

ATOZ ALERT

Assessment of predicate tax offences in an AML/CTF context: The asset management industry should get prepared for CSSF inspections

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The new provisions introduced by Circular 17/650, as amended through Circular 20/744, impact the AML/CTF compliance obligations of the asset management industry.

Asset managers (as well as other regulated investment professionals) should review their internal procedures and document the risk assessment of their business activities in order to prepare for CSSF inspections.

Background

In February 2017, the CSSF published Circular 17/650 following the 2017 Luxembourg tax reform extending the money laundering offence to aggravated tax fraud and tax evasion. The release of Circular 17/650 followed the revised FATF standard of 2012/2013 and of the 4th AML Directive (Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing in Luxembourg law). This initial Circular provided general guidance for all entities falling under the supervision of the CSSF to raise suspicions of tax fraud and evasion through a (non-exhaustive) list of common indicators set out in Annex 1 of the Circular.

In July 2020, Circular 17/650 was amended by a new circular, Circular 20/744, which complements the common indicators included in Annex 1 by new indicators that are to be taken into account specifically in the context of collective investment activities and professionals providing services in that particular sector.

Professionals concerned

The Circular, as amended, is applicable to all the entities supervised by the CSSF, with a focus on investment fund managers.

Purpose

The CSSF expects professionals under its AML/CFT supervision to take these new indicators, where relevant, into account in their risk assessments and when designing risk mitigation measures proportionate to their risk exposure within the specific context of collective investment activities.

Implications

The Circular, as amended, extends the professionals' due diligence obligations to all types of Luxembourg taxes as well as to tax offences in countries other than Luxembourg. It is to be noted that the mere attempt of committing a tax offence is punishable and falls within the scope of the Circular.

In practice, investment professionals will need to ensure that their internal processes are adapted to be able to identify the money laundering of predicate tax offences in light of the (non-exhaustive) list of indicators.

Now is the time for asset managers to review their internal processes and documentation to prepare for CSSF inspections.

Wider context

While the legal basis differs, in so far as DAC6 is concerned, it is worth highlighting that the Luxembourg tax authorities have launched investigations with tax intermediaries by requesting information on their internal policies and the availability of a tool to track analyses. There is therefore a growing pressure on market players to implement proper internal policies that are aligned with the regulations they have to abide by.

To help our clients and other service providers navigate through DAC6 regulations across all the EU jurisdictions they operate in, we have developed an IT solution, [DAC6Connect®](#) which permits DAC6 analysis in a multi-jurisdictional environment as well as connecting intermediaries and taxpayers through seamless coordination and communication. Our solution is also now available as a free mobile app, you can scan the QR code to download it from your regular store.



Do you have further questions?



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