

sector whose resources are already stretched to their maximum and beyond to re-do the job of the tax authorities. To the contrary, it seems to be evident that once the AEOI between two countries is established and working, it would be beneficial to the AML/CFT regime if the people skilled and trained to fight ML and terrorism financing are relieved from re-doing the tax authorities' job.

### **4.3 The fruit of the poisonous tree: the use of stolen data in criminal and tax procedures**

The use by several tax authorities of stolen data on the clients of the trust and company service providing branch of a Liechtenstein bank has caused different court cases, the most prominent probably being the one that went all the way up to the German Supreme Court (Bundesverfassungsgericht). The main legal issue was the question whether means of proof discovered during house searches that were triggered by their owners' names showing up on the stolen so called Liechtenstein CDs were lawful evidence or not. The German Supreme Court ultimately decided that these means of proof were lawful evidence.<sup>117</sup>

Other countries have decided to take a different position and hence not consider requests for administrative or criminal assistance that are based on information that was originally stolen from financial institutions or DNFBPs, e.g. Switzerland. Foreign requests for Administrative Assistance in Tax Matters are not to be considered by Swiss authorities if the request "violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law".<sup>118</sup>

### **4.4 Will voluntary disclosures still be possible and made if tax crimes have become predicate offences to ML?**

Before tax crimes have become predicate offences to ML, financial institutions and DNFBPs motivated, insisted and even pushed their non-tax-compliant clients towards making a voluntary disclosure

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<sup>117</sup> The decision of the German Supreme Court is available in German from [http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2010/11/rk20101109\\_2bvr210109.html;jsessionid=F39030911654858C9635B7393C32632D.2\\_cid361](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2010/11/rk20101109_2bvr210109.html;jsessionid=F39030911654858C9635B7393C32632D.2_cid361), accessed on April 10, 2016.

<sup>118</sup> See Art. 7 TAAA:

**Art. 7 Non-consideration**

The request will not be considered if:

- a. it constitutes a fishing expedition;
- b. it requests information not covered by the administrative assistance provisions of the applicable agreement; or
- c. it violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law.