GLOBAL REPORT
SEPTEMBER 2020

Enhancing Government Effectiveness and Transparency

The Fight Against Corruption

WORLD BANK GROUP

Enhancing Government Effectiveness and Transparency

The Fight Against Corruption

GLOBAL REPORT
SEPTEMBER 2020

Enhancing Government Effectiveness and Transparency

The Fight Against Corruption

Table of Contents

CHAPTER 10

Exchange and Collaboration with Tax Administrations

Corruption is intrinsically linked to tax crimes, as corrupt persons do not report their income from corrupt activities for tax purposes. The Financial Action Task Force (FATF) includes tax crimes in the set of designated predicate offenses for money laundering purposes, explicitly recognizing the linkages between tax crimes and money laundering. Moreover, the extensive level of corruption related to tax has serious implications for government revenues and thus economic development, as indicated in Box 10.1.

Inter-agency collaboration strengthens the efforts of tax administrations to combat corruption. In its 2010[1] recommendations, the OECD advocated greater cooperation and better information sharing between different government agencies active in the fight against financial crimes both domestically and internationally. Agencies, including financial intelligence units (FIUs), anti-corruption units, police, customs authorities, and the public prosecutor's office are also involved in countering corruption. While most of the administration for prosecuting tax crimes related to corruption can be undertaken by tax authorities, they often require support in the form of information sourcing or expertise from other agencies who are also combating corruption. Entering into inter-agency collaboration may substantially enhance the efforts of a tax administration and other agencies combating corruption. Guidance on how this can be achieved is given in Case Study 20, along with references from Africa and other regions of the world.

Investigating and prosecuting alleged corruption requires robust evidence, which is often scattered across agencies that are accustomed to working independently. Data sharing is an initial gateway for collaboration. In general, inter-agency cooperation between tax administration, financial intelligence units (FIUs), financial institutions, anti-corruption authorities, and other enforcement agencies can strengthen efforts to uncover cases of corruption through the sharing of information. The variety of expertise, skills, knowledge and experience offered by cooperation, not only provides joint teams with significant resources, but it also ensures that all offenses are properly identified, investigated and prosecuted. As the OECD has noted, many countries are looking at ways to enhance inter-agency cooperation so that they are working toward a common goal.[2]

There are multiple benefits that can be gained from a joint effort to prosecute tax evasion and other financial crimes including:

- Ensuring evidentiary standards are met for all charges through cooperation with the prosecuting authority;
- Access to mutual legal assistance from foreign law enforcement agencies;
- Access to specialized tribunals, including tax tribunals and anti-corruption tribunals, giving rise to a greater likelihood of success where the judicial process may take more time; and
- Prevention of any duplication of effort and any likelihood of compromising the actions of one agency.

Case Study 21 explores the basic requirements for effective prosecutions of financial crimes, the role of the tax administrations, and the limitations that must be overcome for them to happen. Experiences are highlighted from South Africa and Brazil.

BOX 10.1

The Extent of Corruption

"...in countries perceived to be less corrupt; the least corrupt governments collect 4 percent of GDP more in taxes than those at the same level of economic development with the highest levels of corruption.....and if all countries were to reduce corruption in a similar way, they could gain $1 trillion in lost tax revenues, or 1.25 percent of global GDP " - **IMF**

CASE STUDY 20

EXCHANGE AND COLLABORATION WITH TAX ADMINISTRATIONS

Inter-agency Collaboration to Detect Corruption

Introduction

The ability of a tax administration to share relevant information is often a key indicator of its effectiveness to proactively identify risks pertinent to its mandate. This requires mechanisms to ensure that law enforcement and other tax authorities have full access to accurate and up-to-date information. If adequately planned, inter-agency collaboration is one of the ways to combat corruption. From the perspective of developing countries, the limited capacity of tax administrations could be in part overcome in cooperation with other law enforcement agencies.

Challenges encountered by tax administrations, customs, FIUs and other agencies

Challenges to effective cooperation between tax administration and other law enforcement agencies responsible for combating corruption and other financial crimes include the following:

- ***Administrative challenges:*** traditionally, the obstacles to coordination between government agencies stem from fundamental cultural differences and motivations of different agencies. These include issues such as:
  - » lack of interoperability among different IT systems, lack of secure email systems resulting in inability to send high-security material and widely differing software capabilities resulting in information transfer capacity limitations;
  - » each agency seeking to preserve its independence and autonomy;
  - » difficulty in synchronizing and coordinating organizational procedures and working approach;
  - » different organizational objectives among collaborating agencies;
  - » constituents bringing different expectations and pressures to bear on each agency;
  - » questions of who claims success for successful prosecutions; and
  - » the time period for pursuing cases.
- ***Legal challenges:*** these include specific restrictions and prohibitions, which may prevent an agency from obtaining access to relevant information from counterparty agencies.
- ***Operational barriers:*** these include time-consuming or complicated procedures for obtaining information from another agency, a lack of awareness of the availability of information or other mechanisms for cooperation.
- ***Political challenges:*** these include a lack of support for agencies to adopt the changes required to remove or reduce legal and operational barriers.

Models for sharing information

A study by OECD on inter-agency cooperation identifies the following four types of cooperation among different agencies:[3]

1. ***Direct access to records and databases***
   Tax authorities or other law enforcement agencies involved in investigating and prosecuting financial crimes may grant direct access to their records and information stored on their databases to designated individuals within other agencies or tax authorities. This access may be for a wide range of purposes or restricted to specific cases or circumstances. Direct access has the advantage that an agency requiring information can search for the information directly and, in many cases, can obtain it in real time. For example, in Iceland, tax crime investigators within the Directorate of Tax Investigations have direct access to databases held by the tax administration. However, allowing direct access carries the risk of access to data for purposes other than those for which it was initially contemplated. Countries may, therefore, seek to introduce safeguards to protect the confidentiality of sensitive information, by taking measures such as restricting access to databases to a few nominated individuals and maintaining access logs.

2. ***Mandatory sharing of information***
   An agency may be required to provide specific categories of information spontaneously, without requiring a request to be made. It has the advantage that officials within the agency holding the information identify what is to be shared, and they are likely to have a greater understanding of the information in their records. However, for this to be effective, an agency must have clear rules and procedures in place to identify the information that must be shared. Spontaneous sharing may be straightforward where an obligation exists to provide all information of a particular class, but it is more complicated where the exercise of judgement must be made to identify information that would be relevant to an investigation. Further, by itself, this method does not allow officials investigating to specify the information required. However, it may facilitate the detection of previously unknown criminal activity.

3. ***Spontaneous sharing of information***
   An agency may have the ability to provide specific categories of information spontaneously but can exercise its discretion in deciding whether to do so. Where this operates well, it can be at least as effective as the previous method. Information is shared spontaneously, but officials in the agency holding the data can exercise their judgement as to what to share. This model is particularly useful when it is backed by close cooperative working arrangements and a good understanding by officials in each agency of the information requirements of the other agencies. Models for information sharing that allow discretion to be exercised require clear rules for how this is to be done. For example, decisions as to whether or not relevant information is to be shared may be limited to individuals in certain positions or levels of management. At the same time, guidelines may set out the factors that can be taken into account in making a decision. The effectiveness of this type of legal gateway is also based on the ability of officials to identify relevant information and their willingness to exercise discretion to provide information. However, where there is no previous experience of inter-agency cooperation, the benefits to both agencies of sharing information must be made clear, or there may be a danger that officials exercise their discretion and choose not to share valuable intelligence.

4. ***Sharing information on request***
   An agency may provide information only when specifically requested. This may be seen as the simplest of the four methods for sharing information, as there is less need for rules or mechanisms to identify information for sharing or provide access to records. It also has the advantage of allowing officials to specify precisely the information they require. In the context of an ongoing transaction where investigators have identified specific necessary information, this can be a valuable mechanism. However, in many cases, an agency may hold information that an investigator is not aware of. This may mean that the investigator is unable to request information or is only able to do so at a later stage when the value of the information may be reduced.

Successful practices

Several countries have introduced different models or operational mechanisms to allow agencies to work together in lieu of "legal gateways." All countries assessed by the OECD[4] have legal gateways in place to allow tax administrations to share information collected for the purpose of a civil tax audit or assessment with agencies conducting tax crime investigations and with the customs administration.[5] However, in many countries, FIUs, the police or the public prosecutor are not obliged to report information to the tax administration to evaluate taxes, and vice versa. **Belgium** and **Korea** explicitly prohibit the tax administration from sharing information related to non-tax crimes.[6] Fourteen countries assessed by the OECD prohibit the FIUs from obtaining tax information from the tax authority.[7] Thus, despite the legal gateways to enable information sharing amongst agencies, some countries have introduced different models or operational mechanisms to facilitate collaboration between agencies.

A whole-of-government approach can be particularly effective. Different government agencies collect and hold information on individuals, corporations and transactions, which can be directly related to the activities of other agencies in combating financial crime and tax evasion, including money generated from corruption. To be effective, a tax administration should establish cooperation with these law enforcement agencies, building a "whole of government approach" to improve the prevention and detection of financial offenses, leading to faster and more successful prosecutions, and increasing the probability of the recovery of the proceeds of corruption.[8] For example, **Canada** has established a whole-of-government working group, which includes the Canada Revenue Agency, the Public Prosecution Service of Canada, the Department of Justice, the Canada Border Services Agency, FINTRAC, the Royal Canadian Mounted Police and Public Safety Canada.[9] In the working group, Canada's response to financial crime at large is discussed and opportunities to increase effectiveness are raised and studied, often resulting in recommendations for policy or legislative changes.

Information sharing has to be balanced with confidentiality and the right to privacy. Right to privacy, coupled with confidentiality requirements can also have an impact on the information sharing between the tax administration and other law enforcement agencies. Different agencies share information under all types of cooperation. It is, however, critical to protect the confidentiality associated with the information in addition to the integrity of work carried out by other agencies. **Sweden** has enacted a new Data Disclosure Act, which provides for greater cooperation in tackling organized crime.[10] The law aims to facilitate the exchange of information between authorities that cooperate to prevent or detect certain forms of crime. The information sharing and data disclosure is limited to cases where the need for an effective exchange of information is particularly strong and grounds for the protection of privacy do not prevail over the benefits of disclosing information. Also, the information shared between agencies through legal gateways is at all times required to comply with the provisions of the Secrecy Act.

Each country must design its own tailor-made model for inter-agency cooperation. The international community has recognized the value of inter-agency cooperation. Many developed countries have initiated special programs based on inter-agency cooperation as an effective and efficient way of preventing, detecting, tracking and prosecuting corruption. A country should take into account its specific needs, the legal and organizational structure it has adopted and the particular risks that it faces in designing an appropriate model for inter-agency cooperation.

Finland has adopted a centralized approach for combating the grey economy.[11] It has established the Grey Economy Information Unit (GEIU) to promote the fight against the shadow economy by producing and disseminating reports about grey economy activities and how they may be controlled. The GEIU is a division of the Finland tax administration specifically established to work closely with other government agencies. It collects information from different government agencies regardless of existing confidentiality provisions. In preparing reports about grey economic activities, the GEIU has the right to receive, on request, necessary information held by other authorities, even where that information would not normally be available to the tax administration due to secrecy provisions.

The Netherlands has opted for a cooperative approach for tackling money laundering.[12] It has established the Financial Expertise Centre (FEC), which is a joint project between the National Tax and Customs Administration (NTCA), the Fiscal Intelligence and Investigation Service (which is structurally part of

the NTCA), the National Police, the General Intelligence and Security Service, the Public Prosecution Service, the Netherlands Financial Markets Authority, De Nederlandsche Bank, and the Ministry of Finance and Ministry of Security and Justice (who are involved in regulating and monitoring activity in the financial sector). The mission of the FEC is to monitor and strengthen the integrity of the financial sector, and tackle issues of financial integrity through inter-agency cooperation. This entails sharing information.

Giving tax administrations access to suspicious transaction reports (STRs) would be beneficial in the fight against corruption. In many countries, there is no obligation on the police, public prosecutor or FIU to report information to the tax administration. In addition, many countries do not have legislation to allow the tax administration access to STRs. Allowing such access will have several benefits, including an improvement in the detection of money laundering offenses and proceeds from corruption, greater success in tax crime investigations and prosecutions, and an increase in the actual quantity of tax assessed and recovery of the proceeds of crime. Further, access by FIU to other information held by the tax administration, such as declared income, tax payments, real estate as well as other property, cross-border financial transactions, and the results of tax audits, will help to detect corruption, though this has not yet been widely implemented.

In Italy, the FIU has direct access to the Account and Deposit Register (*Anagrafe dei Conti*) maintained by the tax administration.[13] The Account and Deposit Register includes information on accounts and financial transactions carried out by financial intermediaries, including banks, trust companies, brokerage companies and post offices. Legislation has also been passed, which allows the FIU direct access to the Tax Register *(Anagrafe Tributaria)*. Further, tax officials must report to the FIU any suspicious transactions they encounter in the course of their work.

Other examples of information sharing include:

- **Estonia:**[14] The police and the Tax and Customs Board share information through a common intelligence database.

- **Iceland:**[15] Directorate of tax investigations conducting tax crime investigations has direct access to information contained in police databases.

- **Serbia:**[16] All state authorities and organizations, bodies of territorial autonomy and local government are required to report spontaneously to the tax administration all facts and information detected in the performance of their duties that are relevant to the assessment of tax liability.

Inter-agency cooperation is increasing across the globe

The concept of inter-agency cooperation is widespread among EU countries. One such initiative is the establishment of the **Croatian** State Prosecutor's Office for the Suppression of Organized Crime and Corruption. This is a Croatian Agency, supervised by the state attorney's office but which also cooperates with the tax administration.[17] Similarly, the **Czech Republic** has established Tax Cobra, a cooperation of police, customs, and finance administration.[18] Using smart technology to triangulate data shared by agencies would make dissemination even more effective.

In Southeast Asia, Malaysia has established the National Revenue Recovery Enforcement Team (NRRET) to improve cooperation between law enforcement agencies.[19] The NRRET, which is headed by the Attorney General, is an inter-agency initiative aimed at fighting tax crimes and other financial crimes. Its members include the tax administration, Company Commission Malaysia, Central Bank of Malaysia, Malaysian Anti-Corruption Commission and Royal Customs Department. Its role is to improve cooperation between law enforcement agencies to ensure a holistic approach to development, good governance, and combating corruption, as well as to assist agencies in fighting financial crimes. The NRRET also monitors the sharing of information and planning of joint operations among law enforcement agencies in high profile cases.

In South Asia, India has set up the Economic Intelligence Council (EIC), which acts as the main body to ensure coordination among various agencies.[20] The EIC meets twice a year and holds extraordinary meetings as and when considered necessary. The EIC is mandated to discuss multiple aspects of intelligence relating to economic security and to develop a strategy for the effective collection and collation of intelligence and its dissemination to various law enforcement agencies. It reviews crucial

cases involving inter-agency coordination and approves mechanisms for improving such coordination. As far as sharing of information among multiple agencies is concerned, the EIC generally performs this through the meetings of its Regional Economic Intelligence Councils (REICs).

Recommendations

- ***Establish a bilateral agreement or memorandum of understanding (MOU) to share information between the tax administration and agencies involved in detecting and preventing corruption.*** This ensures a clear legal framework for any information sharing with the agencies concerned. MOUs 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 (e.g., the information may only be used for specified purposes). It may also include other terms agreed by the agencies, such as the format of any request for information, details of competent officials authorized to deal with requests, agreed notice periods and time limits, and a requirement for the agency receiving information to provide feedback on the results of investigations in which the information was used. For example, in **New Zealand**, based on an information sharing agreement between the Inland Revenue and the New Zealand Police, the tax administration can share information with the police for the prevention, detection or investigation of a serious crime, or for use as evidence of a serious crime. The Inland Revenue of New Zealand can also share taxpayer information with the police or other agencies in cases related to the administration of taxation, investigation of tax crimes, and the facilitation of asset recovery.

- ***Establish a national task force.*** The task force should be responsible for the timely collection and dissemination of relevant information to concerned agencies and for developing a framework that enables it to examine specific cases. This will help to identify a number of areas for further investigation across the full range of tax and economic crimes.

- ***Ensure connectivity between agency databases.*** Lack of interconnectivity of databases of different government agencies is the biggest issue faced while sharing information with different agencies tackling corruption. Blockchain technology may be an appropriate platform for developing a common database system accessible to the agencies concerned. The Blockchain system may also facilitate the consolidation of information received by more easily identifying transactions undertaken by the same entity but reported by different companies/individuals.[21] The **United States** Air Force is currently planning to test a Blockchain based database that will allow it to share documents internally as well as throughout the various branches of the Department of Defense and allied governments.[22]

- ***Review limitations in tax treaties on the sharing of information with non-tax departments.*** This can help in removing barriers to information sharing.

- ***Conduct capacity building exercises to develop a culture of cooperation with different agencies working together.*** For example, setting up joint task forces or seconding personnel to different agencies to work together is an effective way of enabling skills to be transferred while allowing personnel to build contacts with their counterparts in another agency.

- ***Establish a system that balances the sharing of information with confidentiality.*** A suitable system is one where the information can be shared only in cases where the need for an effective exchange of information is particularly strong and grounds for the protection of privacy do not prevail over the benefits of disclosing information. This helps to overcome the intense concerns about privacy and potential lack of trust among agencies.

Example 1: Kenya's success with inter-agency cooperation to obtain and use data

Despite the myriad of laws in place to combat corruption, Kenya ranked 145th (out of 176 countries) on Transparency International's Corruption Perceptions Index in 2016. To deal with the corruption, Uhuru Kenyatta, the President of Kenya in 2016, directed the

Office of the Attorney General and the Department of Justice to undertake a thorough review of the legal, policy, and institutional framework for fighting corruption in Kenya. A taskforce[23] was formed to oversee the whole process, drawing its membership from all ministries, departments, and agencies charged with fighting corruption in Kenya. One notable issue identified by the taskforce was the lack of proper coordination among agencies, resulting in duplication of effort. Combating corruption was an uphill task due to the lack of a coordinated framework for reporting corruption, information gathering, intelligence sharing, and cooperation in investigation, among other areas.

The birth of the multi-agency team

To tackle corruption and other economic crimes, Kenya established a multi-agency team (MAT)[24] to ensure cooperation and synergies among a number of agencies involved in combating corruption. The MAT was composed of the Kenya Revenue Authority; Ethics and Anti-corruption Commission (EACC); Office of the Director of Public Prosecutions; Directorate of Criminal Investigations; National Intelligence Service; Financial Reporting Centre; Asset Recovery Agency; and Office of the President.

Terms of reference of the MAT

The MAT's terms of reference were:[25]

- To enhance cooperation, coordination and collaboration among the agencies;
- To engage other relevant agencies in order to enhance the effectiveness of the graft war;
- To identify resource needs for each agency and lobby for the same; and
- To develop effective communication strategies for awareness creation on the gains and achievements made in the fight against corruption.

Successes of the MAT

MAT has been successful in enhancing cooperation and collaboration amongst the agencies and in providing real-time information gathering and intelligence sharing. As of October 2016, Kenya had 406 corruption and economic crime cases pending in court. Out of these, 98 involved high-profile personalities such as cabinet secretaries, members of parliament, and chief executive officers of parastatals and state agencies. Kenya secured several convictions with various penalties, including imprisonment, mandatory fines, and restitution of property. One of the celebrated convictions involved a former member of parliament who was found guilty of 9 corruption counts relating to the loss of KSh4.5 million; the member of parliament, her husband, and 4 others were convicted and sentenced to payment of KSh24.95 million (about USD2.495 million) and 18 years imprisonment.[26] In respect to asset recovery, Kenya has so far traced and recovered assets worth KSh9.8 billion between 2005 and 2016. In March 2017, the President reported that approximately KSh3 billion had been recovered or preserved. As of November 16, 2016, there were 174 civil cases pending in court for recovery of illegally acquired assets worth KSh3 billion.[27] Further, in one interview, the EACC CEO Twalib Mbarak[28] revealed that "there are numerous governors, MPs, and county officials and top government officials on its radar."

Challenges identified

Despite some great successes, MAT has faced a number of challenges:

- The biggest challenge is the lack of legality of some of MAT's operations, which have been challenged in the courts.
- Archaic court procedures with respect to acceptance of documentary evidence, which required the originator of the evidence to appear before the court, and at times injunctions that derailed the prosecution, have made the work of MAT difficult.[29]
- Politicization of the cases against high-ranked politicians has led to claims that MAT is discriminating against or favoring someone in the war on corruption.[30]
- Public awareness about the need for transparency is poor.

Lessons learned

MAT has been largely successful in prosecuting corruption and recovering assets. Some of the lessons learned are:

- Individual institutions face capacity constraints and combining the collective expertise and information pool certainly helps in combating corruption.
- A central depository for data is needed, not only on asset recovery but also for economic crimes and corruption-related cases.
- The capacity of officers needs to be built continuously through training and cooperation with other similar bodies.

Example 2: Nigeria's challenges in achieving inter-agency cooperation to obtain and use data

Nigeria is an interesting example of an African country where lack of effective inter-agency cooperation is responsible for inefficiency in detecting and prosecuting corruption. Until 1999, Nigeria was under military rule. In 1999, the former military head of state, Olusegun Obasanjo, was elected as a civilian president on the platform of addressing corruption. In 2015, Muhammadu Buhari (current President re-elected in 2019), from the All Progressive Congress, won the election on a platform where the fight against corruption featured prominently. Upon assuming office, he established the Presidential Advisory Committee on Anti-Corruption. Over the years, Nigeria established a range of anti-corruption institutions to address various aspects of the fight against corruption. These include the following key agencies:[31]

- ***Institutions addressing corruption in public procurement:*** Bureau of Public Procurement; Code of Conduct Bureau; and Code of Conduct Tribunal;
- ***Institutions dealing with law enforcement:*** Economic and Financial Crimes Commission; Nigerian Financial Intelligence Unit; Independent Corrupt Practices (and other Related Offenses) Commission; Special Control Unit on Money Laundering; and
- ***Institutions dealing with public complaints, public information and government policy coordination:*** Presidential Advisory Committee against Corruption; Public Complaints Commission; Technical Unit on Governance and Anti-Corruption Reform/Inter-Agency Task Team, Bureau of Public Service Reform.

The government also established a National Anti-Corruption Strategy and Action Plan for the period 2017–2021. Despite having multiple regulatory agencies, including the tax authority, the nation still ranked 144th (out of 180 countries) on Transparency International's Corruption Perceptions Index[32] and continues to grapple with corruption scandals amid calls for fiscal transparency and accountability in governance.

The situation may be the result of not only the inadequate capacities of existing institutions but also the lack of a coordinated approach and undue rivalry among the anti-corruption agencies, including the tax authorities. Some government departments were unwilling to share information and some responsibilities between agencies were duplicated.[33] Also, most government systems are manual and therefore, retrieval of information becomes difficult. This situation has proved to be counter-productive, resulting in a string of losses of cases brought against high-profile suspects. In what counted as a major setback to the government, cases against Mike Ozekhome, a Senior Advocate of Nigeria (SAN)[34]; Joe Agi, also a SAN; and Adeniyi Ademola, a Justice of the Federal High Court; and his wife, Olubowale, were all dismissed within a few days. In most of the cases, the judges cited lack of convincing prosecution.[35]

Lessons learned

A number of lessons can be drawn for countries moving in a similar direction:

- Recognize the need for a clear policy and legal framework for cooperation;
- Develop a common technology platform to collect information and ensure interconnectivity of databases;
- Undertake capacity building exercises to train personnel on sharing information and building a culture of cooperation; and
- Establish a national agency responsible for overseeing the sharing of information between different agencies.

CASE STUDY 21

EXCHANGE AND COLLABORATION WITH TAX ADMINISTRATIONS

Sharing Evidence with Joint Prosecution Teams

Introduction

The basic requirements for effective prosecutions

Investigating and prosecuting suspected perpetrators of corruption is very time-consuming and requires collaboration, expertise and knowledge of the law. The process of detecting and proving corruption, fraud, tax evasion and other financial crimes requires many hours of work, specialized expertise and sometimes expensive software or surveillance equipment.[36] Inter-agency cooperation between revenue authorities, financial intelligence units (FIUs) and other law enforcement agencies can be a force multiplier, offering additional resources, expertise, and legal tools.[37] Effective cooperation can provide "critical cover in politically sensitive cases", that can support law enforcement agencies to counteract any political risks.[38] In order to successfully meet the objective of prosecuting a suspect, Joint Investigation Teams must operate within the confines of the law, set a strong terms of reference determining the scope and role of each agency, and ensure timely action.

The successful prosecution of corruption and other financial crimes entails cooperation among agencies with varying institutional cultures and differing scopes and objectives. The level of cooperation between tax administrations and other domestic law enforcement agencies is critical in countering tax and financial crimes.[39] Whilst there are several limitations on the scope of cooperation, opportunities exist in the form of existing cooperation models, the use of task forces and joint centers, and in applying international best practices.[40]

Tax administrations have a key role to play in addressing serious crime. They are granted access to and are highly trained in examining the financial affairs, transactions, and records of millions of individuals and entities.[41] Alongside examining the affairs of taxpayers, tax authorities are enabled by law to issue demand notices requesting the payment of outstanding taxes and pursue payment through specialized tax tribunals or through mediation efforts with the taxpayer. However, tax administrators are not always aware, especially in developing countries, either of the typical indicators of possible bribery, corruption, and other financial crimes not related to tax, or of their role in referring their suspicions to the appropriate law enforcement authority or public prosecutor.[42] For this reason, as well as the way that key data is spread across various agencies, inter-agency cooperation to share information, investigate alleged financial crimes and, ultimately, prosecute is imperative.

The different agencies need to be able to share information effectively while abiding by data protection rules. Some of the agencies involved may include the police, judiciary, public prosecutors, corruption investigation agencies, and financial intelligence units (FIUs). Each of these agencies/institutions will already have some appreciation of the links between their functions and mandates in tackling financial crime.[43] In the course of their activities, the different agencies will collect and hold information on individuals, corporations, and transactions, which may be directly relevant to the activities of other agencies. However, legal gateways will need to be established to enable the sharing of information.[44] This will often be defined by domestic law and limited by regulatory restrictions governing the collection and use of information (e.g. General Data Protection Rules

in the EU).[45] This requires balancing data protection rights with inter-agency sharing of information. It is important to protect the confidentiality of information and the integrity of the mandate being fulfilled by each agency.[46]

Tax tribunals with less strict rules of evidence are an alternative to legal action. The decision to prosecute will generally be anchored on access to lawfully obtained information (particularly regarding the rules of evidence), which is collected and shared between agencies through a mandated process. The collection and sharing of information for purposes of prosecution can only be successful if relevant agencies utilize their technical capacities to identify a financial crime, the appropriate avenue for scrutinizing that crime and the agency entitled to initiate action. Selecting the correct agency is especially important for tax administrators since tax evasion cases may be prosecuted by tax authorities in specialized tax tribunals. From time to time, the tax authority may negotiate with the taxpayer to recover revenues, especially where the chances of a successful legal action are low. Specialized tax tribunals often have less stringent rules of evidence and may be preferred where evidence has not been handled in line with strict rules of evidence. In addition, where a legal action has little chance of success, the tax authority may, at least, recover some revenue from the income generated by that asset.

The capacity to investigate may not always translate into a capacity to prosecute. Investigation involves analyzing significant volumes of financial, banking, and accounting documents, including tax or customs records in order to identify illegal schemes, follow the money and gather financial intelligence.[47] Prosecution will require similar expertise, but will also require gathering and presenting evidence for confiscation, seeking judicial authorization for specialized investigation tools and presenting the case to the court.[48]

The role of tax administration and limitations to joint prosecution

In many countries, the limitations imposed on the tax authority's ability to obtain information from other agencies pose a significant challenge to an effective prosecution. The ability to share information for purposes of inter-agency cooperation in prosecuting a financial crime is often dependent on the enabling framework in a country. In general, for purposes of prosecution it is imperative that the agreement to cooperate is implemented in accordance with the enabling provisions of the law. Countries can and have modified their laws to enable them to get better access to information. Some of the methods of cooperation include direct access to information contained in agency records or databases; an obligation or ability to provide information spontaneously; and an obligation or ability to provide information only on request.[49]

Based on a review of 51 countries, the OECD found that some countries had barriers to the ability of tax administrations to share information with the police or public prosecutors in non-tax investigations. In 15 countries, there was no legal obligation to report suspicions of serious non-tax offenses to the relevant authorities. In two countries, the tax administration was specifically prohibited from doing so.[50] Mixed abilities to share tax information with the FIU were found, together with the prohibition in two countries from sharing with the authority responsible for conducting corruption investigations.[51] In contrast, customs administrations, due to their role in countering illicit trade, were mostly allowed to share information with the police or public prosecutors investigating non-tax offenses, and seven countries[52] even permitted direct access to customs information.[53] Notably, in almost all countries, legal gateways permit (not obligate) the police or public prosecutor to provide information to the tax administration for purposes of administering taxes and, generally, enable sharing with the FIU.[54] Overall, while all other agencies that tend to be involved in the prosecution of a financial crime were permitted to share information with the police or public prosecutor, the limitation on tax administrations and the lack of an obligation for the police and public prosecutors to share relevant information are likely to impede an effective prosecution.

Tax administrations hold a wealth of personal and company information that is a valuable source of intelligence for other agencies tasked with identifying financial crimes.[55] Such information relates to income, assets, financial transactions and banking information, among others. Tax agencies are enabled to engage in exchange of information on request (EOIR), spontaneous exchange of information or automatic exchange of information (AEOI) for tax

purposes on the basis of either tax treaties, or Tax Information Exchange Agreements (TIEA). AEOI and EOIR provide tax authorities with a framework to request and obtain specific information relating to a taxpayer in a foreign jurisdiction; this information can be used to carry out a risk assessment and/or trigger a tax investigation.[56] This may be beneficial to other law enforcement agencies investigating a financial crime. However, there are limitations on the sharing of information. For instance, tax authorities should refrain from engaging in fishing expeditions or requesting information that is not likely to be relevant to the tax affairs of a taxpayer.[57] In addition, the information received must be treated with proper confidence and can only be shared with authorities involved in the assessment, collection, enforcement or prosecution of a tax related offense.[58] Information can be exchanged with other law enforcement agencies where money laundering, corruption and terrorism financing may be concerned, but the supplying jurisdiction must be informed and authorize this.[59]

Since the proceeds or tools of corruption will often involve the use of other jurisdictions, exchange of information between tax authorities can prove advantageous to an inter-agency initiative to prosecute. Where gathering evidence will require the cooperation of foreign authorities, mutual legal assistance can be key, particularly where prosecution is concerned, in executing proceedings or extradition.[60] Mutual legal assistance can be provided via agreements between countries, the UN Convention against Corruption (UNCAC), or on the basis of reciprocity where no agreement exists. In Asia and the Pacific, some of the barriers to effective international legal assistance include the lack of legal basis for cooperation, differences in legal and procedural frameworks, language barriers, resource limitations and evidentiary issues.[61] In addition, a relationship of trust combined with a strong and clear request for assistance was found to be key in enhancing mutual legal assistance.[62] Other agencies can provide tax administrations with important information about ongoing or completed investigations that could influence the reopening of a tax assessment or initiate a tax crime investigation.[63]

In the Brazilian *Petrobras* investigation, tax auditors supported the transnational corruption investigation by analyzing suspects' tax and customs data and sharing this with the police and public prosecutor as permitted by law.[64] With that information, officials were able to uncover evidence of money laundering, tax evasion and hidden assets and the investigation has, so far, resulted in criminal fines, tax penalties and recovered assets amounting to USD15 billion and 1,400 years in prison sentences.[65] Brazil's National Strategy to Combat Corruption and Money Laundering (ENCCLA) was set up as an inter-agency organization to fight money laundering and corruption through coordination and joint policy making among public officials.[66]

Criminal investigations can be affected by a country's limitation on the tax authority's sharing of information. Where criminal prosecutions are concerned, the tax administration is often able to ensure that individuals and companies are required to pay tax on all of their income. This includes income derived from criminal activities, on which the tax administration can deny a deduction for expenses.[67] However, in the event that information valuable to a criminal investigation is uncovered in a country that can limit the ability of tax administrations to share information, there is a likelihood that some elements of a financial crime may go undetected. In addition, where the tax administration may be limited from taxing the direct proceeds of a crime, cooperation with other law enforcement agencies could provide an avenue for alternative charges to be brought against a suspect.

A joint prosecution must be carried out within the confines and structures of the law, which can make prosecutions more difficult. For instance, if the law provides that information obtained from the tax administration may be used for investigative purposes but not as evidence in proceedings, this would present a barrier to successful prosecution.[68] Some laws may require that a formal criminal procedure is initiated under the authority of a public prosecutor or a court order obtained before an anti-corruption authority may receive tax information.[69] Although this ensures an important balancing with protecting personal or confidential information, it may delay and increase the costs of the process. Countries should introduce laws to streamline this process and adapt the legal framework to enable sharing of information for purposes of providing evidence in a formal case.

Globally, jurisdictions apply different frameworks for prosecution of tax and financial crimes. Some countries, such as Burkina Faso and Mexico, have a central prosecution authority that is also responsible for criminal investigations, whilst others do not involve public prosecutors in the investigations that will be

carried out by the police or specialized agencies.[70] In several countries, including New Zealand and Nigeria, law enforcement agencies, including the police, tax administrations or anti-corruption authorities, may prosecute cases directly.[71] In a number of jurisdictions, for example Ghana, Rwanda, and Malaysia, public prosecutors responsible for the prosecution of a financial crime may either have the authority to delegate performance of significant elements of an investigation to a number of the agencies identified above, or they may not participate at all in the investigation process.[72]

Tax administrations generally carry out a separate process of prosecuting tax-related cases through specialized tax courts or tribunals, which are found in most developed and developing countries. In most jurisdictions, the enforcement of taxes and the prevention of tax crime is the tax administration's responsibility.[73] The process of investigation for tax purposes will involve specialized audit teams accessing the financial and other information of a person; this process and the powers to access the information of a taxpayer are provided for by law. Taxpayers are often required to exhaust the tax procedural process before the courts are approached. The coordination of this process with the overall joint prosecution is key, since a failure in the specialized tribunal or inability to prosecute may weaken an overall case, particularly with regard to money laundering. Where a taxpayer agrees to comply with the orders of the tax administration and pay the outstanding taxes, this is likely to affirm the allegation of a tax crime having been committed and efforts to determine whether money laundering occurred will be further justified. If joint teams opt to initiate prosecution in specialized tax tribunals, they will need to ensure that the tax investigation is distinct from the overall investigation. Pursuing an action in the specialized tax tribunal should be considered where a criminal prosecution might not be possible or is unlikely to succeed. This may remove at least part of the proceeds of crime from the criminals by taxing the income generated from that asset and would entail less stringent requirements for evidence. Where tax authorities are involved in a joint prosecution process, they may make strategic decisions about whether or not to combine charges for tax crimes, corruption, and other financial crimes into a single prosecution.[74]

Obstacles to coordination between government agencies may arise from systemic and practical differences:

- Lack of political will and distrust amongst law enforcement agencies;
- The agency's need to preserve autonomy and independence throughout the process to protect the integrity of its mandate;
- Organizational routines and procedures that may be difficult to synchronize and coordinate;
- Observing the rules of evidence to ensure admissibility in court;
- Differing organizational objectives between the collaborating agencies, which need to be balanced;
- Differing expectations and levels of pressure from and for each agency to deliver some element of the work; and
- Differing and incompatible technical platforms.

The importance of enabling law

The mandate of a joint prosecution effort must be clear and each agency must act within its empowering provisions. However, even where empowering provisions exist, political interests may often undermine the legitimacy of a joint investigation team. In addition, the support of policy makers to introduce an enabling legal framework will be key.

Where extensive empowering provisions are not available, a Memorandum of Understanding (MOU)[75] can affirm and evidence the objectives of inter-agency cooperation to prosecute. Under Project Wickenby, the Australian Tax Office has direct access to information collected by the Australian FIU (AUSTRAC) and an MOU with AUSTRAC.[76] Such an MOU should be compliant with the law and provide details on existing regulations, provide modalities of exchange of information, and facilitate shared objectives. It should not create legally binding obligations on the agencies, but it should foster a common understanding of objectives, procedures, and roles, and build trust between agencies.

Recognizing tax crimes as predicate offenses

The ability of tax administrations to be involved in prosecuting financial crimes is often made easier

when tax crimes are recognized as predicate offenses to money laundering. The Financial Action Task Force (FATF) recognized this in 2012, when they revised the Recommendations to include tax crimes as a predicate offense. Predicate offenses are types of criminal activity that give rise to funds or assets that can be laundered to obscure the illegal source.[77] Where a tax crime is designated as a predicate offense, it means that a person may be charged with the offense of money laundering and the predicate offense, in this case tax evasion. This is important because it gives joint prosecution teams greater scope to secure a conviction or impose greater penalties, pursue cases of tax crimes involving other jurisdictions and recover the proceeds of crime through mutual legal assistance.[78] The definition of a tax crime should be broad enough to cover the violation of all direct and indirect tax obligations. A narrow definition could limit the role of the tax administration. It also requires financial institutions and Designated Non-Financial Businesses and Professions to report suspicions of any predicate offenses relating to the proceeds of tax crimes; this will generally require some awareness of the risks and indicators amongst reporting entities and greater cooperation with tax administrations.

According to an OECD survey of 31 jurisdictions, the inclusion of tax crimes as a predicate offense had practical and positive impacts on their work.[79] The most reported impact was better inter-agency cooperation, including an increased ability to work with other agencies on particular cases and on strategic and policy matters.[80] Greater awareness amongst other law enforcement agencies, intelligence agencies and the private sector of the possibility of tax crimes occurring and better avenues for communication with other agencies were also reported.[81] Notably, some jurisdictions reported an increase in prosecutions and that prosecutions were easier to undertake.[82]

The EU 4th Anti-Money Laundering (AML) Directive introduced a requirement for member states to introduce tax crimes as a predicate offense. While no definition was specified, countries were expected to have effected this amendment by 26 June 2017, and by 1 January 2018 tax authorities were to gain access to data collected under AML laws. Ultimately, the European Commission had to open infringement procedures for non-communication of transposition measures against 20 member states. Of the 20, three countries, including Ireland, were referred to the Court of Justice.

Alongside laws defining the mandate of government agencies to cooperate, countries should introduce a wide definition of tax crimes as a predicate offense to money laundering. This could enable cooperation in investigations that involve a broad range of tax crimes. Although there is no recommended definition of a tax crime, countries seeking to introduce them as a predicate offense should amend their AML laws to define the offense and the elements that make it a serious offense.[83] Countries should also ensure that tax crimes committed in a foreign jurisdiction are considered tax crimes. The legal provisions should provide a broad set of tax-related offenses that constitute predicate offenses to money laundering. In particular, fiscal offenses relating to indirect and direct taxes should be included.[84] This could ultimately entail straightforward non-payment of direct and indirect taxes being considered as a predicate offense to money laundering, or, potentially, certain cases of aggressive tax avoidance. In addition, countries will need to:[85]

- Establish, either through legislation or case precedent, that the predicate offense need not be proven in order to convict for money laundering, as established in the FATF recommendations;
- Prepare internal guidelines, handbooks and in-person training for investigators; and
- Introduce policies or directives that establish the mandatory requirement of opening a parallel financial investigation in every investigation of a predicate offense.

The introduction of tax crimes as a predicate offense needs to be effective. This will generally entail countries ensuring that law enforcement agencies, other agencies required to provide information in accordance with the AML requirements, and Designated Non-Financial Businesses and Professions undergo thorough training and awareness raising.

Showing regard for the right to privacy

Particular care is required to ensure that cooperation between agencies does not lead to any curtailing of the right to privacy. Enabling legislation is an important feature in framing the scope of each agency in the process of prosecuting financial crimes. However, an MOU can also provide an enabling framework for the authorities to cooperate.

The role of the tax administration can only extend as far as a tax crime may be concerned and the process will entail a simultaneous prosecution in alignment with tax procedures as mentioned above. Clearly setting out the roles of each authority throughout the prosecution process and ensuring strict adherence to the law ensures that the case cannot be dismissed based on procedural matters. Alongside respecting the rule of law, the right to privacy entitles persons to protection from arbitrary interference or intrusion from the state. Although the right is not absolute, limitations regarding banking secrecy and money laundering in general are often clear. The tax administration must evaluate whether sharing of information is in line with the requirements of the Constitution or Bill of Rights of their jurisdiction. Any limitations to the right to privacy should be balanced by some determination of whether it would be reasonably necessary for the attainment of the objectives underlying the joint investigation.

In making this assessment, the obligation of sharing taxpayer information with other agencies for purposes of investigating a financial crime must be balanced against the potential impact on the integrity of the tax system.[86] A tax administration's information sharing to address serious crime is acceptable as long as it is fit for purpose. In addition, balancing the right to privacy and the benefits to society must be evaluated based on the following:[87]

- The nature of the serious crime in question and the scope of the information required;
- The authority to access the information and the ability of the tax administration to provide it;
- The intended and potential use of the information; and
- The risk of misuse.

Investigating agencies will need to determine to what extent the information is available and will be shared. The 4th AML Directive provides that the processing of personal data should be limited to what is necessary for the purposes of complying with the requirements of the Directive. Financial investigations are, by nature, intrusive and will result in obtaining the private information of an individual.[88] Law enforcement agencies must remain aware of their country's human rights legislation, which protects the right to privacy and associated considerations. They should therefore be able to justify such investigations as proportionate, non-discriminatory, legitimate, accountable, and necessary to the investigation to be undertaken.[89]

Joint teams should set the criteria for information sharing. These should be based on the indicators of suspicious features that fall within the prevention of tax abuses and money laundering initiatives to ensure that the process of prosecution does not infringe upon the right to privacy. The criteria should include:

- Transactions with no real business purpose (substance over form);
- The use of offshore accounts, trusts or companies which do not support any economic substance;
- Tax schemes that involve high-risk jurisdictions (particularly jurisdictions with high levels of secrecy and low or no taxes);
- Highly complex tax structures;
- Unexplained wealth;[90]
- Short-term businesses involved in importing or exporting; and
- Use of cash transactions instead of appropriate financial instruments.

Conclusion

The obstacles to effective prosecutions go beyond the limitations imposed by legislation. The attention drawn to legal challenges is warranted by the potential consequences of a failure to operate within the confines of the law. These failures include the inadmissibility of evidence, the consequence of which will result in rendering the entire process redundant. Joint teams may be limited by distrust amongst the enforcement agencies, differing expectations on the delivery of outcomes, and a lack of harmonized institutional procedures particularly regarding the use of technology to collect, hold, and share data.

Joint prosecution teams must have a clear mandate based on the law, clearly defining the role of each agency and determining clear procedures for cooperation. They must remain aware of their limitations as any breach may result in a failed process, and be prepared to receive any additional support to ensure they meet the procedural requirements. Tax administrations will need to operate within the specialized courts and ensure that sharing of any

information is enabled by the legal framework or any reasonable exceptions. In order to do so, countries should consider introducing tax crimes as a predicate offense in order to facilitate:

- Increased sharing of information and awareness about the nature of tax crimes.
- Mutual legal assistance.
- Prosecution of money laundering based on tax crimes involving foreign jurisdictions.
- Expanding the tools, skills, and resources available, including for asset recovery.
- Extending the statute of limitations through linking to money laundering.

Example: South Africa (Tannenbaum case)[91]

Brief facts of the case

The following South African agencies cooperated in a four-year investigation of Barry Tannenbaum that led to prosecution in 2009:

- South African Reserve Bank (SARB);
- South African Revenue Services (SARS): responsible for the collection of revenue and enforcement of compliance with tax and customs legislation (semi-autonomous);
- South African Police Service (SAPS) Serious Economic Offences Unit: tasked with preventing, combating and investigating economic crime;
- The Financial Intelligence Centre (FIC): assists in the identification of the proceeds of unlawful activities and combating of money laundering activities, amongst others; and
- National Prosecuting Authority (NPA).

Tannenbaum was accused of setting up a Ponzi scheme that involved at least 800 investors in South Africa, Germany, US, and Australia. The scheme promised investors returns of 200% per year in investments related to fraudulent pharmaceutical imports. On 30 July 2009, the North Gauteng High Court granted the Asset Forfeiture Unit in the NPA a preservation order in line with the Prevention of Organized Crime Act.[92] The order froze an estimated R44 million held in two bank accounts belonging to Tannenbaum and his associate.

Cooperation and legal mandate of SARS

SARS's five-year priority initiative proposed to adopt a whole-of-government approach in managing the customs border environment. This included continuing to strengthen risk management capabilities as well as international agreements and links with other jurisdictions. Further, SARS's strategic plan emphasized a whole-of-government approach through collaboration with other government agencies to improve the government's overall value chain.

SARS is mandated to conduct criminal investigations into all criminal offenses created under the Tax Administration Act. This applies to all tax acts whether indirect or direct taxes, excluding offenses under the Customs and Excise Act.[93] SARS is also the only authority assigned the legal mandate to officially lay a criminal complaint with SAPS in respect of a Serious Tax Offense.[94] In general, South Africa recognizes tax crimes as a predicate offense to money laundering.

- Section 73 of the AML/CFT Act provides that any investigation instituted in line with the Act, including those on the property, financial activities, affairs or business of any person, must be reported to the Commissioner of SARS or any officials with a view to mutual cooperation and sharing of information.
- Section 70(3) (c) of the Tax Administration Act 2011, provides for the disclosure of information to the FIC where such information is required for the purpose of carrying out their duties and functions.

In general, South Africa's system provides an enabling environment for SARS to cooperate in a joint prosecution and review information obtained by other agencies with regard to the alleged tax crime.

Process of cooperation

The five agencies coordinated their efforts, ensuring that clear terms of reference identified each agency's scope and mandate. The joint team determined a plan of action for the high-level investigation into serious allegations of fraud, money laundering, tax evasion and

foreign exchange control violations. The responsibilities were set out as follows:

- NPA: freezing or forfeiture of assets of the main suspect and associates and determining whether to prosecute any of the persons or entities involved in the scheme;
- SARS: raising tax assessments and generating attachment orders;
- SAPS: supporting with seizure and arrest where possible;
- FIC: tracing the movement of finances; and
- SARB: accessing banking information, which revealed the use of Tannenbaum's personal accounts to channel money out of the country.

SARS reviewed Tannenbaum's tax filings in the period 2004–2009 and alleged that he had under-declared his income, resulting in tax, penalties and interest.[95] Through investigations into Tannenbaum's accounts, they discovered that he received about USD415 million and about USD324 million was paid to investors and agents in the scheme.[96]

The issuance of arrest warrants could not be enforced since Tannenbaum had fled to Australia and one of his associates was based in Switzerland. Although extradition proceedings were pursued, the process has taken many years and prosecutors were not optimistic that Australia would agree to the extradition request.[97] Tannenbaum has also managed to evade authorities in Australia. The prosecution of Tannenbaum and his associates tied up state resources for several years with little progress made. In addition, investors and overall victims of the scheme have pursued litigation in efforts to recover their assets. Several of the businesses registered as part of the scheme are attached to different associates, whilst others are insolvent. This has had implications for recovery of assets by SARS.

Recommendations

For purposes of joint prosecution efforts, inter-agency teams should evaluate the following and encourage governments to strengthen any areas of weakness:

- Introduce enabling laws, including a broader legal mandate that permits the sharing of information between agencies where reasonable and the recognition of tax crimes as a predicate offense;
- Ensure cost effectiveness;
- The possibility of extradition where suspects may be based in foreign jurisdictions may arise and teams must remain aware of the potential implications for the case and the need for a speedy process;
- Determine clearly whether illegal schemes are taxable;
- Ensure clear frameworks for any information sharing with foreign institutions;
- Consider the role of victims or investors not only as witnesses, but also in pressing charges; and
- Information management—ensure that a member of the directorate of public prosecution is part of the team to enable the quick turnaround of ex parte applications.

With regard to asset tracing and recovery:

- Evaluate the appropriate time to implement preventative measures, including the freezing of assets; this should be done in the interest of ensuring that the person of interest is not alerted too early or too late;
- Understand the constraints existing in the requested country;
- Since cooperation with foreign jurisdictions will be imperative to the tracing and identification of assets for recovery and taxation purposes, ensure that there is a legal basis for assistance, no barriers will prevent cooperation and the appropriate legal instrument is chosen;
- Freezing of assets at the domestic level: determine how fast the judiciary can respond, what kind of coordination will be required, the asset management framework available and the costs associated with holding certain assets whilst proceedings are taking place; and
- Freezing of assets in foreign jurisdictions: since this will require mutual legal assistance, with foreign authorities and comply with the differing rules of procedure.

Whilst the ultimate outcome may not have been a successful prosecution of the alleged offenders, the South African joint team was able to effectively coordinate efforts and engage in a process that should lead to more effective future investigations of financial crimes. The outcome does not take away from the commendable efforts made by the prosecution team and the recommendations made above represent the main lessons drawn by the involved agencies for future joint efforts.

Example 2: Brazil

Some additional lessons may be drawn from Brazil's experience with Operation Car Wash, which involved 44 other countries where investigations were being carried out. This required the negotiation of new agreements with several states, including the United States and Switzerland.[98] Using information obtained by the tax authority on the purchase of a luxury car by the daughter of a former director of Petrobras, the invoice revealed a connection with an operator of the corruption scheme whom the director had denied knowing.[99] Further analysis of the director found that he was the beneficial owner of an offshore company owning a luxurious apartment where the operator once lived.[100] Although the investigation is still ongoing, the authorities were able to engage in international legal cooperation that proved essential to obtaining relevant evidence of major crimes and in recovering illicit assets in foreign jurisdictions.[101] Brazil had an array of regulations dealing with cooperation, including international treaties and agreements, direct assistance, extradition, and enforcement of foreign court decisions. To facilitate successful prosecution, enabling legislation must go beyond obligations for domestic institutions and establish cooperation across jurisdictions.

Notes

1. OECD (2010). OECD Council Recommendation to Facilitate Co-operation between Tax Authorities as well as other Law Enforcement Authorities to Combat Serious Crimes, 14 2010, C(2010)119 October. https://www.oecd.org/tax/crime/2010-recommendation.pdf.
2. OECD (2017a). *Effective Inter-Agency Cooperation in Fighting Tax Crime and Other Financial Crimes*, 3rd Ed. 2017, pg. 131. Available online at: https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.
3. OECD (2017b). Effective Inter-Agency Co-operation for sharing the information in Fighting Tax Crimes as well as other Financial Crimes (Third Edition) – Part 1 – 2017.
4. OECD (n 2 above), page 14
5. Australia, Austria, Azerbaijan, Belgium, Brazil, Burkina Faso, Canada, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Peru, Portugal, Serbia, Singapore, the Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Uganda, the United Kingdom and the United States.
6. OECD, 2017, page 69.
7. OECD (n 2 above), page 15
8. AU/UNECA. (n.d.). Report of the High-Level Panel on Illicit Financial Flows from Africa commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development. https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf.
9. OECD (2017a). *Effective Inter-Agency Cooperation in Fighting Tax Crime and Other Financial Crimes*, 3rd Ed. 2017, pg. 131. Available online at: https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf, page 26.
10. OECD, 2017a, page 21.
11. OECD, 2017a, page 27.
12. OECD, 2017a, page 27.
13. OECD, 2017a, page 22.
14. OECD, 2017a, page 92.
15. OECD, 2017a.
16. OECD, 2017a, page 22.
17. S Hodzic, 2016, 'National report: Croatia' paper presented at the conference 'Improving tax compliance in a globalised world', Rust, Austria, 30 June-2 July 2016.
18. D Nerudova & J Tepperova, 2016, 'National report: Czech Republic paper presented at the conference 'Improving tax compliance in a globalised World Rust, Austria, 30 June-2 July 2016.
19. OECD, 2017a, page 24.
20. OECD, 2017a, page 25.
21. Julia de Jong, Alexander Meyer, and Jeffrey Owens (2017). Exploring How Blockchain Technology Could Enhance Financial Transparency through Registers of Beneficial Ownership. https://www.eventleaf.com/Attendee/Attendee/ViewExhibitorDocument?eId=3PiaJfTLiwOlvrBoRXLDRg%3D%3D&edId=bzzywXcAnmHwF7rqxGz ovg%3D%3D.
22. Mearian (2020). U.S. Air Force to pilot blockchain-based database for data sharing. https://www.computerworld.com/article/3519917/us-air- force-to-pilot-blockchain-based-database-for-data-sharing.html.
23. Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015), see Gazette Notice No. 2118 of 30th March 2015.
24. Oyugi (2016). Country Statement by Ambassador Michael AO Oyugi, Ambassador/Permanent Representative of the Republic of Kenya to the UN and the International Organisations in Vienna, Austria and Leader of Delegation. 15 November 2016, 7th session of the Meeting of the Implementation Review Group of the UN Convention Against Corruption, Vienna, Austria. https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-16November2016/Statements/Kenya.pdf.
25. Kenya Law (2015). The Kenya Gazette (Special Issue), 31st March,2015. http://kenyalaw.org/kenya_gazette/gazette/volume/MTE1NQ-- /Vol.CXVII-No.33/.
26. Kenya Law, 2015.
27. Ibid
28. Obala (2020). EACC Boss: We Have Recovered SH22 Billion of Stolen Assets. https://www.standardmedia.co.ke/article/2001356289/eacc-boss- interview-a-year-in-office.
29. Kihiu (2018). Govt Agencies Say Injunctions Frustrating Graft Fight. https://www.capitalfm.co.ke/news/2018/08/govt-agencies-say-injunctions- frustrating-graft-fight/.
30. Ibid.
31. Ibid.
32. Transparency International, 2018.
33. AU/UNECA. (n.d.).
34. This is a title conferred on legal practitioners in Nigeria who have distinguished themselves in the legal profession
35. Punch (2017). Inter-agency rivalry hurting anti-corruption war. https://punchng.com/inter-agency-rivalry-hurting-anti-corruption-war/.
36. CAPI (2016). Center for Advancement of Public Integrity (CAPI) at Columbia Law School", September 2016, pg. 2, https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/leveraging_resources_and_relationships_- _capi_community_contribution_-_september_2016_0.pdf.
37. Ibid.
38. Ibid.
39. Bernd Schlenther (2017), "Tax administrations, financial intelligence units, law enforcement agencies: How to work together", in Jeffrey Owens et. al., *Inter-Agency Cooperation and Good Tax Governance in Africa*, 2017 Pretoria University Law Press, pg.85
40. Ibid.
41. OECD (2013), 'The role of tax examiners and tax auditors', OECD, 2013, pg. 15. Available online at: https://www.oecd-ilibrary.org/docserver/9789264205376-5-en.pdf?expires=1583685923&id=id&accname=guest&checksum=E3DC053922746958894C2 0B18F5AA90B
42. Ibid.
43. Ibid

44. OECD (2017), *Effective Inter-Agency Cooperation in Fighting Tax Crime and Other Financial Crimes*, 3rd Ed. 2017, pg. 13. Available online at: https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf
45. Bernd Schlenther, 2017, pg. 86
46. OECD (2017), n.11, pg. 13
47. Jean-Pierre Brun, Larissa Gray, Clive Scott & Kevin Stephenson, (2011), *Asset Recovery Handbook: A Guide for Practitioners*, World Bank, pg. 23
48. Ibid
49. OECD (2017). n.11, pg. 13
50. OECD (2017), n.11, pg.14
51. OECD (2017), n.11, pg. 14
52. Costa Rica, Czech Republic, Estonia, Finland, Iceland, Luxembourg and Sweden
53. OECD (2017), n.11, pg.14
54. OECD (2017), n.11, pg. 13-14
55. OECD & World Bank (2018), *Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption*, OECD & World Bank, 2018, pg.13. Available online at: http://documents.worldbank.org/curated/en/461181540209894462/pdf/131110-2018-10-19-OECD-World-Bank-Improving-Co-operation- between-Tax-Authorities-and-Anti-Corurption-Authorities-in-Combating-Tax-Crime-and-Corruption.pdf
56. Global Forum (2019), 'The 2019 AEOI Implementation Report', OECD, 2019, pg.2. Available online at: https://www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf
57. Commentary to Article 26 (Paragraph 1) of the OECD Model Tax Convention 2017
58. Commentary to Article 26 (Paragraph 2) of the OECD Model Tax Convention 2017, para. 12
59. Ibid
60. OECD (2013), 'Mutual Legal Assistance and other forms of Cooperation Between Law Enforcement Agencies' OECD, 2013, pg.6. Available online at: https://www.oecd.org/corruption/acn/lawenforcement/MLAandOtherFormsCooperationLawEnforcementAgencies_ENG.pdf
61. Asian Development Bank & OECD (2017), Mutual Legal Assistance in Asia and the Pacific – Experiences in 31 Jurisdictions', ADB & OECD, 2017. Available online at: https://www.oecd.org/corruption/ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf
62. Ibid
63. Ibid
64. Ibid
65. Ibid
66. Shruti Sudarsan (2018), 'Operation car wash: As Brazil faces challenges ahead, a silver lining appears', Cornell SC Johnson College of Business, September 2018. Available online at: https://business.cornell.edu/hub/2018/09/14/operation-car-wash-brazil-challenges/
67. OECD (2017), pg. 23
68. OECD & World Bank (2018), pg.46
69. OECD & World Bank (2018), pg.46
70. OECD & World Bank (2018), pg.27
71. OECD & World Bank (2018), pg.27
72. OECD (2017), pg.49
73. OECD & World Bank (2018), pg.30
74. OECD & World Bank, (2018), pg.35
75. See Note on Inter-Agency Collaboration to Obtain and Use Data to Detect Potential Corruption for model MOU.
76. Bernd Schlenther, (2017), pg.95
77. OECD (2017), "Fighting tax crime: The ten global principles", 2017, pg. 53-54, http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten- global-principles.pdf
78. Ibid
79. Ibid
80. OECD (2017), pg. 55
81. OECD (2017), pg. 55
82. OECD (2017), pg. 55
83. OECD (2017), pg.55
84. IMF Legal Department (2012), 'Revisions to the FATF Standard – Information Note to the Executive Board', IMF, 2012, pg. 7-10. Available online at: https://www.imf.org/external/np/pp/eng/2012/071712a.pdf
85. FATF (2018), Annual Report 2017-2018, FATF, 2018. Available online at: https://www.fatf- gafi.org/publications/fatfgeneral/documents/annual-report-2017-2018.html
86. Bernd Schlenther (2017), pg.99
87. Bernd Schlenther (2017), pg.99
88. FATF (2012), 'Operational issues: Financial investigations guidance', FATF, June 2012, pg.7. Available online at: https://www.fatf- gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf
89. Ibid
90. For more see Rita Julien (2019), "Unexplained wealth orders (UWOs) under the UK's Criminal Finances Act 2017: The role of tax laws and tax authorities in its successful implementation", WU International Taxation Research Paper Series No. 2019 – 02, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3465485
91. See Annex I
92. South African Government (2009), "R43 million Ponzi scheme money frozen", https://www.gov.za/r43-million-ponzi-scheme-money-frozen
93. OECD (2017), pg.77
94. OECD (2017), pg. 77
95. Larry Schlesinger (2013), "The runaway Ponzi scheme 'mastermind' holed up on the Gold Coast", 25 June 2013, Smart Company, https://www.smartcompany.com.au/business-advice/legal/the-runaway-ponzi-scheme-mastermind-holed-up-on-the-gold-coast/
96. Ibid

97. Rob Rose (2013), *The Grand Scam: How Barry Tannenbaum Conned South Africa's Business Elite,* 2013, Penguin Random House South Africa.

98. Marcos Tourinho (2017), 'Brazil in the global anti-corruption regime', RBPI, October 2017, pg.1. Available online at: http://www.scielo.br/pdf/rbpi/v61n1/1983-3121-rbpi-0034-7329201800104.pdf

99. OECD & World Bank (2018), pg.64

100. OECD & World Bank (2018), pg.64

101. Leaders League (2020). 'International cooperation and its relevance in Brazil's legal system'. https://www.leadersleague.com/en/news/international-cooperation-and-its-relevance-in-brazil-s-legal-system

References

OECD (2010). OECD Council Recommendation to Facilitate Co-operation between Tax Authorities as well as other Law Enforcement Authorities to Combat Serious Crimes, 14 2010, C(2010)119 October. https://www.oecd.org/tax/crime/2010-recommendation.pdf.

OECD (2017). Effective Inter-Agency Cooperation in Fighting Tax Crime and Other Financial Crimes, 3rd Ed. 2017, pg. 131. Available online at: https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

Case Study 20: Inter-agency Collaboration to Detect Corruption

AU/UNECA. (n.d.). Report of the High-Level Panel on Illicit Financial Flows from Africa commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development. https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf.

D Nerudova & J Tepperova, (2016), 'National report: Czech Republic paper presented at the conference 'Improving tax compliance in a globalised World Rust, Austria, 30 June-2 July 2016.

Julia de Jong, Alexander Meyer, and Jeffrey Owens (2017). Exploring How Blockchain Technology Could Enhance Financial Transparency through Registers of Beneficial Ownership. https://www.eventleaf.com/Attendee/Attendee/ViewExhibitorDocument?eId=3PiaJfTLiwOIvrBoRXLDRg%3D%3D&edId=bzzywXcAnmHwF7rqxGzovg%3D%3D.

Kenya Law (2015). The Kenya Gazette (Special Issue), 31st March, 2015. http://kenyalaw.org/kenya_gazette/gazette/volume/MTE1NQ--/Vol.CXVII-No.33/.

Kihiu (2018). Govt Agencies Say Injunctions Frustrating Graft Fight. https://www.capitalfm.co.ke/news/2018/08/govt-agencies-say-injunctions-frustrating-graft-fight/.

Mearian (2020). U.S. Air Force to pilot blockchain-based database for data sharing. https://www.computerworld.com/article/3519917/us-air-force-to-pilot-blockchain-based-database-for-data-sharing.html.

Obala (2020). EACC Boss: We Have Recovered SH22 Billion of Stolen Assets. https://www.standardmedia.co.ke/article/2001356289/eacc-boss-interview-a-year-in-office.

OECD (2017a). Effective Inter-Agency Cooperation in Fighting Tax Crime and Other Financial Crimes, 3rd Ed. 2017, pg. 131. Available online at: https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

OECD (2017b). Effective Inter-Agency Co-operation for sharing the information in Fighting Tax Crimes as well as other Financial Crimes (Third Edition) – Part 1 – 2017.

Oyugi (2016). Country Statement by Ambassador Michael AO Oyugi, Ambassador/Permanent Representative of the Republic of Kenya to the UN and the International Organisations in Vienna, Austria and Leader of Delegation. 15 November 2016, 7th session of the Meeting of the Implementation Review Group of the UN Convention Against Corruption, Vienna, Austria. https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-16November2016/Statements/Kenya.pdf.

Punch (2017). Inter-agency rivalry hurting anti-corruption war. https://punchng.com/inter-agency-rivalry-hurting-anti-corruption-war/.

S Hodzic, (2016), 'National report: Croatia' paper presented at the conference 'Improving tax compliance in a globalised world', Rust, Austria, 30 June-2 July 2016.

Case Study 21: Sharing Evidence with Joint Prosecution Teams

Asian Development Bank & OECD (2017), Mutual Legal Assistance in Asia and the Pacific – Experiences in 31 Jurisdictions', ADB & OECD, 2017. Available online at: https://www.oecd.org/corruption/ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf

Bernd Schlenther (2017), "Tax administrations, financial intelligence units, law enforcement agencies: How to work together", in Jeffrey Owens et. al., *Inter-Agency Cooperation and Good Tax Governance in Africa,* 2017 Pretoria University Law Press, pg.85

CAPI (2016). Center for Advancement of Public Integrity (CAPI) at Columbia Law School", September 2016, pg. 2, https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/leveraging_resources_and_relationships_-_capi_community_contribution_-_september_2016_0.pdf.

FATF (2012), 'Operational issues: Financial investigations guidance', FATF, June 2012, pg.7. Available online at: https://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf

FATF (2018), Annual Report 2017-2018, FATF, 2018. https://www.fatf-gafi.org/publications/fatfgeneral/documents/annual-report-2017-2018.html.

Global Forum (2019), 'The 2019 AEOI Implementation Report', OECD, 2019, pg.2. https://www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf

IMF Legal Department (2012), 'Revisions to the FATF Standard – Information Note to the Executive Board', IMF, 2012, pg. 7-10. https://www.imf.org/external/np/pp/eng/2012/071712a.pdf

Jean-Pierre Brun, Larissa Gray, Clive Scott & Kevin Stephenson, (2011), *Asset Recovery Handbook: A Guide for Practitioners,* World Bank, pg. 23.

Larry Schlesinger (2013), "The runaway Ponzi scheme 'mastermind' holed up on the Gold Coast", 25 June 2013, Smart Company, https://www.smartcompany.com.au/business-advice/legal/the-runaway-ponzi-scheme-mastermind-holed-up-on-the-gold-coast/.

Leaders League (2020). 'International cooperation and its relevance in Brazil's legal system'. https://www.leadersleague.com/en/news/international-cooperation-and-its-relevance-in-brazil-s-legal-system.

Marcos Tourinho (2017), 'Brazil in the global anticorruption regime', RBPI, October 2017, pg.1. Available online at: http://www.scielo.br/pdf/rbpi/v61n1/1983-3121-rbpi-0034-7329201800104.pdf.

OECD (2013), 'The role of tax examiners and tax auditors', OECD, 2013, pg. 15. Available online at: https://www.oecd-ilibrary.org/docserver/9789264205376-5-en.pdf?expires=1583685923&id=id&accname=guest&checksum=E3DC053922746958894C20B18F5AA90B.

OECD (2017), *Effective Inter-Agency Cooperation in Fighting Tax Crime and Other Financial Crimes*, 3rd Ed. 2017, pg. 13. https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

OECD & World Bank (2018), *Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption,* OECD & World Bank, 2018, pg.13. http://documents.worldbank.org/curated/en/461181540209894462/pdf/131110-2018-10-19-OECD-World-Bank-Improving-Co-operation-between-Tax-Authorities-and-Anti-Corurption-Authorities-in-Combating-Tax-Crime-and-Corruption.pdf.

OECD (2013), 'Mutual Legal Assistance and other forms of Cooperation Between Law Enforcement Agencies' OECD, 2013, pg.6. https://www.oecd.org/corruption/acn/lawenforcement/MLAandOtherFormsCooperationLawEnforcementAgencies_ENG.pdf.

OECD (2017), "Fighting tax crime: The ten global principles", 2017, pg. 53-54, http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf.

Rita Julien (2019), "Unexplained wealth orders (UWOs) under the UK's Criminal Finances Act 2017: The role of tax laws and tax authorities in its successful implementation", WU International Taxation Research Paper Series No. 2019 – 02, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3465485.

Rob Rose (2013), *The Grand Scam: How Barry Tannenbaum Conned South Africa's Business Elite,* 2013, Penguin Random House South Africa.

Shruti Sudarsan (2018), 'Operation car wash: As Brazil faces challenges ahead, a silver lining appears', Cornell SC Johnson College of Business, September 2018. https://business.cornell.edu/hub/2018/09/14/operation-car-wash-brazil-challenges/.

South African Government (2009), "R43 million Ponzi scheme money frozen", https://www.gov.za/r43-million-ponzi-scheme-money-frozen.


WORLD BANK GROUP