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Dr. Werner Langen

Dr Werner Langen
PANA Committee Chair
European Parliament
Bât. Altiero Spinelli
60 rue Wiertz / Wiertzstraat 60
B-1047 - Bruxelles/Brussels
Belgium

Dear Dr Langen,

Please find attached Ireland's response to your information request in relation to matters of interest to the PANA Committee dated 23 November 2016.

Yours sincerely,

Michael Noonan T.D.
Minister for Finance

Ireland Response to European Parliament PANA Committee Request for Information

- 1. The legal definitions of money laundering at both the individual and corporate levels, as well as the references to the national laws underpinning these definitions, as appropriate.**

Money Laundering is a criminal offence in Ireland, under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended, and is covered by Part 2 of the Act titled "*Money Laundering Offences*" (Sections 6 to 16). Section 7 which deals with "*Money laundering occurring in State*" states in subsection (1);

"7.— (1) A person commits an offence if—

(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;

(ii) converting, transferring, handling, acquiring, possessing or using the property;

(iii) removing the property from, or bringing the property into, the State,

and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct."

By statutory rule of interpretation the word 'person', used in any offence provision on the Irish Statute book, extends to corporate persons.

Section 18(c) of the Interpretation Act, 2005 provides that the term "*'Person' shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual*".

Section 7(2) Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides for the offence of attempting to commit a money laundering offence within the State.

Section 8 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides for the offence of attempting to commit a money laundering offence outside the State in certain circumstances, e.g. if the conduct takes place on board an Irish ship.

Section 9 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 covers person who attempt, in a place outside the State to commit an offence under Section 7(1).

Section 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 deals with aiding, abetting, counselling or procuring the commission of an indictable offence outside the State.

Section 7(1) of the Criminal Law Act 1997 deals with aiding, abetting, counselling or procuring the commission of an indictable offence which includes a money laundering offence.

Section 111 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides for the liability for offences by a body corporate and states that any person (i.e. director, manager, secretary or

other officer) is also guilty of an offence if proved to have been committed with the consent, or to be attributable to, any neglect on the part of any of these persons.

- 2. The names, mission statements and powers of the entities in your Member State, which are responsible for the handling of Suspicious Transaction Reports (STRs), and, as appropriate, the name(s) of the financial Intelligence Unit(s) (FIUs) required under European Union Law, including details on structures, staff resources, working practices and activities in tackling tax-related crimes. Furthermore, a paragraph explaining how the relevant national entities interact or an organogram would be especially helpful.**

Financial Intelligence Unit (FIU)

The Irish FIU is an autonomous entity embedded within the national Police Force, An Garda Síochána. The staff at the FIU is made up of police officers and civilian support staff. The FIU performs its core functions under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 with regard to Suspicious Transaction Reports (STRs) received (Section 42 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010) and reports from 'competent authorities' under Anti-Money Laundering/Counter Terrorism Financing (AML/CTF) legislation (Section 63 Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010).

The FIU has responsibility for the receipt of STRs and reports from competent authorities of suspected money laundering and terrorist financing incidents, and is also obliged, pursuant to EC Regulation 1889/2005, to maintain data relating to cash declarations – this data is provided to the FIU by the Office of the Revenue Commissioners (Customs Officials).

The FIU performs analysis of STRs and other information relevant to money laundering, associated predicate offences and terrorist financing. It disseminates STRs for investigation. There is close cooperation with other specialist Units within An Garda Síochána with regard to subjects identified in STRs as part of the analysis phase. The FIU also works closely with the designated industry and other law enforcement agencies in the analysis phase. There is dual reporting of STRs in Ireland to the Office of the Revenue Commissioners.

Being a police-based FIU allows direct access to all police databases maintained within the State. Additional relevant information from reporting entities is also available to the FIU to assist in the analysis stage of STRs, if required (Section 56 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010). Information required from other law enforcement agencies can be obtained under the provisions of data protection legislation Disclosure of Certain Information for Taxation and Other Purposes Act, 1996, Section 1 and Section 8 (a) & (b) of the Data Protection Act 1988. The FIU has direct access to the Companies Registration Office (CRO) database and the Land Registry Database.

The FIU is operationally independent and has the authority to carry out its function freely in terms of decision making, requesting and disseminating specific information. The FIU is independent in terms of engaging with other domestic competent authorities or foreign counterparts on the exchange of information. While the FIU is located within the existing structure of another authority it has distinct core functions from those of the other authority. The FIU can obtain and deploy the resources it needs to carry out its functions without any undue political, government or industry influence or interference, hence its operational independence is not compromised.

Revenue Commissioners

The Revenue Commissioners are Ireland's tax and customs administration and its mission, as encapsulated in its Mission Statement, is to serve the community by fairly and efficiently collecting taxes and duties and implementing customs controls. Revenue's strategy for delivering on this is set out in its recently-published Statement of Strategy 2017-2019 and is built around the two pillars of 1) providing service to support compliance and 2) confronting non-compliance.

Revenue's response to non-compliance is determined, in the first instance, by the behaviour of the taxpayer-in particular the nature and significance of non-compliant behaviour. Revenue supports voluntary compliance by undertaking targeted and risk focused interventions that will deliver a proportionate and effective response to non-compliance and secure voluntary compliance for the future.

In Revenue's actions to confront non-compliance it is committed, among other things, to the following-

- Using data analytics to identify sector and behavioural risks and detect non-compliance.
- Improving the effectiveness of audit and other compliance interventions by focusing expert teams on key sectors and risk types.
- Identifying and challenging avoidance schemes.
- Prioritising the focus on offshore evasion.
- Expanding capability to investigate and prosecute serious tax and duty evasion and fraud.
- Matching the nature of compliance interventions to the nature and scale of evasion or non-compliance to be tackled.

As Revenue is a fully integrated tax and customs administration, it is not possible to disaggregate resources deployed exclusively at any given time to address particular dimensions of non-compliance. Revenue currently has approximately 2,000 staff engaged on activities that are dedicated to targeting and confronting non-compliance. These activities include anti-smuggling and anti-evasion, investigation and prosecution, audit, assurance checks, anti-avoidance, returns compliance and debt collection, and resources are redeployed across them, as necessary, on the basis of Revenue's assessment of risk. This assessment is supported and facilitated by REAP, Revenue's national risk analysis system.

Revenue keeps its organisational structures under ongoing review, to ensure that they are fully aligned with current circumstances and priorities and can best facilitate optimal performance, leading to the realisation of key goals and objectives. Important recent adaptations include the reconfiguration of tax districts by reference to levels or tiers of risk, so that cases representing similar degrees of potential risk are dealt with in one location within each Revenue Region.

Revenue adopts a whole case management approach, so that the uncovering of issues in relation to a particular tax will, as necessary, lead to a review of the taxpayer's affairs across taxes generally.

Revenue's action against non-compliance is underpinned by a range of powers contained principally in the Taxes Consolidation Act 1997 (as amended). These include, for example, the power to inspect, and to call for the production of, books, records or other documents, to require the provision of information by third parties, to search premises, and to make applications to the High Court for orders requiring financial institutions to provide information.

The central provision of Irish tax law dealing with criminal offences is section 1078 (as amended) of the Taxes Consolidation Act 1997, which specifies the acts or omissions that constitute offences and the penalties that the Courts may impose where there is a conviction for those offences.

The types of offences for which section 1078 makes provision include-

- Knowingly or wilfully delivering any incorrect return, statement or accounts or knowingly or wilfully providing incorrect information in connection with any tax.
- Knowingly aiding, abetting inciting or inducing any person to make or deliver any incorrect return, statement or accounts in connection with any tax.
- Claiming a relief, exemption or repayment to which there is no entitlement.
- Knowingly or wilfully issuing or producing any incorrect invoice, receipt, instrument or other document in connection with any tax.
- Failure to deduct taxes that are required to be deducted.
- Failure to remit taxes to Revenue.
- Failure to make required returns.
- Destroying or concealing documents that are required to be retained.

Prosecutions for these offences may be brought against individuals or corporate bodies. Where an offence is committed by a corporate body, officers of that body may also be prosecuted where the offence is shown to have been committed with the officer's consent or connivance or to be attributable to any recklessness of that person.

Depending on its gravity, an offence may be prosecuted either summarily (in the District Court) or on indictment (in the Circuit Court). For a summary conviction, the District Court may impose a fine of €5,000 (which may be mitigated by not more than 75%), or imprisonment for a term not exceeding 12 months, or both a fine and imprisonment. On conviction on indictment, the Circuit Court may impose a fine not exceeding €126,970, or a term of imprisonment not exceeding 5 years, or both a fine and imprisonment.

Investigations with a view to prosecution on indictment (that is, the more serious cases) are carried out by the Investigations and Prosecutions Division of the Revenue Commissioners, and files are referred to the Office of the Director of Public Prosecutions, which decides whether prosecutions should be brought.

The numbers of convictions in respect of serious tax offences in each of the years from 2012 to 2015, and to date in 2016, are set out in the following table.

Year	2012	2013	2014	2015	2016 (to 7/12)
No. of convictions	25	10	16	18	8

By way of illustration of the penalties imposed by the Courts, during 2015 prison sentences, ranging up to three years and six months, were imposed in 17 cases, and a fine of €1,250 was also imposed in one of

those cases. The prison sentences were fully suspended in 7 of the cases and partially suspended in 8 others. In the other case, the person was required to perform 240 hours of community service.

In general, tax avoidance is entering into a transaction which gives rise to a tax advantage of some kind (e.g., a reduction, avoidance or deferral of a charge to tax, or a refund or increased refund of tax because of an abuse or misuse of a tax relief) and which was not undertaken primarily for some non-tax purpose.

Revenue has dedicated units in its Large Cases Division to monitor and challenge tax avoidance generally and, in particular, avoidance that may be undertaken by high wealth individuals. These units focus on high risk and potential tax avoidance transactions. There are other units in Revenue that have a role both in identifying aggressive avoidance transactions and in challenging them, either locally or, where there are a large number of participants in a scheme, in conjunction with Large Cases Division.

The Revenue Commissioners are one of the two agencies, along with An Garda Síochána (the Irish police force) that are charged, by section 42 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, with responsibility for collecting and handling Suspicious Transaction Reports (STRs). The EU-mandated Financial Intelligence Unit is operated by An Garda Síochána.

Within the Revenue Commissioners, responsibility for collecting and handling STRs is assigned to the Suspicious Transactions Unit (STU). The STU is part of the organisation's Investigations and Prosecutions Division, whose remit is to investigate tax evasion and other forms of fiscal crime and to pursue criminal prosecutions where possible. The STU receives STRs, considers the nature of the transaction involved in a STR and grades it by reference to the amount of money involved and other risk factors. STRs are then disseminated within the organisation so that the financial intelligence involved can be utilised to investigate and confront any forms of illegality which come within the remit of the Revenue Commissioners.

Revenue received in excess of 21,000 STRs in 2015 and there was a yield of more than €10million from cases involving such reports.

There is close cooperation between the Revenue Commissioners and An Garda Síochána on matters relating to STRs, to ensure that the benefits of the dual reporting system under the 2010 Act are fully realised.

The Revenue Commissioners have been to the forefront in acting against the use of offshore trusts and structures to evade tax liabilities. Revenue's work in relation to offshore accounts and other financial product investigations has to date resulted in the recovery of more than €2.8 billion in tax, interest and penalties.

In line with this active approach to identifying and confronting those who try to escape their tax liabilities, Revenue are examining carefully the information that has become available through the "Panama Papers" revelations. They are committed to making the fullest possible use of any available information in pursuing cases where it appears that tax liabilities have not been addressed, and a number of enquiries have been initiated arising from the examination/analysis of the "Panama Papers" data. This work is ongoing.

Ireland recognises that cooperation between countries is essential to tackling the worldwide problem of tax evasion and avoidance, if the international community is to succeed in ensuring that there will be no hiding places for those who seek to escape their tax obligations. The Revenue Commissioners are fully engaged with the OECD Joint International Taskforce on Shared Intelligence and Cooperation (JITSIC) and will continue to play a full part in agreeing concrete actions that tax administrations can take in response to evidence of tax evasion or avoidance.

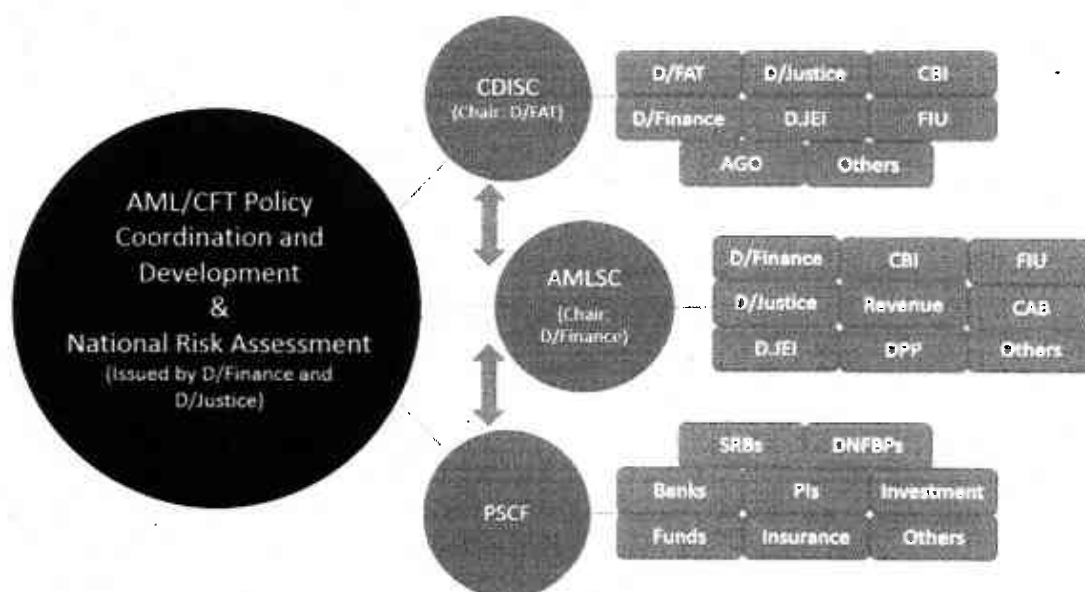
Ireland is also taking action, through proposed changes to its domestic law, to preclude the possibility of the making, on or after 1 May 2017, of a “qualifying disclosure” in respect of any offshore matters. A measure introduced by Finance Act 2016 provides that any person who does not disclose offshore matters before that date will thereafter face the prospect of substantially higher penalties, publication in a statutory List of Tax Defaulters and possible prosecution.

AML/CFT Policy

The national policy coordination structure is made up on the Anti-Money Laundering Steering Committee (AMLSC), the Cross Departmental International Sanctions Committee (CDISC), and the Private Sector Consultative Forum (PSCF). The FIU (and more broadly An Garda Síochána) and the Revenue Commissioners are represented at meeting of both the AMLSC and CDISC. The AMLSC is the chief policy coordination and development body for AML/CFT. The work of the AMLSC includes both formal and informal policy-making and implementation, with regular contact between members of the AMLSC, CDISC, and the PSCF on matters of policy development, implementation, enforcement, and effectiveness.

The AMLSC liaises with both CDISC and the PSCF on risk identification, assessment and mitigation. The various committee structures also allow representatives communicate updates to and convey information from their members and colleagues. Members of the AMLSC also attend various EU and international fora on ML/TF risk, actively engaging in their own capacities as law enforcement, supervisors, policy-makers, as well as representing and/or updating the AMLSC.

Lines of communication within the AMLSC membership, as well as between the AMLSC and other relevant stakeholders, ensure work and information sharing is coordinated between the FIU, law enforcement agencies, the relevant departments, and the private sector where appropriate, and will continue to be built upon going forward.



3. Information on the national prosecution and penalties regime.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 defines Money Laundering and creates Money Laundering offences for both within the jurisdiction and abroad. The Act sets out penalties for ML offences which includes attempts to commit a ML/TF offence. A conviction for ML/TF carries a sentence of fourteen years (14) on indictment and an unlimited fine.

The body with the primary responsibility for the investigation of ML and the underlying predicate offences is An Garda Síochána. This is done through various specialist Units and at a regional and divisional level. Investigations into suspected ML offences and underlying predicate offences conducted by An Garda Síochána are submitted to the Director of Public Prosecutions for necessary directions.

A determination as to guilt or innocence is ultimately made by the Courts. Similarly sentencing is determined by the trial judge having regard for the circumstances of the case. Ireland operates a robust multi-faceted regime to combat ML. This regime includes a broad suite of enforcement and confiscation measures to deprive criminals of the proceeds of their criminal conduct.

In March 2016, a review was conducted by the Office of the Director of Public Prosecutions of all files received for the years 2011 – 2015 in which the offence of money laundering was either prosecuted, recommended by the Gardaí, considered for charge by the Office or became the subject of an outgoing MLA request. The numbers relate to the number of files and not numbers of suspects. Some files may involve more than one suspect.

Of these 73 files, 32 resulted in a prosecution for ML (approx. 43%). 29 of these 32 prosecutions were prosecuted on indictment and summary disposal was directed for the remaining 3 files. 21 (29%) of the files resulted in no prosecution due to the fact there was insufficient evidence to sustain a prosecution for any offence. This rate is lower than the average rate of no prosecution as set out in the annual report of the Office of the DPP in 2014 of 44%. In 17 (23%) of the files, a prosecution was directed in the majority of cases for offences contained in the Criminal Justice (Theft and Fraud) Offences Act 2001 (e.g. theft, deception possession of a false instrument). Other offences directed include drugs and tax offences and conspiracy to commit an offence.

3a. Information on the activities of the national supervisory authorities for credit and financial institutions and other obliged entities.

As regards money laundering, the supervisory authorities ('competent authorities') for credit and financial institutions and other obliged entities are set out in Section 60 of the CJA 2010 as follows:¹

The Central Bank is responsible for the AML/CFT supervision of credit institutions and financial institutions; the designated accountancy bodies for auditors, external accountants, tax advisers and trust or company service providers who are members of those bodies;² the Law Society of Ireland for solicitors; the General Council of the Bar of Ireland for barristers; the Property Services Regulatory Authority for Property Service Providers; and the Minister for Justice and Equality for any other designated person under the Act (administered by the Anti-Money Laundering Compliance Unit).

¹ <http://www.irishstatutebook.ie/eli/2010/act/6/enacted/en/print#sec60> as amended by: <http://www.irishstatutebook.ie/eli/2013/act/19/enacted/en/print#sec13>

² Namely ACCA, the Association of Chartered Certified Accountants; AIA, the Association of International Accountants; CIMA, the Chartered Institute of Management Accountants; CIPFA, the Chartered Institute of Public Finance and Accountancy; ICAEW, the Institute of Chartered Accountants in England and Wales; ICAI, the Institute of Chartered Accountants in Ireland; ICAS, the Institute of Chartered Accountants of Scotland; ICPAI, the Institute of Certified Public Accountants in Ireland; and IIPA, the Institute of Incorporated Public Accountants