Fighting Tax Crime:
THE TEN GLOBAL PRINCIPLES

OECD
BETTER POLICIES FOR BETTER LIVES

Fighting Tax Crime

THE TEN GLOBAL PRINCIPLES

Please cite this publication as:
OECD (2017), *Fighting Tax Crime: The Ten Global Principles*, OECD Publishing, Paris, *https://doi.org/10.1787/63530cd2-en*.

ISBN 978-92-64-59736-5 (pdf)

Photo credits: Cover © CHRISTOPHE ROLLAND – Shutterstock.com.

Corrigenda to publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

Table of contents

Preface

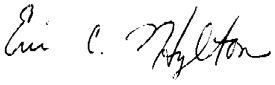
As Chair of the OECD's Task Force on Tax Crimes and Other Crimes (TFTC), I am honoured to present the first global reference guide for Fighting Tax Crime: The Ten Global Principles. This report provides the framework for criminal tax administrations world-wide as they pursue criminal tax compliance. Groundbreaking achievements require significant effort, and one of the TFTC's greatest accomplishments during my tenure is the realization of this global reference guide. The TFTC's role encompasses both tremendous visibility and responsibility in the international community for equipping tax agencies worldwide with the criminal enforcement knowledge and techniques to combat international tax evasion, corruption, terrorism financing, and other financial crimes. The importance of this report will follow suit with TFTC's Oslo Dialogue, in which the principles of whole of government co-operation were introduced.

With over 25 years of experience in criminal tax, it brings me great pride to finally see tax crimes and financial crimes at the forefront of conversations and incorporated into the executive agendas, strategic plans, and legislative priorities of many of our global leaders and governing bodies. This resoundingly reflects the significance of the work of the TFTC and I am honoured to have been part of this endeavour. Additionally, it is instrumental to witness the discourse on global financial integrity deliberated during the G7 and G20 Summits. Many financial integrity NGOs estimate that roughly USD 1 trillion flows illegally out of developing countries annually due to crime, corruption and tax evasion. Now, more than ever, the need for increased transparency, inter-agency co-operation, and international collaboration is undeniable and duly recognized. This guide will solidify TFTC's role in setting global standards, reinforcing best practices, and providing a venue to address global criminal tax compliance threats.

Because financial crimes are global, borderless, and prolific, we must expand and enhance our overall effectiveness in combatting international tax evasion, money laundering, and other financial crimes for which we have purview by utilizing all available resources, techniques, and networks. We are in an era of global financial transparency, where countries are advocating for increased exchanging information with

foreign counterparts, and pursuing revenue lost through tax evasion. With an increased globalized economy and technological advancements, we are witnessing transnational organized crime groups and other perpetrators abuse the vulnerabilities in our financial systems. These frailties can have a significant and devastating impact on national security. Criminal tax investigators, with our unique forensic accounting skill sets, are well positioned to combat these national security threats and pursue illicit financial flows that were either derived from tax evasion, international tax schemes, cybercrime, or terrorist financing. The ten Global Principles contained within this reference guide will arm and equip tax administrations and investigators with the best practices to promote efficient systems for fighting tax crimes for years to come.

We hope that this guide serves as a true pillar for criminal tax organizations worldwide with the recognition that we are only as strong as our weakest link. Let's continue to collaborate, communicate, and cooperate to combat illicit financial flows.



Chair, OECD-TFTC

Deputy Chief, US IRS-Criminal Investigation

Abbreviations and Acronyms

AML	Anti-money laundering
EOI	Exchange of information
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GST	Goods and Services Tax
MLAT	Mutual Legal Assistance Treaty
OECD	Organisation for Economic Co-operation and Development
STR	Suspicious Transaction Report
TFTC	Task Force on Tax Crimes and Other Crimes
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax

Executive Summary

This is the first comprehensive guide to fighting tax crimes. It sets out ten global principles, covering the legal, strategic, administrative and operational aspects of addressing tax crimes. The guide has been prepared by the OECD Task Force on Tax Crimes and Other Crimes (TFTC). It draws on the experience of the members of the TFTC as well as additional survey data provided by 31 jurisdictions: Australia, Austria, Brazil, Canada, Czech Republic, Denmark, El Salvador, Finland, France, Georgia, Germany, Greece, Iceland, Indonesia, Italy, Japan, Lithuania, Luxembourg, Malaysia, the Netherlands, New Zealand, Norway, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States.

The guide shows that the fight against tax crime is being actively pursued by governments around the world. Jurisdictions have comprehensive laws that criminalise tax offences, and the ability to apply strong penalties, including lengthy prison sentences, substantial fines, asset forfeiture and a range of alternative sanctions. Jurisdictions generally have a wide range of investigative and enforcement powers as well as access to relevant data and intelligence. Suspects' rights are nearly universally understood in the same way and enshrined in law.

Increasingly, jurisdictions are taking a strategic approach to addressing tax offences, which includes targeting key risks and leveraging the tools for co-operation with other law enforcement agencies, both domestically and internationally. At the same time, tax crime investigations increasingly need to be undertaken with greater efficiency and fewer resources. However, data shows that the investment is worthwhile, with some jurisdictions being able to calculate the return on investment from the criminal tax investigation teams and reporting recovery of funds well in excess of the expenditure, ranging from 150% to 1500% return on investment.

The role played by criminal tax investigators thus contributes significantly to jurisdiction's overall tax compliance efforts. The implementation of the 10 global principles around the world is critical in addressing the tax gap and supporting domestic resource mobilisation.

Recommendations:

This guide recommends that jurisdictions benchmark themselves against each of the 10 global principles. This includes identifying areas where changes in law or operational aspects are needed, such as increasing the type of investigative or enforcement powers, expanding access to other government-held data, devising or updating the strategy for addressing tax offences, and taking greater efforts to measure the impact of the work they do.

In particular, developing jurisdictions are encouraged to use the guide as a diagnostic tool to identify principles which may not yet be in place. Jurisdictions which have made commitments to capacity building for developing jurisdictions in tax matters (such as the Addis Tax Initiative or the G7 Bari Declaration) are recommended to consider how they can work with developing jurisdictions to enhance tax crime

investigation based on this guide, including through providing expert trainers for the OECD International Academy for Tax Crime Investigation and other regional initiatives.

The TFTC will continue its work in facilitating international co-operation on fighting tax crime, particularly on issues where multilateral action is required to address common challenges.

This could also include collaborating to create an agreed strategy for addressing tax crimes that have cross-border elements. Such a strategy could include identifying the risks of such tax crimes, defining the additional data and other mechanisms that are needed to more effectively combat such tax crimes and working towards ensuring that data and mechanisms are available and efficient in practice.

Introduction

The guide is part of the OECD's ongoing work on the Oslo Dialogue, a whole of government approach to fighting tax crimes and other financial crimes.

Drawing on the knowledge and experience of government agencies around the world, this guide sets out 10 global principles for effectively fighting tax crime. Each principle is described, and supplemented with examples and current practices from around the world.

This guide is intended to serve three purposes:

1. Allowing jurisdictions to benchmark their legal and operational framework to identify successful practices to improve systems in the essential areas for an effective system to fight tax crimes;
2. Allowing the measurement of the progress of jurisdictions through regular updates by tracking and publishing progress in future editions of this guide;
3. Allowing jurisdictions to articulate their needs for training for both developing and developed jurisdictions, including by incorporating the guide into the OECD International Academy for Tax Crime Investigation[1] curriculum.

Naturally, jurisdictions' implementation of the 10 global principles reflects the broader context of their legal system, administrative practice and culture. It is up to each jurisdiction to decide how best to implement the 10 global principles in a manner that is most appropriate in the context of, and most consistent with, the organisational structure for fighting tax crimes and compliance with the jurisdiction's commitments and obligations under international standards, conventions and, in the case of European Union Member States, European Union law.

In addition, each jurisdiction has a different definition of tax crime, and a different organisational structure for investigating tax crime. As such, in this report, references to "tax crime" are intended to mean intentional conduct that violates a tax law, and is intended to be broad enough to accommodate the different legal definitions that may apply under domestic law. It is intended to cover the violation of both income tax law obligations, as well as indirect tax obligations (such as VAT or GST). This edition of the report does not include other financial crimes such as the violation of customs, corruption, bribery or money-laundering laws.

This guide is presented in order to present a picture of current practices and allow jurisdictions to review and evaluate their implementation of the 10 global principles, especially in comparison to relevant peers. This guide includes tables and charts reflecting statistical and other data supplied by 31 jurisdictions in response to a survey in 2017. However, comparisons should be made with considerable care in the absence of uniform law and practices across jurisdictions. In particular, the statistics compiled cannot adjust for variations in terminology (legal terms and definitions), tax and legal systems; the size and population of jurisdictions and size of respective tax administrations; different cultures, attitudes to tax risk

[1] OECD International Academy for Tax Crime Investigation available at: http://www.oecd.org/ctp/crime/tax-crime-academy.htm.

and overall rates of compliance; and other compliance approaches / strategies applied (such as preference for civil penalties rather than criminal prosecutions). As such, the statistics in this guide should not be considered in isolation, but in the context of a jurisdiction's broader approach to tax compliance and fighting financial crimes.

Finally, this guide does not yet include a compendium of details on how individual jurisdictions have implemented the 10 global principles. This compendium would be included in the next version of the guide in 2018, and which would also include responses from additional jurisdictions.

A list of the jurisdictions which responded to the survey on the 10 global principles is included in the annex, together with a brief summary of the agencies responsible for investigation of tax offences in that jurisdiction.

Principle 1

Ensure Tax Offences are Criminalised

Jurisdictions should have the legal framework in place to ensure that violations of tax law are included as a criminal offence, and that effective sanctions apply in practice.

Principle 1: Ensure Tax Offences are Criminalised

Introduction

1. Most taxpayers voluntarily comply with their tax obligations. However, some taxpayers persevere in being non-compliant and use any means to evade their tax obligations. It is in respect of those taxpayers, for whom support and monitoring does not improve compliance, that criminal law plays an important role. Moreover, it enhances the general preventive effect that criminal law enforcement can have and reduces noncompliance.

2. Jurisdictions draw different conclusions as to precisely when the application of the criminal law is warranted. The provisions of the criminal law define the actions that are designated as tax crimes as well as the type of criminal sanctions that are considered appropriate. These defined actions and criminal sanctions will not be the same in all jurisdictions.

3. Wherever dividing lines between non-compliant behaviour and criminal behaviour are drawn, it is important that jurisdictions have the possibility of applying criminal sanctions in respect of violations of the tax law. From a preventive point of view, this is for several reasons: (i) to send a message about the integrity, neutrality and fairness of the law (that is, that nobody is above the law); (ii) to act as a general deterrent for those people that could be tempted to evade their tax obligations if the opportunity arose, by providing serious reputational and punitive consequences of criminal activity; (iii) to act as a specific deterrent for an individual that has been convicted and sanctioned in the past, so that they might be discouraged from doing so again. Actual enforcement of penal provisions for the purposes of punishment for those that have decided not to comply is essential for both doing justice and strengthening the credibility of the penal provisions and the legal system itself.

4. The criminalisation of violations of tax law also ensures the availability of criminal investigative and enforcement powers that are necessary to find the truth regardless of the co-operation of the accused. In some jurisdictions this also provides for a basis for domestic co-operation with other law enforcement agencies under criminal law and international co-operation under, for example, under an MLAT.

5. The precise way of criminalising violations of tax law will vary from one jurisdiction to another. Each jurisdiction has a different legal system, which reflects and interacts with the particular culture, policy and legislative environment.

6. Whatever the particular details of the legal framework are, it will be most effective if:

- The law clearly defines the tax offences that are criminalised;
- A criminal sanction applies if the offence is proven;
- More serious offences are punishable by more serious criminal sanctions; and
- Criminal sanctions are applied in practice.

The law clearly defines the tax offences that are criminalised

7. The offences within the tax crime category may be defined in a general manner to capture a wide range of activities such as criminal actions that intend to defraud the government. A different approach is where the law sets out the specific offences in more detail, each with individual requirements as to the precise actions that constitute a crime.

8. Whichever definitional approach is taken, jurisdictions may also take different approaches to the threshold at which an act is classified as an offence. For instance, jurisdictions may criminalise actions starting from simple non-compliance, such as any deliberate failure to correctly file a tax return. Some other jurisdictions may apply the criminal law starting from a higher threshold, where the deliberate failure to comply with a tax obligation is accompanied by aggravating factors such as if the amount of tax evaded exceeds a certain threshold, if the offence is committed repeatedly, when taxable income is actively concealed, or when records or evidence are deliberately falsified. Alternatively, jurisdictions may have set a very high threshold to classify tax crime, such as organised crime for profit, or tax evasion accompanied by particularly aggravating circumstances. Common examples are included below:

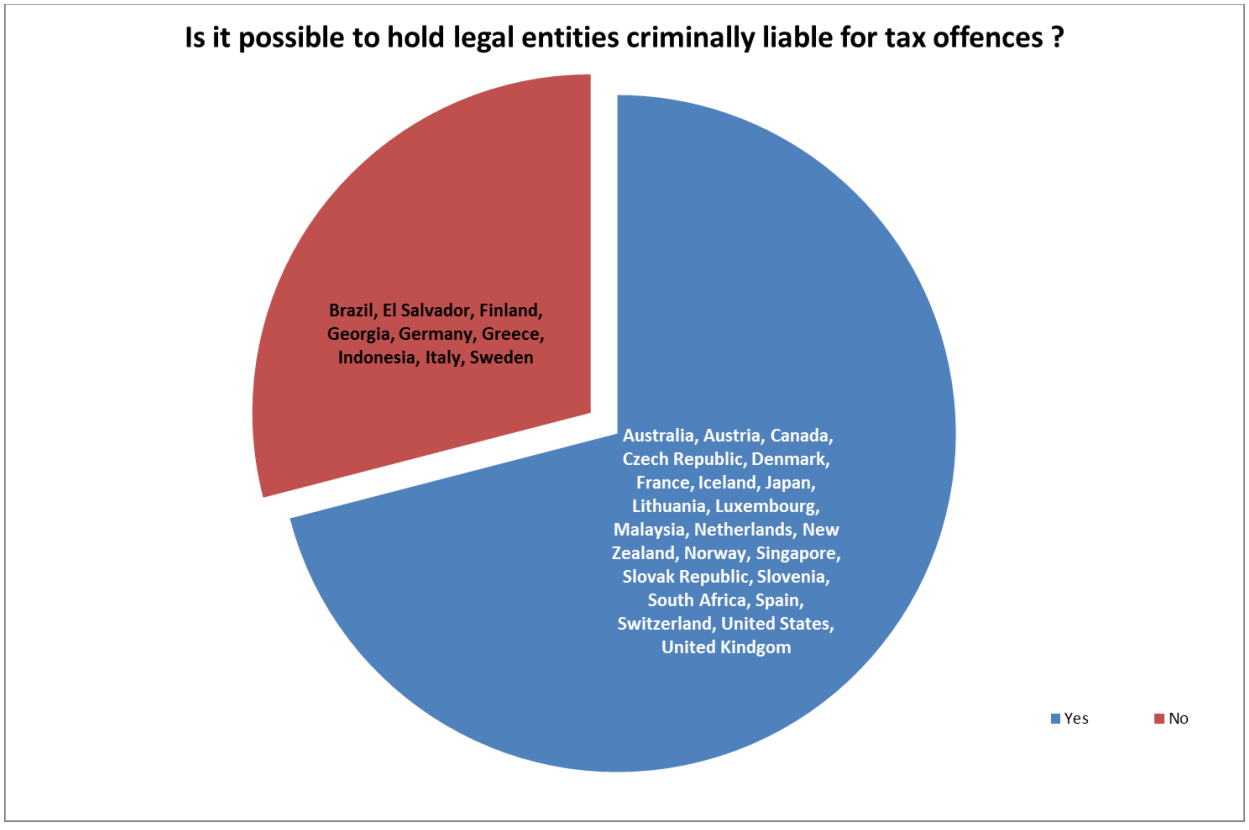
Category	Examples
Non-compliance offences (may apply irrespective of intent or result)	• Failure to provide required information, document or return • Failure to register for tax purposes • Failure to keep records • Keeping incorrect records • Making a false statement • Non-payment
Intentional tax offences	• Destroying records • Deliberate failure to comply with tax law to obtain financial advantage • Evading tax or receiving refunds by fraud or illegal practices • Intentional reduction of tax using false documents, fictitious invoices • Counterfeit or forged documents to reduce tax • Intentionally or by gross negligence providing misleading information in a tax return to obtain tax advantage • Fraudulently obtaining refund / credit • Tax evasion in aggravated circumstances such as considerable financial benefit or conducted in a methodical manner • Theft from or defrauding the government • Obstructing an official of the tax authority • Accessory offences
Specific offences	• Entering an arrangement that would make person unable to pay tax • Committing tax evasion as member of a gang • Commercial commission of tax evasion • Illegal use of zappers or sale suppression software • Identity theft

9. Jurisdictions should also criminalise the act of aiding, abetting, facilitating or enabling the commission of a tax offence by others, or conspiracy to commit a tax offence, (“accessories”), such as actions taken by professional enablers. Based on survey data, 22 jurisdictions responded that accessories, including professional enablers, are criminally responsible, and in most cases can be held liable for the

same offence and the same criminal sanction. In some cases, the person can be liable for an increased penalty, such as where they are a tax professional and their facilitation of the offence is considered to be an aggravating factor. There are also three jurisdictions which also apply significant civil penalties for professional enablers or promoters.

10. Jurisdictions may, for example, include these criminal offences within a statute or code covering all criminal activities, in a general tax act, in their income tax or VAT statutes, or other specific statutes. Whichever approaches are used, the legal provisions should state the elements that constitute the crime. This includes articulating the specific conduct or activity that constitutes the criminal act, as well as the required mental state of the person in committing the activity (such as intention, recklessness or gross negligence).

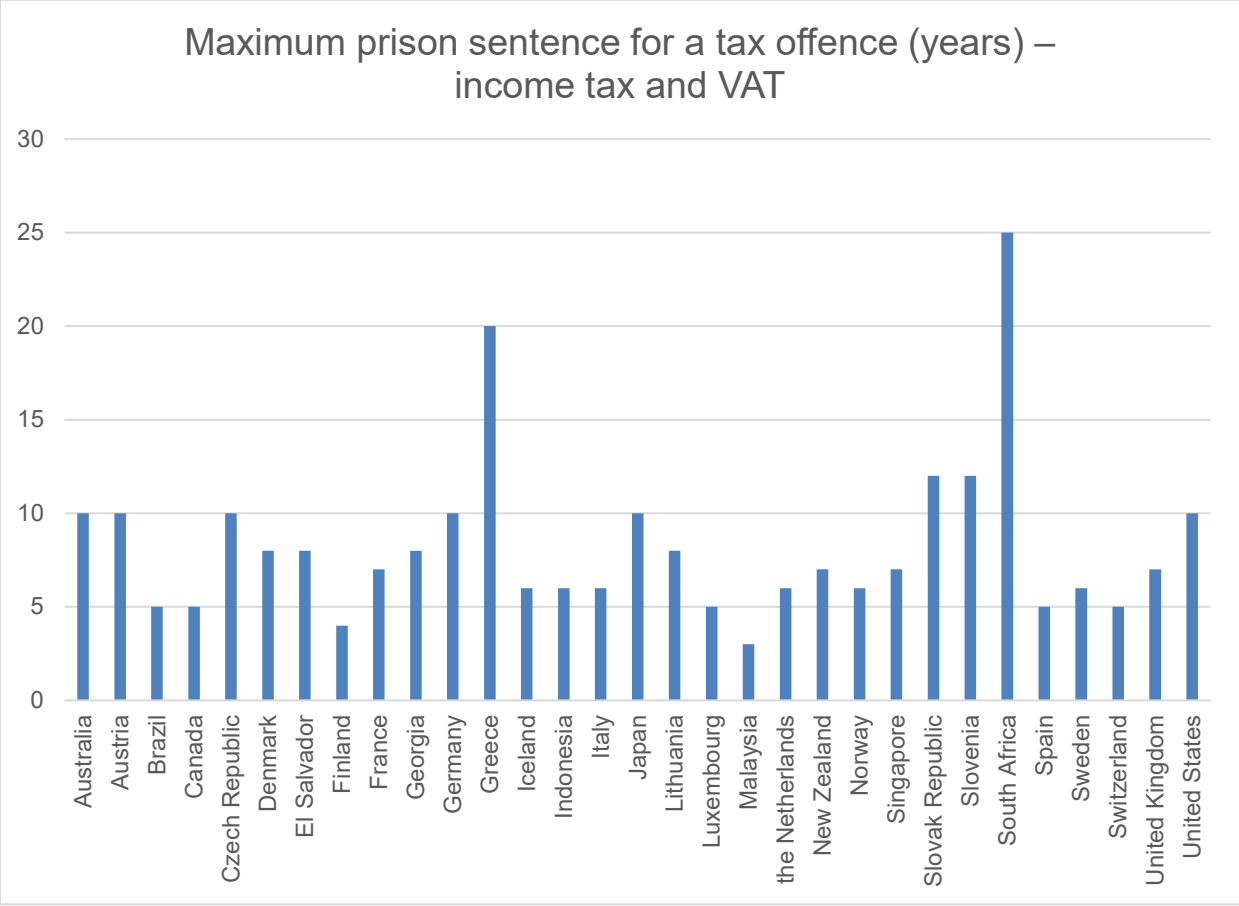
11. In addition to prosecuting individuals, jurisdictions should be able to prosecute legal persons and legal arrangements for committing a tax crime. For example, where tax evasion has been conducted by a company, there may not be an identifiable individual responsible for the crime, but the criminal actions may have occurred because of the combined actions of several persons undertaken in their capacity as representatives of the company. The law may hold the legal person or arrangement criminally liable for the crime, and also impose punishment on key actors such as directors, officers, agents or key employees of the legal person / arrangement criminally liable. The ability to hold entities criminally responsible amongst survey respondents is as follows:



A criminal sanction applies if the offence is proven

12. The legal provision should include a penalty if the elements of the crime are proven. Penalties should be designed to encourage compliance and prevent non-compliance by providing a credible threat. Any statute of limitations on imposing a criminal penalty should reflect the seriousness of the crime and the prescribed punishment. A practical consequence of having a sufficiently long statute of limitations for

serious crimes is that it allows agencies with sufficient time to identify and prosecute criminal acts. This is especially important in respect of complex cases which can take a long time to successfully investigate and prosecute.



More serious offences are punishable by more serious criminal sanctions

13. There is a range of behaviour that can constitute a tax crime. In order to achieve the objectives of criminalising tax offences stated above, more serious behaviour or crimes committed in graver circumstances should be punishable by more serious criminal sanctions, proportionate to the nature of the offence.

14. As discussed above, each jurisdiction will have its own approach to categorising the types of offences and the seriousness of these. Whatever the approach is, the seriousness of the offence should correspond to the seriousness of the consequences for the offender.

Criminal sanctions are applied in practice

15. The law that criminalises tax offences should be enforced. Where the offence is proven in a court proceeding, the criminal sanction that is most likely to be effective and is appropriate to the facts and circumstances should be applied. Penalties should be applied fairly and consistently.

16. Depending on the case, imposing a monetary penalty may be appropriate. For example, in respect of surveyed jurisdictions where data was available, fines were imposed by the competent authorities in respect of violations of the tax law, as follows (in Euro equivalent):

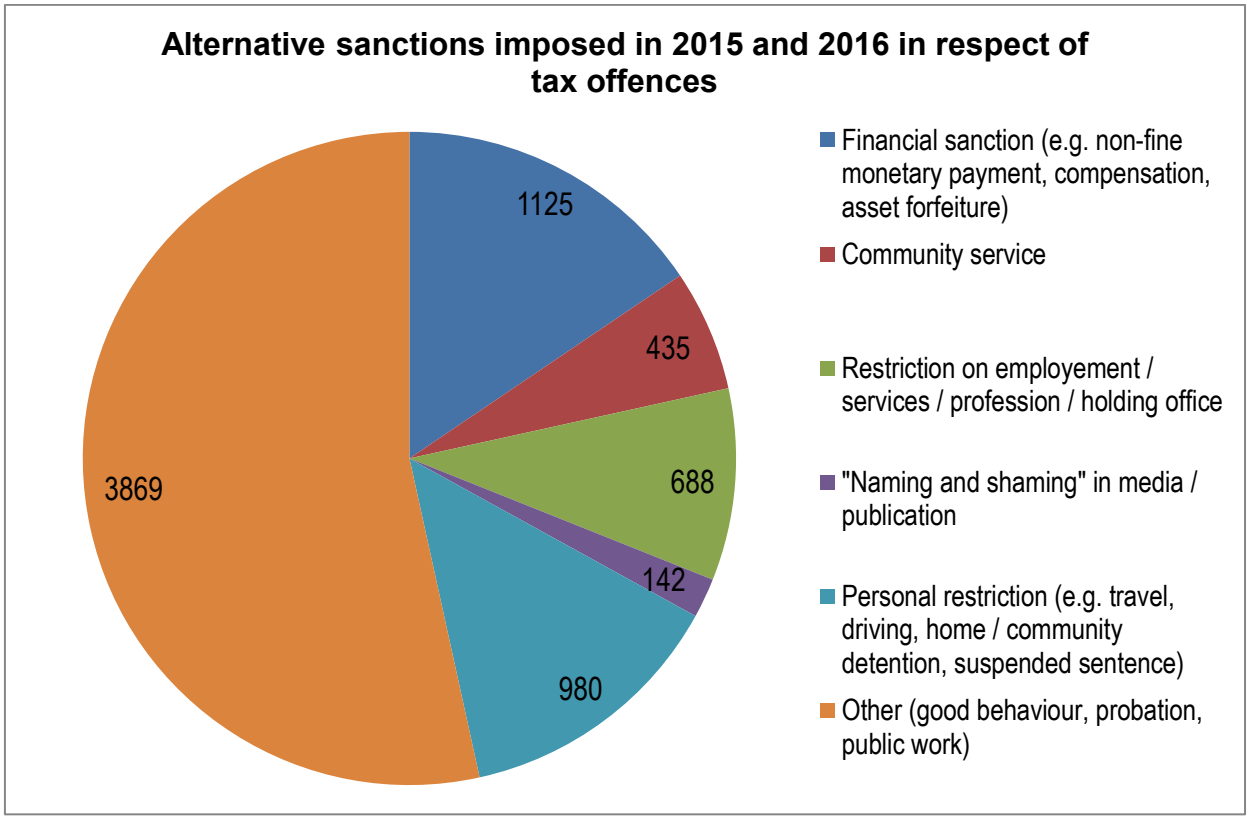
Survey responses: Fines imposed for criminal violations of tax law (in millions)		
Jurisdiction[2]	**2015**	**2016**
Australia	13.3	10.9
Austria	132.7	23.2
Canada	2.8	6.8
Czech Republic	0.9	0.9
Denmark	N/A	46.8
France	22.9	N/A
Germany	126.6	189.9
Iceland	14.3	6.2
Japan	16.2	12.4
Lithuania	1.2	1.0
Malaysia	0.07	0.06
Singapore	0.7	0.3
South Africa	0.7	0.6
Spain	496.8	1 065.2
Switzerland	17.3	12.4
United Kingdom	0.8	1.7
United States	Over 2 077	Over 18.6
Total	**Over 2 924**	**EUR 1 397**

17. It may be appropriate for alternative types of criminal sanctions to apply, depending on the relevant case. These can include community service, “naming and shaming” offenders or enablers, disqualification from holding certain offices, suspension of licence or other privileges, specific orders to forfeit or return assets, or a combination of the above.

18. 16 of the 31 surveyed jurisdictions responded that they have used sanctions other than imprisonment or a fine in 7 239 cases in total in 2015 and 2016.[3]

[2] Figures for Australia represent fines and reparations imposed through both CDPP and ATP prosecutions; figures for Austria represent fines imposed following criminal court convictions; figures for Czech Republic represent individuals and entities; figures for Germany include the total fines determined, total monetary amounts assessed pursuant to section 153a of the Code of Criminal Procedure and total penalties that became legally binding; figures for Singapore represent fines to court and penalties to court.

[3] Australia, Canada, Czech Republic, Denmark, France, Greece, Lithuania, Malaysia, New Zealand, the Netherlands, Singapore, Slovak Republic, South Africa, Sweden, United Kingdom, United States.


Alternative sanctions imposed in 2015 and 2016 in respect of tax offences
1125
435
688
142
980
3869
Financial sanction (e.g. non-fine monetary payment, compensation, asset forfeiture)
Community service
Restriction on employement / services / profession / holding office
"Naming and shaming" in media / publication
Personal restriction (e.g. travel, driving, home / community detention, suspended sentence)
Other (good behaviour, probation, public work)

Principle 2

Devise an Effective Strategy for Addressing Tax Crimes

In order to ensure the effectiveness of the law on tax crimes, jurisdictions should have a strategy for addressing tax crimes. The strategy should be regularly reviewed and monitored.

Principle 2: Devise an Effective Strategy for Addressing Tax Crimes

Introduction

19. To be most effective in addressing tax crimes, tax authorities need to have a range of strategies for encouraging compliance, to effectively respond to the different attitudes of taxpayers to complying with their obligations. To ensure that the laws related to tax crimes are effective in practice, a coherent strategy for enforcing the law should be devised. An overall strategy can be described as a document which states the objective of the tax authorities, identifies the relevant risks of non-compliance with the tax law, and sets out the plan for addressing those risks. There should be buy-in from senior officials who are accountable for delivering the overall strategy.

20. Generally, there should be an overall tax compliance strategy that covers the full range of compliance, from encouraging voluntary compliance, dealing with inadvertent non-compliance, to avoidance, evasion and serious crime. However, the specific strategy would be based on each jurisdiction's legal system, policy, legislative environment and general structure of law enforcement. The figure below as an example shows the range of behaviour and measures that can be taken to enhance compliance.

Tax fraud (serious organised crime)	Combatting and preventing fraud	Anti-fraud measures	• Tax investigation and audits • Prosecution and penalties • Elimination from legal financial circles • Cooperation with the judicial system/police
Tax evasion (shadow economy, income underreporting, illegal employment)	Controls and sanctions		• Controls, investigations • Tax audits (risk analysis) • Prosecution and penalties • Tax collection
Tax avoidance (aggressive tax planning, avoidance models)	Monitoring and cooperation		• Risk management • Office and field staff controls • Official first visits • Tax collection
Tax compliance (voluntary disclosure, fulfilment of tax obligations)	Support an simplification		• Information and forms • Cooperation with interest groups • Horizontal monitoring • Advance rulings

Identifying the risks and threats

21. A strategy may be most effective if a threat assessment is first undertaken, because knowing the relevant threats will ensure the response can be targeted to address those threats. All tax authorities have finite level of resources, which must be allocated efficiently on the basis of priorities. To do this, the tax authority should have a process for identifying the threats that are posed to the enforcement of the tax laws, and how serious these are. Ideally a threat assessment includes current, emerging and future risks.

22. The benefit of conducting regular threat assessments is that it provides a structured basis for actively considering the current, emerging and future risks. Such a process supports improved decision-making by informed priority setting on how to address the various degrees of non-compliance, including combatting tax crimes, more effectively.

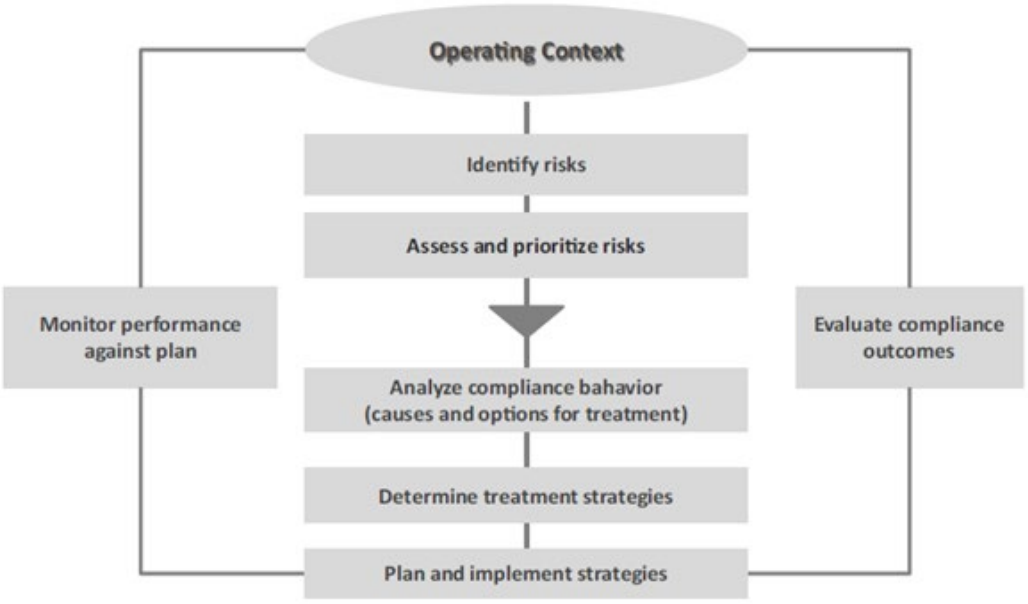
23. A threat assessment identifies the specific risks of tax crimes that are prevalent in the jurisdiction. This should take into account the particular context or environment (cultural, political, legal, economic and technological), and where relevant, draw on the insights of other agencies responsible for fighting financial crimes. It can be effective to prioritise the threats in terms of the likelihood of such threats being realised and the seriousness of the impact if such threats are realised.

24. A number of surveyed jurisdictions take steps to identify and assess the threats on an ongoing basis. This often takes the form of regular environmental scans, intelligence and trend / forecast analysis. A wide range of intelligence sources tend to be taken into account to identify emerging threats, such as all available information from the tax authority, observations of investigators and feedback from completed cases, asset databases, currency transaction data, open source intelligence, and intelligence from other agencies such as police, social services, prosecution, corruption, procurement, labour agencies, customs, immigration or border authorities, as well as from the private sector and from members of the public. Several jurisdictions reported that the analysis of the threats considers the possible revenue impact, frequency of the threat, likelihood of threat materialising and coherence with other strategic priorities.

25. The results of the threat assessment may assist in identifying specific needs, such as to establish a cross-agency task force to address a particular risk, to launch a public awareness campaign, to build technical capacity in a particular area, to engage with the private sector or to inform the need for changes in the law.

Key elements of an overall strategy

26. There are many different ways of designing an overall strategy. The following diagram illustrates a possible approach to preparing a strategy, including the need for the results to feedback into the revision of the strategy.



Source: Russell, B (2010), *Revenue Administration: Developing a Taxpayer Compliance Program*, International Monetary Fund, The United States of America

27. Taking account of the threat assessment, an effective strategy can be prepared which may include the following elements:

- Defining the objectives / performance indicators / outputs. For example, this could be organised around the goals of prevention, detection and enforcement.
- Articulating the resources available to address these risks (including legal powers, funding, personnel, expertise, stakeholders in other government agencies, sources of intelligence, investigation and enforcement tools including domestic and international co-operation).
- Identifying the challenges for the tax authority in being able to address the risks and how those challenges can be mitigated.
- Devising an operational plan for achieving the objectives for the identified risks, using the available resources and tools and including criminal law enforcement.
- Preparing a communications strategy. This is important in order to shape public perceptions and behaviour, as it can be a reminder of the serious criminal sanctions that can be imposed and act as a deterrent when high profile cases are prosecuted. It can also help to educate the public, and build public confidence in the fair enforcement of tax laws.
- A plan for periodically reviewing performance and measuring the effectiveness and currency of the compliance strategy.

28. It is important that the strategy is based on wide consultation with all relevant stakeholders such as policy makers, investigators, enforcement and prosecution officials and other agencies such as AML authorities, in accordance with each jurisdiction's legal system, policy and legislative environment and general structure of law enforcement. In particular, given that serious tax crimes are likely to raise other matters of criminal law such as money laundering (especially as tax crimes are in most cases a predicate offence for money laundering, as set out in principle 7 below), jurisdictions should consider including tax crimes in an overall serious crime strategy, or a strategy specifically for addressing financial crimes. For example, Finland has a national strategy for tackling the shadow economy and economic crime. Austria has both a specific Tax and Customs Compliance strategy as well as annual Internal Security Strategies

which focus more broadly on economic crime and money laundering. The United Kingdom's tax authority contributes to the National Strategic Assessment for Serious and Organised Crime. A number of jurisdictions prepare their strategies in co-ordination with other agencies, such as anti-corruption, economic crime units, police, the prosecutor, financial intelligence unit, customs, securities regulators and the ministry of justice.

29. It is also important that the strategy for addressing tax crimes includes a mechanism for criminal and non-criminal tax officials to share expertise, processes and intelligence. This is because the officials responsible for non-criminal tax matters and for criminal matters will often have a symbiotic relationship; for example, the non-criminal function will have relevant intelligence for investigating tax crimes, both on specific cases as well as general trends. Likewise, the criminal function will also have information relevant for civil tax compliance, including on cases where it was not possible to pursue a criminal conviction but a civil audit may be appropriate, or to inform of a criminal conviction.

30. Strategic co-ordination between the criminal and non-criminal tax officials will help to ensure a coherent use of resources, efficient prioritisation of cases and avoid duplication of efforts by both the tax administration and criminal law enforcement officials. It should also increase taxpayer compliance overall, provide a deterrent effect when the public is aware of the effective co-operation between the criminal and non-criminal functions, and enhance the perceived fairness for the compliant taxpayer. This co-ordination will have to also take into account mechanisms for protecting the rights of a person if and when a matter has criminal aspects (see principle 10 for further information).

31. Almost all surveyed jurisdictions had a process for civil tax officials to refer suspicions of tax crimes to the relevant authority, and in many cases there was a legal obligation to do so. Key features which ensured the effectiveness of this process included training for civil tax officials to be able to identify indicators of a crime; having a clearly identified and central contact point for sending referrals; using a standard form that ensured all relevant data was captured for use by the criminal investigation authority; and meetings for feedback between the civil and criminal investigators including during the process for deciding how to proceed with the individual referrals.

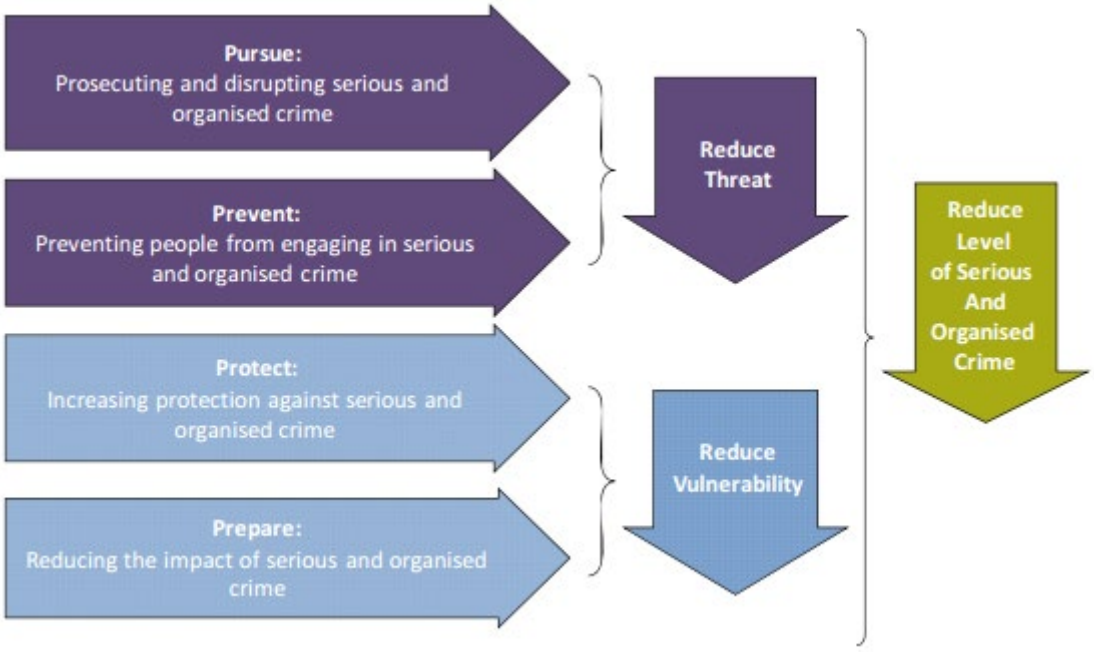
32. The numbers of referrals in surveyed jurisdictions, where data was available for 2015 and 2016, was as follows:

Referrals of suspicions of tax crime from civil tax official[1]		
Jurisdiction	Year 2015	Year 2016
Brazil	9 343	10 371
Canada	315	289
Czech Republic	1 699	1 659
El Salvador	(included in figure for 2016)	91
Finland	543	784
Iceland	37	28
Lithuania	172	144
The Netherlands	888	638
Singapore	65	30
Slovak Republic	484	888
Slovenia	71	91
Sweden	1 731	2 339
United States	232	230
United Kingdom	2 971	1 428
Total	**18 551**	**19 010**

[1] Figures for Brazil, Lithuania and Sweden include suspicions of all types of crimes, not limited to tax offences.

Jurisdiction examples of strategies for addressing tax crimes

33. The UK published its serious crime strategy in 2013, the Serious and Organised Crime Strategy.[2] Although this is not specific to tax crimes but focussed more broadly on serious crimes (including financial and organised crime), it provides an example of the key elements to creating an overall strategy. It is organised around the following principles:



34. In the Netherlands, combined enforcement practices have been in place for many years through the use of guidelines and protocols. One example is the 'Protocol for the Notification and Settlement of Fiscal Offences and Offences Relating to Customs and Allowances.' This protocol describes a tripartite consultation for selecting cases for criminal investigation, made between the Tax and Customs Administration, the Fiscal Information and Investigation Service (FIOD) and the Public Prosecutor. The protocol sets out the criteria for making such decisions, including weighing factors such as the likely amount of criminal loss.

35. In addition, an annual 'Enforcement Strategy Arrangement' is agreed, in which the Tax and Customs administration, the FIOD and the Public Prosecutor agree upon a plan for dealing with violations of fiscal and financial law. The plan includes agreements for prioritisation of risks, co-operation in enforcement interventions as well media strategies. Increasingly in the Netherlands, the criminal law is linked with other forms of enforcement, supervision and compliance strategies rather than being treated as the final stand-alone element of the enforcement chain.

[2] See Secretary of State for the Home Department (2013), Serious and Organised Crime Strategy, HM Government, United Kingdom; www.gov.uk/government/uploads/system/uploads/attachment_data/file/248645/Serious_and_Organised_Crime_Strategy.pdf

References

Secretary of State for the Home Department (2013), *Serious and Organised Crime Strategy*, HM Government, United Kingdom, http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248645/Serious_and_Organised_Crime_Strategy.pdf.

Principle 3

Have Adequate Investigative Powers

Jurisdictions must have appropriate investigative powers to successfully investigate tax crimes.

Principle 3: Have Adequate Investigative Powers

Introduction

36. The purpose of a criminal (tax) investigation is to find the truth by investigating the alleged criminal (tax) behaviour. In conducting an investigation, criminal investigators will generally seek to find and analyse information for the purposes of determining whether or not a crime has been committed. Investigations can result in finding both incriminating ("inculpatory") evidence and evidence that confirms innocence ("exculpatory evidence"). This is used for prosecution authorities to decide whether or not to prosecute the accused. As criminals seek to hide the criminal nature of their conduct, criminal law enforcement agencies need an appropriate range of investigative powers in order to obtain the necessary information. In particular, in the context of investigating tax offences, there is significant value in being able to effectively investigate the source and movement of financial assets. This can be essential to establish the commission of fraud, and to identify the role of an intermediary or accessory, even where the assets themselves have been moved.

37. Depending on which agency has responsibility for investigating tax crimes (see principle 5 for more details), the nature and extent of investigatory powers in a particular agency may vary. In general, the competency for conducting criminal tax investigations will fall within one of these four models, as described in the Effective Inter-agency Co-operation In Fighting Tax Crimes And Other Financial Crimes, Third Edition, 2017 (the "Rome Report").

General Organisational Models for Investigating Tax Crimes			
Model 1	**Model 2**	**Model 3**	**Model 4**
Tax administration directs and conducts investigations	Tax administration conducts investigations, directed by prosecutor	Specialist agency outside tax administration conducts tax offence investigations, which may involve public prosecutors	Police or public prosecutor conduct investigations

38. A tax administration conducting criminal tax investigations under organisational Model 1 may not have investigative powers, expertise or resources, such as the ability to search and seize, intercept communications and demand production of documents. If the tax administration is responsible for conducting criminal tax investigations but does not have the full range of investigative powers itself, these powers should still be available indirectly where needed, such as through the ability to call on the police or another agency to provide investigatory services.

39. Under organisational Model 2 and under Model 4, where the police or public prosecutor conducts and / or directs the investigations, the investigative powers most likely are similar to the investigative powers of the police conducting other financial investigations. Under Model 3, an agency separate to the tax administration is responsible for investigating tax crime cases, and the investigative powers are also most likely similar to the investigative powers of the police.

40. Whichever organisational model is used, the agencies responsible for investigating tax offences should have the investigative powers that it considers are necessary and effective in the context of its own mandate, and taking into account the ability to work with other law enforcement agencies which may have additional powers. These investigative powers should allow accessing information and evidence in the digital world in addition to the more traditional sources of information.

41. The availability of relevant investigative powers amongst survey respondents is set out below. Throughout this section of the guide, it is noted that the precise circumstances and legal procedures that need to be followed in order to use such powers vary. The representation of jurisdictions as having "direct powers" is not intended to reflect that the power can be used in all investigations of a tax offence, but that the agency is able to exercise the powers itself in the authorised circumstances (including circumstances where a warrant or court authorisation is granted to the agency). The reference to having indirect powers via another agency reflects an arrangement where the power would be exercised by a different agency outside the criminal tax investigation agency, such as by the police.

Powers to obtain third party documentary information

42. The power to obtain information may be needed to access documents and information from financial institutions and other third parties. These powers require a third party to hand over documents or information within a specified amount of time. If the demand is not met, more intrusive powers that involve a physical search of property or digital media may follow. The power to obtain third party documentary information is particularly appropriate where the information sought is not readily available in a physical form (e.g. banks which do not maintain paper copies of a customer's bank statements or telecommunications providers' data) since this power allows the third party time to collect the demanded material. These powers can take the form of a subpoena, production order, or other powers to demand or compel the handing over of documentary information. This power is available in survey respondents as follows:

Powers to obtain third party documentary information				
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself			**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[1]	Iceland	Norway	Australia[6]	
Austria	Indonesia	Singapore	Brazil	
Canada	Italy	Slovak Republic	El Salvador	
Czech Republic[2]	Japan	Slovenia	Sweden[7]	
Finland	Lithuania	South Africa		
France	Luxembourg	Spain		
Georgia	Malaysia	Sweden[4]		
Germany	The Netherlands	Switzerland[5]		
Greece[3]	New Zealand	United States		
		United Kingdom		

[1] AFP.

[2] Police.

[3] FPD, YEDDE and FIU.

[4] SECA.

[5] Restriction for the contonal tax administrations: not from Banks directly.

[6] ATO.

[7] STA-TFIU.

43. It is noted that this particular investigatory power may have the same purpose as the civil powers of tax examiners and tax auditors when conducting a civil tax examination, which is to obtain information. Since procedural safeguards should apply once a civil examination becomes a criminal investigation, in order to protect a suspect's rights it is important to identify the point at which that line is crossed (see principle 10). In some jurisdictions civil actions need to cease at this point, while in others civil powers to obtain information for the purposes of the civil examination / audit may still be deployed and may run parallel to a criminal investigation.

44. However, deploying civil powers for the purposes of the criminal investigation may constitute an abuse of powers and any evidence obtained may be inadmissible in court. Procedural safeguards are of particular importance under the organisational "Model 1" referred to above, where the tax administration conducts civil examinations or audits and also has the authority to conduct criminal investigations. In such a model it is important to take measures or implement an organisational structure or standard operating procedure that prevents interference of civil audits / examinations with criminal investigations to prevent an abuse of powers occurring.

Search powers

45. This investigative power refers to the search of property and the ability to search and seize physical evidence such as books and records and other materials that may be evidence of a tax crime. This power generally also allows the investigating authority to use reasonable force to enter the property if needed. This power is available in survey respondents as follows:

Search powers				
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself			**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[8]	Iceland	Singapore	Australia[13]	Switzerland[15]
Austria	Indonesia	Slovak Republic	Brazil	
Canada	Italy	Slovenia	El Salvador	
Czech Republic[9]	Japan	South Africa	Italy	
Finland	Lithuania	Spain	Sweden[14]	
France	Luxembourg	Sweden[11]		
Georgia	Malaysia	Switzerland[12]		
Germany	The Netherlands	United Kingdom		
Greece[10]	New Zealand	United States		
	Norway			

46. Search powers should be accompanied by corresponding safeguards that respect a person's right to privacy and to be free from "unreasonable" search. As such, search powers may be limited by a requirement that there are reasonable grounds to believe that a crime has been committed and that procedural authorisations be obtained such as a search warrant.

[8] Police.

[9] AFP.

[10] FPD, YEDDE and FIU.

[11] SECA.

[12] Federal tax administration or a public prosecutor.

[13] ATO.

[14] STA-TFIU.

[15] Cantonal tax administrations.

Power to intercept mail and telecommunications

47. This refers to the power to review persons' communications, including e-mails, on-line chats, social media, tracking devices and dial number recorders (devices which record incoming and outgoing telephone numbers), keyboard loggers, internet routing addressing, communications using the dark web and many other types of interceptions. This can be an important source of information to establish further inculpatory or exculpatory evidence, to establish a basis to obtain a search warrant, to identify potential search locations, associated persons and co-conspirators to the crime, and to identify criminal assets. Experience from jurisdictions shows that the power to intercept communications varies, as it is a relatively intrusive power and which may be used only in the most serious cases. This power is available in survey respondents as follows:

Power to Intercept Mail and Telecommunications

Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself		**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf		**Not available**	
Australia[16]	Luxembourg	Australia[20]	Iceland	Canada	Singapore
Austria	The Netherlands	Brazil	Italy	Japan	Slovenia[24]
Finland	Norway[18]	Czech Republic[21]	South Africa	El Salvador	Sweden
France	Slovak Republic	Germany	Spain	Indonesia	Switzerland
Greece[17]	Slovenia[19]	Greece[22]		Malaysia	United States
Italy	United Kingdom			New Zealand[23]	
Lithuania					

Power to search and seize computer hardware, software, cell phones and digital media

48. Tax crime investigators may need to search and seize evidence which is in digital form, and be able to do so in a forensically sound manner. While the search powers to obtain evidence referred to above focusses on the search and seizure of physical evidence, this investigative power is focused on the ability to secure digital evidence such as e-mails, text messages, electronic documents and banking records. This type of evidence may be held within computer hardware or software, tablet, cell phone, or any number of electronic storage media including storage in the cloud. For some jurisdictions, this may be an area where the description of investigatory powers in the law has not yet caught up with the rapidly changing digital landscape, and may need to be reformed. This power is available in survey respondents as follows:

[16] AFP in respect of telecommunications.

[17] FIU.

[18] Mail interception, not telecommunications.

[19] For telecommunications.

[20] ATO.

[21] Police.

[22] FPD and YEDDE.

[23] Able to open mail that is found at premises during a search, and obtain existing telecommunications data from third party service providers using powers.

[24] For mail.

Power to Search and Seize Computer Hardware, Software, Cell Phones and Digital Media				
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself			**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[25]	Indonesia	Singapore	Australia[30]	
Austria	Italy	Slovak Republic	Brazil	
Canada	Japan	Slovenia	Czech Republic[31]	
Czech Republic[26]	Lithuania	South Africa	El Salvador	
Finland	Luxembourg	Spain	Italy	
France	Malaysia	Sweden[28]	Sweden[32]	
Georgia	The Netherlands	Switzerland[29]	Switzerland[33]	
Germany	New Zealand	United Kingdom		
Greece[27]	Norway	United States		
Iceland				

49. This power has become essential given the increasing use of technology to commit tax crimes and transfer of criminal proceeds.

50. During a physical search of a home or office, documents can be reviewed in a manner that quickly indicates whether or not they are covered by the search warrant and relevant to the investigation. However, digital media may contain hundreds of thousands of e-mails, documents and text messages, created over many years, and not necessarily related to the tax crime. It is therefore challenging, if not impossible, to determine during the onsite search whether or not a particular piece of electronic information is covered by the search warrant and of its relevance. Therefore, the search may comprise digitally copying or imaging the data that is held, and examining the contents in a forensic lab in order to determine which pieces of the information are within the scope of the search warrant and relevant to the case under investigation.

51. For example, in Australia, police have the power to operate electronic equipment found at a search warrant premises to access data (including data not held on the premises). If the data accessed is evidential material, it can be copied and remove by operating the equipment or, if it is not practicable to do so, seizing the equipment. A thing found at the warrant premises may be removed for up to 14 days for examination or processing in order to determine if it may be seized under the warrant, if it is significantly more practicable to do so having regard to timeliness and the cost of examining or processing the thing and the availability of expert assistance. This has proven particularly useful in large complex tax and fraud investigations, in which large amounts of data must be searched on the digital media in order to identify the relevant evidence.

52. There may also be legal challenges connected with the search and seizure of digital data in computers and other electronic devices. Personal data in an electronic device may not be relevant to the suspected tax crime, or may contain data protected by a legal professional privilege. This may require that the search is carefully governed to ensure it is limited to the terms of the authorisation. There may also be legal challenges connected with the search and seizure of computers and other electronic devices. This

[25] AFP.

[26] Police; appeal to delivering of a thing, seizure of a thing.

[27] FPD, YEDDE and FIU.

[28] SECA.

[29] Federal tax administration or a public prosecutor.

[30] ATO.

[31] Police.

[32] STA-TFIU.

[33] Cantonal tax administrations.

may be particularly pertinent in cases where the search powers contained in the law refer explicitly to searches or seizure of physical documents, or where a person challenges a search of digital media on the basis that it is overly broad and goes beyond the terms of the search authority or could include privileged documents.

53. Based on survey data, the most commonly reported challenge agencies face in the search and seizure of digital media, involves data stored outside the jurisdiction or in the cloud, as their legislation only allows for the search of data which is locally stored. Jurisdictions also noted the challenges of searching large amounts of data, data protected by encrypted passwords, and data that is unable to be accessed because of secrecy laws. Possible solutions mentioned by jurisdictions included the development of an IT system able to sort the main relevant data and a special IT training for professionals in tax crime investigation.

Power to interview

54. This investigative power refers to the ability to interview suspects, accused persons and witnesses to obtain information.

55. The power to interview is generally a power to initiate an interview, rather than a power to compel a person to speak or to provide information during that interview. A distinction should be made between suspects, accused persons and witnesses. Whether or not a suspect provides information during the interview relies on the voluntary co-operation of that suspect. This reflects a suspects' right to remain silent and right to protection from self-incrimination. For this purpose, suspects should be cautioned at the start of the interview. With respect to witnesses, although they do not have the same right to remain silent, legal privileges and professional secrecy provisions may be applicable, e.g. for family members or certain professions. This power is available in survey respondents as follows:

Power to Interview				
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself			**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[34]	Indonesia	Singapore	Australia[37]	
Austria	Italy	Slovak Republic	Brazil	
Canada	Japan	Slovenia	Greece[38]	
Czech Republic[35]	Lithuania	South Africa		
Finland	Luxembourg	Spain		
Georgia	Malaysia	Sweden		
Germany	The Netherlands	Switzerland		
Greece[36]	New Zealand	United Kingdom		
Iceland	Norway	United States		

56. Jurisdictions may also have powers to compel the giving of information, such as inquiry powers which can subpoena potential witnesses before a tribunal or court to answer questions under oath. This can be a particularly powerful tool where a person is unwilling to provide information, such as where

[34] AFP and ACIC.

[35] Police.

[36] FPD and YEDDE.

[37] Oficina de Impuestos de Australia (ATO).

[38] FIU.

contractual duties of confidentiality exist. However, legal privileges and the right of a suspect to remain silent continue to apply. This power is available in survey respondents as follows:

Powers to Compel the Giving of Information				
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself			**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not Available**
Australia[39]	Iceland	Slovenia	Australia[43]	
Austria	Indonesia[41]	Singapore	Indonesia[44]	
Brazil	Italia	Slovak Republic		
Canada	Japan	South Africa		
Czech Republic	Lithuania	Spain		
Finland	Luxembourg	Sweden		
France	Malaysia	Switzerland[42]		
Georgia	The Netherlands	United Kingdom		
Germany	New Zealand	United States		
Greece[40]	Norway			

Power to conduct covert surveillance

57. This power refers to the covert monitoring of the movements, conversations and other activities of a suspect to identify co-conspirators or witnesses, locate evidence in order to obtain search warrants, identify assets being used in perpetrating the tax crime or assets that are the proceeds of crime. Covert surveillance can include observation of a person in private places such as within a person's home or vehicle such as by using a hidden camera, as well as observation of a person in public. Covert surveillance can be particularly relevant for investigating any tax crimes involving organised crime. This power is available in survey respondents as follows:

[39] ACIC.

[40] FPD, YEDDE and FIU.

[41] Related to non-financial institutions.

[42] With restrictions.

[43] ATO.

[44] Related to financial institutions.

Power to Conduct Covert Surveillance			
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself		**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[45]	Luxembourg	Australia[51]	Germany
Austria	The Netherlands	Czech Republic[52]	Indonesia
Brazil	New Zealand	El Salvador	Malaysia
Canada[46]	Norway	Iceland	South Africa
Czech Republic[47]	Singapore		Switzerland
Finland[48]	Slovak Republic		
France	Slovenia		
Georgia	Spain		
Greece[49]	Sweden[50]		
Italy	United Kingdom		
Japan	United States		
Lithuania			

Power to conduct undercover operations

58. This power refers to the ability to conduct an undercover operation, where an enforcement officer takes on a different identity in order to obtain information and evidence. This strong investigative tool may be particularly important in the investigation of ongoing serious crimes such as identifying enablers of tax crimes and other financial crimes where organised crime is involved. The type of information that can be obtained using this investigative power is similar to that sought through covert surveillance, including establishing the identity of co-conspirators and location of assets.

59. The distinction between conducting covert surveillance to obtain this information and conducting an undercover operation is the embedding of the undercover officer, or at least direct contact of the undercover officer, with the criminal organisation for the purposes of gaining their trust to obtain information. The contact of the officer may be physical interactions or digital interactions such as on online platforms. This power is available in survey respondents as follows:

[45] AFP.

[46] Static surveillance is the primary surveillance tactic employed by CRA investigators. CRA investigators are not trained in mobile surveillance and are prohibited from undertaking any form of surveillance involving a motor vehicle. Mobile surveillance may be contracted out to the Canada Border Services Agency, Royal Canadian Mounted Police (RCMP) or other trained law enforcement agencies.

[47] Police; full direct powers for surveillance of persons and things without recording.

[48] According to the Coercive Measures Act covert surveillance can be performed via extended surveillance, on-site interception, technical observation, covert collection of intelligence, obtaining of base station data, traffic data monitoring and telecommunications interception.

[49] FPD, YEDDE and FIU.

[50] SECA has full direct powers to conduct covert surveillance.

[51] ATO.

[52] Police.

Power to Conduct Undercover Operations			
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself		**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[53]	Luxembourg	Australia[56]	Indonesia
Austria	The Netherlands	Brazil	Italia
Finland[54]	New Zealand	Canada[57]	Malaysia
France	Norway	Czech Republic[58]	Singapore
Georgia	Slovak Republic	El Salvador	South Africa
Germany	Slovenia	Iceland	Switzerland
Greece[55]	Sweden	Spain	
Japan	United Kingdom		
Lithuania	United States		

60. Undercover operations are costly and can be dangerous, and require expert skills and training of the officers involved. As such, undercover operations are likely to be used less frequently. As with the other investigative powers noted within principle 3, issues of suspect's rights and protections such as privacy and issues related to entrapment must be safeguarded by correct legal procedures in the use of these powers.

Power to arrest a person

61. The power to arrest a person refers to the power to stop, restrain and take a person into custody, often for the purpose of formally charging them with an offence. The power to arrest a person and to take them into custody (with or without restrictions) can be critical during a tax crime investigation, as to prevent them from influencing other suspects or witnesses as well as when there is a risk of flight by the accused or suspect, or to restrain this person in order to prevent them from committing additional crimes. This power is available in survey respondents as follows:

[53] AFP.

[54] Undercover operations are limited to only serious crimes. With regard to tax crimes, undercover operations can only be conducted in case of aggravated tax fraud and provided that other legal prerequisites have been met.

[55] FPD, YEDDE and FIU.

[56] ATO.

[57] Criminal Investigations may approach the local RCMP detachment to undertake an undercover operation on behalf of CRA. CRA investigators may themselves undertake only the least sophisticated and non-obtrusive types of undercover operations such as visiting a restaurant, bar or office; to obtain information or documents that are readily available to all clients such as bills, invoices or pamphlets.

[58] Police.

Power to Arrest a Person			
Full direct powers Agency responsible for tax crime investigation can be authorised to exercise the power itself		**Indirect powers via another agency** Agency responsible for tax crime investigation can seek assistance of another agency to exercise the power on its behalf	**Not available**
Australia[59]	Slovak Republic	Brazil	Australia[64]
Austria	Sweden[61]	Canada	El Salvador
Denmark	The Netherlands	Czech Republic[62]	Germany
Finland	Norway	Iceland	Greece[65]
France	Slovenia	Indonesia	Malaysia
Georgia	United Kingdom	Italy	New Zealand
Greece[60]	United States	Japan	Singapore[66]
Lithuania		Spain	South Africa
Luxembourg		Switzerland[63]	Sweden[67]
			Switzerland[68]

62. In some jurisdictions, the arrest and custody of an accused or suspect also provides continuous availability for interviewing the suspect or accused for a certain period of time, subject to certain protections under the law.

63. As is the case with the use of investigative powers by any law enforcement agency, these must be accompanied by safeguards, oversight, and authorisations to ensure that the suspects and accused persons are adequately protected from any potential abuse of these investigative powers (see principle 10 for more details).

References

OECD (2017), *Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition*, OECD Publishing, Paris, http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm.

[59] AFP.

[60] FPD and YEDDE.

[61] SECA.

[62] Police.

[63] Federal tax administration or a public prosecutor.

[64] ATO.

[65] FIU.

[66] An arrest can be made in respect of only one offence, under the Tourist Refund Scheme.

[67] STA-TFIU.

[68] Cantonal tax authorities.

Principle 4

Have Effective Powers to Freeze, Seize and Confiscate Assets

Jurisdictions should have the ability to freeze / seize assets in the course of a tax crime investigation, and the ability to confiscate assets.

Principle 4: Have Effective Powers to Freeze, Seize and Confiscate Assets

Introduction

64. Freezing or seizing of assets is "temporarily prohibiting the transfer, conversion, disposition or movement of assets or temporarily assuming custody or control of assets on the basis of an order issued by a court or other competent authority."[1] Freezing is an action that temporarily suspends rights over the asset, and for example may apply to bank accounts which are fungible. Seizure is an action to temporarily restrain an asset or put it into the custody of the government, and for example may apply to physical assets such as a vehicle. Generally, freezing / seizing is used to temporarily prevent the movement of assets pending the outcome of a case. Confiscation of assets can be defined as "the permanent deprivation of assets by order of a court or other competent authority."[2] Confiscation (which may be referred to as asset forfeiture) is generally used after the final outcome of a case, as it is a final measure that stops criminals from accessing assets obtained from a crime. Freezing / seizing and confiscation powers must be exercised in accordance with national law, including requirements as to proportionality.

65. In order to be able to successfully conduct criminal investigations and to ensure that the assets that gave rise to or are the product of tax crime are adequately secured throughout the investigations, it is important that the investigation agencies can freeze / seize such assets for the duration of the investigation and the criminal procedure. As noted above, in the investigation of tax offences, being able to interrupt the movement of financial assets can be essential in identifying or preventing an offence. In addition, agencies should have the authority to confiscate assets that gave rise to or are the product of tax crimes. This is particularly relevant in fighting tax crimes, as financial assets are easily removed from one jurisdiction to another and cause financial damage for governments.

66. Freezing / seizing and confiscation of assets are necessary in order to prevent the proceeds of a crime from being disposed of or being enjoyed by a suspect, or to preserve physical evidence of a crime. In some jurisdictions, the confiscation / forfeiture may be a sanction on its own, or also a way to ensure pecuniary fines are paid. Freezing, seizing and confiscation disrupts criminal activity by inhibiting access to assets that would have been beneficial to the individual or organisation committing the crime or can prevent the criminal assets from being employed to commit further crimes. The freezing / seizing and confiscating of criminal assets is also a deterrent measure as it can reduce the profitability of committing tax crimes.

---

[1] United Nations Office on Drugs and Crime (2004), *United Nations Convention Against Transnational Organized Crime and The Protocols Thereto*, United Nations, New York, www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

[2] United Nations Office on Drugs and Crime (2004), *United Nations Convention Against Transnational Organized Crime and The Protocols Thereto*, United Nations, New York, www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

67. The availability of relevant freezing, seizing and confiscation powers amongst survey respondents is set out below. Throughout this section of the guide, it is noted that the precise circumstances and legal procedures that need to be followed in order to use freezing / seizing or confiscations measures vary. The representation of jurisdictions as having a particular mechanism "available" is not intended to reflect that the mechanism can be used in all investigations of a tax offence, but that the mechanism is available at least in some cases for tax offences and provided that the necessary legal and procedural authorisations have been obtained.

68. Available data on the value of assets seized in 2015 and 2016 amongst survey respondents is as follows (in Euro equivalent):

Survey responses: Assets seized in connection with criminal tax matters		
	Total value of assets that were seized in 2015 in connection with criminal tax matters (EUR equivalent)	**Total value of assets that were seized in 2016 in connection with criminal tax matter (EUR equivalent)**
Australia	105 253 000	7 827 000
France	13 416 059	6 771 224
Iceland	Not available	2 245 000
Italy	1 130 329 172	781 387 725
Lithuania	70 689 000	52 844 000
Malaysia	14 350 000	1 670 000
New Zealand	4 985 000	19 941 000
Slovak Republic	397 473	Not available
Switzerland	235 739 000	342 410 000
United Kingdom	50 857 000	59 755 000
Total	**1 626 015 704**	**1 274 850 949**

69. Jurisdictions should ensure that the freezing, seizing and confiscating of assets is possible for both domestic and foreign tax investigations and judgments. The legal power to do so should be in domestic law, or for international cases may be undertaken in response to a request for mutual legal assistance in accordance with international agreements such as an MLAT (see principle 9 for more details). Survey respondents have the legal ability to apply seizing and confiscation powers in respect of foreign tax investigations and foreign court judgments (e.g. following an MLAT request) as follows:

Survey responses: Availability of seizing and confiscation powers in respect of foreign tax matters			
Available			**Not available**
Australia	Italy	Singapore	Brazil
Austria	Japan	Slovenia	Germany
Canada	Luxembourg	South Africa	Indonesia
Czech Republic	Malaysia	Spain	
El Salvador	The Netherlands	Sweden	
Finland	New Zealand	Switzerland	
France	Norway	United Kingdom	
Georgia		United States	

70. The available mechanisms for the freezing, seizing and confiscating of assets will vary between jurisdictions, but the following types of mechanisms may be relevant to consider. Whether all of the below mechanisms are available in a particular jurisdiction or in a particular agency will depend on the organisational structure for investigating tax offences and taking enforcement actions, as well as the particular legal system which may not permit certain mechanisms which involve the deprivation of assets.

Rapid freezing of assets

71. Speed can be essential when it comes to freezing and seizing assets, as criminals can quickly transfer funds out of the agencies' reach or dispose of property if they become aware that the criminal investigation agencies are investigating them. The legal authority and operational capacity to freeze assets rapidly in urgent cases is relevant, for example, where the loss of property is imminent. Agencies should generally be able to execute rapid freezing orders within 24 and 48 hours. This power is available in respect of tax crimes in survey respondents as follows:

Survey responses: Availability of powers for rapid freezing orders			
Available		**Not available**	**Indirect powers via another agency**
Australia	Luxembourg	Canada	Brazil
Austria	Malaysia	Greece	El Salvador
Czech Republic	Slovenia	Iceland	Italy
Finland	South Africa	Lithuania	
France	Spain	The Netherlands	
Georgia	Sweden	New Zealand	
Germany	Switzerland	Norway	
Greece[3]	United Kingdom	Singapore	
Indonesia	United States	Slovak Republic	

Extended confiscation

72. This is an action that involves not only confiscating property associated with a specific crime, but also additional property which the court determines constitutes the proceeds of other crimes. This might be useful to effectively tackle organised criminal activities to not only confiscate property associated with a specific crime, but also additional property which the court determines constitutes to be the proceeds of other crimes. This power is available in respect of tax crimes in survey respondents as follows:

Survey responses: Availability of powers for extended confiscation			
Available		**Not available**	**Indirect powers via another agency**
Australia	Luxembourg	Georgia	Brazil
Austria	Malaysia	Greece	El Salvador
Canada	Slovenia	Singapore	Italy
Czech Republic	South Africa	Slovak Republic	New Zealand
Finland	Spain		
France	Sweden		
Germany	The Netherlands		
Iceland	Norway		
Indonesia	United Kingdom		
Lithuania	United States		

Value-based confiscations

73. This is a method of confiscation that enables a court to impose a pecuniary liability equivalent to the amount of the criminal proceeds. This applies once the court determines the amount of the benefit accruing directly or indirectly to an individual from criminal conduct, and the order is realisable against any asset of the individual. This power is available in respect of tax crimes in survey respondents as follows:

[3] FIU.

Survey responses: Availability of powers for value-based confiscations				
Available			Not available	Indirect powers via another agency
Australia	Germany	Spain	Greece	Brazil
Austria	Iceland	Sweden	Indonesia	El Salvador
Canada	Lithuania	Switzerland	New Zealand	Italy
Czech Republic	Luxembourg	The Netherlands	Norway	
Finland	Malaysia	United Kingdom	Singapore	
France	Slovenia	United States	Switzerland	
Georgia	South Africa			

Third party confiscations

74. This is a measure made to deprive someone other than the offender – the third party – of criminal property. This applies where that third party is in possession of assets which are knowingly transferred to him/her by the offender to frustrate confiscation. Third party confiscation can alleviate the risk that an agency could be frustrated by the suspect transferring criminal property to a third party to avoid confiscation. This power is available in respect of tax crimes in survey respondents as follows:

Survey responses: Availability of powers for third party confiscations				
Available		Not available		Indirect powers via another agency
Australia	Luxembourg	Canada	Slovak Republic	Brazil
Austria	Malaysia	Georgia	Singapore	El Salvador
Czech Republic	The Netherlands	Greece	Sweden	Italy
Finland	Slovenia	Indonesia	United Kingdom	New Zealand
France	Spain	Norway		
Germany	Switzerland			
Iceland	United States			
Lithuania				

Non-conviction based confiscation

75. This means the power to seize assets without a criminal trial and conviction. Non-conviction based confiscation is an enforcement action taken against the asset itself and not the individual. It is a separate action from any criminal proceeding and requires proof that the property is the proceeds or an instrumentality of crime. In some jurisdictions, the criminal conduct must be established using a standard of proof of the balance of probabilities, which reduces the burden for the agency and means that it may be possible to obtain the assets even where there is insufficient evidence to support a criminal conviction. This power is available in respect of tax crimes in survey respondents as follows:

Survey responses: Availability of powers for non-conviction based confiscation				
Available		Not available		Indirect powers via another agency
Australia	Malaysia	Canada	Lithuania	Brazil
Austria	Norway	Finland	Slovak Republic	El Salvador
Czech Republic	Slovenia	France[4]	South Africa	Italy
Germany	United Kingdom	Georgia	Spain	New Zealand
Iceland	United States	Greece	Sweden	Singapore
Luxembourg		Indonesia	The Netherlands	
			Switzerland	

[4] There is no confiscation procedure in the absence of a criminal conviction (so-called civil confiscation) in French law. However, the non-return of seized property resulting directly or indirectly from the offense can be permitted in certain circumstances.

76. In order to effectively recover criminal assets, jurisdictions should consider the following:

- Having the necessary governance framework to ensure criminal law enforcement agencies operate transparently, and are adequately supervised in connection with the handling of assets to ensure integrity;
- Having the necessary investigative, legal and operational expertise;
- Putting in place a clear organisational structure to manage asset cases. Given that these cases can require specialised investigative and legal expertise which may be located across different agencies, it can be efficient to put in place a specialised multi-agency unit with trained practitioners and adequate resources focussing on asset recovery;
- Ensuring that the rights of suspects are protected during an asset recovery process;
- Having a process to safely manage the assets; and
- Efficiently using international co-operation, given that asset recovery cases can be complex and involve criminal assets located in foreign jurisdictions.

References

United Nations Office on Drugs and Crime (2004), *United Nations Convention Against Transnational Organized Crime and The Protocols Thereto*, United Nations, New York, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

Principle 5

Put in Place an Organisational Structure with Defined Responsibilities

A Jurisdiction should have an organisational model with defined responsibilities for fighting tax crime and other financial crime.

Principle 5: Put in Place an Organisational Structure with Defined Responsibilities

Introduction

77. A range of organisational models exists for allocating the responsibilities for investigating and prosecuting tax crimes. The model adopted in a particular jurisdiction is likely to take into account the jurisdiction's history, its general structure of law enforcement and its legal system.

78. Having a clear organisational model is important because it will allow for efficient allocation of responsibilities, which can reduce the risk of duplication of efforts and gaps in law enforcement. A clear organisational structure is also important as it allows for greater transparency and accountability for the use of resources and deployment of strategies. The organisational structure should ensure that the agency responsible for the investigation and prosecution of tax crimes is independent of personal or political interests, and is also held accountable for exercising its functions with fairness and integrity.

79. Understanding the particular organisational structure that is in place in the jurisdiction is important because it will inform how a jurisdiction can best implement a number of the other global principles. For example, the organisational structure will affect the design of the overall compliance strategy, the range of investigatory powers that should be granted, allocating the appropriate amount of resources, and devising strategies for inter-agency co-operation and international co-operation.

Generally, there are four organisational models:

General Organisational Models for Investigating Tax Crimes			
Model 1	**Model 2**	**Model 3**	**Model 4**
The tax administration has responsibility for directing and conducting investigations, often through a specialist criminal investigations division. The public prosecutor's office does not have a direct role in investigations, though a prosecutor may provide advice to investigators with respect to matters such as legal process and the laws of evidence.	The tax administration has responsibility for conducting investigations, under the direction of the public prosecutor or, exceptionally, examining judges.	A specialist tax agency, under the supervision of the Ministry of Finance but outside the tax administration, has responsibility for conducting investigations, which may involve public prosecutors.	The police or public prosecutor has responsibility for conducting investigations.

80. However, in some jurisdictions a combination of models may be used depending on the circumstances of the case, or another model altogether may be in place.

81. Whichever organisational model is used, it is important that the agency or agencies responsible for investigating and prosecuting tax crimes have clearly defined responsibilities. This will help to ensure that responsibility for all aspects of fighting tax crimes are clearly designated, as well as to reduce the possibility of inefficient duplication of responsibilities. This should be accompanied by corresponding clear governance arrangements (such as clear decision-making responsibility, accountability and supervision), and the appropriate investigative powers (see principle 3) and adequate resources (see principle 6). The organisational structure should also be clearly aligned with the models for inter-agency co-operation (see principle 8).

82. For more information, including on the organisational models used by customs, AML, anti-corruption and other law enforcement authorities, see the OECD (2017), Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes, Third Edition.

References

OECD (2017), *Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition*, OECD Publishing, Paris, http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm.

Principle 6

Provide Adequate Resources for Tax Crime Investigation

Tax crime investigation agencies should have adequate resources.

Principle 6: Provide Adequate Resources for Tax Crime Investigation

Introduction

83. Whatever the organisational model, sufficient resources should be allocated to investigate and take enforcement action in respect of tax crimes. The level and type of resources will vary in accordance with the overall budgetary constraints and other budgetary priorities for the jurisdiction. In particular the type of resources needed may vary depending on the nature, scale and developmental stage of the economy. For example, it may be more urgent to build the legal and physical infrastructure before acquiring advanced analytical and technology tools.

84. Moreover, the allocation of resources to different functions within the agency responsible for conducting tax crime investigations will vary depending on other factors, such as the strategic priorities and the organisational structure.

85. Recognising these circumstances, the important resources for agencies fighting tax crimes include:

Financial resources

86. This means having the budget and funding to pay for the needs of the agency. The average budget over 2015 and 2016 for surveyed jurisdictions for which data was available was as follows:

Survey responses: Average annual budget over 2015 and 2016 allocated for the investigation of tax crimes in Euro equivalent (does not include budget for prosecution)			
Canada	40 797 490	The Netherlands[1]	109 500 000
Georgia	6 118 860	Singapore	8 428 370
Greece[2]	2 290 000	South Africa	9 585 340
Iceland	2 798 455	Sweden[3]	17 278 350
Lithuania	7 274 200	United States[4]	510 833 950
Malaysia[5]	15 409 295		

[1] Figure includes the whole Fiscal Information and Investigation Service (FIOD).

[2] Figure excludes staff payroll.

[3] TFIU.

[4] Majority of this budget is used for tax crime investigations.

[5] The 2015 figure is used only.

87. Surveyed jurisdictions indicated that the allocation of their budget was not dependent on meeting defined performance measures, even where performance targets had been agreed. From the survey, having pre-defined performance targets was uncommon. In eight jurisdictions responding to the survey, performance targets had been identified, which included a minimum number of concluded investigations, number or percentage of investigations leading to prosecution, surplus earning, target time to complete an investigation, and revenue collection target.

88. Some surveyed jurisdictions were able to estimate the return on investment from the tax crime investigation function, as follows.

Estimated return on investment from tax criminal investigation budget, 2015 – 2016:

- In Georgia, comparing the amount of the Investigation Service budget allocated to the collected tax evaded paid to the state budget (including principal amount & fines levied), the results are: In 2015, budget of GEL 17 021 000 and recovery of GEL 25 915 824 (**150% return**). In 2016, budget of GEL 17 500 000 and recovery of GEL 35 072 618 (**200% return**).
- In Indonesia, for every dollar of budget allocated, the tax and penalties collected or tax evasion prevented is 7 dollars (**700% return**).
- In New Zealand, the current planned returns on investment are for NZD 1 spent, return of NZD 7.50 (**750% return** in respect of general tax evasion in the hidden economy) and for NZD 1 spent, return of NZD 4.10 return (**410% return** in respect of fraud).
- In Norway, for NOK 1 spent, return of NOK 15 (**1 500% return**).
- In Spain, in 2015, for every euro spent in the Agency, it collected 11.51 Euro in the fight against fraud (**return of 1 151%**).
- In Switzerland, at the federal level, the multi-annual average of taxes and penalties imposed is equal to 10-12 times the costs of the staff (**1 000-1 200% return** on staff costs).

Human resources

89. This means having staff with the appropriate knowledge, expertise, training and skills. Human resources are likely to have a significant impact on the efficient use of financial resources. This includes having a sufficient number of staff working on tax crime investigations. Staff numbers in the area responsible for tax crime investigations in surveyed jurisdictions, where data was available for 2015 and 2016, was as follows:

Survey responses: Average number of full time equivalent staff responsible for tax crime investigations in 2015 and 2016[6]					
Austria	141	Greece	1 782	Singapore	68
Brazil	159	Iceland	25	South Africa	201
Canada	557	Indonesia	350	Spain	4 850
Czech Republic	432	Lithuania	353	Sweden[7]	800

[6] Figures for Austria represent the WKStA; figures for Brazil represent the Copei; figures for France represent BNRDF; figures for Germany represent tax inspectors in the whole of Germany; figures for Greece represent 2016 only and include FPD, FIU and IAPR; figures for Malaysia represent 2015 only; figures for Norway represent Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime and Norwegian Tax Administration; figures for Spain represent all kind of tax investigation and not limited to criminal tax investigation; figures for Sweden represent the SA-TFIU and SECA; figures for Switzerland represent the federal level only, excluding cantonal level.

[7] TFIU and SECA.

El Salvador	19	Malaysia	235	Switzerland	22
France	40	The Netherlands[8]	1 297	United States	2 267
Georgia	394	New Zealand	189		
Germany	2 432	Norway	311		

90. Having the necessary human resources also includes ensuring that staff have the appropriate skills and knowledge to conduct complex financial investigations. This includes two aspects: having staff with expertise in all relevant fields; and providing ongoing training on emerging risks, investigative tools and skills.

91. The need to ensure that the agency has the necessary expertise in all relevant fields reflects the fact that financial crime investigations demand specialist knowledge and know-how. All financial investigators should have a certain basic level of financial knowledge and skills such as practical investigation techniques, case management and intelligence collection. In addition, more specialised financial investigators will be needed, such as accountants, asset recovery specialists, cyber experts and forensic experts. A range of these skills may be needed to investigate one case, and having the range of skills available is therefore important.

Training

92. Training should be continuous and available for all staff at every level of experience and should include areas such as legal knowledge, emerging risks, investigative techniques, interview techniques, using and leveraging technology solutions, management skills, and working in cross-agency and international investigations. Where possible, training should include practical training drawn from real-life cases, as well as incorporating joint training sessions with investigators, prosecutors, tax authorities and other relevant stakeholders to create greater awareness of the possibilities for inter-agency co-operation. Undertaking international training can also be beneficial in sharing different approaches and creating a network of professionals that can enhance international co-operation.

Infrastructure resources

93. This means having physical tools required to conduct tax crime investigations, such as forensic tools, administrative equipment including for enforcement actions, the ability to securely handle evidence, and effective communication platforms.

Organisational resources

94. This means having the organisational and strategic resources to conduct the work and use the resources efficiently, as well as a network of inter-agency relationships.

Data and technology resources

95. This means having access to relevant data and intelligence, as well as the hardware and software to analyse it. In terms of the data and intelligence required, this should include access to tax and other revenue information, bank account information, real estate information and commercial and company information. In terms of the technology resources, this includes computers, IT systems, smartphones, and

[8] Figure includes the whole Fiscal Information and Investigation Service (FIOD).

data storage systems as well as the analytical tools to establish links, patterns and risks amongst different sources of data (both structured and unstructured data). Increasingly, law enforcement agencies need to have the skills and tools to conduct investigations in response to the increasing digitalisation and globalisation of criminal activity and it is likely that information and data analytics will become even more important, and access to a wider range of digital information and analytical tools will be needed. The survey shows that responding jurisdictions have access to the following databases. Note that not all such databases exist in each jurisdiction. The below is intended to describe the current approaches taken by different jurisdictions, which depend on the organisational structure and availability and sensitivity of certain data, and without reaching a conclusion as to the effectiveness of such forms of access.

Survey responses: Access to Government Databases and Registers

	Access on request		Direct access		No access
Company Formation / Ownership Registry	Australia Canada Czech Republic[9] Finland Germany Indonesia Japan	Malaysia New Zealand Slovenia South Africa United Kingdom United States	Austria Brazil Czech Republic[10] Denmark El Salvador France Georgia Greece Iceland Italy Lithuania	Luxembourg The Netherlands New Zealand Norway Singapore Slovak Republic Spain Sweden Switzerland United States	
Land Registry	Australia Brazil Canada Denmark El Salvador Finland Germany Greece	Indonesia Japan Malaysia New Zealand South Africa Switzerland United Kingdom United States	Austria Czech Republic France Georgia Iceland Italy Lithuania Luxembourg	The Netherlands New Zealand Norway Singapore Slovenia Spain Sweden United States	
Registry Of Citizens	Australia El Salvador Finland Germany Greece Indonesia Japan	Malaysia New Zealand South Africa Spain Switzerland United Kingdom United States	Austria Brazil Czech Republic Denmark El Salvador France Georgia Iceland Italy	Lithuania Luxembourg The Netherlands Norway Singapore Slovak Republic Slovenia Sweden United States	Canada
Tax Databases	Brazil Czech Republic Denmark El Salvador Finland	France Norway Sweden Switzerland	Australia Austria Canada Georgia Germany Greece Iceland Indonesia Italy Japan Lithuania Luxembourg	Malaysia The Netherlands New Zealand Norway Singapore South Africa Spain Sweden Switzerland United Kingdom United States	Slovak Republic Slovenia

[9] Written certified copies of documents from the Commercial Register.

[10] Electronic certificate of incorporation, without official verification for operational purposes.

Survey responses: Access to Government Databases and Registers					
	Access on request		**Direct access**		**No access**
Customs Databases	Australia Brazil Czech Republic Denmark France Germany Greece [11] Indonesia Japan	Lithuania Luxembourg Malaysia New Zealand Norway Singapore Sweden Switzerland United States	Austria Finland Georgia Greece [12] Iceland Italy	Lithuania The Netherlands South Africa Spain United Kingdom	Canada Slovak Republic Slovenia
Police Databases	Australia France Germany Greece [13] Indonesia Lithuania	Malaysia The Netherlands New Zealand Singapore United Kingdom United States	Austria Canada Czech Republic Denmark Finland France Georgia	Greece [14] Italy Lithuania Luxembourg Norway Slovak Republic Slovenia Sweden [15]	El Salvador Iceland Japan Norway Spain Switzerland
Judicial Databases	Australia Austria Canada Czech Republic Finland Georgia Germany Greece	Indonesia Lithuania Luxembourg Malaysia The Netherlands New Zealand United Kingdom United States	Iceland Italy Japan Lithuania New Zealand	Norway Singapore Slovak Republic Switzerland United States	El Salvador Norway Slovenia South Africa Spain Sweden Switzerland
STR Databases	Austria Brazil [16] Finland Germany Greece [17] Indonesia	Japan Luxembourg The Netherlands New Zealand Singapore Sweden	Australia Czech Republic Denmark Greece [18] Iceland Italy	Lithuania Malaysia Slovak Republic United Kingdom United States	Canada El Salvador France Norway Slovenia South Africa Spain Switzerland

[11] FPD, FIU.

[12] IAPR.

[13] IAPR.

[14] FPD, FIU.

[15] SECA.

[16] Request or spontaneous from the FIU.

[17] IAPR, FPD.

[18] FIU.

Survey responses: Access to Government Databases and Registers					
	Access on request		Direct access		No access
Car Registry	Australia Canada El Salvador Finland Germany	Indonesia Japan New Zealand South Africa Switzerland United Kingdom	Austria Czech Republic Denmark France Georgia Greece Iceland Italy Lithuania Luxembourg	Malaysia The Netherlands New Zealand Norway Singapore Slovak Republic Slovenia Spain Sweden United States	
Boat Registry	Australia Austria Canada Czech Republic Denmark El Salvador Finland France Georgia Germany	Greece Iceland Indonesia Japan Malaysia New Zealand Slovenia South Africa Switzerland United Kingdom United States	Italy Lithuania Luxembourg The Netherlands	Singapore Slovak Republic Spain	

Principle 7

Make Tax Crimes a Predicate Offence for Money Laundering

Jurisdictions should designate tax crimes as one of the predicate offences for money laundering.

Principle 7: Make Tax Crimes a Predicate Offence for Money Laundering

Introduction

96. The FATF Recommendations provide: "…Jurisdictions should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences" (Recommendation 3).

97. Predicate offences are specified types of criminal activity that give rise to funds or assets. Those funds / assets may then be "laundered" to obscure the illegal source. For example, the predicate offence of drug trafficking can generate revenue, and through one of the basic steps of placement, layering and integration, conceal the illegal source of the funds, allowing the drug trafficker to use the funds without generating suspicion of criminal activity.[1]

98. The designation of certain crimes as predicate offences means that a person can be charged with the offence of money laundering as well as with the predicate offence itself.

99. During the latest revision of the FATF Recommendations in 2012, "tax crimes (related to direct and indirect taxes)" were separately identified in the existing list of specific categories of offences that should be predicate offences for money laundering.[2]

100. Including tax crimes as a predicate offence for money laundering is important because it means that:

- A person that has committed money laundering can also be charged with the underling predicate offence. This may allow the authorities greater scope to secure a conviction and / or to impose greater penalties. In practice, whether the investigation or prosecution of one or both offences are pursued will depend on the case and factors such as the nature of the evidence and the elements of the offence which must be proven.

[1] See also OECD (2009), *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Paris, www.oecd.org/ctp/crime/money-laundering-awarenss-handbook.htm.

[2] See FATF (2012), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, updated October 2016, FATF, Paris, www.fatf-gafi.org/recommendations.html. The list of designated categories of offence included in the FATF Recommendations are: participation in an organised criminal group and racketeering; terrorism, including terrorist financing; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling (including in relation to customs and excise duties and taxes); tax crimes (related to direct taxes and indirect taxes); extortion; forgery; piracy; and insider trading and market manipulation.

- Financial institutions and other designated professionals and reporting entities are required to file STRs, which report suspicions that a client's funds are the proceeds of a criminal activity, including money laundering as well as predicate offences. As such, STRs can include suspicions of where a client's funds are the proceeds of tax crimes. This can provide greater intelligence from the private sector to the government authorities. In order for this to be more effective, awareness of the risks and indicators is needed amongst the relevant reporting entities of funds being the proceeds of tax crimes. These reports are filed with the FIU.
- STRs are analysed by the FIU and where relevant intelligence is disseminated to the domestic competent authorities responsible for investigating and / or prosecuting the relevant predicate offence. As such, it is possible for STRs to be shared by the FIU with the authority responsible for investigating and / or prosecuting tax crimes.[3] (See also Principle 8).
- The mechanisms for international co-operation under the FATF Recommendations apply as between authorities that have responsibility for investigating and / or prosecuting money laundering and predicate offences. Where tax crimes are included as predicate offences, those avenues for international co-operation are expanded to include authorities responsible for investigating and / or prosecuting tax crimes. This includes direct exchange of information and mutual legal assistance, both between tax investigatory and / or prosecution authorities and between tax and non-tax investigatory / prosecution authorities (see also principle 9).

101. In practice, most jurisdictions surveyed have noted that the inclusion of tax crimes as a predicate offence has had a practical and positive impact on their work. Based on survey data, the most reported impact of tax crimes being a predicate offence was better inter-agency co-operation. This included increased ability to work with other agencies on particular cases and more generally on strategic and policy matters, more awareness amongst other law enforcement, intelligence agencies and amongst the private sector of the possibility of tax crimes occurring, and better avenues for communication with other agencies. Many jurisdictions also reported having better access to information (particularly from the FIU and increased STRs). Some jurisdictions also reported that prosecutions were easier to undertake and that there was an increase in prosecutions. One jurisdiction noted the deterrent effect on would-be offenders.

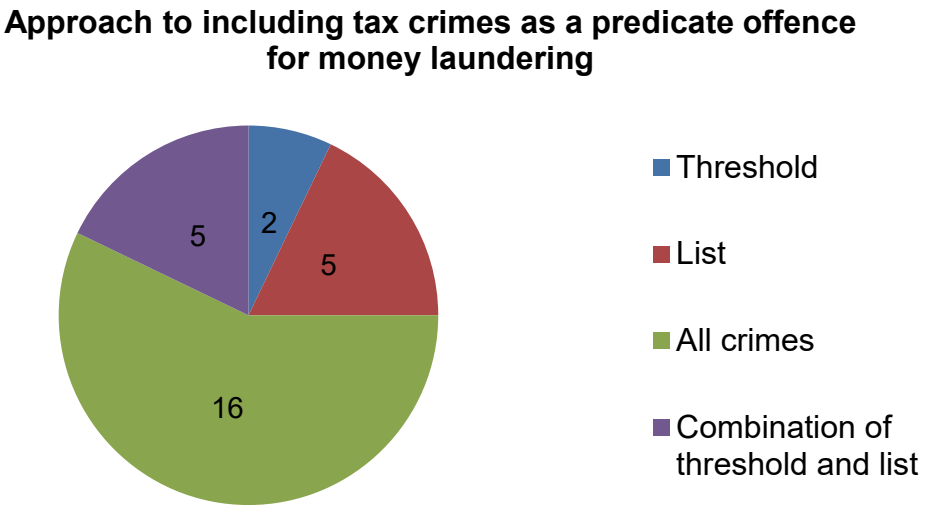
102. Although "tax crimes" is not defined, the FATF Interpretive Note to Recommendation 3 states that jurisdictions are required to apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Each jurisdiction must determine how the requirement will be implemented in their domestic law, including how it will define the offence and the elements of those offences that make them serious offences.

103. There are different ways for jurisdictions to designate tax crimes as predicate offences for money laundering. For example, jurisdictions may:

- use an **inclusive approach** and identify all criminal offences as predicate offences;
- use a **threshold approach** and designate 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
- use a **list approach** and create an explicit list of offences that are predicate offences

[3] See also principle 8 and the Rome Report for more details and OECD, (2015), *Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes*, http://www.oecd.org/tax/crime/improving-co-operation-between-tax-and-anti-money-laundering-authorities.htm.

104. From the survey respondents, jurisdictions are using the following approaches in practice:[4]



105. Seven jurisdictions reported using the "threshold approach" (alone or as part of a combination approach). Six of these defined the threshold as offences punishable by a prison term exceeding a certain time (ranging from six months to four years) and the other defined the threshold as those offences prosecuted by indictment.

106. Surveyed jurisdictions also reported on whether the tax crimes included as a predicate offence extended to tax crimes committed in a foreign jurisdiction, as required by the FATF Recommendations, and 19 of the 31 jurisdictions confirmed this was the case. An additional four jurisdictions required there to be some link to the domestic jurisdiction (namely, that the predicate offence results in a criminal offence being committed in the domestic jurisdiction, that the conduct would also qualify as a crime in the domestic jurisdiction, if at least one part of the conduct was committed in the domestic jurisdiction, or only to the extent the predicate offence was conducted within the European Union).

References

FATF (2012), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, updated October 2016, FATF, Paris, www.fatf-gafi.org/recommendations.html.

OECD (2015), *Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes*, http://www.oecd.org/tax/crime/improving-cooperation-between-tax-and-anti-money-laundering-authorities.htm.

OECD (2009), *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, http://dx.doi.org/10.1787/9789264081093-en.

[4] ***Threshold***: Australia, Canada; ***List***: El Salvador, Germany, Indonesia, Malaysia, Singapore; ***Combination***: Austria, Greece, Japan, Luxembourg, Switzerland; ***All crimes***: Brazil, Czech Republic, Finland, France, Georgia, Iceland, Italy, Lithuania, Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden, United Kingdom.

Principle 8

Have an Effective Framework for Domestic Inter-agency Co-operation

Jurisdictions should have an effective legal and administrative framework to facilitate collaboration between tax authorities and other domestic law enforcement and intelligence agencies.

Principle 8: Have an Effective Framework for Domestic Inter-agency Co-operation

Introduction

107. Combating financial crimes comprises a number of key stages, including the prevention, detection, investigation and prosecution of offences, and the recovery of the proceeds of crime. Depending upon the circumstances, this can involve a number of government agencies, including the tax administration, the customs administration, financial regulators, AML authorities including the FIU, the police and specialised law enforcement agencies, anti-corruption authorities and the public prosecutor's office.

108. Furthermore, the various agencies may each have unique information or investigative and enforcement powers that can enhance another agency's investigation of a particular crime. This makes co-operation amongst the relevant agencies particularly important and beneficial. This includes information sharing, as well as other forms of co-operation. The forms of co-operation below can also be used in parallel with each other, and one does not necessarily exclude the other. In order to make the best use of co-operation, it will be particularly helpful if the relevant agencies have identifiable contact points for information sharing and co-operation, as well as a clear understanding of the types of information and powers the other agencies possess.

109. Any such co-operation is subject to the domestic law and the need to prevent any abuse of powers, which is further discussed below. In addition, depending on the organisational structure in place in a jurisdiction, and which agency has responsibility for investigating tax crimes (see principle 5 for more details), different forms of co-operation may be appropriate.

Information sharing

110. A common form of co-operation is information sharing. In the course of their activities, different government agencies collect and hold information on individuals, corporations and transactions which may be directly relevant to the activities of other agencies in combating financial crime.

111. Effective information sharing can be used to improve the prevention and detection of crimes, identify evidence which may lead to new investigations, and support ongoing investigations. In some cases information may be of a type that the receiving agency could not obtain directly, particularly where the information is of a specialist nature such as that held by the tax administration or FIU. In others, the ability to receive information from other agencies may reduce the duplication of work by different agencies, increasing the speed and reducing the cost of investigations, result in faster and more successful prosecutions, and increase the likelihood of the proceeds of crime being recovered.

112. In addition, sharing of information can be used to identify new angles to existing investigations, such as where an investigation into a tax offence reveals other criminal activity and money laundering. The use of information from different sources may increase officers' understanding of an issue or of the

activities of a suspect, possibly increasing the effectiveness of enquiries. Importantly, mechanisms for sharing information may be used to develop relationships between agencies, and key individuals in those agencies, which can be beneficial in developing new and enhanced forms of inter-agency co-operation.

Legal gateways for information sharing

113. In order for information to be shared, legal gateways must exist between the relevant agencies. Legal gateways for sharing information may take a number of forms, such as:

- Primary legislation often provides the basic framework for co-operation. This could be by explicitly requiring that an agency shares certain types of information in specified circumstances, or by generally allowing information sharing between agencies subject to limited exceptions.
- Where permitted by law, agencies may enter into bilateral agreements or 'memoranda of understanding', agreeing to share information where this is of relevance to the other agency's activities. These memoranda typically contain details of the types of information that will be shared, the circumstances in which sharing will take place and any restrictions on sharing information such as that the information may only be used for specified purposes. Memoranda may also include other terms agreed by the agencies, such as the format of any request for information, details of competent officials authorised to deal with requests, and agreed notice periods and time limits or a requirement for the agency receiving information to provide feedback on the results of investigations in which the information was used.

Models of information sharing

114. Generally, there are four different types of co-operation with respect to sharing information among different agencies:

- direct access to information contained in agency records or database. This can include direct access to mass or bulk data or bulk for risk assessment as well as specific access rights to a particular case record or file;
- an obligation to provide information automatically (i.e. at regular intervals) or spontaneously (i.e. on the occasions when relevant information is identified), normally where the categories of such information are pre-defined (sometimes expressed as a 'reporting obligation');
- an ability, but not an obligation, to provide information spontaneously; and
- an obligation or ability to provide information but only in response to a specific request which is made on a case-by-case basis.

Forms of information sharing

115. Different forms of information sharing may be particularly effective in different contexts. For example:

- Where information is suitable for using analytics and high-level risk assessment, direct access, or automatic or spontaneous exchange could be most effective. Operationally, this will be most effective if the types of information to be shared are clearly defined and can be automated. It also can assist in the detection of previously unknown criminal activity. Training on using the direct access, as well as in greater protections to ensure confidentiality and data protection may be relevant in this case.

- Discretionary spontaneous sharing of information may be very effective when there is a long-standing co-operative relationship between the agencies involved, and there is a clear understanding of what information may be useful in the activities of the recipient agency. Like direct access or automatic exchange, this can assist in proactively alerting an agency to previously unknown criminal activity. This should at a minimum include spontaneous sharing of information by tax authorities with the appropriate domestic law enforcement authorities of suspicions of serious crimes, including foreign bribery, money laundering and terrorism financing.[1]
- Where the information needed is very specific or needs to be in a certain form, information on request or direct access to a specific case record may be most suitable. This is likely to be most relevant when an investigation is relatively well advanced and the investigating agency already has sufficient information to provide the basis of the request.

116. Given the range of investigative techniques available throughout the course of an investigation, it may be most effective if the broadest possible range of information sharing methods is available, both from and to the agency investigating tax crimes. However, whichever types of information sharing are used, it is important to protect the confidentiality of information and the integrity of work carried out by other agencies, and in accordance with domestic law. This would likely include setting clear parameters relating to which people can access the information and for what purpose, as well as having governance mechanisms in place to ensure information is used appropriately.

Other forms of co-operation

117. In addition to information sharing, there is a range of other forms of co-operation being used by law enforcement authorities. Examples include the following.

Joint investigation teams

118. These enable agencies with a common interest to work together in an investigation. In addition to sharing information, this enables an investigation team to draw on a wider range of skills and experience from investigators with different backgrounds and training. Joint investigations may avoid duplication arising from parallel investigations, and increase efficiency by enabling officials from each agency to focus on different aspects of an investigation, depending upon their experience and legal powers. In some cases, gateways for sharing information are wider when agencies are engaged in a joint investigation than they would be in other circumstances.

Inter-agency centres of intelligence

119. These are typically established to centralise processes for information gathering and analysis for a number of agencies. Inter-agency centres may be established to focus on operational information (case-specific information and investigations) or strategic information (broader assessment of risks and threats, focusing on a specific geographic area or type of criminal activity, or having a wider role in information sharing). These centres conduct analysis based on primary research as well as information obtained by participating agencies. By centralising these activities, officials can obtain experience of particular legal and practical issues, and specialised systems can be developed which can increase their effectiveness.

[1] See OECD (2009), *Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD, Paris, www.oecd.org/tax/crime/2009-recommendation.pdf and OECD (2010), *Recommendation of the Council to Facilitate Co-operation between Tax and Other Enforcement Authorities to Combat Serious Crimes*, OECD, Paris, http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=266.

Cost savings may also be achieved, as the expense of collecting, processing and analysing data can be shared between participating agencies.

Secondments and co-location of personnel:

120. This is an effective way of enabling skills to be transferred while allowing personnel to build contacts with their counterparts in another agency. Seconded officials share their skills, experience and specialist knowledge while participating directly in the work of the host agency. Jurisdictions report that arrangements to co-locate and second staff have wider benefits for inter-agency co-operation, including encouraging officials to recognise opportunities for co-operation, more proactive engagement with counterparts from other agencies, improving the effectiveness of co-operation that does take place, and increasing the speed and efficiency of information sharing.

Other models

121. Other strategies include the use of shared databases, dissemination of strategic intelligence products such as newsletters and intelligence briefs, joint committees to co-ordinate policy in areas of shared responsibility, and inter-agency meetings and training sessions to share information on trends in financial crime, guidance on investigative techniques and best practice in managing cases.

122. In the context of the above, particular areas where inter-agency co-operation has been successful in some jurisdictions include:

- Granting the tax administration access to STRs (or "suspicious activity reports")[2]
- Granting the FIU access to information held by the tax administration
- Having a co-ordinated strategy for analysing and responding to STRs
- Putting obligations on tax officials to report suspicions of non-tax crimes to the police or public prosecutor
- The use of multi-agency task forces to combat financial crimes
- Putting in place a centralised structure for inter-agency co-operation
- Developing a co-ordinated approach to recovering the proceeds of crime
- Co-operation with the private sector in the fight against tax crime.

123. For more information on models of inter-agency co-operation, see the Rome Report.[3]

References

OECD (2017), *Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition*, OECD Publishing, Paris, http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm.

OECD (2015), *Improving Co-operation between Tax and Anti-Money Laundering Authorities*, OECD Publishing, http://www.oecd.org/tax/crime/improving-cooperation-between-tax-and-anti-money-laundering-authorities.htm.

[2] See OECD (2015), *Improving Co-Operation Between Tax and Anti-Money Laundering Authorities*, OECD Publishing, Paris, www.oecd.org/ctp/crime/report-improving-co-operation-between-tax-anti-money-laundering-authorities.pdf.

[3] See OECD (2017), *Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes (Third Edition)*, OECD, Paris: http://www.oecd.org/tax/crime/effective-inter-agency-co-operationin-fighting-tax-crimes-and-other-financial-crimes.htm.

OECD (2010), *Recommendation of the Council to Facilitate Co-operation between Tax and Other Enforcement Authorities to Combat Serious Crimes*, http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=266.

OECD (2009), *Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, http://www.oecd.org/tax/crime/2009-recommendation.pdf.

Principle 9

Ensure International Co-operation Mechanisms are Available

Tax crime investigation agencies must have access to criminal legal instruments and an adequate operational framework for effective international co-operation in the investigation and prosecution of tax crimes.

Principle 9: Ensure International Co-operation Mechanisms are Available

Introduction

124. Tax crimes very frequently have an international dimension, for instance because a foreign jurisdiction was used to hide assets or income, or because the proceeds from illicit transactions are kept abroad, without being declared to tax authorities. Because criminal activity can cross international borders, but investigation agencies have powers which are limited by jurisdictional boundaries, co-operation amongst investigation agencies is necessary.

125. International co-operation can take a number of forms including information sharing; service of documents; obtaining evidence; facilitating the taking of testimony from witnesses; transferring persons for questioning; executing freezing and seizing orders; and joint investigation. In order for such co-operation to take place, there should be a legal agreement setting out the terms and procedural requirements. These agreements can be information sharing agreements (such as TIEAs), agreements for exchange of information and administrative assistance, bilateral tax treaties and other instruments (such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters)) as well as agreements for co-operation in using investigative and coercive powers (such as MLATs). These agreements should authorise international co-operation for crimes including tax crimes.

126. The use of exchange of information and MLATs in 2015 amongst survey respondent was as follows. It is noted that in some cases, data was not broken down to exclude non-tax crime requests, and this is noted and shown in italics where relevant.[1]

Survey responses: Numbers of EOI and MLAT requests in respect of criminal tax matters (2015 and 2016)				
Jurisdiction	**EOI requests sent**	**EOI requests received**	**MLAT request sent**	**MLAT requests received**
Australia	1	4	*736*	*706*
Canada	27	3	5	32
Republic Checa	N/A	N/A	*5 202*	*6 186*
France	N/A	N/A	82	N/A
Georgia	16	28	17	41
Greece	*42*	*413*	N/A	N/A
Iceland	26	2	N/A	N/A
Lithuania	N/A	N/A	*2 458*	*2 346*
Malaysia	23	77	N/A	N/A

[1] For Australia and Czech Republic, figures relating to MLATs are not specific to criminal tax investigations only; for Greece, figures related to the FIU only and apply for all money laundering cases; for Lithuania, figures include all criminal matters plus data from the FIU; for Sweden, figures not specific to criminal tax investigations only.

Survey responses: Numbers of EOI and MLAT requests in respect of criminal tax matters (2015 and 2016)				
Jurisdiction	**EOI requests sent**	**EOI requests received**	**MLAT request sent**	**MLAT requests received**
The Netherlands	1	0	67	355
Singapore	50	513	0	21
Slovenia	N/A	N/A	56	367
Sweden	*3 795*	*1 087*	*100-150*	*100-150*
Switzerland	2	N/A	12	N/A
United States	55	N/A	N/A	approximately 15
United Kingdom	81	N/A	N/A	260
Total	324	1 040	8 641	10 316

127. With a view to having a successful holistic approach to fighting tax crime, it is of key importance that jurisdictions have a far-reaching and functioning international co-operation network. This network should be characterised by the following features:

- Be in place with a wide geographical coverage of other jurisdictions;
- Cover a wide range of types of assistance, including exchange of information and other forms of assistance in investigation and enforcement;[2]
- Be supported by a domestic legal framework that allows the sharing of information both sent and received under international legal instruments with all relevant domestic criminal investigation, intelligence and enforcement agencies, where appropriate (i.e. tax authorities, criminal investigation authorities, FIUs, AML authorities); and
- Be given effect in practice, including having a clear operational framework for international co-operation. This should include having dedicated and identified contact points that foreign agencies can contact in case of a request for assistance, sufficient resources to fulfil requests for assistance, as well as training and awareness for domestic investigation agencies as to the availability of international co-operation and how to make effective requests.

128. Although the legal gateways are in place in many cases, practical obstacles can have a significant impact on effective international co-operation. This includes delays caused by a lack of clear communication channels, confusion about the organisational structure or mandate in the counterpart and therefore delays in identifying the correct agency to whom to address the request, and practical communication difficulties including language or lack of clarity in the presentation of the facts of the request. Results from the survey conducted for this guide also showed that jurisdictions may not keep detailed data to monitor the use or impact of the international co-operation tools, which may contribute to a lack of awareness or reduced profile of these tools.

References

OECD (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A Catalogue of the Main Instruments*, http://www.oecd.org/ctp/crime/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.htm.

[2] See also OECD (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A Catalogue of the Main Instruments*, http://www.oecd.org/ctp/crime/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.htm.

Principle 10

Protect Suspects' Rights

Taxpayers suspected or accused of committing a tax crime must be able to rely on basic procedural and fundamental rights.

Principle 10: Protect Suspects' Rights

Introduction

129. Persons subject to a criminal tax investigation should be able to rely on certain procedural and fundamental rights, which are afforded to everyone suspected or accused of a criminal act, including tax crime.

130. The United Nations' Universal Declaration of Human Rights sets out the fundamental human rights which are to be universally protected.[1] Similar rights and guidelines can for instance be found in the European Convention on Human Rights and the African Commission on Human & Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.[2] These rights may be given effect in domestic law by being enshrined in a jurisdiction's constitution or bill of rights, or within criminal procedure law.[3]

131. In particular, taxpayers suspected or accused of committing a tax crime should be able to rely on the following rights:

- The right to a presumption of innocence;
- The right to be advised of their rights;
- The right to be advised of the particulars of what one is accused of;
- The right to remain silent;
- The right to access and consult a lawyer and entitlement to free legal advice;
- The right to interpretation and translation;
- The right to access documents and case material, also known as a right to full disclosure;
- The right to a speedy trial; and
- The right to protection from double jeopardy (ne bis in idem).

---

[1] United Nations (2017), *The Universal Declaration of Human Rights*, www.un.org/en/universaldeclaration-human-rights/ (accessed February 2017).

[2] European Court of Human Rights, Council of Europe, (2017), *European Convention on Human Rights*, www.echr.coe.int/Documents/Convention_ENG.pdf (accessed February 2017).

African Commission on Human and Peoples' Rights (2003), *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, African Union, Gambia, www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf.

[3] Sixth Amendment to the United States Constitution – Rights of Accused in Criminal Prosecutions (2017), www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-9-7.pdf (accessed February 2017).

The Canadian Charter of Rights and Freedoms - Sections 7-14 Constitution Act 1982 (2017), http://laws-lois.justice.gc.ca/eng/const/page-15.html (accessed February 2017).

132. The criminal tax investigation agency needs to be aware of these fundamental rights since failure to do so will not only negatively impact on the rights of an individual, but may have an adverse effect on an investigation and prosecution of a tax crime, for example, where evidence obtained becomes inadmissible if the individual's rights were violated.

133. In particular, as there are instances where a criminal investigation may have originated as an ordinary civil examination or audit procedure, jurisdictions should have safeguards to ensure that the rights of an accused are protected when there is a change from administrative to criminal law. For example, in a civil examination, the taxpayer has an obligation to provide information to the tax administration; however in a criminal investigation, the suspect may have the right to remain silent. This issue is of particular importance for tax administrations which direct and conduct criminal investigations within the same organisational structure as the civil tax (audit) function, referred to as organisational Model 1 in principle 4 above.

134. The line that separates a civil tax matter to the criminal tax matter can require judgement and may be unclear. Based on the survey, most jurisdictions reported that a civil investigation becomes a criminal investigation when there is a reasonable suspicion that a crime had been committed, or where the facts indicate that a crime may have been committed. A smaller number of jurisdictions use an objective marker to determine when a civil matter becomes a criminal investigation, and which is based on a threshold of the amount of tax evaded. Based on survey data, 11 jurisdictions reported that civil and criminal investigations cannot run in parallel, and in practice the civil / administrative tax audits would be suspended and the criminal investigation would take precedence. 19 jurisdictions reported the possibility for civil / administrative tax audits to be conducted in parallel with criminal investigations. Many of these added that there are safeguards to ensure that the rights of an accused are protected when there is a parallel civil and criminal investigation, such as ensuring the investigations are run independently.

135. More detail on each of the rights of suspects is set out below.

136. **The right to a presumption of innocence**: This is the principle that a person is considered innocent until proven guilty and it is a critical component of the criminal justice system. The presumption of innocence means the burden of proof is on the prosecution and not on the accused.

137. As an example of how this can be implemented, the European Council recently adopted a directive to strengthen certain aspects of the presumption of innocence.[4] This Directive requires member states to respect the following related obligations: "before the final judgement, suspects and accused persons should not to be presented as being guilty through the use of measures of physical restraint and the burden of proof is on the prosecution while any reasonable doubts as to the guilt should benefit the accused."

138. **The right of the suspect or accused to be advised of their rights**: This right places a duty on the investigating agency to advise a suspect or accused of their rights. In some jurisdictions, this obligation may be fulfilled by orally advising the person of their rights or in writing by issuing a "Letter of Rights". These rights will generally include the right to remain silent, the right to be informed of the accusations against the person and the right to access a lawyer or in some circumstances the right to free legal advice. For example, in the United States this is known as a "Miranda Warning," and many other jurisdictions have equivalents.[5]

[4] European Council (2016), *Press release and statement - EU Strengthens right to the presumption of innocence*, European Union, Brussels, www.consilium.europa.eu/en/press/press-releases/2016/02/12-eustrengthens-right-to-presumption-of-innocence/.

[5] The Law Library of Congress, (2016), *Miranda Warning Equivalents Abroad*, Global Legal Research Center, Washington, www.loc.gov/law/help/miranda-warning-equivalents-abroad/miranda-warningequivalents-abroad.pdf.

139. In practice, jurisdictions may administer these rights at different stages of an investigation. Some jurisdictions advise an accused of their rights at the commencement of any questioning, while others may do so when a person is arrested.

The right to remain silent

140. This is the right of an accused person to refuse to comment or provide answers when questioned by a criminal investigator. This right is recognised by most legal systems and protects an individual from self-incrimination. This right usually applies both prior to and during a trial.

The right to be advised of the particulars of what one is accused of

141. This right enables the accused to know the nature and substance of the allegations against them. This would generally include the elements of the offence, such as the essential aspects of the offence, details of the alleged conduct which led to the charge and in the case of a tax crime, the alleged damage to the state. Generally, the particulars must be provided to an accused prior to the accused entering a plea in court.

The right to access and consult a lawyer and entitlement to free legal advice

142. Someone accused of having committed a tax crime must have the opportunity to seek legal advice. In addition, if the accused cannot afford legal advice or legal representation, then there may be a right to state-funded legal assistance. This fundamental right is essential to a fair legal system, given the potentially serious the consequences of a conviction.

143. The specific details of these rights vary from jurisdiction to jurisdiction. Jurisdictions may have different practices with respect to when the right to seek legal advice becomes available. For example, in Canada the right extends to someone who has been detained or arrested. Jurisdictions will also have different approaches to the right to state-funded legal representation, which may be available only in specific circumstances such as where the accused meets certain financial criteria.

144. In Europe, under Article 6(3)(c) of the European Convention on Human Rights provides that a person charged with a criminal offence has the right "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require" and this right may be applied both at the pre-trial stage and during the trial.

The right to interpretation and translation

145. This right allows an accused to understand the information about the criminal proceedings in their own language. This ensures that language barriers are not a barrier to receiving a fair trial. The costs associated with these services are usually borne by the prosecuting authority.

146. Generally this right should apply to the questioning of the suspect or accused by a representative of the state authority, meetings between the prosecution and the accused and their lawyer, and during all court appearances and hearings.

147. For example, within the European Union, these rights extend to the translation of essential documents, including any decision depriving a person of his or her liberty, any charge or indictment and any judgment.

The right to access documents and case material, also known as a right to full disclosure

148. This means that the accused has the right to know the details of the case which is argued against them, including the evidence held by the prosecutor. This allows the accused the opportunity to prepare a defence. This disclosure can also encourage the resolution of the case before going to a trial, such as encouraging an accused to confess to the crime and plead guilty.

149. The way jurisdictions implement this right will vary. In some jurisdictions there is a duty on the prosecutor to provide disclosure of all evidence to an accused person, including evidence that is favourable to the accused and evidence that is favourable to the prosecution. This may be subject to the prosecutor's discretion with respect to timing and withholding information for valid reasons such as protection of an informant.

The right to a speedy trial

150. This right should protect an accused person from undue delay in the resolution of a trial. This is because undue delay may:

- Prejudice the accused from receiving a fair trial because evidence may become unavailable or less reliable. For example, the memory of a witness may become weak over time or witnesses may die.
- If the accused is in prison pending the outcome of the trial, the accused may be imprisoned for an unreasonably lengthy period if the accused is subsequently found not guilty of the crime or the sentence imposed on the accused is less than the time already served in prison.

151. There may not be a definitive measurement of what is or is not a speedy trial and it may depend on several factors. In determining whether a breach of the right to a speedy trial has occurred, relevant factors may include:

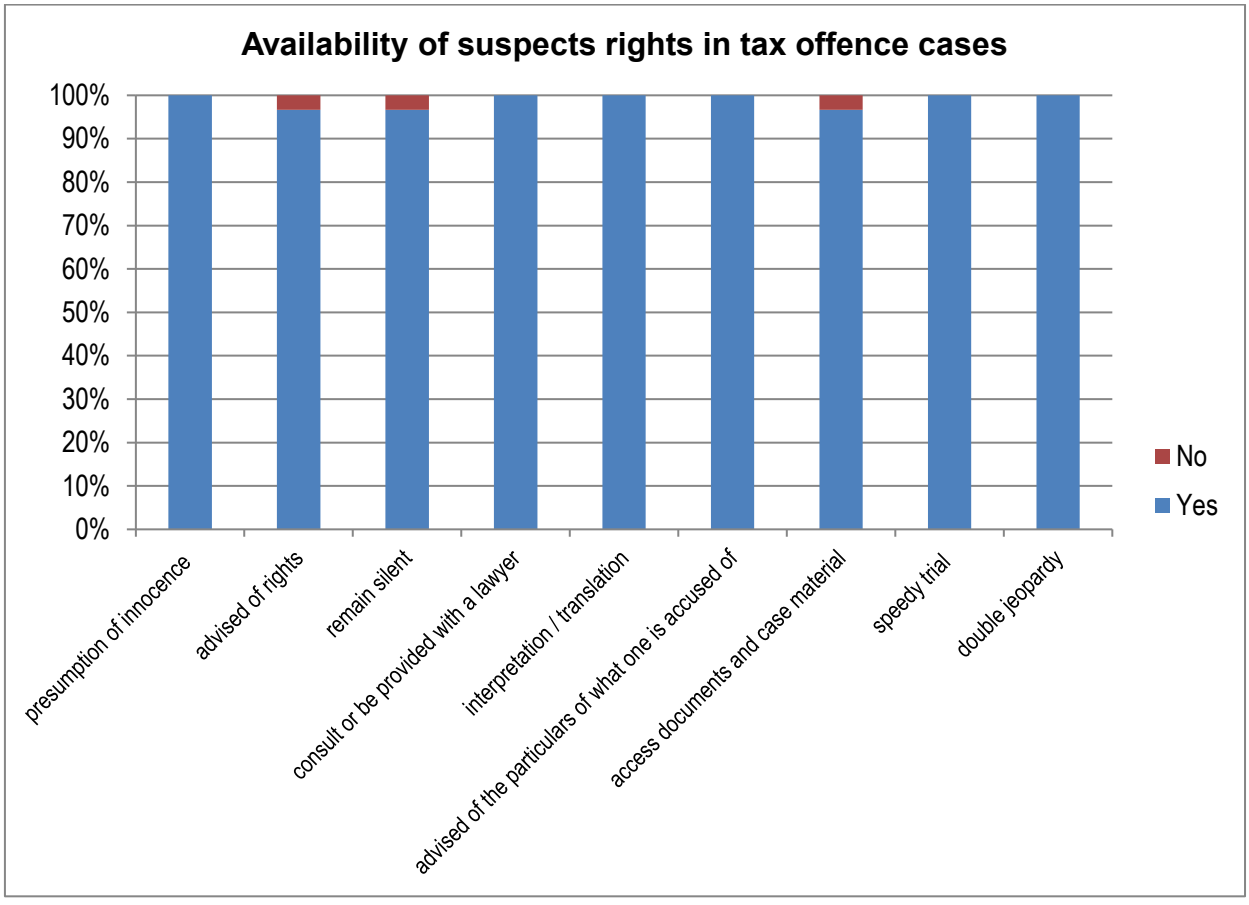
- The length of the delay from the time the accused was charged with the crime until the case is tried;
- The reasons for the delay, including the complexity of completing the work necessary for the case to tried, delays caused by the defence, delays caused by the prosecution, institutional delays such as limited availability of trial dates in the relevant court, and other reasons for delay;
- Whether the accused has waived any delay; and
- The prejudice to the accused in terms of a fair trial, such as the impact on the availability or reliability of evidence.

The right to protection from ne bis in idem (double jeopardy

152. This right protects an accused of being tried twice for the same crime, where the person has previously been found guilty and served their sentence or the person has been acquitted by a final judgement. This also protects an accused from being tried again for a less serious crime, where all of the elements of that less serious crime are subsumed in the elements of the more serious crime. However,

this right does not prevent successive investigations where one investigation may not have resulted in criminal charges, but a subsequent investigation is commenced which is based on new evidence.

153. The survey conducted shows that these rights are almost universally granted. The availability of these rights amongst surveyed jurisdictions is shows in the following chart.[6]



References

African Commission on Human and Peoples' Rights (2003), *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, African Union, http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf.

The Law Library of Congress (2016), *Miranda Warning Equivalents Abroad*, Global Legal Research Center, http://www.loc.gov/law/help/miranda-warning-equivalents-abroad/miranda-warning-equivalentsabroad.pdf.

[6] With respect to the right to be advised of rights, Singapore responded "no" but noted that in practice, there is ample opportunity for an accused person to seek legal advice on the matter at any point of the investigations. With respect to the right to access documents and case material, Singapore responded "no" but noted that in practice, there is sharing of documents and case materials during the criminal case management system meetings with defence lawyers. There is also a criminal case disclosure conference regime whereby parties would be ordered by the court to exchange documentary evidence. Even though this regime is not applicable to tax offences in Singapore, defence lawyers and accused persons (including those self-represented) can apply to opt-in into this regime and it would apply if both prosecution and defence consent.

List of Competent Authorities with Responsibility for Investigating Tax Offences

The below is intended to provide a brief overview of which agency has responsibility for investigating tax offences, including whether both national and sub-national agencies have competency in this area.

Jurisdiction	Agencies responsible for investigation of tax offences
Australia	The investigation of tax offences is undertaken by the Australian Taxation Office (ATO), the Australian Federal Police (AFP) and the Australian Criminal Intelligence Commission (ACIC). The ATO is the Australian tax administrator who in addition to taking administrative or civil action in respect to tax offences, will where appropriate, undertake (criminal) investigations into tax related offences. The AFP is the primary agency which undertakes (criminal) investigations in respect to criminal tax offences. The ACIC also ability to investigate suspected crimes through coercive powers, which allows it to conduct examinations, under which witnesses are able to claim protection against other proceedings (in certain circumstances), as well as to require them to produce documents or things relevant to an investigation.
Austria	The Fiscal Law Enforcement Authority (located at the local tax offices) and the Tax Investigation Unit investigate tax crime on behalf of the public prosecutor. The Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA) was established with responsibility for the investigation of fiscal law felonies concerning social fraud, companies with share capital exceeding EUR 5 000 000 or where the damage exceeds EUR 5 000 000.
Brazil	The tax administration of Brazil (Secretariat of the Federal Revenue of Brazil, or RFB) is responsible only for the administrative investigation of possible tax crimes. Whenever sufficient evidence of possible crimes is found in such an investigation, RFB must present the case to the criminal investigation authorities: either the Federal Prosecution Service (MPF) or the Department of Federal Police (DPF). Tax crime investigations are usually conducted in joint procedures, involving police, prosecutors and RFB's General Co-ordination of Research and Investigation (COPEI). The Federal Prosecution Service (MPF) is responsible for conducting criminal prosecutions and overseeing the activities of the police. It comprises a number of branches: Federal, Labor, Military, and the Public Prosecution Offices in the States and Federal District. The Department of Federal Police (DPF) is directly subordinate to the Ministry of Justice and is responsible for preventing and investigating offences that violate federal law. The role of the Federal Police is broad and encompasses tax crime investigations. MPF and DPF can also start tax crime investigations of their own initiative, without a prior administrative investigation by RFB. At any moment during the criminal investigation, they can request the support and co-operation of RFB. At the State Level a similar structure exists. Each of the 26 States and the Federal District has their own tax administration authority, the State Revenue Secretariat, responsible for the state taxes and for their administrative investigation. The Public Prosecution Offices in each of Brazil's States are responsible for conducting criminal prosecutions at the state level. These offices are led by the State Attorney-Generals. The Special Action Group Against Organised Crime (GAECO) are special groups created by each state Public Prosecutor's Office to deal with complex cases involving organised crime, tax crimes and financial crimes.

	The Civil Police is the state-level police with law enforcement duties that include investigating crimes committed in violation of Brazilian criminal law. The Civil Police in the relevant state are mandated to investigate tax crimes only where it is an entirely local matter which is not considered to be "against the political and social order or to the detriment of property, services and interests of Brazil, its government entities and public companies, as well as other offences with interstate or international effects and those requiring a uniform national approach". In practice, the Civil Police commonly conducts tax crime investigations in conjunction with their investigation into predicate offences. If it becomes evident that international or inter-state elements are involved, the investigation is passed from the Civil Police to the DPF.
Canada	The Canada Revenue Agency has the responsibility for investigating tax offences in Canada under section 239 of the Income Tax Act, 327 of the Excise Tax Act and section 380 of the Criminal Code. The Criminal Investigations Program (CIP) is divided between a national Headquarters function that is located in the International, Large Business and Investigations Branch (ILBIB) and six Tax Services Offices (TSO) located across the jurisdiction that conduct the tax investigations. The Criminal Investigations Directorate at headquarters provides functional leadership and program direction to the TSOs across Canada. It provides policies, procedures along with technical and legal guidance on the development of investigations of violations of the Excise Tax Act, in particular Part IX (Goods and Services Tax) and the Income Tax Act. Specifically, the Criminal Investigations Directorate provides professional and responsive support in the areas of technical assistance, training, quality assurance, policy and procedure development, monitoring of results and amending strategies as required. The TSOs conduct the criminal investigations. Their work involves the planning, examination and investigation of the financial affairs of corporations and/or individuals, including those involved in criminal activities and suspected of tax evasion or misrepresentation, to determine proper income/sales for purposes of a criminal prosecution by the Public Prosecutions Services Canada (PPSC).
Czech Republic	Police of Czech Republic (abbr. PoCR) is responsible for detection and investigation of criminal deeds (in contrast to tax administration which is responsible for assessment and collection of taxes). The police, the prosecution and the courts are authorized to use state power to carry out proceedings enabling them to gather evidence valid before the criminal court. Other government institutions provide impulses for investigations and criminal proceedings of police. Police criminal investigation is carried out under the prosecution's oversight. If there is enough evidence gathered according to the prosecution case is brought before the criminal court. Within the police there are special units for financial crime investigation. Investigation of corruption and severe financial and organized crime is centralized to two police departments responsible for all jurisdiction. In the organizational structure of the Police of the Czech Republic, the National Organized Crime Agency of the Criminal Police and Investigation Service is dealt with tax crimes at the national level, in particular the Tax Crime Division in the Financial Crime Command. At the regional level operate the economic crime divisions of the individual regional directorates of the Police of the Czech Republic, at the level of the districts of the economic criminality departments of the Regional Offices of the Police of the Czech Republic. Prosecution (abbr. SPPO) is responsible for preparation of a criminal case in cooperation with the police (see above). It is up to the prosecution to decide whether enough evidence was gathered to submit the case before the court. The prosecution is also obliged to carry out oversight over the police guaranteeing that evidence was gathered in a manner which is according to the law. The prosecution or the criminal court has the right to ask tax authorities for information gathered in the process of the tax administration, i.e. under the tax secrecy, if a tax crime is being investigated. There is no special tax crime prosecutor's office as a part of the tax administration.
Denmark	Only the police have the powers to investigate tax offences. Severe tax offences are investigated by a special police force (SØIK). However, if the tax offenses are undisguised through tax auditing, and no police investigations are required, the tax department has the power to fine the lawbreakers. This applies to small cases where tax evasion with intent are under DKK 250 000 or in all cases "with gross negligence."
El Salvador	The Directorate responsible for investigating tax offenses is the General Directorate of Internal Taxes. Within this direction, the mediating Unit responsible for these efforts is the Criminal Tax Investigation Unit, which is unique at the national level.
Finland	Most tax crimes are in Finland investigated by the Police. Finland has 11 police departments, which have financial crime investigation units or teams. Also the Customs investigates certain tax crimes. The National Bureau of Investigation (NBI), which is part of police force, has a nationwide jurisdiction for the investigation of organized, international and serious crimes including financial crime.
France	The French judicial authorities responsible for combating tax evasion are: • since 2014, the national financial prosecutor's office, which, in the case of offenses of a fiscal nature, is competent to deal with tax evasion provided for in Article 1741 of the General Tax Code when it is complex in accordance with 1 to

	(5) Article L 228 of the book on tax procedures or committed in organized groups, VAT scams where they appear very complex, laundering of these offenses and related offenses; • Since 2004, specialized courts (JIRS) have dealt with tax evasion cases of a complex nature; • The ordinary courts have to deal with other offenses of tax evasion. The judicial authority conducts investigations carried out by the investigation services of the gendarmerie or the national police under the Ministry of the Interior. Within the Central Directorate of the Judicial Police, since 2010, a brigade is dedicated to the treatment of the complex tax evasion as defined above, the laundering of this offense and related offenses. This is the brigade nationale de la répression de la délinquance fiscale (BNRDF).
Georgia	Investigation Service of Ministry of Finance of Georgia is the respective agency with responsibility for investigating tax offences at national level. The key tasks and responsibilities include the following: prevention, determination, investigation and conduction of the complete preliminary investigation to the extent of the competency; organize and carry out investigations pursuant to the Code of Criminal Procedure of Georgia.
Germany	Tax crimes and tax-related administrative offences constitute substantive criminal law, the enforcement of which is the responsibility of the highest revenue authorities of the Länder (Articles 83 and 84 of the Basic Law (Grundgesetz)). Subject-matter responsibility lies with the revenue authorities administering the tax concerned. Within the revenue administration, special units in charge of administrative fines and criminal matters (known in German as Bußgeld- und Strafsachenstellen) are responsible for investigating tax crimes and tax-related administrative offences (section 385 et seqq. of the Fiscal Code (Abgabenordnung)). When the revenue authorities conduct investigations into a tax crime, they assume the function of the public prosecutor's office, within the limits of their statutory powers. This is only the case, however, if the crime under investigation constitutes exclusively a tax crime. Moreover, the revenue authority may hand the criminal matter over to the public prosecutor's office; equally, the public prosecutor's office may take over the criminal matter at any time. The prosecution and punishment of tax-related administrative offences and tax crimes is the responsibility of the tax investigation units located in the Länder. The role of the tax investigation service is laid down in sections 208 and 404 of the Fiscal Code. Under section 208 subsection (1) of the Fiscal Code, the tax investigation service (customs investigation service) is charged with 1. investigating tax crimes and tax-related administrative offences, 2. determining the tax bases in the cases named in number 1 above, 3. detecting and investigating unknown tax cases. Under section 404 of the Fiscal Code, the customs investigations offices and the tax investigation units of the Länder revenue authorities as well as their officials have, with respect to criminal proceedings for tax crimes, the same rights and obligations as the police authorities and officers under the provisions of the Code of Criminal Procedure (Strafprozessordnung). This means that the customs investigation offices and the tax investigation units of the Länder revenue authorities may order confiscations, emergency sales, searches, inspections and other measures in accordance with the provisions of the Code of Criminal Procedure that apply to the public prosecutor's offices' investigators; they are also authorized to examine the papers of those affected by the search (section 110 subsection (1) of the Code of Criminal Procedure). In other words, their officials may act as investigators of the public prosecutor's office.
Greece	Independent Authority for Public Revenue (IAPR) is responsible for the prevention, detection and investigation of tax and other financial crimes. It includes the General Directorate of Tax Administration (tax administration) and the General Directorate of Customs and Excise (customs administration). The Directorate for Planning and for Evaluation of Audits and Investigations (DIPAEE) and the Services for Investigations and for Safeguarding of Public Revenue (YEDDE) are also part of the IAPR. The mission of Financial Police Division (FPD) is the prevention, investigation and combating of financial crimes, committed against the interests of the public sector and the national economy, especially, those showing characteristics of organized crime, undeclared or uninsured labour and tax evasion, even in cases that are not criminal offences. The Public prosecutors and the Financial Crime Prosecutor are the ones who initiate the criminal prosecution for tax offences after the filing of criminal reports by the Tax Administration Officers. Financial Intelligence Unit (FIU) is responsible for the collection, the investigation and the analysis of suspicious transactions reports (STR's) that are forwarded to it by legal entities and natural persons, under special obligation, as well as every other information that is related to the crimes of money laundering and terrorist financing and the source of funds investigation. Tax crimes are a predicate offence to money laundering and in this context the FIU conducts criminal investigation based on tax crimes.
Iceland	The Directorate of Tax Investigations (the DTI) in Iceland investigates violations of tax law and laws regarding other duties levied by the Directorate of Internal Revenue (the DIR) or with the enforcement of which the DIR is entrusted. In addition, the DTI investigates violations of the Accounting Act and the Financial Statements Act. Taxes or duties levied by other authorities than the DIR thus fall outside the scope of activity of the DTI.

	There are no sub-national agencies with competency in this area.
Indonesia	In Indonesia, Directorate General of Taxes (DGT), under Ministry of Finance, is responsible for collecting tax, administering tax affairs, and upholding the law in tax offences. DGT has a unit called Directorate of Law Enforcement designated specifically in dealing with tax offences. Three key roles of Directorate of Law Enforcement Administration are tax crime investigation, managing tax crime investigators throughout the nation, and providing supporting functions such as Digital Forensic and maintaining tax crime information databases. It was established in 2007. As of March 2016, a new unit was established for intelligence purposes. Included in that unit is the special unit for tax crime indication analysis. Before a taxpayer is being escalated to a tax crime investigation, the unit would run some background checking and data verification, in order to make sure that the indication leads to a tax crime being committed.
Italy	The *Agenzia delle Entrate* carries out the strategic functions of tax collection, assessment and investigation aimed at countering tax evasion, in relation to direct taxes and value added tax. In the course of undertaking these activities, if tax auditors uncover indications of possible tax crimes, they must report them to the public prosecutor. The public prosecutor may then start an investigation with the aid of the judicial police. If tax auditors uncover indications of suspicious financial operations, they must report this to the Financial Intelligence Unit (UIF). According to the Italian Criminal Law, the *Guardia di Finanza* is tasked with prevention, detection, and investigation of all kinds of tax crime violations, together with co-operation with the prosecutorial authorities. The *Guardia di Finanza* is the only organisation in Italy to take the role of both judicial police and tax police enabling it to conduct investigations of tax crimes using both judicial and civil powers.
Japan	The National Tax Agency (NTA), Japan's national tax administration, has criminal tax investigators, known as Sasatsukan, based in the Criminal Investigation Departments (CID) within the Regional Taxation Bureaus. The Criminal Investigations Division of the NTA Head Office supervises each CID in the Regional Tax Bureau.
Lithuania	Prosecuting authorities: The prosecutor organises and is in charge of the pre-trial investigation. Art. 170 of the Code of Criminal Procedure (CCP) provides for the right of the prosecutor to carry out the whole pre-trial investigation or separate actions thereof on his own. When the pre-trial investigation or the separate actions are carried out by the pre-trial investigation officers, the prosecutor controls the pre-trial investigation. The prosecutor gives the pre-trial investigation officers obligatory directions, and can revoke illegal or unjustified actions. It is the sole responsibility of the prosecutor to take the decision to join or separate the investigations, discontinue, terminate, re-open, and complete the pre-trial investigation and draw up the indictment, and, if necessary, approach the pre-trial investigation judge regarding the performance of activities which are under the competences of the particular judge. Tax crime (income tax and VAT) investigative authorities: The Financial Crime Investigation Service (FCIS) is a law enforcement body subordinate to the Ministry of the Interior, the purpose of which is to disclose and investigate offenses, other violations of law related to the financial system and the related crimes, as well as of other violations of law. The main tasks of the FCIS are: • to protect financial system of the state against criminal influence; • to ensure the detection and investigation of criminal acts and other offences related to the receipt and use of financial assistance of the EU Union and foreign states; • to detect and investigate crimes, other offences against the financial system, as well as the related crimes and other violations of law; • to carry out the prevention of crimes and other violations of law against the financial system and related offences. Police: The institutions under the auspices of the Police Department have specialised subdivisions which have as their objective to suppress, disclose and investigate crimes against economy, business order and financial system. Usually, financial crimes are investigated along with other crimes.
Luxembourg	Tax crime investigations in Luxembourg are conducted primarily by the Economic and Financial Department of the Grand-duchy Police under the supervision of a public prosecutor.
Malaysia	The agency is the Inland Revenue Board of Malaysia (IRBM). There is a specific unit which conducts criminal investigations. This is the Criminal Investigation Division of IRBM.
The Netherlands	The following organisations have responsibility for investigating tax offences: The Netherlands Tax and Customs Administration, NTCA (civil) The FIOD (Fiscal Information and Investigation Service) and the Public Prosecutor (criminal)
New Zealand	Inland Revenue Department has responsibility for investigating tax offences as well as civil tax administration. Money laundering, proceeds of crime, fraud and related offences are investigated by the New Zealand Police and Serious Fraud Office (and to some extent, Financial Markets Authority and Commerce Commission).

Norway	The tax administration is responsible for detecting and reporting suspected tax crimes. Other crimes are reported to the police. Economic control and combating financial crime is part of this task. The tax auditors function as advisers in criminal cases and some tax auditors are embedded within the police. The Public Prosecutor's Office prosecutes tax crimes and other crimes based on the outcome of police investigations.
Singapore	Specific officers of The Inland Revenue Authority of Singapore ("IRAS") are authorised to investigate tax crimes. Legally, the powers to investigate tax crimes rests with the Comptroller of the respective tax Acts (who in practice is also the Chief Executive Officer of the IRAS). The Comptroller is legally empowered to authorise specific officers to exercise the investigation powers.
Slovak Republic	The tax and customs offices and the Financial Directorate of the Slovak Republic have a specific role to play in relation to tax offences and tax evasion. The Criminal Office of the Financial Administration (KUFS) provides detection of tax evasion in the area of VAT and excise duties and investigations of tax offences in the area of excise duties as well as investigations of customs offenses. The police force performs tasks in matters of internal order, security and combating crime including the prevention, detection and investigation of criminal offences. The police force co-operates with other agencies in the detection of tax evasion, illicit financial transactions, money laundering and terrorist financing. Police investigations are carried out under the direction of the public prosecutor. They are authorised to use powers to conduct investigations and gather evidence for presentation in the criminal court by public prosecutor. The National Financial Police Unit (NAKA) and the National anti-corruption unit is responsible for detecting and investigating the most serious forms of criminal offenses against property and economic crimes where damage or gains of at least twenty-five thousand times minor damage under the Criminal Code (EUR 6 638 783) to which the scope is at the same time a Specialized Criminal Court. At the same time, the subject of the unit's activities is also suspicion of crimes showing elements of organized crime, with the identification of the participation of organized and criminal groups or the representation of persons from the environment of organized crime. In the Slovak Republic, the public prosecutor has the exclusive right and duty to prosecute all criminal offences. Within the Public Prosecutor's Office, a Special Department of Economic Crimes handles prosecutions of financial offences and crimes against property.
Slovenia	Key agencies responsible for investigation of criminal offences in the field of taxes in Slovenia are the Ministry of the Interior, Police and the Office of the State Prosecutor General of the Republic of Slovenia, Specialised State Prosecutor`s Office (SSPO). The Financial Administration of Republic of Slovenia (FARS) is responsible for investigations of administrative tax offences.
South Africa	The South African Revenue Service (SARS) is legally mandated to conduct criminal investigations into all criminal offences created under the Tax Administration Act and applies to all tax Acts whether indirect or direct taxes, excluding offences under the Customs and Excise Act. The National Agency responsible for combating all crime in general is the South African Police Service (SAPS). It has the legal competency (mandate) to investigate all crimes in terms of the legal conventions which recognises unlawful conduct as an offence including tax offences created under the tax Acts. The SARS is the only authority assigned the legal mandate to officially lay a criminal complaint with the SAPS in respect of a Serious Tax Offence (STO).
Spain	One of the functions of the *Agencia Tributaria* (AEAT)is to detect and investigate tax crimes and money laundering, whenever a tax crime is the predicate offence. Tax officers carry out enquiries aimed at checking the tax position of the examined person. At a certain point, when findings offer sufficient grounds, the cases are referred to the public prosecutor or directly to the courts. In this second stage the investigation is completed by an examining judge. His or her final decision will be either that the case should go for trial (presided over by a different judge or a panel of judges) or, otherwise, waive criminal charges. In terms of direct taxes, there is no strict rule of assigning cases that might develop into tax crimes investigations to specialised units in preference to other units or teams. However, specialisation of tax auditing units and the growing weight of tax investigations has led to a situation where files that have the potential to become tax crime investigations are predominantly handled by some specific units distributed throughout the jurisdiction. Judges in charge of a criminal investigation can request the *Agencia Tributaria* to assist them with the investigation, contributing their specialist skills, knowledge and experience.
Sweden	The Swedish Economic Crime Authority (SECA) is a national prosecuting authority where prosecutors, police officers, economic auditors and other experts work together in investigation teams, co-operating with tax fraud investigators at the Tax Fraud Investigation Unit (TFIU) within the Swedish Tax Agency (STA). The main duties of the tax fraud investigators are to investigate tax fraud following the instruction of the prosecutors.
Switzerland	In respect of direct tax, the responsibility lies with different agencies depending on whether the issue is tax evasion or tax fraud. For tax evasion, the Cantonal tax authorities have responsibility for investigation and penal decisions. The Federal tax administration, division for penal affairs and investigations, ("DPAI") conducts investigations exceptionally in cases of heavy tax

	evasion and/or tax fraud, however the penal decisions remain with cantonal tax administration. For tax fraud, the Cantonal prosecutor is responsible. In respect of indirect taxes, the Federal tax administration (DPAI) is responsible for investigation and penal decisions.
United Kingdom	Her Majesty's Revenue & Customs (HMRC) is the United Kingdom's tax, payments and customs authority. HMRC is responsible for investigating crime involving the taxes, duties and other regimes it is responsible for. Within HMRC the Fraud Investigation Service is the directorate that investigates criminal offences.
United States	The Internal Revenue Service (IRS) is the sole agency responsible for federal tax administration. The Internal Revenue Service – Criminal Investigation (IRS – CI) is the unit within the IRS that has statutory authority to investigate criminal violations of the Internal Revenue Code. In the United States, states that have state income tax have their own state tax authority that handles the respective state's tax administration. Data from the state tax authority were excluded from this report.

Fighting Tax Crime:
THE TEN GLOBAL PRINCIPLES

The OECD's Task Force on Tax Crimes and Other Crimes (TFTC) has a mandate to improve co-operation between tax and law enforcement agencies, including anti-corruption and anti-money laundering authorities, to counter financial crimes more effectively. The TFTC's work is carried out in connection with the OECD's Oslo Dialogue, a whole of government approach to tackling tax crimes and other financial crimes.

Fighting Tax Crime: The Ten Global Principles sets out the 10 essential principles for effectively fighting tax crimes. It covers the legal, institutional, administrative, and operational aspects necessary for putting in place an efficient system for fighting tax crimes and other financial crimes. It draws on the insights and experience of jurisdictions around the world.

The purpose is to allow jurisdictions to benchmark their legal and operational framework, and identify areas where improvements can be made. Future work in this area will include adding country specific details, covering a wide range of countries.

For more information:
www.oecd.org/tax/crime

OECD
BETTER POLICIES FOR BETTER LIVES