

## Newsflash

26 November 2007

### Tax Litigation

#### Limitations regarding money-laundering offences

Important modifications have been made to Penal law to combat money-laundering.

An innovation is to be noted with the limitation of punishable conduct regarding gains resulting from “minor” tax evasion which, under certain circumstances and conditions, are no longer the object of punishable money-laundering offences.

The exclusion of sanctions<sup>1</sup> is subject to the following conditions:

- The exclusion only relates to the manipulation of tax assets which do not result from serious and organized tax fraud demonstrating complex methods of execution or procedures of an international dimension (including the assessment of one of the 13 indicators<sup>2</sup>).
- The exclusion only covers third parties that are not directly linked to the initial offence. Therefore, the perpetrator and accomplice of the underlying offence can still be liable for the money-laundering offence.
- The exclusion only concerns the “purchase, exchange, acceptance, possession, safe-keeping or handling” of financial gains<sup>3</sup>. “Hiding or concealing the nature, origin” etc. of the financial gains<sup>4</sup> is also targeted. The conversion or handing down of financial gains resulting from “minor” tax evasion with the intention to conceal their origin or to avoid legal consequences from the prior tax evasion<sup>5</sup> remains a punishable offence.
- Those who carry the obligation to communicate in virtue of the anti-money-laundering law may only benefit from the exclusion if they act in accordance with their duty to communicate<sup>6</sup>.

The limitations of money-laundering offences and the list of 13 indicators came into effect on 1 September 2007.

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<sup>1</sup> Article 505, 3<sup>rd</sup> & 4<sup>th</sup> paragraph of the Penal Code (Law of 10 May 2007, M.B./B.S. 22 August 2002).

<sup>2</sup> Royal Decree of 3 June 2007 (M.B./B.S. 13 June 2007).

<sup>3</sup> Article 505, 1<sup>st</sup> paragraph, 2<sup>o</sup> of the Penal Code.

<sup>4</sup> Article 505, 1<sup>st</sup> paragraph, 4<sup>o</sup> of the Penal Code.

<sup>5</sup> Article 505, 1<sup>st</sup> paragraph, 3<sup>o</sup> of the Penal Code.

<sup>6</sup> Article 14 *quinquies* of the Law of 11<sup>th</sup> January 1993 (completed by the list of 13 indicators).

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