

# **Government of Luxembourg: obstructing the TAXE investigation**



## Art. 4.3 of the Treaty on European Union

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. ...

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

## **Obstruction in 7 acts**

1. no serious answer to EP's questions
2. denial of access to documents of the Code of Conduct group
3. Council not granting the EP anything meaningful (confirmed hearing in EP on 22<sup>nd</sup> of Sept 2015)
4. ring fencing access of EU commission to exchange of rulings legislated under Luxembourg presidency
5. no consequences from the WALMART scandal
6. failure to deliver the promised "vade-mecum" on economic substance
7. making an example of tax whistleblower Antoine Deltour



Spezialkommission "Taxe" zu Besuch in Luxemburg

## "Wir haben nichts zu verstecken"



Waren sich in vielen Punkten einig: Finanzminister Pierre Gramegna (r.) und der Präsident der Spezialkommission "Taxe", Alain Lamassoure.

Foto: Pierre Matgé



Veröffentlicht am Montag, 18. Mai 2015 um 20:02

(CBu) - "Wir wollen mit unseren Partnern in der EU zusammenarbeiten und haben nichts zu verstecken." Mit diesen Worten resümierte Finanzminister Pierre Gramegna (DP) auf einer Pressekonferenz am frühen Montagabend die Unterredungen mit der Delegation der Spezialkommission "Taxe" des Europäischen Parlaments. Luxemburg



### Ähnliche Beiträge

- Tax Rulings: Kommission klopft Luxemburg auf die Finger
- Antoine Deltour au Luxembourg: "Dénoncer des pratiques systémiques"
- Bericht in "Cash Investigation": LuxLeaks: Anklage gegen Journalist Treffen der EU



Meistgelesene

Zuletzt veröffentlicht



# Demand for information of TAXE to Luxembourg of 23rd April 2015

I would be very grateful if you could provide the TAXE Committee Secretariat with the following information concerning your country:

- Action taken or planned at national level to increase transparency in the area of corporate taxation.
- Action taken or planned at national level to limit corporate tax base erosion and profit shifting.
- Overview (including date and name of company) of all tax rulings issued since 1991
- All information since 1.1.2010 shared with other Member States according to Council Directives 2011/16/EU article 9 and 77/799/EEC article 4.
- National list, if defined, of non-cooperative tax jurisdictions and its evolution and justification.
- A list of current international tax treaties having an effect to reduce corporate tax rates.
- Full report Krecke


# Information received June 2015



GRAND-DUCHÉ DE LUXEMBOURG  
Représentation permanente auprès  
de l'Union européenne

Ref: 4.4.31 – E04.04.310 – df

25741

Brussels,  June 2015

**Subject:** Information on the activities of the TAXE special committee

The Luxembourg government first wishes to express its commitment to fully cooperate with the TAXE Special Committee.

Notwithstanding the fact that the Luxembourg government is fully committed, as previously underscored, to help the Special Committee to meet the objectives of its mandate, it can only do so within the limits of any legal constraints to which it is subjected.

# Information received June 2015

- **All information since 1.1.2010 shared with other Member States according to Council Directives 2011/16/EU article 9 and 77/799/EEC article 4**

Luxembourg exchanges rulings upon request on a regular basis. A limited number of rulings have been exchanged on a spontaneous basis some time ago. Especially in the case of central management of companies, Luxembourg got in most of the cases a reaction saying that the information was not of interest to the country concerned.

Luxembourg has never received spontaneously any information on rulings from any other Member State.



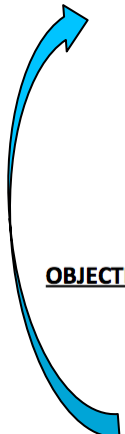
**CONSULTATION OF CODE OF CONDUCT GROUP DOCUMENTS**  
**LIST OF MEMBERS STATES**  
*as of 5 October 2015*

**GAVE CONSENT FOR THE DOCUMENTS TO BE CONSULTED "IN CAMERA":**

1. AUSTRIA
2. BULGARIA
3. CROATIA
4. CYPRUS
5. CZECH REPUBLIC
6. DENMARK
7. GERMANY
8. FRANCE
9. IRELAND
10. ITALY
11. LITHUANIA
12. POLAND
13. PORTUGAL
14. SLOVAKIA

**OBJECTED OR DID NOT SEND REPOSE:**

1. BELGIUM
2. ESTONIA
3. FINLAND
4. GREECE
5. HUNGARY
6. LATVIA
7. LUXEMBOURG
8. MALTA
9. NETHERLANDS
10. ROMANIA
11. SLOVENIA
12. SPAIN
13. SWEDEN
14. UNITED KINGDOM



# Response Council 23rd July 2015 to request from 22nd April 2015



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Ministère des Finances

Luxembourg, le 23 -07- 2015  
Réf. N°

56815/09029

Mr. Alain Lamassoure  
Chair  
European Parliament  
Directorate-General for Internal Policies  
Directorate A- Economic and Scientific Policies  
Special Committee Taxe  
Tax Rulings and Other Measures Similar in  
Nature or Effect

Dear Mr Lamassoure,

I would like to thank you for your letter of 8 July 2015 requesting further Council documents on behalf of the TAXE Committee.

As to documents from the Economic and Financial Committee (EFC) and Economic Policy Committee (EPC) relating to corporate taxation, tax avoidance, unfair tax practices and BEPS, I can inform you that we are not aware of any papers covering the issues you mentioned. Please note that those two Groups are operating under a very specific mandate and do not receive secretarial support by the GSC.

As to the other Working Parties referred to in your letter, we would like to draw your attention to the fact that we have already forwarded an exhaustive inventory with references to the agendas of the Code of Conduct Group and the Working Party on Taxation as well as a considerable number of documents, which we are in a position to share with you, on a CD. This inventory and the CD were attached to the letter, which was signed by Secretary-General Corsepius on 29 May 2015 in agreement with EU Member States.

Allow me to underline that the Council remains fully committed to cooperating with the European Parliament in general and with the TAXE Committee in particular, in the light of the applicable Treaty provisions.

The Council is at your disposal to answer any further questions you might have.

Yours sincerely,

Pierre Gramegna  
Minister of Finance  
Luxembourg

Jeppe Tranholm-Mikkelsen  
Secretary-General  
Council of the European Union

# Charter of fundamental rights of the European Union

## *Article 42*

### **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.



# Greens/EFA letter to minister Gramegna on WALMART of 14th July 2015

*"Compared to other EU Member States, the anti-abuse concept contained under paragraph 6 of the "loi d'adaptation fiscale" has a broad scope of application. It allows the Luxembourg tax authorities to tax the legal acts carried out by taxpayers on the basis of their economic reality. Technically speaking, this concept is however not the only one to be used to assess factual circumstances such as "has this company sufficient economic substance?" The question as to whether a company has sufficient economic substance must be analyzed in the light of paragraph 15 of the "Loi d'adaptation fiscale", paragraph 159 (1) of the "Loi concernant l'impôt sur le revenu" and the Circular 164/2 (which contains the most recent guidelines in this respect) on the basis of facts. If the analysis of these facts leads to the conclusion that the company does not have sufficient economic substance in Luxembourg, it will not be considered as a Luxembourg resident company in the light of the respective Double Taxation Agreement and as a result of the application of the concept of economic substance, without any need to invoke the anti-abuse rule. The concept of economic substance is sufficient as such."*

Walmart has set up 22 subsidiaries in Luxembourg, 5 of which in 2015 alone. Walmart operates no stores in Luxembourg but books considerable profits.

Only two possible conclusions can be drawn from this case, and many other similar cases revealed by Luxleaks: Either you do not apply your own laws on economic substance and anti-abuse, or your law lacks substance.

# Response by Pierre Gramegna on WALMART, 28th of August 2015

Indeed, as inferred by §15 of the « Loi d'adaptation fiscale » and §159(1) of the « Loi d'impôt sur le revenu », Luxembourg tax law requires any company resident in Luxembourg to have its central administration in the country, which means that it must effectively have the functional capacity to realize its activity. This implies that the company disposes of qualified internal or external personnel and that the board of directors and the managers must have the professional knowledge required to realize their functions as well as the capability to engage the responsibility of the company.

With regard to financing transactions, these principals have been laid out in Circular 164/2. In this context, it is explicitly stated that a company active in this domain must fulfil clear substance conditions. For instance the relevant decisions must be taken in Luxembourg by qualified individuals and the company must dispose of qualified personnel, either internal or external, which is capable of executing the realized operations. Crucially, the company must be capable of monitoring the functions realized by its personnel. This together with the requirement that the entity is sufficiently capitalized to assure its activities implies that it effectively controls the relevant business risks.

Under the rule of law, it is hardly conceivable that a government would close down, as your letter suggests, companies that operate within the boundaries of the law.

# European Parliament's mission report on the TAXE visit, 18th May 2015

*Luxembourg has defined in its loi general des import article 6 criteria to determine whether there is sufficient economic substance created in Luxembourg to be taxed in the country. These criteria are developed in an administrative vade-mecum which, for issues of confidentiality, was not annexed to the follow-up letter sent by Mr Gramegna to Mr Lamassoure, despite the specific request for it and the fact that the Minister said orally that it would be at the disposal of the delegation. [Neither Mr Gramegna nor the heads of administration were able to give proof for the robustness of the criteria not of the application of an anti-abuse clause.] Recent reforms did not introduce changes to the notion and application of economic substance requirements*



# Key quotes

„The government of Luxembourg has systematically obstructed the tax investigation of the European Parliament.“

„Transparency is fundamental to democracy. Citizens and the European Parliament have a right to get access to all relevant documents of the Council. The Luxembourg presidency harms citizens' respect in the European Parliament by refusing access to minutes and documents.“

„I call on the government of Luxembourg to give access to all documents and minutes of the Code of Conduct group on business taxation.“

# Additional reading

EU Commission (2014): State aid investigations against Fiat Finance/Luxembourg.

[http://ec.europa.eu/competition/state\\_aid/cases/253203/253203\\_1590108\\_107\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253203/253203_1590108_107_2.pdf)

EU Commission (2015): Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules.

[http://europa.eu/rapid/press-release\\_IP-15-5880\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5880_en.htm)

Financial Times (2015): The case against Luxembourg:

<http://ftalphaville.ft.com/2015/10/21/2142483/the-case-against-luxembourg/>

Jan Fichtner (2015): The offshore intensity ratio.

[https://www.academia.edu/15386988/The\\_Offshore-Intensity\\_Ratio\\_Identifying\\_the\\_Strongest\\_Magnets\\_for\\_Foreign\\_Capital](https://www.academia.edu/15386988/The_Offshore-Intensity_Ratio_Identifying_the_Strongest_Magnets_for_Foreign_Capital)

## Prise de position du Luxembourg suite à la décision de la Commission européenne dans l'affaire Fiat Finance and Trade (21.10.2015)

Communiqué par: ministère des Finances

Le Luxembourg ne partage pas les conclusions de la Commission dans l'affaire Fiat Finance and Trade et réserve tous ses droits.

Le Luxembourg analysera avec la diligence requise la décision de la Commission et son raisonnement juridique.

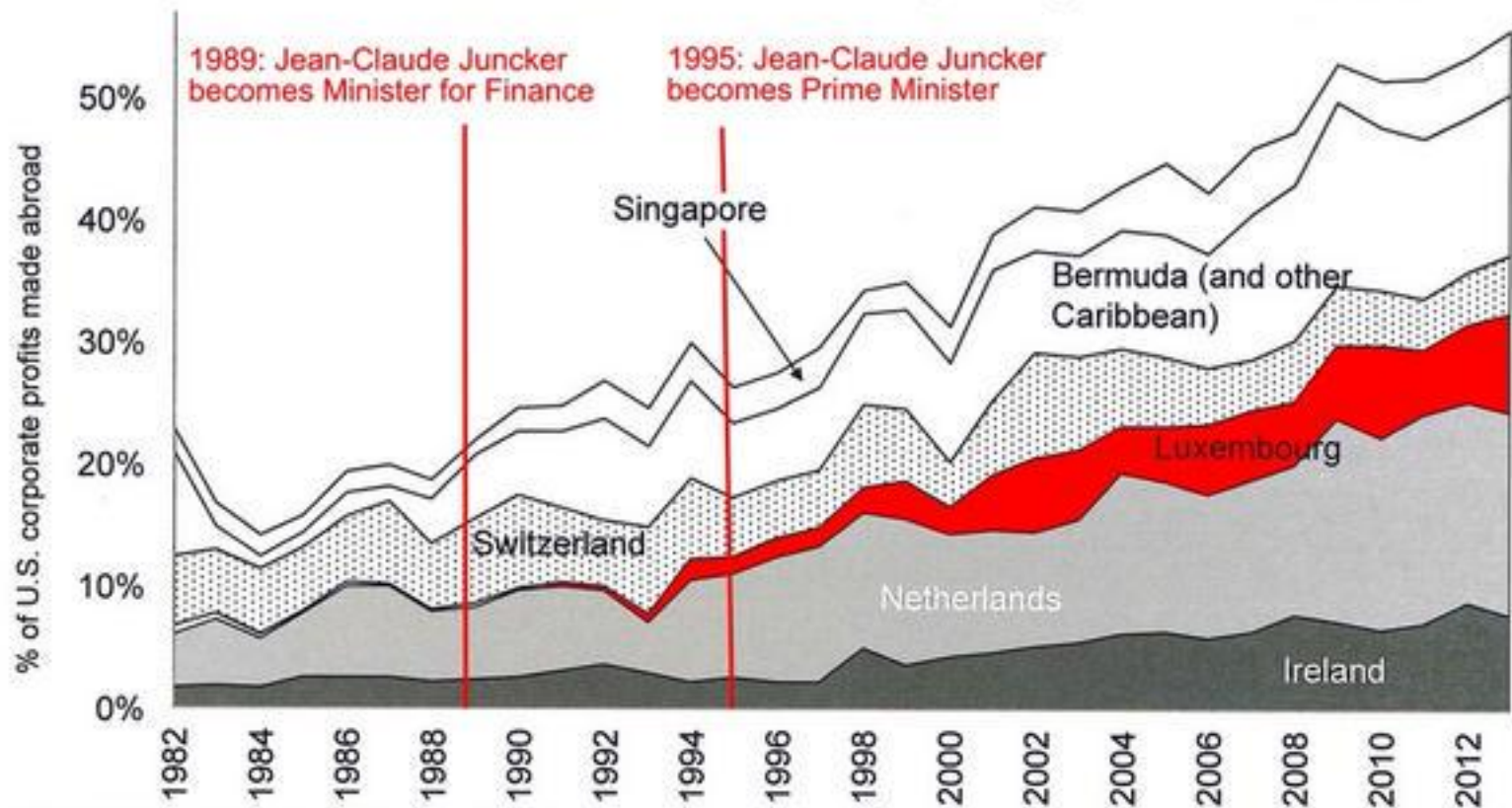
Le Luxembourg constate dès à présent que la Commission a eu recours à des critères inédits pour l'établissement de l'aide d'État alléguée. En particulier, la Commission ne démontre pas l'existence d'un avantage sélectif octroyé à Fiat Finance and Trade au regard du cadre juridique national.

Le Luxembourg estime ne pas avoir accordé à Fiat Finance and Trade une aide d'État incompatible avec le marché intérieur au sens de l'article 107(1) du Traité sur le fonctionnement de l'Union européenne.

Le Luxembourg respecte les normes internationales, notamment celles relatives au principe de libre concurrence (*arm's length principle*), applicables en matière de prix de transfert ainsi que les règles relatives aux aides d'État.

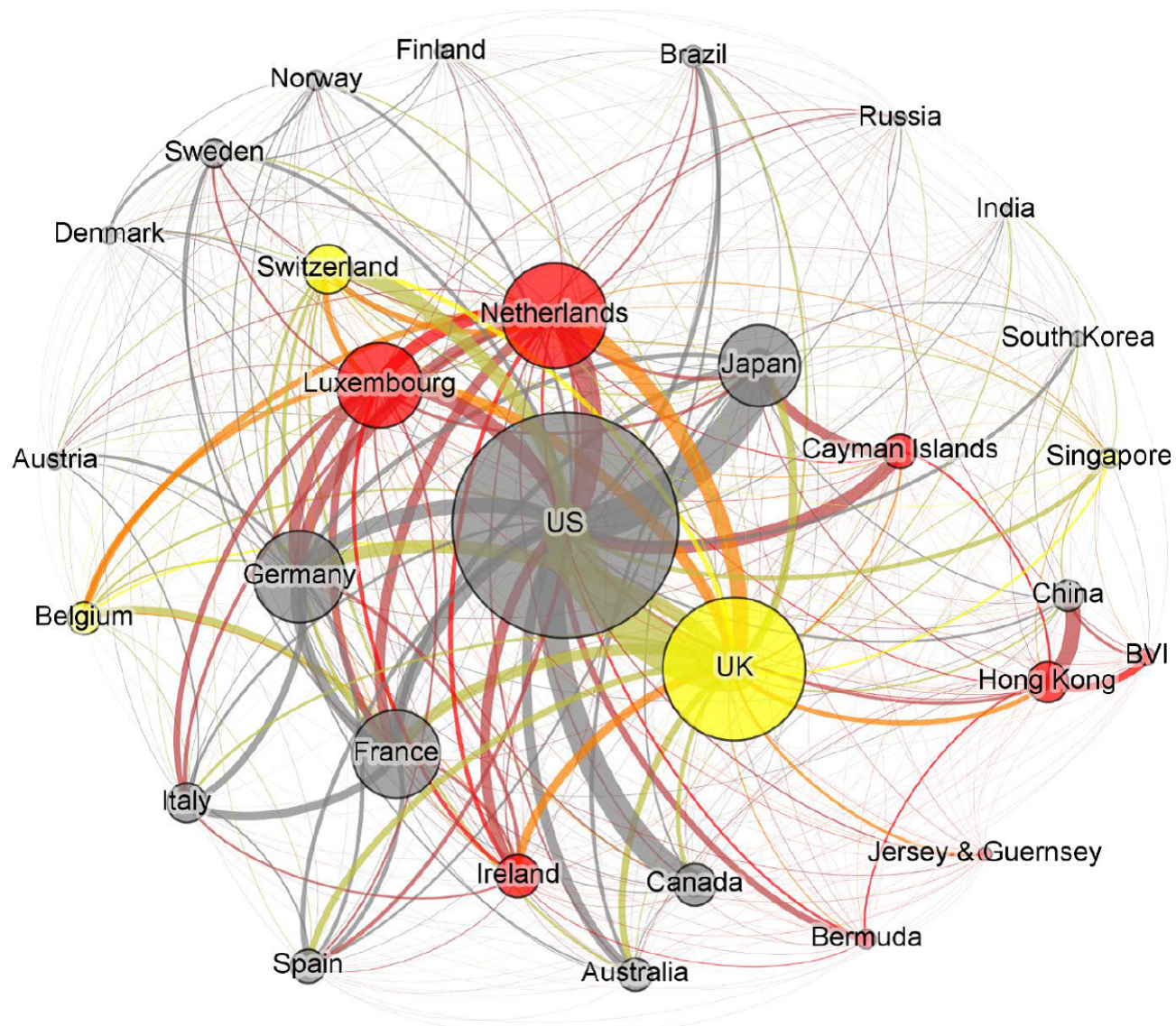


## The share of tax havens in U.S. corporate profits made abroad



Notes: This figure charts the share of income on U.S. direct investment abroad made in the main tax havens. In 2013, total income on U.S. DI abroad was about \$500bn. 17% came from the Netherlands, 8% from Luxembourg, etc. Source: author's computations using balance of payments data, see Online Appendix.

**Figure 1** The Position of the Largest OFCs in Cross-border Global Finance in 2012



Source: Author based on BIS (2015b), IMF (2015a, 2015b).

**Table 4** The 40 Most Intensive Jurisdictions in Cross-border Global Finance 2013

Rank	Jurisdiction (Sovereign country)	Foreign Assets (USD bn)	GDP (USD bn)	Offshore- Intensity Ratio
1	<b>Cayman Islands (UK)</b>	4,173	2.7	1,545.6
2	<b>British Virgin Islands (UK)</b>	1,177	1.1	1,070.0
3	<b>Marshall Islands (US)</b>	40	0.2	200.0
4	<b>Bermuda (UK)</b>	1,033	5.6	184.5
5	<b>Jersey (UK)</b>	681	6.2	109.8
6	<b>Luxembourg</b>	5,513	60.1	91.7
7	<b>Guernsey (UK)</b>	254	3.6	70.6
8	<b>Curaçao (NL)</b>	290	5.6	51.8
9	<b>Bahamas</b>	295	8.4	35.1
10	<b>Barbados</b>	71	4.3	16.5
11	<b>Cyprus</b>	350	21.9	16.0
12	<b>Mauritius</b>	170	11.9	14.3
13	<b>Isle of Man (UK)</b>	81	6.7	12.1
14	<b>Ireland</b>	2,480	232.1	10.7
15	<b>Hong Kong (China)</b>	2,065	274.0	7.5
16	<b>Netherlands</b>	5,417	853.5	6.3