

The more probable reaction depends on the circumstances in a specific country. In Switzerland for example, the legal situation, practice and jurisprudence tends to incite reporting entities to report more¹¹³, especially after the supervisor has expressly invited the reporting entities to do so¹¹⁴. The same is to be concluded on behalf of Liechtenstein.¹¹⁵

4.2 weakening of the existing AML/CFT-regime resource-wise (private sector and public sector)

Looking at the enormous efforts and resources that are and have to be put into the implementation and effective use of all the three systems of AEOI (US FATCA, UK FATCA and CRS), the risk of neglecting AML and CFT is evident. For the next couple of years, the AEOI is about to become at least as important to Legal and Compliance Departments in the private sector globally as the fight against ML and the financing of terrorism. The responsibilities of the FATCA responsible officer¹¹⁶ are as burdensome as those of the MLRO, hence resources are stretched to cover both topics.

The consequential question is: Are we allocating the available resources at their best use? While there are fully functioning authorities investigating and prosecuting tax crimes since the inception of taxes, i.e. the tax authorities, it is hard to see a benefit in charging authorities like the FIUs and the private

¹¹³ This finding is shared by Francesco Naef / Michele Clerici, *Steuerstraftaten als Vortaten der Geldwäscherei: Der Weg in la Terreur*, in: Jusletter of April 7, 2014, although there are still other voices on the Swiss financial market, e.g. the Head of AML of a large cantonal bank who seriously told the author in 2014 to only report cases in which he has an initial suspicion in terms of the criminal procedure code. This attitude is proof of a profound misunderstanding of the AML/CFT-system as a whole, namely the so called inverted reporting cascade as shown in Annex E.

¹¹⁴ See the statement in the press release related to the 2016 annual conference held by FINMA on April 7, 2016: “Focusing on increased money laundering risks in the Swiss financial centre, it (FINMA) pointed out the need for more rigorous supervision. It (FINMA) also called for greater efforts on the part of supervised institutions: banks should consistently report suspicious client relationships and transactions.” Additions in brackets by the author. The press release and other material like FINMA’s annual report 2015 are available from <https://www.finma.ch/en/news/2016/04/20160407-mm-jmk-2016/>, accessed on April 10, 2016.

¹¹⁵ See the article on the interview given by the head of the Liechtenstein FIU and chairman of Moneyval, Daniel Thelesklaf, in: *St. Galler Tagblatt*, April 11, 2016, available from <http://www.tagblatt.ch/nachrichten/panorama/panorama/Wie-der-Suender-im-Beichtstuhl;art253654,4585101>, accessed on April 17, 2016.

¹¹⁶ Just in order to give a little taste of these responsibilities, see the article “Duties of a “Responsible Officer” under FATCA”, by Allen J. Littman and Sarah K. Ma, BakerHostetler, Washington D.C., December 4, 2013, available from <http://www.bakerlaw.com/duties-of-a-responsible-officer-under-fatca-12-4-2013/>, accessed on April 3, 2016.