The last area of concern is the transitory regime of the amendments to the Criminal Code in order to implement the FATF recommendations of 2012. The law enacting tax crimes as predicate offences to ML as described above clearly states that the amendments to § 165 para 1 and 2 Criminal Code will only apply to misdemeanours according to Art. 140 Tax Act and Art. 88 and 89 VAT Act committed after their entry into force, i.e. after January 1, 2016[39]. The text in the dispatch of the draft bill seems to put an accent on § 165 para 2 Criminal Code, stating that serious tax crimes committed before the entry into force of the amendments of the law shall not constitute predicate offences to ML, particularly with regard to Art. 140 Tax Act.[40]

While it is possible to define a clear date when dealing with "taking possession of or taking into custody, converting, exploiting or assigning to a third party" according to § 165 para 2 Criminal Code, it is all the more unclear what the transitory regime means when looking at safekeeping, investing, or managing the proceeds of a tax crime or when dealing with the tax crime itself, at least the direct tax crime. Regularly, direct taxes are due every year. So, what does a reporting entity under Liechtenstein legislation and regulation have to do when it has e.g. taken into custody in order to invest proceeds of an offshore direct tax fraud in 2015? Interests, dividends and capital gains derived from these proceeds are regularly to be filed in the tax return of 2016 et seq. in many jurisdictions. As soon as suspicion arises that the conditions of a tax fraud are met in 2016, like the use of falsified documents (e.g. an incomplete account or portfolio statement), a new predicate offence to ML is suspected to having been committed in 2016 and hence has to be reported to the FIU Liechtenstein. If no such reports are filed until the next Moneyval evaluation in 2020, the efficiency of the Liechtenstein AML/CFT regime could be at stake.

As a result for Liechtenstein, point 5 of the interpretive note to FATF recommendation 3 and the definition according to Art. 3 point (4) (f) of the 4th AMLD seem to be met, doubt remains relating to the full implementation of point 2 of the interpretive note to FATF recommendation 3.

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[39] Available from https://www.gesetze.li/lilexprod/lgpage2.jsp?formname=showlaw&lgblid=2015371000&version=0&search_loc=text&lgblid_von=2015371000&sel_lawtype=chrono&rechts_gebiet=0&menu=0&tablesel=0&observe_date=30.03.2016, accessed on April 3, 2016.

[40] „Schwere Steuerdelikte, die vor Inkrafttreten dieser Vorlage begangen wurden, sollen nicht als Vortaten zur Geldwäscherei gelten. Dies gilt insbesondere auch für die Erfüllung des Straftatbestandes von Art. 140 SteG gemäss § 165 Abs. 2."