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BETREFF **Ermittlungen der Mitgliedstaaten bei Steuerflucht, Steuervermeidung, Steuerhinterziehung und Geldwäsche**

ANLAGEN 2

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(bei Antwort bitte GZ und DOK angeben)

Sehr geehrter Herr Dr. Langen,

vielen Dank für Ihr Schreiben vom 23. November 2016. Darin bitten Sie um Auskunft zu den deutschen Gegebenheiten und der Struktur der Behörden, die in der Bundesrepublik Deutschland gegen Steuervermeidung und Steuerhinterziehung und zur Bekämpfung von Geldwäsche vorgehen. In der beigefügten Stellungnahme finden Sie die Antworten auf Ihre Fragen.

Mit freundlichen Grüßen

W. Schäuble

Annex 1

Answer to question 1

Legal definition of administrative and criminal tax-related offences
Under section 370(1) of the Fiscal Code (*Abgabenordnung*), the evasion of taxes is a tax crime punishable by up to five years' imprisonment or a monetary fine. In particularly serious cases, a penalty of between six months and ten years' imprisonment is imposed. The attempt to perpetrate tax evasion is punishable under section 370(2) of the Fiscal Code.

Under section 370(1) of the Fiscal Code, any person who deliberately furnishes the revenue authorities or other authorities with incorrect or incomplete particulars concerning matters of substantial significance for taxation or who fails to inform the revenue authorities of facts of substantial significance for taxation when obliged to do so and as a result understates taxes or derives unwarranted tax advantages for himself/herself or for another person is deemed to have committed tax evasion.

In Germany, it is mandatory to prosecute tax crimes (legality principle).

Any taxpayer or person looking after the affairs of a taxpayer who recklessly commits one of the acts described in section 370(1) of the Fiscal Code is deemed to have committed an administrative offence.

The German Fiscal Code contains the following provisions on monetary penalties and fines, which can be found in Annex 2:

Section 369 - Tax crimes
Section 370 - Tax evasion
Section 371 - Voluntary disclosure of tax evasion
Section 372 - Illegal import, export or transit of goods
Section 373 - Professional, violent or organised smuggling
Section 374 - Receiving, holding or selling goods obtained by tax evasion
Section 375 - Incidental consequences
Section 376 - Limitation period for prosecution
Section 377 - Tax-related administrative offences
Section 378 - Reckless understatement of tax
Section 379 - General minor tax fraud
Section 380 - Endangerment of withholding taxes
Section 381 - Endangerment of excise tax

Section 382 - Endangerment of import and export duties
Section 383 - Unauthorised acquisition of claims to a tax refund and rebate
Section 383a - Illicit use of the identifier pursuant to section 139a

Legal definition of money laundering and tax-related administrative offences
The definition of money laundering under criminal law is provided in section 261 of the German Criminal Code (*Strafgesetzbuch*). The liability of legal persons for money laundering and other criminal offences is set out in sections 30 and 130 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*). A translation of these provisions can be found in Annex 2.

Answer to question 2

Authorities responsible for the prosecution of tax crimes and tax-related administrative offences and their powers

Where responsibility does not lie with the public prosecution office, the offices for administrative fines and criminal matters of the (*Länder*) tax offices are responsible for investigating and prosecuting tax crimes and tax-related administrative offences. They make decisions on initiating or terminating criminal tax or administrative fine proceedings and have the power to request penalty orders, hand criminal matters over to the public prosecution office, and issue penalty notices.

The office's powers depend on whether it takes action as a dependent entity on behalf of the public prosecution office (sections 386(1), 386(3), and 386(4), second sentence, of the Fiscal Code) or whether it conducts the investigation independently (sections 386(2) and 386(4), third sentence, of the Fiscal Code).

If it is conducting an investigation independently on the basis of section 386(2) of the Fiscal Code, the office for administrative fines and criminal matters has the same rights and obligations as the public prosecution office has in an investigation (section 399(1) of the Fiscal Code).

In criminal tax proceedings, tax investigation units have the same rights and obligations as police officers according to the Code of Criminal Procedure (section 404, first sentence, of the Fiscal Code). Their officers are investigators of the public prosecution office (section 404, second sentence, of the Fiscal Code). The tax investigation unit has the same powers regardless of whether the investigation is being carried out independently by the office for

administrative fines and criminal matters or whether it is being headed by the public prosecution office.

Below is a table setting out the number of officials who work in tax investigation units and offices for administrative fines and criminal matters across Germany:

Year	Officials working in tax investigation units	Officials working in offices for administrative fines and criminal matters
2011	2,371	996
2012	2,361	998
2013	2,383	1,015
2014	2,409	1,054
2015	2,467	1,061

Unit responsible for the prosecution and prevention of serious customs crime and organised customs crime

The Customs Criminological Office (*Zollkriminalamt*) is Directorate VIII of the Central Customs Authority (a higher federal authority). It operates within the remit of the Federal Finance Ministry and is home to Germany's customs investigation service, the main task of which is to prosecute and prevent serious customs crime and organised customs crime. The Customs Criminological Office supports the customs administration in safeguarding tax revenue (e.g. customs duties and excise duties), monitoring Community expenditure (e.g. export subsidies), carrying out checks on foreign trade (e.g. compliance with embargoes), and uncovering breaches of prohibitions and restrictions, among other things.

It is in charge of eight customs investigation offices with a total of 24 field offices. In addition, there are 15 joint police/customs financial investigation groups as well as a "federal" joint investigation group in Wiesbaden consisting of the Federal Criminal Police Office and the Customs Criminological Office. Their organisational structure as joint police/customs financial investigation groups (at both the *Länder* level and the federal level) ensures quick and direct information-sharing between the authorities involved based on legal and contractual provisions. Moreover, the joint police/customs financial investigation groups also work together with the *Land* revenue authorities. This allows *Land* revenue authorities to initiate criminal tax proceedings and assess taxes ex post when relevant information has been forwarded by a joint group. As of March 2016, the joint police/customs financial investigation groups had 78 members of staff on the customs side. Financial investigations aimed at confiscating or seizing criminal assets are conducted by special sections within the customs

investigation offices, independently of the activities of the joint police/customs financial investigation groups.

The Customs Criminological Office does not maintain statistics on the number of suspicious transaction reports filed by obliged entities under the Money Laundering Act (in particular banks, professional services, authorities, and certain professions in the non-financial sector).

In addition to suspicious transaction reports under the Money Laundering Act, the Financial Intelligence Unit (FIU) receives notifications of potential money laundering or terrorism financing from revenue authorities under section 31b of the Fiscal Code. In 2015, revenue authorities transmitted a total of 248 such notifications to the FIU.

FIU

Germany's FIU has police powers and is part of the Federal Criminal Police Office. Its responsibilities are set out in section 10 of the Money Laundering Act. They include collecting, analysing and enhancing suspicious transaction reports, notifying federal and *Länder* prosecution authorities of any information concerning them and of any connections identified between criminal offences, and keeping statistics regarding the numbers and information referred to in Article 33(2) of Directive 2005/60/EC. The FIU also drafts and publishes an annual report and regularly informs the institutions and persons subject to reporting obligations under the Money Laundering Act of the typologies and methods of money laundering and terrorist financing. In addition, the FIU cooperates with other countries' financial intelligence units responsible for the prevention and prosecution of money laundering and terrorist financing.

To fulfil its statutory functions, Germany's FIU works together with all the authorities involved in preventing and investigating money-laundering and terrorist-financing offences. In particular, this includes the law enforcement authorities responsible (joint financial investigation group of the *Länder*), those subject to reporting obligations under the Money Laundering Act and their supervisory authorities. In addition, the FIU works together with tax authorities and intelligence services when necessary.

Germany's FIU is legally responsible for analysing suspicious transaction reports in cooperation with the joint financial investigation groups of the *Länder*. In total, 309 employees are involved in these activities across all authorities (as of 18 April 2016). It is worth noting that 84 of these employees work in the areas of customs and tax investigation. The idea is to ensure that tax aspects are adequately taken into account when analysing suspicious transaction reports in the area of money laundering. In 2015, a total of 29,108 suspicious transaction reports were transmitted to the FIU under the Money Laundering Act.

Germany's FIU regularly participates in public events, meetings involving multiple authorities (such as the forum for the prevention of money laundering and terrorist financing and the conference of heads of financial investigation units of the Federation and the *Länder*) as well as international bodies (FIU Platform, Egmont Group, FATF) so as to communicate the insights gained in analysing suspicious transaction reports to the authorities responsible for preventing and combating money laundering and terrorist financing. New trends and methods used in money laundering and terrorist financing are also described in the annual report and in newsletters focusing on specific topics. This ensures that the authorities involved have all the up-to-date information they need to complete their tasks in an efficient manner.

In cooperation with the tax investigation units, which are responsible for dealing with tax-related offences, the FIU successfully investigated several particularly serious cases of money laundering in conjunction with tax evasion in the past. These investigations dealt with what is known as VAT carousel fraud. Millions of euros worth of assets were secured, and the perpetrators were sentenced to lengthy prison terms.

Answer to question 3

Information about proceedings for tax crimes or tax-related administrative offences; statistics on the prosecution of tax crimes and tax-related administrative offences
Tax investigation units brought a total of 36,708 cases to conclusion across Germany in 2015. The additional tax revenue determined amounted to €3bn, and prison sentences of 1,728 years in total were imposed.

The investigation units of the *Länder* mainly conduct tax-investigation audits. The following table shows trends in the number of tax investigation cases since 2011.

Year	Total number of cases	Tax-investigation audits conducted	Requests for administrative and legal assistance executed
2011	35,592	27,695	7,897
2012	31,655	23,803	7,852
2013	34,183	24,675	9,508
2014	40,241	30,024	10,217
2015	36,708	27,200	9,508

The following table shows the additional tax revenue determined between 2011 and 2015 as a result of tax investigation activities. The amounts given for the years from 2011–2013 are definitive and include all the results of tax investigation activities that were used for tax assessment, regardless of whether they were also used in sentencing. The statistics provided

for the years from 2014 onwards were determined on a provisional basis. These provisional results allow an accrual-based presentation with regard to the tax-investigation audits concluded during the year. The statistics from 2015 onwards include (in the form of a total amount) income or expenditure arising from interest accrual on tax deficiencies and tax refunds under section 233a of the Fiscal Code.

Year	Additional tax revenue*) in €m
2011	2,228.6
2012	3,079.6
2013	2,051.2
2014	2,451.2
2015	3,025.3

*) 2011–2013: definitive amounts; 2014 onwards: provisionally determined amounts

In certain cases, the public prosecution office may, with the consent of the court responsible, dispense with public charges and impose the payment of a sum of money as a condition upon the accused (section 153a of the Code of Criminal Procedure (*Strafprozessordnung*, StPO)). Reckless violations of tax laws are subject to regulatory fines under the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*). The following table gives an overview of the total monetary penalties, sums of money (under section 153a of the Code of Criminal Procedure), and regulatory fines imposed:

Year	Monetary penalties in €m	Sums of money (section 153a StPO) in €m	Regulatory fines in €m
2011	28.9	31.7	11.3
2012	32.5	35.5	53.1
2013	23.9	68.1	1.3
2014	25.3	45.0	39.2
2015	26.2	62.0	38.3

The offices for administrative fines and criminal matters of the tax offices processed more than 83,000 criminal proceedings for tax crimes across Germany in 2015. They also brought about 4,855 administrative fine proceedings to conclusion nationwide. In total, 3,063 official demands for payment of a fine were issued by tax offices, and administrative fines totalling over €45 million were imposed. In a further 37 cases, fines were set by the courts.

The following table shows the number of criminal and administrative fine proceedings concluded by the offices for administrative fines and criminal matters, the number of demands for payment of a fine issued, and the amounts of the fines imposed between 2011 and 2015:

Year	Concluded criminal proceedings	Concluded administrative fine proceedings	Demands for payment of a fine	Fines in €m
2011	79,225	4,314	2,880	55.5
2012	69,474	4,479	2,980	11.0
2013	80,227	4,243	2,779	6.8
2014	89,447	4,282	2,833	12.5
2015	83,307	4,855	3,063	45.0

Panama Papers investigations

As a general point, it is worth noting that the Panama Papers are being evaluated by the prosecution authorities of the *Länder*. The investigations are still in their early stages, as they are highly complex and the progress made varies depending on the circumstances of the specific case in question.

Following the publication of the Panama Papers in early April 2016, there were media reports later that month stating that all the documents would be published online in May 2016. This claim was made in the following article, to give just one example (in German):

http://www.zeit.de/news/2016-04/27/deutschland-panama-papers-werden-im-mai-komplett-veroeffentlicht-27164209

In fact, however, not all the data were made available, as was reported in the following article (in German):

http://www.faz.net/aktuell/wirtschaft/panama-papers/panama-papers-journalistenkonsortium-stellt-rohdaten-online-14223913.html

The information published relates only to the first shareholder level. In cases where the shareholders in question are shell companies or nominees, the information does not necessarily provide a link to Germany or allow identification of the true beneficial owner.

The evaluation of the documents published on 9 May 2016 produced about 380 cases involving Germany. These have been forwarded to the tax offices responsible. No information is available on the status of each individual investigation.

Germany has responded to the Panama Papers by drafting legislation to combat tax evasion (*Steuerumgehungsbekämpfungsgesetz*, bill of 30 December 2016). The aim of the bill is to give revenue authorities better ways of identifying cases where illegal domiciliary companies that serve no actual function are founded or administered. In most cases, these companies are located abroad.

The public prosecution offices of the *Länder* are responsible for investigating and prosecuting cases of money laundering. Statistical data concerning tax-related money laundering offences are not available. In 2014, a total of 31,637 investigations concerning the offence of money laundering under section 261 of the German Criminal Code were completed by the public prosecution offices. Statistical data show 781 convictions of money laundering under section 261 of the German Criminal Code in 2014. However, it is important to note that the statistical data only refer to the most severe offence within each conviction. Therefore, the actual number of convictions involving money laundering can be higher, as they are often related to other offences.

<u>AML/CFT regulatory environment and role of the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin)</u>

One of the main challenges obliged persons and entities (e.g. banks and insurance companies) face in the context of implementing their AML/CFT obligations, in particular with regard to customers who are legal persons, is to establish the identity of the beneficial owner. Under the Money Laundering Act (*Geldwäschegesetz*, GwG), which implements Directive 2005/60/EC into national law, obliged entities are required as part of their customer due diligence (CDD) to identify, where applicable, the beneficial owner of the customer and to take risk-based measures in order to verify his or her identity, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer.

In addition, German banks and their branches and subsidiaries both at home and abroad have been required since 2008 to have in place single group-wide AML/CFT policies, including CDD regarding the beneficial owner (under section 25l of the German Banking Act (*Kreditwesengesetz*, KWG) in conjunction with sections 3(1)(3) and 4(5) of the German Money Laundering Act).

The implementation of these and other legal requirements of the Money Laundering Act by banks (in particular those operating internationally) is reviewed annually by external auditors

in connection with the annual audit of the bank and as part of their audit opinion as well as in the context of targeted audits by BaFin employees or external auditors on behalf of BaFin. If BaFin becomes aware of criminal activities as a result of these audits, it will immediately inform the relevant law enforcement authorities and the Financial Intelligence Unit (FIU) in case of suspicious transactions or activities. Irrespective of that, BaFin can make use of any supervisory measure contained in the Banking Act or the Money Laundering Act in such cases.

BaFin is the sole competent AML/CFT supervisory authority in the financial sector in Germany. Under the German Money Laundering Act, BaFin's supervision aimed at preventing money laundering and terrorist financing is systemic; BaFin is not in charge of ex post supervision of single transactions or the prior authorisation of such transactions, which is neither provided for by the Money Laundering Act nor necessary nor feasible, even on an approximate basis, due to the tremendous number of transactions in practice.

Supervisory action by BaFin following the Panama Papers allegations consisted of off-site reviews in the form of letters to 14 banks which were mentioned by name in newspaper articles written by the ICIJ journalists (ICIJ = International Consortium of Investigative Journalists) in April 2016. Eleven of these banks could not exclude the possibility that they or institutions belonging to their group had contacts to the law firm Mossack Fonseca or referred customers to the law firm Mossack Fonseca.

These eleven banks were requested in May 2016 to provide all documents relating to contacts or business relationships entertained by them or institutions belonging to their group of institutions

- with the law firm Mossack Fonseca,
- with companies and foundations incorporated in Panama or in other countries with the involvement of the law firm Mossack Fonseca, or
- with companies or foundations incorporated or domiciled in Panama

where these business relationship existed between 1 January 2010 and 31 March 2016. Furthermore, these banks were asked to compare the names of their customers with the database published by the ICIJ on the Internet and to submit any relevant documentation in case of a hit. The requested documentation has been delivered by the banks with a high data volume (around 600 gigabytes).

In some cases, banks were not permitted to produce or submit client and bank employee information and documentation because of national criminal or data protection law provisions. For this reason, BaFin sent cooperation requests to ten supervisory authorities of EU Member States in order to obtain information about several foreign subsidiaries and branches of German banks. The authorities were requested to forward a letter to several

branches and subsidiaries of German banks and to pass the answers and documents received on to BaFin. Six supervisory authorities have not yet provided any information. Additionally, the supervisory authority of a third country was contacted as well. In this country, an onsite visit with access to a limited number of a random sample of documents has been granted by the authority. BaFin is in the process of preparing this onsite visit.

In light of the high data volume submitted by the banks, BaFin needs support to scrutinise the documentation. To this end, it published a public, European-wide tender online in December 2016. The focus of the scrutiny will be on compliance with national AML rules, especially group-wide compliance with due diligence standards, the know your customer (KYC) process and beneficial ownership. BaFin will not have any results or a report available prior to spring 2017.

Annex 2

- The Fiscal Code of Germany -

Section 369 – Tax crimes

(1) The following shall be tax crimes (customs crimes):

1. acts which are punishable under the tax laws,
2. the illegal import, export or transit of goods,
3. the forging of revenue stamps or acts preparatory thereto, insofar as the act relates to tax stamps,
4. aiding and abetting a person who has committed an act under numbers 1 to 3 above.

(2) Tax crimes shall be subject to the general provisions of criminal law unless otherwise provided for by the tax laws' provisions on crime.

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.

Section 371 – Voluntary disclosure of tax evasion
(1) Whoever, in relation to all tax crimes for a type of tax, fully corrects the incorrect particulars submitted to the revenue authority, supplements the incomplete particulars submitted to the revenue authority or furnishes the revenue authority with the previously omitted particulars shall not be punished pursuant to section 370 on account of these tax crimes. The information provided must cover all tax crimes for one type of tax that have not become time-barred, and at least all tax crimes for one type of tax within the last 10 calendar years.
(2) Exemption from punishment shall not apply if,

1. prior to the correction, supplementation or subsequent furnishing of particulars in connection with voluntarily disclosed tax crimes that have not become time-barred,

    a) the person involved in the act, his representative, the beneficiary as referred to in section 370(1), or the beneficiary's representative has been notified of an audit order in accordance with section 196, limited to the material and temporal scope of the ordered external audit, or
    b) the person involved in the act or his representative has been notified of the initiation of criminal proceedings or administrative fine proceedings, or
    c) a public official from the revenue authority has already appeared for the purpose of carrying out a tax audit, limited to the material and temporal scope of the external audit, or
    d) a public official has already appeared for the purpose of investigating a tax

crime or tax-related administrative offence, or

e) a public official from the revenue authority has already appeared and provided proof of identity for the purpose of conducting a VAT inspection in accordance with section 27b of the VAT Act, a wages tax inspection in accordance with section 42g of the Income Tax Act or an inspection in accordance with other tax law provisions, or

2. one of the tax crimes had already been fully or partially detected at the time of the correction, supplementation or subsequent furnishing of particulars and the perpetrator knew this or should have expected this upon due consideration of the facts of the case,

3. the tax understated pursuant to section 370(1) or the unwarranted tax advantage derived by someone for himself or for another person exceeds the amount of 25,000 euros per act, or

4. a particularly serious case exists as specified in section 370(3), second sentence, numbers 2 to 5.

In the event that exemption from punishment is ruled out in accordance with the first sentence, numbers 1a) and 1c) above, this shall not preclude the submission of a correction in accordance with subsection (1) above in connection with tax crimes for one type of tax that do not fall under the scope of the first sentence, numbers 1a) and 1c) above.

(2a) Insofar as tax evasion has been committed by breaching the obligation to submit a complete and accurate provisional VAT return or wages tax return on time, exemption from punishment shall apply, notwithstanding subsection (1) and subsection (2), first sentence, number 3 above, if the perpetrator corrects the incorrect particulars submitted to the competent revenue authority, supplements the incomplete particulars submitted to the competent revenue authority, or furnishes the competent revenue authority with the previously omitted particulars. Subsection (2), first sentence, number 2 above shall not apply if the act was detected upon the discovery that a provisional VAT return or wages tax return was corrected or submitted late. The first and second sentences above shall not apply to tax returns relating to the calendar year. In order for a voluntary disclosure relating to a tax return for a particular calendar year to be deemed complete, it shall not be compulsory to correct, supplement or subsequently furnish particulars for provisional returns concerning time periods following that calendar year.

(3) Where tax has already been understated or tax advantages have already been derived, exemption from punishment shall be granted to the person involved in the act only if he pays, within the reasonable period of time allowed to him, the taxes which were evaded to his benefit through the perpetration of the act, the interest payable on the evaded taxes in accordance with section 235, and the interest payable under section 233a insofar as such interest is charged on the interest payable on the evaded taxes in accordance with section 235(4). In cases covered by the first sentence of subsection (2a) above, the first

sentence above shall apply with the proviso that the timely payment of interest in accordance with section 233a or section 235 is immaterial.

(4) Where the notification provided for in section 153 is punctually and duly filed, a third party who failed to make the statements referred to in section 153 or who made such statements incorrectly or incompletely shall not be prosecuted unless he or his representative was previously notified of the initiation of criminal or administrative fine proceedings resulting from the act. Subsection (3) above shall apply accordingly where the third party has acted for his own benefit.

Section 372 – Illegal import, export or transit of goods

(1) Whoever imports, exports or transports goods in violation of a prohibition shall be deemed to have illegally imported, exported or transported goods.

(2) The perpetrator shall be punished pursuant to section 370(1) and (2) where the act is not subject to punishment or a monetary fine as a violation of import, export, or transit prohibitions pursuant to other provisions.

Section 373 – Professional, violent or organised smuggling

(1) Whoever evades import or export duties on a commercial basis or who illegally imports, exports or transports goods on a commercial basis in contravention of monopoly regulations shall be subject to imprisonment of from six months up to 10 years. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine.

(2) Punishment shall also be imposed on any person who

1. evades import or export duties or illegally imports, exports or transports goods, and in committing these acts he or another participant carries a firearm,
2. evades import or export duties or illegally imports, exports or transports goods, and in committing these acts he or another participant carries with him a weapon or some other tool or means to prevent or overcome the resistance of another person by violence or by the threat of violence, or
3. as a member of a group formed for the purpose of repeatedly evading import or export duties or of illegally importing, exporting or transporting goods, commits such an act.

(3) Attempted perpetration shall be punishable.

(4) Section 370(6), first sentence, and (7) shall apply accordingly.

Section 374 – Receiving, holding or selling goods obtained by tax evasion

(1) Whoever purchases or otherwise acquires for himself or for a third party, or sells, or helps

to sell with the aim or enriching himself or a third party products or goods in connection with which excise duties or import duties and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code have been evaded or the illegal import, export or transit of goods pursuant to section 372(2) and section 373 has been committed, shall be punishable by imprisonment for up to five years or a monetary fine.

(2) Where the perpetrator acts commercially or as a member of a group formed for the purpose of repeatedly committing crimes pursuant to subsection (1) above, a penalty of between six months and ten year's imprisonment shall be imposed. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine.

(3) Attempted perpetration shall be punishable.

(4) Section 370(6) and (7) shall apply accordingly.

Section 375 – Incidental consequences
(1) In addition to at least one year's imprisonment for

1. tax evasion,
2. illegally importing, exporting or transporting goods pursuant to section 372(2), section 373,
3. receiving, holding or selling goods obtained by tax evasion, or
4. aiding and abetting a person who has committed an act under numbers 1 to 3 above, the court may disqualify someone from holding public office and acquiring rights from public elections (section 45(2) of the Criminal Code).

(2) Where tax has been evaded, goods illegally imported, exported or transported pursuant to section 372(2), section 373 or goods acquired by tax evasion received, held or sold,

1. the produce, goods and other items to which the evasion of excise duties or import and export duties within the meaning or Article 4 numbers 10 and 11 of the Customs Code, the illegal import, export or transport of goods, or the receiving, holding or selling of goods obtained by tax evasion, relate, and
2. the means of transport used in the act, may be confiscated. Section 74a of the Criminal Code shall be applied.

Section 376 – Limitation period for prosecution
(1) In the cases of particularly serious tax evasion referred to in section 370(3), second sentence, numbers 1 to 5, the limitation period shall be 10 years.

(2) The limitation period for the prosecution of a tax crime shall also be interrupted where the accused is notified of the initiation of administrative fine proceedings or this notification is

ordered.

Section 377 – Tax-related administrative offences

(1) Tax-related administrative offences (customs-related administrative offences) shall be offences which under the tax laws may be punished by monetary fine.

(2) The provisions of the first part of the Act on Administrative Offences shall apply to taxrelated administrative offences insofar as the tax law provisions on administrative fines do not provide otherwise.

Section 378 – Reckless understatement of tax

(1) Whoever as a taxpayer or a person looking after the affairs of a taxpayer recklessly commits one of the acts described in section 370(1) shall be deemed to have committed an administrative offence. Section 370(4) to (7) shall apply accordingly.

(2) The administrative offence may be punished with a monetary fine of up to 50,000 euros.

(3) A monetary fine shall not be set insofar as the perpetrator corrects the incorrect particulars submitted to the revenue authority, supplements the incomplete particulars submitted to the revenue authority, or furnishes the revenue authority with the previously omitted particulars before he or his representative has been notified of the initiation of criminal or administrative fine proceedings resulting from the act. Where tax has already been understated or tax advantages have already been derived, a monetary fine shall not be set if the perpetrator pays, within the reasonable period of time allowed to him, the taxes that were understated to his benefit on the basis of this act. Section 371(4) shall apply accordingly.

Section 379 – General minor tax fraud

(1) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly

1. issues documents which are factually incorrect,
2. places documents into circulation for a fee or
3. fails to record or to have recorded, or incorrectly records or has recorded, transactions or business activity which according to the law must be entered in the accounts or otherwise recorded and in so doing enables taxes to be understated or unwarranted tax advantages to be derived.

The first sentence, number 1 above shall also apply where import or export duties which are administered by another Member State of the European Union or to which a State, which on the basis of an association agreement or preferential agreement grants preferential treatment to goods deriving from the European Union, is entitled can be understated; section 370(7) shall apply accordingly. The same shall apply where the act relates to valued-added taxes

which are administered by another Member State of the European Union.

(2) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly

1. fails to comply at all, in full or in time with the obligation to disclose pursuant to section 138(2),

1a. fails to prepare a record at all, correctly, or completely, in violation of section 144(1) or (2), first sentence, in conjunction with section 144(5),

1b. contravenes an ordinance pursuant to section 177c(1) or an enforceable order based on such an ordinance, insofar as the ordinance refers to this provision on fines for a specified offence,

2. breaches the obligation regarding the authenticity of accounts pursuant to section 154(1).

(3) An administrative offence shall be deemed to be committed by any person who intentionally or negligently contravenes a condition pursuant to section 120(2) number 4 to which an administrative act has been attached for the purposes of special fiscal supervision (sections 209 to 217).

(4) The administrative offence may be punished with a monetary fine of up to 5,000 euros where the action cannot be punished pursuant to section 378.

Section 380 – Endangerment of withholding taxes

(1) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly fails to comply at all, in full or in time with his obligation to withhold or remit to revenue authorities tax-deductible amounts which are due.

(2) The administrative offence may be punished with a monetary fine of up to 25,000 euros where the action cannot be punished pursuant to section 378.

Section 381 – Endangerment of excise tax

(1) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly contravenes the provisions of excise laws or the ordinances issued in connection therewith

1. on the obligations regarding the preparation, safeguarding or subsequent auditing of taxation,

2. on the packaging and labelling of products subject to excise duty or goods containing such products, or on the restrictions on trade or use for such products or goods, or

3. on the use of untaxed goods in free ports

insofar as excise laws or the ordinances issued in connection therewith refer to this provision on fines for a specified offence.

(2) The administrative offence may be punished with a monetary fine of up to 5,000 euros where the action cannot be punished pursuant to section 378.

Section 382 – Endangerment of import and export duties

(1) An administrative offence shall be deemed to be committed by any person who, as the liable party or the person looking after the affairs of a liable party, intentionally or negligently contravenes customs regulations, ordinances issued in connection therewith or Regulations of the Council of the European Union or the European Commission which apply

1. to the recording by customs of the movement of goods across the frontiers of the customs territory of the European Communities as well as across the free zone borders,
2. to the placement of goods under a customs procedure and the implementation thereof or to obtaining another customs-approved treatment or use of goods,
3. to the free zones, border areas and territories subject to border surveillance insofar as such customs regulations or ordinances issued in connection therewith or issued on the basis of subsection (4) below refer to this provision on fines for a specified offence.

(2) Subsection (1) above shall also be applied where the customs regulations and the ordinances issued in connection therewith apply *mutatis mutandis* to excise duties.

(3) The administrative offence may be punished with a monetary fine of up to 5,000 euros where the action cannot be punished pursuant to section 378.

(4) The Federal Ministry of Finance may, by way of ordinance, specify the elements of offences contained in Regulations of the Council of the European Union or the European Commission which may be punished pursuant to subsections (1) to (3) above as administrative offences subject to a monetary fine insofar as this is necessary for the implementation of these laws and insofar as such elements concern obligations regarding the presentation, storage or treatment of goods, the submission of declarations or notifications, the keeping of written records, or the completion or submission of customs documents or the inclusion of notes in such documents.

Section 383 – Unauthorised acquisition of claims to a tax refund and rebate

(1) An administrative offence shall be deemed to be committed by any person who, in breach of section 46(4), first sentence, acquires claims to refunds or rebates.

(2) The administrative offence may be punished with a monetary fine of up to 50,000 euros.

Section 383a – Illicit use of the identifier pursuant to section 139a

(1) An administrative offence shall be deemed to be committed by any person who, as a nonpublic entity, intentionally or recklessly in breach of section 139b(2), second sentence, number 1, and section 139c(2), second sentence, collects or uses the identification number pursuant to section 139b or the business identification number pursuant to section 139c(3) for purposes other than those permitted, or who in breach of section 139b(2), second sentence, number 2, organises his files using the identification number or makes his files accessible for purposes other than those permitted.

(2) The administrative offence may be punished with a monetary fine of up to 10,000 euros.

– German Criminal Code –

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, or
3. is liable because of his participation in the antecedent act

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

Exemption from liability under sentence 1 No 3 shall not apply where the perpetrator or the accomplice brings in circulation an object deriving from an unlawful act listed in subsection (1) sentence 2 and thereby conceals its unlawful origin.

– Act on Regulatory Offences –

Section 30 - Regulatory Fine Imposed on Legal Persons and on Associations of Persons

(1) Where someone acting

1. as an entity authorised to represent a legal person or as a member of such an entity,
2. as chairman of the executive committee of an association without legal capacity or as a member of such committee,
3. as a partner authorised to represent a partnership with legal capacity, or
4. as the authorised representative with full power of attorney or in a managerial position as procura-holder or the authorised representative with a commercial power of attorney of a legal person or of an association of persons referred to in numbers 2 or 3,
5. as another person responsible on behalf of the management of the operation or enterprise forming part of a legal person, or of an association of persons referred to in numbers 2 or 3, also covering supervision of the conduct of business or other exercise of controlling powers in a managerial position,

has committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person or on the association of persons have been violated, or where the legal person or the association of persons has been enriched or was intended to be enriched, a regulatory fine may be imposed on such person or association.

(2) The regulatory fine shall amount

1. in the case of a criminal offence committed with intent, to not more than ten million Euros,
2. in the case of a criminal offence committed negligently, to not more than five million Euros.

Where there has been commission of a regulatory offence, the maximum regulatory fine that can be imposed shall be determined by the maximum regulatory fine imposable for the regulatory offence concerned. If the Act refers to this provision, the maximum amount of the regulatory fine in accordance with the second sentence shall be multiplied by ten for the offences referred to in the Act. The second sentence shall also apply where there has been commission of an act simultaneously constituting a criminal offence and a regulatory offence, provided that the maximum regulatory fine imposable for the regulatory offence exceeds the maximum pursuant to the first sentence.

(2a) In the event of a universal succession or of a partial universal succession by means of splitting (section 123 subsection 1 of the Reorganisation Act [Umwandlungsgesetz]), the regulatory fine in accordance with subsections 1 and 2 may be imposed on the legal

successor(s). In such cases, the regulatory fine may not exceed the value of the assets which have been assumed, as well as the amount of the regulatory fine which is suitable against the legal successor. The legal successor(s) shall take up the procedural position in the regulatory fine proceedings in which the legal predecessor was at the time when the legal succession became effective.

(3) Section 17 subsection 4 and section 18 shall apply mutatis mutandis.

(4) If criminal proceedings or regulatory fining proceedings are not commenced on account of the criminal offence or of the regulatory offence, or if such proceedings are discontinued, or if imposition of a criminal penalty is dispensed with, the regulatory fine may be assessed independently. Statutory provision may be made to the effect that a regulatory fine may be imposed in its own right in further cases as well. Independent assessment of a regulatory fine against the legal person or association of persons shall however be precluded where the criminal offence or the regulatory offence cannot be prosecuted for legal reasons; section 33 subsection 1 second sentence shall remain unaffected.

(5) Assessment of a regulatory fine incurred by the legal person or association of persons shall, in respect of one and the same offence, preclude a forfeiture order, pursuant to sections 73 or 73a of the Penal Code or pursuant to section 29a, against such person or association of persons.

(6) On issuance of a regulatory fining notice, in order to secure the regulatory fine, section 111d subsection 1 second sentence of the Code of Criminal Procedure shall be applied on proviso that the judgment is substituted by the regulatory fining notice.

Section 130

(1) Whoever, as the owner of an operation or undertaking, intentionally or negligently omits to take the supervisory measures required to prevent contraventions, within the operation or undertaking, of duties incumbent on the owner and the violation of which carries a criminal penalty or a regulatory fine, shall be deemed to have committed a regulatory offence in a case where such contravention has been committed as would have been prevented, or made much more difficult, if there had been proper supervision. The required supervisory measures shall also comprise appointment, careful selection and surveillance of supervisory personnel.

(2) An operation or undertaking within the meaning of subsection 1 shall include a public enterprise.

(3) Where the breach of duty carries a criminal penalty, the regulatory offence may carry a regulatory fine not exceeding one million Euros. Section 30 subsection 2 third sentence shall be applicable. Where the breach of duty carries a regulatory fine, the maximum regulatory fine for breach of the duty of supervision shall be determined by the maximum regulatory fine imposable for the breach of duty. The third sentence shall also apply in the case of a breach of duty carrying simultaneously a criminal penalty and a regulatory fine, provided that the maximum regulatory fine imposable for the breach of duty exceeds the maximum pursuant to the first sentence.