Australian Government
Australian Taxation Office

Money Laundering Associated With Tax Crimes in the Asia Pacific

2023

APG
Asia/Pacific Group
on Money Laundering

Asia/Pacific Group on Money Laundering
September 2023

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SUGGESTED CITATION: 'Tax Crimes and Money Laundering,' Asia-Pacific Group on Money Laundering and Australian Taxation Office, Sydney, Australia, August 2023.

ACKNOWLEDGEMENTS: This report was made possible by the many APG members who contributed expertise, questionnaire responses and feedback on the report. In particular, the APG and ATO gratefully acknowledge the consistent support from the APG project team, which comprised of experts from the governments of Pakistan, Singapore and Fiji, and from the Asian Development Bank, European Union, OECD Tax Crimes Taskforce, Pacific Islands Tax Administrators Association and World Bank. The lead authors of the report are Mark McGoldrick (ATO), Mitali Tyagi (APG) and Gavin Raper (APG).

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For more information about the APG, please visit the website: www.apgml.org. This report is produced in partnership with the Australian Taxation Office www.ato.gov.au.

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Executive Summary

Tax crimes and the associated money laundering (ML) are global problems impacting all economies. Systems designed to prevent tax crimes and the associated ML contain weaknesses and loopholes that allow them to persist and deprive jurisdictions of vital tax revenue. The World Bank reports that tax evasion is the number one source of Illicit Financial Flows (IFF),[1] for which estimates range between 125 billion and 15 trillion US Dollars.[2]

The aim of this paper is to inform the public of the nature and global scale of ML associated with tax evasion, the international standards that address it, and the opportunities available to improve the resilience of the international financial system to ML associated with tax crimes. This paper comes as there is increasing global awareness of the close links and common features between tax crimes and ML and their detrimental effects on societies. Such awareness is triggering an increasing global effort to uplift capability to combat these interlinked crimes, and create a more connected intelligence and investigation cohort.

A key aim of this project has been to provide a uniquely Asia-Pacific perspective on the problem, which to date has been lacking from the literature. In this regard, generous participation from the membership of the Asia-Pacific Group on Money Laundering (APG) allowed direct feedback on the experience of monitoring and investigating ML related to tax crimes in the Asia-Pacific.

The findings in this report are based upon three major inputs. Firstly, the project team undertook a review of existing literature. Secondly, APG members completed a comprehensive questionnaire outlining their jurisdiction's existing knowledge and systems used to combat ML related to tax crimes. Thirdly, members provided case studies of the laundering of the proceeds of tax crimes.

A key finding of the literature review was the distinct lack of a specifically Asia-Pacific voice in respect of ML associated with the proceeds of tax crimes. This was subsequently supported by the findings of the questionnaire that indicated there was generally a poor understanding of the topic across the region. Further, the literature review identified the importance of global efforts to increase transparency and sharing of information. Finally, the literature review highlighted that the concepts of ML and tax evasion were very closely aligned.

The literature review also identified a number of issues regarding ML related to the proceeds of tax crimes. A clear definition of what taxes are included, and what constitutes a tax crime is not settled. This paper provides a possible definition, however further work is required to arrive at a comprehensive definition as part of global standards, that can be practically applied by jurisdictions.

Secondly, the manner in which the concept of a 'predicate offence' for ML operates in respect of tax crimes is the subject of differing views. The question is whether financial activity that occurs before the offence (i.e. lodgement or deemed lodgement of the fraudulent tax document), can be considered ML. The authors have chosen not to take a position on this issue, however have opted to use the broadest concept, in order to include most indicators of ML of the proceeds of tax crimes. Further research is required to settle this issue.

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[1] World Bank, *The World Bank Group's Response to Illicit Financial Flows: a Stocktaking*, 2016

[2] Ferwerda, Joras, and Brigitte Unger, 'How Big Are Illicit Financial Flows? The Hot Phase of IFF Estimations', in Brigitte Unger, Lucia Rossel, and Joras Ferwerda (eds), *Combating Fiscal Fraud and Empowering Regulators: Bringing tax money back into the COFFERS* (Oxford, 2021; online edn, Oxford Academic, 18 Feb. 2021), https://doi.org/10.1093/oso/9780198854722.003.0005, accessed 6 June 2023.

EXECUTIVE SUMMARY

In response to the questionnaire, members of the APG reported vastly different levels of understanding and sophistication when it comes to tackling ML associated with tax crimes, reflecting the diverse make-up of the membership. Universally, however, APG members reported a need for additional training in the investigation of tax crimes and associated ML. Although members have access to a wide range of training possibilities, revenue authorities are one source of expertise and information that is not as accessible as others.

Obstacles to sharing information, both domestically and internationally, were broadly reported as a significant blocker to effective investigation. A shift towards more readily sharing financial and fiscal information within and between jurisdictions would be a key step in reducing the risk faced by jurisdictions.

Case studies provided by jurisdictions highlighted that concealment of beneficial ownership was a key and almost universal element. This finding was not surprising, given the prevalence of this issue in existing literature. Several means of concealing beneficial ownership were identified, including the use of physical currency, the use of cryptocurrencies, the use of third party accounts (including nominee accounts and trust accounts), the movement of funds to/from a foreign jurisdiction, and the use of financial systems in a foreign jurisdiction.

These findings are all well-known long-term opportunities and inhibitors to effectively progressing tax crime referrals as a predicate offence to ML. In a sense, the most powerful point that the authors hope to make is that the issues identified are not surprising, however responses to date have not been effective.

Historically, tax crimes have not been given the same priority as other predicate offences, particularly drug offences. This is understandable to a certain degree, as there is an alternative treatment available to authorities (revenue assessments) when seeking to remove the wealth accrued. Crucially, however, this dynamic sends a signal to criminal elements that ML offences are unlikely to be pursued. A change in this dynamic would systemically reduce risks faced by jurisdictions from the ML of the proceeds of tax crimes.

There remains significant work to be done in the Asia-Pacific region to combat ML associated with tax crimes. The paper makes the following recommendations:

1. Increase capacity building efforts, including through the development of comprehensive training material for the detection, investigation and prosecution of money laundering, particularly pertaining to tax crime;
2. Improve utilisation of expertise available within revenue authorities in order to combat the laundering of the proceeds of tax crimes;
3. Supporting increased engagement in the Asia-Pacific region with global initiatives aimed at improving transparency on tax crimes, ML and beneficial ownership;
4. Implementation of global best practice initiatives for information sharing both domestically and internationally (including recovery of proceeds of crime);
5. Closer collaboration between revenue authorities and financial intelligence units (FIUs) in both the capacity building and operational aspects of combatting the laundering of the proceeds of tax crimes (investigation, prosecution and recovery of proceeds);
6. Further research to identify appropriate definitions of tax crimes and associated ML;
7. Closer alignment between tax crimes and ML in legislative constructs; and
8. Compilation of statistics for ML related to the proceeds of tax crimes within governments.

RECOMMENDED READING

Recommended Reading

The following documents are provided to the reader as a list of recommended reading to provide context and understanding of the topic area:

1. FATF and Egmont Group, *Concealment of Beneficial Ownership*, 2018
2. Mathias, E., and Wardzynski, A., *Leveraging Anti-money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues*, April 2023, International Monetary Fund
3. Egmont Group, *Public Bulletin: Money Laundering of Serious Tax Crimes*, 2020
4. Kemsley *et al*, ‘Tax Evasion and Money Laundering: A Complete Framework’ (2022) 29 *Journal of Financial Crime* 589, 594.
5. OECD, *Fighting Tax Crime – The Ten Global Principles*, Second Edition, 2021
6. Eurasian Group, *Laundering of the proceeds from tax and economic crimes*, 2022

Introduction

THE ELEMENTS OF MONEY LAUNDERING

FATF Recommendation 3[3] provides that countries should criminalise ML on the basis of the Vienna Convention[4] and the Palermo Convention[5] and apply the crime of ML to all serious predicate crimes. Tax crimes are included as a designated category of offences for the purpose of Recommendation 3.

The Palermo Convention (in short) defines money laundering as,

> the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property, or the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.

The Palermo Convention also defines the proceeds of crime as any property derived from or obtained, directly or indirectly, through the commission of an offence.

National strategies to combat ML must include not only effective criminal laws prohibiting ML and effective penalties for those convicted, but also efficient and effective confiscation or forfeiture mechanisms to recover the proceeds of crime.

TYPES OF TAX CRIMES FOR THE PURPOSES OF MONEY LAUNDERING:

The FATF's designated categories of crimes includes both direct and indirect taxes:

- **Direct taxes** are levied against the taxpayer directly and include personal and corporate income tax, capital gains tax, and others;
- **Indirect taxes** are taxes collected by a third party intermediary entity or business to satisfy a taxpayers' liability and are then remitted by the third party to the tax authority on behalf of the taxpayer. Examples include sales tax, goods and services tax, and VAT taxes.

To be considered a tax crime, the offence must be subject to a criminal penalty. Other offences, such as administrative offences, are not considered tax crimes and therefore are not predicate offences for money laundering purposes.

WHAT IS TAX EVASION?

A distinction often cited in literature is the difference between tax evasion and tax avoidance.

- **Tax evasion**: In simple terms, tax evasion is the deliberate understatement of income, or the fraudulent misstatement of income, to avoid an otherwise higher tax liability. This can take the form of intentionally or fraudulently failing to report income (such as cash receipts) or the intentional falsification of expenses claimed as deductions. Tax evasion can range from these simple methods to much more complex schemes.

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[3] FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

[4] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

[5] United Nations Convention against Transnational Organized Crime, 2000

- **Tax avoidance:** Unlike tax evasion, tax avoidance is not a criminal offence. Avoidance schemes typically focus on 'loop holes' in tax law or complex schemes using legal structures such as companies or trusts, or a combination of both to reduce a tax liability but which do not cross the line of criminality as the planning does not involve active or passive fault or criminal intent by the taxpayer.[6]

NEXUS BETWEEN TAX EVASION AND MONEY LAUNDERING

Successful tax evasion does not necessarily result in the *receipt* of proceeds of crime. Often, tax evasion results in a saving of funds rather than a receipt of illegal funds. The definition of ML and proceeds of crime in the Palermo Convention (above) can accommodate the unique nature of tax evasion as a predicate crime. The proceeds of crime are defined to include property derived from the commission of an offence. According to one author '...disguising the origin of the tax savings in a distinct step is generally unnecessary. Tax evaders make false representations of income and tax liability during the evasion process itself. If the evasion is successful, unwitting tax authorities acquiesce, and illicit tax savings are produced and cleaned in a single step. At that point, the offense is complete, and there is no need for required subsequent laundering of the proceeds.'[7] Thus, unlike other predicate crimes, there is no clear marker to separate the end of tax evasion process and the beginning of a distinct money laundering step. Therefore, the author concludes that 'tax evasion is not a standard predicate offence that requires receipt and steps to conceal or disguise the tax savings'.

Tax crime ML typologies can be particularly challenging for domestic revenue agencies, law enforcement and financial intelligence units to detect, analyse and investigate because of their complexity. These schemes are typically transnational in nature, make use of complex legal structures that see the use of legal persons and arrangements, as well as nominee shareholders and/or directors, and involve sophisticated professionals who set up such schemes and facilitate transactions to enable their clients' criminal activity. Technological advances mean such actors have immediate access to the global financial system in multiple jurisdictions, including legal entities, arrangements and bank accounts, as well as more complex financial services that make the identification of the laundering stages particularly complex. Conversely, sharing of information between jurisdictions has not kept up with those advances.

In 2020, the Egmont Group issued a public bulletin entitled 'Money Laundering of Serious Tax Crimes' that aimed to enhance FIU detection capacities, information exchange and best practices in the fight against ML of serious tax crimes.[8]

The G20 and OECD also have a long-standing focus on tax evasion. The OECD Secretary General reports to G20 Finance Ministers and leaders on progress made in relation to international tax co-operation. In 2011, the OECD launched the Task Force on Tax Crimes to support and promote a 'whole of government' approach to fighting tax and other financial crimes. Since 2011 the OECD has published a number of papers[9] on tax crimes including the

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[6] See later section under 'Analysis' which includes details of jurisdictions' various tax crime offences, provided in response to the Questionnaire.

[7] Kemsley *et al*, 'Tax Evasion and Money Laundering: A Complete Framework' (2022) 29 Journal of Financial Crime 589, 594.

[8] The Egmont Group, *Money Laundering of Serious Tax Crime, 2020.*

[9] Available from: https://www.oecd.org/tax/crime/#:~:text=The%20OECD%20Task%20Force%20on,crimes%20through%20standard%20setting%2C%20sharing

'Ten Global Principles for Fighting Tax Crime' which underpins its delivery of a range of practical tools, guidance, training, and other capacity building initiatives to jurisdictions to help them fight tax crimes.

OBJECTIVES

The primary aim of this report is to collate tax crime ML typologies observed by member jurisdictions of the APG. Secondarily, the work of this report is compiling information regarding the understanding of, and approaches to, combating the laundering of the proceeds of tax crimes.

SCOPE

The questionnaire circulated as part of this typologies project sought information from APG members across six categories related to tax crimes including:

1. National ML/TF Frameworks;
2. Financial Intelligence (including transaction reporting and public/private partnerships);
3. AML/CFT Supervision;
4. Investigation of Tax Crimes and Money Laundering (including investigating proceeds from tax crimes, agencies' roles, powers and access, cross-agency investigations, prosecutions, asset recovery, training and capability building, and cross-border information sharing);
5. Statistics on Tax Crime and Money Laundering; and
6. Case Studies.

The project did not examine APG member technical compliance or effectiveness ratings with the FATF Recommendations.

The report is intended to:

- Inform APG members on methods and trends in the laundering of proceeds of tax crimes;
- Identify vulnerabilities associated with the concealment of beneficial ownership and tax crime risks and best practices amongst APG members in mitigating risks;
- Enhance understanding of practices and risks surrounding legal persons and legal arrangements, including their nature, structure and beneficial ownerships, with respect to tax crimes; and
- Identify whether and to what extent 'whole of government' solutions can be successful in tackling this type of complex and sophisticated crime.

METHODOLOGY

The project was led by project team comprised of APG members from Australia, Fiji, Kiribati, Pakistan, and Singapore, and APG observers from the Asian Development Bank, European Union and World Bank. The Pacific Islands Tax Administrators Association, which represents many Pacific Island APG members, was another member of the project team.

The project team undertook the following activities:

1. A literature review of existing APG typology reports and other open source publications to identify ML typologies where tax crimes were the predicate offence, and themes and issues relevant to the laundering of the proceeds of tax crimes;
2. Development and circulation of a questionnaire to APG members to elicit data and information on their experiences relating to the investigation, seizure and confiscation of assets, prosecutions and risk-based supervisory approaches to the laundering of proceeds of tax crimes;
3. Collation and analysis of members' observed cases, indicators and trends; and
4. Drafting of recommendations to APG members to enhance their capability to; assess the risks of tax crimes, effectively supervise reporting entities, conduct ML investigations and prosecutions, and freeze and seize the proceeds of tax crimes.

This report analyses survey data collected from APG members to provide an Asia-Pacific perspective on combating ML arising from tax crimes.

As highlighted in the literature review, there is an underrepresentation of Asia-Pacific jurisdictions in the area of ML of tax crimes. Therefore, the questionnaire drafted by the project team focused on six broad themes (see scope above) with the aim of gathering information that would inform and support member jurisdictions implementation of effective AML/CFT frameworks to combat the laundering of proceeds of tax crimes.

Review of existing literature

HISTORY OF TAX CRIME AS A PREDICATE CRIME

Combatting tax crimes is of primary interest to all jurisdictions, and a key issue not just for revenue authorities, but for financial intelligence units and law enforcement agencies as well.[10] The World Bank lists tax evasion as the number one behaviour that gives rise to Illicit Financial Flows.[11] The exact size of the problem in the Asia-Pacific region is unknown.

When the Financial Action Task Force first published its Forty Recommendations in 1990, its purpose was to influence member jurisdictions to criminalise the laundering of proceeds derived from specific drug offences, as identified in the Vienna Convention.[12] FATF revised and reissued the Forty Recommendations in 1996, and then again in 2003.

In May 1998, G7 initiatives to curb harmful tax competition sought to increase international exchange of information on tax evasion and avoidance through tax havens. This was 'partly motivated by growing evidence that criminals can evade anti-money laundering (AML) systems by presenting their affairs as tax related to reassure their bankers, brokers and professional advisors'.[13] The G7 Finance Ministers highlighted the substantial similarities in techniques used in ML and those used in tax crimes.[14]

In 2012, FATF recommended that tax crimes should be predicate offences for ML under FATF Recommendation 3.[15] At the same time, FATF revised its Recommendation 20 to oblige reporting to the FIU whenever financial institutions 'suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity…'. This expanded the definition beyond the previous obligation which was to report only when the suspicion relates to ML (or terrorist financing). The OECD Task Force on Tax Crimes and Other Crimes listed tax crimes as predicate offences to ML under Principle 7 in its Ten Global Principles for Fighting Tax Crime. What becomes clear is that key concepts regarding tax crimes (What is a tax crime in the context of ML? What taxes are relevant?), and how the predicate offence model of ML operates with respect to tax crime are not settled.

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[10] Egmont Group, *Public Bulletin: Money Laundering of Serious Tax Crimes*, 2020

[11] World Bank, *The World Bank Group's Response to Illicit Financial Flows: a Stocktaking*, 2016

[12] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, 1582 UNTS 95 (20 December 1988, entry into force 11 November 1990).

[13] HM Treasury Press Release. *G7 Initiative on Harmful Tax Competition*. May 1998.

[14] Maugeri, A., *Self-laundering of the proceeds of tax evasion in comparative law: Between effectiveness and safeguards*, New Journal of European Criminal Law, 2018, Vol 9(1) pp. 83-108.

[15] The FATF Recommendations include tax crimes under the definition of 'Designated categories of offences' (pp. 121-122) in respect of Recommendation 3 – Money Laundering Offence (see Interpretive Note to Recommendation 3, p38, dot point number 4). FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html Link accessed 23 March 2022.

A problem - when does tax crime become a predicate offence?

Tax crimes are committed at the point where a fraudulent document is lodged, or when authorities deem non-lodgement to be an offence. A problem therefore arises when lodgement (or deemed lodgement) occurs after transactions designed to 'launder' those funds.

Alternative schools of thought exist: firstly, that it is not possible to have money laundering before the predicate offence has been committed. Funds cannot be laundered when there is no crime attached to them. In this scenario, only movements of funds that occur after the tax crime is committed (i.e. after lodgement of a taxation document) can be considered part of the laundering process.

An alternative viewpoint is that movement of funds before lodgement forms part of the broader tax crime concept, i.e. the crime is not limited to the false lodgement itself, but also includes financial transactions and other acts taken in preparation for the false lodgement. The concept of Illicit Financial Flows as defined by the World Bank allows for these flows of funds to be included, albeit not as a money laundering offence per se.

Kemsley *et al*. argues a third viewpoint – that tax evasion is a composite, one-step form of money laundering. There is a strong case for this view, however it is not matched by current legislative frameworks regarding the offences of tax evasion (or fraud) and money laundering.

Identifying which path to take is fundamental to the understanding of the concept of tax crimes as a predicate offence for money laundering, and in particular how jurisdictions establish effective regimes to counteract those crimes.

The authors have chosen not to take a position on this issue. Further research is required to determine how tax crimes can be effectively included as predicate offences under FATF Recommendation 3.

However, case studies that demonstrate funds flows occurring prior to the commission of the tax crime are useful as indicators of schemes used to conceal the origin of the funds. Therefore, the authors have chosen to include such case studies in this report.

Horizontal Review of Recommendation 3 – tax crimes as a predicate offence

The Glossary to the FATF Standards includes tax crimes (related to direct and indirect taxation) in the designated offences category, which recommends it to be included in as a predicate offence to ML in domestic legal systems. However no guidance on the scope of tax crimes has been issued. Further, there is no body of treaty law to guide assessments, unlike categories such as drug crimes.

A review of 34 MERs and four follow-up reports (FUR) (where R.3 was re-rated) found:

- Inconsistency in the way reports address the types of tax crime that are predicates for ML;
- A majority of reports do not provide a detailed scope of what types of tax offence would constitute a serious offence;

- It is often not clear how the jurisdiction's risk and context were considered in determining where a suitable range of tax crimes were covered for Recommendation 3; and
- Only 16 of the 38 reports reviewed (14 MERs and two FURs) had explicit discussion on the consideration of tax offences as predicate offences for ML. Of these 16 reports:
    - Almost all focused on the test of whether the tax offence satisfied the criminal threshold or being listed as a predicate offence for ML;
    - Four reports made reference to the risk and context of tax crimes and their omission from being covered as a serious offence; and
    - Eight provided insight into what types of tax offences have constituted tax predicate offences. I.e. domestic and foreign tax evasion, using false or forged documents, claiming false tax rebates making false statements.

Tax avoidance v Tax evasion

There is no singularly accepted definition for tax avoidance or tax evasion. This lack of clear definitions blurs the line between legal and illegal activity. Further, it is interesting to observe that the OECD accepts that avoidance could be an arrangement that is in contradiction to the intent of the law it purports to follow. This has led to some criticism, for example in academic quarters, of the acceptance of tax avoidance:

> *Tax avoidance* is cheating the public revenue **by the professional advisers** that devise, market, implement and otherwise facilitate the use of tax schemes ('the professional enablers') in which the taxpayer using an individual scheme ('the participating taxpayer') may or may not be complicit.[16]

There is little guidance in the FATF Standards on what constitutes a tax crime as a designated predicate offence for ML: the Standards refer only to direct and indirect taxes. The Egmont Group's *Public Bulletin on Money Laundering of Serious Tax Crimes* found from its survey of 50 financial intelligence units (FIUs) that there was no common definition of a 'serious tax crimes' and almost half of jurisdictions did not distinguish between serious tax crime and a tax crime. Further, the Public Bulletin observed that 'serious tax crimes were not systematically considered as predicate offences or in the domain of an FIUs' mandate'.[17]

The OECD has called for jurisdictions to criminalise tax offences to send a message about integrity and fairness of the law but also as a general and specific deterrent to those tempted to evade their tax obligations. Criminalisation also ensures the 'availability of criminal investigative and enforcement powers that are necessary to find the truth regardless of the cooperation of the accused. In some jurisdictions this also provides a basis for domestic co-operation with other law enforcement agencies under criminal law and international co-operation under, for example, under an MLAT [mutual legal assistance treaty]'.[18]

Only tax offences that attract criminal sanctions can be predicate offences for money laundering purposes. As the OECD suggests, this has implications for a number of FATF Recommendations including R.4 Confiscation and Provisional Measures, R.33 Statistics, and Recommendations relating to International Cooperation. Similarly, the assessment of Immediate Outcomes 2, 5, 6-8 are influenced by whether a jurisdiction applies criminal sanctions to tax offences.

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[16] Mba, O., *Cheating the public revenue: The nature and meaning of 'tax avoidance' and 'tax evasion' in English law*. PhD Thesis University of London, 2019, pp 4.

[17] Egmont Group, *Public Bulletin: Money Laundering of Serious Tax Crimes*, 2020

[18] OECD, *Fighting Tax Crime – The Ten Global Principles*, Second Edition 2021, page 14

Case Study Example

Case Study 15 involved a taxpayer reputedly operating a business in a non-tax region. Such behaviour, if legitimate, is a legal avoidance of taxation. Subsequent investigations, however, revealed that the taxpayer was in fact operating the business outside the non-tax region, and had fraudulently claimed to be operating in the non-tax region in order to evade tax. The offender was convicted, fined and imprisoned.

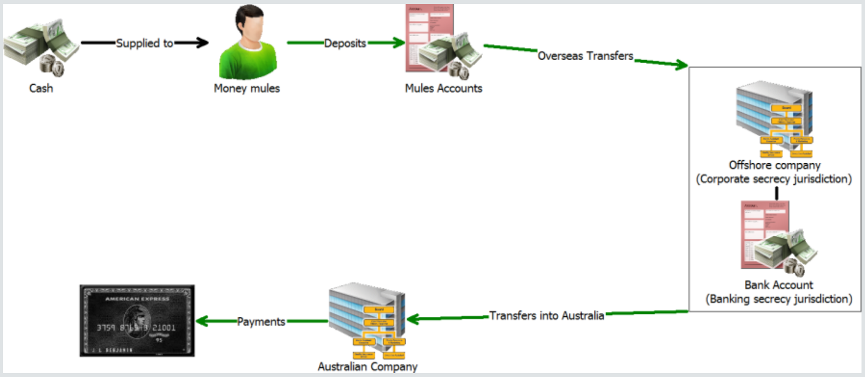
Alternate models for conceptualising tax crime as a predicate offence

In many cases, the commission of the tax crime offence (lodgement of false documentation) occurs after the relevant movement of funds. The World Bank neatly describes how tax evasion may be categorised as an element of Illicit Financial Flows, by designating three main areas of Illicit Financial Flows, as follows:

- The acts themselves are illegal (e.g., corruption, tax evasion); or
- The funds are the results of illegal acts (e.g., smuggling and trafficking in minerals, wildlife, drugs, and people); or
- The funds are used for illegal purposes (e.g., financing of organised crime).[19]

Case Study Example

Case Study 22 involved a taxpayer benefiting from substantial funds that were moved through multiple accounts, both domestically and overseas. The alleged tax crime occurred substantially after the funds were moved (in the following financial year), when fraudulent returns were lodged. The movement of funds offshore is therefore better classified as an Illicit Financial Flow, as opposed to money laundering. This case is, however, strongly indicative of the type of indicator that can be useful in detecting the laundering of the proceeds of tax crimes.


Cash
Supplied to
Money mules
Deposits
Mules Accounts
Overseas Transfers
Offshore company
(Corporate secrecy jurisdiction)
Bank Account
(Banking secrecy jurisdiction)
Transfers into Australia
Australian Company
Payments
AMERICAN EXPRESS

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[19] Illicit Financial Flows (IFFs) (worldbank.org), accessed 22 May 2023

This concept of Illicit Financial Flows is consistent with the position taken by the authors when contemplating typologies of ML related to proceeds of tax crimes, as it allows for a broader range of relevant activity to be captured and described (see p.9).

Kemsley *et al*. demonstrate that tax evasion is not a standard predicate offence for ML, but rather that it is a composite, one-step form of ML.[20] Successful tax evasion achieves the same objective as ML: to integrate dirty money into the legitimate financial system. Taking steps to hide undeclared income is central to the tax evasion process and constitutes ML. Flowing on from this analysis, Kemsley *et al*. call for a changed approach to treat tax evasion and ML by the same means of prosecution.[21]

In an April 2023 paper, the International Monetary Fund[22] advocated for jurisdictions to leverage anti-money laundering measures in order to enhance tax compliance, tackle tax crimes, and, in turn, help mobilise domestic revenues. The relative absence of capability in some parts of the Asia-Pacific region in respect of investigating tax crimes suggests that an increase in utilisation of anti-money laundering measures would have an even greater impact in this region.

The World Bank Group's Stolen Asset Recovery Initiative produced a report in 2022 titled '*Taxing Crime: A Whole of Government Approach to Fighting Corruption, Money Laundering and Tax Crimes*.[23] This report called for improved exchange of information channels for tax and criminal investigative agencies, and combining tax and financial crime prosecution in an inter-agency asset recovery strategy.

Clearly, therefore, there is global recognition that money laundering and tax crime are closely related, and increasing the role of the revenue authority in all aspects will lead to better outcomes in the operational, policy, intelligence and training spheres.

KEY ISSUES IDENTIFIED IN THE LITERATURE REVIEW

Key issues identified in the literature review can be broken down into two categories:

1. Issues relating to the financial system that allow, enable or encourage tax crimes and the laundering of the proceeds; and
2. Issues relating to governmental structures that hinder, delay or block successful investigation and prosecution of tax crimes and the laundering of the proceeds.

The Financial System and its Players

In respect of the first category, the dominant issue is, and has long been, the concealment of beneficial ownership and its impact on effective information exchange, timely development of financial intelligence and law enforcement agency investigations. In 2018 FATF and The Egmont Group of FIUs released a 190-page report[24] covering the many factors that relate to this issue. The purpose of concealing beneficial ownership is simple, to ensure that the true owner of an asset or revenue stream cannot be associated with it (and therefore subject to taxation on income earned on that asset, or confiscation of that asset).

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[20] Kemsley *et al*, 'Tax Evasion and Money Laundering: A Complete Framework' (2022) 29 Journal of Financial Crime 589, 594.

[21] ibid.

[22] Leveraging Anti-money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues (imf.org), accessed 22 May 2023

[23] Brun, Jean-Pierre, Ana Cebreiro Gomez, Rita Julien, Joy Waruguru Ndubai, Jeffrey Owens, Siddhesh Rao, and Yara Esquivel Soto. 2022. *Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes*. Stolen Asset Recovery Initiative Series. Washington, DC: World Bank. doi: 10.1596/978-1-4648-1873-8. License: Creative Commons Attribution CC BY 3.0 IG

[24] FATF and Egmont Group, *Concealment of Beneficial Ownership*, 2018

There is a wide range of well-known methods that all perform the same function – concealment of beneficial ownership. These include the use of:

1. Nominee shareholders and directors, or the use of bearer shares;
2. Trusts and similar legal arrangements;
3. Shell companies or other corporate structures; and
4. Secrecy jurisdictions.

A second, related issue is the role of professional facilitators in establishing schemes that include the arrangements listed above. FATF recommendation 22[25] calls for the regulation of Designated Non-Financial Businesses and Professionals (DNFBPs), including accountants, lawyers, real estate agents and other professionals. This issue was also highlighted in the 2021 OECD paper entitled 'Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes', which identifies lawyers, accountants, financial institutions and other professionals as enablers who help 'engineer the legal and financial structures seen in complex tax evasion and financial crimes'. The paper sets out a number of strategies aimed at professionals who enable tax crime and other crimes on behalf of criminal clients.[26]

The role of professional facilitators is becoming increasingly better understood. A review of the so-called '*Panama Papers*' highlighted the role of advisors with legal, tax, administrative and/or investment expertise in creating, maintaining and enforcing offshore structures.[27]

In the context of mutual evaluations, weaknesses in the regulation and supervision of DNFBPs have been apparent including the vulnerabilities this situation creates for ML/TF risks in countries. [28,29] For example, FATF's *Report on the State of Effectiveness and Compliance with FATF Standards* found only 38% of mutual evaluations by FATF Style Regional Bodies rated the technical compliance of DNFBP supervisors as Compliant or Largely Compliant.[30]

Transparency and Beneficial Ownership

Complex legal structures using companies and trusts, often spanning across multiple jurisdictions, are a common feature in tax crimes and related ML schemes. Beneficial ownership transparency of legal persons and legal arrangements is designed as tool to identify criminals who exploit these structures and to provide competent authorities with rapid information in the context of their analyses and investigations.

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[25] FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

[26] OECD (2021), Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes, OECD, Paris

[27] European Parliament, Directorate-General for Internal Policies, Role of advisors and intermediaries in the schemes revealed in the Panama Papers, 2017

[28] GIABA, *The Vulnerabilities of Designated Non-Financial Businesses and Professions to Money Laundering and Terrorist Financing and the Adequacy of Control Measures in West Africa*, 2016

[29] Jayasekara, S. D. Challenges of implementing an effective risk-based supervision on anti-money laundering and countering the financing of terrorism under the 2013 FATF methodology. *Journal of Money Laundering Control, Vol.21 No.4, 2018, pp601-615.*

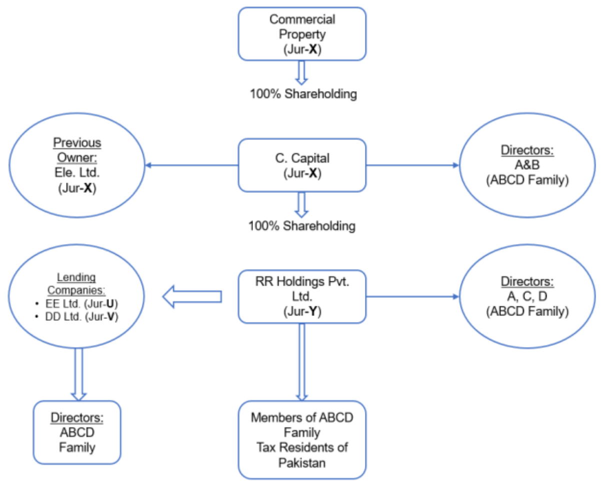
[30] FATF, *Report on the State of Effectiveness and Compliance with FATF Standards*, FATF, Paris, 2022, page 23.

REVIEW OF EXISTING LITERATURE

The FATF recently revised Recommendations 24 and 25 to better ensure that beneficial ownership information is available on both legal persons and legal arrangements. While the FATF standards do not require jurisdictions to establish publicly accessible registers, a number of countries worldwide have taken this path, by establishing centralised beneficial ownership registers and making the information in those registers available not only to competent authorities such as law enforcement agencies and FIUs, but also to FIs/DNFBPs and, in some cases, to the public.

Case Study Example

Case Study 13 involved taxpayers owning commercial property in a foreign jurisdiction through a complex structure involving corporate entities in two foreign jurisdictions. The property was financed by corporations purportedly registered in two further foreign jurisdictions. The use of these arrangements obfuscated the true beneficial ownership of the property from the resident tax authorities.



Commercial Property (Jur-X)
100% Shareholding
Previous Owner: Ele. Ltd. (Jur-X)
C. Capital (Jur-X)
Directors: A&B (ABCD Family)
100% Shareholding
Lending Companies:
• EE Ltd. (Jur-U)
• DD Ltd. (Jur-V)
RR Holdings Pvt. Ltd. (Jur-Y)
Directors: A, C, D (ABCD Family)
Directors: ABCD Family
Members of ABCD Family Tax Residents of Pakistan

The European Union provides a case in point as regards how access to this data can be balanced with data privacy. In its judgement of November 2022, the EU's highest Court ruled that access by the public to beneficial ownership information should be conditional upon the demonstration of a legitimate interest to do so. The Court acknowledged that large groups of the public may hold such a legitimate interest, from the press to civil society associated to the prevention and fight of ML and terrorist financing, to anyone likely to enter into a transaction with the legal person or competent authorities that do not already have access to that information.

FATF Immediate Outcome 5 (IO5), with its related Recommendations 24 and 25, seeks to ensure that 'legal persons and arrangements are prevented from misuse for ML or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.' A recent FATF report on the effectiveness of implementation of recommendations noted that tax crimes were among the top four predicate offences considered a threat for ML by FATF and FSRB members.[31] The report also noted that:

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[31] FATF, *Report on the State of Effectiveness and Compliance with FATF Standards*, 2022

> Just about half (52%) of countries, on average, have the necessary laws and regulations to understand, assess the risks of, and verify the beneficial owners or controllers of companies (legal persons and arrangements - Recommendations 24 and 25). Only 9% of countries are meeting the effectiveness requirements of this immediate outcome.[32]

Critically the issues that hamper governments' ability to tackle tax crimes include:

- Poor understanding of the risks posed by legal persons;
- Impediments to authorities (domestic and foreign) accessing basic and beneficial ownership information for legal persons and arrangements; and
- A belief amongst the private sector that failing to fulfil information requirements will not attract dissuasive penalties.

Governmental Structures

In respect of the second category of issues that relate to governmental structures, there are broadly two main issues:

1. Co-operation, particularly access to information (both domestically between agencies, and internationally between jurisdictions); and
2. Resourcing and capability to undertake investigations into tax crime ML, successfully prosecute offenders, and recover lost funds.

Domestic and International Cooperation

Global peak bodies in the fight against ML consider the sharing of information, both domestically between agencies and internationally between jurisdictions, to be one of the most critical elements in that fight. FATF, FSRBs the OECD and numerous law enforcement authorities including INTERPOL promote co-operation and information sharing to effectively addressed ML.

FATF recommendation 30 calls for designated law enforcement authorities to have responsibility for ML investigations. Additionally, Recommendations 30 and 2 encourage countries to establish short- and long-term co-operation arrangements between agencies, including competent authorities. FATF recommendation 31 calls for authorities to have powers to access information from private citizens. Specifically, authorities should have access to search warrant and compulsory notice powers.

On the international front, FATF recommendation 37 calls on countries to 'rapidly, constructively and effectively' establish mechanisms that allow for the widest possible range of mutual legal assistance in relation to ML investigations between jurisdictions. Specifically, the recommendation calls for countries not to place restrictions on the provision of this assistance. FATF recommendation 40 calls on countries to ensure that their 'competent authorities provide the widest possible range of international co-operation to their foreign counterparts', with clear and effective gateways for these exchanges of information.

A jurisdiction's tax system and classification of tax offences can have implications for international cooperation in the investigation of tax crimes. For example, jurisdictions that do not levy income taxes on residents may not facilitate the exchange of information relating to requests for information from jurisdictions where the evasion of income taxes is a criminal offence as no similar offence exists in their jurisdiction ('dual criminality' requirements).[33] Similar challenges may arise in jurisdictions that do not apply capital gains taxes.

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[32] Ibid. at page 32

As discussed earlier, the OECD notes that the criminalisation of tax offences ensures the availability of criminal investigative powers and, in some jurisdictions, provides the basis for domestic and international cooperation with other law enforcement agencies.

In a 2017 paper, Europol called for improved domestic and international cooperation in the global AML framework, specifically calling for 'legal barriers at the domestic level preventing much needed diagonal cooperation and information flows should be addressed'.[34]

We detail information-sharing arrangements specific to tax-networks below, however the FATF Standard's demand for international cooperation across ML competent authorities is critically linked to action against tax crimes.

Numerous initiatives are underway to improve the sharing of information between jurisdictions. These include the implementation of the OECD's Common Reporting Standard (or Automatic Exchange of Financial Account Information) and a joint paper between the Inter-American Development Bank and the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes titled '*Beneficial Ownership Implementation Toolkit*'. The toolkit contains, 'policy considerations that Global Forum member jurisdictions can use to implement legal and supervisory frameworks to identify and collect beneficial ownership information, which is now a requirement of the international standards'.

In 2010 the United States enacted the Foreign Account Tax Compliance Act (FATCA), a unilateral anti-tax evasion regime. FATCA is aimed at 'detecting U.S. taxpayers who use accounts with offshore financial institutions to conceal income and assets from the Internal Revenue Service' and requirements on financial institutions substantially commenced on 1 July 2014. In the same year, the 'G20 Finance Ministers and Central Bank Governors endorsed the Common Reporting Standard (CRS) as the mechanism for automatic exchange of financial account information between multiple countries'.[35]

In the APG region, appropriate implementation of FATCA and CRS have been found to effectively mitigate risks from tax crimes:

> *While recognising the possibility of tax evasion as an ML/TF risk through abuse of legal persons and international trusts, generally the Cook Islands' agencies were confident that a combination of FATCA, CRS and other international information-sharing agreements mitigate that risk. In discussions with competent authorities and RIs, the assessment team noted strong awareness and implementation of the FATCA and CRS information sharing frameworks, and the dissuasive effect of enforcement by the U.S. authorities. Given the strength of these regimes and regularity of information sharing with foreign counterparts on tax-related information, (see further analysis in IO 2, particularly Table 25) the risk of*

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[33] Investopedia.com lists 23 jurisdictions that do not levy income taxes on residents: Bahamas, Bahrain, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Kuwait, Maldives, Monaco, Nauru, Norfolk Island, Oman, Pitcairn, Qatar, Saint Barthélemy, Saint Kitts & Nevis, Somalia, United Arab Emirates, Turks & Caicos Islands, Vanuatu, Vatican City, Wallis & Futuna, Western Sahara,

[34] Europol, *Global Anti-Money Laundering Framework – from Suspicion to Action*, 2017

[35] Australian Taxation Office, *Automatic exchange of information guidance – CRS and FATCA,* 2 August 2021. https://www.ato.gov.au/general/international-tax-agreements/in-detail/international-arrangements/automatic-exchange-of-information---crs-and-fatca/

> *tax evasion through abuse of legal persons and arrangements appears to be mitigated to a large extent.*[36]

Resourcing and Capability

There is little data available on the resources specifically devoted to combating the laundering of proceeds of tax crimes and the specialist skills necessary to identify, investigate and prosecute these offences. Available anecdotal evidence suggests that jurisdictions required significant training and resources to develop skill and proficiency in these areas. In the work of the APG Tax Crimes typologies project thus far, including consultations, it is evident that several jurisdictions in the Asia-Pacific region are yet to benefit from such investments and upskilling. Critically, it appears that a lack of capacity within competent authorities to understand the complexities of tax crimes, and related ML, are leading to weaknesses in countering this problem.

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[36] APG (2018), *Anti-money laundering and counter-terrorist financing measures – Cook Islands*, Third Round Mutual Evaluation Report, APG, Sydney, at para. 418

Analysis

Surveying the Asia-Pacific experience

The primary output of this report is the findings from a confidential questionnaire (Appendix 3) distributed to 40 of APG's 41 members.[37] The research team received responses from 28 members. This project collected and analysed data captured by the questionnaire, which covered the following topics:

- National ML/TF Frameworks (including national laws, risk and context, and corporate vehicles)
- Financial Intelligence (including transaction reporting and public/private partnerships)
- AML/CFT Supervision
- Investigation of Tax Crimes and Money Laundering (including investigating proceeds from tax crimes, agencies' roles, powers and access, cross-agency investigations, prosecutions, asset recovery, training and capability building, cross-border information sharing)
- Statistics on Tax Crime and Money Laundering
- Case Studies

Money Laundering and Terrorism Financing Framework

The FATF standards have required jurisdictions to criminalise tax offences since 2012. The questionnaire investigated the manner in which national laws across the Asia-Pacific dealt with the issue of tax crimes.

While all jurisdictions that responded to the questionnaire reported criminalising tax offences, the definitions of what constituted a tax crime in the context of a predicate offence for ML varied substantially. Some jurisdictions included a requirement of intention or wilfulness, some include foreign tax offences (and others not). When thresholds were applied, these too varied significantly.

Most jurisdictions reported a difference between tax avoidance and tax evasion (20 of 27 respondents). Avoidance was referred to as 'tax saving devices', whereas a definition of evasion referred to artificial steps to alter an arrangement of a contrived nature. This split between arrangements that are considered legal (avoidance) and illegal arrangements (evasion) is consistent with the definition above. Some jurisdictions also mentioned 'General Anti-Avoidance' Rules and Provisions, which are designed to disallow schemes where the main purpose is to obtain a tax benefit.

The OECD provides for four categories of approaches to how tax crimes are included as predicate offences for ML: inclusive, threshold, list and combination of those. Jurisdictions responded with an even split across all four categories in terms of how they approached defining which tax offences would be predicate offences.

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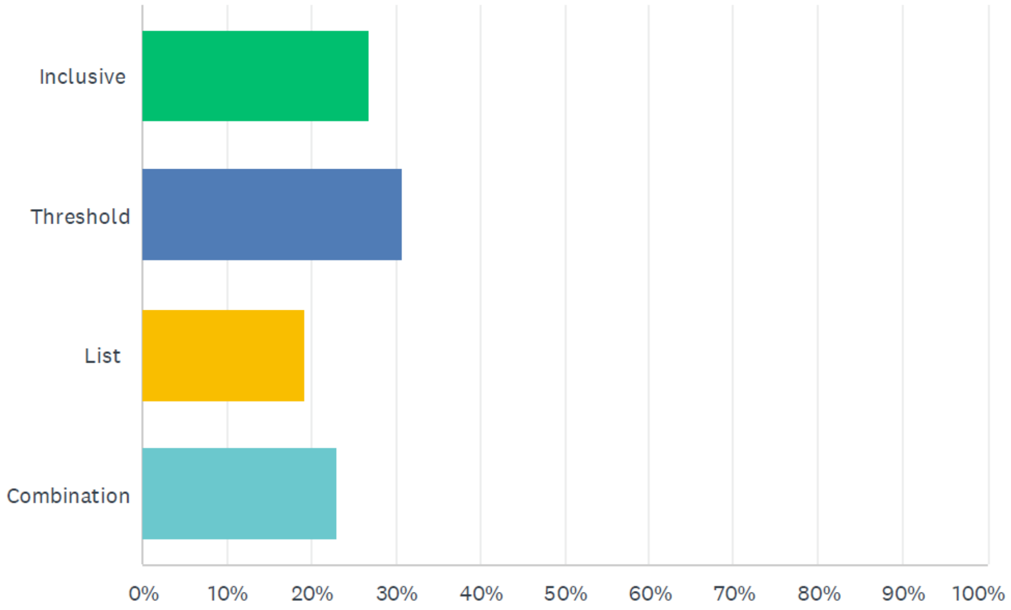
[37] Australia, Bangladesh, Bhutan, Kingdom of Brunei Darussalam, Cambodia, Canada, China, People's Republic of, Cook Islands, Fiji, Hong Kong (China), India, Indonesia, Japan, Korea, Republic of Korea (South Korea), Lao People's Democratic Republic, Macao (China), Malaysia, Maldives, Marshall Islands, Republic of Mongolia, Myanmar, Nauru, Nepal, New Zealand, Niue, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Sri Lanka, Chinese Taipei, Thailand, Timor-Leste, Tonga, United States of America, Vanuatu & Vietnam

ANALYSIS

Separately from the responses to the questionnaire, the APG's mutual evaluation process has revealed that not all APG members have appropriate coverage of tax offences.

- All jurisdictions said that tax offences are criminalised
- Three jurisdictions said tax was not a predicate offence
- 50% of responding jurisdictions said there was a distinction between serious and other tax offences
- Jurisdictions reported a wide range of legal definitions of tax crimes: some have a minimum threshold, requirement of fraud intention, foreign serious tax offence, wilful evasion, claiming a refund not entitled to. Some reported that their definition of tax crimes was in list form, or in a combination of list and threshold form
- For seven of 27 jurisdictions, no distinction noted between avoidance and evasion
- Definitions provided by jurisdictions for tax avoidance and tax evasion included: avoidance means 'tax saving devices', evasion is artificial steps to alter an arrangement of a contrived nature

Answered: 26 Skipped: 2



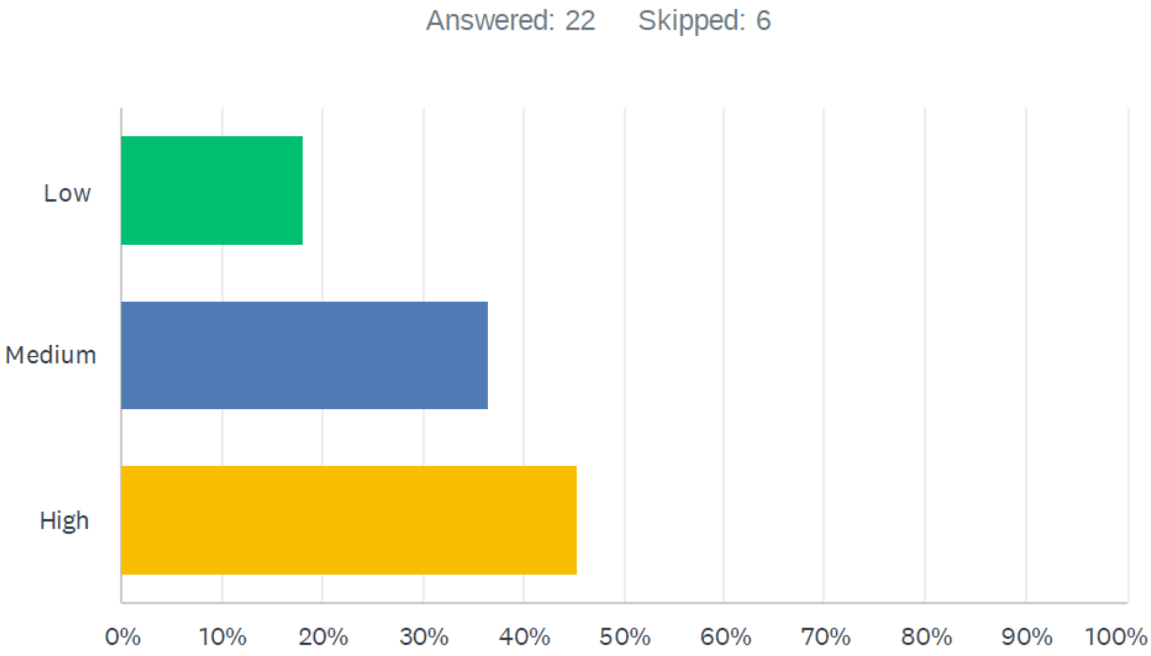
ANALYSIS

Risk and Context

APG mutual evaluation reports reveal that where jurisdictions in the Asia-Pacific include tax offences in their risk assessment, the result is often a high level of risk.[38] This trend was largely reflected in the response to the APG's questionnaire for this report, with some further detail revealed in the answers.

- Laundering of tax crimes was in the National Risk Assessment for all but one jurisdiction
- The risk rating for tax crime as a predicate offence was reported as follows:

  High = 10; Medium = 8; Medium-High = 1; and Low = 3
- Jurisdictions reported that their ML risk was often from foreign tax evasion rather than domestic
- Bearer shares and shell banks not reported to be risk factors
- Only three jurisdictions had estimates for the value of the proceeds of tax crimes that had been laundered



The graph above shows the risk rating of money laundering of tax crimes when assessed in a national risk assessment.

Three jurisdictions reported that tax crime committed in a foreign jurisdiction was a relatively high risk compared to tax crime committed domestically, including for the reason that the jurisdiction was itself an international financial centre. This is consistent with other responses indicating that the risk is often in foreign tax evasion, rather than domestic; and responses noting a lack of referrals indicating major tax violations within the jurisdiction. These findings lead to a conclusion that jurisdictions are not seeing evidence of tax crimes, particularly domestic. The responses to law enforcement activities covered below may provide further insights into the reasons behind this phenomenon.

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[38] As at June 2023, of 31 published APG MERs, while several do not include reference to tax crime of offences or note that tax crimes are not predicates for ML, 14 noted tax crimes posed a high or medium level of risk for ML (Bangladesh, China, Fiji, Korea, Malaysia, Mongolia, New Zealand, Pakistan, Philippines, Singapore, Chinese Taipei, Thailand, Tonga and Vanuatu)

Jurisdictions reported a wide range of destinations for proceeds of tax crimes committed in their jurisdiction. These included: United States of America, Hong Kong (China), Canada, British Virgin Islands, Singapore, Australia, Malaysia, United Arab Emirates, China, Vietnam, Cayman Islands, Switzerland, United Kingdom, Luxembourg, Panama and Jersey.[39] Notably, the question that elicited these responses specifically asked about destinations where the responder had evidence of proceeds being laundered there in relation to tax crimes committed in the responding jurisdiction.

Corporate Vehicles

The review of existing literature suggests that abuse of legal persons and arrangements is a critical issue in relation to laundering of proceeds from tax crimes. As such, this section of the questionnaire was important to confirm findings from previous research related to other parts of the world.

- 22 of 26 jurisdictions reported that corporations can be criminally liable
- 12 of 24 jurisdictions allow nominee shareholders
- 10 of 24 respondents have a central beneficial ownership register
- Legal arrangements nominated included trusts, waqfs, sukuk, charitable organisations, alternative investment funds and unions
- Jurisdictions reported that a wide range of key individuals (e.g. directors, shareholders etc.) from legal persons could be sanctioned

Only 12 jurisdictions answered the question asking whether beneficial ownership of legal persons and arrangements is recorded in a central registry. This response rate correlates to the low number of jurisdictions in the Asia/Pacific that record beneficial ownership information in central registries. APG's mutual evaluation reports reveal that the primary method of collecting this data is through information held by financial institutions.

Jurisdictions responding to the questionnaire typically reported that shareholder information (name, address, nationality, date of birth and identity card details) were recorded. Some also reported that the data was kept by the company rather than held centrally. Some jurisdictions only received information of the shareholder when they held the majority of shares. Some jurisdictions also held records for individuals that do not hold shares but received benefits and profits.

In relation to abuse of trusts, jurisdictions responded with information requirements as the primary means of mitigating the risk of abuse of trusts. This included requiring trustees to keep updated information on relevant trust parties and their effective controller, and licensing any person who carries out trust or company service as a business.

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[39] Some of these jurisdictions were nominated by multiple questionnaire responders. The authors have not analysed the level of economic integration between the responder and the nominated jurisdiction.

In relation to foreign-based corporate vehicles operating in the responders' jurisdiction, 18 responses indicated that beneficial ownership was sought in these circumstances. The other seven responses noted that no beneficial ownership information was sought regarding foreign legal persons. The high proportion of responses where no information was sought regarding foreign legal persons sits in the context of the survey also indicating that the primary source of risk is from foreign tax offences and underscores the need for more attention to mitigating these risks.

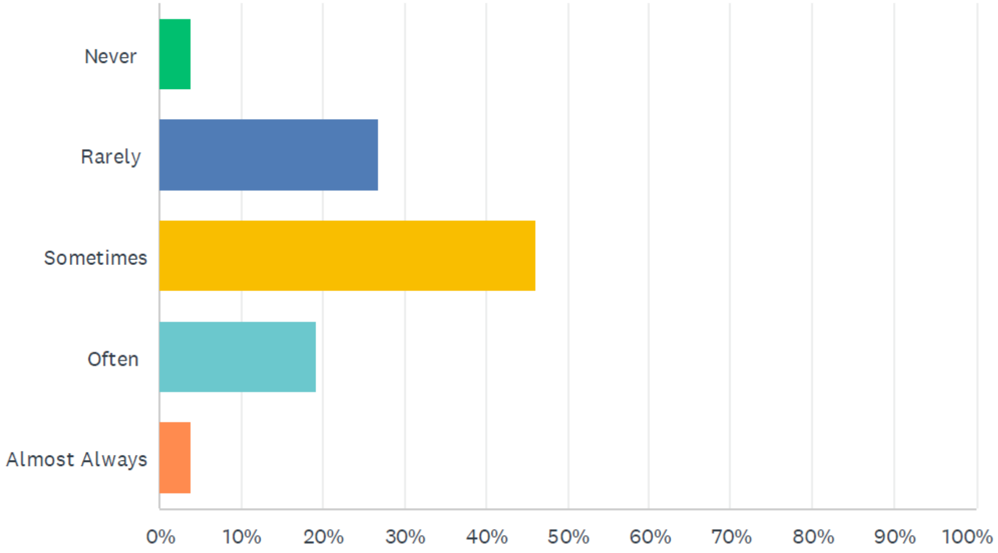
Where a declaration of beneficial ownership information is sought (i.e. in 18 responses), the jurisdictions reported seeking details of registration, Name, Residential Address, Date of Birth, Nationality, Tax Identification Number and percentage of ownership, Shareholders, Source of Funds, Criminal Records, details of local agents or directors, and other details associated with the corporate vehicle and its beneficial owners.

Financial Intelligence

Collection and application of financial intelligence is one of the most powerful tools of the AML/CFT framework. As such the questionnaire included questions on suspicious transaction reporting, cash transaction reporting and reporting on cross-border movement of cash.

How often are tax crimes reported in STRs in conjunction with the reporting of other crimes?

Answered: 26 Skipped: 2



ANALYSIS

It is a positive outcome that all the responding jurisdictions collect suspicious transaction reports that are applicable to tax crime investigations. This accords with the outcomes of the APG mutual evaluation reports where jurisdictions have a high level of compliance with the base STR requirements in the FATF standards. However, it is interesting that 19 of the 26 respondents noted that tax crimes were only reported 'sometimes' or 'rarely'. This is in line with findings discussed above that respondents were not seeing evidence of tax crimes within their jurisdiction.

- Two of 26 jurisdictions did not collect cash transactions
- 14 of 26 jurisdictions collect SWIFT messages
- 24 of 27 jurisdictions collect Cross Border Movement forms
- One jurisdiction required reporting from internet and ship-based casinos
- One jurisdiction reported that real estate agents were covered
- One jurisdiction reported that virtual currency reports are required
- 19 of 26 jurisdictions said tax crimes were reported 'sometimes' or 'rarely'

In regard to SWIFT messages or other reports of international funds transfers, the collecting agency was most often the Financial Intelligence Unit or the Central Bank. The fact that less than half the responders collected SWIFT messages or reports is notable given the findings above regarding laundering of proceeds from tax crimes being conducted in a foreign jurisdiction.

Public Private Partnerships

Eight jurisdictions responded to the questions regarding public-private partnerships (PPP). These responses were mostly from government departments that are part of the PPP, such as revenue authorities, law enforcement, customs and immigration. Other responses noted the existence of bilateral arrangements between public agencies and specific private entities. One jurisdiction referred to collaboration on specific issues. One jurisdiction mentioned international collaboration with global PPPs such as the Joint Chiefs of Global Tax Enforcement (J5) PPP.

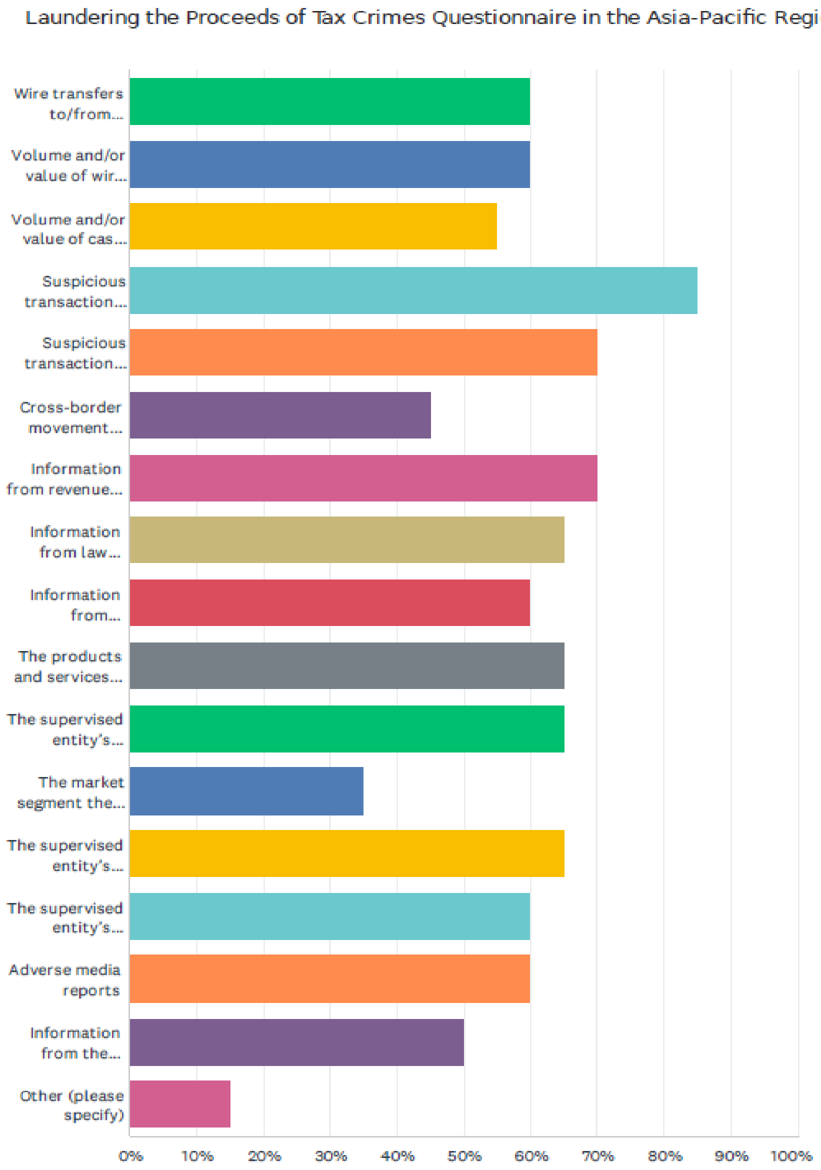
- Eight of 27 jurisdictions have PPPs that work on tax crime
- One jurisdiction indicated that there were arrangements with specific private entities, or on specific issues
- One jurisdiction reported that the domestic PPPs collaborated with global PPPs (e.g. J5 PPP)

AML/CFT Supervision

Risk-based supervision

Almost all respondents indicated that the laundering of the proceeds of tax crimes is included in their jurisdiction's identification and assessment of ML/TF risks faced. However, only 20 of 26 respondents (78%) include tax crimes in their risk-based supervision model. One respondent provided detail on their response by explaining that while they did not have specific predicate crimes in their risk model, they did include factors that may indirectly relate to tax crimes such as ‘offshore areas’ and politically exposed persons. This practice, if it is widespread, would result in domestic tax crimes not being recognised as a specific risk factor in AML/CFT supervision.

Respondents reported a wide range of factors in their risk-based supervision models with 17 respondents (85%) reporting suspicious transaction reports submitted by the supervised entity as being the most common risk factor. However, STRs may be submitted on a very broad range of activities that may be related to the laundering of proceeds of tax crimes and further work is required in order to gain a greater understanding of the types of activity reported in STRs. For example, structuring of cash transactions to avoid reporting thresholds, wire transfers to/from tax secrecy jurisdictions, customers’ behaviour or statements, timing of transactions, use or abuse of legal persons and legal arrangements etc.



As STRs are key inputs into risk-based supervision models, jurisdictions may benefit from sharing analysis of STRs for a more informed view on what factors influence the model's outputs. In particular, it would be interesting to understand how tax crimes are on the higher end of risk (see analysis above) despite low levels of STRs on tax crimes (see analysis above). This analysis would also support supervisors' efforts to provide feedback and guidance to the private sector in order to increase and improve the quality of STR reporting of suspicions of tax crimes.

One respondent provided information on their analysis of STRs for possible links to tax crimes. This analysis identified that:

- 'Banks, investment houses and insurance companies are the preferred channels in moving high-value proceeds with possible links to tax crimes'; and
- For lesser value proceeds 'electronic money issuers, pawnshops and money services businesses are generally used'.

On the basis of this analysis the FIU from the responding jurisdiction conducted briefings to banks and MSBs on tax evasion as a predicate to ML.

Information from law enforcement or intelligence agencies, the products and services offered by the reporting entity and their customer base were the next most common inputs (13 respondents, 65%). Again, greater insight into the products and services and customer types that are viewed as higher risk would be valuable. This is particularly the case since other aspects of the report have revealed that competent authorities are not seeing evidence of tax crimes, particularly domestic.

The market segment the supervised entity operates in was the least common factor (7 respondents, 35%). This may be indicative of the view that tax crimes occur across the populace. Cross-border movement reports were the second least common risk factor (9 respondents, 45%). This may be indicative of the fact that cross-border reporting typically relates to individuals, not supervised entities. Although it is possible that employees of supervised entities feature in cross-border movement reports the relatively few jurisdictions that use this factor is indicative of its limited utility in informing supervisory activities.

One supervisor gathered tax-related indicators in its assessment of financial institutions' inherent risk factors to supplement its risk targeting. Factors considered included the number and proportion of customers, the domicile of customers in offshore centres, and the volume of assets under management from customers in offshore centres.

When supervising financial institutions, supervision activities included assessing the tax-ML risk rating, the level of CDD conducted and the extent of ongoing monitoring.

An area for future exploration is the *weighting* of risk factors in risk-based supervision models. It is expected that effective supervisory activity results in a hardening of reporting entities' preventative measures to mitigate ML/TF risks. Correct weighting of risk factors should therefore focus national supervisors' resources to areas where improvements in these preventative measures will yield the greatest return.

A second area for future work is gaining further insight into the types of products and services that influence supervision risk models. Products that enable wire transfers and cash transactions are two obvious candidates but others such as investment products or assets such as real estate that may be the destination of proceeds of tax crimes require further exploration.

Respondents also referred to ‘tax havens’ or ‘offshore financial centres’ which the questionnaire did not define. One jurisdiction’s risk model included ‘domestic tax exempted areas’. ‘Special economic zones’ that typically enjoy low tax rates in order to attract foreign investment represent other geographical risk factors that the questionnaire did not explore.

In contrast to the high number of respondents who include tax crimes in their supervision risk models, in the past five years, only five respondents had conducted supervision assessments specifically targeting the laundering of tax crimes.

- Five of 26 jurisdictions reported having conducted supervisory activity specifically targeting tax crimes.

The questionnaire responses highlight that most national supervisors do not actively target tax crimes in their supervisory activities despite many jurisdictions rating tax crimes as high risk.

Training and training requirements

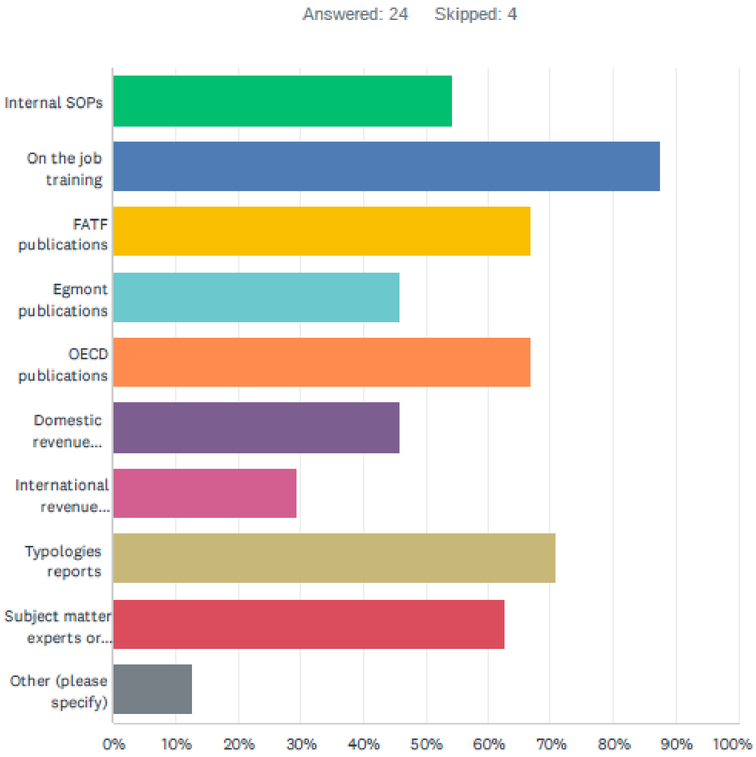
The questionnaire included a question on training for Supervisors specifically. Respondents indicated a strong desire for further training for supervisors across all surveyed categories. Four of the six categories were nominated by 85% or more of respondents and even the lower ranked categories were nominated by at least two thirds of respondents - Understanding of Legal Persons and Arrangements (74%) and Information Exchange (67%).

- Types of training responses were highest for ‘On the job training’ and typologies reports.
- Revenue agency publications were rarely used for training across ML/TF competent authorities.
- Training required in all areas surveyed.

On the job training (21 respondents, 84%) was the most commonly cited method for training supervisory staff followed by typologies reports and (18 respondents, 72%) and FATF publications (17 respondents, 68%). These were closely followed by OECD publications (16 respondents, 64%) and the use of subject matter experts or organisations (15 respondents, 60%). Approximately half of respondents made use of internal SOPs for training (13 respondents, 52%).

Of note, only eight respondents made use of revenue agency publications (32%). It would be expected that a high level of expertise on tax crimes exists within revenue agencies, so it is a topic for future exploration to understand why this expertise is not more readily drawn upon by AML supervisors.

The ‘Other’ category of responses were completed by responding jurisdiction to request assistance with practical case studies, VAs and VASPs, and investigative techniques and the forfeiture and recovery of assets.



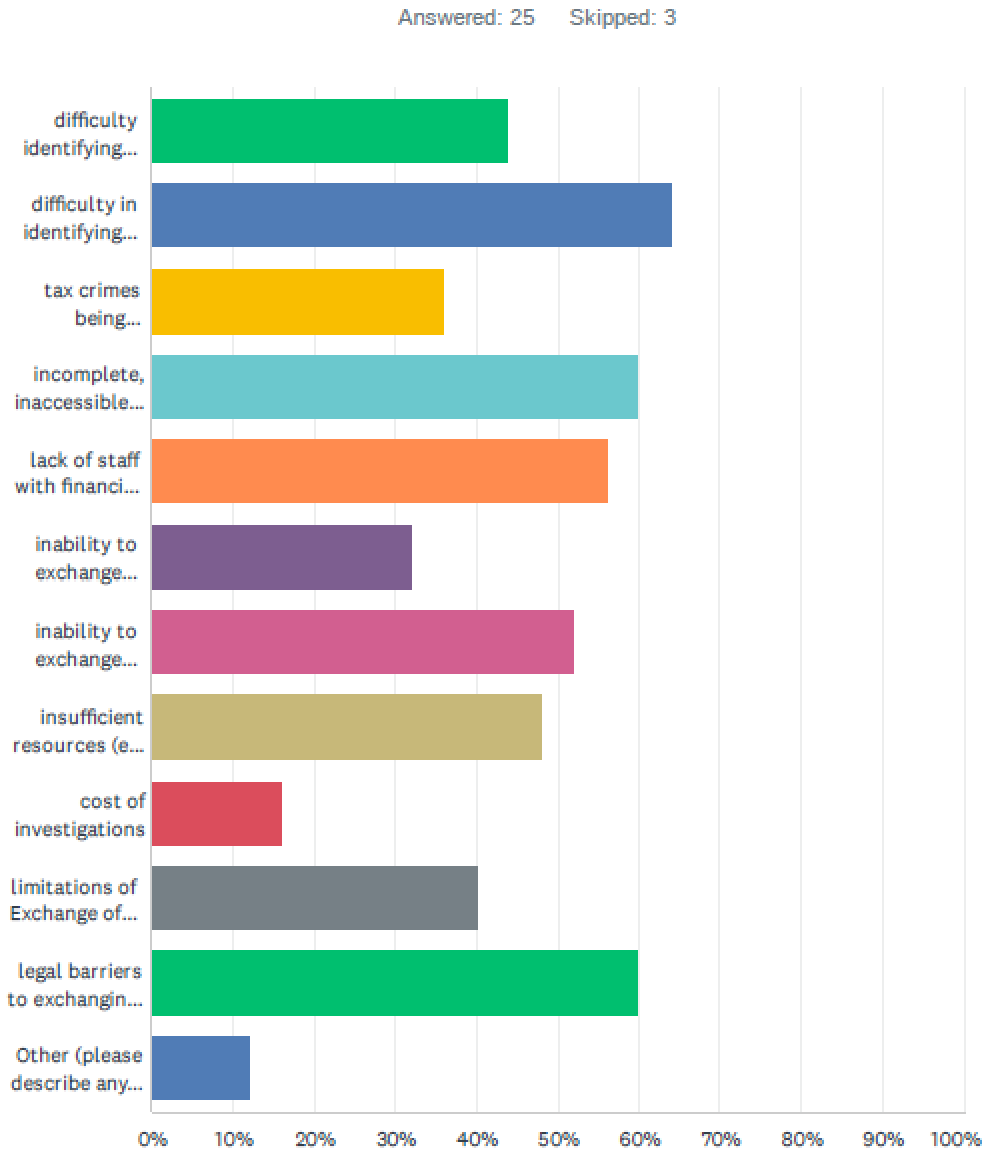
Investigation of Tax Crimes and Money Laundering

One of the motivations behind this project was the relatively small number of ML cases linked to tax crimes in APG mutual evaluation reports. As such the questionnaire queried the challenges to the successful investigation and prosecution of ML offences where the predicate offence is tax crime. Responding jurisdictions noted a few challenges, with the front-runners being:

- Difficulty in identifying elements of ML of the proceeds of a tax crime;
- Incomplete, inaccessible or unavailable information regarding beneficial owners of companies (or other legal persons) and trusts (or other legal arrangements);
- Legal barriers to exchanging information.

One respondent explained the issues with the limitations in the available information exchange mechanisms:

'The current international standard on tax EOI only covers exchanges for direct taxes, and it is not mandatory for jurisdictions to exchange information relating to VAT/GST. GST or VAT crimes, particularly in relation to Missing Trader Fraud or Carousel Fraud are significant money generating crimes in some jurisdictions, and the lack of a tax EOI mechanism covering these is a significant hindrance for cross-border GST or VAT investigations. Inability to exchange information from foreign countries in a timely manner - Lack of response and/or lack of timeliness in response to request for information sent to foreign jurisdictions.'



In most jurisdictions, the agencies responsible for investigation of tax crime were police, revenue, and customs. Two responding jurisdictions identified the prosecutor as the agency responsible [for investigations??]. Interestingly, 16 of 28 reported having dedicated teams for investigation of ML of proceeds of tax crimes. Further, 11 of 28 reported having experience in multi-agency taskforces, of which 10 reported experience investigating ML of tax crimes. These findings underscore the complexity of tax crimes and need for dedicated expertise in law enforcement agencies.

All responding jurisdictions reported that the relevant investigators could use search warrants for tax crimes. While all responding jurisdictions noted that investigators had access to FIU records, only three could access records directly through a searchable database. Access to other information held within government agencies or banks was largely by request, or notice to produce (for banks). Direct access to FIU information or information from financial institutions was not common. This accords with issues raised in other parts of the questionnaire where the inability to identify the occurrence of a tax crime (an information-intensive exercise) is a key impediment to progressing ML investigations in the context of tax crimes.

Inter-agency cooperation in investigations

- Main challenges to multi-agency taskforces investigating tax crimes were:
    - Insufficient evidence of how funds were laundered;
    - Agencies operating under different legal framework;
    - Lack of coordination and sharing arrangements;
    - Poor understanding of tax crime and money laundering; and
    - Law enforcement agencies had significant responsibility in other areas or insufficient resources.
- Key success factors for multi-agency taskforces included:
    - Cooperation mechanisms (e.g. MOU);
    - Training, time, and exchange of information.
- Typically it was noted that there was a division between revenue agencies and enforcement agencies, and therefore cooperation was essential.

Prosecutions

The responding jurisdictions were split almost evenly between those where the prosecutors for tax crimes and ML sit within the same agency or office, and those where these were separate agencies. Generally speaking, the responses suggested that minor charges can be handled by prosecutors from within the revenue agency, however criminal cases are handled by a separate prosecution authority. Positively, for 84% of the responding jurisdictions, the courts that heard matters involving tax crimes there was sufficient jurisdiction to hear ML cases.

The questionnaire sought information from responding jurisdictions on barriers to the prosecution of the laundering of proceeds of tax crimes. 15 jurisdictions provided detailed responses as follows:

- Difficulty in tracing and identifying the sum of the evasion;
- Cases involving cash, difficulty establishing how the funds were dealt with;
- Time involved in investigating financial crimes;
- Difficulty obtaining expert opinions;
- Lack of definition of a tax crime; and
- Lack of sufficiently trained financial investigators.

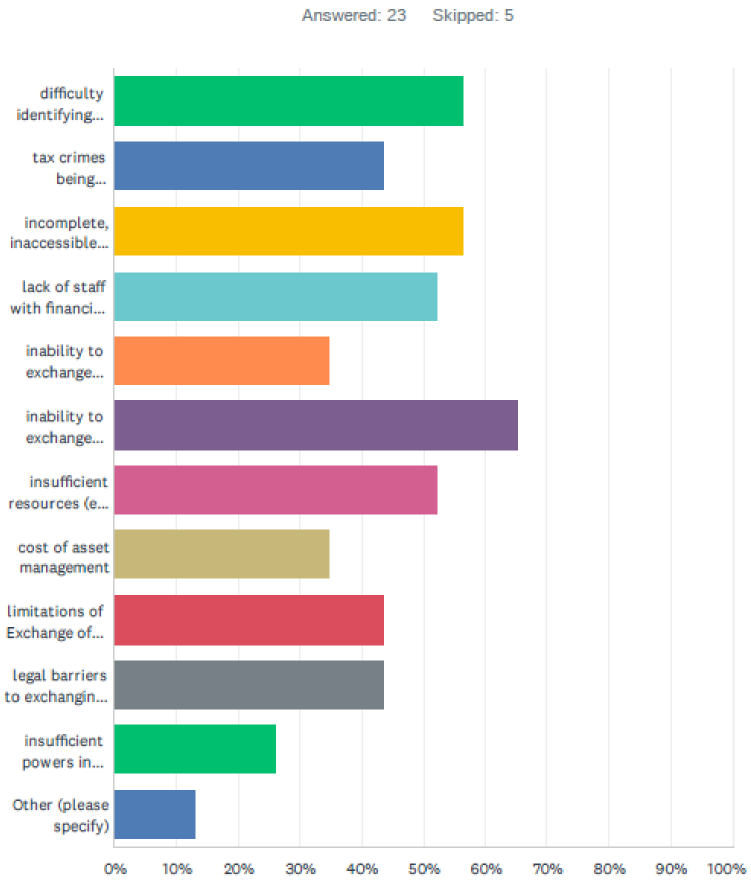
ANALYSIS

The questionnaire also sought information from jurisdictions on the mechanisms for recovery of assets involved in tax crimes. Primarily, the mechanisms included: use of orders (such as garnishees) on asset holders (e.g. banks, tenants, lawyers) and forfeiture (freezing, restraint, confiscation etc.).

With respect to the barriers identified by jurisdictions to recovering the proceeds of tax crimes, only six reported insufficient powers as an issue, and cost and inability to exchange information domestically were only reported by 8 (of 23). Primarily the challenges included:

- Inability to exchange information from foreign countries in a timely manner;
- Incomplete, inaccessible or unavailable information regarding beneficial owners of companies (or other legal persons) and trusts (or other legal arrangements); and
- Lack of staff with financial investigative expertise.

This response was further supported by questions related to international cooperation and cross border information sharing.



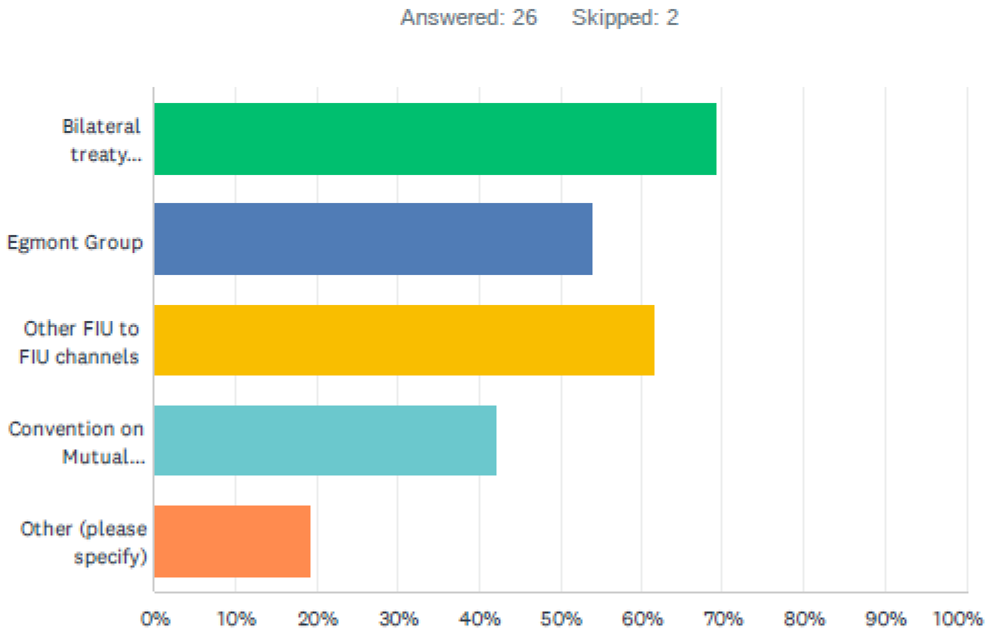
ANALYSIS

Cross-border information sharing

There was a clear issue identified in relation to cross-border information sharing as 21 responding jurisdictions noted it was 'hard' or 'very hard' to obtain information from overseas. Difficulties included:

- Limited mechanisms to exchange information;
- International Exchange of Information is only for direct taxes (yet carousel fraud is transnational in nature);
- Time delays;
- Incomplete responses;
- Requirement that counterpart jurisdiction must inform the taxpayer about information sought;
- Data preservation in offshore jurisdictions;
- Demands of foreign officials for evidence;
- Failure to consider tax fraud as a crime; and
- Language barrier.

Channels used to seek information were typically bilateral treaties, Egmont, FIU to FIU cooperation and Convention on Mutual Administrative Assistance on Tax Matters. Others mentioned include diplomatic channels, Joint International Taskforce on Shared Intelligence & Collaboration, Interpol, informal contacts, and International Criminal Police Organisations and Overseas Police Liaison Officers. 15 of 25 responding jurisdictions were part of OECD Automatic Exchange of Financial Account Information, with a further five indicating they were hoping to join in the near future.

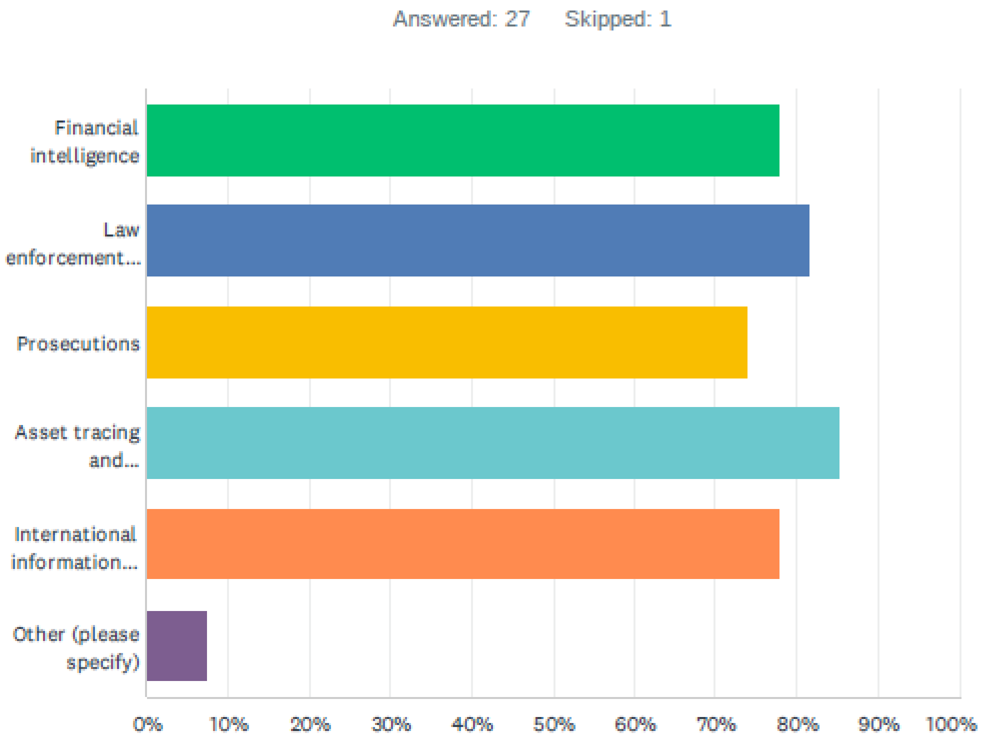


15 of 25 have used the MLAT to obtain information from foreign jurisdictions. Dual criminality is an issue for five respondents (i.e. the other jurisdiction does not have a relevant provision or does not consider tax fraud a crime). Interestingly about half the responding jurisdictions (12 of 25) allow access to banking information by foreign law enforcement agencies for tax crimes. In other cases, the information can still be accessed through appropriate channels.

Training and capability building

Questions in relation to training and capacity building revealed a good number of options available for jurisdictions in the Asia-Pacific. However, this was balanced by a clear indication of high demand for further technical assistance.

Responding jurisdictions specifically noted having received training from the OECD, Asian Development Bank, Pacific Islands Tax Administrators Association, European Commission, AUSTRAC, UNODC, World Bank, APG, IMF and the International Bureau of Fiscal Documentation. However, over 20 of the responding jurisdictions reported requiring training for investigators in all of the areas suggested by the questionnaire. A further suggestion of 'computer forensics' was added by a responder.



Similarly, a large majority of responding jurisdictions (84%) answered 'yes' to the question asking whether staff from the prosecuting agency require further training in areas of serious tax crime investigation and prosecution. The areas where training was sought included:

- Financial intelligence;
- Asset training and confiscation;

- Interviewing techniques;
- Forensic accounting;
- Trial preparation;
- Prosecutions, investigations, civil forfeiture;
- International information exchange;
- Evidence handling;
- Digital forensics; and
- Corporate/legal entities and structures.

Case analysis

Ten jurisdictions contributed case studies to this report, representing all of the sub regions of the membership of the APG. Of the 24 case studies, however, 17 have come from only four jurisdictions (New Zealand, Australia, Singapore and Pakistan), meaning perspectives from other parts of the membership (e.g. Pacific Island nations) are not as well represented in the case studies.

This result is reflective of the finding in the in the literature review that there was a lack of a specific Asia-Pacific voice in the existing material. It is also consistent with the responses provided in the questionnaire, which pointed to a need for capability development across the membership.

The cases provided point to the critical importance that **concealment of beneficial ownership** plays in the laundering of the proceeds of tax crimes. The concealment of beneficial ownership is the common thread that unites the responses provided. There are many methodologies reported that are used to conceal beneficial ownership, including:

1. Use of physical currency;
2. Use of nominees or third parties (e.g. bank accounts of family members);
3. Use of financial systems in foreign jurisdictions (e.g. corporate vehicles such as legal entities and legal arrangements, bank accounts); and
4. Movement of funds offshore from the tax residency jurisdiction.

The use of physical currency immediately divides the source of funds from their beneficial ownership. Physical currency is easily transferred between parties, creating distance from its taxing point. Respondents identified a methodology when the physical currency proceeds of an arguably legitimate businesses are diverted away from the business to third parties (case studies 5, 6, 7, 8, 9, 11 and 12), and income tax and/or GST/VAT on those proceeds are not paid.

Case Study Example

Case Study 5 involved a taxpayer diverting funds that were the cash sales proceeds of a restaurant. Deposits of cash sales from the business were made into personal bank accounts, with the funds then transferred offshore for the personal use of the restaurant owner. False income tax and GST returns were filed. The restaurant owner was convicted and sentenced to home detention and community service.

In contrast, case studies 1, 19 and 20 identified that physical currency was being withdrawn from accounts as part of the ML process for the proceeds of tax crimes. These funds were claimed as deductible expenditure, but in fact were used for personal expenses, or provided to related parties to disguise their taxable origin.

CASE ANALYSIS

Several case studies (1, 2, 4, 6, 8, 14, 19, 20, 21, 22 and 23) identified the use of nominees or third parties to conceal beneficial ownership. These included family members and unrelated parties (such as foreign students who had sold their account details before departing the jurisdiction). Although funds diverted to third parties are still controlled and used by the true beneficial owner, their beneficial ownership is concealed by the use of the nominee or third party.

Case Study Example

Case Study 1 involved a taxpayer issuing false tax invoices. Funds were shifted using bank accounts in associates names (including the suspect's mother), and then withdrew the funds in cash. The use of associates' bank accounts (as well as cash withdrawals), concealed the beneficial ownership of the funds which were the proceeds of the false tax invoices. The offenders were convicted, fined and sentenced to imprisonment.

The use of a professional (lawyer or accountant) trust account was identified in case studies 6, 22 and 23, demonstrating that these accounts can be used to conceal beneficial ownership. It is not clear from any of the case studies that the accounting or law firm was knowledgeable about the use of their account in the scheme, however even when used unwittingly, these accounts can provide the separation between legal and beneficial ownership that is so critical in concealing beneficial ownership from authorities.

Case studies 3, 5, 7, 10, 13, 15, 16, 20, 21 and 22 identified the persistent use of foreign jurisdictions financial systems and corporate structures to conceal beneficial ownership. This is despite global efforts to improve transparency and reduce the opportunity for abuse of this financial infrastructure. In particular, corporate vehicles registered in jurisdictions offering corporate secrecy, and bank accounts held in jurisdictions offering banking secrecy, continue to be prevalent.

Case Study Example

Case Study 7 involved a taxpayer using diverted business cash receipts to acquire real property. Approximately NZD$2.5 million in cash receipts was diverted from a business to accounts controlled by the owner. These funds were used to repay loans provided by a family trust established offshore. The offender was convicted and sentenced to home detention.

Case studies 3, 5, 7, 9, 10, 13, 14, 15, 16, 21, 22 and 23 make clear that the movement of funds to an offshore jurisdiction, as a viable and preferred option for concealment of beneficial ownership. Whether the funds are held in a complex financial structure, or in the name of the true beneficial owner, movement to a foreign jurisdiction conceals the beneficial ownership from the jurisdiction of tax residency, and highlights the importance of initiatives such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

Case Study Example

Case study 21 involved a complex set of offshore arrangements aimed at concealing the beneficial ownership of proceeds of tax crimes. Distributions from legitimate trust arrangements were written off against profits derived by fraudulent losses in trusts, involving the over-valuation of assets purchased from a corporation in a foreign jurisdiction. The valuation was performed by a corporation in a second foreign jurisdiction, and finance was provided by a corporation in a third foreign jurisdiction. Investigations showed that the corporations in the domestic and all three foreign jurisdictions (Companies A, B, C, and D in the diagram below) were in fact controlled by the same two individual resident taxpayers, although this information was originally hidden from authorities by the use of jurisdictions with corporate secrecy legislation. The arrangement was a sham in its entirety and the two offenders were convicted and sentenced to imprisonment.

Case studies 3, 7, 13, 15, 21, 22 and 23 involved complex legal arrangements, which make identification of ultimate beneficial ownership difficult for investigating authorities. In particular, the use of vehicles registered in foreign jurisdictions, and particularly those jurisdictions offering corporate secrecy, is identified as a key factor in concealment of beneficial ownership.

Case study 14 noted the use of an alternate remittance (hawala/hundi) business being used to transfer funds. The use of these arrangements allows for funds to be transferred from one location to another anonymously. In ML terms – breaking the chain between the funds and their beneficial ownership.

In questionnaire responses, Singaporean authorities referred to Exchange of Information on Request arrangements for information not being applicable to indirect taxes such as GST/VAT. This example highlights that what is seen as important in one jurisdiction might be of relatively different importance to another jurisdiction.

Notably, only two of the case studies (2 and 3) noted the laundering of proceeds of tax crimes from a foreign jurisdiction occurring within their own jurisdiction. Both these cases were submitted by one jurisdiction. The low numbers of cases involving foreign proceeds of tax crimes appears contrary to the observation from the questionnaire responses that jurisdictions in the Asia-Pacific region were destinations of the proceeds of tax crimes.

FINDINGS

Findings

There are many changes to the methodologies that captivate us (e.g. 'complex legal arrangements' and cryptocurrencies), but the fundamental concepts (e.g. concealment of beneficial ownership, and transfer of value) remain steadfastly the same.

Responses to the questionnaire demonstrated that there was significant diversity across the Asia-Pacific region in terms of the sophistication in combatting the laundering of the proceeds of tax crimes. Although some jurisdictions appeared relatively advanced in their understanding and expertise, a requirement for additional training was universally reported by respondents in the Asia-Pacific region. It is clear from the responses that knowledge and expertise on the laundering of the proceeds of tax crimes is lacking across the region.

In-house training and that provided by international bodies such as the OECD needs to evolve to focus on the specific area of laundering the proceeds of tax crimes. Training should be expanded to private sector financial institutions across the region given the key role they play in the detection of the proceeds of tax crimes.

Recommendation 1

Increase capacity building efforts, including through the development of comprehensive training material for the detection, investigation and prosecution of money laundering, particularly pertaining to tax crime.

Training should be targeted at all areas of the anti-money laundering regime, including private sector reporting entities, Financial Intelligence Units, law enforcement and intelligence agencies, revenue and prosecuting authorities and confiscation agencies.

As would be expected, jurisdictions reported a wide range of sources for capacity building and capability development in regard to tax crime and associated ML investigations. The Asia-Pacific region offers opportunities for expansion of these programs, with a large proportion of relatively unsophisticated and underdeveloped jurisdictions.

Surprisingly, responding jurisdictions also reported that they were not relying on expertise from revenue authorities in respect of their efforts to combat the laundering of the proceeds of tax crimes. Given the complexity of this area, this is an oversight that needs to be addressed. Conversely, the Project Team observed that training on ML would be of benefit to revenue authorities.

Recommendation 2

Improve utilisation of expertise available within revenue authorities in order to combat the laundering of the proceeds of tax crimes.

The purpose of laundering of the proceeds of tax crimes is the same as the purpose of laundering the proceeds of other crimes – distancing the funds from their criminal origin. This behaviour is observed across a wide range of typologies of the laundering of tax crimes.

A key observation arising from the literature review, questionnaire and case studies is that the concealment of beneficial ownership is a critical element in the commission and laundering of the proceeds of tax crimes. Almost all the case studies provided contained some form of concealment of beneficial ownership.

In 2018, FATF and the Egmont Group of Financial Intelligence Units produced a 190-page report 'Concealment of Beneficial Ownership'. The issues identified in that report are well worth repeating here as they capture many of the key aspects of vulnerabilities associated with the concealment of beneficial ownership:

- *Consideration of the role of nominees including measures that may limit their misuse.*
- *The need for regulation of professional intermediaries…. And the importance of efforts to educate professionals on ML/TF vulnerabilities…*
- *Ensuring financial intelligence units have access to the widest possible range of financial information.*
- *Increased sharing of relevant information and transaction records to support global efforts to improve the transparency of beneficial ownership.*
- *Further work to understand what can be done to improve the quality and timeliness of the cross-border sharing of information, including through mutual legal assistance.*
- *The need for countries to consider and articulate the vulnerabilities and threats relating to domestic and foreign legal persons and arrangements, the domestic and foreign intermediaries involved in their establishment, and the means by which criminals may exploit them to facilitate ML and other criminality.*

As at 9 June 2023, seventeen member jurisdictions were not participating in the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. An opportunity exists therefore to increase the participation of Asia-Pacific region jurisdictions in this, and other global initiatives aimed at improving transparency and combating the concealment of beneficial ownership. Continuing and expanding these global efforts will leave nowhere to hide for those who seek to conceal their beneficial ownership.

Recommendation 3

Continuing efforts to improve:

a) participation in the Global Forum on Transparency and Exchange of Information across the Asia/Pacific region;
b) compliance with FATF standards, particularly those aimed at addressing vulnerabilities arising in relation to the concealment of beneficial ownership (BO registry, regulation of professionals);
c) ongoing vigilance in identifying emerging trends and jurisdictions of concern, and agility in responding to those threats.

Respondents also almost universally reported difficulties associated with the sharing of information between jurisdictions. Hurdles that exist include timeliness and accuracy of information provided, the requirement for an equivalent offence (dual criminality) in the foreign jurisdiction, and the lack of mandatory exchange of information for VAT/GST purposes.

Only two of the case studies reported (from only one jurisdiction) involved situations where foreign tax crimes were investigated in the reporting jurisdiction. Starkly, the movement of the funds out of a jurisdiction was reported as a major issue in the investigation and successful prosecution of the laundering of the proceeds of tax crimes. Improved global cooperation in conducting this type of investigation, and recovery of the proceeds, is an essential element in combatting this crime type that requires significant improvement, or perhaps even an overhaul in approach.

While there are substantial international efforts to improve the flow of information between jurisdictions, there is evidently a long way to go in this regard.

Recommendation 4

Consideration of new models of international cooperation to combat the laundering of the proceeds of tax crimes. This would, ideally, include new or improved arrangements to encourage recovery of the proceeds of tax crimes in foreign jurisdictions (e.g. sharing of proceeds, covering of costs).

The recent IMF working paper '*Leveraging Anti-money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues*' cites that there is currently an opportunity to leverage political momentum generated by the challenging global economic outlook, to greater utilise AML measures in the context of tax compliance. This is especially so in the Asia-Pacific Region, where both AML and tax regimes require significant development. Blending of AML measures into the tax compliance landscape will by necessity lead to greater results in the investigation and prosecution of tax crimes, and related ML.

Similarly, the World Bank Group's Stolen Asset Recovery Initiative produced a report in 2022 titled '*Taxing Crime: A Whole of Government Approach to Fighting Corruption, Money Laundering and Tax Crimes*'[40]. This report also called for enhanced cooperation and information sharing between law enforcement and revenue authorities.

As mentioned earlier, revenue authorities hold expertise in relation to tax crimes, which is underutilised for AML investigations. Greater involvement by revenue authorities in constructing AML training packages, along with an increased focus in that training on tax compliance and tax crime investigation, is an opportunity for both AML and revenue authorities to increase collaboration for the mutually beneficial outcomes.

Several jurisdictions reported utilising revenue powers to recover the proceeds of crime. Given the close links between tax crimes and ML, consideration should also be given to promoting this mechanism as a mainstream option for tackling proceeds of crime.

Recommendation 5

Closer collaboration of revenue authorities and AML authorities in:

a) the development of training materials targeted at investigation and prosecution of money laundering, particularly laundering the proceeds of tax crimes;
b) leveraging existing AML measures to improve tax compliance, per the IMF's recommendation; and
c) use of taxation powers in the recovery of proceeds of crimes.

As mentioned earlier, there is a distinct lack of an Asia-Pacific voice when it comes to research on tax crimes and associated ML. Furthermore, the considerable disparity in sophistication when it comes to combatting these crimes meant that identifying a singular coherent narrative inclusive of all perspectives was not possible.

Responses to the questionnaire showed that even countries towards the advanced end of the capability development spectrum had a lack of knowledge on various aspects of tax crimes. Focus varied from jurisdiction to jurisdiction, and, by and large, the impact of tax crimes from foreign jurisdictions being laundered in their own jurisdiction was largely unknown.

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[40] Brun, Jean-Pierre, Ana Cebreiro Gomez, Rita Julien, Joy Waruguru Ndubai, Jeffrey Owens, Siddhesh Rao, and Yara Esquivel Soto. 2022. *Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes*. Stolen Asset Recovery Initiative Series. Washington, DC: World Bank. doi: 10.1596/978-1-4648-1873-8. License: Creative Commons Attribution CC BY 3.0 IG

Global standards regarding tax crimes as predicate offences for ML have been reported to be confusing for jurisdictions to implement. No clarity has been provided in respect of what constitutes a tax crime for these types of offences, or what types of taxes are to be included (e.g. direct, indirect or both).

Recommendation 6

Increased clarity in global standards regarding definitions of money laundering, tax crimes and predicate offences, and the links between these concepts.

Furthermore, there are different perspectives on when a tax crime occurs for the purpose of being a predicate offence, and particularly whether transactions conducted prior to the lodgement of false documentation can be considered ML offences. Unlike other predicate offences, for tax crimes, the receipt of the proceeds can occur significantly before the offence, and those proceeds will ordinarily be dealt with (in the money laundering construct) immediately.

Kemsley *et al*. offer a compelling solution to this conundrum by demonstrating that tax crime is a one-step form of ML. At this point in time, legislative constructs do not allow for solutions such as the one offered by Kemsley *et al*. The Asia-Pacific region will undoubtedly undergo significant uplift in capability over the coming years in respect to this crime. There is an opportunity for jurisdictions in this region to be at the forefront of thought on these definitional issues as this capability development process occurs.

Recommendation 7

Closer alignment between tax crimes and money laundering in legislative constructs.

A key shortcoming in the questionnaire responses was the lack of statistics available about ML related to the proceeds of tax crimes. Very few respondents provided statistics, and those that were provided were not indicative of the size of the problem. At the same time, the literature review identified that there was a very broad range of values ascribed to the global value of ML related to the proceeds of tax crimes. Many of these values also conflated the issue of tax avoidance with tax crimes, or other similar issues which compromised the results insofar as their use in the context of this paper.

For the issue of ML of the proceeds of tax crimes to be given its appropriate focus in global efforts to counter ML, it is essential that sound, research-based statistics be compiled, using settled definitions of ML, tax crimes and predicate offences.

Recommendation 8

Compilation of global and/or regional statistics to highlight the incidence of money laundering related to the proceeds of tax crimes.

Undoubtedly therefore there remains a great deal of work to do to heighten awareness of the extent of tax crimes which are currently being laundered, and to influence government resources towards the solutions. It is hoped that this paper will be a further step down the path leading to enhanced global efforts to combat the laundering of the proceeds of tax crimes.

APPENDIX 1 – RED FLAGS/INDICATORS

Appendix 1 – Red Flags/Indicators

The below red flags/indicators have been identified from the Questionnaire and Case Studies provided.

Indicators of concealment of beneficial ownership:

- Use of corporations registered in jurisdictions with corporate secrecy legislation
- Use of bank accounts in jurisdictions with banking secrecy legislation
- Separation of jurisdiction of incorporation and jurisdiction of financial activity
- Use of physical currency outside of normal activity
- Transfer of funds to or from foreign jurisdictions
- Foreign taxpayer resident in domestic jurisdiction
- Domestic taxpayer resident in foreign jurisdiction
- Use of nominee bank account holders
- Use of power of attorney/authority to operate over third party accounts
- Use of false identities
- Use of nominees as company directors
- Use of complex corporate structures and legal arrangements
- Use of Trust and Company Service Providers
- Use of trusts with unclear beneficiaries
- Use of solicitors, accountants or other professionals as nominees
- Transfer of funds through solicitor’s or accountant’s trust accounts
- Use of alternate remittance sector
- Use of unusual financial instruments (e.g. cheques made out to cash, bank drafts, bank bills, bearer shares)
- Use of crypto currencies

Other indicators of laundering of the proceeds of tax crimes

- Borrowing funds at a level inconsistent with declared income
- Use of over- or under-invoicing
- Use of international trade to move value
- Non-lodgement of VAT/GST returns
- Refunds from VAT/GST returns inconsistent with observed financial activity.
- Non-lodgement of Income Tax Returns
- Refunds from Income Tax Returns inconsistent with observed financial activity.
- Purchase of high-value items (e.g. property, vehicles, jewellery and travel etc.) inconsistent with observed financial activity
- Use of loan-back arrangements
- Loans received from foreign jurisdictions used to fund lifestyle

APPENDIX 2 – CASE STUDIES

Appendix 2 – Case Studies

CASE STUDY 1 – CHINA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case of shielding or concealing an illegal gain from falsely issuing exclusive value-added tax invoices in Hubei Province

2. Competent Authorities

The Public Security, The People's Procuratorate, The People’s Court

3. Relevant offences/statutes used

Article 312 of Criminal Law - Crime of Disguising or Concealing Criminal Proceeds and Gains

Where anyone, who knows that the proceeds or gains generated therefrom are obtained from any crime, harbors, transfers, purchases, sells such proceeds or gains as an agent, or disguises or conceals them by any other means, he/she shall be sentenced to detention, surveillance, or a fixed-term imprisonment of no more than three years , and/or shall be fined , where the circumstances are serious, he/she shall be sentenced to a fixed-term imprisonment of no less than three years but no more than seven years with a fine.

Where an entity commits the crime as mentioned in the preceding paragraph, it shall be fined, and persons directly in charge and others directly responsible shall be punished in accordance with the provisions of the preceding paragraph.

4. Red Flags identified

- Large cash activity
- Lodgement of false VAT/GST returns
- Use of under- or over-invoicing

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

X Liu falsely issued 20 VAT invoices with a value of CNY 1,971,627 (~USD 276,964) and tax of CNY 335,177 (~USD 47,079) in the name of a medical device company and charged 5% of the total fee. Despite being aware that X Liu was involved in falsifying VAT invoices, Geng X Liu and Zhen X Liu assisted X Liu conduct bank transfers and cash out the proceeds of crime.

The investigation by Public Security revealed that Geng X Liu applied for two point of sales (POS) machines in the name of two companies. Two bank cards issued under Liu's mother's name were used to withdraw the cash.

Knowing that X Liu’s funds were income from false VAT invoices, Geng X Liu transferred the funds to bank accounts in the guise of POS machine transactions, then transferred the funds to accounts under the name of Geng X Liu. Then Geng X Liu and Zhen X Liu withdrew cash from the bank and helped X Liu to illegally cash out more than CNY 30 million (~USD 4.21 million) with a 1% commission for each transaction (part of which was the income from falsely issuing VAT invoices).

From September 2017 to April 2018, the total amount of cash involved in the case was about CNY 30 million (~USD 4.21 million), and the commission charge was more than CNY 300,000 (~USD 42,141).

6. Outcomes/Results

In December 2019, the People’s Court of Yangxin County, Hubei Province, sentenced:

- Yun X Liu to three years imprisonment and a fine of CNY 50,000 (~USD 7,023); and
- Yu X Liu to 18 months imprisonment and a fine of CNY 10,000 (~USD 1,404).

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 2 – HONG KONG, CHINA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Foreign tax evasion and domestic self-money laundering in Hong Kong, China. The case is ongoing.

2. Competent Authorities

Hong Kong Police Force

3. Relevant offences/statutes used

Money Laundering

4. Red Flags identified

- Use of nominees (e.g. director, shareholder, secretary)
- Use of corporate vehicles (e.g. trust, shell companies)
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

Two residents of Jurisdiction X were arrested in Jurisdiction X for smuggling cash and luxury goods out of Hong Kong, China to Jurisdiction X without declaration. Fake invoices purporting that the value-added tax was settled in Jurisdiction X and Y were also found being presented for tax evasion purpose. Hong Kong Police Force enquiries revealed that suspected proceeds of HKD 95 million (~USD 12.12 million) derived from tax evasion were remitted to a corporate bank account under Company A in Hong Kong, China. The account signatory and the director-cum-shareholder of Company A's bank account were arrested. Over HKD 11 million (~USD 1.40 million) in the corporate account of Company A was prevented from dissipation. Investigations into money laundering activities in Hong Kong, China are ongoing.

6. Outcomes/Results

Investigations into money laundering activities in Hong Kong, China are ongoing.

7. Chart or Diagram of activity7. Chart or Diagram of activity

N/A

8. Any other relevant information
N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 3 – HONG KONG, CHINA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Foreign tax evasion and domestic self-money laundering in Hong Kong, China. The case is ongoing.

2. Competent Authorities

Hong Kong Police Force

3. Relevant offences/statutes used

Money Laundering

4. Red Flags identified

Use of foreign financial centres

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

In August 2016, Hong Kong Police Force received an MLA request from Jurisdiction X for financial intelligence and fund flows analysis of several companies and bank accounts in Hong Kong, China held under the name of two Jurisdiction X nationals. Investigations revealed that the subjects held substantial assets in Hong Kong, China that were derived from foreign tax evasion conducted over the past decade. In October 2017, the duo were arrested in Jurisdiction X and HKD 147M held in the Hong Kong, China bank accounts controlled by the duo were restrained in May 2019. Court proceeding and confiscation in Jurisdiction X is underway.

6. Outcomes/Results

Court proceedings in Jurisdiction X are ongoing and an external confiscation order will be applied afterwards.

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 4 – INDONESIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

AH, 2006-2015, Jakarta

2. Competent Authorities

Directorate General of Taxes

3. Relevant offences/statutes used

Using/issuing tax invoices that are not based on actual transactions

4. Red Flags identified

- Large Cash Activity
- Lodgement of false income tax returns
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

The alleged offense was that AH and his five personal associates issued false invoices to gain personal profit.

Based on reports submitted by the reporting entities, the following information is known:

1. During the period of 2006 to 2015, total transactions in one of AH's accounts was approximately IDR 12 Billion (~USD 807,326). Amongst these were transactions allegedly related to the tax offenses , such as 'VAT', 'pay for taxes', 'tax consultation', 'consultation fee', 'Invoices', etc.
2. The funds received by AH came from individuals and companies with business profiles unrelated to AH's (he claimed to work in textiles), such as contractor, mining, cooking oil industry, etc.
3. Most transactions in AH's accounts were cash deposits via ATMs and transfer.
4. AH was also listed as a debtor who had loan facilities from two financing companies. He used the loans to finance the purchase of an automobile and motorcycles.

At the trial AH was proven to have committed money laundering through the following actions:

1. Received funds allegedly as the proceeds of crime generated from the sale of false tax invoices amounting to IDR 123,414,513,244 (~USD 8.30 million). From the total funds received, AH earned a profit of IDR 49,148,707,679 (~USD 3.31 million).-

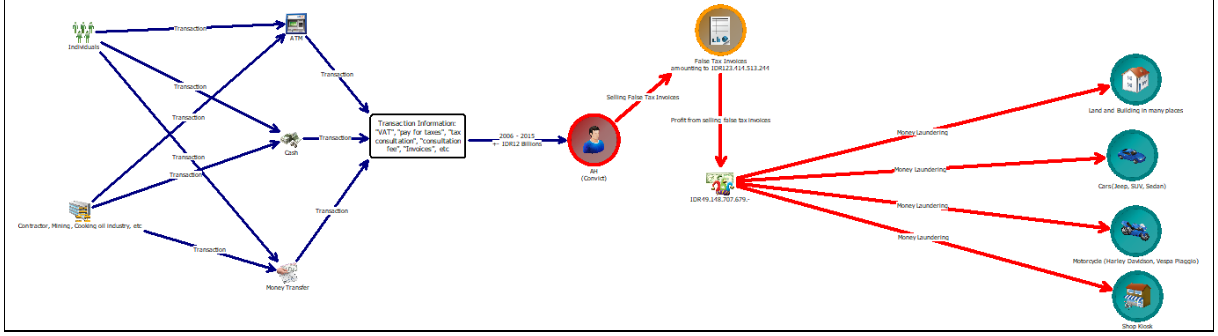
2. Deposited, or directed his employees to deposit, cash deposits into savings/current accounts. The deposits were allegedly from buyers/users of fictitious invoices into the AH's personal account or other parties' accounts for AH's benefit.
3. Transferred money from one bank to another bank, either within or outside the jurisdiction, or from one account to another one at the same bank office. Transfers went into/out of AH's personal accounts and accounts belong to other parties.
4. Spent funds derived from the purchase and sale of assets for the interest of AH.

Asset confiscation of cash, cars, a motorcycle and land and buildings conducted at the time of money laundering investigation amounted to IDR 26.87 billion (~USD 1.81 million).

6. Outcomes/Results

The Court sentenced AH to two years and six months imprisonment and a fine of IDR2 46,829,696,552 (two times of the amount of State losses).

7. Chart or Diagram of activity


Individuals
Transaction
ATM
Transaction
Transaction
Transaction
Cash
Transaction
Transaction
Transaction
Contractor, Mining, Cooking oil industry, etc
Transaction
Money Transfer
Transaction
Transaction Information: "VAT", "pay for taxes", "tax consultation", "consultation fee", "Invoices", etc
2006 - 2015
+- IDR12 Billions
AH
(Convict)
Selling False Tax Invoices
False Tax Invoices
amounting to IDR123.414.513.244
Profit from selling false tax invoices
IDR49.148.707.679.-
Money Laundering
Money Laundering
Money Laundering
Money Laundering
Land and Building in many places
Cars(Jeep, SUV, Sedan)
Motorcycle (Harley Davidson, Vespa Piaggio)
Shop Kiosk

8. Any other relevant information

N/A

CASE STUDY 5 – NEW ZEALAND

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case D

2. Competent Authorities:

Inland Revenue Department

3. Relevant offences/statutes used:

Tax evasion (Tax Administration Act 1994)

Money laundering (Crimes Act 1961)

4. Red Flags identified

- Large Cash Activity
- Lodgement of false income tax returns
- Lodgement of false VAT/GST returns
- Use of non-business bank accounts

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

An Inland Revenue investigation identified the suppression of cash sales by the owner of a restaurant. Steps taken to conceal the offending involved:

1. Deposits of cash sales from the business into personal bank accounts.
2. Subsequent transfers of proceeds banked to personal bank accounts to overseas bank accounts for private use by the restaurant owner.
3. Filing of false income tax and GST returns – they did not report the business income banked into personal accounts.

6. Outcomes/Results

Over NZD 500,000 (~USD 303,717) in cash sales were suppressed resulting in evasion of both income tax and GST. The restaurant owner was convicted on tax evasion and money laundering charges. The owner was sentenced to six months home detention and 200 hours of community service. The owner also repaid the outstanding balance of evaded tax.

7. Chart or Diagram of activity
N/A

8. Any other relevant information
N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 6 – NEW ZEALAND

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case H

2. Competent Authorities:

Inland Revenue Department

3. Relevant offences/statutes used

Tax evasion (Tax Administration Act 1994)

Money laundering (Crimes Act 1961)

4. Red Flags identified

- Lodgement of false income tax returns
- Use of unwitting third parties
- Abuse of trust relationship (authorised tax agent)

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

An Inland Revenue investigation identified tax fraud committed by an accountant acting as tax agent for two companies. Steps taken to conceal the offending involved:

1. The accountant prepared tax returns for two companies, communicated to them the amounts he had calculated as being due to Inland Revenue, but falsely reduced the amounts due when finally submitting the returns to Inland Revenue.
2. The companies paid the taxes as originally calculated by the accountant to Inland Revenue which resulted in overpayments because the accountant had changed the figures, thus facilitating the availability of tax refunds.
3. As the authorised tax agent of the companies, the accountant requested that the refunds be remitted to his accounting firm's trust account.
4. Once received into the trust account, the accountant transferred the refunds to his personal bank accounts via his wife for private use.

APPENDIX 2 – CASE STUDIES

6. Outcomes/Results

The accountant fraudulently obtained over NZD 300,000 (~USD 182,240). The accountant was convicted on charges of making false tax returns and money laundering. The accountant was sentenced to two years and six months imprisonment.

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 7 – NEW ZEALAND

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case HK

2. Competent Authorities

Inland Revenue Department

3. Relevant offences/statutes used

Tax evasion (Tax Administration Act 1994)

Money laundering (Crimes Act 1961)

4. Red Flags identified

- Large Cash Activity
- Takeover of a bank account of an uninvolved entity (e.g. student bank account after leaving jurisdiction)
- Lodgement of false income tax returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

An Inland Revenue investigation of a businessman identified significant undeclared cash receipts from his hospitality business as well as undeclared involvement in other business activities. Steps taken to conceal the offending involved:

1. NZD 2.5 million (~USD 1.21 million) in cash was deposited into two students' bank accounts controlled by the businessman.
2. These funds were then diverted to companies controlled by the businessman as 'capital introduced'.
3. The funds were next used to repay loans held by a family trust established offshore and used to acquire real property.
4. Filing of false income tax returns – they did not disclose the cash deposited into the students' bank accounts.

6. Outcomes/Results

Tax of NZD 340,000 (~USD 206,440) was evaded. The businessman was convicted on tax evasion, fraud and money laundering charges. He was sentenced to home detention for nine months.

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 8 – NEW ZEALAND

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case L

2. Competent Authorities

Inland Revenue Department

3. Relevant offences/statutes used

Tax evasion (Tax Administration Act 1994)

Money laundering (Crimes Act 1961)

4. Red Flags identified

- Large Cash Activity
- Lodgement of false income tax returns
- Lodgement of false VAT/GST returns
- Inflated expenses claimed
- Purchase of real property

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

An Inland Revenue investigation of a restauranteur identified a comparatively low level of income being returned for tax purposes. Over NZD 180,000 (~USD 109,309) in cash was found in a subsequent authorised access visit to the private residence of the restauranteur and previously undisclosed business records were also located. Steps taken to conceal the offending involved:

1. Falsification of payments to the head chef and the restauranteur’s father as expenses to suppliers.
2. Funds diverted to the head chef were withdrawn in cash by the head chef and passed to the restauranteur.
3. Funds diverted to the father were placed in a term investment and also used to acquire real property.
4. Filing of false income tax and GST returns – expenses for suppliers were inflated.

6. Outcomes/Results
Tax of over NZD 230,000 (~USD 139,647) was evaded. The restauranteur was convicted on tax evasion and money laundering charges. He was sentenced to 10 months' home detention and repaid the outstanding balance of evaded tax.

7. Chart or Diagram of activity
N/A

8. Any other relevant information
N/A

CASE STUDY 9 – NEW ZEALAND

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case M

2. Competent Authorities:

Inland Revenue Department

3. Relevant offences/statutes used

Tax evasion (Tax Administration Act 1994)

Money laundering (Crimes Act 1961)

4. Red Flags identified

- Use of accountants as professional facilitators
- Large cash activity
- Use of loan-back arrangements
- Lodgement of false income tax returns
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

An Inland Revenue investigation of a restaurant chain identified the suppression of case sales by the owner. Steps taken to conceal the offending involved:

1. The owner personally counting and collecting cash takings from the restaurant chain.
2. Instructing employees on how much cash to bank in the business' bank accounts and record in the restaurant's books.
3. Diverting suppressed cash sales by depositing the proceeds to personal bank accounts.
4. Changing accountants then, instead of depositing the suppressed cash sales to personal bank accounts, delivering the cash to his accountant who arranged back-to-back transactions resulting in foreign exchange deposits and re-characterizing the sales as capital.

5. Filing of false income tax and GST returns– the cash sales diverted to personal accounts or re-characterised as capital were not reported.

6. Outcomes/Results

Tax of over NZD 800,000 (~USD 485,799) was evaded. The owner was convicted on tax evasion and money laundering charges. He was sentenced to three years and two months imprisonment. His accountant was convicted of money laundering and sentenced to nine months home detention. Property seized covered the outstanding balance of evaded tax.

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 10 – SINGAPORE

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case A - Fraudulently obtaining GST refunds through the electronic Tourist Refund Scheme (eTRS), completed in 2020

2. Competent Authorities

Inland Revenue Authority of Singapore (IRAS)

Commercial Affairs Department (CAD), Singapore Police Force

Corrupt Practices Investigation Bureau (CPIB)

3. Relevant offences/statutes used

Section 62(1)(b) of the Goods & Services Tax (GST) Act 1993

Section 6(b) of the Prevention of Corruption Act (PCA) 1960

Section 54(1)(b) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) 1992

4. Red Flags identified

- Purchase of high-value items
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

IRAS, CAD and the CPIB initiated a joint investigation against a foreign national, Person A.

Person A made at least 16 fraudulent tourist refund claims, amounting to SGD 29,800 (~USD $22,455) under the Electronic Tourist Refund Scheme ('eTRS' 41) in 2013, with the assistance of Person B who was a Singapore Customs officer responsible for approving the claims. Investigations showed that Person A gave bribes to Person B for endorsing the fraudulent claims. Person A subsequently departed Singapore over several occasions with the GST refunds totalling cash of SGD $27,895 (approximately USD $21,020), which act constituted the removing of criminal benefits from Singapore. Person A also made false declarations when he signed on the Notification Slips that he was eligible for the GST refunds under the eTRS.

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[41] Tourists in Singapore can claim the GST paid on purchases at participating retail shops upon departure from Singapore via Changi International Airport or Seletar Airport. This GST refund process is known as the electronic Tourist Refund Scheme (eTRS).

Person A left Singapore prior to the commencement of investigations but he was swiftly apprehended upon his re-entry to Singapore in October 2019. In June 2020, Person A, was convicted for tax evasion, corruption and money laundering offences.

Person B was also convicted and sentenced for tax evasion and corruption offences and is no longer employed with Singapore Customs.

6. Outcomes/Results

A was sentenced to 18 months imprisonment and a tax penalty of SGD 60,000 (~USD 44,515).

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 11 – SINGAPORE

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case B – Omission of income and under-declaration of GST Output tax, Year 2022 / completed, Singapore

2. Competent Authorities

Inland Revenue Authority of Singapore (IRAS)

Commercial Affairs Department (CAD), Singapore Police Force

3. Relevant offences/statutes used

Section 96(1)(b) of the Income Tax Act 1947

Section 62(1)(b) of the Goods & Services Tax (GST) Act 1993

Section 420 of the Penal Code 1871

Section 54(1)(c) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) 1992

4. Red Flags identified

- Purchase of high-value items
- Omission of cash sales
- Lodgement of false Income Tax returns
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

B1 is the Director of a company (C1).

IRAS received information that C1 did not charge GST or report the cash sales in its income tax returns from 2012 to 2017.

Investigation findings revealed that from 2011 to 2016, B1 conducted cash sales on behalf of C1 but did not account for them in income tax and GST returns, resulting in evasion of GST tax and income tax. B1 also made false entries in the GST returns to evade said tax and attempted to use these false management accounts to obtain bank loans.

The unreported cash sales and GST returns amounted to approximately SGD 1.6 million (~USD 1.19 million) and SGD 1.5 million (~USD 1.11 million) respectively resulting in tax evasion of SGD 110,100 (~USD 81,653) in GST output tax. B1 also made false entries in the income tax returns from 2012 to 2017, underreporting a sum of SGD 1.4 million (~USD 1.04 million) thus evading a further SGD 70,000 (~USD 51,912) in income tax. B1 deposited these tax crime proceeds into his personal bank account and used them for loan repayment, and for purchase of a property and vehicle. This amounted to more than SGD 400,000 (~USD 296,640).

B1 was charged with tax evasion, attempted cheating, and money laundering offences.

6. Outcomes/Results

B1 was sentenced to nine months' imprisonment and a tax penalty of SGD 253,200 (~USD 187,782).

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 12 – SINGAPORE

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case C – Omission of income and under-declaration of GST output tax, Year 2022 / completed, Singapore

2. Competent Authorities

Inland Revenue Authority of Singapore (IRAS)

Commercial Affairs Department (CAD), Singapore Police Force

3. Relevant offences/statutes used

Section 62(1)(b) of the Goods & Services Tax (GST) Act 1993

Section 54(1)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) 1992

4. Red Flags identified

- Concealment of Beneficial Ownership
- Use of corporate vehicles (e.g. trust, shell companies)
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

C1 and C2 are GST registered Companies

C3 and C4 are non-GST registered Companies

B5 is the manager and operator of companies C1 and C2

IRAS received information that C1 and C2 omitted a portion of GST sales from their financial accounts and GST returns in 2017.

Investigation findings revealed that B5 directed for various amounts of taxable supplies to be omitted in the GST returns of C1 and C2. These omitted sales were then diverted to two non-GST registered shell companies, C3 and C4, to evade GST. Fictitious sales records were then created in the accounts of C3 and C4 to disguise the omitted sales. A total of SGD 4.68 million (~USD 3.47 million) was omitted, amounting to SGD 306,152 (~USD 227,099) in undercharged taxes.

Accordingly, B5 was charged with tax evasion and money laundering offences.

6. Outcomes/Results

B5 was sentenced to 58 weeks imprisonment and ordered to pay a tax penalty of SGD 630,000 (~USD 467,329).

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 13 – PAKISTAN

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Name: Four natural persons from the same family (Mr A, B, C & D)

Start date of tax investigation: 21 August 2015

Start date of ML investigation: 7 February 2020

Status: Ongoing

Location: Islamabad

2. Competent Authorities

Directorate General Intelligence and Investigation - Inland Revenue.

3. Relevant offences/statutes used

Charge of Predicate Offence of Tax Evasion:

False statement u/s 192 & concealment of income u/s 192A of the Income Tax Ordinance 2001 (ITO)

Offence of money laundering (ML) u/s 3 of the Anti-Money laundering Act 2010 (AMLA 2010)

4. Red Flags identified

- Use of Secrecy Jurisdiction for banking
- Use of Secrecy Jurisdiction for company incorporation
- Separation of jurisdiction of banking and jurisdiction of incorporation
- Use of Alternate Remittance Services
- Lodgement of false income tax returns
- Non-lodgement of other tax reporting obligations
- Shell companies incorporations in various foreign jurisdiction
- Concealment and disguise of origin through complex system in place

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

The accused appear to be beneficial owners of a commercial property in foreign jurisdiction X owned through C Capital Ltd also incorporated in foreign jurisdiction X. C Capital Ltd is a subsidiary of RR Holdings (Pvt.) Ltd incorporated in foreign jurisdiction Y.

The Federal Board of Revenue (FBR) initiated an inquiry into the tax affairs of the members of ABCD family regarding the purchase of a commercial property by C Capital Limited in jurisdiction X. A and B, members of the ABCD family are directors of C Capital Limited. Further investigation identified that RR Holdings (Pvt.) Ltd owned C Capital Limited and the three directors of RR Holdings (Pvt.) Ltd are also ABCD family members. All are residents of Pakistan.

During proceedings, the Pakistani directors of the aforementioned companies (C Capital Ltd and RR Holdings (Pvt.) Ltd) stated the commercial property was purchased through companies incorporated in a foreign jurisdiction (Y) for commercial reasons and funded using debt and equity. Information regarding loan arrangement received from the Inland Revenue Authority of foreign jurisdiction Y showed that RR Holdings (Pvt.) Ltd arranged a loan facility from two other foreign entities, DD Limited incorporated in foreign jurisdiction V, and EE Limited, incorporated in foreign jurisdiction U.

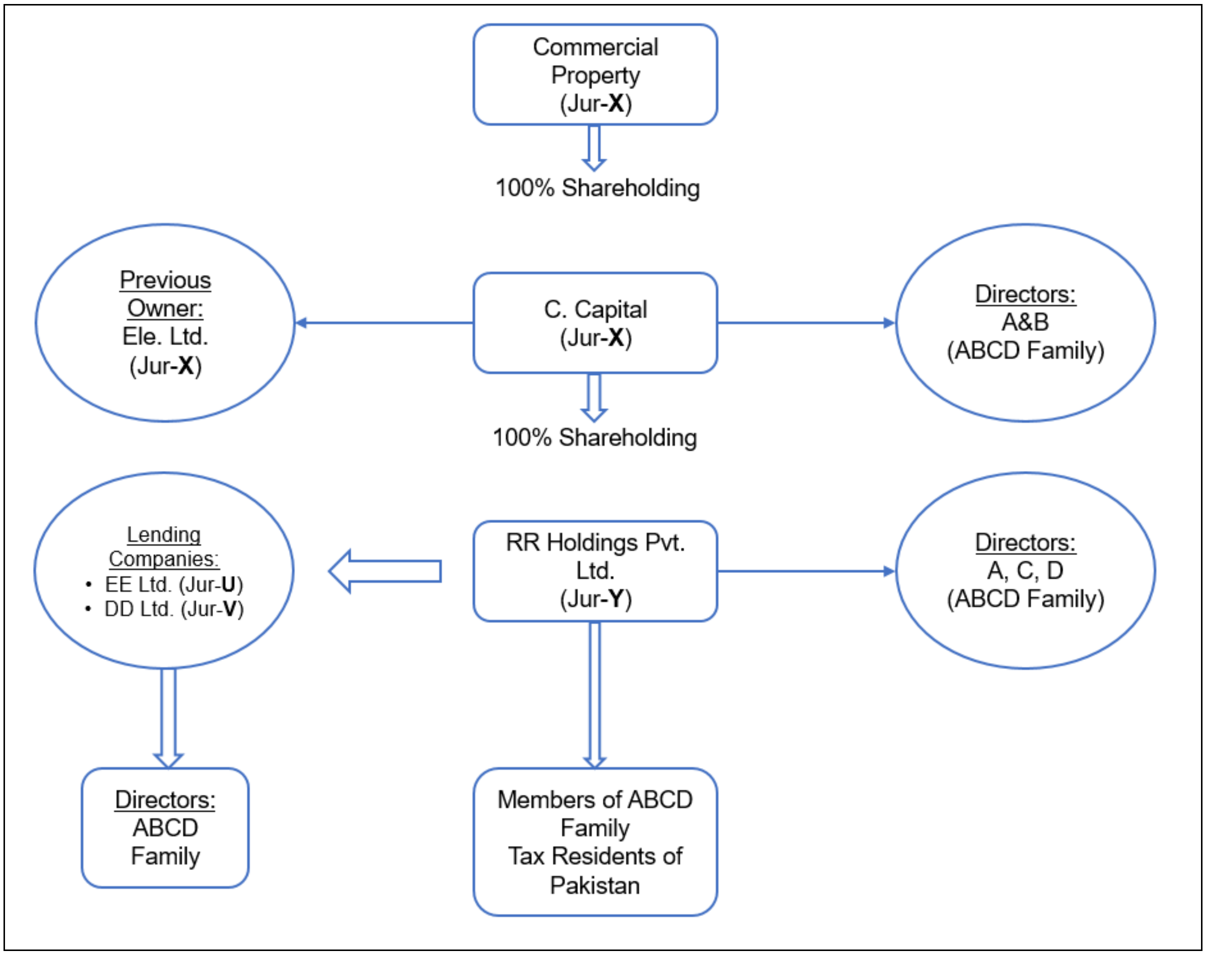
The Int. Taxes Wing of FBR sought to verify RR Holdings (Pvt.) Ltd's loan agreements with assistance from competent authorities of foreign jurisdictions U and V. The Revenue Service of foreign jurisdiction U stated that 'no entity with the name and title of EE Ltd. was ever incorporated in foreign jurisdiction U'. This rendered the debt transaction dubious and raised serious questions regarding the veracity of the claimed debt-sources by ABCD family. Hence, criminal proceedings were initiated under AML Act, 2010 based on the predicate offences of tax evasion.

6. Outcomes/Results

Investigations identified the tax evasion scheme involved approximately USD 50 million. Criminal proceedings were initiated for tax offences and parallel ML offences under the Income Tax Ordinance, 2001 and Anti Money laundering Act 2010 (AMLA 2010). The court granted permission to obtain bank account statements under the AML 2010 and further Investigations are under way.

7. Chart or Diagram of activity

APPENDIX 2 – CASE STUDIES


Commercial Property (Jur-**X**)
100% Shareholding
Previous Owner: Ele. Ltd. (Jur-**X**)
C. Capital (Jur-**X**)
Directors: A&B (ABCD Family)
100% Shareholding
Lending Companies:
• EE Ltd. (Jur-**U**)
• DD Ltd. (Jur-**V**)
RR Holdings Pvt. Ltd. (Jur-**Y**)
Directors: A, C, D (ABCD Family)
Directors: ABCD Family
Members of ABCD Family Tax Residents of Pakistan

8. Any other relevant information
N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 14 – PAKISTAN

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Name: ABC Limited (public limited), six natural persons (including abettors/facilitators)

Year: Investigation (Tax offence & ML offence) 21 September 2020

Prosecution (Tax offence & ML offence) 21 January 2021

Location: Karachi

2. Competent Authorities

Directorate General Intelligence and Investigation - Inland Revenue

3. Relevant offences/statutes used

Concealment of income/assets and tax evasion under the Income Tax Ordinance 2001 (ITO, 2001)

Money laundering under the Anti Money Laundering Act 2010 (AMLA 2010)

4. Red Flags identified

- Large Cash Activity
- Use of nominees (e.g. director, shareholder, secretary)
- Lodgement of false income tax returns
- Non-lodgement of other tax reporting obligations
- Shell companies/AOPs
- Gifts
- Misuse & Illegal Utilisation of company funds for personal benefits of the accused
- Connivance of Financial officers of the company
- Misstatement /wrong disclosures to the external auditors

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

In May 2020 an ex-employee of ABC Limited accused the company of misuse and utilisation of the company's funds by the top management for their personal gain. In September 2020 an investigation commenced into tax offences and related ML offences by ABC Limited and its management.

The complex ML investigation; collected evidence from financial institutions, held multiple interviews including with the company's external auditors, received witness statements, interrogated Custom's database, and conducted an in-depth analysis of ABC company's earnings and banking activities. Investigators also received cooperation from the Oil & Gas Development Company Limited (OGDCL), Securities & Exchange Commission of Pakistan (SECP), National Database & Registration Authority (NADRA), and the Financial Monitoring Unit (FMU).

As a result, investigators identified a money laundering scheme involving of a complex network of financial transactions that laundered proceeds of crime (POC) estimated at over PKR 8 billion (~USD 27.93 million).

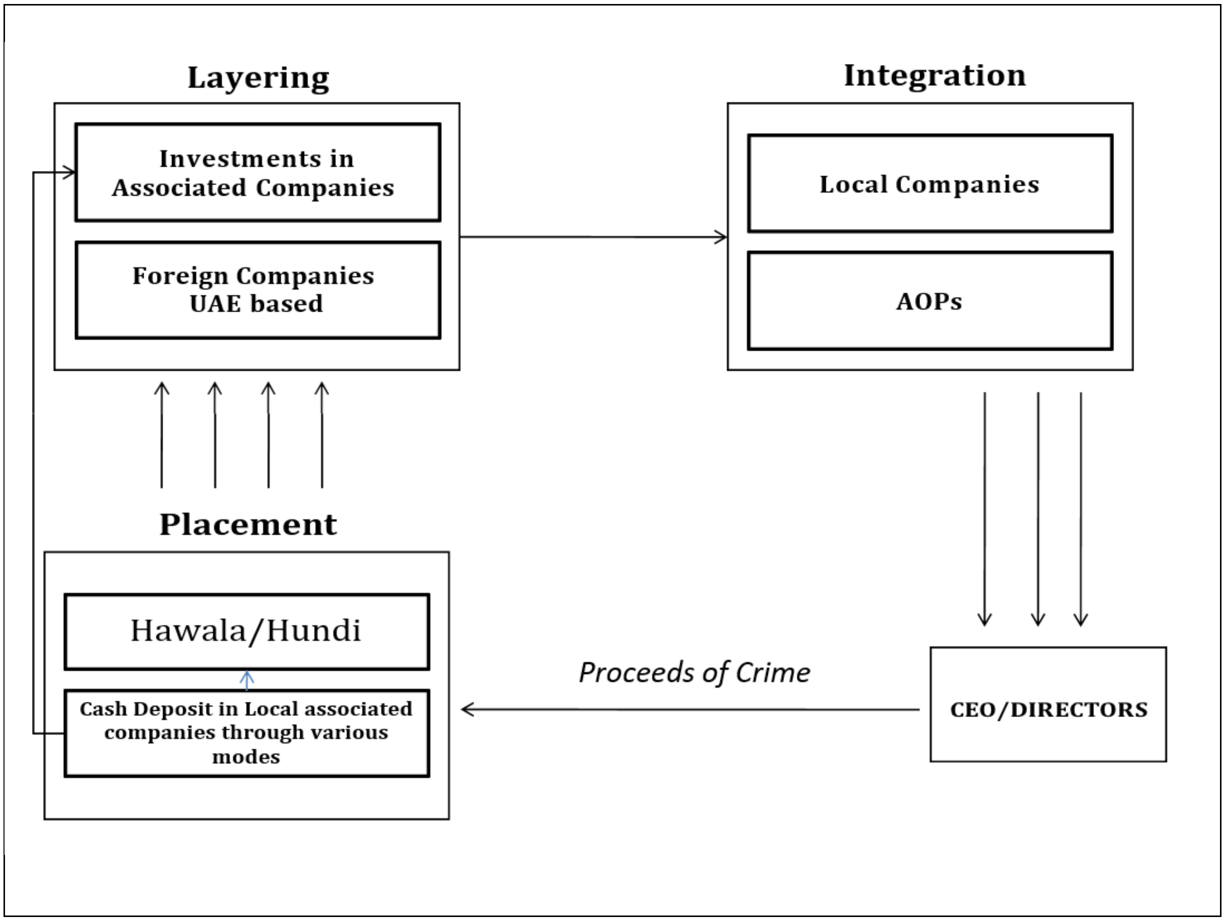
Investigations revealed the following:

- POC was generated through off book sales/purchase and investment of accused company's funds with the connivance of Chief Financial Officer for personal benefit of the Chief Executive Officer and others;
- Placement of POC through cash deposits and transfers to bank accounts established and controlled by the directors of ABC Company;
- Part of the POC (mostly cash) generated through the tax crimes were transferred through Hawala/Hundi to Jurisdiction Y;
- A scheme to concealed personal investments in domestic associated companies and, through hawala/hundi, investment foreign companies in jurisdiction Y;
- An example of investments utilising the above methods revealed during the investigation included:
    - Bank accounts of a shell company and a partnership registered in Pakistan by the CEO and his wife were used to receive profits on the concealed local investment and remittances from companies in the foreign jurisdiction.
    - Gifts from the CEO to his wife

6. Outcomes/Results

The Trial Court permitted access to nine bank accounts and a list of properties for corresponding value have been submitted to the Court. The investigation is completed and the case is now at the prosecution stage.

7. Chart or Diagram of activity


Layering
Investments in Associated Companies
Foreign Companies UAE based
Integration
Local Companies
AOPs
Placement
Hawala/Hundi
Cash Deposit in Local associated companies through various modes
Proceeds of Crime
CEO/DIRECTORS

8. Any other relevant information

- For the predicate offence of Hawala/Hundi (transfer of money from Pakistan through illegal ways and remitted back to Pakistan through banking channels), the case was also referred to the Federal Investigation Agency of Pakistan.
- As a delaying tactic, the accused filed constitutional petitions in the High Court on technical grounds. The High Court dismissed the petition following a challenge by the special prosecution team. The case is currently at the prosecution stage in the Trial Court.
- Investigations were also initiated against two other associated/related parties (both are companies).

CASE STUDY 15 – PAKISTAN

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Name: Mr. H

Year: Start Date of Investigation: 24 November 2016

Start Date of Prosecution: 4 December 2017

Date of Conviction: 30 November 2021

Location: Peshawar

2. Competent Authorities

Directorate General Intelligence and Investigation - Inland Revenue.

3. Relevant offences/statutes used

Charge of Predicate Offence of concealment of income and tax evasion under the Income Tax Ordinance 2001 (ITO 2001)

Money laundering offence under the Anti Money Laundering Act 2010 (AMLA 2010)

4. Red Flags identified

- Use of Secrecy Jurisdiction for banking
- Lodgement of false income tax returns
- Non-lodgement of other tax reporting obligations
- Incorporation and banking occurring in separate jurisdictions
- Camouflaging his business activities (Business was carried on in the tax areas but in tax declaration business was shown as in the non-tax areas to hoodwink the tax authorities).
- Concealment of bank accounts and bank activities in the tax areas

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

Under the ITO 2001, income of a resident of a non-tax area of Pakistan is exempt from taxes to the extent of income derived from the business activities carried on in the non-tax area. Financial intelligence (FI) received from the Financial Monitoring Unit of Pakistan triggered an investigation into a resident of non-tax area receiving large amounts into his bank accounts.

Preliminary enquiries suggested the income was tax exempt as declarations revealed the person to be a resident of the non-tax area and carrying on a business in the same area. However, spot inquiries and third party data from banks, and related and unrelated parties revealed the person of interest put in place a complex scheme to hoodwink tax authorities. Convicted of tax offences and a parallel ML offence, the offender also forfeited assets to the corresponding value of the proceeds of crime.

The offender declared to tax authorities one non-tax area bank account and business activity was also shown in the non-tax area. Investigations revealed the following:

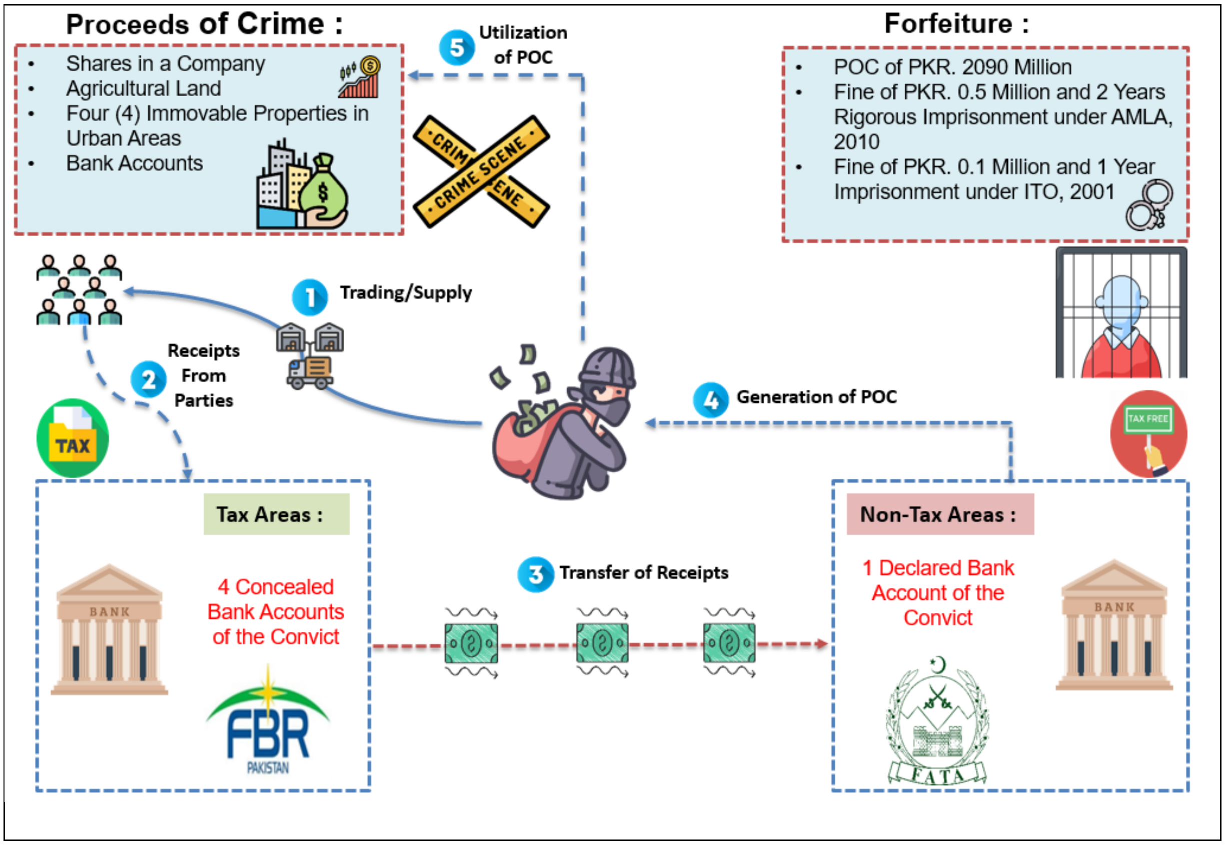
- Spot inquiries revealed that the offender had no business activity in the non-tax areas.
- The offender had four bank accounts in tax areas not declared in tax declarations
- Business addresses (in tax areas) provided to banks, differed to addresses provided to tax authorities (in non-tax areas).
- Undeclared stock purchases in a company with PKR 11.7 million (~USD 40,848)
- The offender received huge amounts from all over Pakistan and transferred them into bank accounts in non-tax areas using banking channels.
- The ML investigation revealed that the suspect camouflaged PKR 2.090 billion (~USD 7.30 million) by routing transactions through non-tax areas to take advantage of exemption clauses in tax laws. False reporting to banks and tax authorities generated proceeds of crime through concealment of business transactions and disguising of income.
- POC was placed into concealed bank accounts in the tax areas then layered through bank transfers from the four concealed bank accounts to the declared bank account in the non-tax area.

6. Outcomes/Results

- The suspect was convicted under AMLA 2010 and section 192A of ITO 2001 in November 2021 and sentence to two years imprisonment.
- The suspect was also sentenced to one-year imprisonment and a fine of PKR 0.1 million (~USD 348) under section 192A of the ITO 2001.
- The suspect forfeited assets with a value corresponding to PKR 2,090 million (~USD 7.30 million) and was fined PKR 0.5 million (~USD 1,746).
- The convicted filed an appeal in the High Court.

7. Chart or Diagram of activity

APPENDIX 2 – CASE STUDIES


Proceeds of Crime :
Shares in a Company
Agricultural Land
Four (4) Immovable Properties in Urban Areas
Bank Accounts
5 Utilization of POC
CRIME SCENE
Forfeiture :
POC of PKR. 2090 Million
Fine of PKR. 0.5 Million and 2 Years Rigorous Imprisonment under AMLA, 2010
Fine of PKR. 0.1 Million and 1 Year Imprisonment under ITO, 2001
1 Trading/Supply
2 Receipts From Parties
TAX
4 Generation of POC
TAX FREE
Tax Areas :
BANK
4 Concealed Bank Accounts of the Convict
FBR
PAKISTAN
3 Transfer of Receipts
Non-Tax Areas :
1 Declared Bank Account of the Convict
BANK
FATA

8. Any other relevant information
Federally Administered Tribal Areas (FATA) are called non-tax areas. These areas are adjacent to Afghanistan and due to special socio-economic conditions, are tax exempt under certain conditions until 30 June 2023. The residents of these areas are exempt from taxes on income derived from the business activities carried on in FATAs.

APPENDIX 2 – CASE STUDIES

CASE STUDY 16 – SOLOMON ISLANDS

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Person X, 2022/Ongoing, Honiara. The case is being disseminated to IRD (Tax Authority) for further investigation under their legislation.

2. Competent Authorities

Inland Revenue Division (IRD)

3. Relevant offences/statutes used

Tax Evasion/Tax Avoidance

4. Red Flags identified

- Use of personal bank account to conduct business or commercial related activities;
- Company Y does not have any bank account with any of the local commercial banks;
- Attempt to remit large funds overseas through several branches of a money value transfer service (MVTS) in one day;
- Structuring of funds below the MVTS's reporting threshold limit;
- Multiple change of company names for Company Y.

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

A Suspicious Transaction Report (STR) was filed by a reporting entity in August 2019 on Person X who attempted to transfer large funds overseas through several branches of an MVTS in one day.

Based on preliminary analysis of the STR, Person X is a foreigner employed by Company Y in Jurisdiction A.

Person X works as a chef for Company Y, a restaurant.

Initial inquiries into Person X revealed:

- They hold a personal bank account with a local commercial bank.
- Between 2019 – 2020 the account received significant deposits totalling approximately SBD 662K (~USD 78,743).
- The source of funds were unknown and are inconsistent with Person X's occupational profile.

Data obtained from the MVTS revealed that Person X remitted approximately SBD 110K (~USD 13,083) to Jurisdiction B during 2019-2020. The purpose of the transfers were for 'family support'.

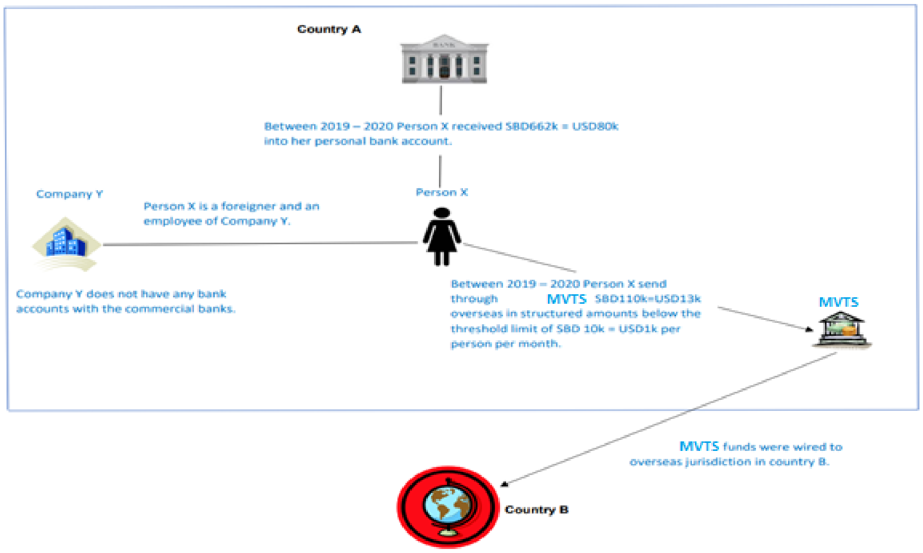
In summary, it is highly likely that Person X and her associates are using Person X's personal bank account and the MVTS to carry out commercial related activities.

Finally, a case dissemination report on this matter has been disseminated to Inland Revenue Division (Tax Authority) for further investigation under its legislation.

6. Outcomes/Results

The case is currently being investigated by IRD.

7. Chart or Diagram of activity


Country A
Between 2019 – 2020 Person X received SBD662k = USD80k into her personal bank account.
Company Y
Person X is a foreigner and an employee of Company Y.
Person X
Company Y does not have any bank accounts with the commercial banks.
Between 2019 – 2020 Person X send through MVTS SBD110k=USD13k overseas in structured amounts below the threshold limit of SBD 10k = USD1k per person per month.
MVTS
MVTS funds were wired to overseas jurisdiction in country B.
Country B

8. Any other relevant information

N/A

CASE STUDY 17 – CAMBODIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

BC CO. Ltd.

Ongoing

Phnom Penh, Cambodia

2. Competent Authorities

Department of Tax Crime Investigation of General Department of Taxation

Internal Security Department of General Commissariat of National Police (GCNP)

3. Relevant offences/statutes used

Fraudulent Tax Invoices

4. Red Flags identified

- Concealment of Beneficial Ownership
- Large Cash Activity
- Use of nominees (e.g. director, shareholder, secretary)
- Use of corporate vehicles (e.g. trust, shell companies)
- Use of foreign financial centres
- Non-lodgement of income tax returns
- Non-lodgement of VAT/GST returns
- Non-lodgement of other tax reporting obligations
- Use of false identities

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

In early 2021, an informant provided the Department of Tax Crime Investigation (DTCI) of the General Department of Taxation (GDT) with a copy of a tax invoice for USD 70,000 from BC Co. Ltd., a shell company.

The DTCI's preliminary investigations found two more copies of the tax invoices of BC Co., Ltd., totalling USD 100,000. Later, the informant provided a copy of another BC Co. Ltd. tax invoice, totalling USD 130,000 and stated a foreign national was selling fraudulent tax invoices of BC Co. Ltd. via WeChat. DTCI investigations identified that BC Co. Ltd. had not declared any revenue, including the fraudulent tax invoices, except for withholding tax on office rental. Therefore, DTCI officially engaged in the information collection for building a tax crime investigation case.

As a result of information collection, DTCI identified:

- BC Co. Ltd. registered in July, 2020 via the online platform CamDX (a data exchange platform of the Royal Government of Cambodia operated by Ministry of Economy and Finance). Records linked to the registration included a copy of M&A of the company, an ID card and a photo of the owner, an office rental agreement, and the photos of office.
- BC Co. Ltd.'s business activity is 'wholesale of construction materials and tools', but the company has no warehouse. The registered location of the company is residential address, not the company's premises.
- The owner of BC Co. Ltd., owning 100% shares did not own any other property in GDT's database. It is suspected the person was hired to be the company owner.
- With the assistance from the Department of Information Communication Technology, cross-checking of data in the e-filing system, found that BC Co, Ltd.'s tax invoices were used by 124 companies to claim VAT input and expenses of approximately in total USD 22 million by January 2021.
- BC Co. Ltd. had not declared any revenues from those tax invoices.

To collect further information, DTCI disguised as taxpayer service provider and invited the owner of BC Co. Ltd. to a meeting. Mr. BC, the owner of BC Co. Ltd., did not come, instead a man named YT with the power of attorney attended the meeting. Mr. YT informed DTCI that he was responsible for taking care of BC Co. Ltd. He also confirmed that Mr. BC was the real owner, and the company had real business activities. Later, DTCI discovered that Mr. YT was an employee of XYZ Co. Ltd., a licensed company for tax agent service, which assisted BC Co. Ltd. in its company registration and monthly tax filing and payment.

With the collated information and clear indicators of tax evasion, a tax crime investigation case for the sale and purchase of fraudulent tax invoices and using fraudulent tax invoices claiming VAT input and expenses was approved.

As the tax crime investigation procedure conducted, DTCI could initially conclude that:

- XYZ Co. Ltd. might also be involved in the tax fraud.
- A few individuals, Cambodian and Chinese, might also involve in the tax fraud.

To succeed in combating this tax fraud scheme and possible ML offence, GDT sought the cooperation from the General Commissariat of National Police (GCNP) as this tax fraud scheme might be involved by criminals of the organized crime.

6. Outcomes/Results

- The operation found four more shell companies issuing fraudulent tax invoices to other companies.
- The investigating judge issued a warrant to freeze assets of related persons.
- The court sentenced four Cambodians and two foreign nationals to prison for terms of between one and three years and ordered the arrest of four related persons.

7. Chart or Diagram of activity

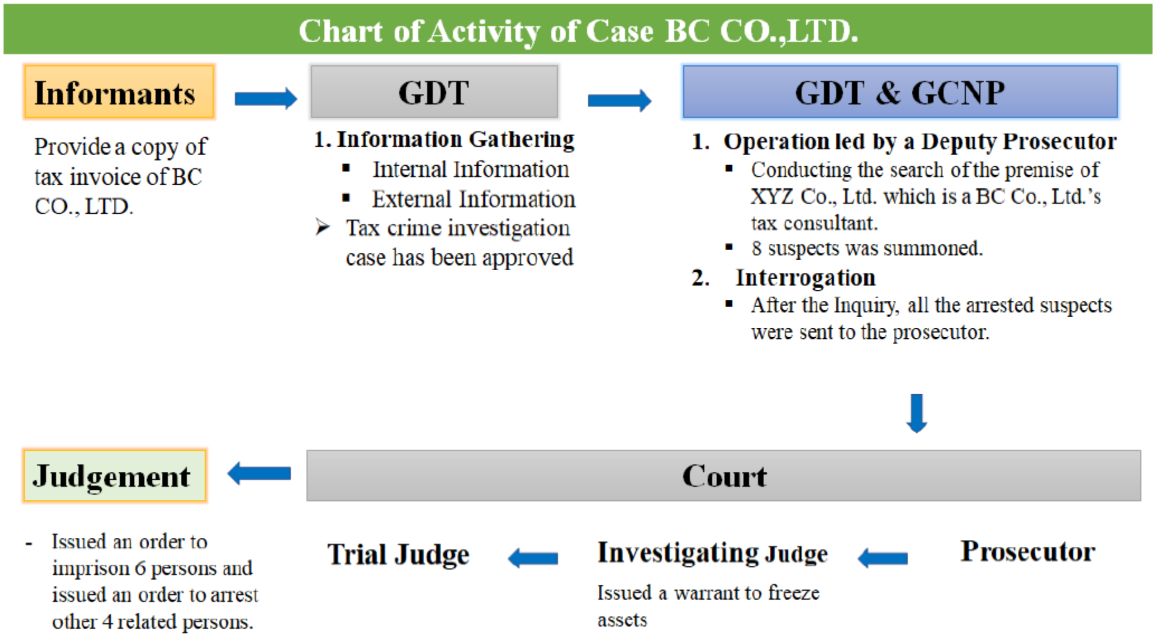


Chart of Activity of Case BC CO.,LTD.

Informants

Provide a copy of tax invoice of BC CO., LTD.

GDT

1. **Information Gathering**
   - Internal Information
   - External Information
   - Tax crime investigation case has been approved

GDT & GCNP

1. **Operation led by a Deputy Prosecutor**
   - Conducting the search of the premise of XYZ Co., Ltd. which is a BC Co., Ltd.'s tax consultant.
   - 8 suspects was summoned.
2. **Interrogation**
   - After the Inquiry, all the arrested suspects were sent to the prosecutor.

Court

Prosecutor

Investigating Judge

Issued a warrant to freeze assets

Trial Judge

Judgement

- Issued an order to imprison 6 persons and issued an order to arrest other 4 related persons.

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 18 – TIMOR-LESTE

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Tax Fraud. Location, Dili District.

2. Competent Authorities

Prosecutor of the Central Office for Combating Corruption and Organized Crime, in Attorney General Office of Timor-Leste.

3. Relevant offences/statutes used

Nil (Tax fraud)

4. Red Flags identified

- *None selected*

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

On 17 June 2016, a company called ABC Brewing Ltd, imported 2,910 cases of beer, but did not pay taxes, thus on 24 June 2016, the case was registered at the central office with a Tax Fraud case. On 30 November 2016, this case was brought before the Dili district court, and on 5 January 2018, the Dili District Court, sentenced the owner to two years in prison, but their detention was suspended for four years. Compensation to the state in the amount of USD 132,379 was awarded.

6. Outcomes/Results

- 2,910 beer cases destroyed by the state
- Compensation to the state in the amount of USD 132,379

7. Chart or Diagram of activity

N/A

8. Any other relevant information
The General Prosecutor of Timor-Leste recognised that this information's not yet completed, because related to the decisions for the proceeds and confiscations, we have to consolidate the data from the Court, and we will be provide the complete information's in the future.

CASE STUDY 19 – AUSTRALIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

N/A

2. Competent Authorities

Australian Criminal Intelligence Commission

Australian Taxation Office

3. Relevant offences/statutes used

N/A

4. Red Flags identified

- Concealment of Beneficial Ownership
- Large Cash Activity
- Cheque Cashing Activity
- Use of nominees (e.g. director, shareholder, secretary)
- Use of corporate vehicles (e.g. trust, shell companies)
- Use of unusual financial instruments (e.g. bank drafts, bank bills, bearer shares etc.) (please describe)
- Lodgement of false income tax returns
- Lodgement of false VAT/GST returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

Case involved two persons in a familial relationship, operating a business entity.

Person A would draw cheques on the business bank account, payable to cash.

At the bank branch, Person A would instruct the teller to distribute the funds to multiple entities, including some legitimate business expenditure, but also personal home loans, commercial bills, personal credit cards and personal expenditure.

Cash cheque withdrawals were recorded by the business as tax-deductible expenditure (e.g. subcontracted labour expenditure).

Third parties and nominees were used in the subcontractor space to make detection more difficult.

6. Outcomes/Results

The ATO has raised assessments in respect of this activity and is undertaking civil recovery of the unpaid taxation.

7. Chart or Diagram of activity

N/A

8. Any other relevant information

N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 20 – AUSTRALIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

N/A

2. Competent Authorities

Australian Criminal Intelligence Commission

Australian Taxation Office

3. Relevant offences/statutes used

N/A

4. Red Flags identified

- Large Cash Activity
- Cheque Cashing Activity
- Use of corporate vehicles (e.g. trust, shell companies)
- Lodgement of false income tax returns
- Use of under- or over-invoicing
- Use of unwitting third parties

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

Background Information:

The scheme involved two individuals (facilitators) with a cash conversion business (CCB) with two interstate offices that converted cheques or direct transfers to cash. The individuals controlled 14 entities and more than 25 bank accounts.

In a recorded interview with the ATO, the facilitators stated that they and their 14 entities:

- Do not provide any services except the conversion of cheques or direct transfers to cash.
- Have a direct relationship with small number of clients plus a relationship with four agents (money mules) with regard to most clients
- Charge a 1% conversion fee for cheques and direct transfer clients a 2-3% conversion fee

- Receive cash deliveries to both offices from a cash delivery service most weekdays up to $1.2million.

ATO investigation of the CCB identified that from 1 July 2014 to 30 June 2022:

- Approximately AUD 966 million (~USD 643.69 million) was received from participant entities.
- There were more than 1,300 participant entities.
- Cheque values range from AUD 30 (~USD 20) to AUD 159,000 (~USD 105,949) with the majority below AUD15,000 (~USD 9,995).

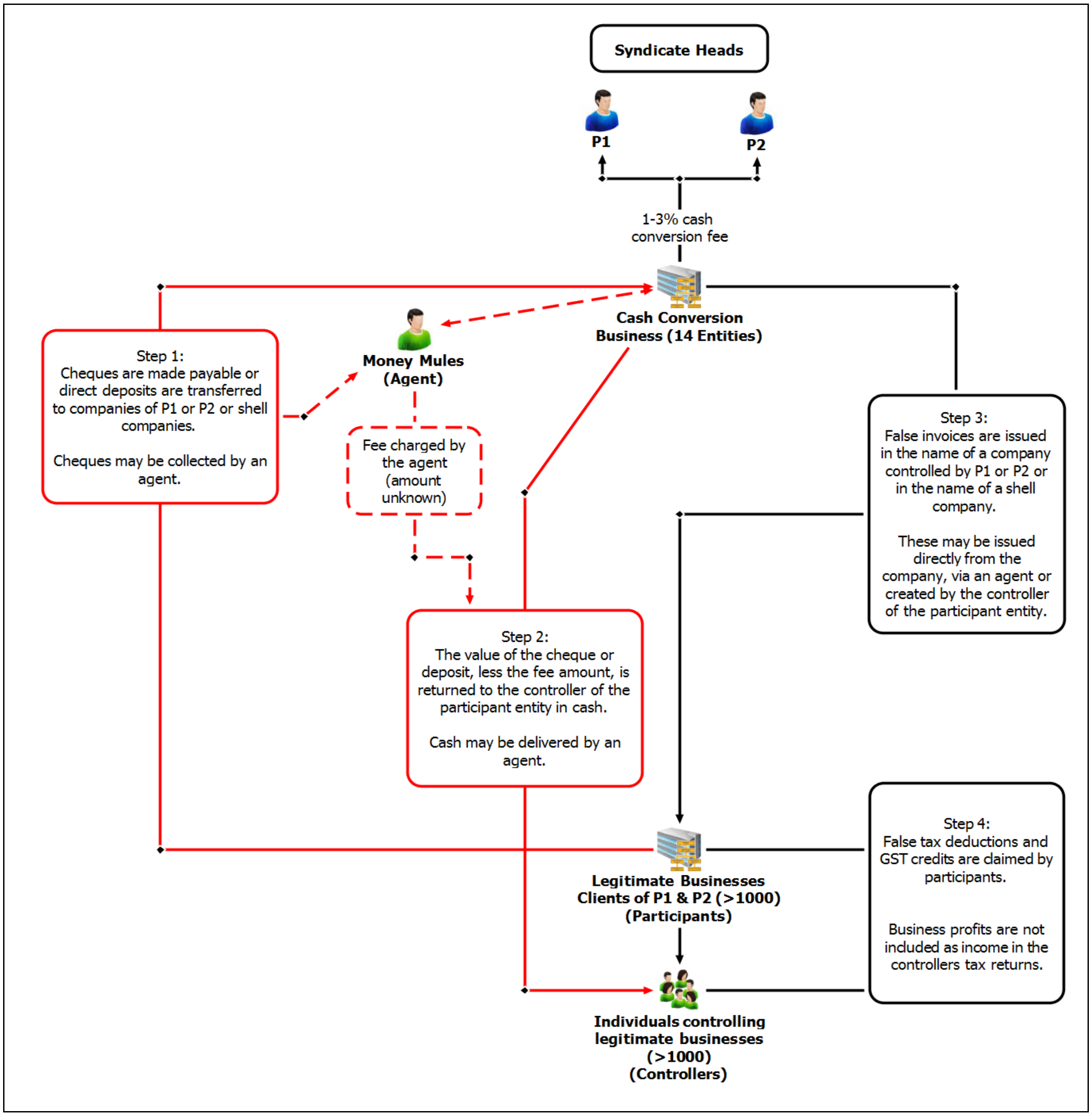
The arrangement operated as follows:

- Invoices were issued in the name of suspected shell entities and/or the CCB to legitimate entities (participant entities).
- The participant entity paid the invoice by cheque or direct transfer to the CCB. From the 2019 income year, a significant increase in direct transfers to the CCB was noted.
- If the cheque was written to a shell entity, the cheque was deposited into the bank account of the CCB, as the shell entity did not hold a bank account.
- No actual goods or services were provided.
- The CCB controllers utilised cash delivery services on an almost daily basis to receive the funds to distribute to the participants.
- The face value of the cheque/direct transfer amount was returned to the participant entities as cash less a fee believed to be between 1% and 3%.
- The participant entities claimed a deduction in lodged tax returns and input tax credits in lodged business activity statements for amounts paid to the shell entities and/or CCB and the controllers of the participant entities receive the majority of these amounts as untaxed ‘cash’ payments.

6. Outcomes/Results

N/A

7. Chart or Diagram of activity


Syndicate Heads
P1
P2
1-3% cash conversion fee
Cash Conversion Business (14 Entities)
Money Mules (Agent)
Fee charged by the agent (amount unknown)
Legitimate Businesses Clients of P1 & P2 (>1000) (Participants)
Individuals controlling legitimate businesses (>1000) (Controllers)

Step 1:
Cheques are made payable or direct deposits are transferred to companies of P1 or P2 or shell companies.

Cheques may be collected by an agent.

Step 2:
The value of the cheque or deposit, less the fee amount, is returned to the controller of the participant entity in cash.

Cash may be delivered by an agent.

Step 3:
False invoices are issued in the name of a company controlled by P1 or P2 or in the name of a shell company.

These may be issued directly from the company, via an agent or created by the controller of the participant entity.

Step 4:
False tax deductions and GST credits are claimed by participants.

Business profits are not included as income in the controllers tax returns.

8. Any other relevant information
N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 21 – AUSTRALIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Case Name: Operation BEAUFIGHTER

Year: The case was finalised in 2018

2. Relevant Agencies

Australian Taxation Office

Australian Federal Police

Commonwealth Director of Public Prosecutions

3. Relevant offences/statutes used

Person A and Person B were charged with:

- Conspiring to cause a loss/risk of loss to the Commonwealth contrary to s.135.4(5) of the Criminal Code; and
- Conspiracy to deal in the proceeds of crime of $AU 1 million or more, contrary to Sections 400.3(1) and 11.5 of the Criminal Code Act 1995.

4. Red Flags identified

- Concealment of Beneficial Ownership
- Use of Accountants as professional facilitators
- Use of Solicitors as professional facilitators
- Use of Company Service Providers as professional facilitators
- Use of Secrecy Jurisdiction for banking
- Use of Secrecy Jurisdiction for company incorporation
- Separation of jurisdiction of banking and jurisdiction of incorporation
- Takeover of a bank account of an uninvolved entity (e.g. student bank account after leaving jurisdiction)
- Use of nominees (e.g. director, shareholder, secretary)
- Use of corporate vehicles (e.g. trust, shell companies)

- Use of foreign financial centres
- Use of loan-back arrangements
- Use of unusual financial instruments (e.g. bank drafts, bank bills, bearer shares etc.) (please describe)
- Purchase of high-value items
- Lodgement of false income tax returns
- Non-lodgement of other tax reporting obligations
- Incorporation and banking occurring in separate jurisdictions
- Use of unwitting third parties
- Use of false identities

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

Operation BEAUFIGHTER was an investigation into large scale tax evasion and money laundering by Person A, a businessman, and Person B, an executive of a major accounting firm.

Person A and Person B were directors of Company A. This company purportedly purchased and invested in medical technologies from Company B in Jurisdiction B, with the funds partly provided by Company C, a finance company located in Jurisdiction C. The technologies were valued by a supposedly independent valuer, Company D.

The court found, however, that all of these entities were set up and controlled by Person A and Person B. The inflated valuations of the technologies then allowed the pair to claim massive tax deductions based on the depreciation of their value over time.

The pair created a web of false identities and siphoned money through further Countries D, E and F, via fake domestic and international companies before coming back to them—often disguised as loans—to fund their lavish lifestyles, which included luxury cars, boats, properties, jewellery, and commercial property. These proceeds of crime were seized by police after the two were arrested.

A benefit of about $68 million (~USD 45.31 million) was received.

6. Outcomes/Results

The operation was one of the largest and one of the most complex investigations into tax fraud in Australia's history.

On 22 December 2014, the jury found Person B guilty of:

- One count of conspiring to dishonestly cause a loss or risk of a loss contrary to section 135.4(5) of the Criminal Code.
- One count of conspiring to deal with property of a value of $1,000,000 or more believing it to be proceeds of crime contrary to section 11.5(1) and section 400.3(1) of the Criminal Code.

Person B was sentenced to 11 years imprisonment with a Non Parole Period of 7 years, increased on appeal to 12 years with a non-parole period of 9 years and 3 months.

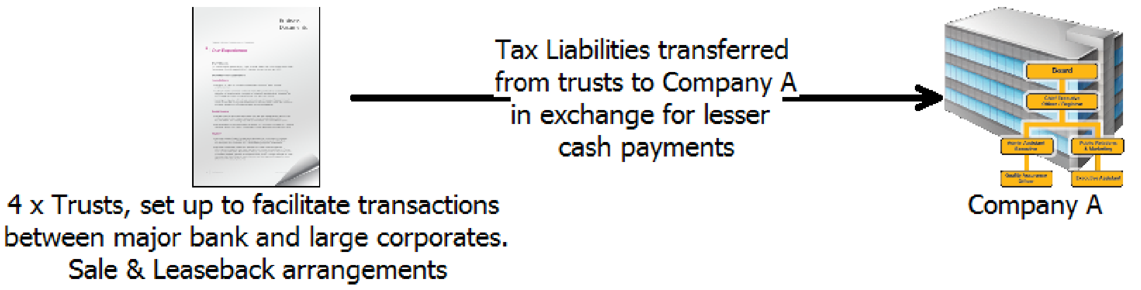
On 29 March 2018, Person A was sentenced to 10 years' jail, in relation to:

- One count of conspiring to dishonestly cause a loss or risk of a loss contrary to section 135.4(5) of the Criminal Code.
- One count of conspiring to deal with property of a value of $1,000,000 or more believing it to be proceeds of crime contrary to section 11.5(1) and section 400.3(1) of the Criminal Code.

The significant sentences handed down to Person A and Person B bring an end to a six-year court case and fraud investigation by the Serious Financial Crime Taskforce.

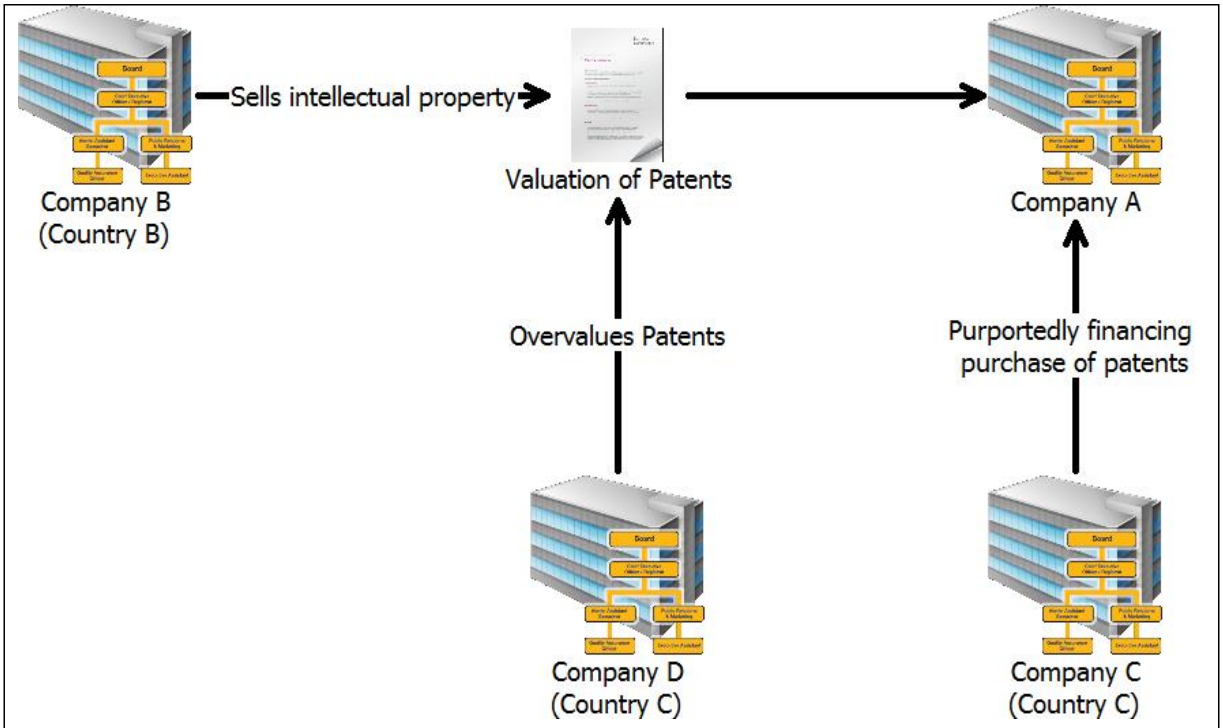
The operation sends a clear message to lawyers and accountants who devise and promote tax evasion schemes and never think they could go to jail that we will continue to purse tax evasion and crime-based offences.

7. Chart or Diagram of activity


Tax Liabilities transferred from trusts to Company A in exchange for lesser cash payments
4 x Trusts, set up to facilitate transactions between major bank and large corporates. Sale & Leaseback arrangements
Company A

A major bank (not accused of any wrongdoing), set up 4 trusts to facilitate transactions with large corporate entities (also not accused of any wrongdoing), under sale and leaseback arrangements. The sale and leaseback arrangements generated tax liabilities.

In exchange for a smaller payment, Company A took on the tax liabilities. Company A was planning to offset these tax liabilities against losses generated.


Sells intellectual property
Valuation of Patents
Company B
(Country B)
Company A
Overvalues Patents
Purportedly financing
purchase of patents
Company D
(Country C)
Company C
(Country C)

This second chart illustrates how the purported tax losses were generated (fraudulently).

Company B, incorporated in Jurisdiction B, would buy patents for medical technologies at fair value.

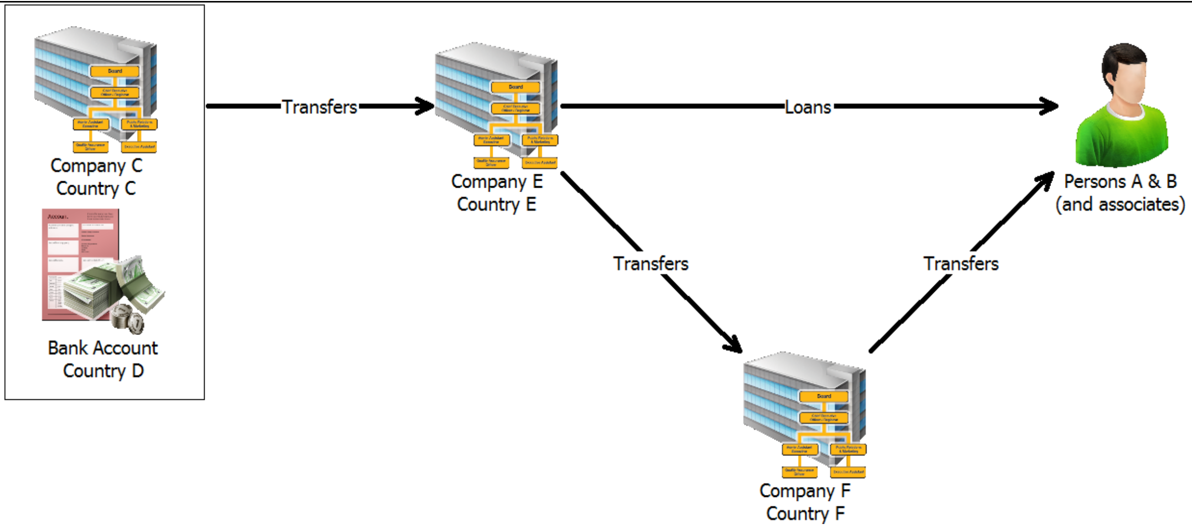
Company D, incorporated in Jurisdiction C, would value these patents at an inflated price. Company A would then ‘buy’ the patents at the inflated price from Company B.

Company A would then be able to claim false depreciation expenses to create losses to offset against the tax liabilities from the four earlier trusts.

Company C, also incorporated in Jurisdiction C, was purportedly providing finance to Company A to purchase the patents.

All the companies were actually controlled by Person A and Person B.

APPENDIX 2 – CASE STUDIES


Company C
Country C
Bank Account
Country D
Transfers
Company E
Country E
Loans
Persons A & B
(and associates)
Transfers
Transfers
Company F
Country F

This chart outlines how the funds were made available to Persons A & B and their associates.

Funds were provided purportedly as ‘loans’ so that they would not be classed as assessable income.

Bank Accounts in Jurisdiction D and Jurisdiction E and the UAE were used to further distance the funds from their origins.

Funds were used to purchase yachts, cars, properties and lifestyle expenditure such as travel.

8. Any other relevant information

Further information can be found at the following website:

Serious Financial Crime Taskforce case studies | Australian Taxation Office (ato.gov.au)

Australia's largest tax fraud case | Australian Taxation Office (ato.gov.au)

APPENDIX 2 – CASE STUDIES

CASE STUDY 22 – AUSTRALIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Undisclosed

2. Relevant Agencies

Australian Criminal Intelligence Commission

Australian Taxation Office (ATO)

3. Relevant offences/statutes used

Not applicable

4. Red Flags identified

- Concealment of Beneficial Ownership
- Use of Accountants as professional facilitators
- Use of Solicitors as professional facilitators
- Use of Company Service Providers as professional facilitators
- Use of Secrecy Jurisdiction for banking
- Use of Secrecy Jurisdiction for company incorporation
- Separation of jurisdiction of banking and jurisdiction of incorporation
- Large Cash Activity
- Use of nominees (e.g. director, shareholder, secretary)
- Use of corporate vehicles (e.g. trust, shell companies)
- Use of foreign financial centres
- Use of loan-back arrangements
- Domestic taxpayer resident in foreign jurisdiction
- Purchase of high-value items
- Lodgement of false income tax returns
- Use of unwitting third parties

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

This case involved two persons (in a familial-type relationship), multiple corporate entities and trusts, offshore corporations and offshore bank accounts.

Over a two- to three-year period, cash deposits were made in Australia, to accounts of associates and nominees. These deposits were rapidly transferred through multiple accounts, ultimately ending in one of the following destinations:

1. Australian accounts of the two principals or their related corporate entities
2. Lifestyle expenditure of the two principals
3. Asset purchases by the two principals or their related corporate entities
4. Offshore accounts, held in banking secrecy jurisdictions, for corporations registered in corporate secrecy jurisdictions, with the two principals the ultimate beneficial owners.

Although the individuals were strongly suspected of narcotics offences, insufficient evidence was gathered in respect of that offending. The investigation was referred to the ATO who conducted civil audits, raised assessments, obtained freezing orders and conducted civil recovery of the unpaid taxation.

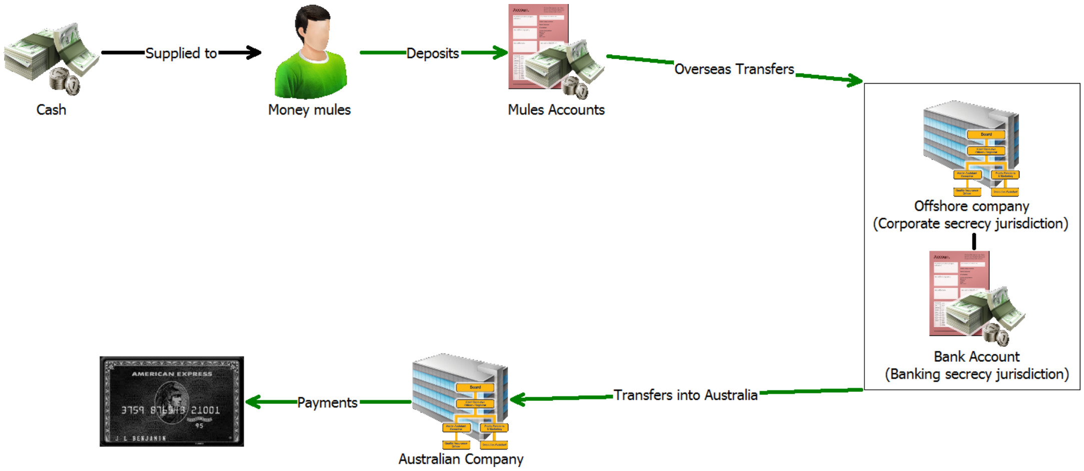
As will be shown in the diagrams below, this case demonstrated the use of multiple methodologies consistent with the laundering of tax crimes.

6. Outcomes/Results

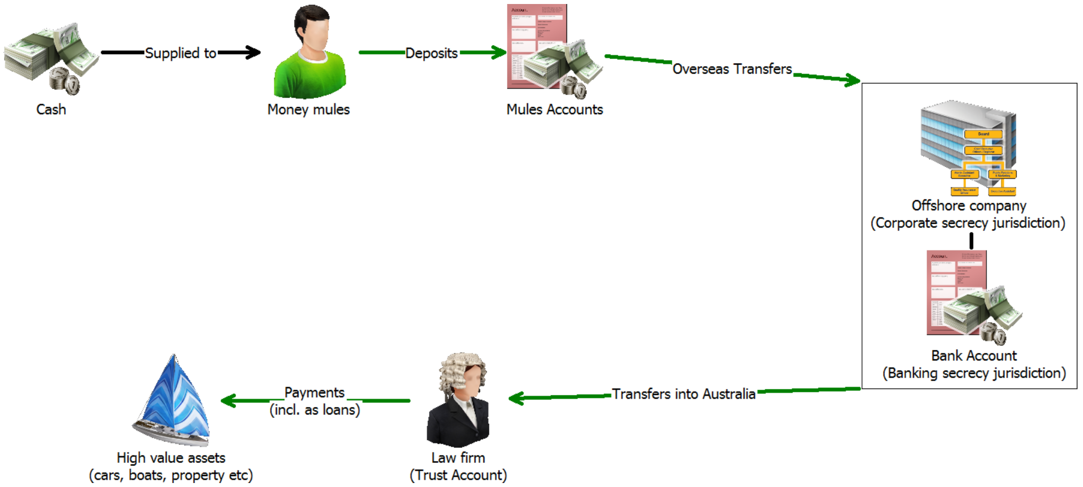
The Australian Taxation Office successfully conducted civil recovery in respect of the two principals and their corporate entities.

7. Chart or Diagram of activity

1. Flow of funds for personal expenditure

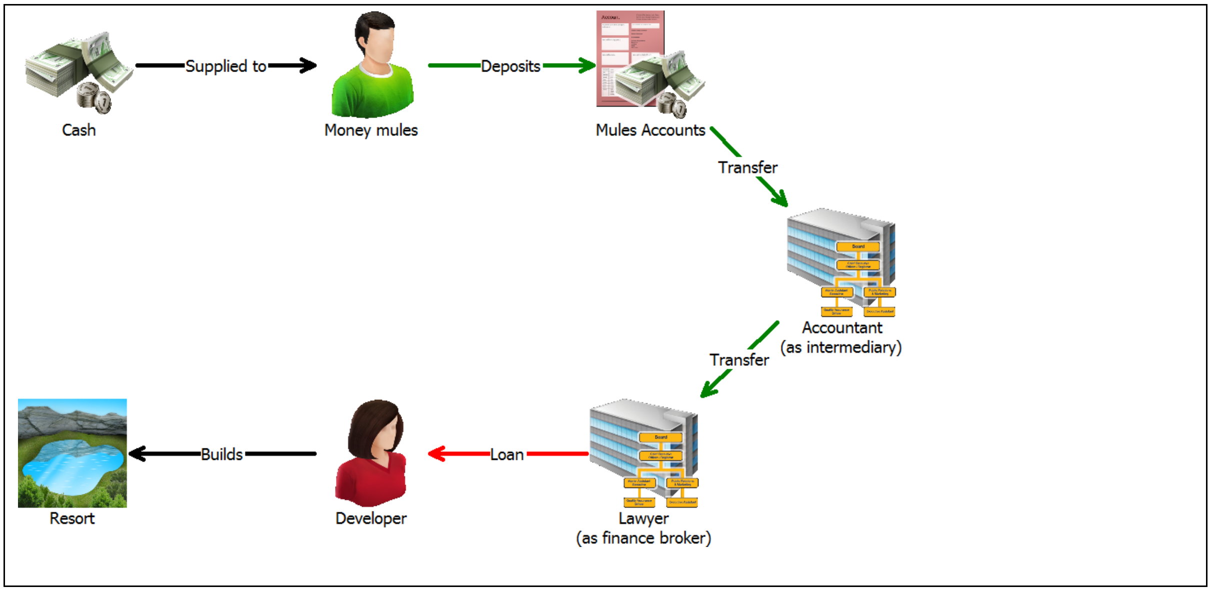

Cash
Supplied to
Money mules
Deposits
Mules Accounts
Overseas Transfers
Offshore company (Corporate secrecy jurisdiction)
Bank Account (Banking secrecy jurisdiction)
Transfers into Australia
Australian Company
Payments
AMERICAN EXPRESS
3759 876543 21001
J L BENJAMIN

2. Flow of funds for asset purchases


Cash
Supplied to
Money mules
Deposits
Mules Accounts
Overseas Transfers
Offshore company (Corporate secrecy jurisdiction)
Bank Account (Banking secrecy jurisdiction)
Transfers into Australia
Law firm (Trust Account)
Payments (incl. as loans)
High value assets (cars, boats, property etc)

3. Flow of funds for third party loans

APPENDIX 2 – CASE STUDIES


Cash
Supplied to
Money mules
Deposits
Mules Accounts
Transfer
Accountant
(as intermediary)
Transfer
Lawyer
(as finance broker)
Loan
Developer
Builds
Resort

8. Any other relevant information
N/A

APPENDIX 2 – CASE STUDIES

CASE STUDY 23 – AUSTRALIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Name: Elbrus

Year: 2017

2. Relevant Agencies

Australian Federal Police (AFP)

Australian Taxation Office (ATO)

3. Relevant offences/statutes used

Conspiracy to defraud (causing a loss), contrary to s135.4(3) of the Criminal Code Act 1995 (Cth)

Dealing with property reasonably suspected of being proceeds of crime, contrary to sections 11.5(1) and 400.3(1) of the Criminal Code Act 1995 (Cth)

Demand with menaces intend obtaining a gain or causing a loss (Blackmail) contrary to section 249K(1)(a) of the Crimes Act 1900 (NSW)

For further information please see: Operation Elbrus prosecutions are drawing to a close | Commonwealth Director of Public Prosecutions (https://www.cdpp.gov.au/case-reports/operation-elbrus-prosecutions-are-drawing-close)

4. Red Flags identified

- Concealment of Beneficial Ownership
- Use of accountants as professional facilitators
- Use of solicitors as professional facilitators
- Use of company service providers as professional facilitators
- Use of secrecy jurisdiction for banking
- Use of secrecy jurisdiction for company incorporation
- Separation of jurisdiction of banking and jurisdiction of incorporation
- Large cash activity
- Use of nominees (e.g. director, shareholder, secretary)
- Use of corporate vehicles (e.g. trust, shell companies)

- Use of foreign financial centres
- Purchase of high-value items
- Non-lodgement of income tax returns
- Lodgement of false income tax returns
- Non-lodgement of VAT/GST returns
- Lodgement of false VAT/GST returns
- Incorporation and banking occurring in separate jurisdictions
- Use of unwitting third parties

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

A total of 16 people were charged as part of the AFP-led investigation, codenamed Operation Elbrus that began in 2016 and received significant assistance from the ATO as part of the Serious Financial Crime Taskforce (SFCT).

The investigation exposed large-scale and organised tax fraud and money laundering conspiracies that used payroll service entities to divert Pay-As-You-Go withholding (PAYGW) tax and Goods and Services tax (GST).

The fraud involved a company established by the syndicate to provide payroll services to legitimate clients. The money received from these companies was transferred to subcontracted companies – controlled by syndicate members – to process payroll. While processing these payments, funds paid by legitimate clients to service tax obligations were diverted by the syndicate for their own personal gain.

Tax Office investigators estimate the amount of tax obligations not paid to the ATO to be approximately AUD105 million (~USD 69.97 million).

A legitimate payroll company – run by the syndicate members – accepted money from legitimate clients to process payroll on their behalf. This money was transferred to seven sub-contracted companies known as Tier 2 companies, which then made payroll payments to individual workers of clients.

The directors of these Tier 2 companies were essentially a front – individuals recruited to appear to be running the companies, but the syndicate members retained effective control.

As part of their contractual obligations to the legitimate payroll company's clients, the Tier 2 companies were required to remit pay as you go PAYGW tax payments to the ATO on behalf of the clients. However, investigators found that only part of these tax obligations were paid. The remaining money was allegedly siphoned off by the syndicate members and channelled through a complex series of companies and trusts for their own personal gain.

Further details can be found at: Operation Elbrus | Australian Taxation Office (ato.gov.au)

6. Outcomes/Results

28 August 2019 – Person A sentenced to four years and six months jail

21 February 2020 – Person B sentenced to three years and four months jail

4 June 2020 – Person C sentenced to three years and three months jail (reduced to two years on appeal)

10 July 2020 – Person D sentenced to four years jail

31 July 2020 – Person E sentenced to seven years and six months jail

1 April 2021 – Person F sentenced to ten years and five months jail

1 April 2021 – Person G sentenced to eight years jail

23 June 2022 – Person H sentenced to 12 years jail

1 May 2023 – Person I sentenced to eight years jail

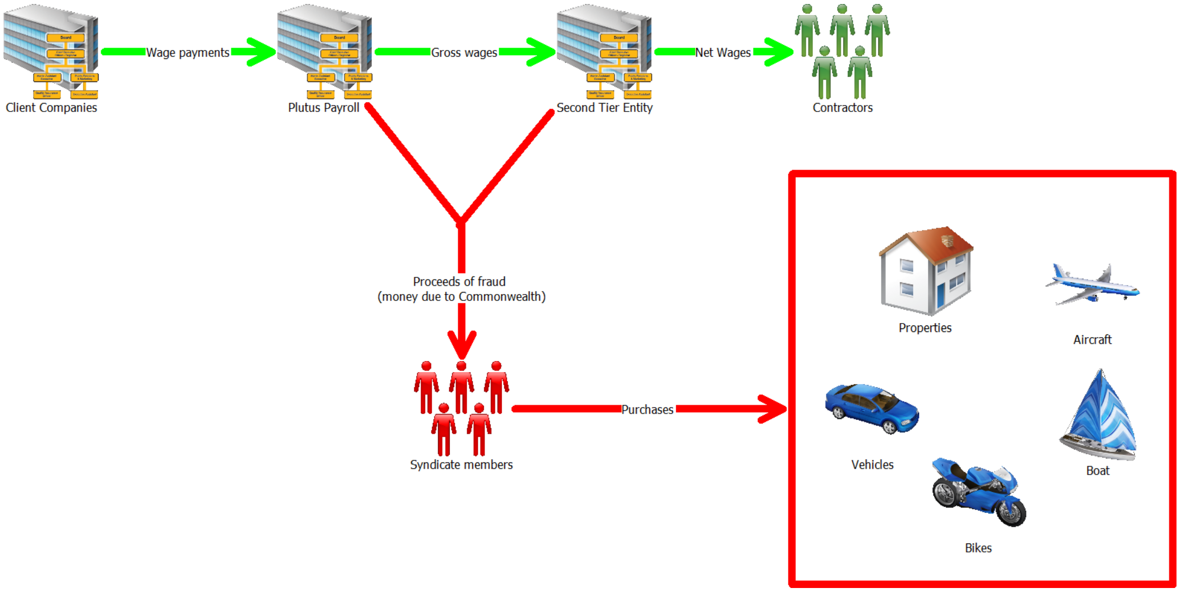
5 May 2023 – Person J sentenced to nine years jail

4 July 2023 – Person K sentenced to 14 years jail

22 August 2023 – Person L sentenced to 15 years jail

22 August 2023 – Person M sentenced to 15 years jail

7. Chart or Diagram of activity


Client Companies
Wage payments
Plutus Payroll
Gross wages
Second Tier Entity
Net Wages
Contractors
Proceeds of fraud
(money due to Commonwealth)
Syndicate members
Purchases
Properties
Aircraft
Vehicles
Boat
Bikes

8. Any other relevant information

N/A

CASE STUDY 24 – AUSTRALIA

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

Protego, 2022

2. Relevant Agencies

Australian Taxation Office

3. Relevant offences/statutes used

Conspiring to cause a loss/risk of loss to the Commonwealth contrary to s.135.4(5) of the Criminal Code Act 1995 (Cth)

4. Red Flags identified

- Use of cryptocurrencies
- Use of nominee bank accounts
- Lodgement of false GST/VAT returns

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

Individual A (main offender) collected the identification details of Individual B. These details were used to takeover Individual B's ATO registration and lodge fraudulent Business Activity Statements (BAS). Each BAS claimed a GST/VAT refund in the range of AUD 5,000 to 50,000 (~USD 3,331 to 33,317).

Funds obtained from this fraud were then remitted to a bank account under the offender's control. These funds were withdrawn in cash, sent offshore, or transferred into cryptocurrencies.

Multiple variations of this fraud were seen, including examples where Individual B, tax agents, or other professionals were knowingly involved in the fraud.

In relation to the events involved in this case study, as at 14 August 2023, the ATO had taken compliance action on more than 56,000 clients and stopped approximately $ 2.7 billion in fraudulent GST refunds from being paid to individuals seeking to defraud the system.

6. Outcomes/Results
N/A

7. Chart or Diagram of activity
N/A

8. Any other relevant information
N/A

APPENDIX 3 – QUESTIONNAIRE

Appendix 3 – Questionnaire

LAUNDERING THE PROCEEDS OF TAX CRIMES QUESTIONNAIRE IN THE ASIA-PACIFIC REGION

COMPLETING THE QUESTIONNAIRE

The questionnaire is part of an information gathering exercise to inform the development of a typology report on the Laundering of Proceeds of Tax Crimes in the Asia-Pacific Region.

APG Members and Observers are asked to complete the attached questionnaire and return by **30 September 2022** to **mail@apgml.org**

Members are encouraged to include comments and additional informal alongside any question to provide further context.

We encourage APG contact points to share this questionnaire with relevant agencies in your jurisdiction.

How will your information be used?

The APG will not single out or identify your jurisdiction in analysis arising out of this questionnaire. All conclusions and analysis will be anonymised. However, we may contact you to seek permission for inclusion of case studies or to showcase certain initiatives.

APPENDIX 3 – QUESTIONNAIRE

SECTION 1: ML/TF FRAMEWORK

National Laws

1. Are tax offences criminalised in your jurisdiction? ☐ Yes ☐ No

2. Is tax crime (in some form) a predicate offence for money laundering in your jurisdiction?

   ☐ Yes ☐ No

3. Does your jurisdiction distinguish between a serious tax crime and other tax offences in regards to what is a predicate offence for money laundering? ☐ Yes ☐ No

4. Please provide the legal definition of what tax crime(s) is/are a predicate offence for money laundering in your jurisdiction. Please include details of what sanctions apply to the tax crime offences:

5. Does your jurisdiction differentiate between tax avoidance and tax evasion?

   ☐ Yes ☐ No

   a. If yes, please provide your jurisdiction's definition of these terms:

6. The OECD categories jurisdictions' designation of tax crimes as predicate offences for money laundering into the following categories:

   a. an inclusive approach that identifies all criminal offences as predicate offences;

   b. a threshold approach that designates as a predicate offence all offences meeting a certain threshold, such as being punishable by one-year imprisonment or more, or offences designated in a category of "serious offences;" or

   c. a list approach that creates an explicit list of offences that are predicate offences.

   d. a **combination** of threshold and list approaches

   Which of the four categories best describes your jurisdictions approach to the designation of tax crimes as a predicate offence for money laundering? (Select one)

   ☐ Inclusive ☐ Threshold ☐ List ☐ Combination

APPENDIX 3 – QUESTIONNAIRE

Risks and Context

7. Is the laundering of proceeds of tax crimes included in your national ML risk assessment?

☐ Yes ☐ No

a. If yes, what was its inherent risk rating? (select the closest option)

☐ Low ☐ Medium ☐ High

If other, please provide details:

b. If no, what factors contributed to its exclusion?

8. What factors, if any, relating to the laundering of proceeds of tax crimes were assessed in the national risk assessment? Please place a ranking (with 1 being the highest risk, 2 being the second highest risk, etc.) next to all factors that apply to your jurisdiction.

Risk Factor	**Relative Ranking**
Professional facilitators (accountants, lawyers, trust & company service providers)	
Availability of nominee shareholders, directors and/or company secretaries	
Correspondent banking relationships with high-risk jurisdictions	
Use of shell banks	
Use of corporate vehicles where beneficial ownership may be concealed (e.g. trusts, shell companies[42], foundations etc.)	
Use of Cryptocurrencies (e.g. Bitcoin)	
Use of jurisdictions with banking secrecy laws	
Use of bearer shares	
Others: (please list and rank)	

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[42] A shell company is an inactive company used as a vehicle for financial manoeuvres or kept open for future use.

If you have included any factors under others, we encourage you to please include (in Section 6) a case study illustrating this factor, if possible.

9. Does your jurisdiction have estimates of the value of the proceeds of tax crimes that are laundered annually? ☐ Yes ☐ No

    a. If yes, please provide information on the approximate value:

Estimate	Domestic proceeds laundered domestically	Domestic proceeds laundered in foreign jurisdictions	International proceeds laundered in your jurisdiction
USD			

    b. In the estimate above, do you include amounts recovered as unpaid taxation?
    ☐ Yes ☐ No

10. Do you have any reports or assessments in relation to tax crimes in your jurisdiction that you can share with the APG Secretariat (we can limit further disclosure)?

    ☐ Yes ☐ No

11. Which jurisdictions do you have evidence are destinations for proceeds of tax crimes committed in your jurisdiction? (List up to 10, where 1 is highest risk, 2 is second highest risk etc.) (*We will not attribute your jurisdiction to any anonymised commentary on destinations for tax crime proceeds*)

1.	2.
3.	4.
5.	6.
7.	8.
9.	10.

Corporate Vehicles

12. In your jurisdiction, can a corporate vehicle be held criminally liable for tax offences? ☐ Yes ☐ No

    a. If yes, can sanctions be applied to key individuals of the corporate vehicle such as: (tick all that apply)

☐ Directors ☐ Officers ☐ Agents ☐ Key employees ☐ Other (please describe):______

13. Does your jurisdiction allow nominee?

    a. Nominee Shareholders ☐ Yes ☐ No

    b. Nominee Directors ☐ Yes ☐ No

    c. Nominee Secretaries ☐ Yes ☐ No

14. Please list the types of corporate vehicles that can be formed in your jurisdiction:

Legal Persons (e.g. companies)	Legal Arrangements (e.g. trusts)

15. Does your jurisdiction require beneficial ownership of corporate vehicles to be recorded in a central registry? ☐ Yes ☐ No

    a. Please list data collected by this registry/these registries

16. Which of the following factors are specifically included in your national laws to mitigate abuse of trusts? (tick all that apply)

    ☐ flee clause

    ☐ non-recognition of foreign judgments

    ☐ non-charitable purpose trusts

    ☐ perpetuity

    ☐ other (please describe): ____________

17. If a foreign-based corporate vehicle is operating in your jurisdiction, do you require a declaration of beneficial ownership information?

    ☐ Yes ☐ No

    If yes, what data is collected?

18. Does your jurisdiction permit bearer shares or share warrants?

    ☐ Yes ☐ No

SECTION 2: FINANCIAL INTELLIGENCE

Transaction reporting

19. What transaction reports does your jurisdiction collect that are applicable to tax crime investigations? Complete the table for all that apply.

Report type	Collect	Threshold (USD)	Collection agency e.g. FIU, Central Bank, LEA etc.
Suspicious transaction report	☐ Yes ☐ No		
Cash transaction report	☐ Yes ☐ No	☐ 10,000 ☐ 15,000 ☐ Other	
SWIFT messages (e.g. MT103), or other reports of international funds transfers	☐ Yes ☐ No	☐ None ☐ 10,000 ☐ 15,000 ☐ Other	
Cross-border movement form	☐ Yes ☐ No	☐ None ☐ USD10,000 ☐ USD15,000 ☐ Other	

20. Please provide further information on the table above, including any other mandatory reporting collected for financial intelligence purposes:

21. How often are tax crimes reported in STRs in conjunction with the reporting of other crimes?

☐ Never ☐ Rarely ☐ Sometimes ☐ Often ☐ Almost Always

Public/Private Partnerships

22. Does your jurisdiction have any public/private partnerships (PPP) that are involved in the investigation of serious tax crime?

☐ Yes ☐ No

23. If yes, please provide details of the PPP, including agencies and private sector bodies that participate and the projects undertaken involving the laundering of the proceeds of tax crimes:

SECTION 3: AML/CFT SUPERVISION

24. Is the risk of laundering the proceeds of tax crimes a factor in your risk-based supervision model?

    ☐ Yes ☐ No

25. If yes, what factors does your supervision model include when assessing the risk of laundering the proceeds of tax crimes? (tick all that apply)

    ☐ Wire transfers to/from jurisdictions you consider to be a high risk for tax crimes
    ☐ Volume and/or value of wire transfers
    ☐ Volume and/or value of cash transactions
    ☐ Suspicious transaction reports from the supervised entity
    ☐ Suspicious transaction reports from other supervised entities
    ☐ Cross-border movement reports
    ☐ Information from revenue authorities
    ☐ Information from law enforcement authorities or intelligence agencies
    ☐ Information from supervisory authorities (other than revenue authorities)
    ☐ The products and services offered by the supervised entity
    ☐ The supervised entity's customer base
    ☐ The market segment the supervised entity operates within
    ☐ The supervised entity's compliance history
    ☐ The supervised entity's systems and controls for managing risk
    ☐ Adverse media reports
    ☐ Information from the general public
    ☐ Other (please describe) ________________________________

26. Please provide any comments to your response to Q25 above if necessary. Include details of any sector specific mitigation measures taken by AML/CFT supervisors. E.g. themed assessments, enhanced registration requirements, targeted education campaigns, sector specific guidance on tax crimes:

27. In the past five years, have you conducted supervision assessments specifically targeting money laundering of tax crimes? ☐ Yes ☐ No

28. If yes, in what sectors were these assessments conducted[43]? (tick all that apply)

    Financial Institutions

    ☐ Deposit / funds taking institutions
    ☐ Lending
    ☐ Financial leasing
    ☐ Money or value transfer services
    ☐ Issuers of payment mechanisms (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)

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[43] Definition of sectors is as per the FATF Standards definitions of financial institutions and designated non-finance business and professions

- ☐ Financial guarantors
- ☐ Traders in:
  - ☐ money market instruments (cheques, bills, certificates of deposit, derivatives etc.);
  - ☐ foreign exchange;
  - ☐ exchange, interest rate and index instruments;
  - ☐ transferable securities;
  - ☐ commodity futures trading.
- ☐ Securities issuers and the providers of financial services related to such issues
- ☐ Individual and collective portfolio management institutions
- ☐ Institutions safekeeping and administration of cash or liquid securities
- ☐ Institutions otherwise investing, administering or managing funds or money
- ☐ Underwriters and insurance institutions (life insurance and other investment related insurance)
- ☐ Money and currency changing institutions

Designated non-financial businesses and professions

- ☐ Casinos
- ☐ Real estate agents
- ☐ Dealers in precious metals and stones
- ☐ Lawyers, notaries, other independent legal professionals and accountants
- ☐ Trust and company service providers

29. What resources do you use to train your staff on tax crimes? (tick all that apply)

- ☐ Internal SOPs
- ☐ On the job training
- ☐ FATF publications
- ☐ Egmont publications
- ☐ OECD publications
- ☐ Domestic revenue agencies publications
- ☐ International revenue agencies publications
- ☐ Typologies reports
- ☐ Subject matter experts or organisations
- ☐ Other (please describe): ________________________

30. In what areas do you require further training? (tick all that apply)

- ☐ Identifying tax crimes risks
- ☐ Identifying the money laundering elements of tax crimes
- ☐ Beneficial ownership
- ☐ Understanding Legal persons and/or legal arrangements
- ☐ Roles of gatekeepers (e.g. accountants, lawyers, trust and company service providers)
- ☐ Information exchange
- ☐ Other (please describe): __________________________

SECTION 4: INVESTIGATION OF TAX CRIMES AND MONEY LAUNDERING

Investigating Proceeds from Tax Crimes

31. What does your jurisdiction consider to be the main challenges to the successful investigation and prosecution of money laundering offences where the predicate offence is tax crime? (tick all that apply)

    ☐ difficulty identifying when tax crimes are committed

    ☐ difficulty in identifying elements of money laundering of the proceeds of a tax crime

    ☐ tax crimes being investigated by authorities not familiar with ML

    ☐ incomplete, inaccessible or unavailable information regarding beneficial owners of companies (or other legal persons) and trusts (or other legal arrangements)

    ☐ lack of staff with financial investigative expertise

    ☐ inability to exchange information from domestic authorities in a timely manner

    ☐ inability to exchange information from foreign countries in a timely manner

    ☐ insufficient resources (e.g. analytical software, IT equipment)

    ☐ cost of investigations

    ☐ limitations of Exchange of Information mechanism (e.g. exclusion of GST/VAT information)

    ☐ legal barriers to exchanging information

    ☐ other (please describe any other challenges):

32. If your jurisdiction achieved a high or substantive level of effectiveness on Immediate Outcome 5 in your mutual evaluation, what factors contributed to this rating? (list as many factors as applicable)

    a.

    b.

    c.

    d.

Agency Role

33. What agency (or agencies) has responsibility for investigation of tax crime and related money laundering in your jurisdiction?

34. Does this agency have a team or teams dedicated to the investigation of money laundering of proceeds of tax crimes?

    ☐ Yes ☐ No

APPENDIX 3 – QUESTIONNAIRE

Agency Powers and Access

[Please note, the following questions relate to the agency or agencies nominated at question 33 above]

35. Are search warrant powers available for the investigation of money laundering offences?

    ☐ Yes, direct access through own personnel

    ☐ Yes, indirect access through another agency

    ☐ No

36. Is there any threshold applicable to search warrant powers?

    ☐ Yes ☐ No

37. If yes, please describe the thresholds:

Continue to Q38

38. What other data sets does this agency (or agencies) have access to? Please select the most appropriate response in the following tables:

Taxation records:

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)	☐ Publicly Available[44]

Telecommunication Interception information

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (own capability)

Financial Intelligence Unit Records

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)	☐ Publicly Available

Police records and intelligence

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)

Banking records

☐ No Access	☐ Access through search warrant	☐ Access through Notice to Produce	☐ Direct Access (searchable database)

Land Registry Records

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)	☐ Publicly Available (if yes, please list websites)

Corporate Registry Records

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)	☐ Publicly Available (if yes, please list websites)

Central Registry of Trusts or other legal arrangements

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)	☐ Publicly Available (if yes, please list websites)

Other registries of ownership of high value items (e.g. motor vehicles, boats, aircraft, jewellery, artwork). (Please compete a separate table for each class of item in your jurisdiction)

☐ No Access	☐ Access upon spontaneous dissemination	☐ Access upon request	☐ Direct Access (searchable database)	☐ Publicly Available (if yes, please list websites)

39. Please provide any comments to your responses in the tables above if necessary:

Cross-Agency Investigations

40. Does your jurisdiction have experience with multi-agency taskforces or other arrangements to investigate serious tax crimes?

    ☐ Yes ☐ No

41. Does your jurisdiction have experience with multi-agency taskforces or other arrangements to investigate money the laundering of tax crimes?

    ☐ Yes ☐ No

42. What are the main challenges to effective cross-agency investigations of serious tax crimes and money laundering of proceeds of tax crimes in your jurisdiction?

43. What are the key factors that contribute to the success of a multi-agency taskforces or cross-agency investigations in your jurisdiction?

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[44] Please note in this sense "publicly available" includes information that can be accessed by the payment of a fee.

44. If yes to Q40-41, please provide further information about your experiences with multi-agency taskforces dealing with proceeds from tax crimes:

Prosecutions

45. Do prosecutors for tax crimes and money laundering sit within the same agency or office?

    ☐ Yes ☐ No

46. If the answer is 'no', or 'yes, but only in some circumstances', please describe the arrangements:

47. Do courts that routinely hear tax crimes cases have jurisdiction over money laundering offences?

    ☐ Yes ☐ No

48. If no, please describe the arrangements:

49. Describe any barriers in your jurisdiction to the prosecution of the laundering of proceeds of tax crimes?

Asset Recovery

50. Please list mechanisms used in your jurisdiction to recover assets involved in tax crimes (including e.g. civil forfeiture)? (list as many mechanisms as applicable)

    a.

    b.

    c.

    d.

51. What are the common challenges faced in your jurisdiction in relation to recovering proceeds of tax crimes?

    ☐ difficulty identifying when tax crimes are committed

    ☐ tax crimes being investigated by authorities not familiar with asset recovery principles

    ☐ incomplete, inaccessible or unavailable information regarding beneficial owners of companies (or other legal persons) and trusts (or other legal arrangements)

    ☐ lack of staff with financial investigative expertise

    ☐ inability to exchange information from domestic authorities in a timely manner

    ☐ inability to exchange information from foreign countries in a timely manner

    ☐ insufficient resources (e.g. analytical software, IT equipment)

    ☐ cost of asset management

☐ limitations of Exchange of Information mechanism (e.g. exclusion of GST/VAT information)

☐ legal barriers to exchanging information

☐ insufficient powers in relation to asset seizure or freezing

☐ other (please list):

Training and Capability Building

52. Do investigators and prosecutors have access to training that is specific to the investigation and prosecution of serious tax crimes?

☐ Yes ☐ No

53. Do investigators and prosecutors have access have access to training that is specific to the investigation and prosecution of money laundering of proceeds of tax crimes?

☐ Yes ☐ No

54. If your response to question 52 and/or 53 was 'yes', describe the training available:

55. Which international/bilateral organisations have provided capability building and training to your jurisdiction during the last five years? (tick all that apply)

☐ OECD (e.g. Tax Crime Academy, Tax Inspectors Without Borders, Global Relations Program on Taxation, Global Forum on Transparency and Exchange of Information)

☐ The European Commission (Global AML facility)

☐ Asian Development Bank (Asia-Pacific Tax Hub)

☐ SGATAR (Study Group on Asia-Pacific Tax Administration and Research)

☐ PITAA (Pacific Islands Tax Administrators Association)

☐ Others (please describe):

56. What areas do staff from the investigating agency for tax crime require further training in?

☐ Financial intelligence

☐ Law enforcement investigations

☐ Prosecutions

☐ Asset tracing and confiscation

☐ International information requests (e.g. Egmont exchange & MLA)

☐ Other (please describe):

57. Do staff from your prosecuting agency require further training in areas of serious tax crime investigation and prosecution?

☐ Yes ☐ No

If yes, please list specific areas where training is required: (list as many areas as applicable)

a.

b.

c.

d.

Cross-border information Sharing

58. How hard is it to receive international cooperation when investigating proceeds from tax crimes?

☐ Very easy ☐ Easy ☐ Hard ☐ Very Hard

59. What difficulties does your jurisdiction face when seeking information from foreign jurisdictions in regards to investigations of tax crimes and related money laundering? (list as many difficulties as applicable)

a.

b.

c.

d.

60. Which channels do you most frequently use to seek information from foreign jurisdictions when investigating proceeds from tax crimes? (tick all that apply)

☐ Bilateral treaty arrangements for information exchange

☐ Egmont Group

☐ Other FIU to FIU channels

☐ Convention on Mutual Administrative Assistance in Tax Matters (OECD Automatic Exchange of Information)

☐ Other (please describe):

61. Is your jurisdiction a participant under the OECD Automatic Exchange of Financial Account Information Standard?

☐ Yes ☐ No

62. If the answer to question 61 is no, does your jurisdiction intend to join the OECD Automatic Exchange of Financial Account Information Standard?

☐ Yes ☐ No

63. Has your jurisdiction made requests to other jurisdictions for information in relation to the investigation of serious tax offences or money laundering of proceeds of tax crimes, under a Mutual Legal Assistance (MLA) treaty, informal diplomatic channel, other treaty or similar?

☐ Yes ☐ No

64. Does your jurisdiction make informal requests for international cooperation in relation to the investigation of serious tax offences or money laundering of proceeds of tax crimes?

☐ Yes ☐ No

65. Is dual criminality an issue in relation to MLA requests for tax crime investigations?

☐ Yes ☐ No

66. If yes, please describe these issues:

67. Please complete the following table:

	Number of requests made in past five years	Number of requests received in past five years
MLA request (regardless of offence)		
MLA request for tax crimes (e.g. beneficial ownership)		
Request related proceeds from tax crimes made through diplomatic or treaty based channels		
Egmont request (regardless of offence)		
Egmont request on tax crimes (e.g. beneficial ownership)		

68. Does your jurisdiction allow access to banking information by foreign law enforcement agencies investigating serious tax crime or money laundering?

☐ Yes ☐ No

69. If no, please provide details where possible:

70. Please complete the tables below for disseminations from the Financial Intelligence Unit relating to the laundering of proceeds of tax crimes:

Year	Domestic		International	
	Number of Spontaneous disseminations	**Number of Disseminations upon request**	**Number of Spontaneous disseminations**	**Number of Disseminations upon request**
2017				
2018				
2019				
2020				
2021				
2022				

SECTION 5: STATISTICS ON TAX CRIME AND MONEY LAUNDERING

71. Please complete the following table in regards to investigations into tax crime offences which are considered a predicate offence for money laundering in your jurisdiction.

Year	Number of investigations commenced	Number of prosecutions	Number of Convictions	Number of asset confiscations	Value of assets confiscated	Civil Audits completed*
2017						
2018						
2019						
2020						
2021						
2022 (to date)						

* Refers to civil audits completed in respect of targets of tax crimes investigation, but where no criminal charges or proceeds of crime action was commenced.

72. Please complete the following table in regards to investigations into money laundering offences where the predicate offence was tax crime.

Year	Number of investigations commenced	Number of prosecutions	Number of Convictions	Number of asset confiscations	Value of assets confiscated	Civil Audits completed*
2017						
2018						
2019						
2020						
2021						

2022 (to date)						

* Refers to civil audits completed in respect of targets of money laundering investigation but where no criminal charges or proceeds of crime action was commenced.

SECTION 6: CASE STUDIES

Please provide case studies that are descriptive of the major issues of concern to your jurisdiction regarding laundering of the proceeds of tax crimes. Please note, it is not necessary that an offence of money laundering (with tax crime being the predicate offence) has been proven. If the case study is demonstrative of how proceeds of tax crimes are laundered, please include here. There is no limit on the number of case studies a jurisdiction can submit, however when submitting multiple case studies please note which methodologies are of the highest concern.

It is important that case studies focus on the movement of the proceeds of the tax crime, including movement subsequent to offending. Please provide as much detail as possible in respect of this aspect.

Please fill out the following items for each case study to be submitted:

1. Case Name, Year/Ongoing, Location, citation (if the case is concluded and published)

2. Competent Authorities

3. Relevant offences/statutes used

APPENDIX 3 – QUESTIONNAIRE

4. Red Flags identified	
Delete red flags that are not applicable and/or add red flags as necessary.	
Concealment of Beneficial Ownership Use of Accountants as professional facilitators Use of Solicitors as professional facilitators Use of Company Service Providers as professional facilitators Use of Secrecy Jurisdiction for banking Use of Secrecy Jurisdiction for company incorporation Separation of jurisdiction of banking and jurisdiction of incorporation Large Cash Activity Cheque Cashing Activity Use of Alternate Remittance Services Takeover of a bank account of an uninvolved entity (e.g. student bank account after leaving jurisdiction) Use of digital fraud systems (e.g. electronic sales suppression software) Use of nominees (e.g. director, shareholder, secretary) Use of corporate vehicles (e.g. trust, shell companies) Use of foreign financial centres Use of loan-back arrangements	Foreign taxpayer resident in jurisdiction Domestic taxpayer resident in foreign jurisdiction Use of unusual financial instruments (e.g. bank drafts, bank bills, bearer shares etc.) (please describe) Purchase of high-value items Non-lodgement of income tax returns Lodgement of false income tax returns Non-lodgement of VAT/GST returns Lodgement of false VAT/GST returns Close matching of revenue and expenditure in tax returns Non-lodgement of other tax reporting obligations Incorporation and banking occurring in separate jurisdictions Use of under- or over-invoicing Use of international trade to move value Use of unwitting third parties Use of false identities Use of crypto-currencies or other digital assets as a laundering mechanism

5. Short summary of the relevant facts of the case, including sufficient background facts to put the case into context

APPENDIX 3 – QUESTIONNAIRE

6. Outcomes/Results

7. Chart or Diagram of activity

8. Any other relevant information