

Regulatory News Alert

CSSF Circular 17/650 - Implementing AML/TF professional due diligences relating to primary tax offences

3 March 2017

Background

The Law of 23 December 2016 implementing the 2017 tax reform (the Law) is, among others, extending the money laundering offence to tax crimes related to direct and indirect taxes.

The *Commission de Surveillance du Secteur Financier (CSSF)* issued a circular drawn up with the Financial Intelligence Unit (FIU) clarifying AML/TF professional due diligences in relation to primary tax offences.

The [CSSF circular 17/650](#) applies to all persons and undertakings falling under the supervision of the CSSF.

Thresholds defined for fiscal fraud types

The Law distinguishes three types of fiscal fraud:

	Definition	Sanctioned by
Simple offence	When the fraud is not an aggravated fiscal fraud nor a tax swindle	Administrative courts
Aggravated fiscal fraud	When the amount of fraud is considered as significant, i.e. if either the amount of the tax defrauded (or fraudulently reimbursed) exceeds €200,000 , or if the tax defrauded (or fraudulently reimbursed) (i) exceeds 25 percent of the annual tax due (or fraudulently reimbursed) and (ii) is equal or exceeds €10,000 .	Imprisonment from 1 month to 3 years and a fine of between €25,000 and 6 times the amount of tax defrauded or fraudulently reimbursed

Tax swindle <i>(l'escroquerie fiscale)</i>	If the fraud involves a significant amount either in absolute amount or in relation to the annual tax due or with the annual repayment due and has been committed by the systematic use of fraudulent practices intended to conceal facts relevant to the authority or to persuade it of inaccurate facts	Imprisonment from 1 month to 5 years and a fine of between €25,000 and 10 times the amount of tax defrauded or fraudulently reimbursed
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The simple tax offence is not considered as a primary tax offence.

Tax swindle was already defined in the criminal code before the adoption of the Law and there have already been convictions for tax swindle in Luxembourg.

The above definitions, which give to professionals an idea of the materiality level, are provided in line with what the Luxembourg Courts will use to determine the category of tax offence or crime. The monitoring of the level of suspected tax offence that a customer would potential face based on the defined thresholds could be very complex.

Application in time

Section 1 of CSSF circular 17/650 describes the customer due diligence measures in connection with primary tax offenses, committed or attempted, in Luxembourg or abroad for new, existing, ongoing and ended customer relationships.

- **New business relationship established after 1 January 2017**

The professional has to gather all the information on the future business relationship (purpose of the relationship, nature of the business, origin of funds) to assess and document the client's financial situation

- **Pre-existing business relationship**

The professional has to gather all the necessary information in an appropriate time based on the risk assessment (particularly when the amount of a transaction is substantial or in case of a high-risk situation)

- **Follow-up of the business relationship**

The professional has to conduct ongoing monitoring of the business relationship, in particular, by checking the consistency of transactions with his/her knowledge of the customer's situation and risk profile

- **Ended business relationship before 31 December 2016**

No requirement for retrospective customer due diligence

Reporting and cooperation with authorities

In **section 3**, the circular provides some examples of the nature of the suspicion, the reporting thresholds, the affected individuals and examples of attempts of money-laundering.

Professionals must promptly notify the Luxembourg Financial Intelligence Unit (FIU), on their own initiative, if they know, suspect or have reasonable grounds to suspect that a laundering of a primary tax offense is taking place, has occurred or has been attempted.

The professional is not obliged to report to the FIU the suspected transaction if the annual tax amount eluded is lower than €10,000. However, this possibility does not apply to tax crimes for which the professional has to assess if the threshold of the substantial amount is in absolute amount or in relation with the annual tax owed.

List of indicators

CSSF published, in **Appendix I** to the circular, a list of **21 indicators** that can raise a suspicion of money laundering offence to tax crime. CSSF stressed that the examples of indicators are neither exhaustive nor exclusive of other criteria.

The professional has to act according to the following steps:

- If an indicator or a combination of indicators raises a suspicion, a closer examination of the business / transaction relationship is necessary to verify whether this doubt is justified in the context of the transactions and the professional's knowledge of the client's situation (KYC and KYT).
- If doubt persists, the professional has to report the suspicion to the FIU.

In order to implement the circular in practice, affected parties and especially financial institutions will need to implement the concept of a "Tax Compliance Policy" that will complement the existing AML Policy. The Tax Compliance Policy, in line with the guidance provided by the new CSSF circular, can be built over key components, such as due diligence standards that will detail the level of scrutiny to be observed based on tax compliance risks and specific questionnaires that will bring a consistent approach towards customers and their related corporate structures.

How Deloitte can help you?

- **Tax Compliance Policy:** How to elevate the AML response by including tax criteria
- **UComply:** All-in-one Know Your Customer & Risk Assessment service
- **KYCaaS:** externalizing KYC processes

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