



Federale  
Overheidsdienst  
FINANCIËN

Europäisches Parlament

26. Jan. 2017

Dr. Werner Langen

Brussel, 24-01-2017

De Minister van Financiën

Afz. : Wetstraat 12, 1000 Brussel

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Parlement européen  
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uw bericht van  
23/11/2016

uw kenmerk  
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KFIN/FIS/GVV/AG/2016.04033

*Handwritten: PANA, Schetsen*

**Subject:** Request for Member State contributions: investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.

Dear dr. Langen

We are pleased to send you herewith the Belgian response on the request for Member State contributions in investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.

#### Definitions

Definitions of money laundering, tax avoidance and tax evasions are derived from the law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing, the Belgian Income Tax Code (ITC) and the Belgian Criminal Code of Procedure (CCP).

The law of 11 January 1993 to prevent the use of the financial system to launder money and to finance terrorism, stipulates that money laundering means:

- The conversion of transfer of money or assets for the purpose of concealing or disguising their illicit origin or assisting any person who is involved in the offence from which this money or these assets derive to evade the legal consequences of his actions;
- The acquisition, possession or use of money or assets known to be of illicit origin;

Voor meer informatie over uw dossier kunt u terecht bij:

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- Participation in, association to commit, attempts to commit and aiding, abetting facilitating and counseling the commission of any of the acts referred to in the foregoing three items.

Money laundering is a criminal offence pursuant to Article 505 of the CCP, which punishes the laundering of the proceeds of any predicate offence, tax offences included.

Terrorist financing means the provision or collection of funds by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, by a terrorist or a terrorist organization or in order to carry out one or more terrorist acts.

The origin of money or assets is illicit when derived from

1. An offence related to:
  - Terrorism of terrorist financing;
  - Organized crime;
  - Illicit trafficking in narcotics;
  - Illicit trafficking in weapons, goods and merchandise, including anti-personnel mines and/or submunitions;
  - Trafficking in illegal labor;
  - Trafficking in human beings;
  - Exploitation of prostitution;
  - Illicit use in animals of hormonal substances or illegal trade in such substances;
  - Illicit trafficking in human organs or tissues;
  - Fraud detrimental to the financial interests of the European Communities;
  - Serious fiscal fraud, whether organized or not;
  - Embezzlement by public officials and corruption;
  - Serious environmental crime;
  - Counterfeiting currency or bank notes;
  - Counterfeiting products;
  - Piracy
  
2. Stock market-related offences, an improper public offering of securities or the provision of investment, foreign exchange or fund transfer services without authorization;
  
3. Fraud, breach of trust, abuse of corporate assets, hostage-taking, theft or extortion, or an offence related to the state of bankruptcy.

#### **National prosecution and penalties regime**

Tax fraud is the violation of the tax law, fraudulently or with intent to harm (art. 449 ITC). Tax fraud is a criminal offense.

In the preparatory work on the Law of June 17 2013 on urgent anti-fraud provisions (House of Representatives - Doc 2763/001 53 - page 5) was determined that the seriousness of the infringement tax may be assessed by reference to the possible use of forged documents, the extent of the amount and unusual nature of that amount assessed on the operations or the financial position of the client, but also on the basis of the indicators mentioned in the royal Decree of June 3, 2007.

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The organized nature of the serious fraud is considered an aggravating circumstance, with a higher punishment. The organized nature of the fraud is defined as "the use of a structure which successive operations provided and / or the intervention of one or more intermediaries, which are either used complex mechanisms or procedures with an international dimension (even if they are used at national level ). The complex mechanisms are clear from the use of simulation mechanisms with the use of company structures or juridical structures."

Normal tax audits are performed by a subdivision of the Belgian Ministry of Finance. Tax fraud audits are performed by the Special Tax Inspectorate, also within the Belgian Ministry of Finance. When a public agent has reasonable suspicion that a case contains aspects of money laundering or financing of terrorism, then he is obliged to inform the Belgian Financial Intelligence Unit (FIU).

Criminal prosecution for tax fraud is treated differently than a tax audit by the Belgian Ministry of Finance. Aspects related to the prosecution and punishment of tax fraud are regulated by the Belgian Income Tax Code. The relationship between the Ministry of Finance (here within the Belgian Tax Administration) and the Public Prosecution Service is strictly regulated by this code. The Code of Criminal Procedure applies, without restrictions, to the prosecution of tax offences.

The Belgian criminal justice system curtails two stages; the pre-trial stage and the trial stage. The pre-trial stage is conducted by the Public Prosecutor or by the Investigating Judge and is inquisitorial. The trial stage is adversarial and is based on the investigating proceedings of the pre-trial stage.

The Public Prosecution Service has exclusive power to prosecute individuals and legal persons, whereof the criminal prosecution of offences of a financial nature, of which tax fraud is one, and has the exclusive responsibility to initiate a criminal procedure against a taxpayer.

Because of the Charter of Taxpayers, tax inspectors can only be questioned as witnesses and not as experts and therefore tax inspectors cannot take part in any criminal investigation. However, some officers of the Special Tax Inspectorate are granted the status of "Officer of the Judicial Police" and have been delegated to the Public Prosecution Service or the Federal Police. Their administrative investigate authority is therefore extended by adding criminal investigative powers.

The Public Prosecution Service can decide to prosecute on the basis of a complaint from a third party, an official police report or a report from the Belgian Ministry of Finance.

It is for a taxpayer possible to enter into a court settlement, under certain conditions, which allows to settle the matter by paying a sum of money (art. 216bis CCP).

Corporate entities can also be criminally liable for offences in the fields of tax fraud and money laundering (art. 5 Criminal Code).

The Belgian Tax Administration may inform the Public Prosecutor of facts which are punishable under the tax laws, only with the prior authorization of the Regional Director (Art. 29 §2, CCP). When a tax auditor suspects that there is a case of tax fraud, it can report, via a formal complaint or report, its suspicions to the Public Prosecutor after authorization by the Regional Director (Art. 460, §2 ITC). When thereafter the Public Prosecutor initiates a prosecution, he is allowed to ask for the opinion of the Regional Director (Art. 461, §1 ITC).

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Within the Tax Administration, an Anti-Fraud Coordination Service (AFCOS) is established that coordinates the cooperation between departments and institutions that are directly or indirectly charged with the fight against tax fraud, mainly the Public Prosecution service and the Belgian FIU. It is also the point of contact for *una via*. It is the single point of contact for the exchange of information with the FIU and has a role of compliance officer within the Belgian Tax Administration concerning anti-money laundering. This cooperation is established via a protocol between the Tax Administration and the FIU.

The Public Prosecution Service must also inform the Belgian Tax Administration via AFCOS of the elements indicating tax fraud that it may have encountered during the preliminary inquiry (art. 2 Complementary law of 28 April 1999). The Tax Administration can only have access to the files of a criminal case if formally authorized by the Federal Prosecutor or the Prosecutor-General (Art. 327, §2 ITC).

In line with the *una via* principle, an administrative procedure or a criminal procedure can be initiated. Guidelines to indicate in which cases criminal proceedings will be initiated suggest that relatively simple tax fraud files will be handled by the Tax Administration while serious and/or organized fraud and/or larger tax fraud files, requiring more substantial judicial resources, should be left to the Public Prosecutor.

The punishments that taxpayers can face are specified in Articles 449 to 456 ITC. The Financial Services and Markets Authority (FSMA), along with the National Bank of Belgium (NBB) is entrusted with the supervision of the Belgian financial sector.

#### **Handling Suspicious Transactions Reports**

From the public hearing of the Belgian FIU by the committee of Inquiry into money laundering, tax avoidance and tax evasion 14 November 2016:

The FIU, established by the Law of 11 January 1993, is a central part of the Belgian Anti Moneylaundering/Financing of Terrorism system. FIU is an independent administrative authority with legal personality, in charge of processing and forwarding information in order to combat money laundering and terrorist financing, including the financing of proliferation-sensitive activities or the delivery of nuclear weapon delivery systems.

FIU, composed of legal and financial experts and a senior officer seconded from the federal police, is placed under the supervision of the Ministers of Justice and Finance and led by a magistrate or his deputy temporarily seconded from the Public Prosecutor's Office. FIU's Bureau, composed of the President and the Vice President, organizes its activities. Its composition, organization, operation and independence are stipulated in the Royal Decree of 11 June 1993.

FIU is in charge of processing suspicious financial facts and transactions linked to money laundering and terrorist financing reported by institutions and individuals specified in the law (Law of 11 January 1993 on preventing use of the financial system for purpose of money laundering and terrorist financing).

If the matter is serious or urgent, FIU may, should such action be deemed necessary, freeze a transaction.

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FIU may request, not only from the institutions and individuals specified by the law, but also from the President of the bar association, the police services, the administrative services of the State, the trustees in and temporary administrators of a bankruptcy and the judicial authorities, any additional information it deems useful for accomplishing its mission, within the time period it determines.

Should the review of the information reveal a serious indication of money laundering or terrorist financing, including financing of proliferation sensitive nuclear activities or of the development of nuclear weapon delivery systems, this information is forwarded to the Public Prosecutor or to the Federal Public Prosecutor.

FIU receives suspicious transaction/activity reports from disclosing institutions on the basis of which an analysis can be started. FIU does not have the possibility to autonomously start an analysis or request information if no STR/SAR has been sent to our unit. The Panama Papers as such do not give FIU the possibility to make inquiries or start searching for financial/police/... information.

Serious tax fraud is one of the predicate offences within the competence of FIU. If it finds serious indications of money laundering related to serious tax fraud, the file will be forwarded to the law enforcement authorities. Other predicate offences within FIU's competence consist of e.g. illicit drug trafficking, organized crime, embezzlement and fraudulent bankruptcy.

When a file is forwarded to the law enforcement authorities because of serious indications of money laundering related to serious tax fraud, FIU must also inform the tax authorities, i.e. the AFCOS. This enhances the efficiency of treating serious tax crime files in stimulating the cooperation and coordination between tax and law enforcement authorities. FIU points out that forwarded files that are not handled on a law enforcement level, often lead to an additional taxation of the main subjects.

On the basis of an STR/SAR, FIU has the power to request information from the Belgian administrative and police services, and request additional information from all the disclosing entities (regardless of the fact whether they filed an STR/SAR or not) and send requests for information to counterpart FIUs, both European and non-European (on the basis of MOU).

Concerning files related to serious tax fraud, counterparties are the Belgian Ministry of Finance and the Customs and Excise Administration. The Belgian AFCOS acts here as a single point of contact for all questions concerning tax matters and centralizes answers and requests. Furthermore, a certain number of FIU personnel (including the Secretary General, the Head of the Analytical Department as well as analysts specialized in tax matters) has direct access (via a VPN) to a number of databases within the Ministry of Finance.

As to the Customs and Excise Administration, FIU has a Liaison Officer who has access to the databases from within the unit and who is regularly present in person to advise analysts in tax-related matters.

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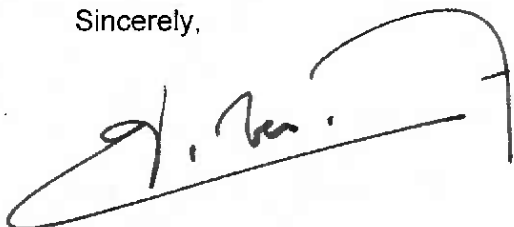
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**Bahama Leaks and Panama Papers**

116 offshore companies from the Bahama Leaks are linked to Belgium, of which 92 have an address in Belgium. The information derived from the Panama Papers is in investigation.

As of 14/12/2016, 174 files of the Panama Papers are in investigation by the Special Tax Inspection. 15 of them are completed.

Sincerely,



Johan Van Overtveldt

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