



Money Laundering of Serious Tax Crimes
*Enhancing Financial Intelligence Units' Detection
Capacities and Fostering Information Exchange*

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BULLETIN ON MONEY LAUNDERING OF SERIOUS TAX CRIMES

Intended Recipients: Reporting entities (primarily tax practitioners) and general public.

PUBLIC BULLETIN: MONEY LAUNDERING OF SERIOUS TAX CRIMES

The purpose of this bulletin is to present key lessons, best practices, and representative case examples to help enhance the fight against money laundering (ML) of serious tax crimes both at the national and international levels. The information in this bulletin should assist with establishing national strategies and to facilitate effective cooperation between FIUs, tax authorities and tax practitioners. It should also assist reporting entities to better detect ML of serious tax crimes.

INTRODUCTION

A recent OECD¹ study on international tax fraud show how sophisticated tax fraud schemes can be. Tax fraud is a crime that generates significant amounts of illicit proceeds and tax fraudsters have devised increasingly complex, transnational schemes that enables them to launder significant amounts of illicit proceeds. Serious tax crimes have significant corrosive effects on the ability of governments to use public finances for the benefit of society. They jeopardise fair economic competition, confidence in state institutions, and deprive public finances of billions every year². Tax crimes can also be connected to other financial crimes, such as corruption. Therefore, combatting serious tax crimes is of prime interest to society as a whole and a key issue, not only for tax authorities, but also for FIUs and, more broadly, law enforcement agencies (LEA) and the judicial system.

In order to better grasp issues linked with ML of serious tax crimes, the project team transmitted a questionnaire and a survey on cases examples to the Egmont Group's FIUs. The project team analysed 50 responses to the questionnaire and 33 to the case survey which provided an overview of national legal frameworks on ML of serious tax crimes, the powers and competencies of the competent authorities, including FIUs, to combat it and the role of the private sector in this regard. They drafted a general report which is available to competent authorities and observers of the Egmont Group.

¹ OECD (2018), *Improving co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption*

² *The European Tax Gap, A report for the Socialists and Democrats Group in the European Parliament*, R. Murphy, University of London, January 2019: https://www.socialistsanddemocrats.eu/sites/default/files/2019-01/the_european_tax_gap_en_190123.pdf ; *Estimates of tax avoidance and evasion*, Tax Justice Network: <https://www.taxjustice.net/topics/more/estimates-of-tax-avoidance-and-evasion/>

Serious tax crimes

In the OECD report Tax Administration 2019: Comparative information on OECD and other Advanced and Emerging Economies, it is stated that “tax crime occurs when people intentionally avoid paying tax or claim money they are not entitled to.”

The project team did not identify a common definition of “serious tax crimes” within the responses received from the 50 project participant FIUs. Almost half of the jurisdictions did not distinguish between “serious tax crime (or equivalent)” and a “tax offence”. In some cases, the seriousness depends on the value of funds and assets involved. In others, it depends on particular aggravating circumstances.

Notwithstanding the absence of a specific definition for the term “serious tax crimes”, many domestic criminal laws define this term by establishing thresholds and defining criteria, such as the existence of tax fraud schemes.

Despite international principles set out by the FATF and the Egmont Group concerning the ML of tax crimes, the project group found that serious tax crimes were not systematically considered as predicate offences or in the domain of an FIUs’ mandate. Moreover, FIUs’ powers and prerogatives regarding ML of tax crimes often differ from one FIU to another, in particular regarding access to information and dissemination capacities, both at national and international levels.

In that context, the report intends to enhance global knowledge of FIUs regarding their powers, capacities, and practices in the fight against ML of serious tax crimes and provide opportunities to consider improvements to both national and international cooperation by providing a toolkit of best practices to be used by FIUs to strengthen their capacities to respond to these crimes.

This bulletin focuses more specifically on the key lessons and best practices that can be used by the legislators and the civil society in order to orientate the debate on national strategies to enhance the general fight against tax fraud and the laundering of its proceeds. It also provides best practices and case examples which competent authorities and reporting entities can exploit to improve their detection, analysis, and dissemination abilities in that field.

KEY LESSONS

Effective national capabilities of authorities to receive, access, analyse and share relevant tax-related information, including information on ML of proceeds of serious tax crimes, are key to the ability of jurisdictions to effectively tackle serious tax-related crimes. National legal frameworks grant high levels of tax secrecy complicate reciprocity in the exchange of information. Low level/no taxation policies do not only increase the attractiveness of the concerned jurisdiction for investors, but also for criminals, which can create vulnerability in other jurisdictions as a lack of beneficial ownership transparency hinder transnational investigations. These circumstances have direct negative impacts on international cooperation on tax-related matters.

On a positive note, all responding FIUs mentioned using at least one of the tools identified in the toolkit which accompanies this bulletin (see below) to fight ML of serious tax crimes in their jurisdiction. These tools can take various forms and concern a wide range of aspects, including organisational factors, such as the existence of a liaison officer between the FIU and tax authority or measures to effectively engage with the private sector. **The core purpose of such tools is to enable timely access to quality tax-related information for FIUs to assist them with analysis and share this with the relevant competent authorities both nationally and internationally.**

However, the report identifies room for improvement concerning the access to and the use of data by competent authorities, the secrecy of the data and low-level willingness of tax practitioners to submit Suspect Activity/Transaction Reports (STRs/SARs). Therefore, it is clear that competent authorities and reporting entities should be given the opportunity to employ as many of the tools identified in the report and in this bulletin. Doing so will ensure that FIUs are better equipped to disrupt ML of serious tax crimes schemes, starting foremost with their capacity to analyse ML associated with tax-crime and receiving STRs on this subject.

Further, a strong commitment from all competent authorities, including FIUs, to understand the technical tax-related issues relating to legislation and associated procedures is also essential to enable them to understand each other's needs with regards to information exchanges and enable the effective use of the tools at their disposal. An increased awareness of one another's mandates, powers, and needs, collectively leads to achieving greater law enforcement outcomes. However, this commitment must be accompanied by a robust political commitment from jurisdictions to take an active part in combatting ML of serious tax crimes and to remediate legislative loopholes and other specific vulnerabilities identified in their jurisdiction.

Jurisdictions are encouraged to reflect on the findings of the report and this bulletin and utilise them to find other solutions specifically tailored to their organisational and/or legal frameworks (e.g. engaging with financial supervisory authorities, or other entities not mentioned in this report).

BEST PRACTICES: TOOLKIT

This list of best practices is not exhaustive, with all items deduced from the key findings of this research project.

1. Facilitate effective cooperation between FIUs and tax authorities at the national level

- Improve the relationship between tax authorities and the FIU at national level:
 - Establish formal or informal agreement(s) between the FIU and tax authorities (e.g. MOU).
 - Promote public-public and public-private agreements at the national level.
 - Facilitate the presence of a liaison officer or secondments both in the FIU and in the tax authority.

- Provide access to information (including tax declaration, immovable property, etc.):
 - Indirect access to tax administration's data without restriction is an important first step.
 - Direct access to tax data is more beneficial to all parties.

- Improve understanding and exploitation of tax information through:
 - The secondment of tax officers to the FIU or employment of officers with a background in tax-related matters at the FIU.
 - Arrangement of regular meetings between the FIU and the tax authorities.
 - Provision of technical training for FIU officials in tax affairs from tax practitioners and/other professionals working in related areas.
- Train tax authority and FIU officers to better detect ML and to share quality information via:
 - Regular joint meetings between tax authorities and FIU personnel to build operational understanding of the subject matter.
 - Attendance at formal training sessions offered in-house or by other organisations.
 - Secondments / other operational activities to enable cross-skilling and active, direct, and intense exchange of knowledge in real time while fostering professional networks.
- Adopt a strategy to improve the quality of the information exchanges through:
 - Annual meetings between the head of FIU and the head of the tax authority, or high-level officers from both entities to define an annual strategy and shared priorities.
 - The implementation of a feedback process to improve the quality of information exchanged.

2. Establish national strategies to enhance the fight against ML of serious tax crimes

- Legislative framework:
 - Tax authorities should be able to send information to the national FIU, and the FIU should be able to send relevant information to the national tax authorities to detect tax fraud.
 - The FIU can play an active role, in coordination with tax authorities, in advising the government on legislative modifications that would limit the opportunities to launder proceeds of tax crimes.
- Enabling FIUs to access to new data, such as:
 - A register of beneficial owners (BO)
 - A register of domestic bank accounts³
 - The automatic exchange of information.
- Cooperation between multiple public actors:
 - FIU engagement with LEAs and Justice Department/Prosecutor's Office to encourage parallel financial investigations on ML of serious tax crimes.
 - Formally notifying the FIU when the tax authority reports the alleged commission of a crime that falls within the FIU's mandate to the judiciary.
 - Implementation of disruption strategies concerning shell/front companies through advanced typologies and the use of a BO register.
 - Fostering public-public cooperation agreements between one or more competent authorities.

³ This register does not include bank statements. It only includes information on the nature of the account, the holder, the number, the bank, etc.

- Participation of FIUs, with other national competent authorities, to adopt and implement recommendations of national risk assessments.
- FIU engagement with private sector to increase the quality and quantity of STR/SAR reporting, which is key for analysis purposes can be improved through:
 - Training courses organised by competent authorities for reporting entities.
 - Effective feedback (including red flag indicators) and typologies should be provided on a regular basis by the FIU to the regulated private sector.
 - Promoting awareness, within financial institutions, about the use of international money transfers for the purpose of ML of proceeds of serious tax crimes.
 - Building trust with relevant actors of the Designated Non-Financial Businesses and Professionals (DNFBP) sector (tax advisors, auditors, accountants) which have access to particularly relevant information on tax matters.
 - Fostering Public-Private Cooperation agreements.
 - Close cooperation with academic partners to gain better academic knowledge of tax crime and seek new ways to enhance capabilities to fight against it.
- Employing the latest technologies and software products to analyse data more effectively and efficiently to enhance detection capacities of FIUs:
 - Utilise high quality technologies for FIU analysis, including data collection, data processing and case management, etc.
 - Analysis based on machine learning using existing identified data sets and typologies.

3. International cooperation between FIUs is essential to fight ML of serious tax crimes:

- The ability to access tax related data on behalf of another FIU, even in the absence of previously submitted STR, and transmitting analysed information to the requesting FIU is crucial.
- FIUs are encouraged to conduct multilateral sharing of information⁴.
- FIUs could develop mechanisms to exchange their own experiences both at national and international level.
- FIUs should consider making spontaneous disseminations to foreign FIU counterparts.
- Improving diagonal cooperation in international ML-related cases can enable competent authorities to support existing cases more efficiently. For information exchange between non-FIU counterparts, it is recommended the request for information from a non-FIU authority to the FIU of another Egmont Group (EG) member is sent first to the national FIU which will then forward it to the intended recipient jurisdiction.

⁴ The need to enhance multilateral exchange of information among its members is introduced as a requirement in the EG Charter and Principles of Information Exchange: <https://egmontgroup.org/en/document-library/8>

- Implementation of standardised feedback forms for all FIUs can enhance cooperation and provide an assessment of the usefulness of the information provided.
- Improving international cooperation between the EG, other multilateral bodies and academia fosters knowledge sharing and leverages common resources.
- FIUs, particularly in low or no-tax jurisdictions, should consider engaging both with their national (i.e. tax authorities) and international partners (i.e. FIUs) to implement tailored strategies to disrupt ML of serious tax crimes:
 - At the international level:
 - Systematic and proactive engagement in exchanging relevant information with other FIUs is strongly required to ensure individuals and companies involved in such criminal schemes are adequately investigated.
 - Conducting joint financial investigations between FIUs on cross-border typologies is particularly relevant in such scenarios.
 - At the national level:
 - FIUs of such jurisdictions should proactively engage in the development of strategic analyses related to ML of serious tax crimes, starting with a national risk assessment that adequately considers such threats.
 - These FIUs could play an active role to support their tax authority to enhance their capacity to fight ML of this type of crime.

CASE EXAMPLES

Spontaneous information from FIU to FIU, allowing to identify more funds derived from tax fraud

Description of the case:

Country A commenced an investigation concerning a cigarette manufacturer whose registration had been revoked after a long court battle. When it ceased to operate formally, the manufacturer owed more than USD 476 million. The debt became uncollectible, since the formal partners of the company had no assets, as they were not the real beneficial owners.

To continue operating, the manufacturer used a fraudulent scheme and set up a front company with straw owners. The partners of the new company were a citizen of Country A (Person Alpha) and a foreign citizen (Person Beta), who had previously been to Country A.

To launder the profits from tax evasion and illegal cigarette sales, a scheme was set up to move funds between third-party bank accounts (individuals and legal entities) and create the appearance of real business transactions. It was only possible to identify the scheme after cross-checking business and accounting documents and the flow of money. During the investigation phase the FIU of Country A provided intelligence reports to the tax authority. In a more advanced stage of the investigation, the authorities requested the judicial lifting of bank secrecy.

The beneficial owner of the business (Person Gama) amassed a fortune in assets, which he had registered in the name of a financial, commercial, and corporate management company in which Person Gama was the sole owner. This company-maintained assets and investments in Country A and other countries. Another foreign citizen living in Country A (Person Delta) was found to be the principle actor of the ML scheme.

The investigation identified the existence of other dormant companies waiting to be used by the criminal organization. As soon as one cigarette manufacturer company was closed by the tax administration, another was set up in its place.

In an attempt to avoid providing evidence of an actual tax crime, the companies that entered this circuit always made the correct declarations of due taxes to the tax authority, so as to be charged at most with a tax offense for lack of payment. The companies did not collect these taxes until they were shut down. Tax debts are then sent to the tax prosecutor for forcible collection. As the partners are usually not within the reach of Country A's law or have no assets to be seized, no effective punishment was possible.

Outcome of the case:

Company Alpha was closed. A request for the seizure of assets of the beneficial owner is still pending judicial authorization. Other cautionary measures are on hold, waiting for the end of the administrative tax proceedings. Documents and media seized during the search warrants are still being analysed.

(case continues on next page)

The alleged offences:

- Omitting information, or making false statements to the authorities.
- Defraud the tax inspection, inserting inaccurate elements, or omitting operations of any nature, in documents or books required by the tax law.
- Falsify or alter tax receipt, invoice, trade note, sales note, or any other document related to the taxable transaction.
- Elaborate, distribute, supply, issue or use document that one knows or should know to be false or inaccurate.

Analysis of the FIU:

The FIU of Country A obtained STRs and CTRs from the financial sector. These reports were analysed by the FIU in conjunction with other information from international counterparts. The FIU of Country A subsequently produced four intelligence reports, at the request of the tax authority of Country A.

The FIU of Country A obtained information from four foreign FIUs.

The FIU of Country A also sought information from the tax authority in relation to information from other foreign countries.

Key factors:

- Domestic cooperation between tax intelligence unit, federal prosecutor, federal police and the FIU.
- Tax administration has a very active tax intelligence unit which works collaboratively with other criminal prosecution authorities and the FIU.
- Difficulty in the actual pursuit of tax crime investigations due to Country A's legal framework requires that tax debt must already have been confirmed by the Tax Authority before any attempt at criminal punitive measures, as well as to freeze assets.
- Criminal prosecution authorities in Country A do not encourage the fight against tax crimes, therefore a change for more effective and enforceable laws in cases of fraud and wilful misconduct in Country A would be key to mitigating the problem.

Spontaneous dissemination concerning money laundering of proceeds derived from tax evasion with the use of trust accounts abroad

Description of the case:

Company Alpha (a Capital Markets Services Licensee) arranged for its client's assets to be managed by Company Beta. The FIU received STRs, which indicated that several trust accounts managed by Company Beta may have been undeclared assets taxable in Country A.

STRs indicated that four trust accounts held under Company Gama and Company Delta may have been undeclared taxable assets in Country A. The trusts accounts were transferred from Company Beta (sister company of Company Alpha), to Company Alpha between April 2010 and February 2012. According to Company Alpha's records, the beneficial owner for the trust accounts was Person Epsilon, from Country B. However, Company Alpha received information from Company Beta that the real beneficial owner could be Company Gama, from Country A.

The alleged offences:

- Tax evasion and money laundering (investigation still ongoing).

Analysis of the FIU:

The FIU from Country B sent six spontaneous disclosures concerning clients of Company Alpha to the FIU of Country A. Pursuant to the disclosures, the tax authorities in Country A informed the FIU of Country A that they were investigating a scheme involving companies (including Company Alpha) concerning the concealment of undeclared tax assets.

The tax authorities of Country A subsequently sent a request regarding Company Alpha to the FIU of Country B. The FIU from Country B provided financial intelligence about Company Alpha's clients, whose accounts may have represented undeclared assets taxable in Country A.

STRs relating to the clients of Company Alpha assessed to be relevant were also disseminated to a domestic LEA, which investigates domestic ML offences relating to tax evasion. The LEA investigated the tax evasion case, seizing approximately USD 2,4 million.

The FIU used an IT system with analytical and querying functions, which assisted in the identification of networks and insights. The FIU also collaborated with foreign counterparts in the exchange of information, using spontaneous disclosures and responses to requests.

Means used by perpetrators:

- Offshore companies and trusts.
- Professional intermediary involved in establishment of trust accounts.
- Assets derived from crime in the form of real estate, fixed deposits, and multi-currency time deposits.

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Challenges:

The FIU received tax-related STRs from reporting entities for suspected tax-related offences, in terms of money flows such transactions comprise commingled funds (i.e. both legitimate and criminal proceeds arising from tax evaded/defrauded). Comingling of funds makes it difficult for an FIU to distinguish criminal proceeds arising from tax evaded/defrauded from legitimate funds without access to other data.

Best Practices:

- Good cooperation between the FIU and other domestic authorities along with feedback to reporting entities.
- Use of liaison officers to validate the relevance of information provided to LEAs and competent authorities.
- Information from liaison officers is used to provide guidance material and outreach to reporting entities on what information to include in STRs (red flag and financial information such as statements, account opening information). This improves the value of intelligence available to FIUs, LEAs and tax authorities.

FIU cooperation with foreign FIUs as well as with private sector to detect tax evasion scheme

Description of the case:

An FIU received a STR from a reporting entity triggered by several unjustified incoming and outgoing cross-border wire transfers involving corporate accounts opened in Country A of an Entity (Alpha) incorporated in Country B.

Alleged offences:

The transactions gave rise to doubts regarding the tax conformity of the entity in Country B and its involvement in ML.

FIU Analysis and Tax Authority investigations:

The FIU's analysis revealed adverse open source of information about the entity established in Country B as well as adverse law enforcement records on the person controlling to the entity. The FIU proceeded to spontaneously exchange information with a foreign FIU and sent information requests to 15 FIUs to better understand the financial activity linked to the entity. The information received from other FIUs included details of counterparties to the transactions suggested Entity Alpha might be involved in a cross-border tax evasion scheme and that the funds credited to, and debited from, its account might constitute proceeds of illicit and undeclared activity. Of the funds transferred to Country A, approximately EUR 1 million was frozen and seized by the LEAs in Country A. International citizens involved were also investigated for tax crimes or tax evasion in their jurisdiction of residence.

Means used by perpetrators:

- Cross-border wire transfers
- Involvement of natural and legal persons in foreign jurisdictions
- Share purchases
- Purchases of luxury goods
- Cash transactions not recorded in the annual accounts.

Key Factors:

- Identification of suspicious activity by the private sector
- Responses to requests for information from foreign FIUs
- Cooperation with local police
- Dissemination to the local tax authority.

Challenges:

- Risk of tipping off
- Tracing cross-border transactions
- High volume of cash transactions
- Exchange of information in real time
- New fraud schemes.