations: prevention	8
3	Detection	12
3.1	Introduction	12
3.2	Conclusions/recommendations: administrative systems	12
3.3	Conclusions/recommendations: information exchange between EU Member States	15
4	Repression	18
4.1	Introduction	18
4.2	Conclusions/recommendations: repression	18
	Annex 1 Audit questions	22
	Annex 2 List of abbreviations	23

I Introduction

I.1 Background to the joint audit

The current VAT¹ system in the European Union provides opportunities for intra-Community fraud that all Member States have to deal with. In a resolution of 12 December 2006, the Contact Committee² expressed support for its VAT Working Group's recommendation to encourage Supreme Audit Institutions (SAIs) to exercise bi- and multilateral cooperation in this area. In response to this recommendation, in March 2007 the Netherlands Court of Audit invited Germany's Supreme Audit Institution (Bundesrechnungshof) and the Belgian Court of Audit (Rekenhof) to participate in an investigation into intra-Community VAT fraud.

This trilateral audit resulted in national reports for each of the three participating countries and in this joint report presenting the overall conclusions and recommendations supported by relevant audit observations. Institutions involved in tackling intra-Community VAT fraud, at European level and in the Member States, may benefit from this report.

I.2 Explanation of intra-Community VAT fraud

The EU Member States have a common VAT system. Since the European internal market has been created in 1993, goods within the internal market can be traded freely and border controls have ceased to exist. A 'temporary' system was introduced for VAT, whereby the zero rate applies to the supply of goods to another Member State. To be eligible for this zero rate, an entrepreneur must have a valid VAT identification number³ and must be able to verify that its trading partner also has a valid VAT identification number. In addition to the VAT return, entrepreneurs must file a quarterly⁴ return of their intra-Community supplies so that they can be monitored.

The temporary VAT system appears to be vulnerable to intra-Community fraud. A simple form of fraud is the wrongful use of the zero rate by presenting a domestic supply as an intra-Community supply. The most common and widespread form of intra-Community VAT fraud is 'Missing Trader Intra-Community Fraud' (MTIC Fraud) or 'Carousel fraud'. In the typical form of this fraud, a trader acquires goods from a trader in another EU Member State at the zero rate of VAT. The trader sells on the goods within his own country and charges VAT to the purchaser. The trader, however, does not remit this VAT to the tax authorities and makes sure that he cannot be traced ('missing trader') if he is investigated. The receiver of the goods sells them on and reclaims the VAT he has paid. The goods can then return to their country of origin via an intra-Community supply at the zero rate, so that the cycle can be repeated one or more times. This is why it is called carousel fraud.

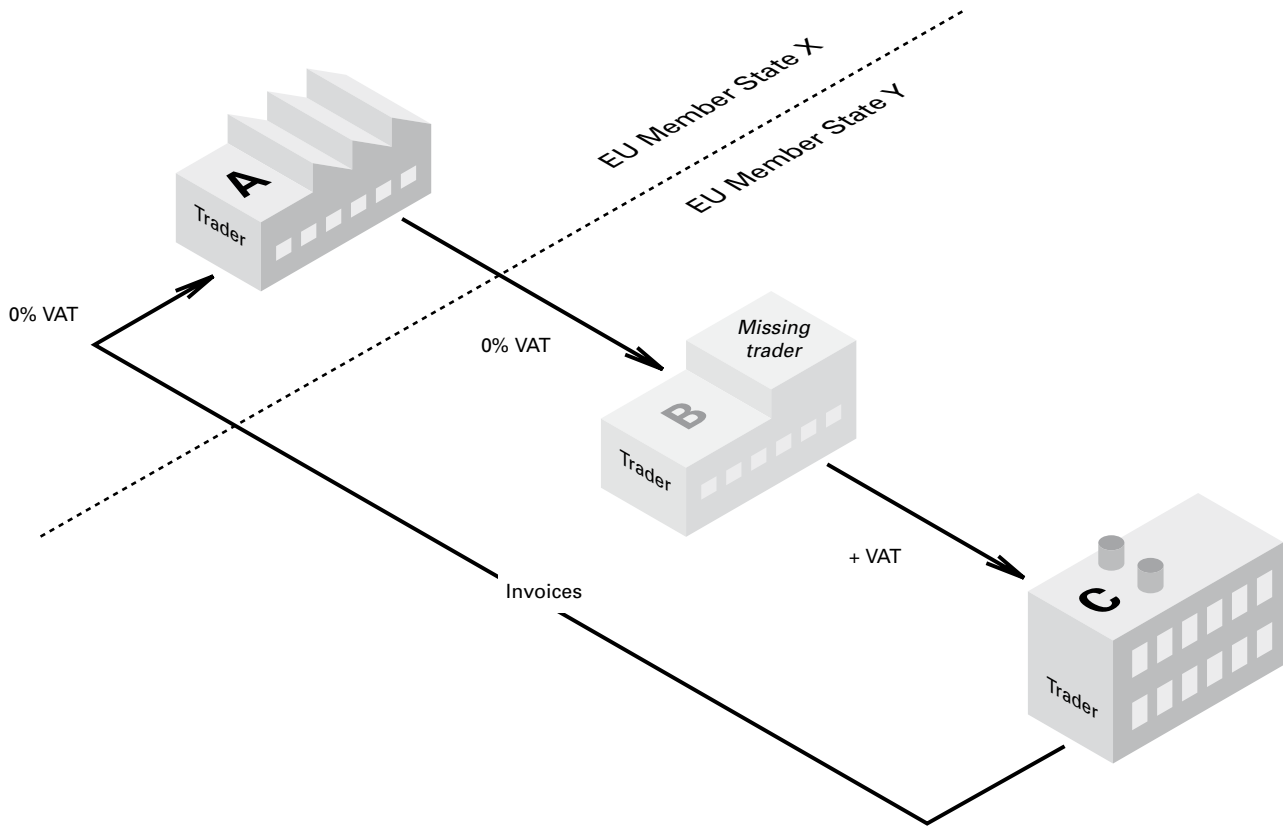
¹
VAT: Value Added Tax.

²
Contact Committee of the Presidents of the Supreme Audit Institutions of the Member States of the EU and the European Court of Auditors.

³
The VAT identification number is used in relation to intra-Community transactions.

⁴
In Germany annual returns are allowed in some cases.

The following diagram illustrates the carousel in its simplest form:



The diagram shows the minimum requirements for a carousel.

- At least three traders, one of which is in another Member State.
- A stream of invoices between the traders.
- A trader who charges VAT (trader B) but who does not remit it ('missing trader').

Although the exact amount of carousel fraud is difficult to establish, it is clear that large amounts of money are involved. The estimate is that approximately €100 billion⁵ in total is involved in the wrongful non-payment of VAT within the EU Member States each year. This includes all forms of VAT fraud but carousel fraud is recognised as a significant part of it.

1.3 Anti-VAT fraud initiatives at EU level

For a number of years, the EU Member States, the Economic and Financial Affairs Council of the EU (Ecofin) and the European Commission (EC) have been discussing ways to counteract intra-Community VAT fraud more effectively.⁶ The Commission has explored avenues for a coordinated strategy against tax fraud. In its meeting of 28 November 2006, Ecofin invited the Commission to prepare the elements of such a strategy in close cooperation with the Member States. In 2007, the Commission made an inventory of possible measures consisting of conventional measures within the existing VAT framework and more far-reaching measures, implying a change in the current system.

⁵ Source: Economic committee of the European Parliament, 2003.

⁶ See for instance COM(2006) 254 final.

Since most measures require Member State unanimity, it has proven difficult to reach agreement on the measures under consideration. Following discussion in Ecofin of conventional measures, the Council of the European Union issued a proposal to amend Council Directive 2006/112/EC and EU Regulation 1798/2003 on 17 March 2008⁷ with a view to introducing monthly recapitulative statements followed by a period of one month for exchanging information on intra-Community transactions between Member States. The proposal entails that the monthly statements will replace the current practice of quarterly statements as from 2010. On 4 November 2008, the Council of the European Union reached agreement in principle on this general approach.

Since Member States hold different views on possible changes in the current VAT system, it is unlikely that agreement will be reached soon on any of the more far-reaching measures.

1.4 Audit framework

The audit objective is to contribute to combating intra-Community VAT fraud by identifying ‘best practices’ that could lead to a more effective approach in the future. Therefore, the audit’s main question is whether the instruments employed by the tax authorities are effective to combat intra-Community VAT fraud.

This central audit question can be divided into three elements.

- 1 Prevention (limiting opportunity to commit fraud), inter alia concerning the potential misuse of VAT identification numbers.
- 2 Detection (risk analysis, inspection, monitoring, audit and signalling) concentrating on the handling of signals from administrative systems and the international exchange of information.
- 3 Repression (investigation, prosecution, sanctioning and settlement) focusing on the organisation of the investigation and prosecution of fraud cases, as well as on the management information available on the results of audits, investigations and fiscal handling of such cases.

1.5 Structure of the report

The three elements of this audit (prevention, detection and repression) are considered in chapters 2, 3 and 4 of this report. The main conclusions/recommendations are presented in each chapter, followed by relevant supporting observations.

2 Prevention

2.1 Introduction

Tax authorities attempt to prevent intra-Community VAT fraud by keeping potential fraudsters out of the system. This requires a risk analysis when issuing VAT numbers⁸ and the timely withdrawal of unused VAT identification numbers. Another important issue is to prevent potential fraudsters taking over a going concern that has an active VAT identification number.

2.2 Conclusions/recommendations: prevention

Assess requests for VAT numbers preventively

Preventive assessment (before VAT numbers are issued) is important; all available information should be used as early as possible. Although there is a tendency to issue VAT numbers quickly, the abuse of VAT identification numbers should be prevented wherever possible. Since prevention has inherent limitations, there is also a need to focus on the early detection of abuse, once VAT identification numbers have been issued.

Issuing VAT numbers

The current policy in Belgium is to issue VAT numbers within three days and in the Netherlands within five days. This means that pre-assessment of applications is difficult. This results in a shift in focus from prevention to early detection of potential fraudsters. Germany currently takes a different approach to issuing VAT numbers. At present, there is no time limit for the tax authority to decide upon an application for a VAT number.

In Belgium, businesses are registered with the central social security database (KBO) through an accredited incorporation office. The information is transferred to the local VAT audit office. This office decides upon the activation of the company number as a VAT number. If certain warning signals occur, preliminary investigation by the VAT audit office is required. In the near future, local offices will receive a daily list of new applicants whose application for a VAT number is subject to more thorough investigation. The decision on who is subject to special attention will be made with the help of a data mart, 'New taxable persons'.

In Germany the registration of businesses for VAT purposes is a matter for the tax offices and more specifically for special units that are trained and experienced in this field. Pre-assessment is conducted by means of detailed checklists based on the tax authority's experience with VAT fraud cases detected. The use of checklists is not left to the staff's discretion, but is mandatory in all federal states.

In the Netherlands the tax authority's regional offices are responsible for issuing VAT numbers. The way this is organised varies per region. Recently a part of the registration process (mainly for businesses without corporate identity) was transferred to the Chamber of Commerce. A checklist used by the Chamber of Commerce contains criteria requiring action from the tax authority in the form of additional checks before registration and other criteria requiring action after registration.

⁸ The term 'VAT number' is used in relation to registration procedures and domestic transactions. In Germany an entrepreneur needs an additional VAT identification number for intra-Community transactions. In Belgium and the Netherlands the VAT identification number is the VAT number complemented by the applicable country code.

Denial of registration

The grounds for refusing a VAT number differ in the Member States.

In Belgium suspicious applicants will be issued with a notice of suspension of activation and, if they do not respond, the suspension may last indefinitely. In these cases an official denial of an application is not necessary.

In Germany registration can be denied, if an applicant does not meet the conditions for being granted entrepreneur status. The tax authority's decision requires an administrative ruling against which the person concerned may lodge an appeal.

In the Netherlands applications for VAT numbers are seldom refused, but if there are no signs of economic activity at the stated address, or if it is impossible to contact the applicant, a VAT number can be denied or withdrawn.

Inactive VAT numbers

Inactive VAT numbers are treated similarly in all three countries when a taxable person himself reports that business activities have stopped. The VAT number will either be deleted or deactivated. If a tax authority becomes aware of apparently inactive VAT numbers through its own research, the approaches are different.

In Belgium taxable persons who submit nil returns or no returns are put under surveillance and the tax authority investigates whether there is still any economic activity. If not, the VAT number is deleted. In major fraud cases, a VAT number can be cancelled or the 'BE' part (country code) can be removed to prevent the taxable person taking part in intra-Community transactions. Retroactive cancellation is possible from the first day of the current month.

If the tax authority in Germany becomes aware that an entrepreneur has discontinued his activities, it deletes the internal VAT processing number and thus the validity of the VAT identification number. This can be done with retroactive effect reaching as far back as necessary.

In the Netherlands a VAT number can be officially deactivated, if an entrepreneur has failed on several occasions to file a tax return or has submitted multiple nil returns. Retroactive cancellation may reach as far back as necessary.

Enhance information system support for risk signalling and prioritise the handling of warning signals

Information system support is necessary to generate warning signals (risk selection) and to cope with time constraints (manual assessment is not feasible). Data mining/risk profiling techniques can be helpful in this respect.

Within the framework of risk management, information systems play an important role. Given the time constraints both during and after the pre-registration period, tax authorities require efficient support in the form of information systems. These systems should provide the authorities with the data necessary to assess an applicant and help define and adjust risk criteria for entrepreneurs who already have a VAT number. Data mining and risk profiling techniques are used in all three countries but to different extent. For pre-assessment purposes, checklists or a data mart are in place. Warning signals produced by these systems have to be evaluated and followed up systematically, as soon as possible, since carousel frauds are known to develop quickly. For risk monitoring after registration, the tax authorities create and define warning signals. The signals focus mainly on data from VAT returns and recapitulative statements (see also 3.2).

Make use of information on prior offenders in risk assessment

Information on prior offenders should be included in the assessment in view of the risk of recidivism.

To assess the risk of a trader acting with fraudulent intentions, it is necessary to have as much relevant information as possible. The more detailed the picture is, the sooner the tax authority can form a reliable opinion on a taxpayer's/applicant's level of past or future compliance. To achieve this, it is useful to know, inter alia, whether an applicant has a history of fraud or of other forms of non-compliance. However, simply having such antecedents is not immediately a reason to prevent a person from carrying on a business. This is the case in all three countries.

In Belgium data on persons with dubious profiles are recorded and made available to all tax offices, thus avoiding the risk of 'registration shopping'. A newly developed data mart will take the profile into account to determine which applications need to be scrutinised.

Germany has a dedicated central database (ZAUBER) to store and analyse cases of VAT fraud and to develop risk profiles. The implementation of this database is part of a decision taken unanimously by the Federal Ministry of Finance and the Finance Ministries of all the Länder.⁹ It is integrated within KUSS, the coordinating unit for special VAT audits and related tax investigations. The database is accessible to the staff of the Länder tax authorities and there is an obligation to enter all cases meeting the conditions in the database. The tax authority should therefore be in a position to detect potential fraudsters early or at least to prevent a fraudster committing VAT fraud in the same way again (using the same company). By means of the ZAUBER database, the German tax authority aims to overcome the disadvantages of its federal structure. In the Netherlands the tax regions do not take antecedents into account when processing VAT number applications. There is no 'black list' of companies or traders that were previously involved in tax fraud. The tax regions do not have access to data from criminal records or records of unusual transactions reported. Furthermore, the tax regions do not have access to information from other regions, unless the information has been recorded in a national system, such as the Taxpayer Database or Individual Client Profile.

Pay more attention to risks in the transfer of company ownership

More attention should be paid to transfers of ownership in addition to risk analyses of start-up companies.

Experience with VAT fraud shows that the transfer of company ownership may entail a risk. Potential fraudsters may try to use existing companies to avoid the registration procedure.

In Belgium a change of directors and managers does not result in an obligation to file a particular form, as is the case when a taxpayer changes name, address, legal form or activity. There is no procedure allowing audit offices to be systematically informed about newly authorised persons. A risk analysis using text mining based on the information in the registry of the Commercial Court, as published in the appendices of the Belgian Official Journal, proved unmanageable with reasonable efforts.

In Germany, the Federal Central Tax Office does not carry out any risk analysis where the ownership or management of a company changes. It is therefore impossible to

⁹
Länder: Federal states in
Germany.

verify, at the level of the Central Liaison Office, whether a dormant company with a VAT identification number has become a fraudulent trader through a change of ownership. The same applies to the Länder. Where 'straw men', instigators or initial financiers have been recorded in ZAUBER, a database query may find information that permits a better assessment of the degree of risk involved in a particular change in a company's ownership or management.

In the Netherlands the tax regions receive a notarial deed when a company's owner or shareholders change. The handling of these deeds by the tax regions varies and depends partly on the available capacity. Some regions deal with them in the same way as a new application. The deeds are in any event not assessed as to the risk of (carousel) fraud.

3 Detection

3.1 Introduction

Intra-Community VAT fraud can be detected in many ways. It is possible to analyse and distil signals from information available at the tax authorities, such as declarations of intra-Community supplies and VAT returns. This may be integrated in regular working processes, including automatically generated detection signals by risk management systems, or can take place on an ad hoc basis by requesting data from a tax authority's information system (queries). Detection can also result from signals received as part of international information exchange with the tax authorities in other Member States.

The main systems and processes to combat intra-Community VAT fraud are:

- the VAT Information Exchange System (VIES) (see 3.2) to facilitate the verification of VAT identification numbers in intra-Community supplies and the processing of declarations of intra-Community supplies;
- audits of VAT returns (see 3.2);
- risk management systems, in particular in relation to VIES and VAT returns (see 3.2);
- international information exchange between tax authorities (or their fraud units) in the form of requests for information and spontaneous reports (see 3.3).

International information exchange and mutual assistance in the area of combating VAT fraud are regulated in EU Regulations 1798/2003 and 1925/2004. The main forms of information exchange are:

- requests for information/mutual assistance pursuant to article 5, 1798/2003 (a standard form has been developed for this at European level (SCAC¹⁰ 2004); there is a separate form (SCAC 383) for information exchange between fraud units pursuant to article 5);
- spontaneous information exchange pursuant to article 19, 1798/2003 (information exchange in the framework of the European Carousel Network (Eurocanet) is a special form of this);
- spontaneous computerised information exchange pursuant to article 18, 1798/2003, and articles 3 and 4, 1925/2004.

3.2 Conclusions/recommendations: administrative systems

Log verification of VAT identification numbers for risk analysis purposes

Logging VAT identification number verifications is useful to provide early warning signals and risk profile information. Further research is recommended to identify best practices in this respect.

VAT identification number verification means an entrepreneur must establish the validity of a purchaser's VAT identification number to confirm that he does not have to charge VAT on an intra-Community supply. Member States are obliged to provide this information on request pursuant to EU Regulation 1798/2003.

¹⁰
SCAC = Standing Committee
on Administrative
Cooperation

Companies can verify data in VIES in several ways depending on the organisation in the Member State. Verification is also possible via the EU website. For 14 Member States, this website automatically confirms not only the validity of a VAT identification number but also the business name and for 11 Member States also the address.

The tax authority in the Netherlands has opted not to record the registration of VAT identification numbers that have been verified. Neither is there a registration of entrepreneurs who have requested verification of specific VAT identification numbers. In Germany verification inquiries from traders and the answers provided to them are stored at the Federal Central Tax Office.

In Belgium data on enquiries about the validity of VAT identification numbers are also stored in a log file. This makes it possible to analyse the data for risk signals, but this is only done in Belgium, where systematic logging of verifications is used to provide early warning signals. Further research is recommended to optimise the use of this information in the risk management system.

Speed up VIES processing and exchange of VIES information

VIES processing takes too long. The process should be speeded up and VIES information should be exchanged earlier.

To qualify for the application of the zero rate, an entrepreneur is obliged to declare his intra-Community supplies in a listing (also known as ‘recapitulative statement’) to the tax authority each quarter. These recapitulative statements are recorded in VIES pursuant to EU Regulation 1798/2003. The recapitulative statement states the total turnover of supplies per Member State per VAT identification number.

Processing and checking the recapitulative statements takes considerable time. According to EU Regulations, international information exchange via VIES must take place no later than three months after the end of the period (therefore on 1 July at the very latest for the first quarter). This period is usually granted to allow traders to file their recapitulative statements in full and to correct any mistakes if necessary. International information exchange may also reveal errors, for example the use of invalid VAT identification numbers, reflected in ‘Member State warnings’ generated by VIES. Correcting this takes time and monitoring is a heavy burden on the tax authorities. Processing recapitulative statements is therefore a long and burdensome process.

Besides speeding up the processing time, Member States should consider making submitted recapitulative statements available earlier instead of waiting for the closing date.

If a recapitulative statement has not been returned, has been returned too late or is incomplete or incorrect, the tax authority may impose penalties. The penalties however are relatively low. In Germany and the Netherlands, for example, the first penalty is no higher than €125 and the second no higher than €250. In Belgium the penalty may rise from €25 to a maximum of €1,250 or €2,500 depending on the number and kind of omissions or errors in the statement. Given the magnitude of damage caused by VAT fraud, the penalties are not appropriate to deter this type of fraud.

Match traders' VIES declarations against their VAT returns

Intra-Community supplies and the amounts concerned should be checked as to their consistency with the supplies in the same trader's VAT returns.

A trader's recapitulative statement should match the corresponding part of his VAT return. In the Netherlands this check is conducted systematically and if any discrepancies are found, traders are given a deadline to correct their statements (either the recapitulative statement or the VAT return). In Germany¹¹ and Belgium this consistency check is not performed regularly. Not correcting errors may produce VAT losses, if supplies are incorrectly classified as intra-Community supplies. It may also result in the provision of incorrect VIES data to other Member States. It is therefore necessary to match VIES declarations against the corresponding VAT returns.

Harmonise chargeability rules to help overcome matching problems with VIES information received from other Member States

Differences in chargeability rules are one of the underlying causes of matching problems with VIES information. Harmonisation is therefore necessary to reduce the number of matching variances.

Matching intra-Community acquisitions in VAT returns against the recapitulative statements of intra-Community supplies from other Member States reveals many variances. This is the case in Belgium and the Netherlands. The number of matching variances is so high, that it is not feasible for the tax authority to try to resolve them all. In Germany, there is currently no real-time and permanent procedure for the automatic comparison of recapitulative statement data transmitted by other EU Member States with the consolidated data on intra-Community acquisitions of goods declared in the VAT returns. Actually this comparison is only applied to entrepreneurs who are not entitled to full input tax deduction.

Matching variances may have several causes. Rather than to fraud, most variances are due to taxpayer's reporting or registration errors. A well-known problem for example is the misinterpretation of reporting rules for fiscal entities in the Netherlands. Differences in chargeability rules between Member States also cause matching variances. Harmonisation of chargeability rules, regarding the allocation of transactions to time periods, is necessary to help solve this problem.

Consider 'transaction-by-transaction' matching as a long-term solution

Matching at a lower level of aggregation is a solution to be considered for the future. This implies matching at transaction level.

The level of aggregation in the recapitulative statements and VAT returns allows matching only of totals. If amounts do not match, it is very difficult to find an explanation of the variances. Reducing the level of aggregation to a 'transaction-by-transaction' base¹² (at least transactions above a certain threshold) may be a solution in the long run. Developments such as electronic invoicing may support this solution. This type of matching can provide the tax authorities with evidence that the zero rate is applied correctly for every single transaction, thereby reducing the risk of (carousel) fraud.

11

However, a Federal Government / Länder Working Group was established to elaborate proposals for comparison of data.

12

Reference is made to similar developments such as the computerised system for monitoring movements of excise goods between Member States under duty suspension (EMCS).

Include matching variances in the risk analysis system

Matching variances as an indicator in combination with other signals may be included in the risk management system.

Matching VIES data on VAT identification number verifications and intra-Community supplies and acquisitions may produce valuable risk signals to detect fraud. However, most of the matching variances are indicative of taxpayer's reporting or registration errors rather than fraud. As long as it is not feasible to correct all individual variances, it would be useful to incorporate the matching results in a risk management system. In combination with other indicators and trend analyses, this may help detect matching variances that are really an indicator of potential or actual fraud. In Belgium this is already current practice.

Enhance risk management of the verification of VAT returns

The risk management system for verification of VAT returns can be enhanced by using all available information sources in combination.

The extent to which the tax authorities of Belgium, Germany and the Netherlands make use of risk management while processing VAT returns differs significantly. The Belgian tax authorities make extensive use of data mining techniques, distinguishing various groups of taxable persons and applying about 100 variables. These techniques are used to identify files for closer inspection. Initial results indicate that slightly more tax revenue is generated by applying these techniques.

In Germany and the Netherlands the application of risk management is also dependent on the performance of local tax authorities, in Germany in the Länder and in the Netherlands in the tax regions. The effective use of risk profiles and risk management techniques is also dependent on the availability of adequate IT support. It is not feasible to analyse many variables or identify interesting patterns in combinations of variables manually.

3.3 Conclusions/recommendations: information exchange between EU Member States

Evaluate the effectiveness of information exchange between Member States

The effectiveness of information exchange between Member States with respect to the prevention and/or detection of fraud is not evaluated. Such an evaluation is warranted, because our audit indicates that only limited use is made of the potential of information exchange. The audit observations indicate that information requests usually help explain administrative variances (due in part to the unreliability of VIES) but rarely result in the detection of fraud.

The audit observations show that the three Member States make only limited use of the potential of information exchange in relation to the size of intra-Community trade. The fact that in Belgium only three queries are made on average per office per annum, for example, begs the question whether all services are sufficiently familiar with this instrument.

Due to a lack of evaluation, the Member States have little insight into the results of administrative cooperation regarding the prevention or detection of fraud or recovery of evaded taxes. It is recommended that the value of information exchange be evaluated, for example by requesting feedback from users on a regular basis. The latter is already the case in the Netherlands, but CLO¹³ Almelo receives only a limited response to the evaluation forms it issues. A possible alternative could be to request feedback on a sample basis only. This would reduce the burden on the divisions concerned as well as on the CLO and allow for a better follow-up and processing of the feedback and the use of the information obtained to process new requests.

Handle information requests on time

Information exchange is time-consuming and in many cases the deadlines are exceeded.

The audit findings show that the quality of information requests and answers is generally satisfactory. The same cannot be said of compliance with the maximum three-month response time imposed on Member States by EU Regulation. Figures differ according to the requesting and answering Member State but as a rule, between 30% and 60% of all requests are answered late.¹⁴

In the Netherlands there is no systematic monitoring of response times. Germany and Belgium have largely automated systems that check response times, but they do not provide any information on the progress made in the period between the submission of a request to the local tax office and the receipt of a reply. The local tax offices' processing of requests usually results in time overruns but time is also needed by the CLO (the Netherlands) and by translation services (Germany). Targets should be set for the local tax offices to reply to information requests on time. Moreover, local tax offices should provide the CLO with better information on the progress of handling information requests. In addition to improved follow-up, this should speed up the provision of information to the requesting state, if an overrun is likely to occur.

Enhance information exchange between fraud units and broaden support for Eurocanet as valuable means of information exchange

Eurocanet is considered a successful tool in Belgium and the Netherlands. The German tax authorities do not actively participate in Eurocanet. Since it would be beneficial to broaden the scope of Eurocanet to encompass as many EU Member States as possible, it is recommendable to remove any obstacle that might prevent its use.

The audit findings reveal that a dedicated approach is required to combat carousel fraud. In this respect, the European Carousel Network is a useful instrument but it is not unanimously accepted by Member States. The Netherlands and Belgium are among those participants that provide data to the network and make use of the information exchanged, but Germany and a number of other Member States refuse to participate actively because such information exchange is viewed as lacking an adequate legal basis.

The non-participation of a substantial number of Member States reduces the significance of the information exchange. This is why Eurocanet participants are considering a further delineation of Eurocanet's functioning rules or specification of a legal basis in regulation 1798/2003 itself. Another idea, promoted by France, is to set up a new European platform called Eurofisc. At the Ecofin Council of 7 October 2008,

¹³
Central Liaison Office,
reference to article 2, 2 of
Regulation 1798/2003.

¹⁴
See also Special report
No 8/2007 of the European
Court of Auditors.

the Council approved the general concept of Eurofisc and also invited the European Commission to include provisions on Eurofisc in Regulation 1798/2003. Eurofisc is designed as a decentralised network with only voluntary participation by the Member States. New solutions like Eurofisc should preserve the advantages offered by the current Eurocanet system. How swiftly the information is exchanged is crucial in this respect. This implies not only that the data exchange is workable and thus remains limited to suspect companies and transactions but also that the information channels are short and data are shared directly with the relevant divisions.

4 Repression

4.1 Introduction

Repression involves the investigation, prosecution, sanctioning and settlement of fraud cases. This audit report focuses on the repression of fraud in the three participating countries and on the management information available on the results of investigations, prosecution and settlement of fraud cases.

4.2 Conclusions/recommendations: repression

Arrange strong cooperation between investigators/prosecutors and the tax authorities

Strong cooperation between investigators/prosecutors and the tax authorities is necessary for successful repression.

Our audit observations indicate that repression can generally be successful only if close cooperation is ensured between all the authorities involved. Successful cooperation requires that:

- there are no formal or time-consuming obstacles between the tax authority and the investigation and prosecution services;
- the units involved have a permanent overview of differing suspicious VAT arrangements;
- satisfactory organisational and staff measures are in force;
- measures are analysed permanently and adjusted when necessary;
- the prosecution services make use of the knowledge of tax experts to combat VAT fraud in suitable cases.

In Belgium the VAT audit offices and audit centres play a limited role in combating VAT evasion. Their only role is to inform the Special Tax Inspectorate immediately when VAT evasion is suspected. The Special Tax Inspectorate tackles specific large-scale and organised fraud cases, including carousel fraud. The VAT Fraud Taskforce (OCS), which is specialised in combating VAT carousel fraud, is considered a strong element in the Belgian approach. The OCS was established to overcome problems in the cooperation between the tax authority, police and public prosecution service. The public prosecutor is obliged to report all suspicions of VAT fraud to the Ministry of Finance.

There are still some obstacles, however, in the organisation and cooperation.

- Formal and time-consuming procedures are in place for:
 - special approval to be entitled to report to the public prosecutor;
 - secondment of tax officers who are experts in special tax issues such as VAT fraud to the public prosecutor.
- The Special Tax Inspectorate has no criminal competence and Justice staff have limited fiscal experience.

In Germany different units are responsible for carrying out VAT checks and combating VAT fraud. The tax authority's approach is to establish specialised organisational structures and provide well-trained staff at national and Länder level. Tax related repression procedures are generally managed within the tax authority. In the case of tax offences, the tax investigation services and the administrative fines and criminal matters unit may either prosecute VAT fraud themselves or hand the cases over to the public prosecution service. If the proceedings are managed by the public prosecution service, the unit for administrative fines and criminal matters is obliged to represent the interests of the tax authority. Furthermore, the public prosecution service generally relies on experienced staff members from the tax investigation service as auxiliary officers. Under the 'uniform strategy for tax investigations, in cases of carousel and chain fraud', special investigation teams may be established in serious cases of tax evasion, or in cases of organised tax evasion. These investigation teams encompass the public prosecutor, police, tax investigators and special tax auditors. Depending on the organisational structures in the Länder, tax offices employ staff with varying levels of experience and at least one experienced VAT controller and/or VAT auditor. At federal level, the unit for the coordination of special VAT audits and related tax investigations (German acronym: KUSS) is responsible for nationwide coordination in the field of suspected and actual VAT fraud. KUSS works closely with the Länder's special VAT audit and tax investigation units to combat VAT fraud. KUSS also supports information exchange between the tax investigators and VAT auditors involved. The handling by the central coordination unit depends on the nature of the case (taxation procedure or criminal prosecution).

In Germany there are still some obstacles to cooperation.

- Coordination throughout Germany cannot be performed satisfactorily since there are shortcomings in the exchange of information between KUSS and the Länder tax authorities.
- At federal level, there is no authority to advise the Länder tax authorities on investigations. This can result in a time-consuming cooperation process.
- Insufficient assignment of proper staff resources with the training and experience needed to combat VAT fraud.
- Neither KUSS nor the Länder tax authorities can influence the public prosecutor's decisions to deal with cases of organised VAT fraud in combined proceedings rather than case by case.

In the Netherlands the tax regions conduct audits on the basis of signals received from internal and external sources. If an audit or a signal from the Fiscal Information and Investigation Service (Dutch abbreviation: FIOD-ECD) gives rise to a suspicion of VAT fraud, the case is discussed in one of the regular meetings of representatives of the tax authority, FIOD-ECD and the public prosecutor. In accordance with national guidelines, a decision is taken either to start criminal investigations or to handle the case fiscally. Special guidelines and procedures are in place for the decision making process. This ensures that the same criteria are applied nationwide by staff with knowledge and experience of VAT fraud and criminal proceedings. In general this ensures satisfactory cooperation between the tax authority, the investigation service and the public prosecutor.

In the Netherlands, there are also obstacles to the organisation of the repression of VAT (carousel) fraud.

- A decision to investigate and prosecute fraud cases also depends on the capacity available at FIOD-ECD and the public prosecution service.
- Special annual agreements are made between FIOD-ECD and the public prosecution service. However, the agreement for 2008 pays no special attention to VAT (carousel) fraud.
- Information about fraud cases is recorded differently by the tax authority and by the public prosecution service.

Provide management information on fraud incidents and VAT losses

Management information on cases of intra-Community VAT fraud and related VAT losses is limited. The total loss due to carousel fraud is not known. Information about these losses is valuable to measure the effectiveness of anti-fraud policies and to decide on what resources to devote to tackling fraud.

Tax authorities should analyse VAT fraud cases and VAT losses and compile all relevant information, including information available at the public prosecution service, in order to measure the effectiveness of anti-fraud policies and measures.

Information about fraud cases and VAT losses is available to some extent in all three participating countries. However, a complete picture of fraud cases and losses due to carousel fraud is not available.

In Belgium information is available about the number of cases detected by the support service (OCS) and handled by the investigation service (BBI), as well as the amounts of VAT and fines involved. The figures show that a limited number of cases account for a disproportionately large part of the amounts evaded. The 15 main cases account for more than 70% of the total amounts evaded in 2006 and 2007.

In Germany statistical data are available but are not used as a steering tool. Consolidated statistics based on data from the Länder are drawn up at national level. The tax authority keeps databases with information about VAT fraud incidents and participants in VAT (carousel) fraud cases. The tax authority units at national level cannot force the Länder to provide them with adequate management information. The relevant practice of the Länder is therefore not analysed at federal level. The statistical data kept by the Länder are also insufficient to measure the effectiveness of anti-fraud policies. Neither the tax authority at national level nor the Länder have comprehensive information on VAT (carousel) fraud cases regarding, for example, the results of confiscation and forfeiture or the recovery rate of assessed tax.

In the Netherlands statistical information is available about VAT fraud and carousel fraud cases as recorded by FIOD-ECD. The financial loss resulting from carousel fraud is relatively high: 75% of the total recorded loss due to VAT fraud is attributable to carousel fraud, while only 6% of the total number of VAT fraud cases involve carousels. The tax authority does not have a complete overview of the number of cases and the financial importance of intra-Community VAT fraud. Information is available only on cases recorded and handled by FIOD-ECD. Information on administrative settlements is not available.

Low collection rates of VAT fraud losses highlight the importance of prevention and early detection

The available information indicates that carousel fraud produces relatively high losses compared with other frauds, while the collection rate of amounts due is low.

Given the nature of missing trader intra-Community fraud, the collection rate of VAT losses due to this type of fraud is low. Although the amount payable can be increased with a considerable fine, e.g. in Belgium and the Netherlands, this has hardly any effect on the amounts collected. Therefore prevention as well as early detection is the best approach to reduce the shortfall of VAT.

Joint and several liability for the payment of VAT evaded by convicted VAT fraudsters, VAT fraud financiers, fraud initiators or other persons involved in a VAT fraud carousel is a valuable additional instrument.

In Germany the tax authority's approach to VAT fraud comprises strengthening prevention, detection and repression in descending order of importance. Although this appears to be a reasonable approach, it is not based on a thorough evaluation of the tax authority's anti-fraud policies.

Annex I Audit questions

(1) Prevention (limiting the opportunity to commit fraud)

- 1 What measures have been taken to prevent potentially untrustworthy traders from gaining access to VAT identification numbers and being able to become ‘missing traders’?
- 2 What measures have been taken to prevent the potential misuse of long-term inactive VAT identification numbers?

(2) Detection (risk analysis, inspection, monitoring, audit and signalling)

- 1 What guarantees are in place for the complete and correct entry of data on VAT identification numbers, intra-Community supplies and corrections of VAT returns in the VAT Information Exchange System (VIES)?
- 2 How is the risk analysis and risk management in place to audit VAT returns and intra-Community supplies organised?
- 3 What audits and risk profile assessments are conducted of VAT returns and declarations of intra-Community supplies?
- 4 Is the detection of unusual transactions followed up promptly by means of a closer investigation?
- 5 Are relevant sources of information, including spontaneous reports and requests for information, used to detect fraud?
- 6 Is there progress surveillance to monitor the on-time receipt/delivery of data in response to requests for information?

(3) Repression (audit, search and detection, prosecution and settlement)

- 1 Are signals of suspected fraud followed up by the tax authorities and/or fraud units?
- 2 What management information is available from the tax authorities concerning the results of audits, investigations and fiscal handling of these matters?

Annex 2 List of abbreviations

BBI	Investigation Service (Belgium)
CLO	Central Liaison Office
EC	European Commission
ECOFIN	Economic and Financial Affairs Council of the European Union
EU	European Union
EUROCANET	European Carousel Network
FIOD-ECD	Fiscal Information and Investigation Service / Economic Investigation Service (the Netherlands)
ICT	Information and Communication Technology
KBO	Central social security database (Belgium)
KUSS	Coordinating unit for special VAT audits and related tax investigations (Germany)
MSW	Member State Warning
MTIC	Missing Trader Intra-Community Fraud
OCS	VAT Fraud Taskforce (Belgium)
OLAF	European Anti-fraud Office
SAI	Supreme Audit Institution
SCAC	Standing Committee on Administrative Cooperation
SO	Selection Consultation
TBF	VAT Fraud Taskforce (the Netherlands)
TPO	Tripartite Consultation (the Netherlands)
VAT	Value Added Tax
VIES	VAT Information Exchange System

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