

# *CSSF Circular 17/650 on Anti-Money Laundering and Counter-Financing of Terrorism: AML/CFT Law applied to primary tax offenses*

20 March 2017

## *In brief*

This new Circular was issued jointly by the CSSF and the Luxembourg Financial Intelligence Unit (FIU). It is part of the new penal provisions provided by the Law of 23 December 2016 implementing the 2017 Tax Reform. It specifically concerns the extension of laundering offense to aggravated tax fraud (“fraude fiscale aggravée”) and tax deceit (“escroquerie fiscale”). The 2017 Tax Reform Law amended article 506-1 of the Penal Code and has brought both tax offenses to the rank of primary offenses for money laundering since 1 January 2017.

This amendment of the Luxembourg Penal Code actually stands as an early transposition of certain provisions of the Directive on “Prevention of the use of financial system for the purpose of money laundering and terrorist financing” (fourth AML Directive).

The purpose of the Circular is to clarify the practical application of these new provisions and to provide guidance to professionals of the financial sector on how to detect, analyse and report any suspicion of tax offenses. Notably, the Circular contains a list of clues to detect the laundering of a tax offense.

## *In detail*

Here are some of the practical aspects of this new Circular:

- Clarifies the definition of tax offenses and comments related thresholds;
- Provides guidelines on the requirement to file a suspicious report to the FIU, together with a list of clues to help in the detection of tax offense laundering;
- Emphasises the importance of understanding the purpose and intended nature of the business relationship, as well as the source of funds;
- Gives precision on the geographical and temporal application of tax offenses;
- Details the impact on internal management requirements for professionals of the financial sector.

### **Who is impacted?**

This new Circular is applicable to all the entities regulated by the CSSF. However, an additional circular specifically dedicated to the Asset Management industry is expected soon.

The CAA is also expected to issue a similar circular for the Insurance industry. Due to the evolving Anti-Money Laundering (AML) and Counter-Financing of Terrorism (CFT) landscape in Luxembourg, these entities should consider having an appropriate AML/CFT tax offense policy and supporting documentation in place.

### **What are the main aspects?**

#### *Clues to help the detection of a tax crime laundering*

Professionals must now declare suspected tax offenses (including attempts) to the FIU. When they have doubts regarding a customer, professionals must verify if the doubts are justified and if they are, they must perform a declaration of suspicious transaction to the FIU.

A list of 22 indicia is provided in Appendix 1 of the new Circular to assist professionals of the financial sector in the detection of laundering of a tax offense.

#### *Purpose and intended nature of the business relationship, as well as source of funds*

For all the new business relationships since 1 January 2017, whatever the level of risk, professionals of the financial sector must obtain information on the purpose and intended nature of the relationship, as well as on the source of funds, in order to assess the financial situation of the prospective client from a tax offense risk point of view.

For existing business relationships, this information must be obtained at appropriate times on a risk-sensitive basis. It's not necessary to obtain this information for business relationships closed before 31 December 2016.

#### *Scope of the tax offense*

Due diligence duty applies both for resident and non-resident customers. Customer Due Diligence must cover:

- For customers living in Luxembourg, all types of direct taxes, VAT, registration and succession rights;
- For non-resident customers, tax offenses prosecuted in the country of residence of the client, even if the country's tax system is different from the Luxembourg one (e.g. French wealth tax on individuals is in scope).

#### *Threshold for the declaration of a tax offense*

The 2017 Tax Reform Law makes a difference between simple tax fraud and aggravated tax fraud. A simple tax fraud is not considered as a primary offense (while an aggravated tax fraud is) and should not be declared to the prosecutor. Simple tax fraud is sanctioned administratively.

Thresholds determine whether the tax fraud is aggravated or not: a quarter of the yearly tax charge evaded, EUR 200,000 or any significant amount (either in absolute amount, or in relation to the yearly tax to be paid).

However, as it's not necessary to qualify the primary offense for which a declaration is made, declarations may be performed even if the thresholds mentioned above are not met. In any case, when the tax fraud is clearly below EUR 10,000, it is not necessary to perform a declaration to the FIU.

For tax deceit, no threshold is applicable. The professional of the financial sector must assess in this case whether the amount of the offense is significant or not (either in absolute amount, or in relation to the yearly tax to be paid).

### *Impact on internal management requirements for professionals of the financial sector*

Policies and procedures in terms of AML/CFT must be adapted to include the laundering of tax offenses, in particular regarding:

- The AML/CFT risk assessment to which the professional is exposed;
- The documentation to be obtained for Customer Due Diligence;
- The need to train employees to recognise the first signs of the laundering of a tax offense;
- The review of the transaction monitoring system including the clues to detect the laundering of a tax fraud;
- The close monitoring of the implementation of the new requirements by the AML/CFT compliance officer, internal audit and the reporting to the authorised management;
- The obligation to communicate to the FIU without delay.

### *In conclusion*

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In practice, we observe that Luxembourg-based financial institutions are more and more aware of the criminalisation of tax offenses and the threat to be sanctioned or even be considered as accomplice in (tax) crime. The coming OCDE CRS reporting deadline is increasing the need to have compliant accounts when they will be exchanged automatically with foreign tax authorities.

We help you to conceptually, strategically and operationally understand and implement the Circular. Our services are based on a modular approach, allowing you to decide in a very flexible manner which services suit you best. Our offer includes:

- Review/drafting of existing AML/CFT procedures to include tax aspects and appropriate reporting to Senior Management;
- In-depth review of high risk client files, gathering of negative/positive indicia, proposition of action plans;
- Preparing a methodology to detect fraud (Matrix), including specific foreign tax aspects (for non-resident clients);
- Organising informational trainings to raise awareness on the signs to detect laundering of a tax offense;
- Diagnosis (including impact analysis on your business, definition or update of your risk assessment model, gap assessment and recommendations);
- Implementation (road map definition, implementation and onsite support);
- Remediation support.

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