

Dr. Werner Langen, Chair,
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,

European Parliament,
B-1047 Brussels,
Belgium

Letter

30. august 2017
J.nr. 2017 - 1220

International Coordination

Dear Dr. Werner Langen,

I hereby have the pleasure of sending you the Danish contribution in response to the PANA Committee's request in regards to investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level.

The Danish contribution is based on information provided by the Ministry of Justice, the Ministry of Business Affairs, the Danish Financial Supervisory Authority and the Danish Customs and Tax Administration.

In relation to the PANA Committee's main focus areas I would like to emphasize that Denmark strongly supports the mutual effort at the EU level against tax avoidance and evasion. We have supported the ATAD I & II and the new proposal for a DAC 6.

Furthermore, I can inform you that in May 2017 the Danish Government agreed on political agreement with the support of all parties in the Danish Parliament on strengthening the fight against international tax avoidance and evasion. In order to strengthen the fight against international tax avoidance and evasion the agreement outlines a continued active international engagement, including at the EU level, allocates additional resources to the tax administration and ensures a robust domestic legislative framework.

Finally, I would like to mention that in June 2017 a political agreement was also concluded that increases the Danish efforts in combatting money laundering. The agreement increases the penalties for money laundering, strengthens cooperation among relevant authorities, increases focus on anti-money laundering in financial institutions and allocates additional resources to the supervisory authorities.

I hope this information is helpful to your inquiry. I apologise for the late reply which permitted us to provide you information that included the latest developments in regard to the strengthened Danish efforts. I hope this delay has not caused any inconvenience.

If you have any questions in relation to the information provided, please do not hesitate to contact legal advisor Daniel Askbo (da@skm.dk) at the Ministry of Taxation's Department for International Coordination.

Yours sincerely

Karsten Lauritzen
Minister for Taxation
Ministry of Taxation

Table 1. Tax-related offences

Question 1:

The legal definitions of administrative and criminal tax-related offences in your Member State covering, as appropriate, avoidance, evasion, fraud and money laundering at both the individual and corporate levels, as well as the references to the national laws underpinning these definitions, as appropriate.

Answer regarding administrative tax-related offences:

Avoidance

The administrative definition of tax avoidance is defined in detail in administrative rulings and court rulings and in the tax legislation.

- The Tax Assessment Act (Ligningsloven), § 3,

Evasion

The administrative definition and penalisation of tax evasion is defined in detail within the specific tax regulations.

General income tax: The Tax Control Act (Skattekontrolloven) section III, §§ 13 – 23a

The definitions are very specific in nature and covers tax evasion from businesses and individuals in the form of omission, concealment and misrepresentation of information, and hidden economy from undeclared business activity and "moonlighting". The definitions are generally valid for both individual and corporate level.

Other examples can be found in:

- VAT: The Value Added Tax Act (Momsloven) § 81
- Withholding Tax: Tax at Source Act (Kildeskatteloven) Kap. VIII §§74-79A

Fraud

Since the power to investigate Fraud cases is a matter for police officials, the definition and penalisation of tax fraud is given in the general penal code under economic crime:

- Straffeloven §289. Serious economic crime

Answer regarding criminal tax-related offences:

Particularly serious tax fraud or evasion, is punishable under the Danish Criminal Code Section 289 by imprisonment for up to 8 years. Fraud of DKK 500 000 or more usually constitutes serious tax fraud. In such cases, the offender is punishable by a fine equal to the amount of the fraud and also to 8 years imprisonment. (See Appendix J1 below)

In criminal law, money laundering is covered by Section 290 of the Danish Criminal Code on handling stolen goods, which also comprises all types of proceeds from crime (such as theft, human trafficking, drugs crime, fraud, etc.). Both natural and legal persons (companies, associations, etc.) may be convicted for handling stolen goods/money laundering under the provisions of the Danish Criminal Code. (See Appendix J1 below)

Answer regarding money laundering:

"Money laundering" as defined by the (Anti) Money Laundering Act means that a natural or legal person unlawfully accepts, acquires or obtains for others a share of economic proceeds obtained through an offence punishable by law. Similarly, "money laundering" is also considered subsequently contributing to securing the economic proceeds from an offence punishable by law by unlawfully hiding, storing, transporting etc. such proceeds. The definition also covers attempted money laundering.

Tax evasion is already included in the definition of money laundering, although the Act does not specify the type of criminal activity from which the proceeds derive. With the implementation of the fourth Money Laundering Directive, it will be clearer that tax evasion is included as an underlying criminal activity.

Table 2. Suspicious Transaction Reports (STR) & Financial Intelligence Unit(s) (FIUs)

Question 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 in 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.

Answer regarding FIUs:

The Money Laundering Secretariat (MLS) is the national centre responsible for receiving and analysing STRs.

In addition, the MLS is responsible for receiving financial intelligence from both reporting institutions and individuals and other cooperative partners who have information that may be of relevance to the MLS's work, including supervisory authorities and The Danish Customs and Tax Administration.

The MLS's responsibilities include analysing and enriching the information and reports received, whereupon it has legal authority to pass on the information to relevant authorities with a view to investigation or any further action that may be required.

The MLS is organised in three groups; visitation, processing and intelligence. The MLS have close cooperation with the police, supervisors and the Danish Customs and Tax Administration and have the competence to disseminate information for the entities to use in their day-to-day work.

Answer regarding STRs:

The Danish FSA (Financial Supervisory Authority) and the DBA (Danish Business Authority) both include in their inspections whether a company in question files an appropriate amount of STRs to the Danish FIU (Financial Intelligence Unit).

Apart from this, the FSA and the DBA has no role in the handling of the STRs, as these are reported to and handled by the Danish FIU.

Table 3. National prosecution and penalties

Question 3:

- I) Information on the national prosecution and penalties regime applicable and applied in your Member State in relation to tax-related offences, supported by an explanation on the state of play in relation to the number of cases (progress and outcomes, as appropriate), and a statement covering achievements and problems encountered to date.
- II) In particular, up-to-date information on the activities of the national supervisory authorities for credit and financial institutions and other obliged entities would be welcome, including statistics on the number of cases related to the offences covered in the first bullet point e.g. the types of companies involved, the types of offences sanctioned and the value of the penalties/fines issued.
- III) Furthermore, it would also be helpful to submit information on the number of ongoing and planned investigations pursuant to the “Panama Papers” and “Bahamas leaks”. If specific case-information may not be share for legal reasons, the submission of consolidated anonymized data or analysis would nevertheless be helpful.

Answer:

- I) Information on the national prosecution and penalties regime in relation to tax-related offences is described in the instructions on tax-related crimes issued by the Director of Public Prosecutions (“Skattesagsvejledningen af juni 2010”) and the instruction on penalties of offences related to the Danish Criminal Code issued by the Director of Public Prosecutions (“Rigsadvokatmeddelelsens afsnit om strafpåstanden i sager om overtrædelse af straffeloven”).
- II) This part is not applicable, as the FSA when on inspection, do not assess specifically whether tax-related offences has occurred. The focus of the FSA inspections is primarily on whether the AML-legislation in itself has been complied with. The AML legislation is however being amended as the FSA’s possibility of informing the tax authorities of tax-related offences will be broader.
- III) The FSA is bound by a duty of confidentiality and cannot disclose any information related to planned inspections. However, the FSA has issued a “Panama-papers report”. The intermediary report from June 2016 is already available on the FSA’s website. The final report was published mid-March 2017, and the English version will soon be on the website.
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Appendix J1:

The Danish Criminal Code Section 289. (unofficial translation)

(1) Imprisonment for a term not exceeding eight years is imposed on any person who is guilty of violation of the legislation on taxes, customs, duties or subsidies or of section 289a committed in a particularly aggravating manner to obtain an unlawful gain for himself or others.

(2) The provision of subsection (1) only applies if a reference to this provision has been inserted into the legislation referred to in subsection (1).

(3) When determining a supplementary fine under section 50(2) for violation of subsection (1), it must be taken into consideration whether the offence was of a particularly aggravating nature, especially due to the method used or because the offence was committed jointly by several persons, or when several offences have been committed.

The Danish Criminal Code Section 290. (unofficial translation)

(1) Any person who wrongfully accepts or obtains for himself or others a share of the proceeds obtained from criminal acts, and any person who dishonestly, after an offence, assists another person in securing the proceeds of a criminal offence by hiding, retaining, transporting or providing assistance for the disposal of the proceeds or in any similar manner, is sentenced to a fine or imprisonment for a term not exceeding one year and six months for handling stolen goods.

(2) The sentence may increase to imprisonment for six years if stolen goods have been handled in a particularly aggravating manner, especially because of the commercial or professional nature of the offence, or due to the scope of the gain made or intended, or when several offences have been committed.

(3) A penalty cannot be imposed under this provision on any person who accepts any proceeds for ordinary subsistence from a family member or his cohabitant, or on any person who accepts any proceeds as normal remuneration for ordinary consumer goods, household goods or services.