

Tax crime as predicate offence to Money Laundering

Legal issues and risks in practice

Ralph Sutter
Kappelistrasse 18
9470 Buchs SG
+41 81 740 29 19
sutter.ralph@bluewin.ch
FS110090

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Assessor: Prof. Dr. Dirk Zetsche, LL.M. (Toronto)

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Abstract

On February 16, 2012, the Financial Action Task Force (FATF)¹ released press information related to the new INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION, the so called “FATF recommendations”². Among the mayor changes, the press release enumerates the expansion of “the scope of money laundering predicate offences by including tax crimes”.

This thesis elaborates solutions to problems people with practical experience within the Anti Money Laundering (AML)/Countering the Financing of Terrorism (CFT)-system might face if and when they have to deal with tax crime as predicate offence to Money Laundering (ML). While doing so, the analysis starts on the global level, then continues at the continental level in Europe and ends up by looking at different national levels in Europe and abroad.

On the global level, the FATF has to consider whether the FATF recommendations can be implemented in compliance with the constitution of the countries concerned, i.e. all countries. On the European level, the EU has to consider whether the wording of the directive implementing the FATF recommendations in the EU is clear enough to avoid national legislation that differs too much from each other. On the national level, the countries implementing FATF recommendations and EU directives have to consider whether the national legislation and regulation is easy to be applied by the private and the public sector.

All three institutional levels should be trying to avoid unwanted consequences of the implementation of FATF recommendation 3 (the definition of the money laundering offence), like under- or over-reporting, weakening the existing AML/CFT-regime resource-wise both in the private and in the public sector, de-incentivising service providers from motivating their clients to file a voluntary disclosure, de-motivating compliance officers and client relationship managers by too large a variety of different national implementations or unequal risks attached to different markets, or over-motivating financial institutions to push their clients into waiving unnecessarily their legal rights. All these topics will be addressed in this thesis.

¹ The FATF was established by the G-7 Summit that was held in Paris in 1989, and is not part of the Organisation of Economic Co-operation and Development (OECD) as it is often falsely explained, due to the fact that the FATF has its offices in a building of the OECD in Paris and shares other infrastructure like IT.

² The FATF recommendations are available from <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> (accessed on April 3, 2016), as well as related material like [FATF Guidance and Best Practices](#), [FATF Methodology for assessing with the FATF Recommendations and the effectiveness of AML/CFT systems](#), and [Procedures for the FATF's fourth round of AML/CFT mutual evaluations](#).

This thesis is addressing some of the problems faced by FATF staff, EU staff, compliance officers, analysts in Financial Intelligence Units³ and prosecutors when confronted with the implementation of FATF recommendation 3. This thesis aims at explaining some unwanted consequences of FATF recommendation 3 and its implementation on the national level and concludes by suggesting how to implement it differently on the global, European and national level.

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Last but not least the warmest thank you goes to Prof. Dr. Dirk Zetzsche, LL.M. (Toronto) and his staff, namely Mag. iur. Christina Delia Preiner, LL.M., and Nadja Dobler, Dipl.-Kffr., for their continuous inspiration and support.

³ See the definition of a Financial Intelligence Unit (FIU) in FATF recommendation 29:

“Financial intelligence units *

Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.”

1. Introduction

Adding tax crime to the list of predicate offences to money laundering seems to be necessary and hence logical in order to ensure that everyone pays a fair share of tax. Or is it?

Tax crime is the only predicate offence where there is no proceeds of crime to be laundered at the moment the assets usually are transferred to a bank account, because in most income tax systems, the taxable base of this year is relevant only to next year's tax period. As an example, legal and legitimate income can be placed on a bank account in 2016 and stay there without any breach of law. Only when this income is not declared lawfully in 2017's tax returns, a crime has happened. Once the tax crime has happened, the assets on the bank account appear to be an amalgam of legal income and proceeds of a tax crime.

This crime normally happens without the victim being dispossessed of any values, i.e. without any transaction away from the victim. This is due to the fact that the tax man normally does not hold any money in his hand which is taken away from him by the offender (with the exception of value added tax (VAT) fraud), but only receives less than due. Therefore, all transaction related red flags and indicators for money laundering are useless when facing tax crime as predicate offence to money laundering.

In addition, the fact that tax crime normally happens in cross border situations makes it very burdensome for the private sector and the public administration to get on top of the topic, because there is no harmonized definition of a tax crime available globally, and not even in the European Union. Hence the compliance officers in the private sector as well as the analysts at the Financial Intelligence Units or the public prosecutors have to learn and update continuously the different definitions of tax crime in a multitude of different jurisdictions.

This has already shown effects in certain countries; where a significant percentage of all Suspicious Activity Reports (SARs) are related to tax crime. In addition to the existing tax authorities, who continue to fight tax crimes, the private sector, the Financial Intelligence Units and the prosecutors investigating money laundering cases have to apply their resources to tax crime once it has become a predicate offense to money laundering. The tax man's interests have been protected by tax authorities since the inception of tax in ancient times, while the protection of the integrity of private persons had to be developed through the declarations of human rights and the rule of law and has to be enforced by Law Enforcement Agencies and courts.

Based on the assumption that public spending will not be allowed to increase in most countries due to austerity and based on the experience that the private sector does not allocate additional resources before legally obliged to do so, one may ask the question whether the allocation of resources to investigating, reporting, analysing, distributing and investigating again these cases of tax crime is not for the benefit of drug dealers, child abusers, fraudsters, weapons dealers and all other criminals. The risk

of them being investigated, prosecuted and jailed seems to be lower than in a situation without tax crime as predicate offence to money laundering due to overstretched resources in the private and the public sector. One may ask the question whether it would be more efficient to re-allocate these resources absorbed in the private and public sector (with the exception of the tax authorities) to all the other predicate offences to money laundering once the automatic exchange of information (AEOI) according to the common reporting standard (CRS) is in place. The working thesis in this paper is: yes.

Analysts in Financial Intelligence Units, prosecutors, judges, and compliance officers in financial institutions have to deal with different AML/CFT national acts and international initiatives. In chapter 2, the legal framework of the international standard, being the FATF recommendations, the European implementation of the international standard, being the 4th Anti-Money Laundering Directive of the EU, and the Egmont Group's operational guidance for the Financial Intelligence Units will be analysed and tested from a practitioner's point of view. In the second part of chapter 2, the legal implementation of FATF recommendation 3 in different countries will be analysed. In chapter 3, overarching legal issues triggered by FATF recommendation 3 are elaborated, while chapter 4 sheds light on practical risks and presumably unwanted consequences when implementing FATF recommendation 3. The concluding chapter is chapter 5, where the arguments in favour or against the inclusion of tax crimes as predicate offences to ML will be summed up.

This thesis cannot and will not solve every problem that may arise in relation to the FATF recommendations, the directives of the EU, and the national laws implementing both, but only a couple of them. Additionally, this thesis is not a detailed and profound analysis of tax crimes as predicate offences to ML from a criminal law perspective, nor is it an analysis at all from a tax law perspective.

2. International legal framework and national implementation

In this thesis, the terms “tax fraud” and “tax evasion” are used to designate criminal behaviour (or at least administratively sanctioned behaviour), while “tax avoidance” is the term used to designate legal behaviour aiming at reducing taxes due. The term tax fraud is used when referring to the category of tax crime with the heavier sanctions, and the term tax evasion is used when referring to the lesser strictly sanctioned tax crime.

2.1 International legal framework

When looking at the topic of AML/CFT, the global standard is set by the FATF recommendations. Additionally, there are a number of international conventions having secondary effects on AML/CFT, like the United Nations Convention against Transnational Organised Crime of November 15, 2000 (CTOC, not signed by the EU) or the Council of Europe’s Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of May 1, 2005 (signed but not ratified by the EU).

In the EU, the FATF recommendations are implemented through a directive, while the international conventions are implemented nationally by those member states of the EU who have signed and ratified the international conventions. EU directives are not applicable directly as national law, but have to be implemented through national statutory acts.

This thesis concentrates on the FATF recommendations, the EU directive and the national legislations. The FATF recommendations are used by judges worldwide when they have to interpret their national AML/CFT-legislation, while the EU directive is the major reference when judges in the European Economic Area (EEA) have to interpret their national AML/CFT Act.

2.1.1 International Standard: FATF recommendations (February 2012)

The definition of “designated categories of offences” as predicate offences to ML includes “tax crimes (related to direct taxes and indirect taxes)”⁴. This definition is picked up in the interpretive note to recommendation 3. In number 4 of this interpretive note to recommendation 3, it says “4. Whichever approach is adopted, each country should, at a minimum, include a range of offences within each of the designated categories of offences. (...)”⁵. Recommendation 3 itself does not speak of designated categories of offences, it refers to “(...) all serious offences, with a view to including the widest range of predicate offences”⁶.

The terminology in the FATF recommendations might be seen as somewhat ambiguous, because recommendation 3 speaks of serious offences, and the Glossary refers to “tax crimes” instead of using the more precise terminology “tax felonies” or “tax misdemeanours”. Are “tax misdemeanours” to be defined as predicate offence to ML or not? Implementing the new FATF recommendations would be clearer if the FATF had used the hyponym instead of the hypernym as shown in the following chart.

Hypernym:

tax crimes

Hyponyms:

tax felonies

tax misdemeanours

Figure 1: Tax crimes and their sub-categories (or hyponyms) tax felonies and tax misdemeanours

Being a missed opportunity to make things clearer, not even the FATF methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems (February 2013) gives any guidance at all how the assessors should evaluate and rate compliance with the FATF recommendations in terms of tax crime as predicate offence to ML. One could come to the conclusion that the FATF had to do something due to political pressure, but could not go beyond the lowest common denominator. It would make it clearer for evaluators in mutual evaluations if the FATF methodology would define tax crimes as being tax felonies, or, in the case of countries without a single tax felony in their national law (as will be shown below when analysing implementation on national levels), a qualified tax misdemeanour for direct and indirect tax each.

⁴ See the „General Glossary“ of the FATF Recommendations, p. 112.

⁵ FATF Recommendations, p. 34. The important parts of the interpretive note can be found in chapter 2.2 below.

⁶ FATF Recommendations, p. 12.

2.1.2 The 4th AML/CFT-Directive of the EU

Through the 4th Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁷ (the 4th AMLD), the EU is implementing the FATF recommendations.

2.1.2.1 The draft 4th AMLD

The enumeration of operational objectives of the draft Directive⁸ (page 7) reads as follows: “*Inclusion of tax crimes in the scope*: include an explicit reference to tax crimes as a predicate offence.” This is declared to be one of the best options to improve the existing situation described in the Impact Assessment undertaken by the Commission. It remains unexplained why the inclusion of taxes crimes in the scope of the draft 4th AMLD would improve the existing situation. It will be analysed in chapters 3 and 4 of this thesis whether there are more arguments in favour or against the conclusion made by the European Commission. But first, it is necessary to go through all the lengthy language of the draft and the enacted 4th AMLD on the search for practical guidance on how to implement the FATF recommendations in national law.

Recital No. 9 of the draft 4th AMLD proposed by the Commission reads as follows: “It is important to expressly highlight that “tax crimes” related to direct and indirect taxes are included in the broad definition of “criminal activity” under this Directive in line with the revised FATF Recommendations.”⁹ The Parliament has amended this recital in its first reading as follows: “It is important to expressly highlight that ‘tax crimes’ related to direct and indirect taxes are included in the definition of ‘criminal activity’ under this Directive in line with the revised FATF Recommendations.”¹⁰ Later on, the Parliament added even more language: “The European Council of 23 May 2013 stated the need to deal with tax evasion and fraud and to fight money laundering in a comprehensive manner, both within the internal market and vis-à-vis non-cooperative third countries and jurisdictions. Agreeing on a definition of tax crimes is an important step in detecting those crimes, as too is public (sic!) the disclosure of certain financial information by large companies operating in the Union on a country-by-country basis.

⁷ OJ L 141, 05.06.2015, p. 73 et seq., available in English from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:141:FULL&from=RO>, accessed on April 17, 2016.

⁸ COM(2013) 45 final; 2013/0025 (COD), available in English from http://eur-lex.europa.eu/procedure/EN/2013_25, accessed on April 17, 2016.

⁹ COM(2013) 45 final; 2013/0025 (COD), p. 14.

¹⁰ Draft report dated November 11, 2013 (COM(2013)0045 – C7-0032/2013 - 2013/0025(COD)), p. 8.

It is also important to ensure that obliged entities and legal professionals, as defined by Member States, do not seek to frustrate the intent of this Directive or to facilitate or to engage in aggressive tax planning.”¹¹

This text remains wishful thinking, since there is no agreement on a definition of tax crimes, as will be explained further in the rest of chapter 2.

Art. 3 point (4) (f) of the draft 4th AMLD defines “predicate offences to ML” as follows:

“all offences, including tax crimes related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”.

Art. 3 point (4) (f) is the catch-all element of the definition of predicate offences to ML. It remains unclear how predicate offences to ML have to be implemented in national law, due to the mix-up with the minimum and maximum thresholds. It will be analysed whether the problem with this definition is solved by the final text of the 4th AMLD in the next chapter (see 2.1.2.2).

2.1.2.2 The 4th AMLD¹²

Again, the search for practical guidance leads through the lengthy language of EU legislation.

Recital No. 9 of the draft 4th AMLD has become Recital No. 11 in the enacted text and reads as follows:

“It is important expressly to highlight that ‘tax crimes’ relating to direct and indirect taxes are included in the broad definition of ‘criminal activity’ in this Directive, in line with the revised FATF Recommendations. Given that different tax offences may be designated in each Member State as constituting ‘criminal activity’ punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States' national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).”

¹¹ Report dated February 28, 2014, A7-0150/2014 (COM(2013)0045 – C7-0032/2013 - 2013/0025(COD)), p. 14. Available from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2014-0150+0+DOC+PDF+V0//EN>, accessed on April 10, 2016.

¹² Available in all official languages of the EU from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>, accessed on April 10, 2016.

It remains unclear what the last sentence means. Normally, national legislation concerning the exchange of information between FIUs subjects the exchange to the verification of dual criminality. Is the 4th AMLD calling for abolishing the principle of dual criminality? In order to find the answer to this question, the competence of the EU on abolishing dual criminality has to be assessed first.

The EU does not have a general competence to legislate criminal law nor tax law, but according to art. 83 of the Treaty on the Functioning of the European Union (TFEU¹³), the “European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime” (Art. 83 1. TFEU).

“If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76” (Art. 83 2. TFEU).

Summing up Art. 83 TFEU, the EU could have harmonised the definition of tax crimes in Member States’ national law, but chose not to do so. By deduction, it seems unlikely that the EU wanted to abolish the principle of dual criminality. One could argue that the EU should have harmonised the definition of the criminal offences first before aiming at abolishing dual criminality. If the latter was the goal of Recital 11 of the 4th AMLD (and supposed Recital 11 would be backed by an actual article of the Directive), it seems more than unlikely that national constitutional courts would accept that, e.g. the German Supreme Court (Bundesverfassungsgericht), having ruled that the competence according to Art. 83 TFEU has to be interpreted in a narrow sense.¹⁴

Art. 3 point (4) (f) of the 4th AMLD reiterates the reservation concerning national law as in Recital No. 11, but has not been altered substantially compared to the draft directive. It reads as follows:

¹³ See the consolidated version of the TFEU in OJ C 326, 26.10.2012, p. 47 et seq. (Art. 83 to be found on p. 80 et seq.)

¹⁴ BVerfGE 123, 267 = NJW 2009, 2267.

“(‘criminal activity’ means any kind of criminal involvement in the commission of the following serious crimes:) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”. It is evident that some Member States of the EEA do not punish tax evasion with deprivation of liberty as described above, but with shorter terms of deprivation of liberty or fines, hence these Member States will not automatically have tax evasion as predicate offence to money laundering, but only tax fraud, if not any of both. This will be elaborated more in detail later on in chapter 2.2.

It would have made it clearer to every member state of the EU if the AMLD would have added tax crimes as predicate offences to ML in a separate statutory provision, e.g. a new Art. 3 point (4) (f) with as simple a wording as:

“(f) tax crimes;”

Thus leaving the catch all provision unchanged as new Art. 3 point (4) (g) AMLD:

“(g) all offences, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”.

As a conclusion, in the 4th AMLD, the EU is not much clearer than the FATF.

2.1.3 Egmont Group documents

The Egmont Group of FIUs (EG) is the international association of national FIUs. The interpretive note to recommendation 29 of the 40 FATF recommendations calls for the national FIUs to seek membership in the EG.¹⁵

In July 2013, the “legislative” body of the EG, the assembly of the Heads of FIU, has approved a document entitled “Egmont Group of Financial Intelligence Units operational guidance for FIU activities and the exchange of information”.¹⁶ Strangely enough, this document on operational guidance contains the term “tax” exactly once: Point 50 lit. m defines fiscal information (on declared income and taxes paid) as information type that may be useful to FIUs. No word of guidance is given on how the analysts in the FIUs should get a clearer picture whether a case is one of tax crime as predicate offence to ML or not. No other document treating this problem seems to have been published by the EG so far.

As an intermediate summary of the analysis of the international legal framework, the language used is vague in the FATF recommendations, the FATF Methodology, the EU AMLD and in the EG documents. In chapter 2.2, it will be analysed what the consequences are thereof.

¹⁵ Interpretive note to recommendation 29, G. Egmont Group, nr. 13 in fine: “The FIU should apply for membership in the Egmont Group.”

¹⁶ The document, dated October 28, 2013, is publicly available on the EG website at <http://www.egmontgroup.org/library/egmont-documents>, accessed on April 3, 2016.

2.2 National Implementation

How do countries have to implement tax crime as predicate offence to ML in their national law? The so far most practical answer, although again in lengthy language, is given in the interpretive note to recommendation 3 of the FATF recommendations, which gives the following guidance:

INTERPRETIVE NOTE TO RECOMMENDATION 3 (MONEY LAUNDERING OFFENCE)

1. Countries should criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).
 2. **Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.** Predicate offences may be described by reference to all offences; or to a threshold linked either to a category of serious offences; or to the penalty of imprisonment applicable to the predicate offence (threshold approach); or to a list of predicate offences; or a combination of these approaches.
 3. Where countries apply a threshold approach, predicate offences should, at a minimum, comprise all offences that fall within the category of serious offences under their national law, or should include offences that are punishable by a maximum penalty of more than one year's imprisonment, or, for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences that are punished by a minimum penalty of more than six months imprisonment.
 4. Whichever approach is adopted, each country should, at a minimum, include a range of offences within each of the designated categories of offences. The offence of money laundering should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. When proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence.
 5. **Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically.** Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence, had it occurred domestically.
- (...)

(text in bold letters highlighted by the author)

Why is this guidance a practical answer under any circumstance? Because this is the threshold every country that is a member of the FATF or of a FATF-style regional body (FSRB¹⁷) will be evaluated against.

For the sake of brevity, the analysis of the national implementation will focus on three topics, the two highlighted in the interpretive note above, being the range of predicate offences and the extension to conduct that occurred in another country, plus the definition of tax crime as predicate offence to ML according to Art. 3 point (4) (f) of the 4th AMLD¹⁸.

This chapter will analyse how 8 countries have implemented FATF recommendation 3. These countries are the 4 German speaking countries that are Liechtenstein and the 3 most important partners for the Liechtenstein economy Switzerland, Germany and Austria plus the 3 FATF member states that were/are the latest adopters of the extension of FATF recommendation 3 in order to include tax crime as predicate offence to ML. In order to include at least one Asian country, Singapore has been added to the sample due to its growing importance as offshore destination for European clients. Further countries were not added in order to meet the limits in terms of length of this thesis.

¹⁷ The nine FATF-style regional bodies are (see e.g. <http://www.apgml.org/fatf-and-fsrb/page.aspx?p=94065425-e6aa-479f-8701-5ca5d07ccfe8> where the FSRBS are listed, accessed on April 3, 2016):

- Asia/Pacific Group on Money Laundering (APG) based in Sydney, Australia;
- Caribbean Financial Action Task Force (CFATF) based in Port of Spain, Trinidad and Tobago;
- Eurasian Group (EAG) based in Moscow, Russia;
- Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG) based in Dar es Salaam, Tanzania;
- Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale / Anti-Money Laundering Task Force of Central Africa (GABAC) based in Libreville, Gabon;
- Grupo de Acción Financiera de Latinoamérica / Financial Action Task Force of Latin America (GAFILAT) based in Buenos Aires, Argentina;
- Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest / Inter Governmental Action Group Against Money Laundering in West Africa (GIABA) based in Dakar, Senegal;
- Middle East and North Africa Financial Action Task Force (MENAFATF) based in Manama, Bahrain;
- Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), based in Strasbourg, France (at the headquarters of the Council of Europe).

¹⁸ “(‘criminal activity’ means any kind of criminal involvement in the commission of the following serious crimes:) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”.

As will be shown below, two FATF-members have not yet implemented tax crime as predicate offence to ML: the USA and Luxembourg. While in the US, case law can be called upon as precedent to argue that at least courts have determined that a foreign government has a valuable property right in collecting taxes, and that right may be enforced in a U.S. court of law (see the reference below), there seems to be neither law nor jurisprudence in place in Luxembourg relating to tax crime as predicate offence to ML, but supervisory guidance only.

2.2.1 Austria

Austria is a member of the FATF, hence the FATF recommendations are applied by Austria. In Austria, ML is punishable according to § 165 Criminal Code¹⁹. Austria has chosen a combination of approaches when defining the predicate offences to ML, combining the threshold approach with the list approach. The first category of predicate offence consists of all felonies as defined in § 17 Criminal Code (the threshold being premeditative acts punishable with life imprisonment or imprisonment of at least 3 years). The law further defines a list of misdemeanours to be predicate offence to ML, e.g. falsification of documents (§ 223 et seq. Criminal Code), perjury (§ 288 Criminal Code), and bribery and corruption (§§ 304-308 Criminal Code).

Additionally, § 165 of the Criminal Code defines that “financial misdemeanours of smuggling or the evasion of entry or exit levies” according to § 35 FinStrG (**Finanzstrafgesetz**, which can be translated

¹⁹ Bundesgesetz vom 23.11.1974, BGBl. Nr. 60/1974, last modified by BGBl. I Nr. 116/2013

(<http://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296&Artikel=&Paragraf=165&Anlage=&Uebergangsrecht=>, last update as of September 14th, 2015) accessed on April 3, 2016:

Geldwäscherei

§ 165. (1) Wer Vermögensbestandteile, die aus einem Verbrechen, einer mit Strafe bedrohten Handlung gegen fremdes Vermögen, die mit mehr als einjähriger Freiheitsstrafe bedroht ist, einem Vergehen nach den §§ 223, 224, 225, 229, 230, 269, 278, 288, 289, 293, 295 oder 304 bis 309, einem gewerbsmäßig begangenen Vergehen gegen Vorschriften des Immaterialgüterrechts oder einem in die Zuständigkeit der Gerichte fallenden **Finanzvergehen des Schmuggels oder der Hinterziehung von Eingangs- oder Ausgangsabgaben** herrühren, verbirgt oder ihre Herkunft verschleiert, insbesondere, indem er im Rechtsverkehr über den Ursprung oder die wahre Beschaffenheit dieser Vermögensbestandteile, das Eigentum oder sonstige Rechte an ihnen, die Verfügungsbefugnis über sie, ihre Übertragung oder darüber, wo sie sich befinden, falsche Angaben macht, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.

(2) Ebenso ist zu bestrafen, wer wissentlich Vermögensbestandteile an sich bringt, verwahrt, anlegt, verwaltet, umwandelt, verwertet oder einem Dritten überträgt, die aus einer in Abs. 1 genannten mit Strafe bedrohten Handlung eines anderen stammen.

(3) Ebenso ist zu bestrafen, wer wissentlich der Verfügungsmacht einer kriminellen Organisation (§ 278a) oder einer terroristischen Vereinigung (§ 278b) unterliegende Vermögensbestandteile in deren Auftrag oder Interesse an sich bringt, verwahrt, anlegt, verwaltet, umwandelt, verwertet oder einem Dritten überträgt.

(4) Wer die Tat in Bezug auf einen 50 000 Euro übersteigenden Wert oder als Mitglied einer kriminellen Vereinigung begeht, die sich zur fortgesetzten Geldwäscherei verbunden hat, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.

(5) Ein Vermögensbestandteil rührt aus einer strafbaren Handlung her, wenn ihn der Täter der strafbaren Handlung durch die Tat erlangt oder für ihre Begehung empfangen hat oder wenn sich in ihm der Wert des ursprünglich erlangten oder empfangenen Vermögenswertes verkörpert.

(text in bold letters highlighted by the author)

as Financial Criminal Act) are predicate offence to ML under the condition that a court is competent for taking action against it, i.e. if the perpetrator has committed the misdemeanour with premeditation and the relevant value of the evasion or the smuggling exceeds EUR 50'000 (§ 53 para 1 and 2 FinStrG).²⁰ Once these conditions are met, the court may sentence the offender to a fine and additionally to imprisonment of a period of time up to two years.²¹ The maximum sentence being of more than one year, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems to be met.

The law is mute on the question whether a predicate offence can be committed in a foreign country, but there is consensus in the Austrian academia that this is possible. Court decisions could not be found on this question. Academics and practitioners have established that proceeds of a foreign offence can be the object of ML in Austria, if the foreign offence would be a predicate offence in Austria too, and the foreign offence would be punished according to the law at the scene of the crime (*lex loci delicti*), while it is not necessary that the foreign offence is a predicate offence to ML in the country where it has been committed.²²

If the predicate offence was committed abroad, Austrian law would request that this act was also punished where it was committed, but to the contrary of German and Swiss law²³, there is no explicit legal norm stipulating this in Austrian law.

On the other hand, it is possible that a foreign offence is a felony and predicate offence to ML in the country where it has been committed but no offence at all in Austria, hence the proceeds of that foreign offence cannot fall in scope of § 165 Criminal Code of Austria, which will be explained below in chapter 3.3. In spite of this, the conditions in point 5 of the interpretive note to FATF recommendation 3 seem to be met by the Austrian Criminal Code.

²⁰ The latest version of the FinStrG can be found (in German only) at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003898>, accessed online on April 3, 2016. For the sake of shortness of this text, the German version of § 35 can be found in Annex C below.

²¹ The legal construction of the offences being very complicated, the list of potential sanctions available from <https://www.bmf.gv.at/steuern/fristen-verfahren/fsv-strafoehe.html>, accessed on April 3, 2016, is very helpful and can be found in German in Annex D below.

²² As explained by Mag. Rainer Brandl, attorney-at-law with the law firm LeitnerLeitner, Linz/Wien/Zürich, during his presentation entitled “Steuerdelikte als Vortaten für Geldwäsche in Österreich” given at the 12th AML/CFT Conference in Zürich entitled “Aktuelle Entwicklungen in der Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung”, organised by Kunz Compliance, Bern, www.compliance.ch.

²³ § 261 para 8 German Criminal Code, Art. 305^{bis} number 3 Swiss Criminal Code.

So far, one could think that only smuggling and the evasion of entry or exit levies are predicate offence to ML in Austria, but that is not the full picture. In December 2010, an additional para 3 was added to § 1 FinStrG, declaring that “all premeditative financial misdemeanours, which are punishable with a mandatory deprivation of liberty of more than three years, are felonies in the sense of § 17 para 1 Criminal Code”.²⁴ There are (only) two misdemeanours that are in scope of § 1 para 3 FinStrG: § 38a (financial misdemeanour committed by a gang or using violence) and § 39 (fraud on levies) FinStrG.²⁵ Once these conditions are met, the court may sentence the offender to a fine and additionally to imprisonment of a period of time up to 3, 5 or 10 years, depending on the amount smuggled, evaded, defrauded or concealed.²⁶ The maximum sentence being of more than one year, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems to be met.

The term levy covers both direct and indirect tax in Austria, including entry levy fraud and excise tax/VAT fraud in other member states of the EU (§ 2 para 1 lit. c FinStrG, under the condition that the requirements of § 39 FinStrG are met). Financial misdemeanours according to § 38a FinStrG include the cases of simple tax evasion (as defined in § 33 FinStrG, covering both VAT and direct taxes) if committed by at least two cooperating (§ 11 FinStrG) members of the same gang which has to have at least three members (§ 38a para 1 lit. a FinStrG). Point 2 of the interpretive note to FATF recommendation 3 seems to be met.

Should all these conditions explained above not be met, the FinStrG only protects taxes as defined in § 2 FinStrG, hence e.g. an evasion of German income tax committed in Austria is out of scope of § 165 Criminal Code, because the Austrian law, namely the FinStrG, does not punish the evasion of German income tax.²⁷ Point 5 of the interpretive note to FATF recommendation 3 seems not to be fully implemented by the Austrian Financial Criminal Act (FinStrG).

²⁴ [BGBl. I Nr. 104/2010](#) (NR: GP XXIV [RV 874 AB 945 S. 85](#). BR: [AB 8415 S. 790.](#)), to be found at https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_I_104/BGBLA_2010_I_104.pdf, accessed online on April 3, 2016:

„(3) Vorsätzliche Finanzvergehen, die mit einer zwingend zu verhängenden Freiheitsstrafe von mehr als drei Jahren bedroht sind, sind Verbrechen im Sinne des § 17 Abs. 1 StGB.“

²⁵ For the sake of shortness of this text, the German version of §§ 38a and 39 can be found in Annex C below.

²⁶ The legal construction of the offences being very complicated, the list of potential sanctions available from <https://www.bmf.gv.at/steuern/fristen-verfahren/fsv-strafhoehe.html>, accessed on April 3, 2016, is very helpful and can be found in German in Annex D below.

²⁷ As explained by Prof. Dr. Jens Bülte, in his presentation on financial felonies als predicate offence to ML, (in German: „Finanzverbrechen als Vortaten der Geldwäscherei“), given at the 17th conference on financial criminal law, Linz, Austria, on March 8, 2012.

As a result for Austria, a premeditative evasion of direct and indirect taxes exceeding EUR 50'000 is a predicate offence to ML only under certain circumstances as described above. While point 2 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 5 of the interpretive note to FATF recommendation 3.

The mutual evaluation of the situation in Austria is scheduled to be discussed at the FATF plenary meeting in June 2016.

2.2.2 Liechtenstein

Liechtenstein is not a member of the FATF, but of the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval).²⁸ Due to the fact that Moneyval has adopted the FATF recommendations as part of the international standards against which "Moneyval shall conduct a fifth round of anti-money laundering and countering the financing of terrorism (AML/CFT) mutual evaluations for States and territories which are subject to its evaluation procedures..."²⁹, the FATF recommendations are to be implemented by Moneyval's member states, including Liechtenstein.

Because the Austrian Criminal Code is the blueprint for the Liechtenstein Criminal Code, ML is punishable according to the same §, i.e. § 165 Criminal Code³⁰. Inevitably, Liechtenstein also has chosen a

²⁸ MONEYVAL (formerly PC-R-EV) was established in 1997 and its functioning was regulated by the general provisions of [Resolution Res\(2005\)47 on committees and subordinate bodies, their terms of reference and working methods](#). At their meeting on 13 October 2010, the Committee of Ministers adopted the [Resolution CM/Res\(2010\)12](#) on the Statute of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). The statute elevates MONEYVAL as from 1 January 2011 to an independent monitoring mechanism within the Council of Europe answerable directly to the Committee of Ministers. MONEYVAL's statute was further amended in 2013 by the [Resolution CM/Res\(2013\)13](#). All links accessed on April 3, 2016.

²⁹ Rules of Procedure for the 5th round of mutual evaluations, adopted by Moneyval at its 46th Plenary meeting (Strasbourg, 8-12 December 2014), revised at its 47th Plenary meeting (Strasbourg, 14-17 April 2015), Moneyval(2014)36 REV1, available online from [http://www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL\(2014\)36REV1_ROP5th_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL(2014)36REV1_ROP5th_en.pdf), accessed online on April 3, 2016.

³⁰ § 165 *Geldwäscherei*

1) Wer Vermögensbestandteile, die aus einem Verbrechen, einem Vergehen nach den §§ 223, 224, 278, 278d oder 304 bis 308, einem Vergehen nach Art. 83 bis 85 des Ausländergesetzes, einem Vergehen nach dem Betäubungsmittelgesetz, **einem Vergehen nach Art. 140 des Steuergesetzes, einem Vergehen nach Art. 88 oder 89 des Mehrwertsteuergesetzes** oder einer Übertretung nach Art. 24 des Marktmissbrauchsgesetzes herrühren, verbirgt oder ihre Herkunft verschleiert, insbesondere indem er im Rechtsverkehr über den Ursprung oder die wahre Beschaffenheit dieser Vermögensbestandteile, das Eigentum oder sonstige Rechte an ihnen, die Verfügungsbefugnisse über sie, ihre Übertragung oder darüber, wo sie sich befinden, falsche Angaben macht, ist mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

2) Wer Vermögensbestandteile, die aus einem Verbrechen, einem Vergehen nach den §§ 223, 224, 278, 278d oder 304 bis 308, einem Vergehen nach Art. 83 bis 85 des Ausländergesetzes, einem Vergehen nach dem Betäubungsmittelgesetz, einem Vergehen nach Art. 88 oder 89 des Mehrwertsteuergesetzes oder einer Übertretung nach Art. 24 des Marktmissbrauchsgesetzes herrühren, oder wer **wissentlich** Vermögensbestandteile, die aus einem Vergehen nach Art. 140 des Steuergesetzes herrühren, an sich bringt, in Verwahrung nimmt, sei es, um diese Bestandteile lediglich zu verwahren, diese anzulegen oder zu verwalten,

combination of approaches when defining the predicate offences to ML, combining the threshold approach with the list approach. The first category of predicate offence consists of all felonies as defined in § 17 Criminal Code (the threshold being premeditative acts punishable with life imprisonment or imprisonment of at least 3 years). The law further defines a list of misdemeanours to be predicate offences to ML, e.g. falsification of documents (§ 223 et seq. Criminal Code), and bribery and corruption (§§ 304-308 Criminal Code).

Finally, § 165 of the Criminal Code defines that financial misdemeanours according to Art. 140 Tax Act (direct tax fraud)³¹ and according to Art. 88 VAT Act (VAT fraud) or Art. 89 VAT Act (qualified VAT evasion)³² are predicate offence to ML. The maximum sentences are 6 months imprisonment according to Art. 140 Tax Act, one year imprisonment according to Art. 88 VAT Act and two years imprisonment according to Art. 89 VAT Act. The maximum sentence under Art. 89 VAT Act being of more than one year, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems to be met. Art. 140 Tax Act and Art. 88 VAT Act would not meet the definition according to Art. 3 point (4) (f) of the 4th AMLD, hence they had to be specifically listed under § 165 para 1 Criminal Code.

solche Vermögensbestandteile umwandelt, verwertet oder einem Dritten überträgt, ist mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

(text in bold letters highlighted by the author)

³¹ The latest version of the Tax Act (Steuergesetz, abbreviated SteG), is available in German from https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgblid=2010340000&version=17&search_text=Steuergesetz&search_loc=text&sel_lawtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tablesel=0&observe_date=30.03.2016, accessed on April 3, 2016.

Art. 140 SteG on Tax Fraud (Steuerbetrug) reads as follows: „Wer eine Steuerhinterziehung durch vorsätzlichen Gebrauch falscher, verfälschter, inhaltlich unwahrer Geschäftsbücher oder anderer Urkunden begeht, wird nach Art. 140 SteG wegen Vergehens mit einer Freiheitsstrafe bis zu sechs Monaten oder einer Geldstrafe bis zu 360 Tagessätzen bestraft.“

³² The latest version of the VAT Act (Mehrwertsteuergesetz, abbreviated MWSTG), is available in German from https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgblid=2009330000&version=8&search_text=Mehrwertsteuergesetz&search_loc=text&sel_lawtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tablesel=0&observe_date=30.03.2016, accessed on April 3, 2016.

Art. 88 MWSTG on VAT Fraud (Steuerbetrug) reads as follows: „Wer eine Steuerhinterziehung durch vorsätzlichen Gebrauch falscher, verfälschter, inhaltlich unwahrer Geschäftsbücher oder anderer Urkunden begeht, wird wegen Vergehens mit einer Freiheitsstrafe bis zu einem Jahr oder einer Geldstrafe bis zu 360 Tagessätzen bestraft.“

Art. 89 MWSTG on qualified VAT Evasion (Qualifizierte Steuerhinterziehung) reads as follows: „1) Wer eine Steuerhinterziehung unter erschwerenden Umständen begeht, wird wegen Vergehens mit einer Freiheitsstrafe bis zu zwei Jahren oder einer Geldstrafe bis zu 360 Tagessätzen bestraft. Als erschwerende Umstände gelten:

- a) das Anwerben einer oder mehrerer Personen für eine Steuerhinterziehung;
 - b) das gewerbmässige Verüben von Steuerhinterziehungen.
- 2) Eine Bestrafung nach Abs. 1 schliesst eine zusätzliche Bestrafung nach Art. 88 aus.“

To the contrary of Austria, Liechtenstein obviously has not added any form of qualified direct tax evasion to the list of predicate offences to ML.³³ It remains to be assessed by Moneyval’s evaluators if point 2 of the interpretive note to FATF recommendation 3 is implemented or not.

The analysis under point 5 of the interpretive note to FATF recommendation 3 shows that “As long as Liechtenstein has jurisdiction over the ML activity itself *ratione loci*, it is irrelevant where the predicate offenses are committed, presuming the facts constitute a domestic predicate offense. Liechtenstein even assumes jurisdiction over the money laundering conduct in another country if the predicate offense has been committed in Liechtenstein (Art. 64, para. 1.9 PC). Art. 65, para. 3 PC finally provides that, if there is no penal power at the place where the criminal act was committed (such as the Antarctic or high seas) it is sufficient that the offense is punishable in Liechtenstein.”³⁴

The dispatch of the draft bill shows some open language indicating that during the preparation period of the draft bill, there had been dissenting discussions between the public and the private sector and potentially within each of them. Not only had the first task force in charge of elaborating a draft implementation of the international standards into Liechtenstein law to be replaced by a second task force with a different chairperson. The second task force even openly admits not having reached a common position on how to implement the international standards into Liechtenstein law and apparently missed the deadline for its report to the Liechtenstein government (December 1st, 2014).³⁵

³³ Which seems to be still in line with Art. 3 point (4) (f) of the 4th AMLD.

³⁴ See page 53 of the Moneyval Report on Fourth Assessment Visit, Principality of Liechtenstein, April 2, 2014, available from http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Liechtenstein_en.asp, accessed on April 10, 2016.

³⁵ The history of these task forces is explained in the dispatch of the draft bill (Bericht und Antrag Nr. 114/2015), available in German from <http://bua.gmg.biz/BuA/default.aspx?nr=114&year=2015&content=378168877&erweitert=true>, accessed on April 3, 2016), on pages 7 to 9. On pages 12 to 16, the different and diverging opinions of the task force’s participants from the public and the private sector are explained.

The Liechtenstein government decided not to suggest to Parliament to define a qualified form of direct tax evasion and make it a predicate offence to ML, e.g. by adding the relevant qualification to Art. 137 Tax Act (Steuerhinterziehung = tax evasion)³⁶. This is important only to the countries knowing a difference between tax evasion (as a misdemeanour) and tax fraud (as a felony or qualified misdemeanour). The question whether this decision meets the guidance given in point 2 of the interpretive note to FATF recommendation 3, especially where it is said that countries “should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences”, remains open. The upcoming fifth round of mutual evaluations by Moneyval (estimated to take place in relation to Liechtenstein in 2020) will bring evidence at least about the European FSRB’s position on that.

Another area of concern is the condition in § 165 para 2 Criminal Code, that only those who **knowingly** (in German: wissentlich) take possession of or take into custody, safe keep, invest, manage, convert, exploit or assign to a third party parts of assets that are proceeds of a misdemeanour according to Art. 140 Tax Act will be punishable. This so called “knowledge” standard was the law before May 23, 2007³⁷ in relation to proceeds of all predicate offences to ML. This was criticised by the Moneyval evaluation of 2000 as being (too) strictly interpreted and “...as a result of which it is difficult to prove the criminal origin of proceeds derived from predicate offences typically committed overseas.”³⁸ The “knowledge” standard being abolished in 2007 and partially re-introduced in 2016 (limited to proceeds of a misdemeanour according to Art. 140 Tax Act) might attract particular interest during the next Moneyval evaluation.

³⁶ Art. 137 SteG on Tax Evasion (Steuerhinterziehung) reads as follows: „1) Wegen Übertretung wird mit Busse bestraft, wer:

- a) als Steuerpflichtiger vorsätzlich oder fahrlässig durch unrichtige oder unvollständige Angaben in der Steuererklärung oder Steueranzeigen oder durch unrichtige oder unvollständige Auskünfte die Einforderung einer von ihm zu entrichtenden Steuer verhindert oder auf sonstige Art schuldhaft Steuern vorenthält;
- b) als zum Steuerabzug an der Quelle Verpflichteter vorsätzlich oder fahrlässig einen Steuerabzug nicht oder nicht vollständig vornimmt;
- c) vorsätzlich oder fahrlässig, zum eigenen oder zum Vorteil eines anderen, Gründungsabgaben oder Abgaben auf Versicherungsprämien vorenthält;
- d) als Steuerpflichtiger oder als zum Steuerabzug an der Quelle Verpflichteter vorsätzlich oder fahrlässig eine unrechtmässige Rückerstattung oder einen ungerechtfertigten Erlass erwirkt.

2) Die Busse beträgt in der Regel das Einfache der hinterzogenen Steuer oder Abgabe. Sie kann bei leichtem Verschulden bis auf einen Drittel ermässigt, bei schwerem Verschulden bis auf das Dreifache erhöht werden.“

³⁷ The amendment to the Criminal Code deleting the word “knowingly” entered into force on May 23, 2007 (the amending law can be found at

https://www.gesetze.li/lilexprod/lgpage2.jsp?formname=showlaw&lgblid=2007186000&version=0&search_loc=text&lgblid_von=2007186000&sel_lawtype=chrono&rechts_gebiet=0&menu=0&tablesel=0&observe_date=30.03.2016, accessed on April 3, 2016.)

³⁸ See number 5 of the Summary of the Moneyval evaluation of 2000, available from Moneyval’s website, [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round1-2/PC-R-EV\(99\)27Summ-LIE1_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round1-2/PC-R-EV(99)27Summ-LIE1_en.pdf), accessed on April 3, 2016.

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, 2016³⁹. 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.

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.“

2.2.3 Switzerland

Switzerland being a member of the FATF, it implements the FATF recommendations. When implementing the international standard, Switzerland historically had chosen the threshold approach, i.e. defining all felonies⁴¹ to be predicate offences to ML. The Swiss government therefore suggested applying the same threshold by introducing new felonies related to direct taxes and by expanding the existing felony related to smuggling on all federal indirect taxes including VAT, levies, stamp duty and the withholding tax.⁴²

The federal set-up of Switzerland causes the tax law to be fractured into 26 cantonal and several federal tax laws. The Swiss Confederation has no constitutional right to impose taxation on the cantons other than for tax harmonisation purposes (see Art. 126 of the Federal Constitution⁴³), hence the Federal Law on the harmonisation of communal and cantonal direct tax (draft Art. 59⁴⁴ para 1^{bis} being the most important text) was the only mean to introduce new tax felonies below the federal level. At the federal level, the proposed changes affected the Federal Law on direct federal taxation (draft Art. 186⁴⁵ para 1^{bis} being the most important text) and the Federal Law on administrative criminal law (draft Art. 14⁴⁶ para 4 being the most important text).

The results of public consultation of the draft bill showed such strong resistance against introducing new felonies related to direct taxes⁴⁷ that the Swiss government chose the list approach for the first time. This allows for the implementation of FATF recommendation 3 as part of the international standard on AML/CFT without further criminalising taxpayers on the national level. Direct tax fraud has

⁴¹ As defined in Art. 10 para 2 Criminal Code, felonies “... are offences that carry a custodial sentence of more than three years”. The unofficial English translation of the Swiss Criminal Code is available from <https://www.admin.ch/opc/en/classified-compilation/19370083/201601010000/311.0.pdf>, accessed on April 3, 2016.

⁴² All legal texts (in German) can be found at https://www.admin.ch/ch/d/gg/pc/documents/2309/GAFI-2012_Entwurf-BG_de.pdf, accessed on April 3, 2016. For the sake of shortness of this text, this draft law that never came into force can be found in Annex A below.

⁴³ Available in English from <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html>, accessed on April 3, 2016.

⁴⁴ Tax fraud.

⁴⁵ Tax fraud.

⁴⁶ Fraud on benefits and levies.

⁴⁷ See the report on the results of the public consultation (in German) available on <http://www.news.admin.ch/NSBSubscriber/message/attachments/31879.pdf>, accessed on April 3, 2016.

always been a misdemeanour in Switzerland, not a felony. To change this by making direct tax fraud a felony was viewed by many participants to the public consultation as having important negative knock-on effects on the relationship between state and citizen. The draft bill that was dispatched to Parliament became law with only one change. While Art. 305^{bis} para 1^{bis} Criminal Code of the draft bill⁴⁸ put the threshold for an act of tax fraud to become predicate offence to ML at taxes evaded of at least CHF 200'000 per tax period, this threshold was elevated to taxes evaded of at least CHF 300'000 per tax period in the law⁴⁹.

For the sake of completeness, Art. 305^{bis} of the Swiss Criminal Code stipulates that the predicate offence, which has been committed outside of Switzerland and is punishable where it has been committed, needs to be a predicate offence in Switzerland too.⁵⁰

It seems necessary to have a closer look at the Swiss way to implement FATF recommendation 3. Art. 305^{bis} numbers 1, 1^{bis} and 3 Criminal Code read as follows:

1. Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemeanour is liable to a custodial sentence not exceeding three years or to a monetary penalty.

1^{bis}. An aggravated tax misdemeanour is any of the offences set out in Article 186 of the Federal Act of 14 December 1990 on Direct Federal Taxation⁵¹ and Article 59 paragraph 1 clause one of the Federal Act of 14 December 1990 on the Harmonisation of Direct Federal (sic!) Taxation at Cantonal and Communal Levels⁵², if the tax evaded in any tax period exceeds 300 000 francs.

3. The offender is also liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission.

Footnotes inserted by the author. The last word "Federal" in para 1^{bis} is obviously a translation error and should be deleted.

⁴⁸ See the draft bill (in German) available on

<http://www.news.admin.ch/NSBSubscriber/message/attachments/33158.pdf>, accessed on April 3, 2016. The press release accompanying the draft bill is available in English on

<https://www.news.admin.ch/message/index.html?lang=en&msg-id=51377>, accessed on April 3, 2016.

⁴⁹ See Art. 305^{bis} para 1^{bis} Criminal Code. The whole of the Swiss Criminal Code as at January 1, 2016 is available in English from <https://www.admin.ch/opc/en/classified-compilation/19370083/201601010000/311.0.pdf>, accessed on April 3, 2016.

⁵⁰ Decision of the Swiss Federal Supreme Court (Bundesgerichtsentscheid) BGE 126 IV 261.

⁵¹ The whole text of the Federal Act on direct federal taxation is available in German from <https://www.admin.ch/opc/de/classified-compilation/19900329/201601010000/642.11.pdf>, accessed on April 10, 2016.

⁵² The whole text of the Federal Act on the Harmonisation of Direct Taxation at Cantonal and Communal Levels is available in German from <https://www.admin.ch/opc/de/classified-compilation/19900333/201601010000/642.14.pdf>, accessed on April 3, 2016.

What does this law mean in practice? Each financial intermediary has to identify the tax residence(s) of his clients and undertake every year all clarifications necessary to avoid any suspicion that the funds of the client might be undeclared tax-wise. Why would he have to? Because if any suspicion arises, the financial intermediary would have to investigate on the tax due by his client at the client's tax residence(s). This is very complicated and costly, because a legal opinion would have to be requested in every case. Once it would be established that the client is suspected to have evaded tax in the amount of at least CHF 300'000 per tax period, a suspicious activity report would have to be sent to the Swiss FIU, called Money Laundering Reporting Office of Switzerland MROS⁵³.

This legal text means that the financial intermediaries in Switzerland have to know the principles of the tax systems of all tax residences of their clients, and update this knowledge and apply it every year. It remains a secret how the Swiss government and parliament came to such a complicated solution. It would have been a much more practical implementation if the law would set the threshold at a certain amount of assets under management, i.e. CHF 1 million or 500'000. But linking the predicate offence to ML in Switzerland to an amount of tax evaded (which in most cases consist of offshore tax from a Swiss perspective) is just making it the most impractical possible.

To the contrary of the Austrian law, Art. 305^{bis} number 3 Criminal Code clearly states that "the offender is also liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission", i.e. the predicate crime being punishable under the *lex loci delicti*. Point 5 of the interpretive note to FATF recommendation 3 seems to be implemented.

While the introduction of the aggravated direct tax misdemeanour in Art. 305^{bis} Criminal Code has gained a lot of attention, the extension of the existing fraud on contributions and levies in Art. 14 para 4 of the Federal Law on administrative criminal law (Bundesgesetz über das Verwaltungsstrafrecht; VStrR)⁵⁴ to cover all indirect taxes has passed almost unnoticed. There is no *de minimis* threshold in Art. 14 para 4 VStrR like there is in Art. 305^{bis} Criminal Code. But there is at least one important element in Art. 14 para 4 VStrR, which is the extension to cover all federal indirect taxes including VAT, levies, stamp duty and the withholding tax. Taking the example of a hidden distribution of profits, i.e. a refund from a foreign company owed to company A in Switzerland, that is directly being paid to company B in Switzerland which has the same sole shareholder as company A. The fact that the recipient of the refund is not the company to which it is owed makes the transfer appear as an indirect

⁵³ From the website of MROS <https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei.html>, accessed on April 3, 2016, the annual reports can be downloaded, in German, French, Italian and English.

⁵⁴ Available in German from <https://www.admin.ch/opc/de/classified-compilation/19740066/index.html>, accessed on April 3, 2016.

hidden distribution of profits from Company A to its sole shareholder. He then makes an allowance to Company B.⁵⁵ This example shows that one single transaction can be in scope of both direct and indirect tax like the Swiss Withholding tax, stamp duty and income tax. While there is a *de minimis* threshold set in Art. 305^{bis} Criminal Code, there is no such threshold in Art. 14 para 4 VStrR, leading to the filing of a suspicious activity report (SAR) based on Art. 14 para 4 VStrR, and thus annihilating the threshold of CHF 300'000 according to Art. 305^{bis} Criminal Code. Point 2 of the interpretive note to FATF recommendation 3 seems to be implemented.

The conditions of the definition according to Art. 3 point (4) (f) of the 4th AMLD are irrelevant for Switzerland, since it is not a member to the EEA. As a result for Switzerland, points 2 and 5 of the interpretive note to FATF recommendation 3 seem to me implemented.

It will be interesting to see how the effectiveness of the Swiss implementation of FATF recommendation 3 will be assessed during the next FATF mutual evaluation. The next mutual evaluation will not take place soon due to the fact that the onsite visit of the 4th round of mutual evaluations has just taken place in February and March 2016.

⁵⁵ Example taken from Francesco Naef / Michele Clerici, Steuerstraftaten als Vortaten der Geldwäscherei: Der Weg in *la Terreur*, in: Jusletter of April 7, 2014.

2.2.4 Germany

Germany also being a member of the FATF, it implements the FATF recommendations. In Germany, ML is punishable according to § 261 Criminal Code.⁵⁶ The whole text of § 261 Criminal Code is very long, which is not unusual for German legal texts, hence it can be found in Annex C below, both in German and in English (with the reservation that the English version is updated as of October 10, 2013 only).

When implementing FATF recommendation 3, Germany has chosen a combination of approaches when defining the predicate offences to ML, combining the threshold approach with the list approach. The first category of predicate offences consists of all felonies as defined in § 12 Criminal Code (the threshold being illegal acts punishable with imprisonment of at least one year) as stipulated in § 261 para 1 sentence 2 number 1 Criminal Code. The law further defines a list of misdemeanours to be predicate offences to ML, e.g. taking bribes meant as an incentive to violating one's official duties (Bestechlichkeit, § 332 Criminal Code), and giving bribes as an incentive to the recipient's violating his official duties (Bestechung, § 334 Criminal Code) according to § 261 para 1 sentence 2 number 2 lit. a Criminal Code.

Additionally, § 261 para 1 sentence 2 number 3 Criminal Code defines that misdemeanours according to § 373 Fiscal Code⁵⁷ (professional, violent or organised smuggling; gewerbsmässiger, gewaltsamer und bandenmässiger Schmuggel) and § 374 para 2 Fiscal Code (qualified receiving, holding or selling goods obtained by tax evasion; gewerbsmässige oder bandenmässige Steuerhehlerei) are predicate offences to ML too. These two misdemeanours are also predicate offences to ML if committed in rela-

⁵⁶ Many German laws and ordinances are available for free online from <http://www.gesetze-im-internet.de/index.html>, some of them even translated into English from http://www.gesetze-im-internet.de/Teilliste_translations.html, accessed on April 3, 2016.

The German Criminal Code as a whole is available (and updated to include the amendments as of December 10, 2015) in German from <http://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf>, accessed on April 3, 2016. The English version of the German Criminal Code (updated to include the amendments as of October 10, 2013) is available from http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p2142, accessed on April 3, 2016. There have been amendments to § 261 German Criminal Code since October 10, 2013.

⁵⁷ The German Fiscal Code (Abgabenordnung, AO) as a whole is available (and updated to include the amendments as of December 3, 2015) in German from <http://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf>, accessed on April 3, 2016. The English version of the German Fiscal Code (updated to include the amendments as of December 22, 2014) is available from http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p2142, accessed on April 3, 2016. There have been amendments to the German Fiscal Code since December 22, 2014.

tion to § 12 para 1 of the law on the implementation of the common market and directly paid subsidies.⁵⁸

Finally, § 261 para 1 sentence 2 number 4 lit. b Criminal Code stipulates that misdemeanours according to § 370 Fiscal Code (Tax evasion, Steuerhinterziehung)⁵⁹ are predicate offences to ML, if committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences. This is an important qualification. Although there is no definition of the term gang in the Criminal Code, the meaning of the term is the same as in most countries, i.e. a group of a minimum of 3 persons, based on a decision by the Federal Court of Justice (Bundesgerichtshof).⁶⁰ Point 2 of the interpretive note to FATF recommendation 3 seems to be implemented.

The maximum sentences are 5 years imprisonment according to § 370 Fiscal Code, and 10 years imprisonment according to §§ 373 and 374 para 2 Fiscal Code. The maximum sentences always being of more than one year, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems to be met.

§ 263 para 3 Criminal Code sanctions any attempt.

When looking at the German criminal law, the situation appears to be different from the one in Austria, since § 370 para 7 Fiscal Code clearly states that “irrespective of the *lex loci delicti*, the provisions of subsections (1) to (6) above shall also apply to acts committed outside the territory of application of this Code”. This means that any qualified tax evasion committed outside of Germany can be a predicate offence to ML in Germany. When asking whether the proceeds of such a predicate offence can be the object of ML in Germany, § 261 para 8 Criminal Code gives a clear answer: “Objects which are proceeds from an offence listed in subsection (1) above committed abroad shall be equivalent to the objects indicated in subsections (1), (2) and (5) above if the offence is also punishable at the place of its commission”, hence yes. This applies without regarding whether the foreign predicate offence is past the statute of limitations, whether the foreign threat of punishment is equivalent to the German

⁵⁸ Gesetz zur Durchführung der gemeinsamen Marktorganisation und der Direktzahlungen (Marktorganisationsgesetz, MOG, no English translation available).

⁵⁹ To be found in Annex C below, both in German and in English.

⁶⁰ The decision by the Federal Court of Justice (Beschluss des Bundesgerichtshofs, GSSt 1/00, NJW 2001, 2266ff.) is available in German from <http://www.hrr-strafrecht.de/hrr/1/00/gst-1-00.php3>, accessed on April 3, 2016.

Criminal Code or whether the offender of the foreign predicate offence can be punished under German law.⁶¹

Point 5 of the interpretive note to FATF recommendation 3 seems to be implemented.

The German law quite clearly defines what proceed of a tax crime as predicate offence to ML can be the object of ML, namely “expenditure saved by virtue of the tax evasion, (...) unlawfully acquired tax repayments and allowances, and (...) an object in relation to which fiscal charges have been evaded”, but only “in cases of tax evasion committed on a commercial basis or as a gang under section 370 of the Fiscal Code”.⁶²

An interesting detail when reading the annual report of the German FIU is the number of SARs received from German tax authorities based on their special reporting obligation according to § 31b Fiscal Code⁶³. In the last available annual report at the time this thesis was written, i.e. the annual report 2014⁶⁴, it is shown that the number of SARs received from German tax authorities has sharply dropped from 2013 (352 SARs) to 2014 (250 SARs). While the whole financial industry is busy implementing reporting duties on tax matters, the German FIU received significantly less SARs from tax authorities. This seems to counter the effort to strengthen cooperation among authorities.

The date for the 4th round of mutual evaluation of Germany by the FATF is November 2020.

As a result for Germany, points 2 and 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.

⁶¹ As explained by Prof. Dr. Gerhard Dannecker, University of Heidelberg, Germany, during his presentation entitled “Steuerdelikte als Vortaten für die Geldwäsche in Deutschland” given at the 12th AML/CFT Conference in Zürich entitled “ Aktuelle Entwicklungen in der Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung”, organised by Kunz Compliance, Bern, www.compliance.ch.

⁶² § 261 para 1 sentence 3 Criminal Code. See also chapter 3.2 below.

⁶³ To be found in Annex C below, both in German and in English.

⁶⁴ Available from

http://www.bka.de/nm_205932/DE/Publikationen/JahresberichteUndLagebilder/FIU/fiu_node.html?_nnn=true, both in German and in English, accessed on April 3, 2016.

2.2.5 Russia

Russia being a member of the FATF (but also being a member of Moneyval and the EAG⁶⁵), it implements the FATF recommendations. In Russia, ML is punishable according to Art. 174 and 174.1 of the Criminal Code of the Russian Federation No. 63-FZ of June 13, 1996.⁶⁶ The Russian AML Act is the Federal Law No. 115-FZ of August 7, 2001 “on combating money laundering and terrorist financing”⁶⁷.

Tax crimes as predicate offences to ML have been introduced by virtue of the Federal Law of the Russian Federation No. 134-FZ of June 28, 2013 on amendments to certain legislative acts of the Russian Federation related to combating illicit financial operations. This law came into force on June 30, 2013. Art. 174 and 174.1 Criminal Code were amended by simply cancelling the existing exceptions related to i.a. tax offences.⁶⁸ Hence Russia’s approach when defining the predicate offences to ML has moved from a combination of the threshold approach with the list approach to a pure threshold approach.

The Article read:	The Article now reads:
<p>Article No. 174 of the Criminal Code of the Russian Federation, "Laundering Money or Other Property Acquired by Other Persons through Crime".</p> <p>Performing financial and other transactions with money or other property knowingly acquired by other persons through crime (other than the crimes specified by articles 193, 194, 198, 199, 199.1 and 199.2 of this Code) in order to give a lawful appearance to possession, use and disposal thereof.</p>	<p>Article No. 174 of the Criminal Code of the Russian Federation, "Laundering Money or Other Property Acquired by Other Persons through Crime".</p> <p>Performing financial and other transactions with money or other property knowingly acquired by other persons through crime in order to give a lawful appearance to possession, use and disposal thereof.</p>

⁶⁵ The Eurasian Group (EAG) is the FSRB uniting Belarus, India, Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Uzbekistan, see footnote 17 above and <http://www.eurasiangroup.org/>, accessed on April 3, 2016.

⁶⁶ The whole text of the Russian Criminal Code is available on the website of the OSCE Office for Democratic Institutions and Human Rights ODIHR: <http://legislationline.org/documents/section/criminal-codes/country/7/>, accessed on April 3, 2016. It is unclear whether the online version is updated shortly after an amendment is passed.

⁶⁷ Available in English from <http://fedsfm.ru/en/normative-legal-base>, accessed on April 3, 2016. The online version seems to be outdated since it only includes the updates up to Federal Law No. 275-FZ dated November 28, 2007. All legislation is available in Russian from <http://www.pravo.gov.ru/>, accessed on April 10, 2016.

⁶⁸ See the *Legal Update No. 425, 29 August 2013*, including an updated English version of Art. 174 and 174.1 Criminal Code, published by the law firm Goltsblat BLP, available from <http://gblplaw.com/news/legal/75122/>, accessed on April 10, 2016.

<p>Article 174.1 of the Criminal Code of the Russian Federation, "Laundering Money or Other Property Acquired by a Person by Committing a Crime"</p> <p>Large scale financial and other transactions with money or other property acquired by committing a crime (other than the crimes specified by articles 193, 194, 198, 199, 199.1 and 199.2 of this Code) in order to give a lawful appearance to the possession, use and disposal thereof.</p>	<p>Article 174.1 of the Criminal Code of the Russian Federation, "Laundering Money or Other Property Acquired by a Person by Committing a Crime"</p> <p>Performing financial and other transactions with money or other property acquired by committing a crime in order to give a lawful appearance to the possession, use and disposal thereof.</p>
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Legal practitioners seem to interpret the wording of the new law in a way that “the money laundering related articles now not only cover money obtained, but also cover money saved through crime”.⁶⁹

The articles of the Criminal Code no longer being exempt from being predicate offences to ML are Art. 193 (Non-return of funds in foreign currency from abroad), Art. 194 (evasion of customs payments collected from organisations or natural persons), Art. 198 (evasion by a natural person of paying a tax and / or a fee), Art. 199 (evading payment of taxes and / or fees collectible from organisations), Art. 199.1 (a tax agent’s failure to discharge his / her duties), and Art. 199.2 (concealment of monetary funds or property of an organisation or individual businessman against which the recovery of taxes and / or fees is levied). Hence point 2 of the interpretive note to FATF recommendation 3 seems to be implemented.

Legal practitioners are expecting that “law enforcement authorities will attempt to initiate criminal cases under article 199 of the Russian Criminal Code, "Evasion of Taxes and/or Levies Due from an Organisation" at the same time as those under article 174.1 for performing transactions with cash funds saved through non-payment. It is impossible to differentiate between legal money and money which has been saved through crime as it appears on an organisation's disbursement account. As a result of this, any business operation – even including the purchases of paper clips for office use – may be suspected to be money laundering. (...)”.⁷⁰

The conditions of the definition according to Art. 3 point (4) (f) of the 4th AMLD are irrelevant for Russia, since it is not a member to the EEA.

As a result for Russia, point 2 of the interpretive note to FATF recommendation 3 seems to be met. No analysis could be undertaken relating to the implementation of point 5 of the interpretive note to FATF recommendation 3 due to the language barrier.

⁶⁹ See the legal update No. 425, dated August 29, 2013, published by Goltsblat BLP, available from <http://gblplaw.com/news/legal/75122/>, accessed on April 10, 2016.

⁷⁰ See Goltsblat BLP, in Footnote 68.

2.2.6 USA

The United States of America being a member of the FATF and the APG⁷¹, they should implement the FATF recommendations. In the US, ML is punishable according to title 18 United States Code (U.S.C.) sections 1956, 1957, 1960 and according to provision of title 31, and title 26 U.S.C. section 6050L.⁷²

When looking for tax crimes as predicate offences to ML, no statutory provision can be found making tax evasion with income from legitimate sources a predicate crime for ML in the US.

Senators Leahy (Democrat-Vermont) and Grassley (Republican-Iowa) introduced the Fraud Enforcement and Recovery Act of 2009 on February 5, 2009⁷³, which in its wording passed by the Senate on April 28, 2009, would have contained an amendment making title 26 U.S.C. section 7201 (attempt to evade or defeat tax) and title 26 U.S.C. section 7206 (fraud and false statements) predicate offence to ML (i.e. by amending title 18 U.S.C. section 1956(a)(2)(A) by the relevant language)⁷⁴:

(g) MAKING THE INTERNATIONAL MONEY LAUNDERING STATUTE APPLY TO TAX EVASION.— Section 1956(a)(2)(A) of title 18, United States Code, is amended by—

(1) inserting “(i)” before “with the intent to promote”; and

(2) adding at the end the following:

“(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or”.

⁷¹ The Asia/Pacific Group on Money Laundering is the FSRB uniting Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, Canada, China, Cook Islands, Fiji, Hong Kong, India, Indonesia, Japan, South Korea, Lao, Macao, Malaysia, Maldives, Marshall Islands, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Niue, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Sri Lanka, Chinese Taipei, Thailand, Timor-Leste, Tonga, United States of America, Vanuatu, and Vietnam, see footnote 17 above and <http://www.apgml.org/>, accessed on April 10, 2016.

⁷² As explained in the Internal Revenue Service’s Manual (IRM), available from <https://www.irs.gov/irm/>, Part 9 Criminal Investigation, Chapter 5 Investigative Process, Section 5 Money Laundering and Currency Crimes, Subsection 1 Overview (IRM 9.5.5.1, number 4 in fine; see https://www.irs.gov/irm/part9/irm_09-005-005.html for direct access), both links accessed on April 10, 2016. The whole of the U.S.C. is available from <http://uscode.house.gov/browse/prelim@title31&edition=prelim>, accessed on April 10, 2016.

⁷³ See one of the press releases available from <http://www.grassley.senate.gov/news/news-releases/grassley-leahy-introduce-anti-fraud-legislation>, accessed on April 10, 2016.

⁷⁴ The protocol of the Floor Consideration is on the Congressional Record and hence available from <https://www.congress.gov/crec/2009/04/28/CREC-2009-04-28-pt1-PgS4774-2.pdf>, accessed on April 10, 2016.

By the time the Fraud Enforcement and Recovery Act became law, this amendment had disappeared.⁷⁵ When looking for a definition of the term “proceed”, the very same Fraud Enforcement and Recovery Act clearly defines that “the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.”⁷⁶ Retaining property through some form of unlawful activity seems to cover the non-payment of tax due.

As the US is a common law country, courts have tried to remedy the shortcoming of the legislator. The most important decision seems to have been taken by the US Supreme Court, the so called *Pasquantino* decision. Some practitioners interpret it as a decision in which the Supreme Court “determined that a foreign government has a valuable property right in collecting taxes, and that right may be enforced in a U.S. court of law”⁷⁷, others hold that “the Court held that a foreign government has a valuable right in collecting taxes, and that if the tax evasion proceeds are used to purchase assets the parties involved face criminal prosecution for tax crimes and money laundering (...)”⁷⁸. A few seem to be of the same opinion as the latter, but use a less specific language like “Tax evasion with income from legitimate sources is considered a predicate crime for money laundering in the United States, if intent to violate federal law can be proven”⁷⁹. This could lead to the conclusion that foreign tax crimes are not predicate offence to ML in the US. The IMF also concluded in June 2015 that serious tax crimes are not predicate offence to ML in the US.⁸⁰ As there was no amendment to title 18 U.S.C. section 1956 (a)(2)(A) since June 2015, the conclusion seems to hold until today.

⁷⁵ See the public law 111-21, available from <https://www.gpo.gov/fdsys/pkg/PLAW-111publ21/html/PLAW-111publ21.htm>, accessed on April 10, 2016.

⁷⁶ See the public law 111-21, Section 2(f)(1), the website being mentioned in footnote 75.

⁷⁷ Andrew H. Weinstein and Kevin E. Packman, What Private Wealth Attorneys Need to Know About Money Laundering, Estate Planning Journal, 2010, p. 2, available from <https://www.hklaw.com/files/Publication/c9d76047-6b77-4532-8390-8e04014c1c2e/Presentation/PublicationAttachment/4fd2780f-75de-459b-9c6b-fc15a2bde3e3/55014.PDF>, accessed on April 10, 2016.

⁷⁸ Gary S. Wolfe, Esq., Tax Evasion and Money Laundering: US Real Estate, p.2, available from <http://www.ustaxfs.com/tax-evasion-and-money-laundering-us-real-estate/>, accessed on April 10, 2016.

⁷⁹ See the “Guide to U.S. Anti-Money Laundering Requirements”, FAQ, 6th edition, published by Protiviti Inc., can be downloaded for free from <http://www.protiviti.co.uk/en-US/Pages/Anti-Money-Laundering.aspx>, accessed on April 10, 2016.

⁸⁰ See the IMF Country Report No. 15/174 of July 2015 on the United States, footnote 2 on page 5 (AML/CFT technical note within the IMF’s financial sector assessment program FSAP), available from <https://www.imf.org/external/pubs/ft/scr/2015/cr15174.pdf>, accessed on April 10, 2016.

The main problem with the US AML/CFT system remains that the “inability to access accurate BO information directly from states, FIs or agents serving corporations or trusts may curtail how effective the authorities can be in pursuing criminally persons who misuse U.S. corporations to launder proceeds generated domestically as well as abroad or to trace and recover their illicit assets. This includes laundering associated with taxes evaded in the United States² and abroad, by U.S. citizens and foreigners respectively, and to cooperate effectively with their foreign counterparts in this regard.

²The amount laundered from taxes evaded in the United States may be substantial. Serious tax crimes are not predicate crimes to ML. The authorities estimated the U.S. net tax gap to be around \$450 billion in 2006, excluding international tax evasion, and tax crimes for state taxes.⁸¹

The definition according to Art. 3 point (4) (f) of the 4th AMLD is irrelevant for the US, since they're not a member to the EEA. The interpretive note to FATF recommendation 3 seems not to be implemented relating to tax crime as predicate offence to ML.

⁸¹ See the IMF Country Report No. 15/174 of July 2015 on the United States, footnote 80, pages 4 et seq.

2.2.7 Luxembourg

Luxembourg being a member of the FATF, it should implement the FATF recommendations. In Luxembourg, ML is punishable according to Art. 506-1 Criminal Code⁸². The text of Art. 506-1 Criminal Code is very long, hence it can be found in Annex D below, in French (updated as of January 1, 2016). Although the article is very long, there is no tax crime listed as predicate offence to ML in Art. 506-1 Criminal Code.

The existing law on tax fraud is § 396 para 5 of the “loi générale des impôts”, which reads as follows:

« Si la fraude porte sur un montant significatif d'impôt soit en montant absolu soit en rapport avec l'impôt annuel dû et a été commise par l'emploi systématique de manoeuvres frauduleuses tendant à dissimuler des faits pertinents à l'autorité ou à lui persuader des faits inexacts, elle sera punie comme escroquerie fiscale d'un emprisonnement d'un mois à cinq ans et d'une amende de cinquante mille francs à un montant représentant le décuple des impôts éludés. »⁸³

The minimum sentence being one month, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems not to be met. The interpretive note to FATF recommendation 3 seems not to be implemented relating to tax crime as predicate offence to ML.

Practitioners expect “(...) that in the course of implementation of AMLD IV, Luxembourg will take specific legal measures (as foreseen in CSSF Circular 15/609) to ensure that tax fraud as a predicate offence is included and thereby render punishable money laundering of tax fraud benefits.”⁸⁴

The next mutual evaluation by the FATF for Luxembourg is scheduled to take place in 2020/21. It will be interesting to see if tax crimes are predicate offences to ML by then and how this will be assessed.

⁸² The Criminal Code is available in French from <http://www.legilux.public.lu/index.html>, accessed on April 10, 2016.

⁸³ As introduced by the « Loi du 22 décembre 1993 sur l'escroquerie en matière d'impôts », available from <http://www.legilux.public.lu/rgl/1993/A/2024/1.pdf>, accessed on April 10, 2016.

⁸⁴ See the text published on the “Fourth Anti-Money Laundering Directive and Wire Transfer Regulation” by André Hoffmann of the law firm Elvinger, Hoss & Prussen, available from <http://www.ehp.lu/legal-topics/legal-topics-by-areas-of-expertise/banking-insurance-and-finance/banking-insurance-and-finance-detail/article/fourth-anti-money-laundering-directive-and-wire-transfer-regulation-1/>, accessed on April 10, 2016. The Circular by the Commission de Surveillance du Secteur Financier (CSSF) that is mentioned in the law firm’s text is available from http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Blanchiment_terrorisme/cssf15_609eng.pdf, accessed on April 10, 2016.

2.2.8 Singapore

Singapore being a member of the FATF and the APG⁸⁵, it implements the FATF recommendations. In Singapore, ML is punishable according to chapter 65A of the Corruption, Drug trafficking and other serious crimes (confiscation of benefits) act.⁸⁶

Singapore has enacted onshore tax crimes as predicate offences to ML by July 1, 2013 by including the following offences in part XII of the list of serious offences in schedule 2 under Art. 64 confiscation of benefits act:

*Part XII —
Offences included as serious offences
with effect from 1st July 2013*

<i>Offences</i>	<i>Description*</i>
Goods and Services Tax Act (Cap. 117A)	
374. Section 62	Fraud, etc.
375. Section 63	Improperly obtaining refund
Income Tax Act (Cap. 134)	
376. Section 96	Tax evasion
377. Section 96A	Serious fraudulent tax evasion

* Note: The short description of offences is for ease of reference only.

[S 380/2013 wef 01/07/2013]

It is evident that “Fraud etc.” according to Section 62 of the Goods and Services Act and “Improperly obtaining refund” according to Section 63 of the same Act as well as Tax evasion and Serious fraudulent tax evasion according to Sections 96 and 96A of the Income Tax Act are serious crime which have to be reported as suspicious transactions to the Singapore FIU according to art. 39 confiscation of benefits act.

⁸⁵ The Asia/Pacific Group on Money Laundering is the FSRB uniting 41 countries in Asia and across the Pacific Ocean, see footnote 17 above and <http://www.apgml.org/>, accessed on April 10, 2016.

⁸⁶ Available from <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:533264b6-42a7-441f-a5b2-9bdfd36863b3>, accessed on April 10, 2016.

By means of the Act 21 of 2014, “foreign serious tax offences” were added to chapter 65A of the Corruption, Drug trafficking and other serious crimes (confiscation of benefits act), whereas “‘foreign serious tax offence’ means an offence against the national law of a foreign country that consists of the doing of any of the following (however described) wilfully with intent to evade, or to assist any other person to evade, any tax of that country:

- (a) omitting from, or understating or overstating in, a return made for the purposes of that tax any information which should be included in the return;
- (b) making any false statement or entry in any return, claim or application made, or any document or information required to be given, for the purposes of that tax;
- (c) giving any false answer, whether verbally or in writing, to any question or request for information asked or made for the purposes of that tax;
- (d) failing to inform the authority responsible for the collection of that tax, in the required manner, of any incorrect information appearing in any assessment made by that authority, when required to do so;
- (e) preparing or maintaining, or authorising the preparation or maintenance, of any false books of account or other records, or falsifying or authorising the falsification of any books of account or records;
- (f) making use of any fraud, art or contrivance, or authorising the use of any such fraud, art or contrivance;” . The Act 21 of 2014 entered into force on September 1, 2014.

Points 2 and 5 of the interpretive note to FATF recommendation 3 seem to be implemented.

Interestingly, the reporting obligation according to art. 39 confiscation of benefits act is larger than in most other countries, covering not only suspicious proceeds of crime and instrumentalities, but also property that is suspected of being intended to be used in connection with any criminal conduct, hence including foreign serious tax offences.⁸⁷ The problem other countries have with the definition of the term “proceeds of crime” seem to have been elegantly avoided by Singapore.

⁸⁷ 39.—(1) Where a person knows or has reasonable grounds to suspect that any property —

- (a) in whole or in part, directly or indirectly, represents the proceeds of;
- (b) was used in connection with; or
- (c) is intended to be used in connection with,

any act which may constitute drug dealing or criminal conduct, as the case may be, and the information or matter on which the knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, he shall disclose the knowledge or suspicion or the information or other matter on which that knowledge or suspicion is based to a Suspicious Transaction Reporting Officer as soon as is reasonably practicable after it comes to his attention. [44/2007 wef 01/11/2007] [25/99] [Act 21 of 2014 wef 01/09/2014]

Amendments of the schedules to chapter 65A of the Corruption, Drug trafficking and other serious crimes (confiscation of benefits) act can be made by the Minister according to art. 63 of the confiscation of benefits act..⁸⁸

The definition according to Art. 3 point (4) (f) of the 4th AMLD is irrelevant for Singapore, since it isn't a member to the EEA.

The results of the on-site visit by the FATF's evaluators in November and December 2015 are scheduled to being discussed at the June 2016 plenary meeting.

2.2.9 Intermediate Result

The result of the analysis of the national implementation of the international standard on tax crime as predicate offence to ML shows that the range of degree of implementation goes from full to almost none. This leads to the AML/CFT-system being inconsistent from a global perspective and difficult to apply in practice, because FATF staff, EU staff, compliance officers, FIU analysts and prosecutors when confronted with the implementation of FATF recommendation 3 do not have a common terminology at hand to start with. Additionally, nobody can apply roughly the same concept of tax crime as predicate offence to ML on different countries involved in the same case. This entails the need to apply much more resources than if there was more consistency in the implementation of tax crime as predicate offence to ML, both by the private and the public sector.

⁸⁸ Amendments to Schedules

63. The Minister may, by order published in the Gazette, amend the First and Second Schedules. [52 [25/99]

3. Overarching Legal Issues

Besides the differences among the national implementations of tax crime as predicate offence to ML which have been analysed above in chapter 2.2, there are overarching legal issues that concern either all countries or multiple fields of law, e.g. criminal law, financial market law, or private law. These issues will be addressed in chapter 3.

3.1 The democratic and constitutional legitimation of the FATF

The first issue that is rarely discussed in academic circles and amongst practitioners is the obvious lack of democratic and constitutional legitimation of the FATF. The participants of the FATF plenaries where the 40 recommendations are discussed and accepted are career civil servants, not even appointed Ministers, not to speak of elected officials. In addition to that, the majority of the UN member states are not represented at the FATF plenaries. The fact that most FATF-style regional bodies (FSRBs, e.g. Moneyval in Europe, MENAFATF in the Middle East and northern Africa, APG in the asian pacific region, etc.; see footnote 17 or the list on the FATF website) are participating at the FATF plenaries is no valid remedy to this second weakness in terms of democratic legitimation of the FATF.

It is quite interesting to see fully fledged democratic nations abide to international standards that are set without democratic or constitutional legitimation. It is even more interesting to see that no human rights NGO has addressed the issue that a group of civil servants forces elected parliaments to implement their recommendations into national law. This is a blatant case of putting pressure on national parliaments by threatening them to harm their nations' reputations by virtue of black lists. This situation can be qualified as one of "comply or die". The members of national parliaments seem to have no choice but to implement the FATF recommendation. One could argue that this violates the constitutional principle of independence that every elected representative ought to enjoy in Parliament.⁸⁹

It is difficult to understand that the international community has not solved the lack of democratic legitimation of the FATF by accepting the 40 recommendations in the form of a multilateral treaty, e.g. an UN convention. Only then the constitutional rights, e.g. the principle of independence that every

⁸⁹ This principle was first explained in Edmund Burke's declaration of independence that an elected representative ought to enjoy in Parliament. Burke, Edmund. *Miscellaneous Writings*. E. J. Payne, ed. Indianapolis, in: Liberty Fund, Inc., 1990. Library of Economics and Liberty [Online] available from <http://www.econlib.org/library/LFBooks/Burke/brkSWv4c1.html>, accessed on April 3, 2016.

elected representative ought to enjoy in Parliament, of the citizens of many countries⁹⁰ in the world are no longer violated.

This issue may seem to be of lesser importance in practice, but only until the first court case is decided on the basis of a court finding that the FATF recommendations and their implementation are violating a country's constitution. Until then, this issue has no effect on the daily business of AML/CFT compliance.

3.2 The potential lack of proceed of crime when facing tax crime

Many and long articles have been written about the question whether money legally earned and legitimately transferred on a bank account or invested into a portfolio can be “proceed of crime”, which is a legal requirement in many AML acts around the globe to commit ML. In many countries, the law defines the term “proceed of crime”.

As for the example of Austria⁹¹, the legal definition in § 165 para 5 Criminal Code is limited to “asset components” (in German: Vermögensbestandteile), i.e. parts of assets that the offender has either obtained himself through the offense or for its commission or if the value of the originally obtained or received assets are embodied in it.⁹² While this definition is very broad by covering not only the proceeds themselves, the interests and investment yields derived from the criminal proceeds but also assets obtained to commit an offence, i.e. an instrumentality and not a proceed, it is too small at the same time by not covering any “pecuniary advantage” as a result of a crime to be proceeds of crime, which would be necessary to cover e.g. legal earnings that have not been declared tax-wise.

⁹⁰ See e.g. Art. 38 para 1 of the German constitution (Grundgesetz), Art. 161 para 1 of the Swiss constitution (Bundesverfassung), and Art. 56 para 1 of the Austrian constitution (Bundes-Verfassungsgesetz), and Art. 57 para 1 of the Liechtenstein constitution (Verfassung).

⁹¹ As explained by Mag. Rainer Brandl, attorney-at-law with the law firm LeitnerLeitner, Linz/Wien/Zürich, during his presentation entitled “Steuerdelikte als Vortaten für Geldwäsche in Österreich” given at the 12th AML/CFT Conference in Zürich entitled “ Aktuelle Entwicklungen in der Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung”, organised by Kunz Compliance, Bern, www.compliance.ch.

⁹² The German text of § 165 of the Austrian Criminal Code can be found in footnote 17 above, including para 5.

The limitation of the definition of “proceeds of crime” to asset components that the offender has either obtained himself through the offense or for its commission or if the value of the originally obtained or received assets are embodied in it leads to the following consequences⁹³:

- The purely pecuniary advantage consisting of taxes not being paid is not received through the offence, but the wealth of the offender is not reduced by committing the tax crime. Such a “damnum non emergens” or “tax saving” is out of scope of the above definition of “proceed of crime”;
- It is crucial to delineate the limit between tax savings and levies being credited: an asset component is proceed of a tax crime only when this tax crime leads to a credit entry on the levy account of the offender, e.g. a credit entry on input tax, a refund of taxes deducted at the source (revenue tax, capital yield tax), or refunds of prepaid taxes (income tax, corporate tax).

The Swiss legislator seems to be aware of the above problems⁹⁴. In the dispatch of the draft law of December 13, 2013, the Swiss government admits that tax crimes as predicate offences to ML do not instantly generate proceed of crime at the very moment they are committed, but allow for illegal savings on costs by the taxpayer⁹⁵, hence “pecuniary advantages” seem to be covered by the law. The Swiss government further explains that it wants to make it clear that the tax crimes as predicate offences to ML to not contaminate the whole fortune of the taxpayer. Only those monies that have been avoided to be paid as tax can become the object of a following act of ML.⁹⁶ Should those monies no longer be identifiable, forfeiture according to Art. 70 Criminal Code is not possible.⁹⁷

In German Law, Art. 261 para 1 sentence 3 Criminal Code clearly states that “the 1st sentence shall apply in cases of tax evasion committed on a commercial basis or as a gang under section 370 of the Fiscal Code, to expenditure saved by virtue of the tax evasion, of unlawfully acquired tax repayments and allowances, and in cases under the 2nd sentence no 3 the 1st sentence shall also apply to an object in relation to which fiscal charges have been evaded”. By doing so, German law covers the “pecuniary advantages” of qualified tax evasion.

⁹³ As explained by Mag. Rainer Brandl, see footnote 91.

⁹⁴ As explained by Prof. Dr. René Matteotti, attorney-at-law with the law firm Baker & McKenzie, Zürich, during his presentation entitled “Steuerdelikte als Vortaten der Geldwäscherei in der Schweiz” given at the 12th AML/CFT Conference in Zürich entitled “ Aktuelle Entwicklungen in der Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung”, organised by Kunz Compliance, Bern, www.compliance.ch.

⁹⁵ Official Federal Gazette (Bundesblatt) 2014, p. 605 et seq., esp. p. 626.

⁹⁶ Official Federal Gazette (Bundesblatt) 2014, p. 605 et seq., esp. p. 626.

⁹⁷ Official Federal Gazette (Bundesblatt) 2014, p. 605 et seq., esp. p. 626/627.

3.3 Offshore tax crime to be included as onshore predicate offence

Another elephant in the room is the difficult task that every Money Laundering Reporting Officer (MLRO) of every reporting entity, every analyst of every FIU, every prosecutor and every judge working on ML cases has to learn at least the core definitions of tax crime in other countries, as soon as the case is a cross-border situation. In many countries, this is rather the rule than the exception, especially in the financial centres.

This task will cause a high demand for additional resources in an industry with profit margins melting like snow in the sun. While the latter is no excuse, it can be a reason why some national AML/CFT regimes are less effective, due to a lack of resources. Due to the very high frequency of amendments in tax law⁹⁸, training people in tax law is probably one of the most time- and resource-consuming trainings that exist. This applies to both the private and the public sector.

An example could maybe make it easier to understand how difficult tax crimes are to be assessed. What is the legal situation in Austria, if a German dentist makes transfers on his bank account in Austria using money that he has received from his patients in Germany but chose not to declare in his tax return in Germany? In Austria, the evasion of German income tax is basically regarded as a simple saving of expenses, hence the benefit from not paying the German income tax is out of scope of § 165 Austrian Criminal Code. In order to calculate the limits relevant according to Austrian financial criminal law for the decision whether this act is exceptionally a predicate offence to ML, one would have to know the tax rate of the dentist in Germany. To make it more complicated, the Austrian reporting entity would not be allowed to sum up all income tax evaded over the years but would have to calculate the amount of tax evaded for every single tax period separately. In addition, it is very difficult for any compliance officer in Austria to detect further taxes avoided in Germany, e.g. on foreign income on capital.⁹⁹

Even if certain supervisory authorities try to make this problem easier for the private sector to solve, the additional administrative charge remains significant. The Swiss Financial Market Supervisory Authority FINMA has allowed in its own AML-Ordinance for the financial intermediaries to disregard the individual tax factors of their clients and instead base their risk assessment on the maximum tax

⁹⁸ It seems to be difficult to find another field of law where the law changes as frequently as in tax law.

⁹⁹ As explained by Mag. Rainer Brandl, attorney-at-law with the law firm LeitnerLeitner, Linz/Wien/Zürich, during his presentation entitled “Steuerdelikte als Vortaten für Geldwäsche in Österreich” given at the 12th AML/CFT Conference in Zürich entitled “ Aktuelle Entwicklungen in der Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung”, organised by Kunz Compliance, Bern, www.compliance.ch.

rate in the country of tax residence of the client.¹⁰⁰ This certainly is making it easier, but still the tax laws of the countries of tax residence of all clients have to be constantly monitored, staff trained and this training updated regularly.

Finally, a somewhat un-easing finding when thinking about offshore tax crime to be included as on-shore predicate offence. The large variety of ranges of sentences for ML with tax crime as predicate offence in the countries above, let alone those countries where direct taxes are unknown like the Gulf countries, leads to unequal treatment among the client relationship managers in financial institutions and designated non-financial businesses and professions (the so called DNFBPs) in the financial centres. Who wants to run the risk of being punished as money launderer when his or her client has lied over and over again and abused a business relationship to launder proceeds of a tax crime while the colleague next door doesn't even have to bother? The additional risk that client relationship managers run on markets with tax crimes as predicate offences to ML may even lead to unwanted consequences that weaken the AML/CFT-system of a country. How? Those client relationship managers who are sensitive to risk may choose to work on markets without tax crimes as predicate offences to ML (or even switch to non-client-facing jobs at all, which can be observed today), leaving the hunters with a big risk appetite among the client relationship managers on the markets with tax crime as predicate offence to ML. Is this what the FATF wants? Every financial institution, DNFBP and country wishes for the contrary: that the most risk averse client relationship managers work with clients from those markets with the biggest risks.

3.4 Criminal law and financial market law

From a client's point of view, financial market law doesn't matter in tax crime situations. A client of a financial intermediary who wants to avoid tax illegally is not bothered by the risks financial market law wants to mitigate, e.g. counterparty risk, liquidity risk, market risk, systemic risk, etc.

Criminal law as part of the regulation of financial markets seems to be not very relevant for the stability of the financial market; it is a mere tool to enforce the measures set in force to mitigate the above risks. Hence the question arises whether the financial market's stability depends upon the definition of tax crimes as predicate offences to ML. The answer based on the impact of the tax crimes being predicate offences to ML on the risks mentioned above tends to be a No, but for the reputation of the financial market it may well be important. Every scandal of a politically exposed person being involved in a tax fraud is weakening the general public's faith in the good governance of financial institutions and

¹⁰⁰ The FINMA AML-Ordinance (Geldwäschereiverordnung-FINMA) can be found (in German only) at <https://www.admin.ch/opc/de/classified-compilation/20143112/index.html>, accessed on April 3, 2016.

DNFBPs. The refusal of the US so far to exchange financial data themselves with their counterparts forwarding information under the FATCA regime makes the US look a bit hypocritical whenever they put such a strong accent on the common fight against tax fraud. Other FATF- and OECD-member states also seem to be much more interested in receiving data rather than delivering it.

From the financial institution's perspective, the issue looks largely different. Even if a financial intermediary is not committing tax fraud or participating in a tax fraud e.g. in Switzerland, due to the lack of forging a document¹⁰¹, there still may be a tax crime in the country of tax residency of the client. Additionally, in the country of residence of the client, there also may be an accusation of ML being raised. Even if the foreign tax crime is not a criminal matter in Switzerland, it definitely is a reputational matter of concern and a supervisory issue. FINMA will raise the question of fit- and properness of directors involved in criminal investigations in other countries. Additionally, FINMA might raise the question of a breach of the guarantee of an irreproachable business conduct (*garantie de l'activité irréprochable, Gewähr für eine einwandfreie Geschäftstätigkeit*).¹⁰²

Since most countries have pledged to prosecute or at least facilitate the prosecution of clients abusing their financial markets by committing tax crimes, the supervisory authorities of these countries expect the financial institutions and DNFBPs to file a suspicious transaction report (STR) or a SAR concerning existing non-tax-compliant clients at the time tax crimes become predicate offences to ML. But because these STR and SAR have an impact on the reputation of the reporting entity, the consequences of tax crime becoming predicate offence to ML have a much earlier impact on the client relationships of financial institutions and DNFBPs, as shall be explained below in chapter 3.5.

¹⁰¹ Forged documents are a physical element of the offence of tax fraud according to Art. 186 Federal Act on direct federal taxation, the whole text of this Act is available in German from <https://www.admin.ch/opc/de/classified-compilation/19900329/201601010000/642.11.pdf>, accessed on April 10, 2016.

¹⁰² As explained by Prof. Dr. Xavier Oberson during his presentation on "Money laundering, taxation and automatic exchange of information", given at the premises of Vontobel Swiss Wealth Advisors SA, Geneva, on December 15, 2015.

3.5 Tax crime as predicate offence to Money Laundering and its effects on private law

Financial institutions and DNFBPs prefer to avoid discovering existing non-tax-compliant clients at the time tax crimes become predicate offences to ML, in order to avoid damaging their good reputation. This is why the reporting entities have conducted in-depth research and analysis in relation to existing clients, aimed at finding the bad apples among their clients and consequently terminating these existing business relationships.

But what are the consequences of tax crimes as predicate offences to ML on the opening procedure of a business relationship? It certainly looks as if a self-certification of tax compliance by prospect clients has become the minimum standard before opening a business relationship. But when facing situations of enhanced due diligence, many banks and other financial institutions, but also DNFBPs, have already started to ask for more, e.g. a legal opinion, written confirmation of tax compliance by tax advisors or even the prospect clients' consent to a simplified administrative assistance procedure even before the account is opened. Such a far reaching form of consent is attached as Annex B.

What does it mean to ask a prospect client to waive his legal rights by consenting to a simplified administrative assistance procedure even before the account is opened? Let's look at the example of Switzerland. The Federal Act on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act, TAAA) knows two different types of procedures when sending requested information to the requesting country, the ordinary procedure and the simplified procedure.

Under the terms of the ordinary procedure according to Art. 17 et seq. TAAA, the Federal Tax Authority (FTA) shall serve each person entitled to appeal with the final decree stating why administrative assistance is being provided and specifying the extent of the information to be transmitted.¹⁰³

If a person entitled to appeal is resident abroad, the FTA shall notify him or her of the final decree by sending it to the person authorised to accept service. If no such person has been designated, it shall give notice of the decree by means of a publication in the Federal Gazette.¹⁰⁴

At the same time, the FTA shall inform the cantonal tax administrations concerned of the issue and content of the final decree.¹⁰⁵

¹⁰³ Art. 17 para 1 TAAA, SR 651.1, available from <https://www.admin.ch/opc/en/classified-compilation/20110630/201408010000/651.1.pdf>, accessed on April 3, 2016.

¹⁰⁴ Art. 17 para 3 TAAA.

¹⁰⁵ Art. 17 para 4 TAAA.

Most importantly, the person concerned and other persons as specified in Article 48 of the Federal Act on Administrative Procedure (Federal Administrative Procedure Act, APA) are entitled to appeal¹⁰⁶ and the appeal has suspensive effect.¹⁰⁷

On the other hand, under the terms of the simplified procedure according to Art. 16 TAAA, the persons entitled to appeal consenting to transmission of the information to the requesting authority shall notify the FTA of this in writing. This consent is irrevocable.¹⁰⁸

The FTA then concludes the procedure by transmitting the information to the requesting authority, making reference to the consent of the persons entitled to appeal.¹⁰⁹ This means that there is no right to appeal any more. And if the consent covers only some of the information, the ordinary procedure is conducted for the remaining part.¹¹⁰

This is how far the effects of tax crimes as predicate offences to ML have reached the contractual relationship between client and service provider. What was once a contractual relationship of mutual good faith has turned into a preliminary investigation, turning financial institutions and DNFBSs into a somewhat strange mixture of confessional, foster home and limbo.

Finally, some reporting obligations are furthering this negative evolution affecting the client relationships. Taking the example of Switzerland, where ML can be committed by act of omission, e.g. when a financial institution refrains from inquiring into a case and consequently doesn't file an SAR.¹¹¹ This increases the inclination of every reporting entity to conduct in-depth clarifications on their clients, in order to counter any accusation, thus reducing the level of good faith and increasing the level of mutual suspicion.¹¹²

¹⁰⁶ Art. 19 para 2 TAAA.

¹⁰⁷ Art. 19 para 3 TAAA.

¹⁰⁸ Art. 16 para 1 TAAA.

¹⁰⁹ Art. 16 para 2 TAAA.

¹¹⁰ Art. 16 para 3 TAAA.

¹¹¹ See the Decision by the Federal Supreme Court (Bundesgerichtsentscheid, BGE) 136 IV 188, available in French from

http://relevancy.bger.ch/php/clir/http/index.php?lang=de&zoom=&type=show_document&highlight_docid=atf%3A%2F%2F136-IV-188%3Ade, accessed on April 10, 2016.

¹¹² 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.

4. Risks in Practice

Implementing a new predicate offence to ML regularly bears risks that are unknown until some time after the entry into force of the statutory amendment. Only then some of the secondary effects of legislation come to light. To take an example, adding a new predicate offence to ML could be expected to increase the number of SARs being filed. But sometimes, conditions in a specific jurisdiction seem to lower the motivation of reporting entities to file SARs, e.g. if the filing of a report would lead to prosecution of the reporting entity itself for ML or a predicate offence to ML.

A few of these risks will be analysed in chapter 4. The sample is aleatory, the analysis is based on empirical experience, and the results are not statistically significant. But still, these are some of the problems faced by compliance officers, FIU staff, prosecutors and judges when dealing with tax crime as predicate offence to ML.

4.1 defensive or offensive reporting by reporting entities?

The problems described above in chapter 3, e.g. the legal complexity of tax crime as predicate offence to ML and the connected lack of resources described in chapter 3.3 could lead to two very different reactions by financial institutions and DNFBPs: either they stop to file STRs and SARs or lower their number of cases reported significantly (which would be the typical reaction of a reporting entity short on resources) or they start to systematically report every slight suspicion of a tax crime as predicate offence to ML or ML based on tax crime as predicate offence (which is the well known pattern in the conduct of those reporting entities who want to avoid the hassle of training and updating their staff constantly). Both reactions are detrimental to the efficiency of an AML/CFT regime. The number of cases reported being too low first of all increases the risk of failing to detect cases of predicate offence to ML, ML or financing of terrorism. Secondly, the lack of statistically sufficient data puts the validity of the statistical analysis of the country concerned at risk. The number of cases reported being too high increases the work overload of the FIU and the prosecutors and floods the AML/CFT network with unwanted cases of petty crime.

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.

sector whose resources are already stretched to their maximum and beyond to re-do the job of the tax authorities. To the contrary, it seems to be evident that once the AEOI between two countries is established and working, it would be beneficial to the AML/CFT regime if the people skilled and trained to fight ML and terrorism financing are relieved from re-doing the tax authorities' job.

4.3 The fruit of the poisonous tree: the use of stolen data in criminal and tax procedures

The use by several tax authorities of stolen data on the clients of the trust and company service providing branch of a Liechtenstein bank has caused different court cases, the most prominent probably being the one that went all the way up to the German Supreme Court (Bundesverfassungsgericht). The main legal issue was the question whether means of proof discovered during house searches that were triggered by their owners' names showing up on the stolen so called Liechtenstein CDs were lawful evidence or not. The German Supreme Court ultimately decided that these means of proof were lawful evidence.¹¹⁷

Other countries have decided to take a different position and hence not consider requests for administrative or criminal assistance that are based on information that was originally stolen from financial institutions or DNFBPs, e.g. Switzerland. Foreign requests for Administrative Assistance in Tax Matters are not to be considered by Swiss authorities if the request "violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law".¹¹⁸

4.4 Will voluntary disclosures still be possible and made if tax crimes have become predicate offences to ML?

Before tax crimes have become predicate offences to ML, financial institutions and DNFBPs motivated, insisted and even pushed their non-tax-compliant clients towards making a voluntary disclosure

¹¹⁷ The decision of the German Supreme Court is available in German from http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2010/11/rk20101109_2bvr210109.html;jsessionid=F39030911654858C9635B7393C32632D.2_cid361, accessed on April 10, 2016.

¹¹⁸ See Art. 7 TAAA:

Art. 7 Non-consideration

The request will not be considered if:

- a. it constitutes a fishing expedition;
- b. it requests information not covered by the administrative assistance provisions of the applicable agreement; or
- c. it violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law.

in their country of tax residence. In order to do that, the clients had to receive detailed information on their assets held by these financial institutions and DNFBPs, who were more than willing to provide such information. This may change with the introduction of tax crimes as predicate offences to ML in the countries where the financial institutions and DNFBPs are domiciled. Why? Once the tax crime committed by the client is a predicate offence to ML in the country of domicile of the financial institution/DNFBP, the latter is not just running the risk of being an accessory to the tax crime of the client, but also of being regarded as potential money launderer by the prosecutor of his own country of domicile. This may have a significant inhibitory effect on the willingness of the financial institution or DNFBP to motivate their clients to file a voluntary disclosure.

4.5 Will the FIUs become the long arm of the tax administration? Or have they already in certain countries?

What criteria might be useful to assess whether a FIU has become the long arm of the tax authority or not? Probably the percentage of reports received by the FIU in question that are related to tax crimes as predicate offences to ML.

Of all the SARs and STRs the German FIU has received in 2014, 7 % were triggered by the suspicion of a tax crime as predicate offence to ML¹¹⁹. This is the 3rd biggest share in the total number of reports. The Austrian FIU received 54 tax related SARs in 2014, when the total number of SARs was 2301, leading to a 2.3% share of tax related SARs.¹²⁰

The number of SARs the Belgian FIU received with serious fiscal fraud as predicate offence to ML has increased from 59 in 2012 to 84 in 2014, leading to a share of 7.43 % of the total in 2014.¹²¹

Of the 464 files the French FIU transferred to the judiciary in 2014, 144 were categorised as having tax fraud or related offences as predicate offence to ML.¹²² This means that almost a third (32.22 %) of all files forwarded by the FIU to the judiciary in France in 2014 were based on tax fraud or related offences as predicate offences to ML.

¹¹⁹ The annual reports of the German FIU are available in German and English from http://www.bka.de/nm_205932/DE/Publikationen/JahresberichteUndLagebilder/FIU/fiu_node.html?nnn=true, accessed on April 3, 2016.

¹²⁰ The annual reports of the Austrian FIU are available in German from http://www.bmi.gv.at/cms/BK/publikationen/Statistiken_Geldwsc.aspx, accessed on April 10, 2016.

¹²¹ The annual reports of the Belgian FIU are available in English, French and Dutch from http://www.ctif-cfi.be/website/index.php?option=com_content&view=article&id=206&Itemid=76&lang=en, accessed on April 10, 2016.

¹²² The annual reports of the French FIU are available in French from <http://www.economie.gouv.fr/tracfin/rapports-annuels>, accessed on April 10, 2016.

As a conclusion, the risk that FIUs become the long arm of the tax administration exists, and some may already have become, like the French FIU.

5. Conclusions

To conclude, the questions raised at the beginning of this thesis are coupled with the answers given in the main parts of the thesis.

On the global level: Has the FATF considered whether the FATF recommendations can be implemented in compliance with the constitutions of the countries concerned? Probably not. The potential constitutional conflicts caused by the implementation of the FATF recommendations on the national level are not about to be solved by a multilateral convention.

On the European level: Has the EU considered whether the wording of the directive implementing the FATF recommendations in the EU is clear enough to avoid too different national legislations? Probably not. If the EU has tried to agree on a harmonised definition of the term “tax crime”, it has failed so far to come to a solution. At least, it would have made it clearer to every member state of the EU if the 4th AMLD would have added the tax crimes as predicate offences to ML in a separate statutory provision, e.g. a new Art. 3 point (4) (f) with as simple a wording as:

“(f) tax crimes;”

Thus leaving the catch all provision unchanged as new Art. 3 point (4) (g) AMLD:

“(g) all offences, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”.

On the national level: Have the countries implementing FATF recommendations and EU directives considered whether the national legislation and regulation is easy to be applied by the private and the public sector? Some did, others didn't. Some countries have simply defined existing misdemeanours or felonies as tax crime which are predicate offences to ML. This certainly makes it easier to apply tax crime as predicate offence to ML if the case is a purely national one. But as soon as the case is an international one, the application of tax crimes as predicate offences to ML tends to become very complicated due to the lack of a harmonised definition of tax crime as predicate offence to ML.

Did all three institutional levels try to avoid unwanted consequences of the implementation of FATF recommendation 3, the money laundering definition, like under- or over-reporting, weakening the existing AML/CFT-regime resource-wise both in the private and in the public sector, de-incentivising service providers from motivating their clients to file a voluntary disclosure, de-motivating compli-

ance officers and client relationship managers by too large a multitude of different national implementations or unequal risks attached to different markets, or over-motivating financial institutions to push their clients into waiving unnecessarily their legal rights? No, none if these issues seem to have been discussed within the FATF, the EU-platform of FIUs, Moneyval or another FSRB, or national task forces on AML/CFT, at least no report on these discussions was published so far.

Summing up the above arguments in favour or against the inclusion of tax crimes as predicate offences to ML, there seem to be more against doing it, at least as long as the European Commission has not published its assessment mentioned in chapter 2.1.2.1 above. Countries having established a functioning AEOI could consider limiting the scope of their statute on tax crime as predicate offence to ML to countries with which there is no AEOI in place.

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List of abbreviations

Abs.	Absatz (para)
AEOI	Automatic Exchange of Information (in tax matters)
AML	Anti Money Laundering
AO	Abgabenordnung (Fiscal Code; Germany)
APA	Federal Administrative Procedure Act (Switzerland)
APG	Asia/Pacific Group on Money Laundering
Art.	Article
BGBI.	Bundesgesetzblatt (Official Journal, Austria and Germany)
BGE	Bundesgerichtsentscheid (Decision by the Swiss Federal Supreme Court)
BO	Beneficial Owner
BVerfGE	Bundesverfassungsgerichtsentscheid (Decision by the German Federal Supreme Court)
CFATF	Caribbean Financial Action Task Force
CFT	Countering the Financing of Terrorism
CHF	Swiss Franc
CRS	Common Reporting Standard (of automatic exchange of information in tax matters)
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
CTOC	United Nations Convention against Transnational Organised Crime
Dipl.-Kffr.	Diplom-Kauffrau (Master of Business Administration in Germany)
DNFBP	Designated Non-Financial Businesses and Professions
EAG	Eurasian Group on combating Money Laundering and Financing of Terrorism
EEA	European Economic Area
EG	Egmont Group of Financial Intelligence Units
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
et seq.	et sequens (and the following)
EU	European Union
EUR	Euro
FATCA	Foreign Account Tax Compliance Act (US)
FATF	Financial Action Task Force (headquartered in Paris, France)
FI	Financial Institution
FINMA	Financial Market Supervisory Authority (Switzerland)
FinStrG	Finanzstrafgesetz (Financial Criminal Act, Austria)
FIU	Financial Intelligence Unit

FSRB	FATF-Style Regional Body
FTA	Federal Tax Authority (Switzerland)
G-7	Group of 7 countries with the major advanced economies as reported by the IMF (Canada, France, Germany, Italy, Japan, United Kingdom, United States)
GABAC	Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale (Anti-Money Laundering Task Force of Central Africa)
GAFILAT	Grupo de Acción Financiera de Latinoamérica (Financial Action Task Force of Latin America)
GIABA	Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest (Inter Governmental Action Group Against Money Laundering in West Africa)
IMF	International Monetary Fund (headquartered in Washington D.C.)
IRM	Internal Revenue Service's Manual (US)
IT	Information Technology
LL.M.	Legum Magister (Master of Laws)
Mag.	Magister (Master)
MENAFATF	Middle East and North Africa Financial Action Task Force
ML	Money Laundering
MLRO	Money Laundering Reporting Officer
MOG	Marktorganisationsgesetz (Germany)
Moneyval	Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MROS	Money laundering Reporting Office of Switzerland (Swiss FIU)
MWSTG	Mehrwertsteuergesetz (Value Added Tax Act)
NGO	Non-Governmental Organisation
NJW	Neue Juristische Wochenschrift (New Legal Weekly Journal, Germany)
OECD	Organisation for Economic Co-operation and Development (headquartered in Paris, France)
PC	Penal Code
SAR	Suspicious Activity Report
SteG	Steuergesetz (Tax act, Liechtenstein)
StGB	Strafgesetzbuch (Criminal Code or Penal Code)
STR	Suspicious Transaction Report
TAAA	Federal Tax Administrative Assistance Act (Switzerland)
TFEU	Treaty on the Functioning of the European Union
UK FATCA	Regime in the UK equivalent to the US Foreign Account Tax Compliance Act

UN	United Nations
U.S.C.	United States Code
US FATCA	Foreign Account Tax Compliance Act of the United States of America
VAT	Value Added Tax
VStrR	Bundesgesetz über das Verwaltungsstrafrecht (Federal Law on administrative criminal law; Switzerland)

Annexes

ANNEX A

Draft Swiss law implementing the serious tax crime as predicate offence to ML as of February 27, 2013 (has not become law in force):

5. Bundesgesetz vom 22. März 1974 über das Verwaltungsstrafrecht (SR 313.0)

Art. 14 Abs. 4

4 Wer gewerbsmässig oder im Zusammenwirken mit Dritten Widerhandlungen nach Absatz 1 oder 2 in Abgaben-, Steuer- oder Zollangelegenheiten begeht und sich oder einem andern dadurch in besonders erheblichem Umfang einen unrechtmässigen Vorteil verschafft oder das Gemeinwesen am Vermögen oder an andern Rechten schädigt, wird mit Freiheitsstrafe bis zu fünf Jahren oder Geldstrafe bestraft.
Mit der Freiheitsstrafe ist eine Geldstrafe zu verbinden.

7. Bundesgesetz vom 14. Dezember 1990 über die direkte Bundessteuer (SR 642.11)

Art. 120 Abs. 3 Bst. d

3 Die Verjährung beginnt neu mit:

d. der Einleitung eines Strafverfahrens wegen vollendeter Steuerhinterziehung, wegen Steuerbetrugs oder wegen Veruntreuung von Quellensteuern.

Art. 152 Abs. 2

2 Die Einleitung eines Strafverfahrens wegen Steuerhinterziehung, wegen Steuerbetrugs oder wegen Veruntreuung von Quellensteuern gilt zugleich als Einleitung des Nachsteuerverfahrens.

Gliederungstitel vor Art. 186

Zweiter Titel: Steuervergehen und Steuerverbrechen

Art. 186 Sachüberschrift (betrifft nur den französischen und italienischen Text), Abs. 1, 1^{bis} (neu), 2 und 4 (neu)

1 Mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft wird, wer vorsätzlich eine Steuerhinterziehung nach Artikel 175 Absatz 1 erster Tatbestand begeht, indem sie oder er:

- a. gefälschte, verfälschte oder inhaltlich unwahre Urkunden wie Geschäftsbücher, Bilanzen, Erfolgsrechnungen oder Lohnausweise und andere Bescheinigungen Dritter zur Täuschung gebraucht; oder
- b. die Steuerbehörde durch Vorspiegelung oder Unterdrückung von Tatsachen arglistig irreführt oder sie in einem Irrtum arglistig bestärkt.

1^{bis} Mit Freiheitsstrafe bis zu fünf Jahren oder Geldstrafe bestraft wird, wer einen Steuerbetrug nach Absatz 1 begeht, wenn die nicht deklarierten Steuerfaktoren mindestens 600 000 Franken betragen.

2 Zugleich ist in den Fällen nach den Absätzen 1 und 1^{bis} eine Busse auszusprechen, deren Höhe sich nach Artikel 175 richtet.

4 Wer an einem Steuerbetrug nach Absatz 1 oder 1^{bis} beteiligt ist, haftet solidarisch für die hinterzogene Steuer.

Art. 186a (neu) Juristische Personen

1 Wird ein Steuerbetrug im Sinne von Artikel 186 Absatz 1 oder 1^{bis} für eine juristische Person bewirkt, so wird die juristische Person gebüsst. Die Busse beträgt:

- a. für einen Steuerbetrug nach Artikel 186 Absatz 1 das Ein- bis Dreifache der hinterzogenen Steuer;
- b. für einen Steuerbetrug nach Artikel 186 Absatz 1^{bis} das Zwei- bis Fünffache der hinterzogenen Steuer.

2 Die Bestimmungen zur Selbstanzeige nach Artikel 181a sind sinngemäss anwendbar.

Art. 188 Sachüberschrift, Abs. 1, 2, 2^{bis} (neu) und 3

Verfahren bei Verdacht auf Steuerbetrug oder Veruntreuung von Quellensteuern

1 Kommt die kantonale Verwaltung für die direkte Bundessteuer im Verfahren nach Artikel 183 zum Schluss, dass ein Steuerbetrug begangen wurde oder Quellensteuern veruntreut wurden, so überweist sie die Verfahrensakten der für die Verfolgung des kantonalen Steuervergehens oder Steuerverbrechens zuständigen Strafverfolgungsbehörde.

Diese Behörde verfolgt auch das Vergehen oder das Verbrechen gegen die direkte Bundessteuer.

2 Das Verfahren vor den Strafverfolgungsbehörden richtet sich nach den Vorschriften der Strafprozessordnung vom 5. Oktober 2007 (StPO; RS 312.0).

2^{bis} Die Zuständigkeit der Strafbehörden bleibt in jedem Fall bestehen.

³ Wird der Täter für das kantonale Steuervergehen oder Steuerverbrechen zu einer Freiheitsstrafe verurteilt, so ist eine Freiheitsstrafe für das Vergehen oder das Verbrechen gegen die direkte Bundessteuer als Zusatzstrafe zu verhängen; gegen das letztinstanzliche kantonale Urteil kann Beschwerde in Strafsachen beim Bundesgericht nach den Artikeln 78–81 des Bundesgerichtsgesetzes vom 17. Juni 2005²⁰ erhoben werden.

Art. 189 Abs. 1

¹ Die Strafverfolgung der Steuervergehen und Steuerverbrechen verjährt fünfzehn Jahre nachdem der Täter die letzte strafbare Tätigkeit ausgeführt hat.

Art. 190 Abs. 2

² Schwere Steuerwiderhandlungen sind insbesondere die fortgesetzte Hinterziehung grosser Steuerbeträge (Art. 175 und 176), die Steuervergehen (Art. 186 Abs. 1 und Art. 187) und die Steuerverbrechen (Art. 186 Abs. 1^{bis}).

Art. 193 Abs. 4

Betrifft nur den französischen und italienischen Text.

Art. 194 Abs. 2

² Kommt sie zum Schluss, dass ein Steuerbetrug begangen wurde oder Quellensteuern veruntreut wurden, so erstattet sie bei der zuständigen kantonalen Strafverfolgungsbehörde Anzeige.

8. Bundesgesetz vom 14. Dezember 1990 über die Harmonisierung der direkten Steuern der Kantone und Gemeinden (SR 642.14)

Gliederungstitel vor Art. 59

2. Kapitel: Steuervergehen und Steuerverbrechen

Art. 59 Sachüberschrift, Abs. 1, 1^{bis} (neu), 2 und 4 (neu)

Steuerbetrug und Veruntreuung von Quellensteuern

¹ Mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft wird, wer:

a. vorsätzlich eine Steuerhinterziehung nach Artikel 56 Absatz 1 erster Tatbestand begeht, indem sie oder er:

1. gefälschte, verfälschte oder inhaltlich unwahre Urkunden wie Geschäftsbücher, Bilanzen, Erfolgsrechnungen oder Lohnausweise und andere Bescheinigungen Dritter zur Täuschung gebraucht, oder

2. die Steuerbehörde durch Vorspiegelung oder Unterdrückung von Tatsachen arglistig irreführt oder sie in einem Irrtum arglistig bestärkt;

b. als zum Steuerabzug an der Quelle verpflichtete Person abgezogene Steuern zum eigenen Nutzen oder zum Nutzen einer anderen Person verwendet.

^{1^{bis}} Mit Freiheitsstrafe bis zu fünf Jahren oder Geldstrafe bestraft wird, wer einen Steuerbetrug nach Absatz 1 Buchstabe a begeht, wenn die nicht deklarierten Steuerfaktoren mindestens 600 000 Franken betragen.

² Zugleich ist in den Fällen nach den Absätzen 1 Buchstabe a und ^{1^{bis}} eine Busse auszusprechen, deren Höhe sich nach Artikel 56 richtet.

⁴ Wer an einem Steuerbetrug nach Absatz 1 Buchstabe a oder ^{1^{bis}} beteiligt ist, haftet solidarisch für die hinterzogene Steuer.

Art. 59a (neu) Juristische Personen

¹ Wird ein Steuerbetrug im Sinne von Artikel 59 Absatz 1 Buchstabe a oder ^{1^{bis}} für eine juristische Person bewirkt, so wird die juristische Person gebüsst. Die Busse beträgt:

a. für Steuerbetrug nach Artikel 59 Absatz 1 Buchstabe a das Ein- bis Dreifache der hinterzogenen Steuer;

b. für Steuerbetrug nach Artikel 59 Absatz ^{1^{bis}} das Zwei- bis Fünffache der hinterzogenen Steuer.

² Die Bestimmungen zur Selbstanzeige nach Artikel *57b* sind sinngemäss anwendbar.

Art. 60 Abs. 1

¹ Die Strafverfolgung der Steuervergehen und Steuerverbrechen verjährt fünfzehn Jahre nachdem der Täter die letzte strafbare Tätigkeit ausgeführt hat.

Art. 61 Verfahren bei Verdacht auf Steuerbetrug oder Veruntreuung von Quellensteuern und Vollzug

¹ Kommt die Behörde im Verfahren nach Artikel *57a* zum Schluss, dass ein Steuerbetrug begangen wurde oder Quellensteuern veruntreut wurden, so überweist sie die Verfahrensakten der zuständigen kantonalen Strafverfolgungsbehörde.

² Das Strafverfahren vor den Strafverfolgungsbehörden und der Strafvollzug richten sich nach kantonalem Recht, soweit Bundesrecht nichts anderes bestimmt. Entscheide der letzten kantonalen Instanz unterliegen der Beschwerde in Strafsachen an das Bundesgericht.

³ Die Zuständigkeit der Strafbehörden bleibt in jedem Fall bestehen.

Art 72p (neu) Anpassung der kantonalen Gesetzgebung an die Änderung vom xx. [Monat] 20xx

¹ Die Kantone passen ihre Gesetzgebung innert zwei Jahren nach Inkrafttreten der Änderung vom xx. [Monat] 20xx den geänderten oder neuen Artikeln 59, *59a*, 60 Absatz 1 und 61 an.

² Nach Ablauf dieser Frist finden diese Bestimmungen direkt Anwendung, wenn ihnen das kantonale Steuerrecht widerspricht.

ANNEX B

Confirmation (Trust Structures¹) with respect to tax compliance of assets

Name of the Account: _____

Account Holder ("AH"):

Country(ies) of Tax Residence AH²:

Tax Identification Number(s) AH³:

Name of the Trust Related Party ("TRP"):

Capacity of the TRP with regard to the above referenced account:

- Settlor
- Discretionary beneficiary
- Income Beneficiary/fixed interest trust
- Capital Beneficiary/fixed interest trust
- Revoker (revocable trust)
- Enforcer (purpose trust)
- Other, please indicate: _____

Date and Country of Birth TRP: _____

Country(ies) of Tax Residence TRP²:

Tax Identification Number(s) TRP³:

This confirmation ("Confirmation") relates to, and is limited to, the banking relationship with _____ Bank AG ("Bank") referenced above.

The undersigned, being related to the account/custody account ("Account") and trust referenced herein in the capacity as stated above ("Trust Related Party" or "TRP"), hereby confirms that he/she has complied with and will continue to comply with his/her tax obligations, if any, in his/her country(ies) of tax residence as stated above with respect to the assets deposited on the Account and/or income and capital gains generated by such assets.

The Trust Related Party undertakes to notify the Bank - via the account holder of the Account ("Account Holder") - immediately in case of a change of his/her tax status (whether by reason of a change in his/her residence, citizenship, domicile or otherwise). Furthermore, he/she will provide the Bank - via the Account Holder - with the confirmations of compliance with tax and reporting obligations reasonably requested by the Bank.

Unless the assets deposited on the Account are regularized under the Tax Agreement Austria or the Tax Agreement UK⁴ by way of one-off payment for the past and final withholding tax going forward, the following applies: In case of an administrative assistance under an applicable double taxation treaty or tax information exchange agreement, the Trust Related Party and the Account Holder herewith furthermore authorise and instruct the Federal Tax Administration - which includes the explicit instruction to the Bank to inform and instruct the Federal Tax Administration accordingly on the Trust Related Party's and the Account Holder's behalf - ("Consent and Instruction") to provide information with

¹ If there are several Trust Related Parties under this business relationship, each of them will have to fill out a copy of this form.

² Please list all countries in which the indicated person/entity is taxable based on residence, domicile or citizenship.

³ Please list all tax identification numbers, if any.

⁴ Tax Agreement Austria means the agreement between Switzerland and the Republic of Austria on cooperation in the area of taxes and financial market, dated 13 April 2012. Tax Agreement UK means the agreement between Switzerland and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation, dated 6 October 2011.

regard to the above mentioned banking relationship to the requesting competent foreign authorities of the Trust Related Party's country(ies) of tax residence within the simplified procedure according to the Federal Act on International Administrative Assistance in Tax Matters. Such information includes, in particular, details about the assets held by the Bank, the income and capital gains generated by these assets and the identity of the Account Holder and the Trust Related Party. By way of the Consent and Instruction, the Trust Related Party and the Account Holder explicitly waive any rights to confidentiality (e.g. Swiss banking secrecy and data protection laws) with respect to the disclosure of information within the administrative assistance procedure. The Trust Related Party and the Account Holder acknowledge that any information disclosed under the Consent and Instruction may become subject to foreign laws and may not be covered by Swiss laws anymore.

This Confirmation is governed by Swiss law. The place of jurisdiction, performance and, for Account Holders/Trust Related Parties resident outside Switzerland, for the enforcement, shall be the domicile of the Bank in Zurich. The Bank, however, shall also be authorized to take legal action or enforcement procedure against the Account Holder/Trust Related Party in any other applicable jurisdiction.

Place and Date:

Signature of the Trust Related Party:

Place and Date:

Signature of the Account Holder
(thereby confirming the authenticity of trust
related party's signature)

ANNEX C

Austrian Financial Crime Act

German Version (no English version available)

Schmuggel und Hinterziehung von Eingangs- oder Ausgangsabgaben

§ 35. (1) Des Schmuggels macht sich schuldig, wer

- eingangsabgabepflichtige Waren vorsätzlich vorschriftswidrig in das Zollgebiet oder aus einer
- a) Freizone oder einem Freilager in einen anderen Teil des Zollgebietes verbringt oder der zollamtlichen Überwachung entzieht oder
 - b) ausgangsabgabepflichtige Waren vorsätzlich ohne Abgabe einer Zollanmeldung aus dem Zollgebiet verbringt.

(2) Der Hinterziehung von Eingangs- oder Ausgangsabgaben macht sich schuldig, wer, ohne den Tatbestand des Abs. 1 zu erfüllen, vorsätzlich unter Verletzung einer zollrechtlichen Anzeige-, Offenlegungs- oder Wahrheitspflicht eine Verkürzung von Eingangs- oder Ausgangsabgaben bewirkt. Die Abgabenverkürzung ist bewirkt, wenn eine entstandene Eingangs- oder Ausgangsabgabenschuld bei ihrer Entstehung nicht oder zu niedrig festgesetzt wird und in den Fällen des § 33 Abs. 3 lit. b bis f.

(3) Der Hinterziehung von Eingangs- oder Ausgangsabgaben macht sich ferner schuldig, wer vorsätzlich eine Verkürzung einer solchen Abgabe dadurch bewirkt, daß er eingangs- oder ausgangsabgabepflichtige Waren entgegen einem Verbot oder einer Verpflichtung behandelt, verwendet oder verbraucht, und es unterläßt, dies dem Zollamt vorher anzuzeigen.

(4) Der Schmuggel wird mit einer Geldstrafe bis zum Zweifachen des auf die Waren entfallenden Abgabebetrages, die Hinterziehung von Eingangs- oder Ausgangsabgaben mit einer Geldstrafe bis zum Zweifachen des Verkürzungsbetrages geahndet. Der Geldstrafe ist an Stelle des Regelzollsatzes der Präferenzzollsatz zugrunde zu legen, wenn der Beschuldigte nachweist, daß die Voraussetzungen für dessen Inanspruchnahme gegeben waren. Neben der Geldstrafe ist nach Maßgabe des § 15 auf Freiheitsstrafe bis zu zwei Jahren zu erkennen. Auf Verfall ist nach Maßgabe des § 17 zu erkennen.

(5) Umsatz- und Verbrauchsteuern sind mit jenen Beträgen dem strafbestimmenden Wertbetrag zugrunde zu legen, die bei Entstehung der Steuerschuld im Inland anzusetzen wären, es sei denn, der Beschuldigte weist deren Höhe durch einen rechtskräftigen Bescheid des zur Abgabenerhebung zuständigen anderen Mitgliedstaates der Europäischen Union nach.

Strafe bei Begehung als Mitglied einer Bande oder unter Gewaltanwendung

§ 38a. (1) Wer, ohne den Tatbestand des § 39 zu erfüllen,

- die Abgabenhinterziehung, den Schmuggel, die Hinterziehung von Eingangs- oder Ausgangsabgaben oder die Abgabehelerei nach § 37 Abs. 1 als Mitglied einer Bande von
- a) mindestens drei Personen, die sich zur Tatbegehung verbunden haben, unter Mitwirkung (§ 11) eines anderen Bandenmitglieds begeht;

einen Schmuggel begeht, bei dem er oder mit seinem Wissen ein anderer an der Tat Beteiligter

- b) eine Waffe oder ein anderes Mittel bei sich führt, wobei es ihm darauf ankommt, damit den Widerstand einer Person zu überwinden oder zu verhindern,

ist nach Abs. 2 zu bestrafen.

(2) Ist die Ahndung der in Abs. 1 genannten Finanzvergehen

ausschließlich dem Gericht vorbehalten, ist auf Freiheitsstrafe bis zu fünf Jahren zu erkennen.

a) Neben einer Freiheitsstrafe von bis zu vier Jahren kann eine Geldstrafe bis zu 1,5 Millionen Euro verhängt werden. Verbände sind mit einer Verbandsgeldbuße bis zum Dreifachen des strafbestimmenden Wertbetrages zu bestrafen;

nicht dem Gericht vorbehalten, ist auf Geldstrafe bis zum Dreifachen des Betrages, nach dem sich
b) sonst die Strafdrohung richtet, zu erkennen. Daneben ist nach Maßgabe des § 15 auf Freiheitsstrafe bis zu drei Monaten zu erkennen.

Außerdem sind die Bestimmungen der §§ 33, 35 und 37 über den Verfall anzuwenden; der Verfall umfasst auch die Beförderungsmittel im Sinne des § 17 Abs. 2 lit. c Z 3.

(3) Die Strafdrohung gilt nur für diejenigen Beteiligten, deren Vorsatz die im Abs. 1 bezeichneten erschwerenden Umstände umfasst.

Abgabenbetrug

§ 39. (1) Des Abgabenbetruges macht sich schuldig, wer ausschließlich durch das Gericht zu ahndende Finanzvergehen der Abgabenhinterziehung, des Schmuggels, der Hinterziehung von Eingangs- oder Ausgangsabgaben oder der Abgabenhellerei nach § 37 Abs. 1

a) unter Verwendung falscher oder verfälschter Urkunden, falscher oder verfälschter Daten oder anderer solcher Beweismittel mit Ausnahme unrichtiger nach abgaben-, monopol- oder zollrechtlichen Vorschriften zu erstellenden Abgabenerklärungen, Anmeldungen, Anzeigen, Aufzeichnungen und Gewinnermittlungen oder

b) unter Verwendung von Scheingeschäften oder anderen Scheinhandlungen (§ 23 BAO) oder

c) unter Verwendung automatisationsunterstützt erstellter, aufgrund abgaben- oder monopolrechtlicher Vorschriften zu führender Bücher oder Aufzeichnungen, welche durch Gestaltung oder Einsatz eines Programms, mit dessen Hilfe Daten verändert, gelöscht oder unterdrückt werden können, beeinflusst wurden

begeht.

(2) Eines Abgabenbetruges macht sich auch schuldig, wer ohne den Tatbestand des Abs. 1 zu erfüllen, durch das Gericht zu ahndende Finanzvergehen der Abgabenhinterziehung dadurch begeht, dass er Vorsteuerbeträge geltend macht, denen keine Lieferungen oder sonstigen Leistungen zugrunde liegen, um dadurch eine Abgabenverkürzung zu bewirken.

a) Wer einen Abgabenbetrug begeht, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen. Neben

(3) der Freiheitsstrafe kann eine Geldstrafe bis zu einer Million Euro verhängt werden. Verbände sind mit einer Verbandsgeldbuße bis zu 2,5 Millionen Euro zu bestrafen.

Wer einen Abgabenbetrug mit einem 250 000 Euro übersteigenden strafbestimmenden Wertbetrag begeht, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

b) Neben einer vier Jahre nicht übersteigenden Freiheitsstrafe kann eine Geldstrafe bis zu 1,5 Millionen Euro verhängt werden. Verbände sind mit einer Verbandsgeldbuße bis zu fünf Millionen Euro zu bestrafen.

Wer einen Abgabenbetrug mit einem 500 000 Euro übersteigenden strafbestimmenden Wertbetrag begeht, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen. Neben

c) einer acht Jahre nicht übersteigenden Freiheitsstrafe kann eine Geldstrafe bis zu 2,5 Millionen Euro verhängt werden. Verbände sind mit einer Verbandsgeldbuße bis zum Vierfachen des strafbestimmenden Wertbetrages zu bestrafen.

Außerdem sind die Bestimmungen der §§ 33, 35 und 37 über den Verfall anzuwenden; der Verfall umfasst auch die Beförderungsmittel im Sinne des § 17 Abs. 2 lit. c Z 3.

§ 261 German Criminal Code

German Version

§ 261 Geldwäsche; Verschleierung unrechtmäßig erlangter Vermögenswerte

(1) Wer einen Gegenstand, der aus einer in Satz 2 genannten rechtswidrigen Tat herrührt, verbirgt, dessen

Herkunft verschleiert oder die Ermittlung der Herkunft, das Auffinden, den Verfall, die Einziehung oder die

Sicherstellung eines solchen Gegenstandes vereitelt oder gefährdet, wird mit Freiheitsstrafe von drei Monaten

bis zu fünf Jahren bestraft. Rechtswidrige Taten im Sinne des Satzes 1 sind

1. Verbrechen,

2. Vergehen nach

a) den §§ 108e, 332 Absatz 1 und 3 sowie § 334, jeweils auch in Verbindung mit § 335a,

b) § 29 Abs. 1 Satz 1 Nr. 1 des Betäubungsmittelgesetzes und § 19 Abs. 1 Nr. 1 des Grundstoffüberwachungsgesetzes,

3. Vergehen nach § 373 und nach § 374 Abs. 2 der Abgabenordnung, jeweils auch in Verbindung mit § 12 Abs. 1

des Gesetzes zur Durchführung der Gemeinsamen Marktorganisationen und der Direktzahlungen,

4. Vergehen

a) nach den §§ 152a, 181a, 232 Abs. 1 und 2, § 233 Abs. 1 und 2, §§ 233a, 242, 246, 253, 259, 263 bis 264,

266, 267, 269, 271, 284, 299, 326 Abs. 1, 2 und 4, § 328 Abs. 1, 2 und 4 sowie § 348,

b) nach § 96 des Aufenthaltsgesetzes, § 84 des Asylgesetzes, nach § 370 der Abgabenordnung, nach § 38 Absatz 1 bis 3 und 5 des Wertpapierhandelsgesetzes sowie nach den §§ 143, 143a und 144 des Markengesetzes, den §§ 106 bis 108b des Urheberrechtsgesetzes, § 25 des Gebrauchsmustergesetzes, den §§ 51 und 65 des Designgesetzes, § 142 des Patentgesetzes, § 10 des Halbleiterschutzgesetzes und § 39 des Sortenschutzgesetzes,

die gewerbsmäßig oder von einem Mitglied einer Bande, die sich zur fortgesetzten Begehung solcher Taten

verbunden hat, begangen worden sind, und

5. Vergehen nach den §§ 89a und 89c und nach den §§ 129 und 129a Abs. 3 und 5, jeweils auch in Verbindung

mit § 129b Abs. 1, sowie von einem Mitglied einer kriminellen oder terroristischen Vereinigung (§§ 129, 129a,

jeweils auch in Verbindung mit § 129b Abs. 1) begangene Vergehen.

Satz 1 gilt in den Fällen der gewerbsmäßigen oder bandenmäßigen Steuerhinterziehung nach § 370 der Abgabenordnung für die durch die Steuerhinterziehung ersparten Aufwendungen und unrechtmäßig erlangten

Steuererstattungen und -vergütungen sowie in den Fällen des Satzes 2 Nr. 3 auch für einen Gegenstand, hinsichtlich dessen Abgaben hinterzogen worden sind.

(2) Ebenso wird bestraft, wer einen in Absatz 1 bezeichneten Gegenstand

1. sich oder einem Dritten verschafft oder

2. verwahrt oder für sich oder einen Dritten verwendet, wenn er die Herkunft des Gegenstandes zu dem

Zeitpunkt gekannt hat, zu dem er ihn erlangt hat.

(3) Der Versuch ist strafbar.

(4) In besonders schweren Fällen ist die Strafe Freiheitsstrafe von sechs Monaten bis zu zehn Jahren. Ein

besonders schwerer Fall liegt in der Regel vor, wenn der Täter gewerbsmäßig oder als Mitglied einer Bande

handelt, die sich zur fortgesetzten Begehung einer Geldwäsche verbunden hat.

(5) Wer in den Fällen des Absatzes 1 oder 2 leichtfertig nicht erkennt, daß der Gegenstand aus einer in Absatz 1 genannten rechtswidrigen Tat herrührt, wird mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bestraft.

(6) Die Tat ist nicht nach Absatz 2 strafbar, wenn zuvor ein Dritter den Gegenstand erlangt hat, ohne hierdurch eine Straftat zu begehen.

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(7) Gegenstände, auf die sich die Straftat bezieht, können eingezogen werden. § 74a ist anzuwenden. § 73d ist

anzuwenden, wenn der Täter gewerbsmäßig oder als Mitglied einer Bande handelt, die sich zur fortgesetzten

Begehung einer Geldwäsche verbunden hat.

(8) Den in den Absätzen 1, 2 und 5 bezeichneten Gegenständen stehen solche gleich, die aus einer im Ausland

begangenen Tat der in Absatz 1 bezeichneten Art herrühren, wenn die Tat auch am Tatort mit Strafe bedroht ist.

(9) Nach den Absätzen 1 bis 5 wird nicht bestraft,

1. wer die Tat freiwillig bei der zuständigen Behörde anzeigt oder freiwillig eine solche Anzeige veranlasst,

wenn nicht die Tat zu diesem Zeitpunkt bereits ganz oder zum Teil entdeckt war und der Täter dies wusste

oder bei verständiger Würdigung der Sachlage damit rechnen musste, und

2. in den Fällen des Absatzes 1 oder des Absatzes 2 unter den in Nummer 1 genannten

Voraussetzungen die

Sicherstellung des Gegenstandes bewirkt, auf den sich die Straftat bezieht.

Nach den Absätzen 1 bis 5 wird außerdem nicht bestraft, wer wegen Beteiligung an der Vortat strafbar ist. Eine

Straflosigkeit nach Satz 2 ist ausgeschlossen, wenn der Täter oder Teilnehmer einen Gegenstand, der aus einer

in Absatz 1 Satz 2 genannten rechtswidrigen Tat herrührt, in den Verkehr bringt und dabei die rechtswidrige

Herkunft des Gegenstandes verschleiert.

§ 261 German Criminal Code
English Version

Section 261
Money laundering; hiding unlawfully obtained financial benefits

(1) Whosoever hides an object which is a proceed of an unlawful act listed in the 2nd sentence below, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its confiscation, its deprivation or its being officially secured shall be liable to imprisonment from three months to five years. Unlawful acts within the meaning of the 1st sentence shall be

1. felonies;

2. misdemeanours under

(a) Section 332 (1), also in conjunction with subsection (3), and section 334;

(b) Section 29 (1) 1st sentence No 1 of the Drugs Act and section 19 (1) No 1 of the Drug Precursors (Control) Act;

3. misdemeanours under section 373 and under section 374 (2) of the Fiscal Code, and also in conjunction with section 12 (1) of the Common Market Organisations and Direct Payments (Implementation) Act;

4. misdemeanours

(a) under section 152a, section 181a, section 232 (1) and (2), section 233 (1) and (2), section 233a, section 242, section 246, section 253, section 259, sections 263 to 264, section 266, section 267, section 269, section 271, section 284, section 326 (1), (2) and (4), section 328 (1), (2) and (4) and section 348;

(b) under section 96 of the Residence Act and section 84 of the Asylum Procedure Act and section 370 of the Fiscal Code, section 38(1) to (3) and (5) of the Securities Trading Act as well as sections 143, 143a and 144 of the Act on the Protection of Trade Marks and other Symbols, 106 to 108b of the Act on Copyright and Related Rights, 25 of the Utility Models Act, 51 and 65 of the Design Act, 142 of the Patent Act, 10 of the Semiconductor Protection Act and 39 of the Plant Variety Rights (Protection) Act.

which were committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences; and

5. misdemeanours under section 89a and under section 129 and section 129a (3) and (5), all of which also in conjunction with section 129b (1), as well as misdemeanours committed by a member of a criminal or terrorist organisation (section 129 and section 129a, all of which also in conjunction with section 129b (1)).

The 1st sentence shall apply in cases of tax evasion committed on a commercial basis or as a gang under section 370 of the Fiscal Code, to expenditure saved by virtue of the tax evasion, of unlawfully acquired tax repayments and allowances, and in cases under the 2nd sentence no 3 the 1st sentence shall also apply to an object in relation to which fiscal charges have been evaded.

(2) Whosoever

1. procures an object indicated in subsection (1) above for himself or a third person; or
2. keeps an object indicated in subsection (1) above in his custody or uses it for himself or a third person if he knew the origin of the object at the time of obtaining possession of it

shall incur the same penalty.

(3) The attempt shall be punishable.

(4) In especially serious cases the penalty shall be imprisonment from six months to ten years. An especially serious case typically occurs if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of money laundering.

(5) Whosoever, in cases under subsections (1) or (2) above is, through gross negligence, unaware of the fact that the object is a proceed from an unlawful act named in subsection (1) above shall be liable to imprisonment of not more

than two years or a fine.

(6) The act shall not be punishable under subsection (2) above if a third person previously acquired the object without having thereby committed an offence.

(7) Objects to which the offence relates may be subject to a deprivation order. section 74a shall apply. section 73d shall apply if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of money laundering.

(8) Objects which are proceeds from an offence listed in subsection (1) above committed abroad shall be equivalent to the objects indicated in subsections (1), (2) and (5) above if the offence is also punishable at the place of its commission.

(9) Whosoever

1. voluntarily reports the offence to the competent public authority or voluntarily causes such a report to be made, unless the act had already been discovered in whole or in part at the time and the offender knew this or could reasonably have known and
2. in cases under subsections (1) or (2) above under the conditions named in No 1 above causes the object to which the offence relates to be officially secured

shall not be liable under subsections (1) to (5) above.

Whosoever is liable because of his participation in the antecedent act shall not be liable under subsections (1) to (5) above, either.

§ 31b German Fiscal Code

German Version

§ 31b Mitteilungen zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung

(1) Die Offenbarung der nach § 30 geschützten Verhältnisse des Betroffenen ist zulässig, soweit sie einem der folgenden Zwecke dient:

1. der Durchführung eines Strafverfahrens wegen einer Straftat nach § 261 des Strafgesetzbuchs,
2. der Bekämpfung der Terrorismusfinanzierung im Sinne des § 1 Absatz 2 des Geldwäschegesetzes,
3. der Durchführung eines Bußgeldverfahrens nach § 17 des Geldwäschegesetzes gegen Verpflichtete im Sinne des § 2 Absatz 1 Nummer 9 bis 13 des Geldwäschegesetzes oder
4. dem Treffen von Maßnahmen und Anordnungen nach § 16 Absatz 1 des Geldwäschegesetzes gegenüber Verpflichteten im Sinne des § 2 Absatz 1 Nummer 9 bis 13 des Geldwäschegesetzes.

(2) Die Finanzbehörden haben dem Bundeskriminalamt – Zentralstelle für Verdachtsmeldungen – und der zuständigen Strafverfolgungsbehörde unverzüglich mündlich, telefonisch, fernschriftlich oder durch elektronische Datenübermittlung Transaktionen unabhängig von deren Höhe oder Geschäftsbeziehungen zu melden, wenn Tatsachen vorliegen, die darauf hindeuten, dass

1. es sich bei Vermögenswerten, die mit den gemeldeten Transaktionen oder Geschäftsbeziehungen im Zusammenhang stehen, um den Gegenstand einer Straftat nach § 261 des Strafgesetzbuchs handelt oder
2. die Vermögenswerte im Zusammenhang mit Terrorismusfinanzierung stehen.

(3) Die Finanzbehörden haben der zuständigen Verwaltungsbehörde unverzüglich solche Tatsachen mitzuteilen, die darauf schließen lassen, dass

1. ein Verpflichteter im Sinne des § 2 Absatz 1 Nummer 9 bis 13 des Geldwäschegesetzes eine Ordnungswidrigkeit im Sinne des § 17 des Geldwäschegesetzes begangen hat oder begeht oder
2. die Voraussetzungen für das Treffen von Maßnahmen und Anordnungen nach § 16 Absatz 1 des Geldwäschegesetzes gegenüber Verpflichteten im Sinne des § 2 Absatz 1 Nummer 9 bis 13 des Geldwäschegesetzes gegeben sind.

§ 31b German Fiscal Code

English Version

Section 31b Disclosure for the purpose of countering money laundering and terrorist financing

(1) The disclosure of the circumstances of the person concerned which are protected under section 30 shall be permissible insofar as such disclosure serves one of the following purposes:

1. conducting criminal proceedings for a crime under section 261 of the Criminal Code,
2. countering terrorist financing within the meaning of section 1(2) of the Money Laundering Act,
3. conducting administrative fine proceedings in accordance with section 17 of the Money Laundering Act against obligated parties within the meaning of section 2(1) numbers 9 to 13 of the Money Laundering Act or
4. taking measures or issuing orders in accordance with section 16(1) of the Money Laundering Act against obligated parties within the meaning of section 2(1) numbers 9 to 13 of the Money Laundering Act.

(2) Irrespective of the amount or business relationship involved, the revenue authorities shall notify without undue delay the Financial Intelligence Unit of the Federal Criminal Police Office and the competent law enforcement authority orally or via telephone, telefax or electronic data transmission where facts indicate that

1. the assets connected to the reported transactions or business relationships are the object of a crime under section 261 of the Criminal Code or
2. the assets are connected to terrorist financing.

(3) The revenue authorities shall notify the competent administrative authority, without delay, of facts indicating that

1. an obligated party within the meaning of section 2(1) numbers 9 to 13 of the Money Laundering Act has committed or is committing an administrative offence within the meaning of section 17 of the Money Laundering Act or
2. the conditions have been met to take measures or issue orders in accordance with section 16(1) of the Money Laundering Act against obligated parties within the meaning of section 2(1) numbers 9 to 13 of the Money Laundering Act.

German Version

§ 370 Steuerhinterziehung

(1) Mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe wird bestraft, wer

1. den Finanzbehörden oder anderen Behörden über steuerlich erhebliche Tatsachen unrichtige oder unvollständige Angaben macht,
2. die Finanzbehörden pflichtwidrig über steuerlich erhebliche Tatsachen in Unkenntnis lässt oder
3. pflichtwidrig die Verwendung von Steuerzeichen oder Steuerstemplern unterlässt und dadurch Steuern verkürzt oder für sich oder einen anderen nicht gerechtfertigte Steuervorteile erlangt.

(2) Der Versuch ist strafbar.

(3) In besonders schweren Fällen ist die Strafe Freiheitsstrafe von sechs Monaten bis zu zehn Jahren. Ein besonders schwerer Fall liegt in der Regel vor, wenn der Täter

1. in großem Ausmaß Steuern verkürzt oder nicht gerechtfertigte Steuervorteile erlangt,
2. seine Befugnisse oder seine Stellung als Amtsträger oder Europäischer Amtsträger (§ 11 Absatz 1 Nummer 2a des Strafgesetzbuchs) missbraucht,
3. die Mithilfe eines Amtsträgers oder Europäischen Amtsträgers (§ 11 Absatz 1 Nummer 2a des Strafgesetzbuchs) ausnutzt, der seine Befugnisse oder seine Stellung missbraucht,
4. unter Verwendung nachgemachter oder verfälschter Belege fortgesetzt Steuern verkürzt oder nicht gerechtfertigte Steuervorteile erlangt, oder
5. als Mitglied einer Bande, die sich zur fortgesetzten Begehung von Taten nach Absatz 1 verbunden hat, Umsatz- oder Verbrauchssteuern verkürzt oder nicht gerechtfertigte Umsatz- oder Verbrauchssteuervorteile erlangt.

(4) Steuern sind namentlich dann verkürzt, wenn sie nicht, nicht in voller Höhe oder nicht rechtzeitig festgesetzt werden; dies gilt auch dann, wenn die Steuer vorläufig oder unter Vorbehalt der Nachprüfung festgesetzt wird oder eine Steueranmeldung einer Steuerfestsetzung unter Vorbehalt der Nachprüfung gleichsteht. Steuervorteile sind auch Steuervergütungen; nicht gerechtfertigte Steuervorteile sind erlangt, soweit sie zu Unrecht gewährt oder belassen werden. Die Voraussetzungen der Sätze 1 und 2 sind auch dann erfüllt, wenn die Steuer, auf die sich die Tat bezieht, aus anderen Gründen hätte ermäßigt oder der Steuervorteil aus anderen Gründen hätte beansprucht werden können.

(5) Die Tat kann auch hinsichtlich solcher Waren begangen werden, deren Einfuhr, Ausfuhr oder Durchfuhr verboten ist.

(6) Die Absätze 1 bis 5 gelten auch dann, wenn sich die Tat auf Einfuhr- oder Ausfuhrabgaben bezieht, die von einem anderen Mitgliedstaat der Europäischen Union verwaltet werden oder die einem Mitgliedstaat der Europäischen Freihandelsassoziation oder einem mit dieser assoziierten Staat zustehen. Das Gleiche gilt, wenn sich die Tat auf Umsatzsteuern oder auf die in Artikel 1 Absatz 1 der Richtlinie 2008/118/EG des Rates vom 16. Dezember 2008 über das allgemeine Verbrauchsteuersystem und zur Aufhebung der Richtlinie 92/12/EWG (ABl. L 9 vom 14.1.2009, S. 12) genannten harmonisierten Verbrauchsteuern bezieht, die von einem anderen Mitgliedstaat der Europäischen Union verwaltet werden.

(7) Die Absätze 1 bis 6 gelten unabhängig von dem Recht des Tatortes auch für Taten, die außerhalb des Geltungsbereiches dieses Gesetzes begangen werden.

§ 370 German Fiscal Code

English Version

Section 370 Tax evasion

(1) A penalty of up to five years' imprisonment or a monetary fine shall be imposed on any person who

1. furnishes the revenue authorities or other authorities with incorrect or incomplete particulars concerning matters of substantial significance for taxation,
 2. fails to inform the revenue authorities of facts of substantial significance for taxation when obliged to do so, or
 3. fails to use revenue stamps or revenue stamping machines when obliged to do so
- and as a result understates taxes or derives unwarranted tax advantages for himself or for another person.

(2) Attempted perpetration shall be punishable.

(3) In particularly serious cases, a penalty of between six months and ten years' imprisonment shall be imposed. A case shall generally be deemed to be particularly serious where the perpetrator

1. deliberately understates taxes on a large scale or derives unwarranted tax advantages,
2. abuses his authority or position as a public official,
3. solicits the assistance of a public official who abuses his authority or position,
4. repeatedly understates taxes or derives unwarranted tax advantages by using falsified or forged documents, or
5. as a member of a group formed for the purpose of repeatedly committing acts pursuant to subsection (1) above, understates value-added taxes or excise duties or derives unwarranted VAT or excise duty advantages.

(4) Taxes shall be deemed to have been understated in particular where they are not assessed at all, in full or in time; this shall also apply even where the tax has been assessed provisionally or assessed subject to re-examination or where a self-assessed tax return is deemed to be equal to a tax assessment subject to re-examination. Tax advantages shall also include tax rebates; unwarranted tax advantages shall be deemed derived to the extent that these are wrongfully granted or retained. The conditions of the first and second sentences above shall also be fulfilled where the tax to which the act relates could have been reduced for other reasons or the tax advantage could have been claimed for other reasons.

(5) The act may also be committed in relation to goods whose importation, exportation or transit is banned.

(6) Subsections (1) to (5) above shall apply even where the act relates to import or export duties which are administered by another Member State of the European Communities or to which a Member State of the European Free Trade Association or a country associated therewith is entitled. The same shall apply where the act relates to value-added taxes or harmonised excise duties on goods designated in Article 3(1) of Council Directive 92/12/EEC of 25 February 1992 (OJ L 76, p. 1) which are administered by another Member State of the European Communities.

(7) Irrespective of the *lex loci delicti*, the provisions of subsections (1) to (6) above shall also apply to acts committed outside the territory of application of this Code.

Art. 506-1 Criminal Code of Luxembourg

French Version (no English version available)

Section V. - De l'infraction de blanchiment

(L. 11 août 1998)

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

- 1) (L. 18 juillet 2014) ceux qui ont sciemment facilité, par tout moyen, la justification mensongère de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect,
- d'une infraction aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-16¹ du Code pénal;
 - de crimes ou de délits dans le cadre ou en relation avec une association au sens des articles 322 à 324ter du Code pénal;
 - d'une infraction aux articles 368 à 370, 379, 379bis, 382-1, 382-2, 382-4 et 382-5 du Code pénal;
 - d'une infraction aux articles 383, 383bis, 383ter et 384 du Code pénal;
 - d'une infraction aux articles 496-1 à 496-4 du Code pénal;
 - d'une infraction de corruption;
 - d'une infraction à la législation sur les armes et munitions;
 - d'une infraction aux articles 184, 187, 187-1, 191 et 309 du Code pénal;
 - d'une infraction aux articles 463 et 464 du Code pénal;
 - d'une infraction aux articles 489 à 496 du Code pénal;
 - d'une infraction aux articles 509-1 à 509-7 du Code pénal;
 - d'une infraction à l'article 48 de la loi du 14 août 2000 relative au commerce électronique;
 - d'une infraction à l'article 11 de la loi du 30 mai 2005 relative aux dispositions spécifiques de protection de la personne à l'égard du traitement des données à caractère personnel dans le secteur des communications électroniques;
 - d'une infraction à l'article 10 de la loi du 21 mars 1966 concernant a) les fouilles d'intérêt historique, préhistorique, paléontologique ou autrement scientifique; b) la sauvegarde du patrimoine culturel mobilier;
 - d'une infraction à l'article 5 de la loi du 11 janvier 1989 réglant la commercialisation des substances chimiques à activité thérapeutique;
 - d'une infraction à l'article 18 de la loi du 25 novembre 1982 réglant le prélèvement de substances d'origine humaine;
 - d'une infraction aux articles 82 à 85 de la loi du 18 avril 2001 sur le droit d'auteur;
 - d'une infraction à l'article 64 de la loi modifiée du 19 janvier 2004 concernant la protection de la nature et des ressources naturelles;
 - d'une infraction à l'article 9 de la loi modifiée du 21 juin 1976 relative à la lutte contre la pollution de l'atmosphère;
 - d'une infraction à l'article 25 de la loi modifiée du 10 juin 1999 relative aux établissements classés;
 - d'une infraction à l'article 26 de la loi du 29 juillet 1993 concernant la protection et la gestion de l'eau;
 - d'une infraction à l'article 35 de la loi modifiée du 17 juin 1994 relative à la prévention et à la gestion des déchets;
 - d'une infraction aux articles 220 et 231 de la loi générale sur les douanes et accises;
 - d'une infraction à l'article 32 de la loi du 9 mai 2006 relative aux abus de marché;
 - de toute autre infraction punie d'une peine privative de liberté d'un minimum supérieur à 6 mois; ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions;
- 2) (L. 27 octobre 2010) ceux qui ont sciemment apporté leur concours à une opération de placement, de dissimulation, de déguisement, de transfert ou de conversion des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions;

3) (L. 13 mars 2009) ceux qui ont acquis, détenu ou utilisé des biens visés à l'article 3-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions, sachant, au moment où ils les recevaient, qu'ils provenaient de l'une ou de plusieurs des infractions visées au point 1) ou de la participation à l'une ou plusieurs de ces infractions. (L. 27 octobre 2010)

4) La tentative des infractions prévues aux points 1 à 3 ci-avant est punie des mêmes peines.

¹ Loi du 18 décembre 2015 : A l'article 506-1, point 1), la référence à l'article 135-13 est remplacée par celle à l'article 135-16.

ANNEX D

Table of potential sentences related to tax crimes as predicate offences to ML in Austria

Tatbestand	Anmerkung	Freiheitsstrafe		Geldstrafe		Verbände
		Gericht**	Spruch-senat*	Gericht**	Spruch-senat*	
Abgabebetrag bis 250.000 Euro § 39 FinStrG	Abgabenhinter-ziehung <hr/> Schmuggel <hr/> Hinterziehung von Eingangs-abgaben <hr/> vorsätzliche Abgaben-hehlerei	bis zu 3 Jahre		zusätzlich bis zu 1 Mio. Euro		bis zu 2,5 Mio. Euro
Abgabebetrag		6 Monate		zusätzlich		bis zu

über 250.000 Euro § 39 FinStrG		bis 5 Jahre		bis zu 1,5 Mio. Euro bei max. 4 Jahren Freiheitsstr		5 Mio. Euro			
Abgabebetrag über 500.000 Euro § 39 FinStrG		1 bis 10 Jahre		zusätzlich bis zu 2,5 Mio. Euro bei max. 8 Jahren Freiheitsstr		bis zu 400 % des statbest. Wertbetrages			
Abgabenhinterziehung Schmuggel Hinterziehung von Eingangsabgaben §38a FinStrG	bandenmäßige oder gewalttätige Begehung	bis zu 5 Jahre	neben Geldstrafe bis zu 3 Monate	zusätzlich bis zu 1,5 Mio. Euro bei max. 4 Jahren Freiheitsstr	bis zu 300% des Verkürzungs- betrages	bis zu 300% des Verkürzungs- betrages			
Abgabenhinterziehung gewerbsmäßig § 38 FinStrG	<table border="1"> <tr> <td>bis zu 500.000 Euro</td> <td>neben Geldstrafe bis zu 3 Jahre</td> </tr> <tr> <td>mehr als 500.000 Euro</td> <td>neben Geldstrafe bis zu 5 Jahre</td> </tr> </table>	bis zu 500.000 Euro	neben Geldstrafe bis zu 3 Jahre	mehr als 500.000 Euro	neben Geldstrafe bis zu 5 Jahre	neben Geldstrafe bis zu 3 Monate	bis zu 300 % des Ver- kürzungs- betrages	bis zu 300 % des Ver- kürzungs- betrages	bis zu 300 % des Ver- kürzungs- betrages
bis zu 500.000 Euro		neben Geldstrafe bis zu 3 Jahre							
mehr als 500.000 Euro		neben Geldstrafe bis zu 5 Jahre							
Schmuggel gewerbsmäßig § 38 FinStrG									
Hinterziehung von Eingangsabgaben gewerbsmäßig § 38 FinStrG									
vors. Abgaben- hehlerei gewerbsmäßig § 38 FinStrG									
Abgabenhinterziehung § 33 FinStrG		neben Geldstrafe bis zu 2 Jahre	neben Geldstrafe bis zu 3 Monate	bis zu 200 % des Ver- kürzungs- betrages	bis zu 200 % des Ver- kürzungs- betrages	bis zu 200 % des Ver- kürzungs- betrages			

Schmuggel § 35 FinStrG		neben Geldstrafe bis zu 2 Jahre	neben Geldstrafe bis zu 3 Monate	bis zu 200 % des auf die Ware entf. Abgaben- betrages	bis zu 200 % des auf die Ware entf. Abgaben- betrages	bis zu 200 % des auf die Ware entf. Abgaben- betrages
Hinterziehung von Eingangsabgaben § 35 FinStrG		neben Geldstrafe bis zu 2 Jahre	neben Geldstrafe bis zu 3 Monate	bis zu 200 % des Ver- kürzungs- betrages	bis zu 200 % des Ver- kürzungs- betrages	bis zu 200 % des Ver- kürzungs- betrages
Abgabenhehlerei § 37 FinStrG						

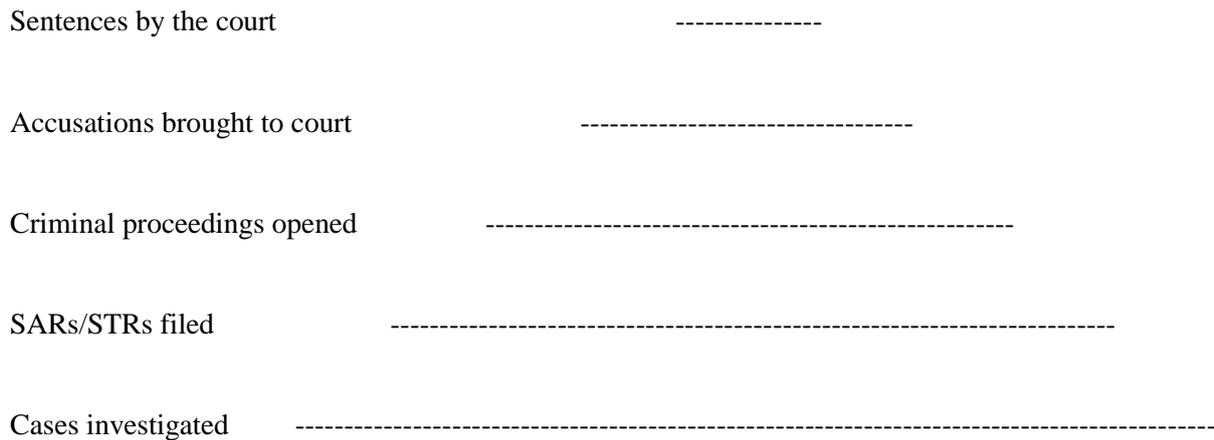
^{*)} Zur Ahndung von Schmuggel, Hinterziehung von Eingangs- oder Ausgangsabgaben und Abgabenhehlerei ist ab einem strafbestimmenden Wertbetrag von mehr als 15.000 Euro ein Spruchsenat zuständig; bei allen übrigen Finanzvergehen ab einem strafbestimmenden Wertbetrag von mehr als 33.000 Euro.

^{**)} Das Gericht ist zur Ahndung von vorsätzlich begangenen Finanzvergehen zuständig, wenn der strafbestimmende Wertbetrag 100.000 Euro, in Fällen des Schmuggels, der Hinterziehung von Eingangs- oder Ausgangsabgaben und der Abgabenhehlerei 50.000 Euro übersteigt.

ANNEX E

The inverted reporting cascade

An important part of a well functioning and efficient AML/CFT-system is the inverted reporting cascade, meaning that from the lowest level, the cases investigated because of an unusual pattern, to the top level, sentencing by the court, legal conditions become stricter and stricter, leading to not all unusual cases that are being investigated leading to the reporting of an SAR/STR, not every SAR/STR being forwarded to prosecutors, the prosecutors then not opening criminal proceedings in all cases of an SAR/STR, not all criminal proceedings that have been opened leading to an accusation and of course not every accusation leading to a sentence. The picture one gets is that of a fir tree, hence the cascade is an inverted one.



Affidavit

Tax crime as predicate offence to Money Laundering – legal issues and risks in practice

I hereby declare under penalty of perjury that the present paper has been prepared independently by myself and without unpermitted aid. Anything that has been taken verbatim or paraphrased from other writings has been identified as such. This paper has hitherto been neither submitted to an examining body in the same or similar form, nor published.

Buchs SG, April 17, 2016

Signature:

Ralph Sutter