The detection and settlement of VAT fraud in four countries

Addendum to the report value-added tax fraud in the European Union

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1 The detection and settlement of VAT fraud in the Netherlands

1.1 Detection

The detection of VAT fraud within the Netherlands is the responsibility of the Tax Administration (Belastingdienst) and is carried out by different institutions. The Enterprise Units (Eenheidondernemingen) of the Tax Administration are responsible for the audit and identification of tax practices to include irregularities or fraud. The examination of intra-Community transactions are conducted in the first instance at the national level and are handled by the Central Liaison Office.

Larger cases of VAT fraud will be investigated in more detail by the Fiscal Intelligence and Investigation Department (Fiscale Inlichtingen en Opsporingsdienst or FIOD). Their investigations, conducted by regional offices, are intended to produce cases to be processed in the criminal justice system, but may, for different reasons, result in an administrative penalty. More detailed information concerning the functioning of these agencies is provided below.

1.1.1 Control by the Enterprise Units (Eenheidondernemingen)

The Tax Administration in the Netherlands is divided into five divisions (Enterprise Units North and South, Large Enterprises, Individuals and Customs). The various divisions are further divided into units, responsible for the imposition, levying, control and collection of diverse taxes. An enterprise unit is further subdivided into teams.

Within the units, various levels of expertise exist. The training for revenue-officers (commies)\(^1\) is 2½ years, for auditors, 3½ years. Both are capable of carrying out audits or inspections. More difficult cases are turned over to certified accountants or inspectors (those who have studied or have a degree in fiscal law).

The enterprise units are tasked with carrying out audits, on average, once every 6.7 years. In practice, audits of high-risk businesses are conducted more frequently, which results in less frequent audits of low-risk businesses. Special attention is also given to 'starters', new businesses or those which have been purchased by other businesses.

The necessity for an audit is dictated by a number of factors. On the one hand, it is influenced by the nature of the group - whether the enterprise is

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1 The 'commies' fulfils the role of both clerk and auditor. The educational level and training are less than that of a tax auditor.
a large, medium or small concern. Another influencing factor is the fiscal necessity of auditing a specific enterprise (is it an enterprise which has a large tax base, or rather, do the tax authorities risk losing large sums of money if an audit is not carried out?). Fiscal risk also dictates the necessity for an audit (is the business in a fraud-sensitive branch?). A last factor is the trustworthiness of a particular enterprise. The criteria used to determine the level of trust or 'trust category', as defined by the Tax Administration, include the method of payment, the presence or absence of a tax advisor, how an enterprise files its regular tax return, and whether or not there have been previous inconsistencies or the enterprise has committed fraud in the past.

Fraud signals take on various forms. When, during the course of an audit, an auditor is alerted to an irregularity, the decision must be made whether the situation calls for further investigation. A risk-analysis, based upon the 'trust category' and the branch, will help determine if further examination is necessary. Generally, the auditor sends a letter requesting information. The decision may be made to examine the company's books, or the officer may conduct a complete field audit, according to the General Tax Law. Tax officials have special investigative powers limited to fiscal crimes. Without warrants issued by an examining magistrate, tax officials may formally enter a business office and confiscate all files. In practice, however, the tax administration has only allowed these powers to be exercised by special criminal investigators which work at the FIOD.

If, in fact, an inconsistency exists, but does not meet the legal requirements set forth in the directive concerning the criminal investigation in fiscal affairs, AFZ 93/2858, (for individuals the threshold sum is 5.500 ECU's and for enterprises, 11.500 ECU's), the auditor may settle the affair administratively. This means that the individual is responsible for payment to the tax authorities, of the sum which was evaded. If the tax evasion was due to fraudulent practices, the auditor may administer a fine with a maximum of 100% above the sum which was originally due. This administrative application ends here.

If the sum evaded exceeds the amount mentioned above, the auditor must report the suspected activity to the fraud-coordinator within his unit. If the case meets the requirements outlined in the AFZ directive, then the fraud-

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2 Large businesses, particularly multi-nationals, appear to make use of, or manipulate, the law in order to avoid high taxes, or in the commission of fraud. Fraud committed by smaller enterprises is usually done by concealing or falsifying information concerning taxes (Verbraak, 1995).

3 The tax authorities may be alerted to fraud as a result of any of the following signals: exceeding the individual 'negative norm', no regular tax returns over a longer period of time, information concerning interest rates from banks, articles from the newspaper concerning bankruptcy of a particular enterprise, information from the Chamber of Commerce, letters of warning concerning unusual practices submitted by enterprises in the same branch, mismatches or irregularities from the ICT-base, or information concerning an enterprise which may have turned up during a control at another place of business.

coordinator brings the case to the selection council (Selectie-Overleg). The participating members are the fraud-coordinator, the team leader from the FIOD, and the official responsible for the enforcement of the General National Tax Law (contactambtenaar AWR). If these participating members determine that enough evidence exists to obtain a successful prosecution in criminal court, the case is moved from the administrative sphere to the criminal sphere, where it is then turned over to the tripartite council (Tripartite-Overleg). Members of the tripartite council are the official responsible for the General National Tax Law (Contactambtenaar AWR), the team leader of the FIOD and the local public prosecutor. Here a definitive decision will be made in terms of whether further investigation is necessary. In view of the seriousness of a case, the decision will be made whether to initiate a criminal investigation or to waive prosecution in lieu of payment (transaction) or to settle the case administratively by imposing an administrative penalty.

Whether a case is settled administratively or whether the case enters the criminal justice system will determine the authority and guidelines which set parameters for the investigation and treatment of the tax evader. The Tax Administration conducts audits and only administrative settlements are within the scope of its authority. Information collected, at this point, is for the purpose of establishing the appropriate collection of taxes. When the 'audit' transforms into an 'investigation' for the purpose of gathering evidence to be used in the criminal justice system, and as soon as enough evidence exists to change the tax payer's status to that of suspect, then the investigation must be conducted by the FIOD and the individual must be provided the same basic rights as any other criminal suspect.

This section reviewed the audit of VAT and the path taken by the tax authorities in the Netherlands when detection of VAT inconsistencies arise. Both the Tax Administration and the Central Liaison Office have audit or inspection functions. The following sections discuss the investigative and settlement practices as well as the operation of the Central Liaison Office.

1.2 Investigation of VAT fraud by the Fiscal Intelligence and Investigation Department (Fiscale Inlichtingen en Opsporingsdienst or FIOD)

The Fiscal Intelligence and Investigation Department (FIOD), founded in 1945, is the investigative branch of the Tax Administration. The Director-General of Taxes of the Ministry of Finance is primarily responsible for the FIOD. The task of the FIOD is the collection of data which are relevant for levying, control and payment of taxes on the one hand, and the criminal investigation of tax, customs and excise crimes on the other. In addition to the main FIOD office there are eleven regional offices throughout the

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5 The first two options are penal measures, the last option is an administrative possibility.

6 A criminal suspect is guaranteed the following rights: to be told the reason for the interrogation, the right to remain silent, the right to legal assistance, the right to examine all materials relevant to the case against him and the right to a speedy handling of the case.
Netherlands. The main office of the FIOD executes inter-regional (national) and large international criminal investigations. The regional offices conduct investigations at the regional level and provide support services to the main office. Within the main FIOD office a special value-added tax division has been established.

The FIOD is divided into an intelligence service and an investigative service. The intelligence service provides information to both the regional units of the FIOD and the Tax Administration which is necessary to determine the accuracy of tax declarations.

The investigative service executes criminal investigations in cases involving suspicion of willful incorrect tax declarations as well as in cases involving the willful breach of regulations concerning import, export and the transit of goods. The investigative service comprises approximately 450 detectives. FIOD investigators must complete three years of training as auditors or customs inspectors, similar to that provided individuals preparing for a position as an auditor with an enterprise unit. Upon completion, they must participate in a three month course to become a 'special investigative officer'. This is followed by an additional two years of job training with a mentor.

The FIOD does not always work independently of other investigative organizations. The investigation of large-scale fraud operations may comprise multi-disciplinary teams including the police and other special investigative services. The FIOD also provides international assistance to foreign services with similar tasks. The FIOD's Mutual Assistance Bureau checks, registers and provides information to audit and investigative services in member states when information uncovered in an investigation points towards problems in those member states.

In situations where the enterprise unit uncovers cases of suspected fraud and further investigation is necessary, an investigation by the FIOD will be initiated according to the AFZ directive. In addition to this reactive investigation, often based upon inconsistencies discovered during a tax audit, particularly in the VAT field, the FIOD also manages a proactive style of operation. It links and compares several data bases examining the data for inconsistencies. Especially fraud-sensitive branches like computers, audio/video and textiles are regularly checked within a certain time period. On the basis of the comparison of these data, the appearance of fraud signals may result in an investigation being initiated by a regional FIOD office. The final decision for (further) investigation will again be made in the tripartite council (see section 1.1.1).

The authority granted FIOD investigators allows them to enter a place of business without a warrant and confiscate all evidence relevant to an investigation of tax fraud. Investigators at the FIOD are special police officials attached to the Tax Administration and have regular police investigative powers. In practice, these powers are only exercised as they relate to crimes such as fraud, embezzlement, corruption and other fiscal
offenses. They may conduct house-searches and arrange for wire-taps, however, a warrant is required. Nevertheless, in emergencies, the chief of a team at the FIOD, in deliberation with the prosecutor, has the authority to give permission for house-searches (but not for wire-taps). When enough evidence has been obtained to pursue the case further, the case is turned over to the public prosecutor.

1.3 The public prosecutor and cases involving serious fraud

Based upon criticism levied against the public prosecutor's office in the beginning of the 1990's, the organisation and working methods of the public prosecution department underwent radical changes. In 1993 a commission,7 was established by the Minister of Justice to evaluate the changes to strengthen the position of the public prosecutor. The reorganization is ongoing.

Despite the fact that fraud had been gaining attention as a serious offense in the Netherlands since the inception of the tripartite council in 1986, an alarming increase in social security fraud cases was the impulse in 1992 to make fraud prevention a priority in policy. This resulted in the establishment of a project team that same year. The emphasis of this team is to stimulate expertise on fraud prevention in the managerial as well as the operational level inside the office of the public prosecutor and the court. During its three years of existence the project team has stimulated several developments in this area such as the conclusion of the agreement ('covenant')8 between the FIOD and the public prosecutor, the establishment of several cooperative lines between judicial institutions and organizations from financial, fiscal and social security sectors, and has increased efficiency and expertise inside the public prosecutor's office. Further special fraud-chambers in the court were initiated. Most importantly, more efficiency in policy making was introduced which resulted in more direct lines within the prosecution office between the top management and the supervisor and case officers.

A demand for more attention to fraud prevention lead to the specialization of prosecuting officers for cases involving fraud. In theory (not yet implemented in every district office) every public prosecution office has two fraud officers; one for fiscal cases and one for social security cases. Depending on the management and the size of the public prosecutors office, the officers are assigned either part- or full-time to prosecute fraud cases. In larger public prosecution offices, specialized units usually exist where expertise concerning certain types of crime is assembled. Supervisor and fraud officers work in this position for three or four years. Under ideal

7 The commission 'Public Prosecutor' or Donner Commission, named after its chairman, was established on 9 December 1993.
8 For the year 1995 this agreement stipulates that the FIOD will provide the public prosecutor with 450 cases, all of which will be prosecuted.
circumstances the position is rotated at different times so that there is always one experienced officer in the unit. Another technique to introduce expertise on fraud is to invest in "secretaries". Secretaries have legal backgrounds and are employed to assist the prosecuting officer in his job. As their positions are not rotated, their continuation at the public prosecutors office is usually more assured than that of the prosecutor, thus their expertise is vast.

Developments to create 'clusters' of expertise are ongoing. Concentration of expertise in a specialized area such as fraud will be established in one office of the public prosecutor in a certain geographical area. Large and complex fraud cases can be referred to this public prosecutor where the expertise is available. The officers will be provided further education within their specialized area. To assure expertise in the prosecution of cases in appeal, advocates-general follow cases in first instance so they are already informed.

As already mentioned, if a tax controller determines that a case meets the criteria for prosecution, the case is turned over to the tripartite consultation, composed of representatives from the tax administration, the FIOD and the public prosecutors office. Factors affecting the decision to prosecute a case, in addition to the amount of taxes evaded, are the directives of the public prosecution department and the work capacity of (mainly) the FIOD and/or the court. Other factors which influence the decision are the involvement of professional criminal groups, the interest for society, whether the case is current, or whether possible mistakes made by the enterprise unit during the audit may jeopardize a successful prosecution. Since 1994, a new factor influencing this decision is the covenant between the FIOD and the public prosecution which stipulates the amount of cases to be prosecuted.

At present there is no specific research into penal settlement of VAT fraud cases. However, recent research concerning the management of serious fraud cases reveals difficulties in the penal settlement of such cases (Nelen, et al., 1994).9 This research shows that the results of the criminal justice process are highly unsatisfactory, especially in corporate crime cases.10 General appeals and appeals for cassation11 at the Supreme Court are quite common in cases involving serious fraud. These legal means serve suspects well, as one-sixth of initially guilty verdicts are reversed by appellate courts. Furthermore, sentences meted out by courts of appeal are significantly lower than those of the districts courts. This difference is due primarily to the duration of the judicial process. On average, nearly six

9 Seven out of forty-three cases were identified as VAT fraud.
10 In general, one quarter of the criminal proceedings against main suspects end in acquittal. Of all main suspects found guilty, slightly over half receive sentences that include unconditional imprisonment; financial penalties (fines, transactions, etc.) are rare.
11 General appeals are handled by courts of appeal and factual issues as well as points of law may be considered. Appeals for cassation are examined by the Supreme Court (Hoge Raad) in the Netherlands which considers only aspects of law. Factual matters may not be raised as an issue in appeals for cassation.
years expire between the beginning of an investigation and the irreversible settlement of criminal cases. In one VAT fraud case it took almost ten years to wind up the criminal proceedings. Reasons for this time gap can be found in the limited capacity of the judicial institutions, mainly the court, and delaying tactics used by the suspects.

1.4 The Central Liaison Office and control of intra-Community transactions

Information between the Netherlands and other E.U. member states regarding ICS’s is exchanged via the Central Liaison Office (CLO) Intra-Community Transactions. Dutch companies are required to provide the CLO with a quarterly return listing ICS’s to companies in other E.U. member states. The CLO feeds this information into a computer base (the Intra-Community Transaction or ICT-base). No more than three months after the end of the quarter the CLO sends the results of ICS’s from the Netherlands to the CLO in the respective countries. This information is sent via the Value-Added Tax Information Exchange System (VIES) network. In essence, a six month time period may elapse between the initial transfer of goods and the ICS report being returned. By the same token, information concerning the supply by foreign companies to Dutch companies is obtained by the Dutch ICT-base.

Without waiting for the information from other E.U. member states concerning ICT’s, a comparison can be made between a company’s quarterly ICS-listing and its quarterly VAT declaration using the information provided in Section 3b on the tax return, where the total ICS’s form a separate rubric. Differences will eventually result in action being taken by the tax authorities. A letter will be sent to the company asking for an explanation or clarification of the problem. If the tax authorities deem the response insufficient, the CLO will initiate an investigation into the business concerned. The same procedure occurs if a business fails to submit an ICS declaration. Another proactive measure is to check the validity of VAT identification numbers in an early stage of the transaction process. The differences in ICT figures with VAT declarations can, in theory, be an indication of fraud (but then one by a rather unintelligent, or inexperienced fraudster). Both transactions are derived from the same administration. Ignorance or lack of knowledge of the new system of declaration and laxness on the part of businesses in filling in declaration forms probably accounted for the majority of differences found during the initial months of operation. Some businesses chose to ignore the legal requirement to file these ICS-listings. Those who are recalcitrant (at the time of the research,

12 All information concerning ICS’s from Dutch companies to a particular foreign purchaser are totalled.
13 The CLO in the Netherlands obtains information from the CLO’s in other member states concerning the supplies of goods from all businesses in the foreign country to that particular company in the Netherlands.
approximately 200 businesses) are forced to prove each ICS individually if they intend to profit from the ICS against the 'zero-tariff'. The subsequent supply of this information to the tax authorities costs the business just as much time and effort as it does to supply this information in a timely (and legal) fashion. Furthermore, failure to submit a regular tax return in the Netherlands may result in a penal sanction of maximum 10,000 Dutch guilders (Article 68, sub 2, General Tax Law, the Netherlands). It is expected that differences in declarations, and the refusal to submit declarations will decrease for the most part if the CLO consistently continues to supervise and exercise control.

In the beginning emphasis was given in the Netherlands to the first method of control (comparing the information concerning ICS’s and checking the existence of VAT identification numbers) in order to ascertain that the information concerning ICS’s which was destined for other E.U. member states, was as accurate and trustworthy as possible. Recently the CLO also began to check to determine whether differences exist between the regular tax return concerning ICA’s by Dutch companies and the figures (submitted by the CLO in other member states) concerning supplies to these same Dutch companies by foreign businesses. This has resulted in a current backlog in the intended audits.

In the first instance it appears that after comparing the total ICA’s by a company with the total ICS’s to that same company by businesses in other countries, 80% of the comparisons result in mismatches. Not all differences are a result of fraud. Small differences can occur as a result of different courses in the currency exchange rate or as a result of the acquisition declaration being filed in a different time period than the ICS from a foreign country.

When a mismatch occurs, the CLO in the Netherlands utilizes the VIES system to examine the data provided by the country from which the goods were allegedly delivered (according to the tax declaration provided by the Dutch company). Additional audits may determine whether other foreign businesses have made deliveries to a Dutch company (deliveries that may not be listed on the regular tax return). When inconsistencies in another country have been determined, a letter is then sent to the Dutch company requesting specific information concerning all deliveries made to that company by each individual company in the country in question. This information provided by the Dutch company is then compared with information in the database in that particular country. It should eventually become clear if there are inconsistencies, and if so, with which suppliers

14 A bill is currently under consideration by the Dutch legislature concerning a business’ failure to submit or to intentionally file a false quarterly ICS-listing. If this bill becomes law, the aforementioned actions could result in an administrative sanction.

15 In 1993 the initial response to the requirement to file a return was 60%, of which 50% was correct. After warning notices and summons, and attempts to provide additional information, the response rate increased to 95%, with approximately 95% accuracy of those returns. The initial responses from 1994 stands at approximately 85%, of which 85% is correct (De Die, 1994).
inconsistencies still remain. The enterprise unit then selects certain of the "true" mismatches for further investigation. Due to the above mentioned priority approach the investigation into tax declarations from 1993 have just now begun in August 1994.

If no discrepancies appear in a comparison between the quarterly tax return on acquisitions and the information provided by foreign suppliers, that is no guarantee that fraud is not being perpetrated. Both declarations could have been falsified for the purpose of committing fraud. The scheme diagrammed in chapter 6, section 6.2.2 provides an example of fraudulent practices where no mismatch occurs in the intra-Community transaction base.
2 The detection and settlement of VAT fraud in Belgium

2.1 Introduction

Within Belgium there are a number of different agencies concerned with the control and investigation of VAT fraud. Similar to the situation in other countries, a case of fraud may first be discovered during a routine audit or control by the tax administration, or by the special administrative branch (Bijzondere Belastinginspectie or BBI) established to investigate important fiscal fraud currents, amongst others, VAT fraud. In addition to this branch, there are three enforcement agencies involved in the investigation of VAT fraud: the Judicial Police (Gerechtelijke politie), the State Police (Rijkswacht) and the Central Service for the fight against Organized Economic and Financial Offenses (Centrale Dienst voor de bestrijding van de Georganiseerde Economische en Financiële Delinquentie or CDGEFID). More about the authority and procedure of these agencies is detailed below.

2.2 VAT audits in Belgium

Value-Added Tax, Registrations and Domains (BTW, Registratie en Domeinen or BRD) is one of the divisions which falls under the Administrator-General of Taxes.\textsuperscript{16} The BRD is divided into two sectors: one for VAT and one for Registration and Domains and further comprises a central administration and external departments. The central administration establishes policy, maintains statistics and supports the external departments. The BRD is responsible for the issuance of VAT numbers and serves as the point of contact where businesses file tax returns. Additionally, it executes controls, interprets and solves disputes, determines who or which qualifies as a taxable person or company and cooperates with other member states in the area of VAT.

In addition to the central administration there are external or field services, headed by an inspector, which are established in the provinces where ten regional directions have their seat. These directions are subdivided into ± 250 control offices with a controller or auditor as the top administrative figure.

There are frequent and numerous consultations between the BRD and the BBI. Whenever VAT fraud has been determined and the BBI has become

\textsuperscript{16} Others are Direct Taxes, Customs and Excise, Land Registry Office (Kadaster), and the Special Tax Inspection (Bijzondere Belastinginspectie).
involved, then the BBI conducts the basic investigation and the BRD takes care of the assessment of taxes for the taxpayer.

In theory, companies in Belgium are audited once every two years, by the VAT administration and the administration for Direct Taxes alternately. In practice, though, this occurs less frequently. On average, a summary control is carried out about once every three years and a thorough control occurs approximately once every six years. Correlations in the data are established by the individual controller for possible later use in an automated risk-analysis. New traders are checked along the lines of an internal directive with the emphasis upon ensuring that these companies do not misuse VAT registration numbers or set up bogus companies.

The initial investigation into fraud may be the result of a fiscal audit, complaints by companies or informants, or as a result of information received from abroad. In cases where fraud signals are evident, one of three options is available to the auditor: the case can be handled administratively by the auditor, the case can be turned over to the BBI, or it can be turned over to the Regional Director (although this last option seldom occurs). In contrast to other countries, there is no directive concerning the reporting, transaction or legal proceedings in fiscal fraud cases. The auditor therefore exercises broad discretion in determining whether to handle a case administratively or process it criminally. In practice, the decision made by the individual control agent whether or not to file a complaint is based upon various criteria such as the amount of VAT evaded, the size and/or complexity of the case, and the likelihood of a successful criminal investigation.

A tax controller has the authority to demand access to all the books relevant to the economic activities of the company. In addition to that, a controller may request information and make copies of, or confiscate invoices and 'closed' books from previous years. Copies must be made of open (current) books. The control agent has the right to gain access to all rooms within the company, however, in conducting controls of the individual's private sphere, the search is limited to certain hours of the day and a search warrant is required. Since 1 January 1993 controllers can consult information systems containing relevant information pertaining to their audit. The right to examine and confiscate books is restricted to information which is of importance in establishing the tax owed. The information obtained may be made available to other tax administrations.

If an individual fails to submit a tax return or if the information given to the tax authorities is incorrect, an administrative sanction of Bfrs 20,000 for each tax return may be imposed.\textsuperscript{17} Failure to submit a domestic supply

\textsuperscript{17} Article 53, category 1, number 1A of the appendix by the Royal Decree number 44 from 21 October 1993 for determining the amount of the non-proportional fiscal fines in the area of VAT.
listing or an ICT-listing is subject to an administrative sanction of not more than Bfrs 100,000. A controller is required to impose a sanction if it can be proven that an irregularity occurred. In that case the taxable person must pay the tax evaded and an administrative sanction of Bfrs 20,000. If the offense is the result of deceptive or intentional practices, the controller may decide to file a complaint with the regional director who then decides whether or not to inform the prosecutor (Procureur des Konings). If fraud is proven in court, a penalty of between Bfrs 10,000 and Bfrs 500,000, and/or a sentence of confinement from between eight days and two years can be imposed.\textsuperscript{18}

Tax officials may follow different levels of instruction within the tax administration. The level at which one enters depends on the previous educational level of the individual. However, the level at which one starts has no bearing upon the ultimate level which one can attain. It is possible to receive specific training within the administration. Tax officials may also receive further training at the National School for Finances.

2.2.1 \textit{The Administration of the Special Tax Inspection (Administratie van de Bijzondere Belastingsinspectie or BBI)}

The Administration of the Special Tax Inspection (BBI) was established by Royal Decree on 14 November 1978. It falls under the authority of the Ministry of Finance. The BBI operates on a national level. There is one central administration located in Brussels and four regional divisions. Each regional division has an information cell which has direct access to information from the ICT-base as well as from the regular tax return base. The BBI is further subdivided into 44 inspectorates some of which have authority to carry out regular inspections and others which conduct special missions. Fourteen of these inspectorates have authority to investigate VAT inconsistencies.\textsuperscript{19} The inspectorates have general authority in a particular area to carry out their investigative assignments. The inspectorates for special missions are established by the Director-General and receive investigative assignments of a particular nature. The jurisdiction of the special investigative branches extends across Belgium, in contrast with the other branches which operate on a regional basis. Additionally, there are three cells responsible for customs investigations.

The BBI is an integrated service of officials from the previous Administrations of Direct Taxation, and VAT, Registration and Domains. Some officials from the Administration of Customs in the BBI are charged with special missions. Cooperation with the other tax administrations exists on both a formal\textsuperscript{20} as well as an informal level and information is

\textsuperscript{18} Article 73 of the Belgian VAT Code.

\textsuperscript{19} At the regional inspectorate in Brussels between 10 and 15 people investigate VAT fraud.

\textsuperscript{20} One example of a regulated form of cooperation between the VAT administration, the BBI and the agency for Direct Taxation is the 'anti-fraud team'. Approximately ten persons from these different administrations consult each other every two months about ongoing cases and
exchanged frequently. Cooperation between control and enforcement agencies in tackling the problem of VAT fraud is somewhat more limited. The exchange of information between control and investigation agencies must be formalized through the use of a 'kantschrift'\(^2\) from the magistrate who is directing the investigation.

If the information gathered by the BBI can be used in a criminal investigation, it is passed on to the judicial authorities. In cases where the investigation into fiscal fraud is initiated by the judicial authorities, the BBI can gather information from judicial files, for which the formal permission from the prosecutor is needed. A formal mutual cooperation is restricted by the Charter of the Taxpayer (*Charter van de Belastingplichtige*), which confines the function of fiscal officials to that of a witness during the investigation and at trial.

The function of the BBI is the fight against fiscal fraud. The agency is tasked with carrying out large-scale audits which require the cooperation of specialists within various branches of the tax administration. This multi-faceted responsibility encompasses direct taxes, VAT and customs and the BBI officer's authority to conduct investigations covers the entire fiscal sector. Further, it investigates and attempts to prevent, or at least put an end to, fraudulent practices. In addition to carrying out investigations, BBI officers are further tasked with the responsibility of making suggestions to parliament concerning changes in the law.

Inspections conducted by the BBI are directed toward gathering information to determine whether or not fraud has occurred (as opposed to a general control visit by the VAT administration). Fiscal officers have the authority to confiscate evidence necessary to support an investigation. If, during the course of an audit or control, a BBI officer ascertains a criminal offense (fraud), the officer may handle the case in the same manner as would an auditor with the VAT administration: as a fiscal civil servant, the BBI officer determines whether or not to submit a fraud case to a higher authority. The officer may handle the case administratively (by imposing a sanction) or, in more serious cases, a report is filed with the regional director. If, at that level, the case is deemed serious, the information will be passed on to the public prosecutor. The public prosecutor then determines which agency will be given jurisdiction over the case: the State Police, the Judicial Police or the CDGEFID.

Complaints by legitimate companies concerning fraudulent practices in particular branches have resulted in the BBI conducting proactive investigations in fraud-sensitive branches such as hi-fi, (luxury) automobiles, textiles, petroleum and flour. Investigators proactively look for
determine policy priorities for dealing with fraud on both a domestic as well as an international level.

\(^2\) *A kantschrift* is a formal, written order or announcement issued by a magistrate.
fraud signals such as dump prices,\textsuperscript{22} multiple businesses registered at the same address or to a post office box, a garage in a shopping street, names of known offenders on the invoices or all of the invoices from a business being made out on the same day. A fraud signal can also come from a colleague who is working on another investigation, ie. stolen cars. This colleague may find invoices of 'niet-indieners' (those who have not filed a tax return) in the books of the business under investigation. When, during the course of an investigation, new facts come to light indicating a separate offense, then a new investigation must be requested to address these current issues. In Belgium there is no policy addressing the working relationship between the prosecutors and the investigative agencies concerning quota and the sort of cases that must be investigated.

In 1993 approximately 350 individuals were employed by the BBI. With a university degree one can enter at level I. For those without a university degree entrance occurs at level II. These two levels determine the speed with which an individual may be promoted within the hierarchical structure. The lowest level is that of clerk (opsteller), followed by auditor (verificateur), deputy-inspector, inspector and chief inspector (Hoofdcontroleur). The top level is that of surveyor of taxes, whose responsibility it is to manage the investigation team.

Spontaneous collaboration between control agencies in Belgium and those in other EU member states is sporadic.\textsuperscript{23} The request for an exchange of information occurs more frequently.\textsuperscript{24} Belgium's cooperation with other member states has been enhanced as a result of the deployment of liaison officers whose task involves keeping both countries informed of current changes in the law and facilitating the flow of information and contacts between the host and the 'sending' country.

2.3 Investigation of VAT fraud by enforcement agencies

There are approximately 700 police services. Some have a general function whereas others are specialists in a certain area. The police in Belgium can be divided into 2 main categories depending upon their tasks as well as on the administrative body whose authority they come under. On the one hand there are the so-called administrative police tasks: enforcement of public order, which are carried out by the municipal police (Gemeentepolitie) and the state police (Rijkswacht). On the other hand are the law enforcement tasks: the detection of crimes and criminals. These may

\textsuperscript{22} Dump prices are prices which are so low that the goods are actually being dumped on the market. These excessively low prices are a good indication of tax evasion.

\textsuperscript{23} In 1993, the last year for which statistics were available, 6 spontaneous exchanges of information were made between Belgium and other E.U. member states (the Belgian Ministry of Finance, Administration of the Special Tax Administration, February 1995).

\textsuperscript{24} In 1993, the last year for which statistics were available, Belgium made 67 requests to E.U. member states and 10 requests to other countries, while 15 requests were made to Belgium (the Belgian Ministry of Finance, Administration of the Special Tax Administration, February 1995). This is an increase over the previous four years.
be fulfilled by the state police, the municipal police as well as the judicial police (*Gerechtelijke politie*).

An investigation into VAT fraud can be initiated through 2 channels. The first channel is the result of notification by an informant which is usually made to the judicial police. The judicial police make an independent official report ("procesverbaal") and this is sent to the prosecutor. This may result in an information-gathering investigation or the use of an investigating magistrate, if coercive measures must be applied.

The second channel is the result of notification by the BBI. Factual information concerning the case is given to the prosecutor who can determine whether to utilize an investigating magistrate or to conduct an informational investigation himself. The public prosecutor decides which agency will conduct the information-gathering investigation: the state police, the judicial police or the CDGEFID. In theory, VAT cases are usually given to the CDGEFID. The state and the judicial police can ask for assistance from the CDGEFID if they are assigned the case.

### 2.3.1 The Judicial Police (*Gerechtelijke Politie*)

The judicial police rely on the public prosecutor from the district to which they are appointed for carrying out assignments concerning investigation of offenses. There is no true corps of judicial police. Every public prosecutor administers an autonomous brigade, under supervision of the Procurator-General.

The expertise within the judicial police concerning the investigation of VAT fraud was lost to the CDGEFID upon its conception (the current director of the CDGEFID came directly from the judicial police). While preference for VAT fraud investigation is given to the CDGEFID, lack of capacity at the aforementioned agency may cause the prosecutor to give such cases to the judicial police. Because there is no expertise within the judicial police, accountants are assigned to assist officers in technical VAT fraud cases. Systematic promotion of expertise concerning VAT fraud investigation within the judicial police is done on an ad hoc basis. The director of the CDGEFID gives lectures to aspiring agents who join the judicial police; additional knowledge is brought in by agents who have specialized in the investigation of VAT fraud.

### 2.3.2 The State Police (*Rijkswacht*)

The state police have general authority in enforcing the law across Belgium. The State Police recently underwent a reorganization with an emphasis upon decentralization. Belgium is now divided into 25 state police districts. At the district level of the state police there is one investigative brigade and

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25 The Special Investigative Brigade conducts investigations which exceed the expertise and capacity of the brigade (such as VAT or E.U. fraud).
between 20 and 30 brigades. VAT fraud investigations are executed by the investigative brigades, but are coordinated and supported by the ‘Criminal Organizations and Proceeds’ unit. This division, a subdivision of the Central Bureau of Investigation or CBO (Centraal Buro Opsporingen), was established in 1993 and drew upon the experience of the Brigade of Surveillance and Investigation (Bewakings- en Opsporings Brigade or BOB) in Brussels involved in investigations of major fraud. This subdivision is further divided into smaller units which focus their energies upon criminal organizations, fraud or the proceeds generated by criminal activities.

VAT fraud is often discovered during the investigation of another fraud, such as EU fraud. The state police may also be alerted to VAT fraud by other signals such as extremely low prices or they may receive official requests from the administration VAT, Registration and Domains or the BBI to investigate. Requests for an investigation are not made directly to the state police but are filtered through the public prosecutor who determines which investigative agency will be tasked with the investigation.

2.3.3 Central Administration for the fight against Organized Economic and Financial Offenses (Centrale Dienst voor de bestrijding van de Georganiseerde Economische en Financiële Delinkwentie or CDGEFID)

The Central Administration for the fight against Organized Economic and Financial Offenses (CDGEFID) was established on 1 January 1994. The CDGEFID was originally created to provide assistance to all police services but it is also capable of conducting independent investigations. The CDGEFID additionally serves as an international point of contact for the exchange of information. It is comprised of officers from the state police (responsible mainly for documentation), the judicial police (responsible mainly for investigation) and from the High Committee of Supervision. In the near future investigators from customs will be sent to the CDGEFID. The CDGEFID was established specifically to handle such offenses as money laundering, stock market offenses, E.U. fraud and organized VAT fraud. Whenever one of these offenses is perpetrated, a copy of the official police report is sent to the CDGEFID. Prior to the establishment of the CDGEFID, VAT fraud was investigated by the BOB, the judicial police as well as the state police. Although the judicial police had been active in handling VAT fraud within the last few years, this function, for the most part, has now been passed on to CDGEFID.

26 The CBO does not conduct research, but provides support and expertise to the BOB, and coordinates their activities in large investigations. A further function is the provision of training geared to the acquisition of special skills in the areas of investigation.

27 The ‘Criminal Organizations and Proceeds’ unit conducts research in the area of money laundering, VAT fraud and fraud with E.U. subsidies.

28 The High Committee of Supervision is responsible for the supervision of civil servants. It is further accountable for the general handling of all cases in which the state is financially disadvantaged.
The CDGEFID may not examine, nor does it have access to tax files. Whenever the CDGEFID needs information from the BBI it is necessary to file a written application with the court (if written material is being requested). Information per telephone may be given without further court authorization. When using it as evidence, a written application again is necessary. The CDGEFID has the authority to make unannounced visits to suspected businesses with a view to conducting an audit of the books. At that point an investigator is only allowed to examine the books and, if necessary, to make copies of materials. In response to what is uncovered here, a 'procesverbaal' or official report can be made and sent to the prosecutor. This may result in the administration being confiscated, but only if so ordered by an investigating magistrate.

The pursuit of criminal cases in general, to include VAT fraud, requires a close working relationship between the department of the public prosecutor, the judicial branch (in the form of an investigating magistrate) and the police.

Having discussed the various police agencies involved in the investigation of VAT fraud, attention now turns to the role of the department of public prosecution in the investigation of, and fight against VAT fraud.

2.4 Settlement: the Department of Public Prosecution

The investigation and prosecution of fiscal offenses has taken on greater importance within the last years. Because of the technical difficulties in prosecuting such cases, expertise has recently been introduced into the prosecution department to ensure greater success in bringing such cases before the court, both at the courts of first instance as well as at the appellate level.

There are 26 district courts of first instance (trial courts) with an equal number of public prosecution offices. Frequently VAT fraud cases are sent to Brussels because the expertise in handling such cases is concentrated there. This has resulted in a burden on prosecutors in the capital. To compensate for this lack of expertise elsewhere in the country, a majority of these district courts have introduced fiscal civil servants\(^9\) to aid in the processing of difficult cases. These civil servants bring expertise from the various tax authorities (customs, VAT, Registrations and Domains). On average they remain with the prosecution department for a period of six years, however this term may be extended by a magistrate.

Expertise is not derived only from external agencies. Since 1 January 1987, approximately fifteen fiscal Substitutes-Procurator of the King\(^{30}\) were assigned to settle fiscal cases. In addition to their legal background, these individuals must have either three years of work experience as an official.

\(^9\) Since May 1, 1995.

\(^{30}\) The phrase 'Substitute' refers to the assistance provided to the position of procurator of the king or procurator-general. There is only one procurator of the king or procurator-general in each district; the substitutes are acting in the name of this person.
with the Ministry of Finance or an additional university diploma in fiscal matters. Because almost all convictions in VAT fraud cases are appealed, fiscal expertise is also necessary at the appellate level. Fiscal substitutes are also found at the higher echelons at the level of the Substitute Procurator-General. Substitute Procurators-General prosecute appellate cases and provide supervision and assistance to the offices of the public prosecutor in their region. In addition, Substitute Procurators-General are responsible for procedural matters, such as ensuring the timeliness and accuracy of the preparations of the case and the trial.

In larger districts specialization exists in the form of a financial section in court. Prosecutors are assigned to these sections to handle fiscal fraud cases which come to court. They achieve a certain level of expertise, but are not excluded from prosecuting or residing over other cases. Many large districts are coping with capacity problems because difficult cases are handed over to them. In smaller districts, on the other hand, the lack of expertise is problematic.

While the prosecution policy in Belgium is established per district court, offenses like VAT fraud usually involve inter-district cooperation. The policy is to prosecute more serious cases of fraud, particularly those involving forgery and false invoices, criminal organizations or money laundering. Judicial expertise on fraud remains problematic; the existence of special fraud-chambers or -sessions, or of a national competent brigade of magistrates could overcome this inadequacy.

2.5 Central Liaison Office

The VIES system in Belgium is known as EURO TP. Every tax inspector has direct access to this system, through which VAT registration numbers can be verified and level one and two information can be stored. In addition, for the benefit of the controllers, there are so-called O-MCTL lists. These are used to supplement the fiscal files of the business concerned.

The CLO is an external service under the VAT, Registrations and Domains. The section 'control and exchange' of the central administration works closely with the CLO. The CLO in Belgium has three tasks:
1. confirmation of foreign VAT identification numbers: the control, on the basis of article 6 of the Regulation 218/92,\(^{32}\) includes the examination of VAT identification numbers obtained from foreign businesses to determine

\(^{31}\) When, after three months, the information between member states is exchanged, checks are made to determine whether the VAT identification numbers supplied by traders from other member states fulfill the construction rules/requirements, are registered, active and real. If this is not the case, this information, in the form of an O-MCTL-message (Operation Message Control), is supplied to the member state in question.

\(^{32}\) Regulation 218/92 is concerned with the administrative cooperation in the area of indirect taxes (VAT).
their validity (were the numbers issued, are they active and being used by the person to whom they were originally issued?).

2. the coordination and exchange of information on the basis of Article 5, Regulation 218/92: the CLO is responsible for the contact with other member states in reference to the exchange of information which is relevant to this regulation. There is one exception to this rule and this concerns the directive 77/799. These requests usually involve serious cases which are handled by the division 'control and exchange' of the central administration. The CLO in Belgium processes only level 34 information, in other words, it is concerned only with the settlement of the requests for further information supplementary to level two information. Level one and two information is processed by the automatized service of the executive administration.

The cooperation between other European CLO's and the Belgian CLO is relatively good. Contact is often influenced by different factors, among them, the formal as well as informal approach used by the CLO's in other member states, and the differences in the levels of authority of both the CLO's and other national agencies working in the area of taxation.

33 Directive 77/799 concerns the mutual assistance of the competent authorities of the member states in the area of direct taxes. This includes exchange of information upon request (article 2), automatic exchanges (article 3) as well as spontaneous exchanges of information (article 4). Directive 79/1070 changed Directive 77/779 by including VAT.

34 Level 3 information (article 5, Regulation 218/92): supplementary information to level 2 information includes: invoice numbers, the data and the amount on the invoice concerning specific transactions between traders in the member states involved.
3 The detection and settlement of VAT fraud in the United Kingdom

3.1 Introduction

The United Kingdom joined the E.U. in 1973. In order to bring it in line with other E.U. member states, the U.K. introduced the Value-Added Tax. This tax replaced the 1940 Purchase Tax as well as the Selective Employment Tax. VAT falls under the jurisdiction of H.M. Customs and Excise (as opposed to Inland Revenue) because Customs and Excise had administered the Purchase Tax and the traditional tax collecting techniques of Customs & Excise were more appropriate for the new tax. Having implemented the tax relatively late, compared to other E.U. countries, the U.K. was able to model its system after those of the other member states.

3.2 Registration and Control of VAT

Traders whose taxable supplies exceed (or are anticipated to exceed) a given amount, are required to register with Customs and Excise. Those traders whose turnover is below the threshold are entitled, but are not required to register. Registered traders are required to file a VAT return every three months; regular traders may file one every month.

While the administrative system of control of VAT in the U.K. is based on central administration, the actual control rests with the local staff. The administrative branch of VAT is centralized (and located in Liverpool). At headquarters, both the Internal Taxes and VAT Control Directorates are

35 The Purchase Tax (PT) "... was levied on specific consumer goods, at a number of different rates, at the wholesale stage. Manufacturers and wholesalers with turnovers above certain specified limits had to register for PT. Supplies by one registered trader to another could be made free of tax but tax was levied on any supplies made to unregistered traders. The different rates were an attempt to make the tax progressive - the less essential the goods were deemed to be, the higher the rate. PT was not levied on exports. Tax charged on certain business supplies was not rebated, nor was PT paid on services. (Information on the Introduction of VAT obtained from HM Customs & Excise in a meeting on February 24, 1995).

36 The Selective Employment Tax (SET) was introduced in 1966 as a tax on the employment of labour in services. (Information on the Introduction of VAT obtained from HM Customs & Excise in a meeting on February 24, 1995).

37 The U.K. differs from its E.U. counterparts, however, in terms of the extent to which the zero-rate of tax applies. Just under 40 percent of consumer expenditure in the UK is spent on supplies which are exempt from the tax or are zero-rated.

38 The limit began at £7,500 in 1977 and on 29 November 1994 was set at £46,000.
responsible for the administration of VAT. Internal Taxes Directorate is concerned with the mechanism VAT and the liability of particular supplies, whereas the VAT Control Directorate is dedicated to the collection of VAT and determines policy on control and debt management. The VAT Central Unit, or VCU, based in Southend, is concerned with the day-to-day management of the tax, to include sending out and receiving quarterly VAT forms, receiving and recording payments of tax due and making payments to businesses which qualify for refunds, checking the return forms for accuracy and correcting any inaccuracies found.

The country-wide network of local VAT offices is organized on the basis of administrative regions called Collections. Circumstances, and thus organizational details, vary from one Collection to the other. At present there are 14 Collections with numerous sub-offices and local VAT offices, employing a total of about 9,500, roughly half of whom are directly involved in control work. Seventy-five percent of the VAT staff are assigned to local offices and a considerable number are involved in on-site visits to businesses. Local VAT offices cover geographical areas, and tend to be situated near the largest concentrations of trade (large ports, airports, distilleries, for example). Local VAT offices serve as a first point of contact for local businesses. Local offices have access to information held on the central VAT computer which will help local VAT employees plan their control visits.

Each local VAT office (LVO) employs around 100 staff in the three main areas of work: control visits (overall priority), enforcement and registration. Staff resources are targeted on the basis of the perceived risk of individual traders: Each trader is assigned "risk points" (RP), based on the periodically assessed risk bands, and time since visit points (TSVP). The risk and time since visit points are then combined to produce the visit priority points (VPP's). A standard level of VPP is used to determine the optimum level for a visit. The priority for a visit to a trader, then, is basically determined by a combination of the risk of that trader to the revenue and the length of time since the last visit.

Local offices have considerable discretion in the deployment of control resources: local offices have discretion to determine their own control visit strategy, subject to the requirements of essential high level objectives set out in the Customs and Excise Management Plan. Visit intervals vary widely with the largest traders receiving several visits a year while the least risky may be visited only infrequently. Newly registered traders are visited within 3 years of registration.

39 Control is the process of ensuring that taxpayers keep their accounts properly and declare the correct amounts of tax, while debt management encompasses all aspects of encouraging taxpayers to pay on time and, where necessary, includes procedures for recovering debts which have been established but remain unpaid (HM Customs and Excise, 1994: 17).

40 A risk band is a general category of risk factors which may include such factors as size, payment history and revenue compliance.
A top priority is identifying areas of greatest revenue risk and providing optimum allocation of resources to counter such risks. This objective can be met through the recruiting and retaining of sufficient staff of the appropriate calibre, and by training and motivating staff.

The Large Payers Unit (LPU) is a discrete unit based at Headquarters in Liverpool and is responsible for monitoring the 10,000 traders who pay the largest amounts of VAT within the U.K..41 This unit proactively monitors the compliance of the largest VAT payers by attempting to secure tax by the due date and acts as point of contact to help traders facing payment difficulties. All traders thought to be a revenue risk are also intensively monitored and contacted.

A computer database has been developed specifically for the LPU, on which each trader is allocated a risk indicator based on both historical compliance information and future indicative trends. Work is prioritized according to the perceived risk to the revenue, using these indicators. The risk analysis is used to control the “infant” debt to prevent problems before they arise. Relevant companies are contacted directly (by phone or mail) and are requested to submit immediate payment of the tax due.

Other aspects of the LPU work include chasing outstanding debts, issuing financial penalties (surcharge documents and tax assessments) and advising the Local VAT Offices to commence enforcement action (bailiff visits/civil recovery action).

The actual control and audit of the largest traders is carried out by the Regional Large Trader Units, Single Team Units or teams of control staff in the LVO’s. Specialist staff are trained in accountancy and computer audit.

3.2.1 NEWRY

The VAT Registration Unit (known as and located at Newry, Northern Ireland) was centralized in December 1992. Newry contains a data base, known as LORDS (Local Office Registration and Deregistration System),42 of commercial London and Northern Ireland VAT registrations and deregistrations.43 There are special teams at Newry responsible for the processing of VAT applications. When applications appear suspicious, an automatic ‘repayment inhibit’ may be placed on the application. When the company at a later point in time files for a tax refund the local VAT office is alerted to the repayment inhibit placed on the business and may investigate before refunding.

41 The 10,000 largest traders account for 65% of the gross annual VAT yield. 1,500 of the largest traders account for approximately 40% of the total tax throughput declared by VAT traders. The time allocated to control these traders is 13% of the total, and produces 29% of the net underdeclarations raised from VAT visits (HM Customs and Excise, 1994; 24).
42 Since local VAT offices do not have direct access to LORDS, the VAT Intelligence Research Team (VIRT) at Newry serves as a liaison between Newry and the local offices.
43 There are two other central VAT Registration Units located in Wales and Scotland. They are modeled after the Newry system.
Suspicious applications are referred to the VAT Intelligence and Research Team (VIRT). The three VIRT officers assigned to NEWRY are tasked with reviewing VAT applications for the purpose of identifying suspect indicators (accommodation addresses, suspects' names, alias names, missing bank information).

When information from the VAT application is fed into the LORDS system, the computer will automatically call attention to businesses registered to accommodation addresses, or known offenders. The VIRT team then contacts the local VAT office where the investigation team of the local office may initiate an investigation.

Newry's proactive work is not just limited to the early identification of suspect individuals or businesses, or repayment inhibits during the registration stage. It also sends out special written inquiries on a regular basis to the local VAT offices asking for information on suspects' names, unusual practices, new accommodation addresses, or other information which may be fed into the LORDS system to aid in the fight against VAT fraud.

Newry is directly linked to CEDRIC as well as to the CHORUS database. CHORUS contains information on companies and employees. Thus, if a question arises as to the actual employment or position of an individual within a specific organization, this information can be obtained from CHORUS and passed on to the local VAT offices.

3.2.2 Compliance

Where traders fail to pay their taxes, Customs may use a variety of procedures to collect debts. In order to assist in determining the reason for failing to pay, local officers (as do investigators from the VIRT or Investigation Division), have the right to examine books, make copies, or confiscate books and look at bank accounts (a right granted them under the VAT Act of 1994). Determination must first be made whether there is a viable reason for the failure to pay; suspicion of fraud is considered. One recourse to ensure compliance when a trader has failed to pay tax due is to seize business assets. In cases where this is inappropriate, Customs and Excise may turn to civil recovery action through the courts. Because this action, may result in either bankruptcy or company liquidation, it is taken only as a last resort when all other efforts to recover a debt have been unsuccessful.

Non-fraudulent compliance problems may take the shape of late returns and payments, and of underdeclaration of tax. Previously, all or most VAT offenses were considered criminal matters which could be prosecuted through the courts. Serious fraud cases still remain criminal offences for which the penalties were substantially increased. Other compliance problems
or offences were decriminalized in the 1980’s and a system of penalties, interests and surcharges has been progressively introduced instead.  

The penalties and surcharges do not apply if the taxpayer has a reasonable excuse for the default. They do, of course, for intentional tax evasion. Intentional tax evasion incurs a civil evasion action resulting in a 25% to 100% penalty. 

The Finance Act of 1988 provided for variable penalties, made it a statutory requirement that a warning letter about the consequences of a continuing failure to comply with a requirement is issued before a regulatory penalty can be imposed. Its successor, the Finance Act of 1993, introduced a flexible system of misdeclaration penalties. This included a new penalty base and the power to mitigate penalties. Interest will now only be charged for 3 years prior to the date of calculation.

If a trader is dissatisfied with the finding made by the local VAT office, the decision may be appealed to a tribunal. Tribunals deal with decisions made by local VAT offices and are concerned only with civil VAT cases. There are three Tribunal Centres in the U.K.. Decisions of the Tribunal can be appealed to the high court and then through the Appeal Court to the House of Lords and finally the European Court of Justice.

3.3 Investigation

Investigation staff at the local level will become involved if fraud is suspected. Inquiries will be made into the suspect, whether any other enforcement or tax agency is currently looking into the suspect, and then a file will be initiated. Investigators must use CEDRIC, the computerized system which contains information on offenders and investigations. Civil investigations are handled by the local VAT office.

At the regional level, within each collection there is a Collection Investigation Unit (CIU). These units are responsible for the criminal investigation of VAT fraud at the local or regional level. Major fraud, or those frauds committed on a national or international level are investigated by the principal Investigation Division office in London or by one of the regional Investigation Division offices.

44. Late returns and payments incur a default. A warning notice is issued at the first default. A further default on payment within the next 12 months incurs a liability to surcharge. The initial rate of surcharge is calculated at 2 percent of the tax outstanding at due date. The rate of surcharge then increases to 5, 10, 15 percent for further payment defaults. Once a warning notice has been issued it will remain in force until 12 months have elapsed without a default.

45. Breaches of regulatory and similar requirements attract a daily rate penalty.

3. From 1 April 1990 misdeclarations of tax attracted an interest charge. Where the amounts are substantial, there is a penalty of 15 percent of the tax misdeclared (HM Customs and Excise, 1994; 21).

45. Tribunal Centres are located in London, Manchester and Edinburgh.
The investigation of fraud occurs on three different levels. The investigation division (ID) has the authority to investigate all national and international criminal frauds. The Collection Investigation Unit (CIU) investigates more regional frauds. The Local VAT Office Investigation Team (LVOIT) investigates VAT fraud under civil procedures. The investigation units are supported by the Intelligence units which operate on a local and national level. At the national office, the VIRT provides intelligence concerning VAT frauds to the various investigation services. Intelligence may be provided to the VIRT by the local intelligence offices, which also supply intelligence to the CIU’s.

All members of the 14 Collection Investigation Units (CIU) are trained by the ID Training Team (London) with input from the Vat Intelligence and Research Team (VIRT). The National Coordination Unit (NCU) circulates a newsletter which goes to each collection. Collection liaison officers are appointed. As public relations officers they liaise with collection intelligence units and they keep the paths of intelligence open. Each collection has a Collection Liaison Officer. Furthermore, a CEDRIC terminal is located in each CIU for use by the local VAT office.

The U.K. takes a proactive approach to the detection and investigation of VAT fraud. Risk analysis is performed targeting individuals, companies and entire branches, or trade classes particularly sensitive to fraud. In examining trade classifications, pre-trading and post-trading figures are compared to determine whether or not there is an increase in the percentage of rating in certain areas. Energy is invested in intelligence gathering to identify fraud and to ensure compliance. If the case is dealt with on the local level it is handled civilly. If the criteria mentioned above dictate the criminal handling of a case it will be sent to the HQ Policy Branch, the central administrative branch, for consultation within the tripartite system.\(^{46}\)

### 3.3.1 Investigation Division

There are 17 officers on the VIRT team. The investigative researchers of VIRT gather intelligence under the direction of the investigative case officer. VIRT is only one dimension of the Investigation Division. Within the division, located in London, there are 3 branches dealing with VAT fraud, divided into 11 operational teams (and one VIRT) totalling approximately 130 people. Nationwide there are 5 other provincial teams\(^{47}\) with about 8 officers on each team. Operational teams are tasked with the actual investigation to include surveillance for the purpose of producing evidence in court. A separate International Assistance Team supplies all information on international requests.

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46 This will be discussed in more detail in the section on Settlement of VAT fraud.

47 Provincial investigative teams are located in Glasgow, Birmingham, Leeds, Manchester and Bristol.
Other operational teams within the Investigation Division specialize in certain areas. There are, for example, VAT teams specializing in gold frauds, other teams specializing in drugs smuggling, commercial frauds and two excise teams (one is operational and the other specializes in intelligence gathering). Specialization should be a function of the team, and not of the individual members on the team. Thus, officers are rotated every four years into another area (for example, from drugs into VAT investigation).

3.4 Settlement of VAT fraud

The handling of a case of VAT fraud in the U.K. is subject to examination by a tripartite body (Tripartite system). Members of the system are representatives from the investigative branch, the solicitor’s office and the administrative branch. The decision may be to either prosecute a case criminally, to compound a case or to seek no further action. More cases of fraud are handled civilly than criminally. When a case is handled civilly, only a financial penalty may be handed down. Only serious criminal cases go to court or are compounded. In compounded cases a financial settlement will be discussed and agreed upon by the parties concerned, thus avoiding a criminal prosecution. In criminal cases which go to court and end in conviction, a prison sentence, a suspended sentence, community service, a fine, confiscation or costs, or any combination of the above may be handed down. Offenders may receive a maximum penalty of seven years; in general a sentence of 2 to 3 years is handed down. Approximately 1,000 cases per year are handled civilly, whereas approximately 200 cases are handled criminally.

Whether or not a case will be handled civilly, compounded or prosecuted criminally depends upon a number of factors: the amount of money evaded during the perpetration of the fraud, whether or not the offender is a key public figure or professional (accountant, lawyer), whether the case is a

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48 The detection of VAT fraud is only one facet of the ID. Most ID resources go into the investigation and detection of drug smuggling.
49 The solicitor is tasked with examining the evidence and weighing its strength and appropriateness for trial. The administrative branch considers such issues as the length of the trial, the health of the defendant, the (possibly deterrent) impact of compounding vs. taking a case before the court. The decision to prosecute or settle out of court is deliberately removed from the investigator in the tripartite system.
50 A compound settlement is a sum based on the arrears plus interest plus a penalty element. Approximately 25% of criminal cases are compounded.
51 In serious VAT fraud cases it is not unusual for the offender to get a prison sentence plus costs and often confiscation of assets obtained as a result of the crime.
52 Customs and Excise secures about £25-33 million in arrears and penalties per year. ‘Evasion prevented’ is a term which, through mathematical calculation, takes into account the amount which would have been lost had the fraud not been stopped. It is estimated that, had the fraud not been prevented, it would have continued for three years, thus, the evasion prevented is estimated at three times that value (i.e. £75 - 100 million would have been evaded had the fraud not been identified).
53 The current amount used as a guideline is £75,000 (net arrears within the last 3 years). Usually amounts below this figure will be dealt with civilly.
high profile one.\textsuperscript{54} Other influencing factors are whether or not the offender is a criminal (is there a previous conviction for VAT fraud?), whether or not Customs and Excise is dealing with a bogus registration or a multi-cell operation,\textsuperscript{55} whether the modus operandi is novel or other criminal activities were involved. In general, bogus repayment frauds\textsuperscript{56} are becoming increasingly prevalent and are always prosecuted criminally; frauds involving suppression of sales\textsuperscript{57} and other types of frauds may be handled civilly unless the amount involved exceeded £75,000. Financial penalties differ depending upon whether the case is settled civilly or criminally. Civil penalties are based on 25-100\% of the tax evaded subject to the level of cooperation given, whereas compound settlements are normally based on 50-100\% of the evaded tax plus the interest. If an offender refuses to pay the compound settlement the case must then be prosecuted.

As only serious cases are prosecuted, they are processed through the Magistrates Court (which deals only with less serious offences) and are tried in the Crown Court (before a judge and a jury). A decision of the Crown Court can be appealed to the Court of Appeal and then to the House of Lords, the final point of appeal is the European Court of Justice.

A unique situation exists in the U.K.. Crown Court cases involving serious fraud are tried before a jury of twelve lay members. By law the jury must be composed of twelve members, but, through attrition, may be reduced in size to 10. A jury is expected to return a unanimous verdict. If, after deliberating for a period of a few hours the jury can not reach a unanimous verdict, the judge may allow the jury to return a majority vote of 10 to 2. If the jury consists of 10 members, the jury must vote unanimously. Individuals serving on juries have no expertise in either the law or in complex fraud matters. This may present problems where fraud cases are so lengthy and difficult that a lay jury may be overwhelmed by the detail and complexity. This in turn may result in split juries, acquittals, or the dismissal by the judge because a jury is unable to follow the case.\textsuperscript{58}

The problem of presenting difficult tax offenses to lay juries has raised some concern. Discussion is under way in the British press regarding the replacement of lay juries in serious fraud cases with a panel of professional judges.

\textsuperscript{54} About one third of the 200 criminal cases are considered sensitive due to the aforementioned factors.

\textsuperscript{55} A multi-cell operation is one in which a number of bogus companies have been set up to obtain repayments. The amount evaded may be small but as there is potential for greater loss then the case will be dealt with through the criminal courts.

\textsuperscript{56} Repayment frauds occur when a trader requests a refund of prepaid VAT from the government when the trader is not entitled to a refund. This often occurs when a trader falsifies an export or intra-community supply.

\textsuperscript{57} Failing to claim the sales of goods, the intra-community acquisition or import of items on which taxes are owed, but not paid.

\textsuperscript{58} In South Wales this past year a judge dismissed charges against an accused in a tax fraud case eight weeks after the case began. The judge cited the complexity of the case and the jury's inability to understand it as the reason for staying the indictment and dismissing the case.
There is a two-tiered system in the United Kingdom consisting of solicitors and barristers. Both have law degrees, however, only barristers may argue cases in crown court. Solicitors receive on-the-job training and rarely specialize in a particular area. In the U.K. the wide range of criminal offenses are prosecuted by the Crown Prosecutor's Service on behalf of the police. For its tax or duty offenses, however, H.M. Customs and Excise remains a prosecuting authority in its own right. This is why Customs retains the authority to arrest and charge, employs its own solicitors and maintains the tripartite system.

Due to the complexity of fraud cases, there are Queen’s Counsel barristers who specialize in prosecuting or defending individuals accused of fraud. A barristers may work at times for the defense, at other times for the prosecution, and is capable of serving as a judge as well.

3.5 Central Liaison Office Liverpool

The Central Liaison Office in the U.K. is known as the Mutual Assistance Liaison Point (MALP). It is housed in Liverpool as part of the Central Operations Directorate of HM Customs & Excise. As such it is not primarily involved in policy matters but has responsibility for operating the VAT Information Exchange System (VIES) which deals with the collection and exchange of data on intra-Community supplies. This data is used to provide assistance to other member states based on E.U. Directive 77/799 and E.U. regulation 218/92.

Another principal function of the unit is to assist local VAT offices (LVO’s) in checking VAT numbers of foreign traders as a method of control. Besides these tasks it arranges with overseas administrations for the conduct of visits by U.K. officials to foreign premises of businesses registered for VAT in the U.K.. Nine staff are currently employed in MALP.

U.K. traders who make supplies to customers registered for VAT in other E.U. countries are obliged by the 6th VAT Directive to provide quarterly recapitulative statements of these transactions. In the U.K. this is done by means of declarations on European Sales Listings (ESL’s). These documents are received in Southend and subsequently processed and corrected, where necessary, in Liverpool by a dedicated process unit in Central Operations. The information they contain is thus made available at various "levels" to all other member states each quarter and, in the U.K., is automatically accessible by all control staff. The scale of the operation means that inevitably, but only occasionally, there will be delays in obtaining level 1 and level 2 requests. Where the information provided at these levels is insufficient, and where a member state is unable to resolve a query by reference to its traders’ records, it is entitled to make a request for level 3
information (Article 5 of Reg 218/92) asking for specific information on particular transactions. About six hundred requests for level 3 information have reached the MALP Liverpool since its inception. Since September 1994 about two hundred mutual assistance requests, based on the 77/799 directive, have been settled. In general, the cooperation with other Central Liaison Offices is regarded as good.

Because, initially, many traders submitted incorrect European Sales Listings, a large number of errors was found during 1993 and 1994. This is partially due to the fact that many traders were not frequently involved in intra-Community transactions, thus they were unfamiliar with the required administrative obligations. This means that the operation in Liverpool invests most of its time and effort correcting data submitted by traders and entered into the VIES system. Since the beginning of 1995 the errors have decreased.

The MALP receives automatic reviews of mismatches from the VIES-system. Mismatches are not, however, a priority in MALP's policy because of the large number of errors. The reviews are sent to local VAT offices which can make an autonomous decision as to how to deal with the information.

The VIES system identifies VAT registration numbers quoted by customers which meet the construction rules for validity but which, for a variety of reasons, are reported by the administration of the acquiring country as inappropriate. These are reported to the country of supply by means of electronic O-MCTL messages which are regarded as an important indicator for the identification of fraud. In the U.K. these messages are notified to Collection Co-ordination Offices for further consideration.

When listings are not submitted, a letter will first be sent to the trader to encourage him to submit a listing. If the trader does not react, a penalty liability notice will be sent to warn him of impending action. If there is no reaction after these two letters penalties are imposed. For a first offense, a penalty of £5, a second offense £10 and a third offense £15 a day will be imposed, for a maximum of one hundred days. An intentional, inaccurate submission incurs a penalty of £100 for each offense.

62 Only when a member state requests for level 3 information will comparisons be made between the regular tax return and the listing.
4 The detection and settlement of VAT fraud in Germany

4.1 The structure of the Tax Administration in Germany

While the law of criminal procedures as well as penal and fiscal law are national and are binding upon the sixteen states (Länder) in the Federal Republic of Germany, the actual collection of taxes and the application, control and enforcement of the law takes place at the state level.

At the federal level, the highest authority is the Federal Ministry of Finance (Bundesfinanzministerium). The Federal Finance Office (Bundesamt für Finanzen) is one of the Federal Ministry of Finance’s direct subordinate offices responsible for coordinating matters between Germany and other E.U. member states and dealing with matters concerning domestic value-added tax. At the state (Land) level, the State Ministry of Finance (Landesfinanzministerium) is the governing authority concerning state and federal taxes within its jurisdiction. Within each state there is at least one, but there may be up to three Regional Finance Offices (Oberfinanzdirektion), which, along with the State Ministry of Finance, serve as supervisory authorities. The actual processing of tax forms and the applications and collection of the taxes due is the responsibility of the local finance office (Finanzamt). The function of the finance offices and the investigation into fraudulent tax practices is basically the same, but the organization may differ slightly from one state to the next.

The authority to administer taxes is granted the federal and state revenue authorities as well as municipal authorities under article 108 of the Basic (Constitutional) Law (Grundgesetz). State revenue authorities collect taxes on behalf of the federal government (63% of VAT collected in 1994 was turned over to the federal government, 37% remained in the state treasury).

63 In Germany the states are referred to as a ‘Land’ (or in the plural form ‘Länder’). In this report they shall be referred to as states.
64 In Berlin, cases of tax fraud are investigated by the Bureau of Investigation of Tax Offenses (Steuerfahndung) which is a separate investigative unit located within one of the tax offices. In North Rhine - Westphalia and Lower Saxony, for example, there are separate finance offices which deal only with criminal offences (Finanzamt für Streubesachen).
65 From 1995, commensurate with their new responsibilities, the percentage retained by the states will increase to 44% while the amount retained by the federal government will decrease to 56%.
4.2 Control

Control within the German finance administration is a multi-tiered process. The bulk of the control and audit process occurs within the local finance office. Within the finance office one assessment official is responsible for supervising particular individuals. All tax information concerning those persons comes to this one official. This assessment official, then, has information concerning the activities of the individuals for previous years and may be more alert to any radical changes that occur.

All information pertaining to VAT obtained by the finance office on the regular tax return (filed monthly, quarterly, or in the cases of small businesses, yearly) is analyzed by computer. The amount of information collected and analyzed by computer is extensive. The goal is to identify illegal practices committed by individual companies rather than to identify potential problem areas, thus, risk-analysis is not utilized in Germany.

If a company fails to file a regular tax return, the business may incur a penalty. Failure to file a return may be a result of financial problems rather than fraud. This should be determined by the local finance office.

When inconsistencies arise with a particular business and the problem cannot be solved by the finance office, the official may notify various auditing agencies within the finance administration.

Irregularities which cannot be solved by the finance office may require the expertise of the VAT Special Audit Service (Sonderprüfungsstelle). This agency has expertise in the area of VAT. The Special Audit Service does not just respond to problems identified by the finance office but is also engaged proactively in auditing businesses which may present a potential threat.

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66 Failure to file a tax declaration (Voranmeldung) violates paragraph 370 of the Fiscal Code (Abgabenordnung or AO) dealing with tax evasion. This may result in a penalty of incarceration not to exceed 5 years or a fine. In particularly serious offenses the prison sentence ranges from 6 months to a maximum sentence of 10 years (paragraph 370, section 3 AO). In practice, the violator receives a fine, on average not more than DM 2,000 or a one year sentence of probation. The German penal code provides for a fine which is calculated in a daily rate. This may range from a minimum of DM 2 to a maximum of DM 10,000 per day. The fine amounts to at least five days and if the law does not determine otherwise, to a maximum of 360 days. In the case of multiple offenses, the judge can sentence an offender to a maximum of 720 days fine. Thus, the maximum fine for a single offense may range from a low of DM 720 to DM 3.6 million. For tax evasion the practice is to give a certain number of days fine - in Berlin 3 to 5 - for every DM 1,000 evaded. Someone who evaded DM 20,000 in tax, for example, would receive a sentence of 4 days x 20 = 80 days. If the daily rate fine is fixed at DM 100 the fine owed would amount to DM 8,000. The daily rate fine is based upon the income of the individual.

67 In Berlin there are VAT Special Audit Services within various finance offices. There are about 50-60 people employed in this service.
problem. Its function is preventative, thus the audit often occurs in an early stage of the control/investigation process.

Businesses in Germany are divided into four size classes (Betriebsgrößenklassen) (large, middle, small, smallest) based upon the company’s turnover and profit. Only large concerns are audited on a regular basis. This occurs, on average, once every three years. If, in the interim, a question arises at the finance office concerning the practices of the business, the VAT Special Audit Service may be called in to conduct an audit. In theory, middle-sized businesses should be audited every five years. Auditors from the Business Audit Service (Betriebsprüfungsstelle) examine books for raw profit based upon certain parameters. Small businesses avoid field audits unless problems are identified by the official within the finance office. In addition to regularly scheduled audits of larger companies, the Business Audit Service conducts lottery sampling audits (Zufallsauswahlkontrolle). A certain number of businesses, even smaller ones, will be selected for audit based upon random sampling. The uncertainty of an audit is a proactive measure by the Business Audit Service to keep companies compliant with their fiscal obligations.

If, during the course of a field audit of a large business by the Business Audit Service irregularities in VAT arise, the auditor may also request a visit by the VAT Special Audit Service. During an audit by either the Business or Special Audit Service the books may be examined on the premises and photocopies may be made of books or receipts but nothing may be removed from the premises. The control must take place within a reasonable amount of time. The audit is not limited to the books and the business premises may be examined to assist in determining whether a business is operating legitimately.

If an audit is being conducted by either the Business or the Special Audit Service, the taxpayer is obligated to assist the officers conducting the audit. At this point, the audit is being conducted for the purpose of establishing,

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68 The Special Audit Service proactively audits businesses when the company claims excessively high exports (and requests repayment of prepaid VAT), or in the case of new businesses which claim repayment of VAT for the initial set-up costs, or in cases where businesses claim bankruptcy. This list of circumstances which may require the VAT Special Investigation Services to conduct an investigation is not exhaustive. A fraud scheme was perpetrated by one individual who fictitiously set up new businesses and applied to 20 different finance offices to receive repayment of VAT based upon the initial investments in his new business. In all 20 jurisdictions the VAT Special Investigation Services conducted an investigation and in only one instance was a refund made; this was due to a computer error which refunded DM 1,500 when a claim had been submitted for over DM 47,000.

69 In Northrhine-Westphalia the finance administration recognizes large commercial firms as a separate category and continuously monitors these companies by auditors with expertise in large commercial concerns. In Düsseldorf, concerns are audited, on average once every 4.8 years, large companies every 6 years, middle-sized businesses every 15 years, small businesses every 28 years and the smallest businesses every 75.3 years (Information obtained during interview at the OFD on 18-9-95).

70 If such problems arise, it may be necessary to request an audit by the Special Audit Service.

71 For more detail see "Durchführung von Umsatzsteuer-Sonderprüfungen", Steuerrecht, DSrR 46/94; 1692-1693.
administratively, whether or not the trader has fulfilled his fiscal obligations.

Auditors from the Business and Special Audit Services are senior level civil servants. All have completed a three year academic study at the Civil Servant College (Beamtenfachhochschule) and have experience in administration. Further training is provided in the actual auditing procedure with an emphasis upon identifying problems.

4.3 Investigation: the Steuerfahndung or Steufa

The Bureau of Investigation of Tax Offenses (Steuerfahndung or Steufa) is the agency tasked with carrying out investigations for the purpose of establishing tax evasion in criminal proceedings. The Steufa frequently initiates investigations as a result of evidence of VAT fraud found in the course of audits conducted by the Business or Special Audit Service. Requests may also be forwarded from the local finance offices. This department is also frequently the recipient of information provided by informants. This information may suffice for further investigation into VAT fraud if there are concrete grounds for suspicion. In essence, because the Steufa and other departments within the finance administration are bound by the Principle of Legality (Legalitätsprinzip), they are required by law to intervene when suspicion exists that a tax offense has been committed. There is no room for administrative discretion (Klos; a).

The Steufa is a special investigation service within the finance administration established to investigate criminal or regulatory tax offenses. The Steufa is either established as an independent agency within a regular finance office responsible for servicing more than one finance office in the area (as is the case in Berlin or Hamburg) or is established as an external, independent finance office for the sole purpose of auditing, investigation and settlement of tax fraud (as is the case in Northrhine-Westphalia and Lower Saxony) (Klos; b; 4).

Steufa investigators have come to be known as the tax police. Officers from the Steufa have the same authority as commissioned police officers and may conduct searches of businesses, homes and individuals and may seize any evidence necessary to support an allegation of tax fraud. They may

72 Between 30 and 40% of the cases which come to the Steufa are a result of complaints from informants or the public. This figure is probably applicable to other agencies as well (interview, Regional Finance Office, Düsseldorf, 18.9.95).
73 See paragraph 152 of the Code of Criminal Procedures - Strafprozeßordnung or StPO, paragraphs 385, 386 and 399 of the Fiscal Code - Abgabenordnung or AO.
74 Berlin will soon assume the same organizational structure as that in Northrhine-Westphalia and other states.
75 Police are often involved in the investigation into other types of tax evasion, particularly that involving employment taxes and illegal workers. They sometimes aid in the investigation into VAT fraud. Police working in the area of economic crimes are given a special 4 week training within finance offices to prepare them to assist in the investigation of such specialized and complex economic crimes.
interrogate suspects or witnesses and also possess the power to arrest. At this point the suspect must be warned that he is under suspicion for tax evasion and must be warned of his legal rights. The suspect is then under no obligation to cooperate with the investigating authorities. The investigation by the Steufa must be based upon a real suspicion of criminal tax evasion and the investigation and subsequent search are conducted for the purpose of collecting evidence. The Steufa is responsible for establishing the offense perpetrated and the correct taxation basis. The officer, at the close of the investigation, is required to write two reports: one for taxation purposes and one for prosecution purposes.

The Steufa investigator works closely with the Department for Fines and Criminal Offenses (Bußgeld und Strafsachenstelle or BuStra) and serves as an auxiliary official to the public prosecutor in matters which deal strictly with taxation offenses. In this role the Steufa investigator provides advice to the prosecution in technical tax matters.

In 1994 there were 1,207 tax investigators nationwide. Tax investigators receive 18 months of training at the Federal Academy of Finance and then spend 18 months as an intern at various finance offices. Further on-the-job training in the form of seminars is available. After having spent three years as an official at a finance office, an individual may apply to become an investigator at the BuStra or the Steufa. A new investigator will spend 6 months in training with an experienced colleague.

4.4 Settlement of VAT fraud

There are two authorities responsible for the settlement of VAT fraud cases in Germany. These are the Department for Fines and Criminal Proceedings (Bußgeld und Strafsachenstelle or BuStra) which handles the prosecution of criminal tax offenses on behalf of the fiscal administration, and the department of public prosecution which processes cases which will pass through the criminal justice system. Both offices work closely with the Steufa, and while cooperation between the two offices is good, a case will usually be handled by one office or the other. When a violation against the fiscal code is committed, it must be determined whether the failure to file taxes or the filing of an incorrect amount was the result of negligence or whether the act was intentional. If the act was a result of negligence or "carelessness", the offense is a regulatory offense (Ordnungswidrigkeit) and may be handled administratively or will be prosecuted by the BuStra. If the evasion of tax was a planned or intentional act, the offense is a crime and must be processed through either the BuStra or the public prosecutors office (and thus the criminal courts).

76 Klos (b).
77 Berlin has the largest office with approximately 100 investigators. This number is expected to double nationwide.
78 Düsseldorf requires investigators to spend time working at a BuStra office before applying to become a tax investigator with the Steufa.
4.4.1 The Department for Fines and Criminal Proceedings (Bußgeld und Strafsachenstelle or BuStra)

The BuStra may receive its information from numerous sources. A report may be submitted by a finance office, the Business Audit Service or the VAT Special Audit Service (a determination has been made that an offense has occurred). If the audit is thorough and the report well written further investigation by the Steufa may be unnecessary. A second source is the Steufa, based upon the determination of an offense subsequent to an investigation initiated by one of the aforementioned audit services. A third channel is through letters or accusations made by individuals (these will require further investigation by the Steufa).

Officials working within the BuStra have the same authority as prosecutors when it comes to dealing with cases of tax evasion and fraud. While prosecuting attorneys have the legal expertise, BuStra investigators are tax experts and receive special training as fiscal officials. The BuStra must determine the exact nature of the offenses involved. In less serious cases or where a fine is likely, the case remains at, and will be handled by the BuStra. The case must be transferred to the department of public prosecution if other offenses are involved, if the likelihood exists that a suspect will be held in pretrial detention, that a prison sentence will be handed down, or if the tax evaded exceeds the DM 300,000 to 400,000 range (see AStBV, Section 2, Subsection 1, Nr. 18).

If the case needs further investigation it is transferred to the Steufa. The investigation and determination of tax evasion takes on the nature of a criminal investigation and the suspect must be warned of his rights. The Steufa may seek the assistance of either the BuStra of the public prosecutors office in conducting its investigation. If a search warrant is required, the application for the warrant is prepared by either the BuStra of the public prosecutor’s office. The warrant must be signed by a magistrate. Based upon the final report written by the Steufa investigator, the BuStra notifies the suspect of the amount of tax evaded and penalty measures being considered by the department. An option is available to the defendant. Under paragraph 153a of the Code of Criminal Procedure the case may be suspended if the defendant makes a contribution (equal to the amount of the proposed fine) either to the state or to a charity (Einstellung unter Auflage). The judge must approve of this agreement. Should the defendant opt for a more formal handling of the case, the BuStra will prepare a punishment order (Strafbefehl) which is a brief account of the offense, the amount of tax evaded and contains a proposal suggesting the amount of the daily fine. The punishment order must be signed by a

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79 This occurs in Berlin in approximately 1/3 of the cases.
80 The maximum fine which can be imposed by the BuStra is a two year (720 days fine) or a suspended prison sentence resulting in a probation sentence of one year.
magistrate. If the defendant agrees to pay, the case is closed. If the defendant objects, the case is sent to the department of public prosecution.

4.4.2 The Department of Public Prosecution and the Court System

The department of public prosecution will become involved in the handling of VAT fraud relatively early in the investigation and settlement process when other offenses such as forgery or corruption are involved. It may also receive the case at a later point in time from the BuStra if, during the course of the investigation the case is so substantial that it is likely that a prison sentence will be handed down.

The prosecutors office may enter into the entire process at a much later point in time. If the entire case has been handled by the BuStra, and at the time of the punishment order the defendant objects to the proposed fine established by the BuStra, the public prosecutor takes over the case and uses the punishment order as an indictment. The case then moves to trial in criminal court before the same judge who signed the punishment order.

Within the prosecutor's office in Berlin there is a special division which deals solely with economic offenses. There are no public prosecutors who specialize in the prosecution of VAT fraud offenses, however those prosecutors working within the economic crimes division attend a six week course at the Federal Finance Academy where they receive special training in bookkeeping and fiscal matters. The department of public prosecution often works closely with the BuStra in complex fiscal cases.

Working within the department of public prosecution to aid in the processing of complex fiscal cases are specialist advisors. They are tasked with reviewing the material and writing an evaluation of the case for the prosecution department. These advisors are university graduates with degrees in business management or political economy. They bring the necessary fiscal expertise into the prosecutor's office.

In Germany's approach to handling tax offenses, the 'concentration maxim' prevails. Within both magistrate court (Amtsgericht) and the higher district court (Landgericht) in Berlin there are divisions, and thus judges, who specialize in economic crimes. In Northrhine-Westphalia one magistrate court (located in the same jurisdiction as the higher district court) is responsible for economic offenses. Within this magistrate court there is one division (and thus a small number of judges) who specialize in tax offenses. Judges working in the area of economic offenses attend special seminar training at the Federal Finance Academy. Only serious cases come before criminal court (others are dealt with by the BuStra). A conviction in criminal court carries a maximum sentence of 5 years for each tax offense. In particularly serious tax fraud offenses a maximum sentence of 10 years

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81 Often times more than one fiscal offense is being perpetrated by a person or company - the evasion of VAT, payroll tax, the employment of illegal workers. It is thus difficult to isolate VAT fraud from other fiscal offenses.
may be handed down for each offense. If multiple offenses have been committed, a compound or cumulative sentence not to exceed 15 years may be handed down. A prison sentence of up to 2 years may be suspended and the offender placed on probation, which, in practice, regularly occurs.

4.5 Central Liaison Office

The Central Liaison Office of the Federal Ministry of Finance is an external office located in Saarlouis. The director of this office is located in the working capitol, Bonn. The function of the Central Liaison Office is the enforcement of the E.U. regulation 218/92. The Central Liaison Office issues VAT identification numbers to German traders, verifies a foreign VAT identification number upon request by a business or a finance office, receives and processes the quarterly ICS lists and handles requests concerning intra-Community transactions from other member states. It collects data and provides information on level one, two and three data to other member states. In principle, this information is passed on to the CLO's in other member states within the three month period.

German traders are required by law to file a quarterly ICS-listing of all ICS's to businesses in other member states. Those traders who fail to comply are initially threatened with an administrative penalty. If they ignore the warning a second warning is sent and the penalty is established. If the trader continues to refuse to submit an ICS-listing an initial sanction of DM 250 is imposed. If the trader fails to react, this same procedure repeats itself (warning, establishment of, and finally the imposition of the penalty) however the penalty is raised to DM 500. If the trader still fails to submit the ICS-listing the procedure repeats itself and the penalty is increased to DM 1,000. If the trader fails to submit an ICS listing for the following four quarters the same procedure is applied for each quarter, thus four identical procedures will be running parallel. A fine of up to DM 5,000 may be imposed for failing to file after the third offense. When comparisons between the regular tax return and the quarterly reports from the Central Liaison Offices are made, this occurs in the local finance office, not by the Central Liaison Office. This is tedious and is usually done only in limited situations with individuals who are not entitled to tax rebates. Because of large fluctuations in the intra-Community listings data, this method of identifying VAT fraud is somewhat limited.

82 If a company fails to comply with the law, the trader is sent a warning letter that he must file a listing or face a coercive enforcement penalty (Zwangsgeld). This is an administrative sanction, not a legal punishment.

83 For the most recent year in which data was available, of the almost 51,000 traders threatened with a fine for failing to submit an ICS listing, only 1/5 of those failed to file and were required to pay a fine. Almost half of the approximately 10,000 offenders receiving a second warning were required to pay the fine, and almost half of the almost 5,000 offenders given a third warning were required to pay the DM 1,000 fine (Information obtained from the Bundesfinanzministerium, interview, 5.9.95).
VAT auditors in the finance office do not have direct computer access to the information in the Central Liaison Office, however, information may be obtained by contacting the CLO. A trader may also contact the Central Liaison Office at Saarlouis directly to verify information (name of the company, street, post code, whether the VAT identification number is a legitimate number issued from a particular company) from a potential foreign customer.