



EINGEGANGEN AM 13. FEB. 2017

Finanšu ministrija

*Ministry of Finance of the Republic of Latvia*

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**The European Parliament Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union Law in relation to money laundering, tax avoidance and tax evasion, The Chair**

*Information according to the request for Member State contributions*

Dear Dr. Werner Langen,

The Ministry of Finance of the Republic of Latvia has received your letter, dated of 23 November, 2016, No D320291 enquiring to provide information on investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the national level. With this letter, the Ministry of Finance provides information prepared in cooperation with the Ministry of Justice, the Financial Intelligence Unit, the Financial and Capital Market Commission and the State Revenue Service.

***Question 1: Legal definitions of administrative and criminal tax-related offences***

Definition provided in the Criminal Law

**Section 217. Violation of Provisions Regarding Accounting and Statistical Information**

- (1) For a person who commits hiding or forging of accounting documents, annual accounts, statistical reports or statistical information prescribed by law for an undertaking (company), institution or organization, the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, or a fine.
- (2) For a person who commits the same acts if they have caused substantial harm to the State authority or local government order, or the interests of persons protected by law as a result thereof, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.

- (3) For a person who commits the criminal offence provided for in Paragraph two of this Section, if it has been committed for acquiring property, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine.

#### **Section 217.<sup>1</sup> Violation of work remuneration provisions**

For payment of work remuneration, which is undisclosed in accounting, if committed on a substantial scale, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine and with deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a term of three years.

#### **Section 218. Evasion of Tax Payments and Payments Equivalent Thereto**

- (1) [Deleted on 13 December 2012]
- (2) For a person who commits evasion of tax payments and payments equivalent thereto or of concealing or reducing income, profits and other items subject to tax, if losses on a large scale are caused thereby to the State or local government, the applicable punishment is deprivation of liberty for a term up to four years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a term of two years and up to five years.
- (3) For a person who commits the acts provided for by Paragraph two of this Section, if commission thereof is in an organized group, the applicable punishment is deprivation of liberty for a term up to ten years, with or without confiscation of property and with deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a term of two years and up to five years, and with police supervision for a term up to three years.

#### **Section 177. Fraud**

- (1) For a person who commits acquiring property of another, or of rights to such property, by the use, in bad faith, of trust, or by deceit (fraud), the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.
- (2) For a person who commits fraud, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.
- (3) For a person who commits fraud, if it has been committed on a large scale, or has been committed in an organized group, or it has been committed, acquiring narcotic, psychotropic, powerfully acting, poisonous or radioactive substances or explosive substances, firearms or ammunition, the applicable punishment is deprivation of liberty for a term of two years and up to ten years, with or without confiscation of property and with or without police supervision for a term up to three years.

#### **Section 177.<sup>1</sup> Fraud in an Automated Data Processing System**

- (1) For a person who commits the knowingly entering of false data into an automated data processing system for the acquisition of the property of another person or the rights to such property, or the acquisition of other material benefits, in order to influence the operation of the resources thereof (computer fraud), the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.
- (2) For a person who commits computer fraud, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up

to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

- (3) For a person who commits computer fraud, if it has been committed on a large scale or if it has been committed in an organized group, the applicable punishment is deprivation of liberty for a term of two years and up to ten years, or a fine, with or without confiscation of property and with or without police supervision for a term up to three years.

#### **Section 195. Laundering of the Proceeds from Crime**

- (1) For a person who commits laundering of criminally acquired financial resources or other property, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.
- (2) For a person who commits the same acts, if they have been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.
- (3) For a person who commits the acts provided for by Paragraph one of this Section, if commission thereof is on a large scale, or if commission thereof is in an organized group, the applicable punishment is deprivation of liberty for a term of three and up to twelve years, with or without confiscation of property and with or without police supervision for a term up to three years.

The definition of money laundering is provided in Section 5 of the Law on Prevention of Money Laundering and Terrorism Financing:

#### **Section 5. Money Laundering and Terrorism Financing**

- (1) The following actions are money laundering:
  - 1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, knowing that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability;
  - 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, knowing that these funds are proceeds of crime;
  - 3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or
  - 4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section.
- (2) Money laundering is also a criminal offence provided for in the Criminal Law in the result of which such funds have been directly or indirectly acquired, and which has been committed outside the territory of the Republic of Latvia and the criminal liability is intended for such a criminal offence at the place of its commitment.
- (3) Terrorism financing is the actions defined as such in the Criminal Law.

Liability of legal persons under Section 70<sup>1</sup> and 70<sup>2</sup> of the Criminal Law

#### **Section 70.<sup>1</sup> Basis for the Application of a Coercive Measure to a Legal Person**

For the criminal offences provided for in the Special Part of this Law, a court or in the cases provided for by the Law – a public prosecutor may apply a coercive measure to a legal person governed by private law, including State or local government capital company, as well as partnership, if a natural person has committed the offence in the interests of the legal person, for the benefit of the person or as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person:

- 1) on the basis of the right to represent the legal person or act on the behalf thereof;
- 2) on the basis of the right to take a decision on behalf of the legal person;
- 3) in implementing control within the scope of the legal person.

The applicable sanctions (coercive measures) for any criminal offence stipulated in the Criminal Law for legal persons are defined in Section 70.<sup>2</sup> Types of Coercive Measures Applicable to a Legal Person of the Criminal Law and are the following:

- 1) liquidation;
- 2) restriction of rights;
- 3) confiscation of property; or
- 4) monetary levy.

***Question 2: Names, mission statement and powers of entities in charge of tax-related crimes, including details on structure***

The full name of the Financial Intelligence Unit of the Republic of Latvia (FIU Latvia) is Office for Prevention of Laundering of Proceeds Derived from Criminal Activity (the short name is Control Service, the international abbreviation – KD). The FIU Latvia was established on 1 June, 1998 and is functioning as an administrative type of the FIU monitored by the Prosecutor's Office. The monitoring is executed by the Prosecutor General and the Department of Specially Authorized Prosecutors established by him. Since 1998 Latvia is a member state of the Council of Europe Moneyval Committee. Since 1999 the FIU Latvia is a member of the international organization the Egmont Group of Financial Intelligence Units. Currently there are 30 employees working at the FIU in the following units – 1) Data Processing Unit, 2) Data Analysis Unit, 3) Systems Analysis Unit, 4) Strategic Analysis Unit, and 5) International Cooperation Unit.

Since 1998 the authority of the FIU Latvia is provided for by the “Law on the Prevention of Money Laundering” and since 2008 by the second consecutive “Law on the Prevention of Money Laundering and Terrorism Financing” (AML/CFT Law). One of the main tasks of the AML/CFT Law is to define how to perform analysis of suspicious and unusual transaction reports and to inform the law enforcement agencies in cases when crime has been established.

In order to successfully perform the above-mentioned task, the Cabinet of Ministers on 22 December, 2008 adopted the Regulation No 1092 “On Procedure how State and Municipality institutions provide information to the Office for Prevention of Laundering of Proceeds Derived from Criminal Activity”, which ensures access to a large volume of information free of charge. Furthermore, the AML/CFT Law authorizes the FIU without any restrictions and third-party approval to request from the subjects of this Law all the information that they have obtained by fulfilling the requirements of this Law.

One of the most significant duties of the FIU is to perform freezing of proceeds derived from criminal activity for a period of up to 45 days. However, concerning proceeds related to terrorism the freezing period is up to six months. In accordance with the requirements of the AML/CFT Law the coordination of activities of the FIU, subjects of the Law, and their supervisory and control institutions is performed by the Advisory Board of the Control Service led by the Prosecutor General, in which 12 different institutions and fields are represented.

The Financial Sector Development Board, led by the Prime Minister, is the leading authority, which coordinates cooperation between the State and the private sector in the field of prevention of and combating laundering of proceeds derived from criminal activity and terrorism financing at the highest level since 2005. The Financial Sector Development Board has defined three priorities of the FIU's work concerning, including tax crimes and offshore company criminal activities:

- discovering large schemes of laundering of proceeds derived from criminal activity (i.e., schemes involving at least 20 parties to the transactions);
- freezing of large amount of proceeds derived from criminal activity in order for law enforcement agencies to arrest them for further confiscation purposes within a court trial;
- providing intelligence concerning crimes to law enforcement agencies in such quality that facilitates pre-trial investigation (for instance, in case the predicate offence has been performed abroad, the investigator is provided full information regarding the criminal case initiated in the corresponding country, the investigator in charge of the case as well as other information).

***Question 3: Information on national prosecution and penalties regime applicable; on achievements and problems encountered in applying them, including detailed information on the activities of supervisory authorities and related entities and specific information on ongoing and planned investigation***

General information

Exchange of information is the most effective tool of cooperation in targeting crimes of tax evasion and money laundering. Therefore, number of inter-institutional meetings have taken place with participation of representatives from the Financial Capital and Market Commission (FCMC), the FIU, the State Revenue Service and the Ministry of Finance in order to discuss the effectiveness of exchange of information and further cooperation. Regular meetings of representatives of the FCMC and the FIU were held since the first publication of the information about Panama papers on 4 April 2016. The Government of Latvia was informed about general conclusions and initial findings following the review and analysis of the Panama Papers provided by the supervisory and investigation authorities. According to these initial findings one of the ways forward in order to cope with situations when persons hide their assets offshore would be strengthening administrative cooperation in tax matters. This would include cooperation by means of the Convention on Mutual Administrative Assistance in Tax Matters, by exchange of information according to the Common Reporting Standard as well as by exchanging of information on beneficial owners.

*Table 1. Statistics on Investigation of Tax evasion and Money Laundering<sup>1</sup>*

		2015		2016	
		Criminal Law Section 218. Evasion of Tax Payments and Payments Equivalent Thereto	Criminal Law Section 195. Laundering of the Proceeds from Crime	Criminal Law Section 218. Evasion of Tax Payments and Payments Equivalent Thereto	Criminal Law Section 195. Laundering of the Proceeds from Crime
Number of court cases <u>pending (unresolved)</u> on 1 January.		97	31	107	27
Number of <u>incoming</u> court cases in 2015		74	6	71	4
Number of court cases <u>resolved</u> ...	... with a conviction	41	8	50	5
	... with an acquittal	3	5	6	2
	... cases resolved in another way	5	3	7	1
Number of court cases <u>pending (unresolved)</u> on 31 December		107	27	104	24
Number of <u>persons convicted</u>		47	9	60	6
Number of <u>legal persons convicted</u>		0	0	0	0

<sup>1</sup> Data provided by the Ministry of Justice of the Republic of Latvia (not published)

## Recent legislative activities in the area of money laundering and tax evasion.

On 3 December 2015, the amendments to the Criminal Law increasing the maximum monetary fines stipulated in Section 41 of the Criminal Law for the criminal offences, including tax related offences, money laundering and fraud entered into force. On 7 April 2016, a new criminal offence was introduced in the Criminal Law stipulating the criminal liability for tax avoidance regarding work remuneration (Section 217.<sup>1</sup> of the Criminal Law).

In 2016, the Latvian authorities devoted major efforts to ensure the effectiveness of anti-money laundering system. Apart from the amendments increasing maximum monetary sanctions for money laundering offence on 4 February 2016, Latvia approved amendments (entered into force on 29 February 2016) in the Prevention of Money Laundering and Terrorism Financing Law by expanding definition of politically exposed persons (PEP).

The Anti-Money laundering regulatory base has been strengthened in order to ensure that high money laundering risks to which Latvian banks are exposed are taken into account and prevented. Ministry of Justice together with other institutions involved in enforcement of money laundering offence is currently working on draft amendments to ensure more effective prosecution of persons who are liable for money laundering offence. The objective of the draft amendments is to introduce the lesser subjective mental element for money laundering offence. The draft amendments have been submitted to the Parliament for approval.

The Permanent Criminal Law Working Group led by the Ministry of Justice has also discussed the issues related to fraud offence. The Working Group is an inter-institutional body, which is responsible for evaluation of proposals for amendments to the Criminal Law and for drafting the necessary amendments to the Criminal Law and related laws and regulations. The objective of the draft amendments is to ensure more effective and adequate legal framework in order to ensure the protection of EU financial interests.

### Findings of the FIU Latvia

#### Cooperation of the FIU Latvia with other competent institutions

The FIU Latvia considers the following types and forms of cooperation as most important:

- reports on work results, addressing topical issues, suggestions to make amendments to laws and regulations with the above-mentioned Advisory Board of the Control Service and the Financial Sector Development Board, which have been established by the AML/CFT Law as the coordinators of activities;
- since 1998 the FIU has organized or taken active participation in 400 trainings of employees of subjects of the Law, their supervisory and control institutions, and law enforcement agencies, including 37 trainings in 2016 (as of December 28) with participation of 2,007 people;
- twice a week the FIU organizes trainings for its own employees during which the following topics are discussed: topical typologies of laundering of proceeds derived from criminal activity, including VAT schemes, amendments to laws and regulations, knowledge acquired in various seminars and workshops (mostly abroad). To these trainings representatives from partner-offices (for example, management of the State Police and the Finance Police Department, representatives of finance institutions and supervisory institutions etc.) are frequently invited with the purpose of exchanging experience;
- the management of the FIU holds meetings with the heads of supervisory institutions and law enforcement agencies in order to discuss topical issues and to seek effective solutions. For example, the heads of the State Revenue Service Finance Police Department and the FIU Latvia agreed that in 2016 priority would be given to the VAT scheme case materials within which there is an actual possibility to freeze the illegally obtained funds. As a result of this agreement, the FIU Latvia has sent 55 case materials to the Finance Police Department within 44 of which

such funds have been frozen. As of 28 December 2016 a total of 226 case materials have been sent and 251 orders for freezing of funds in the total amount of more than 35,5 million EUR have been issued.

#### Information on the types of criminal activities and types of persons involved in the schemes of laundering of proceeds derived from criminal activities

Similarly to the previous years, also in 2016 the most popular typologies were “phishing” type of fraud and tax evasion with the help of VAT schemes – within 86 and 55 case materials respectively out of a total of 226 case materials sent by the FIU. These case materials combined make up about 62% of the total number of all case materials. Analysis of the case materials concerning VAT schemes highlights the following situation:

- the transaction schemes most often function for a relatively short period of time – for several months;
- also natural persons are parties of such transactions; however, mostly these are legal entities – both limited liability companies registered in Latvia (part of them have already been excluded from the VAT Payers’ Register or the procedure of exclusion has been initiated) and companies registered in countries close to Latvia;
- the movement of funds is initiated on the territory of Latvia and concludes on the territory of the neighboring countries (most often in Estonia, Lithuania, Poland etc.).

As the most common typology of laundering of proceeds derived from criminal activity in Latvia is laundering the proceeds derived from the so-called “phishing” fraud committed abroad. The FIU Latvia has compiled 86 case materials regarding such instances.

In 2015 on grounds of the Latvian Criminal Law, Section 218, 47 persons were convicted within 41 criminal cases for evasion from tax payments. The most common type of punishment for these persons was suspended sentence for various periods. Similar data regarding convictions in 2016 is still being collected.

#### Information on measures taken by the FIU concerning the so-called Panama papers case

Considering the proportion of transactions performed by non-residents and the amount of their deposits (47,7% from all deposits in June, 2016), the FIU Latvia pays constant attention to unusual and suspicious transactions performed by these persons. The fact that large schemes of laundering of proceeds derived from criminal activity (with more than 20 parties to the transactions involved), they very often involve also non-residents and companies related to the non-resident supports these activities. Thus, in 2014 the FIU discovered 45 schemes and in 2015 - 47 schemes.

While working on the so-called Panama papers case, the FIU Latvia constantly faced the following challenges:

- the information available in the mass media had not been obtained lawfully and, therefore, it would not be possible to use it in further legal proceedings;
- legitimate ways to obtain the information were explored;
- challenges in processing the personal data:
  - no date of birth, no registration data;
  - differences in spelling in different languages;
  - out-of-date information, for example, many of the legal entities mentioned in the list had stopped their activity already a long time ago.

Taking into account these challenges, during 2016 the FIU Latvia paid special attention to reports on transactions involving persons registered in low tax or no tax countries (please refer to the Cabinet of Ministers Regulation Nr.276), and as a result of which:

- from January to November 2016 in total 41 case materials were sent to the law enforcement agencies to consider initiation of criminal proceedings concerning transactions involving 59 legal entities from 11 offshore jurisdictions and 96 natural persons from 15 jurisdictions. Based on these case materials, during this period the law enforcement agencies initiated 20 criminal proceedings. The other case materials are still under consideration;
- at the same time the FIU Latvia after due consideration has archived 85 case materials concerning 170 legal entities from 13 offshore jurisdictions and 209 natural persons from 28 jurisdictions;
- in relation to the Panama papers case the FIU Latvia has sent spontaneous information reports concerning 77 legal entities and 9 natural persons to 5 foreign FIUs;
- in relation to the Panama papers case 6 requests for information have been received concerning 91 legal entities and 74 natural persons from foreign FIUs;
- no response to requests from the FIU Latvia was received from the International Consortium of Investigative Journalism (ICIJ). The response received from the FIU Panama was formal – 11 natural persons and 12 legal entities were indicated; however, without any identification data and without financial information.

In relation to the issues of the Panama papers case representatives of the FIU Latvia have participated in a large number of action coordinating meetings both with officials of the Latvian institutions as well as with foreign officials including also the Eurojust coordination meeting on 20 September, 2016.

#### *Findings of the Financial Capital and Market Commission (FCMC)*

Following the publication of Panama papers both onsite visits and off-site reviews were conducted or are still in progress. As part of off-site supervisory action general information request was sent by the FCMC to 17 banks (including the bank whose license was revoked) and 7 branches of foreign banks operating in Latvia. The purpose was to have information about the presence of customers mentioned in the Panama papers as well as customers allegedly related to the jurisdiction of Latvia. Targeted off-site analysis of the largest transactions was conducted following receiving responses from banks and branches.

As part of onsite supervisory action, on-site reviews are conducted. Presence of legal entities as customers mentioned in the Panama papers having the largest turnover was one of the factors of the onsite review of banks subject to the scheduled review on subject of implementing provisions on prevention of money laundering and terrorism financing. Data received in response from banks was analyzed during onsite reviews in particular banks conducted shortly after publicity of the Panama papers. This information served as one of the source of information to identify the scope of customers to be scrutinized when reviewing internal control systems in place. Selection of the banks subject to onsite reviews was carried out taking into consideration several factors including money laundering risk and concerns with regard to an internal control system.

Upon the request of the FCMC the banks and branches operating in Latvia were required to identify possible customers and beneficial owners mentioned in the Panama papers and based on the information provided by the FIU identification of possible customers related to the jurisdiction of Latvia had to be identified. Based on the information received from banks and branches operating in Latvia the presence of possible 3022 current and former customers, including customers having relation to Latvia have been detected. The indicated number refers to occurrence of coincidence of titles of legal persons, addresses and names of natural persons. In 14 banks, 134 possible current and former beneficial owners were identified having occurrence of coincidence with persons stated in the request of the FCMC. 25 persons were identified as possible beneficial owners, officials and authorized representatives in several companies. The information is still being analyzed.



A number of onsite reviews is scheduled for 2017 whereas as part of the off-site reviews analysis of the transactions dynamics, reporting occurrence to the FIU Latvia is still in process. The FCMC also reviews possible appearance in Panama papers of persons related to the board, council, officials or shareholders of banks. It is estimated that results could be shared by mid-2017.

Findings of the State Revenue Service and the Finance Police Department of the State Revenue Service

The statistics of initiated Criminal Proceedings by Finance Police Department of the State Revenue Service and Criminal Proceedings sent to prosecution by Finance Police Department of the State Revenue Service is gathered in Table 2 and Table 3.

*Table 2 Initiated Criminal Proceedings by Finance Police Department of the State Revenue Service<sup>2</sup>*

		01.01.2016 – 27.12.2016	01.01.2015 – 27.12.2015
1.	Evasion of Tax Payments and Payments Equivalent Thereto <sup>3</sup>	186	155
2.	Fraud <sup>4</sup>	15	10
3.	Laundering of the Proceeds from Crime <sup>5</sup>	7	9

*Table 3 Criminal Proceedings sent to prosecution by Finance Police Department of the State Revenue Service<sup>6</sup>*

		01.01.2016 – 27.12.2016	01.01.2015 – 27.12.2015
1.	Evasion of Tax Payments and Payments Equivalent Thereto <sup>3</sup>	53	66
2.	Fraud <sup>4</sup>	3	10
3.	Laundering of the Proceeds from Crime <sup>5</sup>	3	10

From 1 April, 2016 to 30 December, 2016 the State Revenue Service received from banks and other payment institutions 283 reports on suspicious transactions, which comprised information on 4931 transactions. This information has been used for risk analysis and tax control measures.

On 23 November, 2016, the Parliament of the Republic of Latvia adopted amendments to the Law "On Taxes and Duties", according to which the obligation to report suspicious transactions in the field of taxes to the State Revenue Service was extended also to tax consultants, sworn notaries, external accountants, sworn auditors and other subjects of the Law "On the Prevention of Money Laundering and Terrorism Financing" (since 1 April, 2016 such obligation had only banks and other payment institutions). This law also obliged sworn notaries to report to the State Revenue Service every case when non-registerable movable property is inherited, if the value of such property exceeds 15 000 euro. For infringements of aforementioned rules administrative liability according to the Administrative Violations Code has been provided.

<sup>2</sup> Information provided by the State Revenue Service (not published)

<sup>3</sup> Section 218 of the Criminal Law

<sup>4</sup> Section 177 of the Criminal Law

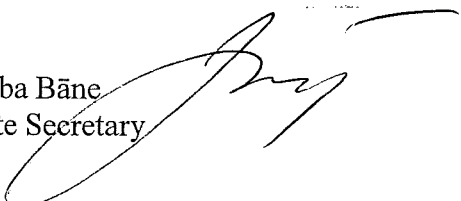
<sup>5</sup> Section 195 of the Criminal Law

<sup>6</sup> Information provided by the State Revenue Service (not published)

We hope that the information, provided in this letter will contribute to achieving the goals of the European Parliament Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union Law in relation to money laundering, tax avoidance and tax evasion.

Yours sincerely,

Baiba Bāne  
State Secretary

A handwritten signature in black ink, appearing to be 'Baiba Bāne', written over the typed name and title.