

# Landlocked and loaded

One of the biggest changes mooted by the G20 in London was a crackdown on tax havens, with banking-reliant Luxembourg caught in the crossfire and unable to turn back. By Tom Phillips

**I**t has been a diplomatic incident waiting to happen for decades. Germany's efforts to claw back tax from citizens who hold bank accounts in Luxembourg has been an ongoing bone of contention, but recessions have a habit of strengthening people's resolve, and political pressure from the G20 countries appears to have driven the first wedge between Luxembourg's secretive banks and their clients.

The crackdown on international tax havens was led by German finance minister Peer Steinbrueck, who is keen to put as much pressure as possible on to offshore financial centres that "hoodwink" taxpaying Germans.

"Whenever there's been a diplomatic incident in the past – with other countries trying to open up Luxembourg's banking system – nothing has changed. It hasn't affected Luxembourg's domestic law. However, things are starting to change," says Chokri Bouzidi, head of the London tax practice at Oostvogels Pfister Feyten.

The banking and fund industry is the small country's number one source of income and Luxembourg's prime minister Jean-Claude Juncker vigorously defended his country's status after it appeared on an Organisation for Economic Cooperation and Development (OECD) 'grey' list following last month's G20 conference in London.

The OECD report named the countries that were compliant with its plan to implement an internationally agreed tax standard, previously endorsed at

the G20 meeting in Berlin in 2004.

While Luxembourg, Switzerland and Austria figure on the grey list, they escape being put on a black list of countries that have not even agreed to basic international tax standards.

The three countries have since announced that, to varying degrees, they will cooperate with the standards on the exchange of information with other countries on tax matters – 'exchange of information on tax matters' being the important part in Luxembourg's case.

Luxembourg has strict banking secrecy laws that prevent the disclosure of information to foreign authorities conducting investigations into the affairs of individuals, unless in the framework of criminal proceedings.

The OECD exchange agreement relates to taxpayers who reside outside the country, allowing overseas authorities to gain information on matters concerning their citizens.

## Leave well alone

Bankers in Luxembourg have criticised the policy, arguing that the country has had a system in place since the 1950s to deal with criminal court procedures and this recent move is driven by political motives that could leave clients' private lives without protection.

Currently, information cannot be exchanged between organisations within Luxembourg itself, let alone to other countries. If German authorities have a suspicion

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Georges Gudenburg, Wildgen

– or the evidence to open a case – then in the past their Luxembourg neighbours would examine the evidence and agree to help if the case warranted it. But the idea that Luxembourg should change its banking secrecy laws, which have been in place for 50 years, has caused much consternation among lawyers in the country.

Bouzidi adds: "It was a political move by Germany. Luxembourg has kept its position that, if Germany has a case within a criminal court procedure, that is different. But a political statement that there are German citizens sheltering from tax is not enough. A prosecutor cannot open a case following a political declaration."

Whatever the motives forcing its elbow, there are clear indications that Luxembourg is becoming more cooperative. It will require Belgium and Austria – which are also on the grey list – to lead the way before it enters into the agreement fully, but now it has been forced to join the negotiation table it will not be able to put the genie back in the bottle.

The key to unlocking the bank secrecy laws may not lie with the OECD list but with the European Commission's (EC) Tax Savings Directive (TSD) (2003).

In November 2008, the EC amended the directive, closing loopholes and accepting proposals to better prevent tax evasion. Currently, Belgium, Austria and Luxembourg have 'opt-outs' from EU rules on taxing savings held by citizens outside their home state. However, Belgium has already indicated that it will exchange information, which could leave Austria and Luxembourg facing mounting pressure from other EC countries, including rival banking nation Switzerland, which looks set to benefit.

"Beyond the OECD model, the big bang waiting for Luxembourg is the TSD," fears Georges Gudenburg, a partner at Wildgen. "This is a tricky situation. If Austria and Luxembourg veto the directive, the EC will revert back to the old directive and Austria and Luxembourg would immediately be on the list of countries that are harbouring tax-avoiders. Luxembourg is too small to survive that."

Oostvogels' Bouzidi believes that change is inevitable, and might not be such a bad thing under the circumstances.

"Whether it likes it or not, Luxembourg banking secrecy is, often wrongly, associated with tax avoidance. If it complies with the agreements it would strengthen its position as a financial centre. My view is that it would be beneficial for Luxembourg." ■