



Fighting Tax Crime – The Ten Global Principles

COUNTRY CHAPTERS
MAY 2024

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Country Chapters
May 2024

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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
UNODC	United Nations Office on Drugs and Crime
VAT	Value Added Tax

1 Argentina

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1. In Argentina, tax crimes related to income tax and VAT/GST are set out in the Tax Crime Law last amended in 2017 (hereinafter, “TCL”), which shall be interpreted under the general rules set by *Criminal Code* (CC). These require criminal intent (*mens rea*). Examples of offences, together with their minimum and maximum sanctions and their statutes of limitations are shown in the table below.
2. Argentina notes that while the TCL also applies to evasion and fraud of provincial taxes, data included in this survey only comprises federal taxes.

Table 1.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Tax evasion (TCL, article 1)	Two years of imprisonment	Six years of imprisonment	Six years
Aggravated tax evasion, when amount evaded is over ARS 15 million* or legal structures have been put in place to conceal the identity of the offender, among others (TCL, article 2)	Three and a half years of imprisonment	Nine years of imprisonment	Nine years
Illicit association for tax purposes (TCL, article 15, paragraph c)	Three and a half years of imprisonment	Ten years of imprisonment	Ten years

Note:

* In April 2021, EUR 1 = ARS 111 (Argentine peso).

3. **Statute of limitations:** In Argentina, the limitation period for criminal actions equals the maximum length of sanction for the offence. Limitation periods in Argentina start on the day on which the offence was committed, and can be suspended with the commencement of the trial, among other grounds (CC, arts. 62 and 67).
4. **Complicity:** Offenders that aid, abet, facilitate or enable the commission of a tax crime, can be tried and punished in Argentina. Sanctions may range from one third of the sanction applied to the primary offender to the same sanction applied to the primary offender (CC, 45-46).
5. **Attempt and conspiracy:** While attempt to commit a tax crime is not an offence in Argentina, it is a criminal offence to conspire to commit it (TCL, 15c).

6. **Professional enablers:** Professionals participating in the offence by committing the acts listed in the TCL (issuing opinions, reports, attesting, certifying balance sheets), besides imprisonment, are subject to disqualification from their profession for twice the time of their sentence (TCL, art. 15a).

7. **Territorial and nationality jurisdiction:** Argentina has jurisdiction over tax crimes committed in the territory of Argentina (CC, art. 1).

8. **Legal persons:** Legal persons can be held liable for tax crime offences in Argentina (TCL, 14). Sanctions include the suspension of activities, prohibition from participating in public tenders, cancellation of the legal personality and loss or suspension of governments benefits. The TCL also includes a “name and shame” provision, i.e. courts may order the sentencing ruling to be published in the media at the offender’s expense (TCL, 14).

Enforcement of tax crime

9. The tables below show the enforcement of tax crimes in Argentina in tax years ending 2015-18, and the list of sanctions imposed over the same period of time.

Table 1.2. Enforcement of tax crimes in the tax years ending 2015-19

Tax years ending	Total number of criminal tax investigations ^(a)	Total number of criminal prosecutions in terms of cases ^(b)	Number of natural persons prosecuted	Number of legal persons prosecuted	Number of criminal convictions (natural persons only) ^(c)	Number of acquittals (in terms of cases) ^(d)	Number of natural persons acquitted	Amount of underlying tax evaded
2015	535	519	1 038	478	10	3	4	ARS 34.3 million
2016	838	819	1 552	684	18	1	1	ARS 11.6 million
2017	856	839	1 246	603	25	6	9	ARS 90.9 million
2018	803	775	719	312	35	2	2	ARS 67.8 million

Note:

(a) This includes criminal referrals for tax crimes started by the Federal Administration of Public Revenue (AFIP)

(b) Criminal prosecutions include the presentation of a formal case by the prosecutor. It is worth noting that one prosecution case might pertain to several legal and/or natural persons.

(c) Reflects convictions in the trial stage

(d) Includes acquittals in the trial stage

Table 1.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years’ imprisonment	68
>3 – 5 years imprisonment	20

10. **Availability of tax deductions for civil and criminal sanctions:** Sanctions and fines are non-deductible from income tax in Argentina (Decree 1344/1998, art. 145)

11. **Availability of settlements:** Argentine law explicitly prohibits out-of-court agreements and probations in tax criminal cases (CC art. 76 bis, paragraph 9; CC, art. 41 ter).

12. Argentina notes that its Congress relaxed this general prohibition upon the enactment of laws encouraging the voluntary disclosure of undeclared assets (Federal Laws No. 26476 of 2008, 26860 of 2013, and 27260 of 2016). During the period those laws were in force, ongoing criminal procedures and statutes of limitations were suspended.

13. **Tax gap:** Argentina does not measure its total tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

14. **Tax crime strategy:** The Federal Administration of Public Revenue (AFIP) and the Federal Public Prosecutor's Office (MPF) are in charge of designing Argentina's tax crime strategy.

15. AFIP is in charge of ensuring taxpayers' compliance with their formal and material tax duties. To facilitate tax compliance, AFIP manages and crosschecks its databases with information from other information registers (such as motor vehicle and real estate registries, banking and financial information, etc.). In addition, AFIP has an active role in developing and updating its tax crime strategy based on experience gathered through past operations, jurisprudence, prevailing doctrine, as well as through identifying emerging types of criminal activity. AFIP contributes to the effective prosecution of tax crimes through filing complaints, assisting other law enforcement agencies, as well as by acting as a plaintiff in court proceedings. These activities promote the development of expertise in planning relevant investigation strategies, ensuring effective evidence collection methodologies, as well as other procedural actions. AFIP's role as plaintiff is governed by internal regulations that ensure its intervention in all aggravated crimes provided for in the TCL.

16. Historically, AFIP has encouraged the adoption of reforms that led to the introduction of amendments to tax laws. Argentina reports that the strategies adopted as a result of these reforms rendered better results as they evolved when they became operationalised.

17. The Federal Public Prosecutor's Office (MPF) is an independent prosecutorial agency. In criminal matters, its function is to set policy for criminal prosecution and conduct public criminal proceedings, as mandated by the National Criminal Procedure Code and other complementary laws. Furthermore, the Attorney General of the Nation has the authority to create specialised prosecutors' offices aimed at carrying out investigation within their remit and assisting other prosecutors in charge of court proceedings. Special prosecutors also contribute to the creation of criminal prosecution policy, design investigation strategies for complex cases and co-ordinate criminal prosecution together with federal security forces and other law enforcement agencies.

18. Resolution PGN 914/2012 created the Economic Crimes and Money Laundering Prosecution Office (PROCELAC), which aims to adopt new strategies, developments and institutional arrangements to enhance investigative capacities and effectiveness of criminal prosecution in cases involving financial crime. PROCELAC specifically deals with tax crime and smuggling offences. PROCELAC's objectives are outlined as raising the efficiency rate of criminal investigations specifically in organised economic crime, crimes that have a socioeconomic impact or institutional relevant, while prioritising criminal tax prosecution.

19. PROCELAC's work focuses on developing strategies for cases that cause economic damage to the state, detection of complex criminal schemes, as well as strengthening links between prosecutors' offices, and timely investigation of criminal offences, ensuring that serious cases of organised economic crimes do not go unpunished due to a statute of limitations.

20. **Threat assessment:** AFIP uses a *Risk Profile System* (SIPER) which assigns a risk category to each taxpayer (low, medium, or high), according to a series of indicators. It uses these risk assessment levels to select taxpayers, on which it will focus its compliance and tax audit measures. The effectiveness of this strategy is assessed through management controls and follow-up reviews of both tax auditors and pending criminal cases.

21. **Communication strategy:** Argentina communicates successful prosecutions and rulings on the websites of the Supreme Court (www.cij.gov.ar) and the Federal Public Prosecutor's Office (www.fiscales.gob.ar). Likewise, the media are informed of all news related to relevant and significant criminal cases.

Box 1.1. Example of successful implementation of tax crime strategy: Argentina

In the "Sobremonte Case", PROCELAC assisted federal prosecutors in the coastal city of Mar del Plata identifying a group of nine people that used natural and legal persons as beneficiaries of the incomes of bars, restaurants and nightclubs, concealing goods purchased and evading tax from the income for a period of eight years.

Various measures were taken to obtain information from the members of this group and compel them to explain their conduct. The authorities eventually requested a foreclosure and freezing of the bank accounts of all the members of the group and those related to them. With the assistance of PROCELAC, the authorities seized 6 properties, 12 vehicles, 1 vessel and the contents of 16 bank accounts. Furthermore, this investigation led to the commencement of a criminal investigation for money laundering offences.

On 14 June 2018, the suspects were prosecuted for the offences of tax evasion and unlawful tax association. The court also ordered the seizure of assets of six defendants, for the sum of ARS 5m. Six other defendants were subject to seizure of assets worth ARS 3m. Currently, the case is still pending, awaiting sentencing.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

22. Pursuant to art. 18 of the TCL, a criminal complaint must be filed by AFIP tax auditors once a tax debt has been identified after the conclusion of an audit. A criminal complaint can also be filed by a third party, in which case the judge will forward the records to AFIP, so that it can immediately verify and reassess the tax situation of the taxpayer in question. MPF can also initiate a preliminary investigation carried out by PROCELAC in cases where it has indications that a tax crime has been committed. If the investigation verifies the commission of a tax crime, MPF files a formal criminal complaint to the competent judicial authorities.

Table 1.4. Investigative powers of tax crime investigation agency (PROCELAC/MPF)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Indirect power via another agency A court order is required. Federal law enforcement agencies execute the search warrant under the orders of a judge or a prosecutor.
Obtain documents from third parties	Full direct power Full direct powers when documents are voluntarily submitted by the third party. If the documents need to be obtained forcibly, a search warrant is required (as above).
Interview	Full direct power Full direct powers to interrogate witnesses or third parties (s7, Law 27148)

Inquiry powers (e.g. power of coercion)	Indirect power via another agency A court order is required. The accused has to testify before the judge. The prosecutor may participate while the statements are being given and can question the accused.
Intercept mail and telecommunications	Indirect power via another agency A court warrant is required. Execution of these operations is under the responsibility of a specialised office within the Supreme Court of Justice.
Conduct covert surveillance	Indirect power via another agency A court order is required. Surveillance operations are executed by federal law enforcement agencies.
Conduct undercover operations	Indirect power via another agency / No power Undercover operations are not usually conducted in cases of tax crimes. The law allows for special investigative techniques (such as undercover operations) to be used in cases of customs offences and money laundering offences, which may be connected to the laundering of proceeds of tax crimes. In these cases, a court order is required and the operation is conducted by federal law enforcement agencies.
Search and seize computer hardware, software and electronic storage media	Indirect power via another agency A court order is required. Federal law enforcement agencies execute the search warrant.
Arrest	Indirect power via another agency A court order is required

23. **Need for additional powers:** When information (tax, social security, etc.) protected by tax secrecy pursuant to article 101 of the Tax Procedures Law (Law 11683) is necessary, MPF finds it difficult to collect information and evidence, as a court order is needed to gain access this information. Prosecutors can directly access this information only in cases, where a judge has delegated the investigation under the terms of s196 of the NCCP and have lifted the tax secrecy obligations for such purposes. Argentina notes that it would also benefit from improved information processing and analysis tools, such as digitisation of evidence and digital evidence processing.

24. **Legal professional privilege:** In Argentina, there are several federal and provincial laws that govern legal professional privilege. This privilege usually comprises of standard attorney-client privilege. Non-compliance to privilege obligations is sanctioned with fines and disqualification from the offender's profession for a period of six months to three years (s156, CC). Under Argentina's Anti-Money Laundering (AML) legislation, notaries and accountants are obligated to file Suspicious Activity Reports (SARs) to Argentina's Financial Intelligence Unit (FIU) (Law 26683/2011).

Principle 4: Freezing, seizing and confiscating assets

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

25. **Legal basis:** In Argentina, the judiciary is responsible for the entire process of asset recovery in criminal tax matters. The principal statute that governs asset recovery in Argentina is s23 of the *Criminal Code* (CC). Argentina notes that in most cases (with the exception of money laundering cases), a conviction is required prior to any seizure or confiscation orders.

26. **Freezing and seizing orders:** Rapid freezing of assets is allowed in Argentina as long as there are reasonable grounds, with a certain degree of probability, to linking the assets with instruments or proceeds of crime. In these cases, a prosecutor can request the judge to institute a freezing order in order to secure assets that might later be subject to seizure or confiscation. To support this process, the Attorney General's Office (PGN) Resolutions No. 129/2009 and No. 134/2009 have been implemented, mandating investigators to enquire into the suspect's assets, to determine whether a freezing order may be necessary. In case there is no evidence directly linking the assets with the crime, a freezing order may be issued based on the danger that the suspect may move assets to prevent any possible seizure or confiscation later on (s23, CC; s518 of the NCCP and s219 of the FCCP).

27. **Confiscation orders:** Apart from conviction confiscations, third-party confiscations are allowed under Argentine law (Criminal Code, art. 23, paragraphs 3 and 4).

28. **Foreign freezing, seizure, and confiscation orders:** Argentina notes that to increase efficiency of asset recovery in relation to assets located abroad, Argentina counts on the assistance of GAFILAT's Asset Recovery Network (RRAG), which is an international platform for the exchange of information related to asset recovery. PROCELAC is the point of contact between RRAG and the Argentine justice system.

29. **Agency / unit responsible for asset recovery:** The asset recovery strategy is developed by the General Directorate of Asset Recovery and Confiscation (DRADB) housed within MPF. The unit co-ordinates with prosecutors and other authorities involved in the investigation process to ensure successful asset recovery.

30. **Freezing, seizure, and confiscation in practice:** Argentina does not have statistics available for asset recovery in tax crimes. However, it notes that DRADB is increasingly active in crimes related to corruption and drug trafficking offences. Table 5 below illustrates the performance of DRADB in 2015-18.

Table 1.5. Total assets recovered with the assistance of DRADB

Type of asset recovered / measure imposed	Number requested in 2018	Number obtained in 2018
Cash forfeited	ARS 59.6m	ARS 95.7m
Immovable property	999	719
Aircraft	10	5
Vehicles ^(a)	6 397	1 866
Vessels	30	21
Banking products (e.g. accounts, deposit boxes)	446	269
Judicial intervention / administration of assets	78	57
Registration of the claim ^(a)	4	4
Preliminary injunction on trusts	26	26
Seizure / preliminary injunction on share participation	173	131
General restraint of property	276	242

Note:

(a) Includes cars, motorcycles and machinery

(b) This measure prevents the owner of the asset from selling it, donating it or otherwise changing the ownership status of the asset.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

31. The Federal Administration of Public Revenue (AFIP) is Argentina's national agency in charge of the collection of tax, customs and social security resources. It is in charge of the verification and tax audit of tax matters. If AFIP auditors discover an alleged tax crime, they must refer the case to the Judiciary, which is the other relevant authority within the framework of a criminal proceeding (TCL, s18).

32. The table below provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 1.6. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Federal Administration of Public Revenue (AFIP)	Agency in charge of executing the policies on the collection of tax, customs and social security resources. As such, it files complaints when, in compliance of its powers, it verifies the possible commission of a crime.
AFIP Legal Co-ordination Directorate	Establishes control measures, designs tax audit strategies and promotes sector-specific regulations to prevent and / or detect evasion schemes of a tax, customs and / or social security resources.
AFIP Directorate for the Prevention of Money Laundering and Terrorism Financing	Promotes the implementation of procedures and working guidelines for the prevention, detection and reporting of operations that may be linked to ML / FT crimes. Liaison with the UIF.
Federal Public Prosecutor's Office (MPF)	The main agency responsible for the prosecution public criminal cases. It promotes the investigation of federal criminal offences committed in Argentina. MPF is the central player in criminal investigations of tax crimes.
Office of the Prosecutor for Economic Crime and Money Laundering (PROCELAC)	A special prosecution unit within MPF, PROCELAC is responsible for providing specialised assistance to federal prosecutors in the areas of economic and financial crimes and it has a special department devoted to tax crimes.
Financial Information Unit (UIF)	Argentina's Financial Intelligence Unit, housed within the Ministry of the Economy, in charge of the national strategy against money laundering and financing terrorism.
Office of the Prosecutor for Administrative Investigations (PIA)	Special prosecution unit within MPF. Main agency responsible for the investigation of cases of corruption in Argentina.
Anti-Corruption Office (OA)	Housed within the Ministry of Justice, OA is charged with receiving attestations of property filed by public officials upon taking office, and assessing whether the changes in their assets are consistent with their levels of income.
National Securities Commission (CNV)	Responsible for the oversight of the securities market in Argentina.
Central Bank of the Argentine Republic (BCRA)	Argentina's central bank is responsible for the oversight of the banking system and investigating offences related to currency control laws.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

33. Argentina does not have statistics available on the tax crime investigation and prosecution budget. AFIP participates and assists with its legal mandate in criminal proceedings involving tax crimes. Within MPF, there are 11 units specialised in economic crime, whose main competencies are in tax and smuggling offences. There are also 83 prosecutors' offices at federal courts, which deal with a broader range of crimes, plus other agencies in the provinces. All of these prosecutors' offices have specialised support available from PROCELAC, in the form of two PROCELAC prosecutors, each with a 10-member team of officials working on criminal tax and customs matters.

Table 1.7. Data bases/sources of information available to tax crime investigators

	Access by AFIP / MPF
Company incorporation/ ownership registry	On request
Real estate Registry in the City of Buenos Aires – CABA	Direct access
Registry of citizens	Direct access
Tax databases	On request
Customs databases	On request
Police databases	On request / Direct access
Judicial databases	Direct access

Suspicious transaction report databases	No access
Domestic bank account databases	On request / No Access
Car registry	Direct access
Vessel registry	On request
National Migration Office	Direct access
Provincial Real Estate Registries	On request
Telecommunication companies' databases	On request (1 company with direct access)

Training for tax crime investigators

34. Investigators attend regular training courses at MPF, AFIP and at universities. The career development of all members of MPF begins from their hiring and is ongoing, even when the person reaches a higher position at MPF. In addition, MPF also accompanies the training process by professionalised training based on a strategic plan, according to the particular needs of each position, as well as according to the thematic areas that the different specialties demand.

Principle 7: Predicate offences

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

35. **Approach:** Since the enactment of Law 25246 in 2000, Argentina adopts an 'all crimes' approach to money laundering, meaning that it is a criminal offence to launder the proceeds of any offence, including tax crimes. Argentina notes that it can prosecute money laundering even if its courts do not have jurisdiction over the predicate offence (CC, s303, §5).

36. **Enforcement of money laundering predicated on tax crimes:** Argentina notes better inter-agency co-operation between AFIP and the financial information unit (UIF) since the enactment of this legislation.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

37. Under art. 18 of the TCL, AFIP auditors are legally obliged to file a criminal complaint whenever they identify suspicions of tax crimes after the conclusion of an audit.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

Table 1.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax crimes	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Access on Request	Access on Request / DSS	Access on Request ^(a)	MSS/Access on Request	Access on Request
	Customs administration	Access on Request/Direct Access/DSS	Access on Request		Access on Request	MSS/Access on Request	Access on Request
	Police or public prosecutor	Access on Request	Access on Request	Access on Request		Access on Request	Access on Request
	Financial Intelligence Unit	DSS	Access on Request	DSS	Access on Request/DSS ^(b)		DSS
	Corruption investigation authority	DSS	Access on Request	DSS	Access on Request	Access on Request	
	Financial regulator	N/A	N/A	N/A	N/A	N/A	N/A

Note:

MSS = Mandatory Spontaneous Sharing / DSS = Discretionary Spontaneous Sharing

(a) Most of the tax information (affidavits, and/or other information provided by taxpayers, and/or any financial-economical information held by AFIP) is protected by tax secrecy pursuant to article 101 of the Tax Procedures Law (Law 11683). Prosecutors can directly request and access tax information in the cases where a judge has delegated the investigation under the terms of section 196 of the National Code on Criminal Proceedings, or when the case was initiated by a complaint submitted by AFIP (Resolution AFIP 98/2009). When the investigation is led by the investigating judge, a court order is needed to lift the secrecy and to access to that information. This rule does not apply in the Salta jurisdiction and the forthcoming jurisdictions, where a new Federal Code on Criminal Proceedings is in force, and where prosecutors lead the investigations.

(b) Sections 22 of the Anti-Money Laundering Law (Law No. 25 246), and 87 of Law No. 27 260 set the secrecy of the information gathered by the FIU, this secrecy includes the AML/CFT suspicious transaction reports (STR), the systemic reports, the voluntary reports, and their national and/or foreign sources of information. Thus, prosecutors cannot request or have access to such information. Under section 13 of Law No. 25 246 and the "2019 Framework Mutual Co-operation Agreement" between FIU and MPF, however, prosecutors can request the FIU collaboration in their investigations. In such cases, FIU can provide Financial Intelligence Reports, which cannot be used as evidence and they can only serve as a guide for the investigation. On the other hand, according to with the "2019 Specific Co-operation Mutual Agreement" between the FIU and the MPF, and sections 13, 19 and 28 of the Law No. 25 246, when after the analysis made by the FIU arises suspicions of ML/TF transactions, it must be brought to PROCELAC to start a preliminary investigation and/or a formal complaint before judiciary to begin criminal proceedings.

Table 1.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	AFIP has several inter-agency co-operation agreements aimed at fighting tax crimes. These agreements cover relationships with MPF, UIF, the Argentine Federal Police, the Ministry of Justice and Human Rights, the Supreme Court of Justice, the Ministry of the Economy and the Ministry of the Security of the Nation.
Disclosure of foreign trusts	Argentina does not disclose the existence of foreign trusts. Any information obtained by AFIP upon request or through the information exchange agreements is protected by fiscal secrecy, provided for in domestic legislation and in the respective legal instruments of international law.
Joint operations and taskforces	AFIP collaborates in judicial processes with both the Judiciary and MPF. Working groups can be formed with other state agencies to plan and define strategies for general matters or specific criminal cases.
Parallel investigations	Parallel investigations can be carried out with other specialised law enforcement agencies. Information is shared under obligation of compliance with provisions of tax secrecy.

Joint intelligence centres	Argentina does not have any joint intelligence centres.
Secondments and co-location of staff	AFIP are personnel seconded to the courts, MPF, and other government agencies.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Argentine law allows for the review and adjustment of the tax situation of subjects accused of or sanctioned for other crimes, including financial crimes.
Multi-agency training	Argentina conducts multi-agency training for researchers working at PROCELAC.

Principle 9: International co-operation

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.

38. **Legal basis:** Argentina signed the OECD Convention on Mutual Administrative Assistance in Tax Matters, in addition to 20 Double Taxation Agreements (DTA) and 28 Tax Information Exchange Agreements (TIEA). AFIP may exchange tax information with foreign tax authorities in relation to tax matters pursuant to bilateral and multilateral agreements. The OECD Convention allows AFIP to exchange information with other parties for non-tax purposes to the extent that this is allowed domestically in both jurisdictions and where authorization is provided. Furthermore, Argentina has two bilateral Mutual Administrative Assistance Agreements with France and Italy.

39. **Competent authorities:** AFIP is the competent authority for sending and receiving requests for information under TIEAs. The competent authority to process requests for Mutual Legal Assistance (MLA) in Argentina is the Ministry of Foreign Affairs and Worship, through its Directorate of International Legal Assistance. The Ministry of Justice and Human Rights is the competent authority exclusively in requests relating to the Treaty on Legal Assistance in Criminal Matters with the United States of America.

40. MLA requests are channelled through the competent authority and, depending on the type of measures requested, may be executed by a judge or by MPF. The General Directorate for Regional and International Co-operation (DIGCRI) housed within MPF and governed by PGN Resolution No. 426/16 was created to offer agents of MPF information and advice on specific international co-operation tools, such as extraditions, spontaneous exchange of information, mutual legal assistance and direct inter-agency co-operation between the different public prosecutors' offices.

Principle 10: Fundamental rights of a suspect or accused person

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

41. The Argentine National Constitution, (which incorporates a series of International Human Rights Treaties), as well as the Criminal Code, the Code of Criminal Procedure, and special laws, respect and contain the fundamental rights of the persons accused or suspected of having committed a crime, including tax crimes.

Table 1.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until conviction
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From the enquiry/ indictment
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	From the enquiry/ indictment
be advised of the particulars of what one is accused of	Yes	From the enquiry/ indictment
access documents and case material, also known as a right to full disclosure	Yes	From the enquiry/ indictment
a speedy trial	Yes	Until sentencing
protection from ne bis in idem (Double Jeopardy)	Yes	From the enquiry/ indictment

Highlights

Successful practices

- Robust legal framework for asset recovery, including freezing, seizing and confiscation of assets
- Adequate referral programme for cases where tax administration detects suspicions of a tax crime
- Argentine MPF is actively working to enhance the direct co-operation with its foreign counterparts, as a more dynamic way of international co-operation that complements and bolsters the traditional MLA avenue, on a basis of mutual knowledge and confidence.

Room for improvement

- Absence of a comprehensive, explicit tax crime strategy and threat assessment in co-ordination with all government agencies involved.

2 Australia

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

42. Australia's Taxation Administration Act 1953 (TAA) sets out a range of different tax offences.¹ This includes absolute liability offences (which require no criminal intent (i.e. *mens rea*) on the part of the offender and are not subject to a defence of mistake of fact); strict liability offences that require no fault element on the part of the offender but are subject to a defence of mistake of fact; and offences requiring criminal intent. A 'taxation offence' is an offence arising out of legislation under the general administration of the Commissioner of Taxation.²

43. Offences set out in the Criminal Code (CC) do not specifically penalise breaches of tax law but the facts of many breaches of tax law lend themselves to prosecutions as generic crimes. Examples of each category of tax offence and the corresponding sanctions for natural and legal persons are set out below.

Table 2.1. Absolute liability tax offences

Offence	Maximum sanctions for natural and legal persons ^(a)		
	1st offence	2nd (+) offence	3rd (+) offence
Failure to comply with the requirements under taxation law (TAA, s8C).	AUD 4 440 ^(b)	AUD 8 880	Natural persons: AUD 11 100 and/or 12 months' imprisonment for every such offence committed thereafter; Legal persons: AUD 55 500.
Failing to keep correct records (TAA, ss8L)	AUD 4 440	AUD 8 880	N/A

Note:

(a) In April 2021, EUR 1 = AUD 1.55 (Australian dollar).

(b) Monetary fines in Australia are set as multiples of a "penalty unit". Penalty units are defined in s.4AA of the *Crimes Act 1914*. As of 1 July 2020, the value of the penalty unit is AUD 222.

Table 2.2. Strict liability tax offences

Offence	Maximum Sanction
Refusal or failure to comply with a court order (TAA, s8G-H)	Natural persons: AUD 11 100 and/or 12 months' imprisonment; Legal persons AUD 55 500.

Table 2.3. Offences requiring criminal intent

Offence	Maximum sanctions for natural and legal persons (sanctions for legal persons are in brackets)	
Offences relating to Tax File Numbers and breach of taxation secrecy/privacy requirements (TAA, ss8WA, 8WB, and 8WC)	AUD 22 100 fine and/or two years' imprisonment (AUD 111 000)	
Dishonestly obtaining a gain or causing a loss (CC, s135).	Ten years' imprisonment (AUD 333 000)	
Obtaining a financial advantage by deception (CC s 134)	Ten years' imprisonment (AUD 666 000)	
Arrangements to avoid payment of old sales tax (Crimes (Taxation Offences) Act 1980, s5)	Ten years' imprisonment and/or AUD 222 000 fine (AUD 1 110 000)	
	1 st offence	2 nd offence
Recklessly or knowingly keeping incorrect records (TAA, ss8Q)	AUD 6 660 (natural and legal persons)	AUD 11 100 and/or 12 months' imprisonment (AUD 55 500)
Recklessly or knowingly making a false or misleading statement (TAA, s8N)	AUD 6 660 (natural and legal persons)	AUD 11 100 and/or 12 months' imprisonment (AUD 55 500)

44. **Statute of limitations:** There is no limitation on when the prosecution can commence a prosecution for an offence under the TAA and the Crimes (Taxation Offences) Act 1980.³ Similarly, there is no statute of limitations for taxation offences that all under general legislation (e.g. the Criminal Code), where the offence carries a penalties of six month' imprisonment or more (for natural persons) or a fine of AUD 33 300 or more (for legal persons). All other offences must be commenced within 12 months of the commission of the offence unless the legislation states otherwise.⁴

45. **Complicity:** Under the Criminal Code of Australia, it is also a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, counsel, incite, or procure the commission of an offence or to conspire with another to commit an offence.⁵

46. **Attempt and conspiracy:** The definition of offence under the TAA, includes attempt, conspiracy, and incitement to commit the offence.⁶ Under the Crimes Act 1914, it is an offence, punishable by up to two years' imprisonment, to be an accessory after the fact to any offence.⁷

47. **Professional enablers:** Promoter penalty laws operate to deter the promotion of tax exploitation schemes. The objective of the law is to deter tax avoidance and tax evasion schemes. Whilst not a criminal remedy, it does afford ATO the ability to request the Federal Court of Australia to impose a civil penalty. These penalties for individuals are of up to AUD 1 110 000. The penalty for a body corporate is AUD 555 000 or twice the consideration received or receivable, directly or indirectly, by the entity or its associates in respect of the same, whichever is the greater penalty.⁸ Australia can also charge professional enablers with offences under the CC (e.g. conspiracy to commit an offence).

48. **Territorial and nationality jurisdiction:** Australia has jurisdiction over all crimes under the CC where the conduct constituting the alleged offence occurs: (i) wholly or partly in Australia; (ii) wholly outside Australia, and the result of the conduct occurs wholly or partly in Australia, (iii) wholly outside Australia and the accused is an Australian citizen or a corporation incorporated under the law of Australia or an Australian State or Territory, or (iv) the offence is an ancillary offence where the conduct occurs wholly outside Australia and the conduct constituting the primary offence or the result of the conduct occurs or is intended to occur wholly or partly in Australia.⁹

49. In a tax context, Australia prosecuted an Australian stockbroker in a recent case for committing large-scale tax fraud while living in the United States more than a decade ago. He was extradited from the United States in 2017 following a decade-long joint investigation by the Australian Taxation Office (ATO) and Australian Federal Police (AFP). The Promoter Penalties set out in the TAA also have extraterritorial effect, meaning that they apply to Australian citizens and companies even when the conduct occurs outside of Australia.¹⁰ Other offences in the TAA do not have extraterritorial effect, meaning the conduct constituting the offence must take place within Australian territory.

50. **Legal person liability:** While all of the above-mentioned offences apply to both natural and legal persons (i.e. those incorporated under Australian law), Australia provides that it does not pursue legal persons for tax offences. Under the TAA, a corporation is deemed to have committed a taxation offence, where an employee or agent of the corporation by whom the act was done or omitted to be done, had the requisite intention. In addition, acts done or omitted to be done by a director, employee, or agent of the corporation, or any other person at the direction or with the express or implied consent of said persons, are also attributed to the corporation.¹¹ Where a company commits a taxation offence, any person who is concerned in, or takes part in the management of the corporation is also deemed to have committed the offence unless they can prove otherwise.¹²

51. Under Division 12 of the Criminal Code, a legal person is liable for crimes committed by an employee, agent, or officer if the company's board or "high managerial agent" intentionally, knowingly, or recklessly committed the offence, or expressly, tacitly, or impliedly authorised or permitted the offence.¹³ In addition, a company is also liable if its "corporate culture" encouraged, tolerated, or led to the offence, or if it failed to create and maintain a "corporate culture" that required compliance with the relevant law.¹⁴

Enforcement of tax crime

Table 2.4. Enforcement of tax crimes against natural persons in tax years ending 2015-20

Tax years ending	Concluded investigations	Cases where action short of prosecution was taken	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	74	24	50	57	220	4
2016	57	16	41	44	368	4
2017	42	13	32	29	477	2
2018	107	50	57	46	154	0
2019	123	42	51	40	408	0
2020	65	29	34	42	399	0
Total	361	174	265	258	2 014	10

Table 2.5. List of other sanctions imposed on natural persons for tax crimes in tax years ending 2019-20

Sanction	Description
Imprisonment	45 sentences ranging from 3 to 84 months in length (average of 38.5 months)
Fine	9 fines ranging from AUD 183 to 14 000 (average of AUD 6 298)
Reparation	AUD 9 770 592
Good Behaviour Bond	Imposed five times
Community service	Imposed three times
Other Conviction	Imposed six times

52. **Summary prosecutions:** Under the Tax Administration Act 1953, Australia also prosecutes a range of summary offences, including failing to lodge returns or keep records, making false or misleading statements, not responding to questions when required, and failing to attend an interview.¹⁵

Table 2.6. Summary prosecutions of tax offences against natural persons in tax years ending 2015-20

Summary Prosecutions	2015	2016	2017	2018	2019	2020	Total
Successful Court Cases	1 540	1 974	2 098	1 880	1 094	599	9 185
Warning Letters	312	421	462	259	138	129	1 721
Unknown Outcome	58	8	1	6	6	8	87
Total Outcomes	1 910	2 403	2 561	2 145	1 238	736	10 993
No Further Action	2 071	1 554	834	960	617	794	6 830
Unsuccessful / Discontinued Prosecution	74	86	92	0	0	0	252
Early Exits	0	0	132	283	131	88	634
Unknown - Nil Outcome	76	0	19	3	6	0	104
Total Nil Outcomes	2 147	1 640	1 077	1 246	748	882	7 740
Total Closed Cases	4 057	4 043	3 638	3 391	1 986	1 618	18 733

53. **Availability of settlements and deferred prosecution agreements:** The Commonwealth Director of Public Prosecutions (CDPP) has power to enter into negotiations with a defendant in relation to the charges to be proceeded with. Such negotiations may result in the defendant pleading guilty to fewer than all the charges faced, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction. The considerations that will be taken into account when conducting charge negotiations are set out in the Prosecution Policy of the Commonwealth.¹⁶

54. The Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 was introduced into the Australian Parliament on 2 December 2019 (following the lapsing of a 2017 version). If enacted, the legislation would implement a scheme that would enable CDPP to enter into deferred prosecution agreements with legal persons (but not natural persons) for certain specified offences, including offences under the Criminal Code, which as outlined earlier, are capable of capturing tax crimes.

55. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** Penalties and fines or losses or outgoings to the extent that they were in furtherance of, or directly in relation to, are not deductible under Australian taxation law.¹⁷

56. **Tax gap:** Australia estimates its tax gap for direct and indirect taxes including general services tax and income tax. For 2018, it estimated its overall tax gap at AUD 31 billion, or 7% of the total collected tax (ATO, 2020₍₁₎).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

57. **Tax crime strategy:** The Australian Taxation Office (ATO) has primary responsibility for developing Australia's strategy to respond to tax crime. Its strategy describes the environmental (risk) landscape, key threats and vulnerabilities, and risk characteristics which compose the overall tax crime risk. The strategy also describes the controls used to address this risk, giving consideration to constraints that impact on ATO's ability to manage the risk. It conducts this evaluation annually at an operational programme level as well as at an enterprise wide level, which seeks to assess the effectiveness ATO has

in addressing tax crimes as a whole. In doing so, it consults with the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC), Australian Transaction Reports and Analysis Centre (AUSTRAC), Attorney-General's Department (AGD), CDPP, and the Australian Securities and Investments Commission (ASIC).¹⁸

58. **Threat assessment:** The ATO maintains various processes, such as regular environmental intelligence scans (quarterly), as well as risk assessments and evaluations, to ascertain the extent and impact of (compliance) risks ranging from evasion through to criminal actions within the tax and superannuation systems. Additionally, the ACIC also undertakes analysis of the cost of serious and organised crime in Australia, which considers all facets of serious and organised crime as well as producing reports which providing a national picture of serious financial crime impacting the Australian community.¹⁹

Box 2.1. Example of successful implementation of tax crime strategy: Australia

The Serious Financial Crime Taskforce (SFCT) is an ATO-led joint-agency taskforce established on 1 July 2015. It brings together the knowledge, resources and experience of relevant law enforcement and regulatory agencies to identify and address the most serious and complex forms of financial crime. As such the SFCT is the primary mechanism utilised by the ATO to respond to serious financial crime.

Participating members of the SFCT include: Australian Federal Police (AFP), Australian Tax Office (ATO), Australian Criminal Intelligence Commission (ACIC), Attorney-General's Department (AGD), Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Securities and Investments Commission (ASIC), Commonwealth Director of Public Prosecutions (CDPP), Department of Home Affairs (Home Affairs), incorporating its operational arm, the Australian Border Force (ABF) and Services Australia.

The SFCT brings together the knowledge, resources and experiences of relevant law enforcement and regulatory agencies to identify and address serious crimes that present the highest risk to Australia's tax and superannuation system.

The SFCT also supports Australia's involvement as a member of the Joint Chiefs of Global Tax Enforcement (J5). This allows us to work together globally with leaders of tax enforcement authorities from Canada, the Netherlands, the United Kingdom, and the United States to further disrupt international tax crime and money laundering.

As of 31 December 2020, the taskforce has:

- completed 1 287 audits and reviews;
- convicted and sentenced twelve people;
- raised liabilities of AUD 996 million and collected AUD 384 million.

59. **Communications strategy:** ATO publishes details of successful prosecutions through statements and statistics on its website and annual report, in addition to media releases.²⁰ In recent times, ATO has developed a comprehensive communications strategy for tax crime communications. Where possible and appropriate, multiple channels are used to promote successful prosecutions. Additionally, AFP promotes successful actions through media releases and statements on its website. CDPP also publishes details of all successful prosecutions on its website, including tax crime related prosecutions. Finally, ATO runs general compliance campaigns to assist taxpayers in meeting their tax obligations. More information is available on its website.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 2.7. Investigative powers of tax crime investigation agencies (ATO, AFP and ACIC)

Power of tax crime investigation agencies to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power/Indirect power AFP has full direct powers, some of which can be exercised without having to apply to a court for a search warrant – for example its ability to conduct some types of surveillance activities and undercover operations. ATO is able to exercise these powers indirectly via AFP. For example, where a search warrant is required, ATO applies for the search warrant and Federal or State police execute it with ATO officers accompanying when such assistance is necessary and reasonable. ACIC also has search warrant powers pursuant to s22 of the Australian Crime Commission Act 2002.
Obtain documents from third parties	Full direct power/Indirect power AFP has full powers and ATO has powers via AFP. For evidentiary purposes, third parties such as banks require search warrants. ACIC has notice to produce powers pursuant to S21A of the Australian Crime Commission Act 2002
Interview	Full direct power/Indirect power Both AFP and ACIC have full direct powers to interview. These agencies work closely with ATO to investigate serious tax crime. The ATO also has interview powers pursuant to S.264 of the Income Tax Assessment Act 1936 which gives the Commissioner power to require a person to attend and give evidence.
Inquiry powers (e.g. power of coercion)	Full direct power/Indirect power ACIC is currently authorised by its governing Board to use coercive powers when investigating certain serious and organised tax evasion. Those coercive powers include the ability to require the production of documents and things (coercive notices) and the ability to require oral evidence on oath/affirmation (coercive examinations) overriding a person's right to silence and their privilege against self-incrimination. ATO staff can attend coercive examination where they are also an ACIC staff member or are otherwise authorised to do so by an ACIC examiner. Whilst coercive examinations are exercised for the purposes of ACIC investigations, ATO staff can later receive and use the resulting information providing, in the case of coercive examinations, it is permitted by the confidentiality direction, and in the case of both coercive notices and coercive examinations, the ACIC CEO considers it is appropriate to do so, it is for a permissible purpose (which includes protecting public revenue), and is not otherwise contrary to law.
Intercept mail and telecommunications	Full direct power/Indirect power The Department of Home Affairs administers the Telecommunications (Interception and Access) Act 1979 (TIA Act). Eligible Australian law enforcement and security agencies (including AFP and ACIC) can obtain warrants for national security or law enforcement purposes set out in the TIA Act. The ATO has no such power.
Conduct covert surveillance	Full direct power/Indirect power ATO is able to exercise these powers indirectly via AFP. For example, where a search warrant is required, ATO applies for the search warrant and Federal or State police execute it with ATO officers accompanying when such assistance is necessary and reasonable.
Search and seize computer hardware, software and electronic storage media	Full direct power/Indirect power CCA also provides AFP with powers to operate electronic equipment found at warrant premises to access data (including data not held on the premises). Further, if the data accessed is evidential material AFP can copy and remove any or all data accessed by operating the equipment or, if it is not practicable to do so, seize the equipment. ATO has these powers via the AFP, Part IAA of the Crimes Act 1914 (Cth) (the Crimes Act) – Sections 3E and 3F provides the legal framework for these actions.
Arrest	No power/Full direct power ATO has no such power, while the AFP does.

Additional Powers

Part IAA of the Crimes Act also provides powers under s3L which allow the AFP to operate electronic equipment found at warrant premises to access data (including data not held on the premises). Further, if the data accessed is evidential material the AFP can copy and remove any or all data accessed by operating the equipment or, if it is not practicable to do so, seize the equipment. Under s3K the AFP may move a thing found at warrant premises for up to 14 days (longer if an extension is applied for and granted by the court), 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 significant

evidence is contained within large amounts of data in / accessible from digital media.

AFP highlights that it would benefit from greater certainty around the legality of seizing material lawfully accessed using these powers, but which is stored outside Australia (offshore) or in the cloud (where it is uncertain in which jurisdiction the servers are hosted).

60. **Legal professional privilege:** In Australia, legal professional privilege attaches to communications between a legal advisor and client if those communications are made for the dominant purpose of (a) enabling the client to gain, or the lawyer to give, legal advice; or (b) litigation that is taking place or was reasonably anticipated at the time the communication was made. The claimant bears the burden of proving a claim for privilege and must provide sufficient information to enable ATO to decide whether to accept or resist the claim.

61. “Accountants’ concession” is an administrative concession granted to taxpayers of professional accounting advisers. Under the concession, ATO will not generally seek access to certain advice documents. The concession recognises that while ATO has the statutory power to access most documents, there is a class of documents that should, in all but exceptional circumstances remain confidential between the taxpayer and their professional accounting advisor. Application must be made for the concession to be applied via a prescribed form.

Principle 4: Freezing, seizing and confiscating assets

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

62. **Legal basis:** Australia’s Proceeds of Crimes Act 2002 (Cth) (POCA) establishes a conviction and non-conviction based criminal assets confiscation regime that allows for the investigation, seizure, and confiscation of the proceeds and instruments of crime, and other criminal benefits, including taxation offences. Restraining orders and other types of confiscation orders cover assets from **third parties** where the court is satisfied that the assets were under the ‘effective control’ of the suspect. For example, property held on trust for the benefit of the suspect, effective ownership, property disposed of without sufficient consideration within certain timeframes, or effective ownership behind the corporate veil or through family

63. **Freezing orders:** POCA allows for the rapid freezing (e.g. between 24 and 48 hours) of bank accounts where a magistrate is satisfied that there are reasonable grounds to suspect that the funds in question are the proceeds of an indictable offence (punishable by one or more years’ imprisonment thus capturing most tax related crimes). Rapid freezing can also be applied against or an instrument of a “serious offence.” This includes certain offences and categories of offences that are punishable by three or more years’ imprisonment and involve unlawful conduct by a person that causes or is intended to cause a benefit of at least AUD 10 000 or a loss to the Commonwealth or another person of at least AUD 10 000). This captures most tax related offences. Authorised officers from AFP, Australian Commission for Law Enforcement Integrity, ACIC, and the Immigration and Border Protection Department may apply to a rapid freezing order.

64. Freezing orders over bank accounts preserve funds standing to the credit of a bank account until an application for a restraining order can be made and heard. Freezing orders can last for up to three days but may be extended where an application for a restraining order has been made but not yet determined. The extension may be for a period of days or for the period ending when the court determines the application for the restraining order.²¹

65. **Seizing orders:** A court may make an order to restrain (i.e. seize) property on application by the Commissioner for AFP or CDPP where it is satisfied that either:

- a. a person has been convicted of, or has been charged with an indictable offence, or it is proposed that he or she be charged with an indictable offence; or

- b. there are reasonable grounds to suspect that a person has committed a serious offence; or
- c. there are reasonable grounds to suspect that the property is the proceeds of an indictable offence or an instrument of a serious offence.²²

66. Australia observes that despite the low burden of proof and fact that both freezing and restraining orders can be heard *ex parte* (i.e. without notification to the effected person), that there are practical limitations as to the speed with which these orders can be obtained due to the time taken to collate evidence and present it to a court.

67. **Confiscation orders:** Once the court has granted an order to seize property, the Commissioner of AFP or CDPP can apply for a forfeiture order (i.e. to seize the property). This court must be satisfied on the balance of probabilities that:

- a. a restraining order under POCA, s18 has been in place for at least six months and that a person whose conduct formed the basis of the restraining order engaged in conduct that constituted one or more serious offences; or
- b. a restraining order under POCA, s19 has been in force for at least six months and the court is satisfied that the property is the proceeds of an indictable offence or the instrument of a serious offence.²³

68. No conviction is required for forfeiture to occur under these provisions.

69. Where property is restrained under section 17 or 18 and the person is subsequently convicted of a serious offence, the restrained property will automatically forfeit to the Commonwealth by operation of the POCA six months after the date of conviction.²⁴ A forfeiture order can also be made in relation to the property of a person who has been convicted of an indictable offence (that is not a serious offence) where the court is satisfied on the balance of probabilities that that property is the proceeds of the offence or the instrument of the offence.²⁵ No restraining order is required in this instance and the order can be made during the sentencing of the person.

70. A pecuniary penalty order (PPO) can also be made against a person ordering them to pay an amount to the Commonwealth based on the benefits that the person has derived from their offending. A court may make a pecuniary penalty order on an application from the Commissioner of AFP or CDPP, where it is satisfied, on the balance of probabilities, that the person has been convicted of an indictable offence and has derived benefits from that offence, or the person has committed a serious offence.²⁶ These orders would usually be sought where it is not possible to show a direct link between the criminal benefits that the person has derived and specific pieces of property (though these orders are often ultimately met through the sale of restrained property).

71. Where a PPO is in force, other assets under the effective control of the suspect can be confiscated to satisfy a PPO. For example, where a person committed a serious tax offence, a PPO could be made against the person requiring them to pay any benefits that the person derived from the commission of the tax offence, and the commission of any other unlawful activity. In assessing the benefits that the person has derived, the court may consider property that came into the possession of the person because of the illegal activity, the value of the person's property before and after the illegal activity, and the person's income and expenditure before and after the illegal activity. This PPO creates a civil debt payable by the person that could then potentially be enforced over property of the person or property under their effective control (such as property held by their spouse or by an associated company).²⁷

72. **Foreign freezing, seizure, and confiscation orders:** Under the Mutual Assistance in Criminal Matters Act 1987 (Cth) (MACMA), an Australian court may enforce a foreign states' restraining and confiscation order (which forfeit the property to the relevant foreign state).

73. **Agency or unit responsible for asset recovery:** In 2011, Australia established the Criminal Assets Confiscation Taskforce (CACT), a Commonwealth initiative to create a multi-agency taskforce

dedicated to taking the profit out of crime by targeting criminals and their assets. Led by AFP, the CACT is responsible for identifying assets derived from suspected criminal offending and freezing, seizing, and confiscating those assets. CACT also includes ATO and ACIC. The majority of restraint and confiscation action is undertaken by the AFP Commissioner, who is represented by a team of litigation lawyers that sit within CACT. In addition, the CDPP may administer post-conviction forfeiture orders which are unconnected to the work of the CACT, where no restraining order has been obtained.

74. **Freezing, seizure, and confiscation in practice:** In the financial years ending 30 June 2015 and 2016, Australia seized AUD 156 million and AUD 11.6 million in connection with criminal tax matters respectively. Figures for the total amount of assets forfeited in connection with tax crimes are not available.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

75. Whilst the Australian Federal Police (AFP) has primary law enforcement responsibility for investigating serious or complex fraud against the Commonwealth, the Integrated Compliance Business Line within ATO also conducts criminal investigations of serious or complex fraud relating to the taxation and superannuation systems. ATO filters cases depending on its capabilities (e.g. where it is capable of handling the investigation it will do so, whereas matters of strategic importance, and those requiring specialised investigations tools will be sent to the Serious Financial Crime Taskforce or AFP).

76. ATO is a participant in various multi-agency task forces as part of the Commonwealth approach to dealing with serious and organised crime and fraud matters, such as the SFCT, the Criminal Assets Confiscation Taskforce and the National Anti-Gang Squad. The Integrated Compliance business line provides personnel for joint operations and investigations and facilitates the sharing of information and intelligence within the legislative framework. Similarly, Serious Financial Crime Taskforce agencies have dedicated liaison officers attached to the taskforce who assist by providing advice to ATO staff in relation to criminal matters. Australia provides that co-operation between ATO and Federal and State Police and the establishment of multi-agency task forces are a key tool in disrupting organised crime.

77. Both ATO and CDPP, which is the independent commonwealth prosecutor, have jurisdiction over tax crime prosecutions. The majority of prosecutions undertaken by ATO are breaches in relation to lodgement, provision of information, making false or misleading statements and failure to withhold offences. While these are administrative offences that do not generally carry a sentence of imprisonment, they are still prosecuted and sanctioned in a criminal court. For more serious matters, ATO Integrated Compliance team/s will refer a brief of evidence to CDPP who will determine whether to proceed with a prosecution. AFP refers all of its briefs to directly to CDPP upon completion of tax crime investigations.

78. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Australia's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#) (OECD, 2017⁽²⁾).²⁸ Additionally, the National Strategy to Fight Transnational, Serious, and Organised Crime (Commonwealth of Australia 2018) sets out a framework for Australia to effectively respond to transnational, serious and organised crime.

Table 2.8. Agencies and bodies responsible for enforcing other financial crimes

Body	Role with respect to financial crime
Australian Taxation Office	Undertakes compliance activities, including civil audits and criminal investigations to tackle tax evasion and fraud. Prosecutes certain criminal tax offences under agreement with the CDPP. Refers briefs of evidence in other criminal matters to the CDPP to prosecute or refers most serious and complex investigations to the AFP.
Australian Border Force	Manages the security and integrity of Australia's borders by detecting and deterring unlawful movement of goods and people across the border.
Australian Federal Police	Primary enforcer of Commonwealth criminal law, including investigation of serious and complex fraud and recovery of the proceeds of these crimes.
Commonwealth Director of Public Prosecutors	Responsible for prosecution of all commonwealth criminal offences.
Australian Criminal Intelligence Commission	Australia's national criminal intelligence agency, established under the authority of the Attorney-General to combat serious and organised crime.
AUSTRAC	Australia's FIU, analyses and disseminates financial intelligence to assist law enforcement agencies with the investigation and prosecution of serious criminal activity.
Australian Prudential Regulation Authority	Prudential regulator of the Australian financial services industry.
Australian Securities and Investment Commission	Enforces financial services and corporation laws and regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.
Criminal Assets Confiscation Task Force	Responsible for conducting investigations to identify assets derived from suspected criminal offending and freeze, seize and confiscate assets. AFP leads the taskforce which also includes ACIC and ATO
Serious Financial Crime Task Force	The main purpose of taskforce is to protect Australia's public finances by addressing serious and significant risks to Australia's tax and superannuation systems. The ATO leads the taskforce, which is a multiagency enterprise.
National Anti-Gangs Squad	Fights gang related crime in Australia. AFP leads the taskforce, which includes the ATO among other members.
Services Australia	Responsible for the development of service delivery policy and provides access to social, health and other payments and services.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

79. Australia does not have a specific tax crime investigation budget but has received a number of investments in recent years to increase its capacity to prosecute complex financial crimes. For example, the Government has extended the Serious Financial Crime Taskforce, which was due to cease on 30 June 2021, by an additional two years until 30 June 2023, and supplemented another AUD 15.1 million to its previous budget of AUD 182 million. This will enable the ATO to leverage the capabilities and powers of Commonwealth law enforcement and regulatory agencies targeting serious crimes that present the highest risk to Australia's tax and superannuation system.

Table 2.9. Databases and sources of information available to ATO tax crime investigators

Database	Access
Company formation/ ownership/mergers and acquisitions/shareholding registries	Access on request
Credit history and Bankruptcy registries	Access on request
Government benefit and payment databases	Access on request
Land Registry	Access on request
Registry of citizens	Access on request

Tax databases	Direct access
Customs and immigration databases	Access on request
Police databases	Access on request
Judicial databases	Access on request
Suspicious transaction report databases	Direct Access
Domestic bank account databases	Access on request
Casino and gambling account databases	Access on request
Car registry	Access on request
Boat Registry	Access on request

Note: Direct access presumes that investigators can also request information from these databases.

Training for tax crime investigators and prosecutors

80. As a minimum qualification, all staff undertaking investigations are required to complete a one-week certification in investigations, followed by a comprehensive six-month assignment comprising of questions relating to investigation practices, procedures, and practical attachments (redacted statements, record of interview, evidence matrix, etc.). This is followed by a Diploma of Investigations. ATO staff also have access to a number of external training courses, e.g. twice annual AFP led workshop on investigations, 3-5-day advanced courses in investigative interviewing, training on management of serious crime (offered to senior ATO staff). It also runs a number of internal programmes on technical tax matters each year. ATO is currently in the process of designing a more detailed training pathway for ATO tax crime investigators. The pathway proposes to include training at various levels including introduction, foundation, intermediate and advanced. It is anticipated these programmes will run for 8-10 weeks total and include modules on tax specific issues, financial crime, and money laundering. The ATO Learning and Development budget includes a component for Investigations training. Due to the tax specific nature of these programmes it is expected that over time all current investigators will complete the re-designed training and it will become mandatory training for all new tax crime investigators.

81. The majority of ATO staff dealing with criminal investigations hold either a Cert IV in Investigations (75%) and/or fraud related law enforcement experience (60%). Additionally, 43% hold a Diploma in Investigations and another 30% have received specialist training by the AFP.

82. All ATO Prosecution staff undertake an on the job training programme prior to initiating proceedings on behalf of the Commissioner. A prosecutor's training will cover topics such as legislation, interpretation, taxation offences, court processes and procedures; court protocol, sentencing, advocacy, and, preparing and running contested matters and culminates in moot courts before they appear in Court on behalf of the Commissioner. Whilst ATO Prosecutors operate under a Commissioner Authorisation, generally prosecutors will have legal qualifications and, where undertaking contested matters, hold a current practising certificate. Ongoing professional development is sourced from internal and external training providers and complemented by cross agency partners and their local law society.

Principle 7: Predicate offences

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

83. **Approach:** Australia adopts a 'threshold' approach to money laundering, meaning that it is an offence to launder the proceeds of any crime punishable by at least one year's imprisonment. This captures most tax crimes that require criminal intent (see principle 1). CDPP may charge individuals with money laundering offences under Division 400 of the Criminal Code, regardless of whether a person has been charged or convicted of the predicate offence, or whether Australia has jurisdiction over the predicate

offence. Australia's money laundering offences also have extraterritorial effect.²⁹ The sanctions imposed for money laundering depend on the level of intent and the amount of money laundered. For example, a person who deals with money or other property over the value of AUD 100 000 believing it to be the proceeds of crime, is liable to a maximum term of imprisonment of 20 years, or a fine of 1 200 penalty units (AUD 266 400), or both.

84. **Enforcement of money laundering predicated on tax crimes:** In cases where the evidence supports it, CDPP may pursue money laundering charges in addition or as an alternative to tax crime offences. However, tax fraud and money laundering charges should only be pursued together where they address different aspects of criminal conduct, and not where the alleged money laundering is merely constituted by dealing with the proceeds of the tax fraud.³⁰ Guidance on the circumstances in which money laundering charges may be appropriate is contained in the CDPP's *National Legal Direction on Money Laundering*.³¹

85. In Australia, tax crime is a predicate offence to money laundering. This enhances law enforcements' ability to bring charges which more accurately reflect the nature of the offence. It also increases the ability of law enforcement work with other agencies to address the activity giving rise to the offence.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

86. Under the Australian Government Investigation Standards and Commonwealth Fraud Control Guidelines, ATO must refer all instances of potentially serious or complex crimes to the AFP, except where the tax administration itself has the capacity and the appropriate skills and resources needed to conduct the investigation, in which case the offence would be referred ATO's Integrated Compliance business line for further investigation.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

87. In addition to reporting, it is critical that agencies involved in the investigation of tax crime and other financial crimes have mechanisms in place to share information with each other. The below tables set out the information sharing gateways that Australia has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Australia's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the Rome Report](#), and in the National Strategy to Fight Transnational, Serious and Organised Crime (Commonwealth of Australia 2018).³²

Table 2.10. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax crime investigation agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct access ^(a)	DSS ^(b)	DSS ^(c)	DSS	DSS ^(d)
	Customs administration ^(e)	DSS	DSS		DSS	DSS	DSS
	Police or public prosecutor ^(e)	DSS	DSS	DSS		DSS	DSS
	Financial Intelligence Unit	Direct access ^(f)	Direct access ^(f)	DSS	Direct access		Direct access
	Corruption investigation authority ^(g)	DSS	DSS	DSS	DSS	DSS	
	Financial regulator ^(h)	DSS	DSS	DSS	DSS	DSS	DSS

Note:

DSS = discretionary spontaneous sharing

(a) ATO tax crime investigators have direct access to information held by the tax administration for other purposes. Where a tax offence is being investigated by another agency, e.g. AFP, it does not have direct access but ATO may still information or the purposes of investigating a serious offence under section 355-70(1) of Schedule 1 to the Taxation Administration Act 1953 (Cth)

(b) Information may be provided for the purposes of administering customs law.

(c) The ATO may disclose information for the enforcement of serious offences (punishable by more than 12 month's imprisonment)

(d) This includes AFP and state based anti-corruption commissions.

(e) Customs may provide information to Commonwealth agencies, state agencies, foreign countries and international organisations for certain purposes, including the administration or enforcement of a law of Commonwealth criminal law or the protection of the public revenue of the Commonwealth, a Territory or another country.

(f) ATO has a right of access to all FIU information, including direct access to all STR, via a secure online connection for any purpose relating to the facilitation of the administration or enforcement of tax law. There are however restrictions on ATO's use of FIU information. For example, ATO may use STRs for intelligence, but they cannot be used or relied on for evidentiary purposes. The FIU also provides the ATO with complete data sets of financial transactions, including STR information, which the tax administration uses in its automated data matching and data mining programmes.

(g) Information can be exchanged under a Memorandum of Understanding in accordance with relevant Australian law relating to privacy and secrecy.

(h) Information may be disclosed for investigation, prosecution and other relevant purposes.

Table 2.11. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Availability
Co-operation agreements	A range of MOUs exist between different government agencies
Joint operations and taskforces	These are commonplace (see earlier examples of CACT, SFCT, the Tax Avoidance Taskforce ³³ , Black Economy Taskforce and Phoenix Taskforce ³⁴).
Parallel investigations	These are available and used on an ad hoc basis, including through joint agency taskforces.
Joint intelligence centres	The Financial Crime Fusion Centre has an intelligence function that includes collecting, analysing, and disseminating data and findings arising from referrals.
Secondments and co-location of staff	Staff secondments between financial intelligence agencies are commonplace
Ability to review tax affairs of persons sanctioned for other serious financial crimes	ATO is not able to examine the tax affairs of a person simply because he or she has been sanctioned for corruption without other specific indicators of tax non-compliance.
Multi-agency training	Yes, see above section on training.

Principle 9: International co-operation

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.

88. **Legal basis:** ATO may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. As of March 2021, Australia has exchange of information relationships with 82 jurisdictions through 46 bilateral tax treaties and 36 Tax Information Exchange Agreements,³⁵ and is party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows ATO to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. ATO also exchanges the financial account information on foreign tax residents under the Common Reporting Standard (CRS) with the participating foreign tax authorities of those non-residents.

89. **Competent authorities:** The International Crime Cooperation Central Authority (ICCC) within AGD is the central authority for both incoming and outgoing MLA requests related to criminal tax matters. AFP also seeks and provides assistance at the police level – including through its network of international liaison officers. Police-to-police assistance is a form of co-operation between police in one country and police in another country. Examples of police-to-police assistance include exchange of intelligence information or preliminary enquiries to determine whether evidence of an offence is located in a foreign country. Police-to-police assistance is often used at the early investigation stage or to obtain evidence that does not require the use of coercive powers.

90. **International co-operation in practice:** Australia does not maintain statistics with respect to criminal tax matters specifically, but provides that in 2015 and 2016, it submitted 736 requests for assistance in general criminal matters pursuant to MLA treaties, and one request under a TIEA. In the same period, it received 706 such requests for assistance under MLA treaties and 4 requests under TIEAs. Of the requests Australia sent, only one was answered in a timely manner.

91. **Enhanced form of international co-operation:** Australia is also a member of the Joint Chiefs of Global Tax Enforcement (J5), which was established in 2018 to tackle international tax crime and money laundering. The group brings together leaders of tax enforcement authorities from Australia, Canada, the United Kingdom, United States, and the Netherlands. Through the J5, experts on tax, crypto and cybercrime sharing intelligence and collaborate on operations to target those who enable global tax evasion. The group works together to gather information, share intelligence and conduct joint operations. The focus of the group is on professional enablers and facilitators of offshore tax crime, cybercrime and virtual asset fraud. The ATO will also refer the most serious matters identified through J5 activities to the Serious Financial Crime Task Force for criminal investigation.

Principle 10: Fundamental rights of a suspect or accused person

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

92. Australia provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are set out in the Australian Constitution, legislation, and common law.³⁶ ATO provides that it protects suspects' rights by ensuring that civil tax audits are run independently of criminal investigations. The decision to

undertake criminal investigation depends on whether there is evidence to support the criminal process and whether this approach is warranted given the circumstances of the case. ATO does not use its compulsory information gathering powers for criminal investigation purposes.

Table 2.12. Rights of persons suspected or accused of having committed tax crimes

Right to:	Available	Timing
presumption of innocence	Yes	From outset of criminal investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	As above
remain silent	Yes	As above
access and consult a lawyer and/or entitlement to free legal advice	Yes	As above
interpretation and translation	Yes	As above
be advised of the particulars of what one is accused of	Yes	As above
access documents and case material, also known as a right to full disclosure	Yes	As above
a speedy trial	Yes	As above
protection from ne bis in idem (Double Jeopardy)	Yes	As above

Highlights

Successful practices

- Comprehensive ‘whole of government’ tax crime strategy which includes periodic threat assessments and an effective public communications strategy
- Effective use of enhanced forms of international co-operation through the Joint Chiefs of Global Tax Enforcement (J5).

Room for improvement

Australia could consider:

- Enhanced collaboration and sharing with traditional and non-traditional partners in order to identify, disrupt and prevent cybercrime (technology enabled crime) affecting the tax and superannuation systems

References

- ATO (2020), *Australian tax gaps – overview*, <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/australian-tax-gaps-overview/#:~:text=Our%20latest%20work%20shows%20that,received%2093%25%20of%20tax%20revenue> (accessed on 19 April 2021).
- 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>.

Notes

¹ All Australian legislation is available at: <https://www.legislation.gov.au>. Figures in Australian dollars (AUD) represent criminal fines.

² TAA, s8A.

³ See TAA, s8ZB and Crimes (Taxation Offences) Act 1980, s9.

⁴ Crimes Act 1914, s15B.

⁵ CCA ss11.2 & 11.5.

⁶ TAA, ss11.1, 11.4, and 11.5 respectively.

⁷ Crimes Act 1914, s6.

⁸ TAA, Division 290.

⁹ CCA, Divisions 14-15 of the Schedule (provisions setting out Australia's extended geographical jurisdiction).

¹⁰ TAA, s290-10 of Schedule 1.

¹¹ TAA, s8ZD.

¹² TAA, x8Y.

¹³ In the latter case of misconduct involving a high managerial agent, the company may escape liability if it had exercised due diligence to prevent the offence, or the authorisation or permission of the offence.

¹⁴ See Australia's Phase 4 Report on Implementing the OECD Anti-Bribery Convention.

¹⁵ Further information is available on the ATO website at: <https://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Tax-crime-prosecution-results/>.

¹⁶ Available on the CDPP website: <https://www.cdpp.gov.au/prosecution-process/prosecution-policy> - see paragraphs 6.14 – 6.21. Further information is available in the CDPP's Guidelines and Directions Manual on Charge negotiation, also available on the CDPP website: <https://www.cdpp.gov.au/publications/charge-negotiation-gd-manual>.

¹⁷ Income Tax Assessment Act 1997, ss 26-5 & 26-54.

¹⁸ More information is available at: <https://www.ato.gov.au/general/the-fight-against-tax-crime/tax-crime-explained/>.

¹⁹ <https://www.acic.gov.au/publications/>.

²⁰ See <https://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Latest-serious-tax-crime-investigation-results/>.

²¹ POCA, ss15N & 5P.

²² See POCA, ss17, 18, and 19 respectively.

²³ See POCA, ss 47 & 49.

²⁴ POCA, s92.

²⁵ POCA, s48.

²⁶ POCA, s116.

²⁷ POCA, ss 140-143.

²⁸ See Rome Report, Chapter 5 – Country Information – Australia. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm>.

²⁹ Anti-Money Laundering and Counter-Terrorism Financing Act 2006, s26.

³⁰ Eg, *Nahlous v R* (2010) 77 NSWLR 463; [2010] NSWCA 58 at [17]

³¹ Available on the CDPP's website: <https://www.cdpp.gov.au/publications/money-laundering-%E2%80%93-guidance-charging-offences-under-division-400-code-nld>.

³² <https://www.homeaffairs.gov.au/nat-security/files/strategy-transnational-serious-organised-crime.pdf>.

³³ http://www.budget.gov.au/2016-17/content/glossies/tax_super/downloads/FS-Tax/03-TFS-Tax_Avoidance_Taskforce.pdf.

³⁴ <https://www.ato.gov.au/general/the-fight-against-tax-crime/our-focus/illegal-phoenix-activity/phoenix-taskforce/>.

³⁵ See <http://treasury.gov.au/tax-treaties> for up-to-date figures.

³⁶ A comprehensive report on these traditional rights and freedoms was produced by the Australian Law Reform Commission in 2016 and is available online: www.alrc.gov.au/publications/freedoms-alrc129.

3 Austria

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

93. Austria's Fiscal Penal Code (FPC) sets out a range of different tax offences that require criminal intent (*mens rea*). Examples of these are shown in the table below.

94. Austria notes that all tax offences regulated in the Fiscal Penal Code are criminal in nature, but criminal prosecution only proceeds in cases where the amount of evaded tax exceeds EUR 100 000 (FPC, art. 53). Below this threshold, offences are prosecuted by administrative courts.

Table 3.1. Income tax offences requiring criminal intent

Offence	Minimum Sanction	Maximum Sanction
Tax evasion (FPC, art.33)	Fine of 20% of the evaded tax	Twice the evaded tax and four years of imprisonment.
Evasion of VAT-payment in advance (FPC, art. 33.2a)	Fine of 20% of the evaded tax	Twice the evaded tax and four years of imprisonment.
Tax evasion committed as a member of a criminal group of at least 3 persons (FPC, art. 38a)	If the evaded amount does not exceed EUR 100 000: Fine of 30% of the evaded tax If the evaded amount exceeds EUR 100 000: no minimum additional fine Legal person: Fine of 30% of the evaded tax	If the evaded amount does not exceed EUR 100 000: three times the evaded amount and up to three months imprisonment If the evaded amount exceeds EUR 100 000: up to five years imprisonment; in addition to an imprisonment sentence which does not exceed four years, a fine of up to EUR 1 500 000 may be imposed. Legal persons: three times the evaded tax
Tax fraud using false or falsified documents/evidence with the intention of obtaining regular fiscal advantage (FPC, art. 39)	If the evaded amount does not exceed EUR 500 000: no minimum additional fine If the evaded amount exceeds EUR 500 000: one year imprisonment	If the evaded amount does not exceed EUR 500 000: up to five years imprisonment; in addition to an imprisonment sentence which does not exceed four years, a fine of up to EUR 1 500 000 may be imposed. Legal persons: fine of up to EUR 5 000 000 If the evaded amount exceeds EUR 500 000: up to ten years imprisonment, in addition to an imprisonment sentence which does not exceed eight years, a fine of up to EUR 2 500 000 may be imposed. Legal persons: fine of up to EUR 8 000 000
Tax fraud committed using false or falsified evidence, manipulated accounting systems or sham deals or behaviour (FPC, art. 39)	If the evaded amount does not exceed EUR 500 000: no minimum additional fine If the evaded amount exceeds EUR 500 000: one year imprisonment	If the evaded amount does not exceed EUR 500 000: up to five years imprisonment; in addition to an imprisonment sentence which does not exceed four years, a fine of up to EUR 1 500 000 may be imposed. Legal persons: fine of up to EUR 5 000 000 If the evaded amount exceeds EUR 500 000: up to ten years imprisonment, in addition to an imprisonment sentence which does not exceed eight years, a fine of up to EUR 2 500 000 may be imposed.

Legal persons: fine of up to EUR 8 000 000

95. **Statute of limitations:** All of the above offences carry a statute of limitations of five years. The limitation period begins on the day when the result described in the statutory definition of the crime effectively occurs. Suspension of the limitation period occurs after the commencement of a criminal investigation. Austria notes that, in experience, this poses difficulties in cases when a report of tax crimes is received shortly before or after the expiration of the limitation period (e.g. in the Panama Papers case).

96. **Complicity:** It is also a criminal offence, punishable by the same maximum penalties as the principal offence, to aid and abet with another person to commit any of these offences (FPC, art. 11).

97. **Attempt and conspiracy:** Conspire and attempt to commit a tax penalty is a criminal offence in Austria (FPC, art 13 and art. 11).

98. **Professional enablers:** Austria does not have a special penalty regime for professional enablers. Rather, these are liable in the same way as secondary offenders.

99. **Territorial and nationality jurisdiction:** Austria has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Austrian territory. Austria notes that its citizens who commit a tax crime outside of its territory may be prosecuted by Austrian courts if the conduct constitutes a tax crime under the laws of Austria or the applicable laws of European Union.

100. **Liability of legal persons:** Legal persons in Austria are subject to criminal liability. Austrian law provides that legal persons shall be held liable for offences committed by its decision-making managers or board members if they act illegally, and by its employees if they act illegally and the organisation failed to prevent them (*Law on Responsibility of Legal Entities*, art. 28a). Legal persons are subject to the same rules of territorial and national jurisdiction than individuals.

Enforcement of tax crime

Table 3.2. Enforcement of tax crimes against natural persons in tax years ending 2015-18

Tax years ending	Concluded tax crime investigations (includes all cases)	Concluded tax crime investigations by court (intentionally committed offences where the evaded amount exceeds EUR 100 000)	Court cases where action short of prosecution was taken (charge is dropped)	Number of cases where prosecution was commenced (court cases only)	Number of convictions (court cases only)	Number of acquittals (court cases only)
2015	6 484	230	48	147	125	22
2016	6 454	231	35	148	127	21
2017	6 578	273	54	172	163	9
2018	8 097	370	69	166	138	28

101. Austria notes the total amount of criminal fines imposed against natural and legal persons was EUR 155 880 000 in 2015-16 (combined), EUR 30 391 000 in 2017 and EUR 28 442 155 in 2018.

102. **Availability of settlements:** Austria notes that it makes neither settlements nor deferred prosecution agreements in tax crime cases.

103. **Availability of tax deductions for civil and criminal sanctions:** Sanctions with a punitive character are not deductible from tax in Austria.

104. **Tax gap:** The EU Commission measures the VAT Gap of the member states. In 2018 the VAT Gap for Austria was estimated as EUR 2 908 billion, or 0.6% of the country's GDP.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

105. Austria's Federal Ministry of Finance first developed a tax crime strategy in 2017, chaired by the Ministry's Anti-Fraud Unit (AFU), and updates it periodically. Its strategic objectives include the protection of the financial interests of the Republic of Austria and the European Union, safeguarding tax revenues, ensuring fairness for honest taxpayers, protecting fair business, ensuring fair competition, enhancing Austria's attractiveness as a business hub, safety and protection of Austrian population, and strengthening Austria's multilateral and bilateral co-operation.¹

106. Austria notes that its Ministry of Finance also applies a Tax and Customs Compliance Strategy, which includes strategic approaches for anti-fraud measures and information campaigns for the public. It pursues a target-group-adapted tax compliance strategy for individuals and entrepreneurs, which includes measures that make it easier for taxpayers to meet their fiscal obligations in an easy and non-bureaucratic way.

107. In addition, since 2010, Austria's Ministry of the Interior publishes annually its Internal Security Strategy, in accordance with the European Union EMPACT Policy cycle.² The Internal Security Strategy prioritises the scope of work of law enforcement agencies, including in economic crime, money laundering, and tax fraud.

108. **Threat assessment:** Austria's Predictive Analysis Competence Centre (PACC), which seats within the Ministry of Finance, supports tax crime investigations through the development of risk analysis programmes, filtering out risk indicators, measuring the risk of companies, and providing global analysis for the detection of irregularities and tax evasion. PACC makes use of all available data sources (tax, customs, etc.) and its outcomes serve as the basis for tax audits.

109. **Communications strategy:** The Public Relations department within Austria's tax administration is the primary responsible for all external communications including press releases.³ It has an internal guideline that governs its work, and it provides the public with information on how to declare and pay the right amount of tax. As an example, for years the tax authority has conducted school visits to enhance tax education. Some of these visits include performing audits during tutorials at commercial academies, and then explaining the consequences of non-compliance to students (BMF, 2017^[3]).

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

110. The competent authorities to investigate tax crime are the local tax offices, which act as Fiscal Law Enforcement Authorities (FPC, art. 58). The Federal Tax Investigation Unit (FTIU) acts upon their order/on their behalf and insofar has the same rights and duties. Within court procedures, the Fiscal Law Enforcement Authorities and the FTIU have the same investigative powers as the criminal police (FPC arts. 195-245 and Austrian Code of Criminal Procedure).

Table 3.3. Investigative powers of tax crime investigation agency (FTIU & Fiscal Law Enforcement Authorities)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power The Code of Criminal Procedure allows investigators to search private premises and seize evidence linked to the criminal tax offence (both physical and electronic), subject to a warrant from a judge
Obtain documents from third parties	Full direct power No judicial authorization is required. FPC art. 99 allows the competent authority to demand information from anyone for the purposes of fiscal penal proceedings. However, the obligated person may have the right to refuse to testify/oblige (e.g. if they are related to the suspect).
Interview	Full direct power No judicial authorization is required. FPC art. 99 allows the competent authority to demand information from anyone for the purposes of fiscal penal proceedings. However, the obligated person may have the right to refuse to testify/oblige (e.g. if they are related to the suspect).
Inquiry powers (e.g. power of coercion)	Full direct power No judicial authorization is required. FPC art. 99 allows the competent authority to demand information from anyone for the purposes of fiscal penal proceedings. However, the obligated person may have the right to refuse to testify/oblige (e.g. if they are related to the suspect).
Intercept mail and telecommunications	Full direct power Judicial authorisation is required
Conduct covert surveillance	Full direct power Judicial authorisation is required
Conduct undercover operations	Full direct power Judicial authorisation is required
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to a court warrant
Arrest	Full direct power Judicial authorisation is required

111. **Legal professional privilege:** Article 104 of the FPC states that legal professionals and their assistants may refuse to provide testimony during administrative fiscal penal proceedings about matters that came to their notice in their capacity as a legal professional. The same regulation applies to advocates, attorneys at law, notaries, and public accountants during criminal proceedings pursuant to Article 157 of the Penal Procedure Code.

Principle 4: Freezing, seizing and confiscating assets

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

112. **Legal basis:** Austria notes that its legislation allows for the forfeiture of goods and assets related to the committed tax offence (FPC, arts. 17-19). Furthermore, devices, material and means of transport, which are used to commit the crime, can be forfeited. Forfeiture is not necessarily conviction based (e.g. in cases of unknown perpetrators or when the residence of the perpetrator is unknown). To guarantee forfeiture of assets and value-based confiscations, Austrian law allows for seizure of the concerned assets. Different procedural rules apply depending on whether the offence falls within administrative proceedings or criminal proceedings. In administrative proceedings, the main condition for seizure is the suspicion that a financial crime was committed, and it is not necessary for an administrative process to have commenced before the seizure. The suspect can avert the seizure by depositing an amount of money (FPC, arts. 89-92).

113. **Freezing and seizing orders:** If the suspected offence falls within the jurisdiction of the court (criminal proceedings), rapid and temporary seizure of assets is allowed if needed to ensure forfeiture or value-based confiscation. The requirements for a temporary seizure are: a) a reasonable suspicion that a tax offence was committed, and that the assets have been received as a result of the tax offence; b) that a future forfeiture of the assets is at risk without seizing the assets. The judicial police needs an order from the public prosecutor allowing for seizure, except in the case of “imminent danger”, where police can seize assets without an order.

114. **Confiscation orders:** Austrian legislation allows for “long-term-seizures” under the condition that the assets are necessary to ensure forfeiture or value-based confiscation. A court order is required, and the suspect can avert the seizure by depositing an amount of money (art. 115 (2) of the *Code of Criminal Procedure*, and art. 206 FPC). Austrian legislation also allows for a value-based confiscation (art. 19 FPC). Third party confiscations may be allowed in special circumstances.

115. **Foreign freezing, seizure, and confiscation orders:** Evaded taxes may be seized on the basis of the Tax Recovery Directive.

116. **Agency/unit responsible for asset recovery:** The tax administration is responsible for asset recovery in tax crime cases.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

117. Austria's Ministry of Finance (BMF) is responsible for the administration of taxes in Austria. Within BMF, the Anti-Fraud Unit (AFU) is responsible for the detection of tax fraud schemes and developing tax fraud prevention strategies. Tax audits are carried out by officials working within the local tax offices. Where suspicion of a tax crime is formed, the tax officer will submit the case to the Fiscal Law Enforcement Authority, which sits within the local tax office and has the same rights and duties as the police on criminal investigations.

118. The Fiscal Law Enforcement Authority is responsible for evaluating and further investigating all referrals. If it deems the case to be falling within the jurisdiction of the court according to art. 53 FPC (i.e. the offence of tax evasion was committed intentionally and the evaded tax amount exceeds EUR 100 000), it has to refer the case to the Public Prosecutor's Office. It may forward the case for further investigation to the FTIU, which has special units responsible for investigating organised and systematic tax fraud.

119. In Austria's experience, a key benefit of having the FTIU working as investigator on behalf of the local tax office is that all of its investigators have specialised qualifications having undergone full tax auditor's training. In addition, as a federal organisation, FTIU has budgetary and personal sovereignty, so it can allocate resources quickly when necessary.

120. The Federal Bureau of Criminal Investigation is located in the Federal Ministry of the Interior, and is responsible for investigating financial crimes other than tax crimes. In cases of social security fraud (economic fraud linked with evasion of payroll taxes and social contributions), investigations are carried out in close co-operation with the tax investigation unit.

121. While the public prosecutor's office is responsible for conducting prosecutions of criminal tax offences, the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA)⁴ has responsibility for the investigation of tax law felonies concerning social fraud, companies with share

capital exceeding EUR 5 million or where the damage exceeds EUR 5 million. The fiscal penal units of the local tax offices are competent to carry out investigations and apply penal sanctions in criminal tax cases, which are not falling within the jurisdiction of the court.

122. The below table provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Austria's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁵

Table 3.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Anti-Fraud Unit (within BMF)	Central co-ordination of all anti-fraud activities and strategy development for the prevention of tax and customs crimes.
Fiscal Law Enforcement Authorities	The local tax and customs offices as Fiscal Law Enforcement Authorities are the competent authorities to detect, investigate – and up to the amount of evaded taxes of EUR 100 000 – prosecute tax offences. Within court procedure they act as investigators and have the same rights and duties as the criminal police.
Austrian Customs Administration (ACA) (within BMF)	Organisation and co-ordination of the federal customs administration.
Federal Bureau of Criminal Investigation (FBCI) (within MOI)	Investigation of financial crimes other than tax crimes.
Public Prosecutor's Office	Prosecutes criminal tax offences and oversees tax crime investigations conducted by Fiscal Law Enforcement Authorities (local tax offices)
Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA)	Investigation and prosecution of serious fiscal law felonies over EUR 5 million.
Financial Intelligence Unit (FIU) (within FBCI)	Receives and analyses suspicious transaction reports and initiates criminal investigations.
Federal Bureau of Anti-Corruption (BAK)	Mandated to prevent and combat corruption.
Financial Markets Authority	Supervises banks and financial institutions for compliance with Austria's AML/CFT regime.
Central Bank of the Republic of Austria	Supervision of payments systems and banks
Federal Tax Investigation Unit (FTIU)	Investigation on behalf of the Fiscal Law Enforcement Authority in cases of organised and systematic tax fraud

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

123. Austria provides that its tax crime investigation budget is allocated on an annual basis and is not performance-based. The budget for the Tax Investigation Unit was of EUR 9.6 million in 2015, EUR 10.6 million in 2016, of EUR 10.7 million in 2017 and EUR 11.4 million in 2018. It had 145 full-time agents in 2015, 157 in 2016, 155 in 2017 and 169 in 2018.

124. Austria notes that it sets annual performance targets for staff in this unit, consisting of numbers of concluded cases and surplus earnings, and that its experience using these indicators has been positive.

Table 3.5. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access ^(a)
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Direct Access
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Access on Request
Beneficial owner registry	Direct Access ^(b)

Note:

(a) Direct access presumes that investigators can also request information from these databases

(b) Art. 12(1) of the Beneficial Owner Register Act

Training for tax crime investigators

125. Austria's tax crime investigators attend regular training sessions on a range of topics including, IT, audit, bookkeeping, ethics, deployment, self-defence, legal, compliance, identifying falsified documents, money laundering, bribery, and interview techniques. Training ranges from basic to advanced and is provided through a combination of seminars at the Federal Financial Academy, awareness raising brochures, reports, intranet publications, and dissemination of international publications. As outlined above, investigators working within the tax crime investigation unit undergo a full tax auditor's training.

126. Austria provides that the staff of the Federal Tax Investigation Unit had 13 360 hours of trainings in 2015, 16 453 in 2016, 18 787 in 2017 and 10 487 in 2018. The costs of the training sessions have been consistently low – never more than EUR 20 000 per year since 2015 – because most are held in the Federal Finance Academy.

127. Austria has observed that its training programme enables staff to develop and maintain personal contacts and has proved effective in improving efficiency, particularly with respect to cross-agency co-operation and information sharing.

Principle 7: Predicate offences

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

128. **Approach:** Austria adopted a 'threshold' approach to money laundering, whereby it is an offence to launder the proceeds of intentional offences punishable by a term of imprisonment of more than one year (art. 165 of the *Criminal Code* of Austria). The Criminal Code also lists some offences that are not punished with a penalty of more than a year imprisonment but still shall be considered predicate offences (forgery of documents, perjury, drug offences).

129. All tax offences falling within the jurisdiction of the court are predicate offences for money laundering, as they are threatened either primary with penalty of more than one year in prison.

130. **Enforcement of money laundering predicated on tax crimes:** Individuals may be charged with money laundering regardless of whether a person has been charged or convicted of the predicate offence,

or whether Austria has jurisdiction over the predicate offence. However, the Financial Action Task Force's 2016 Mutual Evaluation Report of Austria highlights that “[t]he need in practice to prove a predicate offence beyond a reasonable doubt in order to demonstrate the illegal origin of funds limits the ability to detect, prosecute, and convict for different types of ML (in particular relating to foreign predicates and stand-alone ML)”. (FATF, 2016, pp. 37-38⁽⁴¹⁾) The reports notes that, a combination of this and the low sanctions applied by the courts, prosecutors tend to focus on pursuing predicate offences rather than ML charges.

131. The tax administration has observed that the introduction of tax crimes as a predicate offence to money laundering in Austria has resulted in increased detection and referral of suspected tax crimes by other agencies (e.g. FIU and WKStA).

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

132. As outlined under principle 5, the local tax offices' civil tax auditors are under a legal obligation to refer suspected tax crimes detected in the course of their work to the competent local tax office as Fiscal Law Enforcement Authority (FPC, art. 80), who shall then evaluate the referral. The Fiscal Law Enforcement Authority may investigate for itself and report to the Public Prosecutor's Office or forward the case on to the FTIU for further criminal investigation. Civil tax authorities are also obliged to report suspicions of possible *non-tax offences* to the appropriate law enforcement authority (e.g. tax officials must report suspected money laundering to the FBCI) (Code of Criminal Procedure, art. 78).

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

133. In addition to reporting, it is critical that agencies involved in the investigation of tax crime and other financial crimes have mechanisms in place to share information with each other. The below tables set out the information sharing gateways that Austria has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Austria's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the Rome Report](#).

Table 3.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access	MSS ^(a)	MSS ^(b)	MSS	On request ^(c)
	Customs administration	MSS ^(d)	MSS		MSS ^(d)	MSS	On request ^(e)
	Police or public prosecutor	DSS	DSS	DSS		Direct Access	MSS

Financial Intelligence Unit	DSS	DSS	DSS	DSS		MSS ^(f)
Corruption investigation authority	MSS	MSS	MSS	MSS	MSS	
Financial regulator	Sharing Prohibited	Sharing Prohibited	Sharing Prohibited	Sharing Prohibited	MSS ^(g)	On Request

Note:

*DSS = Discretionary Spontaneous Sharing. This means that the agency is in a position to provide information on request and that furthermore there are legal gateways in place that allow, but do not require the agency to provide information spontaneously to another agency.

*MSS = Mandatory Spontaneous Sharing. This means that the agency is in a position to provide information upon request and that not only it is able, but it is also required by law to report information to another agency.

(a) Austria notes that, in practice, it has proven difficult to conduct effective searches of databases held by other divisions. As the responsible division has more professional expertise in effective searches and also in interpreting the results, mostly searches are conducted by the responsible division and explained to the one which is needing them.

(b) Tax administration has the duty to report to the police or the public prosecution service any suspicions of a criminal act falling within its lawful sphere of action.

(c) In addition, suspicions of corruption must be reported unless (i) reporting the crime would affect an official act whose effectiveness requires a personal relationship of trust, or (ii) if and as long as there is sufficient reason to believe that, before long, measures by which the damage is eliminated and the act ceases to be punishable will be taken. In any case, the authority has to do all that is necessary to protect the victim or other persons against any risk, and so if necessary even cases covered by (ii) may have to be reported.

(d) Customs administration has the duty to report to the police or the public prosecution service any suspicions of a criminal act falling within its lawful sphere of action.

(e) The Federal Bureau of Anti-Corruption and the FIU are part of the Federal Ministry of the Interior, and information sharing is based on a number of internal decrees.

(f) Customs administration has the duty to report to the police or the public prosecution service any suspicions of a criminal act falling within its lawful sphere of action.

(g) Financial regulator has the duty to report to the police or the public prosecution service any suspicions of a criminal act falling within its lawful sphere of action.

Table 3.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Various interagency co-operation agreements exist for combatting financial crime
Disclosure of foreign trusts	No
Joint operations and taskforces	A bribery and corruption working group has been established to facilitate co-operation between the tax administration's large tax payers audit unit and the WKStA. The public prosecutor may also authorise joint investigations between police and customs, and police and the tax administration
Parallel investigations	No
Joint intelligence centres	No
Secondments and co-location of staff	The tax administration sends secondees to the Prosecution Office and FIU
Ability to review tax affairs of persons sanctioned for other serious financial crimes	While this is possible, such information is shared on an ad hoc basis rather than systematically.
Multi-agency training	The Federal Finance Academy (BFA) organizes an annual symposium on fiscal criminal law

Principle 9: International co-operation

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.

134. **Legal basis:** Austria may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. To date, it has entered into more than 95 bilateral tax treaties and Tax Information Exchange Agreements,⁶ and is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows Austria to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.⁷

135. Information on criminal matters may be shared only in case there is a legal basis for it. These may be the aforementioned bi- and multilateral conventions within the area of mutual legal assistance, police co-operation agreements or directly applicable European Union law. Within the European Union also the so called Swedish Initiative and the European Investigation Order may be applied which had to be transposed into domestic law (*Finanzstrafzusammenarbeitsgesetz*, “Fiscal Criminal Co-operation Law”, BGBl. I Nr. 105/2014 current version).

136. **International co-operation in practice:** The Federal Tax Investigation Unit includes a Central Liaison Office which acts as the competent authority for sending and receiving MLA requests related to criminal tax matters. Austria does not maintain statistics on the number of MLA requests it sends and receives in relation to criminal tax matters each year.

Principle 10: Fundamental rights of a suspect or accused person

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

137. Austria provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by international human rights treaties of which Austria is a party, and by the Federal Constitution of Austria, which serves as the country’s Bill of Rights.

138. In Austria, a civil tax matter becomes a criminal tax matter the moment a clear suspicion of a tax offence is reported by the tax authority to the Fiscal Law Enforcement Authority. Once a report has been filed with the Fiscal Law Enforcement Authority concerning the suspected tax offence, a tax audit can generally be continued. However, all surveys and investigations relating to the suspected tax offence must be suspended. This serves to protect the rights of potential suspects and to prevent endangering any criminal investigations.

Table 3.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Available from outset of criminal investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Available from outset of criminal investigation (as soon as possible), unless the purpose of certain

		investigation measures is at risk (e.g. house search); in any case prior to the first interrogations
remain silent	Yes	Available from outset of criminal investigation
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times (i.e. in civil tax procedure and from outset of criminal investigation)
interpretation and translation	Yes	Available from outset of criminal investigation
be advised of the particulars of what one is accused of	Yes	Available from outset of criminal investigation (as soon as possible), unless the purpose of certain investigation measures (e.g. house search) is at risk; in any case prior to the first interrogations; in many cases a detailed information of the particulars of what the suspected person is accused of, will become possible only once the prosecution was commenced.
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	Yes	Available from outset of criminal investigation
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Comprehensive tax crime strategy and threat assessment
- Robust communications strategy, including outreach activities at schools
- Legal framework in place for ensuring seizure and confiscation of assets

Room for improvement

- Difficulties for investigators to access databases managed by other agencies and units

References

- BMF (2017), The Austrian Tax and Customs Administration Annual Report of 2016: Information by the Federal Ministry of Finance, Federal Ministry of Finance, Austria, <https://www.bmf.gv.at/en/publications.html>.
- FATF (2016), *Anti-money laundering and counter-terrorist financing measures - Austria*, FATF, <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-austria-2016.html>.

Notes

¹ For more information: <https://english.bmf.gv.at/combating-fraud/Combating.Fraud1.html>.

² For more information: <https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact>.

³ The tax administration's press releases are available at <https://english.bmf.gv.at/>.

⁴ https://www.justiz.gv.at/web2013/home/staatsanwaltschaften~2c9484853e44f8f9013ef0d5c48a7264_de.html.

⁵ See Rome Report, Chapter 5 – Country Information – Austria. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁶ See <http://www.eoi-tax.org> for up-to-date figures.

⁷ <https://www.bmf.gv.at/en/topics/taxation/double-taxation-agreements/the-austrian-tax-treaty-network.html>.

4 Azerbaijan

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

139. Azerbaijan's Criminal Code (CC) sets out a various tax crimes that require criminal intent (*mens rea*). Examples of these offences, which relate to both income tax and VAT/GST, are set out in the table below together their minimum and maximum sanctions.¹

Table 4.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Tax evasion (CC, s213)	Fine of two times the amount of tax evaded	Seven years' imprisonment
Unregistered business activity (CC, s192)	Fine of two times the amount of economic gain	Five years' imprisonment

140. **Statute of limitations:** Statute of limitations for the tax crimes listed above is seven years from the moment the crime was first committed. The limitation period is suspended if the accused disappears during the investigation or court proceedings (CC, s75).

141. **Complicity:** Any person who deliberately participates in the commission of a crime can be held criminally liable as an accomplice to that crime (CC, s31). Any person who directly commits a criminal offence, or directly participated in the commission together with other persons, or who has committed a crime by use of other persons shall be held criminally liable as an executor of a crime (CC, s32(2)).

142. Any person who has instigated another person to commit a crime by an arrangement, payoff, threat, or any other ways shall be held criminally liable as an instigator of a crime (CC, s32(3)). Furthermore, any person who provides advice, instructions, information, means, instruments, or removed obstacles for the commission of a crime shall be held criminally liable as a helper in a crime (CC, s32(4)). The court determines the degree, to which a person has been involved in the commission of a criminal offence and is judged accordingly.

143. **Attempt and conspiracy:** Any person who deliberately attempts to commit a criminal offence, which has not been successfully completed, will be held criminally liable for an attempt to commit a crime (CC, s29). Any person who has organised the commission of a crime or supervised its execution, or created an organised crime group and supervised its activity will be held criminally liable as an organiser (CC, s32(3)).

144. **Professional enablers:** Azerbaijan does not have specific legislative provisions for the treatment of professional enablers of crimes, but they can be prosecuted in accordance with the rules of secondary offenders outline above.

145. **Territorial and nationality jurisdiction:** Azerbaijan has jurisdiction over crimes committed wholly or partly in Azerbaijan. Azerbaijani citizens and residents can also be sentenced in Azerbaijan for tax crimes committed outside of its territory, if the criminal offence is recognised in Azerbaijan and in the state where the criminal offence was committed and the offenders were not already convicted in the state where the crime was committed (CC, s12(1)).

146. **Liability of legal persons:** Legal persons can be held criminally liable for certain criminal offences in Azerbaijan, including falsifying, manufacturing, or selling of official documents, state awards, seals, stamps, or the use of counterfeit documents to commit a criminal offence (CC, s320), but not for tax crimes.

Enforcement of tax crime

147. The below table shows the enforcement of tax crimes in Azerbaijan in tax years ending 2015-18.

Table 4.2. Enforcement of tax crimes in the tax years ending 2015-18

Fiscal Years Ending	Concluded investigations of legal persons	Concluded investigations of natural persons	Number of convictions of legal persons	Number of convictions of natural persons	Number of acquittals of legal persons	Number of acquittals of natural persons
2015	65	24	16	16	8	4
2016	76	20	48	48	13	11
2017	46	9	15	15	15	7
2018	26	74	13	35	2	2

Table 4.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years' imprisonment	44
>3 – 5 years' imprisonment	41
>5 – 8 years' imprisonment	28
Community service (corrective work)	38
Deprivation of the right to engage in certain activities	17
Deprivation of the right to hold certain posts	24

148. **Availability of settlements:** Azerbaijan's criminal law does not allow for any settlements or deferred prosecution agreements. First-time offenders are released from criminal liability if they have completely compensated the damage caused by the crime, or have fully transferred income earned illegally to the state budget and paid additional fine in the amount of one-time payment of illegal gains (CC, 213).

149. **Availability of tax deductions for civil and criminal sanctions:** Sanctions and recovered assets are non-deductible from tax in Azerbaijan.

150. **Tax gap:** According to World Bank Data, Azerbaijan estimates its tax gap at ca. 4% of the country's GDP (Khwaja and Iyer, 2014^[5]).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

151. The Department for Primary Investigation of Tax Crimes (DPITC) under the State Tax Service (STS) of the Ministry of the Economy (MoE) has the primary responsibility for developing Azerbaijan's strategy to tackle tax crime. When devising the strategy, DPITC consults the Cabinet of Ministers of the Republic of Azerbaijan, as well as officials from STS. Currently, DPITC also co-operates with the Prosecutor's Office and courts to develop a methodology that would allow false accounting to be admissible as evidence in the investigative process.

152. **Threat assessment:** DPITC conducts periodic threat assessments using information from various sources. Currently, DPITC and STS are developing a database of risky taxpayers to improve the prevention of VAT fraud. DPITC is also exploring the methodologies of organised crime groups involved in the commission of criminal tax offences.

153. **Communications strategy:** Azerbaijan does not have a specific tax crime communication strategy. However, the DPITC and the Prosecutor's Office provide information related to successful tax crime prosecutions to mass media outlets. Information about DPITC's fight against tax crime is regularly published on STS' website and Azerbaijan notes that STS also conducts special communication campaigns through national TV channels, to inform taxpayers of the fight against tax crime.²

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

154. The below table shows the investigative powers of the DPITC.

Table 4.4. Investigative powers of tax crime investigation unit (DPITC)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power A court order is required.
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Indirect power via another agency A court order is required.
Conduct covert surveillance	Full direct power
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power A court order is not required.
Arrest	Full direct power A court order is required.

155. **Need for additional powers:** Azerbaijan notes that it would benefit from direct access to police databases and to suspicious transaction report databases in tax crime investigations.

156. **Legal professional privilege:** Legal professional privilege in Azerbaijan includes the prohibition of disclosing lawyer-client communications, as provided for by the section 16 of the Law of the Republic of Azerbaijan on Lawyers and Legal Practice.³ Azerbaijan notes that this impacts negatively on tax crime investigations.

Principle 4: Freezing, seizing and confiscating assets

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

157. **Legal basis:** The Tax Code and the Criminal Code of the Republic of Azerbaijan establish the legal basis for freezing, seizing and confiscating assets. According to the Criminal Code of the Republic of Azerbaijan, attachment of property shall be carried out with the aim of guaranteeing a civil party's claim in circumstances provided for under criminal law. Attachment of property shall consist of making an inventory of the property, which shall be left with the owner or holder, and where necessary prohibiting its use, applied to bank deposits, including preventing any further transactions on an account. Property may be attached only if evidence collected in the criminal case provides sufficient grounds for doing so. As a rule, property shall be attached on the basis of a court decision.

158. **Freezing orders:** Azerbaijan's legislation does not allow for rapid freezing orders (between 24 and 48 hours).

159. **Confiscation orders:** In Azerbaijan, it is not possible to institute **non-conviction based confiscations, extended confiscations, or third-party confiscations. Value-based confiscations** are ordinarily used as one of the punishment for tax evasion (CC, s213). Azerbaijan notes that the greatest challenge with respect to freezing, seizing and confiscating assets is when the owner of the assets in question transfers their assets to a third party for safekeeping.

160. Azerbaijan notes that if the taxpayer fulfils their tax obligation within 30 days after seizure of property, confiscation will not be applied and seizure will be terminated.

161. **Foreign freezing, seizure, and confiscation orders:** Azerbaijan can apply seizing and confiscation powers in respect to foreign tax investigations and judgments, if they are not contrary to domestic legislation and reciprocity between Azerbaijan and the country in question is provided.

162. **Agency/unit responsible for asset recovery:** In Azerbaijan, STS is responsible for freezing orders. DPITC is responsible for seizing assets.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

163. STS is the agency responsible for the investigation of tax crimes in Azerbaijan. Within STS, the DPITC is authorised to conduct its own criminal investigations into a range of financial and regulatory offences, including tax crimes. The main function of DPITC is to carry out research and intelligence

activities, conduct investigative operations and co-ordinate international co-operation with overseas tax administrations and law enforcement authorities in fighting tax offences and other crimes within its competence. DPITC has all the powers of the police within its area of competence – and conducts its investigations under the Public Prosecutor's Office (PPO). When evidence of possible fraud, misappropriation, abuse of power, or bribery etc. is found during the course of this investigation, the DPITC is also authorised to conduct preliminary investigation into these offences.

164. The PPO is responsible for the prosecution of tax crimes in Azerbaijan.

Independence of tax crime investigations and prosecutions

165. According to the constitutional provisions, executive, legislative and judicial powers co-operate and are independent within the framework of their authority.

166. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of the Azerbaijan's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁴

Table 4.5. Agencies and other bodies responsible for enforcing tax crimes and other financial crimes

Agency	Role with respect to financial crime
State Tax Service (STS)	Operating under the Ministry of Economy, STS conducts criminal tax investigations and is also empowered to supervise notaries and other persons providing legal services concerning issues related to money laundering and financing of terrorism.
Department of Primary Investigation of Tax Crimes (DPITC)	Housed within STS, DPITC carries out research and intelligence activities, conduct investigative operations and co-ordinate international co-operation with overseas tax administrations and law enforcement authorities in fighting tax offences and other crimes within its competence.
State Customs Administration (SCA)	Carries out the control and enforcement of customs regulations, and conducts preliminary criminal investigations into customs offences under the supervision of the Public Prosecutor's Office.
Public Prosecutor's Office (PPO)	Supervises preliminary criminal investigations conducted by other agencies.
Anti-Corruption Department of the Public Prosecutor's Office	Housed within PPO, the Anti-Corruption Department deals with indicators of possible corruption in the course of an investigation.
Financial Monitoring Service (FMS)	Implements state policy in the prevention of money laundering and the financing of terrorism; responsible for supervising financial institutions and other bodies required to file Suspicious Transaction Reports, and for co-ordinating the activity of relevant government authorities.
Anti-Corruption Directorate (ACD)	National anti-corruption agency housed within the Prosecutor General's Office of the Republic of Azerbaijan. Responsible for the detection and investigation of corruption-related offences.
Commission on Combating Corruption (CCC)	Responsible for the development of anti-corruption policy and monitoring of the implementation of national anti-corruption strategies and action plans.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

167. PPO has a department for the supervision of the implementation of laws in investigative bodies of the Ministry of Justice (MoJ), STS, and SCA.

168. In 2017, there were 39 criminal tax investigators in DPITC and 11 prosecutors working on tax crime in PPO. As of 2020, the number of criminal tax investigators in DPITC rose to 40. Azerbaijan does not have data available on the budgets for DPITC or PPO.

Table 4.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Access on Request
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Access on Request
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Access on Request
Electronic invoice database	Direct Access
VAT deposit account of VAT payers	Direct Access

Training for tax crime investigators and prosecutors

169. STS organises cross-agency trainings with other law enforcement authorities involved in criminal investigations approximately twice a year. These trainings are usually one or several days long. DPITC investigators, PPO prosecutors, and investigators from other investigative bodies can attend these courses. Topics covered mainly focus on investigative techniques and other issues involved in criminal investigations.

Principle 7: Predicate offences

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

170. **Approach:** Azerbaijan amended its legislation to include tax crimes as a predicate offence to money laundering in 2009 under the Law of the Republic of Azerbaijan on the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism (AML-CFT).⁵ Azerbaijan uses a ‘threshold’ approach, whereby proceeds from tax crimes above AZN 45 000 (Azerbaijani Manat)⁶ are determined in the Criminal Code as the constituent element of a money laundering offence.

171. **Enforcement of money laundering predicated on tax crimes:** Since tax crimes were included as a predicate offence to money laundering, Azerbaijan notes an increased number of prosecutions for money laundering offences. Furthermore, Azerbaijan notes that whenever its law enforcement authorities investigate illegal business activity, they also investigate whether the offender was involved in tax evasion.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

172. According to the rules of procedure if auditor finds evidence of tax evasion during the course of their audit he/she will send to DPITC a report which was prepared pursuant to the results of an audit. Azerbaijan mentions that this referral process can be considered as an effective way to find tax evasion, and that it had amounted to 395 cases in 2015, 176 cases in 2016, 58 cases in 2017 and 49 cases in 2018.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

173. DPITC engages in regular co-operation with PPO and agencies under the Ministry of Internal Affairs and the Ministry of Finance, among other institutions. The Criminal Code of Azerbaijan allows for joint investigation teams to be set up in serious cases, with leadership determined on a case-by-case basis by the relevant institutions taking part in the investigation.

174. The below tables sets models for sharing information related to tax crime and other financial crime in Azerbaijan, and the availability of enhanced forms of co-operation in combatting tax crimes.

Table 4.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax crime investigation agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access	Direct Access	Direct Access	Direct Access	On request
	Customs administration	Direct Access	On request		Mandatory spontaneous sharing (MSS)	Direct Access	MSS
	Police or public prosecutor	Direct Access	MSS	On request		Direct Access	MSS
	Financial Intelligence Unit	MSS	On request	On request	On request		MSS
	Corruption investigation authority	On request ^(a)	On request ^(a)	On request ^(a)	MSS ^(a)	On request ^(a)	
	Financial regulator	MSS	MSS	On request	MSS	Direct Access	MSS

Note:

MSS = Mandatory Spontaneous Shari

(a) The Anti-Corruption Directorate may share information it has with other bodies on request. However, in cases where information on the commitment of offences has been revealed, this information (as well as, materials or criminal cases) can be sent spontaneously to relevant authorities that have investigative powers in specific areas for their further examination or investigation.

Table 4.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	DPITC has several co-operation agreements with other state authorities.
Disclosure of foreign trusts	Disclosure of foreign trusts is not possible under Azerbaijan's law.
Joint operations and taskforces	Joint operations and taskforces are possible in cases of serious crimes (see paragraph 38 above).
Parallel investigations	Parallel investigations are not possible under Azerbaijan's law.
Joint intelligence centres	No
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes, upon request of the investigator
Multi-agency training	PPO can organise training sessions for criminal investigators from various law enforcement bodies and agencies.

Principle 9: International co-operation

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.

175. **Legal basis:** Azerbaijan has exchange of information relationships with over 54 jurisdictions in force, consisting of 53 bilateral Double Taxation Agreements (DTA) and one Tax Information Exchange Agreement (TIEA).⁷ Azerbaijan notes that it exchanges information only on the basis of applicable international agreements. There are no provisions in domestic legislation that allow for the exchange of information that contains tax or commercial secrets with foreign jurisdictions in the absence of an international agreement. Furthermore, section 151 of the Constitution of the Republic of Azerbaijan establishes that provisions of international agreements prevail over provisions of domestic legislation.

176. **International co-operation in practice:** Azerbaijan is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows it to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. In addition, Azerbaijan has also entered into seven country-specific agreements, which allow exchange of information and other forms of administrative assistance between the jurisdictions in tax offences (including criminal tax cases).

177. The key challenge Azerbaijan identifies with respect to international co-operation is slow response time from foreign jurisdictions.

178. With regards to good practices, Azerbaijan notes that there is a significant focus given to illicit financial flows, noting that EOI agreements are one of the most useful tools to combatting this problem and recovering assets stolen from Azerbaijan.

179. **Competent Authority:** STS is the central authority for sending and receiving requests for information under exchange of information (EOI) instruments. It is also the competent authority for sending and receiving requests related to criminal tax matters pursuant to MLA agreements. Azerbaijan is able to exchange sensitive intelligence with another international agency if the treaty, through which information is exchanged, has a provision that allows for the exchange of information related to criminal matters.

Principle 10: Fundamental rights of a suspect or accused person

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

180. **Legal basis:** Chapter III of the Constitution of the Republic of Azerbaijan secures the rights and protections of suspects or the accused.⁸ Furthermore, the *Code of Criminal Procedure* (CPC) affirms the rights of suspects and the accused as provided for by the constitution, as well as establishing procedural rights and responsibilities of persons involved in criminal investigations.⁹

181. In Azerbaijan, a civil tax matter becomes a criminal tax matter when the damages incurred by the offender constitute a large amount (threshold of above AZN 20 000).

Table 4.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Any person is considered innocent until they have been proved guilty in court.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From the moment of detention, arrest or indictment.
remain silent	Yes	Nobody may be forced to testify against themselves and close relatives.
access and consult a lawyer and/or entitlement to free legal advice	Yes	In criminal cases, legal advice shall be rendered free at the government's expense.
interpretation and translation	Yes	From the moment of detention, arrest or indictment.
be advised of the particulars of what one is accused of	Yes	From the moment of detention or indictment, the suspect has a right to know what they have been accused of (content, factual description and legal classification of the charge) and to receive a copy of the corresponding decision immediately after the charge is brought.
access documents and case material, also known as a right to full disclosure	Yes	From the moment of detention.
a speedy trial	No	
protection from ne bis in idem (Double Jeopardy)	Yes	If a final judgement has been given on the commission of an offence it shall be prohibited to bring the same criminal prosecution twice for the same offence, to change the charge to a more serious one or to increase the penalty

Highlights

Successful practices

- Tax crimes are enforced and offenders are constantly sentenced
- Good mechanisms for on-sharing of information between government agencies

Room for improvement

- Statutory limits to freezing orders

References

Khwaja, M. and I. Iyer (2014), *Revenue potential, tax space, and tax gap : a comparative analysis (English)*, World Bank Group, <http://documents.worldbank.org/curated/en/733431468038088702/Revenue-potential-tax-space-and-tax-gap-a-comparative-analysis>.

Notes

¹ Azerbaijan's legislation is available in English at <http://www.ombudsman.gov.az/en/view/pages/79>.

² The official website of STS can be found here: www.taxes.gov.az.

³ An English translation of the law can be found here: https://barassociation.az/uploads/attachments/law_of_the_republic_of_azerbaijan_on_lawyers_and_legal_practice.pdf.

⁴ See Rome Report, Chapter 5 – Country Information – Azerbaijan. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁵ The English version of the legislation can be found here: http://www.fiu.az/eng/wp-content/uploads/2014/10/Law-767_2017.pdf.

⁶ In April 2021, EUR 1 = AZN 2.04.

⁷ See <http://www.eoi-tax.org> for up-to-date figures.

⁸ The English version of the *Constitution of the Republic of Azerbaijan* can be found here: [http://www.ombudsman.gov.az/upload/editor/files/Constitution\(1\).pdf](http://www.ombudsman.gov.az/upload/editor/files/Constitution(1).pdf)

⁹ The English version of the *Code of Criminal Procedure* can be found here: <http://www.ombudsman.gov.az/en/view/pages/79>

5 Belgium (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of Tax Offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

182. In Belgium, tax crimes are set out in the Income Tax Law (CIR) and in the VAT Law (CTVA). All listed offences require a *mens rea* element. The types and sanctions are listed in the table below:

Table 5.1. Overview of tax crime offences and sanctions

Offence	Sanction
Violation of the provisions of the tax codes committed with fraudulent intent or malicious purpose	Imprisonment from eight days to two years or a fine of EUR 250 to EUR 500 000, or both
Infringement of the provisions of the tax codes committed in the context of serious tax fraud, organised or not	Imprisonment from eight days to five years and a fine of EUR 250 to EUR 500 000 or one of these penalties only
Commission of a forgery in public, commercial or private papers, or use of such a forgery in order to breach the provisions of the tax codes with fraudulent intent, with the intention of causing harm or in the context of serious tax fraud, whether organized or not	Imprisonment from one month to five years and a fine of EUR 250 to EUR 500 000 or one of these penalties only
Preparation or use of a false certificate that may compromise the Treasury's interests	Imprisonment from eight days to two years and a fine of EUR 250 to EUR 500 000 or one of these penalties only
To give false testimony, the interpreter or expert who makes a false statement, the one who suborns one or several witnesses, experts, or interpreters	Imprisonment from two months to three years
Failure to appear or refuse to testify	Imprisonment from eight days to six months and a fine from EUR 125 to EUR 500,000 or one of these penalties only

183. **Statute of limitation:** The offence of tax fraud becomes statute-barred 10 years after the offence was committed.

184. **Availability of non-criminal sanctions:** Tax fraud gives way to administrative sanctions such as administrative fines and/or tax increases. The level of administrative sanctions is set by legislation. The sanctions are higher in fraud cases than for non-fraudulent offences.

185. **Complicity:** A person convicted as an accomplice is liable to a penalty equivalent to two-thirds of that adjudicated to the primary offender (Penal Code, article 69). Further, accomplices may also have joint liability with the primary offender for the payment of due tax (CIR, article 458 and CTVA, article 73 sexies) and face professional disqualifications. These penalties may be added to the sentences imposed under criminal law.

186. Attempt and conspiracy: Acts carried out as part of an attempt to commit a tax crime, such as drafting and using false documents, may constitute a criminal offence. Conspiracy may be treated as an autonomous offence of creating a criminal organisation (arts. 322-326 of the Criminal Code). Under Article 73h of the VAT Code, any person who undertakes an attempt to commit serious tax fraud is punishable by imprisonment of 8 days to 3 years and a fine of EUR 26 to EUR 50 000, or one of these penalties only.

187. Liability of legal persons: Legal persons can be held liable for criminal offences in Belgium. Penalties imposed on corporate bodies are identical to those that can be imposed on individuals, except that prison sentences are converted into pecuniary penalties.

Table 5.2. Legal basis for sanctions

Legal Basis	Sanction
Penal Code, art. 41bis	Fines ranging from EUR 250 to EUR 125 000
Income Tax Code, art. 458	Joint and several liability for payment of tax
Income Tax Code, art. 455 and Income Tax Code, art. 456	Professional ban/closure, fine from EUR250 to EUR 150 000 in the event of violation of the sanction imposed under article 455, and public display of the sentence or penalty imposed under article 455 Income Tax Code
Penal Code, art. 42, 3°	Special confiscation of the pecuniary benefits derived from the offence
Criminal Code, art. 7	Dissolution

188. Territorial and nationality jurisdiction: The offence of tax fraud will be prosecuted by the Belgian justice system if the fraud has been committed to the detriment of the Belgian Treasury, even if the facts have been committed abroad. The nationality of the taxpayer plays no role. It is sufficient that they are subject to a Belgian tax.

189. Concerning natural persons, article 3 of the Criminal Code grants Belgian criminal law and courts jurisdiction when an offence is committed on Belgian territory, as well as when a constituent element or aggravating circumstance of an offence is committed on Belgian territory.

190. Professional enablers: Article 455 CIR imposes additional penalties for tax offences committed by professionals, including tax advisors, business agents, and accountants. Penalties include closure of establishment for three to five years and prohibition of direct or indirect practice of the professions indicated for three to five years. It should be noted that when a false document is produced by a civil servant or public officer, articles 195 and 196 provide for more severe prison sentences.

Enforcement of tax crime

191. Availability of settlements and deferred prosecution agreements: Under Article 216bis, § 6 of the Code of Criminal Investigation, a criminal transaction is possible for tax offences that have made it possible to evade the tax. This provision applies to both natural and legal persons. The system for deferred prosecution agreements (DPA), as used in English law for example, differs from the Belgian penal transaction system. For example, a DPA can only be offered to a legal entity, and only if it cooperates fully with the investigation. These conditions do not apply in the case of a penal transaction.

192. Availability of tax deductions for civil and criminal sanctions: Civil and criminal sanctions are not tax deductible in Belgium (CIR, Article 53.6)

193. Tax gap: Belgium's Federal Public Service Finance estimates the VAT gap annually using two methodologies: a top-down consumption-side approach from the Center for Social and Economic Research (CASE), which estimated the VAT Gap (percent of VTTL) to 12 % in 2020,¹ and technical

¹ European Commission, [VAT Gap in the EU – Report 2021](#)

assistance from the IMF Fiscal Affairs Department's Revenue Administration Divisions. The overall VAT gap has remained constant at around 8 percent of GDP for the period 2011-2021, with conceivably a slight drop in 2021.²

Principle 2: Having a Strategy for Addressing Tax Crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

194. The Federal Public Service (FPS) Finance has a multi-year strategic plan. It is developed annually into operational plans. Each department within the FPS also draws up an annual operational plan. The same principles apply to the justice and police departments. Enforcing the law, monitoring and fighting fraud and criminality are some of the objectives of the finance strategic plan.

195. A "college" for the fight against tax and social fraud was established in 2020. This college is made up of different legal and administrative actors in the fight against social and tax fraud has developed and implemented three action plans. These plans notably resulted in the adoption of the law of 17 March 2022 on various tax provisions and the fight against fraud which introduced the possibility of setting up tax investigation teams (MOTEMs). These teams are made up of members of specialised police forces and tax officials, and aim to identify offences relating to direct tax, VAT and money laundering.

196. FPS Finance and FPS Justice have amended the tax codes to allow 25 FPS Finance agents to act as judicial police officers. This system, effective since January 1, 2023, allows the public prosecutor to use their fiscal expertise for investigations involving tax fraud. This support is particularly beneficial for police forces lacking sufficient training in financial crime and tax fraud.

197. **Threat assessment:** Belgium does not undertake a threat assessment related to tax crime.

198. **Communications strategy:** The communication from the FPS Finances is limited given the strict professional secrecy that applies in these cases. The only types of proactive publication are the FPS Finances annual report and the partial publication of (previously anonymised) judgments and rulings obtained on a publicly accessible website.³

Principle 3: Investigative Powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

22. Belgium's "Taxpayer's Charter" law, enacted in 1986, establishes a binding legal framework for tax fraud prosecution. The public prosecutor is responsible for public action, while tax authorities act as witnesses. However, it allows information exchange and authorises the detachment of tax officials to the public prosecutor's office and the police (see principle 2).

² IMF, [Belgium: Technical Assistance Report-Revenue Administration Gap Analysis Program–The Value Added Tax](#)

³ FPS, [FISCONET plus](#)

Table 5.3. Investigative powers of tax crime investigation authorities (Public Prosecution Service)

Power of tax crime investigation agency to:	Availability	Comments
Search property and seize physical evidence such as books and records	Full direct power Court order required	
Obtain documents from third parties	Full direct power	
Interview	Full direct power	
Inquiry powers (e.g. power of coercion)	Full direct power	
Intercept mail and telecommunications	Full direct power	In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.
Conduct covert surveillance	Full direct power	In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.
Conduct undercover operations	Full direct power	In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.
Search and seize computer hardware, software and electronic storage media	Full direct power	After authorised by a judge
Arrest	Full direct power	After authorised by a judge

199. **Digital media:** The tax authorities have the power to consult and copy computer equipment, subject to the taxpayer's assistance. However, even though the tax codes impose an obligation on taxpayers to cooperate, the tax authorities have no power of coercion: they cannot force an unwilling taxpayer to cooperate, and they cannot take copies of digital data if the taxpayer is opposed and prevents them from accessing the computer media.

200. **Legal professional privilege:** The solicitor's professional secrecy is the obligation not to disclose the confidences received during the practice of his profession. The violation of this secrecy of the lawyer may give rise to not only disciplinary but also criminal prosecution under article 458 of the Criminal Code.

201. The administration shall request the intervention of the territorially competent disciplinary authority to determine if a request for information of documents is compatible with professional secrecy, as per Article 334 CIR. However, certain individuals may be bound by professional secrecy without their profession being organised or a disciplinary authority providing advice. In these cases, the tax authorities must address the taxpayers' objections guided by legal doctrine and case law, particularly the interpretation of Article 458 of the Criminal Code.

Principle 4: Freezing / Seizing and Confiscating Assets

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

202. **Legal basis and agencies responsible for seizing assets:** The General Administration of Collection and Recovery (AGPR) of FPS Finance is responsible for voluntary and compulsory collection of tax and non-tax debts. The Code of Amicable and Compulsory Recovery of Tax and Non-Tax Debts

(CRAF) was introduced in January 2020 to harmonise recovery procedures. The law amends tax codes and special laws, and a Royal Decree implements the CRAF.

203. The Central Organ for Seizure and Confiscation (OCSC) is a federal institution established by law in 2003 to serve as a knowledge centre for judicial authorities in criminal matters related to asset seizure. It assists in public action related to confiscation and facilitates judgment execution. The OCSC maintains intensive contacts with the public prosecutor's office, investigating judges, police, and FPS Finance.

204. **Freezing and seizing orders:** Freezing, i.e. precautionary seizures, are regulated by the Judicial Code (art. 1386 to 1675), unless the Code for the Amicable and Forced Collection of Tax and Non-Tax Claims or other tax or non-tax provisions provide otherwise (e.g. simplified execution garnishment). Belgium permits the rapid freezing of assets from a tax crime.

205. Criminal seizure, when carried out by an investigating judge, is governed by articles 35 and 89 of the Code of Criminal Investigation.

206. **Confiscation orders:** Seizure is a measure taken in the course of proceedings that results in the temporary unavailability of an asset, whereas confiscation is a penalty imposed in connection with a conviction which, when it becomes final, results in the permanent dispossession of an asset and its transfer to the State.

Principle 5: Organisational Structure with Defined Responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

207. Tax crime investigations in Belgium are conducted by the tax authorities, particularly the anti-fraud services, the public prosecutor's office, the police and the examining magistrate.

208. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of [Country]'s organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹

Table 5.4. Agencies & other bodies responsible for enforcing other financial crimes in Belgium

Agency	Role with respect to financial crime
SPF Finances	Responsible for fighting tax offences.
Administration Générale de la Fiscalité (AGFisc)	AGFISC is responsible for the establishment of direct (e.g. income taxes) and indirect (e.g. VAT) taxes. It processes tax returns, carries out targeted research and audits, and handles related litigation. AGFISC ensures that everyone pays the correct amount of tax. In this respect, it fights against tax fraud, what involves among others: <ul style="list-style-type: none"> - verifications and investigations carried out alone or in co-operation with other services of the Finance department; - controls that require foreign investigations; - co-ordination of the co-operation with other federal public services.
Special Tax Inspectorate (ISI)	Responsible for detecting, preventing and combating major tax fraud: <ul style="list-style-type: none"> - verifications and investigations carried out alone or in co-operation with other services of the Finance department; - simultaneous controls in different regions of the country; - controls that require foreign investigations;

	- co-ordination of the co-operation with other federal public services.
Anti-Fraud Co-operation Service (AFCOS or CAF in French and Dutch)	AFCOS or CAF is mainly responsible for: <ul style="list-style-type: none"> - Acting as a single point of contact in the Ministry of Finance for all information concerning indications of tax fraud identified in judicial cases by public prosecutors⁴ - Co-operating with the network of experts in economic, financial and fiscal material (ECOFINFISC) of the College of the General Prosecutors (CAF is the contact point in the Ministry of Finance as regards information exchange with ECOFINFISC); - Managing the task force responsible for the Fight against Tax Havens.
Customs and Excise administration (DA)	Carries out controls and enforcement of regulations. Analyses frauds based on domestic and international information; participates in national preventive controls; participates and assists in investigations and prosecutions performed by authorities and bodies involved in the fight against tax or customs fraud (the federal police and Europol, EU anti-fraud services (OLAF), and foreign customs administrations.
Police services of the Ministry of Interior Criminal Policy Unit	Responsible for investigations dealing with financial crimes. Mainly gathered within the Federal Police's Economic and Financial Crime Division.
Federal Department of Justice (SPF Justice)	Responsible for judicial investigations, under the supervision of the local prosecution authorities and the federal prosecutor.
Cellule de Traitement des Informations financières (CTIF)	Responsible for analysing Suspicious Transaction Reports provided by designated businesses and professionals under anti-money laundering legislation and for providing relevant information to government authorities. CTIF is the Belgian FIU.
Central Office for the Repression of Corruption (OCRC)	In corruption cases, the OCRC, which is a unit within the federal police, generally conducts investigations under the supervision of a prosecutor. The OCRC is empowered to co-ordinate national operations, support police services, and carry out research and monitoring functions.
Federal Prosecutor's Office	Responsible for prosecuting federal and international corruption where those crimes exceed the competence of local prosecutors.
National Bank of Belgium (BNB)	Responsible for the prudential supervision of financial institutions including banks and insurance companies.
Financial Services and Markets Authority (FSMA)	Responsible for monitoring and supervising financial markets and investment products.

209. **Registers:** The Crossroads Bank for Enterprises (CBE) is a database owned by the FPS Economy that centralises company data, while the register of beneficial owners (UBO) is established to prevent money laundering and terrorist financing. Additionally, the Central Point of Contact for accounts and financial contracts (CPC) is a register of Belgian accounts, foreign accounts, and cash transactions, and the cadastral extract registers land ownership. Lastly, many public representatives are required to submit their mandates, functions and professions to the Court of Audit. The court publishes the list and related remuneration, as well as the list of representatives who have not declared their mandates or assets.

Principle 6: Adequate Resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

210. Resources allocated to the fight against tax fraud are not precisely determined within the general expenditure budget of the Belgian state.

Table 5.5. Databases / sources of information available for tax audits

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access
Register of beneficial owners	Direct Access
Customs databases	Access on Request
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Access on Request

Training for tax crime investigators

211. The officials of the General Administration of the Special Tax Inspectorate receive specific and permanent training in the fight against tax fraud. Different topics are covered during this training, i.e. accounting, income taxes, both for individuals and businesses, VAT, e-audit, fraud methodologies, collection and recovery in tax matters, transfer pricing, international cooperation, fight against money laundering and terrorist financing, fight against tax havens.

212. There are also initiatives to train the Public Prosecutor's Office and the criminal police in this area. The first action plan of the College to combat tax and social fraud planned and carried out three days of training intended for magistrates, police officers, tax and social inspection agents. The themes covered were corruption, social fraud, and money laundering.

Principle 7: Predicate Offences

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

213. **Approach:** Serious tax fraud has been a predicate offence for money laundering since the Law of April 7, 1995, which came into force on the 20th of May 1995. Law of September 18, 2017, on the prevention of money laundering and terrorist financing and on limiting the use of cash includes a list of offenses underlying money laundering.

214. **Enforcement of money laundering predicated on tax crimes:** Belgium does not maintain any data related to successfully prosecuted cases of money laundering predicated on a tax crime.

Principle 8: Inter-agency Co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

215. The obligation to report suspected financial crimes is explained in article 29 of the Code of Criminal Procedure. This article establishes an obligation to report ordinary crimes and misdemeanours, as well as serious tax fraud. Simple tax fraud is subject to optional reporting.

216. Consultation is compulsory between the Public Prosecutor and the tax authorities on cases based on evidence of serious tax fraud, organised or otherwise, which have been reported by the tax authorities (article 29§3 of the Code of Criminal Procedure).

217. The Public Prosecutor responsible for economic, financial and tax crime meets the tax authorities and the federal police twice a year to identify serious or organised tax fraud schemes requiring special attention, in accordance with article 29§5 of the Code of Criminal Procedure.

Table 5.6. Models for reporting suspicions of financial crime detected in the course of official duty to the competent authority

Authority sending the report of suspected crime	Authority receiving the report of suspected crime					
	Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Tax administration		N/A	DSS	MR	MR	MR
Customs administration	MR	DSS		MSS	MSS	MSS
Police or public prosecutor	DSS	DSS	DSS		DSS	MSS
Financial Intelligence Unit	N/A	MSS	MSS	N/A		No
Corruption investigation authority	RP	N/A	N/A	MSS	DSS	
Financial regulator	N/A	MSS	N/A	MSS	MSS	N/A

Note: DSS = Discretionary Spontaneous Sharing. MR = Mandatory Reporting. MSS = Mandatory Spontaneous Sharing

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

218. The below table shows the models for sharing information related to tax crimes and other financial crimes in Belgium, and the availability of enhanced forms of co-operation in combatting tax crimes.

Table 5.7. Models for sharing information related to tax crime and other financial crime.

	Authority receiving information						
	Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset recovery Authority

Authority providing information	Tax administration		Direct access	Direct access	No sharing ¹	Reporting obligatory	No sharing ¹	Direct access
	Agencies investigating tax offences	Direct access		Direct access	Reporting obligatory	Reporting permitted	No sharing	Direct access
	Customs administration	Direct access	Direct access		Reporting obligatory	Reporting permitted	On request	On request
	Police or public prosecutor	Reporting obligatory ²	Reporting permitted ²	Reporting obligatory ³		Reporting permitted	Direct access	Reporting permitted
	Financial Intelligence Unit	Reporting obligatory ²	Reporting obligatory ²	Reporting permitted ³	Reporting obligatory		Direct access	Reporting permitted
	Corruption investigation authority	No sharing	Direct access	On request	Direct access	Direct access		No sharing
	Asset recovery Authority	Direct access	Direct access	On request	Reporting obligatory	On request	No sharing	
	Financial regulator	No sharing	Reporting obligatory	No sharing	Reporting obligatory	Reporting obligatory	No sharing	On request

Note:

1. It is not possible for the tax administration to provide the police or corruption investigation authority with information because of the restriction in the co-operation between the tax administration and the federal police under the Taxpayers' Charter. Suspicions of crime must however be reported to the public prosecutor.

2. Public prosecutors and the CTIF send information relevant to the administration of taxes and tax crime investigators to the Anti-Fraud Coordination service (CAF), which allocates cases to the competent tax authority and shares information with the latter. Information concerning tax crime investigations is shared with the Special Tax Inspectorate (ISI). The central administration of the ISI then determines whether the case will be taken up by the agency or whether it should be on-referred to another authority such as the AGFisc.

3. Public prosecutors and the CTIF send information relevant to the administration of customs and customs crime investigators to the CAF, which allocates cases to the competent tax authority and shares information with it. Information concerning customs crime investigations is allocated to the ISI. The central administration of the ISI then refers the information to the customs and excise administration. The information may also be referred to the regional directorate of the ISI, in particular where it appears that the case may have both tax and customs aspects and require joint investigation.

Table 5.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Yes (see below)
Disclosure of foreign trusts	No
Joint operations and taskforces	No
Parallel investigations	No
Joint intelligence centres	No
Secondments and co-location of staff	Tax officials are detached to the public prosecutor's office. There is also temporary detachment of tax officials as judicial police officers to public prosecutors' offices to participate in multidisciplinary teams in cases of serious tax fraud.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	The tax administration may have access to judicial files of any kind against a taxpayer with the agreement of the prosecutor in charge of the file.
Multi-agency training	There are trainings between tax administration, the FIU, the public prosecutor's office, and the police.

Principle 9: International Co-operation

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.

Legal basis

219. Belgium is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC). It is also a Party to the UNCAC, as well as the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, and the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

220. **International cooperation in practice:**

Table 5.9. Competent authorities for sending and receiving requests

		Pursuant to the MAC	Pursuant to bilateral EOI agreements	Pursuant to multilateral MLA agreements	Pursuant to bilateral MLA treaties
Sending requests related to criminal tax matters	Competent authority responsible for sending requests related to criminal tax matters	Federal Public Service Finance Department: OES International Relations & Special Tax Inspectorate	Federal Public Service Finance Department: OES International Relations & Special Tax Inspectorate	Federal Public Service Finance Department: OES International Relations & Special Tax Inspectorate	Federal Public Service Finance Department: OES International Relations & Special Tax Inspectorate
	Number of requests for assistance in criminal tax matters sent to foreign jurisdictions	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.
	% of those requests that received a response	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.
	Average response time in days	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.
Receiving requests related to criminal tax matters	Competent authority responsible for sending requests related to criminal tax matters.	Federal Public Service Finance Department: OES International Relations	Federal Public Service Finance Department: OES International Relations	Federal Public Service Finance Department: OES International Relations	Federal Public Service Finance Department: OES International Relations
	Number requests for assistance in criminal tax matters received from foreign jurisdictions	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.

% of those requests that your jurisdiction responded to	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.
Average response time in days	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.	These specific statistics are not available.

221. **Enhanced form of international cooperation:** When a tax fraud case is investigated under the direction of an investigating judge, international investigative duties may be requested from the police in the form of international letters rogatory. The Law of 5 May 2022 transposing Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 provides rules facilitating the use of financial and other information for the purposes of the prevention, investigation, detection, or prosecution of certain criminal offences.

222. The tax authorities and the FIU also exchange information with their foreign counterparts. This is possible due to Belgium's signing of different double tax treaties, Tax Information Exchange Agreements, and EU Directives on administrative co-operation in the field of taxation. Additionally, the FIU's co-operation with its foreign colleagues is governed by co-operation agreements, such as Memorandum of Understandings.

223. The European Public Prosecutor's Office conducts transnational investigations into VAT and customs fraud, which are the European Union's own resources. Belgium has one prosecutor appointed to the European Prosecutor's Office and two deputy prosecutors. The Federal Prosecutor supervises the Belgian part of the investigations.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

224. Belgium provides persons accused or suspected of having committed a criminal offence, including all tax crimes, with a full range of procedural and fundamental rights. These fundamental rights are enshrined in several international human rights treaties ratified by Belgium such as the Convention for the Protection of Human Rights and Fundamental Freedoms.

225. A civil tax matter becomes a criminal investigation in Belgium when the examination of the files reveals evidence of serious tax fraud meeting the criteria defined by the Royal Decree of 9 February 2020 implementing article 29, § 4, of the Code of Criminal Procedure.

226. The law of 17 March 2022 on various tax provisions and the fight against fraud introduced the possibility of setting up tax investigation teams, so called MOTEMs. These teams are made up of members of specialised police forces and tax officials, and aim to identify offences relating to direct tax, VAT, and money laundering. The investigative powers of each entity are subject to respect for the fundamental rights enshrined in the Constitution, the European Convention on Human Rights, and the EU Charter of Fundamental Rights.

Table 5.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	

be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	
remain silent	Yes	
access and consult a lawyer and/or entitlement to free legal advice	Yes	
interpretation and translation	Yes	
be advised of the particulars of what one is accused of	No	
access documents and case material, also known as a right to full disclosure	Yes	
a speedy trial	No	
protection from <i>ne bis in idem</i> (Double Jeopardy)	Yes	Article 29 § 3 of the Code of Criminal Procedure provides for consultation between the public prosecutor's office and the tax authorities to avoid bis in idem

Highlights

Successful practices

- Wide range of powers for the tax crime investigation agency, including for accessing registries and for seizing digital evidence.
- Solid use of international co-operation mechanisms, including enhanced forms of international co-operation and exchanges of information

Room for improvement:

- Belgium could benefit from undertaking a threat assessment in relation to tax crimes.

¹ See Rome Report, Chapter 5 – Country Information – [Country]. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf

6 Brazil

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

227. Brazil's Law against Tax, Economic and Consumption Crimes (Law No. 8137/90, hereinafter the "Law Against Tax Crimes") sets out a range of different tax offences that require criminal intent (*mens rea*) and apply to both income tax and value added tax (VAT). Examples of tax offences are shown in the table below.

Table 6.1. Income tax offences requiring criminal intent

Offence	Minimum Sanction	Maximum Sanction	Statute of limitations
Tax evasion (Law against Tax Crimes, art. 1)	Two years of imprisonment and a fine	Five years of imprisonment and a fine	12 years
Falsify or altering invoices, sales notes or any other document related to taxable transactions (Law against Tax Crimes, art. 1.II)	Two years of imprisonment and a fine	Five years of imprisonment and a fine	12 years
Withholding information from, or making false statements to the tax authority (Law against Tax Crimes, art. 2.I)	Six months of imprisonment and a fine	Two years of imprisonment and a fine	Four years
Use of software that allows the taxpayer to have accounting information different from the one submitted to the tax authority (Law against Tax Crimes, art. 2.V)	Six months of imprisonment and a fine	Two years of imprisonment and a fine	Four years

228. Brazil notes that in accordance with Binding Precedent no. 24 of the Supreme Federal Tribunal, the offence of tax evasion may only be prosecuted after the administration assessment determines the effective existence of the offence.

229. **Statute of limitations:** In accordance with Binding Precedent No. 24 of the Supreme Federal Tribunal, the limitation period for a tax crime offence will start on the day after the conclusion of the administration assessment. The limitation period can be interrupted by the commencement of a criminal investigation (Criminal Code, arts. 111.I and 117.I).

230. **Complicity:** Brazil admits accessory liability in tax crime cases. Article 11 of the Law against Tax Crimes prescribes that “whoever contributes to the crimes defined in this law” shall be sentenced to the same sanction than the primary offender.

231. **Attempt and conspiracy:** Attempt to commit a tax crime is a criminal offence in cases where no material result is required, such as withholding information or making false statements to the tax authority, and using software that allows the taxpayer to have accounting information that is different from the one submitted to the tax authority. Conspiracy to commit a tax crime is a criminal offence (art. 29 of Decree-Law 2848/1940).

232. **Professional enablers:** Brazil does not have specific crime for professional enablers, although it is possible to hold them liable for co-authorship or criminal participation (art. 29 of the Decree-Law 2848/1940).

233. **Territorial and nationality jurisdiction:** Brazil has jurisdiction over tax crimes when the criminal offence occurs in another country and damages the Brazilian federal or state assets (Criminal Code, art. 7, I, b).

234. In accordance with the Criminal Code art. 7, II, b, Brazil has jurisdiction over crimes promoted by Brazilian citizens in another country, when the offence damages the Brazilian state or federal treasury. For this possibility to arise, the offender needs to return to Brazilian territory, the conduct must also be criminal offence in the country where it was committed and may be suitable for extradition to Brazil, and the offender must not have been sentenced, acquitted or pardoned in the foreign country.

235. **Liability of legal persons:** Legal persons cannot be held liable for tax or economic offences in Brazil.

Enforcement of tax crime

236. The below table shows the enforcement of tax crimes in Brazil in tax years ending 2015-18. Brazil notes that these figures reflect only tax crime sentences from federal courts, and do not include any state-level investigations.

Table 6.2. Enforcement of tax crimes in tax years ending 2015-18

Tax years ending	Number of ongoing tax crime investigations	Number of concluded tax crime investigations	Number of tax crime investigations where action short of criminal prosecution was taken	Number of cases referred for criminal prosecution	Number of cases prosecuted	Number of convictions	Number of acquittals
2015	24 221	7 811	Not provided by judiciary authorities.				
2016	19 701	6 818					
2017	25 656	6 070					
2018	19 262	5 595					

237. **Availability of settlements:** Brazil allows for prosecution agreements in tax crimes in the event that the offence was committed in co-authorship and one of the participants spontaneously confesses and reveals the entire criminal plot to the authorities. In this case, the sentence of the confessor may be reduced by up to two-thirds (*Law against Tax Crimes*, art. 16, paragraph 1).

238. **Availability of tax deductions for civil and criminal sanctions:** Criminal and civil sanctions are non-deductible from tax in Brazil (*Art. 47, Law 4.506/77*).

239. **Tax gap:** Brazil does not measure its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

240. While Brazil does not have a specific tax crime strategy, it notes that it has developed a range of measures that contribute to the prevention, investigation, and prosecution of economic and tax crimes, including through the use of co-operation agreements, joint taskforces and intelligence systems.

241. The Secretariat of Federal Revenue of Brazil (RFB) and the Federal Police have signed technical co-operation agreements that regulate the sharing of information between those agencies, enhance the combat of organised crime, tax crimes and financial crimes.

242. In 2012, RFB joined the Fiscal Intelligence System (SIF), a co-operation network designed to better integrate the work of State Revenue Services by open up channels for communication, exchange of experiences and best practices, and the development of more integrated intelligence system. Between 2018 and 2019, SIF worked on a wide range of actions, embracing trainings, technical co-operation agreements and integrated actions to combat tax fraud by using fake invoices from front companies.

243. In December 2018, SIF organized a national action, covering all states tax administrations and the RFB, aiming at identifying front companies used into the fake invoice scheme, cancelled their registration and charged all the tax related.

244. **Threat assessment:** Despite Brazil not having a general national threat assessment for tax crimes, it notes that programmes like the Fiscal Intelligence System (SIF) indirectly cover this issue.

245. **Communications strategy:** Brazil provides information to the media regarding both ongoing and concluded financial crime investigations. This includes press conferences and press releases,² which outline the investigative authorities work and underscore the importance of cracking down on tax crimes and other financial crimes.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

246. The below table shows the investigative powers of the tax crime investigation agency of Brazil.

Table 6.3. Investigative powers of tax crime investigation agency (Federal Prosecution Service)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Court order required.
Obtain documents from third parties	Full direct power Court order required.
Interview	Full direct power Witnesses can be compelled to testify through a court order.
Inquiry powers (e.g. power of coercion)	Full direct power Court order required.

Intercept mail and telecommunications	Full direct power Court order required.
Conduct covert surveillance	Full direct power Court order required.
Conduct undercover operations	Full direct power Court order required.
Search and seize computer hardware, software and electronic storage media	Full direct power Court order required.
Arrest	Full direct power Court order required.

247. **Need for additional powers:** The Federal Police of Brazil notes that it would benefit from accessing tax information currently protected by confidentiality laws.

248. **Legal professional privilege:** Brazilian law presumes that any type of client-attorney communication is confidential. Attorneys are not allowed to reveal any confidential information except if being sued by former clients (Code of Ethics and Discipline for Lawyers, arts. 25-26 and Code of Ethics and Discipline for Accountants, art. 2°). Lifting professional secrecy is possible only if the professionals are involved in the crimes.

249. Brazil notes that such a strict definition of legal professional privilege affects tax crime investigations, particularly in cases where lawyers participated in committing the offence.

Principle 4: Freezing, seizing and confiscating assets

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

250. **Legal basis:** Brazil notes that the possibility of freezing, seizing or confiscating assets in a domestic tax crime investigation resides on requests of law enforcement and the public prosecution to court.

251. **Freezing and seizing orders:** Brazil asserts that both the police and the federal public prosecution service (MPF) may request the courts to rapidly freeze assets related to criminal activities, as allowed by both its Code of Criminal Procedure and its AML Law.

252. **Confiscation orders:** Brazil does not allow for non-conviction-based confiscations. Since the enactment of Law 13.964 of 2019, extended confiscations are allowed in Brazil, only to crimes with maximum sanction over six years of imprisonment (Criminal Code, art. 91-A). Thereby, it is not applied to tax crimes. Value-based confiscations are allowed in Brazil (Criminal Code, art. 91, §1°), provided the location of the criminal proceeds is unknown or the criminal proceeds are located in another country.

253. In regards to third-party confiscations, Brazil notes that if an offender uses a third party as a way to conceal the actual ownership of the asset, the judicial authority may lift the property privileges of the asset and confiscate it (Criminal Code art. 91, II).

254. **Foreign freezing, seizure, and confiscation orders:** The possibility of freezing, seizing or confiscating assets resides on requests for mutual legal assistance, in accordance with international agreements such as an MLAT, or letter rogatory. For those jurisdictions, without an international agreement, diplomatic authorities may undertake requests, only if there exist reciprocity between countries.

255. **Agency/unit responsible for asset recovery:** Asset recovery in Brazil is carried out through the co-ordinated work of several agencies including, Federal Prosecution Service (MPF), Comptroller-General of the Union (CGU) and the Department of Asset Recovery and International Legal Co-operation (DRCI).

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

256. The Brazilian Federal Revenue (RFB) is responsible for the civil tax investigations. Whenever sufficient evidence of tax crimes is found in such investigations, RFB must refer the case to the Federal Prosecution Service (MPF), which is responsible for prosecution, according to Law 9.430. Both the Federal Prosecution Service and the Federal Police are responsible for the investigation of tax crimes.

257. The Federal Police is directly subordinate to the Federal Ministry of Justice and Public Safety and is responsible for preventing and investigating offences that violate federal law, including federal tax crimes, under the supervision of MPF.

258. Brazil notes that, at any moment during the criminal investigation, the MPF and the Federal Police can request RFB's assistance, and cases are often conducted as part of a joint operation

Box 6.1. Example of successful implementation of tax crime strategy: Brazil

The intelligence department of the Secretariat of The Federal Revenue of Brazil (RFB) identified a group of non-profit companies ran by straw man, operating at least in 4 states of Brazil, hired by several municipal governments to provide a wide range of services in the public health sector.

The focus of the tax investigation was to prove that these companies were in fact, besides embezzling public funds, producing profits by remunerating illegally the president and directors of the company.

Because there were other financial crimes involved related to public bidding, money laundering and more, the Federal Police Department (PF) and the Federal Prosecution Service (MPF) worked along with RFB and the Office of the Comptroller General (CGU), sharing information and planning strategies for the investigation, both criminal and administrative.

The confidential part of the investigation covered phone and telematics interception (PF), bank account analyses (PF-RFB), intelligence operations (PF-RFB), analysis of RFB database (RFB), consultation to FIU (RFB-PF) and search and seizure warrant (PF-RFB). This part of the investigation revealed the real owner of the non-profit companies and concluded that the companies were providing services with collection of an irregular "administration fee", over-invoicing expenses, and creating fictitious expenses.

The criminal investigation is still in process, not confidential anymore, covering tax charging procedures on strategic targets (RFB); testimonials (PF-RFB); bank account analyses (PF-RFB), analysis of RFB database (RFB), intelligence operations (RFB) and consultation to FIU (RFB-PF).

Some methods used to disguise and council the money movement included:

1. the non-profit companies were hiring front companies connected to the non-profit companies' owner;
2. over-invoice operations of buying goods for fake donation;
3. Large use of check payment for connected or consecutive bank operations;
4. Payments of third-party bills using barcodes on invoices;
5. Bank deposits.

It was estimated that more than BRL 150 million* of the government's funds were embezzled, over a period of more than five years. The Federal Revenue of Brazil has already charged the same amount in taxes and social security contributions. However, the prosecution of tax crimes will begin only at the end of the administrative procedure.

Note:

* In April 2021, EUR 1 = BRL 6.72

259. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Brazil's organisational models for fighting tax crime and other financial crimes is set out in the third edition of [Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes Report \(Rome report\)](#).³

Table 6.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Federal Revenue of Brazil (RFB)	Prevention and detection of tax crimes. RFB also assists the Federal Police and MPF with investigations into financial crimes.
Federal Police (FP)	Prevention, detection, and investigation of tax crimes and other financial crimes including corruption at the federal level.
Public Prosecution Service (MPF)	Conducts federal level criminal prosecutions and oversees police investigations into tax crimes and other financial crimes.
Department of Assets Recovery and International Legal Co-operation (DRCI)	Housed within the Ministry of Justice, DRCI is the principal authority for MLA requests, including seizure and forfeiture requests in international cases.
Council for Financial Activities Control	Collects, analyses, and disseminates financial intelligence relating to suspicious transactions/activities, money laundering and terrorist financing. It also regulates financial and designated non-financial businesses and professions sectors that are not subject to AML/CFT regulation by other governmental institutions.
Office of the Comptroller General	Central agency for internal control and audit of public bodies, corrective and disciplinary measures, and corruption prevention activities. It also has jurisdiction for administrative proceedings against legal persons for corrupt misconduct, including foreign bribery.
Central Bank of Brazil	Supervises financial institutions for AML/CFT compliance.
Special Federal Courts	Facilitate the prosecution of money laundering cases by bringing together judges and prosecutors who are specialized in dealing with such cases.
National Strategy Against Corruption and Money Laundering (ENCCLA)	Co-ordinated by the Ministry of Justice, ENCCLA is the primary policy-co-ordination mechanism in Brazil with respect to money laundering, terrorist financing and corruption.
Integrated Management Cabinet for Prevention and Combat Against Money Laundering (GGI-LD)	Responsible for managing the National Strategy Against Corruption and Money Laundering (ENCCLA).
National Group Against Organised Crime (GNCOC)	Working Group to deal with money laundering cases and typologies
Special Action Group Against Organised Crime (GAECO)	Special unit within all 27 states to facilitate the investigation and prosecution of complex cases involving organised crime, money laundering, and other financial crimes.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

260. The Federal Prosecution Service, the Federal Police and the Tax Authority have separate budgets. For this reason, Brazil is not able to provide figures relating to its budget for the investigation and prosecution of tax crimes. Brazil does not estimate its return on investment for tax crime enforcement or its tax gap. Its investigators do not have performance targets and budgets are not performance-based. According to information provided by Federal Police, there is no budget and staff work specifically dedicated to tax crime investigations or any monitoring for this purpose.

Table 6.5. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Access on Request
Customs databases	Access on Request
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access

Training for tax crime investigators

261. Tax crimes investigators in Brazil have regular training programmes, usually at the Federal Police Academy. The topics covered include smuggling, cartel formation, banking and financial analysis, corruption, money laundering, financial crimes, tax legislation, use of technology tools for tax investigations, among others. The training programmes have basic and advanced modules, on site and distance education, with tax and non-tax trainers. According to PF, the annual programme provides a tax crime training with a thousand participants and an approximate cost of BRL 160 000.

Principle 7: Predicate offences

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

262. **Approach:** Brazil adopted an “all crimes” approach to money laundering in 2012, meaning that it is an offence to launder the proceeds of any criminal offence. Prior to this, there was a fixed list of predicate offences for money laundering. Persons may be charged with money laundering in Brazil regardless of whether a person has been charged or convicted of the predicate offence or whether the Brazil has jurisdiction over the predicate offence (*AML Law, article 2.II*).

263. **Enforcement of money laundered predicated in tax crimes:** Brazil notes that the adoption of the “all crimes” approach has enhanced inter-agency co-operation in tax crime investigations, increasing their overall effectiveness.

264. It also notes that such cases are normally investigated as part of a cross-agency task force which include several law enforcement agencies and the RFB.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

265. The RFB must report to the MPF any evidence of possible tax crimes or other financial crimes, even where this information would otherwise be covered by tax secrecy rules. However, the RFP must obtain a court order before sharing information covered by tax secrecy laws.

266. In the 2015 fiscal year, RFB sent 9 343 referrals of suspected crimes to law enforcement authorities, and 10 371 in the 2016 fiscal year, 11 551 in 2017 fiscal year and 11 155 in 2018 fiscal year.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

267. The below table sets out the information sharing gateways that the Brazil has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Brazil’s frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes](#).

Table 6.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		MSS ^(a)	Direct Access ^(b)	MSS ^(b)	MSS	MSS ^(b)
	Customs administration	Direct Access ^(c)	MSS ^(b)		MSS ^(b)	MSS ^(b)	MSS ^(b)
	Police or public prosecutor	On request ^(c)	On request ^(d)	On request ^(d)		On request ^(d)	On request ^(d)
	Financial Intelligence Unit	DSS ^(d)	MSS ^(e)	DSS ^(e)	MSS ^(f)		MSS ^(f)
	Corruption investigation authority	DSS	Direct Access	DSS	On request ^(d)	On request ^(d)	
	Financial regulator	On request ^(f)	MSS ^(g)	On request ^(d)	MSS ^(h)	DSS ^(h)	DSS ^(h)

Note:

DSS = discretionary spontaneous sharing, MSS(i) = mandatory spontaneous sharing

(a) The RFB must inform the MPF of possible tax crimes and other crimes offence (e.g. money laundering), even where covered by tax secrecy rules but may only provide information protected by tax secrecy rules directly to the police on obtaining a court order.

(b) At federal level, tax and customs are part of a single administration and share access to information. Customs officials may also obtain information on request from State tax administrations.

(c) Information covered by judicial secrecy may only be provided where a court order is obtained.

(d) The FIU may send copies of Financial Intelligence Reports (based on its analysis of Suspicious Transaction Reports) to the tax administration where considered relevant. The tax administration may also request access to specific Suspicious Transaction Reports and Currency Transaction Reports.

(e) The FIU must inform the MPF where evidence of a possible crime is discovered. It may also send the police (including criminal tax investigators) copies of Financial Intelligence Reports (based on its analysis of Suspicious Transaction Reports) where considered relevant. Access to specific Suspicious Transaction Reports and Currency Transaction Reports is available on request.

(f) Limited information is available on request. Information covered by bank secrecy rules cannot be shared.

(g) The central bank must inform the MPF where evidence of a possible crime is discovered. The police may also request information directly, but information covered by bank secrecy is only available where a court order is obtained.

(h) BACEN regularly shares information with the FIU and no court order is required.

(i) Able to provide information, on request and spontaneously without discretion. This means that the agency is in a position to provide information upon request and that not only it is able, but it is also required by law to report information to another agency.

Table 6.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Brazil has various co-operation agreements in place between agencies responsible for fighting financial crime, e.g. RFB and the Federal Police have signed a Technical Co-operation Agreement that regulates the co-ordination and execution of integrated actions aimed at preventing and combating illicit criminal, tax and customs schemes.
Disclosure of foreign trusts	Yes
Joint operations and taskforces	Taskforces comprised of the Federal Police, and the MPF are regularly established in financial crime investigations.
Parallel investigations	Parallel investigations are allowed under Brazilian law.
Joint intelligence centres	Many of Brazil's major cities have Co-ordinated Research and Investigation (COPEI) Units to co-ordinate money laundering investigations by employing task forces comprised of both federal police and prosecutors.
Secondments and co-location of staff	Brazil notes that co-location of staff is allowed but unusual.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. Brazil notes that while there is no standard procedure for communications between the courts and the RFB, this is done on a regular basis.
Multi-agency training	Yes.

Principle 9: International co-operation

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.

268. **Legal basis:** Brazil may exchange tax information with foreign authorities pursuant to bilateral and multilateral agreements, and to domestic legislation on the bases of reciprocity. Brazil is included on international co-operation based on mutual legal assistance, in accordance with international agreements such as an MLAT, and through letter rogatory. For those jurisdictions without an international agreement,

requests may be undertaken by diplomatic authorities, only if exist reciprocity between countries (*Portaria Inter-ministerial n° 501*, of 21 March 2012).

269. **International co-operation in practice:** To date, Brazil has entered into exchange of information relationships with over 40 jurisdictions⁴ through bilateral treaties and Tax Information Exchange Agreements (TIEAs). It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows Brazil to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

270. **Enhanced form of international co-operation:** The Department for Assets Recovery and International Legal Co-operation (DRCI) of the Ministry of Justice and Public Safety is Brazil's Central Authority for international legal co-operation. This department is responsible for both sending and receiving MLA requests in criminal tax matters, including related seizure and forfeiture requests. It also receives and analyses requests for assistance grounded on reciprocity, which are then transmitted via diplomatic channels.

271. In the 2016-18 period, Brazil requested 162 MLAs to other jurisdictions, and answered 77 requests from abroad.

Principle 10: Fundamental rights of a suspect or accused person

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

272. Brazil provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by the Constitution of the Federal Republic of Brazil, which serves as the country's bill of rights, and by international human rights treaties, most notably the American Convention of Human Rights.

273. In Brazil, a civil tax matter becomes a criminal tax matter the moment suspicions of an offence are identified by the tax authority. Whenever, in the course of an administrative tax procedure, the tax authority identifies acts or facts that may constitute a tax crime, it must refer this to the federal prosecution service for the commencement of a criminal investigation.

Table 6.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent		At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	The competent authority may disallow access to evidence related to ongoing proceedings and not yet documented in the records, when there is a risk of compromising the efficiency, effectiveness or purpose of the proceedings.
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Concrete positive examples of inter-agency co-operation
- “All crimes” approach to predicate offences with cross-agency task force in charge of investigating them
- Good access to different databases and sources of information

Room for improvement

- Brazil could make use of non-conviction based confiscations
- Brazil could benefit from lifting some of its tax secrecy laws in regards to tax crime investigations, particularly in regards to legal professional privilege
- Brazil could benefit from more effective powers for tax inspectors.

Notes

¹ See Rome Report, Chapter 5 – Country Information – [Country]. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf

² See (in Portuguese): <http://receita.economia.gov.br/sobre/acoes-e-programas/acoes-da-receita-federal>.

³ See Report, Chapter 5 – Country Information – Brazil. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

⁴ See <http://www.eoi-tax.org> for up-to-date figures.

7 Bulgaria (NEW)

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

274. Bulgaria's Criminal Code 1968 (CC) sets out a range of different tax offences that require criminal intent (i.e. *mens rea*). Examples of tax offences that apply to direct (income tax), and indirect (e.g. VAT related) offences are set out in the tables below, together with their minimum and maximum sanctions and corresponding statutes of limitation period.

Table 7.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statutes of limitation
Evading tax obligations for more than BGN 3 000* (CC, art. 255(1)).	one year imprisonment and a minimum fine of BGN 100	six years' imprisonment and a maximum fine of BGN 2 000	ten years; the absolute statute of limitations expires within 15 years
Evading tax obligations for more than BGN 12 000 (CC, art. 255(3)).	three years' imprisonment and confiscation of a part or the whole property of the convicted person	eight years' imprisonment and confiscation of a part or the whole property of the convicted person	ten years; the absolute statute of limitations expires within 15 years
Evading tax obligations for more than BGN 3 000 through transformation of a commercial company or another legal entity, through transaction involving a business, or related parties (CC, art. 255a(1)).	one year imprisonment and minimum amount of the fine BGN 100	six years' imprisonment and a maximum fine of BGN 10 000	ten years; the absolute statute of limitations expires within 15 years
Evading tax obligations for more than BGN 12 000 through transformation of a commercial company or another legal entity, through transaction involving a business, or related parties (CC, art. 255a(2)).	three years' imprisonment and confiscation of a part or the whole property of the convicted person	eight years' imprisonment and confiscation of a part or the whole property of the convicted person	ten years; the absolute statute of limitations expires within 15 years
Tax fraud using false or falsified documents (CC, art. 256(1)).	two years' imprisonment and a minimum fine of BGN 1 000	eight years' imprisonment and a maximum fine of BGN 5 000	ten years; the absolute statute of limitations expires within 15 years
Setting up a not-for-profit legal entity or a foundation without substantial activity in order to avoid paying taxes (CC, art. 259).	three months of imprisonment and a minimum fine of BGN 3 000 and deprivation of rights	three years' imprisonment, a maximum fine of BGN 5 000 and deprivation of rights	five years; the absolute statute of limitations expires after seven years and six months.
Tax fraud by confirming an untruth or concealing the truth in a written	three months of imprisonment and minimum amount of the	three years' imprisonment and a maximum fine of BGN 1 000	five years; the absolute statute of limitations expires within

declaration or an electronic message (CC, art. 313(2)).	fine BGN 100	seven years and six months
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Note:

* As of March 2023, the exchange rate was EUR 1 = BGN 1.96 (Bulgarian Leva).

275. **Statutes of limitations:** Bulgaria notes that, as a general rule, the limitation period starts running from the date on which the criminal act is committed. There is no possibility to prolong the limitation periods. The limitation periods in relation to criminal prosecution or the enforcement of a criminal sanction can stop running or be terminated in accordance with the relevant legal provisions (CC, art. 81-82). An absolute statute of limitations is a limitation period after the lapsing of which the possibility for criminal prosecution or respectively enforcement of the criminal sanction is extinguished, irrespective of the stopping or the termination of the general limitation periods (CC, art. 81(3) and 82(4)). The limitation periods are different for the different types of crimes and are determined depending on the criminal sanction for each crime.

276. **Complicity:** Any person who aids, abets, or incites another person to commit a tax offence can be punished with the same maximum penalty as the principal offence (CC, art. 20-22).

277. **Professional enablers:** The CC sets out tax offences committed with the participation of a registered auditor, a person who works for the border police, customs administration, or the National Revenue Agency (NRA). These offences carry terms of imprisonment from two to six years and a fine from up to BGN 5 000, as well as a deprivation of rights to hold a certain state or public office or to exercise certain vocation or activity (CC, art. 255(2)).

278. **Territorial and nationality jurisdiction:** The CC applies to Bulgarian and foreign citizens who commit crimes, including tax and financial crimes, within the territory of Bulgaria. It also applies to Bulgarian citizens who commit crimes abroad, and to foreign citizens who commit abroad crimes which affect the interests of Bulgarian citizens or the interests of Bulgaria (CC, art. 3-6).

279. **Legal person liability:** Legal persons cannot bear criminal liability under the CC. However, according to art. 83a of the Law of Administrative Offences and Sanctions (LAOS), a legal entity which has enriched itself or could enrich itself from certain types of crimes shall be sanctioned by a financial penalty up to BGN 1 million and direct or indirect benefits derived by the legal person shall be confiscated (CC, art. 255-256).

280. Bulgarian legal entities can be held liable for crimes committed within and outside the country. Foreign companies that do not have their registered office in Bulgaria can also be held liable when the criminal offence is committed on Bulgarian territory.

Enforcement of tax crime

281. The below table shows the enforcement of tax crimes against natural persons in Bulgaria in the tax years ending 2019-21.

Table 7.2. Enforcement of tax crimes against natural persons in the years ending 2019-21

Tax years ending	Concluded investigations	Number of cases where prosecution was commenced	Number of fines imposed	Number of criminal convictions	Number of acquittals	Number of "probation" and "other" criminal sanctions imposed
2019	618	3 204	46	78	12	26
2020	592	3 231	22	72	14	14
2021	557	3 344	26	83	8	12

282. The below table shows the enforcement of tax crimes against legal persons in Bulgaria in tax years ending 2019-21.

Table 7.3. Enforcement of tax crimes against legal persons in years ending 2019-21

Tax years ending	Concluded investigations	Number of cases where administrative proceedings was commenced	Number of fines imposed	Number of administrative sanctions	Total amount of underlying tax evaded by legal persons (counting on the basis of convictions for tax crimes)
2019	N/A	13	10	10	BGN 3 256 635
2020	N/A	16	12	12	BGN 578 011
2021	N/A	9	7	7	BGN 917 710

283. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** Bulgarian law does not allow tax deductions for civil and criminal sanctions.

284. **Availability of settlements:** Bulgarian law provides for settlements for tax offences in instances where outstanding tax liabilities have been paid in full (Criminal Procedure Code 2006 (CPC), art. 381-384a). The settlement agreement is admissible when the material damages caused by the offence have been recovered. It is mandatory that the competent court approves the settlement, irrespective of whether the settlement is reached during the pre-trial or trial phase of the criminal proceedings.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

285. **Tax crime strategy:** The General Directorate for Combatting Organised Crime (GDBOP) implements the strategy to counter and detect tax crimes. Specific activities are set out in the annual plans of the relevant law enforcement authorities (LEAs) based on a security environment analysis. Seminars, consultations, and joint trainings with private sector organisations and NGOs are held on an annual basis. The key elements of the tax crime strategy are continuous monitoring and gathering of intelligence related to planned, ongoing, or completed illegal acts in the field of tax crimes as well as their prevention, detection, and investigation. The directorate within the Ministry of Internal Affairs (MOIA) which is responsible for the prevention, detection, and investigation of tax crimes is the General Directorate National Police (GDNP) when the tax crimes are not committed by an organised criminal group. Tax crimes committed by organised criminal groups are investigated by the GDBOP. Tax crimes can also be investigated by public investigators or by investigation customs inspectors in the cases under art. 194 of the CPC.

286. Any natural or legal person, as well as a public authority, may report tax crimes to the authorities of the Ministry of the Interior and the Prosecutor's Office. These reports shall be investigated and, if sufficient evidence is gathered, a criminal investigation shall be initiated.

287. NRA has no powers in the field of criminal prosecution and therefore does not assess the threat of tax crimes. Although the NRA does not have investigative functions in the criminal justice system, its employees have a duty to assess the threat of tax crime.

288. **Threat assessment:** As outlined above, the GDBOP conducts a tax crime threat assessment as part of its overall tax crime strategy. When, in the course of the proceedings under the Tax and Social Security Procedure Code (TSSPC), it has been found out that there are grounds to suspect that a crime

has been committed, the proceedings under the TSSPC are stopped and the relevant documents are sent to competent Public Prosecutor's Office (TSSPC, art. 34(2)). After the criminal proceedings have finished, the relevant documents shall be sent to the tax authorities for the purpose of continuing the proceedings under the TSSPC. The assessment of whether a tax offence has been committed is left solely to the public prosecutor.

289. **Communication strategy:** The Prosecution Service is responsible for the communication strategy and provides information to the media related to criminal proceedings. The Prosecution Service has created a media strategy which regulates interaction with the media when providing information. It also governs the media obligations of administrative officials and prosecutors, and the administration itself.

Box 7.1. Inter-agency co-operation to combat VAT Carrousel Fraud: Bulgaria

Successful implementation of a tax crime strategy

The schemes related to VAT-carrousel fraud have a cross-border nature within the European Union (EU). Intra-Community supplies are made to front companies registered in other Member States, such as Romania, Greece, Czechia, and Italy. Operating companies avoid the payment of VAT by using this scheme.

A typical pattern of tax offences involves companies declaring intra-Community deliveries to companies registered in other Member States while, in reality, they operate in Bulgaria without issuing accounting documents. Bulgarian citizens, who do not have the necessary financial means to develop their own businesses, become owners of companies in different Member States in order to serve the interests of the organised crime. They register front companies in Member States, which they use in trilateral, intra-Community transactions.

The concerning goods are delivered to a real trader directly in Bulgaria but are first invoiced to a "missing trader" company registered in another Member State, which re-invoices them at an undervalued amount to the real trader in Bulgaria. This scheme results in an understatement of the tax base and decreases the payable VAT. A fictitious intra-Community supply of goods is declared, solely based on documents, and creates the conditions for a VAT refund or deduction.

Co-operation between agencies is necessary given the complexity for the investigation of these tax crimes. The co-operation amongst the teams of the MOIA, the Public Prosecutor's Office (PPO) and NRA is formed at the very beginning, following a tip-off. In this case, all authorities, within their competence, can learn the details of the criminal scheme and to counteract in the most effective way.

Successful implementation of a communication strategy

The Public Communication Directorate at the Administration of the Prosecutor General interacts with the media in providing information on the work of the PPO, the duties of the administrative heads, prosecutors, and the administration in accordance with the rules for media communication in the system of the PPO, which establish a uniform information standard for all prosecutorial bodies in the country when carrying out media communication.

In cases of high public interest in the investigation of tax crimes, the PPO provides information to the media through publications on the website of the PPO of the Republic of Bulgaria - prb.bg, through a press release, briefing, press conference, interview and participation in radio and television programmes. Details are disclosed to the mass media with the permission and at the discretion of the supervising prosecutor.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

290. The below table sets out the investigative powers that the following agencies have with respect to tax crimes and related financial crimes: the PPO, the Police, the State Agency for National Security (SANS), the National Customs Agency (NCA), and the MOIA.

Table 7.4. Investigative powers of tax crime investigation agencies

Power of tax crime investigation agencies to:	Availability	Comments
Search property and seize physical evidence such as books and records	Full direct power/Indirect power	MOIA has full direct power upon application to the court for a warrant. PPO has indirect power. PPO requires preliminary permission by the court to search and seize physical evidence, in emergency cases the permission is given by the court within 24 hours. As part of the criminal prosecution, following a court sanction, the investigative bodies in the NCA have the authority to search and seize physical evidence. In case of urgency, these can, at their own initiative, carry out the actions, with the same being approved by the court.
Obtain documents from third parties	Full direct power/Indirect power	MOIA and SANS have full direct powers to obtain documents from third parties. PPO has full direct power, except when a professional secret must be disclosed and, in these cases, a preliminary permission by the court is required. The NCA has the authority to request and receive documents from third parties.
Interview	Full direct power	MOIA and SANS have full direct power to interview. The NCA conducts interviews within its competence. PPO and Police have also full direct powers to conduct interrogations.
Inquiry powers (e.g. power of coercion)	Full direct power/Indirect power	PPO has full direct power to send inquiries to state organs. MOIA and SANS have indirect power via another agency to send inquiries.
Intercept mail and telecommunications	Indirect power	SANS has indirect power via another agency. Interception of mail and telecommunications are defined as special intelligence means regarding Special Intelligence Means Act. SANS has capabilities to intercept mail and telecommunications. MOIA has indirect powers via another agency. The PPO is entitled to ask from the court a permission to use special surveillance means. If such a permission is granted, the application of the special surveillance means is carried out by other agencies. This applies also to the interception of mails and telecommunications.
Conduct covert surveillance	Full direct power/Indirect power	MOIA has full direct power to conduct covert surveillance. SANS has indirect power via another agency. SANS has capabilities to conduct covert surveillance in the framework of intelligence gathering process against organised criminal groups, engaged in tax crimes and after granted permission from the court for the use of special intelligence means. The PPO is entitled to ask from the court a permission to use special surveillance means. If such a permission is given, the application of the special surveillance means is carried out by other agencies. This applies also to conducting covert surveillance.
Search and seize computer hardware, software, and electronic storage media	Full direct power/Indirect power	MOIA has full direct power upon application to the court for a warrant.
Arrest	Full direct power	MOIA has full direct power to arrest. Customs authorities within their competence have the power to make arrests. The PPO can order the Police to arrest a person when a charge has been brought against that person (i.e. the person has been accused of having committed a crime) and the period for which the person can be arrested under an order of the PPO is up to 72 hours. The court is the only competent authority to order a permanent arrest.

Additional information

(i) As from the year 2016, the National Investigation Service (NIS) is empowered to search and seize computer information systems and data. At the beginning of 2021 rules for the seizure of crypto assets were added. These rules have been created by taking stock of the world's best practices for

the search and seizure of electronic systems and electronic evidence and serves as a model to solve similar problems. Procedures connected with the seizure of electronic evidence are strictly regulated and no problems have been encountered during investigation.

(ii) During the last years the NIS seized data from different internet providers, including electronic evidence related to the content of websites, access to different websites for commerce with commodities whose distribution is prohibited, limited, and stopped, but there have been no seizures of the whole content of electronic media or their domains.

(iii) SANS has no investigative powers and cannot conduct search and seizure of digital media. SANS can, under the supervision of the PPO, analyse digital evidence obtained during conducted searches.

(iv) Within the framework of criminal proceedings for crimes that the NCA has the authority to investigate, after a court sanction, investigative bodies from the NCA may seize hardware and portable data carriers.

291. **Legal Professional Privilege:** In Bulgaria, lawyers are obliged to maintain client secrecy without any time limitation (Legal Bar Act (LBA), art. 45(1)). This confidentiality obligation applies to information, which is entrusted to the lawyer, by his/her client or by another lawyer in relation to a client (LBA, art. 45(2)).

292. Auditors also have an obligation of professional secrecy. However, this does not apply to disclosures for the purposes of court proceedings, or by law (Independent Financial Audit Act, art. 11). The investigation of tax offences is therefore only significantly affected by legal professional privilege.

Principle 4: Freezing, seizing and confiscating assets

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

293. **Legal Basis:** Bulgarian law has both criminal (conviction) and civil (non-conviction) based (i.e. civil) confiscation regimes. In relation to tax crimes, criminal confiscation of the property of the perpetrator as a criminal sanction is only possible for crimes under art. 255(3), art. 255a(2), and art. 256(2) of the CC.

294. Criminal based confiscation is governed by the Criminal Code and the Code of Criminal Procedure (CPC). Civil based confiscations are governed by the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act 2018 (CCUAAFA). Confiscation is also possible under the administrative procedure regulated by art. 83a(6) of the LAOS in relation to the administrative liability of legal persons for certain crimes committed by natural persons who represent and/or manage the liable legal persons. The Commission for Anti-Corruption and Illegal Assets Forfeiture (CACIAF) initiates proceedings for civil forfeiture when a reasonable assumption can be made that the assets have been unlawfully acquired (CCUAAFA, art. 107(1)). The CCUAAFA is also applicable to tax crimes and provides for measures for the freezing of assets for the purpose of future forfeiture of unlawfully acquired assets. A check under the CCUAAFA may start when a person is accused of a crime under the Criminal Code falling within the category of crimes against the tax and social security systems.

295. **Freezing orders:** The prosecutor may request the freezing of assets from “accused persons” under the CPC (s2, ch. 7) where there is a reasonable suspicion that a person has committed a crime. In principle, charges must have been brought to the court for enable the possibility for the freezing of assets. Freezing of assets may also be requested by CACIAF under CCUAAFA.

296. A freezing order from the CACIAF must be supported by sufficient evidence, based on which a reasonable assumption can be made that the person owns or controls unlawfully acquired assets. If the property includes real estate, the request for granting security must be submitted to the district court in whose region the property is located, and when there are several immovable properties – to the district court where the real estate with the highest tax assessment is located.

297. **Seizing orders:** The seizing of assets in criminal proceedings shall be done in accordance with the same provisions of the CPC applicable to freezing assets. According to art. 391(1) of the Civil Procedure Code a security measure is granted where, without such a measure, it will be impossible or

difficult for the plaintiff to realise the rights under the judgement and if (1) the claim is supported by convincing written evidence, or (2) a guarantee is provided in an amount determined by the court. This civil procedure provision is applied in accordance with the specific features of criminal law and the law of criminal procedure.

298. Assets related to tax crimes committed by the inspected person can be seized under civil proceedings set out in the CCUAAFA when a reasonable assumption can be made that given assets have been unlawfully acquired (CCUAAFA, 107(1)). The NRA has no powers in relation to freezing and seizing of assets related to the commission of tax crimes, it only collects the sums due as public obligations after the proceedings have finished.

299. The legal threshold for a seizure order is met when CACIAF identifies a significant inconsistency. A significant inconsistency represents an inconsistency between the assets and the net income which exceeds BGN 150 000 for the entire inspected period.

300. **Confiscation orders:** Under the criminal regime, the PPO can apply to the criminal court for a confiscation order upon conviction of tax crimes set out in art. 255(3), 255a(2) and 256(2) of the CC. The criminal courts are the competent authorities to adjudicate on the confiscation of assets in criminal proceedings. In this instance, “confiscation” is used as a criminal penalty for the purposes of confiscating of the property of the perpetrator. Criminal confiscation is a (part of the) criminal sanction imposed for the committed crime by way of the criminal sentence and, therefore, the term “confiscation order” is not very precise. Criminal confiscation and the confiscation under LAOS are executed by the National Revenue Agency.

301. Under the CC, PPO can also seek confiscation of assets linked to a crime such as the instruments, the subject of a crime, and direct or indirect benefits gained through a crime (CC, art. 53). However, the latter are considered coercive measures and are not criminal sanctions.

302. As above, civil forfeiture procedures can be initiated by the CACIAF under the CCUAAFA when a reasonable assumption can be made that those assets have been unlawfully acquired. Civil confiscation orders are executed by the NRA. Civil forfeiture procedures provide for value-based and third-party confiscations (CCUAAFA, art. 146-151). If assets are missing or alienated, their monetary equivalent will be confiscated. Value-based confiscations in criminal proceedings take place when the conditions under art. 53(1)(a), and 53(2)(b) of the CC are met.

303. **Foreign freezing, seizure, and confiscation orders:** Bulgarian legislation permits execution of foreign freezing orders on the basis of international agreements (CPC, Chapter 36, section 3). Bulgaria has special legislation applicable to the recognition, execution, and transmission of freezing and confiscation orders within the EU. In relation to confiscation orders coming from EU Member States the applicable law is the Law on Recognition, Execution and Transmission of Confiscation and Forfeiture Acts and Decisions for Imposing Financial Sanctions. In relation to freezing orders coming from EU Member States the applicable law is the Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act. Under both legal acts, the requests for recognition and execution of freezing and confiscation orders shall be communicated directly to the competent regional or district courts.

304. **Agency or unit responsible for asset recovery:** As above, Bulgaria has designated two asset recovery offices, the Supreme PPO (for criminal confiscation) and the CACIAF (for civil confiscation). As for the CACIAF, court decisions that have entered into force in favour of the state, on forfeiture of unlawfully acquired assets shall be sent by the Commission to the established Interdepartmental Board for Forfeited Assets Management.

305. **Freezing, seizure, and confiscation in practice:** The below table shows the value of assets frozen, seized and confiscated during the years ending 2019-21.

Table 7.5. Total value of assets frozen, seized and confiscated during the period 2019-21

	Total value of assets frozen in connection with criminal tax matters	Total value of assets seized in connection with criminal tax matters	Total value of assets confiscated in connection with criminal tax matters
2019	BGN 627 297 631	BGN 180 000	BGN 527 921
2020	BGN 247 105 307	BGN 69 220	BGN 2 007 320
2021	BGN 17 689 099	BGN 0	BGN 7 916 329

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

306. The PPO is a single and centralised body within the judiciary, headed by the Prosecutor General. PPO is responsible for supervising tax crime investigations and carrying out criminal prosecutions. In practice, the National Customs Agency (NCA) conducts tax crime investigations related to import and excise duties and value added tax liabilities and police officers working within the GDNP investigate all other tax crimes.

307. Bulgarian criminal law does not provide for a separate specified state body for the direct investigation of tax crimes. The investigation of tax crimes can be carried out by investigation police officers from the Ministry of Internal Affairs as well as by investigation customs inspectors from the Customs Agency or by public investigators.

308. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 7.6. Agencies and bodies responsible for enforcing other financial crimes

Body or agency	Role with respect to financial crime
National Revenue Agency (NRA)	No direct role with respect to financial crime, through auditors are required to report suspicions of criminal activity to the appropriate authority. The NRA is also responsible for executing civil confiscation orders issued by the CACIAF.
PPO	Responsible for supervising tax crime investigations and prosecutions.
National Customs Agency (NCA)	Detects, investigates, and counters tax crimes, limited to import and excise duties and value added tax (VAT) liabilities. (Art. 194, para. 3 of the Code of Criminal Procedure).
General Directorate National Police (GDNP), housed within the Ministry of Internal Affairs (MOIA)	Detects, investigates, and counters tax crimes.
State Agency for National Security (SANS)	Responsible for the policy of protection of national security. Reports to the Prime Minister. SANS includes in its structure a unit for countering threats against the fiscal system, which is responsible for carrying out activities in order to detect and disrupt tax crimes, posing threats against the financial system. Throughout its operational capabilities the unit has powers and functions to identify criminal activity against the fiscal system of European budget (such as Missing trader intra-community frauds and Carousel fraud). In this regard the unit provides relevant operational information to the PPO in order to initiate criminal investigation and it also supports ongoing inquiries by providing intelligence and analysing financial and tax information. The unit exchanges information and participates in joint activities with national (such as Ministry of Interior, National Revenue Agency, Customs Agency) and international bodies (EUROPOL) in the field of countering tax crimes.
Financial Intelligence Directorate (FID-SANS)	Housed within SANS, the FID receives, stores, examines, analyses, and discloses information collected pursuant to the terms and order specified in the Law on

	Measures against Money Laundering (LMML), the Law on Measures against Terrorism Financing (LMFT) and the Law on the SANS (LSANS) and exercises control over the implementation of LMML, LMFT and the acts on their implementation.
The Commission for Anti-Corruption and Illegal Assets Forfeiture (CACIAF)	Responsible for Bulgaria's civil asset forfeiture regime.
The Bulgarian National Bank (BNB)	The BNB has no direct responsibilities related to tax or other financial crime. According to provisions of Bulgarian Penal Procedural Code (art. 205) there is a general obligation of citizens and officials to notify immediately a body of pre-trial procedure or another state body, where the citizens become acquainted with a crime of general nature. Further, the officials shall notify immediately the body of the pre-trial procedure and take the needed measures for keeping the scene and the data of the crime. And the body of the pre-trial procedure shall immediately execute its powers to institute a penal procedure.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

309. Resources for combatting tax crime fall under MOIA's budget. Targets to combat tax crime are incorporated into MOIA's annual budget.

310. The below table shows the databases and sources of information available to tax crime investigators in Bulgaria.

Table 7.7. Databases/sources of information available to tax crime investigators

Database	No access, access on request, or direct access	Comments
Company formation/ownership/mergers and acquisitions/shareholding registries	Direct access	The access is provided by way of an electronic legal information system. Direct access is free of charge.
Credit history and bankruptcy registries	Access on request	The information is provided by the Central Credit Register of the Bulgarian National Bank. In addition to that, the prosecution services can use the website of the Ministry of Justice for access to the Bankruptcy Registry after registration.
Land Registry	Access on request	Upon request from the prosecution services, access is provided by the Registry Agency. The general principle is that the prosecution services can ask for information freely and free of charge from all state organs (except for the cases when an act of court is required for the disclosure of the information). In addition to that, the prosecution services can use the website of the Land Registry as any other user, after registration and the payment of a fee.
Registry of citizens	Direct access	The MOIA has direct access.
Tax databases	Access on request	After permission given by the court.
Customs and immigration databases	Direct access, and access on request	NCA gives permission to access upon request.
Police databases	Access on request	Access is provided by the MOIAI upon request of the PPO.
Judicial databases	Access on request	The relevant court gives permission to such request.
Suspicious transaction report databases	Access on request	This information is provided by SANS.

Domestic bank account databases and central credit register	Direct access	The competent authorities under art. 56a, par. 3 of the Law on Credit Institutions have the direct access to the information of the Register of Bank Accounts and Safe Deposit Boxes, regarding performing their duties in individual checks. The competent authorities under art. 56, para. 3 of the Law on Credit Institutions have the direct access to the information of the Central credit register, regarding performing their duties in individual checks.
Casino and gambling account databases	Access on request	The information is provided upon request by the NRA.
Car registry	Access on request	The information shall be provided by the Ministry of the Interior, where the register is kept
Boat Registry	Access on request	The information shall be provided upon request by the Executive Agency "Maritime Administration"

Note:

(1) Direct access presumes that investigators can also request for information from these databases.

(2) The general principle is that the prosecution services can ask for information freely and free of charge from all state organs (except for cases when an act of court is required for the disclosure of the information).

Training for tax crime investigators and prosecutors

311. The development and delivery of tax crime training to investigators and prosecutors is determined based on issues and difficulties identified in the course investigations.

312. In 2019, Bulgaria organised three training sessions which focused on European Tax Law, current practice of the European Court of Human Rights in the Area of Tax Law, practical training on the VAT Act, the Corporate Income Taxation Act, and the investigation under Art. 255 and 256 of the CC. A total of 35 prosecutors and 17 investigators participated in at least one of these trainings.

313. The same number of trainings were organised in 2020. The trainings focused on different subjects such as crimes against the financial and tax systems; countering tax crimes in the EU; and computer crimes, crimes against the financial and the credit system. The number of participants to the training programme declined to 4 prosecutors, 19 investigators, and 2 assistant prosecutors.

314. The number of attended trainings, by investigators and (assistant)-prosecutors, increased to six in 2021. The given trainings taught participants about international aspects of criminal tax law; financial crime and economic investigations; and law and financial innovations. 22 prosecutors, 9 investigators, and 1 assistant prosecutor attended at least one of these trainings.

315. In 2022, 78 investigators, 170 prosecutors, and 1 assistant prosecutor participated in a total of 28 trainings. The training sessions focused mainly on digital crimes, international crime, and the application of European legislation.

Principle 7: Predicate offences

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

316. **Approach:** Bulgaria uses the "all crimes" approach with the CC providing that every crime by way of which assets are illegally acquired can be a predicate offence for money laundering (CC, art. 253-253b).

317. **Enforcement of money laundering predicated on tax crimes:** A money laundering offence can be prosecuted when it takes place in another jurisdiction. The general rules on the limits of the enforcement are set out in the articles 4-6 of the CC.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

318. NRA officials who become aware of a tax or financial crime are obliged to immediately inform investigation agency or the PPO and take all measures to preserve the evidence of the crime (CC, art. 205(2)). The different forms of reporting and interaction between NRA tax officials and PPO prosecutors are governed by legislation.

319. Furthermore, SANS has direct online access to tax information such as VAT returns, purchase, deliveries, and tax obligation of legal entities. Due to this access SANS can use and combine information from different sources, which allows to provide an accurate and extensive intelligence report to the PPO.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

320. The below tables show the models for information sharing and co-operation related to tax crime and other financial crime.

Table 7.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences (GDNP)	Customs administration (NCA)	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Civil Asset Recovery Authority (CACIAF)
Authority providing information	Tax administration for civil tax assessments		MSS	MSS	MSS	MSS	MSS	MSS
	Agencies investigating tax offences (GDNP)	DSS		DSS	MSS	MSS	MSS	MSS
	Customs administration (NCA)	DSS	DSS		MSS	DSS	MSS	MSS
	Police or public prosecutor investigating non-tax offences	DSS	MSS-Police DSS-Public Prosecutor	DSS		DSS	MSS	MSS
	Financial Intelligence Unit ^{(a)(b)}	Sharing Prohibited	DSS	Sharing Prohibited	DSS		DSS	DSS
	Corruption investigation authority	MSS	MSS	MSS	MSS	MSS		N/A
	Civil Asset Recovery Authority (CACIAF)	MSS	MSS	MSS	MSS	MSS	N/A	
	Financial regulator ^(c)	N/A	N/A	N/A	MSS	N/A	N/A	N/A

Additional Information

In the Republic of Bulgaria there is no division of PPOs according to “types of crimes”, except in cases where district PPOs are competent to investigate specific crimes referred to in Art. 35, I. 2 of the Code of Criminal Procedure. Therefore, the questions in the table are not practically applicable in the exchange of information from and to the PPO. It is only a requirement for the PPO to send information to the CACIAF by virtue of Article 108 of the CACIAFA.

All other authorities mentioned in the table, when they find evidence of a crime, including a tax crime, are obliged to inform the relevant PPO. This is also the case where the report has been submitted to a PPO which is not competent to investigate the specific crime. In such cases, the alert shall not be returned to the whistleblower, but shall immediately be forwarded to the competent structure in the PPO.

Note:

DSS = discretionary spontaneous sharing

MSS = mandatory spontaneous sharing

(a) Pursuant to Art. 75(2) of the LMML, FID-SANS shall respond to reasoned requests for the provision of information to the relevant security service or public order service, to the competent specialised directorate of the SANS or to the directorate referred to in Article 16 (2) of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, where the said requests are based on suspicions of money laundering or associated predicate offences.

(b) Pursuant to Art. 75 (1) of the LMML, where, in the course of examining and analysing the information obtained under the terms and according to the procedure established by the LMML, the suspicion of money laundering and/or associated predicate offences is not dispelled, the FID-SANS shall disseminate this information to the PPO, to the relevant security service or public order service or to the competent specialised directorate of the SANS within their respective competence, as well as to the directorate referred to in Article 16 (2) of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act. In such cases the Financial Intelligence Directorate of the SANS shall protect the anonymity of the person referred to in Article 4 herein or of the authority referred to in Article 88 herein and of the employees thereof who effected the notification under Article 72 or 88 herein, and where the information has been received under Article 89 herein, the Directorate shall protect the anonymity of the person who effected the notification to the competent foreign intelligence unit and of the employees of the said unit.

(c) Financial regulator – please be informed that from AML perspective in some boxes of table above is stated N/A, because the BNB as AML regulator checks the compliance of banks, payment institutions and e-money institutions with the Law on the Measures against Money Laundering and the Law on the Measures against Terrorist Financing. This function does not suppose the investigation of tax crime or other financial crimes, and respective information sharing; for that reason it is stated “not applicable”. In the case where police or public prosecutor are investigating non-tax offences, BNB may receive requests for information from police or prosecutor and respectively to provide information to them (e.g. whether particular persons/entities have a financial institution under art. 3a of Law on Credit Institutions or similar).

Table 7.9. Availability of enhanced forms of co-operation in combatting tax crimes.

Mechanism	Availability	Additional information and examples
Co-operation agreements	Yes	The agreements concern providing expertise and methodological assistance; carrying out joint inspections; preparation of proposals for regulatory changes; exchange of information; joint training; and other training events. The main purpose of the agreements is to create a legal pattern and procedures for co-operation, information exchange and to enhance joint activities between different institutions for combating tax crimes.
Joint operations and taskforces	Yes	PPO uses task forces for high priority cases. Task forces are an effective tool for rapid, in-depth, and comprehensive investigations of sophisticated tax crimes by including expertise, knowledge, and technological capacity of different institutions such as the MOI, NRA, and SANS.
Parallel investigations	Yes	There is no one specified agency with which joint investigation can be carried out. Depending on the case, joint investigations can be carried out with different agencies.
Joint intelligence centres	Yes	According to Decree No 89/16.04.2015 an Inter-Agency Coordination Centre for Countering the Smuggling and Control of the Goods of high fiscal risk is established. Inter-agency Centre provides coordination and co-operation between the competent state bodies (Chief Directorate for Countering Organized Crime, Chief Directorate of National Police, Customs Agency, National Revenue Agency, Executive Agency Automobile Administration and SANS) in implementing the actions for countering the smuggling and control of risk goods movement. The center is situated and attached to Chief Directorate for Combatting Organised Crime, it includes experts from different institutions and powers. It gives an opportunity to analyse, plan and execute joint actions in order to control the movement, to identify the parties of transactions of goods suspected to be a subject of tax crime or smuggling.
Secondments and co-location of staff	Yes	NRA staff are seconded to the General Directorate Combating Organized Crime (GDCCO) and the Sofia City PPO (SPO), with the aim of providing expert

		assistance in the investigation of tax crimes.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes	In case of suspicion of tax offences in the presence of other financial offences, there is always the possibility of initiating an investigation.
Multi-agency training	Yes	NRA shares expert knowledge to prosecutors and investigators to increase the effectiveness of criminal proceedings.

Principle 9: International co-operation

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.

321. **Legal basis:** The NRA may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements.

322. Bulgaria is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows NRA to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. EU legislation on mutual recognition of decisions in criminal matters regarding any type of offence, including tax crimes, binds Bulgaria. Bulgaria is also a party to numerous multilateral EU and UN conventions for the enhancement of combatting tax crime, corruption, and money laundering.

323. Bulgaria also has concluded 70 bi-lateral tax treaties that allow exchange of information for tax purposes and has concluded 14 bi-lateral treaties for mutual legal assistance in criminal tax matters.

324. Bulgaria can only exchange classified information with states with which it has signed a treaty for the securitisation of classified information. SANS shares regularly information with Europol in terms of suspicion of crimes against the financial interest of EU (including cross-border VAT frauds) according to art. 3 of Regulation (EU) 2016/794 of European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Co-operation (Europol).

325. **Competent authority:** The competent authority for sending and receiving Mutual Legal Assistance Requests to non-EU countries related to criminal tax matters in pre-trial proceedings is the Supreme Cassation Prosecutor's Office, International Department. In cases of requests related to an ongoing trial before a court, the requests shall be sent via the Ministry of Justice.

326. The executing authority in pre-trial proceedings of EU Member State cases is the prosecutor of the relevant district, and in trial proceedings it is the relevant court. The NRA is the competent authority for sending and receiving requests for information under the MAC and bilateral tax exchange of information instruments.

327. **International co-operation in practice:** For the period 2022-23, the Ministry of Justice recorded seven incoming MLA requests and seven outgoing MLA requests regarding the investigation and prosecution of tax crimes. These MLAs only covered requests which were made based on the European Convention on Mutual Assistance in Criminal Matters of 1959.

Principle 10: Fundamental rights of a suspect or accused person

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

328. Persons accused or suspected of having committed a criminal offence, including all tax offences, have full range of procedural and fundamental rights set out in the Bulgarian Constitution and the CPC. Article 55 of the CPC is the main legislative provision which stipulates the rights of accused persons.

329. NRA authorities shall carry out tax inspections and audits within the time limits laid down in the Tax and Social Insurance Procedure Code. Art. 33(1) of the LAOS prohibits parallel administrative and criminal proceedings. In cases where the administrative proceedings before the NRA authorities reveal evidence of criminal tax offences, the PPO shall be notified.

330. The PPO carries out its own investigation and informs the organs of the NRA about its endeavours. The NRA must stop its administrative procedure or is prohibited to start such a procedure when it is informed that the PPO is carrying out its own investigation.

331. The below table shows the rights of persons suspected or accused of having committed a tax crime.

Table 7.10. Rights of persons suspected or accused of having committed tax crime

Right to:	Available Yes/No	Relevant legislative provision	At what point in time (e.g. from outset of investigation, at all times, upon charges being filed, etc.)
Presumption of innocence	Yes	CPC, art. 16	At any stage of the investigation until the sentence has entered into force.
Be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	CPC, art. 12(2), art. 55, and art. 229	As from the stage of presentation of the charge.
Remain silent	Yes	CPC, art. 55(1)	During the questioning of the person in his capacity as accused.
Access and consult a lawyer and/or entitlement to free legal advice	Yes	CPC, art. 15, art. 55(1), art. 91-99	During the pre-trial phase as from the presentation of the charge.
Interpretation and translation	Yes	CPC, art. 55(4)	As from the presentation of the charge until the end of the trial phase of the criminal proceedings.
Be advised of the particulars of what one is accused of	Yes	CPC, art. 55(1), art. 219	As from the presentation of the charge.
Access documents and case material, also known as a right to full disclosure	Yes	CPC, art. 55(1), art. 227(1)	As from the presentation of the charge.
A speedy trial	Yes	CPC, art. 22, art. 356	As from the beginning of the investigation.
Protection from <i>ne bis in idem</i> (double jeopardy)	Yes	CPC, art. 24(1)	As from the beginning of the investigation.

Highlights

Successful practices

- Extensive training provided to tax crime investigators and prosecutors on an annual basis, based on needs identified through ongoing monitoring criminal investigations.
- Availability of extensive civil and criminal based asset forfeiture regimes.
- Use of joint task forces in high priority financial crime cases.

Room for improvement

- The creation of a specialized unit of tax inspectors within the NRA for the investigation of tax crimes.
- Recommendable that the NRA has direct access to information about the available funds and their movement in bank accounts. This type of information will enable the NRA to detect tax evasion and tax fraud schemes.
- Conduct more trainings for police officers who are involved in the investigation of tax crimes and for improvement of the teamwork between public prosecutors, investigating policemen and other police officers involved in the investigation of such crimes.



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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

332. Canada's Income Tax Act (ITA) sets out a range of tax offences.¹ These include strict liability offences (which require no criminal intent – or *mens rea* – on the part of the offender) and offences requiring criminal intent. Offences are set out in the ITA and in the Canadian Criminal Code (CC).²

333. While CC offences do not specifically target breaches of tax law, they can be applied for tax-related offending (e.g. use of forged document).³ Examples of each category of tax offence and the corresponding minimum and maximum sanctions are set out in the table below:

Table 8.1. Strict liability offences

Offence	Minimum sanction	Maximum sanction
Failure to file or make a return as and when required (<i>ITA, s238(1)</i>)	A fine of not less than CAD 1 000*	Both the fine of not more than CAD 25 000; and imprisonment for a term not exceeding 12 months.

Note:

* In April 2021, EUR 1 = CAD 1.50

Table 8.2. Income tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
ITA, s239 (1) Every person who has (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation, (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer, (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer, (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act, or	A fine of not less than 50% of the amount of the tax that was sought to be evaded.	A fine of 200% of the amount of the tax that was sought to be evaded and imprisonment for a term not exceeding five years.

(e) conspired with any person to commit an offence described in paragraphs 239(1)(a) to 239(1)(d).		
<p>239 (1.1) Every person who obtains or claims a refund or credit under this Act to which the person or any other person is not entitled or obtains or claims a refund or credit under this Act in an amount that is greater than the amount to which the person or other person is entitled</p> <p>(a) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under this Act or a regulation,</p> <p>(b) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person,</p> <p>(c) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person,</p> <p>(d) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person,</p> <p>(e) wilfully in any manner, or</p> <p>(f) by conspiring with any person to commit any offence under this subsection.</p>	A fine of not less than 50% of the amount of the tax that was sought to be evaded.	A fine of 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled and imprisonment for a term not exceeding five years.

334. **Statute of limitations:** Under the ITA, the statute of limitations is set at eight years for tax offences, unless proceeded by indictment, in which case the statute of limitation does not apply. The eight-year period starts after the day on which the matter of the information or complaint arose (ITA, s244(4)). The ITA and the CC make no mention of grounds for interrupting the limitation period.

335. **Complicity:** While there are no general rules in the ITA regarding complicity, the offence of “conspiracy” is included in the ITA. It sets out that any person that conspired with others to commit any of the tax offences may be sentenced up to 200% of the amount of tax that was sought to be evaded and a maximum of five years in prison.

336. **Attempt and conspiracy:** Attempt and conspiracy to commit a tax crime are criminally liable in Canada (ITA, s239(1) and (1.1)).

337. **Professional enablers:** Canada does not have a separate penalty regime for professional enablers, but subsection 21(1) and section 22 of the *Criminal Code* state that a person may be held liable for any criminal offence, including tax offence, such as tax evasion, either as primary or secondary offender (e.g. by committing the offence directly or through counselling others). In addition, section 239 of the ITA allows Canada to charge individuals who conspired with any person to commit a tax offence.

338. **Territoriality and nationality jurisdiction:** Canada has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Canada. Canadian authorities cannot prosecute Canadian citizens and residents that commit tax crimes wholly outside of Canada.

339. **Legal persons:** Legal entities such as corporations can be criminally liable for tax offences in Canada (s35 of the *Interpretation Act*). Legal entities are subject to fines. Their residency in Canada is determined through common law principles.⁴

Enforcement of tax crime

340. Canada can impose penalties for tax crime offenders including fines, prison sentences, community service and house arrest, among others (ITA, Part XV; CC, s470, Part XXIII and Part XXVII). In addition, details on tax crime offences, and subsequent outcomes, may be made publicly available.⁵

Table 8.3. Enforcement of tax crimes in years ending 2015-18

Tax year ending*	Total number of criminal investigations ^(a) for tax crimes	Total number of criminal convictions of individuals ^(b) for tax crimes ^(c)	Total number of criminal convictions for legal entities ^{(c)(d)}	Total amount of underlying tax evaded ^(e)
2015	294	95	23	CAD 12 552 136
2016	393	50	7	CAD 16 412 442
2017	349	37	6	CAD 32 719 784
2018	337	27	5	CAD 45 433 640

Note:

* All tax years refer to a time period covering April to March of the fiscal years.

(a) The numbers refer to the number of ongoing Criminal Investigations Directorate (CID) cases in different stages, including Workload, Preliminary, Investigations, and Court.

(b) The numbers refer to the number of files that have resulted in conviction. Please note that there can be multiple files in a case. Therefore, the terminologies, i.e. cases and files, are not interchangeable.

(c) Between 2013 and 2015, the Criminal Investigations Programme (CIP) underwent an operational transformation where an investigation focus was placed on more egregious and complex cases, resulting in a decreased number of convictions for both individual and other legal entities in subsequent years after 2015, while producing significantly increased dollar amounts for the corresponding convicted cases.

(d) "Legal entities" refer to other than individuals, such as corporations.

(e) The amounts refer to the sum of the tax evaded arising from the files resulted in conviction.

Table 8.4. List of other sanctions imposed on natural persons in tax years ending 2015-18

Tax year ending	Total number of criminal convictions of individuals for tax crimes where offender received a prison sentence ^(a)	Size of criminal fines imposed in respect of tax crimes	Total number of criminal convictions of individuals where community services were imposed	Total number of criminal convictions of individuals where media sanctions ^(b) were imposed
2015	34	CAD 9 737 962	7	40
2016	22	CAD 4 104 862	5	28
2017	24	CAD 10 084 150	3	16
2018	14	CAD 3 118 455	3	19

Note:

(a) The numbers refer to the sum of the files resulted in a prison sentence.

(b) The CRA communicates convictions for tax evasion or failing to file income tax returns publicly using Enforcement Notifications; these can be found on the CRA website in the CRA Newsroom: <https://www.canada.ca/en/revenue-agency/news/newsroom/criminal-investigations-actions-charges-convictions.html>.

341. **Availability of tax deductions for civil and criminal sanctions:** Canada does not allow tax deductions for criminal fines or penalties. However, fines or penalties of non-criminal nature incurred for the purpose of earning income may be deductible. The Supreme Court of Canada, for example, held that penalties imposed for violation of a quota were incurred as a cost of doing business by the producer in order to earn additional income. Those penalties were therefore deductible from taxable income.

342. **Availability of settlements:** While the Criminal Code allows settlements or deferred prosecution type of agreements for tax offences under certain circumstances, such settlements or agreements are not available for offences under the *Income Tax Act*.

343. **Tax gap:** Canada estimated its tax gap for 2014 (last available figure) at between CAD 9.4 billion and CAD 11.4 billion (CRA, 2019^[6]).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

344. The Canada Revenue Agency (CRA) has primary responsibility for developing Canada's strategy to respond to tax crime. CRA works in conjunction with relevant federal stakeholders, including the Royal Canadian Mounted Police (RCMP), the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Ministry of Finance. The tax crime strategy includes information sharing and collaboration with international and domestic partners, new tools to analyse intelligence and consultation with the CRA's experienced audit and investigation teams. The most serious cases, including but not limited to international tax evasion, money laundering and underground economy, and other such offences, are the focus of the CRA's Criminal Investigations Program (CIP).⁶

345. **Threat assessment:** The CRA does not undertake threat assessment specifically for tax crimes. However, it has developed the Corporate Risk Profile (CRP), an annual report that describes the enterprise risks that can affect and guide its strategic priorities and operations. The CRP leverages CRA's environmental scan, monthly risk watcher reports, and broad international consultations. These, in addition to external engagements with other tax administrations, provide the context for identifying key trends and changes in the environment that may lead to new risks or risk drivers that could affect exposure to existing enterprise risks. Additionally, the CRA is an active participant in the periodic assessment conducted by the Government of Canada to identify inherent money laundering and terrorist financing (ML/TF) risks in Canada.

Box 8.1. Example of successful implementation of tax crime strategy: Canada

CRA's Corporate Risk Profile (CRP) report identified virtual assets as a potential risk driver, where these risks could have an impact on CRA's strategic priorities and operations. For this, the CRA has developed an action plan to assess the extent of the compliance risks posed by the use of cryptocurrencies, specifically in the criminal world, and is developing new guidance and training for employees.

In 2017, the CRA created a Cryptocurrency Project with the objective of developing an understanding of, and response to, the impact of blockchain technologies and cryptocurrencies on tax compliance.

In 2018, the CRA joined the Australian Criminal Intelligence Commission (ACIC) and Australian Taxation Office (ATO), the Dutch Fiscal Intelligence and Investigation Service (FIOD), Her Majesty's Revenue & Customs (HMRC), and Internal Revenue Service Criminal Investigation (IRS-CI) in the Joint Chiefs of Global Tax Enforcement (J5) group. A crypto asset group was created as a priority area for the J5, which focused on generating cases, sharing intelligence and pooling cryptocurrency investigation information.

Through the work of the Cryptocurrency Project, as well as the J5 Crypto Asset Group, the CRA has been able to identify and target tax evasion via cryptocurrency-based money laundering, token frauds, and mining schemes. Also, CRA's participation in the J5 cryptocurrency group has resulted in the generation of workload and inter-agency collaboration. Outreach to Canadian law enforcement agencies has also resulted in joint force operations.

In response to increasing prevalence and use of virtual currencies, the CRA has developed and implemented cryptocurrency investigation and forensics training for CRA investigators and cryptocurrency auditors.

346. **Communication strategy:** The CRA has developed a communications strategy to maximise the impact of investigative actions by publicising the results of successful prosecutions and pre-judgment information on significant criminal actions. Its goal is to foster deterrence of intentional tax non-compliance, warn taxpayers of potential fraud schemes and maintain the integrity of the tax system.⁷

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers
to successfully investigate tax crimes.

Table 8.5. Investigative powers of tax crime investigation agency (Canada Revenue Agency)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power
Conduct covert surveillance	Full direct power/Indirect power through another agency Static surveillance is the primary surveillance tactic employed by CRA investigators. While mobile surveillance by CRA is prohibited; it may ask federal law enforcement agencies to operate on its behalf.
Conduct undercover operations	Full direct power/Indirect power through another agency CRA investigators may themselves undertake only the least sophisticated and non-obtrusive types of undercover operations (e.g. visiting a bar or restaurant to obtain information or documents that are readily available to the public, such as bills, invoices or pamphlets). For more intrusive operations, CRA may ask Canadian law enforcement agencies to act on its behalf.
Search and seize computer hardware, software and electronic media storage	Full direct power
Arrest	Indirect power through another agency CRA uses peace officers to carry out arrests. The Criminal Code has provisions for arrests with or without a warrant. Subsection 495(2) of the Criminal Code sets out that a person may not be arrested without a warrant for hybrid offences; that is, for offences for which the person may be prosecuted by indictment or on summary conviction at the discretion of prosecutor. Where a peace officer does not arrest the person, section 497 of the Criminal Code allows the peace officer to issue an appearance notice. If the peace officer requires a warrant, the conditions in section 507 of the Criminal Code must be met, and the warrant must contain the information listed in section 511.

347. **Additional powers not mentioned above:** The CRA has direct power to track movement of things and the power to obtain transmission data. Concerning search and seizure of digital media, CRA has the power to search and seize such media but it faces challenges with respect to cloud storage, especially when attempting to seize emails located on live cloud-based servers. The CRA has explored new forensic tools that will enable computer forensic analysts to search and seize data, including emails that are available to them during the execution of search warrants upon appropriate judicial approval. Discussions with the Department of Justice are ongoing to evaluate existing legislation and to understand the privacy and legal requirements of accessing and sharing information with other countries using cloud technologies.

348. The CRA notes that it is in the process of reviewing Canadian legislation to evaluate the need for changes to investigative powers, offences, and sanctions.

349. **Legal professional privilege:** Solicitor-client privilege attaches to oral or written communications between a client and a lawyer in situations where a client: (i) seeks advice from a lawyer; (ii) a lawyer provides advice in his or her professional capacity; and (iii) the communication between the client and the lawyer relates to legal advice or is made in confidence. CRA notes that its investigators frequently find potentially privileged information when executing a search warrant at the residence or business of the taxpayer under investigation, at the premises of a third party (other than a lawyer) or a CRA office, and that they also often seek information in the possession of a lawyer. In these cases, solicitor-client privilege can cause lengthy delays in an investigation, as the court must determine, for every piece of information, if it meets the solicitor-client privilege threshold. The investigators cannot use any piece of information meeting that threshold, or the investigation may be aborted.

350. This is true only for lawyers, as there are no secrecy obligations for other professionals (e.g. for accountants or other tax professionals). Accountants have ethical duties to their clients to maintain the confidentiality of information given to them. However, there is no legal privilege applicable to communications between an accountant and any client of that accountant.

Principle 4: Freezing, seizing and confiscating assets

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

351. **Legal basis:** The Attorney General of Canada undertakes the seizing, freezing, or confiscation of assets through a Court order.

352. **Freezing orders:** Canada's Criminal Code does not allow for the rapid freezing of assets (24-48 hours).

353. **Seizing orders:** In Canada, the CRA investigators have the ability to seek special search warrants to seize tangible and moveable property, such as vehicles and cash, and restraint orders to restrain intangible and immovable items, such as residences and bank accounts. In the case of tax investigations, reasonable grounds to believe that the assets were obtained through the commission of tax offences⁸ is a required element in order to seek the special search warrants or restraint orders. The Attorney General of Canada undertakes the making of the application with the support of a sworn affidavit by the CRA investigator. The seizure or restraint of assets can take place at any time during the course of a tax investigation. However, assets seized or restrained will generally have to be returned within six months unless proceedings with respect to the forfeiture of the seized or restrained assets have commenced or the assets are of investigational or evidentiary value.

354. Once an offender is convicted or discharged of tax offences, the Attorney General of Canada can make an application at sentencing for a Court order of property forfeiture. The Court must be satisfied, on a balance of probabilities, that the property is proceeds of crime obtained from the commission of tax offences before an order of property forfeiture can be granted. There is a 30-day appeal period before the forfeited property is disposed of.

355. **Confiscation orders:** Non-conviction confiscations are not allowed, but Section 462.37 of Canada's Criminal Code allows for extended and value-based confiscations. This can be obtained through a court order at the request of the Attorney General.

356. **Foreign freezing, seizure, and confiscation orders:** Seizing and confiscation in foreign judgments can be done through a Mutual Legal Assistance Treaty.

357. **Agency/unit responsible for asset recovery:** The Seized Property Management Directorate of the Public Services and Procurement Canada (PSPC) is the federal government department that manages assets seized or restrained and disposes of the forfeited assets.

358. CRA's CIP has not had any cases of asset freezing/seizing/confiscation pursuant to the Canadian proceeds of crime regime between 2015 and 2018. Until its first proceeds of crime case in 2018/19, the CRA has focused on its civil collection measures to recover any taxes owed linked with tax crime convictions. Such measures included garnishing wages or other income, asset and seizures, and third-party assessments.

359. However, during the period leading up to 2018/19, the CRA entered into, or renewed, a number of memorandums of understanding (MOUs) with the RCMP and regional and local law enforcement authorities to reinforce the exchange of information between the parties and reaffirm the need for an integrated approach to combatting financial crimes, such as Joint Force Operations (JFOs). These efforts have since yielded positive results, including its first proceeds of crime case for the CRA in 2018/19, while contributing to JFOs, resulting in numerous JFO cases of freezing, seizing, or confiscation of assets.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

360. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Canada's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁹

Table 8.6. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Canada Revenue Agency (CRA)	The core responsibility is to ensure that Canada's self-assessment tax system is sustained by providing taxpayers with the support and information they need to understand and fulfil their tax obligations, and by taking compliance and enforcement action when necessary to uphold the integrity of the tax system, offering avenues for redress whenever taxpayers may disagree with an assessment/decision.
Criminal Investigations Program (CIP) –housed within the CRA–	Investigates significant cases of tax evasion, fraud and other serious violations of tax laws, and where appropriate, refers cases to the Public Prosecution Service of Canada (PPSC) for criminal prosecution. The focus is on the most serious cases that meet one or more of the following criteria: <ul style="list-style-type: none"> • significant and/or material cases of tax evasion with an international element • promoters of sophisticated and well organised tax schemes aimed at defrauding the government • joint financial crime cases with other enforcement agencies, including cases of tax evasion involving money laundering or terrorist financing • significant and/or material cases involving income tax and/or Goods and Services Tax/Harmonised Sales Tax (GST/HST) tax evasion including the underground economy • significant cases of benefit fraud
Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)	Canada's financial intelligence unit, aims to facilitate the detection, prevention and deterrence of money laundering, terrorist activity financing and other financial crime threats to the security of Canada.
Royal Canadian Mounted Police (RCMP)	Canada's national police service with national, federal, provincial, and municipal policing mandates.
Sensitive and International Investigations (SII) –housed within the RCMP–	Investigates sensitive, high risk matters relating to, among others, fraud, money laundering, and corruption involving public officials and institutions that cause significant threats to Canada's political, economic and social integrity of its institutions across Canada and internationally.

Financial Crimes Unit –housed within the RCMP–	Contributes to the security of the Canadian economy and seeks to protect Canadians and their governments from financial crimes, including the laundering proceeds of crime, fraud, corruption, and counterfeit currency, perpetrated by organized crime groups and others. It is delivered in partnership with international and domestic government agencies, domestic stakeholders and the community at large.
Integrated Market Enforcement Teams (IMETs) –housed within the RCMP–	Promote compliance with the law in the corporate community and assure investors that Canada's markets are safe and secure. The Initiative is a partnership with the PPSC, provincial and municipal forces and securities commissions and market regulators.
Department of Finance	Develops and evaluates federal tax policies and legislation in the areas of personal income tax, business income tax, and sales and excise tax. The department is the policy lead for Canada's federal anti-money laundering and anti-terrorist financing (AML/ATF) regime.
Canada Border Services Agency (CBSA)	Responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants that meet all requirements under legislation. CBSA investigators conduct criminal investigations into suspected cases of evasion or fraud with respect to various pieces of border legislation that regulate the importation and exportation of goods, or the admissibility of persons to Canada. The CBSA also enforces the Cross-Border Currency Reporting Program and transmits information from reports and seizures to FINTRAC.
Public Prosecution Service of Canada (PPSC)	A national, independent and accountable prosecuting authority whose main objective is to prosecute federal offences, including tax crimes. The PPSC does not have authority to direct investigations, however, it is the PPSC that decides whether to proceed through the courts.

361. Canada notes that, under its tax legislation, the CRA has the ability to share information with provincial tax administrations for specific purposes. According to the CRA, its Audit areas work in close relationship with the CIP and Audit referrals form the largest source of referrals for the programme.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

362. CRA's tax crime investigation budget was CAD 62.1 million for 2015 and CAD 60.0 million for 2016. In 2017, this was CAD 62.1 million, and 2018, CAD 60.8 million. The Canadian government assigns this budget on an annual basis, and it is not tied to a performance indicator. In 2018, there were 564 investigators working for CRA, compared to 581 in 2017; 556 in 2016; and 557 in 2015 carrying out the tax crime investigations while Public Prosecution Service of Canada (PPSC) was the agency dedicated to the prosecution of tax and financial crimes.

363. CRA recognises the importance of effectively measuring the efficiency of its CIP through key performance indicators, reports, and relevant and timely statistical information, to make informed strategic decisions related to resource allocations and the achievement of programme priorities. To this end, new indicators were proposed and implemented, including:

- The number of media stories and mentions of Criminal Investigations Directorate's (CID) Enforcement Notifications related to an investigation.
- The amount of tax that would have been lost by the government, had an investigation not been conducted.
- The percentage of the most complex criminal investigations that include the potential for taxes evaded of CAD 1 million or more

364. In addition to monitoring through KPIs, tracking investigation statistics (for example, the number of referrals, the number of convictions, and the amount of fines and jail time), also facilitates the identification of efficiencies. Case referral projections are estimated as a way of assisting the PPSC in

determining workload from the CRA. In addition, the CIP measures the use of salaries, operation and maintenance costs, prosecution costs and number of resources assigned, as set out in the Prioritization and Governance Framework.¹⁰ Finally, new national standards are being implemented to identify the average number of months required to advance a case through all investigative stages,¹¹ and reporting accuracy is being measured to ensure information used to populate reports is accurate.

365. The table below identifies the sources of information CRA investigators have access to when investigating tax crime offences:

Table 8.7. Databases/sources of information available to the CRA tax crime investigators

Database	Access
Company formation/ ownership registry	Access on request
Land Registry	Access on request
Registry of citizens	No access
Tax databases	Direct access
Customs databases	Access on request
Police databases	Direct, but limited, access
Judicial databases	Access on request
Suspicious transaction report databases	No access
Domestic bank account databases	No access
Car registry	Access on request
Boat registry	Access on request

Training for tax crime investigators

366. Canada offers a suite of mandatory and optional online and in-class training courses for criminal investigators. These courses range from basic to advanced and cover a range of topics including principles of evidence, negotiating skills, interviewing skills, and search and seizure.

367. Depending on the course, it may either be compulsory or optional for criminal investigators and computer forensic analysts (CFAs). Time spent on training is dependent on the number of years of experience of the investigator and CFA. In their first year, a newly hired investigator will spend at least 30 days in training for the basic investigator training. Senior investigators spend approximately 3 days in training per year. CFA training is sporadic, but senior CFAs spend on average 5.5 days per year on training. The Training and Learning Section of the CID at the CRA headquarters currently has 9.5 full-time employees, including the manager, devoted to developing and co-ordinating training. Experienced investigators, from the 6 regional offices located across the country, facilitate courses offered by headquarters throughout the year. With the onset of the pandemic, options for courses to be provided via Webex are being explored.

368. Canada also provides investigators with a range of core and advanced training course on computer forensics and the Canadian Police Knowledge Network offers additional online courses for individuals involved in the law enforcement sector. These cover a range of topics including courtroom testimony skills, disclosures, and theory of truth and deception.

Principle 7: Predicate offences

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

369. Much of tax offences, which are predicate offences, are liable to summary conviction, however, these may also be prosecuted on indictment. Any individual may be charged with money laundering,

regardless of whether the person has been charged or convicted of the predicate offence, or whether Canada has jurisdiction over the predicate offence. In cases where the predicate offence takes place in another jurisdiction, Canada must be able to demonstrate that the offence is also one in Canada. However, in Canada, the investigation and prosecution functions are separate and independent, hence, decisions relating to whether to prosecute offences, proceed with certain types of prosecutions, or under what charges, rest solely with the Public Prosecution Service of Canada (PPSC).

370. Relevant legislation for money laundering is set out in subsection 462.31(1) of the CC, which makes it an offence to launder proceeds of crime, and the punishment for laundering the proceeds of crime is stated in 462.31(2). In general terms, the offence of laundering the proceeds of crime is committed when a person deals with property, or any proceeds of property, with the intent to conceal or convert it, knowing it was derived from the commission of a designated offence. A designated offence is defined at section 462.3 of the CC as any offence under an Act of Parliament that may be prosecuted as an indictable offence. Tax evasion may be prosecuted by indictment (subsection 239(2) of the *Income Tax Act* (ITA)). As such, tax evasion constitutes a predicate offence for the commission of the Canadian money laundering offence.

371. Canada notes that since tax crimes became a predicate offence for money laundering in 2010, the CRA has been able to be more proactive in its participation in meetings and discussions surrounding improvements to its anti-money laundering/anti-terrorism financing regime. More importantly, the change has allowed Canada the ability to lay money laundering offences as well as seize and restrain property under the Criminal Code's Proceeds of Crime provision.

Principle 8: Inter-agency co-operation

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

Information sharing between agencies involved in investigation and prosecution of tax crime and other financial crime

372. The table below provides detailed information on the models for sharing information related to tax crimes and other financial crimes in Canada.

Table 8.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	On Request ^(b)	DSS ^(e)	DSS ^(d)	DSS ^(e)
	Customs administration	On Request	DSS ^(f)		DSS ^(g)	MSS ^(h)	DSS ⁽ⁱ⁾
	Police or public prosecutor	DSS ^(j)	DSS	DSS ^(k)		DSS ^(l)	Direct Access
	Financial Intelligence Unit	Sharing prohibited ^(m)	DSS ⁽ⁿ⁾	DSS	DSS ^(o)		DSS ^(p)
	Corruption investigation authority	DSS ^(q)	DSS	DSS	Direct Access	DSS ^(r)	

Financial regulator	On Request	On Request	Sharing Prohibited	On Request	DSS	Sharing Prohibited
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Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

- (a) Tax crime investigators within the CRA have direct access to information held by the tax administration.
- (b) The CRA and the Canada Border Services Agency (CBSA) may receive information from each other on request for the effective administration and enforcement of laws that provide for the imposition of a tax or duty.
- (c) The CRA may provide information to police organizations when there are reasonable grounds to believe that the information will afford evidence of a listed serious offence, including bribery of judicial or public officers, corruption, fraud, laundering proceeds of crime, terrorism offences or criminal organization offences. The CRA may also share information with law enforcement agencies when criminal proceedings have been commenced by the laying of charges; the information relates to imminent danger of death or physical injury to any individual; or the police are enforcing an Act administered by the CRA. However, there is currently no obligation on the CRA to report suspicions of a serious non-tax crime to the competent law enforcement agencies.
- (d) It is the policy of the CIP to consider using a Voluntary Information Record (VIR) at the early stages of all of the CRA criminal investigation cases. A VIR, which includes taxpayer information, should be prepared in all cases where an investigator identifies transactions that a reporting entity would be required to report to FINTRAC. The existence of such a transaction would be an indication that FINTRAC would be in possession of information, and potentially additional financial intelligence, concerning the target of the investigation. In addition, an investigator may make a VIR if there are indications that a reporting entity has reported a suspicious transaction(s). Sharing such taxpayer information is permitted if it is reasonably regarded as necessary for the administration or enforcement of the applicable Act.
- (e) The CRA may only provide the corruption investigation authority information related to serious crimes under Sections 241(9.5) of the Income Tax Act, Section 295 (5.04) of the Excise Tax Act, and Section 211 of the Excise Act 2001.
- (f) The CBSA may provide tax crime investigators with Cross Border Currency Reporting information, or enforcement information, pursuant to judicial authorisation where the information is necessary for criminal proceedings as prosecuted by indictment for tax offences. Information may also be provided on request.
- (g) The CBSA may provide information to the RCMP where it has reasonable grounds to suspect that the information would be relevant to investigating money laundering or terrorist financing offences. Where a court order has been obtained, the customs administration may also provide information for the purpose of prosecuting under criminal proceedings that have already commenced.
- (h) The CBSA is required to provide Cross Border Currency Reporting and enforcement information to FINTRAC.
- (i) Under section 107(5) of the Customs Act, a Customs Administration official may provide, allow to be provided or provide access to customs information to the following persons: a peace officer having jurisdiction to investigate an alleged offence under any Act of Parliament or of the legislature of a province or territory subject to prosecution by indictment, the Attorney General of Canada, and the Attorney General of the province or territory in which proceedings in respect of the alleged offence may be taken, if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes. In addition, under section 107(4) of the Customs Act, a Customs Administration official may provide, allow to be provided or provide access to customs information if the information will be used solely in or to prepare for criminal proceedings commenced under an Act of Parliament.
- (j) The RCMP and the CRA have a formal working relationship with respect to audits and cases related to recovering the proceeds of crime. The RCMP has, in the past, shared such information with the CRA's Special Enforcement Program. The information continues to be shared with CID for review by the CID's Illicit Income Assistance Program.
- (k) The CBSA may only use police information for the purposes of justifying the remedial seizure of non-declared currency (currency release upon payment of a monetary penalty). Customs may seize as forfeit any declared currency if there are reasonable grounds to suspect the currency is the proceeds of crime or funds for use in the financing of terrorist activities.
- (l) The RCMP may refer information to FINTRAC to prompt investigation specific disclosures.
- (m) While FINTRAC can receive information concerning civil tax matters from the tax administration, it cannot disclose information to the tax administration for these purposes under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).
- (n) Where FINTRAC has reasonable grounds to suspect the information would be relevant to investigating or prosecuting a money laundering offence or terrorist financing offence, it may then provide information to the CRA where it has reasonable grounds to suspect that the information is relevant to an offence of evading or attempting to evade taxes or duties.
- (o) Disclosure will be made where FINTRAC has reasonable grounds to suspect the information would be relevant to investigating or prosecuting a money laundering offence or terrorist financing offence.
- (p) Under the PCMLTFA, FINTRAC is to provide operational support to Canada's domestic and international law enforcement and intelligence partners and to give strategic advice to the Government of Canada. Information on sharing intelligence can be found on the FINTRAC website at <https://www.fintrac-canafe.gc.ca/intel/fintel-eng>
- (q) The corruption investigation authority may send leads to the tax authority and tax crime investigations, and the customs authority, relating to the compliance and enforcement of their acts. There are no restrictions on what information may be provided.
- (r) The corruption investigation authority may provide FINTRAC with a Voluntary Information Record (VIR).

373. The below table sets the availability of enhanced forms of co-operation in combatting tax crimes in Canada:

Table 8.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	The CRA has a range of MOUs with other agencies, including RCMP, Department of Justice, CBSA, and PPSC, to facilitate the enforcement of financial crime
Disclosure of foreign trusts	The CRA is only allowed to disclose taxpayer information, including information on foreign trusts, in accordance with section 241, i.e. a section on provision of information, of the <i>Income Tax Act</i> .
Joint operations and task forces	The CRA enters into joint forces operations with law enforcement agencies, Canada Border Services Agency (CBSA), Ontario Securities Commission (OSC), etc.
Parallel investigations	Parallel investigation can occur, however information gathered under audit powers is not allowed to be shared for the purpose of fulfilling investigative tasks.
Joint intelligence centres	The CRA currently has no joint intelligence centres.
Secondments and co-location of staff	The CRA participates in secondments and co-locates staff with other departments and/or agencies including, but not limited to, the RCMP and the Department of Justice.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Although there are no automatic checks conducted, the CRA would use all information it receives or has in its possession to conduct enforcement actions.
Multi-agency training	The CRA is involved in several training courses regarding money laundering and proceeds of crime with law enforcement agencies and other government departments.
Framework agreement between CRA and Chartered Professional Accountants of Canada (CPA)	Signed between the CRA and the CPA, which provides a forum for continuous dialogue between the CRA and various CPA Tax Committees.
Financial Service Liaison Committee	Established by the CRA with senior representatives of Canada's Financial Services Industry to identify and, where possible, address issues related to tax administration.
Communication campaign	The CRA proactively participates in events or theme specific campaigns, such as Small Business Week or Fraud Prevention Month/Week, to capitalise on media attention and message reinforcement through third parties.

Principle 9: International co-operation

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.

374. **Legal basis:** CRA may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements.

375. **International co-operation in practice:** As of March 2020, Canada has exchange of information (EOI) relationships (under bilateral tax treaties and Tax Information Exchange Agreements) with 117 jurisdictions. It is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows CRA to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.¹²

376. Between 2015 and 2018, inclusive, Canada made 48 requests for assistance in criminal tax matters under EOI instruments and 10 requests under MLA treaties. Out of these requests, Canada received a response within the time period of less than 6 months for just over half of the requests it made. In the same fiscal periods, Canada received 8 requests for assistance in criminal tax matters under EOI instruments.

377. **Enhanced form of international co-operation:** The CRA's ability to share information without a treaty or agreement is limited. However, in very limited circumstances, the CRA may be able to provide information to foreign authorities in order to make a request to them for information that would assist in a CRA audit, collection, or investigation activity. Such a disclosure is permissible under paragraph 241(4)(a)

of the ITA, where the disclosure would be for the purpose of the administration or enforcement of the Income Tax Act. That said, the provision would not permit the CRA to respond to a request from a country with whom no treaty or listed international agreement (such as Tax Information Exchange Agreements) is in effect.

378. In addition, subsection 241(9.5) of the ITA may also permit disclosure to a law enforcement officer of an appropriate police organization outside of the tax treaty or agreement framework, where, if the CRA official has reasonable grounds to believe that the information will afford evidence of an act or omission in or outside of Canada for a listed serious offence, including bribery of judicial or public officers, corruption, fraud, laundering proceeds of crime, terrorism offences or criminal organization offences.

379. Canada's central authority for sending and receiving requests for information under EOI instruments is the Competent Authority Services Division of the CRA's Compliance Programs Branch. The CRA's CID is authorised to discuss and exchange general information on special projects but any exchange of documents must be made through the formal EOI process. The Department of Justice is the competent authority for sending and receiving requests related to criminal tax matters pursuant to Mutual Legal Assistance Treaties.

Principle 10: Fundamental rights of a suspect or accused person

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

380. Canada provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are set out in the Canadian Constitution, legislation and common law. The Government of Canada also provides a Guide to the Canadian Charter of Rights and Freedom, which is embedded into the country's constitution.¹³

381. In Canada, a civil tax matter becomes a criminal tax matter the moment an auditor determines that there could be a tax offence.¹⁴ Furthermore, it is possible to have a civil tax audit conducted in parallel with criminal investigations, as long as the auditors do not share information gathered under their broader inspections' powers with criminal investigators.

Table 8.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	When charged
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	When charged
remain silent	Yes	At the time of arrest or detention
access and consult a lawyer and/or entitlement to free legal advice	Yes	At the time of arrest or detention
interpretation and translation	Yes	During a hearing or court proceeding
be advised of the particulars of what one is accused of	Yes	At the time of arrest or detention
access documents and case material, also known as a right to full disclosure	Yes	Preparation of a hearing or court proceeding
a speedy trial	Yes	When charged
protection from ne bis in idem (Double Jeopardy)	Yes	When charged

Highlights

Successful practices

- Solid tax crime strategy and threat assessment for tax crimes
- Good training opportunities for investigators
- Adequate regime for freezing, seizing and confiscating assets.
- Effective use of enhanced forms of international co-operation through the Joint Chiefs of Global Tax Enforcement (J5)

Room for improvement

- Canada faces challenges with the seizing and/or restraining of assets that are (i) located outside of Canada but purchased with the taxes evaded from schemes in Canada, and (ii) which include electronic materials stored outside of Canada (offshore) or in the Cloud (server location is unknown)
- Canada has a strong privacy framework for the protection of personal information. However, the framework creates barriers to sharing information and intelligence.

References

CRA (2019), *Tax Gap and Compliance Results for the Federal Corporate Income Tax System*, <https://www.canada.ca/en/revenue-agency/news/2019/06/tax-gap-and-compliance-results-for-the-federal-corporate-income-tax-system.html> (accessed on 19 April 2021).

Notes

¹ All of the tax offences contained in Table 6.1 and 6.2 have parallel provisions under the Goods and Services Tax (Part IX) of the Excise Tax Act (ETA).

² R.S.C. 1985, c. C-46 ("CC").

³ All Canadian legislation is available from <https://laws-lois.justice.gc.ca>. The Canadian *Criminal Code* (CC) does not specifically target breaches of tax law, but many breaches of tax law can lend themselves to prosecution as generic crimes, including falsification of books and documents (section 397 of CC), false return by public officer (section 399), forgery (section 366), use of forged document (section 368), and fraud (section 380).

⁴ For more on the Canadian criteria for tax residency, see: <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/Canada-Residency-EN.pdf>

⁵ Both criminal investigations and convictions contained in both Table 6.3 and 6.4 are pursuant to the ITA, ETA, and Criminal Code.

⁶ More information can be found at <https://www.canada.ca/en/revenue-agency/campaigns/tax-evasion-no-borders.html>.

⁷ The CRA Enforcement Notifications communicating criminal investigations actions and outcomes can be found on the CRA website through the CRA Newsroom, <https://www.canada.ca/en/revenue-agency.html>.

⁸ Refer to Table 8.3.

⁹ See Rome Report, Chapter 5 – Country Information – Canada. Available at <http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

¹⁰ The Framework is a risk-based model designed to guide the CIP in the use of its investigative resources against the most serious cases of tax evasion or fraud. It was implemented to ensure their resources are focused on combating the most serious threats, and to facilitate the realignment of resources from low to high priority cases, as required.

¹¹ Looking at the number and the percentage of months spent at various stages of the investigations as well as the number of aborted investigations and the corresponding time spent at various stages.

¹² A detailed list of Canada's Tax Treaties can be found at: <https://www.fin.gc.ca/treaties-conventions/treatystatus-eng.asp>.

¹³ See <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>.

¹⁴ See *R. v. Jarvis*, 2002 SCC 73 and its companion case, *R. v. Ling*, 2002 SCC 74.

9 Chile

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

382. Chile's Tax Code (CT) sets out a range of different tax offences, which require criminal intent (*mens rea*) and apply to both income tax and VAT/GST. Examples of Chilean tax offences and the corresponding sanctions and limitation periods are set out below.

383. Chile notes that fines are set in Yearly Tax Units (UTAs), the value of which is updated every month by the Inland Tax Service based on the inflation rate. For August 2020, 1 UTA is equivalent to CLP 603 264.¹

Table 9.1. Income tax offences requiring criminal intent

Offence	Minimum sentence	Maximum Sentence	Statute of limitations
Tax evasion (CT, art. 97.4.1)	Imprisonment between 541 and 818 days and fine equivalent to half the amount of evaded tax	Imprisonment between 819 and 1 095 days and fine equivalent to thrice the amount of evaded tax	Five years
Fraudulent tax returns (CT, art. 97.4.4)	Imprisonment between 819 and 1 095 days and fine equivalent to the double of the amount of evaded tax	Imprisonment between 3 651 and 4 563 days and fine equivalent to four times the amount of evaded tax	Ten years
Subtraction, concealment or alienation of assets subject to confiscation by the tax authority (CT, art. 97.14)	Fine of 0.5 UTAs.	Imprisonment between 541 and 818 days and fine of 4 UTAs	Five years

384. **Statute of limitations:** The limitation periods for offences listed above start on the day on which the offence was committed, and are suspended by the commencement of a criminal investigation (Criminal Code, arts. 95-96).

385. **Complicity:** In Chile, the accomplices of tax crimes are criminally liable, and may be sanctioned with a lower sentence than the one given to the offender.

386. **Attempt and conspiracy:** In relation to tax crimes, conspiracy is not penalised, and attempt is penalised with a penalty two degrees lower than the penalty for the full crime.

387. **Professional enablers:** Article 97, 4°, fifth paragraph of the Chilean Tax Code sets that whoever produces, sells or assists in the use of invoices, tickets or debit or credit notes for facilitating the

commission of a tax offence is subject to imprisonment for a term between 541 and 818 days, and a fine of up to 40 UTAs.

388. **Territorial and nationality jurisdiction:** Chile has jurisdiction over crimes committed wholly or partly in Chile.

389. **Liability of legal persons:** Legal persons are not criminally liable for tax crimes in Chile but can be subject to fines in civil tax proceedings.

Enforcement of tax crime

390. Chile states that the total amount of underlying tax evaded amounted to almost CLP 6 billion in 2016, CLP 11 billion in 2017 and CLP 73 billion in 2017. In 2018 the total amount of tax evaded on tax crimes was of almost CLP 44 billion, and over CLP 31 billion in 2019.

391. The below tables show the enforcement of tax crimes in Chile in tax years ending 2015-19, and the type of criminal sanctions imposed in Chile during the same period of time.

Table 9.2. Enforcement of tax crimes in the tax years ending 2015-19

Tax years ending	Concluded investigations	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	296	182	108	5
2016	427	273	137	17
2017	350	292	154	14
2018	60	124	42	3
2019	53	99	33	6

Table 9.3. List of income tax sanctions imposed in years 2015-19

Sanction	Number of times imposed
>0 – 3 years' imprisonment	149
>3 – 5 years' imprisonment	122
>5 years' imprisonment	4

392. **Availability of tax deductions for civil and criminal sanctions:** Sanctions are non-deductible from tax in Chile.

393. **Availability of settlements:** The Code of Criminal Procedure of Chile allows offenders and the Public Prosecution Service to reach a “reparation agreement”, which, when enforced, grants the offender immunity from prosecution. This type of agreement can be applied to tax crime prosecutions.

394. **Tax gap:** Chile measures and publishes the tax gap only for VAT. The last available estimation reaches to 21.29% for year 2018,² representing around USD 6 293 billion of missing revenue.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

395. Chile's Internal Tax Service (SII), which operates within the framework of the Ministry of the Treasury, is charged with developing and implementing the national tax crime strategy. This strategy is based on the analysis of several indicators, ranging from the amount of damage suffered by the public treasury to the estimated effect prosecutions are projected to have in the future. The strategy is developed by SII's Regional Offices throughout Chile and its national Tax Crime Department. The Tax Crime Department evaluates the strategies used by the Tax Revenue Service every year, to gather the information that allows determining of the occurrence of tax crimes. The Collective Performance Agreement, an evaluation instrument that contains annual goals for the detection of cases, measures the strategy's effectiveness. This supports the decisions made by the Director to refer cases for criminal prosecution.

396. **Threat assessment:** The Regional Offices of the SII operate on the basis of a technical committee, which meets once a month to review the cases of existing tax crimes, and to alert to the discovery or new potential cases. The sources of the information are the existing data bases of the SII. The most important internal sources are the databases of the Sub-directorate of Information Technology, such as the Integrated Taxpayer Information System (SIIC) and the information from each Regional Directorates. In addition, information is also provided by the Sub-Directorates of Inspection and of Appraisals. The Tax Crimes Department is the specialised unit of the SII in charge of detecting criminal threats or outlining the profile of tax crimes or tax offenders. Currently, it has identified undue tax reduction and irregularly obtaining of Export VAT refunds as critical areas.

397. **Communications Strategy:** Chile does not have a specific communication strategy especially aimed at tax crime investigations.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 9.4. Investigative powers of tax crime investigation agency (Public Prosecution Service)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power/Indirect power SII can seize accounting documentation. For other seizures, collaboration with the prosecutions office is required.
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	No power
Intercept mail and telecommunications	No power
Conduct covert surveillance	No power
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power/Indirect power SII can seize accounting documentation, including hardware, software and electronic storage media. For other seizures, collaboration with the prosecutions office is required.

Arrest	No power
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398. **Legal professional privilege:** While Chile does not have a statutory definition of legal professional privilege, but lawyers are not compelled to offer statements against their clients or disclose communications with them (Civil Procedure Code, art. 360). This possibility is not extended to other professions, such as accountants. Under Chilean law, there is an exception to professional secrecy, whereby persons with knowledge in the area of accounting who have taken part in the preparation of a tax return are obliged to testify under oath on the points contained in the return (art. 34 of the Tax Code).

Principle 4: Freezing, seizing and confiscating assets

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

399. **Legal basis:** Chile operates a conviction-based confiscation system, while freezing and seizures are allowed under authorisation of the courts. The freezing of assets is allowed under the authorization of the courts, as for example under the figure of the “precautionary measures” set in article 157 of the Criminal Procedure Code.

400. As a general rule, seizures must be authorized by courts. However, there is also an administrative measure that can be carried out by the Internal Tax Service without the need for a court order. In this respect, the Director of SII may order the affixing of seals and the seizure of accounting books and other documents related to the activity of the taxpayer, to carry out an investigation for offences that are sanctioned with fines or imprisonment (art. 161, Tax Code). These measures may be carried out in the place where the respective accounting books and other documents are or may be found, even if it does not match the address of the presumed offender.

401. **Freezing and seizing orders:** As a general rule, Chilean law does not allow for rapid freezing of assets in criminal investigations (i.e. freezing in less than 48 hours) except for cases *in flagrante delicto*. Freezing of assets under the authorization of the courts is allowed (art. 157 of the Criminal Procedure Code). Chile notes that a “fast freezing” of an asset may take place in cases of money laundering predicated on tax crimes (Law 19.913, art. 32).

402. **Confiscation orders:** Chilean law only allows for conviction-based confiscations (art. 31 of the Criminal Procedure Code). Non-conviction-based confiscations, third-party confiscations and value-based confiscations are not allowed in Chile. The Chilean Constitution expressly prohibits imposing the penalty of confiscation of property or rights. There is no special rule that regulates the possibility of confiscation without conviction.

403. **Foreign freezing, seizure, and confiscation orders:** In Chile the enforcement of foreign criminal sentences will be subject to the provisions of international treaties ratified by Chile (Criminal Procedure Code, art. 13).

404. **Agency/unit responsible for asset recovery:** Chile notes that the organisation in charge of freezing, seizing or confiscating assets is the Treasurer-General of the Republic, which is the agency in charge of collecting and distributing all public funds in Chile.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

405. The Public Prosecution Office of Chile is in charge of tax crime investigations. The Internal Tax Service (SII) is in charge of referring cases to the prosecution, and co-operating with it during the investigation when requested.

406. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Chile's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).³

Table 9.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Public Prosecution Office	Prosecutors in local prosecution units are responsible for investigating and prosecuting specific cases, with specialised anti-corruption prosecutors in all of the country's regions.
Specialized Anti-Corruption Unit <i>housed within Public Prosecution Office</i>	Assists the public prosecution in cases of corruption and economic crime, provides legal support and financial and accounting analysts who analyse the information gathered in cases relating to economic crime.
Internal Tax Service (SII)	Performs administrative investigations if it suspects a tax offence has been committed.
Unit of Financial Analysis (UAF)	Chile's FIU, analyses Suspicious Transaction Reports and forwards the information relating to possible criminal offences to the public prosecutors office; develops national strategies to combat terrorist financing, drug trafficking, bribery and other predicate offences for money laundering
Tax Crime Department <i>-housed within SII-</i>	Responsible for the collection of background data, which will allow the SII Director to decide whether to refer the case for prosecution.
National Customs Service	Facilitates and streamlines import and export operations through the simplification of custom procedures and formalities; safeguards government interests by enforcing such operations on a timely and accurate basis, and collects associated duties and taxes; produces foreign trade statistics for the Government.
Police (Carabineros de Chile)	Has responsibility for criminal intelligence, immigration control, international co-operation in combating crime, and detecting and preventing criminal activities.
Investigations Police (PDI)	Responsible for investigating crimes; in particular the economic crime unit is involved in corruption investigations.
Central Bank of Chile	Provides information on criminal tax violations when detected as part of its work as oversight body of the banking system.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

407. The investigation of tax offences in Chile is carried out by the SII Department of Tax Crimes and by each of its Regional Offices, which are co-ordinated by the Department of Tax Crimes. Chile does not have the data on the annual budget allocated for the investigation and prosecution of tax crimes. The budget is not based on any performance metrics, however, data is collected and processed within the different Regional Offices of the SII. Each regional office of SII maintains statistics of the number of cases in which criminal prosecution was initiated, cases concluded, convictions and acquittals, which allows to know by region the kind of crimes that are committed and to know if the prosecuting of a criminal offence has been effective. As of 2020, between the Department of Tax Crime and the Department of Criminal Judicial Defense, there are 56 officials specifically dedicated to the fight against tax crime.

Table 9.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	No Access
Land Registry	No Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	No Access
Police databases	No Access
Judicial databases	No Access
Suspicious transaction report databases	No Access
Domestic bank account databases	No Access
Car registry	Direct Access
Boat registry	No Access

Training for tax crime investigators

408. On joining the SII, all tax auditors undergo a three-month training course that includes modules on tax crime investigation. All SII criminal investigators also have yearly criminal procedure seminars. Additionally, the Tax Crimes Department trains the officers of the Regional Directorates in tax crimes investigations. Auditors in the SII's Regional Offices also have access at least once a year to training programmes taught by personnel of the Department of Tax Crimes. In addition, the Chilean FIU has prepared E-learning classes to improve tax auditor's ability to detect possible money laundering.

409. In general, there is no mandatory training in tax crimes for the Public Prosecutor's Office. The Academy of the Public Prosecutor's Office is working on restructuring the training programmes. Every year, there are trainings on economic crimes, including tax crimes. On the other hand, some prosecutors and their staff have participated in the courses held by the SII.

Principle 7: Predicate offences

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

410. **Approach:** Chile adopted a 'list approach' to money laundering in 2006, and tax crimes are included in the list of predicate offences (Law 19913, art. 27.a). Persons may be charged with money laundering in Chile regardless of whether a person has been charged or convicted of the predicate offence. Chile can also bring proceedings for money laundering where the predicate offence (e.g. a tax crime) takes place outside of its jurisdiction, provided the act is an offence in the jurisdiction where it took place (Law 19913, as amended, art. 27).

411. **Enforcement of money laundering predicated on tax crimes:** The SII collaborates and co-operates with the FIU of Chile (UAF), providing information on suspicious transaction reports. Currently, there are direct communication channels between both organizations, and in 2015 a collaboration agreement was signed between both institutions for the delivery of information by the SII to the FIU.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

412. SII auditors report any suspicion of criminal activity to the Public Prosecution Office. The inspectors of the Internal Revenue Service, as civil servants, must report any crimes they became aware in the exercise of their functions and, especially, if applicable, those that they noticed in the conduct of their subordinates (Article 175 of the Criminal Procedure Code).

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

413. The SII provides support and co-operates with public prosecutors and the police conducting investigations on a range of financial offences. The police and SII co-operate to share methodological experience in the detection and analysis of criminal cases, while the Public Prosecutions Service and the SII work together in joint operations. The SII prepares documents summarising relevant investigative processes for use by public prosecutors leading investigations. The SII also runs capacity-building workshops for public prosecutors and police to give law enforcement officials tools to better understand the nature of tax crimes.

414. On a political level, the tax authority and the prosecution service have agreed on the establishment of working groups for better inter-agency co-ordination in the fight against tax crime. Furthermore, a legal subcommittee has been established between agencies under the purview of the Ministry of the Treasury, where SII, the National Customs Agency, and the Treasurer-General of the Republic discuss joint experiences and best practices.

415. The below table shows the models for sharing information related to tax crime and other financial crime in Chile.

Table 9.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	DSS ^(b)	Direct Access ^(c)	DSS ^(d)	Direct Access
	Customs administration	DSS ^(e)	MSS ^(f)		MSS ^(g)	MSS ^(h)	MSS
	Police or public prosecutor	DSS	DSS	DSS ⁽ⁱ⁾		Sharing Prohibited ^(j)	Direct Access
	Financial Intelligence Unit	Sharing Prohibited ^(k)	MSS	Sharing Prohibited ^(l)	MSS		MSS
	Corruption investigation authority	DSS	Direct Access	DSS	DSS	DSS	
	Financial regulator	On Request	On Request	Sharing Prohibited	On Request	MSS	MSS

Note: DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

(a) The SII has created an electronic platform accessed through a secure website, to which the public prosecutor's office has direct access. This provides instant access to tax information such as tax returns, while other information may be obtained from tax auditors on request.

(b) General information held by the SII and not covered by tax secrecy provisions may be made available to customs. The SII may also provide information covered by tax secrecy to the customs administration on request, to the extent it is used in customs audits. Information on VAT refunds on exports is shared in order to combat refund frauds.

(c) The public prosecutor has direct access to information held by the SII on a secure website, including tax information such as tax returns. The Chilean tax administration cannot share information covered by tax secrecy directly with the police but may share non-tax information on request. There is a general provision that imposes on all public officials the obligation to report suspicions of crimes to report to the Public Prosecutor any crimes or irregular activities that comes to their knowledge in the exercise of their position. This must be done in the first 24 hours after they become suspicious of possible criminal activity. This obligation applies to individual officials and not to the tax authority as an agency.

(d) General information held by the SII is available on an electronic platform placed on a secure website. The tax administration may only share tax information with the FIU where consent has been obtained from a judge.

(e) The customs administration may provide information the Director of the SII on request, for the purpose of use in tax audits. Customs may also enter into agreements with other authorities, including the tax administration, to send information electronically to facilitate compliance with audits and other operations.

(f) All state authorities, including the customs administration, must provide as quickly as possible all information required by the Public Prosecution and criminal courts. Specifically, under the Electronic Information Exchange Agreement, entered into between the Ministry of Public Prosecution and Customs, the customs administration is obliged to transmit electronically information about commercial operations relevant to active investigations.

(g) The customs administration must provide as quickly as possible all information required by the Public Prosecution and criminal courts. Customs will also provide information to police on request.

(h) Customs receives reports of all movements of cash and bearer negotiable instruments exceeding USD 10 000 to and from Chile. This information is then provided by the customs administration to the FIU

(i) There is no obligation on the Public Prosecutor or police to share information with the customs administration. However, where an investigation is conducted into suspected customs offences, Public Prosecution may provide information to enable Customs to pursue a criminal or civil action.

(j) The Police do not share information with FIU. However, a police officer posted within the FIU has the ability to share information spontaneously regarding police cases and migration issues.

(k) The FIU may not share operational information with any authority other than the Public Prosecutor. Therefore, information may not be provided to the tax administration or customs administration.

Table 9.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	The SII co-operates with public prosecutors and police conducting a range of financial offences. The police and SII co-operate to share methodological experience in the detection and analysis of criminal cases. There is no general formal agreement, but there is an agreement between the Public Prosecutor's Office and the Internal Revenue Service, which allows that prosecutors (by an interconnection system) to have access to tax information.
Disclosure of foreign trusts	Chile does not have information as to whether foreign trusts are shared with other government agencies.
Joint operations and taskforces	The public prosecution service and the SII work together in joint operations. There are some complex cases in which the SII work together with Customs Office or the Prosecutors Office.
Parallel investigations	In Chile, the investigation stage of the criminal process corresponds exclusively to the Prosecution Office. The SII carries out an administrative investigation prior to the investigation by the Prosecution Office so that the Director can decide whether to file a criminal action or to impose just a financial penalty.
Joint intelligence centres	Chile does not have any joint intelligence centres.
Secondments and co-location of staff	Service employees only have the possibility of transfers within the same Service, but not to other public bodies.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes
Multi-agency training	The SII has taken part in trainings of other institutions such as Customs and the Investigative Police.

Principle 9: International co-operation

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.

416. **Legal basis:** Chile has exchange of information relationships with over 36 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements.⁴ Chile has signed the convention on Mutual Administrative Assistance in Tax Matters (MAAT Convention) on 24 October 2013, and this convention is in force respect to Chile as of 1 November 2016.

417. Exchange of information is only allowed under the provisions of the double tax treaties, TIEAs and MAAT Convention referred above. Therefore, the exchange of information shall be carried out only between the competent authorities of the appropriate international instrument and subject to the confidentiality standards contain therein.

418. **International co-operation in practice:** The Chilean Tax Revenue Service is in charge solely of the exercise of criminal actions for the sanction of tax crimes. Other organizations prosecute all the other financial crimes. To date, the Tax Crime Department of SII has not had MLA requirements in matters within its competence, so it does not have statistics in this regard.

419. **Enhanced form of international co-operation:** Foreign criminal court orders can be enforced in Chile, in accordance with art. 13 of the Criminal Procedure Code.

Principle 10: Fundamental rights of a suspect or accused person

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

420. Chile provides persons suspected or accused of tax crimes with a full series of rights. These are enshrined in several international human rights treaties ratified by Chile, and in national legislation, most notably the Political Constitution of the Republic of Chile.

Table 9.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until convicted by a final judgment.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Since the first act of the procedure.
remain silent	Yes	Since the first act of the procedure.
access and consult a lawyer and/or entitlement to free legal advice	Yes	Since the first act of the procedure.
interpretation and translation	Yes	Since the first act of the procedure.
be advised of the particulars of what one is accused of	Yes	Since the first act of the procedure.
access documents and case material, also known as a right to full disclosure	Yes	Since the first act of the procedure.
a speedy trial	Yes	Since the first act of the procedure.
protection from ne bis in idem (Double Jeopardy)	Yes	Since sentencing

Highlights

Successful practices

- Solid inter-agency co-ordination
- Good capacity building for tax crime investigators
- Possibility of enforcing foreign court rulings in Chile

Room for improvement

- Chilean tax crime investigators and prosecutors could benefit from more powers for freezing and confiscating assets. In particular, in regards to rapid freezing of assets and non-conviction based confiscations.

Notes

¹ In April 2021, EUR 1 = CLP 837.05.

² Provisional figure based on National Accounts information.

³ See Rome Report, Chapter 5 – Country Information – Chile. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁴ See <http://www.eoi-tax.org> for up-to-date figures.

10 Colombia

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

421. Tax crimes in Colombia are established in sections 402, 343 A and 434 B of the Criminal Code (“CC”), require criminal intent (*mens rea*), and apply to both income tax and VAT/GST. Examples of Colombian tax crime offences together with their minimum and maximum sanction are laid down in the table below.

Table 10.1. Tax offences requiring criminal intent

	Minimum sanction	Maximum sanction
Withholding agent or collector does not withhold tax or, after withholding, omits to pay the due amount to the tax administration (Art. 402 of the CC)	48 months of imprisonment and a fine of twice the amount the agent was obliged to collect or withhold	108 months of imprisonment and a fine of twice the amount the agent was obliged to collect or withhold
Hiding of assets to the tax administration, recognising them at a lower value than their real one, or including inexistent liabilities in tax returns, when assets are valued at over 5 000 monthly minimum wages (Art. 434 A of the CC)	48 months of imprisonment	108 months of imprisonment. However, depending on the value of the assets or liabilities the sanction could increased in 36 to 54 months.
Not submitting tax returns, including inappropriate expenses, claiming inappropriate tax credits, among others, when the value is over 250 monthly minimum wages, and the conduct does not constitute another offence (Art. 434 B of the CC)	60 months of imprisonment	60 months of imprisonment. However, depending on the value of the assets or liabilities the sanction could increased in 36 to 54 months.

422. Colombia notes that for 2021, the monthly minimum wage is set at COP 908 526¹ (Presidential Decree No. 1785, of 29 December 2020). Also, it notes that, as of 2021, it has not initiated cases related to arts. 434A and 434B of the CC.

423. **Statute of limitations:** Arts. 83, 84 and 90 of the CC state that the statute of limitation for criminal sanctions is the length of the maximum sanction for the respective offence. It starts on the day of commission of the offence and may be interrupted upon the arrest of the suspect.

424. **Complicity:** Accomplices of tax crimes are criminally liable in Colombia. Sanctions for accomplices are between half and a quarter of the sanction of the primary offender (arts. 28-30, CC).

425. **Attempt and conspiracy:** Attempt and conspiracy to commit a tax crime are not criminally liable in Colombia.

426. **Professional enablers:** Colombia does not have a separate penalty regime for professional enablers, but they may be sanctioned in accordance with the rules of complicity.

427. **Territorial and nationality jurisdiction:** Colombia has jurisdiction for tax crime cases over any offence committed wholly or partly in Colombian territory.

428. **Liability of legal persons:** Legal persons or entities may not be criminally liable for tax crimes committed in Colombia. However, the criminal liability will be recognized on the managers or members of the administration board.

Enforcement of tax crime

Table 10.2. Enforcement of tax crimes in years ending 2015-19

Tax years ending	Number of concluded tax crime investigations	Number of tax crime prosecutions commenced*	Number of convictions	Number of acquittals
2015	2 625	3 091	111	8
2016	1 572	3 553	149	26
2017	1 943	4 756	193	11
2018	4 577	6 033	389	84
2019	2 811	10 415	158	10
Total	13 528	27 848	1 000	139

Note: Figures with * include cases for both tax and customs criminal offences

429. Colombia did not provide information regarding the type and number of sanctions it imposed to tax crime offenders, but it notes that, based on the criminal cases where a conviction was obtained, the value of the damages recognized between 2015 and 2019 was approx. EUR 9.5 million.

430. **Availability of settlements:** Colombian case law allows for prosecution agreements in tax crime offences, provided the suspect pays all the underlying tax with interest and civil penalties.

431. **Availability of tax deductions for civil and criminal sanctions:** Art. 105.2.C of the Colombian Tax Code states that criminal and civil sanctions are non-deductible for income tax purposes in Colombia.

432. **Tax gap:** Colombia does not measure its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

433. Colombia's tax crime strategy is prepared by the Directorate for National Taxes and Customs (DIAN) in co-ordination with the public prosecution service (FGN) and the Ministry of the Treasury. The strategy, known as "shock plan", includes analysis on current threats and scenarios, and lays down an internal mechanism for reporting suspicions of tax crimes to the prosecution office. This plan is updated yearly.

434. Colombia notes that after the creation of DIAN's new Specialised Unit against Tax Crimes, this whole strategy is currently under review. More information on the new unit is available under Principle 5 in the Part I of the current publication.

435. **Threat assessment:** Colombia notes that its threat assessment for tax crimes is currently under review after the creation of the new Specialised Unit against Tax Crimes within DIAN.

436. **Communications strategy:** The public prosecution service (FGN) communicates successful prosecutions to the media, while DIAN has a media strategy for fostering voluntary compliance.

Box 10.1. Example of successful implementation of tax crime strategy: Colombia

In 2019, DIAN's civil tax audit unit detected a number of cases where taxpayers had purchased fake invoices with the purpose of reducing their tax burden. These fake invoices were issued by different companies owned by a woman recognized as "La Patrona", who was the head of the criminal organization. During the investigation, the Colombian tax administration noticed that 2 500 taxpayers were involved in the criminal structure. After the initiation of a civil and criminal investigation, approximately 800 taxpayers voluntarily came forward, confessed the crime and paid the underlying tax and their corresponding sanctions.

The whole criminal structure of "La Patrona" generated over EUR 200 million of losses in taxes for Colombia.

DIAN reported taxpayers who did not take part in the voluntary compliance scheme to the public prosecution service (FGN), which undertook criminal investigations. FGN in particular paid attention to the professionals who enabled these crimes, such as accountants and tax advisors who signed forged tax returns. Besides, DIAN established that any transaction carried out by any of these taxpayers would be ineligible for tax deductions and benefits (art. 671 of the Tax Statute). As of today, there are three convictions related to this criminal structure and the FGN is starting the investigations of the taxpayers who purchased the fake invoices.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

437. The table below lays down the investigative powers of the public prosecution service in Colombia.

Table 10.3. Investigative powers of tax crime investigation agency (Public Prosecution Service)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Direct power Court order required except for accountant books
Obtain documents from third parties	Direct power Court order required when the information is confidential
Interview	Direct power
Inquiry powers (e.g. power of coercion)	Direct power
Intercept mail and telecommunications	Direct power Court order required
Conduct covert surveillance	Direct power Court order required
Conduct undercover operations	Direct power Court order required

Search and seize computer hardware, software and electronic storage media	Direct power Court order required
Arrest	Direct power Court order required

438. **Legal professional privilege:** Colombia notes that its definition of legal professional privilege does not affect tax crime investigations.

Principle 4: Freezing, seizing and confiscating assets

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

439. **Legal basis:** Colombia notes that the possibility of freezing or seizing assets in a domestic tax crime investigation resides on requests of law enforcement and the public prosecution to court. However, Colombian Constitution bans the faculty of confiscating assets (Art. 34) before a judicial decision.

440. **Freezing and seizing orders:** Colombian law allows the courts to issue freezing and seizing orders on the assets of the accused, but limited to protecting potential compensation of damages caused by the crime (article 92 of the Criminal Procedure Code).

441. **Confiscation orders:** Colombia only allows conviction-based confiscations (art. 34 of the Constitution).

442. **Foreign freezing, seizure, and confiscation orders:** Colombia may execute foreign freezing and seizing orders under the provisions of bilateral treaties or through exequaturs, provided the conduct does not affect any Colombian constitutional provisions (*ordre public*) (article 489 of the Criminal Procedure Code). Confiscation order can only be issued by a judge after recognising the criminal liability.

443. **Agency/unit responsible for asset recovery:** The “CISA” (Central de Inversiones) and the “SAE” (Sociedad de Activos Especiales) are the units entitled to sell the frozen, sized or confiscated assets in order to compensate the Government.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

444. The public prosecution service (FGN) is responsible for tax crime investigations and prosecutions in Colombia. DIAN, Colombia’s revenue agency, carries out civil tax assessments and, when in the course of such audits, detects suspicions of a tax crime, it refers the case to FGN.

Table 10.4. Agencies and other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Special Administrative Unit of the National Tax and Customs Administration (DIAN)	DIAN is attached to the Ministry of Treasury and Public Credit and is responsible for guaranteeing the fiscal security of the State and the protection of the economic public order. Among its functions are the administration of taxes, customs rights and other foreign trade taxes, monitoring of compliance with national regulations related to taxes, customs and foreign exchange, and also to prevent, investigate and penalise the violation of such regulations.

	<p>Within its structure, DIAN has a General Directorate and seven other Directorates. The Directorate of National Taxes administers income and related taxes, sales taxes, national stamp duty and other national taxes which are not administered by any other State entity, as well as conducts the assessment and collection of customs duties, foreign exchange taxes and foreign exchange penalties.</p> <p>DIAN is also responsible for the administration of customs duties and other taxes levied on foreign exchange. In customs matters, crimes concerning contraband and export fraud are typified as criminal offences which, once detected by DIAN, are reported to the Attorney General's Office. DIAN is supported by the Fiscal and Customs Police Force (POLFA) in exercising controls over merchandise entering the country and over individuals carrying large amounts of cash into or out of Colombia.</p>
Office of the General Prosecutor/Fiscalía General de la Nación (FGN)	<p>Is formally part of the judicial branch of government and is responsible for investigating and prosecuting allegations of crime, including corruption offences on natural persons. It has an independent role, as conferred by the Constitution, and is headed by the Prosecutor General.</p> <p>In 2014, Colombia established the Economic and Financial Police within the Office of the General Prosecutor. It is a specialized judicial police unit, established at a national level, with jurisdiction throughout the country and is responsible for investigating financial and economic crimes, including corruption. In addition, there is a National Anti-Corruption Unit established by the General Prosecutor. The National Anti-Corruption Unit specialises in the investigation and prosecution of offences against the public administration, including transnational bribery, but only in relation to cases specifically assigned to it by General Prosecutor. Local prosecutor offices can also handle corruption-related cases at a local level, depending upon where an offence occurred. Further, the National Police, in particular its Criminal Investigations Office, may support the Office of the General Prosecutor, for example by obtaining evidence, carrying out arrests and seizing property.</p>
Office of the Inspector General (Procuraduría General de la Nación)	<p>Its functions include, inter alia, supervising public sector compliance with the Constitution, the laws, judicial decisions, and administrative decrees. The Inspector General may also file an action to hold a public official accountable for disciplinary misconduct. Along with the FGN, it is also responsible for the detection and investigation of corruption offences.</p>
Superintendence of Companies	<p>Also conducts administrative investigations and imposing sanctions on legal persons for acts of corruption. This can be done independently of the investigation where it concerns foreign bribery. In domestic corruption cases this can only be done when the natural persons that committed the crime have an ongoing criminal process and the legal persons has been used in the conduct of the crime, or benefit from the crime.</p>
Unit for Intelligence and Financial Analysis (UIAF)	<p>A special administrative unit under the Ministry of Treasury and Public Credit, which has the objective to prevent and detect money laundering operations in different economic sectors. UIAF was created by Law 526 of 1999 with the objective to detect, prevent and combat money laundering in all economic activities, UIAF receives and analyses information on suspected money laundering from financial institutions and other bodies under anti-money laundering legislation, as well as from other government authorities, UIAF then shares the results of its analyses with the relevant law enforcement agency or competent authority.</p> <p>Within its structure, UIAF has a General Directorate; two Offices (Legal Advisory and Internal Control) and four Sub-Directorates (Financial Analysis, Strategic Analysis, Information Systems, and Administrative and Financial). Its strategic objectives are to strengthen the systems and technologies for the fight against money launderings and terrorism financing; and develop mechanisms for the prevention and detection of crime.</p>

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

445. Currently the Colombian Tax Administration has 132 public officers working specifically combatting tax crime and other criminal matters, such as smuggling.

Table 10.5. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Access under Request
Land Registry	Direct Access
Registry of citizens	Direct Access

Tax databases	Access under Request
Customs databases	Access under Request
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Access under Request
Car registry	Direct Access
Boat registry	Direct Access

Training for tax crime investigators and prosecutors

446. The Colombian tax administration lectured different public agencies about the particularities of the tax felonies. This initiative is made at least one per year.
447. Colombia is co-ordinating specific criminal tax trainings with several foreign tax agencies.

Principle 7: Predicate offences

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

448. **Approach:** Colombia applies a 'list' approach to predicate offences for money laundering since 2000. This means that offences listed in article 323 of Law 509/2000 may be predicate offences for money laundering, including tax crimes.
449. **Enforcement of money laundering predicated on tax crimes:** Colombia notes that designating tax crimes as a predicate offence for money laundering has resulted in better co-ordination and information sharing between the FGN, DIAN, the financial intelligence unit and the police.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

450. DIAN conducts investigations for administrative tax violations. Where, in the course of such an investigation, possible criminal activity is detected, the tax administration is required to report this to the Attorney-General's Office for investigation.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

Table 10.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		On request	Direct Access	On request	MSS	Not available
	Customs administration	Direct Access	On request		On request	MSS	Not available
	Police or public prosecutor	No sharing	Direct Access	No sharing		DSS	Not available
	Financial Intelligence Unit	No sharing	MSS	No sharing	MSS		Not available
	Corruption investigation authority	Not available	Not available	Not available	Not available	Not available	
	Financial regulator	DSS	On request	DSS	On request	MSS	Not available

Note:

*DSS = discretionary spontaneous sharing

*MSS = mandatory spontaneous sharing

Table 10.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Colombia is an active member of the EA MLA.
Disclosure of foreign trusts	Colombia has a ultimate beneficial owner report, whose purpose is to disclose foreign trust and real owners and beneficiaries
Joint operations and taskforces	No
Parallel investigations	Yes
Joint intelligence centres	Yes, Colombia has intelligence center but without access to investigation on Tax Crime
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	No
Multi-agency training	Tax administration trains different public agencies, such as FGN, in tax criminal law and cases.

Principle 9: International co-operation

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.

451. **Legal basis:** Colombia may exchange tax information with foreign authorities pursuant to bilateral and multilateral agreements, and to domestic legislation on the bases of reciprocity.

452. **International co-operation in practice:** Colombia is a start party to the OECD Convention on Mutual Administrative Assistance in Tax Matters, allowing it to exchange tax information with over 124 jurisdictions. It is also signatory to 1 FATCA Agreement and to 14 double taxation agreements.

453. Colombia notes that to date it has not sent or received any requests for tax information for criminal investigation purposes.

454. **Enhanced form of international co-operation:** DIAN notes that it would benefit from further capacity building in using international exchange of information mechanisms, and it mentions operational issues such as language barriers as constraints that affect its capability to use such mechanisms.

Principle 10: Fundamental rights of a suspect or accused person

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

455. Colombia provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by the *Political Constitution of the Republic of Colombia*, which serves as the country's bill of rights, and by international human rights treaties, most notably the American Convention of Human Rights.

456. In Colombia, a civil tax matter becomes a criminal tax matter the moment suspicions of a criminal offence are identified by the tax authority. Whenever, in the course of an administrative tax procedure, the tax authority identifies acts or facts that may constitute a tax crime, it must refer this to the prosecution service for the commencement of a criminal investigation.

Table 10.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until sentencing
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Good tax crime strategy and threat assessment for tax crimes
- Possibility of executing foreign freezing and confiscation orders

Room for improvement

- Colombia would benefit from a penalty regime for legal persons and professional enablers
- Colombia could make use of capacity building on the use of international co-operation mechanisms for tax crime investigations

Note

¹ In April 2021, EUR 1 = COP 4 324.

11 Costa Rica

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

457. Article 92 of the Tax Legal and Procedure Code (TC) of Costa Rica sets out the crime of “fraud against the public treasury”, which requires criminal intent (*mens rea*). The criminal conduct, together with its minimum and maximum sanctions and statute of limitations is laid down in the table below.

Table 11.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Limitation period
Tax evasion when the evaded amount exceeds 500 basic salaries (TC, art. 92)*	Five years' imprisonment	Ten years' imprisonment	Ten years

Note:

* The basic salary is a variable amount, which is updated annually. Consequently, the threshold of 500 basic salaries will be conditioned by the fiscal period in which the crime is committed and by the amount of basic salary in force in that period. For example, for the year 2020 the basic salary corresponds to CRC 450 200¹, so that the threshold of 500 salaries would rise to CRC 225.1 million.

458. **Statute of limitations:** The limitation period for the above crime is of ten years. It starts on the day the offence was committed and is interrupted by the summoning of the offender, among other grounds (Criminal Procedure Code, art. 31, 32, 33).

459. **Complicity:** Accomplices for tax crimes are criminally liable in Costa Rica (Criminal Code, arts. 46-48).²

460. **Attempt and conspiracy:** Conspiracy to commit a tax crime is not criminally liable in Costa Rican law, whereas attempt, could be punished with a maximum penalty of ten years in prison.³ However, Costa Rica notes that it records no cases for attempted tax evasion.

461. **Professional enablers:** Costa Rica does not have a separate penalty regime for professional enablers, but they can be prosecuted under the same rules as secondary offenders (articles 45-49 of the Criminal Code).

462. **Territorial and nationality jurisdiction:** Costa Rica has jurisdiction over all crimes where the conduct constituting the offence occurred wholly or partly in Costa Rica (Criminal Code, art. 4 and 5).

463. **Liability of legal persons:** Legal persons are not criminally liable in Costa Rica except in the case of bribery offences. However, the Costa Rican criminal system applies subjective responsibility; therefore, the natural person who has committed the crime on behalf of the legal person will be sanctioned.

Enforcement of tax crime

Table 11.2. Enforcement of tax crimes in tax years ending 2015-19

Tax years ending	Concluded investigations	Cases referred for prosecution	Number of convictions ^(a)	Number of acquittals
2015	0	5	0	0
2016	3	7	0	0
2017 ^(b)	1	2	1	0
2018	2	7	1	1
2019	2	2	0	0

Note:

(a) The conviction issued in 2018 is still pending an appeal.

(b) Costa Rica notes that the 2017 conviction included five family members and their accountant, all of whom were sentenced to ten years in prison. The underlying amount of tax evaded in that case was EUR 1.2 million.

464. **Availability of tax deductions for civil and criminal sanctions:** Criminal and civil sanctions are not deductible from tax in Costa Rica.

465. **Availability of settlements:** While Costa Rica does not allow settlements out of court agreements in tax crime cases, it notes that one of the grounds for termination of a criminal case is the full payment of the evaded tax (Criminal Procedure Code, art. 30, subsection “j”).

466. **Tax gap:** Costa Rica does not have recent data available on its tax gap.⁴

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

467. Costa Rica does not have a specific strategy for fighting tax crimes. However, it has an inter-institutional agreement with the Supreme Court of Justice and the Prosecutor’s Office responsible for tax crimes. The agreement works to improve co-ordination and learning in criminal tax matters.

468. The Agreement is currently in process of being reviewed for its renewal, since the term of validity expires in 2020. It is intended to include other organisations that participate in the management of tax crimes (General Directorate of Customs, Tax Control Police and General Attorney of the Republic). As a result of the Agreement, a closer approach between the Prosecutors Office and the Tax Administration can be highlighted, which allowed a more effective communication for the discussion of cases, in addition to joint training activities in criminal-tax matters.

469. **Threat assessment:** Costa Rica does not undertake a periodic threat assessment in criminal tax matters.

470. **Communications strategy:** While Costa Rica does not have a formal communication strategy for tax crime investigations, it communicates successful tax crime prosecutions to the media.

Box 11.1. Example of successful prosecution of a tax crime case: Costa Rica

As a result of a tax audit of income tax, it was determined that in fiscal years 2012 and 2013, the investigated taxpayer had funds in his bank accounts, which were initially justified as financing means granted by related parties.

However, throughout the investigation, the taxpayer was unable to prove the origin or the veracity of such financing, which is why they were considered by the Tax Administration as an unjustified capital increase. This situation led to ignoring the deductible expenses recorded and linked to the payment of apparent interest as a result of the financing previously referred to. For the execution of these actions, the taxpayer used various corporate structures, controlled by the same natural persons, all of it in order to erode the tax base and therefore pay less tax, obtaining a large capital benefit to the detriment of the Public Treasury.

According with that, and since there were hints of a tax crime, the case was brought to the attention of the Prosecutor's Office. During the criminal process, the accused chose to request an alternative measure to end the process, for which he made a comprehensive repair of the damage by paying to the State an amount of EUR 7 353 309.*

Note:

* Euro exchange rate as of 27 August 2020, consulted on the Central Bank of Costa Rica website.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

471. The Prosecutor's Office is in charge of investigations of tax crimes in Costa Rica. In the case of the Tax Administration, when the tax auditors during the development of a tax audit detect signs of the commission of a possible tax crime, they follow the established procedure to raise it as a criminal complaint. The case is then transferred to the Prosecutor's Office for the commencement of a criminal investigation. The Prosecutor's Office analyses the complaint and may request the tax administration to provide further evidence. Tax secrecy may be lifted under a court order.

472. Additionally, the Public Prosecutor's Office may initiate a criminal investigation at its own initiative or upon receiving a report from any individual.

Table 11.3. Investigative powers of tax crime investigation agency (Tax Agency/Office of Public Prosecutions)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Both civil investigators and the Prosecutor's Office can request a court warrant to search property and seize physical evidence.
Obtain documents from third parties	Full direct power Civil investigators have the power to obtain documents for third parties without a warrant (except in the case of financial information, in which case it requires judicial authorization). The Prosecutor's Office can also use this power, but only after obtaining a warrant from a judge.

Interview	<p style="text-align: center;">Full direct power</p> <p>The rights and guarantees of taxpayers are different in the administrative and criminal fields. In this way, during the tax audits, tax inspectors have the power to interview the taxpayer and third parties without the formalities of the criminal process. For its part, during the criminal process, necessarily, the accused must be warned about the scope of his statements. According to this, the evidence obtained from an interview at the administrative field could be used during the criminal process, provided that it has complied with the procedural guarantees established for this type of process.</p>
Inquiry powers (e.g. power of coercion)	<p style="text-align: center;">Full direct power</p> <p>During the tax audit, the tax auditors have the power to call the taxpayers and third parties to appear in order to answer, orally or in writing, the questions or information requirements necessary to verify and supervise the respective tax obligations, with adherence to due process (<i>Art. 112 of the Tax Code</i>). On the other hand, during the criminal process, the judges of the Republic and the Prosecutors Office may request the intervention of the public force and order the necessary measures for the safe and regular fulfilment of the acts they order in the exercise of their functions (<i>Article 139 of the Code of Criminal Procedure</i>). In addition, when, for a procedural act, the presence of a person is necessary, the judicial authority who knows the process will order their appears, in case of contempt, the person may be presented by the public force to the judicial office. (<i>Article 165 of the Code of Criminal Procedure</i>). As for the accused, he may abstain from testifying, without his silence harming him in the resolution of the case (<i>Article 343 of the Code of Criminal Procedure</i>).</p>
Intercept mail and telecommunications	<p style="text-align: center;">No power / Indirect power via another agency</p> <p>Civil investigators do not have the power to intercept communications. The Prosecutor's Office can request that the Judicial Investigation Agency (<i>Organismo de Investigación Judicial; OIJ</i>) conduct interception of mail and telecommunications but must first receive authorisation from a judge.</p>
Conduct covert surveillance	<p style="text-align: center;">No power / Indirect power via another agency</p> <p>Prosecutor's Office can request this power through the OIJ, subject to the same authorisation as for powers to intercept mail and telecommunications. Tax inspectors are not empowered to conduct covert surveillance; however, they can request assistance from the tax control police.</p>
Conduct undercover operations	<p style="text-align: center;">Full direct powers</p> <p>Civil investigators do not have the authority to conduct undercover operations. The Prosecutor's Office can request the OIJ to conduct an operation, subject to judicial authorisation.</p>
Search and seize computer hardware, software and electronic storage media	<p style="text-align: center;">Full direct powers</p> <p>Both civil investigators and the Prosecutor's Office have the power to search and seize computer hardware, software and electronic storage media subject to authorisation by a judge</p>
Arrest	<p style="text-align: center;">No powers / Full direct power</p> <p>The Prosecutor's Office has full direct powers to arrest.</p> <p>Tax inspectors or civil inspectors do not have the power to arrest. In the case of the Prosecutor's Office, it can only order it temporarily (no more than 24 hours) in the cases in which article 237 of the Criminal Procedure Code allows it. In the case of preventive detention, a court order is required.</p>

473. **Legal professional privilege:** Costa Rica recognises the institute of legal professional privilege under the Article 105 of the CT, which sets that the Tax Administration cannot request confidential information from legal professionals and accountants on their clients. This privilege limits access to tax information, but the Tax Administration has the possibility to seize physical evidence.

Principle 4: Freezing, seizing and confiscating assets

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

474. **Legal basis:** Costa Rica notes that it is possible to seize and confiscate assets related to a tax offense both before and after a criminal conviction. The agency that conducts criminal investigations for tax offenses is empowered to request the confiscation of assets during the investigation stage; later in the trial stage, it can make the request to the judge, who ultimately is the one who orders the confiscation of assets in favour of the Costa Rican state. On tax crime matters, the only competent court to order the confiscation of assets is the Criminal Court of Finance of the Second Judicial Circuit of San José.

475. In addition, from the foregoing, it is also possible for the Deputy Prosecutor's Office against Money Laundering to initiate an investigation for the legitimisation of assets, having as a predicate offense the tax crime.

476. The Deputy Prosecutor's Office against Money Laundering could also request from the competent judge an order of seizing, confiscation or any other precautionary measure, aimed at preserving the availability of assets, products, instruments or related goods for the eventual confiscation.

477. The Financial Intelligence Unit could carry out financial investigations for the legitimation of assets, related to tax crimes and apply immediate freezing measures. In this case, must be notified the Prosecutor's Office, so this office may request the competent judge to reiterate the precautionary measures of freezing or immobilization.

478. The statutes that govern the freezing, seizing and confiscating of assets in Costa Rica are the Penal Code, the Code of Criminal Procedure, the Law on Narcotic Drugs and Psychotropic Substances, Related Activities, Money Laundering and Financing of Terrorism, and the Law against Organised Crime.

479. **Seizing orders:** In the context of an investigation for money laundering predicated as a tax crime, the Deputy Prosecutor's Office for Money Laundering may request the judge a seizure order, confiscation or any other precautionary measure, aimed at preserving the availability of assets, products, instruments or related goods for the eventual confiscation.

480. **Freezing orders:** The FIU may request the application of freezing orders to financial entities, as well as to the National Registry, who must immediately freeze or immobilize financial products, money, assets and real or personal property related to the investigation. Financial entities and the National Registry must report the implementation of this measure within 24 hours to the FIU through the "Direct UIF" communications platform.

481. **Confiscation orders:** During the processing of the criminal case for tax crime, it is possible to request the confiscation of assets to the courts. Costa Rica only allows non-conviction based confiscations if the case is being treated as one of organised crime.

482. **Foreign freezing, seizure, and confiscation orders:** In Costa Rica, the execution of these foreign orders is possible under treaties or the *exequatur* procedure.

483. **Agency/unit responsible for asset recovery:** In the context of a case for tax crimes, the organisation responsible for pursuing the recovery of assets is the Prosecutor Office for Economic and Tax Crimes. However, if the tax crime is related to money laundering or organised crime, the unit responsible will be the Costa Rican Institute on Drugs.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

484. In Costa Rica, the investigation and prosecutions of tax crimes and other crimes is carried out by the office for public prosecutions jointly with the Judicial Police. It is organized into different Units and Prosecutor's Offices, depending on the region or specialisation. Regarding tax crimes, the competent office is the Deputy Prosecutor for Economic, Tax and Customs Crimes.

485. When administering taxes, the tax authority has the right to request any information required to ensure that a taxpayer is complying with their obligations. When evidence of a tax crime is uncovered, the

tax administration must stop the administrative investigation and fill out a criminal complaint. This complaint is then transferred to the Prosecutor's Office. The Prosecutor's Office analyses the complaint and may request the fiscal authority to expand information on the complaint filed. During criminal proceedings, the Prosecutor's Office has the power to summon the tax inspector who conducted the administrative investigation.

486. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Costa Rica's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁵

Table 11.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Anti-Corruption Prosecutor	Carries out preparatory investigations regarding facts that indicate the possibility of the existence of corruption. The investigation may lead to a criminal prosecution. The Anticorruption Prosecutor office is different from the Deputy Prosecutor for Economic, Tax and Customs Crimes.
Tax Crimes Investigation (Deputy Prosecutor office for Economic, Tax and Customs Crimes)	Handles investigation of tax and customs crimes, as well as economic crimes.
Judicial Police (Organismo de Investigación Judicial)	Responsible for the identification and apprehension of suspects, it receives criminal complaints, takes responsibility for crime scenes, gathers and holds evidence according to chain of custody requirements, and produces technical evidence and reports.
Financial Intelligence Unit	Requests, collects, and analyses information and Suspicious Transaction Reports submitted by supervisory authorities and agencies.
General Superintendence of Financial Entities	Ensure stability, robustness and an efficient functioning of the financial system in accordance to standards, guidelines and resolutions issued by the institution itself
Tax Administration	Must examine every issue related to possible tax evasion as part of its functions.
General Directorate of Customs	Administration and control of customs.
Fiscal Control Police (FCP)	Responsible for the prevention and investigation of possible customs and tax offences, and crimes against the Treasury.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

487. Neither the Tax Administration nor the Prosecutor's Office have a special budget for the investigation of tax crimes. In fact, the budget of the Prosecutor's Office as an entity depends on the budget of the Judicial Branch and in the case of the Tax Administration, its budget depends on the budget assigned to the Ministry of Finance.

488. The Prosecutor Office has two prosecutors and ten auxiliary prosecutors, who deal with the following matters: tax crimes, economic crimes, customs crimes and intellectual property crimes. The Tax Administration has 246 tax inspectors to carry out fiscal audits.

Table 11.5. Databases / sources of information available to tax crime investigators

Tax Administration:

	Access
Company formation/ ownership registry	Access on Request
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Access on Request
Customs databases	No Access
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Access on Request
Car registry	Access on Request
Boat registry	Access on Request
Other	Additionally, the Tax Administration has access to the following information: immigration information; social security information; information on Tour Operators, information on private universities; Boards of Education; Public Transport Operators; driver's license data; private health services and patents.

Prosecutor's Office:

	Access
Company formation/ ownership registry	No Access
Land Registry	Yes
Registry of citizens	Yes
Tax databases	No Access
Customs databases	No Access
Police databases	Yes
Judicial databases	Yes
Suspicious transaction report databases	No Access
Domestic bank account databases	No Access
Car registry	Yes
Boat registry	Yes
Other	No

Training for tax crime investigators

489. Costa Rica does not organise any specialised tax crime training for civil tax auditors, judicial police investigators or criminal tax prosecutors. Costa Rica does not have a continuous training plan in tax criminal matters (tax crimes). The Tax Administration has collaborated to provide training on tax matters to prosecutors and judicial investigation agents. In the same way, the Public Ministry (Prosecutor's Office) has collaborated to provide training to tax inspectors on forensic auditing, evidence collection and preparation of complaints.

Principle 7: Predicate offences

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

490. **Approach:** Costa Rica *de facto* included tax crimes as predicate offences to money laundering in 2009. Costa Rica adopts a threshold approach, whereby all offences with a term of imprisonment of at

least four years may constitute a predicate offence for money laundering, tax crimes included. Persons may be charged with money laundering, regardless of whether a person has been charged or convicted of the predicate offence, or whether Costa Rica has jurisdiction over the predicate offence.

491. **Enforcement of money laundering predicated on tax crimes:** Costa Rica has reported that since tax crimes were included as predicate offences for money laundering, there has been little to no impact on tax crime investigation, as there is no conviction for money laundering whose preceding offense is a tax offense. However, there is adequate communication and exchange of information between the Money Laundering Prosecutor's Office and the Financial Intelligence Unit.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

492. When administering taxes, the tax authority has the right to request any information required to ensure that a taxpayer is complying with their obligations. When a possible tax crime is uncovered, the tax administration must stop the administrative inquiry and fill out a criminal complaint. This complaint is then transferred to the Prosecutor's Office. The Prosecutor's Office analyses the complaint and may request the fiscal authority to expand information on the complaint filed. During criminal proceedings, the Prosecutor's Office has the power to summon the tax inspector who conducted the administrative investigation.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

Table 11.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		DSS ^(a)	MSS	DSS ^(b)	DSS	DSS
	Customs administration	DSS	Direct Access		Direct Access	On Request	DSS
	Police or public prosecutor	N/A	N/A	N/A		N/A	N/A
	Financial Intelligence Unit	On Request	Direct Access	On Request	Direct Access		DSS
	Corruption investigation authority	DSS	DSS	DSS	DSS	DSS	
	Financial regulator	N/A	N/A	N/A	N/A	N/A	N/A

Note:

DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

(a) The tax administration may only provide taxpayer information where criminal proceedings are already in progress. However, all public officials must report any suspicions of crime to the public prosecutor.

(b) The tax administration may provide taxpayer information to the Prosecutor's Office where criminal proceedings are already in place. The tax administration cannot provide taxpayer information directly to the police but may provide general information on request.

Table 11.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Inter-Agency Agreement: major multi-agency initiative, important framework in the fight against the smuggling of drugs and explosives, and possible terrorist activity.
Disclosure of foreign trusts	No
Joint operations and taskforces	Drugs, Money Laundering, and Terrorist Financing National Plan 2020-24: FIU-designed a plan to co-ordinates every national agency involved in combating crimes connected with money laundering and developed tools for co-operation and exchange of information relevant to each area. This Plan was updated and covers the period 2020-24.
Parallel investigations	Different enforcement agencies cannot conduct parallel investigations. The competent organism to carry out the criminal investigation of tax crimes is the Prosecutor office for Economic, Tax and Customs Crimes, which can be supported by the judicial police. When the Tax Administration, in the development of its investigation, detects evidence of a tax crime, by legal provision, it must suspend the investigation and raise the case to the Prosecutor's Office.
Joint intelligence centres	No
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes, as long as the action of the Tax Administration to audit is not prescribed and that, furthermore, a tax audit has not been carried out before (with a definitive character) in relation to the same tax and fiscal period.
Multi-agency training	No

Principle 9: International co-operation

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.

493. **Legal basis:** Costa Rica may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Costa Rica has an exchange of information relationships with 22 jurisdictions through its Tax Information Exchange Agreements.⁶ Also, Costa Rica ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) on 5 April 2013, which entered into force on 1 August 2013, which allows it to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorization is provided. It is also a signatory of the Convention on Mutual Assistance and Technical Co-operation between the Tax and Customs Administrations of Central America.

Table 11.8. International co-operation in practice

Year	Number of cases (request for assistance)	Time to response
2015	2	181 days for one and 138 days for the other one
2016	2	258 days for one and 12 days for the other one
2017	0	-
2018	0	-
2019	2	99 days for one and 90 for the other one

494. **Enhanced form of international co-operation:** Costa Rica can execute foreign judicial orders, pursuant to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) articles 1 and 17. Costa Rica may assist another jurisdiction in the execution of foreign judicial orders, but up to date this has not happened.

Principle 10: Fundamental rights of a suspect or accused person

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

495. In Costa Rica, the fundamental rights of a suspect or accused of committing a tax crime are covered by the *Political Constitution of the Republic of Costa Rica* and by other domestic legislation such as Code of Criminal Procedure (CPC). International human rights treaties of which Costa Rica is a party also enshrine these rights.

Table 11.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Throughout the criminal process (investigation and court process)
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Throughout the criminal process (investigation and court process)
remain silent	Yes	Throughout the criminal process (investigation and court process)
access and consult a lawyer and/or entitlement to free legal advice	Yes	Throughout the criminal process (investigation and court process)
interpretation and translation	Yes	Throughout the criminal process (investigation and court process)
be advised of the particulars of what one is accused of	Yes	Throughout the criminal process (investigation and court process)
access documents and case material, also known as a right to full disclosure	Yes	Throughout the criminal process (investigation and court process)
a speedy trial	Yes	Throughout the criminal process (investigation and court process)
protection from ne bis in idem (Double Jeopardy)	Yes	Throughout the criminal process (investigation and court process)

Highlights

Successful practices

- Good inter-agency co-operation between the tax administration and the office for public prosecutions
- Non-deductibility of civil and criminal sanctions

Room for improvement

- Costa Rica would benefit from establishing a criminal liability regime for legal persons in tax crime cases
- Costa Rica would benefit from having a formalised tax crime strategy and periodic threat assessment

Notes

¹ In April 2021, EUR 1 = CRC 735.

² http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027.

³ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_articulo.aspx?param1=NRA&nValor1=1&nValor2=5027&nValor3=121237&nValor4=-1&nValor5=23852&nValor6=04/05/1970&strTipM=FA.

⁴ For more information on the latest available data, see the following link: https://www.hacienda.go.cr/docs/5b22dabb60f20_Analisis%20de%20brechas%20tributarias%20en%20el%20impuesto%20general%20sobre%20las%20ventas%20y%20el%20impuesto%20a%20la%20renta%20de%20las%20sociedades.pdf.

⁵ See Rome Report, Chapter 5 – Country Information – Costa Rica. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁶ See <http://www.eoi-tax.org> for up-to-date figures.

12 Croatia (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of Tax Offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

496. Chapter XXIV of Croatia's Criminal Code (CC) contains offences related to tax or customs duty evasion. These apply to all types of tax and require criminal intent (*mens rea*). The below table shows the examples of tax offences, their minimum and maximum sanctions, and corresponding statutes of limitations.

Table 12.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Tax or customs duty evasion (CC, article 256, paragraph 1 and 2)	Natural persons: 6 months of imprisonment and 30 daily units* Legal persons: EUR 10.000,00	Natural persons: 5 years of imprisonment and 1000 daily units Legal persons: EUR 15.000.000,00 If the purpose of punishment would not be achieved by sanctions prescribed by paragraphs 1 to 4 of Article 10 of the ALLPCO, the legal person may be fined in the amount up to 10% of the annual total turn over of the legal person in the business year preceding the year of reaching decision imposing the fine	15 years
Qualified tax or customs duty evasion (CC article 256, paragraph 3)	Natural persons: one year of imprisonment. Legal persons: EUR 15.000,00	Natural persons: 10 years of imprisonment. Legal persons: EUR 20.000.000,00 If the purpose of punishment would not be achieved by sanctions prescribed by paragraphs 1 to 4 of Article 10 of the ALLPCO, the legal person may be fined in the amount up to 10% of the annual total turn over of the legal person in the business year preceding the year of reaching decision imposing the fine	20 years

Notes:

*The amount of the daily unit shall be determined by taking into consideration the perpetrator's income and property as well as the average costs necessary for supporting the perpetrator and his or her family. A daily unit shall not be set at less than HRK 20 (EUR 2,65) or at more than HRK 10 000 (EUR 1 327,23) according to article 42(4) of the CC. The number of daily units, the amount of a daily unit and the product of their multiplication shall be specified in the judgement. Article 42 CC does not prescribe criminal offence, but contains provisions on fine, as a general institute. Fine can be imposed as an ancillary punishment for criminal offence prescribed by Article 256 (both basic and qualified form). For criminal offences committed out of greed a fine may be imposed as ancillary punishment even when it is not prescribed by law (Article 40 Paragraph 5 CC). For criminal offence referred to in Article 256 CC it is not possible to impose a fine as an alternative to prison sentence, but only cumulatively. The court may impose a fine as a main (only) punishment for a criminal offence punishable by imprisonment up to three years (Article 40 Paragraph 4 of the CC), which is not the case with the criminal offence referred to in Article 256.

497. **Statute of limitations:** The statute of limitations for criminal prosecution commences from the day when the criminal offence was committed. If a consequence which is a material element of a criminal offence arises later, the statute of limitations commences from that moment (CC, art. 82). The period of limitation for criminal prosecution shall not run during the time criminal prosecution and cannot be instituted or continued pursuant to the law. If a first-instance judgement has been rendered before the end of the period of limitation, the period shall be extended by two years (CC, art. 81).

498. **Attempt, complicity, and conspiracy:** The CC stipulates that a person who incites, aids, or abets in the commission of any criminal offence is criminally liable (CC, arts. 37-38 & 6). Whoever intentionally incites another to commit a criminal offence shall be punished as if they themselves had committed the crime (CC, art. 37(1)). Article 38 of the CC prescribes that whoever intentionally aids and abets another in the commission of a criminal offence, shall be punished as if he or she himself or herself has committed it, but the punishment may also be mitigated.

499. For the inciter and aider to be held criminally liable, the perpetrator must enter the phase of commission which is punishable. In relation to the criminal offence of tax or customs duty evasion, the attempt to commit the criminal offence is punishable (CCA, art. 34(1)), therefore it is enough for the perpetrator to attempt the commission of the criminal offence of tax or customs duty evasion for the inciter and aider to be held criminally liable. The same sanctions apply as to the completed crime, but the perpetrator of the attempt may be punished more leniently (CC, art. 34(2)).

500. **Professional enablers:** The general provisions CC apply to professionals aiding and abetting the commitment of tax crimes (e.g. lawyers, accountants, etc.) (CC, arts 37 & 38).

501. **Territorial and nationality jurisdiction:** The criminal legislation of the Republic of Croatia is applicable to its nationals or individuals who have their permanent residence in Croatia and commit tax evasion (as defined in article 256 of the CC) outside the territory of Croatia, if the act is a criminal offence according to the law where the crime is committed (CC, art. 14 - i.e. dual criminality). The same applies to cases where the perpetrator acquires Croatian nationality after having committed the criminal offence.

502. The Act on Liability of Legal Persons for Criminal Offences (ALLPCO) does not contain extra-territorial jurisdiction rules. However, Article 2 of the ALLPCO provides that the provisions of the CC apply to legal persons, if the ALLPCO does not prescribe otherwise.

503. **Legal persons:** In Croatia, legal persons can be held criminally liable for the commission of criminal offences, including for tax or customs duty evasion. Criminal liability of legal persons is prescribed by the ALLPCO. A legal person shall be punished for a criminal offence committed by the responsible person if a duty of that legal person is violated or if the legal person realised or should have realised unlawful material gain for itself or another. Moreover, amendments to the ALLPCO, which were enacted 12 October 2023, amend articles 3(1) & (2) so that a legal person shall be punished for the criminal offence also where the commission of the criminal offence was made possible by the lack of supervision or control by a responsible person.

504. Legal persons may be punished for criminal offences by a fine and by abolition of the legal person. The court may impose a suspended sentence on the legal person instead of a fine. In this case, the fine

will not be executed if the legal person does not commit another criminal offence within the period determined by the court, which may not be shorter than one year or longer than three years. The court may impose a suspended sentence on the legal person for criminal offences when the court has imposed a fine on the legal person of less than EUR 6.636,14 (ALLPCO, art. 13). This is prescribed by article 13 paragraph 2 of the ALLPCO. The amount of EUR 6.636,14 in this provision shall be replaced by the amount of EUR 20.000,00 (upon enactment of the amendments to the ALLPCO).

Enforcement of tax crime

505. The tables below show the enforcement of tax crimes in Croatia in tax years ending 2019, 2020 and 2021, and the list of sanctions imposed over the same period.

Table 12.2. Enforcement of tax crimes pursuant to CC, art. 256 (Croatian Bureau of Statistics data) in the tax years ending 2019 – 2021

Tax years ending	Number of natural persons prosecuted	Number of legal persons prosecuted	Total number of indictments*	Number of criminal convictions (natural persons only)	Number of natural persons acquitted
2019	204	97	100	77	23
2020	207	58	92	79	13
2021	156	74	123	105	18

*Confirmed indictments against natural persons are listed in the table. According to the data of the State Attorney's Office of the Republic of Croatia, the total number of indictments filed against legal entities and natural persons, regardless of whether they have been confirmed, is as follows: 2019 = 221, 2020 = 146, 2021 = 164.

Table 12.3. List of other sanctions imposed in tax years ending 2019 – 2021 (State Attorney's Office statistics)

Sanction	Number of times imposed
Imprisonment	20
Suspended sentence (imprisonment)	217
Suspended sentence (monetary fine)	3
Monetary Fine	43
Community work	24

506. Availability of tax deductions for civil and criminal sanctions: Croatian law does not allow tax deductions for civil and criminal sanctions (Article 7, paragraph 1, item 7 of the Law on Profit Tax ("Official Gazette" No. 177/04 - 114/22)).

507. Availability of settlements and deferred prosecution agreements: The Criminal Procedure Act 2003 (Criminal Procedure Act, Official Gazette 143/12, 145/13) stipulates that the parties may negotiate the terms of admission of guilt and agreement on the type and extent of punishment, court warning, suspended sentence, partially suspended sentence, special obligations, protective supervision, confiscation of the objects and the costs of the procedure (CPA, art. 360(1)).

Furthermore, the CPA stipulates that the state attorney may issue a decision to conditionally postpone or waive criminal prosecution for offences carrying up to five years' imprisonment where the suspect undertakes: (i) any act for the purpose of repairing or compensating the damage caused by the criminal offence; or (ii) pays a certain amount for the benefit of a public institution, for humanitarian or charitable purposes (CPA, art. 206d(1)). However, this kind of agreement is not available for *qualified* tax or customs duty evasion, wherefore the maximum sanction is a prison sentence of ten years.

508. **Tax gap:** According to the latest data for 2020, which were published by the European Commission in 2022, the Croatian VAT gap is 6.9% of the total VAT due, or 466 million euros.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

509. **Tax crime strategy:** The Croatian Tax Administration has not developed a specific strategy to fight tax crimes. However, there are several competent institutions that operate in the field of anti-corruption policy, corruption repression, and in special areas of corruption prevention. The field of anti-corruption policy formation is the responsibility of the Ministry of Justice and Public Administration (MoJPA), the Government of the Republic of Croatia, the Croatian Parliament, and the implementation of this policy is the responsibility of all state agencies. The MoJPA is the central body for coordination of the development and implementation of national strategic documents related to the prevention of corruption.

510. **Anti-corruption strategy document:** The current strategic document is the Strategy for the Prevention of Corruption for the period from 2021 to 2030 (Official Gazette number 120/2021). Its implementation is planned via three action plans. The action plan for the period from 2022 to 2024 is in the process of implementation. The strategy is generally focused on preventing corruption horizontally in public administration, political system, judiciary, economy, management of state property and public finances, agriculture, health, science, culture, education, sports, environmental protection, energy, transport and infrastructure, private sector and other priority areas.

511. Tax crime is not explicitly mentioned in the Strategy. Although in one part the strategy and action plan defines measures and activities to strengthen the capacity of the Tax Administration in terms of hiring new public servants, improving IT tools for data processing in the field of financial investigations, increasing the number of financial investigations conducted, and training officers who conduct financial investigations in the field of forensic accounting and on the harm of corruption.

512. **Threat assessment of tax crimes:** The ministry of Internal Affairs and the General Directorate of Police prepares and adopts a biannual strategic document which assesses the state of security, predicts the likely development of the security situation, assesses risks, defines priorities, and plans the necessary measures and actions as well as necessary resources. The is analysed and updated on an annual basis.

513. In the area of organized and economic crime, the threat is assessed separately in a document called the Evaluation of the Threat from Serious and Organized Crime in the Republic of Croatia, which constitutes a part of the general strategic assessment. In relation to acts of economic crime, e.g. tax crimes, the last strategic assessment for the period 2023 - 2024 highlighted corruption crimes, money laundering, excise duty, subsidy and circular VAT fraud as special threats.

514. **Communication strategy:** The Tax Administration publishes notices on its website for every successfully launched action to combat tax crime in cooperation with USKOK (special prosecutor's office for corruption and organized crime).

Box 12.1. Example of successful implementation of tax crime strategy

Example of notification on the website of the Tax Administration (<https://www.porezna-uprava.hr/Stranice/Vijest.aspx?NewsID=3253&List=Vijesti>)

A multimillion VAT fraud involving 47 participants was discovered

Published: October 28, 2021.

The independent sector for financial investigations of the Central Office of the Tax Administration submitted a criminal report against 42 natural and 5 legal persons to the Office for Suppression of Corruption and Organized Crime. The report was based on the well-founded suspicion that they had committed the criminal offense of tax or customs evasion and assisting in tax evasion or customs duties as part of a criminal association from article 256, paragraphs 1 and 3 of the CC in connection with article 38, article 329, paragraph 1, item 4 of the CC (Official Gazette No. 125/11 - 84/21), i.e. in relation to article 256 paragraphs 1 and 2 of the CC and in relation to Article 3 paragraph 1 of the Law on Liability of Legal Persons for Criminal Offenses.

It has been established that there is a reasonable suspicion that in the period from January 2019 to May 2021, the mentioned persons conspired to reduce the actual value added tax payment obligations by unjustifiably reducing input tax on the basis of fictitious invoices of related companies for deliveries that were not conducted.

The aforementioned action resulted in a reduction of the tax liability based on the established value added tax in the minimum amount of HRK 51,427,206.99

Principle 3: Investigative Powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

515. The below tables show the investigative powers of the Croatian tax crime investigation agencies.

Table 12.4. Investigative powers of tax crime investigation agency: Tax Administration – Independent Sector for Financial Investigations (ISFI)

Power of tax crime investigation agency to:	Availability/Comments
Search* property and seize physical evidence such as books and records	Seizure of books and records - direct power through tax regulations (General Tax Law) or indirectly based on the order of the prosecutor. TA (ISFI) does not conduct property searches.
Obtain documents from third parties	Direct power through tax regulations (General Tax Law) or indirectly based on the order of the prosecutor.
Interview	No power in case the interview is used as evidence in criminal proceedings (that is the competence of the Police and the prosecutor's office). TA (ISFI) can assist in conducting interviews.
Inquiry powers (e.g. power of coercion)	No power - it does not belong to the tasks of the Tax Administration, but to the Police in cooperation with the prosecutors, with the application of regulations on criminal procedure. TA (ISFI) can assist in analysing the results of these actions.
Intercept mail and telecommunications	No power - it does not belong to the tasks of the Tax Administration, but to the Police in cooperation with the prosecutors, with the application of regulations on criminal procedure. TA (ISFI) can assist in content analysis.
Conduct covert surveillance	No power - it does not belong to the tasks of the Tax Administration, but to the Police in cooperation with the prosecutors, with the application of regulations on criminal procedure

Conduct undercover operations	No power - it does not belong to the tasks of the Tax Administration, but to the Police in cooperation with the prosecutors, with the application of regulations on criminal procedure
Search and seize computer hardware, software and electronic storage media	Seizure of computer hardware, software, and electronic storage media - direct power through tax regulations (General Tax Law). For the tax procedure there is a possibility to preserve evidence in Article 67 paragraph 3 of the General Tax Law, which states: "The tax authority can take measures to secure evidence, such as listing or seizing computers and other equipment on which found data, as well as copying network data, data on the Internet and data from computers and other equipment." No power to search computer hardware, software, and electronic storage media for criminal proceedings - it does not belong to the tasks of the Tax Administration, but to the Police in cooperation with the prosecutors, with the application of regulations on criminal procedure. TA (ISFI) can assist in content analysis.
Arrest	No power - that belongs to the tasks of the Police

Table 12.5. Investigative powers of tax crime investigation agency: Ministry of the Interior, Police

Power of tax crime investigation agency to:	Availability/Comments
Search* property and seize physical evidence such as books and records	Seize physical evidence such as books and records - full direct power of the Police Search property - only on the basis of a court order
Obtain documents from third parties	Full direct power of the Police
Interview	Direct power of the Police, on the order of the Prosecutor
Inquiry powers (e.g. power of coercion)	Full direct power of the Police
Intercept mail and telecommunications	Yes, but on the basis of a court order
Conduct covert surveillance	Yes, but on the basis of a court order
Conduct undercover operations	Yes, but on the basis of a court order
Search and seize computer hardware, software and electronic storage media	Seize - full direct power of the Police Search - only on the basis of a court order
Arrest	Full direct power of the Police

Note:

*each search is conducted by court order. The search is conducted by the police / investigator / prosecutor. Documents can also be seized from the persons who are the subject of the proceedings. There is an annual list of investigators of the Tax and Customs Administration, which is adopted in accordance with the Law on the State Attorney's Office. The prosecutor can issue an order to these investigators to take evidentiary action (temporary confiscation of objects, examination of witnesses, digital evidence).

516. **Need for additional powers:** Croatia notes that the current powers that individual bodies have at their disposal are sufficient for successful detection and proof of tax crimes when investigations are coordinated.

517. **Legal professional privilege:** Article 284 of the CPA stipulates that a person whose testimony violates the legally established obligation to keep information confidential cannot be examined as a witness, until the competent authority exempts them from this obligation. Furthermore, article 285 of the CPA specifies that, among others, public notaries, tax advisors, lawyers, doctors, dentists, psychologists, probation officers, social workers, and journalists hold the duty of secrecy regarding information they received from the defendant in the course of their profession, and are exempted from testifying. However, the persons listed in article 285 paragraph 2 of the CPA cannot withhold testimony if there is a legal basis on which they can be or have been acquitted duties of confidentiality. For example, a tax advisors obligation to secrecy is not violated when information is presented during tax, misdemeanour, criminal or court proceedings (Tax Advisory Act, article 20 and General Tax Law, article 8, paragraph 5, point 3).

Principle 4: Freezing / Seizing and Confiscating Assets

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

518. **Legal basis:** Article 206(i) of the CPA stipulates that the state attorney is obliged to immediately initiate an investigation in order to determine the value and location of the acquired assets if there are grounds for suspecting that a criminal offence has been committed for which criminal proceedings are initiated, and that a material benefit has been obtained from the offence.

519. **Confiscation orders:** The legal basis for confiscation of illegal property benefits is set out in articles 77 and 78 of the CC. The confiscation of objects for the commission of a criminal act is regulated in article 79 of the CC (Official Gazette No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21). The confiscation procedure is prescribed by Articles 556 to 563 of the CPA ("Official Gazette" No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145 /13, 152/14, 70/17, 126/19, 126/19, 80/22). Confiscation is generally possible only based on conviction. However, it is possible to freeze assets during criminal and court proceedings.

520. Articles 560.a to 560.f of the CPA enable non-conviction-based confiscation in cases of absconding, illness, death of the person against whom criminal proceeding has been initiated, if it is probable that the unlawful gain amounts to 60.000,00 HRK (7.963,37 EUR).

521. The proceeds of tax or customs duty evasion referred to in article 256 of the CC may be subject to extended confiscation (CC, art. 78), if the criminal offence, in accordance with article 21, paragraph 2, point 4 of the Act on the Office for the Suppression of Corruption and Organised Crime (USKOK) falls under the jurisdiction of the USKOK.

522. Furthermore, if the proceeds of crime have been merged with legally acquired property, the entire property shall be subject to confiscation up to the estimated value of the proceeds of crime. This however only applies to extended confiscation. Confiscation in full or in part of the assets is impossible, the court shall order the perpetrator to pay the corresponding money equivalent (CC, art. 77(4)). It may be ordered that the payment shall be made in instalments.

523. **Freezing and seizing orders:** The Court may order freezing measures upon the State Attorneys'/USKOK request. Rapid freezing of assets is not stipulated by the CPA.

524. **Foreign freezing, seizure, and confiscation orders:** Croatia can execute foreign freezing, seizure and confiscation orders according to international agreements, the Act on International Legal Assistance in Criminal Matters (Official Gazzete 178/04) and the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union (Official Gazzette 91/10-141/20).

525. **Freezing, seizure, and confiscation in practice:**

Table 12.6. Value of assets frozen during the period 2019-2021

	Period and amount
Total value of assets <i>frozen</i> in connection with criminal tax matters	2019 - 2021 total amount of assets frozen – all prosecutor's offices, excluding USKOK, for the criminal offense from art. 256. CC = 295.942,72 EUR 2019 - 2022 USKOK cases, criminal offense from Art. 256. CC committed as part of a criminal association = 11.984.636,55 EUR
Total value of assets <i>confiscated</i> in connection with criminal tax matters*	2019 = 1.912.894,90 EUR 2020 = 863.316,83 EUR 2021 = 265.106,25 EUR

*Please note, that if submitted during the criminal proceedings, damage claim has priority over confiscation. If the court awards the injured party a property claim, there is no confiscation of the property benefit.

Principle 5: Organisational Structure with Defined Responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

526. In Croatia, tax crimes are investigated by the Police and the Tax Administration (primarily Independent Sector for Financial Investigations) and prosecuted by the Prosecution Service. The table below provides a high-level overview of the agencies responsible for combatting financial crimes.

Table 12.7. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Civil tax authority	Is responsible for the coordination, collection, control, and analytical processing of data from different governmental agencies and exchange of relevant data with intelligence and law enforcement agencies. Provides professional assistance and support to law enforcement agencies (LEAs) to detect and combat all forms of tax fraud, tax evasion, and tax offences.
Independent Sector for Financial Investigations of the Tax Administration (ISFI)	Responsible for the analysis and financial research in cases with serious indications of organised crime, corruption, and subsidy fraud. Pro-active detection of potential organised tax and economic fraud, complex financial research of these crimes based on requests of LEAs and pro-active and request-based research of potentially illegally acquired assets, primarily by analysing the disproportion of assets and legal income in co-operation with the USKOK.
Office for the Suppression of Corruption and Organised Crime (USKOK)	USKOK is an abbreviated name for the Office for Suppression of Corruption and Organized Crime. The office is a special state attorney's office, specialized in prosecuting corruption and organized crime, responsible for the entire territory of the Republic of Croatia
Customs administration (under the Ministry of Finance)	Executes customs investigations which depending on the complexity of the case fall under customs criminal acts. The customs service has the authority to carry out customs supervision in order to determine customs punishable offences. The Customs Service in the Republic of Croatia has a signed agreement with State Attorney Office (SAO) and designated contact points (24 hours) when a criminal offense is determined. If necessary, consultations are carried out with the competent SAO in order to make a decision whether it is a criminal offense or a misdemeanour, respecting the principle of <i>ne bis in idem</i> . The Customs Service collects evidence and submits a criminal report to the SAO, which takes further steps of criminal prosecution. In these cases, there is close cooperation with the police.
Police (under the Ministry of Internal Affairs)	Criminal investigations through the police administrations and the Police Directorate in coordination with the State Attorney's Offices.
Police National Office for the Suppression of Corruption and Organised Crime (PNUSKOK)	Systematically monitors security development and the state of crime in the fight against economic crime and corruption at the national level; directly conducts complex criminal investigations; carries out implementation of international, regional, and national projects; actively participates in the creation of normative solutions, education and implementation of national strategies and strategic documents. Besides, the PNUSKOK is the national contact point for the Office for Confiscation of Illegally Acquired Assets, which receives requests for tracing assets from other national offices of EU member states.
Prosecution service	Prosecution of financial crimes, including tax crime, corruption, and money laundering through general prosecutors. The criminal prosecution of this criminal offence is under the capacity of municipal state attorneys. Municipal state attorney prosecutes criminal offences which are prescribed by imprisonment up to 12 years (in general, according to Article 29 par.1 of the State Attorney's Act in relation to Article 19a of the Criminal Procedure Act). If this criminal offence is committed within criminal organisation, criminal prosecution is under the capacity of USKOK.
Anti-Money Laundering Office (AMLO, under the Ministry of Finance – Croatian FIU)	An independent central national administrative unit responsible for receiving and analysing the reports on suspicious transactions and other information in relation to prevention and detection of ML, associated predicate offences and TF. AMLO is primarily competent to: <ul style="list-style-type: none"> - carry out operational analysis of STRs submitted by banks and other reporting entities, as well as other information received from national authorities and foreign FIUs related to individual cases in order to determine whether there is a suspicion of ML/TF in relation to transactions, a particular person or funds - disseminate individual cases with suspicion on ML/TF to competent national authorities and foreign FIUs. AMLO is authorised to sign agreements on the co-operation or establish independent co-operation in exchanging information with other national competent authorities and foreign FIUs.
Croatian Financial Services Supervisory Agency (Hanfa)	Responsible for the supervision of persons, entities, and companies in accordance with the Anti-Money Laundering and Terrorist Financing Act.
Croatian National Bank	Supervision of credit institutions, credit unions, e-money institutions, and payment institutions as well as branches

of equal reporting entities from other EU member states and third countries and their representatives or distributors established in the Republic of Croatia for AML/CFT compliance.
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Principle 6: Adequate Resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

527. There is no special budget for combating tax crime. Such activities are part of the regular tasks of the Tax Administration, the Police, the Prosecutor's Office and other bodies.

528. Between 2019 and 2022, the independent sector for financial investigations (ISFI) submitted criminal charges to the prosecutors based on which criminal investigations were initiated for VAT evasion in the total amount of EUR 36,297,381.00. For the same period, the sector's operating costs amounted to approximately EUR 2,920,000.00. According to the annual work plan for 2023, the ISFI is planned to submit 95 reports on financial investigations and 6 criminal reports for organized tax crime.

Table 12.8. Data bases/sources of information available to tax crime investigators

	State Attorney's Office	Independent Sector for Financial Investigations of the Tax Administration (ISFI)	Customs Administration
Company incorporation / ownership registry (public information)	Direct access	Direct access	Direct access
Land registry (public information)	Direct access	Direct access	Direct access
Registry of citizens	Access on request	Direct access	Direct access
Tax databases	Direct access (certain registries)	Direct access	Direct access
Customs databases	Access on request	Direct access/access on request	Direct access
Police databases	Direct access (certain databases)	Direct access (certain databases)	Direct access (certain databases)
Judicial databases	Direct access to criminal and misdemeanour evidence	Access on request	Access on request
Suspicious transaction report databases	Access on request	Access on request	Access on request
Domestic bank account databases	Direct access	Direct access	Access on request
Car registry	Direct access	Direct access	Access on request
Boat registry	Access on request	Direct access	Access on request

Training for tax crime investigators

529. Croatia's Judicial Academy organises trainings on the prevention and prosecution of money laundering. Under this programme, one-day trainings are organised as part of the action plan to strengthen the effectiveness of the Croatian system for the prevention of money laundering and financing of terrorism. The target groups are criminal law judges and public prosecutors. These trainings cover multiple topics, such as tax evasion as a method of money laundering. The Judicial Academy organised 1 training for a total of 8 participants in 2020 and 2 trainings for a total of 29 participants in 2021.

530. Under the Judicial Co-operation Act and International Legal Assistance Act, one-day trainings are organised every year. The target group is criminal law public prosecutors, and the training covers asset

confiscations and other topics. The academy organised 2 trainings for a total of 14 participants in 2020 and 3 trainings for a total of 44 participants in 2021.

Principle 7: Predicate Offences

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

531. **Approach:** The Croatian criminal legislation applies an “all crimes approach” regarding predicate offences for money laundering. Article 265 of the CC does not explicitly list the predicate offences from which the proceeds of the crime should derive and therefore applies to all criminal offences by commission of which material gain can be acquired, including tax or customs duty evasion. Furthermore, the law stipulates that if the proceeds are derived from a predicate criminal offence committed in a foreign country, the perpetrator shall be punished for money laundering when the activity from which the proceeds derived is also a criminal offence under the domestic law of the country where the offence was committed (CC, art, 265(7)).

Enforcement of money laundering predicated on tax crimes

Box 12.2. Case studies on successful prosecution of money laundering predicated on tax crime

Case Study 1: On July 28th, 2021, the USKOK submitted an indictment against two defendants for the criminal offence of money laundering (CC, art. 265(5)) and tax or customs duty evasion (Article 256 of the CC).

The defendants were accused of having obtained a material benefit in the amount of HRK 36 189 007,69 for themselves and others in their roles as managers/directors of two trading companies, by aiding and abetting tax or customs duty evasion as part of a criminal association (CC, art. 256, paragraph 1 and 3 in connection with article 329, paragraph 1, item 4 and paragraph 2, and art. 38) with the aim of presenting the proceeds of the crime as legal. One of the defendants used the amount of HRK 748 796.78 and the other of HRK 699 907,65 of illegally acquired funds for their businesses in such a way that the companies' obligations were settled with these funds and personal vehicles and other assets were acquired on behalf of those companies.

In the same case an indictment was filed against a total of 36 natural persons and 3 legal persons on July 14th, 2022, for committing respectively aiding the offences of criminal association, tax or customs duty evasion, abuse of trust in business operations, and money laundering. In relation to the criminal offence of tax or customs evasion, the indictment states that, through several modalities of tax fraud, committed by issuing and posting unreliable invoices issued for various services, and on the basis of which the right to deduct input tax was unjustifiably achieved, the amount of taxes due were unjustifiably reduced, causing damage in the amount of over HRK 18m, and a significant pecuniary gain in the amount of over HRK 13m was obtained. Over HRK 3m was used by the organisers of the criminal association for investment in the purchase of real estate for the purpose of concealing its illegal origin.

Case Study 2: In the case of the County State Attorney's Office in Varaždin, on April 27th, 2021, an indictment was submitted against 11 defendants, of which 9 defendants were charged with the crime of tax or customs evasion (CC, art. 256, paragraph 1 and 3) and money laundering (CC, article 265, paragraphs 1 and 4). The defendants were accused of having falsely presented to the competent tax authorities the purchase and sale of gold between several legal entities. After the export of that gold to two member states of the European Union, the defendants unjustifiably claimed the right to a tax refund of several millions. The defendants used forged invoices under the auspices of trading companies in a chain of false purchases and sales of gold.

Principle 8: Inter-agency Co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

532. Article 123 GTL prescribes that if there is a suspicion during a tax audit that a taxpayer has committed a criminal offence or a misdemeanour, the tax authority is obliged to submit a report to the

competent authority. If the competent prosecutor accepts the criminal report of the Tax Administration, a criminal investigation is initiated according to the CPA.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

Table 12.9. Models for sharing information related to tax crime and other financial crime

Rating	Definition
Sharing Prohibited	<i>Unable to provide information.</i> Note: There is no legislation that prohibits sharing information. Only restriction could apply to information regarded as classified (The Act on Confidentiality of Data, Official Gazette no. 79/07, 86/12)
On Request	<i>Able to provide information on request</i>
Discretionary Spontaneous Sharing (DSS)	<i>Able to provide information on request and spontaneously with discretion. This rating means that the agency is in a position to provide information on request and that furthermore there are legal gateways in place that allow, but do not require the agency to provide information spontaneously to another agency.</i>
Mandatory Spontaneous Sharing (MSS)	<i>Able to provide information, on request and spontaneously without discretion. This rating means that the agency is in a position to provide information upon request and is also required to provide relevant information spontaneously to another agency.</i> Note: The Tax Administration, cooperating with criminal prosecution authorities, delivers tax information at their request or spontaneously if it assesses that the case could be a criminal offense.
Direct Access	Direct access to the information (for recipient)

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences TA (ISFI) Police	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority Police: PNUSKOK	Asset Recovery Authority* Police: PNUSKOK
Authority providing information	Tax administration		Direct access	On request	On request Spontaneous in case of suspected criminal offence	On request Spontaneous in case of suspected ML/FT	On request Spontaneous in case of suspected criminal offence	On request
	Agencies investigating tax offences	TA (ISFI) - direct access Police - on request		TA (ISFI) - on request Police - on request	ISFI / Police: for the prosecutors - on request Spontaneous in case of suspected criminal offence	ISFI / Police: on request Spontaneous in case of suspected ML/FT	TA (ISFI) - on request and spontaneously Police - direct access	TA (ISFI) - on request Police - direct access
	Customs administration	On request	On request		Prosecutors - on request and spontaneous Police - direct access and on request	On request Spontaneous in case of suspected ML/FT	On request Spontaneous in case of suspected criminal offence	On request
	Police or public prosecutor	On request	On request	On request		On request Spontaneous in case of suspected ML/FT	Prosecutor - on request Police - direct access	Prosecutor - on request Police - direct access
	Financial Intelligence Unit	Spontaneous (suspicion of ML/FT) and	Spontaneous (suspicion of ML/FT)	Spontaneous (suspicion of ML/FT) and	Spontaneous (suspicion of ML/FT) and on		Spontaneous (suspicion of ML/FT) and on	Spontaneous (suspicion of ML/FT)

	on request	and on request	on request	request		request	and on request
Corruption investigation authority	On request	TA (ISFI) - on request Police - direct access	On request	Prosecutors - on request and spontaneous Police - direct access	On request Spontaneous in case of suspected ML/FT		Direct access
Asset Recovery Authority*	On request	TA (ISFI) - on request Police - direct access	On request	Prosecutors - on request and spontaneous Police - direct access	On request Spontaneous in case of suspected ML/FT	Direct access	
Financial regulator	On request or Discretionary Spontaneous Sharing (DSS)	On request, DSS and Mandatory Spontaneous sharing (MSS)	On request, DSS	On request, DSS, MSS	MSS	On request, DSS, MSS	On request, DSS, MSS

***Note:**

With reference to Asset Recovery Authority:

In Croatia Economic Crime and Corruption Department within the Police National Office for Suppression of Corruption and Organized Crime (PNUSKOK) is national contact point for the submission of requests and the exchange of data for the purpose of tracing and identification of proceeds of crime. (Asset Recovery Offices – ARO).

Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime in the legal system of the Republic of Croatia was, among others, transposed by Act on Simplifying exchange of data between Law Enforcement Authorities of the Member States of EU (OG 56/15) which entered into force on 30 May 2015.

Art. 9 (2) of the Act on Simplifying exchange of data between Law Enforcement Authorities of the Member States of EU (OG 56/15) prescribes that the national contact point for the submission of requests and the exchange of data between the national and foreign authorities for the purpose of tracing and identification of proceeds of crime is the organisational unit of the Ministry of the Interior competent for the suppression of economic crime.

Table 12.10. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Availability
Co-operation agreements	Yes
Disclosure of foreign trusts	No
Joint operations and taskforces	Yes
Parallel investigations	Yes
Joint intelligence centres	No
Secondments and co-location of staff	Yes
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes
Multi-agency training	Yes

533. At the national level, the State Attorney's Office of the Republic of Croatia has concluded multiple co-operation agreements/protocols with relevant stakeholders. To further strengthen inter-institutional co-operation, a protocol on the Co-operation and the Establishment of an Inter-Institutional Working Group for the Prevention of Money laundering and Terrorist Financing (IIWG) was signed by representatives of 11 institutions and agencies responsible for combatting ML/TF which entered into force in 2007. Representatives of the following authorities are members of IIWG: the Anti-Money Laundering Office (AMLO, head of IIWG), the State Attorney's Office, the Financial Inspectorate, the Tax Administration, Customs Administration, the Croatian National Bank, the Croatian Financial Services Supervisory Agency, the Ministry of the Interior, the Security Intelligence Agency, the Ministry of Justice and Administration and the Ministry of Foreign and European Affairs. Moreover, based on the Action Plan for strengthening the

effectiveness of AML/CFT system adopted by Croatian Government in May 2022, high level state officials have been designated as members of IIWG.

534. The goals and tasks of the IIWG is to strengthen co-operation and coordination of all institutions involved in achieving strategic and operational goals in the fight against ML/TF, identify and combat weaknesses and risks, as well as identify and eliminate shortcomings that affect the achievement of the strategic and operational goals.

535. As a further effort to improve inter-agency co-operation a new and further detailed Co-operation Agreement between the Tax Administration and the USKOK is currently being prepared.

Inter-agency co-operation in practice

536. The Tax Administration continuously co-operates with the criminal prosecution authorities. Since the establishment of the ISFI, USKOK has had the practice of forming teams in complex cases of organized VAT evasion, which include officials of ISFI and the PNUSKOK, led by a Deputy Head of USKOK. This initiative resulted in the initiation of 13 investigations for organized tax fraud against a total of 186 natural persons and 49 legal persons in the period of 2019-2021. During the same period, 11 indictments were brought against 153 natural persons and 40 legal persons, of which a significant part resulted in final convictions.

Box 12.3. Example of successful inter-agency co-operation

Example 1

On September 7th, 2022, USKOK, the Police Administration, and the ISFI, initiated criminal proceedings against three Croatian citizens due to suspicions of committing the criminal acts of receiving and offering bribes. It is suspected that, in the period from May 2013 to September 2014, the first suspect, as a judge of the Municipal Court in Šibenik, received a bribe from the second suspect in order to obtain an acquittal for him. The role of the Tax Administration was to analyse cash flows and determine the potential disproportion between assets and legitimate income.

Example 2

After a financial investigation carried out by the ISFI in co-operation with police officers under the coordination of USKOK, a criminal report was filed against 12 Croatian citizens and one company due to reasonable suspicion of committing the criminal acts of tax evasion as part of a criminal association, assisting in tax evasion as part of a criminal association, abuse of position and authority, incitement to abuse of position and authority and receiving and offering bribes. In the period from January 1, 2020 to March 10, 2022, they evaded VAT in the amount of HRK 2 610 036.82 through organised activities and by using false invoices. In addition to the above, some of the suspects favored certain companies in public procurement, for which they received bribes. Prosecutors initiated criminal proceedings on March 11th, 2022.

537. The below tables show the results of the Tax Administration's co-operation with criminal prosecution agencies in cases of organized crime and corruption for the years ending 2018 - 2022. This is part of the cases that ended in criminal proceedings based on the criminal report of the Tax Administration.

Table 12.11. ISFI statistics of submitted criminal reports to prosecutors

Period	Number of criminal reports filed	Number of natural and legal persons involved	Tax evasion	Illegal extraction of money from companies	Misuse of EU funds	Subsidy fraud (2018), money laundering (2021, 2022)
01.01.-31.12.2018.	6	108	24 533 346,63	7 961 096,59		18 570 387,61
01.01.-31.12.2019.	7	87	131 636 528,4			
01.01.-31.12.2020.	6	82	27 089 697,16	12 807 970,82		
01.01.-31.12.2021.	8	95	70 443 513,91	10 135 101,97	13 488 750,00	21 266 731,90
01.01.-31.12.2022.	5	36	64 851 284,04	1 070 226 191,38		24 049 635,38
In total (HRK)	32	408	318 554 370,15	1 101 130 360,76	13 488 750,00	63 886 754,89
In total (EUR)			42 279 430,64	146 145 113,91	1 790 264,78	8 479 229,53

Table 12.12. Data from Anti-Money Laundering Office

AMLO cases with suspicion on ML and associated predicate offences disseminated to competent national authorities for further proceedings						
	2021	%	2020	%	2019	%
Tax Administration	66	27,16	93	37,34	92	40,88
Ministry of Interior (Police)	91	37,44	89	35,74	77	34,22
State Attorney's Office	48	19,75	40	16,06	31	13,77
Security-Intelligence Agency	10	4,11	9	3,61	12	5,33
USKOK	23	9,46	17	6,82	13	5,77
European Public Prosecutor Office Croatia	1	0,41	/	/	/	/
Customs Administration	1	0,41	1	0,40	/	/
Financial Inspectorate	3	1,23	/	/	/	/
Total	243	100	249	100	225	100

538. **Secondments and co-location of staff:** One police officer is assigned by the PNUSKOK and seconded to work in USKOK at any given time. In this way, USKOK may rapidly obtain data from the Information System of the Ministry of Interior.

Principle 9: International Co-operation

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.

539. **Legal basis:** Croatia signed the MAC in 2013 and ratified it on February 28th, 2014. The MAC entered into force on June 1st, 2014. The MAC complements national legislation (agreements on avoidance

of double taxation, General Tax Act, Income Tax Act, Profit Tax Act etc.) in the field of exchange of information and other forms of administrative co-operation with other jurisdictions.

540. The most used MLA Treaty is the MLA Convention of 1959. Moreover, Croatia has concluded multiple bilateral MLA Treaties, mainly with countries such as The Republic of Serbia, Bosnia and Herzegovina, Republic of North Macedonia, and Montenegro.

541. Croatia is currently party to 66 double tax treaties, and most of them are based on the OECD Model Tax Convention. Moreover, Croatia signed a Memorandum of Understanding between the Ministry of Finance of the Republic of Croatia and the Ministry of Economy of the Republic of Azerbaijan on exchange of information and assistance in the recovery of tax claims in order to have broader co-operation in the field of tax audits and recovery of taxes. In addition, Croatia is planning to implement DAC 7 in the domestic legislation.

542. **Competent authorities:** The competent authority for the exchange of information under tax EOI instruments (e.g. the MAAC and bilateral tax treaties) is the Tax Administration.

543. Regarding the MLA assistance with third states, the State Attorney's Offices and courts issue MLA requests (including in criminal tax matters) and send them to the Ministry of Justice and Public Administration as a central authority in accordance with the applicable bilateral and multilateral international agreements. The execution of the MLA requests issued by Third States is in the competence of the country courts (requests for taking over the criminal proceedings are in the competence of the State Attorney's Office). The Ministry of Justice and Public Administration (MoJ) is the central authority responsible for receiving foreign mutual assistance requests and transmitting them to domestic judicial authorities (MLA Law, Art.6, JCCMEU, Art.5(5)). Consistent with the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters in exceptional cases, domestic judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority. The State Attorney's Office is the competent authority for receiving and executing MLA requests from member states, European investigation orders, European arrest warrants and freezing orders.

544. If the Ministry of Justice and Public Administration does not have a relevant international treaty with a specific counterpart or should the international instrument envisage it, the MoJPA may transmit and receive the MLA request through the Ministry of Foreign and European Affairs (MLA Law, Art.6(8)).

International co-operation in practice

545. International exchange of information in Croatia during the period 2019 – 2022

Table 12.13. Received mutual legal assistance requests and instruments of judicial cooperation

Year	MLAT executed	MLAT refused	EIO executed	EIO refused	EAW executed	EAW refused	Freezing order executed	Freezing order refused	Confiscation order executed	Confiscation order refused
2021	1	/	44	/	7	/	3	/	/	/
2020	1	/	18	1	2	/	/	/	/	/
2019	0	/	10	1	2	/	/	/	/	/

Table 12.14. Issued mutual legal assistance requests and instruments of judicial cooperation

Year	MLAT executed	MLAT refused	EIO executed	EIO refused	EAW executed	EAW refused	Freezing order executed	Freezing order refused	Confiscation order executed	Confiscation order refused
2021	11	1	15	/	2	/	/	/	/	/

2020	1	/	10	/	/	/	/	/	/	/
2019	/	/	2	/	/	/	/	/	/	/

546. **Exchange of sensitive information with other international agencies:** In tax procedures, data can be shared with other countries under the conditions of Article 8 of the General Tax Code, if the data is provided in accordance with the law governing administrative cooperation in the field of taxes.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

547. According to Croatian legislation, the administrative procedure of the tax audit and the criminal procedure are separate and independent procedures. Tax procedures, including tax audits, are regulated by the General Tax Law (GTL) and are carried out for the purpose of determining taxes. Criminal procedures are regulated by the CPA and are carried out to determine possible criminal liability.

548. The GTL protects the rights of the taxpayer. According to articles 84 and 85 of the GTL, the taxpayer has the right to withhold information in certain cases, including when there is a risk of self-incrimination. Article 11(3) GTL resolves the problem of possible duplication of procedures in terms of taxation in tax proceedings and confiscation of property in criminal proceedings.

549. The below table shows the rights of persons suspected or accused of having committed tax crimes.

Table 12.15. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Upon charges being filed*
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	Upon charges being filed**
interpretation and translation	Yes	During all procedural actions
be advised of the particulars of what one is accused of	Yes	Upon charges being filed
access documents and case material, also known as a right to full disclosure	Yes	Upon charges being filed***
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Notes:

* Written Instructions of rights – Art. 239 par. 2 - must be delivered to the defendant parallel with search warrant, first interrogation summon, the decision to conduct investigation, summon for evidentiary hearing, decision on detention, order for line-up evidence collection, decision on pretrial detention, order for line-up recognition, order on expert testimony regarding the defendant himself.

** The defendant must be instructed immediately after the arrest or other action provided for by the CPA that he has the right to hire a defense attorney and that the defense attorney can be present during his interrogation.

Mandatory defense is prescribed in Article 66 of the CPA:

The defendant must have a defense attorney:

- if he is mute, deaf, blind, unable to defend himself, from the first questioning until the final completion of the criminal proceedings
- if proceedings are being conducted due to a criminal offense under the jurisdiction of the county court, from the first examination or the adoption of a decision on the conduct of the investigation until the final completion of the criminal proceedings

- from the adoption of a decision ordering detention or pre-trial detention against him
- during the duration of the proceedings for the criminal offense for which the proceedings are initiated ex officio if he has been deprived of his liberty or is serving a prison sentence in another case
- if at the time of delivery of the indictment for a criminal offense for which a prison sentence of ten years or more is prescribed until the final conclusion of the proceedings
- from the adoption of the decision on trial in absentia
- if he was left without a defense attorney because the decision denied the defense attorney's right to legal representation
- from the adoption of a decision on conducting an investigation in the proceedings against a defendant with mental disorders
- during the negotiation of the terms of admitting guilt, agreeing on punishment and other measures and signing a statement for rendering judgment based on the agreement.

Free legal advice: Article 66 par. 3 in the case of mandatory defense, an ex officio defense counsel will be appointed to the defendant, if he does not have an elected defense counsel or was previously appointed ex officio, or if he was left without a defense counsel during the proceedings, and does not hire another defense counsel himself.

Article 72.

When the defense is not mandatory, the defence attorney shall be appointed to the defendand upon his request - after he receives decision in the case of mandatory defense, an ex officio defense counsel will be appointed to the defendant, if he does not have an elected defense counsel or was previously appointed ex officio, or if he was left without a defense counsel during the proceedings, and does not hire another defense counsel himself.

Article 72.

When the defense is not mandatory, the defendant shall, at his request, upon receipt of the decision on the conduct of the investigation, or notification of the conduct of evidentiary actions referred to in Article 213, paragraph 2 of the CPA, or after the indictment has been filed pursuant to Article 341, paragraph 3 of the CPA (indictment without investigation). Defence attorney is appointed to him until the final completion of the criminal proceedings, to the expense of budget funds, if it seems probable that, based on his financial situation, he cannot cover the costs of the defense without jeopardizing his own maintenance or the maintenance of his family and the persons he is obliged to support by law, and the complexity, difficulty or special circumstances cases justify it.

Article 72a

The right to temporary legal assistance from a defense attorney at the expense of budget funds is available to the arrested person from Article 107, points 2 and 3. - there is a suspicion that he committed criminal offence for which is being prosecuted ex officio or is caught committing criminal offence.

The method and conditions for exercising that right are regulated in detail in that article.

***Access to File-Article 184 par.1 Criminal Procedure Act: the defendant and the defense attorney have the right to access to the file:

- after the defendant has been questioned, if the questioning was carried out before the decision to conduct the investigation was made, and before the notification about the opening of the investigation is delivered,
- from the moment the decision on to conduct investigation is delivered (formal investigation for criminal offences for which the punishment is prescribed imprisonment more than 5 years)
- from the moment notification of investigation is delivered (for criminal offences up to 5 years)
- from the delivery of the notification on the opening of the research.

Par. 2. if an urgent evidentiary action was carried out against the defendant (e.g. search, line-up....) and the conditions from paragraph 1 are not met, the defendant and the defense attorney have the right to inspect the record of the execution of that action within 30 days from the date of its implementation at the latest.

Highlights

Key issues for further consideration

Successful practices

- Effective inter-agency co-operation among the tax administration and other financial crime authorities
- Effective enforcement of money laundering predicated on tax evasion
- Maintenance of comprehensive statistics regarding the enforcement of tax crimes

Room for improvement:

- The ISFI identified the following main challenges:
 - A lack of Tax Administration officials in charge of direct co-operation with criminal prosecution bodies. Croatia needs to increase the number of employees in ISFI by at least 5 (solving this problem is in process), as well as the general number of employees of the Tax Administration who work on tax evasion cases in cooperation with criminal prosecution authorities.
 - The need to expand the method of working in joint teams with police officers and prosecutors at all levels of the Tax Administration (currently, such co-operation is achieved at the central level in cases of corruption and organized crime).
 - Prosecutors would benefit from direct access to a larger number of Tax Administration databases.
 - The establishment of an greater level of mutual exchange of information with foreign authorities.
 - More targeted training for law enforcement authorities on the investigation and prosecution of tax crimes.
- The State Attorney's Office stated a lack of professional staff, which is related to timely detection, i.e. recognition of the modalities of committing tax crimes. This primarily applies to financial investigators working for prosecutors.
- The Ministry of Internal Affairs systematically manages human resources and continuously takes care of filling vacant positions of police investigators with adequate personnel. The police is ready to respond to all the challenges that are put before it in the investigation of criminal offences.

Official Gazette, no. 151/03, 110/07, 45/11, 143/12, 114/22

Official Gazette, no. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 130/20, 80/22.

Official Gazette no. 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17.

1 EUR is equal to 7.536625 HRK, June 2023.

Official Gazette no. 115/16, 106/18, 121/19, 32/20, 42/20.

13 **Czechia**

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

505. Tax crime offences in Czechia are set out in Chapter VI, Division 2 of the Czech Criminal Code (CC).¹ Examples of Czech tax offences, all of which require criminal intent,² are set out in the table below, together with their minimum and maximum sanctions and their respective limitation periods.

Table 13.1. Offences requiring criminal intent in Czechia

Offence	Minimum sanction	Maximum sanction	Limitation period (s. 34, CC)
Evasion of a tax, fee or similar payment (CC, s240)	Six months' imprisonment and prohibition of activity*	Three years' imprisonment and prohibition of activity*	Three years
Curtailment of taxes, fees or other similar payments (CC, s241)	Prohibition of activity*	Three years' imprisonment and prohibition of activity*	Three years
Failure to comply with reporting obligations to the tax authority (CC, s243)	Prohibition of activity*	Two years' imprisonment and prohibition of activity*	Three years
Counterfeiting and alteration of objects for the identification of goods for tax purposes (CC, s245)	Prohibition of activity*	One year imprisonment and prohibition of activity*	Three years

Note:

* "Prohibition of activity" consists in banning an offender from performing a certain occupation, profession or function or such an activity that requires a special authorisation. (...) The court may impose [such] a sentence (...) for one year to ten years" (CC, s73)

506. **Statute of limitations:** The limitation period starts from the moment of the commission of the offence. Starting a criminal prosecution and issuing an order of arrest are among the most common grounds for restarting the limitation period (s34(4)).

507. **Complicity:** Unless stated otherwise, accessories to tax crimes (including organisers, instigators or aiders to tax crimes) may be held liable as the principle offender (CC, s24).

508. **Attempt and conspiracy:** In Czechia attempt (CC, s21) and conspiracy (CC, s20) to commit any crime (including tax crimes) are also criminal offences. The sanctions for these are the same as for the principal offender, unless otherwise stipulated by the statute governing the crime in question.

509. **Professional enablers:** Czechia does not have a specific criminal regime for professional enablers but they are captured through the above-outlined accessory liability. However, the fact that an offender has exploited their employment, position, or function to commit a criminal offence is considered an aggravating factor on sentencing (CC, s42).

510. **Territoriality and nationality jurisdiction:** Czechia has jurisdiction over all crimes where the conduct constituting the alleged offence took place entirely or in part within its territory. If an accessory to the offence acted in Czech territory, Czech law applies to the accessory even if the act of the primary offender took place abroad. Czech law also applies to acts committed abroad by its citizens and permanent residents (CC, s6) as well as the acts of foreigners if the said act is a crime in the country of its commission and the offender was apprehended in Czech jurisdiction (CC, s8). Finally, Czech law applies to acts committed “*in favour of a legal entity with a registered office or branch in the territory of Czechia, or in favour of a natural person who is an entrepreneur with an enterprise, branch or place of business in the territory of Czechia*” (CC, s8(2)).

511. **Liability of legal persons:** The 2011 Act on Criminal Liability of Legal Persons and Proceedings against Them (CLLP) sets out general criminal liability for crimes committed by legal persons in Czechia.³ Criminal sanctions that may be imposed on legal entities include forced liquidation, confiscation of property, monetary sanctions, prohibition of activity, prohibition of performance of public contracts/competition, prohibition of accepting grants and subsidies and the publication of the judgment (CLLP, ss16-23). Czechia was not able to provide any data relating to the enforcement of tax crimes against legal persons in practice.

Enforcement of tax crime

Table 13.2. Enforcement of tax crimes against natural persons in tax years ending 2015-18

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases where action short of prosecution was taken	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	1 175	N/A	N/A	1 129	554	155
2016	1 129	N/A	N/A	1 077	558	130
2017	1 082	1 098	32	1 109	600	127
2018	1 115	1 117	31	1 030	547	161

512. The below table lists the type and amount of sanctions imposed to natural persons in regards to tax crimes in Czechia in tax years ending 2015-18.

Table 13.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years' imprisonment	873
>3 – 5 years imprisonment	42
5 – 8 years' imprisonment	62
>8 years' imprisonment	14
Prohibition of activity	217
Confiscation of things	3
Community service	23
Banishment	24
Other punishment	288

513. **Availability of settlements:** Pursuant to the Criminal Procedure Code (CPC), a public prosecutor may enter into a settlement agreements under certain conditions, including admission of guilt and payment

of proportionate compensation (CPC, s309-314). The defendant and prosecution can also enter into an “agreement on guilt and punishment” that must be approved by a judgment of conviction issued by a court (CPC, ss175a &314o-314s).

514. **Defences:** Furthermore, section 33 of the CC provides for a defence of “effective regret”, meaning that criminal liability for certain crimes shall expire, if the detrimental effect from the crime has been voluntarily rectified or if the criminal offence was reported at a time, when the detrimental effects of the crime could still be prevented. Section 242 of the CC states that criminal liability for tax evasion or other similar payments (CC, s241) shall expire if the offender fulfils his/her tax obligations before the court of first instance has begun enunciating its judgment. If the perpetrator fulfils only a part of their obligations, their criminal liability will not expire, but their efforts to rectify the effects of the crime may be taken into account by the court when administering criminal sanctions.

515. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** Czechia does not allow for tax deductions for civil and criminal sanctions.

516. **Tax gap:** Czechia does not calculate a tax gap or return on investment for tax crime enforcement.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

517. Czechia has set up a whole-of-government tax crime strategy which involves co-operation between several agencies, including the Czech Police (Police), the Public Prosecutions System (SPPO), the tax and customs authorities and the Financial Intelligence Unit (FAO). The main objectives of this strategy, called *Tax Cobra*, are to protect the state budget, prosecute the organisers of tax crime, and carry out evidence-based legislative reform. Participating agencies are involved in the ongoing reciprocal exchange of information, referral of tax crime suspicions to SPPO and the permanent assessment of the strategy’s effectiveness (measured particularly by the amount of assets successfully recovered).

518. *Tax Cobra* was formally launched in April 2019, when the Ministry of the Interior (MoI) and the Ministry of Finance (MoF) entered into an agreement on co-operation, information exchange, and on a joint approach to the fight against tax evasion. Since its first informal creation in 2014, over CZK 11.7 billion⁴ has been either recovered or prevented from being evaded. Furthermore, *Tax Cobra* has enabled the collection of additional data on tax criminality, including; the number of cases processed by the *Tax Cobra*, the number of cases where prosecution has begun, the number of motions to file an indictment, the number of prosecuted persons and the amount of seized assets.

519. The Czech government has also published a National Strategy for the Fight against Organised Crime 2018-23, which outlines two-year action plans against organised crime (including tax crime). The current strategy has a particular focus on; increasing the effectiveness of the criminal justice system; improving inter-agency co-operation and exchange of information; improving the effectiveness of international co-operation; increasing the efficiency of the management of recovered assets; improving the ability of law enforcement agencies to investigate financial crime; creating a consensual approach to dealing with environmental criminality; and improving the ability of law enforcement agencies to tackle new methods of organised criminality.

520. **Threat Assessment:** One of the strategic documents for threat assessment in Czechia is the National Risk Assessment that is prepared by FAO in co-operation with the Ministries of Finance, Justice, Interior, Culture and Foreign Affairs, Police, SPPO, the National Bank of Czechia, and other government

agencies. This assessment identifies the most significant threats, vulnerabilities and consequences and suggests the measures that should be taken to mitigate such threats. The National Risk Assessment is reviewed every four years.

521. **Communication strategy:** GFD administers the website of the Tax Cobra. It serves as a space for press releases in connection with its operations. Furthermore, media outputs (e.g. press releases, press conferences) are produced by Police, in co-operation with other agencies involved in the project. There is however, no established co-operation with the media.

Box 13.1. Example of successful implementation of tax crime strategy: Czechia

In May 2017, police officers within the Tax Cobra team arrested 28 people and subsequently prosecuted 24 natural and two legal persons for tax evasion and related charges and the legalisation of proceeds from crime, with estimated damages of about CZK 415 million (approx. EUR 15.8 million).

During the investigation and the prosecution of the case, called “Stone”, Tax Cobra worked with the support of FAO and the General Financial Directorate (GFD). Together, they documented the criminal activity of individual suspects associated with a chain of suspicious companies and linked this information to the activities of the principal organisers of the crime.

The suspects established operations within at least 21 companies, some of which did not carry out any real business activity and created a system of fictitious payments for non-existent, over-estimated advertising services and, creating a systematic tax evasion scheme.

Tax Cobra carried out 23 house searches and inspected other premises, where detectives secured incriminating evidence. Detectives seized several luxury motor vehicles, jewellery, real estate, money on bank accounts, and cash – all at a total value of at least CZK 110 million (approx. EUR 4.3 million).

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 13.4. Investigative powers of tax crime investigation agency

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Indirect power via another agency A court order is required.
Conduct covert surveillance	Full direct power / Indirect power via another agency Surveillance of persons and things without recording is allowed. Recorded surveillance requires written authorisation from SPPO.
Conduct undercover operations	Indirect power via another agency “Simulated transfer” requires written authorisation from SPPO (CPC, s. 128c). In urgent cases, police officers may conduct the simulated transfer without authorisation, but must request this post facto. The use of an undercover agent is limited to investigations involving felonies with a maximum

	prescribed sanction of at least eight years' imprisonment and subject to a court order (CPC, s. 128e). Police conducts all undercover operations.
Search and seize computer hardware, software and electronic storage media	Full direct power / Indirect power via another agency Full direct power to seize things while on delivery, a court order is required for seizure during home searches.
Arrest	Indirect power via another agency Arrest warrants must be issued by a judge. Detention of a person suspected of committing a crime, only with prior consent of the public prosecution.

Note: A simulated transfer consists of an officer simulating a purchase, or other means of transfer of e.g. objects that require special permits, or whose purchase is otherwise restricted (e.g. firearms, nuclear material, or objects with a criminal origin).

522. **Legal Professional Privilege:** In Czechia, general legal professional privilege for lawyers, tax advisers and notaries is set out by section 21 of Act No. 85/1996 Coll. on the Legal Profession, by section 6(9) of Act No. 523/1992 Coll. on Tax Advisory Services, and by section 45 of the Act on Notaries, respectively.

523. Special legal professional privilege, with regard to responsibilities in enforcing measures against legitimisation of proceeds of crime and financing of terrorism, is regulated in section 27 of the Anti-Money Laundering and Counter Terrorist Financing (AML-CFT) Act.⁵ This stipulates that lawyers, when acting as legal advisors or defence attorneys, are not required to perform customer due diligence, file suspicious transaction reports (STRs) or answer requests from FAO. When acting in any other capacity, lawyers are required to fulfil the aforementioned duties in the same way and scope as any other entity obliged under the AML-CFT Act. However, instead of filing a suspicious transaction report (STR) directly to FAO, the lawyer shall file a STR to the Czech Bar Association. If the lawyer is a notary, the STR should be sent to the to the Notary Chamber of Czechia, which shall examine it and eventually (without undue delay, but no later than seven calendar days from the detection of the suspicious transaction) submit it to FAO.

Principle 4: Freezing, seizing and confiscating assets

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

524. **Legal basis:** The CC sets out a non-conviction based asset recovery regime which allows for the freezing, seizure, and confiscation of either proceeds of crime, or items that may be used to commit a crime in the future (e.g. unlicensed firearms)(CC s101).

525. **Freezing and seizing orders:** Czechia may freeze assets connected to a tax crime. In addition, the AML/CFT Act contains provision for the rapid freezing of funds, for a period of up to 24 hours, which can be extended to three days cases where there is reasonable danger that the assets may be moved beyond reach. Rapid freezing of assets is typically only used in cases involving money laundering and terrorist financing.

526. **Confiscation orders:** Apart from conviction-based confiscations, courts in Czechia can impose **extended confiscation** of assets in cases where the upper penalty limit for the offence is set to at least four years' imprisonment, or for specific offences set out in the statute (CC, s102a). Although **value-based confiscation** is technically possible, in practice, Czech courts focus on seizing the original proceeds of crime. If the proceeds are inaccessible, then value-based confiscation is a procedure of a subsidiary nature in the framework of forfeiture or confiscation, used to replace the value of the original proceeds of crime. **Third party** confiscations are also allowed, especially when the assets transferred can be directly linked to the principal offence (CC ss101(1)(c) & 102a(2)(a-c)).

527. **Foreign freezing, seizure, and confiscation orders:** Czechia may enforce foreign states' freezing, seizing, and confiscation orders pursuant to Act. No. 104/2013 Coll and mutual legal assistance (MLA) treaties. However, Czechia points out that it does not provide MLA in all tax investigations, but only in criminal proceedings concerning tax crime. When dealing with Member States of the EU, the procedure of asset freezing is provided for in the transposing legislation to the Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union (EU) of orders freezing property or evidence. The procedure for the recognition and execution of a European Freezing Order issued by another Member State is provided for in section 232 et seq. of the Act 104/2013 Coll. When a European Freezing Order is not applicable, the standard MLA request procedure applies, on the basis of international treaties. In the absence of an international treaty, judicial co-operation aimed at seizure and confiscation of assets can still be executed, on the basis of reciprocity, as provided for by section 4 of the Act 104/2013 Coll.

528. **Agency or unit responsible for asset recovery:** Police and SPPO are the two responsible authorities for freezing/seizing assets in Czechia, while confiscatory powers reside with the Courts.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

529. In Czechia, no single agency or authority has sole responsibility for conducting tax crime investigations. Instead, tax crimes investigations are managed jointly by NOCA (housed within the Czech Police) and SPPO. Within NOCA, tax crime investigations are handled by the Financial Criminality Division, which was established in 2016.

530. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Czechia's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁶

Table 13.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Financial Administration (FA)	Responsible for conducting tax audits and reporting suspected crimes to Police.
Financial Intelligence Unit of Czechia (FAO)	Responsible for receiving and analysing STRs and for national co-ordination of international sanctions. Acts as a supervisory authority for the obliged entities. Shares information with other agencies. In line with the AML/CFT legislation, may freeze assets that are involved in the suspicious transaction and suspend the transaction itself.
Serious Economic Crime and Corruption Command of the National Organised Crime Agency (NOCA) –housed within Police–	Investigates serious tax crime offences, corruption money laundering, fraud and illicit trade (over CZK 150m in damage)
Public Prosecutions System (SPPO)	Responsible for supervising criminal investigations, issues directives to NOCA and other investigation agencies.
Customs administration	Criminal investigation authority with regard to breaches of the customs code. ⁷ Its competencies in criminal proceedings apply until prosecution.

* Czechia notes that while its customs administration has legal powers of investigation in breaches of the customs code, in practice it refers most of its investigations to the PoCR and/or the SPPO.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

531. Czechia notes that as tax crime investigations are conducted jointly by NOCA and SPPO, is not possible to identify the portion of the budget allocated specifically to financial and tax offences. The overall budget of these agencies is provided on an annual basis and is not subject to performance indicators.

532. In terms of the number of investigators, the Serious Economic Crime and Corruption Command of the NOCA had between 50 and 60 specialists in 2015, while in the same year there were 201 administrators within the Risk Management Division of the tax authority. Even though Czechia does not have prosecutors exclusively specialised on tax crimes, there were 240 public prosecutors specialised in property and tax crimes in 2015. Czechia reports that the FCD (responsible for tax crime investigations) within NOCA consists of approximately 45 specialists.

533. The below table sets the databases and sources of information that are available to tax crime investigators in the Police:

Table 13.6. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access / Access on Request Direct access to the electronic certificate of incorporation (without official verification), access on request to other documents from the registry.
Land Registry	Direct Access
Tax databases	Direct Access For designated officials in charge of tax crime investigations. Non-designated officials should manage their requests via SPPO.
Customs databases	Direct Access For designated officials in charge of tax crime investigations. Non-designated officials should manage their requests via SPPO.
Police databases	Direct Access
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request The central register of bank accounts is a non-public information system operated by the Czech National Bank. The system contains information on bank accounts of both natural persons and legal persons. There is no information on account activity, but it contains basic information (e.g. date the account was opened / closed / changed).
Car registry	Direct Access
Boat registry	Access on Request
Central evidence of grants from the state budget	Access on Request
Central register of executions	Access on Request
Insolvency register	Access on Request
Intrastat	Access on Request
Register of foundations	Access on Request
List of tax advisers	Direct Access
Trade register	Access on Request

Training for tax crime investigators and prosecutors

534. Czechia provides a series of trainings, workshops, and courses for its tax crime investigators. These include special conferences and workshops focused on strengthening the fight against corruption and money laundering activities, and a “tax criminality” one-week course with modules covering tax offences, criminal procedure, tax law and the basics of accounting. Police also organises an annual “instructional and methodical training” for its investigators, which includes updates on investigative practices and case law of Czechia and of the European Union. Police notes that it provides “methodological assistance” to particular investigators who require it, including guidance and support in specific investigations. There is no specific training budget for tax crime investigators.

Principle 7: Predicate offences

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

535. **Approach:** Czechia applies the “all crimes” approach to money laundering, which designates all criminal offences as predicate offences. Individuals may be charged with money laundering irrespective of whether a person has been charged or convicted of the predicate offence, or whether Czechia has jurisdiction over the predicate offence.

536. **Enforcement of money laundering predicated on tax crimes:** The public prosecutor is obligated to prosecute all criminal offences they become aware of, unless the law, directly applicable EU legislation, or a promulgated international treaty binding Czechia stipulates otherwise (CPC, s2(3)). However, Czechia was not able to provide any data related to enforcement of money laundering predicated on tax crimes in practice.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

537. The Financial Administration (FA) is the tax administration of Czechia responsible for assessment and collection of taxes and duties levied on behalf of the state. Specialised units of the FA conduct tax audits, on which the collection of taxes and duties are based. When information indicating a tax crime or another criminal offence has been committed is uncovered during the course of a tax audit, the FA has a legal obligation to report it to Police. The FA does not have any legal competencies to conduct criminal investigations into tax crimes and other financial crimes.

Information sharing between agencies involved in investigation and prosecution of tax crimes other financial crimes

538. The below table shows the models for sharing information related to tax crimes and other financial crimes in Czechia. A more detailed analysis of Czechia’s information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of [the Rome Report](#).

Table 13.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax Crime Investigation Agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		MSS ^(a)	On request	On request ^(b)	Direct Access ^(c)	MSS
	Customs administration	MSS	MSS		Direct Access	MSS	MSS
	Police or public prosecutor	MSS ^(d)	Direct Access	Direct Access		On Request	Direct Access
	Financial Intelligence Unit	MSS	MSS	MSS	MSS		MSS
	Corruption investigation authority	MSS ^(d)	Direct Access	MSS	Direct Access	DSS	
	Financial regulator	On request	MSS	MSS	MSS	MSS	MSS

Note:

MSS = mandatory spontaneous sharing

(a) The tax administration must report suspected tax offences and spontaneously provide any information relevant to an offence it has reported. However, where a tax criminal investigation did not commence following the report of a suspicion by the tax administration, the tax administration may only provide information requested by the public prosecutor or judge.

(b) The tax administration is under an obligation to report specified criminal offences to the police or state prosecutor including facts indicating the commitment of such criminal offence. Beyond that, information obtained in the course of the tax administration's activities can be provided to the police only on request of the state prosecutor, court or specialised police unit authorised by the Police President. Moreover, in order to use information obtained by the tax administration as evidence in criminal proceedings, conditions of the Criminal Code regarding how the information has to be obtained must be fulfilled, for example interviews conducted by the tax administration cannot be used as evidence in criminal proceedings.

(c) The Czech FIU has direct access to the ADIS database, which contains taxpayer information including the location of business premises, bank account number, tax arrears, any risk assessment and relations to other natural and legal persons.

(d) The Czech police are required to spontaneously provide information concerning illicit tax behaviour to the tax administration, except where this could endanger main investigation of corruption or other crime.

Table 13.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Senior officials from the tax administration and FIU regularly meet to discuss trends in financial crime and the effectiveness of models for co-operation. Furthermore, the Customs Administration is an integral part of the Moneyval Group. Furthermore, a National Situation Center for Border Protection has been set up, allowing police experts and customs officials to analyse data regarding people entering Czechia.
Disclosure of foreign trusts	Not required
Joint operations and taskforces	"Cobra" task force: a method of work that was established for the investigation and prevention of tax crime. It groups investigators from different institutions into a team, which executes joint operations to fight tax crime.
Parallel investigations	Not applicable. There is a single investigation agency (Police).
Joint intelligence centres	Czechia does not have any joint intelligence centres dedicated to combatting tax crimes.
Secondments and co-location of staff	Czechia does not have any secondments or co-location of staff dedicated to combatting tax crimes.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	No. Proceeds from corruption (or any other crime) are not taxable income. They have to be confiscated as part of criminal prosecution.
Multi-agency training	Czechia does not conduct multi-agency training focusing on combatting tax crimes.

Principle 9: International co-operation

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.

539. **Legal basis:** Police and SPPO may exchange information with foreign authorities in relation to criminal matters pursuant to bilateral and multilateral agreements as well as domestic legislation. Within the EU, EU directives and decisions that apply to co-operation in any type of offence, including tax crimes, bind Czechia. In the absence of a MLA treaty, Czechia applies its domestic law,⁷ which provides for international co-operation based on guarantees of reciprocity for similar cases.

540. As of November 2020, Czechia has entered into exchange of information relationships with 104 jurisdictions through 90 double tax treaties, and 14 Tax Information Exchange Agreements (TIEAs).⁸ It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows the Ministry of Finance to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

541. **International co-operation in practice:** While Czechia does not have detailed data regarding requests for international legal assistance, it notes that it sent 9691 requests to other jurisdictions from 2017-19. Czechia reports that most of its international co-operation is intra-EU and that these numbers reflect all criminal offences (not only tax crimes).

542. Czechia notes that co-operation with some jurisdictions, most notably those in the EU and the United States, is particularly positive and successful, whereas in other cases, Czechia does not receive a response to its requests.

Principle 10: Fundamental rights of a suspect or accused person

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

543. **Legal Basis:** In Czechia, the fundamental rights of the accused are enshrined in domestic law and in international human rights treaties ratified by Czechia. Section 112(1) of the Czech Constitution establishes that “*the constitutional order of Czechia is made up of this Constitution and the Charter of Fundamental Rights and Basic Freedoms*”,⁹ which works as a national bill of rights. The rights of the accused are also recognised in the *Code of Criminal Procedure* and other national legislation.

544. The below table sets the rights of individuals suspected or accused of having committed a tax crime in Czechia:

Table 13.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	From initiation of criminal prosecution, until final decision of the court.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all stages of criminal prosecution.
remain silent	Yes	At all stages of criminal prosecution.
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all stages of criminal prosecution.

interpretation and translation	Yes	At all stages of criminal prosecution.
be advised of the particulars of what one is accused of	Yes	At all stages of criminal prosecution.
access documents and case material, also known as a right to full disclosure	Yes	At all stages of criminal prosecution.
a speedy trial	Yes	At all stages of criminal prosecution.
protection from ne bis in idem (Double Jeopardy)	Yes	The protection is in place, primarily laid down in Article 40(5) of the Charter of Fundamental Rights and Basic Freedoms, as well as in section 11(1)(h) – (k) of the Criminal Procedure Code. There is also jurisprudence in development, which aims at further clarifying the specifics of protection from ne bis in idem.

Highlights

Successful practices

- Effective ‘whole of government’ tax crime strategy through Tax Cobra
- Well established legal framework for asset recovery

Room for improvement

- Czechia would benefit from measuring its tax gap

Notes

¹ The “Law of January 8, 2009, the Criminal Code” (Zákon ze dne 8. ledna 2009 trestní zákoník) was published on the Official Gazette (Sbírka zákonů) of 9 February 2009. An unofficial English translation can be found at: <http://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf>.

² Section 13(2) of the Criminal Code provides that “a necessary element of criminal culpability is intentional culpability, unless this Code expressly stipulates that negligent culpability suffices”.

³ For an unofficial English translation, see here: https://www.unodc.org/res/cld/document/criminal-liability-of-legal-persons-and-proceedings-against-them_html/418-2011_Act_on_Criminal_Liability_of_Legal_Persons_Czech_Republic.pdf.

⁴ In April 2021, EUR 1 = CZK 25.91.

⁵ The “Act no. 253/2008 Coll. – on selected measures against legitimisation of proceeds of crime and financing of terrorism”, (Zákon č. 253/2008 Sb. - Zákon o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu) was published on the Official Gazette (Sbírka zákonů) of 5 June 2008. An unofficial English translation can be found at: https://www.financnianalytickurad.cz/download/FileUploadComponent-1475423275/1502718894_cs_1502716120_cs_1481644819_cs_zak_2008-253_en-act-no-2532008-coll-19082013.pdf.

⁶ See Rome Report, Chapter 5 – Country Information – Czechia. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁷ Act 104/2013 Coll., “On International Judicial Co-operation in Criminal Matters”, as amended.

⁸ See <http://www.eoi-tax.org> for up-to-date figures.

⁹ For the Charter of Fundamental Rights and Basic Freedoms, see: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf.

14 Denmark (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

545. **Tax crime legislation:** Tax crimes in Denmark are governed by the Tax Control Act of 2017 (TAA), Taxation at the Source Act of 2016 (TSA), and Value Added Tax Act of 2010 (VAT). The Criminal Code (CC) (section 289) provides that any person who commits a violation of the tax legislation of a particularly serious nature (i.e. above a threshold of DKK 500 000 (Danish kroner¹) and with a sufficient degree of intent, shall be liable to up to eight years' imprisonment. The below table set out examples of Danish tax offences, and their maximum sanctions.

546. Some tax related crimes do not always require intent but may rather result in punishment if the offence has been committed with gross negligence. This applies, for example, if incorrect or misleading information is given about a legal person, e.g. in financial records or when registering the legal person to a registration authority. Such cases of gross negligence are punishable with a fine or, under aggravating circumstances, with up to four months' imprisonment (CC, s. 296). A fine can be imposed as an additional punishment to other forms of punishment, such as imprisonment, when the defendant has gained or intended to gain financial benefit for themselves or others through the commission of the offense (CC, s. 50(2)). An additional fine is usually imposed under CC (s.50(2)) when certain forms of economic crimes are sanctioned with imprisonment. This applies, for example, to intentional tax evasion, where the additional fine is typically determined based on the amount of taxes and duties evaded. According to CC (s. 289(3)), when determining the amount of an additional fine under CC, s. 50(2), consideration must be given to whether the crime is particularly serious, especially due to the way it was committed or because it was committed by several persons acting in concert, or when a large number of offenses have been committed. Furthermore, the Danish Penal Code (s. 83) provides a general possibility to reduce the punishment below the prescribed penalty range (e.g. from imprisonment to a fine) when circumstances, information about the crime, the perpetrator's personality or other factors decisively advocate for it.

Table 14.1. Income tax offences requiring criminal intent

Offences related to income tax	
Offence	Maximum sanction
Providing misleading information in an income tax return, with intent or gross negligence (TAA, s82)	Eight years' imprisonment (if tried under criminal law), eighteen months' imprisonment (if tried under tax law) and/or fine (see para. 3)

Failing to notify the tax administration if the tax assessment is too low, with intent or gross negligence (TAA, s83)	Eight years' imprisonment (if tried under criminal law), eighteen months' imprisonment (if tried under tax law) and/or fine (see para. 3)
Omitting the obligation to withhold tax, labour market contribution or dividend tax, with intent or gross negligence (TSA, s74)	Eight years' imprisonment (if tried under criminal law), eighteen months' imprisonment (if tried under tax law) and/or fine (see para. 3)
Receiving income due to labour market contribution without the tax or the labour market contribution having been withheld by the employer, with intent or gross negligence (TSA, s75)	Eight years' imprisonment (if tried under criminal law), eighteen months' imprisonment (if tried under tax law) and/or fine (see para. 3)
Offences related to VAT/GST	
Issuing invoices with incorrect statements; submitting incorrect or misleading information or omitting to provide information (VAT, s81)	Eight years' imprisonment (if tried under criminal law), eighteen months' imprisonment (if tried under tax law)

547. **Statute of limitations:** In principle, tax crimes carry a five-year limitation period from the commission of the crime. If the amount of taxes evaded surpasses DKK 500 000 (approx. EUR 67 000) the limitation period increases to ten years (CC, s. 93).

548. **Accessory liability:** It is an offence to aid, abet, counsel, procure, or conspire with another to commit a tax crime in Denmark (CC, s. 23(1)). The penalty can be reduced for someone who has only intended to provide minor significant assistance or strengthen an already formed intent, as well as when the crime has not been completed, or intentional complicity has failed.

549. **Attempt and conspiracy:** In Denmark, attempt to commit a tax crime is an offence pursuant to the CC (s. 21(1)). In addition, acts aimed at inciting or assisting the commission of an offence are punishable as attempts where the offence is not completed (CC, s. 21(1)).

550. **Professional enablers:** Denmark does not have specific legislative provisions for the treatment of professional enablers, but they can be held criminally liable as primary or secondary offenders, to whom in principle the same sanctions apply (CC, s. 23(1)).

551. However, it should be specified that a person who carries out an activity that requires a special public license or permit (e.g. a registered accountant), may be deprived by judgement in criminal proceedings of the right to continue such activities or to carry on such activities in certain circumstances, if the act committed implies an imminent risk of abuse of his position (CC, s. 79(1)). It is similarly possible to deprive someone of the right to be involved in the management of a business enterprise without undertaking unlimited personal liability for the commitments of the enterprise (CC, s. 79(2)). Any deprivation is imposed for a period of one to five years starting from the date of the final judgement or until further notice, in which case the issue of continued deprivation of the right to carry on such activities after a period of five years may be brought before the court.

552. By way of example, two persons were found guilty in 2022 of amongst others VAT and tax fraud for a total of DKK 18.4 million (approx. EUR 2.47 million). The fraud took place through a company, where they intentionally did not sufficiently declare their VAT and withheld taxes. They were both sentenced to imprisonment and had to pay an additional fine. They were also deprived of the right to be a founder, director or board member of any company until further notice.

553. **Territorial and nationality jurisdiction:** Denmark has jurisdiction over crimes conducted *wholly or partly* in Danish territory.

554. With respect to natural persons, Denmark also has jurisdiction over acts committed within the territory of another state by a person who is a Danish national or has his abode or similar habitual residence within the Danish State at the date of the provisional charge, provided the act is considered a criminal offence under both Danish legislation and under the legislation of the country in which the act was committed (CC, s. 7(1)(i)).

555. Concerning legal persons, Denmark has jurisdiction over all entities registered within its territory. A crime is considered to be committed where the act or acts that give rise to liability for the legal person

have been committed (CC, s. 9(1)). If the duty to act cannot be attributed to any employee, etc., but is attributed to the legal entity itself (for example, when a duty to submit certain information to an authority is not fulfilled due to a lack of instructions from management), the omission is considered to have been committed at the place where the legal entity is domiciled.

556. Furthermore, acts committed wholly outside the territory of any state by a person who was a Danish national or has his abode or similar habitual residence within the Danish State at the date of the provisional charge are also subject to Danish criminal jurisdiction, provided they carry a sanction of more than 4 months' imprisonment (CC, s. 7(2)). (1)(i) and (2) mentioned above apply with the necessary modifications to acts committed by a person who is a national of or has his abode in Finland, Iceland, Norway or Sweden at the date of the provisional charge, and who is staying in Denmark (CC, s. 7(3)).

557. Acts are deemed to have been committed at the place where the offender was when the act was committed. As regards legal persons, acts are deemed to have been committed at the place where the act(s) implying the liability of the relevant legal person were committed (CC, s. 9(1)). If the criminality of an act depends on or is influenced by an actual or intended consequence, the act is also deemed to have been committed at the place where the effect occurred, or where the offender intended the effect to occur (CC, s. 9(2)). This is for instance relevant where a person located in another state commits tax evasion against the Danish authorities.

558. **Liability of legal persons:** Legal persons, such as joint-stock companies, co-operative societies, estates, municipalities, state companies and sole proprietorships (in cases where the size and organization of a sole proprietorship can be equated with a corporate structure), can be held criminally liable (CC, s. 26) for tax offences and can be sanctioned with fines (CC, chapter 28). The CC (s. 26) establishes the presumption that criminal liability for entities other than natural persons applies to all forms of organizations that can act in a legal relationship. If an entity is deemed to be *without* legal personality, it may – depending on the circumstances of the specific case – be possible to assert personal liability against the responsible natural person, if that person has acted with intent or with gross negligence.

Enforcement of tax crime

559. The below tables show the amount of concluded investigations and convictions for tax crimes in Denmark between 2015 and 2021, and the types of sanctions imposed on tax offenders. The data comprises violations of the Tax Control Act of 2017 (TAA), Taxation at the Source Act of 2016 (TSA), Value Added Tax Act of 2010 (VAT) and section 289 of the Criminal Code (CC). Data is not calculated by year of conviction (as opposed to the tax year).

Table 14.2. Enforcement of tax crimes in the years ending 2015-21

Tax years ending	Number of convictions	Number of acquittals
2015	190	10
2016	204	11
2017	175	14
2018	118	11
2019	112	10
2020	141	7
2021	156	6
Total	1096	69

Table 14.3. List of other sanctions imposed in years ending 2015-21

Sanction	Number of times sanction imposed 2015-18	Number of times sanction imposed 2019-21
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> 0 – 3 years' imprisonment	101	59
> 3 – 5 years' imprisonment	11	12
< 5 years' imprisonment	1	2
Fine	311	266
Community Work or Service	199	80

560. **Availability of settlements:** Certain cases concerning taxes can be settled administratively by the Danish Tax Agency (DTA). Cases concerned must be suitable for the application of a fine and the taxable person has to accept the assessment of the DTA. The courts determine the cases in which custodial sentences may be imposed and where, as a result, the DTA cannot settle the case. The DTA can, for instance, settle cases concerning tax *avoidance* (as opposed to criminal offences) if the intentionally avoided amount is not over DKK 250 000 (approx. EUR 33 000). In such cases, the DTA is authorised to issue an administrative fine, without the involvement of the police or the courts. However, cases that do not meet these criteria will be dealt with in court according to the criminal procedure rules which do not allow out-of-court settlements.

561. **Availability of tax deductions for civil and criminal sanctions:** Tax deductions for criminal and civil sanctions are not allowed under the Danish legal system (Act on taxation of income “Statsskatteloven” § 6, s. 1).

562. **Tax gap:** The tax gap is measured in Denmark.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

563. **Tax crime strategy:** In Denmark, tax crime investigations are divided into two tracks: (i) the civil track, which is governed by the DTA and (ii) the criminal track, which is the responsibility of the police and the prosecutor’s office.

564. The DTA’s “segment-strategy” is the cornerstone of the Danish efforts to combat tax crimes. The strategy is based on the compliance risk management model that the OECD recommends for tax administrations. The strategy is the foundation of the operational work conducted by Tax Agency and aims to ensure an all-encompassing evaluation of all aspects of the DTA’s stated goals.

565. The segment-strategy is composed of the following key elements:

- Division of taxable legal persons into different “segments”. The division is mainly based on the type of legal personality, and secondly with regards to income-size for certain legal persons;
- Division of taxable natural persons into different “segments”. The division is mainly based on fraudulent categories such as money laundering, VAT carousel fraud, supply chain fraud, etc. and secondly on the income-type;
- Analysis of the “tax-gap” attributed to tax crimes conducted by the segments;
- Core challenges and risk regarding the respective segment;
- Organizational demands required in relation to the given segment.

The strategy is evaluated once a year.

566. The DTA has a separate strategy for mitigating the impact of money laundering. This resulted in the creation of a specific money-laundering unit Center for Hvidvask (the Center of money-laundering) and the implementation of initiatives across the DTA, aimed at combatting money-laundering.

567. Under the criminal track, the police and the prosecutor's office deal with tax crimes following the same basic principles as all other criminal cases in accordance with The Administration of Justice Act (AJA) (ss. 96 and 742). This provides that police must initiate an investigation after a notification or on their own initiative, when there is a reasonable suspicion that a criminal offence, which is subject to public prosecution, has been committed. Public prosecutors must then advance a case as quickly as possible while ensuring innocent persons are not prosecuted. Based on these principles, the public prosecutors determine whether a reported crime should lead to a criminal charge.

568. On 1 January 2022, the National Special Crime Unit (NSK) was established in order to strengthen the efforts to combat the most complex forms of economic crime, organised crime and cybercrime.

569. This unit is responsible for the investigation and the prosecution of its own cases. Furthermore, it assists the police districts with forensic services for the purpose of contributing to efficient investigation and prosecution of offences across the police force and prosecution service.

570. The most complex cases regarding tax crime are processed within the National Special Crime Unit, mainly cases in which it is presumed that an economic offence has been committed:

6. an offence of a considerable scope;
7. the offence is an element of an organised crime;
8. an offence that includes the use of unusual business practices, or
9. an offence which is of an aggravated nature.

571. The State Prosecutor for Special Crime (SSK) supervises and carries out legality checks on the processing of criminal cases in the NSK and conducts the cases if they are appealed to the high courts. SSK and NSK cooperate in large and complex criminal cases concerning economic and organized crime.

572. **Threat assessment:** The DTA has a risk-based, dynamic approach to tax crime investigation with continuous revision, based on evolving threats. As opposed to the strategy, the threat assessment concerns potential for tax crime and is instrumentally more proactive.

573. This approach ensures that the DTA can reply quickly to emerging threats. At the beginning of the Covid-19 pandemic, the Danish government facilitated several government aid packages to ensure businesses (among others) could survive the impending lockdown. Due to time constraints, safe-guard-mechanisms were of a lower standard compared to those developed under ordinary (pre-Covid) circumstances. However, the DTA was able to rapidly identify these threats in relation to the Covid-19 aid packages and ensure governmental focus where the potential for misuse was the largest. The DTA then worked with other Danish government agencies to ensure a whole-of-government approach, which was paramount in limiting fraudulent claims concerning COVID19-compensation for companies.

574. **Communications strategy:** The DTA is pro-active when it comes to communicating results regarding tax crime audits/investigations to the broader population. This has both a deterrent effect – it ensures potential tax criminals are aware that there is comprehensive ongoing work in place to combat tax crime, and raises public awareness of the Danish efforts against tax crimes. The communication with the public is coordinated with the Press Office of the DTA. Publication of any conviction or resolution will be decided on a case-to-case basis, taking into account, for instance, the interest of the public, the previous interest in the media and the interest in general for prevention of similar crimes.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 14.4. Investigative powers of the Danish Police

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power (in urgent cases). Otherwise: Power via another agency (prosecution)
Obtain documents from third parties	Full direct power (from financial institutions). Otherwise, Power via another agency (prosecution)
Interview	Full Direct Power
Inquiry powers (e.g. power of coercion)	No power
Intercept mail and telecommunications	Power via another agency (prosecution)
Conduct covert surveillance	Power via another agency (prosecution)
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power (in urgent cases). Otherwise: Power via another agency (prosecution)
Arrest	Full direct power (in urgent cases). Otherwise: Power via another agency (prosecution/subject to court)

575. **Legal professional privilege:** Lawyers and state-authorized registered accountants have legal professional privilege. The privilege of lawyers is regulated in the administration of justice act “*retsplejeloven*” Section 7. The rules of lawyer/client privilege apply. The privilege of state-authorized accountants is regulated in the auditors’ act “*revisorloven*”. Some audits and statements must be signed by a state-authorized accountant.

Principle 4: Freezing, seizing and confiscating assets

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

576. **Legal basis:** In Denmark, the *seizure* of assets linked to almost all types of crime with an economic gain, including tax crime, is regulated in the Danish Administration of Justice Act (chapter 74, s. 801-807f). The *confiscation* of assets in relation to tax crime (and other types of crime with an economic gain) is regulated in the Danish Criminal Code (ss. 75-77a).

577. **Freezing orders:** Danish law does not provide a legal basis for the freezing of assets linked to tax crimes. The temporary freezing of assets (e.g. bank accounts) can be done only in relation to money laundering offences pursuant to the Danish Anti Money Laundering Act.

578. **Seizing orders:** The AJA also provides several options for the seizure of assets linked to tax crimes, including the proceeds of crime that the suspect has at his/her disposal, as well as other assets owned by the suspected criminal and criminal proceeds held by third parties (individuals or legal persons) (AJA, ss. 802(1), (2) and s. 803). Under these provisions, investigators in the police or asset recovery unit must apply for a court order for the seizure *unless* waiting for the court order would impede the seizure from taking place (s. 806(4)). In this situation, the police can make a temporary seizure and apply to the courts within 24 hours for an order approving the seizure.

579. In addition to the above, the AJA also provides, subject to a court order, for the seizure of the entire property or parts thereof owned by a suspected criminal where indictment has been raised for an offence carrying 18 months' imprisonment or more *and* the accused has evaded further prosecution in the case (s. 802(3)). The accused may, for example, have evaded further prosecution in the case by not showing up for the trial, even though the presence of the accused is necessary to proceed with the case.

580. **Confiscation orders:** Danish law provides for several scenarios for confiscation, including value-based confiscation and extended confiscation. With respect to tax crimes, the Criminal Code (s. 75(1)) provides that the *proceeds gained from any criminal act, or a sum equivalent thereto, may, either wholly or in part, be confiscated. Where the size of such an amount has not been sufficiently established, a sum thought to be equivalent to the proceeds may be confiscated.* Section 76(1) further provides that the courts may confiscate from any person to whom the proceeds of a criminal act have directly passed (i.e. third party confiscation).

581. **Foreign freezing, seizure, and confiscation orders:** Regarding orders from EU/EEC-countries, Denmark recognises certificates related to seizure and confiscation under the following Council Framework Decisions: 2003/577/JHA2005/212/RIA & 2006/783/RIA. Denmark is not a part of Regulation (EU) 2018/2015 on mutual recognition of freezing orders and confiscation orders (see preamble no. 57) or directive no. 2014/42/EU (see preamble no. 44).

582. With respect to orders from non-EU/EEC-countries, Denmark will recognise requests for Mutual Legal Assistance (MLA) for seizure or confiscation if the Danish legal requirements are fulfilled, namely that the request is made in accordance with the principles of the European Council convention of 20 April 1959 on Mutual Assistance in Criminal Matters or the European Council convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

583. **Agency/unit responsible for asset recovery:** The Special Crime Unit (SCU), housed within the State Police has a dedicated Asset Recovery Office (ARO), specialised in seizing and confiscating assets stemming from criminal activity. The ARO handles the most complicated cases of seizure and confiscation, related to all types of crime with an economic gain, including tax crimes. In smaller or less complicated cases, the ARO unit will often serve as an advisory centre for other parts of the SCU or Danish police in general, and help with specific questions or general guidance.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

584. The Danish Tax Agency (*Skattestyrelsen*) is responsible for administering taxes and conducting civil tax audits. It has no criminal investigation powers. Criminal investigations, including for tax offences, money laundering, and other financial crimes, are conducted by the Danish Police and prosecuted at police-district or state level. Denmark's financial intelligence unit is situated at the state level as is the Special Crime Unit, which is responsible for investigating the most complex cases of tax crime (a scoring model is used to assess whether a case should be investigated by SCU or district police).

585. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

586. A more comprehensive analysis of Denmark's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 14.5. Agencies and bodies responsible for enforcing financial crimes

Agency	Role with respect to financial crime
Danish Tax Authority (Skattestyrelsen)	Responsible for administering taxes and conducting civil tax audits. Its intelligence unit detects possible tax offences, prevents new tax crimes and identifies new forms of fraud. Whenever it uncovers evidence of tax crimes, this evidence is passed to the police.
District Police	Tax crime investigations as above-mentioned, a scoring model is used to assess whether a case should be investigated by SCU or by District Police).
Special Crime Unit (SCU)	The Special Crime Unit is responsible for investigating and prosecuting the biggest and most complex cases regarding economic crime including tax crime.
General prosecutors in the police district	Prosecution of minor tax crime and money laundering cases.
Specialist prosecutors in the police district	Prosecution of more complex financial crime cases.
State Prosecutor for Serious Economic and International Crime (NSK)	Prosecution of complex tax crime and money laundering cases, as well as corruption cases. Denmark's financial intelligence unit is situated at this level.
Asset Recovery Office (ARO)	The ARO sits within the SCU of the State Police and handles recovery of assets in the most complicated cases related to all types of crime with an economic gain.
Financial Intelligence Unit (FIU)	Housed within the State Police, the FIU serves as national center for the receipt and analysis of suspicious transaction reports and relevant money laundering information, associated predicate offences, and terrorist financing. The FIU is also responsible for disseminating analysis results to national competent authorities, and for developing the national risk assessment on money laundering.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

587. The DTA is currently expanding, following organizational restructuring in 2018. Between 2020 and 2024, the DTA will hire 1 000 new employees. The below table illustrates the annual budget increases of the Anti-Fraud Division. Denmark also notes that this only relates to civil investigations of tax crimes. In a criminal context, the relevant resources are allocated with the police and the prosecutor's office.

Table 14.6. Anti-Fraud Division basic budget 2018-21

Year	2018	2019	2020	2021
Basic budget	189	201	224	241

588. The below table shows the databases and resources available to tax crime investigators within the Danish Police. In general, investigators have access to the publicly available databases for real estate registration (*Tinglysning*) and company registration (*Erhvervs- og selskabsstyrelsen*) and, on request, to underlying information such as on applicants for registration.

Table 14.7. Databases/sources of information available to tax crime investigators (Justitsministeriet)

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Access on Request
Registry of citizens	Direct Access

Tax databases	Access on Request
Customs databases	Access on Request
Police databases	Direct Access
Judicial databases	Direct access
Suspicious transaction report databases	Direct Access
Domestic bank account databases	No Access
Car registry	Direct Access
Boat registry	Access on Request
Other	No Access

Training for tax crime investigators

589. Denmark has no specific police training for tax crime investigations. The responsible directorate (Danish police) concluded that the training for economic crime sufficiently covers tax crimes.

Principle 7: Predicate offences

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

590. **Approach:** It is an offence to launder the proceeds of *any criminal offence*, regardless of whether a person has been charged or convicted of the predicate offence, or whether Denmark has jurisdiction over the predicate offence (CC, s. 290a).

591. **Enforcement of money laundering predicated on tax crimes:** Denmark notes that SCU investigators are attentive to where the proceeds of crime are transferred with several SCU units specialised in economic and financial crime. These units employ accountants specialised in cash flow analysis to further such investigations – including investigations into money laundering. As outlined above, ARO within SCU is specialised in tracking the proceeds of all types of crimes.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

592. Civil tax auditors within the DTA are required to report suspicions of all financial crimes, including all tax crimes, to the Danish Financial Intelligence Unit (FIU). The FIU will analyse and eventually forward the information to the police (SCU or police district) who will decide whether there is sufficient evidence of a crime to launch an investigation. The Prosecution Service is responsible for determining whether or not a charge should be brought, and typically the police and prosecution service will cooperate closely from the beginning.

Information sharing between agencies involved in investigation and prosecution of tax crime and other financial crimes

593. In Denmark, information sharing between government agencies is governed by the Public Administration Act (s. 28) and by the EU General Data Protection Regulation for obtaining information

necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (Art. 6). The below table shows the models for sharing information related to tax crime and other financial crimes in Denmark.

Table 14.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority ^(f)
Authority providing information	Tax administration		MSS	MSS	MSS ^(a)	MSS	DSS	MSS
	Customs administration	MSS	MSS		MSS	MSS	DSS	MSS
	Police or public prosecutor	DSS	Direct Access	MSS		MSS	DSS ^(b)	Direct Access
	Financial Intelligence Unit	DSS	DSS	DSS	DSS		DSS ^(c)	DSS
	Corruption investigation authority	DSS ^(d)	DSS ^(e)	DSS ^{(a)(e)}	DSS ^{(a)(e)}	DSS		DSS
	Asset Recovery Authority ^(f)	DSS	Direct Access	MSS	Direct Access	MSS	DSS ^(b)	
	Financial regulator	Sharing prohibited	On request	On request	On request	On request	DSS	On request

Note:

MSS = Mandatory Spontaneous Sharing / DSS = Discretionary Spontaneous Sharing

(a) If in the course of his/her activities a tax auditor detects or becomes aware of suspected non-tax offences, internal guidelines require him/her to inform the Danish police.

(b) The police can share information. Where the police are the corruption investigation authority, direct access is available.

(c) The FIU can share information if it is necessary for the police's prosecution of criminal offences.

(d) The police can share information with other authorities if it is necessary for either the police's prosecution of criminal offences or the receiving authorities' performance of their tasks and if it does not interfere with the police's investigation of criminal offences.

(e) The police can share information with other authorities if it is necessary for the prosecution of criminal offences or the receiving authorities' performance of their tasks and if it does not interfere with the police's investigation of criminal offences. Where the police are the corruption investigation authority direct access may be available.

(f) Danish Asset Recovery Office ("ARO") is part of Danish police, thus Danish ARO has the same access to receive and provide information as the police.

Table 14.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	The DTA has a very close co-operation with the Police, including agreements for sharing information.
Disclosure of foreign trusts	Yes, insofar as the DTA determines that information is relevant for other government bodies as in accordance with the Public Administration Act (§ 28).
Joint operations and taskforces	Yes, the Danish Tax and Customs Administration works together with a range of other public bodies, semi-public bodies and other professions.

Parallel investigations	Yes, possible for civil and criminal investigations.
Joint intelligence centres	No
Secondments and co-location of staff	The DTA and State Prosecutor for Serious Economic and International Crime have at times posted employees with each other to further cooperation and knowledge sharing.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes
Multi-agency training	No

Principle 9: International co-operation

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.

594. **Legal basis:** Denmark has exchange of information relationships with over 150 jurisdictions through more than 70 bilateral tax treaties and more than 50 Tax Information Exchange Agreements. Denmark is also signatory to the Convention on Mutual Administrative Assistance in Tax Matters which allows DTA to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. However, Denmark notes that it primarily uses these agreements in the civil track of a tax audit and that requests related to criminal tax matters are dealt with through MLA. Denmark does not have a legal act governing MLA in criminal matters. This means that Denmark can execute requests from other countries regardless of whether there is a bi- or multilateral agreement with the requesting country as long as the requested assistance is in accordance with the Danish domestic law on the matter as it were a Danish domestic criminal investigation. Denmark uses bi- or multilateral agreements as a legal basis when requesting MLA.

595. **Competent authorities:** The DTA is the competent authority for both sending and receiving *requests for administrative assistance* in criminal tax matters. The Danish “judicial authorities” are the competent authorities for sending and receiving *MLA requests* for requests in criminal matters. The “judicial authorities” in Denmark include the courts and prosecution authorities, which under the Danish Administration of Justice Act include the Ministry of Justice, the Director of Public Prosecutions, the State Prosecutors and the Police Commissioners.

Principle 10: Fundamental rights of a suspect or accused person

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

596. Denmark provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights, which are enshrined in international human rights treaties and in national pieces of legislation, most notably the Administration of Justice Act.

Table 14.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	All rights apply from the moment a suspect is charged with a crime.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	
remain silent	Yes	
access and consult a lawyer and/or entitlement to free legal advice	Yes	
interpretation and translation	Yes	
be advised of the particulars of what one is accused of	Yes	
access documents and case material, also known as a right to full disclosure	Yes	
a speedy trial	Yes	
protection from ne bis in idem (Double Jeopardy)	Yes	

Highlights

Successful practices

- Comprehensive tax crime strategy
- Good mechanisms for on-sharing of information between government agencies

Room for improvement

- Denmark could benefit from a more effective asset recovery policy (especially concerning freezing of assets relating to tax crimes).

Notes

In March 2022, EUR 1 = DKK 7.44

See Rome Report, Chapter 5 – Country Information – Denmark. Available at [Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition \(oecd.org\)](#).

15 El Salvador (NEW)

This chapter was published May 2024

Principle 1: Ensure that violations of tax offences are criminalised by:

- a) having legal frameworks in place that criminalise some violations of tax laws by natural persons;
- b) making available effective criminal sanctions that apply in practice to natural persons who violate tax laws;
- c) having a penalty regime in place for legal persons who violate tax crimes; and
- d) ensuring that professionals who enable tax crimes are also subject to criminal liability.

Tax crime legislation

597. The Criminal Code of El Salvador (CC) sets out various tax crimes offences, all of which require criminal intent (*mens rea*)⁵. These are outlined in the table below together with their corresponding sanctions. These offences cover infractions to both the income tax law and the VAT law of El Salvador. However, it should be noted that Article 252 of the Criminal Code establishes a defence of ‘Absolute Excuse’ for tax crimes, whereby no criminal penalties will be imposed provided the offenders pays the evaded tax together with any civil fines and interest. to the Treasury *at any time*. In effect, an offender can escape criminal liability for all tax crimes set out in the Criminal Code if they agree to pay their outstanding debt and corresponding civil penalties set out in the Tax Code.⁶

598. In situations where an offender does not invoke “Absolute Excuse”, they may be prosecuted and subjected to a term of imprisonment as set out in the table below. If following the imposition of the criminal sanction, the evaded tax is still outstanding, the Attorney General will institute an administrative process to collect the outstanding tax debt – which will be applied *in addition to* the criminal sanction.

⁵ See article 18 onwards of the CC.

⁶ For reference, Article 246 of the Tax Code establishes various non-compliances related to the obligation to withhold and collect taxes. These non-compliances include: a) failure to withhold or collect and not remit the corresponding tax, with a fine equal to the amount that was not paid; b) failure to withhold or collect the tax when there is a legal obligation to do so, with a fine of 75% of the amount not withheld; c) withholding or collecting and remitting the tax late, with a fine of 50% of the sums withheld or remitted late; and d) withholding or collecting and remitting an amount less than the corresponding amount within the legal deadline, with a fine of 30% on the amount not remitted within the legal deadline. In no case shall these fines be less than nine hundred and eighty colones or their equivalent in dollars.

Table 15.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Misappropriation of tax (CC, art. 250)	4 years' imprisonment	8 years' imprisonment and	8 years
Tax Evasion (CC, art. 249)	4 years' imprisonment	8 years' imprisonment	8 years
Unlawful refunds or tax returns (CC, art. 250)	4 years' imprisonment	6 years' imprisonment	6 years
Counterfeiting In Printing, Emitting, Delivering Or Granting Of Supporting Tax Documents (CC, art. 283 & 284)	4 years' of imprisonment.	8 years' of imprisonment.	8 years

599. Statute of limitations: The statutes of limitations for criminal tax offences are set out in the table above. The limitation period for tax crimes starts on the date of commission of the offence but is suspended in the period between when the offender is convicted and awaiting sentencing (Code of Criminal Procedure, arts. 34-37).

600. Complicity: Accomplices of tax crimes can be prosecuted in El Salvador in accordance with articles 36 and 37 of the CC. It is important to highlight that an accomplice can be subject to criminal liability for the offence in which they have participated, even if their role does not match that of the principal perpetrator.

601. Attempt and conspiracy: Article 251 of the CC makes it an offence to attempt or conspire to commit a tax crime punishable by a term of imprisonment from two to four years. If the perpetrator is a public official, the sanction increases to four to six years' imprisonment.

602. Professional enablers: El Salvador does not have a specific penalty regime for professional enablers. While professional enablers may be held liable as primary offenders or accomplices, El Salvador reports that they are mainly prosecuted through **CC, art. 251 (proposition or conspiracy to commit any tax fraud offence)**. El Salvador reports that as of April 2024, there are currently several bills regarding the legal liability of professional enablers before Congress.

603. Territorial and nationality jurisdiction: El Salvador has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in El Salvador. Jurisdiction extends to crimes committed by Salvadoran nationals outside the country (CC, arts. 8 & 9).

604. Liability of Legal persons: The Penal Code of El Salvador provides that only natural persons may be held liable for criminal offences, including tax offences. Representatives of legal persons and persons jointly responsible for the commission of the offence, such as business partners, may be sanctioned under the Tax Code of El Salvador, which covers administrative, but not criminal, offences (Tax Code, art. 233).

605. Availability of settlements: As outlined above, no criminal sanction shall be imposed on a person accused of committing tax crimes if the person satisfies the payment of the tax, fines, and interest obligations prior to sentencing (CC, art. 252).

606. Availability of tax deductions for civil and criminal sanctions: Salvadoran law does not allow tax deductions for civil or criminal penalties (see Article 29A, item 20 of the Income Tax Law).

607. Non tax deductibility of bribe payments: Articles 335, 335-A, and 336 of the Criminal Code classify bribes, bribery, and influence peddling as crimes against the Public Administration. Therefore, these behaviours, in addition to being punishable by the State, cannot be subject to any type of deduction.

Enforcement of tax crime

608. The below table sets out number of tax crime investigations and convictions in El Salvador in the tax years ending 2020-2023, and the amount of underlying tax evaded. In total, El Salvador conducted 206 tax crime investigations, resulting in one conviction. One offender was sentenced a term of imprisonment. The total amount of underlying tax evaded was \$191,502,387.08.

Table 15.2. Enforcement of tax crimes in the tax years ending

Tax years ending	Investigations for tax crimes	Number of convictions	Amount of underlying tax evaded	Number of convictions where the offender received a prison sentence
2019	19	0	\$4,649,034.33	0
2020	73	0	\$59,210,514.43	0
2021	64	0	\$64,524,466.46	0
2022	40	0	\$47,048,719.52	0
2023	10	1	\$16,069,652.34	1

Principle 2: Devise a strategy for addressing tax crimes, which includes:

- a) the identification of existing and emerging risks and threats; and
- b) mechanisms for the regular review and monitoring of the implementation and effectiveness of the strategy.

Tax Crime Strategy

609. El Salvador has designed a tax crime strategy that aims to facilitate the exchange of information and the co-operation of different government agencies together with experts in tax crime prevention. Agencies involved in the strategy are the Criminal Tax Investigation Unit (UIPT) of the General Directorate for Internal Taxes (DGIT), the Office of the General Prosecutor of the Republic (OGPR) and the DGIT's Legal Department. The strategy's results are evaluated annually, and its effectiveness is measured by the amount of evaded money being recovered as well as the results of other deterrence measures.

610. El Salvador notes that by applying this strategy, it has managed to attain better co-operation with the OGPR and raised over USD one million in unpaid taxes since 2017, through the defence of absolute excuse.

Table 15.3. Taxes recovered through defence of 'Absolute Excuse' between 2017-2023.

Year	Cases Reported to the Prosecutor's Office	Total Amount (Tax Determined)	Cases Resolved Extraordinarily by Absolute Excuse	Total Amount of Tax Recovered through Absolute Excuse
2017	54	\$46,837,034.84	1	\$147,235.43
2018	63	\$30,107,003.38	5	\$325,023.76
2019	19	\$4,649,034.33	2	\$572,419.42
2020	73	\$59,210,514.43	27	\$4,100,494.89
2021	64	\$64,524,466.46	13	\$2,105,330.24
2022	40	\$47,048,719.52	26	\$7,798,444.00
2023	10	\$16,069,652.34	11	\$5,445,613.74
TOTAL	323	\$268,446,425.30	85	\$20,494,561.48

611. **Threat assessment:** El Salvador carries out a periodic threat assessment utilising the complaints filed by taxpayers and the audits carried out by civil agencies as sources of data. The OGPR and Police carry out the threat assessment whenever they encounter suspected tax evasion. The key element that is looked at within the threat assessment is the quantitative value of tax evasion practices.

612. **Communication Strategy:** Since the launch of the Anti-Evasion Plan in October 2019, driven by the current government, the Ministry of Finance has adopted a robust communication policy. This policy is reflected in the regular summoning of media outlets in cases of alleged tax fraud. Additionally, coverage is provided for search procedures with preventive measures, during which documents are seized that will play a crucial role as evidence in judicial proceedings. Information regarding arrests related to fiscal crimes in El Salvador is also communicated. All these significant events are disseminated through official institutional communication platforms. The DGIT has a dedicated webpage on the government's portal.

Box 15.1. Example of a successful case: "Operation Tax" in El Salvador

Six owners of petrol stations and an agent from the DGIT were remanded in El Salvador in October 2018 after being charged by the OGPR with tax evasion totalling more than USD 16 million. In these instances, undeclared income was identified using asset-betterment methodologies to quantify unjustified increases in assets, as well as presumed additional income derived from purchases of goods for sale that had not been recorded in the accounting. Additionally, income generated from leasing premises was discovered and various deductions relating to contended expenses were also disallowed, either due to concealing or not maintaining inventory control records, or due to a lack of supporting documentation.

This case was a successful example of the enhanced collaboration between UIPT and OGPR, as tax crime investigators joined efforts with the public prosecution and provided the latter with skills and expertise in tax crime investigations. Meetings were held between the Office of the Attorney General of the Republic (FGR) and the UIPT with the aim of advancing cases that had previously been reported to the Prosecutor's Office as tax evasion offenses. These cases were initiated by the UIPT, which requested authorization from competent judges to conduct searches with preventative measures. These procedures were carried out in collaboration between the Prosecutor's Office, the police, and the UIPT. During these procedures, tax-related documents were seized, which will serve as evidence in the analysis of the alleged tax offenses.

Principle 3: Ensure that competent authorities have adequate powers to effectively detect, investigate, and prosecute tax crimes

613. The below table sets out the investigative powers of El Salvador's tax crime investigation agency (DGIT).

Table 15.4. Investigative powers of tax crime investigation agency (DGIT)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Indirect power via another agency Via request to OGPR

Obtain documents from third parties	Indirect power via another agency Can be requested by the DGIT during civil tax audits. The OGPR stands as the competent entity in criminal investigations, given its authority to conduct criminal inquiries and its role as the representative of fiscal interests, as stipulated by Article 193 of the Constitution of the Republic of El Salvador. Therefore, it is responsible for collecting documentation from third parties.
Interview	Indirect power via another agency Concerning criminal investigations, the competence falls under the OGPR. Therefore, it is the collaborating agents of the Attorney General who conduct interviews during the course of the criminal investigation.
Inquiry powers (e.g. powers of coercion)	Full direct power During the audit process. The competent authority in criminal investigations is the OGPR. Consequently, it is this institution that is responsible for leading the investigation once knowledge of a possible criminal act is obtained, allowing them to request information from the Ministry of Finance and other institutions using this authority.
Intercept mail and telecommunications	No power
Conduct covert surveillance	Indirect power via another agency Operations conducted by the police under authorisation of the OGPR
Conduct undercover operations	Indirect power via another agency Operations conducted by the police under authorisation of the OGPR
Search and seize computer hardware, software and electronic storage media	Indirect power via another agency Done through requests to the OGPR
Arrest	No power

614. **Need for additional powers:** El Salvador notes that it would benefit from obtaining statutory powers of seizure without having to rely on authorisations from the public prosecution system or the civil tax audit agency.

615. **Legal professional privilege:** Lawyers and accountants in El Salvador have a duty of professional secrecy in regards to all documents and communications with clients.

Principle 4: Provide competent authorities with adequate powers to freeze, seize, and confiscate assets linked to the enforcement of tax crimes, in accordance with their domestic legal frameworks

616. **Legal basis:** El Salvador's has a non-conviction based legal framework for asset forfeiture, which allows the State to take ownership of assets associated with a crime and those that are the proceeds of the crime after following the due process established in said law that allows for the forfeiture of assets related to the criminal act.

617. **Freezing of assets:** Article 25(2) of the Anti-Money Laundering and Asset Forfeiture Law establishes provisions related to the freezing of accounts. El Salvador permits the freezing of assets in tax crime investigations, including the rapid freezing of assets (i.e. within 24-48 hours).

618. **Seizure and confiscation of assets:** As noted above, El Salvador has a non-conviction based confiscation regime, meaning an suspect does not have to be convicted of crime in order to be permanently deprived of the instruments or proceeds of the suspected criminal activity.

619. During the course of investigative proceedings, the prosecutor shall order the seizure, collection, and preservation of objects or documents related to the commission of a criminal offense, as well as those that may serve as evidence. Additionally, the prosecutor shall order the confiscation of objects harmful to health, in prohibited or dangerous possession, in unauthorized trade, or of illicit origin, as well as other objects and documents regarding which there are no existing or exercisable property rights. The seizure or collection may be ordered in urgent cases by the police, who must report to the prosecutor within eight

hours to order their confiscation, request their seizure, or order their return. There are various mechanisms in place to return seized assets to a claimant, where they can demonstrate that possession/ownership was legitimate.

620. As an exception, when the seizure order concerns property subject to confiscation, such as motor vehicles, ships, aircraft, or objects suitable or useful for combating organized crime, the judge, upon request from the prosecutor, may order their deposit in favor of the police or the prosecutor's office, institutions that must immediately and exclusively allocate them to that purpose. If the judge deems that such property or objects are not suitable or useful for that purpose, he may order their deposit in favor of the Armed Forces for their institutional purposes.

621. Foreign freezing, seizure and confiscation of assets: In El Salvador, the applicability of foreign orders for precautionary embargo, seizure, or confinement can vary based on various factors, including international agreements, judicial cooperation treaties, and national laws. Typically, for a foreign order of this nature to be recognized and enforced in El Salvador, it must undergo a legal process and be endorsed by the country's relevant judicial authorities.

622. Agency responsible for asset recovery: The seizure and confiscation of assets related to criminal tax matters in El Salvador is under the competence of the courts and the prosecution service.

623. Freezing, seizing, and confiscation in practice: El Salvador was not able to provide any statistics regarding the recovery of assets linked to tax crimes.

Principle 5: Put in place an organisational structure with defined responsibilities for fighting tax crimes and other financial crimes

Agencies responsible for investigation and prosecution of tax crimes

624. DGIT's UIPT is the is the unit mandated to investigate tax evasion and other tax offences, under the direction of the public prosecutor. In El Salvador, the majority of tax crime investigations are conducted by the Criminal Tax Investigation Unit within DGIT, though in some cases the police may conduct cases with support from the tax administration. In both cases, the investigations are led by the public prosecutor. In practice, the UIPT informs the Attorney General's Office (FGR) about the possible commission of the tax crime and then collaborates by providing the information they require for the criminal investigation, providing an expert if available, conducting analysis, providing advice, etc. But above all, works to resolve any requests the FGR may

625. The OGPR, through the State Penal Unit of the Directorate for the Defence of State Interests, is directly responsible for conducting the prosecution of fiscal offenses.

626. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of El Salvador's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Cooperation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁷

⁷ See Rome Report, Chapter 5 – Country Information – El Salvador. Available at www.oecd.org/tax/crime/effective-inter-agency-cooperation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf

Table 15.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Tax administration (DGIT)	Responsible for preventing, detecting, and investigating cases related to tax evasion and other tax offences, and for reporting to the OGPR indications or evidence of other financial crimes such as money laundering.
Criminal Tax Investigation Unit within DGIT (UIPT)	Responsible for conducting tax audits and finding evidence for the commencement of criminal investigations, and for referring tax crime cases to OGPR.
Customs Department (housed within the Ministry of Finance)	Responsible for the assessment and collection of customs duties, and the prevention, detection, and investigation of customs-related criminal offences including smuggling.
Organised Crime Division, the Financial Crime Department and the Central Research Division (housed within the Police Department)	Central to preventing and combating financial crime. These entities, attached to the National Civil Police and collaborate closely with the OGPR in conducting criminal investigations, and can, when necessary, support criminal tax investigations.
State Penal Unit of the Directorate for the Defence of State Interests within the OGPR,	Responsible for directing DGIT's tax crime investigations and conducting the prosecution of fiscal offenses.
Organised Crime Unit, the Financial Investigation Unit, the Criminal Unit, the Unit Against Theft and Car Robbery and the Unit Against Corruption Offences (housed within the Prosecutor General's office)	Responsible for fighting financial crime and other serious offences. All units correspond investigative and processing units, except for the Financial Investigation Unit (UIF).
FIU	Responsible for the fight against money laundering and terrorist financing, and identifying and recovering the proceeds of crime. The Financial Investigation Unit (UIF) is the principal office under the OGPR, focused on generating financial intelligence to prevent and combat crimes such as money laundering (ML), terrorism financing (TF), and proliferation financing of weapons of mass destruction (PWMD). Additionally, it is responsible for receiving reports of suspicious transactions (STRs) from obligated entities.
Unit Against Corruption Offences (housed within the Office of the Prosecutor General)	Responsible for investigating cases of corruption in the public administration of national or international importance.
Government Ethics Tribunal	Responsible for the implementation and enforcement of the Government Ethics Law. The Tribunal's core objective is to promote ethical performance within the civil service through respect for and observance of the ethical standards provided for in the law.
Office of the Under-Secretary for Transparency and Prevention of Corruption	Anti-corruption agency in charge of implementing national anti-corruption policy.
Office of Supervision of the Financial System	Responsible for monitoring the financial system and individual participants, to help preserve the stability, efficiency and transparency of the system, and for co-operating with other State agencies.

Independence of Tax Crime Investigations and Prosecutions

627. The OGPR is an independent branch of government, as enshrined in article 193 of the Constitution of El Salvador. The independence of investigations and judicial actions is grounded in the principle of legality, enshrined in Article 15 of the Constitution of the Republic, Article 1 of the Criminal Code, and Article 2 of the Criminal Procedure Code. This legal principle establishes that all investigations, proceedings, or trials must be conducted in accordance with the existing and pre-established laws, and in the courts that have been previously established by the law. For this reason, no influence or deviation from independence is permitted, both in investigations and in prosecutions or judicial processes.

Principle 6: Provide adequate resources to competent authorities in order to support:

- a) the development of robust organisational structures and governance;
- b) appropriate training and development of staff; and
- c) IT infrastructure, access to data, and use of appropriate analytical resources.

Resources for combatting tax crime

628. El Salvador notes that its budget is allocated to the tax administration as a whole and therefore it is not possible to identify the part of the budget dedicated for the investigation of tax crimes. This also applies to the budget of the OGPR. Neither the budgets of the DGIT nor OGPR are based on performance indicators.

629. As of April 2024, there are 17 investigators working within UIP. El Salvador does not calculate an estimate of return on investment for tax crime investigations or prosecutions.

630. **Tax gap:** El Salvador is currently in the process of developing a methodology to measure income tax evasion, which is expected to be published at the end of 2024.

631. The table below indicates the level of access tax crime investigators within UIPT have various databases held by other government agencies. Discretionary access on request means the Registrar has discretion to provide specific information upon request of UIPT but is not required to do so. Full direct access means that UIPT can access the database in full, directly (i.e. without the need to request access).

Table 15.6. Data bases/sources of information available to tax crime investigators

Type of Register	Type of Access
Company formation/ ownership	Direct Access
Real Estate (i.e. Immovable property & land)	Discretionary access on request DGIT has agreements for data verification with both the National Registry Center (CNR) and the National Civil Registry (RNPN), which are conducted through granted access to specific users.
Registry of citizens	Discretionary access on request DGIT has agreements for data verification with both the National Registry Center (CNR) and the National Civil Registry (RNPN), which are conducted through granted access to specific users.
Legal Entities and arrangements (other than trusts/fiduciary arrangements) (e.g. public limited/traded companies, limited liability companies, general partnerships, limited partnerships, non-profit organisations etc.)	Discretionary access on request
Trusts/fiduciary arrangements	Discretionary access on request
Bank Accounts	Discretionary access on request
Financial Assets (e.g. cash or cash equivalents, bonds, fixed deposits, equity shares, mutual funds, exchange traded funds, insurance contracts, derivatives, employment benefit schemes etc)	Discretionary access on request
Motor Vehicles	Discretionary access on request
High value goods/assets (e.g. aircrafts, boats/ships, artworks, precious metals and stones etc.)	Discretionary access on request
Register of persons subject to AML/CFT sanctions under domestic legislation	Discretionary access on request

Training for tax crime investigators

632. Tax inspectors in El Salvador undergo training on money laundering, tax intelligence, asset recovery, crimes against the public treasury, international taxation, and financial analysis. Training sessions last one or two days per year, and instructors are members of the tax authority and of the prosecution service.

633. Through inter-agency collaboration between the Ministry of Finance and the OGPR, the latter has participated in educational programs on tax matters. These programs have emphasized the application of the principle of prejudice and the understanding of tax fraud offenses.

634. Additionally, personnel from the units responsible for both audit and criminal investigations (i.e. UIPT) have taken part in a virtual course titled “Combating Fiscal Crime: 10 Global Principles,” organized by the OECD. Likewise, various courses related to Money Laundering and Terrorism Financing have been conducted.

Principle 7: Designate tax crimes as a predicate offence for money laundering

635. Tax crimes are designated as predicate offences by the *Law Against Laundering of Money and Other Assets* of 1998. El Salvador adopts a “list approach” to predicate offences under which tax evasion is specified as a predicate offence for money laundering⁸. Its definition of tax crimes as a predicate offence only covers tax offences committed within Salvadoran jurisdiction. Subsequently, both offences must take place within the jurisdiction of El Salvador; otherwise, jurisdiction may not be exercised. El Salvador does not require a conviction for the predicate offence in order to prosecute a case of money laundering.

636. El Salvador notes that since tax crimes were included as a predicate offence for money laundering, the government has had a stronger focus on fighting tax evasion. However, financial resources for the tax administration have not increased significantly and DGIT could not provide any statistics on the enforcement of money laundering predicate on tax crimes.

Principle 8: Establish effective legal, administrative, institutional, and operational frameworks for domestic inter-agency co-operation, including:

- a) reporting and information sharing by tax authorities of suspicions of tax crimes and other financial crimes, including corruption, money laundering and terrorism financing, arising out of the performance of their duties, to the appropriate domestic law enforcement authorities and, where applicable, to the Financial Intelligence Units;
- b) reporting and information sharing between all appropriate domestic authorities, including law enforcement authorities, with respect to the enforcement of tax crimes and other financial crimes within their respective mandates; and
- c) mechanisms to support enhanced forms of co-operation among tax authorities, competent authorities, and other appropriate domestic law enforcement authorities responsible for enforcing financial crimes, such as joint operations and taskforces, parallel investigations, staff secondments, co-ordination fora, and joint intelligence centres.

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

637. El Salvador has a formal referral program under which civil tax auditors are required to refer suspicions of tax crimes to OGPR. In accordance with the provisions of Article 23 of the Tax Code of El Salvador, when an auditor becomes aware of the possible commission of tax fraud in the exercise of their duties, they shall, in compliance with the principle of prejudiciality, suspend the civil/administrative process. Instead, the auditor will prepare a report for OGPR, who will determine whether to commence an investigation. If the OPGR decides not to proceed with a criminal investigation, it must record this decision in writing (CPC, art, 293) and notify DGIT so it can proceed with the civil/administrative procedure.

638. Between 2015 and 2021, the DGIT issued a total of 242 reports of suspected financial crime to OGPR, as detailed below:

Table 15.7. Reports issues by the tax authority years 2019-23

Years	2015	2019	2020	2021	2022	2023
Total number of notices sent to the prosecutor's office	30	19	73	64	40	10

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

639. The tables below set out some of the information sharing gateways that El Salvador has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation.

Table 15.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax Crime Investigation Agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(b)	Direct Access ^(a)	MSS ^(e)	MSS ^(d)	MSS
	Tax Crime Investigation Agency [UIPT]	N/A		Discretionary access on request	Mandatory access on request	Mandatory access on request	Mandatory access on request
	Customs administration	Direct Access ^(a)	Direct Access ^(a)		MSS ^(b)	MSS ^(d)	MSS
	Police or public prosecutor investigating non-tax offences	MSS ^(f)	MSS ^(e)	Discretionary access on request		MSS	Mandatory access on request
	Financial Intelligence Unit	Sharing Prohibited ^(g)	Sharing Prohibited ^(g)	Sharing Prohibited ^(g)	MSS ^(f)		MSS
	Corruption investigation authority	MSS	MSS	MSS	N/A	MSS	
	Financial regulator	MSS	MSS	MSS	MSS	MSS	MSS

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

- (a) Predicate offences are listed on Article 6 of the Salvadoran AML Law, and include the following: trading of persons, fraud, theft of vehicles, kidnapping, extortion, illegal enrichment, illegal negotiation, graft, bribery, illegal trading of weaponry, tax evasion, smuggling, perverting the course of justice, and any act of concealment and laundering of money or goods derived from criminal activities.
- (b) The tax administration has responsibility for administering tax and customs, and conducting tax crime investigations. Officials within the administration have direct access to records held by other areas.
- (c) The tax administration has an obligation to provide all relevant information to the public prosecutor working within the OGPR. Tax secrecy rules mean that the tax administration cannot share any information directly with the police.
- (d) This obligation is contained in provisions that require relevant information to be provided to the OGPR which includes public prosecutors and the FIU.
- (e) This obligation relates to information about operations and closed cases but does not cover any information directly connected to an ongoing criminal investigation.
- (f) The FIU is a structural part of the Attorney General's Office, which also includes the OGPR
- (g) Legislaton does not provide for any information to be provided by the FIU.

Table 15.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	There is a framework agreement of interinstitutional cooperation signed among the OGPR, the Ministry of Justice and Public Security, the Superintendence of the Financial System, and the Ministry of Finance. This agreement aims to combat crimes related to money laundering and assets, as well as financial and tax offenses, while also strengthening the financial system. The signing of this agreement took place on January 11, 2022. Prior to this, on May 7, 2021, another agreement was signed between the OGPR and the Ministry of Finance with the same purposes.
Disclosure of foreign trusts	Not available
Joint operations and taskforces	Joint investigations have been used in cases of national importance, including smuggling, organised crime and money laundering, demonstrating the ability of the State to prevent and fight complex financial crimes. Joint Investigation teams consists of the UIPT, Attorney General's Office (Organised Crime Unit and the Criminal Unit), and the Police Department
Parallel investigations	Not possible.
Joint intelligence centres	Not available, but El Salvador notes that it would benefit from one.
Secondments and co-location of staff	Not available.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	In some cases, the notification of the condemnatory resolutions issued in cases related to fiscal offenses is requested through a written communication to the competent court, while in other cases, the notification is automatic.
Multi-agency training	There are no specific agreements in this regard, but the Criminal Tax Investigation Unit can request assistance from entities such as the National Council of the Judiciary of the Supreme Court of Justice regarding training in specific matters and from the Office of the General Prosecution Office.

Principle 9: Ensure international co-operation mechanisms are available to competent authorities including by:

- a) ensuring access to all international legal instruments relevant to the enforcement of tax crimes and other financial crimes;
- b) having adequate operational frameworks for effective international co-operation related to the enforcement of tax crimes and other financial crimes.

640. **Legal basis:** El Salvador may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bi-lateral and multi-lateral agreements. El Salvador maintains information exchange relationships with four jurisdictions through bilateral tax treaties. Furthermore, El Salvador is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which was ratified in 2019 and became effective from January 1, 2020. Since 2008, it has been a Party to the Mutual

Assistance and Technical Cooperation Agreement between Central American Tax and Customs Administrations (in force for El Salvador since 2012). This treaty is in place to prevent double taxation and combat tax evasion regarding income and wealth taxes. Article 27 of this treaty establishes the exchange of tax information between the contracting parties.

641. Competent authority: The Financial Investigation Unit, which works within the General Prosecutors Office, is the competent authority for both incoming and outgoing MLA requests. DGIT is the competent authority for all tax information exchange agreements.

642. International co-operation in practice: El Salvador notes that the exchanging of information with other jurisdictions is still not highly developed and was not able to provide any statistics regarding the cross-border exchange of information in criminal tax matters.

Principle 10: Provide fundamental protections and rights to individuals when enforcing tax crimes and other financial crimes including by guaranteeing basic procedural and fundamental rights are in place for individuals suspected or accused of committing tax crimes or other financial crimes

Legal basis: El Salvador provides persons accused or suspected of having committed a criminal offence, including all tax offences, with various procedural and fundamental rights. These are enshrined in the Constitution of the Republic of El Salvador and in the Inter-American Convention of Human Rights, which was ratified by El Salvador in 1978.

643. In El Salvador, a civil tax matter becomes a criminal tax matter when, during their investigations, civil authorities discover conduct that generates suspicion of a tax crime and refer this to the OGPT. As outlined under Principle 8 above, the administrative process is suspended the moment the OGPR starts a criminal investigation (Tax Code art. 23).

Table 15.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times whenever there has not been a conviction.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At time of formal accusation
remain silent	Yes	Throughout the criminal process
access and consult a lawyer and/or entitlement to free legal advice	Yes	Throughout the criminal process
interpretation and translation	Yes	Throughout the criminal process
be advised of the particulars of what one is accused of	Yes	Throughout the criminal process
access documents and case material, also known as a right to full disclosure	Yes	Throughout the criminal process
a speedy trial	Yes	Throughout the criminal process
protection from ne bis in idem (Double Jeopardy)	Yes	From the beginning of the process

Highlights

Key issues for further consideration

Successful practices

- Framework agreement on inter-agency cooperation signed by the OGPR, the Ministry of Justice and Public Security, the Superintendence of the Financial System, and the Ministry of Finance to combat crimes related to money laundering and assets, as well as financial and tax offenses.

Room for improvement

- Defence of 'Absolute Excuse' which allows offenders to escape liability at any point in time by paying their outstanding debt together with any civil fines and interest.
- Absence of periodic threat assessments

16 Estonia

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

644. Tax crimes in Estonia are set out in the Penal Code of Estonia (PC). They apply to both income tax and VAT/GST, and require criminal intent (*mens rea*). Estonian tax crime offences, together with their minimum and maximum sanctions, are set out in the table below.

645. Estonia notes that the conduct will be treated as a criminal offence if the amounts involved are higher than EUR 40 000.

Table 16.1. Tax offences requiring criminal intent

Offence	Minimum sentence	Maximum sentence
Concealment of tax liability and unfounded increase of claim for refund (PC, 389.1)	Fine of EUR 300 for individuals and EUR 4 000 for legal persons	Seven years of imprisonment; confiscation of assets from legal persons and fine of up to EUR 16 million.

646. **Statute of limitations:** Tax crime offences in Estonia have a five-year limitation period. The period may be interrupted by a series of grounds, including the commencement of the prosecution, and the interrogation of the accused in court (PC, 81, section 5-6).

647. **Complicity:** The Penal Code of Estonia provides that sanctions for aiders and abettors shall not exceed two thirds of the maximum statutory sanction for the offence (PC, 60).

648. **Attempt and conspiracy:** Attempt and conspiracy to commit a tax crime are not a criminal offence in Estonia (PC, 22).

649. **Professional enablers:** Estonia does not have a separate penalty regime for professional enablers but they may be held liable for the above listed offences either as primary or secondary offenders (e.g. by committing the offence directly or through counselling another).

650. **Territorial and nationality jurisdiction:** Estonia has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Estonia. Estonian citizens and residents can be prosecuted for tax crimes committed outside of Estonian territory, provided the act damaged the Estonian state budget (PC, 11.1.3).

651. **Liability of legal persons:** Legal entities may be held criminally liable in Estonia. Sanctions for legal persons include fines.

Enforcement of tax crime

Table 16.2. Enforcement of tax crimes in tax years ending 2015-19

Tax years ending	Number of criminal tax investigations	Number of criminal prosecutions of natural persons	Number of criminal prosecutions of legal persons	Number of criminal convictions of natural persons	Number of criminal convictions of legal persons	Number of acquittals of natural persons	Offenders that received prison sentences
2015	68	81	7	43	12	0	18
2016	45	63	5	30	7	2	6
2017	33	37	4	40	2	0	0
2018	43	127	9	24	3	0	19
2019	47	120	7	44	3	2	30

Table 16.3. List of sanctions imposed in tax years ending 2015-19

Sanction	Number of times imposed
>0 – 3 years' imprisonment	39
>3 – 5 years imprisonment	4
Fines	14

652. **Availability of settlements:** A court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused and the prosecutor's office. The accused must agree on the nature of the prosecution and the nature of the crime, the nature and extent of the damage caused by the crime, and on the type of punishment required by the prosecutor in court and the ruling. The tax administration (ETCB), acting as the damaged party, has to agree with the settlement.

653. The prosecution may also terminate the case if the monetary values involved were deemed negligible and the accused has remedied the damage (Code of Criminal Procedure, 202). Estonia notes that it makes active use of this procedure in small-value cases.

654. **Availability of tax deductions for civil and criminal sanctions:** Sanctions are non-deductible from tax in Estonia.

655. **Tax gap:** The European Union estimated Estonia's VAT gap at 7% of the total VAT liability in 2018 (Center for Social and Economic Research, 2018^[71]).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

656. In Estonia, the Estonian Tax and Customs Board (ETCB) is responsible for pre-trial investigations of criminal matters involving tax and customs. The Estonian Ministry of Justice is leading the development of national crime policy and currently focuses on the prevention of organised crime. Enhanced attention is paid to the prevention of and responding to economic crime. The strategy of the ETCB in criminal tax matters focuses on providing assurances to business that their tax and customs affairs are in order and

ensuring an equal competitive business environment. The main performance metric used as part of this strategy is the share of the underground economy of tax receipts.

657. The ETCB launched several action plans related to tax crime investigation. First, the ETCB works to map the tax environment annually and estimate criminal risks based on historical data. Secondly, it works to further develop methods of collection and analysis of operational information and to ensure that modern technological resources are available to tax crime investigators. Thirdly, the ETCB participates in international groups for co-operation on crime and promote cross-border operational information sharing. Lastly, it develops its own operational capabilities to detect the proceeds of crime.

658. **Threat assessment:** The investigation department of the ETCB compiles an annual threat assessment describing known members of organised crime groups involved in tax crimes and their *modus operandi*. The threat assessment is primarily based on the intelligence that ETCB officers collected, while carrying out their duties. It also includes data mining analysis. ETCB also has set a 24-hour free hotline for whistle-blowers, whose tips are then incorporated into the threat assessment.

659. **Communications strategy:** The ETCB's communication department undertakes a series of programmes targeting young people in order to improve tax compliance. These include on-sight visits to seminars, conferences, and social media campaigns. Media coverage of successfully executed tax crime proceedings may only be issued with the permission of the Prosecutor's Office.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers
to successfully investigate tax crimes

660. The below table shows the power of the investigative tax crime investigation agency of Estonia.

Table 16.4. Investigative powers of tax crime investigation agency (Estonian Tax and Customs Board)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Court order required
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Indirect powers via another agency The Estonian police conducts interception of mail and telecommunications at the request of the ETCB. Court order is required.
Conduct covert surveillance	Full direct power Prosecutor order required.
Conduct undercover operations	Indirect powers via another agency The Estonian police conducts undercover operations at the request of the ETCB
Search and seize computer hardware, software and electronic storage media	Full direct power/Indirect power If this is conducted covertly, there should be a Court's permit. If the IT hardware has been seized in the course of the search of premises, the examination of its contents is permitted without a court order.
Arrest	Full direct power Court order required

661. **Need for additional powers:** The Investigation Department of the ETCB does not have the right to carry out covert interception, covert examination of postal deliveries, or to recreate a crime scene. Execution of such measures is requested by ETCB to either the Police and Border Guard Board (PBGB) or the Security Police (SP). ETCB notes that it would benefit from the possibility of conducting these procedures independently, without having to rely on the financial or human resources of other agencies.

662. **Legal professional privilege:** Legal professional privilege is prescribed in article 72 of the Code of Criminal Procedure of Estonia and covers the prohibition of lawyers give testimony on circumstances they have been made aware of due to their profession. This privilege is not extended to accountants or tax advisors in Estonia.

Principle 4: Freezing, seizing and confiscating assets

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

663. **Legal basis:** The Investigations Department of the Estonian Tax and Customs Board (ETCB), in co-operation with the Public Prosecutor's Office and the courts, is in charge of freezing, seizing or confiscating assets. The table below outlines the powers available to criminal investigators from the ETCB. Estonia notes that in 2015-19, over EUR 10 million worth of assets were seized in connection with criminal tax matters.

664. **Freezing and seizing orders:** Rapid freezing of assets (within 24 to 48 hours) are allowed under Estonian law. To proceed, ETCB must request an order from the prosecutor (art. 142 of the Code of Criminal Procedure).

665. **Confiscation orders:** Non-conviction based confiscations are allowed in Estonia on a prosecutor's order. Third-party confiscations may proceed under court orders, when the assets were acquired from the offender as a donation, for a price that is substantially lower than market price, or if the third person knew the assets were being transferred to avoid confiscation. Similarly, extended confiscations and value-based confiscations may be allowed by the courts on a case-by-case basis (arts. 83-84 of the Penal Code).

666. **Foreign freezing, seizure, and confiscation orders:** Estonia applies seizing and confiscation powers in respect to foreign tax investigations and judgments if such a confiscation or seizure is permitted and confirmed by the relevant national court.

667. **Agency/unit responsible for asset recovery:** ETCB is the agency responsible for asset recovery in Estonia.

Principle 5: Organisational structure with defined responsibilities

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

668. The Investigations Department (ID) of the Estonian Tax and Customs Board (ETCB) is the main department responsible for investigating tax crime in Estonia. Its role is to conduct operations aimed at avoidance, prevention and detection of criminal offences related to the violation of taxation laws and customs rule, conducting, if needed, surveillance activities for this on the basis of and pursuant to the procedure established by law. Furthermore, it conducts pre-trial investigation of criminal offences related to taxation and customs issues, operating under the direction of the Public Prosecutor's Office to ensure

the legality of all procedures. The ID has access to all tax administrative databases to facilitate its ability to proactively investigate criminal tax offences.

669. The Public Prosecutor's office directs all pre-trial criminal proceedings, ensuring the legality and effectiveness thereof. Its officers represent public prosecution in court, participate in planning surveillance activities necessary for the ID's prevention and detection operations, as well as performing other related duties set out by the law. The Public Prosecutor's Office guides investigative authorities in gathering evidence and decides whether to bring charges against a suspect or not.

670. The Estonian Financial Intelligence Unit (FIU) is an independent structural unit of the Estonian Police and Border Guard Board. The FIU primarily focuses on the analysis and verification of information related to money laundering and terrorist financing, immediately forwarding its findings to competent authorities upon the detection of any criminal offence. In Estonia, all persons who suspect that a transaction may be connected with either money laundering or terrorist financing are encouraged to notify the FIU. Since 2008, it is possible to send an electronic notification directly to the FIU through their website.

671. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Estonia's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).³

Agencies responsible for investigation and prosecution of tax crimes

Table 16.5. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Estonian Tax and Customs Board	Responsible for the administration of state revenues, implementation of national taxation and customs policies and protection of the society and legal economic activities; responsibility for administering direct and indirect taxes and excise duties. Customs crime investigations are conducted by the tax and custom's administration's Investigations Department under the direction of the Public Prosecutor's Office.
Investigations Department (within the Tax and Customs Board)	Investigates the avoidance, prevention and detection of criminal offences related to violation of taxation laws and customs rules; and investigates before the trial criminal offences related to violations of taxation laws and customs rules
Tax and custom's administration's Investigations Department	Conducts customs crime investigations
Estonian Police and Border Guard Board	Responsible for the investigation and prevention of offences.
Public Prosecutor's Office	Directs pre-trial criminal proceedings, guides investigative bodies in gathering evidence and, according to identified circumstances, decides on bringing charges against a person.
Estonian Financial Intelligence Unit (FIU)	Analyses and verifies information about suspicions of money laundering or terrorist financing, takes measures for preservation of property where necessary and immediately forwards materials to the competent authorities upon detection of elements of a criminal offence.
Financial Supervision Authority (FSA)	Conducts supervision in the name of the state and is independent in its activities and decisions
Internal Security Service (housed within Public Prosecutor's Office)	Responsible for investigating corruption crimes of high ranking officials and for managing a hotline for reporting cases of corruption.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

672. The tax crime investigation budget for the Investigation Department (ID) of the Estonian Tax and Customs Board (ETCB) is allocated annually and usually consists of roughly EUR 3 million. The budget is not based on any performance metrics. As of 2019, there are 92 full time investigators employed with the ID of ETCB and 10 prosecutors.

Table 16.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	No Access
Car registry	Direct Access
Boat registry	Direct Access

Training for tax crime investigators

673. Every year, Estonian tax crime investigators undergo several days' worth of training in areas related to criminal justice. The focus is on specialised financial crime training, such as criminal asset recovery, and on procedural law enforcement training, such as conducting house searches, arresting individuals and handling digital evidence. The yearly training budget is of EUR 12 000.

Principle 7: Predicate offences

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

674. **Approach:** Since 2017, Estonia employs an “all crimes” approach to money laundering, meaning that it is a criminal offence to launder the proceeds of *any* offence (art. 4(5) of the Money Laundering and Terrorism Financing Prevention Act of 2017). Estonia does not require jurisdiction over the predicate offence in order to launch a money laundering prosecution. This means that if the tax crime is committed by a foreign citizen in a foreign jurisdiction (meaning there is no national or territorial jurisdiction over the predicate offence), but the money is laundered through Estonia, a prosecution can be brought against the suspect in this case.

675. **Enforcement of money laundering predicated on tax crimes:** Estonia notes that a common predicate offence arises, when an individual files an unfounded claim for a tax return and then uses the proceeds of that offence in a subsequent money laundering operation. Since tax crimes were included as a predicate offence to money laundering, Estonia observes better inter-agency co-operation between the

Investigation Department (ID) of the Estonian Tax and Customs Board (ETCB) and the national anti-money laundering unit of Estonian Police.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

676. In Estonia, a civil tax matter becomes a criminal tax matter if a tax liability or obligation to withhold is concealed, or an unfounded claim for return is increased by an amount corresponding to, or exceeding EUR 40 000 (major damages). It is possible for a civil tax audit to be conducted in parallel with a criminal investigation, however, no evidence collected through the civil tax audit is admissible for the purpose of the criminal investigation.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

677. In 2017, a co-operation agreement was concluded between the Estonian Tax and Customs Board (ETCB) and Estonian Police and Border Guard Board (EPBGB) about information exchange, the use of a common intelligence database and sharing of technical resources. This database contains information on individuals (such as their employer's details, their salary and taxable income, and their tax position) and companies (including their employees' details, their tax position and VAT returns). In practice, this agreement affirms that the two law enforcement authorities will notify each other of crimes they identified, if the pre-trial procedures are under the jurisdiction of the other party (e.g. if the Police comes across a criminal tax offence, it will notify the Head of the Investigation Department (ID) of ETCB and vice versa for relevant crimes). Furthermore, the two agencies co-operate on identifying and pursuing any misuse of databases or abuse of power of officials in the two agencies.

Table 16.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	Direct Access ^(b)	Direct Access ^(b)	Direct Access ^(c)	Direct Access ^(c)
	Customs administration	Direct Access ^(b)	Direct Access ^(b)		Direct Access	DSS	Direct Access
	Police or public prosecutor	Direct Access ^(c)	Direct Access ^(c)	Direct Access ^(c)		Direct Access ^(c)	Direct Access ^(d)
	Financial Intelligence Unit	Sharing Prohibited ^(e)	DSS	DSS	MSS		MSS
	Corruption investigation authority	Direct Access ^(c)	Direct Access ^(c)	Direct Access ^(c)	Direct Access ^(e)	Direct Access ^(d)	

Financial regulator	MSS	MSS	MSS	MSS	MSS	MSS
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Note:

DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

(a) Tax administration, tax crime investigation and customs administration are all divisions of the Estonian Tax and Customs Board, and share access to information.

(b) The State Tax and Customs Board and police share access to a common intelligence database. As the FIU is part of the police authority, it can also access tax information through this database.

(c) The FIU is part of the police authority and has direct access to police information.

(d) Corruption investigations are conducted by the Estonian Police and Border Guard Board.

(e) The FIU may only provide information where there are suspicions of possible tax offences. Where there is a suspicion of a possible offence and information is shared with the tax administration, the information may also be used, with the consent of the public prosecutor, for the purposes of assessing taxes.

Table 16.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	A co-operation agreement exists between the Estonian Tax and Customs Board and Estonian Police and Border Guard board about information exchange, the use of the common intelligence database and sharing of technical resources. This database contains information on individuals and companies.
Disclosure of foreign trusts	Yes.
Joint operations and taskforces	Yes, between ETCB and the Police.
Parallel investigations	Yes. ETCB and the Police can conduct parallel investigations.
Joint intelligence centres	No, but information-sharing between agencies is very common.
Secondments and co-location of staff	ETCB has seconded an offer to Europol.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. If there is a reason to suspect tax fraud, checks are conducted to ensure taxes had been paid correctly.
Multi-agency training	Yes

Principle 9: International co-operation

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.

678. **Legal basis:** Estonia may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Estonia has exchange of information relationships with over 60 jurisdictions through bilateral tax treaties. Estonia has no Tax Information Exchange Agreements in place.⁴ Estonia is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows exchanging information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

679. **International co-operation in practice:** In 2015-19, Estonia's criminal tax investigators sent out a total of 139 requests for assistance to foreign jurisdictions under the framework of Mutual Legal Assistance Treaties (MLAT). Estonia notes that 95% of the requests they sent under the Exchange of Information Agreements (EOI) and 90% of requests sent under the MLAT framework were answered by the counterpart jurisdictions. The average time it took to receive a response to their requests was 5 days for EOI requests and 61 days for MLAT requests.

680. In the same time period, Estonia received 882 requests from foreign tax crime investigators under the framework of Exchange of Information Agreements (EOI) and 280 under the framework of MLAT. Estonia notes that it can only exchange sensitive intelligence with another foreign agency responsible for tax crime investigations via accredited and secure channels.

681. **Enhanced form of international co-operation:** Estonia is allowed to execute foreign seize and freezing orders pursuant to bilateral treaties or domestic legislation.

Principle 10: Fundamental rights of a suspect or accused person

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

682. Estonia provides persons accused of committing or suspected of having committed a tax crime with a full range of rights. These are enshrined in several pieces of legislation, most notably the *Constitution of the Republic of Estonia*.

Table 16.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	From the beginning of the investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From the beginning of the investigation
remain silent	Yes	From the beginning of the investigation
access and consult a lawyer and/or entitlement to free legal advice	Yes	From the beginning of the investigation
interpretation and translation	Yes	From the beginning of the investigation
be advised of the particulars of what one is accused of	Yes	From the beginning of the investigation
access documents and case material, also known as a right to full disclosure	Yes	Once the preliminary investigation has been completed
a speedy trial	Yes	If the circumstances of the offence are clear, the Prosecutor's Office may request a decision under the expedited procedure that should take place within 48 hours of being interrogated as a suspect (Penal Code, 389)
protection from ne bis in idem (Double Jeopardy)	Yes	From the beginning of the investigation

Highlights

Successful practices

- Robust tax crime strategy
- Threat assessment periodically updated using various sources of information
- Adequate legal framework for asset recovery

Room for improvement

- Estonia could benefit from setting up a joint intelligence centre between ETCB, the FIU and the Public Prosecution Service.

References

Center for Social and Economic Research (2018), *Study and Reports on the VAT Gap in the EU-28 Member States: 2018 Final Report*, European Commission, https://ec.europa.eu/taxation_customs/sites/taxation/files/2018_vat_gap_report_en.pdf.

Notes

¹ In March 2022, EUR 1 = DKK 7.44

² See Rome Report, Chapter 5 – Country Information – Denmark. Available at [Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition \(oecd.org\)](https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition/).

³ See Rome Report, Chapter 5 – Country Information – Estonia. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁴ See <http://www.eoi-tax.org> for up-to-date figures.

17 Finland (NEW)

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

683. Tax crime in Finland is criminalised according to the Finnish Penal Code (hereinafter “FPC”). Tax fraud (FPC, chapter 29, s 1) is defined as giving a tax authority false information on a fact that influences the assessment of tax; filing a tax return concealing a fact that influences the assessment of tax, for the purpose of avoiding tax; failing to observe a statutory duty pertaining to taxation that is of significance in the assessment of tax, or otherwise acting fraudulently.

684. Aggravated tax fraud is tax fraud where a considerable financial benefit is sought, or the offence is committed in a particularly methodical manner and the tax fraud is aggravated when assessed as a whole (FPC, ch 29 s 2). A considerable financial benefit as evaluated in court praxis (not in written law) corresponds to taxes exceeding EUR 20 000. The FPC also provides for the sanctioning of petty tax fraud which covers tax fraud that when assessed as a whole, with due consideration to the amount of financial benefit sought and the other circumstances connected with the offence, is to be deemed petty (FPC, ch 29 s 3).

685. All these offences require criminal intent (*mens rea*). Several different taxes (e.g. VAT, income tax, withheld taxes for employers, etc.) and several tax periods can be combined as one offence. The table below sets out the minimum and maximum sanctions as well as the statute of limitations for each of these offences.

Table 17.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Tax fraud (ch 29 s 1 FPC)	Fine of maximum 120 fine units*	Two years' imprisonment	Five years
Aggravated tax fraud (ch 29 s 2 FPC)	Natural persons: Four months' imprisonment Legal persons: Fine of EUR 850 000	Natural persons: Four years' imprisonment Legal persons: Fine of EUR 850 000	Ten years
Petty tax fraud (ch 29 s 3 FPC)	Fine	Fine of max 120 fine units	Two years

Note:

* Day fine, the amount of which is set so that it is reasonable in view of the solvency of the person fined based on the person's income and basic consumption (ch 2a FPC). The amount of one day fine for a person with average income is EUR 54.

686. For the above sanctions, conditional imprisonment is possible if the perpetrator is sentenced to a maximum of two years' imprisonment and community service is possible with prison sentences of up to eight months.

687. **Statute of limitations:** The statute of limitation starts running from the date on which the offence was committed (FPC, chapter 8). Each statute of limitation period listed in the table above may be extended by one year upon application of the case to the courts.

688. **Complicity:** Chapter 4 of the FPC covers all aiding and abetting of tax crimes.

689. **Attempt and conspiracy:** Attempt is punishable if mentioned specifically in the provision dealing with each crime (chapter 5, section 1 of Criminal Code). Attempt is punishable as regards tax crimes (chapter 29, section 1 of Criminal Code). Conspiracy in tax crime (planning of a tax crime) is not punishable.

690. **Professional enablers:** As above, the FPC covers all aiding and abetting. There are no specific penalties for professional enablers.

691. **Territorial and nationality jurisdiction:** According to chapter 1 of the FPC, Finland's criminal law applies to offences, including tax crimes, which are:

- committed in Finland (sec. 1)
- committed outside of Finland and directed at Finland, e.g. at the Finnish authority (sec. 3) or a Finnish person (sec.5)
- committed outside of Finland by a Finnish person (i.e. a person permanently resident of Finland at the time of the offence or at the beginning of court proceedings) if the offence is punishable under Finnish law and punishable by imprisonment for more than six months (sec. 6)
- committed outside of Finland where criminal liability of the act is based on an international agreement binding Finland (sec. 7).¹

692. Partial connection is established by these sections. No questions have risen concerning partial connection so far even in tax crimes committed in part in Finland and in part in another jurisdiction.

693. The provisions apply to natural and legal persons alike. If Finnish law applies to the offence, it also applies to the determination of corporate criminal liability (FPC, chapter 1 section 9). A legal person can be taxable in Finland based on registration or location of its business and management.

694. **Legal persons:** Legislation on corporate criminal liability is included in chapter 9 of the FPC. Legal persons in Finland can be held criminally liable for tax fraud and aggravated tax fraud related to VAT (FPC, chapter 29 section 10). Corporate fines are imposed as a lump sum of at least EUR 850 and a maximum of EUR 850 000.

Enforcement of tax crime

695. The tables below show the enforcement of tax crimes in Finland in tax years ending 2018-21, and the list of sanctions imposed over the same period.

Table 17.2. Enforcement of tax crimes in the tax years ending 2018-21

Tax years ending	Total number of criminal tax investigations	Total number of criminal prosecutions (in terms of cases) ¹	Number of criminal convictions ²	Number of acquittals (in terms of cases) ¹	Total number of fines imposed for tax crimes	Amount of underlying tax evaded (in EUR) ³
2018	1 792	336	454	154	268	N/A ⁴
2019	1 924	340	480	105	274	35 901 000

2020	1 535	339	390	87	220	37 375 000
2021	1 111	309	478	119	261	47 118 000

Note:

1. Source: SAKARI-statistics which is used by prosecutors
2. Source: Statistics Finland
3. Source: Tax Administration, Gentax
4. Gentax was not yet in use in criminal cases; amount of underlying tax evaded appr. same as following years (appr. EUR 40 000 000).

Table 17.3. List of other sanctions imposed on natural persons in tax years ending 2018-21

Sanction	Number of times imposed
>0 – 3 years' imprisonment	778 (742 conditional)
>3 – 5 years imprisonment	2
Business prohibition orders	793
Community Service	12

696. **Availability of tax deductions for civil and criminal sanctions:** Finland does not provide for tax deductions or corrections for civil or criminal sanctions imposed in tax crime cases.

697. **Availability of settlements:** While a plea of guilt is possible in Finland, plea bargaining is not possible. However, the prosecutor can, after negotiation with the offender, make a proposal of judgement to the court. A negotiation in which the offender pleads guilty can include waiving prosecution concerning other offences by the same offender. Waiving prosecution is possible only if no public or private interest requires prosecution, according to the Criminal Procedure Act (hereinafter “CPA”) chapter 1 sections 10 and 10a. A plea of guilt can result in the reduction of the punishment. These provisions do not apply to legal persons.

698. **Tax gap:** The Finnish Tax Administration (hereinafter “FTA”) produces an annual estimation of the VAT tax gap. Until 2019 this estimation was based on the IMF-method, where the calculation is founded on the national authorities' statistics on the national economy and tax data. Since 2019 the tax gap is estimated using a new method developed by the FTA, the calculation of which is based on the results of administrative tax audits. In 2019 both methods produced the same outcome, establishing a 3 % VAT tax gap. The VAT tax gap was 2,8 % in 2020 and 2,7 % in 2021. These are reported as whole numbers, so the gap has remained the same.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

699. **Tax crime strategy:** The Finnish Government published a Resolution on a National Strategy for Tackling the Shadow Economy and Economic Crime for 2020–2023. Strategies have continuously been produced since 1996. The Ministry of the Interior is responsible for the preparation of the current strategy and action plan, while the Ministry of Economic Affairs and Employment is responsible for its realisation.²

700. There are four main strategical focus points in the national strategy, which are:

- promoting healthy competition between companies and a fair labour market;
- preventing the grey economy and economic crime;

- ensuring the ability of authorities to combat the grey economy and economic crime; and
- developing measures to combat the grey economy and economic crime and improving co-operation between authorities.

701. The action plan includes about 60 different actions, many of them focused on tax crimes, for example:

- Tax number for the shipyard sector,
- Communication campaign for young people and immigrants about their tax duties (Happy taxpayer project),
- Asset recovery in cross-border situations,
- Wider utilisation of criminal background information in administrative controls in combatting economic criminality,
- Modelling of multi-agency supervision,
- Initiation of research related to aggressive tax planning,
- Misuse of identities,
- Insurance wrapper control project,
- Increasing publicity of taxation information in those situations when changes are made.

702. Each project has its own responsible bodies. Generally, the following authorities are involved: the FTA, the police, the customs authority, the Regional State Administrative Agency, the Finnish Centre for Pensions, the National Prosecution Authority, the Ministries of Finance, Justice, Interior, Economic Affairs and Employment, Social Affairs and Health, Environment and Education. The private sector and NGOs are not involved in devising the strategy but may co-operate in different actions of the plan.

703. Regular monitoring of the progress of the action plan as a whole and of the separate actions takes place with reporting three times a year. Both the Ministry of the Interior and the Ministry of Economic Affairs and Employment supervise the progression. In 2024, impacts of the current strategy and action plan will be evaluated.

704. **Threat assessment:** The FTA prepares a steering and control plan part of which has an annual focus on tackling of the shadow economy. This plan defines the priorities of the control, the most significant risks and the measures to combat them. Resources and schedules are also determined on this basis. Although there is no threat assessment specifically for tax crimes, the plan focuses on prolonged known risks, current and new tax risks and phenomena. It includes tools and methods for tackling each selected risk.

705. The FTA also has plans to create specific threat assessments for the shadow economy and is currently devising such an assessment every two years with other Nordic countries' tax administrations (Nordic Threat Assessment). In addition, there have been two common operational environment analyses with other Finnish agencies³ tackling the shadow economy and economic crimes, in the years 2021 and 2022. This co-operation with other Finnish agencies is expected to continue in the future. The products are primarily intended for decision-makers and the media.

706. The methodology in preparing the steering and control plan consists of an analysis made by risk experts and based on statistical analysis, using tax data, different kinds of comparative data from third parties, data from national and international sources and tips and impulse data from other agencies. Scenarios were formed based on the futures table method, meaning that after the most relevant phenomena from the horizon scanning were brought in as main drivers, the potential future developments were analysed for each driver. Finally, paths for the scenarios were chosen and scenario narratives were formed. No other agencies are consulted in the conception phase of the steering and control plan, but in

its implementation, there is continued co-operation with other agencies involved in tackling the shadow economy and economic crime.

707. The FTA's risk management is very successful regarding tax fraud targets. The surety to aim in tax audit cases was 94 % in 2021 (taxation measures) and 86 % of cases were advanced to crime report consideration.

708. **Communication strategy:** The FTA has comprehensive guidance on its work on its website.⁴ The government does not communicate successful prosecutions of tax crimes to the public. However, in some cases, Law Enforcement agencies (police or customs authority) have already provided information on successful investigations. It is also worth mentioning that in principle, criminal verdicts are public.

Box 17.1. Example of successful implementation of tax crime strategy: Finland

One of the main topics in FTA's shadow economy part of the steering and control plan are VAT-frauds. After noticing in late 2016 that Finland's VAT control systems were insufficient to tackle the bluntest type of VAT fraud, spotting fraudulent negative VAT returns, Finland introduced a pre-fraud control mechanism. The basic idea was to fit and match a fraud proof VAT control into the weekly VAT refund payment cycle, and to do so without severely disrupting the legal flow of money.

Normal VAT controls focused on misconducts that take place on average 10 weeks after the VAT return has been filed. As the normal refund cycle runs twice a week, this type of retrospective control was insufficient to stop the fraud. Authorities were forced to watch as the fraud took place and negative VAT was refunded on false grounds. Therefore, anti-VAT-fraud function was implemented to spot the fraudulent returns using advanced analytics ahead of the normal VAT control selection. This enabled to avoid the normal ten weeks control queue and to deviate from the mass processing of VAT returns, therefore, to focus on most relevant returns to prevent fraud.

To ensure the effective implementation of this measure, all relevant parties of the FTA had to be involved, given that it was necessary to adapt more processes than the normal VAT control. In this project, the FTA's Anti-Fraud Unit coordinated the role of all parties involved.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 17.4. Investigative powers of tax crime investigation agency

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct powers
Obtain documents from third parties	Full direct powers
Interview	Full direct powers
Inquiry powers (e.g. power of coercion)	Full direct powers
Intercept mail and telecommunications	Full direct powers
Conduct covert surveillance	Full direct powers

	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.
Conduct undercover operations	Full direct powers Undercover operations are limited to only serious crimes. Regarding tax crimes, undercover operations can only be conducted in case of aggravated tax fraud. Also, the other prerequisites listed in the Coercive Measures Act must be met.
Search and seize computer hardware, software and electronic storage media	Full direct powers
Arrest	Full direct powers

709. **Need for additional powers:** The Tax Administration needs more investigative powers (administrative coercion measures) to be able to get hold of the material that an uncooperative taxable person or a third party is possessing. This aims also to ease the lack of police resources, and such a project is underway in Finland.

710. Data protection challenges have also been encountered about some data access legislation. This problem is related to the fact that the legislation has become outdated.

711. **Legal professional privilege:** Pursuant to section 5(c) of the Advocates Act, an attorney may not disclose without consent or unlawfully disclose a secret of an individual or their family or a business or professional secret of which the attorney has become aware of in the course of his professional activity. This provision imposes an obligation on attorneys to maintain secrecy in relation to information they may become aware of as part of their legal profession and not in relation to other activities the attorney might conduct (e.g. company formation, etc.).

712. Furthermore, the Code on Judicial Procedure provides for a list of persons that may not give evidence in a court procedure (chapter 17, section 13). The list includes an attorney or counsel, in respect of information the client has entrusted to them for the pursuit of a case, unless the client gives consents for them to testify. More specifically, this provision states that an attorney or trial counsel or interpreter may not, without permission, testify regarding what they have learned: (1) in carrying out a function related to legal proceedings, (2) in providing legal counsel regarding the legal status of the client in a criminal investigation or in other procedure in advance of legal proceedings and (3) in providing legal counsel regarding the initiation or the avoidance of legal proceedings. The court may oblige a person referred to in ss 1 other than an attorney or legal counsel or interpreter of a defendant in a criminal case to testify if the prosecutor has brought charges for an offence for which the maximum sentence is imprisonment for at least six years.

713. An advocate or a licensed legal counsel referred to in the Licensed Legal Counsel Act or a public legal aid may not, without permission, testify regarding a personal or family secret or a commercial or professional secret that they had learned in a function other than that referred to in ss 1. Nonetheless, the court may oblige them to testify if the prosecutor has brought charges for an offence for which the maximum sentence is imprisonment for at least six years, or if very important reasons, taking into consideration the nature of the case, the significance of the evidence in respect of deciding the case, and the consequences of presenting it as well as the other circumstances, require testifying.

714. On the administrative investigation side, the powers of the FTA to access information under s 19 of the Act on Assessment Procedure generally prevail over secrecy provisions including provisions on professional secrecy.

Principle 4: Freezing, seizing and confiscating assets

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

715. **Legal basis:** Police and Customs as criminal investigating authorities are responsible for freezing assets according to Criminal Investigation Act, Coercive Measures Act (chapters 6 and 7) and FPC (Chapter 10).

716. **Freezing and seizing orders:** Finland permits the rapid (between 24 and 48 hours) freezing of assets in cases of suspected aggravated tax fraud, i.e. when there are grounds to suspect a crime and a danger exists that a person will seek to evade payment or compensation or will hide property (Coercive Measures Act, chapter 6, section 1). In this case an investigation authority or prosecutor may give an interim order, which must then be submitted to a court decision.

717. **Confiscation orders:** Non-conviction based confiscations are possible in Finland. It is sufficient that the court is satisfied that the origin of property is illegal and a crime has been committed (FPC, ch10 s 1(3)).

718. Extended confiscations are limited to serious crimes as defined by the FPC (ch10, s3). Regarding tax crimes, extended confiscations can only be used in cases of aggravated tax fraud. The confiscation of proceeds of crime (FPC, ch10 s2) are usually value-based. There is a specific section for forfeiture of value (FPC, ch10 s8) which applies to instruments of crime.

719. Property transferred to a third party in order to avoid payment of forfeiture or restitution may be ordered forfeit if third party knew or had justifiable reason to believe that transfer was aimed to avoid payment of forfeiture or restitution, or if he or she has received it as a gift or otherwise free of charge.

720. Furthermore, an instrument of crime and certain other property (that can be forfeited according to the Finnish Penal Code) may be ordered forfeit from a person to whom it has been conveyed after the commission of the offence if, when receiving it, he or she knew or had justifiable reason to believe that the object or property was linked to an offence, or if he or she has received it as a gift or otherwise free of charge.

721. **Foreign freezing, seizure, and confiscation orders:** The request may have its legal basis in a treaty or EU Regulation (EU 2018/1805). In absence of a treaty/EU Regulation, the legal basis is in the Act on International Assistance in Criminal Matters (mutual legal assistance in pre-trial investigation phase).

722. **Agency / unit responsible for asset recovery:** The police and the customs authority as criminal investigating authorities are responsible for applying to the courts for orders to freeze, seize, and confiscate assets (Criminal Investigation Act; Coercive Measures Act, chapters 6 and 7).

Table 17.5. Total value of assets recovered

	Total value of assets seized in connection with economic crimes* (in EUR million)
2018	27.4
2019	31.7
2020	24.9
2021	40.4

Note:

* The following crime profit figures include the amounts of property secured by coercive means in economic crimes in general (pre-trial investigation phase). Criminal proceeds in Finland includes property secured on the basis of forfeiture or damages.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

723. The Investigation and prosecution of tax crimes in Finland are handled by specialised financial crime units with the Police and Prosecution Service respectively. The table below provides a high-level overview of the agencies in Finland responsible for combatting tax crimes and other financial crimes.

Table 17.6. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Finnish Administration (FTA) Tax	The FTA is the civil tax administration and does not have any criminal investigation function, but it has the duty to report certain crimes which it observes in the context of fiscal supervision. There are also joint and simultaneous investigations with police and customs.
Customs Administration	The tasks of the customs administration are customs clearance and taxation, control of foreign traffic, prevention of customs offences, foreign trade statistics and customs laboratory examination. The customs administration is a pre-trial investigation authority regarding so called customs-offences, e.g. offences related to import, export and transit. The customs administration directs and conducts the investigations into these cases.
Police	<p>There are 11 local police units in Finland, each of which has a financial crime investigation unit. In addition, the Central Crime Police (NBI), which is a national operator, has its own economic crime prevention line and financial crime investigators are also placed in regional units so that economic crime prevention achieves nationwide coverage. The above-mentioned entities co-operate with each other, sharing, for example, the investigation responsibility for larger criminal entities, if it is considered appropriate.</p> <p>Economic crime intelligence and the special areas of responsibility related to the recovery of the proceeds of crime and corruption are centralized in the NBI, where coordinators are operating nationwide. In addition, some police units have separate units related to economic crime intelligence and criminal benefit officers, with the help of which the aim is to create a national network. The investigation arrangements for demanding frauds differ and partly depend on the nature of the fraud crimes, business-related frauds are most commonly investigated in financial crime units. Fraud related to information networks and other online crime may be most commonly investigated, either in own investigation units or, for example, in multidisciplinary investigation units.</p> <p>As far as the police is concerned, the fight against corruption is carried out by national units (NBI corruption coordinator and PolAmk (Police University College) related investigation). In addition, the police units have a national network, which also includes other authorities.</p> <p>Police units have different structures in investigative models, but one of the most typical investigative units is the economic crime unit. However, it should be noted that the number of corruption crimes is small, and it is difficult to reveal, investigate and prove them.</p>
National Prosecution Authority	<p>The National Prosecution Authority consists of the Office of the Prosecutor General and five Prosecution Districts (Northern Finland, Eastern Finland, Southern Finland, Western Finland and Åland). All prosecutors are competent to prosecute cases in all courts across the country. There is a nationwide system of specialisation, meaning that prosecutors can choose from three broad areas of criminality in which to specialise, e.g. financial crime. Senior specialised prosecutors are employees of specific Prosecution Districts, but they prosecute the most complex cases relating to their respective areas of expertise regardless of where they are based.</p> <p>The prosecutor decides whether to bring charges based on which the suspected perpetrator can ultimately be convicted and sentenced in court. The police and other pre-trial investigation authorities are responsible for preparing criminal cases for the prosecutor.</p>
FIU	The FIU is established within the National Bureau of Investigation (police) and primarily handles police tasks related to combating and investigating money laundering. The unit's duties also include preventing, exposing and investigating terrorist financing.
Financial Supervisory Authority (FIN-FSA)	<p><i>Finanssivalvonta</i>, or the Financial Supervisory Authority (FIN-FSA), is the authority for supervision of Finland's financial and insurance sectors. Entities supervised include banks, insurance and pension companies as well as other companies operating in the insurance sector, investment firms, fund management companies and the Helsinki Stock Exchange.</p> <p>The objective of FIN-FSA's activities is to enable balanced operations of credit institutions, insurance and pension companies and other supervised entities in stable financial markets. It is also to protect the rights of the insured and to foster public confidence in financial market operations. In addition, FIN-FSA is responsible for promoting compliance with good practice in financial markets and disseminating general knowledge about the markets. These objectives and duties have been included in the Act on the Financial Supervisory Authority.</p>

The FIN-FSA consists of four departments: Capital Markets Supervision, Banking Supervision, Digitalisation and Analysis and Insurance Supervision. The AML division is part of the Digitalisation and Analysis department and is obliged to report to the FIU in cases where there is a suspicion of money laundering or terrorism financing. This is covered by an MoU between FIN-FSA / AML division and FIU.

Other departments of FIN-FSA are able to report to police in case they suspect crimes on capital markets (e.g. insider trading) or in cases where there are serious breaches of other criminal law areas. However, consideration of tax crimes is mostly outside the competencies of the FIN-FSA.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

724. The National Prosecution Authority (hereinafter “NPA”) is responsible for the prosecution of crimes in Finland where some prosecutors are specialized on financial crimes. At the police, around 400 staff are responsible for tax crime investigations and around 30 prosecutors direct investigation and prosecution of tax crime.

Table 17.7. Data bases/sources of information available to tax crime investigators

	Access by NPA
Company incorporation/ ownership registry	Direct access
Land registry	Direct access
Registry of citizens	Direct access
Tax databases	Access on request
Customs databases	Direct access
Police databases	Direct access
Judicial databases	Access on request
Suspicious transaction report databases	Access on request
Domestic bank account databases	Access on request
Car registry	Direct Access
Boat registry	Direct Access

725. The NPA's investigation budget is not based on performance. In economic crime prevention (including tax crimes), the budget is decided on the basis of multiple factors, such as the amount of criminal proceeds and the recovery of net proceeds, the length of investigations, the number of open cases, the number of cases over 24 months, the number of solved economic crimes and the ratio of incoming economic crimes. It is difficult to isolate the exact part of the budget dedicated to combatting tax crimes, but tax crimes are regularly among the most frequent types of economic crimes, so their share forms an essential part of the statistical data as well. Performance is not directly linked to funding, but it is regularly monitored and taken into consideration.

Training for tax crime investigators

726. Economic crime (including tax crime) investigation trainings are organised internally and externally by the police. Internal training focuses on workplace training and on financial crime investigation courses organised by the police administration at the Police University College. In several economic crime investigation units, internal orientation is also organised for starting investigators with view to fostering tax crime investigation expertise. External trainings take place on a regular basis through seminars, fact sheets or other learning events organised by official co-operation partners (FTA, Prosecutor's Office, Enforcement

Authority, universities, etc.). Depending on current trends in the operating environment, these trainings may also focus on other types of crime. Tax crime training is, however, a mandatory part of basic education for investigators, as the share of tax crimes in all economic crimes is significant.

727. In addition, the police, the Prosecutor's Office, the FTA and enforcement officers have prepared a manual for asset recovery covering various types of crimes. In alignment with the manual, the police have arranged an education program for the proceedings in which employees from the FTA may also participate.

728. For customs crimes, investigators receive (93 days of) training on customs enforcement, (45 days on) customs criminal investigation, and (15 days on) customs economic crime investigation. In addition, they receive courses from the police economic crime investigation and from Cepol regarding tax crime.

729. For prosecutors, training is provided internally by the NPA on tax crimes, forfeiture measures and coercive measures. Training on current issues is also provided in co-operation with the FTA and the National Courts Administration.

Principle 7: Predicate offences

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

730. **Approach:** Finland applies an "all crimes approach", i.e. any crime which produces proceeds of crime may be considered as a predicate offence. There is no threshold. There must merely be sufficient proof that the assets stem from an illegal source. Along with other major changes in Finland's money laundering legislation in 2003, the "all crimes approach" was implemented (FPC, ch32, s6-10). Previously, tax crime had not been included in the list of predicate offences for money laundering, but nonetheless - in very evident cases of transferring and concealing - could be considered as a predicate offence in court praxis.

731. Under Finland's regime, jurisdiction over predicate offence is not required, i.e. the money laundering offence can be prosecuted in Finland even if only the money laundering offence occurred in Finland. Requirements of dual criminality must be considered, though there are also exceptions to this rule (FPC, ch1, s11). According to a recent reform, since December 2020, the perpetrator of a predicate crime may also be liable for money laundering offence if they e.g. transfer or conceal proceeds of the predicate crime (FPC, ch32, s11).

732. **Enforcement of money laundering predicated on tax crimes:** The adoption of the "all crimes approach" and the clarification of the legal basis has notably improved investigation and prosecution processes. There is now also clearly better inter-agency co-operation between the FIU and the FTA. According to the customs administration, the amount of money laundering investigations has also increased since.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

733. Auditors within the FTA do not have a criminal law function but have a duty to report certain crimes they observe in the context of fiscal supervision, including tax crimes. The FTA can also conduct joint and

simultaneous investigations with police and customs. Finally, auditors may also, on request of the police, participate in criminal tax investigations as experts.

734. The FTA can provide tax data to other authorities if they have a regulated right to obtain such data. There are over 100 provisions which entitle data exchange. Tax data is available by secure technical connection. Disclosure may be subject to restrictions, depending on the applicable EU law or agreement.

735. In addition to general access powers, the competent authority may also request the assistance of the police to search and seize documents directly from any persons. In tax crime cases, the FTA claims for damages based on tax evaded and also recovers compensation debts ordered by the courts.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

Table 17.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information							
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority	
Authority providing information	Tax administration		DSS	Access On Request	DSS	DSS ^(a)	DSS ^(b)	DSS	
	Agencies investigating tax offences	DSS		DSS	Direct Access (same authority)	MSS	MSS	DSS	
	Customs administration	MSS	MSS		MSS	MSS	Unable to provide information	Access On Request	
	Police or public prosecutor	DSS ^(c)	Direct Access (same authority)	DSS		MSS	MSS	DSS	
	Financial Intelligence Unit	Access On Request	Direct Access	Access On Request	Direct Access ^(d)		Direct Access ^(e)	DSS	
	Corruption investigation authority	DSS	Direct Access	Unable to provide information	Direct Access	Direct Access		Unable to provide information	
	Asset Recovery Authority	Access On Request	Access On Request, (In certain criminal suspicion cases, DSS)	Access On Request	Access On Request, (In certain criminal suspicion cases, DSS)	Access On Request, (In certain criminal suspicion cases, DSS)	Access On Request, (In certain criminal suspicion cases, DSS)	Access On Request, (In certain criminal suspicion cases, DSS)	
	Financial regulator ^(f)	Unable to provide information ^(g)	DSS	Access On Request	DSS	MSS	Unable to provide information	DSS	

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) FTA has a duty of care obligation related to AML findings.

(b) No obligation but low threshold in reporting suspected corruption.

- (c) All receivers: Obligation of confidentiality in certain cases e.g. during investigation may limit exchange of information. Basically and in practice prosecutors do not obtain information on their own exceeding information the police obtains during tax crime investigations.
- (d) The tax crime investigation is made by the LE authorities - the FIU has direct access to the data.
- (e) The police investigates corruption - the FIU has access to police data
- (f) AML legislation provides the possibility to exchange AML related information with other AML supervisors.
- (g) NB: there is a limited possibility to provide info spontaneously to tax authorities on KYC information connected to CRS/FATCA regulations

Table 17.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	The co-operation between the FTA and anti-corruption agency is based more on case specific EOI. FTA has an MoU with FIN-FSA, which is related to CRS/FATCA-supervision and Know Your Customer (KYC)/AML-KYC responsibilities.
Disclosure of foreign trusts	Yes, persons with unlimited tax liability to Finland are required to report all income from abroad, including from a trust.
Joint operations and taskforces	The FTA has joint and simultaneous investigations with the police and customs criminal investigations. This may include search and seizure procedures (both civil and criminal). Other agencies may also be involved in these investigations such as the Regional State Administrative Agency or the Finnish Immigration Service. In joint investigations, every agency acts with their own powers.
Parallel investigations	Civil/administrative tax audits can be carried out in parallel with criminal investigations. In such parallel cases, the rights of a suspected person are guaranteed also in tax audit.
Joint intelligence centres	In co-operation with the FTA, the Grey Economy Information Unit (housed within the FTA) provides information to about 30 different governmental organisations.
Secondments and co-location of staff	The FTA has liaison officers e.g. in the police and the FIU to help select cases with taxation interest for further investigation.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Where an individual (including public officials) or company is sanctioned for corruption, the FTA can conduct checks to ensure that taxes have been paid correctly. There is no automatic EOI for corruption offences, but the conviction data is mainly public. The FTA may receive impulse information from the police where there is a taxation interest. Exact figures are not available, but in Finland, the police usually ask the FTA to investigate tax interests related to the crime of corruption. There are 1-2 such cases per year.
Multi-agency training	The FTA has prepared an anti-corruption training for tax auditors also earlier, but at the moment, new training is in preparation together with other Nordic countries' tax administrations. FTA is in the lead of preparation. The OECD <i>Bribery and Corruption Awareness Handbook for Tax Auditors and Examiners</i> is included in the material. The training is going to have three levels, from basics to deep dive.

Principle 9: International co-operation

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.

736. **Legal basis:** The FTA may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. Finland has a large treaty network in force with 148 jurisdictions, allowing the exchange of information to take place (i.e. an EOI mechanism is in force), covering all regional partners, EU Member States, its neighbouring countries and its main trading partners. Finland's EOI network, including jurisdictions where agreements have been signed but have not yet entered into force, covers 155 jurisdictions. Latest bilateral treaties (including updates of existing DTCs) are with Germany, Hong Kong, Spain, Sri Lanka, Turkmenistan and Uzbekistan.

737. Finland is also party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows FTA to exchange information with other Parties for non-tax purposes (such as

investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

738. **Competent authorities:** The police and customs are the authorities responsible for criminal tax investigations in Finland and are also the competent authorities under the MLATs. However, the FTA is the competent authority under all tax and tax information exchange treaties and sends a large amount of requests under these instruments. Part of these requests will lead to criminal investigations but typically, the pre-crime investigation by the Police or Customs has not yet started at this stage. After the FTA has enough evidence for a suspected tax crime (the threshold being "reason to suspect" to start an investigation into a potential offence), it is reported to the police or customs authorities.

739. Whether law enforcement agencies can exchange sensitive intelligence with another international agency responsible for tax crime investigations at the pre-investigation stage is considered on a case-by-case basis in relation to the operation in question and possible international dimensions, the requested information and the legislation related to the whole. There is no absolute barrier, and exchange of information and legal aid co-operation also requires reciprocity. The customs administration may spontaneously share such information regarding criminal investigations based on the Naples II Convention.

Principle 10: Fundamental rights of a suspect or accused person

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

740. **Legal basis:** The Constitution of Finland, Criminal Procedure Act, relevant EU-legislation, and international human rights instruments collectively safeguard the fundamental rights of the accused in Finland.

Table 17.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	From the initiation of the investigation by the investigation authority
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From the initiation of the investigation by the investigation authority
remain silent	Yes	From the initiation of the investigation by the investigation authority
access and consult a lawyer and/or entitlement to free legal advice	Yes	From the initiation of the investigation by the investigation authority
interpretation and translation	Yes	From the initiation of the investigation by the investigation authority
be advised of the particulars of what one is accused of	Yes	From the initiation of the investigation by the investigation authority
access documents and case material, also known as a right to full disclosure	Yes	From the tax assessment process
a speedy trial	Yes	From the initiation of the investigation by the investigation authority
protection from ne bis in idem (Double Jeopardy)	Yes	From the initiation of the investigation by the investigation authority

Highlights

Successful practices

- Comprehensive threat assessments
- Use of joint investigations

Room for improvement

- Finland would benefit from automated exchange of intelligence type of data between law enforcement and other authorities for investigating tax crime.
- The Finnish tax administration notes that it would benefit from more investigative powers to compensate for the lack of police resources, and such a project is underway in Finland.
- The Finnish law enforcement authorities note that it would be useful to consider administrative crime prevention mechanisms, such as tax confiscations. This would improve efficiency in economic crime investigations, such as coercive measures and the threat of punishment, should still be taken into account, already because of the deterrent effect they create.
- The Finnish law enforcement authorities also understand that anti-money laundering legislation should be harmonised, drawing from the example of other OECD Member countries. In the co-operation of judicial assistance related to the investigation and combating of tax crimes, Finland notes that with some individual countries there are challenges with the exchange of information and especially with its timeliness.

Notes

¹ These international offences are issued by Degree (see under FPC ch 1 s 7)

² For further information see <https://www.vero.fi/en/grey-economy-crime/prevention/torjuntaohjelma/>.

³ In common operational environment analysis, the following ministries are involved: Ministry of Finance, Ministry of the Interior and Ministry of Economic Affairs and Employment of Finland. Authorities include, among others: Police, Customs, Regional State Administrative Agency, FTA, National Enforcement Authority of Finland, Finnish Centre for Pensions, Finnish Worker's Compensation Centre, Finnish Transport and Communication Agency Traficom, Centre for Economic Development, Transport and the Environment, Finnish Food Authority and National Prosecution Authority.

⁴ See <https://www.vero.fi/en/individuals/> and <https://www.vero.fi/en/grey-economy-crime/>.

18 France

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

741. France's General Code of Taxes (CGI) sets out a series of tax crime offences, all of which require criminal intent (*mens rea*). The below table lists examples of tax offences in France and their maximum sentences.

Table 18.1. Tax offences in France and maximum sentences

Offence	Maximum sentence
Fraudulent tax evasion (CGI, art. 1741, 1 st part)	Five years' imprisonment + fine of double the profit made by committing the offence
Aggravated fraudulent tax evasion (CGI, art. 1741, 2 nd part)	Seven years' imprisonment + fine of double the profit made by committing the offence

742. France notes that, apart from criminal offences, the CGI also sets out a series of "tax administrative penalties", which are investigated and settled in the non-criminal sphere. It also notes there are some general offences in the Criminal Code (CP) that apply to breaches of tax law (e.g. VAT scam is treated as a general scam in the terms of art. 313-1 of the CP).

743. French law also provides for "naming and shaming" as a complementary sentence for tax crimes, whereby the court can order that an offender's name is published in the media for a period not exceeding two months (CGI, art. 1741).

744. **Statute of limitations:** Tax crime offences have a six-year limitation period in France. The limitation period starts on the day on which the offence was committed and can be interrupted through different types of measures taken by the public prosecution service and by the courts (arts. 8 and 9-2 of the French Code of Criminal Procedure (CPP)).

745. **Complicity:** According to articles 1742 of the CGI and articles 121-6 and 121-7 of the CP, accomplices of tax crimes can be sentenced to the same maximum penalties as the main offenders. French law sets the definition of "accomplice" as the individual who knowingly, through aide or assistance, facilitated the preparation or the commission of the crime, and the individual who, by employing threats, promises or orders instructed or provoked somebody else to commit a crime.

746. **Attempt and conspiracy:** Attempt and conspiracy to commit tax crimes are criminal offences in France (CGI, art. 1741).

747. **Territorial and nationality jurisdiction:** France has jurisdiction over any crime committed wholly or partly inside French territory. It also has jurisdiction the offence damaged the budget of France and was committed by a French resident, even outside French borders.

748. **Legal persons:** In France, legal persons can be held criminally liable for any criminal offence (CP, art. 121-2). Regarding tax crimes, the court can charge both the natural and legal persons for the same act. The maximum sentence applied to legal persons is a fine amounting to five times the maximum sanction available for natural persons.

749. **Professional enablers:** Professional enablers may be charged with complicity in tax fraud (cf. supra §5). France also has a non-criminal sanction regime for professional enablers (CGI, art. 1740 A bis).

Enforcement of tax crime

750. The below table shows the number of natural persons convicted of tax crime offences in France in the tax years ending 2014-18.¹

Table 18.2. Enforcement of tax crimes in tax years ending 2014-18

Tax years ending	Number of court cases the resulted in criminal conviction
2014	722
2015	712
2016	616
2017	650
2018	738 (provisional data)

751. The below table shows the amount and types of sanctions imposed to tax crime offenders in France in tax years ending 2014-18.

Table 18.3. List of sanctions imposed in tax years ending 2014-18

Sanction	2014	2015	2016	2017	2018*
Imprisonment	605, of which 481 with suspended prison time	569, of which 411 with suspended prison time	503, of which 381 with suspended prison time	507, of which 386 with suspended prison time	604, of which 465 with suspended prison time
Fine	182	220	186	195	220
Prohibition of practising certain professions/activities	176	195	218	207	284
Community service	0	1	1	0	1
Day-fines	8	9	3	8	10
Broadcasting/publication in the media of sentence	19	23	7	9	8

752. France notes that almost all individuals sentenced to imprisonment for tax offences under Articles 1741 and 1743 of the CGI from 2014-15 received less than three years of jail time. Of these, the vast majority (82%) were in prison for less than one year.

753. The below table lists the type and number of sanctions imposed in France in tax years ending 2015-18.

Table 18.4. List of other sanctions imposed in tax years ending 2015-18

Length of prison sentence	>0 – 6 months	>6 months – 1 year	>1 – 2 years	>2 – 3 years	>3 – 5 years
Number of times imposed in 2014	41	55	26	2	
Number of times imposed in 2015	61	68	27	2	
Number of times imposed in 2016	59	42	13	4	4
Number of times imposed in 2017	39	60	20	2	
Number of times imposed in 2018 (provisional data)	53	65	18	2	1

754. **Availability of settlements:** France allows for settlements in tax crime cases, provided the offender pleads guilty to the offence and accepts the length and type of sentence requested by the prosecution. Where France enters into a settlement with a legal person for tax crimes cases the legal person must pay an extra fine of up to 30% of its annual turnover and adopt a compliance programme under the supervision of the French Anti-Corruption Agency (CPP, arts. 41-1-2 and 180-2). France notes that the possibility of settling tax crime cases has allowed for a successful and effective settlement in two complex cases involving legal persons in 2019.

755. **Availability of tax deductions for civil and criminal sanctions:** Sanctions, including criminal sanctions and the costs linked to an asset that was seized or confiscated, are non-deductible in France (CGI, 39, 39-2).

756. **Tax gap:** The European Commission estimated France's VAT gap for 2018 at over EUR 8 billion, or 5% of the VAT total tax liability (Center for Social and Economic Research, 2019^[8]).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

757. **Tax Crime Strategy:** France's policy for addressing tax crimes includes a "whole-of-government" approach, set out yearly by the Parliament as an annex of the Budget Law.² This includes the co-operation between tax crime investigators, the tax authority, the public prosecution service and other government agencies, most notable those housed within the Ministry of Justice.

758. France's tax crime strategy is orientated towards fighting the most serious offences, as laid out in a 2014 official paper that acts as the guide for all law enforcement and prosecution agencies, and in the Law on Fighting Tax Fraud (Law No. 2018-898 of 23 October 2018).³ For the 2016-19 period, the French government's strategy for fighting tax crime focused on adapting the investigative process to new, international threats, optimising the management and security of digital information, reinforcing the fight against identity theft, mapping risks, and improving techniques for investigation, sanctioning and recovering assets.

759. France notes that in 2019, its Judiciary Police created a Directorate on Financial Crimes, which deals with the most complex tax crime investigations. For example, in 2019 a tax crime investigation against a digital services company was concluded by settling for a fine of EUR 965 million.

760. **Threat Assessment:** France's national tax crime strategy is assessed on a yearly basis by the Ministry of Justice, using information transmitted by the courts and the prosecution service. Successive assessments conducted by the Court of Auditors and by the Parliament examine the actions and the strategy implemented by the French Government and suggest improvement measures. Other threat assessments include a report on trends and analysis on terrorism financing and money laundering

published every year by TRACFIN, France's FIU, and research and programming reports published by different government agencies.

761. **Communication Strategy:** France notes that in serious cases of tax fraud, it has issued press releases to inform the media about the results. The Ministry of Budget also issues regular publications regarding tax fraud prevention that are posted on its website: <https://www.economie.gouv.fr/presse/communiqués>

Box 18.1. Example of successful implementation of tax crime strategy: France

Following a large investigation carried out jointly by over 100 agents of the tax administration and the specialised police forces of the Ministry of Interior, a distribution channel for a specific computer programme, designed to suppress revenue and which was being used in the pharmaceutical sector, was dismantled in spring 2015. This unprecedented operation allowed the investigators to search the premises of the developer of the cash management software, and those of some of its resellers and users. This was the first time a judicial order was granted to search and seize the premises of a software developer on a criminal case.

Also, in 2015, the tax authority carried out another large-scale operation on over 200 users of another software programme, which was designed to hide revenue, this time in the retail sector. This operation used, for the first time on a large scale, the new procedure of “unannounced computer control”, which allows the tax administration to seize online documents and use them for assessing the tax damage.

Both operations were the subject of a press release on 4 May 2015.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

762. The below table shows the powers of the tax crime investigation agency of France.

Table 18.5. Investigative powers of tax crime investigation agency (Public Prosecution Service and Judicial Police)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Court order required
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Indirect power In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.
Conduct covert surveillance	Full direct power In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud and after authorised by a judge.
Conduct undercover operations	Full direct power In tax crime cases, only when committed by an illegal organisation or in cases of suspected aggravated tax fraud, and after authorised by a judge.

Search and seize computer hardware, software and electronic storage media	Full direct power Court order required
Arrest	Full direct power Court order required

763. **Legal professional privilege:** Legal professional privilege in France is governed by article 66-5 of Law 71-1330, of 31 December 1971, which states that conversations, mail and, more generally, any communications between a lawyer and his/her client and between lawyers are subject to professional secrecy. This privilege extends to accountants. However, France notes that legal privilege does not apply to certain tax information, including the identity of the client, the amount, date and form of payments done by the client and supporting evidence (art. L.81 of the Tax Procedure Code).

Principle 4: Freezing, seizing and confiscating assets

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

764. **Legal basis:** The Platform for the Identification of Criminal Assets (PIAC) of France, which operates within the framework of the Judicial Police, is in charge of identifying criminal assets and may conduct investigations under the supervision of a judicial authority. The PIAC is also tasked with centralising all the information related to assets that are the proceeds of crime and subject to French jurisdiction, both for assets located in France and abroad. France notes that the PIAC is usually asked to intervene jointly with other criminal investigation agencies in order to manage the asset-related aspects of tax crime investigations.

765. France notes that PIAC is the national contact point for all countries that wish to initiate “police to police” co-operation regarding the identification of criminal assets. Thus, in 2018, PIAC replied to 136 requests coming from other members of the European Asset Recovery Offices network and sent 395 outgoing requests. In the same manner, PIAC replied to 20 requests coming from members of the CARIN network (Camden Asset Recovery Interagency Network), another asset recovery network that includes non-European countries.

766. Besides playing a key role in international co-operation related to asset recovery, PIAC is also in charge of centralizing statistics at a national level regarding all criminal assets identified by law enforcement agencies. In 2018, the total amount of criminal assets for which a seizure request was addressed by French LEA to judicial authority reached EUR 645 338 072.

767. **Rapid freezing of assets:** French law does not provide a minimum period for freezing assets, which must be authorised by the courts. Therefore, when a rapid freezing of assets is applied by investigators, the measure must be immediately confirmed by the judge.

768. **Non-conviction-based confiscations are not allowed in France.** However, case law has set out that France may enforce non-conviction-based confiscations orders issued by foreign courts.

769. Concerning the restitution of objects placed under judicial control, French law provides that the restitution does not proceed when the seized object was the instrument or the result of a crime (Code of Criminal Procedure, arts. 41-4, 99, 373 and 481).

770. France allows **extended confiscations** for crimes with a minimum sanction of over five years’ imprisonment, only if the offender cannot justify the origin of the assets. A general confiscation of assets (“*confiscation générale du patrimoine*”) is only allowed in cases of money laundering **including when tax crimes are the predicate offences** (Criminal Code, art. 324-7).

771. **Value-based confiscations**, known in France as “seizure by equivalence”, are allowed under French law (articles 131-21, paragraph 9, of the Criminal Code, and 706-141-1 of the Code of Criminal Procedure). The law also allows for **third-party confiscations** provided the third party is not a bona fide possessor of the asset (article 131-21 of the Criminal Code).

772. The below table shows the number and total monetary value of seizures conducted by the National Brigade for the Repression of Tax Crimes (BNRDF) in tax crime cases between 2011 and 2020.

Table 18.6. Number and monetary value of seizures conducted in tax crime cases by the BNRDF between 2011-20

Year	Number of seizures	Total value
2011	12	EUR 2 141 373
2012	20	EUR 20 850 855
2013	28	EUR 17 211 092
2014	50	EUR 6 266 456
2015	30	EUR 13 415 659
2016	25	EUR 6 770 844
2017	52	EUR 8 196 979
2018	22	EUR 18 144 271
2019	37	EUR 13 955 677
2020	6	EUR 17 892 697
TOTAL	282	EUR 124 845 903

Note: Data for 2020 amounts for the first semester only.

773. **Agency responsible for asset recovery:** The Agency for Management and Recovery of Confiscated and Seized Assets (AGRASC) of France operates within the framework of the Ministries of Justice and of Budget and is tasked with facilitating the seizure and confiscation of assets in criminal investigations. During 2018 it facilitated the confiscation of assets worth EUR 36 million, of which 8.8 million were transferred to the state budget.

774. **Foreign freezing, seizing and confiscation in practice:** French law allows and facilitates the enforcement of foreign court orders in regard to seizure and confiscation of assets. French case law provides precedents for enforcing confiscation and seizure orders emanating from a foreign jurisdiction. The procedure differs if the order was issued by a European Union member state or by a non-EU member country.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

775. The *Direction Générale des Finances Publiques* (DGFIP) is responsible for conducting tax audits aimed at detecting and combating serious tax frauds. Fraud detection within DGFIP is tasked to the Task Force VAT and to the National Direction of Tax Investigations (DNEF) and its several regional offices. Where a tax fraud is suspected, the auditor must establish both the acts and intent that constitutes the criminal offence and have this approved by the *Commission des Infractions Fiscales* (CIF), which is an independent administrative authority. Once approved, the CIF refers the case to the Public Prosecutor,

who will then examine the referral and determine whether to proceed with prosecution in accordance with the provisions of Article 40-1 of the Code of Criminal Procedure. In cases deemed suitable for prosecution, the Public Prosecutor will then direct an investigation conducted by judicial police, with the exception of the most serious cases, which are directed by an examining judge.

776. France has a number of judicial police forces, which are competent to investigate tax offences. For example, the *Brigade Nationale de Répression de la Délinquance Fiscale* (BNRDF), which is composed of police officers and of officers of the DGFIP and hold the same powers as judicial police officers, are mandated to investigate alleged fiscal offences. Similarly, the *Brigade Nationale d'Enquêtes Économiques* (BNEE) is composed of tax inspectors working within the judicial police and assists with the detection and investigation of tax crimes. Those tax inspectors are not tax police officers; they provide technical support and expertise. They assist the judicial police in their investigations by providing them with the financial and tax expertise. However, BNEE's main focus is on the fight against financial crimes such as the misappropriation of assets, fraud, breach of trust, corruption, favouritism, influence peddling, embezzlement, illegal workers and money laundering. The BNEE also acts as a liaison between the judicial police services and the DGFIP.

777. While the BNRDF is a full law enforcement agency and only leads criminal investigations dedicated to serious tax crimes, the BNEE assists regular police officers of the judicial police with tax and accountancy competencies during criminal investigations opened under other offences. Tax agents of the BNEE do not have judicial powers while the BNRDF agents do, authorizing them to arrest people or search premises.

778. The Judicial Investigation Service of Finances (SEJF), also known as the "Tax Police", was created on July 2019 within the Ministry of Finance. This new service increases the investigative capacity available to the judicial authority in tax and customs matters. Placed under the joint supervision of the Director General of Customs and Indirect Taxes and the DGFIP, this new service is headed by a magistrate from the Judiciary. It may be asked to participate, in particular by the National Financial Prosecutor's Office (PNF) in cases requiring tax, customs or financial expertise. The SEJF is composed of 280 authorized investigators, including 241 judicial customs officers and 39 judicial tax officers. These officers are specially authorised to carry out judicial police missions and have all the prerogatives made available to them by the Code of Criminal Procedure.

779. France notes that since 2013, complex tax crimes are prosecuted by a dedicated office at the service of public prosecutions, namely the Office of the Prosecutor for Financial Crimes (*Parquet national financier*, PNF). The PNF has jurisdiction over cases of suspected aggravated tax fraud and handled 244 cases in 2019. France highlights that through this special office it has been more effective and diligent at prosecuting complex cases of tax and financial crimes. All other tax crimes are prosecuted by regional or local offices.

780. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of France's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁴

Table 18.7. Agencies responsible for investigating financial crimes in France

Agency	Role with respect to financial crime
General Direction of Public Finance (DGFIP)	Responsible for conducting tax audits, including detecting and combating serious tax frauds and referring these for investigation and prosecution.
The Task Force on VAT	Housed within DGFIP, the Task Force on VAT is in charge of the oversight of tax fraud on VAT and may suggest policy measures and action plans to other agencies. It also monitors trends and risks in other areas such as internet sales (marketplaces, etc.), particularly when the seller is non-EU legal person.
Tax Police (SEJF)	Placed under the supervision of DGFIP and the Customs Direction and composed of judicial customs

	officers and judicial tax officers, it may be asked to participate, in particular by the National Financial Prosecutor's Office (PNF) in cases requiring tax, customs or financial expertise
National Brigade for the Repression of Tax Criminality (BNRDF)	Housed within Police, the BNRDF is composed of police officers and of officers of the DGFIP with judicial powers and is responsible for investigating serious tax frauds such as undeclared foreign accounts, and complex illegal structures under the supervision of the Public Prosecutor.
National Brigade of Economic Investigations (BNEE)	Composed of tax inspectors working within the judicial police – BNEE assists police officers and with detection and investigation of tax crimes, however, its main focus is on the fight against other non-tax financial crimes.
General Directions of Customs and Excise (DGDDI)	Responsible for administration and collection of customs and excise tax and protection and security through combating all kinds of trafficking, including drugs, weapons and explosives, and animal and plant species threatened with extinction
Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFF)	In charge of tackling corruption at national and international levels, infringements of corporate law, complex tax fraud and money laundering, as well as electoral fraud and financing of political parties. The above mentioned BNRDF is part of OCLCIFF. OCLCIFF belongs to the central directorate of the judicial police, inside the Ministry of Interior.
Public Prosecutor	Local or regional territorial jurisdiction. Directs tax and other financial crime investigations conducted by judicial police, with the exception of the most serious cases, which are directed by an examining judge.
Public Prosecutor for Financial Crimes (<i>Parquet national financier</i>)	Has national jurisdiction to prosecute economic and financial crimes, in particular tax fraud, corruption and offences related to the stock exchange.
TRACFIN	French national Financial Intelligence Unit, receives and analyses Suspicious Transaction Reports submitted under anti-money laundering legislation, and refers these to the Public Prosecutor for investigation of possible money laundering or terrorist financing.
French Anti-Corruption Agency	In charge of controlling the implementation of preventive anti-corruption measures taken by big companies, responsible for investigating and monitoring anti-corruption compliance programmes by large companies, including court-ordered compliance programmes.
Prudential Supervisory Authority	Responsible for the authorisation and supervision of banks and insurance agencies.
Financial Markets Authority (AMF)	Regulates participants and products in the French financial market.

Independence of tax crime investigations and prosecutions

781. The independence of the prosecution service in France is ensured by its Constitution (*arts. 64 and 65*) and by a series of statutes and judicial precedents.⁵

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

782. The Office of the Prosecution for Financial Crimes had 36 staff in 2017 and 38 staff in 2018, 17 of which were prosecutors. Its budget is allocated annually together with that of the rest of the prosecution service of Paris.

783. France reports that the BNRDF had 45 staff in 2015, 42 agents in 2016, 48 in 2017, 42 in 2018 and 43 in 2019. At the end of 2020, the BNRDF should have 44 agents, which include 21 police officers and 23 tax agents with judicial powers. In addition, the BNRDF also include two agents dedicated to support tasks, who are not investigators. Simultaneously, the new “Tax Police” (SEJF), created in 2019, has 25 agents dedicated to complex tax crime cases, with budget allocated for hiring 25 more in 2020.

784. The below table shows the databases and sources of information available to tax crime investigators in France.

Table 18.8. Databases and sources of information available to public prosecutors in France

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Access on Request and Direct Access The investigative authority has direct access to only 4 databases; access to any other tax database must be requested.
Customs databases	Access on Request
Police databases	Access on Request / Direct Access Direct access to the criminal records database
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Direct Access / Access on Request The list of accounts held by a person is accessible on direct access, but not its balance or transactions, which are only accessible on request
Car registry	Direct Access
Boat registry	Access on Request
Endowment Contracts Database	Direct Access
Property Value Estimation Database	Direct Access

Training for tax crime investigators

785. France notes that all its prosecutors undergo a three-year course at the National School for Magistrates (ENM) and continuous training throughout their careers. This includes specific training on tax crimes for prosecutors within the MNF and JIRS. France also provides police with a series of trainings dedicated to financial and tax crimes that usually last between 5 and 8 weeks a year, in addition to specialised training for investigators housed within the BNRDF and the SEJF.

Principle 7: Predicate offences

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

786. **Legal basis:** France adopts an “all crimes” approach to money laundering whereby all offences are predicate offences to money laundering (Criminal Code, art. 324(1)). France reports that since adopting this approach in 1996, criminal investigations in tax offences have been more efficient and straightforward.

787. **Enforcement of money laundering predicated on tax crimes:** France also notes that there is ongoing communication between the tax authority and the FIU and that the tax authority received 2351 reports from TRACFIN regarding tax crimes as predicate offences for money laundering in the 2016-19 period, with the flow of referrals growing year after year. Of these reports, only 3% did not lead to a tax audit or to the commencement of a criminal investigation.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

788. As outlined under principle 5 above, tax auditors must investigate all suspected tax frauds. Where the auditor can confirm both the act and intent, two cases may arise: 1) compulsory submission to the public prosecutor of tax inspections leading to tax recalls of more than EUR 100 000; 2) cases below that amount are subject to the procedure set in article L-228 of France's Law of Tax Procedure which means that the tax administration must refer its findings to the CIF for approval. Upon approval, the CIF will then transmit the case to the public prosecutor for further investigation and possible prosecution.

789. However, where an auditor suspects tax evasion was committed under certain special circumstances (use of offshore shell companies, false documents etc.), they are allowed to immediately refer the case to the public prosecution service for investigation (as opposed to the tax auditor conducting the preliminary investigation themselves). The entire procedure has been subject to reforms, most notably in 2018, to limit CIF's discretionary powers.

790. France notes that it has **compulsorily** referred 965 civil tax audits for criminal investigations in 2019, and that the CIF has allowed for the commencement of further 672 criminal investigations in cases of tax evasion below EUR 100 000. These figures are double the number of investigations commenced in 2018.

791. France's referral programme is a two-way system in which the judicial authorities must also refer cases of suspected civil tax offences back to the DGFIP for civil investigation (article L-101 of the Tax Procedure Code).

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

792. The table below shows the models for sharing information related to tax crime and other financial crimes in France. A more detailed analysis of France's information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of the Rome Report.⁶

Table 18.9. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax crime investigation agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		DSS ^(a)	DSS	MSS	DSS	MSS
	Customs administration	DSS	DSS ^(b)		MSS	DSS	MSS
	Police or public prosecutor	DSS	DSS ^(b)	MSS		DSS	Direct Access
	Financial Intelligence Unit	DSS ^(c)	DSS	DSS	MSS		MSS

Corruption investigation authority	DSS	Direct Access	DSS	Direct Access	DSS	
Financial regulator	Sharing Prohibited	MSS ^(d)	Sharing prohibited	MSS ^(a)	MSS ^(d)	MSS ^(a)

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) The DGFIP has the ability to provide information spontaneously to police conducting tax investigations, but is not under an obligation to do so. Tax officials seconded to the Brigade Nationale d'Enquetes Economiques (BNEE), which is under the supervision of the Ministry of the Interior, have direct access to databases held by the DGFIP, including the national register of bank accounts (FICOBA). By working within the judicial police, BNEE officers facilitate sharing of information between the two agencies.

(b) Tax offences may be conducted by a number of police forces acting as judicial police under the direction of a Public Prosecutor or examining judge. However, a number of forces are more specialised in financial investigations and in 2010 the Brigade National de Répression de la Délinquance Fiscale was established as an agency with specific police and tax skills to combat serious tax offences. French police forces do not generally grant direct access to information for offices in other police forces. However, they are able to share information spontaneously where this is relevant to an offence under investigation by another force.

(c) TRACFIN sends monthly reports to DGFIP by email or mail. Reports of particular importance or urgency can be transmitted immediately without delay.

(d) Financial regulators are obliged to provide information spontaneously to the Public Prosecutor with respect to any sums or transactions that they suspect relate to criminal offences punishable by more than one year's imprisonment, or to the financing of terrorism.

793. The below table shows the availability of enhanced forms of co-operation in combatting tax crimes in France.

Table 18.10. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	France reports that a co-operation agreement between the tax administration and customs administration plays a key role in the fight against tax evasion; allowing the receipt of information by the tax administration upon request and spontaneous communication by customs to the tax authorities of all information and documents collected in the course of their duties
Disclosure of foreign trusts	Yes
Joint operations and taskforces	Task Force on VAT: DGFIP, TRACFIN, Police, Prosecution Services and Customs Authority, BNEE, SEJF, BNRDF, OCLTI, DGCCRF, Gendarmerie Nationale.
Parallel investigations	Parallel investigations are allowed in France.
Joint intelligence centres	France has three intelligence centres on tax crime issues, all of which operate jointly since 2019 in regard to research goals and information sharing.
Secondments and co-location of staff	France makes active use of secondments between the tax authority and law enforcement agencies.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes (article L-101 of the Law of Tax Procedure)
Multi-agency training	Training for tax crime investigators in France includes instructors from other government agencies such as the customs authority.

Principle 9: International co-operation

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.

794. **Legal basis:** France may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. To date, it has

entered into exchange of information relationships with more than 140 jurisdictions through over 110 bilateral tax treaties and over 25 Tax Information Exchange Agreements.⁷ It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows France's tax authorities to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorization is provided. As a member of the European Union, France also co-operates with other EU member states in accordance with EU law.

795. **Competent Authority:** The Office for Mutual International Criminal Assistance (BEPI) of the Ministry of Justice is France's central authority for sending and receiving MLA requests related to all crimes, including tax crime, in regard to countries that are not members of the European Union. Intra-EU requests are handled directly by the courts.

796. **International Co-operation in practice:** BEPI has originated 38 requests for assistance in 2017 and 41 such requests in 2018, while it has received 12 requests in 2017 and 17 in 2018.

Principle 10: Fundamental rights of a suspect or accused person

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

797. **Legal basis:** France provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by a series of international human rights treaties signed by France and, in domestic law, by the Declaration of the Rights of the Man and of the Citizen of 1789 and the Preamble of the Constitution of 27 October 1946.

798. In France, a civil tax matter becomes a criminal tax matter when the civil tax authorities refer a case to the public prosecutor, and the latter begins the criminal investigation.

Table 18.11. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until sentence
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From indictment
remain silent	Yes	From indictment
access and consult a lawyer and/or entitlement to free legal advice	Yes	From indictment
interpretation and translation	Yes	From indictment
be advised of the particulars of what one is accused of	Yes	From indictment
access documents and case material, also known as a right to full disclosure	Yes	From indictment
a speedy trial	Yes	During trial
protection from ne bis in idem (Double Jeopardy)	Yes	During trial

Highlights

Successful practices

- Comprehensive tax crime strategy and periodic threat assessment
- Effective asset recovery measures
- Concrete examples of international co-operation

Room for improvement

- Lack of a pre-defined communications strategy which fosters voluntary compliance

References

Center for Social and Economic Research (2019), *Study and reports on the VAT gap in the EU-28 Member States: 2019 Final Report*, European Commission, https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-full-report-2019_en.pdf.

Notes

¹ The number of convictions relates to the number of offenders (they may have been sentenced for having committed more than one offence). Data for 2018 is provisory.

² The 2019 version is available in French from: https://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/files/documents/dpt-2019/DPT2019_fraude_fiscale.pdf.

³ http://circulaire.legifrance.gouv.fr/pdf/2014/05/cir_38332.pdf (in French).

⁴ See Rome Report, Chapter 5 – Country Information – France. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁵ Constitutional Council, Decision 2017-680 QPC, of 8 December 2017. Available in French from: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2017680qpc/2017680qpc.pdf.

⁶ See Rome Report, Chapter 5 – Country Information – France. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

⁷ See <http://www.eoi-tax.org> for up-to-date figures.

19 Georgia

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

799. Tax crimes in Georgia requiring criminal intent (*mens rea*), are set out under section 218 of the Criminal Code of Georgia (CCG), and detailed in the table below.¹

Table 19.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Intentional evasion of more than GEL 100 000* in taxes (CC, article 218, paragraph 1)	Three years of imprisonment and GEL 2 000 fine	Five years of imprisonment
Aggravated intentional evasion of taxes (more than GEL 150 000) (CC, article 218, paragraph 2)	Five years of imprisonment	Eight years of imprisonment

Note:

* In April 2021, EUR 1 = GEL 4.11

800. **Statute of limitations:** Statute of limitations for tax evasion is six years, and ten years in the cases of aggravated tax evasion. The limitation period starts from the day when the crime was committed (CCG, article 71).

801. **Complicity:** Accomplices of tax crimes are criminally liable in Georgia (CCG, article 25).

802. **Attempt and conspiracy:** According to article 25 of the CCG, aiding, abetting or facilitating the commission of crimes, including tax evasion, is a criminal offence. Sanctions for accessory to tax evasion are the same as for the perpetrators of the act itself.

803. **Professional enablers:** Georgia does not have a separate penalty regime for professional enablers but they may be held liable for the above listed offences either as primary or secondary offenders (e.g. by committing the offence directly or through counselling another) (CCG, art. 25).

804. **Territorial and nationality jurisdiction:** Georgia has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Georgia (CCG, art. 4). Georgian citizens can be held liable for tax crime offences committed outside of the country, provided the conduct is not considered a crime in the jurisdiction where it was committed, and that the act constitutes a serious or particularly serious crime directed against the interests of Georgia (CCG, art. 5.2.).

805. **Legal persons:** Georgia's legislation does not provide for corporate criminal liability for tax crimes (CCG, article 107).

Enforcement of tax crime

806. The below table shows the number of concluded tax crime investigations and the number of tax crime cases where prosecution was commenced in Georgia in years ending 2015-18.

Table 19.2. Enforcement of tax crimes in the tax years ending 2015-18

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	252			46		
2016	149			39		
2017	106			22		
2018	114			22		

807. The below table shows the number of sanctions imposed for tax crime offences in Georgia in tax years 2015-18.

Table 19.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
Imprisonment	20
Bail	100

808. **Availability of tax deductions for civil and criminal sanctions:** Tax deductions for civil and criminal sanctions are not available in Georgia (TCG, article 168, paragraph 2, sub-paragraph "t").

809. **Availability of settlements:** Georgian law accepts settlements in tax crime cases. Article 218 of the CCG provides that a person shall not incur in criminal liability if the tax evaded has been paid, deferred or adjusted within 45 working days after receipt of a tax notice in response to tax audit findings.

810. **Tax gap:** Georgia does not measure its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

811. **Tax crime strategy:** Georgia notes that it does not have a specific strategy for fighting tax crimes. The prosecution service issues a series of guideline documents based on successful cases, which serve as practical approaches for tax crime investigations.

812. **Threat assessment:** The Investigation Service (IS) of the Ministry of Finance of Georgia conducts periodic threat assessments, which are updated on a constant basis. The IS sources its data from various state agency databases, including the electronic databases of the Information Centre of the Ministry of Internal Affairs, the Revenue Service, the Service Development Agency, the Public Registry, Entrepreneurial Registry and the State Procurement Agency.

813. **Communication strategy:** The Prosecution Service of Georgia possesses a general strategy for communicating information about successful prosecutions of crimes, including tax crimes.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

814. Georgia grants the Investigative Service a wide range of investigative and procedural powers, as outlined in the table below.

Table 19.4. Investigative powers of tax crime investigation agency (Investigation Service)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Based on a court warrant authorising search and seizure. In cases of urgent necessity, an investigator may issue a decree and enter a storage facility, a dwelling, or other properties to locate and seize an item, document, substance, or any other object containing information. The legality of the decree is reviewed by the court after it has been exercised.
Obtain documents from third parties	Full direct power Investigators must submit a written request to the court, which then decides whether or not to grant a warrant to obtain third party documents. This power may be also used through an investigator's decree, as outlined above.
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power (Articles 20(2), 111(7) and 112 of the Criminal Procedure Code of Georgia)
Intercept mail and telecommunications	Indirect power through another agency Court order required, measure is carried out by LEPL Operational-Technical Agency.
Conduct covert surveillance	Full direct power A court order is required
Conduct undercover operations	Indirect power through another agency Court order required, measure is carried out by LEPL Operational-Technical Agency.
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to a court warrant or an investigator's decree (as outlined above).
Arrest	Full direct power Court order required except in urgent cases (CPCG, 171 and 172)

815. **Need for additional powers:** Georgia notes that the Investigation Service would benefit from the ability to receive information and materials from the Financial Monitoring Service on request.

816. **Legal professional privilege:** Article 43 of the *Criminal Procedure Code of Georgia* provides that all communications between the accused and their defence lawyer are confidential. Georgia notes that defence lawyers are prohibited from disclosing any confidential information without prior consent of the client, but that this circumstance does not normally affect tax crime investigations. If the lawyer is personally engaged in criminal activity, they can be subject to standard coercive powers under the CPCG, e.g. search and seizure.

Principle 4: Freezing, seizing and confiscating assets

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

817. **Legal basis:** The Criminal Procedure Code of Georgia (CPCG) provides for the possibility of identifying, tracing, freezing or seizing rapidly property that is liable to confiscation.

818. **Freezing and seizing of assets:** Georgia permits criminal tax investigators to invoke the investigator's decree in order to conduct the rapid freezing of assets (between 24 and 48 hours). As with other cases involving the investigator's decree, criminal tax investigators do not need to seek court authorisation prior to conducting the action, but a court will retroactively determine its legality after it occurred. However, Georgian law specifies that an investigator's decree can only be used in cases of urgent necessity; meaning that instruments like the rapid freezing of assets is not an ordinary measure. Georgian law does not permit non-conviction based confiscations in tax crime cases.

819. **Confiscations:** Under Georgian law, any property, the value of which corresponds to the proceeds of crime, is subject to confiscation during criminal proceedings. Value-based confiscations apply to all crimes requiring criminal intent, including tax evasion under art. 218 of the GCC. Georgian law also permits third-party confiscations, provided the third party is not a bona fide possessor of the asset.

820. **Foreign freezing, seizure, and confiscation orders:** All measures provided for by the CPCG for domestic proceedings are equally applicable for proceedings involving international co-operation, including foreign tax investigations and judgements (art 11, para 2, of the *International Co-operation in Criminal Matters Act*).

821. **Agency/unit responsible for asset recovery:** The seizure and confiscation of assets related to criminal tax matters is under the competence of the Investigation Service, the Prosecution Service and the courts. While the Investigation Service is a specialised agency that focuses on financial matters including the seizure and confiscation of assets, the Prosecution Service has a specialised financial crimes department (Department of Procedural Guidance of Investigation in the Ministry of Finance) for dealing with these issues.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

822. The below table provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Georgia's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 19.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
LEPL Revenue Service	LEPL Revenue Service is Georgia's civil tax authority, operating under the Ministry of Finance. Its Audit Department ensures the organisation and execution of taxpayer control measures and conducts both desk-based and field audits. When control procedures uncover elements of possible crime, the Tax Monitoring Department immediately communicates the materials to the relevant investigation body.
Investigation Service of the Ministry of Finance (IS)	Responsible for the investigation of tax crimes as well as the prevention, suppression and detection of all financial-economic crime.
Customs Department	Responsible for the identification of persons carrying cash, cheques and other securities subject to monitoring; installing and applying customs controls over goods and/or vehicles subject to customs supervision, and co-operating with law enforcement authorities.
Ministry of Internal Affairs	Responsible for crime prevention, crime investigation, the fight against criminal and administrative offences.
Prosecution Service of Georgia (PSG)	Sole agency responsible for conducting criminal prosecutions in Georgia

Financial Monitoring Service (FMS)	Serves as the national centre for analysing the financial intelligence and disseminating cases of potential money laundering, terrorism financing and predicate criminal offences to law enforcement authorities.
Anti-Corruption Unit of the Prosecution Service	Investigates and prosecutes the most serious corruption crimes, analyses corruption cases country-wide, sets standards and elaborate on policy recommendations for corruption crimes, develop prosecution-specific prevention policies.
National Bank of Georgia	Implements monetary policy of the country to ensure price stability and supports stable functioning of the financial sector.
Anti-Money Laundering Inspection and Supervision Department	Enforces compliance of financial institutions with the requirements of the Law on Combating Money Laundering and respective obligations as set out by the Head of FMS

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

823. With approximately 400 employees, the Investigations Service's budget for 2018 was GEL 18 430 000, in line with previous budgets. The budget is provided on an annual basis by the Ministry of Finance, to which IS has to submit a report on a quarterly basis. The report provides updates on the actions taken and targets reached, or yet to be reached, including number of crimes identified, accused persons, prosecutions initiated, measures of restraint used, etc.

824. In accordance with CPCG, the prosecutor is independent in making decisions. Accordingly, in view of the relevant evidence gathered by the Investigation Service in the particular criminal case, the Prosecutor's Office independently makes a decision to initiate prosecution.

825. Georgia notes that, thanks to the efforts of IS, the amount of recovered taxes that were evaded was approximately GEL 35 million in 2015, 50 million in 2016, 18 million in 2017 and 34 million in 2018.

826. Georgia also measures return on investment. For each GEL spent, it recovered GEL 2.06 in 2015, 2.71 in 2016, 1.00 in 2017 and 1.88 in 2018.

827. The below table shows the databases and source of information that are available to tax crime investigators in Georgia:

Table 19.6. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Direct Access
Judicial databases	Access on request
Suspicious transaction report databases	Access on request
Domestic bank account databases	Access on request
Car registry	Direct Access
Boat registry	Access on request
Other: State Procurement Agency	Direct Access

Training for tax crime investigators

828. Staff of the Investigation Service undergo regular training that covers a range of specialist subjects relevant to tax crime investigators (including, but not limited to: *Asset Tracing, Financial Analysis, IT Forensics, Cybercrime, Modern Methodologies for Combating VAT Fraud, Combating Money Laundering*). Besides, prosecutors undergo periodic trainings in financial crimes, both separately and jointly with investigators of the Investigation Service of the Ministry of Finance.

829. The Prosecutor's Office has its own training centre, which is responsible for planning and organizing trainings for prosecutors. In addition, staff of the Investigation Service participates in trainings carried out in different areas, such as legal and practical issues related to illicit trafficking, anti-corruption measures in public procurement, among others.

Principle 7: Predicate offences

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

830. **Approach:** Since August 2007, Georgia applies the "all crimes" approach to money laundering, which designates all criminal offences as predicate offences.³ According to Georgian law, individuals that are being prosecuted for money laundering in Georgia can also be prosecuted for the predicate crime (including tax evasion under s. 218 of CCG), irrespective of whether the predicate crime has been committed in a foreign jurisdiction or not.

831. **Enforcement of money laundering predicated on tax crimes:** Georgia notes that since tax crimes were included as a predicate offence, the IS was able to access more information from the FMS and increase its co-operation with other anti-money laundering bodies. Furthermore, it led to the creation of additional deterrence for potential tax offenders, caused by the fact that money laundering offenders could now also be prosecuted for tax crimes.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

832. In accordance with the legislation of Georgia, all authorities are obliged to report suspicions of tax crime to investigation service. As soon as the administrative offence is detected, the tax authority official completes an administrative offence report. If the signs of a crime are detected after the tax audit, relevant materials are immediately sent to the investigative authority of the competent jurisdiction (Articles 268, 271 Tax Code of Georgia).

833. Public authorities exchange information based on the circumstances determined by Georgian legislation. In particular, tax authority reports the information on all cases of seizure to the Investigation Service of the Ministry of Finance of Georgia (Order N 966 of the Minister of Finance).

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

834. The below table shows the models for sharing information related to tax crime and other financial crime in Georgia:

Table 19.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access	Direct Access	MSS	MSS	MSS
	Customs administration	Direct Access	Direct Access		MSS	MSS	MSS
	Police or public prosecutor ^(a)	DSS	DSS	DSS		DSS	MSS
	Financial Intelligence Unit ^(b)	Sharing Prohibited	Sharing Prohibited	Sharing Prohibited	MSS		MSS
	Corruption investigation authority ^(c)	DSS	DSS	DSS	Direct Access	DSS	
	Financial regulator ^(d)	On Request	On Request	On Request	On Request	DSS	On Request

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) Law enforcement agencies have the right to receive confidential tax information only if it concerns cases under investigation by them. The prosecution service can spontaneously provide any information it deems appropriate based on the relevance and type of information. Information may also be provided on request as long as this does not prejudice any ongoing investigation.

(b) The FIU disseminates cases of potential money laundering, terrorism financing and predicate offences spontaneously to the Prosecution Service, the Ministry of Internal Affairs and the State Security Service. Otherwise, data held by the FIU, including STRs, can only be requested using a court order.

(c) This concerns cases where corruption is investigated by the Anti-Corruption Unit within the Investigation Department of the Office of the Chief Prosecutor or investigation units of the regional offices of the Prosecution Service. Other bodies that are also competent to investigate corruption offences include the Anti-Corruption Agency of the State Security Service, the Investigation Service of the Ministry of Finance and the General Inspection of the Ministry of Justice.

(d) The National Bank of Georgia must share information and documents where it discovers signs of criminal activity. Otherwise, information may be requested on the provision of a court order.

Table 19.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Yes. Georgia has several co-operation agreements with foreign jurisdictions.
Disclosure of foreign trusts	Yes
Joint operations and taskforces	Various Joint operations and taskforces: Joint Maritime Operations Centre (JMOC): inter-agency approach to the prevention, detection and elimination of all kind of illegal activities, maritime incidents and grave violations of the maritime space regime of Georgia Working Group for the Prevention, Detection and Suppression of Illegal Turnover of Narcotics

	Container Control Programme: Joint initiative of United Nations Office on Drugs and Crime (UNODC) and World Customs Organisation (WCO)
Parallel investigations	Yes
Joint intelligence centres	Not available
Secondments and co-location of staff	Yes
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes – individuals under criminal investigation or enquiry can have their tax affairs audited by the civil tax authority upon request by criminal tax investigators.
Multi-agency training	Yes

Principle 9: International co-operation

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.

835. **Legal basis:** Georgia may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. The International Co-operation in Criminal Matters Act of Georgia (ICCMA) allows international judicial co-operation with foreign countries based on multilateral or bilateral agreements. In absence of the treaty in relation to these countries, co-operation is carried out based on reciprocity or on ad hoc agreement. The ICCMA also provides the spontaneous exchange of information.

836. Georgia has exchange of information relationships with more than 55 jurisdictions through over 50 bilateral tax treaties and Tax Information Exchange Agreements. It is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows Georgia to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. In cases, where foreign authorities request assistance that require the use of coercive measures (e.g. search, seizure), such assistance may only be afforded if it is also authorized by the court or other competent authority of the requesting Party.

837. **International co-operation in practice:** Between 2015 and 2018, Georgia made 16 requests for assistance in criminal tax matters under EOI instruments and 19 requests under MLA treaties. Georgia states that only around 30% of the requests received response in a timely manner (less than 6 months). In the same period, it received 28 requests for assistance in criminal tax matters under EOI instruments and 65 such requests under MLA treaties. The central authority for sending and receiving MLA requests is the General Prosecutors Office of Georgia.

Principle 10: Fundamental rights of a suspect or accused person

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

838. Georgia provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by Chapter 2 of the *Constitution of the Georgia*, which serves as the country's Bill of Rights.⁴ The rights of suspects are further protected by provisions regulating the conduct of civil and criminal proceedings in *Criminal Procedure Code of Georgia (CPCG)*.⁵

839. In Georgia, a civil tax matter becomes a criminal tax matter if the amount of taxes being evaded that is investigated exceeds GEL 100 000. Furthermore, it is possible to have a civil tax audit conducted in parallel with criminal investigations, but the prosecution can only be undertaken after the tax audit is conducted. When a foreign citizen is arrested for a tax crime within the Georgian jurisdiction, the Ministry of Foreign Affairs should notify its counterpart no later than three hours after the arrest and shall immediately notify the diplomatic mission or consular office of the relevant state.

Table 19.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until found guilty by the court.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Any time during criminal proceedings.
remain silent	Yes	Throughout the entire proceedings.
access and consult a lawyer and/or entitlement to free legal advice	Yes	Access to lawyer is unrestricted. Accused is qualified for free legal advice if he/she is unable to pay the legal fees and he/she requests it as well as when accused is subject to a mandatory defense (<i>person is juvenile, does not know the language of proceedings etc.</i>) and his/her contractual lawyer does not participate in the process.
interpretation and translation	Yes	Always throughout the entire proceedings when person who does not know or properly know the language of criminal proceedings participates in the procedural actions or otherwise needs it.
be advised of the particulars of what one is accused of	Yes	From the moment of commencing criminal prosecution.
access documents and case material, also known as a right to full disclosure	Yes	From the moment of commencing criminal prosecution.
a speedy trial	Yes	Throughout the entire proceedings.
protection from ne bis in idem (Double Jeopardy)	Yes	According to the Article 18 of CPCG (Impermissibility of repeated arrest, accusation and conviction double jeopardy): - a person may not be arrested repeatedly based on the same evidence and/or the same information; - a person may not be charged with and/or convicted of a crime for which he/she once already been acquitted or convicted.

Highlights

Successful practices

- Solid return on investment in tax crime investigations
- Robust training for tax crime investigators and prosecutors
- Ample access to databases by tax crime investigators

Room for improvement

- Non-conviction based confiscations not permitted

Notes

¹ The official translation into English of the Criminal Code of Georgia can be found on the following link: <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>.

² See Rome Report, Chapter 5 – Country Information – Georgia. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

³ An English translation of the *Law of Georgia on Facilitating the Suppression of Money Laundering and Terrorism Financing* can be found online at: https://www.fms.gov.ge/Uploads/files/AML_CFT_Law.pdf.

⁴ *Constitution of Georgia*, see Chapter 2 <https://matsne.gov.ge/en/document/view/30346?publication=35>.

⁵ See Chapter II of the *CPCG*: <https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>.

20 Germany

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

840. Tax crimes in Germany are regulated by the Fiscal Code (“FC”), Criminal Code (“CC”) and the Act on Administrative Offences (“Act of AO”). The FC sets out a series of tax crimes, that require criminal intent (*mens rea*) or negligence, and that apply *inter alia* to income tax and VAT/GST. Examples of FC offences are shown in the table below:

Table 20.1. Offences requiring criminal intent

Offence	Minimum Sanction	Maximum Sanction
Tax evasion by failing to submit mandatory information to the tax administration, or by submitting incorrect or incomplete information (FC, s370(1))	Monetary fine*	Five years' imprisonment
Serious tax evasion, by deliberately understating taxes on a large scale (FC, s370(3)(1))	Six months' imprisonment	Ten years' imprisonment
Serious tax evasion, by using a third-country company for the purpose of concealing tax (FC, s370(3)(6).)	Six months' imprisonment	Ten years' imprisonment

Note:

* The value of the monetary fine will be defined in accordance with the circumstances surrounding each particular case and offender (Sections 75-77 of the *Instructions for Criminal Proceedings and Proceedings for Collecting Fines (Taxes) of 2020*).

841. **Statutes of limitation:** The limitation period for tax evasion is five years (CC, s78(3) no. 4) whereas FC, s376(2) has a limitation period of ten years. The limitation period begins on the day the offence is completed (CC, s78a, as per FC, s369(2)). The limitation period is interrupted by the commencement of a criminal investigation or the day the offender is notified of the commencement of an administrative investigation (FC, s376 (2)).

842. **Complicity:** Criminal liability applies to those that aid, abet, facilitate, or enable the commission of an offence, including tax crimes (CC, s49). If convicted, these secondary offenders can face mitigated sentences in relation to that of the principle offender. It is also an offence under the Fiscal Code to aid or abet the commission of tax evasion (FC, 369(2) and s370).

843. **Attempt and conspiracy:** Under German law, any person who attempts to induce another to commit a criminal offence or abets another to commit a felony shall be criminally liable under the provisions

governing attempted felonies (CC, s30 and FC, s370(2)). Conspiracy to commit a tax crime is also a criminal offence in Germany (FC, s370(3)).

844. **Professional enablers:** German law does not contain any specific provisions that apply to professional enablers. However, professional enablers can be held liable as primary or secondary offenders under the above outlined provisions on complicity.

845. **Territorial and nationality jurisdiction:** Germany has jurisdiction over crimes committed in whole or in part in Germany. Section 370(7) of the Fiscal Code provides that irrespective of the place of commission, Germany has jurisdiction over tax evasion offences committed outside Germany territory that damage the German budget. However, the Public Prosecution Office (PPO) may choose not to prosecute an offence committed outside of Germany if the offender was already convicted for the offence abroad or if the expected sentence for the crime in Germany would be negligible taking into consideration the sentence imposed abroad (Code of Criminal Procedure (CCP), s153c(2)).

846. **Liability of legal persons:** German law does not attribute criminal liability to legal persons. However, section 130 of the Act on AO attributes criminal responsibility to the owners or legal representatives of legal persons, provided he or she intentionally or negligently omitted to take the supervisory measures required to prevent the illegal act from happening. In this case, the offender is subject to a fine not exceeding EUR 1 million. In addition to that, an administrative fine can be determined against a legal person if its owner or representative has intentionally or negligently committed tax evasion (FC, s370, s378).

Enforcement of tax crimes

847. The below table shows the enforcement of tax crimes in Germany in tax years ending 2015-19.

Table 20.2. Enforcement of tax crimes in the tax years ending 2015-19

Tax years ending	Concluded investigations	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	83 307	15 269	7 976	93
2016	72 940	13 801	7 846	91
2017	62 261	13 254	7 827	84
2018	57 523	12 237	7 232	69
2019	54 369	11 712	6 799	55

848. Germany notes that it has collected around EUR 3 billion in additional revenue per year in the tax years 2015 to 2019 thanks to fines applied to tax offenders. The below table shows a breakdown of the types of fines imposed by Germany during this period.

Table 20.3. Sanctions imposed for tax crimes in tax years ending 2015-19

Tax years ending	Total fines determined	Total monetary amounts assessed pursuant to section 153a of the Code of Criminal Procedure	Total penalties that became legally binding	Total years of prison sentences imposed (cumulative)
2015	EUR 26 221 254	EUR 62 006 336	EUR 38 349 271	1 728 years
2016	EUR 28 919 030	EUR 46 810 046	EUR 144 189 772	1 513 years
2017	EUR 29 392 552	EUR 50 264 697	EUR 153 412 355	1 586 years
2018	EUR 17 607 854	EUR 40 137 512	EUR 54 923 611	1 472 years
2019	EUR 17 681 342	EUR 34 438 100	EUR 27 940 498	1 234 years

849. **Availability of settlements:** German law allows for settlements in criminal investigations, including for tax crimes, provided the accused agrees to follow a series of instructions issued by the Public Prosecution Service (PPS), which may include paying a sum of money to the Treasury (CCP, s153a).

850. Similarly, individuals who voluntarily disclose information previously omitted are exempt from criminal liability provided they have not previously been exempted under this provision and the amount of evaded tax is under EUR 25 000 (FC, s370(1)). However, this exemption from criminal liability does not apply if criminal proceedings have commenced or the crime has already been detected (FC, s371(2)).

851. **Availability of tax deductions for civil and criminal sanctions:** Under section 4(5) of the Income Tax Act (ITA), fines, administrative fines and cautionary fines imposed by the court or other legal authorities within the territorial scope of the ITA, or by agencies of the European Union are not tax deductible. Furthermore, interest on evaded taxes (as described in FC, s235) are not tax deductible either.

852. **Tax gap:** According to the European Commission, Germany's VAT gap in 2018 was estimated at EUR 22 billion, or 10% of total VAT revenue (Center for Social and Economic Research, 2020^[9]).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

853. **Tax crime strategy:** Germany's Federal Ministry of Finance (BMF) is responsible for the legal framework (provisions on criminal penalties and fines with regard to tax crimes and tax-related administrative offences), while the higher revenue authorities of the 16 federal states (*Länder*) are responsible for issuing instructions with regard to criminal proceedings and proceedings for collecting fines.

854. The Basic Law for the Federal Republic of Germany (Basic Law) gives the authority and responsibility to enforce criminal law to the *Länder*, which are obliged to investigate and pursue any cases of criminal activity. Therefore, Germany does not have a national strategy to combat tax evasion. Rather, the *Länder* set their investigation priorities using a *Land*-based approach. If a cross-*Länder* tax evasion case is investigated, the tax investigation agencies will co-ordinate with one another.

855. *Länder* follow instructions on criminal tax procedures contained in the Instructions for Criminal Proceedings and Proceedings for Collecting Fines (Taxes) of 2020. Furthermore, Germany notes that there are joint meetings between BMF and the authorities of the 16 *Länder*, during which issues of national significance in the field of tax are discussed and co-ordinated.

856. **Threat Assessment:** German revenue authorities are also obligated to undertake a threat assessment in every tax case. For this purpose, they use the data that is available to the revenue authorities (such as tax returns) and, where necessary, request additional data from taxpayers. Germany notes that this data is analysed using a risk management system (RMS), which helps the authorities identify cases that merit further examination. These cases are then manually processed by tax auditors, using selected risk parameters. The RMS consists of systematically compiling and evaluating risk potential, which then inform the necessary enforcement reactions from tax authorities. Risk parameters are defined by the tax administrations and updated on an ongoing basis.

857. **Communications strategy:** Due to tax secrecy requirements set by German laws, tax authorities are prohibited from discussing individual cases in the media. However, information on particular scenarios that could be relevant in terms of criminal tax law (e.g. the *cum-ex cases*) are made public, while making sure it is not possible to identify the details of individual cases.

Box 20.1. Example of successful implementation of tax crime strategy: Germany

In recent years, the 16 *Länder* have adopted a strategy of purchasing data relating to German taxpayers' foreign bank accounts from undisclosed sources for the purpose of criminal investigation. Following the completion of criminal proceedings against individuals based on this data, these same individuals were called to provide witness testimony against financial institutions for failure to meet their supervisory obligations, resulting in fines totally millions of euros.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

858. The enforcement of tax crimes in Germany is the responsibility of specialised units (*Bußgeld- und Strafsachenstellen*) that sit within the respective revenue authorities of the 16 *Länder* (i.e. regions). Tax investigation units (*Steuerfahndungsstellen*) have the same rights, obligations and powers as Police but only with respect to tax crimes. The below table sets out the powers available to tax crime investigators.

Table 20.4. Investigative powers of tax crime authority in Germany (*Bußgeld- und Strafsachenstellen*)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power A court order is required except where it could not be obtained without endangering the purpose of the measure (<i>Instructions for Criminal Proceedings and Proceedings for Collecting Fines (Taxes) of 2020</i> (ICPPCF))
Obtain documents from third parties	Full direct power A court order is generally required. An exception applies in cases where a court order cannot be obtained without endangering the purpose of the measure (ICPPCF, s60(6)).
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Indirect power via another agency Interception of communications can only be ordered by a court in very serious cases (FC, s370(3) s. 2 no 5) and upon the request of a Public Prosecutor (CCP, s100a)
Conduct covert surveillance	No powers
Search and seize computer hardware, software and electronic storage media	Full direct power Seizure of evidence contained on computer hardware, software, or electronic media during a search is only permissible if there is an initial suspicion that an offence has been committed (CCP, s152).
Arrest	Full direct power Pre-trial detention is only permissible if imposed by a judge, by means of a warrant of arrest and a request for enforcement of pre-trial detention. Germany notes that in most cases, a suspect is first arrested by the Police under orders of the PPS and then brought before a remand judge, who determines whether the suspect is to be subject to pre-trial detention or not.

859. **Legal professional privilege:** Germany provides that various professions are subject to professional secrecy obligations, including lawyers, public accountants, tax consultants and tax representatives. It is a crime for certain professionals to disclose confidential information revealed to them by a client (CC, s203(1)). Professionals covered by secrecy obligations have the right to refuse to give evidence in criminal proceedings (CCP, s53(1)) and the right to withhold information to protect certain

professional secrets (FC, s102(1)). Professionals included in this prohibition are listed in CCP, s53 and include defence counsellors, lawyers, notaries, certified public accountants and tax consultants, among others.

860. Germany notes that in the area of money laundering and terrorism financing, lawyers, tax advisers and auditors are required to report suspicious cases to the Financial Intelligence Unit (FIU) (Money Laundering Act (MLA), s43(1)). However, information obtained in the course of providing legal advice or representing a client in judicial proceedings is exempt from these reporting obligations, unless the obliged entity has positive knowledge of money laundering, terrorist financing, or another criminal offence (MLA, s43(2)).

Principle 4: Freezing, seizing and confiscating assets

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

861. **Legal basis:** The Code of Criminal Procedures grants the PPS and respective revenue authorities of the 16 *Länder* powers to apply to the court for orders to freeze, seize, and confiscate the instruments and proceeds of crime (CCP, s98).

862. **Freezing and seizing orders:** German law also allows for the rapid freezing of assets. A court order is needed and assets may be frozen for a maximum of 12 months (CCP, ss111b & 111c). The tax crime investigation agency or the Public Prosecution Service can request the order.

863. Objects may be seized if they are found to be evidence of a criminal act or if there are grounds to assume the conditions for their forfeiture or confiscation have been fulfilled (CCP, s111b et seq.).

864. **Confiscation orders:** German law provides for both conviction and non-conviction based confiscation in tax crimes cases (CC, s76a(4)). The purpose of non-conviction based confiscations (called “extended independent confiscation” in Germany) is to make it possible to confiscate assets of unclear origin, irrespective of the existence of proof of a specific unlawful act or of proceedings aimed at convicting a specific accused person. The court must be convinced that the asset originates from a criminal offence. Conviction-based and non-conviction based confiscations have equal status.

865. German law provides for value-based confiscations (CCP, s111), and third-party confiscations for both conviction and non-conviction based confiscations. For third-party confiscations, the law attributes possession of an asset to the person who effectively controls it in such a way that they can economically exclude the legal owner from the effects of the asset (CC, s73b).

866. Under section 73b of the Criminal Code, a confiscation order may be issued against a person other than the offender if that person has obtained something by committing the offence and the offender or participant acted on said person’s behalf, or if the object so obtained was transferred to that person free of charge or without legal reason, or was transferred to that person and said person recognised, or ought to have recognised, that the object obtained was derived from an unlawful act (CC, s73b(1) sentence 1 no 2). A confiscation against another person is also possible if the object obtained devolved to that person in the capacity as an heir (CC, s73b(1) sentence 1 no 3).

867. **Foreign freezing, seizure, and confiscation orders:** While German legislation does not specifically provide for the enforcement of foreign states’ freezing, seizure, and confiscation orders, case law has allowed the enforcement of such measures in the past.

868. **Agency/unit responsible for asset recovery:** The law enforcement authority in criminal tax matters encompasses the *Bußgeld- und Strafsachenstelle*, which has public prosecution powers in criminal tax proceedings, and the tax investigation unit, which has police powers. Both are under one roof, either

in a regular tax office or in a special tax office responsible for tax crimes and tax investigations. While *Bußgeld- und Strafsachenstellen* are involved only in criminal proceedings, tax investigation units act as both fiscal authorities and investigation authorities. If there is an initial suspicion of a tax crime, they must initiate criminal tax proceedings and conduct investigations, and inform the accused person of his/her rights.

869. **Freezing, seizing, and confiscation in practice:** Germany was not able to provide any data relating to the monetary value of assets that were seized and/or confiscated in tax crime cases.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

870. As outlined above, each *Länder's* revenue authority has a specialised unit (*Bußgeld- und Strafsachenstellen*) responsible for the detection, investigation, and prosecution of both administrative and criminal tax matters.

871. In criminal tax matters, the *Bußgeld- und Strafsachenstelle* conducts the investigation if the crime is exclusively a tax crime. The Public Prosecution Service may take over the criminal matter at any time, and the *Bußgeld- und Strafsachenstelle* may hand the criminal matter over to the Public Prosecution Service at any time (FC s386(4)). Where a revenue authority carries out the prosecution itself and independently, it assumes the same rights and obligations that a public prosecutor would have in investigatory proceedings (FC, s399(1)).

872. As previously noted investigators have the same powers as the Police with respect to tax crimes. If the investigation covers other crimes (e.g. bribery, corruption, money laundering etc.) the tax administration must hand it over to the PPS.

873. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Germany's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of the [OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹

Table 20.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Federal Central Taxation Office (FCTO)	Responsible for receiving reports of suspected tax crime from other federal, regional, and local government authorities and referring these to the competent <i>Bußgeld- und Strafsachenstellen</i> . Also the competent authority for exchange of information in criminal and civil tax matters
Revenue authorities of each <i>Land</i>	Responsible for assessing and collecting taxes in accordance with the law. The <i>Bußgeld- und Strafsachenstellen</i> is the specialised unit within each revenue authority responsible for detecting, investigating, and prosecuting tax crimes.
Central Customs Authority (<i>Generalzolldirektion</i>)	Manages the operating tasks of German Customs Administration and acts in a judicial capacity for the PPS in cases of criminal customs offences.
Department for criminal and administrative fines – housed within the Federal Public Prosecution Service –	Responsible for carrying out economic crime investigations in conjunction with the tax authorities of each <i>Land</i> .
Financial Intelligence Unit (FIU)	Central unit for sending, receiving, and analysing anti-money-laundering reports (STRs) in Germany.
Federal Criminal Police (BKA)	Co-ordinates the fight against corruption at the national and international level.

Public prosecution offices of the <i>Länder</i>	In many of them, special departments have been set up whose main duties are connected with anti-corruption. A number of <i>Länder</i> have established joint criminal investigation groups on fighting corruption consisting of prosecutors and investigators from other government agencies.
Federal Financial Supervisory Authority (BaFin)	Works to counteract abuses in banking, to guarantee the transparency and the integrity of the financial markets and investor protection and to ensure and preserve the interests of insurance policy holders to the extent that obligations from insurance policies may be met at any time.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

874. In Germany, every *Land* has its own budget. Therefore, the monetary resources available for fighting tax crimes vary from jurisdiction to jurisdiction and Germany does not have data available for the total annual budget allocated fighting tax crimes.

875. In Germany, there were 2 466 tax inspectors in 2015 and 2 435 in 2016. In 2017 there were 2 431 tax inspectors and 2 454 in 2018.

876. The table below shows the sources of information available to German tax crime investigators.

Table 20.6. Data bases/sources of information available to tax crime investigators

Database	Access
Company formation/ ownership registry	Direct Access
Land registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Access on request
Police databases	Access on request
Judicial databases	Access on request
Suspicious transaction report databases	Access on request
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Access on request
Other	Access on request

Training for tax crime investigators

877. Germany notes that training for tax crime investigators and prosecutors is conducted by each *Land*, and that there is no uniform training on the federal level. Courses are normally prepared by the tax crime investigation agencies and by the Police. The *Länder* normally share information about the contents of the training programmes.

Principle 7: Predicate offences

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

878. **Approach:** Germany uses a “list” approach to predicate offences for money laundering which specifically includes tax crimes (CC, s261). Tax crimes committed outside of Germany are also predicate offences provided the relevant act would also be considered a predicate offence if it was committed in Germany, and that the offence is also subject to punishment in the territory where it was committed.

879. Germany notes that persons who were involved in, and prosecuted or convicted for, committing a predicate offence can be prosecuted for laundering the proceeds of that criminal offence (i.e. self-laundering). Self-laundering constitutes a crime if the perpetrator of the predicate offence brings the object derived from the predicate offence into circulation, while obscuring its unlawful origin.

880. Germany notes that the inclusion of tax crimes as predicate offence in 2007 has resulted in better access to information during the course of tax crime investigations.

881. **Enforcement of money laundering predicated on tax crimes:** Germany may not provide information related to the enforcement of money laundering predicated on tax crimes.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

882. Civil tax authorities in Germany are under a legal obligation to inform law enforcement agencies about suspicions of any crime. Vice-versa, law enforcement agencies are under an obligation to inform civil tax authorities about suspicious financial activity that was uncovered during the course of a criminal investigation.

883. There is also a legal basis for continued close co-operation between civil tax authorities and law enforcement agencies after the notification of suspicious activity. The Fiscal Code provides that the courts, authorities of the Federation, the *Länder*, and other local authorities must notify the FCTO of any information that becomes known to them in the course of their work, which may indicate that a tax crime has been committed. The FCTO, is in turn, obliged to report these suspicions to the competent *Bußgeld- und Strafsachenstellen*.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

884. Germany notes that several liaison structures have been set up in the *Länder* between their respective tax authorities and law enforcement authorities. It particularly notes the existence of permanent joint investigation groups consisting of investigators from Police and Customs that are responsible for fighting money laundering.

885. Germany indicates that respective *Bußgeld- und Strafsachenstellen* have also set up central co-ordinators and liaisons to facilitate effective exchange of information. Liaisons in the tax, customs and criminal investigation teams hold regular round table meetings to share intelligence and other relevant information, both on a general basis and to consult on specific cases.

886. The below tables show the models for sharing information related to tax crime and other financial crime in Germany and the availability of enhanced forms of co-operation in combatting tax crimes (Table 20.8).

Table 20.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct access ^(a)	Direct access ^(b)	DSS ^(c)	MSS ^(d)	MSS
	Customs administration	Direct access ^(b)	Direct access ^(b)		MSS ^(e)	MSS ^(f)	MSS
	Police or public prosecutor	MSS	MSS	MSS ^(g)		MSS	MSS
	Financial Intelligence Unit	MSS ^(h)	MSS ^(h)	MSS	MSS ⁽ⁱ⁾		MSS
	Corruption investigation authority	MSS	MSS	MSS	MSS	MSS	
	Financial regulator	Sharing Prohibited	MSS ^(j)	Sharing Prohibited	MSS	MSS	MSS

Note:

DSS= Discretionary Spontaneous Sharing/ MSS = Mandatory Spontaneous Sharing

- (a) There are no restrictions on the disclosure of information subject to tax secrecy if it serves the implementation of criminal tax proceedings.
 (b) Tax crime investigators have regular direct access to tax databases and may request information from departments responsible for tax assessments.
 (c) Tax and customs administrations share access to common risk analysis data, particularly concerning suspected VAT fraud. There is also a duty to share information concerning illegal employment. Information sharing is subject to tax secrecy rules.
 (d) Disclosure by tax administrations of information protected by tax secrecy rules is only permitted in legally regulated individual cases.
 (e) Indicators of possible money laundering or terrorist financing (or that there has been or will be an attempt to commit such offences) must be reported. Where there are indicators of possible money laundering or terrorist financing (or that there has been or will be an attempt to commit such offences), tax administrations must immediately inform the FIU.
 (f) Information may be provided for criminal procedure or investigation matters.
 (g) Customs must report information concerning possible money laundering or terrorist financing. Police and prosecutors must provide customs administrations with any relevant information arising out of criminal procedures.
 (h) All information from Suspicious Transaction Reports regarding money laundering and related investigations and which may be relevant for civil or criminal tax purposes, must be sent to the relevant tax administration. Information may also be provided on request.
 (i) Where the FIU obtains, or by analysis finds out, information relating to possible money laundering, terrorism financing or another criminal offence, it must provide this without delay to the appropriate federal law enforcement agency.
 (j) This obligation only applies where there is a compelling public interest in the prosecution of such crimes or when a person obliged to furnish information (for example in a tax procedure) intentionally provides false information.

Table 20.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Germany notes that the revenue authorities of the <i>Länder</i> and the special federal monitoring unit for undeclared work (Finanzkontrolle Schwarzarbeit) work closely together on the basis of the Act to Combat Undeclared Work and Unlawful Employment and an agreement setting out the details of the co-operation.
Disclosure of foreign trusts	Germany notes that the tax administration does not disclose the existence of foreign trusts with other government agencies.
Joint operations and taskforces	As criminal prosecution is the responsibility of the <i>Länder</i> , Germany notes it does not have information available on any joint operations and taskforces. However, it further notes that joint investigation teams are usually managed under the leadership of the competent Public Prosecution Office. Joint operations are agreed

	on and conducted on a case-by-case basis.
Parallel investigations	Germany notes that although it does not have information on this available, parallel investigations are possible.
Joint intelligence centres	The FCTO is mandated to gather and evaluate all relevant information and inform the <i>Länder</i> of any information concerning them and of any connections identified between criminal offences.
Secondments and co-location of staff	Germany notes that it does not conduct secondments or co-location of staff.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Germany notes that while tax returns filed by individuals, who have been previously convicted of a serious financial crime may be reviewed more carefully, there is no overriding policy that would require tax auditors to review the tax affairs of individuals convicted of financial crimes. Instead, this is decided on a case-by-case basis.
Multi-agency training	Germany does not conduct multi-agency training for tax crime investigators.

Principle 9: International co-operation

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.

887. **Legal basis:** Germany may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. As of November 2020, Germany has exchange of information relationships with over 115 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements.² Germany may also exchange information with tax crime investigation agencies of other European Union member states pursuant to the Fiscal Code (§117a). It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows Germany to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

888. **Competent authorities:** In cases of cross-border administrative assistance in tax matters, the competent authority is the Federal Central Tax Office. However, the Federal Office of Justice (Bundesamt für Justiz) is responsible for legal assistance in criminal tax matters. In the case of a European Investigation Order (EIO), the *Bußgeld- und Strafsachenstelle* acts as the judicial authority and is authorised to order requests for legal assistance, to the extent that it takes action independently in a public prosecution capacity.

889. **International co-operation in practice:** Germany continues to be a very active jurisdiction in the field of EOI. It provides that between 2011 and 2019 it received around 4 000 EOI requests and sent approximately 4 500.

Principle 10: Fundamental rights of a suspect or accused person

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

890. **Legal basis:** Germany provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These rights are affirmed in several international human rights treaties of which Germany is party and by the Basic Law for the Federal Republic of Germany, which serves as the country's constitution.

891. In Germany, if there is a suspicion that a prosecutable tax crime has been committed, criminal proceedings must be initiated (CCP, s152(2)). A suspicion is deemed to exist if there are sufficient factual indications of a tax crime. The mere possibility of culpable tax evasion is not enough to justify a suspicion.

Table 20.9. Rights of persons suspected or accused of having committed a tax crime

Right to:	Yes/No	Additional Information
Presumption of innocence	Yes	Until sentencing
Be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	The accused must be informed of the initiation of criminal proceedings at the latest when he/she is called upon to provide information or documents related to the relevant criminal offence. The accused must be advised of his/her rights at the latest when the criminal proceedings are initiated.
Remain silent	Yes	As of the initiation of proceedings
Access and consult a lawyer and/or entitlement to free legal advice	Yes	At any time
Interpretation and translation	Yes	As of the initiation of proceedings
Be advised of the particulars of what one is accused of	Yes	As of the initiation of proceedings
Access documents and case material, also known as a right to full disclosure	Yes	After the conclusion of the investigation or during the investigation provided this doesn't endanger the success of the investigation (CCP, s147).
A speedy trial	Yes	At all times
Protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Broad information sharing gateways between relevant information financial crime authorities
- Very active jurisdiction in regards to international sharing of information for criminal tax purposes

Key issues for further consideration

- Absence of national co-ordinated strategy on the enforcement of tax crimes
- Germany does not utilise some enhanced forms of co-operation including multi-agency training, secondments, and co-location of staff, systematic reviews of the tax affairs of persons sanctioned for serious financial crimes, and the use of joint operations and task forces is unknown.

References

Center for Social and Economic Research (2020), *Study and reports on the VAT gap in the EU-28 Member States: 2020 Final Report*, European Commission, <http://dx.doi.org/10.2778/2517>.

Notes

¹ See Rome Report, Chapter 5 – Country Information – Germany. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

² See <http://www.eoi-tax.org> for up-to-date figures.

21 Greece

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

892. **Tax crime legislation:** Tax crimes in Greece are governed by articles 66-71 of the Tax Procedure Code (TPC, Law 4174/2013, as amended). All tax crimes set out in the TPC require criminal intent (*mens rea*) on the part of the offender. The below table set out examples of Greek tax offences, together with their minimum and maximum sanctions.

Table 21.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Offences related to income tax, single property tax, special property tax		
Tax on the taxable income or assets that have been concealed exceeds EUR 100 000 per tax year	Two years imprisonment	Five years imprisonment
Tax on the taxable income or assets that have been concealed exceeds per tax year EUR 100 000	More than Five years imprisonment (incarceration)	15 years' incarceration
Offences related to VAT		
VAT tax that has not been paid over or has been incorrectly paid over or refunded or offset or deducted or held back exceeds per tax year EUR 50 000	Two years imprisonment	Five years imprisonment
If the VAT tax exceeds per tax year EUR 100 000	More than five years imprisonment (incarceration)	15 years' incarceration
Offences related to fictitious, falsified or forged tax records		
Tax records (regardless of value of such records)	Three months imprisonment	Five years imprisonment
Total value of such tax records exceeds the amount of EUR 75 000	One year imprisonment	Five years imprisonment
Total value of such tax records exceeds the amount of EUR 200 000	More than five years imprisonment (incarceration)	Up to ten years incarceration

893. **Statute of limitations:** The statute of limitations of criminal offences is prescribed in the Greek *Penal Code* (art. 111). Crimes with a maximum sentence of up to five years' imprisonment carry a five-year limitation period. Crimes with a maximum sentence of over 15 years' imprisonment carry a 15-year limitation period. The limitation period for tax crimes runs from the final appeal ruling on the taxpayer's tax assessment and, if no such appeal has been lodged, from the lapse of the time limit for lodging the appeal (art. 68, *Tax Procedure Code*).

894. **Complicity:** Accomplices of tax crimes can be sentenced in Greece. Any person who knowingly signs an inaccurate tax return as proxy, as well as anyone who knowingly colludes in any way in general in the commission of the offences under this Law, shall be punished as a primary offender (TPC, art. 67(3)).

895. **Attempt and conspiracy:** According to par.1 of art. 68 of TPC (Law 4174/2013), where the offence of tax evasion or attempted tax evasion has been committed, a criminal report shall be lodged (to the Public Prosecutor) by the Governor of the IAPR or by the bodies of the Tax Administration or by the Financial Police Directorate of the Hellenic Police. The criminal prosecution shall be initiated ex officio.

896. **Professional enablers:** While the TPC does not have a specific regime for professional enablers, any person who in any manner collaborates or offers assistance to the commitment of tax crimes, may be also deemed as perpetrator of the tax crime (par. 1 of art. 67 of TPC).

897. **Territorial and nationality jurisdiction:** Greece has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Greece (TPC, art. 68(4)).

898. **Legal persons:** Legal entities do not bear criminal liability in Greece. Greek law provides a lists of individuals who can be considered perpetrators, depending on their role they assumed on behalf of a legal entity (e.g. directors of foreign companies, chairpersons of the board in case of limited liability companies etc.).

Enforcement of tax crime

899. The below table shows the enforcement of tax crimes in Greece in tax years ending 2015-18.

Table 21.2. Enforcement of tax crimes against natural persons in the tax years ending 2015-18

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	758					
2016	3 173					
2017	2 230	279				
2018	1 611	398				

900. **Availability of settlements:** Settlements for tax offences are available to both natural and legal persons under Greek law.

901. **Availability of tax deductions for civil and criminal sanctions:** Expenses related to the payment of fines or sanctions are not tax deductible in Greece (art. 23 of the Income Tax Law).

902. **Tax gap:** In line with European Union directives, Greece estimates its VAT gap. In 2018, it was estimated at 31% of the expected VAT revenues (VVTL) (Center for Social and Economic Research, 2019^[8]).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

903. Greece's Independent Authority for Public Revenue (IAPR) issues a strategic plan for the fight against tax crimes every four years. The Strategic Plan 2020-24 aims at the "maximization of public

revenue and the elimination of non-compliance".¹ To effectively address non-compliance, the IAPR aims to prevent and suppress cases of tax evasion and smuggling by adopting modern risk management techniques and behavioural models analysis. Risks of non-compliance are addressed by enhancing audit tools, targeting actions, cross-check audits with the best use of information and continuing training of audit staff on new audit methods and tools. This strategy is implemented by the IAPR's General Directorate of Tax Administration (GDTA), and by the Directorate of Planning and Evaluation of Audits and Investigations (DIPAE). Its effectiveness is permanently reviewed by monitoring the fulfillment of the strategy's goals.

904. The IAPR also has a yearly Operation Plan, released by the Directorate of Strategic Planning, which identifies the goals and required actions to fight tax crimes, and then disseminates the plan to the competent authorities for implementation. Moreover, every year the General Directorate of Tax Administration (GDTA) elaborates an Operational Plan, which includes measures to increase tax compliance; a plan of action against tax evasion, in which specific quantitative goals are determined; and the implementation of appropriate measures for the collection of amounts due. In addition, DIPAE prepares an annual Operational Plan setting quantitative and qualitative targets per each of the four tax investigation agencies operating under its supervision (YEDDE – Service for Investigations and for safeguarding of Public Revenue).

905. All these documents are complemented by the work of the Financial Division of the Greek Police, which monitors and analyses applicable laws, social and fiscal situation and trends, and publishes an annual report that defines and revises the strategy of the Division in the context of *Strategic and Operational Programme* of the Hellenic Police Headquarters.²

906. **Threat assessment:** In Greece, criminal tax investigation agencies carry out a risk assessment by exploiting information they receive from internal and external sources, as well as information resulting from the findings of the audits and investigations. In this context, DIPAE takes advantage of the information received, and also creates operational action plans based on the results of investigations carried out by the four (4) tax investigation agencies operating under its supervision (YEDDE – Service for Investigations and for safeguarding of Public Revenue. At the same time, at least once a year, it prioritises the pending investigation cases of YEDDE with a scoring based on objective risk analysis criteria. The Financial Police Division (FPD) also builds its own threat assessment, utilising data from cases and complaints it has dealt with, as well as applicable laws and national and international trends. The key objective of its threat assessment is to identify the importance and the frequency of tax crime, and its strategy is developed in line with the *Strategic and Operational Programme* of the Hellenic Police Headquarters.

907. **Communication strategy:** The responsibility for communicating successful prosecutions of tax crimes to the public lies with the IAPR's Central Administration. Press releases are posted on IAPR's website (www.aade.gr/anakoinoseis). The website also features a section with guidance, instructions and FAQs on how to file tax declarations.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers
to successfully investigate tax crimes

908. The below table shows the investigative powers of the tax crime investigation agency in Greece.

Table 21.3. Investigative powers of tax crime investigation agency (YEDDE/FPD)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power For YEDDE house search requires the authorisation and presence of the prosecutor (art. 44 of the TPC and the Greek Code of Criminal Procedure).
Obtain documents from third parties	Full direct power
Interview	Full direct power YEEDDE has full direct power if the issue concerns the submission of written information by the taxpayer (art. 14 par.1 of Tax Procedure Code). If the issue concerns interrogation, it has no power, unless YEDDE requests that a prosecutor's order should be issued.(art. 33 par. 5 of Code of Criminal Procedure).
Inquiry powers (e.g. power of coercion)	No power
Intercept mail and telecommunications	Full direct power / Indirect power via another agency YEDDE has no power FPD has the potential to use this special investigative act according to Greek Code of Criminal Procedure and L.2225/1994.
Conduct covert surveillance	Full direct power YEDDE has full direct power FPD has the potential to use this special investigative act according to Greek Code of Criminal Procedure.
Conduct undercover operations	Full direct power YEDDE has no power FPD has the potential to use this special investigative act according to Greek Code of Criminal Procedure.
Search and seize computer hardware, software and electronic storage media	Full direct power YEDDE has full direct power FPD has this investigative power according to article 44 of L.4249/2014 and Greek Code of Criminal Procedure.
Arrest	Full direct power YEDDE has no power FPD has this investigative power according to the Greek Code of Criminal Procedure.

909. **Need for additional powers:** The FPD notes that the power of freezing bank accounts and other assets would give them the ability to investigate and collect the evidence necessary for subsequent seizure of illegally acquired assets.

Principle 4: Freezing, seizing and confiscating assets

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

910. **Legal basis:** Greece law provides a conviction based asset recovery regime, whereby assets can only be confiscated upon conviction of an offender for tax crime. D.G SDOE staff and officials have the right to seize assets or property or means used in criminal activities in order to safeguard the public interest. In cases of financial crime and smuggling, they also may freeze bank accounts and assets, by written order of the service director, with the obligation to inform of the action within 24 hours the competent prosecutor (Article 30 of Law 3296/04).

911. **Freezing of assets**³: IAPR can temporarily freeze assets where tax audit assesses amounts of VAT and withholding taxes duties and contributions in total of more than EUR 150 000 (TPC, arts. 46(5)-(6)). In these cases, the IAPR may refuse to issue any documents required for the transfer of the taxpayer assets. Greece's Financial Intelligence Unit (FIU) has the right to freeze assets in criminal tax matters, when tax evasion is linked to money laundering as a predicate offence.

912. The Hellenic FIU also has freezing powers. In urgent cases, when it is suspected that a property or transaction is related to money laundering or terrorist financing, the FIU shall order the provisional freezing of the property or the suspension of the specific transaction execution for 15 days. After expiry of the above period, the temporary freezing or suspension shall be automatically lifted. The temporary freezing or suspension shall be also ordered on the same conditions when requested by a corresponding authority from another member state of the European Union. When the Authority's investigation reveals reasonable suspicion of the above offences, the FIU shall order the freezing of the assets of the controlled persons. Once the investigation has been completed, the FIU shall decide whether to close the case or to refer it, by a reasoned report thereof, to the competent prosecutor, when the information collected is sufficient for such referral. A closed case may be reopened at any time in order to continue the investigation or correlate it to any other investigation (Article 48 par.2§d of Law 4557/2018).

913. Greek law does not allow for non-conviction based confiscations;⁴ extended confiscations,⁵ value-based confiscations⁶ or third party confiscations.⁷

914. **Foreign freezing, seizure and confiscation of assets:** The Hellenic Asset Recovery Office (HARO) within D.G SDOE co-operates with the corresponding departments of the Member States of the European Union to detect and trace assets deriving from cross border criminal activities that may be the subject of legal assistance for freezing, seizure or confiscation.

915. **Agency responsible for asset recovery:** The freezing, seizing, and confiscation of assets related to criminal tax matters in Greece is under the competence of the courts, the Financial Intelligence Unit and the IAPR.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

916. Both YEDDE and FPD have jurisdiction to conduct tax crime investigations. YEDDE is a specialist tax agency within the IAPR which is an independent authority. It has jurisdiction over economic crimes, and large tax evasion. The Financial Police Division (FPD) is an independent central service of Hellenic Police, supervised, co-ordinated, directed and controlled by the Chief of Hellenic Police. Moreover, the Financial Crime Prosecutor has oversight, guidance and co-ordination of FPD's actions. FPD investigates financial crimes committed against the interests of the public sector and the national economy that show characteristics of organised crime, undeclared income, and uninsured labour and tax evasion.

917. YEDDE directs its own investigations, which are related to intracommunity VAT fraud, false and fictitious invoices, e-commerce, bank accounts investigations, excessive non-issuance of invoices and investigations related to the use of manipulated cash registers and related software. In many cases YEDDE and FPD work together on joint investigations.

918. FPD conducts audits for cases that originate from citizen complaints and from information sent by other Services, or conducts preliminary examination/investigation by orders sent from Public Prosecutor or from Financial Crime Prosecutor. According to article 32 of Presidential Decree 178/2014 (as amended by Article 1 of P.D. 21/2017) FPD is divided into seven departments, with the Fiscal Policing Department being responsible to proceed to the prosecution of crimes and violations that are mainly connected: i) to fiscal legislation even in cases where violations are not criminal offences and ii). to customs legislation and mainly to any illicit market activities (smuggling) of extremely high importance. It is noted that FPD has conducted joint audits for fiscal and customs legislation in co-operation with YEDDE.

919. D.G. SDOE is a national enforcement agency that specialises in financial and economic crimes, other than customs and tax crimes, with competency to conduct parallel financial investigations. In case that during SDOE's financial investigations tax issues are detected, SDOE shares the information with IAPR in order to conduct further tax crime investigation.

920. The below table provides a high-level overview of the agencies responsible for combating financial crimes more generally. A more comprehensive analysis of Greece's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁸

Table 21.4. Agencies responsible for investigating tax and other financial crimes

Agency	Role with respect to financial crime
Independent Authority for Public Revenue (IAPR)	IAPR safeguards public revenue, by promoting tax compliance and combating tax evasion and smuggling, while providing high quality services to citizens and businesses. Its regional services are provided by Tax Offices, Customs and Chemical Labs. IAPR currently comprises of the Central Services, the Special Decentralized Services under the Governor or under the General Directorates and the Regional services (Tax Offices, Customs and Chemical Labs).
General Directorate of Tax Administration (GDTA)	Housed within IAPR, GDTA is responsible for maximising public revenue via improved procedures of control and collection; identifying, combating and punishing tax avoidance and tax evasion; ensuring co-operation with all the audit services of Independent Authority for Public Revenue for the control of tax evasion and smuggling.
Service for Investigations and for Safeguarding of Public Revenue (YEDDE)	YEDDE is a specialist tax agency within the IAPR. Its competences includes: Preventative audits, Investigations and Audits for Revealing Economic Crimes and Large Tax Evasion Cases.
General Directorate of Customs and Excise	Responsible for: preventing the smuggling of goods, especially of cigarettes, mineral oil and alcohol, fighting the illicit trafficking of narcotic drugs, precursors, weapons, dual use goods and conducting criminal investigations regarding the breaches of the customs code; defining the policy of customs controls; and monitoring the cross-border controls on cash couriers
Financial Police Division (FPD)	Housed within the Ministry of Public Safety, its tasks include prevention, investigation and combating of financial crimes committed against the interests of the public sector and the national economy
Directorate General of Financial and Economic Crime Unit (SDOE)	SDOE is an independent investigative agency under the Ministry of Finance supervised by the Prosecutor against Financial Crime and the General Secretariat against Corruption. SDOE is responsible for the research, identification and combating of economic offences of particular significance, such as money laundering, corruption, fraud, violations related to provisions, grants, illegal stocks trading and other financial transactions, as well as economic frauds against the interests of the Hellenic state and the E.U. regardless of the place of execution of the crime.
Financial Intelligence Unit	Conducts a thorough investigation in order to identify the location of criminal proceeds. Where criminal proceeds are located, the FIU proceeds to freeze the funds or property of equal value. Responsible for referring money laundering cases to the public prosecutor for prosecution.
Public Prosecutor against Corruption Crimes	Supervises and co-ordinate preliminary corruption investigations and conduct prosecutions in corruption cases.
Financial Crimes Prosecutor	Responsible for the co-ordination between law enforcement agencies in detecting tax crimes and other financial crimes if they are committed against the interests of the Hellenic Republic, the European Union, local state authorities or services that can seriously affect national economy.
Directorate of Economic Crime Investigation	The establishment of the Financial Crime Research Directorate was made by law 4512/2018 - articles 381-394 (Government Gazette A 5 / 17-1-2018). The Prosecutor of Economic Crime (Article 17A of Law 2523/1997, A, 179), has the guidance and co-ordination of the operation of the Service. The mission of the Service is exclusively to conduct investigations, preliminary examinations and preliminary investigations, to verify the commission of a major criminal misconduct of tax crimes, provided for in Articles 66 of Tax Procedure Code and other related financial crimes, which seriously harm the interests of the Greek state and the European Union, by order of the Financial Crimes Prosecutor.
Inspectors-Controllers Body for Public Administration (SEEDD)	Has a mandate to promote efficient and effective public administration, in particular to enhance the fight against corruption, maladministration, low productivity and low quality of services

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combating tax crime

921. IAPR's budget for 2017 was EUR 443.9 million, of which 1.1% was allocated to training and travel expenses for auditing. In 2018 there was an increase, whereas in IAPR's budget of total amount of EUR 449.6 million was allocated 1.4% to training and travel expenses for auditing. The budget is based on the annual strategic and operational plan, and it is provided on an annual basis, following the national audit plan. While the IAPR is responsible for the investigation of tax crimes, the Financial Crime Prosecutor is responsible for the co-ordination between law enforcement agencies and for the prosecution of tax crimes offenders.

922. Both the IAPR and FPD have performance targets set annually in the context of their respective strategies. An overview of the IAPR's key performance indicators and its results are available online (<https://www.aade.gr/open-data/KPIs>) and are updated every month.

923. The below table shows the databases and sources of information that are available to tax crime investigators in Greece.

Table 21.5. Data bases/sources of information available to tax crime investigators

	Access (FIU)	Access (YEDDE)	Access (FPD)
Company formation/ ownership registry	Direct Access	Direct Access	Direct Access
Land Registry	Access on Request	Access on Request	Access on Request
Registry of citizens	Access on Request	Access on Request	Access on Request
Tax databases	Direct Access	Direct Access	Direct Access
Customs databases	Access on Request	Direct Access	Access on Request
Police databases	Direct Access	Access on Request	Direct Access
Judicial databases	Access on Request	Access on Request	Access on Request
Suspicious Transaction Report (STR) databases	Direct Access	Access on Request	Access on Request
Domestic bank account databases	Access on Request	Access on Request	Access on Request
Car registry	Direct Access	Direct Access	Direct Access
Boat registry	Access on Request	Access on Request	Access on Request
Information System "ERGANI" (records real time data about employment in private sector of the economy)	Access on Request	Access on Request	Direct Access
Register of Bank Accounts and Payment Accounts	Access on Request	Direct Access (automated electronic request)	Direct Access
Records of other public agencies or services	Access on Request	Access on Request	Access on Request
Records of Tax Cash Register System of gas stations		Direct Access	

Training for tax crime investigators

924. The IAPR provides specialised training for experienced, as well as for inexperienced officials, on various subjects. Training programmes are organised around audit topics (including specialised programmes focused on combating tax evasion, VAT carousel fraud, etc.), as well as many programmes on preventive audits (this year about 15 programmes on preventive audits, with a duration of 14 hours per

programme). Eight hours per session are specifically dedicated to tax crimes. Furthermore, programmes concerning customs investigation are organised every semester. These focus on investigation and auditing, as well as on combating smuggling and counterfeit products.

925. The FPD participates in seminars and trainings organised by national, European, and international organisations, including EUROPOL, CEPOL, the National Institute of Education, private sector stakeholders, and others. Training topics are usually related to investigation of financial crime, fraud, tax evasion, money laundering, etc. The trainings within and outside Greece are not frequent and usually last for one to two days. FIU also conducts regular training on topics including tax evasion, VAT fraud etc., with a focus on their links to money laundering.

Principle 7: Predicate offences

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

926. Greece employs the “list” approach to predicate offences for money laundering, under which tax crimes are specified as predicate offences to money laundering (Law 4557/2018, art. 4.p.i). Greece can prosecute offenders of the predicate offence, even when the money laundering offence did not take place within Greek territory.

927. Greece notes that since the introduction of tax crimes as predicate offences in 2010 it has noticed improved co-operation between the tax administration and the FIU, more effective access to data, and increased numbers of tax crime investigations.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

928. When in the course of a tax audit, tax evasion, as defined in article 66 of the TPC, is found, the Head of the competent audit centre submits immediately a criminal report to the competent Public Prosecutor in accordance with the provisions of Article 55A of the TPC. When the auditors of the YEDDE find tax evasion related to the issuance of fake and fictitious or the receipt of fictitious tax documents/invoices, the Head of the YEDDE submits immediately a criminal report to the competent Public Prosecutor in accordance with the provisions of Article 66 of the TPC. In both cases the criminal prosecution shall be initiated ex officio.

929. In accordance with Article 33 of the Code of Criminal Procedure, the Financial Prosecutor or the Public Prosecutor shall not instruct the Head of the YEDDE to start an investigation, unless the Head of the Service requests so in special cases.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

930. The GDTA and the YEDDE (both parts of IAPR), as well as the FPD, have direct access, as to the IAPR databases for the purposes of conducting financial crime investigations and audits. Secrecy rights of tax, customs, banking, stock exchange and business do not apply during such investigations. During

investigations conducted by the FIU, no provisions governing secrecy rights related to banking, capital markets, taxation or professional secrecy applies.⁹

931. In 2018, Greece established an inter-agency co-ordination body to combat tax crime (see Law 4512/2018). It aims to prevent overlap between the work of the IAPR and law enforcement bodies, and submits non-binding recommendations to the FCP. It also gathers and analyses data and information derived from tax audits carried out by each competent authority. Members of the interdisciplinary body include representatives from the Economic Crime Prosecution, the IAPR, DG SOE and FPD.

932. The below table shows the models for sharing information related to tax crime and other financial crimes in Greece. A more detailed analysis of Greece's information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of the Rome Report.¹⁰

Table 21.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies responsible for investigating tax crimes ^(a)	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access	MSS	MSS	Direct Access ^(b)	Direct Access ^(c)
	Customs administration	DSS	DSS		MSS	MSS	MSS
	Police or public prosecutor	MSS	MSS	MSS		Direct Access ^(d)	MSS
	Financial Intelligence Unit ^(e)	DSS	DSS	DSS	DSS		DSS ^(f)
	Corruption investigation authority	DSS	DSS	DSS	DSS ^(g)	DSS	
	Financial regulator	On request	MSS	MSS	MSS ^(h)	MSS	DSS ⁽ⁱ⁾

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) Tax crime investigation authorities (YEDDE and FPD) have direct access to IAPR databases.

(b) Where, in the course of a tax audit conducted by a Local Tax Office or Audit Centre, evidence of possible money laundering or a predicate offence of tax evasion is discovered, the GDTA submits a STR to the FIU. Where a STR is submitted by the GDTA, the FIU sends follow up reports and feedback on the results of any action taken.

(c) SDOE and FPD have direct access to IAPR databases as well as the GDTA and the YEDDE. Other authorities may receive information on request.

(d) The FIU has direct access to police information. The Greek public prosecutor is under an obligation to provide the FIU with information spontaneously, but does not give the FIU direct access to information.

(e) The FIU also sends to the GDTA, Local Tax Offices and Audit Centres information concerning suspicions of possible tax evasion for further tax investigation.

(f) The obligation to provide information spontaneously relates to the provision of information to the SDOE. Other authorities may receive information on request.

(g) The FPD also has access upon request to records of other departments, authorities and agencies when this is necessary for an investigation.

(h) The Capital Markets Commission must report to the public prosecutor any information it obtains which causes it to suspect a criminal offence may have been committed. Other information may be provided to the public prosecutor or court on request, subject to the condition that the information must be absolutely necessary for the detection or punishment of a criminal offence.

(i) In some circumstances, information must be provided to the SDOE without discretion.

933. The below table shows the availability of enhanced forms of co-operation in combating tax crimes in Greece.

Table 21.7. Availability of enhanced forms of co-operation in combating tax and other financial crime

Mechanism	Description
Co-operation agreements	IAPR has al co-operation in place with Greek Police which orders local police departments all over the country, to assist IAPR auditors during the audit procedure.
Disclosure of foreign trusts	N/A
Joint operations and taskforces	Joint investigations are conducted between several teams. The Co-ordination Operational Centre, set by Law 4410/2016, is: responsible for co-ordinating all the administrative agencies of investigation, control and enforcement against the domestic and international smuggling groups that trade illicitly excise goods. Its members include IAPR, Hellenic Police, National Transparency Authority, the Hellenic Coast Guard, SDOE and Secretariat of Commerce.]
Parallel investigations	Yes
Joint intelligence centres	There is no joint intelligence centre but Hellenic FIU officers are seconded from various law enforcement and supervisory authorities, including Hellenic Police, SSFECU/SDOE, IAPR, MoF, MoJ, Bank of Greece and others. In this way, HFIU benefits from this specialized knowledge and experience that personnel have gained in relevant fields.
Secondments and co-location of staff	IAPR seconds and co-locates its staff to law enforcement agencies on a regular basis.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	SDOE shares the information with IAPR in order to conduct further tax crime investigation.
Multi-agency training	Yes

Principle 9: International co-operation

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.

934. **Legal basis:** Greece exchange tax information with foreign tax authorities pursuant to bilateral and multilateral agreements. In specific it has bilateral exchange of information relationships with 57 jurisdictions through bilateral tax treaties and with 1 jurisdiction through a Tax Information Exchange Agreements.¹¹

935. At EU level, Greece exchanges tax information, mainly including direct taxation, through the EU Directive 2011/16 on administrative co-operation in the field of taxation. Value added tax, customs duties and excise duties are covered by other Union legislation on administrative co-operation between Member States. Furthermore, exchange of tax information with third countries is conducted under the OECD – Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. All the aforementioned legal instruments, foresee for exchanging information also for non-tax purposes (such as investigation of money laundering and corruption), to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

936. The Hellenic FIU is also a member of the EGMONT Group and FIU.net, which facilitate exchange of sensitive intelligence between its member countries. The IARP is able to exchange sensitive intelligence with a counterpart tax administration within the context of relevant international treaties

937. **Competent authority:** The Directorate for International Economic Relations of IARP is the Competent Authority for international administrative co-operation regarding exchange of information on request, in direct taxation. IARP is the competent authority for sending and receiving MLA requests in tax matters in Greece. FPD is also able to exchange information for criminal activities in general with other law enforcement authorities of the Member States of the European Union based on Presidential Decree 135/2013 (Council Framework Decision 2006/960/JHA).

938. **International co-operation in practice:** The statistics on the number of incoming and outgoing requests for international administrative co-operation in tax matters not distinguish between requests relating to criminal and civil tax matters because this is not foreseen in the respective legal framework and it is not monitored by the EU and OECD reporting obligations. However, the FIU has received 201 requests in 2015, 212 requests in 2016, 206 requests in 2017 and 221 requests in 2018 – all of these requests were related to predicate offences to money laundering. The FIU estimates that more than 90% of the requests they sent were answered by their criminal jurisdiction in time.

Principle 10: Fundamental rights of a suspect or accused person

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

939. **Legal basis:** Greece provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed both by the European Convention of Human Rights and its Protocols and the International Covenant on Civil and Political Rights, which prevail over any conflicting provisions of national law.¹² Furthermore, these rights are complemented by the Greek Constitution and by relevant provisions of the Greek Code of Criminal Procedure.

940. Greece notes that Local Tax Offices and Audit Centers (under the GDTA) are obliged to file criminal reports to Public Prosecutors. This obligation does not contradict with the exchange of information (Information Sheets) taking place between Local Tax Offices or Tax Centers and YEDDE.

Table 21.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	YES	Until sentencing
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	YES	At all times
remain silent	YES	At all times
access and consult a lawyer and/or entitlement to free legal advice	YES	At all times
interpretation and translation	YES	At all times
be advised of the particulars of what one is accused of	YES	At all times
access documents and case material, also known as a right to full disclosure	YES	At all times
a speedy trial	YES	At all times
protection from ne bis in idem (Double Jeopardy)	YES	At all times

Highlights

Successful practices

- Comprehensive tax crime strategy and threat assessment

Room for improvement

- Absence of financial penalties for tax crimes
- Legal persons are not criminally liable
- Limited powers to freeze, seize, and confiscate assets linked to tax crimes.

References

Center for Social and Economic Research (2019), *Study and reports on the VAT gap in the EU-28 Member States: 2019 Final Report*, European Commission, https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-full-report-2019_en.pdf.

Notes

¹ The full plan is available at the IAPR's website: <https://www.aade.gr/epiheirisiaka-shedia/stratigiko-shedio-aade-2020-2024> (in Greek).

² The 2018 Operational Plan is available from the Greek Police website: http://www.astynomia.gr/images/stories/2019/files19/23042019_ethsia_ekthesi_doa.pdf (in Greek).

³ Freezing / seizing is used to temporarily prevent the movement of assets pending the outcome of a case. Confiscation is used after the final outcome of a case, as a final measure that permanently deprives criminals from accessing assets obtained from a crime.

⁴ Non-conviction based confiscation means the power to seize assets without a criminal trial and conviction.

⁵ Extended confiscation 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.

⁶ Value-based confiscation is a method of confiscation that enables a court to impose a pecuniary liability equivalent to the amount of the criminal proceeds, such as a fine.

⁷ Third party confiscation is a measure made to deprive someone other than the offender – the third party – of criminal property.

⁸ See Rome Report, Chapter 5 – Country Information – Greece. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁹ The provision of this paragraph does not prejudice to Articles 212, 261 and 262 of the Code of Penal Procedure.

¹⁰ See Rome Report, Chapter 5 – Country Information – Greece. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

¹¹ See <http://www.eoi-tax.org> for up-to-date figures.

¹² Greek Constitution, Art. 28(1) <https://www.wipo.int/edocs/lexdocs/laws/en/gr/gr220en.pdf>.

22 Honduras

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

941. Honduras' tax crime offences, which require criminal intent (*mens rea*), are set out in article 431 of the Criminal Code (Decree 130/2017, in force since 25 June 2020). This sole offence applies to both income tax and VAT/GST, and is detailed below.

942. Honduras notes that tax crime offences below HNL 50 000¹ are treated as civil tax offences and may not be prosecuted.

Table 22.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Defrauding the Public Treasury, by action or omission, by avoiding the payment of taxes, contributions or duties, or by not withholding amounts that should have been withheld		
If the evaded amount is between HNL 50 000 and HNL 250 000	Three years of imprisonment	Six years of imprisonment and a fine of 120% the evaded amount
If the evaded amount is over HNL 250 000	Six years of imprisonment	Ten years of imprisonment and a fine of 140% the evaded amount

943. **Statute of limitations:** The limitation period is of ten years for cases where the amount evaded is between HNL 50 000 and 250 000, and 15 years for cases where the amount evaded exceeds HNL 250 000.

944. **Complicity:** Accomplices of committing a tax crime are liable to a sanction equivalent to three quarters of the sanction received by the primary offender (CC, 62).

945. **Attempt and conspiracy:** Attempt and conspiracy to commit a tax crime are not criminally liable in Honduras.

946. **Professional enablers:** Honduras does not have a separate penalty regime for professional enablers, although those can be prosecuted under the general rules of primary and secondary offenders.

947. **Territorial and nationality jurisdiction:** Honduras has jurisdiction over all tax crimes committed wholly or partly within Honduran territory. Under the current interpretation of art. 9.2.e of the Criminal Code,

it also has jurisdiction over tax crimes committed outside of Honduras provided they damage the Honduran budget.

948. **Liability of legal persons:** Legal persons may be liable for committing a tax crime in Honduras. Sanctions include suspension from public tenders and prohibition of receiving subsidies for up to five years, and fines of up to twice the evaded amount (CC, 434).

Enforcement of tax crime

Table 22.2. Enforcement of tax crimes in tax years ending 2015-18

Tax years ending	Concluded investigations	Cases referred for prosecution	Cases where plea agreement/conviction was reached	Cases where other pre-trial action was adopted
2015	10	9	3	6
2016	11	8	4	5
2017	12	9	5	4
2018	4	11	5	5
Total	37	37	17	20

949. Honduras notes that all the convictions involved imprisonment for less than three years.

950. **Availability of settlements:** Honduras allows for settlements provided the offender pays all the outstanding debt with interests before the case is referred for prosecution (CC, 431 last paragraph). It also allows for plea agreements during the trial phase of the proceedings.

951. **Availability of tax deductions for civil and criminal sanctions:** Honduras does not allow tax deduction for criminal sanctions. Civil sanctions may be tax deductible only if a tax amnesty is put in place by the State.

952. **Tax gap:** While Honduras measures the gap for its outstanding civil tax debt, this does not include the criminal tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

953. In 2014, the Republic of Honduras set up an Inter-Agency Task Force for the Fight against Tax Crimes and Related Crimes, known as the “National Anti-Evasion Task Force”. The Task Force is led by the tax administration (SAR) and membership comprises the National Police, the prosecution service, the Attorney General’s Office, intelligence services, and the customs administration. The private sector is represented by the Honduran Council of Private Enterprises, which may be required to take part in meetings.

954. The main objective of the National Anti-Evasion Force Group is to identify, prevent and combat tax crimes and related crimes by promoting inter-agency co-ordination. Its strategy has been in place since 2014 and has been revised once since, adding powers to combat energy theft.

955. **Threat assessment:** Honduras conducts an assessment for civil tax threats, but this does not apply to tax crimes.

956. **Communications strategy:** SAR publishes its annual results on the government's transparency website, as well as on the website there is a section to file tax crime complaints. SAR is currently working on a media campaign to raise awareness of the issue of tax crimes.²

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 22.3. Investigative powers of tax crime investigation agency (Servicio de Administración de Rentas)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Indirect power Court order required at the request of prosecutor or General Attorney
Obtain documents from third parties	Direct power Except for banking information, where the request must be channelled through the National Banks and Insurance Commission
Interview	Direct power
Inquiry powers (e.g. power of coercion)	Direct power
Intercept mail and telecommunications	Indirect power Court order required at the request of prosecutor or General Attorney
Conduct covert surveillance	Indirect power Court order required at the request of prosecutor or General Attorney
Conduct undercover operations	Indirect power Court order required at the request of prosecutor or General Attorney
Search and seize computer hardware, software and electronic storage media	Indirect power Court order required at the request of prosecutor or General Attorney
Arrest	Direct power National Anti-Evasion Task Force, through the National Police

957. SAR notes that it would benefit from seizing evidence without the need of a court order.

958. **Legal professional privilege:** Attorney-client communications, including communications with tax advisors are accountant, are privileged in Honduras. SAR notes that while this affects tax crime investigations, on occasions it requests court orders to lift communication privilege.

Principle 4: Freezing, seizing and confiscating assets

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

959. **Legal basis:** The Criminal Procedure Code and other statutes govern Honduras' regime for freezing, seizing and confiscating assets.

960. **Freezing and seizing orders:** Honduras does not allow for rapid freezing of assets.

961. **Confiscation orders:** While Honduras does not allow non-conviction based and value-based confiscations, its law provides for extended confiscations.

962. **Foreign freezing, seizure, and confiscation orders:** Honduras does not have information about the ability to execute foreign freezing, seizing or confiscation orders.

963. **Agency/unit responsible for asset recovery:** Asset recovery is responsibility of the courts at the request of the prosecution service. The Office of Administration of Seized Assets (OABI) manages the assets.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

Table 22.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Servicio de Administración de Rentas (SAR)	Honduras' tax administration, strategic co-ordinator of National Anti-Evasion Task Force
Inspectoría General (housed within SAR)	Honduras' tax crime investigation agency within SAR
Customs Agency	Customs Administration of Honduras, combats customs crime
National Police	Support in the investigation of Tax Crimes
Special Prosecutor's Office for Tax Crimes and Related Crimes	It exercises criminal action in the field of Tax Offences.
Attorney General's Office of the Republic	It initiates criminal proceedings in the field of Tax Crimes.
Dirección Nacional de Investigación e Inteligencia (Intelligence Agency)	Support in the investigation of Tax Crimes
Agencia de Investigación Criminal ATIC (housed within Attorney General's Office)	Support in the investigation of Tax Crimes
Fuerza Nacional Antievasión (National Anti-Evasion Task Force)	Fight against Tax Crimes and Related Crimes

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

964. Honduras notes that SAR had 45 staff in charge of tax crime investigations. It could not provide budget figures for combatting tax crimes.

Table 22.5. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	On Request
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	On Request
Judicial databases	On Request
Suspicious transaction report databases	On Request
Domestic bank account databases	On Request

Car registry	On Request
Boat registry	On Request

Training for tax crime investigators

965. Honduras provides tax crime investigators with capacity building in managing criminal investigations, investigation techniques and tax crime law, among others. Prosecutors dedicated to tax crime cases also have training in accounting.

Principle 7: Predicate offences

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

966. **Approach:** Honduras notes that it has not designated tax crimes as a predicate offence for money laundering.

967. **Enforcement of money laundering predicated on tax crimes:** Not applicable.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

968. Under article 152 of the Tax Code, when civil tax auditors detect suspicions of a crime, they must report them to the Prosecution Service.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

Table 22.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		On Request	Direct Access	On Request	On Request	On Request
	Customs administration	Direct Access	On Request		On Request	On Request	On Request
	Police or public prosecutor	On request	Direct Access	On Request		On Request	On Request
	Financial Intelligence Unit	Sharing Prohibited	On Request	Sharing Prohibited	On Request		On Request

Corruption investigation authority	On Request	On Request	On Request	On Request	On Request	On Request	
Financial regulator	On Request	On Request	On Request	On Request	On Request	On Request	On Request

Table 22.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Through Anti-Evasion Task Force
Disclosure of foreign trusts	No
Joint operations and taskforces	Anti-Evasion Task Force, led by SAR, other members include the National Police, intelligence services, customs authority and the Office of the Solicitor General.
Parallel investigations	Honduras allows for parallel civil/criminal investigations on the same taxpayer, provided they do not investigate the same facts.
Joint intelligence centres	No
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes
Multi-agency training	No

Principle 9: International co-operation

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.

969. **Legal basis:** Honduras may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. As of 2021, Honduras has exchange of information relationships with five jurisdictions through one bilateral Tax Information Exchange Agreement and one Multilateral Convention on Mutual Administrative and Technical Co-operation, which allows it to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.³

970. **Competent authorities:** The competent authority for the TIEA is the Secretariat of Finance, and for the Multilateral Convention on Mutual Assistance and Technical Co-operation, the competent authorities are the Tax and Customs Administrations.

971. **International co-operation in practice:** Honduras does not maintain statistics on the number of requests it has sent or received. SAR notes that if it became the competent authority, rather than the Secretariat of Finances, the exchange process would be more straightforward.

Principle 10: Fundamental rights of a suspect or accused person

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

972. Honduras provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are set out in the Honduran Constitution and the Code of Criminal Procedure, among other laws.

Table 22.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until sentence
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From the onset of the investigation
remain silent	Yes	From the onset of the investigation
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	From the onset of the investigation
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Solid inter-agency co-operation agreements in place with the Anti-Evasion Task Force
- Law provides for liability of legal persons
- Mandatory reporting of suspicions of a tax crime by civil tax assessors

Room for improvement

- Honduras would benefit from having a threat assessment for tax crimes and from including staffing and budgetary resources into the overarching tax crime strategy.
- Honduras would benefit from setting up a regime for rapid freezing of assets, non-conviction based confiscations and value-based confiscations.
- SAR would benefit from the possibility of seizing evidence without a court order.
- Honduras would benefit from including tax crimes as predicate offences for money laundering.

Notes

¹ In April 2021, EUR 1 = HNL 28.9.

² <https://www.sar.gob.hn/portal-de-transparencia/inspectoría-general/> (in Spanish).

³ See <http://www.eoi-tax.org> for up-to-date figures.

23 Hungary

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

973. Hungary's Act C of 2012 of the Criminal Code ("Act CC") captures a range of tax criminal offences under the comprehensive definition and concept of "budget fraud". This includes crimes related to taxes, duties and budgetary subsidies and also money laundering linked to a predicate offence. The Act CC specifies that tax crimes require criminal intent (*mens rea*) in order to be viewed as a criminal offence.

974. This section covers general acts of tax evasion, tax crime relating to excise goods, and offences related to false reporting, either with or without the use of forged documentation or other fraudulent instruments.

Table 23.1. Tax offences requiring criminal intent

Offence	Minimum and maximum sanctions
(1) Any person who: a) induces a person to hold or continue a false belief, or suppresses known facts in connection with any budget payment obligation or with any funds paid or payable from the budget, or makes a false statement to this extent; b) unlawfully claims any advantage made available in connection with budget payment obligation; or c) uses funds paid or payable from the budget for purposes other than authorized; and thereby causes financial loss to one or more budgets,	Imprisonment of up to two years
(2) if: a) the budget fraud as defined in Subsection (1) results in considerable financial loss; or b) the budget fraud as defined in Subsection (1) is committed in criminal association with accomplices or on a commercial scale.	Imprisonment of up to three years
(3) if: a) the budget fraud as defined in Subsection (1) results in substantial financial loss; or b) the budget fraud as defined in Subsection (1) results in considerable financial loss and is committed in criminal association with accomplices or on a commercial scale	Imprisonment between one and five years
(4) if: a) the budget fraud as defined in Subsection (1) results in particularly considerable financial loss; or b) the budget fraud as defined in Subsection (1) results in substantial financial loss and is committed in criminal association with accomplices or on a commercial scale	Imprisonment between two and eight years
(5) if: a) the budget fraud as defined in Subsection (1) results in particularly substantial financial loss; or	Imprisonment between five and ten

b) the budget fraud as defined in Subsection (1) results in particularly considerable financial loss and is committed in criminal association with accomplices or on a commercial scale.	years
(6) Any person who manufactures, obtains, stores, sells or trades any excise goods in the absence of the criteria specified in the Act on Excise Taxes and Special Regulations on the Marketing of Excise Goods or in other legislation enacted by authorization of this Act, or without an official permit, and thereby causes financial loss to the central budget, shall be punishable in accordance with Subsections (1)-(5)	
(7) Any person who either does not comply or inadequately complies with the settlement, accounting or notification obligations relating to funds paid or payable from the budget, or makes a false statement to this extent, or uses a false, counterfeit or forged document or instrument	Imprisonment of up to three years

975. **Statute of limitations:** Under Section 26 of Act CC, the statute of limitations is equal to the maximum penalty set for the crime, or after not less than 5 years. In crimes that have been committed, the period starts the day the crime was carried out. Section 28 of Act CC sets the circumstances on which the statute of limitations can be interrupted. This can occur, among others, by any action of the court, the public prosecutor, the investigating authority, the justice minister (in international cases), or the responsible foreign authority taken against the perpetrator in connection with the crime. In these cases, the period of limitation restarts on the day of the interruption.

976. **Complicity:** Hungarian law applies the same maximum penalties to those who aid, abet, incite or conspire with the principal offender, or any other person to commit a criminal offence.

977. **Attempt and conspiracy:** Attempt and conspiracy to commit a tax crime are criminally liable in Hungary.

978. **Professional enablers:** Hungary does not have a separate penalty regime for professional enablers, but these can be prosecuted following the general rules for primary and secondary offenders.

979. **Territorial and nationality jurisdiction:** Hungary has jurisdiction over all crimes committed wholly or partly in Hungary (Act of CC, s3).

980. **Liability of legal persons:** In Hungarian law, criminal responsibility does not apply for a legal person. Natural persons, who belong to the management of the legal person or are a representative of it (and act on behalf of the legal entity) can be held criminally liable for an offence committed by the legal person.

981. The general rule under the Criminal Code is that Hungarian criminal law shall be applied to crimes committed by individuals (natural person). The criminal liability of companies was created on the basis of Criminal Code by the special Act CIV of 2001 on Criminal Measures Applicable to Legal Entities ("Cm Act") which introduced to concept of the criminal liability of legal entities.

Enforcement of tax crime

Table 23.2. Enforcement of tax crimes in tax years ending 2015-19

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	N/A	N/A	N/A	690	N/A	N/A
2016	N/A	N/A	N/A	595	N/A	N/A
2017	N/A	N/A	N/A	524	N/A	N/A
2018	N/A	N/A	N/A			
2019	N/A	N/A	N/A			

Note by Hungary: these statistics are not to be treated as official Hungarian statistics.

982. **Availability of settlements:** The prosecution authority may settle tax crime cases in Hungary.

983. **Availability of tax deductions for civil and criminal sanctions:** In criminal cases, the concept of tax deduction is incomprehensible. According to section 10 (8) of the HCC the sentence may be reduced without limitation if the perpetrator repairs the financial damage caused by the budget fraud referred to in Subsections (1)-(6) before the indictment. This provision shall not apply if the criminal offense is committed in criminal association with accomplices or by a habitual recidivist.

984. **Tax gap:** Regarding VAT, Hungary uses the tax gap index of the European Commission as an indicator. The most recent figures were published in September 2020 (Study and Reports on the VAT Gap in the EU-28 Member States 2020 Final Report) based on data of year 2018 and 2019. According to the study of the European Commission, the estimated VAT tax gap reduced to 8.4% in 2018, and the estimated rate of tax avoidance was 6.6% for the year 2019.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

985. The National Tax and Customs Administration of Hungary (NTCA) has a generic strategy, which refers to a revised plan that ensures that the service meets the requirements and challenges in the 21st Century. In addition to *the former institutional strategy* the Directorate General for Criminal Affairs (DGCA) has issued guidelines for the period of 2016-20, which set up mid-term goals for the criminal service to achieve. These guidelines focus on areas such as mapping of economic sectors, ensuring closer ties between intelligence and investigation activities, training, and international co-operation.

986. The DGCA of the NTCA is responsible for the development and implementation of its own strategy against financial and economic crimes. Since these crimes fall under the investigative competences of the NTCA, the DGCA is the sole stakeholder in the development, implementation and revision of this strategy. The strategy against tax crime comprises of the following elements: disruption of organised crime, improvement of market conditions, focus on the quality of intelligence information, criminal analysis, and applying an “asset-focused approach” for identifying criminal proceeds.

987. **Threat assessment:** The quarterly operational and strategic reports mentioned in the section above can serve as threat assessments and set up goals for future initiatives. Two major performance indicators included in the threat assessment are; the proportion of damage caused to the budget and the assets that could be secured in the course of a criminal investigation, and the number of disrupted and liquidated criminal organisations compared with the remaining known and active ones. Efficiency is measured by the Hungarian Central Statistical Office (KSH), or other professional associations or institutions.

988. **Communications strategy:** The communication activities of the DGCA focus primarily on nationwide interventions against well-known business entities, which can create a deterrent effect on other business operators. Large-scale operations that are usually communicated by the DGCA may involve simultaneous house searches at a multitude of premises (sometimes over 100) and the preliminary arrests of dozens of suspects. Convictions and sentencing of suspects is typically much less communicated, because it will likely have less impact due to the length of the judicial process in Hungary.

Box 23.1. Example of successful implementation of the tax crime strategy: Hungary

Due to measures introduced in the mid-term criminal strategy, the asset recovery rate grew from 22% in 2015 to 45% in 2017. At the same time, the number of criminal investigations launched fell from 7 672 cases in 2015 to 5 977 cases in 2017, indicating a more efficient approach to asset recovery and criminal investigations

The strategy of the NTCA DGCA also shifted the focus towards tackling organised crime groups. In 2014, 18 organised crime groups were dismantled – in the years following the implementation of the new strategy, 71, 54 and 55 OCGs were dismantled. The strategy and its results are under periodic review, and adjustments are made where necessary.

Note by Hungary: Statistics and information displayed in this box are issued by the case management system of the NTCA DGCA, and should be treated as dynamic statistics, contrary to static statistics of closed criminal cases. These are not the official statistics of Hungary.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

Table 23.3. Investigative powers of tax crime investigation agency (National Tax and Customs Agency of Hungary)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power The interception of mails and telecommunication can be requested to and carried out by the Special Service for National Security on a special form filled by the case owner unit at the NTCA and after the authorisation of the Court. In exceptional cases it can be requested before Court authorisation, but the request for Court authorisation shall be submitted simultaneously. The filled form is classified and forwarded to the Service via a special dedicated e-system, and the authorisation process is regulated in the Act on NTCA and in the Act on Criminal Procedure.
Conduct covert surveillance	Full direct power The NTCA has full direct powers of to conduct covert surveillance. An undercover investigator can either infiltrate into an OCG, or carry out a controlled delivery. Moreover, a trust purchase or a mock purchase can also be used, but both are subject to the prior consent of the public prosecutor.
Conduct undercover operations	Full direct power
Search and seize computer hardware, software and electronic storage media	Full direct power The NTCA has full direct powers to search and seize computer hardware, software and electronic storage media. Hungary observes that it does not generally experience issues regarding the search and seizure of digital media / devices, as this is properly regulated in their criminal procedure law.
Arrest	Full direct power The NTCA has full direct power to arrest a suspect during the course of a tax crime investigation.

989. **Legal professional privilege:** In Hungary, legal privilege covers everything that a defence attorney talked about with their client. Defence attorneys cannot be interviewed as witnesses about something that they discussed with their client. In addition, any written communication between the attorney and their client, or the attorney's notes on the case, are privileged and thus not admissible at court. Accountants are not covered by privilege and their property can be searched, relevant materials seized, and they can be freely interviewed either as suspects or witnesses.

Principle 4: Freezing, seizing and confiscating assets

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

990. **Legal basis:** The Hungarian Police and the National Tax and Customs Administration (NTCA) are both authorised to perform seizure of assets. The Hungarian AML/CFT Act covers the regulations of the legal instrument suspension that is considered as a freezing measure in the AML/CFT context. The Hungarian Financial Intelligence Unit (HFIU) has the right to use this legal instrument. Confiscation of assets may be ordered by a judge. The Asset Recovery Office (ARO) may also perform seizure on request by investigative authorities.

991. **Freezing and seizing orders:** As far as the criminal procedures are concerned, Art. 309 of the Act of Criminal Procedure (ACP) provides that the court, prosecutor or investigating authority can order the seizure of objects (which includes movable property, account money, electronic data, electronic currency but not real estate), that have evidential value (308.§ 2.a) or may be subject to a confiscation or forfeiture measure as provided for by the law (308. § 2.b), thus including equivalent value seizure. Sequestration can be ordered by the court (or, in urgent cases, by the prosecutor or investigative authority) when, inter alia, forfeiture may be ordered on the objects, account money, electronic currency property rights, claim or money managed upon a contract (Art. 324 §). It extends to real estate, if subject to confiscation.

992. **Confiscation orders:** Upon conviction, all assets obtained by the perpetrator through either participation in a criminal organisation or through budget fraud resulting in substantial financial loss could be subject to a confiscation order. However, the assets must be; obtained at most five years before the start of criminal proceedings, and must only consist of assets that are unreasonably disproportionate relative to the lawful income and personal circumstances of the perpetrator. Non-conviction based confiscations are not permitted under Hungarian law. A value-based confiscation of property shall be ordered, if the property subject to confiscation as a result of criminal proceedings is no longer accessible, it cannot be separated from other assets or its confiscation would impose unreasonable difficulties. Third-party confiscations can occur against any person or legal entity that benefits from the proceeds of a criminal act.

993. **Foreign freezing, seizure, and confiscation orders:** As far as criminal cases are concerned, seizing and confiscation may be performed on the base of judicial co-operation regulated by the Act CLXXX of 2012 on the criminal co-operation with the member States of the European Union, and by Act XXXVIII of 1996 on the judicial co-operation in criminal matters, and also other relevant bilateral and multilateral MLA Conventions.

994. **Agency/unit responsible for asset recovery:** As far as criminal cases are concerned, for tax offences asset recovery activity performed by primarily the NTCA DGCA since expertise relies within this organisation; however, the ARO could do it as well. In view of its specific (and main) task of collecting and recovering state budgetary revenues, the NTCA pursues a policy of detecting and securing the proceeds of financial and economic criminal offences within the scope of its competence as a priority. To that end,

the DGCA focuses on the degree of enrichment of the suspects and develops financial profiles as a tool to assist them in applying conservatory measures, besides providing relevant intelligence to supporting investigations. Financial profiling does not only serve taxation purposes when a disproportion is established between the assets and the declared income, but is also used in order to trace assets and criminal proceeds in criminal investigations within the legal remit of the NTCA DGCA, particularly budget fraud, fraudulent bankruptcy and copyright violations, and budget fraud related money laundering.

Box 23.2. Comments on Principle 4 by the Hungarian Financial Intelligence Unit (HFIU)

In the perspective of the HFIU, *Principle 4: Freezing / Seizing and Confiscating Assets* means the use of the legal instrument suspension, which is considered a freezing measure in the AML/CFT context.

Section 30 of the AML/CFT Act covers the reporting obligation of suspicious activity. According to Section 30 (1), in the event of noticing any information, fact or circumstance indicating money laundering of terrorism-financing, the executive officer, employee or contribution family member of the obliged entity shall submit without delay a report to the designated person determined under the Section 31 (1), who shall forward the report to the FIU.

Section 34 (1) of the AML/CFT Act lays down that the obliged entity shall suspend execution of the transaction if any data, fact or circumstance constituting grounds for reporting arises in relation to such a transaction, for the investigation of which the obliged entity deems that immediate measures by the FIU are required. In this case, the obliged entity shall make a report without delay to the FIU in order to it to be able to check the well-foundedness thereof.

The obliged entity may suspend the transaction also by suspending all transactions concerning the service engaged by the client decreasing the client's assets. In this case, the obliged entity shall call the HFIU's attention to this in its report Section 34 (2) of AML/CFT Act. Such reports are considered as a special type of SARs.

The reporting regime is based on suspicion. However, the level of suspicion in the context of the reporting obligation is the lowest possible level of suspicion. Section 34 of the AML/CFT Act does not even use the word "suspicion". However, it is important to emphasise that the reporting entities are supported by red flags and indicators issued by the supervisory bodies and the HFIU. The level of suspicion is higher in those cases, where the SAR triggered by the transaction-suspension.

The HFIU can also suspend transactions. The HFIU can carry out such a suspension on the basis of its own analysis, on the basis of the request of a foreign FIU and on the basis of the request of the investigative authority, public prosecutor. Section 35 (1) of the AML/CFT Act lays down that the obliged entity shall suspend execution of the transaction in accordance with the FIU's instruction if the FIU notifies the service provider in writing regarding a fact, data or circumstance constituting grounds for reporting in connection with the transaction or the service provider's client.

As for the duration of time that a transaction can be suspended, the HFIU has to conduct serious check in connection with the data, facts or circumstance that are the basis of the report and to examine the necessity of the dissemination of information (the result of its analytical work) specified in Section 48 (1) of AML/CFT Act within four business days as of the reporting specified in Section 34 of AML/CFT Act, and the notification specified in Section 35 (1) of AML/CFT Act. In addition, the HFIU is entitled to extend the aforesaid examination for further three business days if this is necessary for the dissemination of information specified in Section 48 (1) of AML/CFT Act. (Section 35 (2),(3) of AML/CFT Act).

The HFIU notifies the obliged entity within the mentioned four days: 1) if it extends the duration of the suspension or 2) if the transaction can be performed prior to the completion of the HFIU's inspection. /Section 35 (4) of AML/CFT Act.

In regards to the international context, based on Section 35 of the AML/CFT Act and having regard to Section 49 (1) of the AML/CFT Act, the HFIU is allowed, as defined in the mentioned paragraphs, to suspend transactions/withhold consent for a suspicious transaction upon request, which has to indicate the emergence of any information, fact or circumstance of ML/TF, sent by the foreign counterpart FIU.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

995. The authority responsible for the investigation of tax crime offences in Hungary is the Directorate General for Criminal Affairs of the National Tax and Customs Administration. The Hungarian Financial Intelligence Unit is the authority for receiving, analysing suspicious activity reports (SARs), disseminating the results of the analysis, suspending transactions if necessary and it carries out the exchange of information with counterpart FIUs based on the AML/CFT Act. It is an autonomous and independent department within the Central Management of National Tax and Customs Administration (NTCA), identifying itself as a hybrid financial intelligence unit. It does not carry out criminal investigations and it is not part of the investigative authority of the NTCA. As such, it does not conduct criminal investigations, and does not apply any coercive measures (OECD, 2017, p. 303^[2]).

996. The Head of the NTCA supervises the HFIU. The HFIU identifies itself as a hybrid FIU. On one hand, the HFIU does not carry out criminal investigations and it is not part of the investigative authority of the NTCA. On the other hand, it works very close with law enforcement agencies, and it co-operates very closely with them.

997. Prosecution of tax crimes is conducted by the 9th District Prosecution Office in Budapest and by the Department of Economic Crimes (DEC) at the Budapest High Prosecution Office. Upon completion of the criminal proceeding and associated procedural actions, the prosecutor shall examine the case files and decide on whether to file an indictment.

998. The below table provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Hungary's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹

Table 23.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
National Tax and Customs Administration of Hungary (NTCA)	Responsible for the prevention, detection and investigation of criminal activities falling under its jurisdiction.
NTCA Directorate General for Criminal Affairs (DG-CA)	Responsible for the prevention, detection and investigation of crimes determined by the Code on Criminal Procedure, and responsible for administering customs and excise duties.
National Protective Service (housed within the Hungarian National Police)	Responsible for maintaining integrity and preventing internal corruption of public officials of the civilian security services, the law enforcement agencies and the administrative

	government agencies.
National Bureau of Investigation ((housed within the Hungarian National Police))	Dedicated body for criminal asset recovery.
Hungarian Financial Intelligence Unit (HFIU)	Receives,, analyses and disseminates Suspicious Transaction Reports and carries out the exchange of information with counterpart FIUs.
Department for priority, corruption and organised crime (housed within the General Prosecutor's office)	Specialised prosecutors dealing with high level anti-corruption cases
Anti-corruption unit (housed within the National Police)	Responsible for the national co-ordination of actions against corruption
National Protective Services	Works to detect and prevent corruption and other offences of the Police and other selected public agencies
Central Bank of Hungary (MNB)	Single integrated supervisor of all financial services and markets in Hungary.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

999. As of 2020, there are 1 179 staff in the criminal branch of the NTCA. Tax crime investigations are measured through three key performance indicators. First, the proportion of ongoing investigations that last more than two years should not exceed 20% of all other ongoing investigations. Secondly, there should be at least five criminal proceedings against organised crime groups launched per quarter. Finally, the rate of secured assets should reach at least 25%.

1000. Hungary notes that the criminal investigation service of the NTCA has always met its key performance indicators. However, trying to maintain and improve the timeliness of the investigations is the hardest strategic goal to achieve, usually because of significant changes in legislations and certain aspects related to resource management (human and technical). The rate of secured assets is established based on the dividend of the value of perpetration of all launched criminal investigations linked to a certain time period under scrutiny, and the value secured by the investigating authority by using coercive measures (e.g. seizure) as regulated by the Penal Procedure Code.

Table 23.5. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Access on Request
Customs databases	Access on Request
Police databases	Direct Access
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access
Register of personal data and address records of citizens	Direct Access
Register of personal identification documents	Direct Access
System of civil registers	Access on Request

Registers of travel documents (register of persons restricted from traveling abroad and related to passport records)	Direct Access
Social security records and registers	Access on Request
Records of municipal tax authorities	Access on Request
Traffic records (register of driver's licenses, the register of motor vehicles, registers of origin and control, document archives, register of parking permits and preliminary authenticity check registers)	Direct Access
Criminal data registers and the registers of biometric data related to criminal prosecution and law enforcement described in specific other legislation	Direct Access
Central immigration register	Direct Access
Records of the refugee authority	Direct Access
Passenger records of airlines engaged in the carriage of passengers processed according to the Act on Air Transport;	Access on Request
Administrative records of the public prosecutor's offices relating to criminal proceedings	Access on Request
Court databases (register of non-governmental organizations and foundations, register of persons placed under guardianship or conservatorship)	Access on Request
Register of companies	Direct Access
Court case records	Access on Request
Real estate register	Direct Access
Register of private entrepreneurs maintained by a designated body	Access on Request
Lien records and registers of notaries public and the collateral register	Access on Request
Register of misdemeanor offenders	Access on Request
Register of firearm licenses	Direct Access
Registration of telephone and communications service providers	Access on Request

Training for tax crime investigators

1001. Various trainings are offered to criminal investigators who wish to be up to date regarding tax crimes, at a rate of twice or three times a year, 50 days each. Mandatory biannual courses include online course for all of the criminal investigators measuring the professional preparedness.

Principle 7: Predicate offences

[Countries should designate tax crimes as one of the predicate offences for money laundering.](#)

1002. **Approach:** Hungary's Act of CC adopts an 'all crimes' approach to money laundering, whereby all criminal offences can be considered predicate offences, if they generate proceeds from a crime. No specific thresholds apply to the crime of money laundering.

1003. **Enforcement of money laundering predicated on tax crimes:** Hungary notes that since the "all crimes approach" has been in practice for over a decade, any improvement is linked to a series of factors, including the approach for predicate offences.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1004. According to internal regulations within the NTCA, if an employee perceives the suspicion of a crime or an irregularity or malpractice that could entail a crime, the employee makes a criminal complaint.

1005. Moreover, if the criminal complaint has not yet been filed, the civil tax authority shall disclose confidential tax information to the investigating arm of the state tax and customs authority for the investigation of specific criminal offences, and for the prosecution of criminal cases (Paragraph 15 of Section 131 of the *Act on the Rules of Taxation (Art.)*).

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1006. In the course of analysing-assessing activity the HFIU is authorised to make a proposal for the performance of a procedure falling into the competence of a central governmental body (e.g. tax authority, customs authority) and to send information, sending the data required for conducting the procedure falling into the competence of the supervisory authority or the company registry court that may be processed by the body conducting the procedure. The HFIU may not otherwise share information for the purpose of assessing taxes or customs duties.

Table 23.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	Direct Access	On Request ^(b)	Direct Access	On Request ^(c)
	Customs administration	Direct Access	Direct Access		On Request ^(b)	Direct Access	On Request ^(c)
	Police or public prosecutor	MSS ^(d)	MSS ^(d)	MSS ^(d)		Direct Access ^(e)	On Request ^(c)
	Financial Intelligence Unit	Sharing Prohibited ^(f)	DSS ^(g)	Sharing Prohibited ^(f)	DSS ^(g)		DSS ^(g)
	Corruption investigation authority	On Request ^(c)	On Request ^(c)	On Request ^(c)	On Request ^(c)	On Request	
	Financial regulator	MSS	MSS	MSS	MSS	MSS	MSS

Note:

DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

(a) Since May 2013, all tax information held by the NTCA has been directly accessible to tax crime investigators within the DG-CA. In addition, the NTCA must disclose information, including confidential tax information, to criminal tax investigators where this is for the purposes of detecting, preventing or investigating tax offences or prosecuting cases. The DG-CA may also obtain information on request.

(b) The court, Public Prosecutor and law enforcement agencies may request information, data or documents from the NTCA and prescribe a time limit of between eight and 30 days for these to be provided. However, all public officials, including tax officials, must file a report with the public prosecutor if they become aware of any criminal offence in the course of their duties, including the identity of the suspected offender. This report must include details of why the official is suspicious of criminal activity, including any evidence that has come to their attention.

(c) The court, the prosecutor and investigations authorities may contact central and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents, and may prescribe a time limit for fulfilling such request ranging between a minimum of eight and maximum of thirty days. Encrypted data and information made unrecognisable in any other manner shall be restored into its original condition by the supplier prior to communication or delivery, or made understandable to the requestor. Data supply shall be free of charge. Unless stipulated otherwise by law, the contacted body shall fulfil the request within the prescribed deadline or state the reason for non-compliance.

(d) If a judge, public prosecutor, police or other investigating authorities identifies any fact or circumstance which they believe would initiate or facilitate a judicial, administrative or other procedure within the competence of the tax and customs administration (including civil administrative proceedings and criminal investigations), they must inform the NTCA in order for this procedure to be conducted.

(e) The Hungarian FIU has direct access to police information and criminal records. The FIU may also request information from the police.

(f) In the course of analysing-assessing activity the HFIU is authorised to make a proposal for the performance of a procedure falling into the competence of a central governmental body (e.g. tax authority, customs authority) and to send information, sending the data required for conducting the procedure falling into the competence of the supervisory authority or the company registry court that may be processed by the body conducting the procedure. The FIU may not otherwise share information for the purpose of assessing taxes or customs duties.

(g) Law enforcement authorities, including the police and the DG-CA of the NTCA may be provided with Suspicious Transaction Reports at the discretion of the HFIU. They may also request access to specific Suspicious Transaction Reports.

Table 23.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	NTCA has numerous co-operation agreements with other government agencies in Hungary for the fight against tax crimes.
Disclosure of foreign trusts	No
Joint operations and taskforces	Generally, it is possible to set up a joint task force in cases where crimes are committed by the same offenders and fall under the competence of more than one investigating authorities, or where special knowledge or expertise from another investigative authority is required. The agreement is prepared by the heads of the participating investigating authorities, and should be approved by the prosecutor. National Police and NTCA maintain a joint unit for International Law Enforcement Co-operation (ILECC). ILECC is a unit dedicated to manage all means of criminal information exchange between the national authorities and their foreign partners.
Parallel investigations	If the different Criminal Directorates of NTCA are conducting parallel investigation, the co-ordination unit of NTCA DGCA decides which one conducts the investigation
Joint intelligence centres	N/A
Secondments and co-location of staff	In cases where a joint task force is not appropriate, but an investigation conducted by one authority would be facilitated by access to the knowledge, experience or expertise of an official from another authority, the official may be seconded or reassigned to the investigating authority. This procedure is particularly common when a case is transferred between authorities in the course of an investigation.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes: The NPS annually organize anti-corruption trainings and ensures raising awareness. The staff responsible for data protecting is organizing internal trainings and workshops concerning corruption regularly. There has been the following codes for ethics in force concerning crime investigators: <ul style="list-style-type: none"> • Law Enforcement Professional Ethical Code and Regulation for Ethical Procedure • Professional Ethical Code of Government Officials
Multi-agency training	NTCA personal takes part in different multi-agency training both on domestic and international level (CEPOL, ICOFI, ARO etc.)

Principle 9: International co-operation

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.

1007. **Legal basis:** Hungary exercises international co-operation with a variety of partner agencies. Pursuant to international conventions such as Naples II, Hungary exchanges information particularly with all the EU member states, as well as those who have signed a bilateral agreement on cross-border co-operation. To date, Hungary has exchange of information relationships with 85 jurisdictions through 83 bilateral tax treaties and 2 Tax Information Exchange Agreements.² Hungary also co-operates with the investigation and prosecution of tax crimes with signatories of the European Convention on Mutual Assistance in Criminal Matters, as well as with countries that established bilateral agreements on mutual legal assistance.

1008. **International co-operation in practice:** Hungary notes that the key challenge with respect to international co-operation is the different application of international conventions (such as Naples II) across different jurisdictions.

1009. **Enhanced form of international co-operation:** Hungary is also able to exchange sensitive intelligence with its counterpart agencies in the pre-investigation stage on the basis of the Naples II Convention, as well as national acts that regulate the handling of sensitive information.

Table 23.8. Requests of international assistance in tax crime investigations

Tax years ending	From criminal investigators for criminal tax investigations (under EOI)	From criminal investigators for criminal tax investigations (under MLAT)	Requests for assistance from other jurisdictions for tax crime investigations (under EOI)	From other jurisdictions for tax crime investigations (under MLAT)
2015	689	129	356	293
2016	634	191	247	263
2017	616	78	81	276
2018	293	102	174	213
2019	166	28	127	259

Note: Figures on this table only include international assistance requests received by NTCA, and not those received by HFIU or the Hungarian Judiciary.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

1010. Hungary's provision of fundamental rights stems out of its Constitution and the Hungarian Act of Criminal Proceedings of 1973.

Table 23.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Available from the outset of criminal investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Available from the outset of the investigation
remain silent	Yes	Available from the outset of the investigation
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	From the outset of the investigation
access documents and case material, also known as a right to full disclosure	Yes	From the outset of the investigation, provided it does not interfere with the interest of the investigation. After investigation is concluded, the defence has the right to view all documents that may serve as the basis for pressing charges, except those that are treated confidentially.
a speedy trial	Yes	During trial
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Access to a wide range of government databases for investigation purposes
- Robust investigative powers
- Overarching tax crime strategy and periodic threat assessment

Room for improvement

- Hungary would benefit from having a specific penalty regime for professional enablers

Notes

¹ See Rome Report, Chapter 5 – Country Information – Hungary. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

² See <http://www.eoi-tax.org> for up-to-date figures.

24 Iceland

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1011. Iceland's criminal tax offences are set out in the Income Tax Act of 2003 (ITA), the General Penal Code (GPC) of 1940 and the Value Added Tax Act (VAT Act) of 1988, and require criminal intent (*mens rea*).¹ These are set out in Table 24.1 below.

1012. Iceland notes that, for an act to be considered a tax crime, it needs to involve a substantial amount of money, or have been committed in a particularly reprehensible manner or under circumstances that greatly increase the criminality of the action, by an individual who has already been convicted for a previous tax violation (GPC, art. 262 (3)).

Table 24.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Tax evasion / fraud (ITA, article 109)	Fine of at least twice the amount that was evaded (ITA, art. 109(1))	Fine of up to ten times the amount that was evaded (ITA, art. 109(1)) OR Imprisonment for up to six years (GPC, art. 262)
VAT evasion / fraud (VAT, art. 40)	Fine of at least twice the amount that was evaded (VAT, art. 40 (1))	Fine of up to ten times the amount that was evaded (VAT, art.40(1)) OR Imprisonment for up to six years (GPC, art. 262)

1013. **Statute of limitations:** The statute of limitations for tax crimes in Iceland is six years. The limitation period runs from the date on which the punishable action ended. The commencement of a criminal investigation suspends the period of limitation.

1014. **Complicity:** Accomplices of tax crimes are punishable under Icelandic law (GPC, s22).

1015. **Attempt and conspiracy:** The GPC establishes that it is an offence to aid, abet, counsel, or procure to commit a crime.² The extent of the offender's involvement in the crime is taken into consideration, and the offender may receive a more lenient sanction if its involvement was minor, or the crime was not brought to completion.³ These provisions apply to all crimes committed in Iceland, including tax crimes.

1016. **Professional enablers:** Iceland does not have a separate penalty regime for professional enablers, but they may be held liable for the above listed offences either as primary or secondary offenders (e.g. by committing the offence directly or through counselling another). Professional enablers would thus fall under the provisions regarding accessory liability.⁴

1017. **Territorial and nationality jurisdiction:** Iceland has jurisdiction over tax crimes when the conduct constituting the offence occurred wholly or partly in Iceland.

1018. **Liability of legal persons:** The GPC states that legal persons registered in Iceland may be held criminally liable and fined according to the relevant statutes governing the criminal offence committed.⁵ Therefore, under art. 40 of the VAT Act and art 109 of the ITA, legal persons are subject to the same fines as natural persons, as outlined in Table 1. Furthermore, punishment may be imposed upon a legal person even in cases when it cannot be established which employee or representative of the legal person has actually committed the crime.⁶ In some cases, withdrawal of the operating license can also be imposed on a legal person as a criminal sentence.⁷

Enforcement of tax crime

1019. The below table sets out the enforcement of tax crimes in Iceland in tax years ending 2015-18.

Table 24.2. Enforcement of tax crimes in the tax years ending 2015-18

Tax years ending	Concluded investigations	Cases where action short of prosecution was taken (fines)	Cases referred for prosecution	Number of convictions	Number of acquittals	Amount of VAT and withholding tax on salaries not remitted	Amount of main tax bases evaded	Amount of fines imposed
2015	201	29	77	24	0	ISK 562 614 446	ISK 10 981 564 799	ISK 1 636 272 018
2016	156	51	50	12	0	ISK 641 168 439	ISK 1 599 241 919	ISK 716 344 000
2017	281	58	40	20	0	ISK 791 052 036	ISK 6 548 099 740	ISK 2 311 625 324
2018	199	38	61	18	0	ISK 718 395 398	ISK 3 899 208 480	ISK 2 369 278 165

Note:

* In April 2021, EUR 1 = ISK 151.50

1020. The below table lists the type and number of sanctions imposed in Iceland in tax years ending 2015-18.

Table 24.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years' imprisonment	74
>3 – 5 years' imprisonment	0
Fine	177

1021. **Availability of tax deductions for civil and criminal sanctions:** Iceland does not allow tax deductions or corrections for criminal sanctions imposed in tax crime cases.

1022. **Availability of settlements:** Iceland does not make settlements or deferred prosecution agreements available for individuals or legal persons for tax offences, as, according to Icelandic

constitution, the power to decide whether to levy a tax, change a tax or abolish a tax may not be vested in administrative authorities.

1023. **Tax gap:** Iceland did not provide information concerning its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1024. Iceland notes that, while it does not possess a specific tax crime prevention strategy, several agencies are contributing, within the limits of their own statutes, to this objective: the Directorate of Tax Investigation (DTI), Iceland Revenue and Customs (IRC) and the Office of the District Prosecutor (DP). The relationship between each agency and their respective Ministries is regulated by a formal agreement, and all agencies meet to discuss cases under investigation.

1025. **Threat assessment:** Iceland notes that there is no periodic threat assessment undertaken by its tax crime authorities.

1026. **Communication strategy:** While there is no formal strategy in place, court rulings are discussed in the media and are published on the websites of both the courts and the DTI.

Principle 3: Investigative Powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

1027. The below table sets out the investigative powers of the Directorate of Tax Investigations of Iceland in tax crime investigations.

Table 24.4. Investigative powers of tax crime investigation agency (Directorate of Tax Investigations)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power The DTI obtains a court order to conduct search and seizure. The search and seizure is conducted by DTI investigators with the assistance of the police. There are no limitations to which properties can be searched or what items can be seized.
Obtain documents from third parties	Full direct power If the third party does not comply with the DTI's request, the DTI can obtain a court ruling compelling him/her to do so. According to the provision, there is no limit to what documents can be obtained but the DTI would only request documents that relate to the investigation of the case in question.
Interview	Full direct power The DTI can call persons for questioning as witnesses or as suspects. DTI investigators conduct the questioning. Suspects and witnesses are summoned via e-mail, through mail or in person. Suspects are compelled to come and can be brought in for questioning by the police if they do not appear. The questioning is recorded in audio and often video as well and subsequently transcribed. Everything that the suspect or witness says during questioning in relation to the case in question is included in DTI's report and is admissible at court.

Inquiry powers (e.g. power of coercion)	Full direct power The DTI has the power to seize documents and data, Court order is normally obtained prior to conducting search and seizure. Evidence obtained in this manner would be admissible at court.
Intercept mail and telecommunications	Indirect power via another agency If necessary for an investigation, the DTI would rely on the police for such interception.
Conduct covert surveillance	Indirect power via another agency If necessary for an investigation, the DTI would rely on the police for such interception. As yet, this has not been used in relation to an investigation by the DTI.
Conduct undercover operations	Indirect power via another agency If necessary for an investigation, the DTI would rely on the police for such interception. As yet, this has not been used in relation to an investigation by the DTI.
Search and seize computer hardware, software and electronic storage media	Full direct power The DTI obtains a court order to conduct search and seizure and this includes search and seizure of computer hardware, software, smart phones and electronic storage media. The police processes the digital evidence. Private e-mails are not to be reviewed. Seized electronic documents that are not relevant to the case are to be deleted as soon as it has been determined that they are not relevant to the case. The electronic data that is used in the investigation is a mirror copy of the data seized and the original data is deleted.
Arrest	Indirect power via another agency The police has the power to arrest suspects. According to the ITA, the police is obligated to assist the DTI in its investigations as necessary. The police is obliged to find and escort a person to the offices of the DTI for questioning if the person has not complied with a summons by the DTI to report for questioning. The DTI will not request an arrest after the conclusion of its investigation.

1028. **Need for additional powers:** Iceland notes that if the DTI could prosecute its own cases at court, it would greatly simplify the procedure of criminal tax investigations and prosecutions. Currently, the DTI conducts investigations and the outcomes of these investigations are sent to the DIR for reassessment and to the Office of the District Prosecutor (ODP) for prosecution. These agencies have their own procedures and in certain instances, the process is duplicated, i.e. the same questions asked as during the investigation by the DTI. In addition, both the IRC and the ODP have asked for explanations and other information from the DTI when cases are referred to them. The current system results in the processing of the case taking longer. Therefore, it would simplify the procedure of criminal tax investigations and prosecutions if the DTI could prosecute its own cases at court.

1029. **Legal professional privilege:** The Icelandic Act on Professional Lawyers (APL) regulates the conduct of all lawyers and attorneys operating in the country, and sets out the duties of lawyers concerning legal professional privilege. Article 22 of the APL defines legal professional privilege as “the duty of maintaining silence with respect to any matter confided to [the lawyer] in the course of [his/her] functions”.⁸ Similar confidentiality and secrecy provisions apply to other professionals involved in tax or other financial advices, notably accountants and auditors, whose professional privilege is established by article 30 of the *Act on Auditors*.⁹

Box 24.1. Successful example: Interpretation of legal professional privilege in Iceland

The Supreme Court of Iceland ruled that the obligation to disclose information under art. 94 of the ITA prevailed over confidentiality and secrecy provisions in other laws, including legal professional privilege.* As a background on the case, the DTI had the tax affairs of a plastic surgeon under investigation. Many clients of the surgeon had turned to the same attorney to handle their cases. The DTI demanded that the attorney divulge the names and personal identification numbers of the clients that had sought legal advice with regard to their dealings with the surgeon in question to use in its investigation, which he refused based on attorney-client privilege. The DTI brought the case to court and the Supreme Court ruled that the attorney’s confidentiality towards his clients should be waived. The judgment referred to, inter alia, the extensive obligations that the wording of Article 94 of the ITA entail, as well as to the fact that this was a special provision that went beyond the general duty of confidentiality as stated in the APL. For the purpose of tax crime investigations, this means that the DTI

can obligate a lawyer to provide relevant documents or other information regarding their clients' tax affairs. In addition, the DTI has requested and obtained a court ruling to search an attorney's premises.**

Note:

* The judgment of the Supreme Court is available from: <https://www.haestirettur.is/default.aspx?pageid=347c3bb1-8926-11e5-80c6-005056bc6a40&id=0bcb88a0-fd1e-4254-9464-3df834851ca1>

** The ruling of the Appellate Court is available from: <https://www.landsrettur.is/domar-og-urskurdir/domur-urskurdur/?id=59b89594-10aa-4ff7-af04-d2757020727b>

Principle 4: Freezing, seizing and confiscating assets

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

1030. **Legal basis:** Seizures, freezing and confiscation of assets in Iceland are allowed under the Collection Act no. 150/2019.

1031. Iceland notes that in 2016, the DT seized ISK 325 574 962, in 2017 the amount was ISK 2 026 979 049 and in 2018 the amount was ISK 924 190 436 in connection with criminal tax matters. The majority of assets that the DTI froze were real estate but in addition the DTI froze bank accounts, cars and shares.

1032. **Freezing and seizing orders:** During the course of criminal investigations, the Directorate of Tax Investigations (DTI) may submit a request to freeze or seize assets to the Directorate of Revenue and Customs (IRC) which then submits another request to the District Commissioner, who has the power to do so. The District Prosecutor also has the power to confiscate assets. Icelandic law does not allow for the rapid freezing of assets.

1033. **Confiscations:** Apart from conviction confiscations, value-based confiscations are allowed in Iceland. At the beginning of the investigation, the DTI estimates the amount of the tax avoided and the amount of the possible fine and freezes assets for that amount. In Iceland, third-party confiscations are usually applied with regard to spouses of offenders.

1034. **Foreign freezing, seizing and confiscation orders:** Iceland notes that it has not applied seizing powers with respect to foreign tax investigations, as no such requests were ever received.

1035. **Agency responsible for asset recovery:** If assets have been seized/frozen with regard to unpaid taxes, the IRC handles the selling of such assets (such as real estate) and payments from frozen bank accounts. In relation to fines in relation to tax crimes, the ODP handles such assets.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1036. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Iceland's organisational models for fighting tax

crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹⁰

Table 24.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Icelandic Directorate of Revenue and Customs (IRC)	Responsible for determining tax assessments and conducting tax audits. Collects indirect taxes and customs duties, as well as direct taxes.
Directorate of Tax Investigations (DTI)	Responsible for investigating cases where there are suspicions of tax fraud.
Police Commissioners	Responsible for the investigation and prosecution of all minor economic crimes
Director of Public Prosecutions (DPP)	Ensures that legally prescribed sanctions are applied against persons who have committed criminal violations
Office of the District Prosecutor	Investigates and prosecutes offences related to corruption covered by the General Penal Code.
Ministry of Finance and Economic Affairs	Prepares guidelines for tax inspectors concerning their obligation to report cases of suspected domestic and foreign bribery to law enforcement authorities
The Central Bank of Iceland	Deals with various communications and inquiries from parties subject to supervision regarding their operating licences and the interpretation of laws and regulations pertaining to their operations

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1037. The below table sets the databases and sources of information available to tax crime investigators in Iceland.

Table 24.6. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land and Real Estate Registry	Direct Access
Registry of citizens and residents	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access ^(a)
Police databases	No Access
Judicial databases	Direct Access
Suspicious transaction report databases	No access
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Access on Request
Worldfengur ^(b)	Direct Access

Note:

(a) One agent at the DTI has access to this database

(b) The studbook of origin for the Icelandic horse

Training for tax crime investigators:

1038. Iceland notes that there is no specific training regime for tax crime investigators, but in-house training as well as training with other domestic stakeholders and international training is available. Investigators do attend training both domestically and internationally.

Principle 7: Predicate offences

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

1039. **Approach:** Iceland amended its legislation to include tax crimes as predicate offences to money laundering in 2009. Iceland adopts an ‘all crimes’ approach to money laundering, whereby all criminal offences constitute predicate offence for money laundering (GPC, art. 264). Persons may be charged with money laundering, regardless of whether a person has been charged or convicted of the predicate offence, or whether Iceland has jurisdiction over the predicate offence.

1040. **Enforcement of money laundering** Since tax crimes were included as a predicate offence for money laundering, DTI notes that they have experienced better inter-agency co-operation with other government agencies in Iceland.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1041. Iceland’s civil tax authority (DIR) must refer cases to criminal tax investigation officials (DTI) whenever it has a suspicion of tax fraud or another punishable offence. DTI will then decide whether to commence a criminal investigation.¹¹ Following this procedure, DIR referred 37 cases to the DTI in 2015, 25 cases in 2016, 68 cases in 2017 and 39 cases in 2018. Conversely, DTI can refer cases to IRC following similar procedures.¹²

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1042. The below table shows the models for sharing information related to tax crimes and other financial crimes in Iceland.

Table 24.7. Models for sharing information related to tax crime and other financial crime

	Authority receiving information					
	Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority

Authority providing information	Tax administration		Direct Access ^(a)	Direct Access ^(b)	MSS	MSS	MSS
	Customs administration ^(c)	Direct Access	Direct Access		Direct Access	Access on Request	Direct Access
	Police or public prosecutor	MSS	MSS ^(d)	Direct Access ^(e)		MSS	Direct Access
	Financial Intelligence Unit	MSS	MSS	On Request	MSS		MSS
	Corruption investigation authority	DSS	DSS	Direct Access	Direct Access	MSS	
	Financial regulator	On Request	DSS	On Request	DSS	MSS	DSS

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) This refers to the case where tax crime investigations are conducted by the DTI. Police conducting non-tax crime investigations do not have direct access to tax databases, but the IRC is under an obligation to provide all relevant information to the police.

(b) The customs side of the IRC has restricted access to information held by the tax side.

(c) The Directorate of Internal Revenue and the Directorate of Customs merged at the beginning of 2020 under the name Icelandic Revenue and Customs (IRC). However, in regards to access to information databases, each side works as a separate agency.

(d) This refers to the case where tax crime investigations are conducted by the DTI. Police conducting non-tax crime investigations have direct access to relevant information held by the police.

(e) Certain officials within the customs side of the IRC have full access to police databases. Customs officials do not have access to databases held by public prosecutors.

Table 24.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	There is a co-operation agreement in place between the DTI and the Office of the District Prosecutor and between the DTI and the IRC.
Disclosure of foreign trusts	No
Joint operations and taskforces	Agencies exchange information and co-operate on a case by case basis. Joint working arrangement is in place between the DTI and the Office of the District Prosecutor.
Parallel investigations	The DTI does not investigate money laundering but cases where there is suspicion of money laundering are referred to the Office of the District Prosecutor which investigates the money laundering aspect while the DTI investigates the predicate offence.
Joint intelligence centres	No
Secondments and co-location of staff	Staff from IRC has been seconded at the DTI whereas staff from the DTI has been seconded at the police.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	The DTI has the ability to review the tax affairs of persons sanctioned for other serious financial crimes.
Multi-agency training	The Ministry of Finance and Economic Affairs has, in collaboration with the tax authorities and the DTI, prepared guidelines for tax inspectors concerning their obligation to report cases of suspected domestic and foreign bribery to law enforcement authorities. Representatives from numerous agencies attended a course focusing on, among other topics, inter-agency co-operation in combating corruption and money-laundering.

Principle 9: International co-operation

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.

1043. **Legal basis:** Iceland may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Iceland has exchange of information relationships with 89 jurisdictions through 42 bilateral tax treaties and 50 Tax Information Exchange Agreements.¹³ It is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows DTI to exchange information with other parties for non-tax purposes (such as the investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1044. **International co-operation in practice:** Between 2015 and 2018, the DTI made 86 requests for assistance in criminal tax matters under EOI instruments and no requests were made under MLA treaties. Iceland states that all of the requests received response in a timely manner (less than 6 months). The DTI withdrew one request during the period in question. In the same period, the DTI received four requests for assistance in criminal tax matters under EOI instruments and no such requests under MLA treaties

1045. There is no centralised agency/unit that handles both incoming and outgoing MLA requests in Iceland.

Principle 10: Fundamental rights of a suspect or accused person

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

1046. Iceland provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These rights are affirmed by Chapter VI of the Constitution of Iceland, which serves as the *de facto* Bill of Rights of Iceland, as well as by valid international human rights treaties (including the *International Covenant on Civil and Political Rights* and the *European Convention on Human Rights*).¹⁴ Furthermore, these rights are also covered by the *Law on Criminal Procedure* (LCP) and the *General Penal Code* (GPC), which set out the procedural rights and responsibilities of authorities representing the justice system of Iceland.¹⁵

Table 24.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	When notified of investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	When notified of investigation
remain silent	Yes	When notified of investigation
access and consult a lawyer and/or entitlement to free legal advice	Yes	When notified of investigation
interpretation and translation	Yes	When notified of investigation
be advised of the particulars of what one is accused of	Yes	When notified of investigation
access documents and case material, also known as a right to full disclosure	Yes	During investigation, the suspect or their attorney can request copies of documents and access to case material. However, the DTI is not required to submit such documents until three weeks after they were created, or came into the DTI's possession should access to these documents be detrimental to the investigation. At the conclusion of a criminal tax investigation, the suspect receives a report with the conclusion of the investigation along with all documents on which the conclusion of the investigation is based.
a speedy trial	Yes	The right to a speedy trial is based on the Icelandic Constitution and is interpreted as also applying to the investigation leading up to the trial.

protection from ne bis in idem (Double Jeopardy)	Yes	At all times.
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Highlights

Successful practices

- Independent tax crime investigation service with robust set of investigative powers
- Solid referral programme between civil tax administration and tax crime investigation service

Room for improvement

- Absence of explicit tax crime strategy and periodic threat assessment
- Legislation does not provide for some types of freezing orders (e.g. rapid freezing of assets)

Notes

¹ An unofficial translation of the *Income Tax Act* can be found on the following link: https://www.government.is/media/fjarmalaraduneyti-media/media/Act_no_90_2003_01022012.pdf.

An unofficial translation of the *Value Added Tax Act* can be found on the following link: https://www.government.is/library/Files/The_Value_Added_Tax_Act_with_subsequent_amendments.pdf.

An unofficial translation of the *General Penal Code* can be found on the following link: https://www.government.is/library/Files/General_Penal_Code_sept.-2015.pdf.

² GPC, s. 22.

³ GPC, s. 22, ss. 2.

⁴ GPC, s. 22.

⁵ GPC, s. 19a.

⁶ GPC, s. 19a, ss. c.

⁷ VAT Act, s. 40.

⁸ APL, s. 22, an unofficial English translation is available from: https://www.legislationline.org/download/id/4752/file/Iceland_Act%20on%20Professional%20Lawyers_1999_am2004_en.pdf.

⁹ The official translation of the *Act No. 79/2008 on Auditors* is available from: <https://www.government.is/publications/legislation/lex/?newsid=c983ebcc-1191-11e8-9424-005056bc4d74>.

¹⁰ See Rome Report, Chapter 5 – Country Information – Iceland. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

¹¹ ITA, art. 96, ss. 6.

¹² ITA, art. 102 and 96.

¹³ See <http://www.eoi-tax.org> for up-to-date figures.

¹⁴ An unofficial English translation of the *Constitution of the Republic of Iceland* (along with 2013 revisions) can be found here: https://www.constituteproject.org/constitution/Iceland_2013.pdf?lang=en.

¹⁵ An official English translation of the relevant excerpts of the *Law on Criminal Procedure* (No. 88 / 2008) can be found here: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82808/90953/F191009152/ISL82808.pdf>.

25 Indonesia (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1047. Indonesia's Law of the Republic of Indonesia nr. 6 as lastly amended by law number 7 Year 2021 regarding General Provisions and Procedures of Taxation 1983 (GPT) sets out a range of tax offences related to income tax and VAT either committed by natural or legal persons. In addition, the law provides for offences deliberately conducted by tax officers and penalty of such offences. GPT separates tax offences which require criminal intent from tax offences which require negligence.

1048. In addition to the GPT, there are several tax laws that contain criminal offences and penalties including property tax (Law number 12 Year 1985 as lastly amended by law number 12 Year 1994), coercive tax collection (Law number 19 Year 1997 as lastly amended by law number 19 Year 2000), and stamp duty (Law number 10 Year 2020).

1049. Furthermore, Indonesia notes that the sanction imposed is doubled if the accused person, who committed had already committed another tax crime offence in the past year (GPT, art. 43). This is intended to prevent the recurrence of a criminal act in tax matters. The double criminal penalties due to recidivism are only imposed to offences set out in art. 39 GPT.

1050. Examples of tax offences, and their corresponding minimum and maximum sanctions are set out in the table below.

Table 25.1. Tax Crime Offences

Offence	Minimum sanction	Maximum sanction
1. Any person who, due to his/her negligence: a. does not submit the tax return; or b. submits tax return, but its contents are incorrect or incomplete, or attach information containing incorrect contents (GPT, art. 38).	The minimum fine is one time the estimated state loss; the minimum detention sanction is three months.	The maximum fine is two times the estimated state loss; the maximum detention sanction is one year.
2. Any person who intentionally misinforms, hides information to, or does not co-operate with the Indonesian tax authorities (GPT, art. 39).	The minimum fine is one two time the estimated state loss.	The maximum fine is four times the estimated state loss; and the maximum imprisonment sanction is six years.

3. Any person who intentionally: a. issues and/or uses any tax invoice, proof of tax collection, proof of withholding tax, and/or proof of tax payment not based on actual transactions; or b. issues a tax invoice but has not been confirmed to be taxable entrepreneur (GPT, art, 39A).	The minimum fine is two times the estimated state loss; and the minimum imprisonment sanction is two years.	The maximum fine is six times the estimated state loss; and the maximum imprisonment sanction is six years.
4. Any person who attempts to commit a criminal offence of abusing or using unrightfully the taxpayer identification number or the taxable entrepreneur confirmation or submits the tax return and/or information the contents of which are incorrect or incomplete to the effect of applying for a restitution or making a tax compensation or tax credit (GPT, art. 39(3)).	The minimum fine is two time the estimated state loss; and the minimum imprisonment sanction is six months.	The maximum fine is four times the estimated state loss; and the maximum imprisonment sanction is two years.
5. The provisions as referred to in art. 39 and 39A, also apply to any representatives, proxies, employees of the taxpayer, or other parties who ask to commit, who participate in committing, who recommend, or who assist in the committing a criminal offence in the taxation sector (GPT, art. 43).	The minimum fine is two times the estimated state loss; and the minimum imprisonment sanction is six months.	The maximum fine is four times the estimated state loss; and the maximum imprisonment sanction is six years.

1051. **Statutes of limitations:** Article 40 of Law Number 7 of 2021 concerning General Provisions and Tax Procedures stipulates that criminal acts in the field of taxation cannot be prosecuted after the lapse of 10 years from the time the tax becomes due, the end of the tax period, the end of part of the tax year, or the end of the relevant tax year. Furthermore, it is stated in the Criminal Code (art. 80(1)) that each act of prosecution terminates the expiration date, as long as the action is known to the person being prosecuted or has been notified to him according to the manner determined in the general regulations. Furthermore, art. 80(2) provides that after being discontinued, a new expiration date begins.

1052. **Complicity:** Criminal penalties apply to any natural or legal person involved in committing a criminal tax offence (GPT, art. 43). Penalties for criminal tax offences shall apply to all parties involved, such as taxpayers, their representatives, employees, but shall also include those who order, participate, propose, or assist the tax criminal offence.

1053. **Professional enablers:** Indonesia has a tax crime regime for professional enablers that aid, abet, facilitate, or enable the commission of a tax offence (GPT, art. 39, 39A, and 43).

1054. **Territorial and nationality jurisdiction:** Indonesia has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Indonesia. In addition, Indonesia divides its taxes into two different groups: national tax, and regional tax. National taxes are for example income tax, VAT, stamp duty, property tax especially connecting with forestry, fishery, and mining. Examples of regional taxes are retribution tax, and property taxes especially connecting with land and building.

1055. **Legal person liability:** In Indonesia, criminal tax offences apply to natural and legal persons. Consequently, legal persons can be held criminally liable for tax crimes under Indonesian law.

Table 25.2. Enforcement of tax crimes in the tax years ending 2019-2021

Tax years ending	Investigation warrant	Number of cases where prosecution was commenced (P-21)	Sentences	Number of fines imposed (IDR)
2019	151	138	35	1.840.713.105.166
2020	136	111	33	699.998.364.754

2021	118	98	37	3.246.668.992.650
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1056. The above data represents the balance at the end of the calendar year. Since the investigation process up to P-21 and court decisions may take longer than 1 year, the taxpayers in the “investigation warrant” column are not necessarily the same as the taxpayers in the “number of cases where the prosecution was commenced (P- 21)” and “sentences” columns.

1057. **Availability of settlements:** Taxpayers are given the opportunity to stop investigative actions by making payments equal to the amount of losses in state revenue. The calculation of losses in state revenue is based on tax that is unpaid, underpaid by, or should not have been refunded to the taxpayer in the taxable period, the fraction of the taxable year, or the taxable year. Termination of tax investigation is regulated in art. 38, 39, 39A, and 43 of the GPT. A taxpayer or a suspect must pay all amount equal to the losses of the state revenue as well as the administration sanction accordingly to terminate tax investigation. The Attorney General may terminate the investigation on a criminal tax offence, on request of the Minister of Finance (GPT, art. 44B).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

1058. **Tax crime strategy:** The Directorate General of Taxes (DGT) of the Ministry of Finance, sets out a tax crime strategy that focuses on collaborative investigation, integrity, and fair law enforcement. Indonesia set up several programmes to improve its strategy on these topics. The key element of tax crime law enforcement in Indonesia, relies on the effort to restore loss that arise from the crime. This has led to the implementation of the *ultimum remedium* principle (GPT, art. 8(3) and 44B). Furthermore, DGT has two special units, the Directorate of Law Enforcement (DLE) and the Directorate of Intelligence. The Directorate of Intelligence focuses on intelligence activities such as surveillance. Meanwhile, DLE focuses on tax crime law enforcement activities such as investigation.

1059. **Threat assessment:** DLE joined as a member of the Committee of Law Enforcement Priority Targets. The committee periodically consults on taxpayers, based on a compliance risk methodology, and proposes to deal with high-risk taxpayers under law enforcement procedures.

1060. The Committee of Law Enforcement Priority Targets categorises taxpayers into nine XY matrix. X1Y1 is considered as the taxpayers with the lowest risk, while X3Y3 is categorised as the taxpayers with the highest risk. This categorisation considers many factors such as tax return lodgement compliance and the taxpayers business turnover. The Committee moreover holds a monthly meeting.

1061. **Communication strategy:** DGT publishes the conviction of suspects in tax crime in the media. Furthermore, DLE periodically publishes its activities regarding to the activities or the results of law enforcement.

Box 25.1. Examples of successful implementation of tax crime: Indonesia

The South Jakarta District Court s imposed a prison sentence of 1 year and 8 months and a fine of Rp. 10.2 billion against the South Korean citizen, Kim Nam Hee, a tax offender who is a citizen of South Korea. In his decision Number 44/Pid.Sus/2023/PN JKT.SEL, Kim was found to have intentionally failed to submit SPT and did not deposit SPT which had been withheld or collected.

Principle 3: Investigative Powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

1062. The below table shows the investigative powers of DGT in Indonesia.

Table 25.3. Investigative powers of DGT

Power of tax crime investigation agency to:	Availability	Comments
Search property and seize physical evidence such as books and records	Full direct powers upon application to the court for a warrant	DGT has full direct power to search property and seize physical evidence such as books and records, including documents from third parties.
Obtain documents from third parties	Full direct power	With the condition that the investigator will ask for court approval afterwards.
Interview	Full direct power	DGT asks Police Department for support when presenting witnesses or suspects by force.
Inquire (e.g. power of coercion/inquiry)	Full direct power	The DGT has full direct inquiry power in dealings related to non-financial institution and indirect power via another agency in dealings related to financial institutions
Intercept mail and telecommunications	No power	DGT has no authority to intercept mail and telecommunications.
Conduct covert surveillance	Full direct power	DGT has the authority to conduct covert surveillance. This activity is conducted by Directorate of Intelligence.
Search and seize computer hardware, software, and electronic storage media	Full direct power	The DGT has a Digital Forensic Team within the DLE and the regional tax offices which supports these actions. Authority of searching and seizing belong to tax investigators.
Arrest	Indirect power via another agency	Support from Police Department.

1063. **Need for additional powers:** Indonesia points out that tax investigators should have the authority to arrest suspects to improve the effectiveness of tax investigations.

1064. **Legal Professional Privilege:** Public accountants, notaries, tax consultants, administration offices, and/or other third parties, who have a relationship with a taxpayer who is subject to a tax audit, tax collection, or investigation criminal offenses in the field of taxation are required to provide the requested information or evidence at a written request from the Director General of Taxes. Only banks keep their obligation to secrecy when the Minister of Finance request for information. All other parties are obliged to share the requested information.

Principle 4: Freezing / Seizing and Confiscating Assets

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

1065. **Legal basis:** The Criminal Law Code (CLC), the Anti-corruption Law (ACL), and GPT set out the legal basis and general rules to seize, freeze, and confiscate assets. Investigators can only freeze and seize assets when permission is given from the head of a local district court (CLC, art. 38(1)), and the assets are related to tax crimes (GPT, art. 44(2)). However, in urgent circumstances the investigator may carry out an immediate seizing first and then seek approval from the local court after the seizure is carried out.

1066. Movable assets can be seized when they are related to tax crimes, there is no legal threshold needed for the freezing or seizure of assets. Investigators have the authority to search and seize assets as evidence and those assets are closely related to tax crime with the permission of the head of the local court (GPT, art 44(2)(e)). Meanwhile, investigators have authority to freeze and seize all assets belonging to the suspect or any other party closely related to the tax crimes for asset recovery purposes (GPT, 42(2)(j)).

1067. **Freezing and seizing of assets:** Investigators from the police, prosecution, and the anti-corruption agency are empowered to freeze and seize assets. Seizure can only be carried out by investigators with a permit from the head of the local district court (CPC, art. 38(1)). Furthermore, investigators must, in urgent situations, act right away and may freeze and seize movable assets without the permission from the head of a local district court (CPC, art. 38(2)). Afterwards, investigators must immediately report the seizure to the head of the local district court for approval.

1068. Indonesia notes that third party freezing, and seizure orders often occur in tax related crime, because suspects use third parties to buy assets. Investigators are therefore empowered to seize evidence from third parties which are related to tax crime (GPT, art. 44(2(e))).

1069. **Confiscation of assets:** In Indonesia, confiscation of assets is an additional penalty by the court. The confiscation of assets is conviction-based. Only prosecutors can execute the order to confiscate assets from the accused person. However, in money laundering cases, third-party confiscations are available to the court (CLC, art. 10(2), and ACL, art. 18, 19, 38B, and 38C). The authority of conviction-based confiscation assets belongs to prosecutors.

1070. **Foreign freezing, seizure, and confiscation orders:** Tax Investigators can request assistance to carry out foreign freezing and seizure of assets to other countries through the MLA procedures.

1071. **Agency / unit responsible for asset recovery:** The prosecutor's office is in charge of carrying out the execution of criminal sentences. Asset recovery is carried out by the Attorney's Office.

1072. **Freezing, seizing and confiscation in practice:** The table below displays freezing and seizing in practice over the years 2018-2023.

Table 25.4. Freezing, seizing and confiscation in Indonesia

Year	Freezing		Seizing	
	TOTAL	FREEZING VALUE	TOTAL	SEIZING VALUE
2018	0	Rp0	1	Rp 3.000.000.000
2019	0	Rp0	6	Rp 287.600.672.138

2020	0	Rp0	25	Rp 90.006.601.223
2021	3	Rp15.992.517.599	43	Rp 1.049.825.568.704
2022	3	Rp1.127.264.460	54	Rp 313.927.212.864
2023	2	Rp1.420.085.764	4	Rp 21.678.983.550

Principle 5: Organisational Structure with Defined Responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1073. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 25.5. Agencies and bodies responsible for enforcing other financial crimes

Agency/Body	Role with respect to financial crime
Directorate General of Taxes (DGT)	Operating under the Ministry of Finance, the DGT is responsible for collecting tax, administering tax affairs, and upholding the law in tax offences. In criminal tax investigations, the DGT manages the work of its investigators and co-ordinates with the Indonesian Police and Public Prosecutor.
Directorate of Law Enforcement (DLE) and Regional Tax Offices (RTO)	Specialized department operating under the DGT, whose tax investigators conduct criminal tax investigations in the field. Tax crime investigators are given limited authority as they are considered civil investigators. For actions that are beyond the tax investigator's authority as stated in GPT (examples: arrest, hold firearms), they need to coordinate with the police.
The Directorate of Customs and Excise (DCE)	Is responsible for the custom and excise administration. Investigators from DCE coordinate with the Indonesian prosecutor. DCE is responsible for the prevention and investigation of hand carry of cash and commodities at the Indonesian border, and the prevention and investigation of money laundering that relates to custom excise.
Directorate of Tax Intelligence (DTI)	In case of tax fraud or tax crime, responsible for launching a preliminary analysis of the case before handing it to DLE for investigation.
Attorney's General's Office (Prosecutor)	Is the central prosecution authority in Indonesia which has the responsibility to coordinate and provide, with tax crime investigators, a sufficient legal document, and evidence for prosecution. General prosecutors commence prosecutions regarding financial crimes including tax crime, corruption, and money laundering.
The Financial Transaction Reports and Analysis Centre (PPATK)	Coordinates the implementation of legislation to prevent and eradicate money laundering in Indonesia. Internationally, PPATK has the duty and authority to receive financial transaction reports, conduct analysis of financial transaction reports, and forward the analysis results to law enforcement agencies (LEAs).
Asset Recovery Centre	Is responsible for ensuring asset recovery is carried out in Indonesia with an integrated asset recovery system (Integrated Asset Recovery System) in an effective, efficient, transparent, and accountable manner. By conducting searches, safeguards, maintenance, seizures, and returning assets resulting from criminal acts domestically and transnationally.
State Intelligence Agency (BIN)	The Badan Intelijen Negara (BIN), Indonesia's national intelligence agency, is responsible for domestic and international intelligence collection and analysis.
Anti-corruption agency (KPK)	To increase efficiency and effectiveness of legal enforcers and to decrease the rate of corruption in Indonesia through coordination, supervision, monitoring, prevention, and enforcement, with the active role of the entire elements of the nation.
OJK	Is mandated to regulate and conduct prudential and AML/CFT supervision of banks and other financial institutions, except those in commodity futures

Independence of tax crime investigations and prosecutions

1074. Indonesia has legislation which ensures that tax officers operate with integrity and independence (Law Number 7 Year 2021 Harmonization of tax regulation, art. 36A). For example, tax officers who benefit themselves unlawfully by abusing their power may face criminal charges in accordance with CC (art.368).

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crimes

1075. The budget to combat tax crimes was IDR¹ 7.6 bln for 2020, and 8.3 bln for 2021 and 2022. DLE consists of 154 employees, divided into several departments; Forensics and Evidence department, 34 employees; Preliminary Investigation department, 30 employees; Investigation department, 29 employees; and 49 tax investigators. In addition, DLE has 11 employees for general support.

1076. The budget for the enforcement of tax crimes is not performance based. Indonesia notes that it plans to increase the budget for the enforcement of tax crimes each year. Besides, DLE has performance targets which focus on the completion of investigation. The performance of investigators is measured by assessment on the following targets: voluntary disclosure, seizing assets, termination of investigation because of art. 44B GPT, submission of case files, and transfer of responsibility for the suspect and evidence.

1077. The below table shows the availability of databases and sources of information to tax crime investigators.

Table 25.6. Databases and sources of information available to DLE tax crime investigators

Database/source	Access
Company formation/ ownership registry	Direct access
Land Registry	Access on request
Registry of citizens	Direct access
Tax databases	Direct access
Customs databases	Access on request
Police databases	Access on request
Judicial databases	Access on request
Suspicious transaction/activity report databases	Access on request
Car registry	Access on request
Boat registry	Access on request
Database of bank accounts	Access on request
Company formation/ ownership registry	Direct access
Land Registry	Access on request
Registry of citizens	Direct access

Training for tax crime investigators and prosecutors

1078. Tax crime investigators are given the possibility to attend and participate in numerous trainings. DGT cooperates with the Tax Education and Training Centre and the National Police Reskrim Education and Training Centre to routinely organize investigative training for DGT investigators. There are two types

of courses: investigation management training and investigation training. Officials who are directly involved in investigative activities are the target audience for investigation management training. Meanwhile, potential investigators are the target audience for investigative training. This training is a requirement for an employee to be appointed as an investigator.

1079. Investigation management training is held annually for officials who have never attended this training and are directly related to investigative activities. The duration of this training is 200 hours and is held for one month. Tax Investigation training is not always available annually. This training is provided when needed. The duration of this training is 400 hours and is held for two months. Criminal laws, investigator's code of ethics, investigation simulations, and investigative tactics (techniques for questioning suspects and witnesses, prosecution, etc.) are all common topics covered in both types of training.

1080. In 2023, several joint trainings were held for LEA Officers such as police, prosecutors, judges, and investigators to promote standardization of treatment in the management of criminal cases in the area of taxation in order to boost taxpayer compliance. This training focuses on giving LEA Officers information on tax regulations, especially criminal articles in tax law. The content of this course, in particular the emphasis on criminal articles in Law No. 7 of 2021 concerning harmonization of tax regulations, guidelines for handling tax crime cases for the supreme court, issues the latest information regarding tax crimes, and the Supreme Court of the Republic of Indonesia's rulings on tax crimes. The training is held for five days.

1081. Indonesia is also creating a team of money laundering investigators with PPAK, the Attorney General's Office, and the Police's Bureau of Coordination and Supervision of Investigators. Training on laundering crimes is held annually with a training duration of 33 hours. This training is expected to improve the investigation and recovery of assets in corruption cases where money laundering has been used as a means. The purpose of this training is to increase participants' knowledge and understanding of the crime of money laundering, both those charged with predicate criminal evidence beforehand or jointly or independently in accordance with Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The training focuses on the in-depth investigation of tax crime cases in the context of how to distinguish money laundering from tax crimes, conducting administrative investigations of and steps in asset tracing and documentation of material evidence.

Principle 7: Predicate offences

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

1082. Approach: Indonesia uses a combined threshold and list approach to cover predicate offences, encompassing 26 categories of offences as well as criminal acts subject to imprisonment of four years or more.

1083. In Indonesia, tax crimes have been predicate offences for money laundering since 2010 (Law number 8 of 2010 concerning the Crime of Money Laundering, art. 2). This development improved and increased coordination with external parties, education and training related to tax and money laundering crimes, and joint investigations between LEAs.

1084. Enforcement of money laundering predicated on tax crimes: According to art. 2 of Law number 8 of 2010, the enforcement of money laundering predicated on tax crime could be enforced if it is committed either in the territory of the Republic Indonesia or outside the territory of the Republic of Indonesia as long as it is a criminal tax offence under Indonesian tax law.

1085. Between 2016 and 2021, Indonesia has commenced 18 investigations of money laundering predicated on tax crimes. Seven investigations and four prosecutions are ongoing, and sentences have been imposed in seven cases. The sentences range from ten months to six years' imprisonment, in addition to the imposition of supplementary fines, for cases that were reported in the years 2018, 2019, and 2019.

Box 25.2. Successful enforcement of money laundering predicated on tax crime: Indonesia

Successful enforcement of money laundering predicated on tax crime: Indonesia

In 2017, a suspect issued fabricated tax invoices to report income. Indonesian tax investigators noticed the predicated crime because the suspect could not accurately report all components of the assessed income when filing taxes.

During further facts and evidence research, tax investigators determined that the predicate crime led to money laundering offences.

The tax investigators managed to prove the money laundering offence and the suspect was successfully prosecuted for imprisonment for four years and six months and received a fine of IDR two billion.

In the process, tax investigators from Directorate of Law Enforcement collected data and information about the flow of money, indicating money laundering, from The Financial Transaction Reports and Analysis Centre (PPATK) to provide evidence. The investigators can receive and follow up on Analysis Results Reports from PPATK as well as information, data, reports or complaints, regarding indications of money laundering crimes. Investigators also might order to postpone transactions or block assets that are known or reasonably suspected to be proceeds of crime.

As stated in Indonesia's Tax Law, investigators have powers during the investigation process to examine, seek out, and collect information on individuals or corporates regarding the truth of the actions committed in relation to a criminal offence in taxation sector; to examine the books, records, and other documents relating to a criminal offence in the taxation sector; to conduct searches to obtain evidences in the form of books, records, and other documents, as well as other evidences allegedly related to a criminal offence in taxation sector and/or to confiscate any of the aforesaid evidences; to ask for assistance from the expert personnel during investigating the criminal offence;

Tax Investigators under the Money Laundering Law have the right to request the reporting party to provide written information regarding the assets. The investigators also could consider freezing or seize the assets of the suspect or conduct search to obtain evidence. Investigators may request the assistance of other law enforcement officials, including the Indonesian National Police during freeze or seize the assets of the suspect and conduct searches to obtain evidence.

After obtaining evidence, the investigators will prepare case files and assist with national police, submit it to Attorney's General's Office (Prosecutor). It is the responsible of prosecutor to coordinate and provide, with tax crime investigators, a sufficient legal document, and evidence for prosecution. General prosecutors commence prosecutions regarding financial crimes including tax crime, corruption, and money laundering.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1086. PPATK sends suspicious transaction reports (STRs) to DGT when suspicious activity is discovered by civil tax authorities. DGT subsequently refers to its Directorate of Tax Intelligence (DTI) for further analysis to make a judgement as to whether it is indicative of a tax crime. DTI will send the analysis to DLE for investigation if the STR indicates tax crime. DLE has no direct access to STRs, apart from those they receive from DTI.

1087. DGT has been establishing relationships with other bodies involved in tax crime investigations through securing Memoranda of Understanding (MoU) or other form of agreement. Even enforcement agencies are bound and submissive in legal or formal framework collaboration, other agencies still continue to assist the investigation process according to their authority as long as accordance with rules and regulation.

1088. Internally, DLE has an ongoing project of building a tax crime data centre. The purpose of this centre is to provide an information link between investigators in case their investigations are linked to a certain individual. Through the data centre, investigators can coordinate and share evidence relevant to their cases. In the long term, the data centre is planned to adopt data science methods to map and detect suspicious patterns that could be flagged in the civil tax database.

1089. The below tables show the models for sharing information and co-operation related to tax crime and other financial crime.

Table 25.7. Models for sharing information related to tax crime and other financial crime

Rating	Definition
Sharing Prohibited	Unable to provide information.
On Request	Able to provide information on request
Discretionary Spontaneous Sharing (DSS)	Able to provide information on request and spontaneously with discretion. <i>This rating means that the agency is in a position to provide information on request and that furthermore there are legal gateways in place that allow, but do not require the agency to provide information spontaneously to another agency.</i>
Mandatory Spontaneous Sharing (MSS)	Able to provide information, on request and spontaneously without discretion. <i>This rating means that the agency is in a position to provide information upon request and is also required to provide relevant information spontaneously to another agency.</i>
Direct Access	Direct access to the information (for recipient)

Table 25.8. Models for sharing information related to tax crime and other financial crime

Authority providing information	Authority receiving information							
	Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority*	
Tax administration		Direct access	DSS	DSS	DSS	DSS	On Request	
Agencies investigating tax offences	Sharing prohibited		On Request	On Request	On Request	DSS	DSS	

Customs administration	On request	On Request		On Request	On Request	On Request	On Request
Police or public prosecutor	On request	On Request	On Request		DSS	DSS	On request
Financial Intelligence Unit	DSS	On Request (through Tax Intelligence Unit)	On Request	DSS		DSS	On request
Corruption investigation authority	On request	DSS	On Request	DSS	DSS		On request
Financial regulator	On request	DSS	Sharing prohibited	Sharing prohibited	Sharing prohibited	Sharing prohibited	

DSS = discretionary spontaneous sharing

Table 25.9. Availability of enhanced forms of co-operation in combatting tax crimes.

Mechanism	Availability	Additional information and examples
Co-operation agreements	Yes	MoU between Attorney General's Office, and National Police of Republic of Indonesia
Disclosure of foreign trusts	No	No
Joint operations and taskforces	Yes	Money laundering
Parallel investigations	No	No
Joint intelligence centres	No	No
Secondments and co-location of staff	No	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes	Corruption
Multi-agency training	Yes	Training involving tax investigators, police officers, public prosecutors, and judges

Principle 9: International Co-operation

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.

1090. **Legal basis:** Indonesia is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) and has exchange of information relationships with 77 jurisdictions through 71 bi-lateral tax treaties.

1091. Indonesia has a network of international instruments for the exchange of information on request which covers 156 jurisdictions, through the Convention on Mutual Administrative Assistance on Tax Matters (MAC), 69 bilateral EOI instruments (Double Taxation Conventions) and 6 Tax Information Exchange Agreements (TIEAs) with 6 countries.

1092. Furthermore, it has concluded Mutual Legal Assistance (MLA) treaties that facilitate exchange of information and MLA in criminal tax matters with People's Republic of China (2006); Brunei Darussalam, Cambodia, Lao PDR, Malaysia, the Philippines, Singapore, Vietnam (2008); Hong Kong, China (2012); South Korea, India (2014); Switzerland, and Russian Federation (2021).

1093. **Competent authorities:** In Indonesia the competent authorities for international co-operation are the Ministry of Law and Human Rights, PPKAT, KPK, Police, DGT, DCE, OJK, Central Bank of Indonesia, BNN, AGO.

1094. The Ministry of Law and Human Rights, INP, AGO are the competent authorities for mutual legal assistance in Indonesia. Moreover, DGT is obtaining data from various sources and the data has different competent authorities. PPATK is a competent authority related to information exchange of financial transaction data, and DCE relates to import and export goods in Indonesia, and cash delivery, OJK relates to banking and the financial market, and KPK relates to data from corruption cases. For each institution responsibility shall refer to table 1.3

1095. **International co-operation in practice:** Indonesia does not maintain statistics on the number of EOI and MLA requests it sends/receives in relation to financial crime cases.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

1096. Indonesia provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These procedural and fundamental rights are set out in the Criminal Procedure Code (CPC).

1097. The below table shows the rights of persons suspected or accused of having committed a tax crime.

Table 25.10. Rights of persons suspected or accused of having committed tax crime

Right to:	Available Yes/No	Relevant legislative provision	At what point in time
presumption of innocence	Yes	Art. 8(1) of Law Number 48 of 2009 concerning Judicial Powers and General Explanation of Law Number 8 of 1981 concerning the CPC.	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Chapter I number 2 letter g explanation of the CPC and Article 51 of the CPC.	Arrest or detention
remain silent	Yes	Article 52 of the CPC regulates the freedom of suspects to provide information both during examinations at the investigative or court level.	During investigation or trial
access and consult a lawyer and/or entitlement to free legal advice	Yes	Chapter I number 2 letter g of CPC explanation states, "To a suspect, from the time of arrest and/or detention, apart from being required to be notified of the charges and the legal basis for being charged, he must also be informed of his rights including the right to contact and seek the assistance of a legal adviser." Art. 114 of the CPC emphasizes that before the start of an investigation, the investigator is obliged to notify the suspect about his right to receive legal assistance or to be accompanied by a legal adviser.	Arrest or detention
interpretation and translation	Yes	Art. 51 of the CPC regulates, "To prepare a defense: a. the suspect has the right to be clearly informed in a language he understands about what is suspected of him when the examination begins; b. the accused has the right to be clearly informed in a language he understands about what he is charged with." Art. 53 of the CPC stipulates the right of a suspect to receive the assistance of an interpreter at each level of examination, including for suspects who have special needs.	Start of Trial
be advised of the particulars of what one is accused of	Yes	Art. 51 and Chapter I number 2 letter g of the CPC	Arrest or detention

access documents and case material, also known as a right to full disclosure	Yes	Art. 72 of the CPC, "at the request of the suspect or his legal adviser, the official concerned provides copies of the minutes of the examination for the benefit of his defense". Art. 143(4) of the CPC, "the derivative of the letter of delegation of cases along with the indictment shall be submitted to the suspect or his attorney or his legal adviser and investigator, at the same time as the submission of the letter of delegation of the case to the district court".	Simultaneously with the submission of the letter of delegation of the case to the district court.
a speedy trial	Yes	Based on Art. 50 of the CPC: a) A suspect has the right to be immediately examined by an investigator and can then be submitted to the public prosecutor. b) The suspect has the right to immediately bring his case to court by the public prosecutor. c) The accused has the right to be tried immediately by the court.	Start of trial
protection from <i>ne bis in idem</i> (Double Jeopardy)	Yes	Art. 76 of the CPC states that "Except in cases where the judge's decision is still possible to be repeated, a person may not be prosecuted twice because of an act that an Indonesian judge has tried against him with a decision that becomes permanent."	After the trial

Highlights

Key issues for further consideration

Successful practices

- Active enforcement of money laundering predicated on tax crimes.

Room for improvement:

- Indonesia highlights that tax crime investigators would benefit from powers of arrest and asset recovery information.

¹ As of April 2023, 1 EUR = the exchange rate was 1 EUR = IDR 16 225,48.

26 Ireland

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1098. Ireland's Tax Consolidation Act 1997 (TCA) sets out various tax crimes, ranging from absolute liability offences (requiring no *mens rea*) through to offences that require criminal intent of the part of the offender.² Civil investigators, at their discretion, may escalate a civil investigation to a criminal investigation where a tax crime is suspected. This escalation is, however, subject to approval by a separate internal grouping made up of both civil, criminal and legal representatives.

Table 26.1. Absolute liability offences

Offence	Minimum criminal sanction	Maximum criminal sanction
Failure to file a return (TCA s. 1078 (2)(g)(i & ii))	Probation where a conviction is not recorded.	Summary Conviction: Fine of EUR 5 000 which may be mitigated to not less than ¼ of such fine, and/or 12 month term of imprisonment
Failure to keep proper books and records* (TCA s. 1078 (2)(g)(iii))	Suspended sentence with or without restitution for tax owned	Fine of EUR 5 000 which may be mitigated to not less than ¼ of such fine, and/or 12 month term of imprisonment
Failure to remit VAT (TCA s. 1078 (2)(i))	Suspended sentence with community service	

Note: *There is a provision for a defence of "reasonable excuse" for this offence.

Table 26.2. Tax offences requiring criminal intent

Offence	Minimum criminal sanction	Maximum criminal sanction
Filing an incorrect return (TCA, s. 1078 (2)(a))	Probation where a conviction is not recorded.	Summary Conviction: Fine of EUR 5 000 which may be mitigated to not less than ¼ of such fine, and/or 12 month term of imprisonment
Claims or obtains a relief / exemption / repayment to which the person is not entitled (TCA, s. 1078 (2)(c))	Suspended sentence with or without restitution for tax owned.	Indictable Conviction: Fine of EUR 126 970 and/or 5 year term of imprisonment
Issues an incorrect invoice (TCA s. 1078 (2)(d))	Suspended sentence with community service.	

1099. **Statute of limitations:** All offences outlined in the TCA are subject to a statute of limitations of 10 years from the commission of the offence. The limitation period begins from the date that the Summons for attendance in Court is issued to the tax entity.

1100. **Complicity:** Accomplices for tax crimes are criminally liable in Ireland. (TCA, s1078(2)(b)).

1101. **Attempt and conspiracy:** It is a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, incite, or conspire with another person to commit any of these offences.

1102. **Professional enablers:** There is no separate penalty regime within the meaning of Revenue legislation. Professional enablers may however be held to account by their own governance bodies. This is completely separate to any Revenue or Courts sanction.

1103. **Territorial and nationality jurisdiction:** Ireland has jurisdiction over tax crimes committed wholly or partly in Ireland.

1104. **Liability of legal persons:** A legal person can be held liable for the tax offences outlined above, punishable by the same fines as natural persons. Furthermore, under the TCA, for any offence committed by a corporate body that is shown to have been committed with the consent or connivance of a company officer, that person shall also be deemed to be guilty of the offence, punishable by the same sanctions as a natural person (TCA, s1078(5)).

Enforcement of tax crimes

Table 26.3. Enforcement of tax crimes in Ireland in tax years ending 2015-19

Tax years ending	Total number of criminal investigations*	Cases referred for prosecution**	Total number of criminal prosecutions***	Number of convictions
2015	122	9	37	28
2016	108	14	30	18
2017	107	6	27	24
2018	100	13	20	21
2019	61	14	26	15

Note:

* Refers to the number of ongoing investigations at year end

** Refers to the number of cases referred to the Director of Public Prosecution during the year

*** Refers to the number of cases before the courts during the year

Table 26.4. List of sanctions imposed for tax crime offences in tax years ending 2015-19

Sanction	Number of times imposed
>0 – 3 years' imprisonment	26*
>3 – 5 years' imprisonment	0*
Fine < EUR 5 000	9
Fine > EUR 5 000	4
Community Service	9

Note: these sanctions do not include sanctions imposed by the courts in respect of excise duty cases which were initially dealt with summarily. Ireland further notes that in the majority of cases, the imprisonment time imposed can be fully or partially suspended at the judge's discretion.

1105. **Availability of settlements:** Ireland does not allow for settlements and other out of court agreements.

1106. **Availability of tax deductions for civil and criminal sanctions:** Sanctions are non-deductible from tax in Ireland.

1107. **Tax gap:** Ireland does not measure its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1108. The Irish Revenue Commissioners are responsible for tax strategy, which includes compliance, enforcement and risk identification.

1109. **Threat assessment:** Ireland includes a threat assessment as part of its tax strategy.

1110. **Communications strategy:** Each successful prosecution of a tax crime is the subject of a press release that is made available through the website of the Revenue Commissioners. There is also a report published quarterly via a government publication, reflecting on all successful prosecutions for tax crimes.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

Table 26.5. Investigative powers of tax crime investigation agency (Revenue Commissioners)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Pursuant to legislative provisions, search warrants may be obtained from the courts to search a property and seize physical evidence.
Obtain documents from third parties	Full direct power Pursuant to legislative provisions, court orders may be obtained to secure documents and information from third parties, including financial institutions.
Interview	No power A suspect may only be invited for interview under caution. A third party may be compelled by court order to answer specific questions in the context of a criminal investigation.
Inquiry powers (e.g. power of coercion)	No power
Intercept mail and telecommunications	No power RC has no power to intercept mail / telecommunications. There is only a provision to obtain telecommunication data such as name and address of the subscriber. For mobile phones, this includes tracking data to locate the equipment and, in the case of internet, requests can be made in respect to IP addresses.
Conduct covert surveillance	Full direct power Pursuant to legislative provisions, tracking devices, audio recording devices and cameras can be used for the purposes of investigating serious tax and duty offences which are punishable by imprisonment for a term of 5 years or more or by a more severe penalty. Audio recording devices and cameras, etc. used to record images in a place to which the public do not have access require court approval.
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power Pursuant to legislative provisions, search warrants may be obtained from the courts to search a property. Material which may be useful when investigating the offence and found during the search may be seized, including computer hardware and storage media.

Arrest	<p style="text-align: center;">Full direct power</p> <p>Limited to VAT offences, where the suspect is not established in the jurisdiction, or is likely to leave the jurisdiction.</p>
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1111. **Legal professional privilege:** Legal professional privilege in Ireland is a common law right, referenced in S908D of the Taxes Consolidation Act, “Order to Produce Evidential Material”. This statute provides that information contained in books, documents or records given to an authorised officer are admissible in criminal proceedings unless the information “is privileged from disclosure in such proceedings”. The party asserting the existence of the privilege bears the onus of justifying the claim. If agreement between the parties on what documents are privileged cannot be found, the documents may be forwarded to an independent lawyer for examination and recommendation. Once the legal professional privilege has been established on the facts of a case, it is inviolate and there is no judicial discretion to displace it. At an operational level, it is impossible to say that tax crime investigations are affected without having access to the privileged information in specific cases.

Principle 4: Freezing, seizing and confiscating assets

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

1112. **Legal basis:** The Collector-General’s Division may issue Notices of Attachment, under Section 1002 of the Taxes Consolidation Act, 1997, in order to recover tax from payments due to defaulters. This may include bank deposit accounts, all financial institutions, merchant acquirers and third parties and has the effect of freezing those accounts until the tax debt due has been recovered.

1113. There is also provision under Section 960L of the Taxes Consolidation Act, 1997 (as amended), to initiate recovery by county sheriff, who may seize goods, animals or other chattels belonging to a tax defaulter. The appointment of all Sheriffs is made by the Government under section 12(3)(a) of the Court Officers Act, 1945. Sheriffs execute warrants on behalf of Revenue within appointed Bailiwicks and are independent of Revenue but are answerable to Courts for their actions.

1114. **Freezing and seizing orders:** The Proceeds of Crime Acts 1996-2016 (“PoCA”) provides a mechanism for freezing of assets which are deemed to be the proceeds of crime generally which may be applicable to tax crime. Section 1A of the PoCA provides of the freezing of property which is suspected to be the proceeds of crime however, the wording of the provision does not allow the freezing of bank accounts. This is an administrative process and can be obtained without court order immediately upon discovery of property so suspected. With authorisation by a Chief Bureau Officer, the property may be held for a period of 21 days without reference to the Court – thereafter, a court order must be sought pursuant to sections 2 or 3 of the PoCA or the property released.

1115. Section 17(1) and (2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 permits the freezing of *inter alia* bank accounts when it is suspect that a transaction on that account would amount to an offence of money laundering. This provision could be used when the funds representing that balance are the suspected of being the proceeds of tax crime.

1116. **Confiscation orders:** Apart from conviction-based confiscation, the PoCA provides for civil non-conviction based forfeiture.

1117. **Foreign freezing, seizure, and confiscation orders:** Ireland may execute foreign post-conviction confiscation orders only, under the provisions of the Mutual Assistance Act 2008. The competent authority for such requests is the Chief State Solicitor’s Office on the instructions of the Department of Justice.

1118. **Agency/unit responsible for asset recovery:** There is no one agency responsible for asset recovery in Ireland. The Criminal Assets Bureau is responsible for all assets recovered under the PoCA. The Office of the Director of Public Prosecutions is responsible for assets recovered under post-conviction forfeiture.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1119. The Revenue Commissioners, Ireland's tax and customs agency, is the body responsible for the investigation of tax crimes in the Republic of Ireland. The Investigation and Prosecutions Division of Revenue is responsible for progressing criminal investigations of an indictable nature, and forwarding completed files to the office of the Director of Prosecutions, who is the sole prosecuting authority in the State.

1120. Revenue criminal investigators are authorised with specific powers under revenue legislation to apply to the Courts for production orders and search warrants and to execute them in order to obtain information and uplift evidence in the course of investigating customs and tax fraud/offences. The power for revenue officers to search for cash, power of seizure, detention and forfeiture of cash is provided for in the *Criminal Justice Act 1994* as amended by *Proceeds of Crime (Amendment) Act 2005*.

1121. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Ireland's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).³

Table 26.6. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Revenue Commissioners of Ireland	Ensures that taxpayers comply with both their Tax and Customs/Excise responsibilities in meeting their obligations under Revenue law and that they pay the correct amount of both tax and duty when due.
Investigations and Prosecutions Division (housed within Revenue Commissioners)	In charge of challenging and punishing serious tax and customs evasion by carrying out criminal investigations and forwarding completed files to the office of the Director of Prosecutions
Garda National Economic Crime Bureau, GNECB (housed within the Irish Police Force)	The GNECB are responsible for investigating cases of alleged fraud. Fraud is a common law offence. The Revenue Commissioners are responsible for investigating cases of alleged tax evasion only.
Director of Public Prosecutions (DPP)	Sole prosecuting authority in Ireland in indictable matters, including tax evasion.
FIU	Central reception point for the receipt of Suspicious Transaction Reports (STRs).
Criminal Assets Bureau and the Bureau of Fraud Investigation	The Criminal Assets Bureau are an independent statutory body, established in 1996. They are comprised of officials from An Garda Síochána (Ireland's Police Force), the Revenue Commissioners and the Department of Social Protection. Their mission is to target the assets of known criminals that have been gained through illicit means. We are unsure of the what Bureau of Fraud Investigation is (perhaps a previous iteration of the GNECB, referenced above?)
Irish Central Bank	Investigates regulatory breaches or complaints about regulated entities and refer any criminal matter where relevant to the Gardaí (Police), Revenue Authorities, Director of Corporate Enforcement or Department of Social Protection.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1122. Revenue is a fully integrated tax and customs administration and so it is not possible to disaggregate resources deployed exclusively at any given time on tax crime investigations. Revenue currently has approximately 2 000 staff engaged on activities that are dedicated to targeting and confronting non-compliance. These front-line activities include anti-smuggling and anti-evasion, investigation and prosecution, audit, assurance checks, anti-avoidance, returns compliance and debt collection. Resources are allocated to these different aspects of enforcement and compliance work are continuously adjusted in response to changes in the level of risk in different sectors.

Table 26.7. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Limited Access on Request
Judicial databases	Access on Request
Suspicious transaction report databases	Direct Access
Domestic bank account databases	Access on Request Pursuant to a court order
Car registry	Direct Access
Boat registry	Access on Request

Training for tax crime investigators

1123. All investigators are obliged to undergo training in both standard investigative techniques and in specialty courses oriented at tax crime. The duration of these courses varies on a case-by-case basis. For example, the advanced tax crime investigation course is run over a period of seven days; the tax technical training is a part-time course run over a periods of two academic years running from September to the following April in each year. Post-graduate training in the area of computer forensics is provisioned for. There is also a post-graduate qualification provided for on the topic of White Collar Crime. Depending on the role / rank of an officer assigned to the Investigations area, they may only attend certain courses. For example, more junior officers / ranks might only attend the beginners specialised tax crime investigation course.

1124. Revenue have sourced training for investigators specifically in the area of criminal investigations. This training was sourced with a private company. The training is not tax specific but is confined to training in investigative methods. On the job coaching and mentoring is also carried out to assist in building the skill set of criminal investigators.

Principle 7: Predicate offences

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

1125. **Approach:** Ireland designates tax crime as a predicate offence to money laundering using the ‘all crimes’ approach. There is no prescriptive legislative reference that defines a tax crime as a predicate offence to money laundering. In practice, the Financial Intelligence Unit of the Irish Police Force, and the Suspicious Transactions Reports Unit of the Revenue Commissioners are in contact on a regular basis (as it receives the same data feed from designated financial institutions) Revenue focus on the tax evasion suspicion whilst the FIU, as the designated competent authority for money laundering investigations, focus on the money laundering element, if any.

1126. **Enforcement of money laundering predicated on tax crimes:** Ireland does not have statistics on tax crime as predicate offence to money laundering. However, recent developments between Revenue and the FIU have led to an arrangement whereby instances of seizures of cash at ports and airports (under Proceeds of Crime Legislation) are also reported to the Financial Intelligence Unit to see if they are interested in following up from a money laundering perspective.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1127. If an auditor in the course of an intervention believes a tax crime has been knowingly committed, they may refer that case to the Admissions Committee of Investigations and Prosecutions Division of Revenue. This committee sits six times per year approximately, and makes decisions on whether to accept, reject or adjourn the cases that have come before it as regards suitability for criminal investigation. The auditor who originally sent the case to the Admissions Committee is present on the day, and will verbally explain the facts of the case to underpin the written submission that they have already made. If a case is accepted as suitable for criminal investigation, the case is investigated by a case officer in the Prosecutions Branch of IPD. The civil case will continue to be progressed by the tax auditor, who will liaise with the criminal investigator in an effort to avoid duplication of work, and also to ensure that the criminal investigation is not compromised in any way by the civil case.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1128. Revenue’s IPD area have a liaison role with the Irish Police Force, who from time to time may request information on a taxpayer. All such requests need to adhere to the relevant legislative cover, and be presented in the correct format. IPD investigate cases with a tax crime focus, while the Garda National Economic Crime Bureau may investigate other financial crimes, eg; fraud cases.

Table 26.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	Direct Access ^(a)	DSS ^(b)	DSS ^(c)	DSS ^(c)
	Customs administration	Direct Access ^(a)	Direct Access ^(a)		DSS ^(c)	DSS ^(c)	DSS ^(c)
	Police or public prosecutor	DSS ^(c)	DSS ^(c)	DSS ^(c)		Direct Access	Direct Access
	Financial Intelligence Unit	Direct Access ^(d)	Direct Access ^(d)	Direct Access ^(d)	Direct Access		Direct Access
	Corruption investigation authority	DSS ^(c)	DSS ^(c)	DSS ^(c)	Direct Access	Direct Access	
	Financial regulator	Sharing Prohibited ^(e)	MSS ^(f)	MSS ^(f)	MSS ^(g)	MSS ^(g)	MSS ^(g)

Note:

DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

(a) Civil tax compliance, criminal tax investigation and customs administration are all part of a unified tax and customs administration. There is no impediment to sharing information between these areas.

(b) Legal gateways exist between the tax administration and the Irish police (An Garda Síochána) which enable sharing of information. These gateways also permit information exchange between the tax administration and the FIU, which is part of the police. Tax officials within the Revenue are not obliged to report suspicions of non-tax crimes to the police, but reports can be made and there is an effective legal framework in place to facilitate this.

(c) Specialists from the FIU and the tax administration's Suspicious Transaction Reports Office meet approximately every four to six weeks to discuss their analyses of Suspicious Transaction Reports and to co-ordinate investigations where evidence exists of both tax and non-tax offences, as well as discuss broader operational issues related to money laundering investigations. Arrangements are also in place for the tax administration to provide the FIU with information relating to declarations of cash moving into or out of the EU through Ireland.

(d) The customs administration investigate cases where cash in excess of EUR 6 348 is encountered (usually at entry to or exit from the State) and is suspected of being derived from or was intended to be used in connection with criminal activity. Such cash is detained and an investigation is conducted by Revenue to identify and establish a link with criminality. Where such link is identified a file is prepared and sent to the Director of Public Prosecutions who will decide whether an application for forfeiture of the cash should be made in the Circuit Court.

(e) The Revenue Commissioners receives copies of all Suspicious Transaction Reports directly from regulated businesses. Specialists within the tax administration and FIU meet regularly to discuss their analyses of Reports and co-ordinate investigations where evidence of tax and non-tax offences exists, to ensure there is no duplication in investigations. Broad legal gateways also allow the Irish FIU, which is part of the police, to share information with respect to tax offences.

(f) Mandatory gateways open between the Central Bank and the tax administration where the Central Bank comes into possession of information relevant to the tax administration that leads it to suspect that a criminal offence may have been committed by a supervised entity. This information may only be provided where there is a suspicion that a criminal offence may have taken place, but the tax administration may then use the information received for any purpose, including the making of civil tax assessments. The Revenue Commissioners and the Central Bank are currently in discussions to enhance the exchange of information mechanisms between the two entities, which is already grounded in legislation. Joint teams are in negotiations to develop a formal, mutual Memorandum of Understanding to streamline processes, which should result in more timely and focused data exchange.

(g) The central bank must report to the police or other relevant criminal investigations authority, any information it obtains that leads it to suspect that a criminal offence may have been committed by a supervised entity. As the Irish FIU is part of the police, this obligation also extends to sharing information with the FIU.

Table 26.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Irish Anti-Money Laundering Steering Committee (AMLSC) is the national co-ordination committee on AML/CFT matters and facilitates

	national policy formulation A mechanism has also been arranged between Revenue and the FIU to exchange information received by Customs in respect of cash declarations.
Disclosure of foreign trusts	Revenue do not disclose information to other government agencies in relation to foreign trusts.
Joint operations and taskforces	Joint operations relating to the border with Northern Ireland have been carried out in the past. They are usually in the form of excise fraud investigations.
Parallel investigations	Yes. E.g. Revenue conducting tax investigations, cash seizure investigations. Irish Police Force conducting money laundering investigations into the same individuals.
Joint intelligence centres	No
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. If information is in the public domain that indicates that a tax entity has been sanctioned for other serious financial crime, then Revenue can review the tax affairs of the tax entity at any time.
Multi-agency training	Occasionally, Revenue may use the resources of other agencies to fulfil it's training requirements. This can be both domestic agencies, or EU centralised training.

Principle 9: International co-operation

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.

1129. **Legal basis:** Ireland has exchange of information relationships with 99 jurisdictions through 73 bilateral tax treaties and 27 Tax Information Exchange Agreements.⁴

1130. **International co-operation in practice:** Ireland made eight requests for assistance that originated with criminal investigators submitted under mutual legal assistance (MLA) treaties in the years 2015-17. Only approximately 25% of their requests were answered by the counterpart jurisdiction, with the average response time being 8 months. In the same time period, Ireland has received 68 requests under its MLA treaties. For the period 2018-19 Ireland has made 15 requests, of which 12 were responded to. The average waiting time for these requests was 18 months.

1131. **Enhanced form of international co-operation:** Ireland may execute foreign confiscation or seizure orders under the provision of bilateral or multilateral treaties.

Principle 10: Fundamental rights of a suspect or accused person

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

1132. Ireland provides suspects and accused persons with a full range of rights. These are enshrined in domestic legislation and in international human rights treaties ratified by Ireland, as well as in case law.

Table 26.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times until proven guilty

be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent	Yes	This right applies when a suspect is interviewed – the suspect is advised of his / her right to silence.
access and consult a lawyer and/or entitlement to free legal advice	Yes	The right to access / consult a lawyer applies at all times. There is no entitlement to free legal advice prior to a suspect being charged for tax crimes. The possibility of free legal advice does arise once one is charged but this is dependent on the means of the individual concerned.
interpretation and translation	Yes	If and when required or deemed necessary.
be advised of the particulars of what one is accused of	Yes	A suspect will only be advised of the full particulars when served with the book of evidence.
access documents and case material, also known as a right to full disclosure	Yes	Prior to the arraignment of the suspect where s/he is required to enter a plea.
a speedy trial	Yes	During trial
protection from ne bis in idem (Double Jeopardy)	Yes	Applies at all times.

Highlights

Successful practices

- Good inter-agency co-ordination between Revenue, FIU and the Police.
- Examples of cross-border co-operation with Northern Ireland
- Criminal liability for legal persons

Room for improvement

- Ireland would benefit from more investigative powers for its tax crime investigators
- Ireland would benefit from an in-depth tax crime strategy and threat assessment.

Notes

¹ As of April 2023, 1 EUR = the exchange rate was 1 EUR = IDR 16 225,48.

² <http://www.irishstatutebook.ie/eli/1997/act/39/section/1078/enacted/en/html#sec1078>.

³ See Rome Report, Chapter 5 – Country Information – Ireland. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁴ See <http://www.eoi-tax.org> for up-to-date figures.

27 Israel

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1133. The Israeli Income Tax Ordinance (ITO) sets out various tax crimes ranging from offences requiring criminal intent (*mens rea*) to offences requiring negligence on the part of the offender. The ITO applies to all taxation offences except those for VAT, which are prosecuted under the Value Added Tax Law of 1975. The below table lists examples of tax offences in Israel and their maximum sentences.

Table 27.1. Tax offences and maximum sentences

Offence	Criminal Intent	Maximum sentence	Availability of non-criminal sanction
Offences against the ITO or regulation thereunder for which no penalty is specifically provided (ITO, art. 215)	Negligence	One year's imprisonment or ILS 29 200* fine.	Monetary compensation
Transfer of assets with intent to prevent collection of tax (ITO, art. 216B)	Intentional act	Two years' imprisonment or ILS 75 300 fine.	Monetary compensation
Unlawful representation (ITO, art. 216B)	Intentional act	Two years' imprisonment or ILS 29 200 fine.	Monetary compensation
Incorrect return and information (ITO, art. 217)	Negligence	Two years' imprisonment or ILS 75 300 fine.	Monetary compensation
Fraud (ITO, art. 220)	Intentional act	Seven years' imprisonment.	Monetary compensation

Note:

* In April 2021, EUR 1 = ILS 3.93

1134. Israel provides that in some cases a term of imprisonment may be replaced by full time public service. In addition to fines and prison sentences, Israel can also impose probationary imprisonment, whereby the offender will be only be imprisoned if they offend again within the probationary period. The courts can also award “good behaviour bonds¹” and community service.

1135. **Statute of limitations:** For most tax offences covered by the ITO, the statute of limitations is set at 6 years after the end of the tax year in which the offence was committed (ITO, art. 225). The exception is fraud with criminal intent, where the limitation period is ten years after the tax year in which the offence was committed. For all offences, the start of an investigation suspends the limitation period.

1136. **Complicity:** Accomplices to tax crimes can be prosecuted in Israel Article (29)b of the Penal Law of Israel of 1977 (PLI)). They are subject to the same sanctions as principal offenders.

1137. **Attempt and conspiracy:** Under Israeli law, it is a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, counsel, or procure the commission of an offence. (PLI, art. 26(1)-(4)).

1138. **Professional enablers:** The ITO establishes that persons who assisted offenders in the preparation of a tax report, and persons that would be responsible for corporate offences (such as directors or representatives of a company) are subject to a fine. This fine may be up to ILS 226 000 and twice the amount of tax evaded for income tax offences, and up to ILS 1 300 000 under VAT.

1139. **Territorial and nationality jurisdiction:** According to the PLI, Israeli courts have jurisdiction over any crime committed wholly or partly within the territory, or territorial waters of Israel.² Israel may also prosecute anyone who commits an offence abroad, if the offence injured, or intended to injure, the State of Israel or its nationals or residents.³ Extraterritorial jurisdiction is established for tax offences committed entirely outside of Israel only when the perpetrator is an Israeli citizen, the offence is considered a crime in the state where it was committed and it has not been enforced in that state. Israel notes that there is currently no precedent for establishing extraterritorial jurisdiction in tax offences involving legal persons.

1140. **Legal persons:** The ITO's definition of "person" includes both natural and legal persons,⁴ meaning that legal entities are criminally liable for tax offences. Usually, the penalties include fines, or inclusion on a corporate criminal registry, which may affect possibilities of participating in public tenders. Israel notes that it actively prosecutes legal persons in addition to the individuals who are responsible for committing the offence.

Enforcement of tax crime

1141. The below table shows the amount of concluded investigations, prosecutions, and criminal convictions for tax crime offences in Israel (income tax and VAT) in the tax years ending 2015-17. The number of concluded investigations includes "misdemeanour offenses" that are concluded with an administrative fine.

Table 27.2. Enforcement of tax crimes in the tax years ending 2015-17

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases where action short of prosecution was taken	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of court cases that resulted in a criminal conviction
2015	6 101	N/A	N/A	N/A	947	739
2016	6 031	N/A	N/A	N/A	805	697
2017	6 173	N/A	N/A	N/A	837	600
Total	18 305				2 589	2 036

1142. **Availability of settlements:** Settlements for tax offences are available to both natural and legal persons under Israeli law. These are based on case law and working guides of the State Attorney.

1143. **Availability of tax deductions for civil and criminal sanctions:** Penalties and fines are not tax deductible in Israel (ITO, art. 17).

1144. **Tax gap:** Israel does not estimate its tax gap.⁵

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

1145. **Tax crime strategy:** Israel's tax crime strategy seeks to deepen the co-operation between the Israeli Police (Police), the Israeli Tax Authority (ITA), the Securities Authority, the Ministry of Justice, the Antitrust Authority, and the AML authority. The result of the strategy is a new combined enforcement structure, which enhances the ability of these agencies to conduct joint enforcement operations. Israel notes that the new enforcement structure resulted in a number of investigations that would otherwise not be possible, whereby each agency contributes its own expertise. Furthermore, ITA conducts meetings with law and tax professionals (from associations such as the Israel Bar, the Accountants Council and tax consultants), in order to promote better enforcement of tax legislation.

1146. Additionally, ITA analyses suspicious tax crime indicators and proactively approaches taxpayers. by sending out letters. Israel notes that between 2014 and 2017, it sent over 153 000 such letters and opened approximately 50 000 new investigation files. ITA conducts concurrent civil inspections and criminal examinations in order to prevent the establishment of new companies, or stop the operation of existing companies that are suspected of VAT fraud. These examinations are based on information from databases within the tax authority, but also from external sources such as company and real estate registration files.

1147. **Threat assessment:** ITA reviews its investigation plan annually. The plan is based on a national risk assessment survey and includes references to various cases of tax avoidance, which are then publicly communicated in order to promote deterrence. Additionally, internal discussions are held annually, with the aim of identifying and preventing future offences. The investigation division also holds quarterly forums to discuss ongoing investigations and tax crime trends. The forum raises cases for discussion and finds effective enforcement methods. New methods employed by tax offenders are discussed in a wider forum that includes all managers from all investigation units in Israel.

1148. Israel also notes that the head of its investigation division is responsible for carrying out the national tax crime risk assessment survey. This assessment prioritises risk factors by severity, and is based on information submitted by several government agencies, including Police, ITA and the AML authority.

1149. **Communication strategy:** Successful prosecutions and remands are regularly monitored and published in the media by ITA's spokesperson. These cases are publicised on ITA's website and also appear in the Israeli media.⁶

Box 27.1. Example of successful implementation of tax crime strategy: Israel

In 2015, ITA changed its operational model against companies suspected of distributing fictitious invoices. In addition to regular investigation teams, ITA established a special unit to monitor companies they consider high risk. The unit examines companies in-depth, based on experience and verified indicators.

Companies that are identified as high-risk are invited to a hearing prior to a decision, on whether to terminate the business or not.

As a result of this strategy, over 1 000 companies involved in distributing fictitious invoices were closed between 2016-17.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

1150. The below table shows the investigative powers of the tax crime investigation agency in Israel.

Table 27.3. Investigative powers of tax crime investigation agency (ITA)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power/ Indirect power ITA requests court orders for all searches except for books and records, which can be seized without a court order.
Obtain documents from third parties	Full direct power
Interview	Full direct power ITA has full powers to interview suspects under investigation.
Inquiry powers (e.g. power of coercion)	Full direct power Subject to suspects' rights according to law
Intercept mail and telecommunications	Indirect power ITA has full powers to intercept mail and telecommunications, however a court order is required.
Conduct covert surveillance	<i>Information not available</i>
Search and seize computer hardware, software and electronic storage media	Full direct power/Indirect power A court order is required.
Arrest	Indirect power ITA has powers, in Income Tax cases, to require a person to post bail and other conditions, otherwise the person is brought before a judge. In VAT-related cases a court order is required (ITO, 227(3)(a))

1151. **Legal professional privilege:** In Israel, if a suspect who is under investigation for tax crimes or his/her lawyer claim that certain documents fall under legal professional privilege, the tax authority shall place the documents, without inspecting them, under a special envelope, which is to be delivered to the court for inspection. The judge shall inspect the documents and issue a ruling on whether they are privileged, partly privileged or not privileged. Documents that are partly privileged or not privileged are returned to ITA and accepted as evidence (ITO, art. 235C). This privilege does not apply to accountants or other economic consultants.

Principle 4: Freezing, seizing and confiscating assets

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

1152. **Legal basis:** ITA has varied direct powers to seize, freeze and confiscate assets derived from criminal activity.

1153. **Freezing of assets:** Freezing of assets in tax crime cases is not prescribed in Israeli law, except for tax crimes as predicate offences to money laundering. As such, Israeli legislation does not allow for rapid freezing orders (defined as orders executed within 24 to 48 hours).

1154. **Seizing of assets:** Seizure of property, including cash, is allowed in Israel. ITA notes that it mainly uses this power to seize unreported cash income. However, Israel cannot seize cash in income tax cases. Israel highlights that it would benefit from the such a power.

1155. **Confiscation of Assets:** Confiscation of assets ordinarily occurs upon conviction and is executed through a court decision, on application of a district attorney. However, in some circumstances, non-conviction based confiscations can occur in both civil and criminal procedures where an Assessing Officer suspects that tax on a certain income will not be collected (e.g. because the suspect intends to leave Israel). This applies to both VAT and income tax cases (ITO, arts. 112A and 194). In this situation, the Assessing Office can use a written notice to demand that the person immediately provide collateral for the payment of the tax or the advance payments. Israel allows for third-party confiscations (for both conviction and non-conviction based procedures. Israeli law allows for extended confiscations and value-based confiscations only in cases where tax crimes are prosecuted as predicate offences for money laundering.

1156. Israeli law also allows for civil based confiscations in money laundering cases (including money laundering predicated on tax crimes) where the property was obtained directly or indirectly from a money laundering offence, and the person suspected of having committed that offence does not permanently reside in Israel, or cannot be found or the property in question was only discovered following conviction (*Prohibition of Money Laundering Laws (PML laws)* art, 22).⁷

1157. **Value-based confiscations:** Tax offences, as predicate offences for ML, provide for the application of value-based confiscation under article 21 of the PMLL following a ML conviction. Under article 21 PMLL, property that can be confiscated includes: 1) property which is object of the offence committed or which was used or intended to be used to commit or facilitate the commission of the offence; 2) property which was or was intended to be directly or indirectly obtained as remuneration for the offence for or in consequence of the offence. Property of the convicted person, which may be forfeited, extends to any property found in his/her possession, control or account and includes pre-acquired property.

1158. **Third-party confiscations:** Under article 21(c) of the PMLL, where no property of the convicted person is found to implement the confiscation order in full, the court may direct that the order be implemented from the property of another person, the acquisition of which was financed by the convicted person or which he transferred to the other person without consideration; the court shall not order as stated with respect to property which the convicted person financed or transferred to the same person prior to the commission of the offence for which he was convicted and with regard to which the confiscation order was issued.

1159. Under article 21(d) of the PMLL the court shall not issue the forfeiture of any property (in all of the above cases) held by the defendant or by a third party who controls or claims a right to the property, before giving them an opportunity to plead their arguments against the order. In cases where a third party claims a right to property subject to criminal proceedings and the court opines that an examination of the arguments might impede progress in the criminal trial, it may direct that the forfeiture be adjudicated within the civil proceedings framework, with provisions from Art. 21(e).

1160. Israel provides that confiscation orders are often followed by a swift income tax assessments, aimed at retrieving as much illegally-derived assets and property from offenders as possible.

1161. **Foreign freezing, seizure and confiscation of assets:** Israeli allows for the implementation of foreign freezing, seizure and confiscation of assets. The procedure is set on the “Law for Legal Assistance between Countries” and channelled through the courts.

1162. **Agency responsible for asset recovery:** The seizure and confiscation of assets related to criminal tax matters in Israel is under the competence of the courts and the prosecution service.

1163. **Freezing, seizing, and confiscation in practice:** Israel does not possess figures related to freezing, seizing and confiscation that are specific for tax crimes.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1164. ITA's Investigation Unit (ITA-IU) is responsible for the investigation of tax crimes. In some cases, an attorney is attached to an investigation to present a legal outline for formulating the evidence file. When a criminal offence is suspected, ITA-IU collects intelligence, gathers evidence, and presents it to ITA's legal division which is responsible for filing indictments. The unit operates in close co-operation with other law enforcement authorities, such as Police Israel Securities Authority (ISA), and the Israel Money Laundering and Terror Financing Prohibition Authority (IMPA).

1165. The ITA-IU is composed of nine principal investigation departments, including five income tax departments and four VAT and customs departments. These departments co-operate with additional departments dedicated to specialist assignments. The Special Intelligence Criminal Tax Unit (Yaadim, "targets" in Hebrew) is the main intelligence-gathering unit, whose objective is to provide intelligence to the principal investigation units. The Yahalom ("diamond") department, established in 2011, is tasked combatting financial crime offences connected to organised crime. An independent intelligence unit operates within each investigation department for income tax, VAT, and customs, and is synchronised with the Yaadim department. ITA-IU may request the assistance of the Israeli Police during tax crime investigations.

1166. The Intelligence Fusion Centre (IFC) was established in 2007 as a component of ITA-IU, to combat severe organised crime by significantly enhancing ITA-IU's intelligence gathering network. It combines forces from Police, ITA and IMPA in a single centre, facilitating the real-time exchange of intelligence between the institutions and producing synthesised all-source intelligence reports on the activities of criminal organisations involved in severe criminal offences. Israel observes that the creation of the IFC significantly enhanced the quality of their early warning systems (EWS) and enforcement. The IFC is supervised by an executive committee and its intelligence products can be disseminated to and integrated by other tax authorities for their own purposes.

1167. Israel's prosecution authority, the State Attorney's Office (SA), is part of Israel's Executive Organ and operates as a separate organisational unit in the Ministry of Justice and no responsibility for criminal investigations. Within SA, prosecutions for financial and taxation offences are handled by two departments; Deputy State Attorney (Economic Enforcement) Department and the Tel Aviv District Attorney (Taxation and Economic Offences). These departments are primarily responsible for prosecuting cases involving the shadow economy, government corruption, and serious white-collar crime linked to securities law, severe tax offences, and money laundering. In addition, regional prosecution departments employ attorneys specialised in financial and tax offences and a Legal Division within ITA specialised in tax offence is also authorised by the SA to prosecute tax offenders in certain instances.

1168. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Israel's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁸

Table 27.4. Agencies, taskforces & other bodies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Israel Tax Authority's Investigations Unit	Housed within ITA and in charge of investigating tax crimes. It collects intelligence information, gathers evidence, detects crimes, investigates crimes, and presents the necessary material to the legal units in order to file indictments.
Israel Tax Authority's Legal Unit	Specialised in tax offences, prepares tax cases for indictment and in some instances is authorised by the State Attorney to prosecute tax offenders itself.
Israel Customs Administration – housed within ITA	In charge of preventing illegal activity (frauds, narcotics, money laundering, security violations and intellectual property violations).
Israel Police	Single police authority in Israel authorised for enforcement regarding all criminal offences
State Attorney	Responsible for all criminal prosecutions, including tax crimes.
“Lahav 433”-housed within the Israeli Police-	Responsible for directing all police units involved in investigation of corruption in all its forms domestic and international.
Israel Securities Authority (ISA)'s Investigations Department	Identifies and exposes criminal activities in the capital market and investigates suspected criminal offences under the Securities Law and investment legislation.
Financial Intelligence Unit of Israel	Manages and secures the database containing reports of unusual or suspicious activity.

Independence of tax crime investigations and prosecutions

1169. Israel notes the independence of its prosecution service is enshrined in traditional law and customs, and in government papers such as the 1962 “Agranat Committee Report”.⁹ Tax crime prosecutors are also subordinate to Attorney General directives, which highlight the independence of the prosecution.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1170. Israel does not have a specific tax crime investigation budget, but scheduled projects receive their budget annually. Israel notes that a significant part of ITA's activities are aimed at deterrence and prevention, hence calculating return on investment would not be an efficient way to measure the efficacy of its activities.

1171. There are approximately 500 staff dealing with tax crime investigations at ITA. The number of prosecution staff has increased between 2015 and 2017 by 23%.

Table 27.5. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Access on Request
Judicial databases	Direct Access
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request

Car registry	Direct Access
Boat registry	Direct Access

Note: Direct access presumes that investigators can also request information from these databases.

Training for tax crime investigators

1172. Tax crime investigators undergo regular training, both at the local and national level. These range from in-office training, through courses, professional forums or knowledge-sharing conferences hosted at ITA national headquarters. The system for managing and disseminating knowledge works by choosing about 15 “knowledge leaders”. Each of the knowledge leaders are chosen to lead trainings in a different field of knowledge to all staff at the tax authority. The knowledge leaders present their method to the management of the investigation division prior to delivering lectures and operating online tests to verify successful assimilation of the materials. In addition, professional lectures are given by officials from other enforcement agencies and by third party lecturers.

1173. For prosecutors, professional training is provided on a regular basis. The frequency of these trainings can vary from one to several weeks. These courses include in-house training, as well as courses held by the police or the Justice Department. At these events, participants from ITA, Police, Ministry of Justice and Ministry of Foreign Affairs are present, tackling the training topics together. The topics included in the training range from criminal law, through to tax and money laundering offences.

Principle 7: Predicate offences

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

1174. **Approach:** Since the adoption of anti-money laundering (AML) legislation in 2000, Israel uses a ‘list’ approach to money laundering, meaning that there is an explicit list of tax offences that are designated predicate offences.¹⁰ This legislation was expanded with the fourteenth amendment of the AML law in October 2016.

1175. **Enforcement of money laundering predicated on tax crime:** Since 2000, ITA has been able to investigate a broader range of money laundering offences linked to tax crimes and as a result, seize and confiscate more assets than beforehand. Israel notes that the easier inter-agency information exchange facilitated by this amendment has improved the quality of investigations, as investigators can now base their actions on a wider range of intelligence than before. As a result, enforcement has enhanced and deterrence strengthened.

1176. However, Israel notes that even before these amendments, ITA was a dominant participant in AML investigations and was able to investigate a range of VAT and customs offences that were already designated predicate offences. ITA also has a long history of conducting joint investigations with the police and other enforcement agencies on things like real estate taxation, where the financial expertise of ITA tax investigators (most of whom are qualified accountants) is useful in locating property and funds available for confiscation.

1177. Israel is able to launch a money laundering investigation and prosecution even when the predicate offence (i.e. tax crime) is committed by a foreign citizen in a foreign jurisdiction, but the money is laundered through Israel. The only condition is that the predicate offence is also a criminal offence in the foreign jurisdiction.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to law enforcement authorities

1178. ITA's civil office refers cases to the Investigative Unit for the commencement of a criminal investigation. ITA can run civil and criminal investigations in parallel.

1179. ITA has its own investigations unit that is in charge of criminal enforcement of tax laws. While it operates in close co-operation with other law enforcement authorities (such as the Israel Police, Israel Securities Authority and IMPA), ITA investigators handle most cases of suspected crimes themselves and do not refer them to external law enforcement authorities. In some tax investigation cases, an attorney is appointed to accompany the investigation and present the legal outline for formulating the evidence file.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1180. In addition to reporting, it is critical that agencies involved in the investigation of tax crime and other financial crimes have mechanisms in place to share information with each other. Although the ITO prohibits tax officials from disclosing any information obtained for tax assessment purposes, there are certain circumstances in which tax information is allowed to be shared with law enforcement authorities following authorisation from the Minister of Finance.

1181. Since 2005, the Minister of Finance has delegated this authority to the Director of ITA, notably streamlining inter-agency information exchange procedure and improving its effectiveness. In practice, when Police needs access to tax information about a suspect for the purpose of an investigation, it may request a "Permit to Disclose Information" from the Director of ITA. Requests of this kind are a routine procedure, and the Director grants such permits regularly. Additionally, when a tax assessment officer suspects that an offence has been committed, he submits an application for the removal of privilege at his own initiative, before referring it to law enforcement authorities.

1182. In 2006, Israel established an Intelligence Fusion Centre (IFC) designed to integrate criminal economic enforcement activities. The IFC allows investigators from the police, ITA and IMPA to routinely exchange information aimed at combating severe and organised crime. IFC members of the Tax Authority include a VAT representative and an Income Tax representative. The team handles declared objectives at the level of integrated intelligence investigation aimed to assist operational forces toward economic enforcement activities. In addition to this government decision and the establishment of the IFC, eight task forces have also been set up to deal with various economic attacks, including money laundering and bribery. These task forces also include police personnel, tax office staff, and State Attorney Office staff. Israel notes that this combined activity led to quite a few joint investigative files with positive and mainly economic successes.

1183. The below tables set out the information sharing gateways that Israel has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Israel's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes](#).

Table 27.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax crimes	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access	Direct Access	DSS ^(a)	DSS ^(a)	DSS ^(c)
	Customs administration	Direct Access	Direct Access		DSS ^(a)	DSS ^(a)	DSS ^(a)
	Police or public prosecutor	MSS	MSS	MSS		MSS	MSS
	Financial Intelligence Unit	DSS ^(b)	DSS ^(b)	DSS ^(b)	DSS		DSS
	Corruption investigation authority	MSS	MSS	MSS	MSS	MSS	
	Financial regulator	Access on request ^(c)	Access on request ^(c)	Access on request ^(c)	Access on Request ^(c)	Access on request ^(c)	Access on Request ^(c)

Note:

DSS = discretionary spontaneous sharing^(d) / MSS = mandatory spontaneous sharing

(a) Israeli tax legislation contains provisions on secrecy, which preclude the tax authority from disclosing information without authorisation from the Minister of Finance. In practice, when Police needs access to tax information about a taxpayer for the purposes of an investigation, it may request a "Permit to Disclose Information" from the Minister of Finance. Requests for this kind of permit are a routine procedure, and the Minister grants such permits regularly. Additionally, if an assessment officer suspects that an offence has been committed, he/she also may request a "Permit to Disclose Information" from the Minister of Finance at his/her own initiative and then disclose the information to the police. Since 2005, the Minister of Finance has delegated this authority to the Director of ITA.

(b) The IMPA is authorised to disseminate information to the tax authority for the purpose of investigating and prosecuting money laundering, serious tax offences, customs offences and violation of the cross-border declaration obligation, which are predicate offences in the PMLL. In certain conditions set out in Law and Regulations, the information could also be used for pursuing other criminal offences, but not for civil tax collection.

(c) This requires a "Permit to Disclose Information" from the Governor of the Bank of Israel.

(d) Able to provide information on request and spontaneously with discretion. This means that the agency is in a position to provide information on request and that furthermore there are legal gateways in place that allow, but do not require the agency to provide information spontaneously to another agency.

Table 27.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Government decision no. 4618 (2006) established a Committee for tax crimes, whose members include representatives of the State Attorney, the Israeli Police, ITA, the Securities Commission, AML Authority, the Prison Service and the Intelligence Service.
Disclosure of foreign trusts	Yes, if ITA is aware of them
Joint operations and taskforces	Police co-operates with the Tax Authority through "Joint Investigation Teams" that are set up to tackle specific major cases
Parallel investigations	Yes
Joint intelligence centres	Intelligence Fusion Centre (described above)
Secondments and co-location of staff	Israel actively makes use of secondments and co-locations of staff
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. In any criminal investigation (tax or non-tax) with tax related fiscal implications, the investigation conclusion file will be forwarded to the assessing officer. (Directive 31.2 of Israel's State Attorney).
Multi-agency training	Joint qualifications and training for all the relevant enforcement authorities. The trainings are managed by the Israel Police

Principle 9: International co-operation

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.

1184. **Legal basis:** Israel may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Israel has exchange of information relationships with more than 50 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements (TIEA).¹¹ It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows ITA to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1185. **Competent Authority:** ITA is in charge of handling incoming and outgoing requests for mutual legal assistance in criminal tax matters.

1186. **International co-operation in practice:** Israel notes that between 2015-17, 79% of TIEA requests and 80% of mutual legal assistance requests sent by Israel were answered by the counterpart jurisdiction. The average response time for EOI requests was 5.8 months, while for MLA requests the response time ranged from 8 to 10 months.

1187. Israel notes that the key challenges with regards to international co-operation often stem from language barriers (i.e. translation errors), lack of clarity over what information should be included in the request, and long processing times for both EOI and MLA requests (the latter of which are slowed by cumbersome formal procedures). The best practices that Israel identified was simply the receipt of informal early notification of an incoming request, which allows the recipient to prepare the necessary material ahead of time, to establish the strategy, scope and execution of the request and then expedite formalities procedures of the request, particularly in cases of urgency.

Principle 10: Fundamental rights of a suspect or accused person

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

1188. **Legal basis:** Israel provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. While Israel does not have a written constitution, these rights are enshrined in several pieces of legislation, notably in the supra-legal *Basic Law: Human Dignity and Liberty*.

1189. The decision to undertake criminal investigation occurs when there is a suspicion that an offence was committed and suspicion of *mens rea* can be established.

Table 27.8. Availability of enhanced forms of co-operation in combatting tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until conviction by court.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	When suspicion of a criminal offense rises, before investigation, the person is warned and advised of his right to an attorney.
remain silent	Yes	From investigation

access and consult a lawyer and/or entitlement to free legal advice	Yes	Before investigation, the person is warned and advised of his right to an attorney and free legal advice.
interpretation and translation	Yes	Investigation must be held in native language or other understood language.
be advised of the particulars of what one is accused of	Yes	In the warning before investigation the suspected offence is disclosed, particulars are disclosed during the investigation.
access documents and case material, also known as a right to full disclosure	Yes	Core documents are provided in a hearing (held before indictment for felonies); for other offences- all documents are provided after indictment
a speedy trial	No	Not enshrined in law. Recognised by case law.
protection from ne bis in idem (Double Jeopardy)	Yes	From Indictment.

Highlights

Successful practices

- Comprehensive tax crime strategy and threat assessments
- Extensive use of investigative powers
- Effective use of joint intelligence centres and inter-agency taskforces
- Systematic referral of conviction data of financial crime offenders to ITA for the purposes of tax reassessments.

Room for improvement

- Lack of power to freeze assets when not in connection to a money laundering investigation

Notes

¹ “Good behaviour bonds” can be imposed in a court sentence, simultaneously with probationary period, to ensure that the person does not repeat the offence. If the offence is repeated within the prescribed period, the fine becomes effective.

² PLI, Ch. 2 s3.

³ PLI Ch2. s5, 7.

⁴ Article 1 of the ITO provides that “person – includes a company and a body of persons”.

⁵ For more information, see OECD (2019), *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies*, OECD Publishing, Paris. Available from: https://www.oecd-ilibrary.org/taxation/tax-gap_40126618-en.

⁶ Here are two examples of the way in which ITA communicates successful prosecutions (in Hebrew): https://taxes.gov.il/About/SpokesmanAnnouncements/Pages/Ann_181017_1.aspx; https://taxes.gov.il/About/SpokesmanAnnouncements/Pages/Ann_300717_1.aspx

⁷ Section 17B of Schedule 1 of the *PMLL* includes tax offences as a predicate offence for money laundering, provided either: 1) the income that was object of the tax offence exceeded ILS 2 500 000 in a four-year period or ILS 1 000 000 in a one-year period, or 2) the tax offence was committed “in a sophisticated manner” and the income that was object of the tax offence exceeded ILS 625 000, or 3) the tax offence is linked to a criminal or terrorist organisation or 4) if the offence is a money laundering offence originating from a tax offence and was committed by someone other than the person who owes the tax.

⁸ See Rome Report, Chapter 5 – Country Information – Israel. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm>.

⁹ <https://mfa.gov.il/MFA/AboutIsrael/Spotlight/Pages/The%20Attorney%20General.aspx>.

¹⁰ Art. 117(b)(3) VAT Law.

¹¹ See <http://www.eoi-tax.org> for up-to-date figures.

28 Italy

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1190. Tax crimes in Italy are set out in the Legislative Decree 74/2000 “on the New Legislation in regard to Income Tax and Value Added Tax Offences”, updated by the Legislative Decree 158/2015 (LD 74/2000) which complement the general rules of criminality set in the Italian Criminal Code (CC). All tax crimes in Italy require criminal intent (CC, art. 42). Some examples of tax offences in Italy are set out in the table below, together with their minimum and maximum sanctions and their limitation period.

Table 28.1. Tax offences requiring criminal intent

Offences	Minimum sanction	Maximum sanction	Statute of limitations
Fraudulent tax return through the use of invoices or other documents for non-existing transactions (Art. 2, par. 1, 2 and 3 LD - 74/2000)	Four years' imprisonment	Eight years' imprisonment	Ten years and eight months
Fraudulent tax return through the use of other artifices (Art. 3 LD 74/2000)	Three years' imprisonment	Eight years' imprisonment	Ten years and eight months
Failure to submit tax return (Art. 5 Paragraph 1, 1-bis and 2 LD 74/2000)	Two years' imprisonment	Five years' imprisonment	Eight years
Issue of invoices and other documents for non-existent transactions (Art. 8 LD 74/2000)	Four years' imprisonment	Eight years' imprisonment	Ten years and eight months
Concealment or destruction of accounting records (Art. 10 LD 74/2000)	Three years' imprisonment	Seven years' imprisonment	Eight years and four months
Fraudulent failure to make tax payment (i.e. preventing the collection of tax) (Art. 11 LD 74/2000)	Six months' imprisonment	Four years' imprisonment	Six years
	One year's imprisonment	Six years' imprisonment	Six years
Failure to make tax or VAT payment (Art. 10-ter LD 74/2000)	Six months' imprisonment	Two years' imprisonment	Six years

1191. **Statute of limitations:** As outlined above, the limitation period for tax crimes set out in the CC varies depending on the seriousness of the offence. The limitation period for all CC offences, starts on the day the offence was committed (CC, art. 158). The limitation period can be suspended on several grounds, including the commencement of a criminal investigation.

1192. **Complicity:** Offenders that aid, abet, facilitate or enable the commission of a tax crime, can be tried and punished as primary offenders (CC, art. 110).

1193. **Attempt and conspiracy:** In the Italian criminal law system, the general definition of attempted crime is outlined in Article 56 of the Criminal Code, under which the person who carries out substantial acts, unequivocally intended to commit a crime, is liable for attempt if the action is not completed or the event does not occur. With specific reference to tax offences, although the general principle of liability to punishment for attempted crimes applies, the latter principle is expressly excluded (Article 6 of Legislative Decree 74/2000) for the so-called “crimes relating to tax returns” (Articles 2-5 of the same Legislative Decree 74/2000).

1194. **Professional enablers:** Article 13 bis of the LD 74/2000 increases the sanctions for tax crimes committed by professional enablers by a further 50%. The definition of professional enabler includes tax and other financial advisors, who commit a criminal offence in the course of their professional duties, by developing or aiding clients in implementing tax evasion models. In addition to the increased penalty, the court can prohibit professional enablers from conducting professional activities related to tax representation and assistance for a period of one to five years. Professional enablers may also be charged with “criminal association”, which carries a penalty of imprisonment for a period of three to seven years.

1195. **Territorial and nationality jurisdiction:** Italy has jurisdiction over crimes committed wholly or partly in Italy or when the crime was committed abroad but its consequences have effects in Italy (CC, art. 6).

1196. **Legal person liability:** Legal persons, including companies and associations (the latter, with or without legal personality) can be held liable for criminal acts committed by their senior managers (LD 231/2001 and 124/2019). Sanctions include fines, confiscations, the exclusion of public tenders and forced liquidation of the legal entity.

Enforcement of tax crimes

1197. The below table shows the enforcement of tax crimes against natural persons in Italy in tax years ending 2015-18. Italy could not provide data for the types of sanctions imposed for tax crime offences during that period.

Table 28.2. Enforcement of tax crimes against natural persons in the tax years ending 2015-18

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	18 327					
2016	13 075					
2017	12 433*	15 564				
2018	12 174**	18 167				

Note:

* This amount includes 1561 investigations conducted by the Customs Agency

** This amount includes 1320 investigations conducted by the Customs Agency

1198. **Availability of settlements:** Provided an offender pays all the amounts owed in tax, including interest and fines before indictment, they shall not be punished for the offence (“*causa di non punibilità*”). LD 74/2000 Arts.13 & 14). This procedure is valid only where all outstanding tax liabilities, including fines and interest, have been paid before the opening of the first judicial hearing, or within the deadline for submitting the return relating to the subsequent tax period, and if the voluntary settlement occurred before the offender had formal knowledge of any audit or assessment activity.

1199. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** Italian law does not allow for tax deductions for civil and criminal sanctions, or confiscated assets (LD 16/2020, Art. 8(1) and jurisprudence of Italy's Supreme Court: Cass. V. Civ., No. 4548, of 15/02/2019).

1200. **Tax gap:** Italy estimates its tax gap relative to VAT, corporate income tax, personal income tax, the regional business tax, rental income tax, municipal property tax on real estate, municipal tax on indivisible services, excises on fuel and gasoline, radio TV tariff, additional (regional and municipal) personal income tax, social security contributions. For the 2012-17 period, Italy estimated its VAT tax gap at around EUR 36 billion per year, i.e. 27% of the total amount due of VAT or approx. 2% of the country's GDP.¹

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1201. Italy notes that its revenue agency (ADE) carries out civil tax investigations, while the Guardia di Finanza (GdF) is the law enforcement agency tasked with investigating economic crimes under the supervision of the Public Prosecutor's Office (*Pubblico Ministero*, PPO). In recent years, GdF and ADE have strengthened their synergies by enhancing strategic and operational co-operation. In particular, GdF has developed target risk analyses with the purpose of both mapping relevant tax evasion phenomena and organising intervention plans. It has also implemented an integrated system with the ADE to better co-ordinate civil and criminal tax investigations and avoid duplication. The two agencies also share higher complexity tax disputes in order to reach a joint position. Moreover, Customs carries out civil tax investigations on VAT intra community transactions within EU, and on VAT Credit compensation on import declarations.

1202. ADE has developed a response strategy to prevent and detect VAT fraud based on strengthening of controls when the VAT Registration Number is electronically assigned, support of the risk analysis activities with new database (e-invoice, quarterly VAT declaration), and better communication with the taxpayers (i.e. warning letters). Through specific IT tools, ADE undertakes monitoring all business with an active VAT Registration Number (VRN) and elaborates a risk score for each VAT registration number cross-matching tax declarations and information on the EU VIES system, among others. Aside from referring the case for criminal prosecution, ADE is allowed to cancel the VRN of the individual or company in the event of detecting VAT fraud or it can exclude the VRN from the VIES System.

1203. **Threat assessment:** Italy does not conduct a comprehensive threat assessment on the strategic level. However, many of the ADE's activities include operational-level threat assessments that are conducted in connection to specific criminal sectors. GdF's Special Departments prepares strategic analyses on an annual basis. Topics covered include criminal trends, related typologies, categories of groups involved and their territorial scope. In accordance with this analysis, Special Departments draw up intervention plans carried out by the local units

1204. **Communication strategy:** When a tax crime case leads to a significant outcome, a press conference is organised by the prosecution service. Once the information has been made public by the Prosecutor, it is published on the news page of the GdF Internet site and is reposted on social media (Twitter, Telegram and YouTube).²

1205. GdF and the Italian Ministry of Education have a joint "Education to economic legality" programme, which targets students of primary and secondary schools by explaining the GdF's work in tackling tax offences and economic crime.

Box 28.1. Example of successful implementation of tax crime strategy: Italy

In January 2019, Italy introduced mandatory e-invoicing in transactions between private individuals following the sale of goods and rendering of services carried out between subjects residing or established in Italy (with the exemption for small-sized enterprises and taxable person whose annual turnover is no higher than EUR 65 000). The measure was introduced in Italy in accordance with Council Implementing Decision (EU) 2018/593 of 16 April 2018, for the period from 1 July 2018 to 31 December 2021, for the purpose of combating VAT fraud and evasion, simplifying tax compliance, improving the efficiency of collection and modernizing the Italian production sector with consequent reduction of administrative costs for businesses. A special "Sistema di Interscambio" (interchange system) managed by the Revenue Agency has been set up to issue and send electronic invoices. The Revenue Agency has also made available to taxpayers, free of charge, some technical and IT tools useful to foster tax compliance.

The obligation to issue an electronic invoice has an anti-evasion function, aiming at reducing the VAT gap, and an anti-fraud function in order to prevent tax crimes. With these new measures, ADE is able to intercept typical fraud mechanisms such as carousel frauds from the very beginning, by receiving in real time an overview of the transactions and monitoring the consistency of VAT payments. This allows DADE to identify the existence of missing traders and interrupt the fraudulent chain quicker than in the past.

The information framework available to the Agenzia delle entrate with respect to the transactions carried out by taxpayers is implemented through the data on the daily amounts received as consideration which, as from 1 January 2020 – a deferred date due to the ongoing health emergency – must be sent electronically by taxable persons carrying out retail and similar activities. Such taxable persons are not obliged to issue invoices except in cases where it is requested by their customers. In addition, under Article 1, paragraph 682, of Law No 160 of 27 December 2019 (budget-law for the year 2020), the Revenue Agency and the Guardia di Finanza are allowed to resort to any technology, any processing and linkage of the data contained in the records of financial relations with the other databases which are available to them in order to identify risk criteria useful for bringing out tax positions to be controlled and to encourage voluntary compliance, subject to pseudonymisation of the personal data of the taxpayers and complying with the legislation on the protection of privacy.

Based on data collected via e-invoicing, ADE and GdF are developing specific risk analyses, the results of which will be available next few years.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 28.3. Investigative powers of Italy's tax crime investigation agency (GdF)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	<p>Full direct power</p> <p>The Code of Criminal Procedure (CpC) allows investigators from GdF and Customs to search private premises and seize evidence linked to the criminal tax offence (both physical and electronic), subject to a warrant from a judge</p>

Obtain documents from third parties	Full direct power GdF and Customs can obtain documents or information from third parties by way of interviewing them as possible witnesses, or subjecting them to search and seizure powers, the latter after obtaining a court order.
Interview	Full direct power Authorization from prosecutor is required for interviewing suspects.
Inquiry powers (e.g. power of coercion)	Full direct power GdF, as judicial police, has all the inquiry powers provided by the Penal Procedure Code to pursue and collect evidence.
Intercept mail and telecommunications	Full direct power GdF has full direct powers to intercept mail and telecommunications subject to a judicial warrant. This power is usually applied in serious cases involving organised crime groups.
Conduct covert surveillance	Full direct power Interception of communication and other forms of monitoring are subject to a judicial warrant.
Conduct undercover operations	No power GdF is not authorised to conduct undercover operations, even in serious cases involving organised crime groups.
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to a court warrant
Arrest	Full direct power Court order required.

1206. **Legal professional privilege:** In Italy, professional secrecy rights and obligations are regulated by CPC, Art. 200, which mandates that lawyers and “technical consultants” are under no obligation to disclose confidential information regarding their clients. However, any professional considered participant in the commission of an offence immediately loses all immunity and secrecy privileges related to their profession and can be held criminally liable as a professional enabler.

Principle 4: Freezing, seizing and confiscating assets

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

1207. **Legal basis:** Italy applies both conviction and non-conviction-based asset recovery regimes which allow for the freezing, seizing, and confiscation of assets connected to a criminal offence.

1208. **Freezing of assets³:** Italy grants authority to GdF and Customs to conduct seizures without a court order in “urgent situations that make it impossible to wait for the order of the judge” (*CpC, Art. 321*). In this case, GdF and Customs can seize the assets and submit a report to the courts, which then have 48 hours to confirm the seizure. For regular freezing orders, GdF and Customs must apply for a court order.

1209. **Seizing orders:** Any law enforcement agency can request the Public Prosecutor’s Office to issue a seizure order in Italy. A Judge then issues the order, and the requesting agency can enforce it.

1210. **Confiscation orders:** Italy provides that its courts automatically apply confiscation measures upon criminal conviction. Pursuant to LD 74/200, Italy can apply extended confiscations and value-based confiscations (i.e. confiscation of equivalent amounts). The law also allows third-party confiscation of assets under the concept of indirect availability, whereby all assets are subject to confiscation provided that they have been obtained unlawfully and the third-party is not a *bona fide* possessor.

1211. **Foreign freezing, seizure, and confiscation orders:** Italy can enforce outcomes of foreign tax investigations and judgments under the direction of the judiciary (*CpC, Art 727*). Within the European Union (EU), such seizures take place under *LD 35/2013*, which regulates the principle of mutual recognition of investigation outcomes and judicial decisions in criminal matters.

1212. **Agency or unit responsible for asset recovery:** The seizure of assets derived from criminal activity in Italy relies on the co-operation between GdF, Customs and the courts (LD 74/2000) (i.e. GdF and Customs must apply to the court for orders to recover assets).

Table 28.4. Asset recovery in practice (figures related to tax crimes only)

Year	Total value of assets seized (in EUR)
2015	1 130 329 172
2016	781 387 725
2017	833 770 466
2018	1 087 999 956

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1213. As outlined above, GdF is responsible for investigating tax crimes under the supervision of PPO. GdF does not have special units or divisions responsible for different segments of financial crime, but rather is a law enforcement agency that is dedicated to all economic crimes. PPO is responsible for the prosecution of all tax crimes.

1214. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Italy's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁴

Table 28.5. Agencies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Italian Revenue Agency (Agenzia delle Entrate, ADE)	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.
Guardia di Finanza (GdF)	Tasked with prevention, detection, and investigation of all kinds of tax crime violations, together with co-operation with the prosecutorial authorities
Italian Customs and Monopolies Agency (ADM)	Collects and holds information stored in several databases about individuals, corporations and financial transactions in order to prevent, detect, investigate and prosecute illicit crimes in the fields falling within the competences.
Public Prosecutor's Office (Pubblico ministero (PPO))	Handles preliminary investigations, to supervise the judicial police investigations, to plead in court and to challenge or enforce the decisions of the judge
Financial Intelligence Unit (UIF)	The Italian UIF is the national Financial Intelligence Unit responsible for receiving, analysing STRs related to money laundering (ML), associated predicate offences and terrorist financing (TF) and disseminating the outcomes of its analysis to competent law enforcement agencies specifically indicated by the law (LD no. 231/2007): the Nucleo Speciale di Polizia Valutaria (NSPV) of GdF and the Direzione Investigativa Antimafia (DIA). In addition to NSPV and DIA, information can be forwarded by UIF, in cases of specific interest, to the Intelligence Services. Furthermore, the Direzione Nazionale Antimafia e Antiterrorismo (DNAA) receives from UIF, through NSPV and DIA, ID data of subjects reported or connected to STRs. NSPV and DIA transmit to the DNAA the reports that are relevant to organized crime or terrorism. The FIU also co-operates and exchanges information related to possible ML/TF with its international counterparts.
National Anti-corruption Authority (ANAC)	Aims to prevent corruption within the Italian public administration and state-controlled companies, promoting transparency in the whole public management system, and encouraging ethical behaviours and activities of public officials by means of advisory and regulatory powers.
Bank of Italy (BoI)	Is entrusted with specific (regulatory, control and sanction) tasks in anti-money laundering area.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1215. Italy was not able to report information regarding GdF or PPO's respective budgets for combatting tax crimes or other financial crimes.

Table 28.6. Data bases/sources of information available to tax crime investigators

Database	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	Access via FIU's dissemination
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Direct Access
<i>Molecola</i> database	Direct Access

Note: Italy notes that GdF works continually to enrich its access to information and possess access to over 40 databases, allowing it to make use of synergies arising from integrating information from different sources. Furthermore, the GdF has developed a *Molecola* database, which allows investigators to calculate the disproportion between declared income and the value of assets of a suspect.

Training for tax crime investigators and prosecutors

1216. Italy's tax crime investigators are required to attend the *GdF Economic and Financial Police School*, which provides up-to-date technical and professional training for investigators.

1217. The project is subdivided into the following courses held annually at the *Economic and Financial Police School*:

- a. *Financial-economic Investigator Qualification Course*. This course lasts 3 months and is divided into 3 sessions of 4 weeks each. Each session is interrupted by 3 months of training on the job and courses in e-learning at the respective units of each trainee.
- b. *Financial-Economic Investigator Refresher Courses*. All qualified agents will take part in an annual e-learning refresher course arranged by the *Distance Training Section of the Tax Police School*. Furthermore, personnel holding a *Financial Economic Investigator* qualification will take part, every 4 years, in a specific 2-week course at the *Excellence Training Centre*.

Principle 7: Predicate offences

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

1218. **Approach:** Since 2014, Italy applies an “all crimes” approach to money laundering, which designates all criminal offences as predicate offences (CC, art. 648 bis).

1219. In June 2016, the Supreme Court ruled that a case of money laundering can be prosecuted and judged in Italy even if only a fragment of the conduct was committed within Italian territory. In that case, a money laundering offence was found to have taken place, where a withdrawal and transfer of money had taken place from one foreign jurisdiction to another via an Italian bank (*Corte di Cassazione, sentenza 24401*).

1220. **Enforcement of money laundering predicated on tax crimes:** Since the Guardia di Finanza is economic and financial police according to the national legislation, it carries out tax audits as well as money laundering inspections. Furthermore, a specific unit of the Guardia di Finanza, the Monetary Police Special Unit, receives all the STRs coming from national FIU related to money laundering or terrorism financing, which are analyzed and then sent to the other Guardia di Finanza Units on the field.

1221. Enforcement in practice can start following different paths. Cases of money laundering could be detected, during 1) a tax audit. Guardia di Finanza units can also have access, for tax assessment purposes, to the financial accounts of the subject audited after being authorized by the Regional Commander; 2) an inspection for the prevention of money laundering risk into financial institutions and other subjects obliged under the provisions of national AML laws; 3) the follow-up of STRs; 4) a criminal investigation for the other crimes. However, if there is a suspicion that an AML crime has been committed, the case is immediately reported to the Judicial Authority that opens a criminal investigation. There are various money laundering offences that entail a prison sentence up to 12 years. Criminal laws, also, allow the seizure both of the amount of tax evaded and of the money laundering transactions.

1222. Available statistics about the phenomenon include EUR 798 million of money laundering operations predicated on tax crimes in 2017, 121 audits in 2017 (EUR 129 million of taxable income and VAT evaded for approximately EUR 21 million), 178 audits in 2018 (more than EUR 210 million of taxable income and VAT evaded for approximately EUR 35 million, and 297 audits in 2019 (over EUR 317 million of taxable income and VAT evaded for approximately EUR 49 million).

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1223. ADE is the agency responsible for collecting taxes and conducting tax audits. When tax auditors uncover indications of possible tax crimes, they are legally obliged to report them to the public prosecutor. The public prosecutor may then open an investigation with the aid of the GdF. If tax auditors uncover indications of suspicious financial operations, they must report them to the UIF.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1224. The below table shows the models for sharing information related to tax crimes and other financial crimes in Italy. A more detailed analysis of Italy's information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of [the Rome Report](#).

Table 28.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax crime investigation agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	Direct Access ^(b)	Direct Access ^(c)	Direct Access ^(d)	Direct Access
	Customs administration	Direct Access ^(e)	Direct Access ^(f)		MSS	MSS	Direct Access
	Police or public prosecutor	Direct Access and MSS ^(g)	MSS ^(h)	MSS		MSS	MSS ⁽ⁱ⁾
	Financial Intelligence Unit	Sharing Prohibited ^(j)	MSS ^(k)	Sharing prohibited	MSS ^(l)		MSS ^(m)
	Corruption investigation authority	Sharing prohibited	Direct Access	Sharing prohibited	Direct Access ⁽ⁿ⁾	Sharing prohibited	
	Financial regulator	Sharing prohibited ^(o)	MSS ^(p)	Sharing prohibited	MSS	MSS ^(q)	MSS

Note:

MSS = Mandatory Spontaneous Sharing

(a) The Guardia di Finanza has direct access to the tax register database (Anagrafe Tributaria) and other databases maintained by the Agenzia delle Entrate, which hold fiscal information of Italian taxpayers.

(b) The Agenzia delle Entrate has granted the Italian Customs Administration direct access to a system called SERPICO which holds a number of databases, including the Anagrafe Tributaria (Tax Register) and the VIES system containing information on intra-Community transactions within the EU. Other information is shared spontaneously or on request.

(c) If officials within the Agenzia delle Entrate or the Agenzia delle Dogane e dei Monopoli in the course of their tax or customs activities detect evidence of crimes, they have to suspend their investigations and without any delay report these suspicions to the Judicial Authority.

(d) The Guardia di Finanza, the UIF and the Direzione Investigativa Antimafia (the Bureau of Anti-Mafia Investigation) are the lead agencies in preventing and combating money laundering. The UIF may consult the Register of accounts and deposits held by the Agenzia delle Entrate (provided for by art. 20, para. 4, L. 413/1991) and consisting of a repository into which financial intermediaries, the Italian Post Office and trust companies are required to record identification data for each customer having with them any kind of financial relationship. The UIF may also consult the Tax Register kept by the Agenzia delle Entrate (art. 1 of DPR 605/1973; art. 37 d.l. 223/2006, translated into l. 248/2006) which contains, on a national scale, data and information resulting from tax declarations and complaints and related verifications, as well as other data and information of possible fiscal relevance. In addition, the UIF may also have access to the Real Estate Register provided for by art. 19 d.l. n. 78/2010, translated into l. 122/2010. Note that the access by the UIF to the above mentioned databases makes available a wide range of information, not only related to beneficial ownership, useful for the financial analysis of the STRs. The legal basis providing for direct access of the UIF to databases held by the Revenue Agency is Art. 6, paragraph 6, of Leg. Decree 231/2007, as amended by the Leg. Decree n. 90/2017. Detailed conditions on the UIF access are set up into specific agreements signed between the UIF and the Agenzia delle Entrate. The information available to the UIF from the tax administration's databases are also used in the context of the international co-operation that UIF is able to provide to its foreign counterparts. The UIF's capacity to co-operate and provide information to foreign FIUs is only subject to reciprocity and appropriate confidentiality safeguards by the counterparts.

(e) The Italian Customs and Monopolies Agency has granted the Agenzia delle Entrate direct access to the software COGNOS, which contains information on customs transactions between Italian traders and third countries, and also on intra-Community transactions within the EU. The Customs anti-fraud database, BDA, is available on request. This database contains information on customs crime investigations carried out through customs offices. Other information is shared spontaneously or on request.

- (f) The Italian Customs Administration has granted the Guardia di Finanza direct access to the software COGNOS, which contains information on customs transactions between Italian traders and third countries, and also on intra-Community transactions within the EU.
- (g) The Guardia di Finanza has authority to carry out civil tax investigations and audits under its administrative powers. In particular, the Guardia di Finanza may conduct civil tax audits that follow on from a criminal tax investigation (subject to authorisation by the public prosecutor). The Guardia di Finanza has direct access to information held by other police agencies for the purpose of tax audits and administration of taxes. Although operating under the supervision of the Ministry of Finance, the Guardia di Finanza has broad powers to investigate financial crimes, including money laundering, smuggling, drug trafficking and illegal immigration. Under Italian law, any agency or public official who discovers information relating to possible tax evasion is obliged to share this information with the Guardia di Finanza, which may conduct an investigation.
- (h) The Guardia di Finanza has responsibility for carrying out investigations into tax crimes and has direct access to information held by other police agencies. In addition, where the police or public prosecutors, in the course of their duties, obtain information concerning possible tax evasion, they are obliged to share this information spontaneously with the Guardia di Finanza.
- (i) The Guardia di Finanza, being part of the Italian Law Enforcement Community (together with the Carabinieri, the State Police and the Polizia Penitenziaria), has direct access to the police database (SDI) and other databases maintained by the Italian Minister of Interior.
- (j) Although the UIF cannot provide information directly to the Agenzia delle Entrate or Italian Customs and Monopolies Agency, it does provide copies of all STRs to the Guardia di Finanza, which carries out tax audits and investigates suspected tax offences. Following a tax audit, the Guardia di Finanza reports to the Agenzia delle Entrate or the Customs and Monopolies Agency any information that would be relevant in the assessment of taxes, such as evidence of non-criminal tax avoidance.
- (k) The UIF is required to share all STRs and its financial analyses with the Nucleo Speciale di Polizia Valutaria (NSPV) of the Guardia di Finanza. In addition, a Memorandum of Understanding between the agencies provides that the UIF will provide to the Guardia di Finanza any information it obtains that is relevant to the agency's activities.
- (l) The UIF sends all Suspicious Transaction Reports, together with its analysis, to both the NSPV of the Guardia di Finanza and the Direzione Investigativa Antimafia (DIA), a multi-agency body made up of personnel belonging to Guardia di Finanza, Polizia di Stato (Italian National Police) and Carabinieri, set up at Italy's Ministero dell'Interno (Ministry of the Interior). In addition to NSPV and DIA, information are forwarded by UIF, in cases of specific interest, to the Intelligence Services. Furthermore, the Direzione Nazionale Antimafia e Antiterrorismo (DNAA) receives from UIF, through NSPV and DIA, ID data of subjects reported or connected to STRs. Separate, but interlinked, objectives for the prevention and repression of criminal activity give rise to various forms of co-operation between the UIF and the judicial authorities. In the course of its duties the UIF may uncover evidence of criminal activity, which is then reported to the competent judicial authorities pursuant to Article 331 of the Code of Criminal Procedure, either directly by means of a report or via the technical reports sent to the investigative bodies together with the relevant STRs. Co-operation between the national administrative, judicial and investigative authorities involved in preventing and combating money laundering and the financing of terrorism has also been reinforced with the recent decrees implementing in Italy the IV and the V AML/CFT Directives. This also to make the contribution of the financial analysis activity performed by the UIF more effective. This includes the exchange of information between the UIF and the judicial authority carried out to assist ongoing investigations. In addition, co-operation with the DNAA has taken on new forms. The data relating to STRs – especially those regarding reported persons or their associates – are to be transmitted to the DNAA for it to check whether they are relevant for pending court cases. This helps both the DNAA to co-ordinate ongoing prosecutions and the UIF to prioritize the financial analysis.
- (m) The UIF may disseminate STRs related to possible money laundering and associated predicate offences (including possible corruption) only to the competent law enforcement authorities foreseen by the current Italian legal framework (Guardia di Finanza – NSPV and DIA). The UIF can also contribute to ongoing investigations and criminal proceedings regarding all crimes that constitute predicate offences of money laundering, providing STRs and related financial analysis on request of the competent judicial authority. Anomalous transactions potentially linked to cases of corruption often emerge from the UIF's reconstruction of financial flows performed through its financial analysis. Identifying cases of corruption is sometimes difficult, since the way in which the price is paid is often abstractly symptomatic of a host of different types of financial anomaly. The UIF's financial analysis instead makes it possible to observe some of the indicative elements that contribute effectively to judicial investigations on corruption.
- (n) While the UIF provides STRs and information related to possible money laundering and associated predicate offences (including possible tax evasion or corruption) to the competent law enforcement authorities (Guardia di Finanza – NSPV and DIA) and, on request, to the judicial authorities in charge of investigations or criminal proceedings, no feedback was provided to the UIF until 2017. With the transposition of the IV directive (Leg. Decree n. 90/2017, amending Leg. Decree 231/2007), the feedback on the investigative outcomes of STRs has been expanded. Based on said information flow the UIF can now extend its feedback to the reporting entities which, in the previous regulatory framework, was limited only to cases of STRs not resulting in any investigative activities. It is worth noting that in any case, in order to classify reported persons by level of risk, and allowing the UIF to prioritise its analysis of STRs, the competent law enforcement authorities, after receiving STRs from the UIF, check them with the information contained in their databases and on this basis give the UIF monthly feedback about the "level of relevance" of the STRs. A systematic investigative feedback to the UIF about the actions taken in relation to its analysis offers more opportunities to enrich the UIF's information, allowing the UIF to improve the quality of its technical studies and to deduce connections between subjects, behaviours, channels and financial instruments. As regards the access by the UIF to information of law enforcement nature, also prescribed by the European legislation and the FATF standards as an essential instrument to perform the financial analysis, it's worth noting that the Leg. decree 90/2017 has made available to the UIF law enforcement information, except for data covered by official secrecy, that need a specific authorization by the relevant judiciary authority. The Leg. decree 125/2019, implementing the Fifth AML Directive, introduced new constraints to the access to such information, excluding that the UIF may know cases in which a police investigation is underway or the judicial authority has not yet made its own decisions regarding the exercise of the criminal action.

(o) Official secrecy rules prevent the Bank of Italy from sharing any information related to its supervisory activities with the Agenzia delle Entrate for civil tax purposes or with the Italian Customs and Monopolies Agency.

(p) Where the Bank of Italy has reason to suspect a possible offence has taken place, it must inform the public prosecutor's office, which will generally direct an investigation through the appropriate police agency. Police may also request information relevant to investigations from the Bank of Italy, which will be provided so long as this does not breach confidentiality provisions.

(q) Information held by the Bank of Italy and other Italian financial regulators typically cannot be shared with other agencies. However, specific legislation provides that secrecy restrictions cannot be imposed between the financial regulators and the UIF. Subsequently, the UIF has signed memoranda of understanding with the Bank of Italy and the Insurance Supervisory Authority setting out obligations for the bodies to share information and to co-operate in combating money laundering and ensuring effective supervision. A memorandum of understanding between the UIF and the Securities Supervisory Authority was signed on 7 June 2012.

Table 28.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Co-operation between ADE, Customs Agency and GdF is provided by law, and guaranteed by a continuous exchange of information and periodic meetings. In cases where evidence suggests of organized crime, the Anti-Mafia and Counter-Terrorism Directorate also co-operate.
Disclosure of foreign trusts	Under development
Joint operations and taskforces	Joint operation and task forces, involving ADE, Customs Agency, GdF and the Anti-Mafia and Counter-Terrorism Directorate are common.
Parallel investigations	Not available in order to avoid overlapping investigation.
Joint intelligence centres	Yes
Secondments and co-location of staff	GdF has personnel seconded at Europol, OLAF and DIA. A customs official responsible for the central analysis and intelligence structures was seconded to Anti-mafia and Counter-terrorism Directorate, to support the activities to combat money laundering and the property interests of organized crime detected in cross-border movements of goods and currency.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes: There is an automatic transfer process of data and information from the criminal proceeding to the fiscal one, including in the context of corruption investigations.
Multi-agency training	Officers from different agencies can attend specific training courses aimed at the improvement of the ability to detect and investigate financial crimes, and recover the proceeds of those crimes.

Principle 9: International co-operation

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.

1225. **Legal basis:** Italy may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Exchanges of information in the absence of a treaty can be carried out based on a Memorandum of Understanding signed with foreign countries or in the framework of international police co-operation (Europol, Interpol).

1226. As of November 2020, Italy has tax exchange of information relationships with over 115 jurisdictions through more than 100 bilateral tax treaties and Tax Information Exchange Agreements.⁵ Italy is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows ADE to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1227. As a member state of the European Union, Italy is also bound by European law in regards to exchanges of information with other EU jurisdictions.

1228. **Competent authorities:** The Italian FIU is able to co-operate at international level with its foreign counterparts and exchange information regarding suspicious transactions also related to tax matters. In this context in recent years it has conducted joint financial analysis in co-operation with other European FIUs, and disseminated their results to the national competent law enforcement authorities.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

1229. **Legal basis:** Italy provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed in several international human rights treaties of which Italy is a party, and by the Constitution of the Italian Republic, which serves as the country's Bill of Rights.

1230. In Italy a civil tax matter becomes a criminal tax matter when the offence overcomes the punishment threshold stated in the law (see Table 28.9). In cases where there are no thresholds involved (such as failure to file a return), the occurrence of the act means it immediately becomes a criminal tax matter.

1231. Art. 20 of LD 74/2000 provides for procedural autonomy, by virtue of which the civil tax proceedings and the criminal proceedings are mutually independent, and as such a civil tax matter will not be suspended in the presence of a criminal investigation.

Table 28.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	According art. 27(2) of the Constitution, 'the defendant shall not be found guilty until finally sentenced'
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Data of entry in the register of suspected
remain silent	Yes	Always
access and consult a lawyer and/or entitlement to free legal advice	Yes	Data of entry in the register of suspected
interpretation and translation	Yes	Data of entry in the register of suspected
be advised of the particulars of what one is accused of	Yes	Data of notification of a warrant notice
access documents and case material, also known as a right to full disclosure	Yes	Notice of conclusion of the investigation ex article 415-bis of the Italian Criminal Code
a speedy trial	Yes	Immediate trial: it is a special ritual characterised by the lack of a preliminary hearing, which is used when there is evidence is clear. The defendant has 15 days, from the notification of the relevant decree, to request to be submitted to the abbreviated trial or alternatively plea bargaining; otherwise, he is submitted to the ordinary trial.
protection from ne bis in idem (Double Jeopardy)	Yes	The Italian Constitutional Chart does not allow the Double Jeopardy principle

Highlights

Successful practices

- Implementation of public campaign to raise awareness of the impact of tax crimes through the “Education to economic legality” programme;
- Introduction of e-invoicing requirements.

Room for improvement:

- Inability to conduct undercover operations for financial crimes, including in serious cases involving organised crime groups.

Notes

¹ http://www.mef.gov.it/documenti-allegati/2019/Relazione_evasione_fiscale_e_contributiva_2019.pdf (in Italian).

² <http://www.gdf.it/stampa/ultime-notizie/ultime-notizie-ufficio-stampa-interno> (in Italian).

³ Freezing/seizing is used to temporarily prevent the movement of assets pending the outcome of a case. Confiscation is used after the final outcome of a case, as a final measure that permanently deprives criminals from accessing assets obtained from a crime. Please note that the UIF also has powers to postpone suspicious transactions for up to five working days at the request of the investigative bodies, the judicial authorities, a foreign FIU or on its own initiative, provided that this does not interfere with any investigations under way. Postponement orders are issued in close co-operation with the investigative authorities to allow the exercise of freezing or confiscation powers.

⁴ See Rome Report, Chapter 5 – Country Information – Italy. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁵ See <http://www.eoi-tax.org> for update to date figures.

29 Japan

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1232. Tax crimes in Japan are regulated in several different statutes, including the Income Tax Act (ITA), Consumption Tax Act (CTA), Corporation Tax Act and Inheritance Tax Act. All tax offences require criminal intent (*mens rea*) and carry sanctions of imprisonment and fines. The table below sets out examples of tax crimes in Japan, together with their maximum criminal sanctions (tax crime offences in Japan do not have minimum sanctions), and statutes of limitations.

Table 29.1. Offences requiring criminal intent

Offences related to income tax and VAT/GST	Maximum criminal sanction	Statute of limitations
Evading tax or receiving refunds of tax by deception or other wrongful acts (ITA, art. 238 (1), CTA, art.64(1), Corporation Tax Act, art.159(1), Inheritance Tax Act, art.68(1)).	Ten years' imprisonment or fine of JPY 10 million* or both	Seven years
Attempt of receiving refunds of consumption tax by deception or other wrongful acts (CTA, art.64 (2)).	Ten years' imprisonment or fine of JPY 10 million* or both**	Seven years
Failing to file a tax return by the due date with intent to commit a crime but without deception or other wrongful acts(ITA, art.238 (3), CTA art.64 (5), Corporation Tax Act, art.159(3), Inheritance Tax Act, art.68(3)).	Five years' imprisonment or fine of JPY 5 million*** or both	Five years
Failing to file a return by the due date without any justifiable reason (ITA, art.241, CTA, art.66, Corporation Tax Act, art.160, Inheritance Tax Act, art.69).	One year's imprisonment or fine of JPY 500 000	Three years

Note:

In April 2021, EUR 1 = JPY 130

* If the evaded tax amounts to over JPY 10 million, the maximum fine may be equal to the amount of the tax evaded.

** The criminal sanction of attempt of receiving refunds of consumption tax by deception or other wrongful acts may be reduced by one half (*Penal Code*, art.43, 68).

*** If the evaded tax amounts to over JPY 5 million, the maximum fine may be equal to the amount of the tax evaded.

1233. **Statute of limitations:** The limitation periods set out in the table above begin from the moment of the completion of the offence and can be interrupted for any period where the offender was outside of Japan (*Code of Criminal Procedure* (CCP), arts. 250(2) & 253(1)).

1234. **Complicity:** Under the Penal Code of Japan (PC), it is an offence to aid, abet, facilitate, or enable the commission of an offence, including tax crimes (PC, art.61 & 62). If the offenders are convicted, the

offenders may face a reduced sentence (compared to the one received by the primary offender) (PC, art.63).

1235. **Attempt and conspiracy:** It is also an offence to attempt to receive refunds of consumption tax by deception or other wrongful acts (CTA, art.64(2)).

1236. **Professional enablers:** Japan does not have a separate penalty regime for professional enablers but they may be held liable as primary or secondary offenders (e.g. by committing the offence directly or through counselling another).

1237. **Territorial and nationality jurisdiction:** Japan has jurisdiction over all tax crimes committed by those subject to Japanese tax laws, even if the wrongful acts connected with the offence are performed wholly outside of Japan (ITA, art.238 (1), CTA, art.64, etc.).

1238. **Legal person liability:** Legal persons can be held liable for tax crimes under the concept of dual liability which allows for the enforcement of crimes against both the individual offender (i.e. natural person) and the corporation. (Corporation Tax Act, art. 163).

Enforcement of tax crime

1239. The below table shows the enforcement of tax crimes in Japan in the fiscal years ending 2015-18.

Table 29.2. Enforcement of tax crimes in the fiscal years ending 2015-18

Fiscal years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions*	Number of acquittals
2015	181	115	115	111	133	0
2016	193	132	132	128	100	0
2017	163	113	113	113	143	0
2018	182	121	121	124	122	0

* Including the cases carried over from previous year and settled in reference year.

1240. The below lists the type and number of sanctions imposed in violation of ITA, Corporation Tax Act and CTA in Japan in calendar years ending 2015-18. Japan notes that, in respect of tax crimes (violation of ITA, Corporation Tax Act, CTA and Inheritance Tax Act), its courts imposed fines amounting to JPY 2.075 billion in total in fiscal year 2015, JPY 1.592 billion in fiscal year 2016, JPY 2.425 billion in total in fiscal year 2017 and JPY 1.810 billion in total in fiscal year 2018.

Table 29.3. List of other sanctions imposed by the trial courts in calendar years ending 2015-18

Sanction	Number of persons (including legal persons) imposed
>0 – 3 years' imprisonment	404
>3 – 5 years' imprisonment	2
> 5 years' imprisonment	3
Fine	317

1241. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** Japan does not allow tax deductions or corrections for civil and criminal sanctions imposed in tax crime cases or for confiscated assets.

1242. **Availability of settlements and deferred prosecution agreements:** The Public Prosecutor may make deferred prosecution agreements available for individuals and legal persons for tax offences (CCP, art. 350-2). Settlements are not available for natural or legal persons for tax crimes.

1243. **Tax gap:** Japan notes that it does not measure its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax Crime Strategy

1244. NTA is responsible for planning and implementing the strategy for responding to and fighting tax crimes. When devising the strategy, the Criminal Investigation Division of NTA consults with other units, such as the Large Enterprise Division and the Taxation Department of NTA, as necessary. The key elements of the strategy are the prosecution of malicious tax evaders and positive actions toward cases with socially strong ripple effects (illicit receipt of consumption tax refunds, failure to file tax returns, international cases and so on).

1245. **Threat Assessment:** NTA does not undertake periodic threat assessments for tax crimes.

1246. **Communications Strategy:** NTA provides information to the public on how to declare and pay the right amount of tax. NTA also holds press releases to promote successful cases against tax crime offenders.¹

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 29.4. Investigative powers of tax crime investigation agency (NTA)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct powers Court permission is needed (<i>Act on General Rules for National Taxes</i> (AGRNT), art.132, etc.)
Obtain documents from third parties	Full direct powers Court permission is needed for compulsory measures (AGRNT, art.131 & 132, etc.).
Interview	Full direct power (AGRNT, art.131)
Inquiry powers (e.g. power of coercion)	No power
Intercept mail and telecommunications	No power
Conduct covert surveillance	Full direct power Investigators of NTA may observe a suspect to identify co-conspirators, locate evidence, and identify assets that are the proceeds of the tax crime, in order to obtain search warrants.
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power Court permission is needed (AGRNT, art.132, etc.).
Arrest	Indirect powers via another agency (CCP, art.199)

1247. **Legal professional privilege:** Japanese law provides that lawyers and notaries may refuse the seizure of documents containing confidential information about a client, except if the refusal is deemed to be an abuse of the rights of the defendant (CCP, art. 105). Such cases are those where lawyers or notaries conspire with clients in treating information as confidential even though the information is not. Professional privilege in Japan does not extend to accountants.

Principle 4: Freezing, seizing, and confiscating assets

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

1248. **Legal basis:** Japan applies a conviction-based asset recovery regime. This regime allows to confiscate proceeds of crime, except stolen or misappropriated property, and property derived from proceed of crime (Act on Punishment of Organized Crimes and Control of Crime Proceeds (APOCCCP), art.15).

1249. **Freezing orders:** The prosecution service can request financial institutions to freeze assets in the course of a tax crime investigation (CCP, art. 197(1)).

1250. **Seizing orders:** NTA may seize assets in the course of a tax crime investigation for the purpose of the tax collection where it would be impossible to collect the tax after determination of tax claims (National Tax Collection Act, art. 159(1)).

1251. **Confiscation orders:** Confiscation orders are applied upon conviction as part of the sanction on the offender (*PC*, art.9). While Japan notes that it does not have powers to confiscate assets based on convictions for tax crimes, it may do so on money laundering convictions where tax crime was a predicate offence. The prosecution then has the powers to request the court to forbid an offender from disposing assets subject to confiscation, even during the course of a criminal investigation (*Act on Punishment of Organized Crimes and Control of Crime Proceeds (APOCCCP)*, art. 22(1) & 23(1)). Value-based confiscations are allowed in Japan provided the original assets are neither properties, cash nor other goods capable of being confiscated (APOCCCP, art. 16(1)). Confiscations of assets from third parties are allowed if the third parties received the assets knowing that they represented the proceeds of unlawful activities (PC, art. 19(2), APOCCCP, art. 15(1)).

1252. **Foreign freezing, seizure, and confiscation orders:** If there is a confiscation order from a foreign state based on the confiscation judgment of the foreign state, Japan may apply foreign confiscation orders if the orders meet domestic law or treaty (if there is a treaty) requirements. In addition, NTA can apply foreign seizure orders for the purpose of the tax collection (Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and Local Tax Act Incidental to Enforcement of Tax Treaties, art.11).

1253. **Agency or unit responsible for asset recovery:** While NTA is in charge of seizures, confiscation is executed by the order of the Public Prosecutor, and the Public Prosecutor must dispose of confiscated assets (CCP, art. 490(1) & 496).

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1254. NTA is Japan's national tax administration. The NTA comprises the Head Office in Tokyo, 12 Regional Taxation Bureaus (including the Okinawa Regional Taxation Office), and 524 Tax Offices across the country. The NTA is an external organ of the Ministry of Finance. The NTA's mission is to "help taxpayers properly and smoothly fulfil their tax duties".

1255. The NTA has tax crime investigators, known as Sasatsukan, based in the Criminal Investigation Departments (CID) within the Regional Taxation Bureaus. The CID of the NTA Head Office supervises each CID in the Regional Taxation Bureau. Based on the AGRNT, tax crime investigators in CIDs may conduct non-compulsory measures (such as inquiries, inspections and retentions), and also may conduct compulsory measures (such as scrutiny and search and seizure) with warrants issued by a judge in a Court of Justice. Where these investigations reveal evidence of tax offences, tax crime investigators file an accusation with the Public Prosecutors Office (PPO) which can then conduct further investigations to indict criminals in a court.

1256. The below table provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Japan's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 29.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Criminal Investigation Department (CID) (housed within NTA)	Conducts compulsory measures with warrants issued by a judge and non-compulsory measures. Where these investigations reveal evidence of tax offences, tax crime investigators file an accusation with PPO.
Japanese Customs Administration	Responsible for conducting investigations of criminal offences based on customs law.
Police	Conducts investigations into alleged offences including corruption. Following their investigations, judicial police officials refer cases and evidence to PPO
Public Prosecutors Offices (PPOs)	Powers to initiate and conduct investigations into allcriminal offences including corruption and commence criminal prosecutions in court.
Japan Financial Intelligence Centre (JAFIC)	Responsible for processing administrative work related to the enforcement of the Act on the Prevention of Transfer of Criminal Proceeds mainly by collecting, arranging and analysing Suspicious Transaction Reports filed by specified business operators and disseminating those information to the relevant authorities.
Securities and Exchange Surveillance Commission	Conducts criminal investigations based on Financial Instruments and Exchange Act.

Independence of Tax Crime Investigations and Prosecutions

1257. The independence of the prosecution in Japan is ensured by art. 14 of the Public Prosecutor's Office Act. In regards to tax crime investigations, these can only be conducted by NTA staff under Chapter 11 of AGRNT.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1258. NTA's budget is provided annually and is not based on performance. The number of NTA's annual budget including the enforcement of statutes relating to tax crimes was JPY 700 416 million in 2017, JPY 702 647 million in 2018 and JPY 705 915 million in 2019. The number of NTA's staff dedicated to the tax crime investigations was 1 495 in 2015, 1 493 in 2016, 1 489 in 2017 and 1 494 in 2018. There are public prosecutors who specialise in investigations of financial crimes including tax crimes within the Public Prosecutors Offices.

1259. The below table shows the sources of information that are available to tax crime investigators in Japan.

Table 29.6. Data bases/sources of information available to tax crime investigators

Database	Access
Company formation/ ownership registry	Access on Request
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Access on Request*
Police databases	Access on Request*
Judicial databases	Direct Access*
Suspicious transaction report databases	Direct Access**
Domestic bank account databases	Access on Request
Car registry	Access on Request
Boat registry	Access on Request

Note:

* Accessible to only some part of information.

** JAFIC sends STR data to the tax crime investigation agency (NTA) through the government common network.

Training for tax crime investigators and prosecutors

1260. NTA offers two kinds of training courses for tax crime investigators, based on their level of experience. The annual one week-training course for newly appointed tax crime investigators teaches basic legal matters and procedures regarding tax crime investigation. All newly appointed tax crime investigators are required to take this training course. The annual one week-training course for mid-level tax crime investigators aims at sharing expert knowledge regarding tax crime investigation, and includes legal matters, case studies and so on. Approximately 80 tax crime investigators take this training course every year.

1261. For the Public Prosecutors, lectures on investigation into tax crime are provided through various trainings based on their experience and appropriate opportunities.

Principle 7: Predicate offences

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

1262. **Approach:** Japan adopted a combined threshold and list approach to money laundering in 2017 meaning that Japanese law now lists specific offences that can be predicate offences for money laundering, a list that includes tax crimes.³ In addition to this list, any crime punishable by the death penalty, life imprisonment, or a sentence of imprisonment of over four years may also be a predicate offence to money laundering. Japan's courts have jurisdiction over money-laundering offences even when the predicate offence took place in another jurisdiction.

1263. **Enforcement of money laundering predicated on tax crimes:** Japan notes that since and the inclusion of tax crimes as a money laundering predicate offence, inter-agency co-operation between NTA and JAFIC, and access to information improved.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1264. In Japan, public officials, including tax authorities, are lawfully obliged to report suspicions of all criminal activities to law enforcement agencies.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1265. The tables below set out some of the information sharing gateways that Japan has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of the Japan's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the [Third Edition of the Rome Report](#).

Table 29.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Tax Crime Investigation Agency	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		MSS	DSS	MSS ^(a)	Sharing Prohibited	MSS ^(a)
	Customs administration	DSS	MSS ^(b)		MSS	DSS	MSS
	Police or public prosecutor	DSS	DSS	DSS		DSS	
	Financial Intelligence Unit	Sharing Prohibited	MSS	MSS	MSS		MSS

Corruption investigation authority^(c)	DSS	DSS	DSS		DSS	
Financial regulator	On Request	MSS ^(d)	On Request	MSS	DSS	MSS

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) Public officials, including tax authorities, are obligated to report suspicions of criminal activities to a public prosecutor or a judicial police official (Act on Punishment of Organized Crimes and Control of Crime Proceeds, art. 239(2) and 241(1)). When tax officials do so, they need to balance the public welfare benefit of protecting tax secrecy against the benefit of reporting possible offences.

(b) Providing information for the tax authorities (NTA) is discretionary spontaneous (DSS).

(c) In Japan, Police and Public Prosecutors are responsible for conducting criminal investigations of corruption.

(d) Providing information for the tax authorities (NTA) is on request.

Table 29.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	NTA does not have specific co-operation agreements with the other agencies in combatting tax crime, but the tax administration co-operates with the other administrations to combat tax crime.
Disclosure of foreign trusts	NTA and other government agencies do not share information on foreign trusts.
Joint operations and taskforces	Joint investigation may be conducted by CID and PPO, under the public prosecutor's control and supervision.
Parallel investigations	They are possible
Secondments and co-location of staff	Japanese financial crime agencies actively make use of secondments. NTA sends some investigators to PPO and the other agencies, and vice versa.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Possible, but no automatic referral programme is in place.
Multi-agency training	PPO and NTA hold joint seminars on cases to discuss problems and areas of possible improvement in their investigations.

Principle 9: International co-operation

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.

1266. **Legal basis:** NTA may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. NTA cannot exchange information with foreign authorities without a tax treaty. Japan has exchange of information relationships with over 75 jurisdictions pursuant to bilateral tax treaties and Tax Information Exchange Agreements.⁴ It is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows NTA to use exchanged information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1267. **Competent authorities:** The International Operations Division of NTA is the central authority for sending and receiving requests for information under EOI instruments. The Ministry of Justice is the competent authority for sending and receiving requests related to criminal tax matters pursuant to MLA agreements.

1268. **International co-operation in practice:** Between 2015 and 2018, Japan made 2 430 requests for assistance in tax matters including criminal tax matters under EOI instruments and 27 requests for

assistance in all kinds of criminal matters from the prosecution under MLA treaties. In the same time period it received 901 requests for assistance in tax matters including criminal tax matters under EOI instruments.

Principle 10: Fundamental rights of a suspect or accused person

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

1269. **Legal basis:** Japan provides persons accused or suspected of having committed a criminal offence, including all tax offences, with procedural and fundamental rights. These are enshrined in the *Japanese Constitution of 1947*, which acts as the country's bill of rights, among other legislation.

1270. NTA can start a criminal tax investigation when it has suspicion of a possible tax crime whether a civil tax examination into the same tax offence is in process or not. However, once it initiates a criminal investigation, any civil investigation is suspended until the completion of the criminal investigation.

1271. In addition, the right to remain silent in course of a criminal tax investigation is guaranteed by the Constitution. However, according to a judicial ruling of the Supreme Court, criminal tax investigators are not required to advise a suspect of the right to remain silent in a criminal tax investigation.

Table 29.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until conviction
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	On the inception of investigations of prosecutors
remain silent	Yes	Throughout the criminal procedure
access and consult a lawyer and/or entitlement to free legal advice	Yes	Throughout the criminal procedure
interpretation and translation	Yes	Throughout the criminal procedure
be advised of the particulars of what one is accused of	Yes	On the inception of investigations of tax crime investigation
access documents and case material, also known as a right to full disclosure	No	
a speedy trial	Yes	In the process of trial
protection from ne bis in idem (Double Jeopardy)	Yes	After the finalisation of judgement

Highlights

Successful practices

- Active use of secondments

Room for improvement

- Lack of periodic threat assessment for tax crimes

Notes

¹ <http://www.nta.go.jp/english/taxes/index.htm> (Information for taxpayers, in English).

<http://www.nta.go.jp/publication/webtaxtv/index.html> (Web Tax TV, in Japanese).

http://www.nta.go.jp/information/release/kokuzeicho/2019/sasatsu/h30_sasatsu.pdf (Overview of the criminal investigation, in Japanese).

² See Rome Report, Chapter 5 – Country Information – Japan. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

³ See Act on Punishment of Organised Crimes and Control of Proceeds of Crime entered into force.

⁴ See <http://www.eoi-tax.org> for updated figures.

30 Korea

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1272. Korea's Punishment of Tax Offences Act (PTOA) was enacted in 1951 and was completely revised in 2009. The Act sets out various tax crimes ranging from administrative offences of non-criminal nature to criminal offences, including tax evasion. Examples of tax crime offences enshrined in the PTOA are laid down in the table below. The crimes prescribed in Table 1 require criminal intent.

1273. Korea notes that the PTOA mainly governs national tax offences, while offences relating to customs are governed by the Customs Act (CA), and those on local tax are enshrined in the Local Tax Act.

Table 30.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Tax evasion (PTOA, art. 3)	N/A	Imprisonment with labour for not more than three years or fine of up to triple the amount of tax evaded.
Tax evasion when evaded tax amounts to over KRW 500 million* in a year (AAPS, art. 8)	Imprisonment with labour for a limited term of not less than three years and fine of up to twice the amount of tax evaded.	Imprisonment with labour for an indefinite term and fine of up to five times the amount of tax evaded.
Breach of obligations to issue invoice (PTOA, art. 10)	N/A	Imprisonment with labour for not more than one year or fine of up to double the amount of VAT wrongly invoiced.
Breach of obligations to issue invoice when the aggregate amount is more than KRW 3 billion (AAPS, art. 8-2)	Imprisonment with labour for a limited term of not less than one year and fine of up to twice the amount of VAT wrongly invoiced	Imprisonment with labour for a limited term of not less than three years, and fine of up to five times the amount of VAT wrongly invoiced.

Note:

* In April 2021, EUR 1 = KRW 1 337

1274. **Statute of limitations:** Pursuant to PTOA, the limitation period for prosecuting any offender whose annum amount of tax evaded is less than KRW 500 million shall expire when seven years elapse. In case of an offender whose annum amount of tax evaded is more than KRW 500 million and more than KRW 1 billion, the prescription of a public prosecution shall expire when 10 years and 15 years elapse respectively, as such act would be governed by the Act on the Aggravated Punishment of Specific Crimes

(AAPS). The limitation period starts on the day when the tax administration determines the tax base evaded in the relevant case or, if impossible to determine, on the day when the payment of the tax was due.

1275. **Complicity:** It is a criminal offence, punishable by the maximum penalties of up to two years of imprisonment or a fine of up to KRW 20 million to aid, abet, incite, or conspire with another person to commit a tax crime (PTOA, art. 9).

1276. **Attempt and conspiracy:** Attempt and conspiracy to commit tax crimes are not a criminal offence in Korea.

1277. **Professional enablers:** A certified tax accountant or another professional with complicity in a tax criminal offence shall be punished together with the primary offender. Apart from the general rules on complicity, a person who makes a tax return on behalf of a person liable to taxation and makes a false return on taxes of another person in order to help evade the imposition or collection of taxes shall be punished under Article 9 of PTOA.

1278. Furthermore, the Certified Tax Accountant Act (CTAA) prescribes that any certified tax accountant abetting a person in a crime prescribed in PTOA shall be punished by aggravating by one third of a term of imprisonment or a fine referred to in the relevant provisions applicable thereto. The CTAA also contains the provision of disciplinary action whereby any certificated tax accountant who committed such a crime shall be punished, for example, by revocation of registration.

1279. **Territorial and nationality jurisdiction:** Korea has jurisdiction over all crimes where any act or omission forming part of the offence, occurs wholly or partly on Korean territory. Offences committed by Korean residents outside of the territory of the Republic of Korea can be prosecuted under Korean jurisdiction (Criminal Act, Article. 3).

1280. **Liability of legal persons:** All offences set out by the PTOA apply to both natural and legal persons. Sanctions for legal persons that commit a criminal tax offence consist of fines. The same rules regarding fines shall apply to both cases.

Enforcement of tax crime

Table 30.2. Enforcement of tax crimes in the tax years ending 2015-18

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases where action short of prosecution was taken (Disposition of notification)	Cases referred for prosecution (Accusation)	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals	Total number of fines imposed (Natural Persons)	Total number of fines imposed (Legal Persons)
2015	364	338	52	286	No statistics	No statistics	No statistics	KRW 8.29 billion	KRW 4.56 billion
2016	346	315	42	273	No statistics	No statistics	No statistics	KRW 5.77 billion	KRW 8.81 billion
2017	276	238	34	204	No statistics	No statistics	No statistics	KRW 5.01 billion	KRW 8.58 billion
2018	386	362	26	336	279	No statistics	No statistics	KRW 2.26 billion	KRW 3.64 Billion

1281. Korea was not able to provide a breakdown of the type of sanctions imposed in tax years ending 2015-18.

1282. **Availability of tax deductions for civil and criminal sanctions:** Korean law does not allow for tax deductions for any type of civil or criminal fines or penalties (Income Tax Act, Article. 33).

1283. **Availability of settlements:** Korean law does not allow for settlements or deferred prosecution agreements.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1284. NTS addresses all 15 types of tax crime prescribed in PTOA and is particularly committed to detecting tax evasion (Article 3) and breach of obligation to issue tax invoice (Article 10). In order to detect tax evasion, NTS conducts tax audits especially targeting cases to be managed intensively, such as great asset individuals, high-income business and offshore tax evasion. Auditors investigate whether the case is a criminal offence and charge the suspected when they find any evidence of a tax crime. In order to detect breaches of obligations in relation to tax invoices, NTS conducts nationwide tax audits. When the audit team secures positive evidence of a tax offence, the audit team will indict the suspected person.

1285. In addition, as Korea has found some offshore tax evasion and tax-free wealth transfer cases committed under the assistance of professional enablers, auditors closely investigate whether any enabler takes part in the crime and accuse the suspected one on charges of being an accomplice if there is any evidence.

1286. **Threat assessment:** At the beginning of each year, the NTS conducts a threat assessment in order to set a focus target and goal of the year. By analysing previous year's tax audit cases and tax intelligence data collected continuously, the NTS searches and investigates new types of tax evasion methods and fraudulent tax invoice businesses. According to the analysis result, the NTS devises a new tax audit method and chooses specific business to investigate closely.

1287. **Communication strategy:** The NTS makes efforts to raise public awareness on the importance of tax compliance by regularly publicising (via press releases) successful investigations and prosecutions of tax crimes. The NTS does not have any other methods of communication with the public.

Box 30.1. Example of successful implementation of tax crime strategy: Korea

Since January 2019, when the NTS established a joint tax crime investigation channel with the Public Prosecutors' Office (PPO) for cracking down on tax evasion cases, the NTS and PPO have collaborated in issuing search and seizure warrants, investigating and accusing tax offenders, sharing taxation information, and maintaining public prosecutions.

In 2019, thanks to the new investigation channel, Korea successfully carried out the investigation of tax offences against bars and nightclubs operating under disguised names thanks to the search and seizure warrants being issued rapidly from the beginning of the investigation.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

Table 30.3. Investigative powers of tax crime investigation agency (NTS)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power A warrant is required
Obtain documents from third parties	Full direct power Investigators require a court warrant to obtain documents from third parties and there are no limitations as to the type of document that can be obtained. Investigators may exercise the power under any circumstances during the investigation.
Interview	Full direct power Investigators from NTS may interrogate a subject whenever they need interview during the investigation. The subject may choose to be interviewed without summon, but if it is required to provide any evidence that the subject was asked to appear, Korea delivers a notification document to the subject. If the subject refuses to be summoned without any fair ground, Korea may impose a fine on the subject.
Inquiry powers (e.g. power of coercion)	No power The NTS cannot request any other law enforcement agency to conduct this operation on their behalf
Intercept mail and telecommunications	No power The NTS cannot request any other law enforcement agency to conduct this operation on their behalf
Conduct covert surveillance	No power The NTS cannot request any other law enforcement agency to conduct this operation on their behalf
Conduct undercover operations	No power The NTS cannot request any other law enforcement agency to conduct this operation on their behalf
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to a court warrant. Both a search warrant and seizure warrants are covered by the same court. There are no special steps taken to ensure that the digital evidence secured is admissible at court. Digital evidence would also follow the same procedures for storage and processing as physical evidence.
Arrest	No power The NTS is only in charge of accusation. Law enforcement agencies make judgement on whether to arrest the suspect or not.

1288. **Legal professional privilege:** Legal professional privilege in Korea is governed by the Attorney-at-Law Act (AALA), Certified Public Accountant Act (CPAA), and Certified Tax Accountant Act (CTAA), which state that conversations, mail and, more generally, any communications between any of those professionals and their clients and between professionals, are subject to professional secrecy. As such, under the Criminal Procedure Act (CPA), legal professionals and accountants may refuse to testify in respect to facts of which they have obtained knowledge in consequence of a mandate received in the course of their profession, and which relates to classified information of other persons.

Principle 4: Freezing, seizing and confiscating assets

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

1289. **Legal basis:** Seizing orders are covered under the National Tax Collection Act (NTCA). Confiscation orders are covered by the Act on Regulation and Punishment of Criminal Proceeds Concealment (ARCP) and they fall within the remit of the PPO.

1290. **Freezing orders:** Korea notes that it does not allow for freezing orders in relation to tax crime investigations.

1291. **Seizing orders:** If a tax office plans a seizure before the determination of national taxes, it is required to obtain approval from the head of a regional tax office before seizure and to deliver a written notice to the taxpayer after seizure.

1292. **Confiscation orders:** Under the Act on Regulation and Punishment of Criminal Proceeds Concealment (ARCP), any property generated by the criminal acts prescribed in Article 8 of AAPS, (i.e. the case where any of tax crime prescribed in Articles 3 (1), 4, and 5 of PTOA is committed and the offender has taken fraudulent tax refund) may be confiscated.

1293. **Foreign freezing, seizure, and confiscation orders:** Under the ARCP, when a foreign country has requested co-operation in relation to a foreign criminal case in the execution of a finally binding adjudication of confiscation or collection of equivalent value or in the preservation of property for the purpose of confiscation or collection of equivalent value, mutual assistance may be provided.

1294. **Agency/unit responsible for asset recovery:** Asset recovery falls within the remit of the PPO.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

Table 30.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
National Tax Service (NTS)	The civil tax authority, responsible for ensuring tax compliance and collecting tax revenues. It is divided into a number of Regional Taxation Bureaus (RTB), which are principally responsible for all tax matters in their area.
RTB	Each RTB has an investigation bureau, which is principally responsible for tax audits and investigation of tax offence in each area.
Public Prosecutors' Office (PPO)	After successful investigation by the CID, the case file is transferred to the PPO for prosecution, but it is not involved with the investigation work of CID. Prosecutors may be assigned to a case after the accusation by NTS. PPO is also divided by local area, similar to NTS.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1295. NTS does not have a specific budget allocated to the CID and to tax crime investigations in general. NTS utilises the budget allocated to tax auditing and this is used to conduct tax crime investigations Korea notes that it does not keep statistics on the tax crime investigations budget or the number of staff directly involved in criminal tax investigations. The NTS does not have a separate team dedicated to the investigation of tax offences. Instead, the tax audit tea takes charge of both tax audit and investigation of tax offences. The number of tax auditors in NTS is around 4 000.

Table 30.5. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Access on Request
Police databases	Access on Request
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request
Car registry	Access on Request
Boat registry	Access on Request
Other	N/A

Training for tax crime investigators

1296. Korea has a special training course for the investigation of tax offences in the National Tax Officials Training Institute. The training course takes six weeks for once in a year. This course contains theoretical and practical knowledge about the tax crime investigation. Trainees may learn various law enforcement skills and knowledge, including the fundamentals of criminal law, practical skills to be used in investigation, and warrant request procedure. Some of the subjects are taught directly by prosecutors.

Principle 7: Predicate offences

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

1297. **Approach:** Korea takes a list approach for predicate offences to money laundering, which is detailed in the ARCP.

1298. **Enforcement of money laundering predicated on tax crimes:** Korea notes that it does not possess statistics or data related to the enforcement of money laundering predicated on tax crimes.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1299. If the tax audit team finds any suspicious point that can be deemed to be a tax offence, the team will refer the case to the Tax Offence Investigation and Deliberation Committee. If the committee allows to turn the audit into an investigation, the team then carries out the investigation of tax offence. After concluding the investigation, the team files a report to the committee which then determines how to proceed with such case depending on the report. The types of actions vary as follows: disposition of notification; accusation; freedom from suspicion. According to the decision made by the committee, the audit team will take necessary follow-up measures.

1300. Each RTB has a team that provides legal services related to tax audits (including investigation of tax offence) that consists of lawyers. Under the CPA, when a NTS official in the course of his/her duty believes that an offence has been committed, he/she shall lodge an accusation. However, there are only a few cases where this has happened.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

Table 30.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct access	On request	No sharing ^(a)	On request	Not available
	Customs administration	MSS ^(b)	MSS		No sharing	MSS ^(c)	Not available
	Police or public prosecutor	On request	MSS ^(d)	MSS ^(e)		On request	Not available
	Financial Intelligence Unit	DSS ^(f)	MSS	MSS ^(g)	MSS		Not available
	Corruption investigation authority	Not available	Not available	Not available	Not available	Not available	
	Financial regulator	No sharing	No sharing	DSS	MSS	No sharing	Not available

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) There is a general prohibition on the National Tax Service sharing information with respect to non-tax offences, other than in exceptional circumstances.

(b) The Korea Customs Service provides the National Tax Service with declared information on imports and exports and violations of the Foreign Exchange Transactions Acts.

(c) The Korea Customs Service provides KoFIU with information on currency movements and transactions.

(d) In Korea, the public prosecutor must provide the National Tax Service spontaneously with information relevant to a tax crime investigation, whereas the Korean police may only provide information on request.

(e) Suspicions of customs crimes must be reported to the Korea Customs Service.

(f) In July 2013, the Financial Transaction Report Act (FTRA) was revised to enable the National Tax Service to gain wider access to FIU information. Previously, the FIU disseminated FIU information to the tax administration only where it was required for conducting criminal tax investigations. Under the revised law, the FIU information can also be disseminated for the purposes of selecting and conducting tax audits and collecting tax debts. To control the privacy of information, an "Information Analysis Review Committee" was introduced to monitor the FIU information is disseminated to law enforcement agencies in accordance with the law. A requirement was also introduced that, whenever the FIU refers a Currency Transaction Report to a law enforcement agency, the person filing the report must be notified. In most cases, this notification must take place within 10 days of the Currency Transaction Report being referred to law enforcement, though in certain circumstances this notification may be suspended for a period of time.

(g) The KoFIU provides the Korea Customs Service with access to relevant Suspicious Transaction Reports.

Table 30.7. Availability of enhanced forms of co-operation in combatting tax crimes.

Mechanism	Description
Co-operation agreements	NTS operates a joint investigation channel with PPO for cracking down on tax evasion that violation of the people's live and fraudulent tax invoice traders
Disclosure of foreign trusts	Yes, but only in cases when NTS possess relevant data and disclosure is allowed in prescription of legal bill.
Joint operations and taskforces	Since June 2018, NTS, PPO and other 6 agencies have operated "Joint Investigative Task Force on Recovery of Illicit Assets Abroad" to fight against illegal activities such methods of money laundering and tax fraud.
Parallel investigations	There aren't many cases of parallel investigations.
Joint intelligence centres	No
Secondments and co-location of staff	NTS officials are dispatched to PPO and K-FIU
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes, it may conduct such review in case of alleging tax evasion.
Multi-agency training	No

Principle 9: International co-operation

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.

1301. **Legal basis:** Korea may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. As of end of February 2021, NTS may exchange information with 151 jurisdictions under bilateral tax treaties, MAC, and Tax Information Exchange Agreements (TIEA).¹ It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows Korea to use exchanged information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorization is provided. All requests for information exchange related to tax matters are made through bilateral tax treaties, MAC, and TIEA. Criminal MLA requests are not separately made or kept track of.

1302. **International co-operation in practice:** Between 2017 and 2019, Korea made 456 requests for assistance in tax matters including criminal tax matters under EOI instruments. In the same period it received 380 requests for assistance in tax matters including criminal tax matters under EOI instruments. Korea does not maintain separate statistics for criminal cases.

1303. **Enhanced form of international co-operation:** The NTS actively co-operates with foreign tax authorities on EOI cases. For example, Korea has in place an agreement with the United States that allows Simultaneous Criminal Tax Investigation in both countries.

Principle 10: Fundamental rights of a suspect or accused person

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

1304. **Legal basis:** The fundamental rights of the accused are enshrined in Chapter II of the Constitution of the Republic of Korea, which acts as the national bill of rights. The rights of the accused are also recognised by the Procedure for the Punishment of Tax Offences Act and other legislation.

Table 30.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	No	
protection from ne bis in idem (Double Jeopardy)	Yes	From indictment

Highlights

Successful practices

- Penalty and administrative regimes in place to tackle professional enablers
- Solid tax crime strategy and threat assessment
- Concrete examples of positive inter-agency co-ordination

Room for improvement

- Korea would benefit from the possibility of allowing freezing orders in tax crime cases
- Korea could make use of multi-agency trainings for tax crime investigators

Note

¹ See <http://www.eoi-tax.org> for updated figures.

31 Lithuania (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1305. Lithuania's Criminal Code (CC) sets out tax offences that require criminal intent (*mens rea*). Examples of tax offences, their minimum and maximum sanctions, and corresponding statutes of limitation are listed in the table below.

Table 31.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Failure to pay taxes (CC, art. 219)	Fine (ranges from 100 to 4 000 MSLs* for natural persons and 200 to 100 000 MSLs for legal entity)	six years' imprisonment	12 years
Provision of inaccurate data on income, profit, or assets (CC, art. 220)	Fine (ranges from 100 to 4 000 MSLs for natural persons (Paragraph 1); 150 to 6 000 MSL (Paragraph 2) MSLs for natural persons and 200 to 100 000 MSLs for legal entity)	eight years' imprisonment	15 years
Failure to file a tax return or to submit a report or another document (CC, art. 221)	Fine (ranges from 100 to 4 000 MSLs for natural persons and 200 to 100 000 MSLs for legal entities)	six years' imprisonment	12 years

* 1 MSL is equal to EUR 50.

1306. Lithuania notes that its CC does not contain specific rules for calculating fines. The court determines the amount of the sentence after considering all the relevant circumstances of the offending.

1307. **Statute of limitations:** The limitation period starts running on the date a criminal offence is committed and is suspended upon the commencement of criminal investigation (CC, art. 95).

1308. **Complicity:** Accomplices, organisers, and abettors of tax crimes may be sentenced to the same sanction as the primary offender (CC, art. 26).

1309. **Attempt and conspiracy:** Lithuanian criminal law stipulates that every criminal offence can be committed as an attempt (CC, art. 22). Furthermore, Lithuanian criminal law stipulates that serious tax offences (e. g. CC, art. 220, 221 pr. 2) can be committed in preparation stage (conspiracy) (CC, art. 21).

1310. **Professional enablers:** Lithuania does not have a separate penalty regime for professional enablers. However, they are recognised as primary offenders or secondary offenders depending on their involvement in the commission of the tax crime.

1311. **Territorial and nationality jurisdiction:** Lithuania has jurisdiction over all crimes committed within or partly within Lithuania. Lithuanian citizens and residents can be held liable for acts labelled as tax crimes, even if these crimes are committed outside of Lithuania (CC, art. 4-5).

1312. **Legal persons:** Legal persons can be held criminally liable for tax crimes. When a legal entity is held liable for a tax crime, the penalty can be either a fine, restriction of operation of the legal entity, or liquidation of the legal entity. Twenty-five legal entities were convicted of tax crimes during the period 2019-21.

Enforcement of tax crime

1313. The tables below show the enforcement of tax crimes in Lithuania in tax years ending 2018-21, and the list of sanctions imposed over the same period of time.

Table 31.2. Enforcement of tax crimes in the tax years ending 2018-21

Tax years ending	Total number of concluded criminal tax investigations	Number of criminal convictions against natural and legal persons	Total amount of fines imposed on natural persons (in EUR)	Total amount of fines imposed on legal persons (in EUR)
2018	130	59	168 864.47	352 245.48
2019	130	65	177 330.18	180 177.80
2020	143	57	284 958.34	142 809.20
2021	132	61	331 500.98	112 798

Table 31.3. List of other sanctions imposed in tax years ending 2018-21*

Sanction	Number of times imposed
Fixed-term imprisonment	53
Restriction of freedom	5
Contribution to the Fund for victims of crimes	3
Job at no charge	2
Deprivation of the right to work or engage in certain activities	2
Compensation or elimination of property damage	4
Forfeiture of assets	20
Prohibition of using a special right	1

* Updated figures for 2018, 2019, 2020 and 2021 according to art. 219, 220, 221 of the Criminal Code of the Republic of Lithuania (tax crimes).

** This is a penal sanction that must assist in implementing the purpose of a penalty. It can be imposed together with a penalty, as described above. Only the court, having considered all the circumstances relevant to the imposition of the sentence, is entitled to impose this penal sanction with the punishment. If the court considers that this penal sanction will serve the purpose of the punishment, there is no formal impediment to its imposition, and it can be applied to tax offenders.

1314. **Availability of tax deductions for civil and criminal sanctions:** Lithuanian law does not allow tax deductions for civil and criminal sanctions.

1315. **Availability of settlements:** The Criminal Code does not contain specific provisions for settlement agreements. However, it does forest out circumstances in which an offender may be exempted from criminal liability (CC, art. 38).

1316. If the exempted offender commits a misdemeanour or a negligent crime within the period of one year or fails, without valid reasons, to comply with the court agreement on the procedure for compensating for the damage, the court may revoke its decision on the release from criminal liability and decide to prosecute the person for the criminal acts committed. An offender who was previously exempted based on reconciliation cannot be granted a second exemption within a four-year period.

1317. **Tax gap:** Lithuania estimates its VAT gap by using the consumption-based method (CASE) and the production-based method (IMF). The latest CASE report about the VAT gap in EU countries was published in December 2022. The VAT gap in Lithuania was 19.3 percent in 2020.¹ Lithuania does not calculate which part of the VAT gap is related to tax crimes.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1318. **Tax crime strategy:** Lithuania's strategy to combat tax crimes is implemented by the Coordinating Commission for Reducing the Shadow Economy (the Commission), which also plans and adopts prevention measures against the proliferation of the shadow economy. The work of the Commission is organised by the Office of the Prime Minister.² The goal is to coordinate inter-agency co-operation, and to ensure that agencies share specific, aggregated, and analytical information in a timely and systemic manner; to ensure their actions are coordinated, particularly for the identification and removal of criminal economic and financial activities.

1319. The Commission's plans and measures are drawn up based on the results of systemic analysis and implemented through the coordination of the activities of several authorities, which incorporate the measures into annual action plans approved by the authorities.

1320. Targeted checks by the State Tax Inspectorate (STI) constitute a permanent prevention measure against the proliferation of the shadow economy. This measure is of major importance as it is long-term and has been expanded to new sectors. The STI selects specific economic activities of taxpayers for inspection. Since 2020, the STI also investigates unique vehicle owner declaration codes and excise duty goods. During these investigations, the STI applies monitoring and control measures. These investigations are widely communicated within the society with the intention of increasing awareness of the possibility of detections and thus better tax compliance.

1321. The table below shows the number of cases STI referred to LEAs and the Financial Crimes Investigation Service of Lithuania (FCIS) during the period 2018-22.

Table 31.4. Number of cases STI referred to LEAs and FCIS during the period 2018-22.

Year	Cases referred to LEAs	Cases referred to FCIS
2018	180	143
2019	125	102
2020	87	74
2021	95	80
2022	83	69

1322. **Threat assessment:** STI assesses tax risks using the VAT and PIT gap analysis, results of various tax risk analyses (by sector, by tax, by certain segment of taxpayers, etc.), monitoring, and control activity

results. This is done continually with the aim of distinguishing the main tax risks to be targeted by STI and other governmental institutions and to monitor the results of activities taken. Every two years the STI updates the consolidated plan of tax compliance assurance measures foreseen for the riskiest economic sectors or topics (e.g. VAT avoidance and fraud risks are included).

1323. In addition, STI provides six-monthly reports to the government about the implementation of measures in the fields of the shadow economy, unregistered labour, and tax crimes.

1324. **Communication strategy:** STI provides information on how to correctly complete tax returns as part of the standard documentation provided to taxpayers related to their mandatory annual tax returns. STI's broader annual communication strategy, covers topics including declaration of income and assets, tax returns, land taxes, and property taxes.

1325. Lithuania also publishes up to ten reports per year about successful court decisions.³ FCIS shares data with the public on successful pre-trial investigations, decisions adopted in criminal cases, and identified negative trends. Some press releases are available on the website of FCIS.⁴ Between 82 and 122 press releases were published annually during the period 2018-21.

Box 31.1. Example of successful enforcement of tax crime in the tourism sector: Lithuania

The investigators of the Vilnius Regional Board of the Financial Crime Investigation Service have uncovered the acts of a group of 13 accomplices suspected to have concealed EUR 2 million of proceeds using ten companies in the tourism sector. The members of the group are suspected of having been involved in swindling, misappropriation of property, submission of wrong information on income, profit and property, fraudulent management of accounts, and forgery of documents.

The Vilnius Regional Prosecutor's Office, which organises and leads the pre-trial investigation, suspects that the persons acting in the group of accomplices, representing the tourism companies, may have committed fraud by avoiding the payment of corporate income tax. It is suspected that shell companies, established in Latvia, were involved in the tax evasion scheme. It is calculated that over a five year period, over EUR 2 million in income was concealed amounting to more than EUR 150 000 in unpaid income taxes.

Currently, the pre-trial investigation is ongoing, and the suspects are subject to coercive measures. Aiming to ensure a civil claim, a temporary ownership rights restriction was applied to the property amounting to EUR 1.6 million in value.

Box 31.2. Example of successful inter-agency co-operation to combat tax crime: Lithuania

The Risk Analysis Centre (RAC) and the Joint Operation Centres (JOC) were established in the Lithuanian regions of Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys to enhance inter-agency co-operation, exchange, and analysis of information on violations of tax law and other criminal activities in the financial field.

The RAC was founded by numerous state agencies and is designed to co-operate in (1) exchanging and analysing information amongst agencies, which is collected with regard to tax law violations and other infringements of legislation and criminal activities in financial and economic areas, (2) identifying threats to the public finance system and tax collection, including by coordinating priority actions of

institutions, (3) and planning and organising the measures which aim at detecting violations and criminal activities.

The JOC consists of working groups in control and law enforcement agencies in the above listed countries, its main purpose is to ensure the effective collaboration at the regional level and execute the tasks the RAC assigned to it.

In total, the JOC organised 1 259 audits in 2020. In performing the actions of control activities, 575 violations were identified, for which the liability is provided under the Code of Administrative Offences and 31 pre-trial investigations have been launched.

In 2020 all JOC controlled taxpayer sales grew by two percent as compared to the year of 2019. All JOC controlled VAT liability declared by taxpayers grew by 20 percent in 2020 as compared to 2019.

In total, the JOC organized 3 089 audits in the year 2021. In performing the actions of control activities, 718 violations were identified, for which the liability is provided under the Code of Administrative Offences and 39 pre-trial investigations have been launched.

In the year 2021 all JOC controlled taxpayer sales grew by 15 percent as compared to the year of 2020. All JOC controlled VAT liability declared by taxpayers grew by 19 percent in 2021 as compared to 2020.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1326. The below table details the investigative powers of the Financial Crimes Investigation Service of Lithuania (FCIS) (agency mandated to investigate tax crimes).

Table 31.5. Investigative powers of tax crime investigation agency (FCIS)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Search warrant required.
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power Court order required.
Conduct covert surveillance	Full direct power Court order required.
Conduct undercover operations	Full direct power Limitations.
Search and seize computer hardware, software and electronic storage media	Full direct power
Arrest	Full direct power Arrest warrant required.

Additional powers

1. In cases where there are grounds for assuming that there are, in some premises or in any other place or in the possession of some person, instruments of a crime, tangible objects and valuables that were obtained or acquired in a criminal way, or certain things or documents which might be relevant to the investigation of the criminal offence, a pre-trial investigation officer or a prosecutor may conduct a search for the purposes of discovering and seizing them (CPC, 145).

2. For searches of a person, the same rules apply as for searches of premises (CPC, 146). A person's search without a separate ruling may be performed either by detaining or arresting that person or when there is a sufficient basis to assume that at the place where a seizure or search is performed, that person is hiding documents or other evidence with significance for the investigation of a criminal offence. If it is necessary to seize documents or other objects that have significance for investigating a criminal offence and it is precisely known where they are and who has them, a pre-trial investigation officer or a prosecutor may perform a seizure (CPC, 147).

3. A ruling may be handed down by a pre-trial investigation judge according to the prosecutor's request, authorising a pre-trial investigation officer to intercept private conversations transferred by electronic communication networks, make recordings, control other information transferred by electronic communication networks, and record and compile it under the conditions of article 154 CPC. The conditions for undercover investigations are set out in articles 158 and 159 of the CPC. Actions of pre-trial investigation officers who do not disclose their identity are authorised by a ruling handed down by a pre-trial investigation judge upon request of the prosecutor and only in the case when there is sufficient data on a crime being committed. Upon receipt of a prosecutor's request, a pre-trial investigation judge may assign surveillance of a person or transport vehicle, or of an object (CPC, art. 160).

1327. **Legal professional privilege:** In Lithuania, legal professional privilege is defined as the duty of a lawyer to preserve its professional secrecy and includes a set of general rules on how to fulfil that duty. The definition of a lawyer's professional secrecy is broad and covers any information that is obtained by the advocate when conducting his professional activities, (Law of the Bar of the Republic of Lithuania, art. 5(4) and art. 46 (5)).

1328. Article 8 of the Lawyers' Ethics Code states that it is prohibited for a lawyer to use information constituting the lawyer's professional secrecy for his or another person's interests in an illegal manner. Lawyers have the right to disclose information constituting their professional secrecy without the client's consent, when it is unavoidably necessary to preserve human life, to protect the rights and legitimate interests of the client, his heir or assignee, and to defend the lawyer's rights in a dispute with a client, but only to the extent necessary for the correct settlement of the dispute.

1329. Article 80 of the CPC provides further circumstances under which persons may not be questioned as witnesses during the pre-trial investigation for the protection of information received through performing professional duties.

Principle 4: Freezing, seizing and confiscating assets

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

1330. **Legal basis:** Lithuania has both conviction and non-conviction-based confiscation regimes. Article 72 of the CC stipulates the conditions for the confiscation of assets upon conviction. Art. 94 of the CPC provides the conditions for non-conviction-based confiscations.

1331. **Freezing and seizing orders:** Articles 151 and 152 of the CPC stipulate the conditions for, and definition of, temporary restriction of the right of ownership. The legal ground for freezing assets is securing a civil claim or a probable (extended) confiscation of property. No special threshold for freezing assets is required, but a prosecutor's decision must be reasoned and in line with general legal rules and principles.

1332. Article 151(1) of the CPC states that temporary restriction of the right of ownership may be imposed by the prosecutor to secure a civil action, possible confiscation of property or extended confiscation. When imposing such measures motives of rendering a resolution and grounds for a temporary restriction of the right of ownership must be provided. While there are no formal criteria regarding motives, the reasons must clearly justify the existence of a ground for the application of a temporary property restriction. The temporary restriction of the right of ownership imposed by a resolution of a prosecutor cannot last for more than six months (CPC, art. 151(6)). This period may be extended by a ruling of the pre-trial investigation judge.

1333. In Lithuania there is no special regime for the rapid freezing of assets in, but assets are usually frozen rapidly, there is no specific time given, but rapid freezing of assets happen with no delay when there are sufficient grounds for this action. Furthermore, prosecutors and pre-trial investigation bodies are

obliged to take all the measures provided by law, within the limits of their competence, to investigate and detect a criminal offence as soon as possible when signs of a criminal offence are detected (CPC, art. 2).

1334. **Conviction based confiscation orders:** Conviction-based confiscations can only be ordered by a judge upon criminal conviction. Where prosecutors have determined that all the statutory conditions of confiscation are met, they must propose to the judge to order the confiscation of assets (CC, art. 72). Conviction-based confiscation is considered as a Penal sanction (CC, art. 67(1)). Asset confiscation can be applied together with a verdict in a criminal case, or after the termination of a pre-trial investigation by a prosecutor's decision approved by the pre-trial judge or a pre-trial judge's decision (non-conviction-based confiscation) (CC, art. 94).

1335. **Non-conviction-based confiscations:** In cases where the prosecution is not able to institute criminal proceedings for justifiable reasons (e.g. unsuccessful mutual legal assistance, missing persons, unclear subjects, unclear transactions, fictitious enterprises, and transactions, etc.) the authorities may nonetheless pursue the confiscation of the illegal proceeds under a civil based regime set out in article 94 of the CPC.

1336. **Extended confiscations:** Only judges are the competent authorities to execute an extended confiscation and it can only be ordered if the statutory conditions are met (CC, art. 72). Extended confiscations are only used in criminal proceedings. The civil confiscation procedure is used under the Civil Procedure Code of the Republic of Lithuania. Civil asset forfeiture is not a type of criminal punishment, therefore no proof of the person committing the crime is required for civil asset forfeiture.

1337. **Third party confiscations:** Third-party confiscations are executed if assets are transferred under a fake transaction, if assets are transferred to family members of the offender, or if the property is transferred to a corporation where the offender or his family have over 50 percent of the shares (CC, art. 72(4)). Third party confiscations apply to the criminal and civil based confiscation regimes.

1338. **Value based confiscations:** Value based confiscations are ordered when assets subject to confiscation were concealed, consumed, belong to third parties, or cannot be confiscated for any other reason (CC, art. 72(5)).

1339. **Foreign freezing, seizure, and confiscation orders:** Foreign requests for assistance are executed in accordance with the CPC. The CPC stipulates mandatory confiscation when criminal proceedings are terminated in absence of a conviction due to death of the perpetrator, or where the perpetrator is unknown or unavailable by reason of flight or absence (CC, art. 94(1)(1) in combination with art. 3(1)).

1340. Lithuania has the authority to take appropriate action in response to requests by foreign countries to identify, arrest, and confiscate proceeds and instruments of crime, and property of corresponding value. Lithuania has arrangements for co-ordinating seizure and confiscation requirements on behalf of foreign authorities. This could take the form, for instance, of joint investigations teams. Lithuania has mechanisms in place to manage and, where necessary, dispose of property frozen, seized, or confiscated, pursuant to international requests.

1341. **Agency or unit responsible for asset recovery:** In Lithuania, responsibilities involving asset recovery are shared between the Prosecutor General's Office (PGO) and the Lithuanian Criminal Police Bureau ("LCPB"). PGO performs all functions related to co-operation with foreign authorities and international organisations. Furthermore, PGO and LCPB both have designated a contact person in the EU Asset Recovery Network (the European (EU) Union Asset Recovery Offices (ARO)).

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1342. The Financial Crime Investigation Service (FCIS), which is a national LEA subordinated to the Minister of the Interior, is in charge of tax crime investigations in Lithuania. FCIS investigates offences affecting Lithuania's financial system and other criminal acts related to the use of financial assistance of the European Union (EU).

1343. Tax crime investigations conducted by FCIS are supervised by the public prosecution service, which controls pre-trial investigations. Public prosecutors are the sole agents responsible for continuing, terminating, or re-opening criminal investigations in Lithuania.

1344. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Lithuania's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of the [Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁵

Table 31.6. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
State Tax Inspectorate (STI)*	Lithuania's tax agency, working under the Ministry of Finance.
Financial Crime Investigation Service (FCIS)	FCIS is the LEA which is accountable to the Ministry of Interior and responsible for the prevention, detection, and pre-trial investigation of financial crimes and crimes against national financial system, with the exception of those assigned by the prosecutor's office to the Lithuanian Police. The FCIS is the main Lithuanian institution responsible for coordination of anti-money laundering activities. It serves as a Financial Intelligence Unit (FIU) in Lithuania and is an active member of the FIU.NET and Egmont Group. The FIU is not authorised to conduct the pre-trial investigations.
Lithuanian Customs Authority (LCA)	Responsible for criminal intelligence to ascertain criminal activities related to customs activities and to carry out pre-trial investigations of these activities.
Lithuanian Police (LCPB)	National law enforcement agency of Lithuania with general competence in the field of pre-trial criminal investigation. The general competence of the Lithuanian criminal police in the field of pre-trial investigation also includes investigations of tax crimes, with the exception of those assigned by the prosecutor's office to a the FCIS.
State Border Guard Service (SBGS)	Investigates smuggling between border crossing points and carries out pre-trial investigation of smuggling-related offences and performs criminal intelligence in this field.
Special Investigation Service (STT)	Anti-corruption agency which detects and investigates corruption-related offences.
Prosecutor's Office (PO)	Organises and directs pre-trial investigations, to uphold charges on behalf of the State in criminal cases, to protect the public interest, to ensure justice, and to assist the judiciary in the administration of justice.

* The STI under the Ministry of Finance and the CIAC are not authorised to conduct the pre-trial investigations.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1345. FCIS, which is responsible for the investigation of financial crimes, employed 331 people in 2020 and 342 in 2021, approximately 200 of which were engaged in investigations. In 2020 the annual budget of the FCIS was EUR 9 768 million and EUR 10 722 million in 2021. The budgetary decision is based on a series of performance indicators, including the yearly increase in the number of financial crimes investigations, the amount of training received by staff, and the number of cases not referred by courts to LEAs for supplementary investigation.

1346. Lithuania applies two performance objectives for tax crime investigations: (i) ensure rapid, thorough, and cost-efficient criminal intelligence gathering, pre-trial investigation and forensic accounting; and (ii) ensure the implementation of AML prevention measures.

1347. The below table shows the sources of information and databases available to tax crime investigators in Lithuania.

Table 31.7. Data bases/sources of information available to tax crime investigators

Data bases or source	Access by FCIS
Company incorporation/ ownership registry	Direct Access
Land registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access/Access on Request
Customs databases	Direct Access/Access on Request
Police databases	Direct Access/Access on Request
Judicial databases	Direct Access/Access on Request
Suspicious transaction report databases	Direct Access
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Direct Access

Training for tax crime investigators

1348. FCIS organises its own personnel training in line with the strategy for the training of civil servants approved by the Government of Lithuania. Topics covered include strategic goals of the institution, financial possibilities regarding the institution's budget, and training in a particular field (e.g. financial crime investigation, criminal intelligence tools, forensic accounting, etc.) put forward by the heads of units of the Service in line with identified needs.

1349. FCIS conducted professional advancement events for up to 378 employees annually between 2019-21. The training topics were related to the performance of criminal intelligence and pre-trial investigation actions, the use of special equipment, building of analytical capacity, disclosure of criminal acts in cyberspace, collection of evidence, etc. In 2019, 17 staff members of the FCIS also participated in trainings abroad, organised by CEPOL, OLAF, FATF, and VAF COS.

1350. Lithuanian police investigators have undergone training on the improvement of their specialised competencies in fields such as: investigation of assets (84 investigators participated in 2020 and 3 in 2021)

illicit enrichment and extended confiscation of assets (84 investigators participated in 2020 and 3 in 2021), and analysis and investigation of assets in cases of criminal intelligence (427 investigators participated in 2020 and 25 in 2021).

Principle 7: Predicate offences

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

1351. **Approach:** Lithuania first adopted an “all crimes” approach to money laundering in 1994. Since 2003, the Criminal Code stipulates that it is an offence to launder the proceeds of any offence, including tax crimes. Persons may be charged and convicted of money laundering regardless of whether a person has been charged or convicted of a predicate offence or whether the predicate offence was committed in a foreign jurisdiction (CC, articles 7 and 216).⁶

1352. **Enforcement of money laundering predicated on tax crimes:** Lithuania notes that since the adoption of the “all-crimes” approach, cross-border co-operation and reporting of suspicious activities has been facilitated, as portrayed in the example below.

Box 31.3. Example of successful cross-border co-operation regarding money laundering: Lithuania

In 2016, the Court of Appeal of the Republic of Lithuania handed down a decision in a cross-border case of money laundering. A US company “A” had transferred USD 38 000 to the bank account of a company “D” operating in Lithuania. The predicate offence was fraud; however, tax crime was used to predict the criminal origin of the assets.

A representative of the foreign company “A” in a statement submitted to the police of the Netherlands pointed out that an unidentified person had obtained the e-mail address of the director of the company “A”. That person sent an e-mail to the foreign account manager of the company “A” requesting money and later phoned that manager, introducing himself as the director of the company and confirming the need for funds. Thus, the amount of USD 38 000 was illegally transferred from “A”s bank account at the bank “V”, operating in the Netherlands, to the bank account of the Lithuanian company “D”. The company itself had never given permission to transfer the money.

The Court of Appeal stated that the circumstances of an unidentified person pretending to be the director of company “A” gave instructions to transfer the money to company “D”, indicated the criminal nature of the transferred money. It was identified that a shareholder of company “D”, who had previously been convicted of money laundering, had been in contact with other persons to obtain the USD 38 000. This shareholder had asked the director of company “D”, who had also previously been convicted of money laundering, to send him the relevant data of the company “D”, including the swift code and bank account number.

There wasn’t any reasonable doubt that the information, which the shareholder had obtained from the director of company “D” was submitted to unidentified persons who ensured that the illegal transfer would be made.

It was therefore not necessary to identify the persons, who possibly committed the crime related to the illegal transfer of money from the US company “A” to the Lithuanian company “D” to be able to convict the shareholder and director of company “D” of money laundering.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

1353. Lithuania notes that STI, law enforcement authorities, and the public prosecution service have signed several agreements regarding inter-agency co-operation in tax crime investigations. The national framework allows tax auditors to proactively exchange information with other state authorities. Article 30 of the Law on Tax Administration establishes that tax auditors should co-operate with other state or municipal institutions, exchange information, and conduct joint inspections with other authorities.

1354. When a tax auditor, during a tax audit, establishes that a criminal act or any other offence, may have taken place, it must inform the relevant law enforcement authority or controlling agency, such as the FCIS, LCPB, prosecutor's offices, or the LCA. The relevant law enforcement authority then either initiates a pre-trial investigation or declines the commencement of a pre-trial investigation. The tax authority is informed about the decision made by the law enforcement authority and may appeal the decision of the law enforcement authority to the prosecutor.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

1355. The below table shows the sharing of information related to tax crime and other financial crime between agencies.

Table 31.8. Models for sharing information related to tax crime and other financial crime

	Authority receiving information						
	Tax administration for civil tax assessments	Agencies investigating tax crimes (FCIS)	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority (LCPB)
Tax administration		DSS, MSS, Direct Access	Direct Access ^(a) / MSS	Direct Access/ MSS	Direct Access/ MSS	MSS ^(b)	Direct Access/ MSS
Agencies investigating tax crimes (FCIS)	DSS, MSS		DSS	DSS	DSS	DSS	DSS
Customs administration	Direct Access/ MSS	DSS, Direct Access (customs database of customs declarations)		DSS, Direct access to Customs Number Plates Recognition System	DSS, Direct access to Customs Number Plates Recognition System, Cash declaration data	DSS, Direct access to Customs Import declarations	On request
Police or public prosecutor investigating non-tax offences	Partially direct/On request	DSS	Direct Access, DSS On request		On request	On request	On request ^(c)

Financial Intelligence Unit	MSS	DSS	MSS, DSS	On request		MSS	On request
Corruption investigation authority	DSS	DSS	MSS, DSS	On request	MSS		On request
Asset Recovery Authority (LCPB)	Partially direct/On request	On request	On request		On request	On request	
Financial regulator	On request	DSS	On Request	On request	MSS	On request	On request

(a) The customs administration has direct access to information held by the STI concerning bank accounts in Lithuania, tobacco and alcohol products sold, business licenses granted, permanent establishments of foreign companies and information required for risk assessment purposes, direct access to electronic way-bill subsystem (i.VAZ). The STI also provides information spontaneously which concerns possible violations under the competency of Customs. The customs administration may request information concerning possible tax violations and administrative liabilities of taxpayers.

(b) The Special Investigation Service has direct access to information held by the tax administration concerning natural or legal persons to whom administrative penalties have been applied for committing administrative violations, information concerning completed control actions, information concerning bank accounts in Lithuania and information provided in the assets and income declarations of residents of Lithuania. Other information must be provided spontaneously by the tax administration.

(c) Asset recovery are shared between the Prosecutor General's Office and the Lithuanian Criminal Police Bureau.

1356. The below table shows the availability of enhanced forms of co-operation in combatting tax crimes.

Table 31.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	The FCIS, the LCA, the SBGS and the LCPB signed a co-operation agreement committing them to exchanging information on preventing, detecting and investigating crimes, and other co-ordination of actions at national and regional levels.
Disclosure of foreign trusts	The STI discloses the existence of foreign trusts with other governmental agencies.
Joint operations and taskforces	FCIS often engages STI to carry out pre-trial investigation actions and render methodological guidance. They also submit conclusions of pre-trial investigations related to the assessment of damage to the budget (in the form of unpaid taxes). While carrying out broad-scale operations, a close co-operation with police units is also maintained.
Parallel investigations	Parallel civil and criminal investigations in tax cases are allowed by Lithuanian case law.
Joint intelligence centres	STI and FCIS and other state institutions co-operation.
Secondments and co-location of staff	This practice has been launched in the FCIS in response to the need for employees who specialise in a particular field. For example, in 2018 two staff members of the FCIS were placed at the Bank of Lithuania for over six months where they acquired the necessary qualifications for achieving the objectives of the FCIS. According to FCIS and STI co-operation rules, the law enforcement authority can appoint employees of the tax authority to investigate a person's or company's economic activity and to provide a specialist's conclusion. This way the tax authority is involved in pre-trial investigation as a participant of the criminal proceedings, namely as a specialist.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Pursuant to the provisions of the Law on Personal Income Tax, the general resident's benefit received in money or in kind is subject to income tax. The taxation of resident income is not linked to the circumstances of the legality of the income, therefore, the income received from criminal activities (including bribes) is also the subject to income tax. The STI shall calculate taxes only in cases where the statute of limitations for tax calculation established by the Law on Tax Administration has not expired (i.e. personal income tax shall be calculated or recalculated for current and five past years). However, if it is established that the court has passed a judgment on a criminal case by which a sum of money corresponding to taxpayer's unpaid taxes has been confiscated, the STI will not calculate the same amount of taxes in the tax case by administrative decision (in order not to file an identical lawsuit). Currently, there is no unambiguous judicial practice regarding the justification of taxing confiscated funds with personal income tax.
Multi-agency training	Trainings are commonly carried out with other pre-trial investigation institutions (i.e. the LCPB, the SBGS), as well as the Lithuania Prosecutor's Office. Topics of the trainings are most often associated with the performance of criminal intelligence or pre-trial investigation actions, use of restrictive measures, topicalities of criminal law, etc. The FCIS also organises trainings in the field of money laundering and protection of the financial interests of the EU for employees of other institutions, organisations, and businesses.

Principle 9: International co-operation

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.

1357. **Legal basis:** Lithuania may exchange tax information with foreign tax authorities in relation to criminal tax matters pursuant to bi-lateral and multi-lateral agreements, or domestic legislation. Lithuania has tax exchange of information relationships with over 55 jurisdictions through bi-lateral tax treaties and Tax Information Exchange Agreements and is a member of the Convention on Mutual Administrative Assistance in Tax Matters (MLAT), which it joined in 2014. FCIS also has governmental agreements with 13 countries, inter-agency agreements with 8 countries, and MOUs (between FIUs) with 17 countries. Information provided to foreign tax authorities for the assessment of taxes may also be used for other purposes if reciprocity is ensured and there is no conflict with international obligations.

1358. Lithuania is also a party to bilateral treaties on mutual legal assistance (MLA) in criminal matters with 12 countries as part of an agreement with the EU, Japan, and the United States.

1359. **Competent authorities:** STI is the competent authority for incoming and outgoing requests for administrative co-operation in tax matters. The PGO and the Ministry of Justice are Lithuania's central authorities for incoming and outgoing MLA requests in criminal matters, including tax matters. The PGO is responsible at the pre-trial stage and the Ministry of Justice of the Republic of Lithuania at the trial stage. These central authorities have separate document management systems.

1360. MLA in criminal cases in Lithuania is carried out in accordance with the provisions of the CPC and ratified international agreements (CPC, art. 66). The international legal instruments, pursuant to which Lithuania provides MLA and grants extradition may be divided into several categories: 1) conventions ratified by Lithuania (e.g. agreements of the Council of Europe, United Nations), 2) bilateral agreements, and 3) EU legal acts.

1361. In addition to MLA, the PGO can spontaneously exchange information with foreign authorities in criminal tax matters (CPC, art. 66-67). Lithuania notes that it on average takes one to three months to receive a response when it submits requests for MLA.

1362. The below table shows the number of incoming and outgoing MLA requests and European Investigation Orders during the period 2017-22.

Table 31.10. Incoming and outgoing MLA requests and European Investigation Orders during the period 2017-19

	2017	2018	2019
Outgoing MLAs	640	242	238
Incoming MLAs	744	386	367
Outgoing European Investigation Orders ^(a)	180	517	561
Incoming European Investigation Orders	105	607	1 023

(a) Directive 2014/41/EU, which replaced MLAs with EU Member States applying this legal instrument, entered into force in Lithuania on 15 June 2017.

Principle 10: Fundamental rights of a suspect or accused person

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

1363. Lithuania provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These are enshrined in several international human rights treaties to which Lithuania is a Party, as well as in the Constitution of the Republic of Lithuania.

1364. The below table details the rights of persons suspected or accused of having committed tax crimes in Lithuania. These rights are all stipulated in article 44 paragraph 7 of the CPC (“Protection of human rights in the criminal procedure”) and must be granted from the moment of detention.

Table 31.11. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No
presumption of innocence	Yes
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes
remain silent	Yes
access and consult a lawyer and/or entitlement to free legal advice	Yes
interpretation and translation	Yes
be advised of the particulars of what one is accused of	Yes
access documents and case material, also known as a right to full disclosure	Yes
a speedy trial	Yes
protection from ne bis in idem (Double Jeopardy)	Yes

Highlights

Successful practices

- Development and implementation of a coordinated national strategy for combatting the shadow economy, including specific tax crime measures and threat assessment.
- Enhanced measures to support inter-agency co-operation between tax and law enforcement authorities at the regional level, including the establishment of a Risk Analysis Centre (RAC) and the Joint Operation Centres (JOC) designed to increase co-operation, information exchange, and analysis of information on violations of tax laws and other financial crimes.
- Comprehensive conviction and non-conviction-based asset recovery regimes.
- Annual training tailored to the needs of tax crime investigators.

Notes

¹ [VAT gap in the EU - Publications Office of the EU \(europa.eu\)](https://ec.europa.eu/eu-justice/eu-justice-portal/en/vat-gap-in-the-eu).

² The Commission itself is composed of the representatives of the following institutions: the Office of the Prime Minister, the Prosecutor General's Office, the Ministries of Finance, Justice, Environment, Social Security and Labour, Health, Transport and Communications, Economy and Innovation, Agriculture, and the Interior, the National Courts Administration and the Special Investigation Service.

³ <https://www.vmi.lt/evmi/lvat-sprendimu-apzvalga?inheritRedirect=true>

⁴ www.fntt.lt

⁵ See Rome Report, Chapter 5 – Country Information – Lithuania. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm>.

⁶ The Recommendations on the Legalization of Property Obtained in a Criminal Way approved by the Prosecutor General of the Republic of Lithuania state that Article 216 of the CC is applied regardless of whether a person has been charged or convicted of a predicate offence.

32 Luxembourg (NEW)

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1365. In Luxembourg, offences related to income tax are set out in the General Tax Law (Abgabenordnung, “AO”), while the Law on Value Added Tax (“VAT Law”) contains VAT related offences. Offences under both statutes require criminal intent and as such are applied in accordance with the general principles set out in the Penal Code (“CP”). The below table details the offences and their minimum and maximum sanctions.

Table 32.1. Income tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Aggravated tax evasion (AO, 396(5))	One month imprisonment and fine of EUR 25 000	Three years' imprisonment and fine representing six times the amount of the undue tax benefits or reduction.
Tax fraud (AO, 396(6))	One month imprisonment and fine of EUR 25 000	Five years' imprisonment and fine representing ten times the amount of the undue tax benefits or reduction.
Aggravated tax evasion (VAT Law, 80(1))	One month imprisonment and fine of EUR 25 000	Three years' imprisonment and fine representing six times the amount of the undue tax benefits or reduction.
Tax fraud (VAT Law, Art. 80(1))	One month imprisonment and fine of EUR 25 000	Five years' imprisonment and fine representing ten times the amount of the undue tax benefits or reduction.

1366. **Statute of limitations:** The statute of limitations for tax crimes in Luxembourg is five years. The limitation period starts with the final assessment of the evaded tax, if necessary, by a decision of a judge (see *inter alia* §419 AO for direct taxes or art. 80 of the VAT Law). In case of pending proceedings before the administrative courts, the statute of limitations is suspended and only runs from a final decision of the administrative courts (§469 AO).

1367. **Complicity:** Luxembourg has a criminal regime for individuals who aid, abet, facilitate, or enable the commission of a tax offence (CP, art. 67). Individuals subject to these provisions shall be sentenced to no more than two thirds of the sanction of the primary offender (CP, art. 69 alinéa 2). In addition, the co-offender (CP, art. 66) can be convicted to the same sentence than the primary offender.

1368. **Attempt and conspiracy:** Attempt of aggravated tax evasion and tax fraud are punishable by the same penalties as the primary offences.

1369. **Professional enablers:** Luxembourg law does not have a specific penalty regime for professionals who enable tax crimes (e.g. tax advisers who help their client to commit tax evasion). However, the general laws on complicity apply, meaning that any person who co-operates or aids an offence (to the extent that the offence would not have occurred without their assistance) is punished as a primary offender. In addition, under certain conditions, professional enablers may be prosecuted for money laundering. Consequently, tax advisers and other professional enablers who help their client commit tax crimes, may under certain circumstances, be punished as perpetrators of the crime.

1370. **Territorial and nationality jurisdiction:** Luxembourg has jurisdiction over all crimes committed wholly or partly in Luxembourg and can exercise extraterritorial jurisdiction over its citizens and foreigners for certain offences. For example, Luxembourg can prosecute money laundering of the proceeds of tax crime that is committed outside its territory.

1371. **Liability of legal persons:** Legal persons can be held liable for criminal offences in Luxembourg. Articles 34 to 38 of the CP set out that legal persons are subject to monetary fines between EUR 500 and EUR 750 000, confiscations, exclusion from public tenders, and dissolution of the legal entity. Criminal liability for legal persons does not exclude personal responsibility for the individual who committed the offence.

Enforcement of tax crime

1372. The below table shows the enforcement of tax crimes in Luxembourg in tax years ending 2015-22.

Table 32.2. Enforcement of tax crimes in tax years ending 2015-22

Year	New notices*		Prosecution**		Convictions****	Acquittals
	Number of cases	Number of persons	Number of cases	Number of persons***	Number of persons	Number of persons
2015	16	39	4	4	3	0
2016	20	29	5	8	12	0
2017	11	24	2	2	11	0
2018	71	201	7	22	2	0
2019	60	116	12	18	7	0
2020	67	80	7	8	10	0
2021	135	197	19	25	16	2
2022	115	156	21	24	22	11

Note:

*The year indicated corresponds to the year in which the case was started.

**The year indicated corresponds to the year of the *citation directe/renvoi*.

***Persons concerned are all persons who have actually been linked to the predicate offence.

****The year indicated corresponds to the year of the final conviction (*date de jugement/arrêt*).

1373. The below table lists the type and number of sanctions imposed in Luxembourg in tax years ending 2015-22.

Table 32.3. List of other sanctions* imposed in tax years ending 2015-22

Year	Fines	Prison sentences**
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2015	3	1
2016	12	0
2017	11	0
2018	2	0
2019	7	2
2020	10	4
2021	16	1
2022	21	4

Note:

* Multiple sanctions may be possible for one conviction.

** All prison sentences are suspended prison sentences (*sursis*) and under three years.

1374. **Availability of tax deductions for civil and criminal sanctions:** Art. 12(4) of the amended law of 4th December 1967 on income tax expressly prohibits tax deductions or corrections for civil or criminal sanctions imposed in tax crime cases such as fines, restitution orders, confiscation, reparation payments, etc.

1375. **Availability of settlements:** In 2015, Luxembourg amended the Penal Code to introduce the possibility to settle criminal cases by special agreements called “*jugement sur accord*”. These settlement agreements may also apply to tax crimes. This new procedure allows a quick criminal response to offences whose commission is recognised by their authors. This procedure has the advantage of expediting criminal proceedings where an offender pleads guilty. In such cases, a criminal record occurs (inscription au casier judiciaire).

1376. **Tax gap:** Luxembourg does not have any figures available relating to its estimated tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1377. Luxembourg does not have a dedicated national strategy for combatting tax crime. However, it notes that it has strong legal and operational frameworks for combatting tax crimes, including criminal offences with dissuasive fines, strong frameworks for domestic and international co-operation between judicial and administrative authorities, and enough human resources to assure the efficient enforcement of tax crimes.

1378. **Threat assessment:** The threats related to Tax Crime were assessed as part of the National Risk Assessment on Money Laundering and Terrorist Financing, which is conducted every two years. The last national risk assessment was published in September 2020.¹

1379. More recently, a vertical risk assessment of money laundering and terrorist financing regarding legal persons and legal arrangements was published in February 2022 and a vertical terrorist financing risk assessment was published in May 2022. The next National Risk Assessment will be published in the last quarter of 2023.

1380. **Communications strategy:** Bound by tax secrecy, Luxembourg’s tax authorities are prohibited from making public communications regarding tax crime prosecutions. However, Luxembourg’s public press and media regularly report on public tax trials.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1381. The below table lists the investigative powers of the tax crime investigation authorities of Luxembourg.

Table 32.4. Investigative powers of tax crime investigation authorities (Economic and Financial Department of the Grand-Duchy Police acting on behalf of the State Prosecutor or Investigative Judge)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power
Conduct covert surveillance	Full direct power
Conduct undercover operations	Full direct power
Search and seize computer hardware, software and electronic storage media	Full direct power
Arrest	Full direct power

1382. **Legal professional privilege:** In Luxembourg, legal professional privilege generally applies to all communications between a lawyer and their client. On July 13, 2021, the Administrative Court delivered seven judgments relating to tax audits out by the Luxembourg Inland Revenue (ACD) following the Panama Papers leaks. These judgments, more specifically, examined the right of the ACD to obtain information on the beneficial owners of Panamanian corporate structures, for which lawyers based in Luxembourg acted as intermediaries. The court overruled first instance judgments, judging that, in certain cases, governed by the General Tax Law (AO), legal professional privilege does not apply where lawyers are solicited at third parties in tax matters.

Principle 4: Freezing, seizing, and confiscating assets

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

1383. **Legal basis:** Luxembourg's Penal Code sets out a conviction-based confiscation regime.

1384. **Freezing orders:** Luxembourg law allows for the freezing of assets, including rapid freezing orders (i.e. within 24-48 hours).

1385. The Financial Intelligence Unit (CRF) has the power to freeze assets suspected to be related to money laundering, an associated predicate offence, or terrorist financing (article 5 (3) of the 2004 AML/CFT Law). According to the 2018 CRF Law, the CRF can freeze assets for an indefinite period (with a possibility to appeal against the instruction). In practice, the CRF maintains the freezing of funds while allowing national, or foreign judicial authorities, by way of a mutual legal assistance request, to order their seizure.

1386. **Seizing orders:** Article 66 of the Code of Criminal Procedure (CPP) provides for the seizure of any type of object or property useful for the manifestation of the truth or for future confiscation in a judicial inquiry led by an investigative judge. Specifically, this article provides for seizures of financial assets (e.g.

bank accounts, insurance policies), as it enables the seizure of assets and underlying financial documentation at the same time. This procedure is largely used for asset recovery.

1387. In addition, the CPP (art. 31 § 3 and art. 33) allows seizures in *flagrante delicto* cases by the State Prosecutor. *Flagrante delicto* means that a crime or misdemeanour is happening or has just happened or when, within a short period of time from the action (i.e. a period going up to 24 hours, according to Jurisprudence), the suspect is being pursued or is found in possession of objects, or presents traces or evidence, suggesting that he has participated in the commission of the crime or the misdemeanour. In *flagrante delicto* cases, the State Prosecutor can seize on his own initiative, any property, whether proceeds, substituted proceeds, instrumentalities, corresponding value or illicit enrichment.

1388. Outside *flagrante delicto* cases, the State Prosecutor has no coercive powers of their own. They can still seize property, but only with the consent of the concerned person. Unless the property is held by a third party, who is neither suspect nor liable to professional secrecy, this article is in practice seldom used for asset recovery (see article 47 of the CPP, which applies to seizures within a preliminary investigation).

1389. **Confiscation orders:** Articles 31 and 32 of the Penal Code (as amended by the 2018 Confiscation Regime Law) govern special confiscation in Luxembourg. Former article 32-1, which specifically referred to confiscation related to ML, TF and terrorism, has now been merged with the general framework set out under article 31 of the Penal Code.

1390. Articles 31, paragraph 2, states that special confiscation applies to:

1. property of every kind, whether corporeal or incorporeal, movable or immovable, as well as legal acts or documents evidencing title to or interest in such property, property forming the object or the direct or indirect proceeds of an offence or constituting a financial benefit of any kind derived from the offence, including the income from that property;
2. property that has been used or intended to be used to commit the offence, when the property belongs to the convicted person or where he has free use of that property taking into account the rights of the bona fide owner;
3. property that has been substituted for that mentioned in 1) above, including the income from the substitute property;
4. property belonging to the convicted person, the monetary value of which corresponds to that of the property mentioned in 1) above, if it cannot be traced for purposes of confiscation;
5. property of every kind, whether corporeal or incorporeal, movable or immovable, belonging to the convicted person or, subject to the rights of the bona fide owner, of which he has free disposal, when neither the convicted person nor the owner, being given the chance to provide explanations about the property to be confiscated, were able to justify the origin, where it is a crime or a misdemeanour punishable by at least four years of imprisonment and having generated a direct or indirect proceed.

1391. The second and fifth points refer to property held by third parties but where the convicted person has the free use, considering the rights of the bona fide owner.

1392. Luxembourg has measures in place that allow the confiscation of property of corresponding value, whether held by criminal defendants or by third parties. Article 31, paragraph 2, 4th point, provides for the confiscation of property of corresponding value (“property belonging to the convicted person, the monetary value of which corresponds to that of the property mentioned in 1° above, if it cannot be traced for purposes of confiscation”)

1393. **Foreign freezing, seizure, and confiscation orders:** In Luxembourg, foreign freezing orders are executed pursuant to the provisions of the Law dated 23 December 2022 on the mutual recognition of freezing orders and confiscation orders. Luxembourg allows confiscation of property based on a final

decision rendered by a foreign jurisdiction. Before being executed, the foreign confiscation decision must be declared enforceable in Luxembourg through an *exequatur* procedure (CPP, articles 659 to 668). The above-mentioned law dated 23 December 2022 introduced a new procedure for the recognition of foreign confiscation orders without *exequatur* procedure for confiscation certificates issued by the European Union Member States, with the exception of Denmark and Ireland.

1394. **Agency/unit responsible for asset recovery:** Law of 22 June 2022 on the management and recovery of seized or confiscated assets created an “asset recovery office” (*Bureau de Recouvrement des Avoirs* or “BRA”) attached to the public prosecutor. As specified in article 74-4 (1) of the modified law dated 7 March 1980 on judiciary organisation, BRA’s mission is to:

- within the framework of international co-operation, detect and identify of property referred to in Article 31, paragraph 2, of the Criminal Code for the purpose of its seizure or confiscation;
- within the framework of a criminal investigation or inquiry, the detection and identification of property referred to in Article 31(2) of the Criminal Code for the purposes of its seizure or confiscation;
- within the framework of the post-sentence asset investigation, detect and trace property belonging to the convicted person.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1395. Tax crime investigations in Luxembourg are conducted by the Public Prosecutor or by an investigative judge depending on the procedure. The investigation is usually delegated to the Economic and Financial Crime Department of the Grand-Ducal Police – Judicial Police Service.

1396. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Luxembourg’s organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 32.5. Agencies & other bodies responsible for enforcing other financial crimes in Luxembourg

Agency	Role with respect to financial crime
Luxembourg Direct Tax Administration (ACD) and Indirect Tax Administration (AED)	Both authorities are required to suspicions of tax crimes to the public prosecutor
Customs and Excise Administration (ADA)	Responsible for implementing national and European cash controls for the prevention and detection of financial offences
Economic and Financial Crime Department of the Judiciary Police	Law enforcement agency specialised in the fight against economic and financial crime, including investigation of money laundering and tax offences
Public Prosecutor	Responsible for public prosecutions and enforcing the application of Luxembourg law
Financial Intelligence Unit	Luxembourg’s FIU is of a judicial nature and has nationwide powers to combat offences related to money laundering and terrorism financing. The Financial Intelligence Unit (FIU) is responsible for receiving and analysing suspicious transaction reports and other information concerning suspicious facts likely to relate to money laundering, associated predicate offences or terrorist financing.

Financial Sector Supervisory Commission (CSSF)	Prudential supervisory board of the financial sector in Luxembourg
Insurances Commission (CAA)	Supervisory board of the insurances sector in Luxembourg

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1397. Luxembourg does not have any figures available regarding the amount of financial or human resources dedicated to combatting tax and other financial crimes.

Table 32.6. Databases / sources of information available for tax audits conducted by ACD and AED

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	On request ¹
Car registry	Direct Access
Boat registry	Access on request
Register of beneficial owners	Direct Access
Customs databases	Access on request
Police databases	No Access
Judicial databases	Direct Access
Suspicious transaction report databases	No Access (however, the CRF spontaneously communicates reports)
Domestic bank account databases	No Access

Training for tax crime investigators

1398. ACD, tax auditors have to take part in training sessions for on-site control (“contrôle sur place”), which represent up to 80 hours in the initial training modules for new auditors.

1399. Heads of the local tax offices (“Bureaux d’imposition”) regularly take part in mandatory AML/CFT trainings. In this context, an external training session held by senior CRF officials has been organised during the year 2017 by the ACD to further increase awareness of the local tax offices and their staff with regard to the Money Laundering (ML)/Financing of Terrorism (FT) risk and their obligation to file suspicion transaction reports (STRs) to the FIU as well as criminal complaints to the prosecutor’s office.

1400. The ACD held also internal training sessions for all the local tax offices in order to give practical advice on ML/FT detection, filing STRs and criminal tax complaints. An internal support unit has also been put in place at the level of the legal division in order to provide legal backup and analysis capacities to the local tax offices.

1401. The AED also provides mandatory trainings (as initial formation and during the career) to all the staff. This includes training on VAT control/investigation (75-150 hours) and a detailed AML/CFT course (24-40 hours) for the tax inspectors as well as for the agents from other departments/services.

1402. In October 2019, the AED’s anti-fraud unit held VAT training (presenting also different VAT fraud schemes) to the prosecutors, police investigators and FIU analysts. In April 2021, a VAT training was given by the AED to the FIU analysts.

Principle 7: Predicate offences

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

1403. **Approach:** Luxembourg added tax crimes as a predicate offence to money laundering in 2016.³ It uses a combination of both the “threshold” approach and the “list” approach, whereby a list of specific offences (including tax crimes) and “*any other offence punishable of imprisonment for more than six months*” are deemed predicate offences for the purposes of money laundering (PC, art. 506-1).

1404. **Enforcement of money laundering predicated on tax crimes:** Luxembourg notes that since the new legislation was adopted, co-operation between national authorities was reinforced, thanks to a series of new provisions requiring direct co-operation between national tax authorities, FIU and judicial authorities.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1405. Article 16 of the Law of 19 December 2008, regarding inter-administrative and judicial co-operation, provides for a legal obligation of spontaneous reporting by the tax administrations of information and documents to the State Prosecutor in case of suspicions of a crime or offense, as well as communication, upon request of the State Prosecutors and the FIU, of useful information within the framework of criminal proceedings or analysis of money laundering or financing of terrorism.

1406. Luxembourg’s two tax administrations, Luxembourg Inland Revenue (ACD) and the Registration Duties, Estates and VAT Authority (AED) have data sharing protocols in place with key agencies, namely other national tax authorities, and FIU. These information sharing powers are set out in legislation⁴ and include the obligation to report suspected offences to prosecution authorities. In addition, all staff of the ACD, AED and ADA must inform the FIU of any knowledge of, suspicion of, or of any good reason to be suspicious of ML/TF. This includes reporting of STRs to the FIU, Luxembourg’s primary intelligence and detection agency. The ACD signed a Memorandum of Understanding with the FIU in 2020 related to co-operation. The AED also signed a Memorandum with the FIU on 30 April 2020.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1407. The below tables show the models for sharing information related to tax crimes and other financial crimes in Luxembourg, and the availability of enhanced forms of co-operation in combatting tax crimes.

Table 32.7. Models for sharing of information related to tax crime and other financial crime

		Authority receiving information			
		Tax administrations (ACD and AED)	Customs administration	State Prosecutor or investigative judge	Financial Intelligence Unit
Authority providing information	Tax administrations (ACD and AED)	DSS ¹ and on request ²	DSS and on request ³	MSS and on request ⁴	MSS and on request ⁴
	Customs administration	DSS ⁵		MSS and on request	MSS and on request
	State Prosecutor or investigative judge	DSS ⁶	DSS and on request ⁷		Direct access ⁸ and on request ⁹
	Financial Intelligence Unit	DSS ¹⁰	DSS	DSS	
	Financial regulator	On request ¹¹	No access	MSS and on request	MSS and on request

Note:

DSS = Discretionary Spontaneous Sharing. MSS = Mandatory spontaneous sharing (mandatory reporting of suspicions of criminal offences to the State Prosecutor as well as reporting of suspicious transactions or activities to the FIU).

** The Asset Recovery Authority is attached to the Public Prosecutor.

1. The exchange of information framework between The ACD (direct tax administration) and the AED (indirect tax administration) and ADA (customs administration) is set out by law dated 19 December 2008 regarding inter-administrative and judicial co-operation and the Grand Ducal Regulation 22 January 2009 on regarding inter-administrative co-operation between the ACD, AED and ADA.

2. Upon request, ACD and AED can mutually exchange relevant tax information and documents.

3. This concerns only the AED.

4. Upon request, the tax administrations must also forward to the judicial authorities and to the FIU any information, which may be useful in criminal proceedings.

5. The customs administration may share information concerning the detection or investigation of VAT offences.

6. Judicial authorities and the FIU, regularly pass on information and other data on tax offences.

7. The ADA may request the authorisation of the State Prosecutor for specific investigative measures.

8. To the judicial database.

9. In Luxembourg, the FIU is no longer part of the public prosecutor. There is a close co-ordination of activities and information sharing between the FIU and prosecutors.

10. Judicial authorities and the FIU, regularly pass on information and other data on tax offences.

11. Co-operation is currently foreseen between CSSF and AED only.

Table 32.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Direct Tax Administration, the Indirect Tax Administration and the Customs and Excise Administration regularly exchange information regarding tax matters, as required by law.
Disclosure of foreign trusts	No
Joint operations and taskforces	Yes: Regular common controls between the Service Anti-fraude (AED) and the Service Révision (ACD) of taxpayers; regular meetings between ACD, AED and ADA for specific cases
Parallel investigations	Yes: between ACD and AED or AED and ADA
Joint intelligence centres	Cellule de Renseignement financier (FIU) – the FIU is a joint intelligence centre as it works in connection with foreign FIU
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes: The principle of the non-deductibility of bribes was established in Luxembourg by the Act of 15 January 2001 approving the OECD Anti-Bribery Convention. The state prosecutor notifies the tax administration when a person is convicted of serious financial crime so they can determine whether to review a tax assessment.
Multi-agency training	Tax officials get training courses on bribery detection, which are organised by the National Institute of Public Administration (INAP) for public officials.

Principle 9: International co-operation

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.

Legal basis

1408. Luxembourg is a party to a range of multilateral agreements on mutual legal assistance (“MLA”), which are applicable to international co-operation in tax matters. These instruments include the 1959 European Convention on Mutual Assistance in Criminal Matters the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 17 March 1978 and the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 16 October 2001.

1409. A reservation was applicable from 31 December 2000 until 31 December 2016, whereby Luxembourg provided MLA in fiscal matters, if the criminal fiscal offence constituted a tax fraud within the meaning of paragraph 396, subparagraph 5, of the 1931 General Tax Law (Document L03) or of paragraph 29, subparagraph 1, of the 1948 Registration and Succession Rights Law. This reservation was abolished by the 2017 Tax Reform Law.

1410. Since the entry into force of the law dated 1 August 2018 regarding the European Investigation Order in criminal matters, Member states of the European Union may issue European Investigative Order to have investigative measures to gather evidence in criminal matters carried out in another EU country based on mutual recognition.

1411. Luxembourg’s current mutual legal assistance framework does not differentiate between common law offenses and tax offenses. Therefore, tax offenses that triggered the international assistance request do not hinder its execution.

1412. In the absence of an international convention or bilateral treaty, the law of 8 August 2000 on international mutual legal assistance in criminal matters set out the general framework for MLA in criminal matters. It applies to requests for mutual legal assistance in criminal matters which seek to have objects, documents, funds and property of any kind seized in the Grand Duchy of Luxembourg, communication of information or documents ordered in accordance with articles 66-2 to 66-4 of the CPP a search or any other taking of evidence of a similar degree of constraint ordered. Only the investigative judge has the power to order coercive measures. Mutual legal assistance for coercive measures is referred to as MLA or “major assistance” (*“grande entraide”*). The State Prosecutor has no coercive powers, except in cases of *flagrante delicto* (please refer to comments under criterion 4.2). However, he or she can provide any non-coercive assistance (including the surveillance of suspects and undercover operations), referred to as “ancillary mutual legal assistance” (*“petite entraide”*).

1413. On an administrative level, Luxembourg’s exchange of tax information framework provides foreign tax administrations with the necessary information to proceed to tax adjustments and allows thus the foreign tax crime investigations agencies to prosecute tax crimes. Luxembourg may exchange with foreign authorities in relation to criminal tax matters pursuant to bi-lateral and multi-lateral agreements, also unilaterally in the absence of a treaty. To date, Luxembourg has tax exchange of information relationships with 84 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements. Luxembourg is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows its tax administration exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1414. **International co-operation in practice:** No statistics are available on use of the above legal instruments in tax crime investigations/cases are available.

1415. **Enhanced form of international co-operation:** Luxembourg declared itself willing to receive spontaneous exchanges on substantial activities in “no or only nominal tax jurisdictions” (NTJ). In addition, Luxembourg is a member of the JITSIC network (“Joint International Tax Shelter Information & Collaboration”).

Principle 10: Fundamental rights of a suspect or accused person

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

1416. Luxembourg provides persons accused or suspected of having committed a criminal offence, including all tax crimes, with a full range of procedural and fundamental rights. These fundamental rights are enshrined in several international human rights treaties ratified by Luxembourg such as the European Convention on Human Rights and in domestic legislation, most notably in the Constitution of the Grand-Duchy of Luxembourg as well as in the CCP.

1417. A civil tax matter becomes a criminal investigation in Luxembourg when a civil auditor of any of the Luxembourg tax agencies comes across a suspected crime, as they must then report it to the Public Prosecution Service who is able to start an investigation.

Table 32.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	From the beginning of the investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From the beginning of the investigation
remain silent ¹	Yes	from being interviewed by police or investigative judge
access and consult a lawyer and/or entitlement to free legal advice ²	Yes	From the beginning of the investigation
interpretation and translation	Yes	From the beginning of the investigation
be advised of the particulars of what one is accused of	Yes	From the beginning of the investigation
access documents and case material, also known as a right to full disclosure	Yes	From before the first interview by the investigating judge
a reasonable time of proceedings	Yes	From the beginning of the investigation
protection from <i>ne bis in idem</i> (Double Jeopardy)	Yes	From the beginning of the investigation

Note:

1. Access to a lawyer at the beginning of an investigation is set out by article 3-6 CCP.

2. Reasonable time of proceedings is a procedural guarantee of the right to a fair trial enshrined in article 6 § 1 of the European Convention on Human Rights.

Highlights

Successful practices

- Strong inter-agency co-operation
- Good range of seizure and confiscation powers

Room for improvement:

- Luxembourg could benefit from the development of a national tax crime strategy

Notes

¹ <https://mj.gouvernement.lu/dam-assets/dossiers/blanchiment/en-nra-import-version-2982022.pdf>

² See Rome Report, Chapter 5 – Country Information – Luxembourg. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf

³ Tax Reform Law of 23 December 2016.

⁴ Loi du 24 décembre 2008 *concernant la coopération inter administrative entre les administrations fiscales*. Text as in force - Art. 16. (Complétée par la Loi du 23 décembre 2016 (Mém. A 274 du 27/12/2016 P.5139)).

33 Malaysia (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislations

1418. Malaysia's Income Tax Act of 1967 (ITA) sets out a range of different tax offences. These tax offences include criminal offences requiring criminal intent (i.e. *mens rea*); and strict liability offences that require no element of intention on the part of the offender and are subject to a defence of mistake of fact. Examples of tax offences that apply to income tax related offences are set out in the tables below, together with their minimum and maximum sanctions and their limitation period.

Table 33.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitation
Wilful evasion (ITA, s114).	Fine of MYR 1 000*	fine of MYR 20 000 or three years' imprisonment, or both; and special penalty of treble the amount undercharged of tax.	No limitation

Note:

* As of March 2023, the exchange rate was EUR 1 = MYR 4.81.

Table 33.2. Strict liability offences

Offence	Minimum Sanction	Maximum sanction	Statute of limitation
Incorrect return by omitting or understating any income or giving information affecting chargeability of tax (ITA, s113(1)).	Fine of MYR 1 000	Fine of MYR 10 000 and special penalty of double the amount of undercharged tax.	12 years
Failure to file returns of any two more years of assessment (ITA, s112(1A)).	Fine of MYR 1 000	Fine of MYR 20 000 or six months' imprisonment, or both; and special penalty of treble the tax charged.	No limitation

1419. **Statutes of limitations:** Prosecution can commence with no limitation for an offence under the ITA. Although, provision s121(1) of the ITA states that a prosecution for an offence under section 113, 115, 116 or 120 can only be commenced within the length of twelve years after the offence was committed. The latter possibility is therefore applicable to the strict liability offences listed in the table above.

1420. **Complicity:** In Malaysia, any person who aids, abets or incites another person to commit a tax offence under section 113, 114, 115, 116 or 118 shall be deemed to have committed the same offence, and shall be liable to the same penalty applied to the primary offender (ITA, s121(2)).

1421. **Professional enablers:** Any person who assists or advises in tax returns that result in an understatement of tax shall be criminally liable to a fine between MYR 2 000 and MYR 20 000, or to imprisonment for a term not exceeding three years, or to both, unless the adviser proves the assistance or advice was given with reasonable care (ITA, s114). Professional enablers are liable to primary liability (ITA, 114(1A)).

1422. **Territorial and nationality jurisdiction:** Malaysia has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Malaysia (Penal Code 1936 (PC), s2). Furthermore, Malaysia can prosecute Malaysian residents or citizens who commit a tax crime wholly outside of Malaysia if the alleged offences fulfil the conditions under section 127A Criminal Procedure Code 1935 (CPC).

1423. **Legal person liability:** Malaysia notes that it can prosecute legal persons for tax crimes (ITA, s2). It also mentions that liability for offences committed by a legal person shall lie jointly and severally with:

- (i) the managers, directors, secretary, and any other person exercising the foregoing functions over the person, in the case of a company (ITA, s75);
- (ii) the manager, treasurer, secretary and the members of its controlling authority, in the case of body of persons (ITA, s75);
- (iii) the compliance officer or partner of a limited liability partnership or trustee manager of a business trust (ITA, s75B).

Enforcement of tax crime

1424. The below table shows the enforcement of tax crimes in Malaysia in tax years ending 2018-21.

Table 33.3. Enforcement of tax crimes against natural persons in the tax years ending 2018-21

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals	Total amount of underlying tax evaded (counting on the basis of convictions for tax crimes)
2018	25	25	1	0	-	-	-
2019	56	56	3	0	-	-	-
2020	156	156	1	1	-	-	-
2021	243	243	12	12	6	-	-

1425. The below table shows the types of sanctions imposed in tax crime cases in Malaysia in tax years ending 2018-21.

Table 33.4. List of other sanctions imposed in tax years ending 2018-21

Sanction	Number of times imposed
>0 – 3 years' imprisonment	0
>3 – 5 years imprisonment	0
Fine	6
Home Detention	0

Community Work	0
Reparation	0
Post Detention Conditions/Supervision	0
Community Detention	0
Community Service	0

1426. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** Malaysia does not allow tax deductions or corrections for civil or criminal sanctions imposed in tax crime cases.

1427. **Availability of settlements:** The Director General of Inland Revenue (DGIR) may at any time before conviction arrange a settlement. The DGIR has the power to compound any offence committed by a person at any time before conviction, provided that the person pleads guilty in writing to the alleged offence (ITA, s124).

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

1428. **Tax crime strategy:** The Inland Revenue Board of Malaysia (IRBM) is responsible for devising Malaysia's strategy for responding to and fighting tax crimes. IRBM's Criminal Investigation Division, in particular, is responsible for devising as well as implementing the strategy, which centres around two key elements: strategic co-operation with IRBM's Intelligence Department, Criminal Investigation Division and Legal Department, and collaboration between IRBM and law enforcement agencies (LEAs), in terms of sharing information and joint operation exercise. The strategy is reviewed annually at conferences and meetings.

1429. Malaysia's tax crime strategy aims to increase tax compliance through its Awareness, Education & Services (AES) approach. The ultimate goal of the tax crime strategy is prosecuting malicious tax evaders and affirmative action on cases with socially strong ripple effects (e.g. failure to furnish tax returns, make incorrect tax returns by omitting or understating any income and wilful evasion).

1430. **Threat assessment:** Tax crime cases are selected by analysing information from internal and external sources. IRBM does not undertake a periodic assessment of systemic threats, but a specific threat assessment is completed for each case, and it is based on observations and findings accrued during the investigation process.

1431. However, tax compliance risks and threats related or resulted from tax crime investigation activities are registered via the Risk Management Information System (i-RIS) or the Tax Compliance Risk (TCR) profile. Registered TCRs are categorised under the common four pillars of tax compliance such as registration, lodgement, reporting and payment. Current risk mitigation action plans are reviewed to ascertain effectiveness and suggestions for new control measures. Business owners identify risks of the threat, set priority, and perform mitigation strategies on the case-specific threat. Meanwhile, the TCRM Division of the Integrity and Risk Management Department performs risk analysis from the TCR risk profile and monitors the outcome of the mitigation plans.

1432. **Communication strategy:** IRBM's Communication Division is responsible for disseminating information regarding successful prosecutions via mainstream media, whether online or in print.

Box 33.1. Example of successful tax crime and communication strategy: Malaysia

In November 2019, The Royal Malaysia Police (RMP) and the Department of Wildlife and National Parks Peninsular Malaysia (DWNP) coordinated a search operation, which included various LEAs, to raid a business premises of a suspect. The owner of the business premises was suspected of being involved in wildlife trafficking and other crimes.

During the search operation the DWNP seized various items which were related to protected wildlife smuggling and prohibited substance for trading. Furthermore, the suspect used bank accounts to receive and transfer proceeds to other involved parties. The suspect also gathered proceeds from illegal trading of wildlife and exotic animals in bank accounts. The RMP ordered to freeze bank accounts that were suspected to be used to keep the illegal proceeds. At the same time, IRBM gathered evidence indicating the suspect failed to file returns for the years 2017, 2018 and 2019 (ITA, s112(3)).

The suspect was successfully prosecuted due to sufficient evidence, in the co-operating LEAs gathered during their research. This case was highly published in national media. The suspect was charged under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATPUAA) for the number of serious crimes committed.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1433. The below table shows the investigative powers of the IRBM in tax crime investigations.

Table 33.5. Investigative powers of tax crime investigation agency (IRBM)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power – Investigation Department and State Investigation Services
Obtain documents from third parties	Full direct power – Investigation Department and State Investigation Services
Interview	Full direct power – Investigation Department and State Investigation Services
Inquiry powers (e.g. power of coercion)	Full direct power – Investigation Department and State Investigation Services
Intercept mail and telecommunications	No power
Conduct covert surveillance	No power
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power – Investigation Department and State Investigation Services
Arrest	No power

Note:

Additional information: Malaysia's Tax Authority has identified that the powers to arrest or remand a person, conduct a body search, and power to freeze, seize and forfeit assets would help them in their daily duties.

1434. **Legal Professional Privilege:** Malaysia notes that it does not have a statutory definition of legal professional privilege. However, lawyers cannot be compelled to disclose legitimate communications,

whether oral or written, passing directly between him and his client. This privilege does not extend to communications made in furtherance of a fraud or a criminal act (Evidence Act 1950 (EA), s126). IRBM could discover such act if it confiscates written evidence of such criminal act upon investigation.

1435. In addition, there is a professional secrecy for accountants (By-laws of the Malaysian institute of accountants, art. ss114).

Principle 4: Freezing, seizing, and confiscating assets

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

1436. **Legal basis:** In 2001, Malaysia enacted the AMLATPUAA which allows LEAs to issue orders to freeze, seize and forfeit assets. This legislation only applies for money laundering offences. Under AMLATPUAA, an investigating officer may seize movable and immovable property if the investigating officer has valid reasons to suspect the property to be the subject matter or evidence relating to the commission of such offence, terrorist property, the proceeds of unlawful activity or the instrumentalist of an offence.

1437. **Freezing orders:** A LEA may issue an order to freeze any property from any person if an investigation regarding an unlawful activity has commenced against that person. Furthermore, the LEA needs to have reasonable grounds to suspect that a money laundering offence or a terrorism financing offence is or will be committed by that person or the LEA has reasonable grounds to suspect that the property is the proceed of an unlawful activity or the instrumentalist of an offence (AMLATPUAA, 44).

1438. An order to freeze property may be varied or revoked by the LEA that issued the order where an officer is satisfied that such property is not liable for seizure or on the application of the person named or described in the order (AMLATPUAA, 44A).

1439. **Seizing orders:** The investigating officer is empowered to seize any property that is in the possession, custody, or control of a financial institution until the seizure order is varied or revoked (AMLATPUAA, 50). The investigating officer does not have to meet a threshold for the seizure of properties. The investigating officer effecting a seizure for movable property is obliged to notify Bank Negara Malaysia, the Securities Commission, or the Labuan Financial Services Authority (AMLATPUAA, 50). The seizure of immovable property shall be effected by the issue of a Notice of Seizure by the Public Prosecutor (AMLATPUAA, 51).

1440. In addition, LEAs are empowered to seize businesses if they have reasons to believe that a business is affiliated to a financial or tax crime offence. The LEA may seize the business and the investigating officer effecting the seizure shall send a notice to the Public Prosecutor (AMLATPUAA, 52).

1441. A seizure order expires after twelve months from the date of the seizure order, or where there is a prior freezing, twelve months from the date of the freezing order if the person against whom the order was made has not been charged with an offence under the AMLATPUAA.

1442. **Forfeiture orders:** The court can forfeit properties if the offence is proved against the accused or when the offence is not proved against the accused, but the court is satisfied that the accused is not the true and lawful owner of the property, and no other person is entitled to the property (AMLATPUAA, 55).

1443. Moreover, the Public Prosecutor may, before the expiration of twelve months from the date of seizure, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is the subject-matter or evidence relating to the commission of such offence, terrorist property, the proceeds of an unlawful activity, or the instrumentalist of an offence.

1444. **Seizing and forfeitures in practice:** The below table shows the value of assets seized and forfeited in the fiscal years ending 2018-21.

Table 33.6. The value of assets seized and frozen in the tax years ending 2018-21*

	Value of assets seized	Value of assets forfeited
2018	238 000 000	55 900 000
2019	-	-
2020	224 884 168	82 558 899
2021	765 975 237	160 192 923

Note:

* The amounts are given in MYR

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1445. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Malaysia's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹

Table 33.7. Agencies responsible for investigating and prosecution of financial crimes

Agency	Role with respect to financial crime
Inland Revenue Board of Malaysia	Responsible for administering and collecting direct taxes, and undertakes compliance activities, including civil audits and criminal investigations to tackle tax evasion and fraud.
Royal Malaysian Customs Department	Responsible for administering, collecting indirect taxes, and conducts criminal investigations for offences related to indirect taxes and customs.
Royal Malaysian Police (RMP)	Malaysia's main LEA, responsible for investigating crimes committed under the PC, including complex fraud.
Malaysian Anti-Corruption Commission	Investigates and prosecutes corruption in the public and private sector. It also has a role in examining anti-corruption systems of public and private bodies and in educating the public about anti-corruption practices.
Public Prosecutor's Office	Conducts criminal prosecutions in Malaysia.
Financial Intelligence and Enforcement Department (FIED)	Carries out the functions that AMLATFPUAA assigned to the Bank Negara Malaysia (Central Bank of Malaysia). FIED is also responsible for facilitating the implementation of AMLATFPUAA through co-operation with its domestic and international partners, to safeguard the financial system's integrity against money laundering and terrorism financing threats and activities.
National Anti-Financial Crime Centre (NAFCC)	Inter-agency initiative to fight tax crimes and other financial crimes. Its role is to improve co-operation between LEAs. NAFCC also monitors the sharing of information and planning of joint operation among LEAs in some higher profile cases.
Ministry of Domestic Trade and Consumer Affairs	Investigates the consumer complaints ⁴⁰⁰ authorizing the law that is enforced to ensure a healthy and ethical business environment.
Companies Commission of Malaysia	Handles financial management irregularities and fraudulent transaction by officers of a corporation.
Securities Commission Malaysia	Takes measures to monitor, mitigate and manage systemic risks from the capital market.
Labuan Financial Services Authority	Responsible for the development and administration of the Labuan International Business and Financial Centre.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1446. In Malaysia, the Legal Department of IRBM fulfils the function of prosecuting tax and financial crimes, while the Investigation Department carries out criminal investigations. The Investigation Department employed 235 staff members in 2015, who were distributed across 17 investigation branches. Tax crime investigation was centralised in 2016 to the Criminal Investigation Division (CID).

1447. The total workforce of CID consisted of approximately 14 persons during the period 2018-21. The budget for the investigative activities is meant for salaries, training costs and other related overhead expenses. There is no calculation of the return on investment for tax crime investigations, but Malaysia notes that fines for tax offences are high, because tax penalties can treble the amount of undercharged tax (ITA, s114).

1448. The below table shows the databases and sources of information available to tax crime investigators in Malaysia.

Table 33.8. Data bases/sources of information available to tax crime investigators

Data bases/sources	Access
Company formation/ ownership registry	Access on Request
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Access on Request
Police databases	Access on Request
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request
Car registry	Access on Request
Boat registry	Access on Request
Other	Access on Request

Training for tax crime investigators

1449. The Malaysia Tax Academy provides basic training to tax crime investigators through the Certified Tax Investigation Programmes (CTIPs). CTIPs take place once a year, the programmes consist of two two-day-sessions, which focus on tax crime: one session focusing on the EA while the other focuses on the CPC. CTIP is only meant for the education of investigators and every investigator is obliged to complete the programme and obtain the diploma.

Principle 7: Predicate offences

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

1450. **Approach:** Malaysia adopted a “list” approach to money laundering in 2010, with the following crimes being listed as a predicate offence for money laundering, regardless of whether they were

committed in Malaysia or in a foreign jurisdiction (i) failure to furnish return or give notice of chargeability (ii) incorrect returns (iii) wilful evasion.

1451. **Enforcement of money laundering predicated on tax crimes:** Malaysia notes that since it has included tax crimes as a predicate offence, the impact could be seen in the better inter-agency co-operation, easier access to information and easier recovery of lost revenue. For example, the strong inter-agency co-operation enables IRBM to recover tax liabilities from assets seized by other LEAs.

Principle 8: Inter-agency co-operation

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

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1452. The below table shows the models for sharing information related to tax crime and other financial crime in Malaysia.

Table 33.9. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority
Authority providing information	Tax administration		Direct Access ^(a)	On Request ^(b)	On Request ^(a)	On Request ^(a)	On Request	On Request
	Agencies investigating tax offences	Direct Access		On Request	On Request	On Request	On Request	On Request
	Customs administration	On Request	On Request		On Request	On Request	On Request	On Request
	Police or public prosecutor	On Request	On Request	On Request		On Request	On Request	On Request
	Financial Intelligence Unit	Direct Acls ^(c)	Direct Access ^(b)	DSS	DSS		DSS	On Request
	Corruption investigation authority	On Request	On Request	On Request	On Request	On Request		On Request
	Asset Recovery Authority	On Request	On Request	On Request	On Request	On Request	On Request	
	Financial regulator	On Request	On Request	On Request	On Request	On Request	On Request	On Request

Note:

DSS = discretionary spontaneous sharing

(a) Tax crime investigations are conducted by the Investigations Department of the IRBM and have direct access to tax administration information.

(b) Disclosure of information by the tax administration is prohibited, except when authorised under the Dangerous Drug Act, Corruption Act or the Anti-Money Laundering, Terrorist Financing and Proceeds of Unlawful Activities Act.

(c) A limited number of officials within the IRBM, including some officials within the Investigations Department, have direct access to the Suspicious Transaction Reports database maintained by FIED. The FIU may also spontaneously provide information relevant to tax crime investigations or the activities of the IRBM.

1453. The below table shows the availability of enhanced forms of co-operation in combatting tax crimes.

Table 33.10. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	IRBM has co-operation agreements to combat tax crime and other financial crime with Malaysian Anti-Corruption Commission, Royal Malaysian Custom Department, Ministry of Domestic Trade and Consumer Affairs and Royal Malaysian Police.
Disclosure of foreign trusts	IRBM collaborates and shares relevant information with the LEAs in order to deter any form of financial crime and disclose foreign trusts. IRBM has co-operation's with more than 70 exchange partners in Exchange of Information (EOI) between international tax authorities in an effort to reduce global tax evasion. This includes information relating to cross-border arrangements.
Joint operations and taskforces	To enhance existing work collaboration, IRBM participates and conducts several joint operations and taskforces to tackle national tax crime and money laundering threat. To enhance existing work collaboration, IRBM participates several joint operations and taskforces with other LEAs were being conducted under National Anti-Financial Crime Centre (NFCC). All LEAs including IRBM will work from one place and investigate the same targets but under the to the legal framework of their respective agencies.
Parallel investigations	Yes. IRBM conducts parallel investigations on tax offences by sharing information, intelligence, and evidence.
Joint intelligence centres	IRBM effectively uses the inter-agency platform of the National Coordination Committee to Counter Money Laundering (NCC) and the National Anti-Financial Crime Centre (NFCC) for exchange of information and intelligence networking among LEAs.
Secondments and co-location of staff	IRBM supports other LEAs by secondments and co-locations of IRBM-staff to LEAs to earn and provide better assistance among LEAs in terms of learning best practices and expertise sharing.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Disclosure of information by IRBM to other agencies ⁴⁰³ authorized when related to the Dangerous Drug Act (DDA), CPC, Panel Code (PC), Customs Act (CA), Anti-Corruption Act (ACA) and AMLATPUAA.
Multi-agency trainings authorize organises national seminars and holds annual talks and forums with professional bodies on various tax matters including tax and financial crimes. In meeting the training needs for the investigation officers, IRBM participates Inter-Agency capacity building/training programs formulated for the specific needs of the LEA's that organized by National Coordination Committee to Counter Money Laundering (NCC) and the National Anti-Financial Crime Centre (NFCC). Examples: Certified Financial Investigator Program.	

Principle 9: International co-operation

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.

1454. **Legal basis:** The Malaysian tax administration may only exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Malaysia has exchange of information relationships with over 70 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements. Malaysia is a party to Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows it to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. In addition, Malaysia has entered into more than ten Mutual Legal Assistance in Criminal Matters agreements that allow Malaysian Tax Administration to exchange information with other Parties in criminal matters.

1455. **Competent authority:** The Malaysian Attorney General's Chambers is the competent authority for sending and receiving requests related to criminal tax matters pursuant to MLA agreements. No request for assistance was made for the years 2018-21, while it received 1 request in 2019 and didn't receive any requests in 2018, 2020 and 2021.

Principle 10: Fundamental rights of a suspect or accused person

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

1456. Malaysia provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights.

1457. In Malaysia, a civil tax matter becomes a criminal tax matter when there is sufficient evidence to prove each element of the offence in the relevant section of ITA, such as the offences listed under section 112, 113 or 114. In Malaysia it is not possible to have a civil tax audit conducted in parallel with a criminal investigation.

Table 33.11. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At the time when commission of offence alleged/at all material time until proven guilty.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	During criminal investigation
remain silent	Yes	When the defence is called after the prosecution has proved prima facie case in court
access and consult a lawyer and/or entitlement to free legal advice	Yes	When the case is charged in court
interpretation and translation	Yes	During investigation and in court proceeding
be advised of the particulars of what one is accused of	Yes	When the case is charged in court
access documents and case material, also known as a right to full disclosure	Yes	During investigation and in court proceeding
a speedy trial	Yes	During court proceedings
protection from ne bis in idem (double jeopardy)	Yes	At the time when the same offence was previously convicted or compounded

Highlights

Successful practices

- Comprehensive tax crime strategy which is reviewed annually.
- Strong inter-agency co-operation that results in successful investigation and prosecution of tax crimes.

Room for improvement

- Malaysia could consider undertaking a periodic assessment of systemic threats.

Notes

¹ See Rome Report, Chapter 5 – Country Information – Malaysia, Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>

34 Mexico

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1458. Mexico's tax crime legislation is established in the Federal Tax Code (CFF), supported by provisions of the Federal Criminal Code (CPF) and governed by the National Code of Criminal Procedure (CNPP). The table below lists the provisions of the CFF that govern criminal tax offences.

Table 34.1. Offences requiring criminal intent

Offence	Maximum sanction	Maximum sanction
Tax fraud (CFF, s108)	Three months' imprisonment ^(a)	Nine years' imprisonment ^(b)

Note:

(a) The minimum sanction of three months' imprisonment applies when the amount of evaded tax does not exceed MXN 1 734 280.1

(b) The maximum sanction of nine years' imprisonment applies when the amount of evaded tax exceeds MXN 2 601 410. Furthermore, if the offence is classed as an aggravated crime, the sanction can be increased by up to one-half to thirteen years and a half of imprisonment. If convicted for being part of an organised crime group, the sanction can be up to sixteen years' imprisonment, in addition to any charges brought for each individual criminal tax offence.

1459. **Statute of limitations:** Under s100 of the CFF, the period of limitation to present a criminal complaint for a criminal tax offence is five years. The period starts on the day the offence was committed. Once the complaint is presented, the prosecutor has an additional period to present the case to the courts, which is calculated depending on the potential sentencing for the offence but will never be shorter than five years. Furthermore, s101 of the CFF notes that the limitation period doubles if the offender is outside the country.

1460. **Complicity:** Under s13 of the CPF, individuals that intentionally help or assist another individual in the commission of a criminal offence, or who assist the offender after the perpetration of the offence are to be held criminally liable for their own part of the criminal act.

1461. **Attempt and conspiracy:** Attempt and conspiracy to commit a tax crime is punishable in Mexico (CPF, 12-13).

1462. Mexico notes that since 1 January 2020, a group of three or more persons that are organised for the purpose of committing a criminal tax offence are to be prosecuted as an organised crime group.

1463. **Professional enablers:** Mexican law provides a criminal liability regime for individuals who carry out acts, operations and practices with the direct result of helping the commission of a financial crime (CFF, s95). These include giving consent to a third party to impersonate another individual, sale of fake invoices and improper use of tax information.

1464. **Territorial and nationality jurisdiction:** Mexico has territorial jurisdiction over all crimes committed wholly or partly in Mexico (CPF, s2-3).

1465. **Liability of legal persons:** Mexico notes that two legal reforms relevant to the criminal liability of legal persons came into force in 2016 and 2020. Under s11 of the CPF, legal persons can be held criminally liable for tax offences. Under s422 of the CNPP, several sanctions can be imposed on legal persons, ranging from pecuniary sanctions and fines and publication of judgements (“name and shame provisions”), through confiscations, suspension of activities, temporary disqualification in public procurement contracts, judicial intervention, to dissolution of the legal entity, etc.

Enforcement of tax crime

1466. The below table shows the enforcement of tax crimes in tax years ending 2015-18 in Mexico. Furthermore, Mexico notes that it began the investigation of 411 tax crime cases in 2020.

Table 34.2. Enforcement of tax crimes in the tax years ending 2015-18

Fiscal Years Ending	Total number of criminal tax investigations (natural persons)	Total number of criminal tax investigations (legal persons)*	Total number of criminal prosecutions for tax crimes (natural persons)	Total number of criminal prosecutions for tax crimes (legal persons)*	Total number of criminal convictions	Total numbers of acquittals
2015	419	N/A	381	N/A	38	26
2016	104	N/A	230	N/A	43	25
2017	156	N/A	98	N/A	52	24
2018	54	N/A	88	N/A	67	18

Note:

* Mexico notes that criminal liability for legal persons was instituted as a consequence of a recent legal reform.

Table 34.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years’ imprisonment	86
>3 – 5 years’ imprisonment	33
>5 – 8 years’ imprisonment	14
Fine	0
Reparation	6*
Probation	N/A

Note:

* Effectively paid. Even though in more than 90% of the judgments there is an order to repair the damage.

1467. **Availability of settlements and deferred prosecution agreements:** Mexico has several processes available for settlements for both natural and legal persons. Section 191 of the CNPP establishes a deferred prosecution agreement regime, under which the offender agrees to the payment of any monetary damages incurred by the victim (the Ministry of Finance in cases of tax crimes), as well as to other conditions agreed with the prosecution. Once these conditions are fulfilled, criminal prosecution for the offence ceases.

1468. Section 186 of the CNPP allows for settlements between the offender and the victim of the crime (the Ministry of Finance in cases of tax crime). The offender is required to agree to payment of any monetary damages and the settlement agreement is subject to approval by a prosecutor or a judge, after which criminal prosecution for the offence ceases.

1469. Furthermore, under s201 of the CNPP, the offender can admit guilt and accept responsibility for the criminal offence, resulting in a reduced term of imprisonment and the repayment of any monetary damage to the treasury. In case there is a third-party beneficiary of the criminal tax offence, the primary offender may avail themselves of the opportunity criteria (CNPP, s256), under which the offender provides information on third-party beneficiary of the crime. Under these criteria, the primary offender is then considered to have been used for the commission of the crime by the third-party beneficiary and the criminal prosecution of the primary offender ceases.

1470. **Availability of tax deductions for civil and criminal sanctions:** In Mexico, it is not possible to apply for tax deductions for civil and criminal sanctions.

1471. **Tax gap:** Mexico notes that between 2015 and 2017, a total of MXN 1.36 billion of tax was evaded by shell companies offering and trading simulated invoices that cover non-existent or false operations. Its tax gap estimations are between the range of MXN 350 million to 500 million of evaded tax.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1472. In 2019, the Mexican government instituted reforms to the federal legal system, which led to increased capabilities to fight tax crimes and other financial crimes. This reform specially aimed at tackling professional enablers of financial crime, who establish shell companies to sell fake invoices and manage simulated outsourcing activities. Furthermore, attention was given to corruption issues and beneficial ownership, which has generated losses to the treasury in billions of US dollars. The legal reform introduced the classification of organised crime groups in criminal tax offences, as outlined in Principle 1 above. The reform represents the transposition of the United Nations Convention against Transnational Organized Crime, which also increased the investigation powers of federal law enforcement officers involved in criminal tax investigations, as outlined in Principle 3 below. Furthermore, the reform classed certain aggravated tax crimes as matters of national security.

1473. In addition to the tax and criminal legal reform that was implemented last year, the PFF in collaboration with the SAT, the Ministry of Labour, the IMSS (social security) and the INFONAVIT (housing), in November 2020, promoted a legal reform to fight tax evasion with illegal outsourcing. The PFF also issued a protocol for the detection and reporting of corruption acts. Finally, it is important to say that in September 2020, the SAT presented its strategy against tax evasion, highlighting the following points: a) Increase penalties and perception of risk, b) Eliminate tax forgiveness, c) Payment of income tax for rental income, d) VAT withholding on labour outsourcing, e) Digital economy oversight, f) Scheme to withhold income tax from catalogue sales income, g) Interest withholding rate on savings.

1474. **Threat assessment:** Mexico conducts a periodic evaluation of threats in economic crimes, including with the prosecution service. In July 2018, the SAT identified 5 390 taxpayers who definitely simulated operations to avoid taxes. Likewise, the SAT identified 37 000 companies and individuals are engaged in illegal outsourcing or who receive such services in order to evade taxes.

1475. **Communications strategy:** Mexico notes that it communicates successful prosecutions of criminal tax offences through press conferences, press releases and briefing notes.

Box 34.1. Example of successful implementation of tax crime strategy: Mexico

This is a success story in the fight against corruption. Mr J., a direct family member of a high-level official of a Mexican Federal Ministry, received between 2010 and 2014 more than MXN 220 million in his bank accounts for deposits made by contractors of the Ministry.

The finding of the Financial Intelligence Unit was that the bank deposits were made by two important suppliers of the Ministry, who supplied technological equipment and other type of equipment. Both the family member of the high-level public servant, as well as two providers of the Ministry added deposits in their accounts for more than MXN 1 400 million between 2010 and 2015; however, they did not declared such amounts to the Treasury.

The Ministry of Public Administration also investigated the high-level public servant for corruption, as he acquired high-value real estate and was driving a Ferrari. He stated that his brother was a businessman and paid his bills and properties, and that the inconsistencies in his wealth declarations were registration errors.

The PFF initiated an investigation with the information provided by the FIU. Subsequently, the PFF presented a criminal complaint – for tax fraud- to the federal prosecutor. Today, Mr J. is sentenced for tax fraud, for which he was given a prison term of three years, and obliged to repair the damage.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1476. The below table shows the investigative powers of the tax crime investigation agency in Mexico.

Table 34.4. Investigative powers of tax crime investigation agency (PFF)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Search warrants are issued by the judge and executed by the Federal Police and the Prosecutor. PFF can be present during the search.
Obtain documents from third parties	Full direct power SAT and PFF can gather and analyse all documents and information related to the commission of criminal tax offences, as well as request, obtain and analyse information from third parties.
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power The Federal Police can conduct interception of mail and telecommunications upon request by the Prosecutor / PFF.
Conduct covert surveillance	Full direct power The Federal Police can conduct covert surveillance upon request by the Prosecutor / PFF.
Conduct undercover operations	Full direct power The Federal Police can conduct undercover operations upon request by the Prosecutor / PFF.
Search and seize computer hardware, software and electronic storage media	Full direct power Search warrants are issued by the judge and executed by the Federal Police. PFF can be present

	during the search.
Arrest	Full direct power The Federal Police executes all arrest warrants issued by the judge.

1477. **Additional powers not listed above:** PFF may request information from other state authorities and agencies to corroborate the findings of its investigations. This includes financial information of the suspect (CFF, s42 and s92).

1478. **Need for additional powers:** PFF notes it would benefit from the ability to obtain financial information directly from banks in real-time.

1479. **Legal professional privilege:** Article 117 of the National Code of Criminal Procedures establishes the obligation of attorneys (defense attorney of a person accused of committing a crime) to maintain professional secrecy in the practice of their duties. Article 222 also establishes the “duty” (obligation) to denounce a crime to every person that has knowledge of such crime. The only persons exempted of that duty are direct family members of the persons responsible of such crime. For tax consultants, auditors or other financial professionals there is no rule that requires them to keep secrecy if they are aware of the commission of a crime and no exception of the duty established in article 222.

Principle 4: Freezing, seizing, and confiscating assets

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

1480. **Legal basis:** The National Code of Criminal Procedure of Mexico regulates the freezing, seizing and confiscation of assets, which is in charge of the prosecution service and the police.

1481. **Freezing of assets:** The prosecutor has full direct powers to order the freezing of assets. It may also order the immediate suspension of any proceeds of financial operations performed within the country.

1482. **Seizing of assets:** In Mexico, the instruments, objects or proceeds of the crime, as well as the goods in which there are traces or could be related to it, will be seized during the development of the investigation, so that they are not altered, destroyed or disappear (article 229 NCCP). Also, the Ministry of Finance and Public Credit can request financial institutions to seize assets and immediately suspend operations or services with clients or users that are in a list of blocked people (article 115 Credit Institutions Law).

1483. **Confiscation of assets:** The judicial authority, through a conviction in a criminal process, may order the confiscation of property. When the seizure of the assets has been registered in the public records, the authority that ordered their confiscation will request the registration of the sentence (article 250 NCCP).

1484. **Non-conviction based confiscations:** In Mexico, these types of confiscation can be instituted through the civil action of “extinction of property”. There is a list of offences contemplated for this action, which includes tax crimes committed by an organised crime group.

1485. **Extended confiscations:** Mexico notes that all proceeds of crime can be confiscated.

1486. **Value-based confiscations, third-party confiscations:** When the proceeds, instruments or objects of the criminal act have disappeared or are not located for reasons attributable to the accused, the prosecution service will request a court order for seizure or confiscation of property (NCCP, 249).

1487. **Foreign freezing, seizure, and confiscation orders:** Mexico allows the execution of foreign orders for freezing, seizing and confiscating assets, in accordance with domestic law and international treaties such as the UN Convention against Transnational Organised Crime, the UN Convention against Corruption and FATF Recommendations.

1488. **Agency / unit responsible for asset recovery:** In Mexico, a specialised unit in FGR is responsible for asset recovery in relation to financial crimes. Furthermore, SAT and the Financial Intelligence Unit (UIF) of Mexico carry out specific roles in the asset recovery process.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1489. In Mexico, the agencies responsible for the investigation and prosecution of tax crimes are the Tax Administration Service (SAT) and the Federal Tax Attorney's Office (PFF) in co-ordination with the Attorney General's Office (FGR). SAT carries out tax audits to verify compliance with taxpayers' obligations. If SAT discovers a possible tax crime, it issues a Technical Accounting Report (TAR) to PFF. The PFF has legal powers to conduct investigations directly, in accordance with s92 of the CFF. Mexico notes that inter-agency co-operation is essential to the successful prosecution of criminal tax cases and utilises task forces and joint investigation teams often.

1490. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Mexico's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 34.5. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Tax Administration Service (SAT)	Made up of various administrative units, SAT is the primary agency responsible for the collection and administration of tax and customs.
Attorney General's Office (FGR)	The primary federal prosecution agency, it works in collaboration with PFF to prosecute financial crimes.
Federal Tax Attorney's Office (PFF)	Part of the Ministry of Finance, it is the primary agency responsible for the investigation and prosecution of tax crime and other financial crimes. It receives cases from SAT or other agencies that detect criminal tax offences and leads the investigation of the offence. Finally, the PFF presents the criminal complaint to the FGR.
Deputy Prosecutor's Office of Investigations	The specialized unit of the PFF responsible for conducting criminal investigations. It presents criminal complaints to the FGR for prosecution.
Financial Intelligence Unit (UIF)	An administrative unit of the Ministry of Finance responsible for receiving and analysing suspicious transaction reports (STR) and disseminating the intelligence products to various agencies involved in tackling tax crimes and other financial crimes.

Independence of tax crime investigations and prosecutions

1491. Administrative and criminal tax matters are autonomous in Mexico. The acts that are carried out in criminal proceedings are valid regardless of what is carried out in the administrative investigation. Section 92 of the Tax Code states – and courts have confirmed – that a criminal tax investigation does not rely on the commencement of a civil or administrative assessment.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1492. In 2015-18, PFF maintained a staff of 60 lawyers and operated with a budget of roughly MXN 1.3 million per unit per year. Mexico notes that in 2019, PFF's budget amounted to MXN 6.15 million. In the same year, PFF achieved payment for damages relating to several tax crimes amounting to around MXN 2 billion. In average, PFF calculates that for every dollar spent in 2019, there was a return of MXN 323.5.

1493. The parameter for a year's target is based on the statistics of previous years, in order to increase the efficiency of prosecutions and favourable judgments. Furthermore, aims are set in order to identify and prosecute the most relevant criminal organizations / professional enablers of tax crimes. The targets are set by the PFF's leadership.

Table 34.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	On request
Land Registry	On request
Registry of citizens	On request
Tax databases	On request
Customs databases	On request
Police databases	On request
Judicial databases	On request
Suspicious transaction report databases	On request
Domestic bank account databases	On request
Car registry	On request
Boat registry	On request

Training for tax crime investigators and prosecutors

1494. In Mexico, tax crime investigators within the PFF receive standard training in financial crime issues. This includes courses on money laundering, investigation techniques, argumentation, and human rights. Mexico notes that two to three courses are scheduled per year, lasting between one to two weeks. Furthermore, investigators also receive specialised training in tax law and criminal adversarial system. The training received depends on the grade and experience of the trainees. Mexico also notes that PFF investigators were involved in trainings hosted by the United States Embassy.

Principle 7: Predicate offences

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

1495. **Approach:** Mexico uses an 'all crimes' approach to defining predicate offences to money laundering since 1990. This is also set out in s108 of the CFF, which indicates that the crime of tax fraud is presumed to have been committed when a money laundering offence has been discovered. Tax crimes were included as a predicate offence in Mexico since the creation of the money laundering offence.

1496. **Enforcement of money laundering predicated on tax crimes:** Mexico notes that when enforcing money laundering it does not require jurisdiction over the predicate offence as well. Mexican legislation allows money laundering offences to be prosecuted in Mexico as long as any part of the operation takes place in Mexico.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to law enforcement authorities

1497. In Mexico, the civil tax authority has a legal obligation to report suspicions of corruption or tax crimes. When a SAT civil auditor discovers a possible criminal tax offence, they file a report that is referred to PFF. PFF criminal investigators review the report and launch a criminal investigation if appropriate.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1498. The below tables set out the information sharing gateways that Mexico has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Mexico's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes](#).

Table 34.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		MSS	On request	On request ^(a)	On request	On request
	Customs administration	On request	MSS		On request	On request	On request
	Police or public prosecutor	On request	MSS	On request		On request	On request ^(b)
	Financial Intelligence Unit	On request	MSS	On request	On request		On request ^(c)
	Corruption investigation authority	DSS	MSS	On request	DSS	On request	
	Financial regulator	On request ^(d)	On request ^(f) /On request ^(e)	Sharing prohibited	On request ^(d)	On request ^(d)	

Note:

MSS = mandatory spontaneous sharing / DSS = discretionary spontaneous sharing

(a) The Tax Administration Service (SAT) is obliged to respond to the requests of prosecutors in the context of criminal investigations and occasionally reports acts that in considers may constitute an illegal act.

(b) Prosecutors can provide information casuistically as long as the corresponding petition is duly founded and motivated and does not imply a violation of the duty of reservation and confidentiality of criminal investigations. The police is not obliged to share information contained in a criminal investigation, unless authorised by the prosecutor in charge of the investigation. However, in the event that the police receives an anonymous complaint about a crime or otherwise discovers the commission of a crime, it is obliged to inform the competent prosecutor in charge of investigating the offences.

(c) The Financial Intelligence Unit (UIF) is obliged to respond to the requests of prosecutors in the context of a criminal investigation and, occasionally, denounces acts that in its judgment could constitute an illegal act.

(d) Mexico notes that this exchange of information does not violate the rights related to such investigations and it does not conflict with data privacy legislation under the Federal Law of Transfer and Access to Personal Information.

(e) In Mexico, the Customs Administration operates under the remit of SAT and requests to the National Banking and Securities Commission (CNBV) are sent through SAT.

Table 34.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Various agencies involved in tackling tax crimes have signed co-operation agreements that allows them to exchange information. This includes agreements with Mexican states, the private sector and federal government agencies for sharing of information.
Disclosure of foreign trusts	Yes
Joint operations and taskforces	Yes. Mexico has a multi-agency task group on combatting illegal outsourcing for tax evasion, which consist of multiple federal agencies such as IMSS, INFONAVIT, SAT, UIF, and STP (labour, social security, housing, tax and financial bodies).
Parallel investigations	Parallel investigations are not systematically conducted, but can happen on a case-by-case basis.
Joint intelligence centres	One centre for operations with the FGR was created in order to combat tax and financial crimes.
Secondments and co-location of staff	Secondments and co-location of staff does not happen as a regular basis, however, there are special cases in which designated groups or individuals from other agencies, such as SAT are assigned to co-operate with PFF by joining its staff.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes, if there are elements and information that constitute a possible tax crime committed by a convicted person, competent authorities (PFF or FGR) may conduct a criminal investigation.
Multi-agency training	Yes, there have been multiple training groups given by different agencies (national and international) provided to PFF and other authorities in order to disclose information, share knowledge and experiences regarding tax and other financial crimes. Between 2016 and 2020, PFF took part in more than 60 training programmes and virtual courses along with foreign agencies such as the US Embassy (OPDAT), FATF, OECD and with national agencies and academies like UNAM, Anahuac University and the General Prosecutor's Office, in order to improve PFF staff's skills and knowledge regarding tax crimes.

Principle 9: International co-operation

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.

1499. **Legal basis:** Mexico has 61 Double Taxation Agreements (DTAs), which include provisions for the exchange of information. Furthermore, it has 16 Tax Information Exchange Agreements (TIEA) and is party to the Convention on Mutual Administrative Assistance in Tax Matters.

1500. Mexico has also signed 33 bilateral treaties with 32 jurisdictions (two treaties with the United Kingdom) on Mutual Legal Assistance (MLA) that are used in tax crime investigations.³

1501. Mexico noted that between 2015-17, its tax crime investigations sent out 30 MLA requests and received 13 requests from other jurisdictions. It notes that about 90% of the MLA requests Mexico has received have been answered. Furthermore, the average response time to requests sent by Mexico is between 12 to 14 months from the time the request was sent to the time a response is received.

1502. Mexico can exchange sensitive intelligence with other international agencies involved in tax crime investigations informally by PFF, based on procedural powers mandated to PFF by s81-83, and s85 of the Internal Regulations of the Ministry of Finance and Public Credit. Furthermore, s439 of the CNPP provides that international legal assistance includes obtaining evidence, information exchange, delivery of documents, objects and other proof.

1503. **Competent authority:** The SAT is the tax authority in charge of requesting tax information from foreign authorities through collaboration agreements. Various administrative units of the SAT are competent to request tax information and depending on the type of taxpayer, activity, internal or foreign trade taxes, will be the authority in charge of requesting that information.

1504. On the other hand, MLAs are processed through the FGR in accordance with MLA treaties signed and ratified by Mexico. These are processes for the exchange of information and evidence used exclusively for criminal trials. The administrative unit of the FGR in charge of the MLA request sends them to the General Directorate of International Procedures and this Directorate reviews the request so that it complies with legal guidelines and subsequently sends it to the attaché at the Mexican embassy the respective country or region. The request must include the case background, offences under investigation, purpose and nature of the assistance, and limitation period of the crimes.

1505. **International co-operation in practice:** Mexico notes that difference in legal systems sometimes leads to delays in processing and responding to MLA requests sent by Mexican authorities. This is because the legislations of the receiving state may require more conditions to be fulfilled in order to respond to MLA requests.

1506. In terms of good practices, Mexico highlights maintaining good relationships with agencies in other jurisdictions, which are fostered through frequent meetings to develop mutual trust.

Principle 10: Fundamental rights of a suspect or accused person

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

1507. **Legal basis:** The fundamental rights of a suspect or accused person are covered under Title One, Chapter I of the Political Constitution of the United Mexican States.⁴ Furthermore, procedural rights in criminal proceedings are set out under the CNPP.

1508. In Mexico, a civil tax matter becomes a criminal tax matter if criminal intent is present in the act of a suspect. It notes that each tax offence has elements that are considered, including the use of deception, or taking advantage of errors. As soon as one of these elements is identified during an administrative procedure, the matter is turned over to PFF for criminal investigation.

Table 34.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all stages of the criminal proceedings, until proven guilty at court.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At the point of appearance of the suspect before the prosecutor or the supervisory judge.
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all criminal procedure phases. The accused has the right to a public defender at all times.
interpretation and translation	Yes	At any time during criminal proceedings
be advised of the particulars of what one is accused of	Yes	At the point of appearance of the suspect before the

		prosecutor or the supervisory judge.
access documents and case material, also known as a right to full disclosure	Yes	Constant discovery of evidence.
a speedy trial	Yes	At all times.
protection from ne bis in idem (Double Jeopardy)	Yes	At all times.

Highlights

Successful practices

- Dedicated tax crime prosecution agency (PFF)
- Solid legal framework for freezing, seizing and confiscating assets and for investigating professional enablers
- Very good examples of inter-agency co-operation in practice

Room for improvement

- Mexico could benefit from making more active use of secondments and co-location of staff

Notes

¹ In April 2021, EUR 1 = MXN 23.86.

² See Rome Report, Chapter 5 – Country Information – Mexico. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

³ For a more comprehensive overview of the treaties Mexico has in place, see here: <https://www.sat.gob.mx/normatividad/98105/tratados-en-materia-fiscal-y-cuestiones-relacionadastratados-en-materia-fiscal-y-cuestiones-relacionadas>.

⁴ An English version of the Mexican constitution can be found here: https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en.

35 Netherlands

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1509. The Netherlands' General Tax Act (GTA) sets out a range of different violations of tax law as a criminal act. This includes absolute liability offences that require no criminal intent (i.e. *mens rea*) on the part of the offender and offences requiring criminal intent. Examples of each category of tax offence and the corresponding sanctions are set out in the tables below.

1510. Acts punishable under the tax legislation, to which a term of imprisonment is attached, are qualified as criminal offences. Any other acts punishable under the tax legislation are offences (infringements).

Table 35.1. Tax offences requiring criminal intent

Offence	Criminal Intent	Maximum sanction
Failure to fulfil an obligation set out in tax legislation (GTA, s. 68(1))	Absolute liability offence (<i>mens rea</i> not required)	Six months of imprisonment or a fine of the third category (EUR 8 300)
Failure to comply with the liabilities under fiscal law referred to in Section 47a, par. 3 (GTA, s. 68(2))	Absolute liability offence (<i>mens rea</i> not required)	A fine of the second category (EUR 4 150)
Deliberate failure to file a tax return or comply with tax liabilities (GTA, s. 69(1))	Criminal intent (<i>mens rea</i>) required	Four years of imprisonment or a fine of the fourth category (EUR 20 750), if this not more than once the amount of taxes evaded.
Deliberate failure to file a correct or complete tax return or documents or deliberate submission of false or forged documents (GTA, s. 69(2))	Criminal intent (<i>mens rea</i>) required	Six years of imprisonment, or a fine of the fifth category (EUR 83 000), if this is not more than three times the amount of tax evaded.
Intentionally not paying taxes owed based on tax self-assessment, partially or wholly, or failure to pay within the deadline set out in the tax act.	Criminal intent (<i>mens rea</i>) required	Six years of imprisonment or a fine of the fifth category (EUR 83 000), or a fine not exceeding the amount of tax owed, whichever amount is higher.

Note: In 2018, a fine of the second category amounted to EUR 4 150, third category to EUR 8 300, fourth category to EUR 20 750, and fifth category to EUR 83 000. Furthermore, for offences outlined in GTA, S. 69(1) and (2), if the suspect commits any of the offences while performing their profession, they may be disqualified from the profession.

1511. **Statute of limitations:** The statute of limitations varies depending on the seriousness of the offence and differs between offences (infringements) and criminal offences. The limitation period is

connected to the maximum sentence on the offence as set out in de Penal Code. Generally, absolute liability offences have a limitation period of six years, while offences requiring criminal intent have a period of 12 years. The limitation period begins the day after the offence was committed.

Table 35.2. Statute of Limitations in the Netherlands

Statute of limitation	Type of crime
3 years	Offences (infringements)
6 years	Crimes subject to a fine, imprisonment or imprisonment of up to 3 years
12 years	Crimes punishable by imprisonment of more than 3 years
20 years	Crimes punishable by imprisonment of 8 years or more.
No	Crimes punishable by imprisonment of 12 years or more

1512. **Complicity:** Section 47 of the Dutch *Penal Code* (PC) sets out criminal liability for those who have committed the offence, participated as an accessory, or those who by any means intentionally abetted the commission of the offence. Suspects can only be considered to be accessories to a criminal offence, if they abetted the crime intentionally, knowing the effects of the crime. Section 48 of the PC affirms that anyone who intentionally assists in committing a crime, or intentionally gives the opportunity, means, or information for committing the crime shall be tried as an accomplice. Accomplices are liable to two-thirds of the maximum sentence for the offence they are convicted of.

1513. **Attempt and conspiracy:** Section 140 of the PC also sets out the criminal liability for conspiracy to commit a tax offence, which is defined as deliberate and structural co-operation with or participation in an organisation that intends to commit a criminal tax offence. The maximum penalty for this offence is six years of imprisonment, or a fine of the fifth category (EUR 83 000). Founders, leaders, or administrators of these schemes may have their sentence increased be one-third.

1514. **Professional enablers:** The Netherlands does not have a specific criminal regime for professional enablers (e.g. lawyers, accountants, or tax advisers who wilfully enable the commission of a criminal offence). However, when an offender commits a tax crime during the course of their profession, he or she may be disqualified from the practice of their profession (stripped of their license, etc.). For money laundering offences, the commission of a crime through practicing a profession is considered an aggravating factor. Also, for example an accountant can be considered being a suspect for its punishable participation.

1515. Moreover, disciplinary law can be, and increasingly is, deployed. Criminal law and disciplinary law can be applied simultaneously. Section 67r of the GTA, since 1 January 2020, regulates the publication of a decision in which an administrative fine is imposed, due to an offence or participation in an offence. To this end, the violation must have been committed by an offender during professional or commercial assistance with the fulfilment by a taxpayer of their obligations arising from a tax law.

1516. **Territorial and nationality jurisdiction:** The Netherlands has jurisdiction over all tax crimes, where the conduct constituting the alleged offence occurs wholly or partly in the Netherlands. Section 73 of the GTA also states that the Netherlands have jurisdiction over anyone, who is guilty of committing any punishable offence laid out by Dutch tax legislation, even when the offence is committed outside of the Netherlands.

1517. **Liability of legal persons:** Under Article 3 the Dutch *Civil Code*, the State, local authorities, other governmental bodies, religious denominations and associations, foundations, mutual insurers, limited liability companies, and private limited companies, all have legal personality. For the purpose of criminal liability, the nexus is the same as that of a natural person committing a criminal offence, namely, to fulfil the constituent elements of the offence, including conscious negligence.

1518. Legal persons may be held criminally liable for tax offences (including criminal tax offences set out in the GTA), pursuant to section 51(1) of the PC, provided the criminal behaviour took place ‘in the sphere of the legal person’. Sanctions are nominally the same as for natural persons, however, they typically constitute an out of court settlement, criminal fine, or winding up of the legal person. Furthermore, Section 51 of the PC also affirms that criminal prosecution may be brought against the person who ordered or led the conduct of the legal person during the commission of the criminal offence.

Enforcement of tax crime

Table 35.3. Enforcement of tax crimes in the tax years ending 2015-19

Tax years ending	Concluded investigations	Offence detected (number of suspects)	Cases where action short of prosecution was taken (number of suspects)	Cases referred for prosecution (number of cases)	Number of cases where prosecution was commenced	Number of convictions (suspects)	Number of acquittals (suspects)
2015	133	749*	146	341	341	229	13
2016	145	461	144	187	187	238	16
2017	167	426	130	192	192	201	29
2018	145	519	156	200	200	235	33
2019	238	505	131	168	168	208	44

* Natural persons and legal persons.

1519. **Availability of tax deductions for civil and criminal sanctions:** Under Section 8 of Corporate Income Tax Law (Wet VPB, 1969) and Section C of the Income Tax Law (Wet IB, 2001), tax deductions for civil and criminal sanctions are not allowed in the Netherlands.

1520. **Availability of settlements:** Under Section 74 of the *Code of Criminal Procedure* (CCP), the Public Prosecutor may enter into a settlement agreement with the offender to avoid prosecution of the criminal offence, except for offences carrying a statutory term of imprisonment of more than six years. The possible conditions of the settlement are outlined in Section 74(2) of the CCP, and include, among others, a fine, renunciation of possession of assets, payment of compensation, or community service.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1521. The Netherlands' Fiscal Intelligence and Investigation Service (FIOD), works in close co-operation with the wider Tax and Customs Administration (NTCA), and Public Prosecution Service (OM) on what it describes as a ‘combined enforcement practice’. The strategy calls for fast and flexible decision-making process supported by guidelines and protocols. For example, the ‘Protocol for the Notification and Settlement of Fiscal Offences and Offences Relating to Customs and Allowances’ describes how the NTCA, FIOD, and OM make a joint decision on whether or not to open a criminal investigation into tax and customs offences.¹ The protocol sets out criteria for when a matter becomes eligible for possible criminal proceedings (based on intentional acts, amounts involved etc.). In addition, the three bodies also agree on an ‘Enforcement Strategy Arrangement’ on an annual basis, which sets out a plan for dealing with violations of tax, financial, and economical laws and regulations including co-operation agreements between

enforcement partners, the deployment of interventions, the impact of prosecution on society, and future developments. The use of media, digitalisation, innovation, and the prioritising of relevant themes are all taken into account in this strategy.²

1522. With the 'Handhavingsbrief' (Enforcement Letter),³ the tax authorities want to provide insight into the considerations that it makes annually, about the use of people and resources to the various target groups and activities. This letter is a strategy document that is sent to Parliament.

1523. The strategy is aimed at ensuring that citizens and companies are prepared to comply with tax rules themselves, reducing the enforcement costs imposed on tax authorities. The goal is that the compliance deficit is reduced as much as possible, to ensure the continuity of tax revenues and legal payments of surcharges.

1524. The Netherlands also reports ongoing development in the enforcement of criminal law. The Netherlands observes that it is increasingly linking criminal enforcement to other forms of enforcement, supervision and compliance practices, rather than treating it as an isolated, final step in the enforcement chain. The Netherlands views its enforcement strategy as based on four key elements: (i) togetherness, (ii) impact, (iii) appropriate use of criminal law, and (iv) entrepreneurship. Through this four-pronged approach, the Netherlands seeks to make sure that the entire criminal procedure is well co-ordinated, enforcement of crimes is not only conducted reactively, but has positive social impact, and that tax authorities have the necessary leeway to operate within certain frameworks, to ensure that they do not experience organisational obstructions to their investigations. This approach allows FIOD to design flexible operational strategies, with a strong focus on enforcement outcomes and influencing the public's awareness and behaviour. By ensuring that FIOD can use alternatives to criminal proceedings, such as settlements or disciplinary law for certain professions, it is able to significantly cut down on the costs of enforcement and focusing their resources on the most impactful and challenging investigations. Furthermore, inter-agency co-ordination is also enhanced through this strategy, as it organises joint operations with tax auditors and other agencies, when particular crime areas are highlighted as problematic.

1525. The Netherlands highlights that reviewing the effectiveness of this strategy is challenging and that it is working on developing a method to measure the effectiveness and impact of FIOD's work.

1526. **Threat assessment:** Commissioned by the Board of Prosecutors General, the Dutch Police, FIOD and other governmental agencies conduct a regular threat assessment (every four years) which is called: National Threat Assessment (*Nationaal Dreigingsbeeld*).⁴ The assessment is based on operational criminal information and strategic information. An important part of the assessment is about trend analysis and crime forecasts. For tax crimes, significant attention is given to VAT carousel fraud.

1527. In 2017, the Dutch Police published the National Threat Assessment for Organised Crime (NDB). In this assessment, 34 different forms of organised crime were researched and assessed. Specific attention was given to areas of environmental crime and cybercrime. About 50 researchers and analysts have participated in the creation of the 2017 NDB, involving all units of the Police, the FIOD, the Ministry of Social Affairs and Employment, the Police Academy, and the Royal Netherlands Marechaussee. The NDB represents the starting point for policymaking for the approach to organised crime every four years. Using the NDB's outcomes, the Board of Prosecutors General formulated their advice to the government, concerning priorities in the approach to fighting organised crime and most efficient allocation of resources.

1528. **Communications strategy:** The NTCA provides information to the public regarding the correct payment of tax on its website.⁵ For tax crime, successful prosecutions are typically communicated by FIOD, in collaboration with the Public Prosecutor and the NTCA.⁶

Box 35.1. Example of successful implementation of tax crime strategy: The Netherlands

In 2020, the FIOD and the Public Prosecution Service took one of the largest online mixers for cryptocurrencies offline, named *Bestmixer.io*. This operation deals a severe blow to the concealment of criminal flows of money by mixing cryptocurrencies such as bitcoins. Six operational servers have been dismantled and seized in the Netherlands and Luxembourg. The investigation was conducted in close co-operation with the Dutch Digital Intrusion Team (DIGIT), Europol and the authorities in Luxembourg, France and Latvia. In June 2018 the Financial Advanced Cyber Team (FACT) of the FIOD started the investigation under the supervision of the National Public Prosecutor's Office for Serious Fraud and Environmental Crime and Asset Confiscation. The reason for the investigation was a report from cyber security company McAfee.

The investigation gathered information regarding transactions between customers and *Bestmixer.io*. The customers are located all over the world, especially in the United States, Germany and the Netherlands. The FIOD analyzed the information together with Europol. After that the data was shared with other countries. On the anonymous part of the Internet, the darknet, cryptocurrencies are a regular means of payment and are often used as means of payment in the criminal world. A crypto mixing service is an online service that makes it possible to conceal the origin or destination of cryptocurrencies. This service is used to split up cryptocurrencies against payment of a commission, after which they are mixed together in a different combination.

People who use a mixing service probably do so to increase their anonymity. The investigation so far shows that many of the mixed cryptocurrencies have a criminal origin or destination. In these cases, the mixer was probably used to conceal and launder criminal flows of money. The total turnover of darknet markets amounts to approx. USD 800 million per year. It is believed that a large part of the payments via the darknet take place via mixers in order to launder the criminal (crypto) money.

Bestmixer.io is one of the three largest mixing services for cryptocurrencies and offered services for mixing the cryptocurrencies bitcoins, bitcoin cash and litecoins. The service started in May 2018 and achieved a turnover of at least USD 200 million (approx. 25 000 bitcoins) in a year's time and guaranteed that the customers would remain anonymous. The operation against *Bestmixer.io* is a significant and important step in the fight against criminal flows of money in general and virtual criminal flows of money in particular.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 35.4. Investigative powers of tax crime investigation agency (FIOD)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Search of private homes is subject to a court order from an investigating judge. Search of other premises is subject to authorization from a public prosecutor.
Obtain documents from third parties	Full direct power Subject to authorisation from a public prosecutor.
Interview	Full direct power Subject to authorisation from a public prosecutor.

Inquiry powers (e.g. power of coercion)	Full direct power Subject to authorisation from a public prosecutor.
Intercept mail and telecommunications	Full direct power Subject to a court order from an investigating judge.
Conduct covert surveillance	Full direct power Subject to authorisation from a public prosecutor.
Conduct undercover operations	Full direct power Subject to authorisation from a public prosecutor.
Search and seize computer hardware, software and electronic storage media	Full direct power Search of private homes is subject to a court order from an investigating judge. Search of other premises is subject to authorization from a public prosecutor.
Arrest	Full direct power Subject to authorisation from a public prosecutor.

1529. The Netherlands notes that it is facing challenges with the increased complexity of encrypted passwords, cloud storage, end-to-end encryption, and the dark net. It notes that closer co-operation, not only on the operational but also at a strategic level, would be beneficial to tackling this issue.

1530. **Legal professional privilege:** Legal advice concerning tax liability and assistance in related litigation is protected from disclosure. Section 98 and 218 of the *Code of Criminal Procedure (CCP)* protects confidential communications passing between legal practitioners, and practitioners and clients, where those communications are made for the purpose of obtaining or giving legal advice or assistance. The right of non-disclosure is also applicable when giving testimony or answering questions on account of their status, profession, or their office; however, only about what was entrusted to the practitioner as such. However, where such communications are made for the purpose of committing an illegal or wrongful act (e.g. to facilitate tax evasion), they are not protected from disclosure under Section 98 of the CCP.

Principle 4: Freezing, seizing, and confiscating assets

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

1531. **Legal basis:** The *Code of Criminal Procedure* sets out a general regime for conviction-based criminal confiscation. The general regime is not applicable for criminal tax cases. For criminal tax cases confiscation is ruled by the General Tax Act (GTA) and the relevant authority is the NTCA.

1532. **Freezing orders:** The Netherlands notes that the FIU does not have the capabilities to freeze assets.

1533. **Seizing orders**⁷: The Netherlands can seize assets in pending investigations rather quickly (typically within 24 hours), subject to a prosecutor's order as ruled in the Code of Criminal Procedure (CCP).

1534. **Confiscation orders:** Non-conviction-based confiscations⁸ are not possible in criminal tax cases. However, in criminal tax cases, fines of the 5th category are possible. For these, prejudgment attachment is possible following the CCP (section 94a). This requires authorization by an investigating judge. The NTCA has extensive options to collect tax liabilities in civil cases. As assets obtained from financial crimes are, in many instances, reinvested in the economy, it is often difficult to determine whether a case is a purely criminal case. In these circumstances, civil procedures can therefore be used to confiscate criminal assets. In such cases the procedure is a regular (civil) tax assessment, followed by (prejudgment) attachment or collection of taxes. No court orders or prosecutor's authorisations are necessary for this procedure. For this type of confiscation, regular administrative and civil rules for collecting taxes apply.

1535. The Netherlands allows for **extended confiscations**⁹ under Section 36e of the Penal Code. It is permitted to confiscate any unlawfully acquired profits or assets upon conviction.

1536. The Netherlands can institute **value-based confiscation**¹⁰ in cases where the original proceeds of crime are no longer accessible or available for confiscation. Furthermore, Section 94a of the CCP allows for a value-based confiscation for securing provisional fines.

1537. **Third-party confiscations**¹¹ are possible under both the CCP and GTA confiscation regimes for seizure of criminally derived assets, if the third parties are aware that the goods transferred to them were the proceeds of crime.

1538. The Netherlands does not maintain a record of the value of assets confiscated in criminal tax matters.

1539. **Foreign freezing, seizure, and confiscation orders:** In the Netherlands, courts are able to execute foreign states' confiscation orders that forfeit the property to the relevant foreign state, based on reciprocity and have done so in practice. However, courts cannot enforce a foreign state freezing or seizure order in criminal tax matters.

1540. **Agency/unit responsible for asset recovery:** In the Netherlands, financial investigators working on asset recovery are employed at dedicated financial investigation units within the Police, FIOD (investigators, specialists and experts), other specialized investigative agencies and the Public Prosecutor's Office (OM).

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1541. FIOD is the NTCA's criminal investigation service and is the agency with primary responsibility for fighting tax and financial crime. This includes investigation of vertical fraud (i.e. tax fraud, bankruptcy fraud, financial regulation of markets, and money laundering); horizontal fraud (i.e. intellectual property fraud, insolvency/bankruptcy fraud, and health care fraud), commercial bribery, foreign bribery, and many other financial crimes. FIOD has full police powers and works under the supervision of the Public Prosecutions Service for serious fraud, environmental crime, and asset confiscation. The Public Prosecution Service has the discretionary power for deciding whether a criminal case should be prosecuted, preparing indictments, and asking the court to impose an appropriate sanction.

1542. The table below provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of the Netherlands' organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹²

Table 35.5. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Netherlands Tax and Customs Administration	Deals with non-compliance with respect to taxes, customs and excise duties.
Fiscal Intelligence and Investigation Service (FIOD) (within NTCA)	Primarily responsible for investigation of tax fraud, money laundering, commercial bribery, and foreign bribery.
Police	Investigates money laundering and horizontal fraud. Responsible for seizure and confiscation of criminal gains.

Inspectorate SZW	Investigates breaches of social security law
National Police Internal Investigations Department (NPID)	Investigates (among other things) corruption within the public sector.
Public Prosecution Service (OM)	Prosecutes all criminal cases
Financial Intelligence Unit (independent unit housed within Police)	Collects, analyses, and disseminates financial intelligence relating to suspicious transactions/activities, money laundering, and the financing of terrorism.
Dutch Central Bank	Supervises banking sector
Dutch Authority for the Financial Markets (AFM)	Supervises financial market sector
Bureau of Financial Supervision (BFT)	Supervises lawyers, notaries, and accountants.
Dutch Authority for Consumers and Markets (ACM)	Enforces Dutch competition laws.
Anti-Money Laundering Centre (AMLC)	The AMLC is a meeting place. For partner organisations inside the government such as the FIOD, police, Public Prosecution Service (OM) and Financial Intelligence Unit (FIU). And also, for co-operation partners outside the government, such as banks, exchange services for virtual currency and universities. Here they combine forces to combat money laundering in a unified way on a broad front, to protect the integrity of the financial system.
Infobox Criminal and Unexplainable Assets (iCOV)	Maps criminal and unexplainable assets and supplies participating agencies with operational, tactical and strategic financial intelligence to support government agencies in the execution of their work

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1543. As outlined above, FIOD is dedicated to the investigation of tax crimes. The FIOD's budget is allocated on an annual basis and was EUR 102 million in 2015, EUR 117 million in 2016, EUR 116 million in 2017, EUR 125 million in 2018 and EUR 128 million in 2019. Approximately 50% of FIOD's resources are tax-crime related.

1544. This is not performance based, though FIOD staff do have performance targets relating to capacity allocation, specific crimes themes, asset recovery, outputs of official reports, quality of official reports which lead to conviction or to an alternative sanction, and other matters including formation, occupation, personal development, sick leave, and number of frauds detected. The Netherlands does not estimate a tax gap or a return on investment for tax crime investigation.

Table 35.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Direct Access
Judicial databases	Access on Request
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Direct Access

Training for tax crime investigators

1545. Every FIOD investigator is required to undertake a five-week foundation course covering a range of topics including criminal law, criminal procedure, official reporting, and interview techniques. Courses on criminal law and criminal procedure must be repeated every five years.

1546. Following the foundation course, investigators undergo a specialised 16-week training programme aimed at giving them the theoretical and practical knowledge and skills to independently conduct criminal investigations. This covers interview techniques, asset recovery, IT systems, house searches, and safety issues and is followed by a further six months' training on the job. Where possible, FIOD involves other financial crimes agencies in the training (reflecting its motto: '*Organized crime, organized criminal investigation*').

1547. The Netherlands notes that on average, FIOD allocates 5-8% of total working hours for each full time equivalent (FTE) employee for professional development by means of training, or other activities. The total budget allocated for training and professional development of FIOD employees is approx. EUR 2.4 million.

Principle 7: Predicate offences

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

1548. **Approach:** The Netherlands adopted an 'all crimes' approach to money laundering in 2001, meaning that it is an offence to launder the proceeds of any crime. Persons may be charged and convicted of money laundering regardless of whether a person has been charged or convicted of the predicate offence, provided the court is satisfied that the object/property etc. in question originated from any crime.

1549. **Enforcement of money laundering predicated on tax crimes:** The Netherlands notes that prosecutors actively pursue money laundering as an additional or alternate charge in tax crime investigations.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1550. In the Netherlands, there are few legal obligations on tax officials working within NTCA to report crimes to the domestic law enforcement authorities, including where there are suspicions of corruption by civil servants. However, officials are able to report suspected crimes and, to facilitate this, the Minister of Finance has waived tax secrecy rules in these specific circumstances.

1551. The Minister of Finance has also issued guidance on how tax officials should report suspected crimes, through the chain of command, to the police or public prosecutor. This guidance applies to specified crimes only, which include bribery, private-sector corruption (public corruption being covered by a legal obligation), money laundering of the proceeds of non-tax offences, and terrorist financing.

1552. NTCA also has a specific protocol in place governing referrals from NTCA to FIOD. Under the protocol, NTCA has criteria for selecting offences which are eligible for referral (e.g. crimes relating to tax,

allowances, and customs, and then presents these in a co-ordination meeting made up of officials from NTCA, FIOD, and OM, who make a decision on whether to proceed with criminal proceedings. The below table sets out the number of referrals civil tax auditors working within NTCA made to FIOD between 2015 and 2019.

Table 35.7. Outcome of NTCA referrals of suspected crime in 2015-19

Year	Number of notifications (i.e. potential crimes detected)	Number of notifications presented to joint co-ordination meeting	Number of referrals to FIOD for criminal investigation	Number of referrals to NTCA for civil investigation
2015	888	502	166	722
2016	638	324	207	431
2017	605	269	222	383
2018	497	384	257	116
2019	403	329	216	87

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1553. In addition to reporting, it is critical that agencies involved in the investigation of tax crime and other financial crimes have mechanisms in place to share information with each other. The below tables set out the information sharing gateways that the Netherlands has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of the Netherlands' frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of the [OECD Report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).

Table 35.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a) Direct Access ^(b)	MSI ^(j)	DSS ^(d)	Direct Access ^(e)	
	Customs administration	MSS	MSS		On Request	On Request	Direct Access
	Police or public prosecutor	DSS	MSS	On Request ^(f)		Direct Access	Direct Access
	Financial Intelligence Unit	Sharing Prohibited ^(g)	Direct Access ^(h)	On Request	Direct Access		Direct Access
	Corruption investigation authority	DSS	Direct Access	DSS	Direct Access	MSS ⁽ⁱ⁾	
	Financial regulator	Sharing Prohibited	DSS ⁽ⁱ⁾	On Request	DSS ^(k)	DSS ^(l)	DSS

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) FIOD has direct access when an investigation involves a tax crime (even if other offences are involved). Where the investigation includes other financial crimes with no tax elements, the NTCA is able to provide information on request and tax secrecy provisions are lifted.

(b) Not all databases are directly accessible by customs officials. Some are available on request of Customs and OM and FIOD may also spontaneously provide relevant information.

- (c) Covenants are in place between police and NTCA that act as permanent requests for information, allowing spontaneous sharing to take place.
- (d) The NTCA has the right to report unusual transactions to the FIU but is under no obligation to do so.
- (e) Both FIOD and NPIID (Rijksrecherche) can investigate corruption. FIOD has direct access to information held by the NTCA and covenants in place between the Police and NTCA enable NTCA to spontaneously share information with NPID.
- (f) Information is provided on request with the consent of the Public Prosecutor's Office.
- (g) NTCA has no access to Unusual Transaction Reports (UTR).
- (h) Where the FIU determines that there is sufficient evidence of possible criminal activity for a UTR to be categorized as an STR, this is made available on a national database by the FIU to FIOD and NPID. FIOD may, in consultation with the Public Prosecutor, share the Suspicious Transaction Report with the NTCA's civil division for use in assessing taxes.
- (i) By means of FIOD liaison officers at the FIU.
- (j) Secrecy laws governing information held by financial regulators are given priority over a general obligation to share information with other agencies, except where a strictly interpreted necessity condition is met. In practice this means that Dutch financial regulators are able to provide information concerning a suspected tax offence to the tax administration, so long as the information is to be used in specific law enforcement and not for general intelligence purposes. The Dutch Central Bank and the Financial Markets Authority may only provide information on criminal tax violations where there is a direct link to their role as supervisor.
- (k) Information may be provided where it is relevant for criminal law enforcement, and not for intelligence purposes.
- (l) The Dutch Central Bank, the Financial Markets Authority and the Dutch Competition Authority are able to provide information concerning suspected money laundering to the FIU. The Bureau of Financial Supervision (BFT) is responsible for the supervision of lawyers, notaries and accountants, which benefit from greater secrecy and non-disclosure provisions under Netherlands law. In contrast to other regulators, the BFT is subject to greater restrictions on the types of information it may provide.

Table 35.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Various co-operation agreements exist between agencies involved in combatting financial crime
Disclosure of foreign trusts	N/A
Joint operations and taskforces	May be established on a permanent or ad hoc basis. Police and FIOD have several permanent joint taskforces and teams.
Parallel investigations	While it is technically possible for parallel investigations to happen, the Netherlands notes that there is a database, where all ongoing criminal investigations are recorded to prevent parallel investigations.
Joint intelligence centres	The <i>Anti-Money Laundering Centre</i> and <i>Dutch Financial Expertise Centre</i> both have an intelligence function. Furthermore, the Netherlands also have the <i>Infobox Criminal and Unexplainable Assets (iCOV)</i> and <i>Regional Information and Expertise Centres (RIECs)</i> , which provide information to criminal tax investigators.
Secondments and co-location of staff	Liaison officers from FIOD are stationed at the FIU. These exchanges are conducted under the framework of the Financial Expertise Centre. There are also exchanges of staff in Public-Private Co-operation.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. The public prosecutor's office keeps records of the state of affairs in criminal cases and advises law enforcement agencies about the outcomes of the court case. Providing the tax administration with information from the court case of criminal investigations is a public prosecutor's decision.
Multi-agency training	Where possible, financial crime agencies always involve each other in their training.

* More details about the iCOV and RIECs are outlined in the Rome Report.

Principle 9: International co-operation

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.

1554. **Legal basis:** The Netherlands can exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation.

1555. International co-operation in practice: To date, Netherlands has exchange of information relationships with 126 jurisdictions through 97 bilateral tax treaties and 29 Tax Information Exchange Agreements. It also has bilateral MOUs with 28 countries and is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows the Netherlands to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1556. Enhanced form of international co-operation: The Public Prosecution Service (OM) is the Netherlands's central authority for incoming and outgoing MLA requests in criminal tax matters. In 2015, 2016 and 2017, the OM made 91 requests for assistance in a criminal tax matter under MLA treaties and one under a TIEA. It does not maintain statistics on the quality of timeliness of responses received in these matters. Between 2015-17, it received 355 requests for assistance from foreign jurisdictions. In 2017 this was 189, all of which were pursuant to MLA treaties.

Principle 10: Fundamental rights of a suspect or accused person

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

1557. The Netherlands provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by Chapter 1 of the *Constitution of the Kingdom of the Netherlands*. Furthermore, in the Netherlands, the European Convention on Human Rights has direct effect. The judiciary must immediately test all legislation and governance against the ECHR (Article 94 of the Dutch Constitution). Furthermore, the procedural guarantees for a fair trial are included in the *Code of Criminal Procedure*.

1558. The legal system provides that it protects suspects' rights by ensuring that civil tax audits are run independently of criminal investigations. The decision to undertake criminal investigation depends on whether the facts and circumstances of the case give rise to a reasonable suspicion that a criminal offence has taken place

Table 35.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	From indictment
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	The suspect is cautioned at the time of the arrest and each time an interrogation starts, whether or not the suspect is arrested. An arrested suspect is advised of legal assistance free of charge. A suspect that is not arrested is advised about his right to legal assistance.
remain silent	Yes	From indictment
access and consult a lawyer and/or entitlement to free legal advice	Yes	From indictment
interpretation and translation	Yes	From indictment
be advised of the particulars of what one is accused of	Yes	From indictment
access documents and case material, also known as a right to full disclosure	Yes	During the entire investigation, however in some cases the public prosecutor can determine the suspect is not allowed (temporary) to access documents.
a speedy trial	Yes	From indictment
protection from ne bis in idem (Double Jeopardy)	Yes	From indictment

Highlights

Successful practices

- Solid inter-agency co-operation
- Extensive national tax crime strategy and threat assessment on tax crimes
- Exhaustive legal framework for seizing, freezing and confiscating assets

Room for improvement

- The Netherlands would benefit from strategic and operational co-ordination in the fight against tax crimes committed by using digital resources.

Notes

¹ <https://zoek.officielebekendmakingen.nl/stcrt-2015-17271.html>.

² <https://zoek.officielebekendmakingen.nl/stcrt-2015-17271.html>.

³ <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/11/14/aanbiedingsbrief-jaarplan-2019-belastingdienst>.

⁴ https://www.om.nl/publish/pages/54055/17001_-_nbd2017_interactief.pdf.

⁵ <https://www.belastingdienst.nl/wps/wcm/connect/nl/home/home>.

⁶ <https://www.fiod.nl> (FIOD), <https://www.om.nl> (OM), <https://www.belastingdienst.nl> (NTCA).

⁷ Freezing / seizing is used to temporarily prevent the movement of assets pending the outcome of a case. Confiscation is used after the final outcome of a case, as a final measure that permanently deprives criminals from accessing assets obtained from a crime.

⁸ Non-conviction-based confiscation means the power to seize assets without a criminal trial and conviction.

⁹ Extended confiscation 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.

¹⁰ Value-based confiscation is a method of confiscation that enables a court to impose a pecuniary liability equivalent to the amount of the criminal proceeds, such as a fine.

¹¹ Third party confiscation is a measure made to deprive someone other than the offender – the third party – of criminal property.

¹² See Rome Report, Chapter 5 – Country Information – The Netherlands. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>

36 New Zealand

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1559. New Zealand's Tax Administration Act 1994 (TAA) sets out various tax crimes ranging from absolute liability offences (requiring no *mens rea*) through to offences that require criminal intent of the part of the offender.¹ The offences attracting the most serious penalties are set out in the Crimes Act 1961 (CA). While they do not specifically penalise breaches of tax law they can be applied to tax related offending (e.g. use of a forged document). Examples of each category of tax offence and the corresponding sanctions for natural persons are set out in the tables below.

Table 36.1. Absolute liability tax offences

Offence	Maximum sanctions for natural persons		
	1st offence	2nd (+) offence	3rd (+) offence
Failure to keep books and documents as required by law (TAA, s143)	NZD 4 000	NZD 8 000	NZD 12 000
Failure to provide information (including tax returns and forms) to Inland Revenue (IR) (TAA, s143)			
Failure to issue a tax invoice as required (TAA, s143)			

Note: In April 2021, EUR 1 = NZD 1.67

Table 36.2. Offences requiring criminal intent

Offence	Maximum sanctions for natural persons
Deliberate failure to comply with tax obligations (TAA s143A(7))	NZD 25 000 fine for first offence and NZD 50 000 fine for every offence thereafter.
Knowingly using or permitting the use of tax deductions or withholdings of tax for any other purpose than payment to IR (TAA, s143A (8))	Five years' imprisonment, a maximum fine of NZD 50 000, or both.
Tax evasion (TAA, s143B(4))	Five years' imprisonment.
Dishonestly taking or using a document (CA, s228)	Seven years' imprisonment.
Use of a forged document (CA, s257)	Ten years' imprisonment.

Note: For offences that prescribe a term of imprisonment only, the court has the discretion to instead impose a fine (Sentencing Act, s39(1)).

1560. **Statute of limitations:** Under the TAA, the statute of limitations (with some exceptions, depending on the nature of the offence²) is ten years for both absolute liability offences and offences requiring knowledge or intent that breach obligations in the Income Tax Act 2007 or the Goods and Services Act 1985.³ The ten-year time frame begins after the end of the income tax year (which ends on 31 March) in which the offence was committed. There is no statute of limitations for the Crimes Act offences that can serve as tax crimes.

1561. **Accessory liability:** It is also a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, incite with another person to commit any of these offences.⁴

1562. **Complicity:** It is an offence in New Zealand to attempt or conspire to commit a criminal offence.⁵

1563. **Territorial and nationality jurisdiction:** New Zealand has jurisdiction over all crimes where any act or omission forming part of the offence, or any event necessary to the completion of any offence, occurs in New Zealand, whether the person charged with the offence was in New Zealand or not at the time of the act, omission, or event.⁶ Tax crimes do not have extraterritorial effect, meaning that Inland Revenue (IR) cannot prosecute NZ residents or citizens that commit a tax crime entirely outside of New Zealand.

1564. **Liability of legal persons:** All of the abovementioned offences apply to both natural and legal persons – thus body corporates, corporations sole, and unincorporated bodies are also subject to the abovementioned fines.⁷ Where the offence only specifies a term of imprisonment, the court may impose an unlimited fine on a legal person.⁸ The nexus required to convict a company of a tax offence is set out in case law. It is the “doctrine of identification”, i.e. the doctrine that identifies a person, usually a company director, as the “directing mind and will of the company”.⁹ Where the person is not a director, (for example, a lower level company employee), a court may hold a body corporate liable on the *Meridian* principle, which asks whose act and state of mind was intended to count as the act and state of mind of the company for the particular purpose.¹⁰

1565. **Professional enablers:** New Zealand does not have a separate penalty regime for tackling professional enablers. However, a professional enabler may be prosecuted under the TAA for aiding, abetting, inciting, or conspiring with another person to commit an offence, and will be liable to the same criminal penalties applicable to the principal offender.

Enforcement of tax crimes

Table 36.3. Enforcement of tax crimes in the tax years ending 2015-19

Tax years ending	Number of concluded civil investigations	Number of investigations where criminal offence was detected	Number of criminal investigations where action short of criminal prosecution was taken	Number of cases referred for criminal prosecution	Number of cases prosecuted	Number of convictions	Number of acquittals
2015	5 658	642	529	113	70	121	1
2016	6 514	727	626	101	80	105	0
2017	N/A	N/A	N/A	183	113	147	0
2018	N/A	N/A	N/A	124	86	94	0
2019	N/A	N/A	N/A	110	92	68	0
Total				631	441	535	1

1566. New Zealand is only able to provide figures on the number of civil and criminal investigations combined (i.e. it does not have individual figures on tax crime investigations). However, of the 12 172 civil and criminal tax investigations concluded in the tax years ending 2015-16, a criminal offence was detected

and thus a criminal investigation pursued in 1 369 instances. In 1 155 cases, an action short of *criminal* prosecution was taken and accordingly a *civil* shortfall penalty was applied under Part IX of the TAA. These include evasion shortfall penalties, where the offending amounts to the offence of tax evasion, but IR considers that liability is satisfactorily dealt with by a civil penalty. This approach is in accordance with the Solicitor-General’s guidelines, which restrict prosecution to cases where the public interest demands it. The remaining 214 cases were referred for criminal prosecution during the tax years ending 2015-16.

1567. In total, in the tax years ending 2015-17, 631 cases were referred for criminal prosecution, 441 prosecutions were commenced, resulting in 535 individual convictions (i.e. where an offender is convicted of multiple offences, or multiple counts of the same offence, each conviction is counted separately). Out of the total number of convictions, 203 were for tax evasion, 223 were for other TAA offences either requiring knowledge by the offender for aiding and abetting tax offences under the TAA. Those charged with aiding and abetting the commission of tax offences are typically company directors, where the taxpaying companies are the principal offenders. The principal offenders may not be prosecuted, either because it serves no purpose or because they have been struck off the register of companies and thus no longer exist. The remaining 109 convictions were for tax related offences under the Crimes Act 1961.

1568. Table 36.4 sets out the sanctions imposed in these cases. This demonstrates that New Zealand has a range of available sanctions in criminal tax matters and that the courts are utilising these in practice. These figures are cumulative, meaning that more than one sanction may have been imposed (e.g. an offender may have been ordered to pay reparation in addition to serving home detention). New Zealand does not maintain statistics on the total amount of fines imposed or the total amount of underlying tax evaded in these cases.

1569. New Zealand was not able to provide statistics on the number of legal persons prosecuted for tax offences during the tax years ending 2015-19 but notes that while rare, this does happen on occasion.

Table 36.4. List of other sanctions imposed in tax years ending 2015-19

Sanction	Number of times sanction imposed
>0 – 3 years’ imprisonment	46
>3 – 5 years imprisonment	12
Fine	39
Home Detention	173
Community Work or Service	158
Reparation	148
Post Detention Conditions/Supervision	44
Community Detention	84

1570. **Availability of settlements:** NZ law does not permit “settling” prosecutions, nor does it permit deferred prosecution agreements. However, as outlined above, s141E of the TAA permits the imposition of shortfall penalties for less serious cases of tax evasion. Decisions on whether or not to prosecute are made in accordance with the Solicitor-General’s Prosecution Guidelines and the Commissioner of Inland Revenue’s (supplementary) Prosecution Guidelines, where shortfall penalties are considered to be suitable alternatives to prosecution. A taxpayer who has paid a shortfall penalty may not later be prosecuted for the breach.¹¹

1571. **Availability of tax deductions for civil and criminal sanctions:** NZ law does not permit tax deductions or corrections for any types of civil or criminal fines or penalties and has a body of case law that supports this position.

1572. **Tax gap:** New Zealand does not calculate an overall tax gap but has estimated that, on average, the self-employed population underreport approximately 20% of their income.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

1573. **Tax Crime Strategy:** New Zealand has a range of documents that contribute to its overall strategy for the prevention, investigation, and prosecution of tax crimes. In 2014-15, New Zealand published a compliance management programme on its website. This was updated in 2016 with compliance information for small-to-medium sized businesses, which is where IR's criminal strategy is focussed.¹² New Zealand is planning a further update in this series in 2020, but this may yet be deferred due to higher priority work arising from the COVID-19 disruption. IR has also published its prosecution strategy, which is one of the compliance tools used for responding to tax crimes.¹³ These guidelines set out IR's strategic goals and direction, the types of non-compliance that may result in a decision to prosecute, factors that may influence a decision to prosecute, the choice of charges, the Commissioner's approach to publicising prosecution results, and the Commissioner's approach to measuring prosecution activity.

1574. In addition, IR is a party to several taskforce activities involving other agencies (including the NZ Police (NXP), the National Organised Crime Group, the Gang Intelligence Centre, the Serious Fraud Office (SFO), NZ Customs Service, and the Ministry of Business, Innovation and Employment) that focus on wider organised criminal activity (with tax crimes as one component). These taskforces are commonly led by NXP with IR as a partner and recipient of information.

1575. **Threat assessment:** IR's tax evasion/fraud programme of work is based on comprehensive risk analysis informed by intelligence from a wide range of internal and external sources, including various FIU products. IR has developed its own Data Intelligence Platform (DIP) to achieve better understanding of populations and earlier identification of new and emerging risks earlier.

1576. The DIP supports administration of the revenue function, and works in tandem with the embedded tax administration and risk identification functionality that exists in our core system (known as START). From a tax risk perspective, the significant gains sit with the ability to combine the use of internal data held in our core system with external datasets and then apply analytics to this data.

1577. START already has risk-based rules and mechanisms to identify tax risk purely from the information IR already holds such as tax returns, refund claims, filing methods (e.g. IP addresses), associates etc. This function is primarily automated through two START tools:

- "Integrity Manager" – upfront rules to withhold tax credits and refunds (covering fraud and error risk); and
- "Discovery Manager" – backend rules which review and compare information already filed.

1578. The DIP supports the core system, with data being added continuously. Specific large datasets ingested into the DIP include details of real property ownership/dispositions, electronic funds transfers and peer-to-peer platform transactions). IR increasingly uses the DIP to proactively identify fraud patterns, trends and anomalies. Over 20 intelligence reports were completed across 2018-20, the majority focusing on tax evasion and money laundering risks, leading to revisions in our compliance strategies and more effective prioritisation of IR's tax crime work.

1579. **Communications strategy:** IR's media and communications team makes case-by-case decisions in consultation with the relevant business manager about when and what type of communication will best support its compliance programme. This approach allows for coverage of high profile cases as well as enabling a range of prosecution activity across both income tax and GST together.

1580. Finally, IR provides information, reminders, seminars, compliance checks, and online self-assessment tools to help taxpayers declare and pay the right amounts of tax. It has also used radio,

newspaper, and mobile advertisements to prompt tradespeople to declare all their income from cash jobs. An example of one such campaign, entitled “declare it all or risk everything”, is available on IR’s website.¹⁴

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 36.5. Investigative powers of tax crime investigation agency (IR)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records power IR is also authorised to apply for warrants to enter private dwellings for the purposes of inspecting documents, property, and processes, and to remove and retain relevant documents. ^(a)	Full direct power
Obtain documents from third parties	Full direct power
Interview	Full direct power Interviews are voluntary and interviewees retain all civil and procedural rights
Inquiry powers (e.g. power of coercion)	Full direct power IR has the power to interview suspects under compulsion in which the right to remain silent and the privilege against self-incrimination do not apply, though self-incriminatory statements are not admissible against their maker in criminal prosecutions). ^(b) IR also has full direct powers to obtain court orders for persons to produce information or to attend inquiries before a judicial officer and has the ability to compel reasonable assistance (e.g. from employees of a business) in exercising entry and search powers to obtain information.
Intercept mail and telecommunications	No power These powers are only available under 434authorizedrrants, which IR is not authorised to apply for. The New Zealand Police does not exercise its powers to do so on behalf of IR, but if Police discovers information relevant to the Commissioner in the course of its own investigations, it may release that information to the Commissioner at its discretion under information sharing laws. However, tax authorities are able to open mail that is found at premises during a search, and obtain existing (i.e. already transmitted) telecommunications data from third party service providers.
Conduct covert surveillance	Full direct power IR can conduct covert surveillance subject to restrictions relating to private activity, private places, and surveillance device warrants, and is able to conduct certain types of surveillance activity for risk management and intelligence purposes. While there is no legislative prohibition on undercover operations, ther434authorized434n434specific legislative authorisation. From time to time, IR directly conducts elements of investigations covertly (e.g. when officers do not disclose their identity or function), but does not operate “undercover officers” and does not conduct “undercover operations”.
Search and seize computer hardware, software and electronic storage media	Full direct power
Arrest	No power IR does not have powers of arrest. Suspects are generally brought to court by summons, but warrants for arrest may be issued by a court if the person does not respond to the summons or is out of New Zealand when the summons issues. The person will then be arrested either by the Police on an outstanding warrant, or on their return to New Zealand. In either case they will be brought before a court and released on bail, usually on specific conditions for re-appearance on a specific date.
Additional powers	
IR also has the ability to obtain court orders to produce information or conduct inquiries before a judicial officer, and the ability to compel reasonable assistance in exercising powers to obtain information. IR notes that it would benefit from powers that are more explicit to access cloud and other remotely stored electronic data. ^(c)	

Note:

(a) See TAAIs17(2) and 17D.

(b) TAA, s17K.

(c) For more information see Chapter, 3, Government Discussion Document entitled “Making Tax Simpler” – available online at: <http://taxpolicy.ird.govt.nz>.

1581. **Legal professional privilege:** Legal advice in respect of tax liability and assistance in related litigation is protected from disclosure in accordance with general principle. Section 20 of the TAA protects confidential communications passing between legal practitioners, and practitioners and clients, where those communications are made for the purpose of obtaining or giving legal advice or assistance. However, where such communications are made for the purpose of committing an illegal or wrongful act, e.g. to facilitate tax evasion, they are, in accordance with general principle, not protected from disclosure. The protection in section 20 applies to the exercise of the Commissioner’s powers in sections 16 to 19. A similar provision in the Evidence Act 2006 applies to proceedings.

Principle 4: Freezing, seizing, and confiscating assets

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

1582. **Legal basis:** In 2009, New Zealand enacted the Criminal Proceeds (Recovery) Act¹⁵, which establishes a **civil-based asset-confiscation regime**. Under CPRA, assets can be seized or forfeited regardless of the existence or outcome of criminal proceedings where it can be shown, on the balance of probabilities (as opposed to the criminal threshold of “beyond reasonable doubt”), that they were derived from “significant criminal activity”. This covers (i) activity punishable by five years’ imprisonment; or (ii) activity from which assets with a value of NZD 30 000 have been derived. This captures property derived from all tax offences in the Crimes Act and TAA that require knowledge or intent on behalf of an offender. Assets may also be confiscated from **third parties** so long as this threshold is met.

1583. **Freezing orders:** IR can also apply for freezing orders directly through the Crown Law Office. The number of this kind of application varies annually from none to four or five per year. There is no legal restriction on the time it takes to obtain a freezing order. However, IR takes a conservative approach, and will typically take between one and two weeks to arrange for a restraining order. The urgency with which a freezing order is sought depends on the danger of the dissipation of assets and the effect of the order on the rights of the taxpayer.

1584. **Seizing orders:** Restraining orders to seize assets pending the outcome of litigation) can be made on application to the High Court by the Police Commissioner (for specific property) or a prosecutor (for instruments of crime) under the CPRA. Restraining orders expire after one year or on the date that a forfeiture order is granted or declined. They can however be extended on application to the Court for a further year, more than once.

1585. **Confiscation orders:** Civil *forfeiture* orders (i.e. to confiscate assets) are also made on application to the High Court, but must be made by the Police Commissioner. There are special rules regulating the exchange of information between IR and the Police for the purposes of applications under the CPRA. Both restraining and forfeiture orders can be made “without notice” where there is a risk of the proposed restrained property being destroyed, disposed of, altered, or concealed.

1586. **Foreign freezing, seizure, and confiscation orders:** Under CPRA and the Mutual Assistance in Criminal Matters Act 1992 (MACMA)¹⁶, a NZ court may enforce foreign states’ freezing, seizing and confiscation orders (which forfeit the property to the relevant foreign state).¹⁷ However, to IR’s knowledge, no such orders have been made.

1587. **Agency/unit responsible for asset recovery:** Both IR and the Asset Recovery Unit (ARU) which sits within NZP, are responsible for seizing and confiscating assets in criminal tax matters. IR collaborates closely with ARU on cases to ensure that all sanctions are considered and applied where appropriate. Both IR and ARU work closely with the Serious Fraud Office (SFO) when circumstances justify it. When IR wishes to ensure that assets are seized, it provides the relevant information to the ARU, which then applies to the High Court for a forfeiture order.

1588. **Freezing, seizure, and confiscation in practice** For 2015-19, NZ authorities seized NZD 90 million of assets in connection with criminal tax matters. Figures for the total amount of assets forfeited in connection with tax crimes are not available.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1589. **IR is solely responsible for detecting, investigating, and prosecuting tax evasion and other tax related crimes such as tax fraud.** Once a risk is identified, it is referred to customer compliance specialists who will investigate the suspicion. When a criminal matter is identified, a solicitor from Legal Services is assigned to the case to ensure that due process is followed. If a manager decides to proceed with charges, the case is handed to the Legal Services team who will prosecute the case in court. In accordance with the Solicitor-General's standing instructions, IR will instead refer complex cases to the local Crown solicitor for prosecution. Crown solicitors (private firms of solicitors with a partner holding a warrant to do Crown work) are responsible for most serious criminal prosecutions in New Zealand, under the high-level supervision of the Crown Law Office.

1590. The experience of IR has been that being responsible for most of its own investigations and prosecutions carries a number of advantages. For example, prosecutors are highly specialised on tax crime matters and have a more streamlined referral process with minimal competition for resources. IR has not experienced any disadvantages from being the sole agency responsible for initiating tax crime prosecutions.

1591. The below table provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of NZ's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).¹⁸

Table 36.6. Agencies & other bodies responsible for enforcing other financial crimes

Body	Role with respect to financial crime
Inland Revenue Department	Solely responsible for the detection, investigation, and prosecution of tax evasion and other tax related crimes such as tax fraud.
The NZ Customs Service	Deals with non-compliance in respect of the collection of customs duty, and goods and services tax (i.e. VAT).
National Organised Crime Group (within NZP)	Responsible for enforcement of less serious financial crime.
Asset Recovery Unit (separate unit within NZP)	Administers civil based asset forfeiture/confiscation procedures.
Financial Intelligence Unit (FIU) (housed within NZP)	Collects, analyses and disseminates financial intelligence relating to suspicious transactions/activities, money laundering, and the financing of terrorism.
The Serious Fraud Office	Detects, investigates, and prosecutes serious or complex fraud and corruption matters, which covers most

	instances of bribery, corruption, and secret commissions.
Financial Markets Authority	Regulates a range of investment related issues and supervises AML/CFT legislation.
Reserve Bank	High level regulation of financial markets and AML/CFT supervisor.
National Co-ordination Committee	Statutory body consisting of Reserve Bank, Ministry of Justice, FMA, Department of Internal Affairs, IR, Customs, and NZP responsible for overseeing the operation of NZ's AML/CFT regime.
Crown Law Office	Responsible for government prosecutions at a supervisory level.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1592. IR does not have a specific tax crime investigation budget, but has received a number of investments from Government since 2010 to enable additional focus to be given to improving the reporting of cash transactions across the hidden economy and further deter fraudulent return and claim activity. In more recent years, IR's focus has extended to emerging risk areas such as the sharing and gig economy, alternative payment methods and cryptocurrencies. In the year to 30 June 2019, IR's hidden economy work assessed NZD 108.8 million of additional tax revenue; IR's work to identify and prevent fraudulent refunds and entitlements resulted in the assessment of NZD 30 million of additional tax revenue. IR has no staff dedicated entirely to tax crime investigations, but rather maintains an agile workforce of specialist accountants and lawyers who operate under broad roles enabling them to investigate tax crime cases either referred to them as suspected tax offending or revealed as suspected tax offending in the course of standard audits.

1593. Tax crime cases do not have performance targets but, on average, IR aims to finish tax crime investigations within 16 months from notification of the suspected offence.

Table 36.7. Data bases/sources of information available to tax crime investigators

Database	Access
Company formation/ ownership registry	Direct Access*
Land Registry	Direct Access*
Registry of citizens	Access on Request
Tax databases	Direct Access*
Customs databases	Access on Request
NZP databases	Access on Request
Judicial databases	Direct Access*
Suspicious transaction/activity report databases	Access on Request
Car registry	Access on Request
Boat registry	Access on Request
Database of bank accounts**	N/A

Note:

* Direct access presumes that investigators can also request information from these databases.

** There is no general database of bank accounts. IR is able however to compel financial institutions to provide copies of relevant bank accounts using its power in TAA s17B.

Training for tax crime investigators

1594. Overall, IR invests 4-6% of its annual operational budget for tax investigations in staff development activities that include both technical and investigative training. On average, IR investigators with up to five years' experience receive 20 days' direct training per annum and those with over five years' experience receive 15 days. In addition to this, IR provides that a considerable amount of training is done "on the job".

1595. IR's investigator training covers a range of topics including, evidence, elements of tax offences, use of the Commissioner's powers, search and surveillance, the rights of taxpayers, briefs of evidence, witness familiarisation, investigative interviewing, and various tax technical and anti-money laundering courses. IR is currently in the process of developing a revised training course on serious non-compliance that will apply the skills learned in existing training to a practical scenario-based programme designed to ensure investigators have a good grasp of investigation methods and strategic investigation techniques. It will consist of six intensive classroom modules, supplemented by online training, with additional modules on specialist topics for investigators with more practical experience.

Principle 7: Predicate offences

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

1596. **Approach:** New Zealand adopted an "all crimes" approach to money laundering in 2015, meaning that it is now an offence to launder the proceeds of *any* offence. Prior to this, all tax crimes carrying a term of four or more years' imprisonment were predicate offences for money laundering. Persons may be charged with money laundering under the Crimes Act regardless of whether a person has been charged or convicted of the predicate offence, or whether New Zealand has jurisdiction over the predicate offence.¹⁹ As with any element of an offence, the source of the proceeds in a predicate offence must be proved beyond reasonable doubt.

1597. **Enforcement of money laundering predicated on tax crimes:** Where the facts justify it and the decision meets the requirements of the Solicitor-General's Prosecution Guidelines, IR will prosecute for money laundering in addition to the main count of tax evasion. For example, in *R v Chahil and Gupta*,²⁰ Mr Chahil was the person behind 13 restaurants that had been involved in tax evasion of approximately NZD 700 000. Mr Gupta was the accountant that had assisted him to launder NZD 524 000 of the proceeds of this tax evasion. Mr Chahil was sentenced to three years and two months imprisonment with a fine of NZD 50 000 for the tax evasion and was sentenced to two years and one month imprisonment for the money laundering, with the sentences to be served concurrently. Mr Gupta was sentenced to ten months home detention for his role in the money laundering.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

1598. As outlined under Principle 5, IR is solely responsible for investigating both civil and criminal tax matters, meaning that suspected tax crimes, whether identified in the course of an audit or because of suspicious anomalies (e.g. a company which is perpetually in a tax loss situation), are investigated by the same Customer Compliance Specialists who conduct civil audits. Investigations are not referred to an

external law enforcement body. Where an auditor (a Customer Compliance Specialist) identifies a suspected tax crime, IR's Legal Services unit will, on request, assign a solicitor to advise on procedural, evidential and other legal issues (e.g. advice on appropriate charges) during the course of the investigation. Such requests are encouraged by Legal Services and are usually made, but are not mandatory. IR may report suspected non-tax related offences to NZP, the Customs Service and the SFO under the conditions set out in the Authorised Information Sharing Agreement (AISA), discussed further below.

Information sharing between agencies involved in investigation and prosecution of tax crime and other financial crime

1599. Subject to certain restrictions, agencies responsible for investigating and prosecuting tax crimes and other financial crimes in New Zealand have the discretion to spontaneously share information with each other. The process works satisfactorily in practice. In July 2020, IR entered into an AISA with NZP, the Customs Service and the SFO under which it may (either on request or proactively) share personal information of natural persons or associated entities suspected of serious non-tax offences (such as tax information, financial transaction information, domestic relationship information, asset and employment information, and any other personal information discovered during the course of its usual functions).

1600. The NZP, the Customs Service and the SFO may request, and IR may proactively volunteer, personal information when either party has reasonable grounds to suspect that a serious crime has been, is being, or will be, committed. A serious crime is defined as an offence punishable by imprisonment of four years or more and covers financial crimes such as bribery, corruption, money laundering and the financing of terrorism. IR may also share taxpayer information with NZP or other agencies in cases related to the administration of taxation, investigation of tax crimes, and the facilitation of asset recovery.

Table 36.8. Models for sharing information related to tax crime and other financial crimes

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access ^(a)	DSS	DSS ^(b)	DSS	DSS
	Customs administration	DSS	DSS		DSS	DSS	DSS
	Police or public prosecutor	DSS	DSS	DSS		DSS	DSS
	Financial Intelligence Unit	Sharing prohibited ^(c)	DSS ^(d)	DSS	DSS		DSS
	Corruption investigation authority	DSS	DSS	DSS	DSS	DSS	
	Financial regulator	DSS	DSS	DSS	DSS	DSS	DSS

Note:

DSS = Discretionary Spontaneous Sharing

(a) Generally, due to the relatively small size of the tax administration, a high level of co-operation exists between all the personnel carrying out compliance activities. This is supported by a national portfolio structure which assists in identifying risk, managing process and sharing information, shared legal and technical resources with common sign-off processes, information sharing special interest groups, regular co-ordinated national training, and co-location of resource. In one instance, there is a separate investigations group which addresses sensitive matters, but this group is included in all the activities described above save for dealing with particular issues.

(b) Since 2014, an information sharing agreement between the Inland Revenue and the New Zealand Police means that the tax administration may now share information with the Police for the prevention, detection or investigation of a serious crime, or for use as evidence of a serious crime. For these purposes, a serious crime is defined as a crime punishable by four or more years in jail and therefore includes such offences as bribery and money laundering. The Inland Revenue may also share taxpayer information with the Police or other agencies in cases related to the administration of taxation, investigation of tax crimes or the facilitation of asset recovery.

(c) The FIU does not provide information to the tax administration for the purposes of making civil tax assessments. However, where the tax administration has received FIU information related to suspected tax offences, it may also use this information for the purposes of assessing taxes.

(d) Processes are in place to ensure that any Suspicious Activity/Transaction Reports concerning possible tax evasion are forwarded to the Inland Revenue by the FIU without requiring a request to be made. The Inland Revenue also makes extensive use of targeted information requests to obtain FIU data in relation to specific taxpayers, and high risk demographics and regions for use in detecting offshore tax evasion.

Table 36.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	IR has a range of MOUs with other agencies to facilitate the enforcement of financial crime (see above).
Joint operations and taskforces	Occurs from time to time as necessary (e.g. with other NZ agencies or Australian law enforcement agencies), but is restricted owing to IR's strict secrecy provisions.
Parallel investigations	Occur from time to time (e.g. with other NZ agencies or Australian law enforcement agencies), but is restricted owing to IR's strict secrecy provisions.
Joint intelligence centres	No formal general intelligence centre, but CLAG (see "Multi-Agency Training" below) does have some intelligence sharing function and there is a multi-agency Gang Intelligence Centre.
Secondments and co-location of staff	Occurs from time to time (e.g. with NZ Customs), but is restricted owing to IR's strict secrecy provisions.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Always possible upon receipt of information from other agencies
Multi-agency training	Occurs through CLAG (Combined Law Agency Group) meetings and DPF (Departmental Prosecutors Forum), but is restricted owing to IR's strict secrecy provisions.

Principle 9: International co-operation

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.

1601. **Legal basis:** IR may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. As of November 2020, New Zealand has entered into exchange of information relationships with 60 jurisdictions through 40 Double Tax Agreements (DTAs) and 20 Tax Information Exchange Agreements (TIEAs).²¹ It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows IR to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. According to NZ IR, New Zealand may also consider ad hoc requests.

1602. New Zealand is also able to share information on criminal matters in the absence of a treaty or convention pursuant to the [Mutual Assistance in Criminal Matters Act 1992](#) (MACMA). MACMA allows for co-operation with all jurisdictions, including where no treaty or convention relationship exists.

1603. **Competent Authorities:** The Crown Law Office is New Zealand's central authority for sending and receiving MLA requests related to all crimes, including tax crimes and has experience granting MLA requests for financial and company information. The former takes longer as it requires a search warrant whereas company information is publicly available.²²

1604. **International co-operation in practice:** New Zealand actively uses tax MLA and tax treaty requests as part of its criminal investigation process. Recent examples include MLA requests to Hong Kong, China and several DTA requests made to Australia, the United Kingdom and the Netherlands as part of an investigation into a cross-border tax evasion scheme²³ and DTA requests to Australia and India as part of an investigation into tax evasion and money laundering.²⁴

Principle 10: Fundamental rights of a suspect or accused person

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

1605. **New Zealand provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights.** These fundamental rights are affirmed by the [New Zealand Bill of Rights Act 1990](#). Other procedural protections are set out in the [Criminal Procedure Act 2011](#) and the [Evidence Act 2006](#) (e.g. the privilege against self-incrimination). The TAA also confirms basic rights in the tax crime context (e.g. the onus of proof is on the Commissioner for tax crimes).²⁵

1606. In New Zealand, a civil tax matter becomes a criminal tax matter the moment an offence is identified or admitted. IR provides that it protects suspects' rights by ensuring that accused persons are informed of the rights applicable to the nature of the audit/investigation. For example, the privilege against self-incrimination is explained at the outset of a criminal investigation, whereas in a civil audit, this may not be explained unless the person makes an admission of wrongdoing, at which point they will be advised of the right.

1607. Following a recent court decision,²⁶ IR has reviewed its operational approach to the use of statutory powers and the operation of the disputes' procedure. This is to ensure that when a taxpayer is required to provide information to IR in compliance with a statutory obligation or power that the exercise of this power or complying with the statutory obligation does not undermine the taxpayer's rights under the New Zealand Bill of Rights Act in relation to potential criminal liability.

Table 36.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Available	Additional Information
presumption of innocence	Yes	Available from outset of criminal investigation
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Available from outset of criminal investigation
remain silent	Yes	Available from outset of criminal investigation subject to statutory limitations related to certain powers (e.g. inquiry powers under TAA, s171. Incriminating statements are inadmissible in criminal proceedings Except when a charge of perjury is made).
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	Upon charges being filed, with additional information available on request.
access documents and case material, also known as a right to full disclosure	Yes	In increasing degrees from the time charges are filed, with full disclosure occurring after a plea of "not guilty".
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Strong legal framework for recovery of assets related to tax crimes
- Significant resources dedicated to training IR compliance staff

Room for improvement

- New Zealand could benefit from using enhanced forms of co-operation such as secondments and co-location of staff and joint intelligence centres.

Notes

¹ All New Zealand legislation is available at: www.legislation.govt.nz. Crimes Act offences do not specifically penalise breaches of tax law, but the facts of many breaches of tax law lend themselves to prosecutions as generic crimes (e.g. section 228 dishonestly using a document; section 240 obtaining/causing loss by deception; section 256 forgery; section 257 using forged documents; section 260 false accounting).

² Where the exceptions apply the timeframe will be either 6 months, 12 months or 5 years from the date of the offence, depending on the maximum fine that can be imposed.

³ TAA, s150A.

⁴ Crimes Act, s66 and TAA, s148.

⁵ Crimes Act, ss309 and 310 and TAA, s148.

⁶ Crimes Act, s7.

⁷ Section 29 of the Interpretation Act 1999 provides that “person includes a corporation sole, a body corporate, and an unincorporated body”.

⁸ For offences that prescribe a term of imprisonment only, the court has the discretion to instead impose a fine (Sentencing Act, s39(1)).

⁹ Nordik Industries Ltd. v Regional Controller of Inland Revenue (1975) 2 NZTC 61043.

¹⁰ Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 3 NZLR 7; applied to criminal law for example in Linework Ltd v Department of Labour [2001] 2 NZLR 639.

¹¹ TAA, s149(5).

¹² www.ird.govt.nz/taxagents/compliance/basics-business/sme-compliance-focus-index.html.

¹³ www.ird.govt.nz/technical-tax/prosecution-guidelines/.

¹⁴ www.ird.govt.nz/m/apps/under-the-table.html.

¹⁵ Criminal Proceeds (Recovery) Act. Available at:

<https://www.legislation.govt.nz/act/public/2009/0008/latest/whole.html#whole>.

¹⁶ Mutual Assistance in Criminal Matters Act 1992 (MACMA). Available at:

<https://www.legislation.govt.nz/act/public/1992/0086/latest/DLM273057.html>.

¹⁷ CPRA Part 2, subpart 8 (foreign restraining orders and foreign forfeiture orders); MACMA part 3 sections 54-58 (requests to enforce foreign restraining orders and foreign forfeiture orders).

¹⁸ See Rome Report, Chapter 5 – Country Information – New Zealand. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

¹⁹ [Crimes Act 1961](#), ss243-245.

²⁰ *R v Chahil and Gupta* [2020] NZHC 317.

²¹ See <http://www.eoi-tax.org> for up-to-date figures.

²² <https://www.companiesoffice.govt.nz/>.

²³ *R v Honk Barges Ltd* [2018] NZHC 1890.

²⁴ *R v Chahil and Gupta* [2020] NZHC 317.

²⁵ TAA, s149A.

²⁶ *R v Safi* [2018] NZDC 19698.

37 Norway

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1608. Norway's Civil Penal Code (CPC) sets out a range of different tax offences, which require criminal intent (*mens rea*) or gross negligence. Examples of tax offences that apply to both income tax and VAT/GST are set out in the table below.

1609. Norway notes that its tax crime offences do not have a minimum sanction, and that when the CPC sets sanctions in the forms of fines and imprisonment, the court can decide which one to impose, or impose both.

Table 37.1. Tax offences requiring criminal intent or gross negligence

Offence	Maximum Sanction
Tax fraud (CPC, 378)	Imprisonment for two years and a fine
Aggravated tax fraud, if it involves a considerable sum, was perpetrated in a manner which has made it difficult to discover or was committed in multiple occasions, etc. (CPC, 379)	Imprisonment for six years and a fine
Grossly negligent tax fraud (CPC, 380)	Imprisonment for a year and a fine, if aggravated imprisonment for six years and a fine

1610. **Statute of limitations:** The limitation period for tax crime offences in Norway is ten years (CPC, 381). The period commences when the criminal offence has ended, and can be cancelled by issuing a charge.

1611. **Complicity:** It is also a criminal offence, punishable by the same maximum penalties as the principal offence, to be complicit in the commission of any of these offences (CPC, 15).

1612. **Attempt and conspiracy:** Attempt to commit a tax crime is an offence in Norway (CPC, 16) with the same maximum penalties. Conspiracy to tax crime is not an offence in Norway.

1613. **Professional enablers:** Norway does not have a separate penalty regime for professional enablers, but they can be considered complicit and receive the same sanction as the primary offender.

1614. **Territorial and nationality jurisdiction:** Norway has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in Norway. As tax crimes in Norway involve a

Norwegian resident submitting false or incomplete information to the Norwegian authorities, the offence per definition has to be committed in Norway with full jurisdiction for Norwegian authorities.

1615. **Liability of legal persons:** All of the abovementioned offences apply to both natural and legal persons (CPC, 27). While Norway does not maintain statistics on the amount of legal persons prosecuted for tax crimes, it notes that it generally prioritises prosecuting individuals, as legal persons are liable for an administrative sanction that exceeds criminal fines.

Enforcement of tax crime

1616. The below tables show the enforcement of tax crimes against natural persons in Norway in tax years ending 2015-18, and the list of types of sanctions imposed by Norway in the same period. Data for the enforcement of tax crimes are taken from the Norwegian tax authorities' annual report on the total amount of investigative audits, including both civil and criminal cases.

1617. Data for the type of sanctions imposed represents cases reported by Tax Norway's regional offices in relation to their work.

Table 37.2. Enforcement of tax crimes against natural persons in the tax years ending 2015-18

Tax years ending	Number of concluded tax crime investigations	Offence detected (number of cases)	Cases where action short of prosecution was taken	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2015	603					468	
2016	524					372	
2017							
2018							
2019							

Table 37.3. List of other sanctions imposed in tax years 2015-16

Sanction	Number of times imposed
>0 – 3 years' imprisonment	64
>3 – 5 years' imprisonment	1

1618. **Availability of settlements:** Settlements in tax crimes are not allowed under Norwegian law.

1619. **Availability of tax deductions for civil and criminal sanctions:** Sanctions in Norway are non-deductible from tax.

1620. **Tax gap:** Norway does not measure its tax gap.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1621. The Prime Minister's Office, the Ministry of Justice and the Police, the Attorney General, the Ministry of Finance and the Directorate of Taxes lead Norway's tax crime strategy. Other contributing

agencies include the Directorates of Police, Social Services, Customs and Labour Market Inspections. The strategy is implemented through inter-agency memorandums of understanding (MOUs) and annual meetings among high-level representatives of each agency. The most prominent MOU relates to labour market crime, including tax crime. Norway has established seven Regional labour market crime centres, and the MOU regulates the administration of these centres.

1622. **Threat assessment:** Every second year the five Nordic countries, under the Nordic Agenda of Co-operation, undertake the "Nordic Agenda Threat Assessment" which seeks to identify risks, evaluate trends, and assess the consequences of tax crimes. All of the abovementioned government agencies contribute to the threat assessment, which draws on tax databases, currency and transaction data, as well as open source intelligence. Norway, as the other Nordic countries, also has a national threat assessment which includes tax crimes, and is prepared by ØKOKRIM.

1623. **Communications strategy:** Norway notes that while it does not possess a specific communications strategy for tax crimes, there is a strategy of communicating all aspects of the fight against economic crime. Also the verdicts are public, and are to a certain degree made known through the media and on the internet.

Box 37.1. Example of successful implementation of tax crime strategy: Norway – Strategy to Combat Labour Market Crimes

The strategy is successful in three ways:

1. It has brought the public attention to a particular area of tax crimes – the labour market crimes. This is a holistic approach to the misuse of people and companies to exploit government welfare, exploit people and steal their identities (human trafficking) and use fraudulent documents and operations to get VAT or other forms of refunds from tax administrations. This has become a part of the Norwegian general awareness and has mobilised the community and civil institutions to very high degree of attention to the problem.
2. It has increased ability and commitment to work under the guidance of a “whole of government approach”. The political attention and focus from the very top of the involved departments have made it possible to seek best practises and increase tax administrations’ ability to co-operate. As an example, ØKOKRIM have in collaboration with their partners in the civil directorates, analysed Norway’s legal situation in relation to secrecy and discretion provisions. This has resulted in a newly proposed change of law that will address the findings they have done.
3. Cases concerning illegal workers being expelled from Norway (police), human trafficking of labour and false ID’s (Police, Tax, Labour inspectorate), illegal sales of food (Police, Customs, Tax, Food inspectorate) and misuse of workforce (Police, Labour inspectorate and Tax) have been detected and handled and/or investigated by the Labour crimes centres and local police.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

1624. Tax crime investigations in Norway are conducted by the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM). The below table shows the powers of ØKOKRIM in tax crime investigations.

Table 37.4. Investigative powers of tax crime investigation agency (ØKOKRIM)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Court order required.
Obtain documents from third parties	Full direct power Court order required.
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power Court order required.
Intercept mail and telecommunications	No power
Conduct covert surveillance	Indirect power via another agency
Conduct undercover operations	Indirect power via another agency
Search and seize computer hardware, software and electronic storage media	Full direct power Court order required
Arrest	Full direct power Court order required – if more than 72 hours

1625. The power to intercept mail and communications is restricted to crimes with a minimum sentence of ten years in Norway, which makes those measures impossible for tax crimes. ØKOKRIM notes that it would benefit from such power in some cases.

1626. **Legal professional privilege:** The attorney's duty of confidentiality is protected in Norway by Section 95 of the Constitution and several international human rights treaties of which Norway is a state party. It is defined in Norway as the ability of a client to communicate with his/her lawyer openly without fear of breaches of confidentiality, and includes the fact that lawyers cannot give statements in court unless given permission by the client. Accountants and tax advisors are not included in the legal professional privilege.

1627. Norway notes that the attorney professional privilege often affects tax crime investigations.

Principle 4: Freezing, seizing, and confiscating assets

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

1628. **Legal basis:** Confiscation orders in Norway can be issued by the courts as part of a criminal conviction.

1629. **Freezing and seizing orders:** Norwegian law provides for seizing orders, issued by the Police, including ØKOKRIM. Anyone with legal interest can bring the orders before the court.

1630. **Confiscation orders:** The CPC, chapter 13, regulates confiscation of assets. When certain conditions are met, an asset may be confiscated even if no one is convicted of the underlying crime. If the owner or the rights holder of the assets is not known, confiscation can be made against a third party (possessor).

1631. **Foreign freezing, seizure, and confiscation orders:** Norway applies seizing and confiscating powers in respect of foreign tax investigations and court decisions.

1632. **Agency/unit responsible for asset recovery:** In Norway the Norwegian Police, including the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) are responsible for the seizure and confiscation of assets in tax crime cases. The final confiscation is decided by the court.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1633. Tax crimes in Norway are investigated and prosecuted by the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) and by the Norwegian Police. The Norwegian Tax Administration (NTA) is under a duty to detect and report suspected tax crimes (and other financial crimes) to the Police.

1634. Civil tax auditors function as advisers in criminal cases and some tax auditors are embedded within Police. Police in Norway's 12 police districts may investigate all financial crime; however, the most serious and complex cases will be referred to ØKOKRIM which is a specialised police and prosecution authority, with special units dedicated to the investigation and prosecution of various types of financial crime.

1635. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Norway's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).

Table 37.5. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Norwegian Tax Administration	Detects and reports suspected tax crime to Police
ØKOKRIM	Investigates and prosecutes cases of complex corruption, tax crimes and any other form of economic crimes
Norwegian Police	Investigates tax crime and other financial crimes
The Public Prosecutor's Office	Prosecutes tax crime and other financial crime
Norwegian Customs and Excise Agency	Border control, and assessment and collection of customs and excise duties, and service
Financial Intelligence Unit	Collects, analyses and disseminates financial intelligence relating to suspicious transactions/activities, money laundering, and the financing of terrorism
Financial Supervisory Authority of Norway (Finanstilsynet)	Supervises financial institutions for AML/CFT compliance

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1636. The Norwegian government does not allocate a specific budget for the investigation or prosecution of tax crimes. There is only a general budget for the Police and the public prosecution service. Budgets are allocated on an annual basis, and are not performance based, and staff does not have performance targets.

1637. The below table shows the databases and sources of information available to tax crime investigators in Norway.

Table 37.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access*
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access/Access on request
Customs databases	Access on Request
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access

Note:

* Direct access presumes that investigators can also request information from these databases.

Training for tax crime investigators

1638. Norwegian investigators go through a three-year programme at the Police Academy and finish it with the degree of Bachelor in Police Science. The Police Academy also provides post-Bachelor training on financial crime investigations. In ØKOKRIM, all prosecutors and investigators are obliged to participate in different specific training courses within their first year of employment covering all financial crimes.

Principle 7: Predicate offences

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

1639. **Approach:** Norway adopts an ‘all of crimes’ approach to money laundering, whereby it is an offence to launder the proceeds of any criminal offence (CPC, 337-341). Persons may be charged with money laundering regardless of whether a person has been charged or convicted of the predicate offence, or whether Norway has jurisdiction over the predicate offence.

1640. **Enforcement of money laundering predicated on tax crimes:** Norway observes that the introduction of the ‘all of crimes’ approach to money laundering in 1999 has resulted in improved inter-agency co-operation between the different authorities involved in prosecuting money laundering and corresponding predicate offences.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1641. Tax auditors working within the NTA may report to the Police findings that give reason to suspect crimes. The suspicion must be found to be a “reasonable suspicion” if the violation of regulation is outside

the NTAs area of administration, and may be reported when the regulation is carrying a term of imprisonment of six months or more.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1642. In addition to reporting, it is critical that agencies involved in the investigation of tax crime and other financial crimes have mechanisms in place to share information with each other. The below tables set out the information sharing gateways that Norway has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Norway's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes](#).

Table 37.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		MSS	MSS	MSS ^(a)	MSS	Direct Access ^(b)
	Customs administration	MSS	MSS		MSS	MSS	Direct Access ^(b)
	Police or public prosecutor	DSS		DSS		MSS	Direct Access ^(b)
	Financial Intelligence Unit	DSS	DSS	DSS	DSS ^(c)		Direct Access ^(b)
	Corruption investigation authority	Direct Access ^(b)	Direct Access ^(b)	Direct Access ^(b)	Direct Access ^(b)	Direct Access ^(b)	
	Financial regulator	On Request	DSS	DSS	DSS	DSS	Direct Access ^(b)

Note:

DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

(a) As indicated earlier the tax administration may report reasonable suspicion of crimes carrying a term of imprisonment of six months or more to the Police

(b) There is no specialized Corruption Investigation authority in Norway. Investigation and prosecution are carried out by ØKOKRIM and the Norwegian Police and Prosecutions Authority.

(c) The FIU is able to provide information spontaneously to the police, but the police are not able to request information. This could act as an important restriction on an investigator's ability to obtain information held by the FIU, or to seek further details with respect to information already obtained.

Table 37.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Yes
Disclosure of foreign trusts	Yes
Joint operations and taskforces	Yes

Parallel investigations	Yes
Joint intelligence centres	Yes
Secondments and co-location of staff	Yes
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes
Multi-agency training	Yes

Principle 9: International co-operation

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.

1643. **Legal basis:** The Norwegian tax authority may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. To date, it has exchange of information relationships with over 125 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements.¹ It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows Norway to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. However, there may be limitations issued by one of the parties in the exchange of information that hinders the national sharing of such information between Tax and Police authorities for prosecution purposes.

1644. The Norwegian Police and Prosecution Authority may exchange information with foreign authorities according to existing international legal framework.

1645. **International co-operation in practice:** Norway does not maintain statistics on the number of MLA requests it sends and receives in relation to criminal tax matters each year.

1646. **Enhanced form of international co-operation:** Norway allows the execution of foreign asset recovery orders.

Principle 10: Fundamental rights of a suspect or accused person

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

1647. Norway provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by the *Constitution of the Kingdom of Norway* and several international treaties ratified by Norway.

1648. In Norway, a civil tax matter becomes a criminal tax matter the moment the tax administration refers the matter to the Police. Norwegian tax authorities are required to respect the full rights of persons accused of criminal offences when conducting civil investigations to ensure the admissibility of evidence is not compromised.

Table 37.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From moment of being suspected of a crime
remain silent	Yes	From moment of being suspected of a crime
access and consult a lawyer and/or entitlement to free legal advice	Yes	From moment of being suspected of a crime
interpretation and translation	Yes	From moment of being suspected of a crime
be advised of the particulars of what one is accused of	Yes	From moment of being suspected of a crime
access documents and case material, also known as a right to full disclosure	Yes	From moment of being suspected of a crime
a speedy trial	Yes	
protection from ne bis in idem (Double Jeopardy)	Yes	

Highlights

Successful practices

- Dedicated unit for the investigation of tax crimes, economic crimes and corruption
- Tax crime strategy designed with input from several government agencies and neighbouring jurisdictions
- Solid threat assessment of tax crimes and other economic and financial crimes

Room for improvement

- Norway notes that the current statutory definition of legal professional privilege may affect the success of tax crime investigations

Notes

¹ See <http://www.eoi-tax.org> for up-to-date figures.

38 Poland (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation:

1649. In Poland, tax crimes are criminalised in the Act of 10 September 1999 – Penal Fiscal Code (PFC), which outlines a range of criminal tax offences, all of which require criminal intent.

Table 38.1.

Offence	Minimum sanction	Maximum sanction
Tax evasion (PFC, art. 54)	Fine of ten daily rates, where one daily rate is from PLN 116 to PLN 46 533 according to court decision or five days of imprisonment, or both. Optional ban on conducting a specific business activity or profession, or occupying a specific position for one to five years.	Fine of 720 daily rates, where one daily rate is from PLN 116 to PLN 46 533 according to court decision or five years of imprisonment, or both. Optional ban on conducting a specific business activity or profession, or occupying a specific position for one to five years.
Tax Fraud (PFC, art. 56)		
Unfounded tax refund (PFC, art. 76)		

Note:

* In March 2023, 1 EUR = 4.69 PLN.

1650. **Statute of limitations:** The statute of limitations for all the offences listed in Table 1 above is ten years with the option to extend it by an additional ten years if criminal proceedings were initiated during the first period. The period of limitation is not counted if the provision of the PFC in question does not allow the initiation or continuation of criminal proceedings (PFC, art. 44 § 7). Indeed, formal immunities, which are enjoyed by specified actors¹, may be waived by a decision of an authority specified by law. Formal (procedural) immunity does not waive the criminal nature of a given act, but only ensures that criminal proceedings against the perpetrator cannot be initiated and conducted without the permission of an authorised body. If a final decision is repealed by a court of higher instance, the statute of limitations starts from the day of the repeal, unless ten years have passed since the commission of the offence (PFC, art. 44 § 6).

1651. **Complicity:** Complicity in committing tax crimes is subject to criminal liability in Poland. Each accomplice committing a prohibited act shall be held liable within the limits of their intentionality or unintentionality, regardless of the liability borne by the other perpetrators (PFC, art. 9).

1652. **Attempt and conspiracy:** An attempted fiscal crime is punishable according to Polish law, if this type of fiscal crime is punishable by more than one year of imprisonment. An attempted fiscal crime may

be punishable by a fine in the amount of up to two thirds of the maximum statutory penalty provided for a given type of fiscal crime (PFC, art. 21 ; Penal Code (PC) art. 13, 14 § 2, 15). It is also a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, incite, or conspire with another person to commit any of these offences. Accessories to tax crimes are subject to the same penalties as principal offenders (PC, art. 18 and 19). The principal offenders and accessories to crimes can be prosecuted together in one case.

1653. **Professional enablers:** Poland does not have a specific criminal regime for professional enablers. Accessories to tax crimes are prosecuted under the same penalties as principal offenders.

1654. **Territorial and nationality jurisdiction:** Polish jurisdiction applies to all perpetrators of criminal tax offences committed in the territory of the Republic of Poland. Under Polish law, there is no concept of partial commission of a crime. Furthermore, tax crimes have an extraterritorial effect in cases, where either a Polish citizen or a foreign commits a criminal tax offence against the financial interests of the Republic of Poland (PFC, art. 3).

1655. **Liability of legal persons:** In Poland, legal entities can be criminally liable for tax offences and have a separate penalty regime. They are subject to fines ranging from PLN 1 000 to PLN 5 000 000, but not higher than 3% of the revenue earned in the fiscal year, in which the tax offence was committed. Additionally, they may be subject to forfeiture of objects and other assets gained from the commission of the offence. The legal entity can also be banned from conducting certain business activities, using subsidies, or the assistance of international organisations of which Poland is a member state of (e.g. Eurofunds) for one to five years. Furthermore, the judge can decide on imposing a ban on participating in public procurement contracts for one to five years and making the judgement public (articles 7, 8 and 9 of the Act of October 28, 2002 on the liability of collective entities for acts prohibited under penalty (Journal of Laws of 2020, item 358, as amended)).

Enforcement of tax crime

Table 38.2. Enforcement of tax crimes in the tax years ending 2015-22 (applies to natural persons only)

Tax years ending	Concluded investigations	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals	Amount of underlying tax evaded (based on convictions)
2015	7 254	3 247	2 941	183	USD 95 million*
2016	6 478	2 955	2 555	127	USD 64 million
2017	8 193	3 038	2 498	113	USD 52 million
2018	5 048	2 798	2 219	110	N/A**
2019	5 385	2 943	2 412	108	N/A**
2020	4 898	2 614	2 046	63	N/A**
2021	5 574	3 041	2 619	137	N/A**

Note:

* In March 2023, 1 EUR = USD 1.08.

** Data not available, as there has been a change in the statistics collected since 2018, and such data is not available in that and subsequent years.

Table 38.3. List of other sanctions imposed in tax years ending 2015-22 (applies to natural persons only)

Sanction	Number of times imposed
Imprisonment	1 005

Fine	24 638
Naming and shaming of the offender in the media	40
Ban on doing business	149
Restriction of liberty*	151

Note:

* PC, art. 34: The penalty of restriction of liberty lasts from one month to two years. It consists in: the obligation to perform unpaid, controlled work for social purposes; deducting from 10 to 25% of remuneration for work on a monthly basis for a social purpose indicated by the court. While serving the penalty of restriction of liberty, the sentenced person may not change the place of permanent residence without the consent of the court and is obliged to provide explanations regarding the course of serving the sentence.

1656. **Availability of tax deductions for civil and criminal sanctions:** Poland does not allow tax deductions for any civil or criminal sanction in any form.

1657. **Availability of settlements:** Polish law provides for a settlement procedure for offenders of tax crimes. As part of this procedure, the perpetrator agrees with the public prosecutor on the sentence imposed for the crime, which is then confirmed by a judge at court. Under this procedure, the perpetrator may be punished with lower penalties than under normal criminal procedure. There is no concept of deferred prosecution agreements in Polish law (PFC, art. 156).

1658. **Tax gap:** According to the estimates of the Polish Ministry of Finance, in 2021 the VAT gap in Poland amounted to approximately 4.3% of potential receipts.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1659. The National Revenue Agency (NRA) is responsible for drawing up a tax crime strategy, in consultation with the Ministry of Finance. The key elements of the strategy range are: supporting taxpayers to ensure they fulfil tax obligations, increased efficiency of tax collection and increased effectiveness of preventing and combatting tax crime.

1660. This is the general strategy of the NRA and one of its elements is the area of improving the effectiveness of combating economic crimes and fraud. This strategy is established in 4-year cycles and evaluated annually. The NRA strategy, in this regard, generally indicates the objective of improving the effectiveness of combating economic crimes and fraud, which can be assessed by the size of the shadow economy in the national economy or the size of the VAT gap, not by specific numerical indicators, but generally by the increase or decrease of these indicators compared to year-on-year.

1661. Nevertheless, the NRA has set specific goals to achieve in the scope of fiscal crimes related to cigarettes. In this regard, statistical surveys are carried out by research companies to estimate the potential volume of cigarette smuggling over a certain period of time. Then, the number of revealed smuggled cigarettes (i.e. detected by the NRA) in passenger cars was estimated at 40% of the estimated amount based on statistical research.

1662. **Threat assessment:** The NRA carries out threat assessment according to different methodologies, e.g. assessing the probability of occurrence of a specific threat. All data available to the NRA and open sources is used in the assessment. The assessment focuses on threat identification, analysis, assessment and prevention. The threat assessment is updated on an ongoing basis as needed.

1663. **Communication strategy:** The National Revenue Administration conducts information and promotion activities as well as educational activities informing about the effects and dangers of tax crimes. In this regard, press conferences, webinars, trainings and meetings with entrepreneurs, taxpayers and organisations are organised. Education in the field of tax law is also addressed to school and university students. In addition, the NRA provides such information via websites and social media. The NRA has a dedicated public relations department that deals with the media. Finally, publishing court cases is largely used as a penal measure that is ordered by court.

Box 38.1. Example of successful implementation of tax crime strategy: Poland – the STIR system

STIR, for “*System Teleinformatyczny Izby Rozliczeniowej*”, meaning Clearing House Information System, is used in Poland in order to increase the effectiveness of preventing and combating tax crime. This tool is used in order to tighten the tax system by counteracting the use of the financial sector for tax fraud. Through STIR system, the authorities of the National Revenue Administration are able to detect tax frauds early and block the transfer of funds outside the Polish banking system, which should be used to pay tax or customs arrears together with any late payment interest.

STIR has been set up by the Act of August 29, 1997, Tax Ordinance, defining crimes and tax offences related to tax frauds.

Head of the National Revenue Administration carries out a risk analysis, grounded on data relating to accounts used by entrepreneurs for their corporate settlements. Due to regulations introduced into the Polish legal system, the Head of the NRA may block a qualified entity’s bank account for a period of up to 72 hours if information indicates that this entity may use banks for activities aimed at tax fraud.

Blocking bank accounts is one of the key elements of the STIR system, the use of which has justified grounds based on securing the interests of the State Treasury. It is a response to the identified threats to the stability of budget revenues in the form of VAT fraud and allows for quick intervention by the NRA authorities, enabling securing significant amounts.

If there is a justified concern that trader will fail to fulfil the existing or future tax liability exceeding the equivalent of EUR 10 000, NRA may extend the time limit for blocking accounts, not exceeding three months. Public prosecutor’s office is notified of the blocking of bank accounts.

Data from the STIR system, in particular regarding cash flows between entities’ bank accounts, as well as authorizations of persons to accounts and contact information related to these persons, are information used before initiating preparatory proceedings. STIR system provides support in the field of unravelling organized crime groups, which introduce so-called blank invoices into economic circulation to VAT fraud and participate in the money laundering from crimes.

In addition, STIR allows for the disclosure of irregularities in tax settlements at the initial analytical stage. It gives the opportunity to determine discrepancies in tax returns and allows for effective security of tax receivables and liabilities. Through access to data on persons authorized to access a bank account, it allows for the exclusion of fraudulent schemes and the identification of the appropriate tax fraud offenders.

Finally, the prosecutor’s office is also notified after conducting analytical activities and collecting the necessary evidence regarding the possibility of committing tax fraud (i.e. a crime or a tax crime).

The table below shows the concrete results achieved through STIR system between 2018 and 2022:

Year	Number of cases regarding the blocking of bank accounts	Number of entities covered by the blockade of bank accounts	Number of blocked bank accounts	Total value of blocked financial resources in PLN million	Total value of estimated depletion of public law receivables in PLN million
2018	23	23	41	10.23	132.18
2019	120	120	566	69.7	591.5
2020	196	196	1 020	96.15	660.93
2021	261	260	1 270	100.95	522.98
2022	267	266	1 138	77.43	291.36
Total	867	865	4 035	354.46	2 198.95

Note: Converted into PLN at the average EUR exchange rate announced by the National Bank of Poland on the last working day of the year preceding the year in which the decision was issued.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Table 38.4. Investigative powers of tax crime investigation agency (NRA)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power After obtaining a search warrant from a prosecutor or court.
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power This power is available after obtaining the consent of the Prosecutor General and after a regional court issues the order to intercept.
Conduct covert surveillance	Full direct power
Conduct undercover operations	Full direct power After obtaining consent from the Prosecutor General.
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to a search warrant from a prosecutor or from court.
Arrest	Full direct power After obtaining court order, which is issued at the request of the prosecutor.

1664. **Additional powers not mentioned above:** The NRA also has the power to detain a suspect of criminal tax offences for up to 48 hours. However, detentions during criminal tax investigations are rarely

used. Most often they are used against members of organized crime groups in order to prevent them from escaping or hiding.

1665. **Legal professional privilege:** Pursuant to the provisions of the Code of Criminal Procedure, persons obliged to maintain official and professional secrecy may refuse to testify on the circumstances covered by this obligation, unless the court or prosecutor releases these persons from the obligation to maintain secrecy.

1666. In addition, persons obliged to keep notarial, advocate, legal adviser, tax advisor, medical, journalistic or statistical secret as well as the secret of the General Prosecutor's Office may be interrogated about the facts covered by this secret only when it is necessary for the benefit of the justice system, and the circumstance cannot be established on the basis of other evidence. In preparatory proceedings, permission to question such persons is issued by the court at the request of the prosecutor.

1667. If, during the search, the investigator finds documents containing information covered by secrecy, he or she immediately transfers them without reading them to the prosecutor or the court in a sealed package. Such protection does not apply to documents held by a person suspected of having committed a crime.

1668. If the defender or another person at whom the search is carried out declares that the documents found during the search cover circumstances related to the performance of the function of the defender, the authority performing the activities leaves these documents to the named person without getting acquainted with their content or appearance. However, if the statement of a person who is not a defender raises doubts, the authority performing the activities shall transfer these documents without reading them in a sealed package to the court, which, having familiarised itself with the documents, returns them in whole or in part to the person from whom they were taken, or issues an order to retain them for purposes of the proceedings (Code of Criminal Procedure (CCP), art. 180 and 225).

Principle 4: Freezing, seizing, and confiscating assets

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

1669. **Legal basis:** Each law enforcement agency in Poland develops and follows its own methodology about seizure and confiscation of assets. Poland reports that the most challenging part of these operations is identifying hidden and scattered criminal proceeds.

1670. **Freezing and seizing orders:** Pursuant to Polish criminal law, in cases involving fiscal crimes, assets may be seized pursuant to a court order in proceedings before a court and pursuant to a prosecutor's order in preparatory proceedings. In urgent cases, seizure of assets may be carried out by the competent law enforcement authority, including the National Revenue Administration. Subsequently, such seizure of assets by a law enforcement agency requires the approval of the court or prosecutor, depending on the stage of the proceedings, as described above.

1671. **Confiscation orders:** Confiscation and forfeiture of assets in Poland must be imposed by the court. After a person is convicted of a tax offence, an extended confiscation can be ordered on any assets or advantages derived from a tax offence punishable by imprisonment of at least 3 years. A confiscation can be ordered on these assets within 5 years of committing the offence, unless the perpetrator or another interested party presents proof the property was not derived from criminal activity.

1672. In case the court cannot confiscate assets directly derived from criminal activity (because these are hidden, or otherwise out of reach), it can issue a pecuniary liability equivalent to the value of the criminally derived asset. Under Polish law, even if the perpetrator transfers criminally derived assets onto

a third party, the assets may still be considered liable to confiscation unless the third party can prove that the assets were legally acquired. This applies for assets that were acquired by the principal offender indirectly through the criminal tax offence.

1673. Poland does not permit non-conviction based confiscations.

1674. **Foreign freezing, seizing and confiscation orders:** Poland does apply seizure and confiscation powers with respect to foreign tax investigations and judgments. Pursuant to the provisions of the Code of Criminal Procedure, Polish courts and prosecutors may co-operate with the competent authorities of other countries in the enforcement of seizure or forfeiture orders through the Minister of Justice. Within the European Union, co-operation in this area takes place directly between the competent courts and prosecutors, without the intermediation of the Minister of Justice. Co-operation in this field is more common within the EU than with third countries.

1675. **Agency/unit responsible for asset recovery:** Poland does not have a central agency responsible for the seizure and confiscation of assets. These responsibilities lie with the Prosecutor's Office, the Police, the *Internal Security Agency* (ISA), the *Central Anticorruption Bureau* (CAB) and the *National Revenue Administration* (NRA). There are no specialised units working only on asset seizure / confiscation. Typically, units responsible for investigations in criminal tax matters are also responsible for seizure and confiscation operations, in co-operation with other units.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1676. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 38.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
National Revenue Administration (NRA)	Collects taxes, carries out administrative tax proceedings, tax inspections and detects violations of tax law. The NRA has a specialist division that is tasked with fighting economic crimes.
Police (Policja)	The police investigate tax offences detected in the scope of their activities. The police has specialised units relevant to tax crimes, which focus on combating serious fraud and stolen asset recovery.
Border Guard (BG)	The border guard investigates customs-related offences detected in the scope of their activities.
Prosecutor's Office (PO)	Responsible for prosecution of all crimes, the PO directs serious cases of tax crimes.
Internal Security Agency	The Internal Security Agency conducts investigations in cases of fiscal crimes disclosed within the scope of its activities.
Military Police	The military police conduct investigations into cases of fiscal crimes committed by soldiers.
Central Anti-Corruption Bureau	The Central Anti-Corruption Bureau conducts investigations in cases of fiscal offences disclosed within its competence.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1677. Poland does not have a dedicated unit for the investigation and prosecution of tax crimes. The investigation of tax crimes is conducted by specialist units within the National Revenue Administration. Once NRA investigators successfully conclude an investigation, the case is either prosecuted directly by the NRA or transferred to the Prosecutor's Office (PO). Regardless of the gravity of the case, the prosecutor is competent to prosecute if the suspect is a judge, prosecutor, officer of the Police, Internal Security Agency, Foreign Intelligence Agency, Central Anti-Corruption Bureau, Border Guard, Military Police or an employee of the NRA unit conducting or supervising investigations in fiscal criminal cases. When it comes to the severity of the case, the NRA forwards the case to the prosecutor for prosecution in the following cases : the amount exposed to tax depletion is higher than 500 times the amount of the minimum wage, the perpetrator has made tax crimes a permanent source of income, in the case of recidivism, committing a crime by an organized criminal group, committing a tax crime with the use of violence or the threat of its use, when the perpetrator, by abusing a relationship of dependence or taking advantage of a critical position, forced another person to commit a tax crime.

1678. Poland does not have data available on the size of the budget dedicated to the investigation and prosecution of tax crimes. However, the NRA notes that The number of staff responsible for conducting criminal fiscal investigations within the NRA over the last years 2017-22 is more or less constant and amounts to approximately 2 000 employees. The main performance target related to tax crimes is the percentage of investigations that lead to prosecution. In recent years, the average percentage of investigations leading to prosecution is on average 50%. Generally, this performance target is met and has been constant over the years.

Table 38.6. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct access
Land Registry	Access on Request
Registry of citizens	Direct access
Tax databases	Direct access
Customs databases	Direct access
Police databases	Access on request
Judicial databases	Access on request
Suspicious transaction report databases	Access on request
Domestic bank account databases	Access on request
Car registry	Direct access
Boat registry	Access on request
The Central Register of Property Activities	Direct access
The Central Register of Beneficial Owners	Direct access

Training for tax crime investigators

1679. Tax crime investigators in Poland undergo a mix of standard law enforcement training and specialist training related to legal frameworks and nature of financial crimes. All investigators are obliged to attend and complete a basic training in the practical application of penal procedure and penal fiscal law, as well as performing investigative activities, once.

1680. Depending on needs, trainings are organised on the practical aspects of tax investigations, usually led by experienced prosecutors and criminal tax investigators. The frequency and length of training depends on the subject matter covered. Furthermore, specialised trainings at various levels (e.g. computer forensics, criminal analysis, use of new technologies) is held several times a year for a group of several

dozen investigators. Indeed, only selected investigators participate in specialist training on specific topics, depending on the needs and the work tasks they perform, which require such special skills and knowledge. Poland notes that the training for criminal tax investigators is constantly being reviewed and further developed, to ensure its investigators are equipped to tackle new forms of financial crime.

Principle 7: Predicate offences

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

1681. **Approach:** Since 23 June 2001, with amendment to the Act of 6 June 1997 – Penal Code, Poland has taken an “all crimes” approach to money laundering, meaning that it is a crime punishable by law to launder the proceeds of any criminal activity. Prosecutors do not require national jurisdiction over the predicate offence to indict a person for a money laundering offence, as long as the money laundering offence has been committed within the territory of Poland. When a tax crime has been committed within its jurisdiction, the export of the criminal proceeds for the purpose of money laundering abroad is also subject to criminal liability in Poland.

1682. **Enforcement of money laundering predicated on tax crimes:** Poland notes that the recognition of tax crimes as a predicate offence had a positive effect on combating tax crimes, mainly by increasing exchange of information between agencies, such as the financial intelligence unit (FIU) and by improving inter-agency co-operation during investigations.

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

1683. If the tax authority, in the course of an investigation, has suspicions of the commission of an offence prosecutable ex officio, this authority is mandated by law to notify the competent law enforcement authority, as well as to take the necessary steps to secure the evidence. In the event of disclosure of a prohibited act consisting in the violation of tax law, i.e. violations of the provisions of the Act of 10 September 1999, the Penal Fiscal Code, the competent authority to conduct preparatory proceedings is the financial authority of the preparatory proceedings. In the case of revealing the possibility of committing an offence specified in the Act of 6 June 1997, the Penal Code and an offence concurrent with a fiscal offence, the competent authority to conduct the preparatory proceedings is the prosecutor's office. In the event of a justified suspicion of committing tax fraud, the Head of the NRA or the authorized Head of the Custom' and Tax Office notifies the National Prosecutor's Office.

Information sharing between agencies involved in investigation and prosecution of tax crime and other financial crime

1684. The Nation'l Revenue Administration provides the prosecutor's office and law enforcement authorities with information contained in the Central Register of Tax Data in connection with criminal and penal fiscal proceedings (i.e. tax information, data, case files...). In accordance with Polish legislation, data may also be made available via an IT system.

1685. The National Revenue Administration also provides information, in accordance with the law, based on agreements and arrangements with the Central Anti-Corruption Bureau, the Internal Security Agency, the Polish Financial Supervision Authority, the General Inspector of Information, and the Office of Competition and Consumer Protection.

1686. The exchange of information between the National Revenue Administration and other authorities is regulated primarily by the Tax Ordinance Act. As part of counteracting the use of the financial sector for fiscal fraud, units of the National Revenue Administration co-operate with the National Prosecutor's Office on an ongoing basis. In this way, working meetings and trainings are organised.

1687. There are several anti-corruption entities in Poland that work together under the Government Anti-Corruption Program. If corruption is suspected, this information should be forwarded to the relevant entity. Each of these entities fights corruption to the extent specified in the laws establishing the entity. Based on bilateral agreements, the NRA co-operate with other entities and exchange information through internal channels. An Internal Inspection Bureau has been established within KAS to identify, detect and combat corruption crimes within NRA, as well as to prevent and prosecute the perpetrators of such crimes. The Bureau performs the tasks imposed by the KAS Act on the Head of the NRA. The bureau verifies all information received on suspicion of a corruption crime by either a NRA officer or employee, regardless of its source. This applies to information provided by both civil and criminal investigative sections of the NRA, as well as any citizen.

Table 38.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police / Law Enforcement	Financial Intelligence Unit	Corruption investigation authority	Public prosecutor investigating non-tax offences
Authority providing information	Tax administration		Direct access	Direct access	DSS	Direct access	MSS	DSS
	Tax crime investigation division	Direct access		Direct access	DSS	MSS	MSS	DSS
	Customs administration	Direct access	Direct access		DSS	Direct access	MSS	DSS
	Police / Law Enforcement	DSS	DSS	DSS		Direct access	MSS	DSS
	Financial Intelligence Unit	DSS	MSS	DSS	MSS		MSS	MSS
	Corruption investigation authority	DSS	MSS	DSS	DSS	DSS		DSS
	Public prosecutor	DSS	DSS	DSS	DSS	DSS	DSS	
	Financial regulator	DSS	MSS	DSS	MSS	MSS	MSS	MSS

Note:

DSS = discretionary spontaneous sharing // MSS = mandatory spontaneous sharing

Table 38.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Yes. See paragraph 28.
Disclosure of foreign trusts	No
Joint operations and taskforces	Yes, e.g. the NRA and the Police may act together in criminal fiscal cases, often under the supervision of the prosecutor.
Parallel investigations	Yes, under the supervision of the prosecutor, the NRA may, for example, conduct an investigation in the aspect of tax crimes, and the Police in the aspect of other crimes committed at the same time by a given criminal group.
Joint intelligence centres	No
Secondments and co-location of staff	No
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. Affairs are reviewed by the prosecutor.
Multi-agency training	Yes, e.g. the joint training of the NRA and the Police on investigating tax crimes, in particular VAT fraud.

Principle 9: International Co-operation

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.

1688. **Legal basis:** Poland has exchange of information relationships with 99 jurisdictions through 86 DTCs and 14 TIEAs. Figure to be updated before publishing.² It is also party to the *European Convention on Mutual Assistance in Criminal Matters* and the *Convention on Mutual Administrative Assistance in Tax Matters*. Furthermore, Poland has 48 bilateral agreements regarding co-operation in criminal matters between Poland and other countries.

1689. **International co-operation in practice:** Poland does not have data available on the number of requests for assistance under the framework of mutual legal assistance treaties or exchange of information agreements. However, Poland does note that the key challenge in international co-operation is slow response from foreign jurisdictions and difficulties in identifying the correct agency to whom to address the information request. Poland notes that it has raised awareness on the availability of international co-operation and provided training to its investigators on the necessary processes. Poland notes that it is a good practice to set up national contact points that are easily identifiable by domestic and foreign law enforcement authorities, through which requests for international assistance can be transmitted to the counterpart jurisdiction.

1690. **Enhanced forms of international co-operation:** Poland is able to exchange sensitive intelligence with another international agency responsible for tax crime investigation on the basis of the law of the European Union and bilateral agreements, in accordance with the provisions of national law (Act of 16 September 2011 on the exchange of information with law enforcement authorities of European Union Member States, third countries, European Union agencies and international organizations (Journal of Laws of 2020, item 158, as amended)).

1691. In Poland, international co-operation requests in cases concerning tax crimes are not distinguished from requests concerning other criminal cases. Therefore, all these requests are transferred to the counterpart jurisdiction's law enforcement agency through the prosecutor's office or through police channels.

Principle 10: Fundamental rights of a suspect or accused person

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

1692. In Poland, the fundamental rights of suspects or accused are covered by *Chapter II of the Constitution of the Republic of Poland (1994)* and with the procedural rights further described by the *Code of Criminal Procedure (Act 6 of 1997)*.³

1693. In Poland, it is possible to carry out tax audits in parallel with criminal investigations. However, these are independent and separate proceedings.

Table 38.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times until conviction
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times during criminal proceedings, starting with the first interview after the presentation of charges (when the person becomes a suspect)
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times. Entitlement to free legal advice is available when the suspect and / or the accused cannot afford legal representation
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	The particulars should be provided to the accused before the indictment is forwarded to the court
access documents and case material, also known as a right to full disclosure	Yes	At the end of the investigation, before indictment is forwarded to the court
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Comprehensive tax crime strategy
- Broad investigative powers of tax crime investigation agency
- Good sharing of information between agencies involved in investigation and prosecution of tax crime and other financial crime

Room for improvement

- Poland could benefit from non-conviction-based confiscations

Notes

¹ Members of Parliament and Senators, Members of the European Parliament, common court judges, judges of military courts, judges of the Supreme Court, judges of administrative courts, judges of the State Tribunal, judges of the Constitutional Court, etc.

² <http://www.eoi-tax.org/jurisdictions/PL#agreements>

³ <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>;
https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997_am%202003_en.pdf

39 Portugal (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of Tax Offences:

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation:

1694. Tax crimes in Portugal are set out in the General Regime of Tax Infractions (RGIT) approved by the Law 15/2001. Tax crimes apply to offences related to income tax, value added tax, as well as other taxes such as real estate tax.

1695. Article 12 of the RGIT provides that individuals who commit a tax crime are liable to a sanction of imprisonment of up to 8 years, and to a fine of between 10 to 600 days. Legal entities may be subject to a fine of between 20 and 1920 days.

Table 39.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Tax swindling	Individuals: fine of 10 days Legal entities: fine of 20 days	Individuals: 8 years' imprisonment Legal entities: fine of 1920 days
Frustration of tax recovery	Individuals: fine of 10 days Legal entities: fine of 20 days	Individuals: 2 years' imprisonment Legal entities: fine of 240 days
Criminal association/association to commit offences	Individuals: 1 year imprisonment	Individuals: 8 years' imprisonment
Qualified disobedience	Individuals: fine of 10 days Legal entities: fine of 20 days	Individuals: 2 years' imprisonment Legal entities: fine of 240 days
Breach of professional secrecy	Individuals: fine of 10 days	Individuals: 3 years' imprisonment / fine of 360 days
Fraud	Individuals: fine of 10 days Legal entities: fine of 20 days	Individuals: 3 years' imprisonment Legal entities: fine of 360 days
Qualified fraud	Individuals: 1 year' imprisonment Legal entities: fine of 240 days	Individuals: 8 years' imprisonment Legal entities: fine of 1920 days

Misappropriation of tax/Tax embezzlement	Individuals: fine of 10 days Legal entities: fine of 20 days	Individuals: 5 years' imprisonment Legal entities: fine of 1200 days
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1696. **Statute of limitations:** Articles 118 to 121 of the Criminal Code (CC) (applicable to tax offences under Article 3(a) of the General Regime of Tax Infractions) provide a limitation period for criminal proceedings, which can range from five to ten years, depending on the maximum prison sentence. The period is also four years for tax assessments. Suspension of the limitation period occurs in accordance with provisions of the Criminal Code or in cases where a tax assessment has been subject of a judicial challenge. Furthermore, the limitation period is interrupted by acquisition of defendant status or indictment notice, and always ends when the normal limitation period has elapsed.

1697. **Complicity:** The law provides legal basis for punishing anyone who aids, abets, councils or procures the commission of offences (CC, arts 26 & 27).

1698. **Attempt and conspiracy:** Attempt and conspiracy are criminally liable acts according to article 23 of the Criminal Code.

1699. **Professional enablers:** Professional enablers or intermediaries conducts fall within the definitions of some of the crimes established by RGIT (f. ex. Criminal association / association to commit offences (Article 89) and Qualified Fraud (Article 104).

1700. **Territorial and nationality jurisdiction:** The Criminal Code establishes a general principle for territorial scope in article 4, and an extension of this principle applying for facts occurred outside Portuguese Territory in article 5. There are however exceptions, which can be found in Article 6. According to Article 4 of Criminal Code: unless otherwise provided for in international conventions or treaties, Portuguese criminal law shall apply to acts committed: (a) in Portuguese territory, whatever the nationality of the official; or (b) on board Portuguese vessels or aircrafts. In the context of tax infractions (criminal and administrative offences) established by RGIT, this same principle applies (Article 4): Unless otherwise provided for in a treaty or international agreement, RGIT rules shall apply, irrespective of the nationality of the perpetrator, to acts committed: (a) in Portuguese territory; (b) on board Portuguese vessels or aircraft

1701. **Liability of legal persons:** Legal persons, companies, even if irregularly established, and other entities that are equivalent for tax purposes can be held criminally liable for tax crimes, when committed by their representatives acting on their behalf and in their interest (RGIT, Article 7 (1)). Such liability does not exclude individual (criminal) liability of each agent (RGIT, Article 7 (3)). Liability can be imposed by way of pecuniary fines (as main penalty) (RGIT, Article 12) and ancillary penalties (Article 16 RGIT), such as temporary suspension of certain activities, deprivation of subsidies, or grants from public entities, loss of tax advantages, closure of businesses, termination of licenses, publication of judgment conviction decisions, winding up of the legal person, and loss of goods and transport instruments.

Enforcement of tax crime

1702. The below table shows the enforcement of tax crimes in tax years ending 2019-2021.

Table 39.2. Enforcement of tax crimes in the tax years ending 2019-2021

Tax years ending	Total number of criminal tax investigations	Total number of criminal prosecutions (in terms of cases)	Number of natural persons prosecuted	Number of legal persons prosecuted	Number of criminal convictions (natural persons only)	Number of acquittals (in terms of cases)	Number of natural persons acquitted	Amount of underlying tax evaded

2021	4383	826	N/A	N/A	N/A	N/A	N/A	N/A
2020	3606	824	N/A	N/A	1320	N/A	N/A	N/A
2019	4676	1087	N/A	N/A	1966	N/A	N/A	N/A

1703. **Availability of tax deductions for civil and criminal sanctions:** According to the Portuguese Corporate Income Tax Code and Personal Income Tax Code - the deduction of expenses deriving from civil or criminal sanctions imposed in tax crime cases is not allowed. The same applies for non-criminal cases, with the exception if they have a contractual origin.

1704. **Availability of settlements:** Court settlements are not allowed, but deferred prosecution agreements can be made using the Provisional Suspension of Proceedings in the Code of Criminal Procedure. This allows for cases with a less than five-year sentence to be stopped from trial if the defendant complies with certain conditions. In tax crimes, these conditions may include paying missing tax, performing public service, attending programmes, or donating to charities.

1705. **Tax gap:** According to the European Commission, Portugal's VAT Tax Gap in 2019 (percent of VTTL) was estimated to 7.9 %.¹

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1706. **Tax crime strategy:** Under the Portuguese Framework Law on Criminal Policy, tax crimes are mentioned as priority prevention crimes and priority investigation crimes. The Tax and Customs Authority, the Judiciary Police and the Republican National Guard are competent to investigate tax crimes. The investigation is always directed by the Public Prosecutor's Office. Law n.º 5/2002 provides special measures for the fight against organised crime, including serious crimes that may be linked to tax crimes, such as money laundering and criminal association.

1707. The Strategic Plans for Combating Tax and Customs Fraud and Evasion, urges the Tax and Customs Authority to increase its attention in the prevention and investigation of fraud by directing action towards the detection of technical and material complex mechanisms deployed by taxable persons and third parties, whether internal or international, indicating that tax offences have been committed. This detection of indicators subsequently aims to bring criminal proceedings.

1708. **Threat assessment:** The Tax and Customs Authority does not undertake a periodic threat assessment.

1709. **Communication strategy:** The Public Prosecution Service regularly publicises highlights of investigation actions (in an anonymous manner) and conclusions in tax crime investigations, through namely the Central Department of Criminal Investigation and Prosecution and Regional Departments of Criminal Investigation and Prosecution, in accordance with the Portuguese Code of Criminal Procedure (Article 86 (13) (b)). In addition, court decisions are made public, including those concerning tax crime. The activity of the Public Prosecutor's Office in the Central Investigation Department is published at the following link: <https://dciap.ministeriopublico.pt/acusacoes-dciap>. The purpose of this publication is to inform citizens of the outcome of the most relevant investigations, with a brief summary of the subject of the case sent for trial. These include investigations into tax offences. The decisions of the higher courts are published at the following link: <http://www.dgsi.pt/>.

Box 39.1. Example of communication strategy

Each year, at the end of June, a report on activities to combat tax and customs fraud and evasion - is presented to the National Parliament and is published after, attracting a significant media coverage. This report contains statistical and generic information about tax criminal investigations performed by the Tax and Customs Authority, sampling some major cases.

The most recent report refers to 2022 and is available at the following link: [Relatório de Atividades Desenvolvidas de "Combate à Fraude e Evasão Fiscais e Aduaneiras" - 2022](#).

Principle 3: Investigative Powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1710. The Portuguese Tax and Customs Authority has powers according to the General Regime of Tax Infractions and the Portuguese Code of Criminal Procedure to perform search property and seize physical evidence such as books and records.

1711. 18. The powers to perform the mentioned actions require, however, the previous assignment and authorisation of the Prosecutor responsible for the case. In some cases, the authorisation of the instructing Judge is needed, e.g. in house searches or when searching professional offices whose activities are protected by secrecy rules.

Table 39.3. Investigative powers of tax crime investigation agency (Tax and Customs Authority)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	indirect powers via another agency Orders are conducted by the Public Prosecution Service
Obtain documents from third parties	indirect powers via another agency Orders are conducted by the Public Prosecution Service
Interview	indirect powers via another agency Orders are conducted by the Public Prosecution Service
Inquiry powers (e.g. power of coercion)	indirect powers via another agency Orders are conducted by the Public Prosecution Service
Intercept mail and telecommunications	indirect powers via another agency Orders are conducted by the Public Prosecution Service. Investigative power also depends on the consent of an investigating judge
Conduct covert surveillance	indirect powers via another agency Orders are conducted by the Public Prosecution Service
Search and seize computer hardware, software and electronic storage media	indirect powers via another agency* Orders are conducted by the Public Prosecution Service. In some cases, investigative powers also depend on the consent of the investigating judge
Arrest	indirect powers via another agency Orders are conducted by the Public Prosecution Service

1712. **Legal professional privilege:** In Portugal, lawyers may refuse to testify to facts covered by legal professional privilege (art. 135 of the Criminal Procedure Code). Portugal notes, however, that financial institutions and banks cannot invoke professional privilege in order not to provide information when the request is made by prosecutors or the judge in the context of criminal proceedings (Article 89 of the General Regime for Credit Institutions and Financial Companies).

Principle 4: Freezing / Seizing and Confiscating Assets

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

1713. **Legal basis:** The seizure and the recovery of assets linked to criminal activities are subject to the general law that is established by the most relevant criminal laws, namely the Criminal Code (the Code of Criminal Procedure) and specific laws of combat against serious crime and of prevention against money laundering. The most general provisions are provided for under the Criminal Code in article 111.

1714. The freezing of assets linked to tax crimes is regulated by articles 227 and 228 of the Criminal Procedure Code, as well as by Law 45/2011 of 24 June.

1715. The main rules for seizures are set out in the Code of Criminal Procedure in articles 178 to 186 and the General Regime of Tax Infractions.

1716. The legislation governing the confiscation of assets in the context of tax offences is contained in Articles 17 and 18 of the Regime of Tax Infractions and Articles 109 to 111 of the Penal Code.

1717. **Freezing and seizing orders:** Freezing or economic bail (227.º and 228.º Criminal Procedural Code) is exclusively applied by decision of the Investigating Judge, upon request of the Public Prosecutor's Office, under the terms of Article 228 of CPP, and then executed by Asset Recovery Office or Law enforcement agencies. There are several legal instruments that allow, during the course of a criminal investigation for a tax crime, the possibility of quick or urgent seizures. In urgent cases, the assets may be immediately seized, even as a precautionary measure under Article 250 of the CPP or article 4.º of law 45/2011, and then submitted to the judge to freeze the previously seized assets.

1718. Seizures may be carried out by any criminal police body and are then subject to validation by the Public Prosecutor's Office. They may also be determined by the Public Prosecutor's Office or, in the pre-trial phase, by the investigating judge. The legal threshold for seizure is based on a balance of probabilities demonstration of a connection between seized assets and the crime. The general regime for seizure in criminal prosecutions is the founded suspicion of a crime.

1719. **Confiscation orders:** The Asset Recovery Office may seize, provided that it has been entrusted by the Public Prosecutor to carry out the patrimonial and financial investigation in question. But, in addition to the ARO, as mentioned before, competent law enforcement authorities and the Public Prosecutor can also seize without the intervention of the ARO in any criminal investigation. National legislation allows for non-conviction-based confiscation whenever it is not possible to ensure the conviction of the perpetrator of the crime, but the link between the property and the typical unlawful act that generated it is still demonstrated, under article 109 no. 2 (instruments) and 110 no. 5 (benefits) of the Criminal Code.

1720. **Foreign freezing, seizure, and confiscation orders:** Law No. 144/99, of 31 August, rules international judicial cooperation in penal matters. This law applies, with the necessary adaptations, to the Portuguese cooperation with the international judicial entities established within the framework of international treaties or conventions binding the Portuguese State.

1721. One of the forms of cooperation provided for in this law is judicial assistance in penal matters. This judicial assistance comprehends, namely, information reporting, procedural acts, and other public acts admissible by the Portuguese law where necessary to carry out the goals of the proceedings, as well as the acts necessary for the seizure and recovery of objects, instruments or proceeds of the offence.

1722. Portugal is also prepared to assist a requesting State in identifying, freezing, seizing, or confiscating assets derived from offenses, as per Law No. 144/99, with direct communication via INTERPOL available for urgent situations.

1723. The possibility of sharing the confiscated assets with other States, namely with those that have contributed to the success of the investigation and of the judicial decision to confiscate, is not provided for in the domestic legislation.

1724. Agency / unit responsible for asset recovery: Asset and financial recovery investigations are carried out by the Public Prosecutor's Office, which can delegate this task to any criminal police body, specifically the tax authority in the case of tax offences. Whenever the conditions of Law 45/2011 of 24 June are met, the Public Prosecutor's Office can delegate the investigation of asset recovery to the national asset recovery office.

Principle 5: Organisational Structure with Defined Responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1725. Tax crime investigations are carried out/conducted either by the Judiciary Police, Tax and Customs Authority or National Republican Guard. Each of the above carry out their own investigations unless, under the Public Prosecutors decision, they form joint teams of investigation.

1726. All criminal investigations are under the responsibility of the Public Prosecutor's Office. In this task of leading and directing the investigation, the Public Prosecutor's Office can delegate the task of carrying out the investigation to any criminal police body that is competent to do so, namely the Tax Authority in the case of tax offences. Once the investigation has concluded, it is up to the Public Prosecutor's Office to decide whether sufficient evidence of a criminal offence has been gathered, and if so, to issue an indictment and submit the case to trial.

1727. The table below provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 39.4. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Tax and Customs Authority	The Tax and Customs Authority is competent to investigate customs crimes and tax crimes through central and regional departments, according to their mission and competences. These departments have divisions or units dedicated to criminal investigation.
Police	The Judicial Police has exclusive competences for investigating serious crimes, as defined by the Portuguese Organisation of Criminal Investigation Act, which includes most financial crimes
Specialist financial crime agencies	The National Anti-Corruption Unit of the Judicial Police is the specialized operational unit for the preventive and repressive response to criminal phenomena associated with economic and financial crime. The unit has competence in e.g. matters related to prevention, detection, criminal investigations,
Prosecution	The role of the Public Prosecutor's Office is, among other things, to prosecute criminal offences guided by the principle of legality. The Office is organised in a manner where tax crimes are being investigated in specialised sections or assigned to prosecutors who are specialised within the tax crime area.

Financial Intelligence Unit	The Portuguese FIU is part of the structure of the Judiciary Police, being a central service directly dependent on the National Director.
Financial supervisor	The Portuguese financial supervision system is composed of three supervisory authorities: Portuguese Insurance and Pension Funds Supervisory Authority; Bank of Portugal; and the Portuguese Securities Market Commission. Together, these authorities are in charge of supervising financial entities for Anti-Money Laundering and Counter-Terrorism Financing purposes.

Principle 6: Adequate Resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1728. There is no specific budget dedicated for combatting tax crimes. In most instances, tax crime investigations are included in other economic and financial crime investigations executed by prosecutors.

Table 39.5. Data bases/sources of information available to tax crime investigators

	Access by Tax and Customs Administration
Company incorporation/ ownership registry	Direct access
Land registry	Direct access
Registry of citizens	Direct access
Tax databases	Direct access
Customs databases	Direct access
Police databases	Access on request
Judicial databases	Direct access
Suspicious transaction report databases	Access on request
Domestic bank account databases	Access on request
Car registry	Direct access
Vessel registry	Access on request
National Migration Office	Access on request
Provincial Real Estate Registries	Direct access
Telecommunication companies' databases	Access on request

1729. **Training for tax crime investigators:** In the case of prosecutors, there is an ongoing training programme run by the Centre for Judicial Studies, which is provided on an ongoing basis and adapted on an annual basis, including training on tax crimes, among other topics.

Principle 7: Predicate Offences

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

1730. **Approach:** Portugal has a 'mixed approach' to predicate offences for money laundering, which combines the "list" and "threshold" approaches. Some tax crimes are predicate offences for money laundering, most notably tax fraud and tax swindling which were added to the list in 2002.

1731. Portugal notes that its money laundering offence fully covers predicate offences that occur outside the territory of Portugal, or if the place where the crime was committed (or the identity of the offenders)

remains unknown (Article 368-A of Criminal Code). It is not mandatory that the underlying facts of the suspect activity that occurs in a foreign jurisdiction be considered a predicate offence in that jurisdiction, and constitutes a predicate offence had they occurred within Portugal.

1732. **Enforcement of money laundering predicated on tax crimes:** Since tax crimes were included as a predicate offence for money laundering, the results in detecting tax offences has increased significantly. Additionally, there has been more data and information sharing as well as better and faster access to relevant tax information within the criminal investigation leading to more cases being prosecuted and eventually more convictions.

Principle 8: Inter-agency Co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

1733. The Tax and Customs Authority has mandatory reporting in terms of referring suspicions of financial crime to law enforcement. The agency is thus in a position to provide information upon request and is also required to provide relevant information spontaneously to other authorities.

1734. Under article 36 no. 5 c) of the Complementary Regime of the Tax Audit Procedure, any tax audit should be suspended as soon as a criminal inquiry is filled. Nevertheless, tax audits affected by this kind of suspension should proceed as soon as the Prosecutor issues a non-charging decision or a court decision is final and non-appealable, making it possible to conclude the auditing and to proceed the tax assessment.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

1735. The below tables show the models for sharing information related to tax crimes and other financial crimes in Portugal, and the availability of enhanced forms of co-operation in combatting tax crimes.

Table 39.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						Public prosecutor responsible for asset recovery
		Tax administration for civil tax assessments	Agencies investigating tax crimes	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	
providing	Tax administration		On request	On request	Direct Access	On request	On request	Direct Access
	Customs administration	On request	On request		Direct Access	On request	On request	Direct Access
Authority information	Police or public prosecutor	On request	On request	On request		On request	On request	
	Financial Intelligence Unit	DSS	DSS	DSS	DSS		On request	DSS

Corruption investigation authority	On request	On request	On request	On request	On request		On request
Financial regulator	On request	On request	On request	On request	MSS (on ML/FT) otherwise on request	On request	On request
Notes: MSS = Mandatory Spontaneous Sharing / DSS = Discretionary Spontaneous Sharing							

Table 39.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Availability	Description
Co-operation agreements	Yes	There are co-operation protocols between tax authorities and other law enforcement agencies.
Disclosure of foreign trusts	No	
Joint operations and taskforces	Yes	Taskforces between tax authorities and other law enforcement agencies are regularly set up (e.g. on verifying compliance on VAT obligations regarding goods in circulation).
Parallel investigations	Yes	It is possible but mixed criminal investigation teams involving competent LEA are the usual procedure.
Joint intelligence centres	No	
Secondments and co-location of staff	Yes	The Permanent Liaison Office is in operation at the FIU, with officials from the Tax and Customs Authority, who directly access tax information and share it with the UIF for the prevention of ML/TF and with the PJ for combating more serious tax crime.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes	At any stage of the process of criminal investigation, the respective final decisions and the facts established relevant to the settlement of outstanding taxes are always communicated to the Tributary and Customs authority. This is limited by a statute of limitations period applicable on tax assessments.
Multi-agency training	Yes	There is joint training involving the Tax and Customs Authority; FIU and Criminal Police.

Principle 9: International Co-operation

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.

1736. **Legal basis:** Portugal may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. Portugal is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows it to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1737. The Portuguese FIU can exchange information with other FIUs if the information is intended for the tax authorities of those countries and within the scope of ML/FT prevention. This exchange can be done at the first stage of evaluation, before a case is formally opened.

1738. Competent authorities: The competent authority for sending and receiving information pursuant to the MAAC is the Tax and Customs Authority. The competent authority for sending and requests based on mutual legal assistance is the Prosecutor General.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

1739. The law provides suspects with the possibility of claiming the defendant's statute, which consists of several rights, upon request. The rights of defendants or suspects in criminal proceedings are essentially laid down in Articles 28 to 32 of the Constitution of the Portuguese Republic, and Articles 58 to 64, especially Article 61 of the Code of Criminal Procedure.

Table 39.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until proven guilty in trial
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	After suspicions of a crime by identified natural (or legal person), assuming the defendant's statute, as soon as he has to be present to the authorities (Investigators, Prosecutor or Judge)
remain silent	Yes	From the moment when presence before the authorities is required, during the investigations
access and consult a lawyer and/or entitlement to free legal advice	Yes	From the moment when presence before the authorities is required, during the investigations
interpretation and translation	Yes	Whenever the defendant does not know Portuguese, during the whole criminal proceedings: articles 61 and 92 and 93 of the Code of Criminal Procedure
be advised of the particulars of what one is accused of	Yes	By the time of the questioning
access documents and case material, also known as a right to full disclosure	Yes	Always, unless (and as long) the investigation is under secrecy by decision of the Prosecutor with the agreement of the Judge
a speedy trial	Yes	Always
protection from ne bis in idem (Double Jeopardy)	Yes	Always

1740. It is not possible to have civil or administrative tax audits conducted in parallel with criminal investigations. Any tax audit should be suspended as soon as a criminal inquiry is filled. Tax audits affected by this kind of suspension should proceed as soon as the Prosecutor issues a non-charging decision or a court decision is final and non-appealable, making it possible to conclude the auditing and to proceed to tax assessment.

1741. A civil tax matter becomes a criminal tax matter as soon as a suspicion of tax crime is raised, since reporting is mandatory.

Highlights

Successful practices

- Use of joint taskforces involving tax authorities and other financial crime authorities.
- Comprehensive public communications strategy for the enforcement of tax crimes

Room for improvement:

- Portugal may benefit from undertaking periodic tax crime threat assessments.

40 Romania (NEW)

This chapter was published May 2024

Principle 1: Ensure that violations of tax offences are criminalised by:

- a) having legal frameworks in place that criminalise some violations of tax laws by natural persons;
- b) making available effective criminal sanctions that apply in practice to natural persons who violate tax laws;
- c) having a penalty regime in place for legal persons who violate tax crimes; and
- d) ensuring that professionals who enable tax crimes are also subject to criminal liability.

Tax crime legislation:

1742. Tax crimes in Romania are set out in the *Law on the Prevention and Combating of Tax Evasion* (Law No. 241/2005). The statute applies to offences related to income tax, value added tax, as well as other taxes. All offences require criminal intent (i.e. *mens rea*).

Table 40.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Intentional withholding or collection and non-payment of taxes or contributions within 60 days of due date.	One year in prison or a fine.	Five years in prison or a fine.
Taxpayer acting in bad faith with respect to taxes or contributions resulting in a reimbursement or restitution from the general consolidated budget.	Three years in prison and the prohibition of certain rights or a fine.	Ten years in prison and the prohibition of certain rights or a fine.
Evasion: defined as the omission of income, declaring fictitious expenses, maintaining multiple sets of or manipulating accounting records, dissipation of seized assets and hiding assessable assets or chargeable sources.	Two years in prison and the prohibition of certain rights or a fine. If the amount evaded is more than EUR 100 000 in the equivalent of the national currency, the minimum punishment is increased to seven years in prison. If it is greater than EUR 500 000 in the equivalent of the national currency, the minimum punishment is increased to nine years.	Eight years in prison and the prohibition of certain rights or a fine. If the amount evaded is more than EUR 100 000 in the equivalent of the national currency, the maximum punishment is increased to 13 years. If it is greater than EUR 500 000 in the equivalent of the national currency, the maximum punishment is increased to 15 years.

1743. **Statute of limitations:** The statute of limitations for criminal liability in Romania varies depending on the maximum available prison sentence mandated for an offence. The limitation period begins from the

date of the commission of the crime or from the date of the last criminal action or inaction in the case of continued and habitual crimes.

Table 40.2. Statutory limitation periods in Romania

Maximum prison sentence	Limitation period
20 years or greater	15 years
10-20 years	10 years
5-10 years	8 years
1-5 years	5 years
1 year or a fine	3 years

Source: Article 154 of the Criminal Code (CC)

1744. **Complicity:** The accomplice to a deliberately performed crime is punished with the penalty stipulated by law for the perpetrator of the act in accordance with article 49 of the *Criminal Code* (CC).

1745. **Attempt and conspiracy:** Attempt is a criminally liable act according to article 9 of the CC.

1746. **Professional enablers:** Romania does not have a specific criminal penalty regime for professional enablers. Art. 49 of the CC, however, applies to instigators, accomplices, and other intermediaries that aid, abet, facilitate and/or enable the commission of a tax offence by another entity.

1747. **Territorial and nationality jurisdiction:** The Romanian legal system establishes territorial and nationality jurisdiction over Romanian natural and legal persons for tax crimes in accordance with art. 9-11 of the Criminal Code, making them subject to Romanian criminal law for offences they commit outside Romania. Law No. 234/2022 provides a specific exemption for the offence of evasion and some other tax, customs, corruption, money laundering and terrorism financing offences that they are not required to also be offences in the jurisdiction where they are committed. Romanian criminal law also applies to offences committed outside Romanian territory against the Romanian state, Romanian citizens or legal persons.

1748. **Liability of legal persons:** In regard to tax crimes, the legal framework provides for effective criminal sanctions which apply to both natural and legal persons. The criminal liability of legal persons is established by art. 135 of the CC and art. 136 of the CC establishes the penalties applicable to legal persons. Furthermore, art. 2(b) from the *Law for the Prevention and Combating of Tax Evasion* (Law No. 241/2005) ensures that the Act is applied broadly by defining taxpayers as any natural or legal person or any other entity without a legal personality that owes taxes, fees, contributions, and other amounts to the general consolidated budget.

Enforcement of tax crime

1749. The below table shows the enforcement of tax crimes in tax years ending 2019-2021.

Table 40.3. Enforcement of tax crimes in the tax years ending 2019-2021

Tax years ending	Total number of criminal tax investigations	Total number of criminal prosecutions (in terms of cases)	Number of natural persons prosecuted	Number of legal persons prosecuted	Number of criminal convictions (natural persons only)	Number of acquittals (in terms of cases)	Number of natural persons acquitted	Amount of underlying tax evaded
2021	59	53	42	11	34	38	8	RON 15 418 048
2020	65	63	44	19	32	30	3	RON 88 795

								546
2019	75	72	54	18	47	46	7	RON 312 741 253

Note: In March 2024, EUR 1 = RON 4.97

1750. **Availability of tax deductions for civil and criminal sanctions:** Art. 25(4)(b) of Law no.227/2015 on the Tax Code, as amended, prohibits the deduction of expenses relating to interest, fines, confiscations, and penalties that are due to the Romanian and foreign authorities.

1751. **Availability of settlements:** Romania allows settlements in regards to tax crime prosecutions through Guilty Plea Agreements. This is a legal document that allows a defendant and prosecutor to agree on a guilty plea during criminal investigations. Through it, the defendant acknowledges the acts committed, accepts the legal qualification, and the imposition of a penalty or correctional measure. The agreement can be initiated by both parties, has limits established by the superior hierarchical prosecutor, and is only available for offences with up to 15 years of imprisonment or fines. The agreement includes the defendant's statement, the type and extent of the penalty, and the signatures of the parties involved.

1752. **Tax gap:** The methodologies applied by the tax agency for estimating the compliance tax gap is calculated at a global level and not by way of a summation of the components that form the tax gap. The National Agency for Fiscal Administration (NAFA) uses top-down methodologies to estimate the tax gap for VAT, and personal and corporate income taxes. In 2018, the VAT gap was estimated to 33.8% as a percentage of the VAT Total Tax Liability.⁹

Principle 2: Devise a strategy for addressing tax crimes, which includes:

- a) the identification of existing and emerging risks and threats; and
- b) mechanisms for the regular review and monitoring of the implementation and effectiveness of the strategy.

Tax crime strategy

1753. **Tax crime strategy:** Although Romania does not have a specific national strategy for responding to tax crime, addressing tax crime and evasion is included in both the National Strategy Against Organised Crime 2021-2024 and the Strategy of the Romanian Tax Administration for 2021-2024 respectively. The National Strategy Against Organised Crime seeks to limit organised crime group's access to financial resources through improving the quality of financial investigations amongst other disruptive activities. The Strategy of the Romanian Tax Administration established "Objective 2 – Prevention and fight against tax evasion" which includes an objective to reform risk management procedures against non-compliance, the adoption of various OECD standards such as SAF-T and to seek to facilitate a framework for simultaneous and collaborative actions between various control structures within NAFA.

1754. **Threat assessment:** NAFA selects cases using a dynamic internal risk analysis process using internally held information with indicative risk criteria that can be adapted on a number of variables including industry, geographical location and seasonal activity, among others. The identification of emerging issues is limited and there is no inter-agency collaboration to identify emerging threats in the jurisdiction.

⁹ <https://data.europa.eu/doi/10.2778/2517>; The VAT Total Tax Liability is an estimate of the theoretically collectable VAT amount in a jurisdiction.

1755. **Communication strategy:** Press releases issued by the POHCCJ, including those related to the settlement of tax evasion cases, are published on the website of the Public Ministry (www.mpublic.ro). All press releases issued by the POHCCJ are published under “Press releases” - <https://www.mpublic.ro/ro/content/comunicate-de-presa>.

1756. The web page contains a section for activity reports of the Public Ministry for the period 2011 – 2022, in which statistical data on tax evasion crime published (number of cases on-hand, number of cases solved, the way they were solved, number of defendants prosecuted, damages, etc.).

Box 40.1. Example of communication strategy

NAFA implements measures to increase the tax compliance of the population through publicising of substantial cases where it has been successful or other actions the agency has taken. This mediatisation is considered to be a prevention action against future tax fraud cases by creating awareness among taxpayers of NAFA’s capabilities and also how they can avoid engaging in similar tax fraud and remain compliant with the tax legislation. NAFA presents these cases generically as a phenomenon on its website and the Anti-Fraud Directorate Facebook page, both of which are publicly available, and details the sanctions that were applied and educates taxpayers on the possible risks of involvement in the fraudulent behaviour. NAFA notes that it does not measure the impact of the mediatisation strategy towards improving wider taxpayer compliance, however, it has observed decreases in other instances of taxpayers engaging in the same behaviours and schemes that were utilised in the cases that NAFA had publicised as part of their communication strategy.

Principle 3: Ensure that competent authorities have adequate powers to effectively detect, investigate, and prosecute tax crimes

1757. The investigative powers of the Romanian public prosecution service, and the police are outlined in the table below.

Table 40.4. Investigative powers of tax crime investigation agency (Public Prosecution Service and Police)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct powers/Indirect Powers Public Prosecution Service: A judge’s authorisation is needed for searches. Police: Holds indirect powers that require A judge’s authorization.
Obtain documents from third parties	Full direct powers: Public Prosecution Service: Full direct powers, but in some cases a judge’s authorisation is needed. Police: Full direct powers according to art. 169-170 Criminal Procedure Code in criminal cases in which activities are carried out under the supervision of the prosecutor according to art. 300 Criminal Procedure Code
Interview	Full direct powers Public Prosecution Services: Full direct powers Police: Full direct powers in criminal cases in which activities are carried out under the supervision of the prosecutor.
Inquiry powers (e.g. power of coercion)	Full direct powers Public Prosecution Service: full direct powers, but in some cases, it is needed an authorisation (e.g.: Inquiry of members of Parliament or Government)

	Police: full direct powers in criminal cases in which activities are carried out under the supervision of the prosecutor according to art. 300 Criminal Procedure Code
Intercept mail and telecommunications	<p style="text-align: center;">Full direct powers/Indirect powers</p> <p>Public Prosecution Service: full direct powers, but a judge's authorisation is needed. In urgent cases, the prosecutor is authorised to intercept mail and telecommunications for up to 48 hours, which is later authorised by a judge to ensure the intercepts become admissible as evidence.</p> <p>Police: Indirect powers, a judge's authorisation is needed.</p>
Conduct covert surveillance	<p style="text-align: center;">Indirect powers</p> <p>Public Prosecution Service: Indirect powers via specialised police departments and a judge's authorisation is needed.</p> <p>Police: Indirect powers, a judge's authorisation is needed.</p>
Search and seize computer hardware, software and electronic storage media	<p style="text-align: center;">Full direct powers</p> <p>Public Prosecution Service: Full direct powers, but a judge's authorisation is needed. (Article 168 Criminal Procedure Code)</p>
Arrest	<p>Indirect powers</p> <p>The Public Prosecution Service has indirect powers via a Judge of Rights and Freedoms. The prosecutor or criminal investigation body may detain a person for 24 hours and thereafter submit a written request to the Judge of Rights and Freedoms for preventative arrest for a further 30 days.</p>

1758. **Digital media:** In criminal investigations where there is a reasonable suspicion regarding the commission of a crime or for the purpose of gathering evidence, the prosecutor may order the preservation of computer data, in its own capacity or at the request of the investigative body of the judicial police (art. 154 *Criminal Procedure Code*).

1759. In the event that there are reasonable suspicions that an internet domain has been used to commit crimes, (including tax evasion crimes), the prosecutor (by virtue of the office held or at the request of the investigation body of the judicial police) can order the seizure of an internet domain located on the national territory, belonging to a person that is indicted for an offence, until the final resolution of the case.

1760. In 2021, the Romanian Police established an Online Investigations Department within the Economic Crime Investigation Directorate, consisting of specialised police officers who seek to identify accounts registered on online market and social media platforms engaging in criminal activity whilst simultaneously identifying the individuals managing the internet domains and related computer data.

1761. **Legal professional privilege:** There is no legal definition of legal professional privilege in Romania, but the regulations specific to different professional categories make reference to professional secrecy. Witnesses in specific professions, including lawyers, notaries and physicians cannot be interviewed regarding information that may be subject to confidentiality or secrecy regulations, however there is an exception where the witness consents to disclose this information or another legal reason removes the obligation to keep secrecy or confidentiality. Banking professional secrecy is specifically noted in the law (art 306(6) of the *Criminal Procedure Code*) and cannot be a basis to deny a prosecutor's requests once a criminal investigation has started. There are no secrecy privileges that apply to accountants and tax advisors during a prosecution.

Principle 4: Provide competent authorities with adequate powers to freeze, seize, and confiscate assets linked to the enforcement of tax crimes, in accordance with their domestic legal frameworks

1762. **Freezing and seizing orders:** The General Directorate of Enforcement Special Cases within NAFA and the National Agency for the Management of Seized Assets are responsible for asset recovery

in Romania. The freezing of assets is regulated by the *Fiscal Procedure Code* (Law No.207/2015) and is used as a precautionary measure in instances where there is a perceived risk of flight or asset dissipation by the taxpayer. The Public Prosecution Service is able to seize assets for a period of 3 months totalling 150% of the estimated shortfall amounts. Furthermore, it is mandatory for tax authorities to seize assets as a contingency measure in suspected contraventions of the *Law on the Prevention and Combating of Tax Evasion* (Law No. 241/2005) once a suspect is indicted.

1763. **Confiscation orders:** Romanian legislation does not allow for non-conviction-based confiscation. Article 112 of the CC provides the possibility of extended confiscation. If the value of assets subject to confiscation is manifestly disproportionate to the nature and severity of the offence, confiscation will be ordered only in part, by monetary equivalent, by taking into account the result produced or that could have been produced and the asset's contribution to it. If the assets were produced, modified, or adapted in order to commit the offence, they are entirely confiscated.

Table 40.5. Asset recovery in practice

	2021	2020	2019
Total value of assets seized in connection with criminal tax matters	RON 761 156 431	RON 597 080 732	RON 927 853 921
Total value of assets confiscated in connection with criminal tax matters	RON 16 998 357	RON 29 405 021	RON 33 642 567

Note:

(a) The total amount of assets confiscated includes both cash amounts and the proceeds from the disposal of confiscated assets.

Principle 5: Put in place an organisational structure with defined responsibilities for fighting tax crimes and other financial crimes

Agencies responsible for investigation and prosecution of tax crimes

1764. NAFA is Romania's authority for the administration of taxes, duties, and other budgetary revenues provided by law. The General Anti-tax Fraud Directorate (GAFD) within NAFA is its operative structure for the prevention, detection and combating of tax evasion and tax fraud. After an audit is undertaken, GAFD inspectors notify the criminal investigation bodies if, in the course of their investigations they find evidence that indicates the commission of criminal acts.

1765. The Police for Economic Crime Investigation is the specialised division of the Romanian Police which conducts tax and other economic crime investigations under the guidance of the Prosecutor who directly coordinate the investigations, and in some limited instances, the Prosecutor can conduct tax crimes investigations unilaterally.

1766. The table below provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 40.6. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
Tax Agency	NAFA is Romania's authority for the administration of taxes, duties, and other budgetary revenues provided by law. The General Anti-tax Fraud Directorate (GAFD) within NAFA, is the operative section for the prevention, detection and combating of tax evasion and fraud which also assists the Romanian Police and Prosecutor in their investigations of tax crimes

Police	The Police for Economic Crime Investigation is the specialised division of the Romanian Police which conducts tax and other economic crime investigations under the guidance of the Prosecutor who directly coordinate the investigations The National Directorate for Investigating Organised Crime and Terrorism is a specialised unit within the Romanian Police that is charged with investigating organised crime.
Prosecution	The Prosecutor's Office provides prosecutors who supervise and coordinate investigations conducted by Romanian Police. In limited circumstances, the Prosecutor's Office also conducts its own investigations of tax crime. Romania has Prosecutor's Offices attached to the various levels of courts, specifically the Tribunal, the Court of Appeal and the High Court of Cassation and Justice who conduct prosecutions of tax crime at their respective level without interference by higher prosecutor offices.
Financial Intelligence Unit	The National Office for Prevention and Control of Money Laundering is Romania's financial intelligence unit. The Office's analysis suspicious transactions in addition to supervising reporting entities for the purpose of preventing and combating money laundering and terrorist financing.
Financial supervisor	The supervision of the financial sector in Romania is divided between the National Bank of Romania (BNR) which supervises compliance by the banking sector and the Financial Supervisory Authority (ASF) for the non-banking sector.

Principle 6: Provide adequate resources to competent authorities in order to support:

- a) the development of robust organisational structures and governance;
- b) appropriate training and development of staff; and
- c) IT infrastructure, access to data, and use of appropriate analytical resources.

Resources for combatting tax crime

1767. Romania does not have a specific budget allocated to the enforcement of tax crimes.

1768. In terms of staff responsible for tax crime investigations and prosecutions in relevant agencies, the GAFD consists of 1 000 inspectors, of which it is estimated that between 25-30% are active in the fraud investigation area. The Police for Economic Crime Investigation has a workforce which includes 2 067 investigators and its National Directorate for Investigating Organised Crime and Terrorism has 296. Within the Prosecution Service, there are no prosecutors who are exclusively competent to investigate tax crime offences.

Table 40.7. Data bases/sources of information available to tax crime investigators

Database	Access by Prosecution Service	Access by Tax Administration	Access by Ministry of Internal Affairs	Access by ONPCSB-FIU
Company incorporation/ownership registry	Direct access	Direct access	Direct access	Direct access
Land registry	Access on request	Direct access	Direct access	Direct access
Registry of citizens	Direct access	Direct access	Direct access	Direct access
Tax databases	Direct access	Direct access	Direct access	Direct access
Customs databases	Direct access	Direct access	Direct access	Direct access
Police databases	Direct access	No access	Direct access	Direct access
Judicial databases	Direct access	No access	Direct access*	Direct access
Suspicious transaction report databases	Access on request	Access on request	Access on request**	Direct access**
Car registry	Access on request	Direct access	Direct access	Direct access
Boat registry	Access on request	Direct access	Direct access***	Direct access
Database of bank accounts	Direct access	Direct access	Direct access	Direct access

* Direct access to Judicial Record managed by the Romanian Police. No Access to ECRIS.

** Access on request to ONPCSB-FIU.

*** Access on request to Romanian Naval Authority

1769. **Training for tax crime investigators:** NAFA does not have an internal training function and training is limited to the initial induction program for auditors. The Anti-Fraud inspectors within the NAFA can participate in voluntary national and external training programmes on different topics that are held by the School of Public Finance and Customs, a general directorate within the Ministry of Finance which develops and holds professional training programs designed to develop the skills, knowledge and abilities of the Ministry's staff and subordinate structures. The inspectors participate frequently on international seminars and meetings organised on the Fiscalis (EC), including the regular Eurofisc meetings.

1770. The Romanian Police organises internal training sessions on specialist topics tailored to their operational capabilities and functions. The National Institute of Magistracy (NIM), the national institution responsible for recruiting judges and prosecutors, provides the initial and ongoing training of judges and prosecutors in office. Of note, it offers specialised training in fields that include anti-corruption, asset-recovery and financial, economic and tax crimes. However, the training held by NIM is only available to prosecutors and judges. Joint trainings between investigators and prosecutors from different agencies have been organised in the past on an ad-hoc basis, including the Directorate for Investigating Organised Crime and Terrorism and the National Agency for the Management of Seized Assets.

Principle 7: Designate tax crimes as a predicate offence for money laundering

1771. Approach: Since 2002, Romania has employed an all-crimes approach whereby any money or asset generating offence, including tax crime, is a predicate offence for money laundering. Romanian prosecutors can also pursue matters where the offence from which the criminal proceeds originated was committed in another jurisdiction and can also apply to Romanian citizens and legal persons who commit money laundering outside of Romania, irrespective of whether the original crime committed was a crime in the country it was committed in. However, a foreign person who commits a crime in a foreign jurisdiction who launders the proceeds of that crime in Romania cannot be charged with money laundering in Romania.

1772. **Enforcement of money laundering predicated on tax crimes:** Since tax crimes were included as a predicate offence for money laundering, the number of cases referred is significant. In 2022, the National Office for Prevention and Control of Money Laundering referred 332 cases to NAFA. Between 2018 and 2020, Romania successfully prosecuted and secured 68 convictions of money laundering predicated by tax evasion.

Principle 8: Establish effective legal, administrative, institutional, and operational frameworks for domestic inter-agency co-operation, including:

- a) reporting and information sharing by tax authorities of suspicions of tax crimes and other financial crimes, including corruption, money laundering and terrorism financing, arising out of the performance of their duties, to the appropriate domestic law enforcement authorities and, where applicable, to the Financial Intelligence Units;
- b) reporting and information sharing between all appropriate domestic authorities, including law enforcement authorities, with respect to the enforcement of tax crimes and other financial crimes within their respective mandates; and

- c) mechanisms to support enhanced forms of co-operation among tax authorities, competent authorities, and other appropriate domestic law enforcement authorities responsible for enforcing financial crimes, such as joint operations and taskforces, parallel investigations, staff secondments, co-ordination fora, and joint intelligence centres.

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

1773. Law No. 129/2019 requires NAFA to immediately submit a suspicious transaction report to the National Office for Preventing and Combating Money Laundering when it knows, suspects or has reasonable grounds to suspect, that the property and cash identified originates from the commission of criminal offences, is related to terrorist financing or the person has breached the obligations included in this statute. Law No. 2017/15 and Government Emergency Ordinance no. 74/2013 establishes the referral framework for NAFA to notify the relevant criminal investigation bodies, if in the course of their investigations they find evidence that indicates the commission of criminal acts.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

1774. The below tables show the models for sharing information related to tax crimes and other financial crimes in Romania, and the availability of enhanced forms of co-operation in combatting tax crimes.

Table 40.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agency investigating tax crimes	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		MSS	MSS	MSS	MSS	MSS
	Customs administration	MSS	MSS		MSS	MSS	MSS
	Police or public prosecutor	DSS	Police: MSS MoJ: DSS	On Request		DSS	MoJ: DSS Police: MSS
	Financial Intelligence Unit	DSS	MSS	DSS	MSS		MSS
	Corruption investigation authority	Sharing Prohibited	MSS	Sharing Prohibited	MSS	Sharing Prohibited	
	Financial regulator	MSS	MSS	MSS	MSS	MSS	MSS

Table 40.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Availability	Description
Co-operation agreements	Yes	NAFA has working agreements with the Ministry of Finance and the European Public Prosecutor's Office and has co-operation agreements with the Ministry of Finance and POHCCJ which grant designated officers in these agencies access to selected NAFA applications. Romanian Customs Authority has concluded MoU's with two Police taskforces (MAI) including MAI-IGPR and MAI-IGPF, which target illicit goods trafficking and human-trafficking respectively, as well as the Department for Export Control within the Ministry of Foreign Affairs (ANCEX)

		The National Anti-Corruption Directorate (DNA) and the POHCCJ have agreements with state agencies including the National Fiscal Administration Agency and the Trade Register to obtain access to their databases for use in criminal investigation of corruption, tax crimes and other related offences.
Joint operations and taskforces	Yes	POHCCJ, NAFA, Police taskforces, and other law-enforcement national institutions, are part of the Interinstitutional Working Group for Preventing and Combating Tax Evasion, a strategical and operational body which has the responsibility to analyse the statistics and the results of fighting against the criminals, and also to implement national actions plans for combating this crime.
Parallel investigations	No	
Joint intelligence centres	No	
Secondments and co-location of staff	Yes	The Romanian Police have staff seconded to the Southeast European Law Enforcement Center (SELEC). The Romanian Customs Authority has staff seconded to MAI-International Police Cooperation Center (MAI-CCPI-Naitonal Focal Point), SELEC, FRONTEX and the Romanian Border Police (IGPF).
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes	The NAFA and POHCCJ have this ability.
Multi-agency training	Yes	Has been conducted previously on an ad-hoc basis between agencies

Principle 9: Ensure international co-operation mechanisms are available to competent authorities including by:

- a) ensuring access to all international legal instruments relevant to the enforcement of tax crimes and other financial crimes;
- b) having adequate operational frameworks for effective international co-operation related to the enforcement of tax crimes and other financial crimes.

1775. **Legal basis:** Romania may exchange tax information with foreign authorities pursuant to bilateral and multilateral agreements. Romania maintains EOI relationships with 88 jurisdictions through 87 Double Taxation Agreements and three Tax Information Exchange Agreements, each allowing the exchange of information in both civil and criminal tax matters. Romania is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) as amended by its 2010 Protocol (Multilateral Convention), which entered into force for Romania on 1 November 2014.

1776. Article 36 of Law no. 129/2019 allows The National Office for Prevention and Control of Money Laundering to exchange information with foreign institutions or competent authorities from other EU Member States or third countries, based on reciprocity and through protected communication channels, if the purpose is to prevent and combat money laundering and terrorist financing. This includes recovering the proceeds of these crimes. In practice, information shared with other jurisdictions is limited to strictly for intelligence purposes only and the information cannot be used as evidence in judicial proceedings.

1777. **Competent authorities:** The competent authority for sending and receiving information pursuant to the MAAC and the bilateral EOI agreements is POHCCJ. The competent authority for sending and receiving requests based on mutual legal assistance is the National Anticorruption Directorate (DNA).

Principle 10: Provide fundamental protections and rights to individuals when enforcing tax crimes and other financial crimes including by guaranteeing basic

procedural and fundamental rights are in place for individuals suspected or accused of committing tax crimes or other financial crimes

Table 40.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until proven guilty in trial, according to the Criminal Procedure Code
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	During the course of criminal proceedings, according to the Criminal Procedure Code
remain silent	Yes	During criminal proceedings, a defendant has the right to not give any statements, and their attention shall be drawn to the fact that their refusal to make any statements shall not cause them to suffer any unfavorable consequences, and that any statement they do make may be used as evidence against them, according to the Criminal Procedure Code
access and consult a lawyer and/or entitlement to free legal advice	Yes	During the course of criminal proceedings, according to article 83 of the Criminal Procedure Code
interpretation and translation	Yes	The defendant has the right to an interpreter free of charge, when they cannot understand, express themselves properly or communicate in the Romanian language, according to the Criminal Procedure Code
be advised of the particulars of what one is accused of	Yes	During the course of criminal proceedings, the defendant has the right to be informed of the act for which they are under investigation and the charges against them, according to the Criminal Procedure Code
access documents and case material, also known as a right to full disclosure	Yes	During the course of criminal proceedings, the defendant has the right to consult the case file, according to the Criminal Procedure Code
a speedy trial	Yes	The Criminal Procedure Code establishes the right to a fair trial and a reasonable duration of the trial
protection from ne bis in idem (Double Jeopardy)	Yes	No person can be investigated or prosecuted for an offence when a final criminal judgment has already been returned concerning that same person for the same offence, even if the charges were different, according to the Criminal Procedure Code

1778. It is not possible to have civil tax audits conducted in parallel with criminal investigations. However, the Fiscal Procedure Code allows for the suspension of civil audits in cases where a criminal investigation is underway against a taxpayer or when financial and accounting documents have been seized by a criminal investigation body. The audit ceases only for the specific fiscal obligations and periods mentioned in the criminal notification. If the prosecutor orders the abandonment of the criminal investigation or leaves the civil action unresolved, the NAFA can resume with a new tax audit notice.

Highlights

Successful practices

- The inclusion of tax crimes as a predicate offence for money laundering led to 68 successful convictions of money laundering that were predicated by tax evasion between 2018 and 2020.
- The media exposure by NAFA of successful cases to deter tax fraud, educating taxpayers about compliance and risks.

Room for improvement:

- Threat assessments by NAFA could be improved by engaging other domestic stakeholder agencies.
- Romania could compound upon its successes from the implementation of a targeted strategy to address tax crimes.

41 Singapore (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1649. Singapore's tax legislation, for example the Income Tax Act 1947 (ITA) and the Goods and Services Tax Act 1993 (GSTA), set out various tax crimes ranging from absolute liability offences (requiring no *mens rea*) to offences that require criminal intent on the part of the offender. Examples of each category of tax offence and the corresponding maximum sanctions and statute of limitations are set out in the tables below.

Table 41.1. Absolute liability tax offences

Offence	Maximum sanction	Statute of limitations
Making an incorrect return or giving incorrect information on matters affecting the person's tax liability or liability of another person or a partnership (ITA, s 95(1))	Penalty equal to the amount of tax and/or amount of Productivity and Innovation Credit (PIC) bonus that has been undercharged or obtained as a result of the incorrect return or information	The comptroller is allowed to raise additional assessments within four years after expiry of that year of assessment (as of 2008) (ITA, s 74 (1)).
Making an incorrect return by omitting or understating any output tax or overstating any input tax or giving any incorrect information (GSTA, s 59(1)).	Penalty equal to the amount of tax which has been undercharged.	Tax assessments may only be raised within five years after the end of the prescribed accounting period for periods ending on or after 1 January 2007 (GSTA, s 45(5)).
Failure to register (GSTA, s 61).	Penalty equal to 10% of the tax due; a maximum fine of SGD 10 000; SGD 50* fine for every day of offence thereafter.	
Sole proprietorship, partnership, limited liability partnership or company is used to carry out a plan devised for specified arrangement (GSTA, s 62C(4)).	12 months' imprisonment, a maximum fine of SGD 50 000, or both.	
Unauthorized collection of tax or amounts attributable to tax (GSTA, s 64A(1)).	Penalty equal to three times the amount collected or attempted to; a maximum fine of SGD 10 000.	

Note:

* In March 2023, 1 EUR = 1.44 SGD

Table 41.2. Offences requiring criminal intent

Offence	Maximum sanction
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Failure to make a return without reasonable excuse (ITA, s 94A)	A maximum fine of SGD 5 000; six months' imprisonment.
Making an incorrect return or giving incorrect information on matters affecting the person's tax liability or liability of another person or a partnership without reasonable excuse or through negligence (ITA, s 95(2)).	Penalty equal to twice the amount of tax, or amount of PIC bonus that has been undercharged or obtained, or both. A maximum fine of SGD 5 000, or three years' imprisonment, or both.
Wilful intent to evade tax or obtain PIC bonus or a higher amount of PIC bonus, or both (ITA, s 96).	Penalty equal to three times the amount of tax, or amount of PIC bonus, or both. A maximum fine of SGD 10 000, or three years' imprisonment, or both.
Wilful intent of serious fraudulent tax evasion and action to obtain PIC bonus (ITA, s 96A).	Penalty equal to four times the amount of tax, or amount of PIC bonus, or both. A maximum fine of SGD 50 000, or five years' imprisonment, or both.
Making an incorrect return by omitting or understating any output tax or overstating any input tax or giving any incorrect information without reasonable excuse or through negligence (GSTA, s 59(2)).	Penalty equal to twice the amount of tax that has been undercharged. A maximum fine of SGD 5 000, or three years' imprisonment, or both.
Fraud with wilful intent to evade tax (GSTA, s 62).	Penalty equal to three times the amount of tax that has been undercharged. A maximum fine of SGD 10 000, or seven years' imprisonment, or both.
Arrangements to cause loss of public revenue, i.e. participating in a specified arrangement, knowing or having reasonable grounds to believe that participation is based on a fraudulent purpose (GSTA, s 62C(1)).	A maximum fine of SGD 500 000, or ten years' imprisonment, or both.
Any act, or attempted act, or breach of obligations provided for under this Act, with the intention of obtaining an undue refund (GSTA, s 63).	Penalty equal to three times the amount refunded or overpaid. A maximum fine of SGD 10 000, or three years' imprisonment, or both.
Unauthorized collections of tax or amounts attributable to tax without reasonable excuse or through negligence (GSTA, s 64A(2)).	Penalty equal to three times the amount collected or attempted to. A maximum fine of SGD 10 000, or three years' imprisonment, or both.

1650. **Limitation period:** The time-bar provisions, section 74(2) ITA and s 45(5A) GSTA only exclude cases of fraud or wilful default from the time-bar, and not cases of strict liability. This time-bar is only applicable to the issue of raising assessments. There is no limitation period in the prosecution of criminal offences, including absolute liability offences.

1651. **Complicity:** It is also a criminal offence to aid or abet another person to commit tax offences. This secondary offence of aiding or abetting is punishable by the same maximum penalties as the primary offence. Such provisions are provided for in the ITA and GSTA. Furthermore, Singapore's Penal Code 1871 (PC), Section 109 provides that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by the PC for the punishment of such abetment, be punished in the same way as for the main offence.

1652. **Attempt and conspiracy:** Attempted offences are covered under sections 511/512 of the Penal Code 1871 (PC), while conspiracies are covered under sections 120A/120B (criminal conspiracy) and section 107(1)(b)/109 (abetment by conspiracy).

1653. Attempts to commit an offence – Section 511 of the PC defines an attempt to commit an offence. The punishment for an attempt to commit an offence is set out in section 512. Section 512 provides that such offence is punishable with the same penalties as the primary offence. If no express provision is made for the punishment, the offender may be punished with imprisonment of up to 20 years and shall also be liable to fine or to caning.

1654. Conspiracy – The definition of a criminal conspiracy is covered in S 120A of the Penal Code 1871. Section 120B further states that where there is no express provision made for the punishment of the conspiracy, the person(s) shall be punished in the same manner as if he had abetted the offence that is the subject of the conspiracy.

1655. Abetment by conspiracy – The definition of a conspiracy is similar to that of a criminal conspiracy, save that the "abetment" aspect requires proof of some further act done in pursuance of the conspiracy. Section 109 further provides that an abettor is liable for punishment provided for the primary offence, unless otherwise expressly provided for.

1656. **Professional enablers:** Singapore does not have a separate penalty regime for professional enablers, but they may be held liable for the above listed offences either as primary or secondary offenders (e.g. by committing the offence directly or by aiding or abetting the offence). Furthermore, once a professional enabler is charged for criminal tax offences, they are also liable to face disciplinary actions under the Accountants Act (AA) 2004 or Legal Profession Act (LPA) 1966, upon which they may be censured, suspended or struck of the list of authorised professionals.

1657. **Territorial and nationality jurisdiction:** Singapore has jurisdiction over all tax crimes committed in Singapore. Singapore generally does not have jurisdiction when a crime is wholly committed outside of Singapore, unless expressly provided for. However, as part of enhancing deterrence against Missing Trader Fraud (MTF), a new offence has been introduced in GSTA (section 62C) that provides that a person would be guilty of the same offence under the GSTA, as if the offence had been committed in Singapore, even the person was outside Singapore.

1658. **Legal persons:** Singapore has jurisdiction over any legal person, whether incorporated or resident in Singapore or not. The crime must be attributable to the legal person. Legal persons are subject to the same fines as natural persons.

Enforcement of tax crime

1659. The tables below show the enforcement of tax crimes in Singapore in tax years ending 2018-21, and the list of sanctions imposed over the same period of time.

Table 41.3. Enforcement of tax crimes in the tax years ending 2018-21

Tax years ending	Concluded tax audit cases	Amount of tax and penalties recovered from tax audits*	Concluded investigation cases (A) = (B) + (C) + (D)	Cases where action(s) short of prosecution was taken (B)	Amount of tax and penalties recovered (on the basis of actions short of prosecution)*	Cases where no further actions were taken (C)	Cases where prosecution action was taken (D)	Number of acquittals	Amount of tax evaded and penalties imposed (on the basis of convictions for tax crimes, column D)*
2018	10 483	348 989	243	175	30 259	19	49	0	3 170
2019	10 146	351 136	155	112	29 463	22	21	0	7 979
2020	9 702	366 736	141	76	55 988	24	41	0	20 837
2021	9 281	339 846	192	133	15 349	43	16	0	18 773

Note:

* in thousands SGD

Table 41.4. List of other sanctions imposed in tax years ending 2018-21

Sanction	Number of times imposed			
	2018	2019	2020	2021
Total number of cases prosecuted	49	21	41	16
Sanctions imposed				
>0 – 3 years' imprisonment	6	6	16	7
>3 – 5 years imprisonment	5	0	0	1
Fine imposed by court	38	15	27	10

Penalty imposed by court	43	20	39	21
Media publicity	18	13	20	16

1660. **Availability of tax deductions for civil and criminal sanctions:** Fines and penalties incurred as a consequence of not complying with statutory and regulatory requirements are not allowed as tax deductions (ITA, section 14V(2)(b)).

1661. **Availability of settlements:** Singapore allows settlements in tax crime cases at the discretion of the Comptroller. Settlements may involve paying a sum of money (referred to as the “composition sum”), and/or receiving a conditional or stern warning, in lieu of prosecution for the offence. Once an offence has been compounded, no further prosecution action may be taken.

1662. **Tax gap:** Inland Revenue Authority of Singapore (IRAS) does not calculate the estimated tax gap or the return on investment for tax crime investigation. However, they set performance targets for tax crime investigations that measure the effectiveness of investigations.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1663. **Tax crime strategy:** The Inland Revenue Authority of Singapore (IRAS) is the agency responsible for the investigation of tax crimes. IRAS believes that taxpayers are generally compliant, and this large majority of compliant taxpayers exerts a positive influence on societal behaviour while also creating pressure on the minority group of errant taxpayers to comply. IRAS tailors the compliance approach to the following four taxpayer profiles, so that IRAS can better address their compliance behaviour.

- **Voluntarily compliant:** Most taxpayers comply voluntarily in fulfilling their tax obligations. IRAS proactively provides the necessary platforms and services to enable them to do so.
- **Unaware:** Some taxpayers who want to comply with tax regulation requirements may require assistance to do so. In this regard, we invest efforts into raising taxpayers’ awareness of tax issues and provide taxpayers with accurate information to prevent non-compliance.
- **Negligent:** Some taxpayers may not have given sufficient attention to their tax obligations. IRAS seeks to detect errors and deter this group from making recurring mistakes.
- **Errant:** A minority of taxpayers intentionally cheat or evade tax. IRAS will not hesitate to take strong actions against them and penalise such errant taxpayers.

1664. The compliance approach is guided by the Integrated Compliance and Service Framework (ICSF). The ICSF anchors compliance and service actions relying on four strategic elements, collectively known as the “Four Rights”: Right Design from the Start, Right Service to Meet Taxpayers’ Needs, Right Actions at the Right Time and Right Taxpaying Values.

1665. **Threat assessment:** The divisions within the Compliance Community first identify risks through both a top-down and a bottom-up approach: the former involves carrying out environmental scanning to understand external trends and developments, while the latter involves observing taxpayers’ behaviour through day-to-day operations. Further analysis of the specific compliance risks is carried out to identify root causes before appropriate programmes are formulated and implemented across IRAS. IRAS then monitors its compliance performance at both the strategic and operational levels, using appropriate indicators. This feeds into IRAS’ risk identification process, forming a compliance planning cycle.

1666. IRAS has a structured process, known as Compliance Strategic Planning (CSP) exercise, to prioritise risks and develop strategies. During the annual CSP exercise, the IRAS Compliance Community comes together to discuss trends and developments. IRAS management then collectively identifies compliance risks that are relevant to the whole-of-IRAS for the next 1-3 years and formulate high level strategies to address these risks. These strategies in turn guide divisions in the development of their respective work plans. The CSP exercise helps to create alignment and coherence in the compliance strategies and work plans of different divisions, with key outcomes monitored and evaluated.

1667. **Communication strategy:** IRAS publishes media releases when a person who committed tax crimes is prosecuted and/or sentenced in court.¹ IRAS' compliance communication strategy also includes preventive and educational communication.

Box 41.1. Example of successful implementation of tax crime strategy: Singapore

Following a Compliance Strategic Planning (CSP) exercise, syndicated fraud in relation to electronic Tourist Refund Scheme (eTRS) was identified as one of the key compliance risks facing IRAS. Three divisions within IRAS – Investigation & Forensics Division (IFD), the Goods & Services Tax Division (GSTD), and Data and Digital Ecosystems Division (DDED) collaborated to develop a model to detect anomalies and suspicious cases of eTRS fraud.

Through collective inputs by GSTD and IFD on key indicators of eTRS fraud and data profiling tools deployed by the Data Science and AI Team of DDED, the anomaly model developed by DDED was able to identify unusual but consistent trends for attention. For example, spikes in transaction volume during certain periods when the same group of tourists was in Singapore and their GST refund claims were being handled by the same Singapore Customs (SC) officer who approved the refunds to these tourists. These findings led IFD to identify the collusion involving the tourists, the SC officer, and a particular retailer. IFD then worked together with the Singapore Customs and the Corrupt Practices Investigation Bureau (CPIB) to conduct a joint operation. The operation led to the successful enforcement and prosecution of the syndicate members for tax evasion, corruption, and money laundering charges.*

Following the successful operation, IFD also provided inputs to GSTD to tackle the emergence of eTRS fraud by imposing more stringent requirements on specific retailers assessed to be more susceptible to syndicated eTRS fraud activities. For example, such retailers are required to pack goods that have been purchased in tamper-proof, serially numbered and sealed bags to prevent goods tampering and to implement closed-circuit television (CCTV) surveillance systems at their retail premises. IRAS also uses data analytics and other tools to improve its capabilities to detect non-compliance with these requirements and fraudulent GST refund claims.

Note:

* More details on this case can be found at the following link: <https://www.iras.gov.sg/news-events/newsroom/former-singapore-customs-officer-jailed-for-fraudulently-obtaining-gst-tourist-refunds>.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

1668. The below table shows the powers of the tax crime investigation agency of Singapore.

Table 41.5. Investigative powers of tax crime investigation agency (IRAS)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power IRAS' officers are allowed* to obtain information, and specifically have full and free access to all buildings, places, records, data and documents. This includes seizure of records, data and documents.
Obtain documents from third parties	Full direct power This refers to power of IRAS' officers to obtain information from or verify information with third parties such as other government agencies, financial institutions and customers.
Interview	Full direct power IRAS' officers have power to require a person to answer questions**.
Inquiry powers (e.g. power of coercion)	Full direct power Inquiry powers are the same as the powers to conduct interview. Evidence obtained through these powers are admissible against the person in any court proceedings.
Intercept mail and telecommunications	No power
Conduct covert surveillance	Full direct power IRAS' officers perform basic surveillance on person(s) and location(s)/premise(s) primarily to support planning for raid operations.
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power IRAS' officers have full and free access to computers, computer programs and computer software***. This includes power to seize these items. In addition, IRAS is gazetted as a prescribed Law Enforcement Agency (LEA) empowered to access computers (whether in Singapore or elsewhere) when investigating an arrestable offence****.
Arrest	Full direct power IRAS has the power to arrest any person whom the arresting officer reasonably believes is committing offences stipulated in S65F of the ITA or S83E of the GSTA.

Additional Powers

Body search: IRAS has the power to search or cause to be searched a person found in the building or place for any document or thing which may be relevant for the investigation or is required as evidence in proceedings for specific offences*****.

Forced entry: IRAS has the power, for the purpose of investigating above-mentioned offences, break open any outer or inner door or window, or use any other reasonable means, to gain entry to a building or place.

Seizure of goods: IRAS has the power to seize, or prohibit the disposal of or dealing in, any goods which are suspected to have been used or intended to be used to commit an offence under GSTA or suspected to constitute evidence of an offence under GSTA or which may aid in any investigation or prosecution in connection with such offence.

Note:

* See ITA, s 65B and GSTA, s 84.

** See ITA, s 65B(1)(f) or 65B(3B) and GSTA, s 84(1)(f) or 84(2A).

*** See ITA, s 65B(1) and GSTA, s 84(1).

**** See Criminal Procedure Code (CPC) 2010, s 39.

***** Offences provided for under section 96 or 96A of the ITA and section 62 or 63 of the GSTA.

1669. **Legal professional privilege:** A person is not obliged under Section 65B of the ITA to disclose any information subject to legal privilege. IRAS has had only a very small number of cases where the subject of our investigations claimed profession legal privilege. It should be noted that there is no professional legal privilege for accountants, financial advisors and tax counsellors.

Principle 4: Freezing, seizing, and confiscating assets

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

1670. **Legal basis:** The GSTA and ITA provide avenues for IRAS to recover the tax undercharged via civil and criminal routes. Under the civil route, the GSTA and ITA provide powers for IRAS to raise additional tax assessments under Section 74 ITA and Section 45 GSTA to recover the tax undercharged without the need for a criminal investigation to be triggered. This allows IRAS to collect any tax undercharged as soon as the amount of tax omitted can be quantified. In addition, IRAS may also offer composition for offences, where appropriate. For cases where IRAS has commenced criminal proceedings against the tax offender, depending on the severity of the offence, the court may impose penalties of up to 400% of the tax undercharged as provided under the ITA and GSTA, in addition to any custodial sentences or fines being imposed. These high penalties serve the main purpose of deterrence but may also have the practical effect of disgorging ill-gotten gains from tax crimes.

1671. **Asset Recovery:** If taxpayers default in paying the taxes that have been undercharged, IRAS' Compliance Strategy and Tax Recovery Division (CSTRD) will proceed to recover the taxes due through a wide range of enforcement actions such as imposition of late payment penalties, appointment of third parties like banks or tenants (to remit monies to IRAS), and imposition of travel restriction orders on taxpayers. For certain syndicated tax crimes such as GST Missing Trader Fraud (MTF) cases, additional tax assessments are raised shortly after conducting a raid on the alleged syndicate. The banks with which entities of the syndicate maintain accounts are appointed as agents to remit the monies to IRAS. This strategy has proven to be effective as it deprives the syndicate of the illicit proceeds to perpetrate tax crimes.

1672. **Freezing, seizure, and confiscation in practice:** Where there is evidence of tax predicate money laundering offences, IRAS would also refer such cases to the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF) for money laundering investigations to be carried out. The CAD is empowered under the Corruption, Drug Trafficking and Other Serious Crimes Act 1992 (CDSA) and the Criminal Procedure Code 2010 (CPC) to exercise a variety of investigative powers, including the powers to freeze bank accounts and to seize and confiscate assets. This collaboration places Singapore in a stronger position to effectively freeze and confiscate criminal proceeds.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1673. IRAS is the only agency that handles all tax matters ranging from civil tax administration to the criminal investigation and prosecution of tax crimes.

1674. The table below provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 41.6. Agencies responsible for investigating financial crime–

Agency	Role with respect to financial crime
IRAS - Investigation and Forensic Division (IFD)	A division within IRAS, IFD is responsible for deterring and tackling evasion and fraud across all taxes and schemes administered by IRAS. IFD detects, investigates and penalises and prosecute taxpayers for tax frauds and abusive tax schemes to build public confidence and in so doing, encourages voluntary compliance.
Commercial Affairs Department (CAD)	CAD is the principal white-collar crime investigation agency in Singapore. It investigates into a wide spectrum of commercial and financial crimes and safeguards Singapore's integrity as a world-class financial and commercial centre through vigilant and professional enforcement of the laws.
Corrupt Practices Investigation Bureau (CPIB)	Independent body within the Prime Minister's Office which investigates and aims to prevent corruption in the public and private sectors in Singapore. The CPIB is headed by a director who is directly responsible to the Prime Minister.
Suspicious Transaction Reporting Office (STRO)	STRO is Singapore's Financial Intelligence Unit and a member of the Egmont Group of FIUs. STRO is responsible for receiving and analysing Suspicious Transaction Reports (STRs), Cash Movement Reports (CMRs) and Cash Transaction Reports (CTRs) and disseminating financial intelligence to combat money laundering terrorism financing and other serious crimes.
Monetary Authority of Singapore (MAS)	MAS is Singapore's central bank and financial services regulator. It has supervisory responsibilities, including Anti-Money Laundering (AML) / Combatting the Financing of Terrorism (CFT) issues, over banks, insurance companies, capital markets licensees, moneychangers and remittance agents, etc.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1675. IRAS is responsible for both the investigation and prosecution of tax crimes. In particular, the investigation of tax crimes is handled by the Investigation and Forensic Division (IFD) within IRAS, which has its own budget. The prosecution of tax crimes is mainly carried out by legal officers in IRAS' Law Division, who are authorised by the Public Prosecutor to do so. There are also cases where the prosecution will be conducted by Deputy Public Prosecutors from the Attorney-General's Chambers.

Table 41.7. Annual headcount and manpower costs of the IFD

Year	IFD Headcount	IFD Manpower cost (in millions SGD)
2019	73	12.9
2020	71	11.8
2021	72	12.9

1676. The above budget is not tied to the achievement of specific performance measures. However, each year there is an annual planning exercise, which encompasses work planning and the associated budgeting required achieving the work plan outcomes.

Table 41.8. Data bases/sources of information available to tax crime investigators

	Access
Company incorporation / ownership registry	Direct Access
Land registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Access on Request

Police databases	Access on Request
Judicial databases	Direct Access
Suspicious transaction report databases	Direct Access
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access
Travel records	Direct Access

Training for tax crime investigators

1677. IRAS' tax investigators have access to a wide range of training programmes within IRAS and at external agencies. In-house investigation courses and training programmes cover the types of powers given to investigators (conducting raids, seizures of exhibits, proving elements of the tax offences, statement taking and report writing). There is also on-the-job training where new tax investigators would participate in raids and cases led by other tax investigators, to learn how a tax investigation is conducted. In addition, IRAS' tax investigators are trained at the following external courses:

- a. Investigation-related courses conducted by other local enforcement agencies like Singapore Police Force (SPF) and the CAD,
- b. Overseas financial investigation courses as well as specialised courses (e.g. on VAT fraud or Cryptocurrencies) conducted by the Organisation for Economic Co-operation and Development (OECD) Academy for Tax and Financial Crime Investigation, and
- c. Secondments with other local LEAs, such as CAD and the Criminal Investigation Department (CID) in the SPF.

1678. Moreover, IRAS and CAD also conduct frequent sharing sessions on the latest trends in investigation and/or tax crimes to ensure that investigative knowledge is kept up to date.

Principle 7: Predicate offences

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

1679. **Approach:** Singapore has adopted a combination approach when defining predicate offences, meaning it combines threshold and list approaches. The list of predicate offences is set out in the First and Second Schedules of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA). With effect from 1 July 2013, the offences of tax evasion and serious fraudulent tax evasion under the ITA (sections 96 and 96A), and the offences of tax evasion and improperly obtaining refunds under the GSTA (sections 62 and 63) have been designated as money-laundering predicate offences.

1680. With effect from 1 September 2014, Singapore has defined "foreign serious tax offence" in the CDSA as an offence against the national law of a foreign country that consists of the wilful evasion of any tax of that country. This refers to any foreign tax evasion offence, so long as the offence has been criminalised in the foreign jurisdiction and is committed with intent to evade tax. This allows and empowers CAD in Singapore to pursue money laundering investigations arising from all foreign serious tax predicate offences regardless of whether there is a corresponding equivalent tax offence in Singapore.

1681. **Enforcement of money laundering predicated on tax crimes:** Where there is evidence of money laundering arising from tax predicate offences, IRAS would refer the cases to CAD for money laundering investigation to be carried out. Offenders may be charged with tax predicate charges and money laundering charges at the discretion of the public prosecutors when the evidential threshold is met.²

Principle 8: Inter-agency co-operation

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

Reporting of suspected crimes by civil tax authority to relevant law enforcement authorities

1682. IRAS houses both the auditors, who perform civil audits, and investigators, who investigate tax crimes. In Singapore, cases are surfaced for investigation whenever there is a *prima facie* evidence of tax evasion. When the tax auditor comes across a suspected case of tax evasion the auditor will refer the case to IFD to follow up accordingly.

1683. All referrals from auditors are sent to IFD's Tactical Intelligence Team for review before they are assigned to experienced Deputy Directors within IFD for further evaluation. Following the detailed evaluations, recommendations will be made to the Governance Committee (comprising of IFD management) on whether a full-scale investigation should commence. Once the Governance Committee approves a full-scale investigation to be undertaken, the case would be assigned to an investigation officer or team to follow up.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

1684. IRAS is the main agency in Singapore investigating tax crimes. While there are other agencies such as the Singapore Police Force and the Corrupt Practices Investigation Bureau, which are legislatively empowered to investigate any type of offences (including tax offences), tax offences would be referred to IRAS for investigation.

1685. During a tax investigation, an investigation officer may come across information suggesting that a serious non-tax offence (such as money laundering or corruption) has been committed. IRAS would refer cases involving serious non-tax offences to other agencies for investigation.

1686. IRAS also lodges Suspicious Transaction Reports (STR) to the Suspicious Transactions Reporting Office (STRO) when relevant cases are identified in the course of work.

1687. For cases where there are elements of tax predicated money laundering, IRAS has an established framework to identify and refer such cases to the CAD for money laundering investigation and prosecution. For the specific purpose of pursuing tax predicate money laundering offences, a CAD satellite office staffed by a CAD officer, set up in IRAS in June 2021, facilitates and provides relevant inputs to domestic tax predicate money laundering referrals. This facilitates early identification of potential cases with money laundering offences during tax investigations and allows the CAD officer to commence investigations after the case is referred to CAD. The CAD officer also conducts training and sharing sessions to sensitise IRAS officers to the elements of money laundering offences as well as the evidence needed to make out the offences. This CAD officer is also subjected to the same secrecy provisions under section 6 of the ITA and GSTA as the rest of IRAS officers when it comes to sharing of tax information.

Table 41.9. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset recovery Authority ^(g)
Authority providing information	Tax administration		Direct Access ^(a)	DSS ^(b)	DSS ^(c)	DSS	DSS	
	Customs administration	DSS ^(b)	DSS ^(b)		DSS ^(d)	DSS	DSS	
	Police investigating non-tax offences	DSS	DSS	DSS		Direct Access ^(e)	DSS	
	Financial Intelligence Unit	DSS	DSS	DSS	DSS		DSS	
	Corruption investigation authority	DSS	DSS	DSS ^(f)	DSS	DSS		
	Asset recovery Authority ^(g)							
	Financial regulator	DSS	DSS	DSS	DSS	DSS	DSS	

Note:

- The Investigation and Forensic Division (IFD) within the tax administration (IRAS) is responsible for investigating tax offences in Singapore and has direct access to the database of the tax administration.
- This is only in respect of Goods and Services Tax matters, which is jointly administered by IRAS and Singapore Customs.
- A Satellite Office staffed by an officer seconded from the Commercial Affairs Department (CAD) of the Singapore Police Force has been established within the tax administration (IRAS). This CAD officer works alongside IFD tax investigators to identify and investigate cases with tax predicate money laundering offences. For this sole purpose, the CAD officer has direct access to tax data and is subjected to the same secrecy provisions as the rest of the IRAS officers.
- This refers to sharing with the police only.
- Singapore's FIU, STRO, is part of the Singapore Police Force (SPF), and it has direct access to the police databases.
- Information is also shared by CPIB, on a case-by-case basis, at the request of the investigating authority.
- Singapore does not have a central asset recovery authority and the relevant law enforcement agencies would deal with the domestic recovery of assets or illicit proceeds for the respective offences under their agencies' purview. As such, it would not be accurate to provide a standalone response based on the above template.

Table 41.10. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	IRAS is the only agency in Singapore investigating into tax crimes. However, for cases where there are elements of tax predicated money laundering, IRAS has an established framework to identify and refer such cases to the CAD for money laundering investigation and prosecution. Please see above.
Disclosure of foreign trusts	IRAS is only allowed to disclose taxpayer information, including information on foreign trusts, in accordance with section 6 of the ITA.
Joint operations and taskforces	IRAS has conducted joint operations with agencies like Singapore Customs in cases where other serious crimes besides tax crimes have been committed. One such example is the Fraudulent tourist refund case which was charged in court on 15 September 2017.
Parallel investigations	Yes. This is possible for example where IRAS is carrying out an investigation on the tax predicate offences, while the CAD is investigating the money laundering aspect of the tax predicate offences.

Joint intelligence centres	No. However, IRAS works with relevant agencies on a project basis, for example with STRO for identification of tax evasion cases through financial intelligence.
Secondments and co-location of staff	IRAS has a secondment arrangement with the CAD and the Organised Crime Division of the Criminal Investigation Department (CID) for cross secondment of staff. In addition, a CAD satellite office staffed by a CAD officer was set up in IRAS in June 2021 to facilitate and provide relevant inputs to domestic tax predicate money laundering referrals. This facilitates early identification of potential cases with money laundering offences during tax investigations and allows the CAD officer to commence money laundering investigations after the case is referred to CAD. The CAD officer also conducts training and sharing sessions to sensitise IRAS officers to the elements of money laundering offences as well as the evidence needed to make out the offences
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes. This is usually at the direction of the Attorney General's Chambers or when cases are referred to IRAS by other Law Enforcement Agencies.
Multi-agency training	See above, paragraph relating to Training for Tax crime investigators.

Principle 9: International Co-operation

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.

1688. **Legal basis:** IRAS may exchange tax information with foreign tax authorities in relation to criminal tax matters pursuant to bilateral tax agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC). These agreements provide that information exchanged cannot be used for purposes other than for tax, unless where the agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax in accordance with their respective domestic laws.

1689. Furthermore, based on the Mutual Assistance in Criminal Matters Act 2000 (MACMA), Singapore, through the Attorney General Chambers (AGC), can provide mutual legal assistance in respect of criminal matters to countries in the absence of a treaty if there is an undertaking of reciprocity in accordance with section 16(2) of MACMA. This undertaking of reciprocity should provide that the requesting country will comply with a future request by Singapore for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

1690. Other than the MACMA, Singapore/IRAS will not be able to exchange tax information with foreign authorities in absence of an underlying bilateral tax agreement or MAC.

1691. As of 31 December 2022, Singapore has exchange of information relationships with 159 jurisdictions through 96 bilateral tax treaties, 2 Tax Information Exchange Agreements and the MAC.

1692. IRAS is able to share information spontaneously with tax treaty partners on potential tax crimes against the treaty partner. IRAS is also able to file Suspicious Transaction Reports (STR) to the Suspicious Transaction Reporting Office (STRO), if IRAS reasonably suspects any acts that may give rise to foreign tax evasion predicate offences. STRO will evaluate the case for dissemination to the relevant FIU.

1693. **Competent authorities:** IRAS handles and processes exchange of information requests under bilateral tax agreements or MAC and the AGC handles and processes requests for mutual legal assistance in respect of criminal matters including requests for assistance under the Mutual Legal Assistance Treaty (MLAT).

1694. **International co-operation in practice:** As Singapore can assist in both civil and criminal tax matters, we do not require Requesting Jurisdictions to specifically identify if its request is for criminal tax matters.

Principle 10: Fundamental rights of a suspect or accused person

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

1695. Singapore provides persons accused or suspected of having committed a criminal offence, including all tax offences, with procedural and fundamental rights. In Singapore, a person may be charged in court for a tax crime when there is *prima facie* evidence that the accused person has committed the crime. *Prima facie* evidence means there is reasonable evidence to suggest that a person may have committed a tax crime.

1696. Certain fundamental rights are set out in the Constitution. The Criminal Procedure Code 2010 (CPC) is the main legislation dealing with matters relating to criminal procedure and rights of an accused person in connection with criminal offences in general. Supplementing these, the tax legislation also deals with certain aspects of investigation into tax crimes.

Table 41.11. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	The presumption of innocence has been explicitly cited by the Singapore courts in the Grounds of decision for various reported criminal cases.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	N/A	An accused person is informed that he/she is the subject of criminal investigations during criminal investigations, specifically at the commencement of statement recording.
remain silent	Yes	The person arrested is informed that they may remain silent in respect of anything that may expose them to a criminal charge, penalty or forfeiture. Furthermore, remaining silent is a right when secrecy or privilege apply.
access and consult a lawyer and/or entitlement to free legal advice	Yes No	Article 9(3) of the Constitution states that where a person is arrested, he shall be allowed to consult and be defended by a legal practitioner of his choice. However, while there are avenues for free legal advice such as through the Public Defender's Office (based on specified criteria) and pro bono representation, there is no entitlement to free legal advice in Singapore as a matter of fact.
interpretation and translation	Yes	During investigations and during court proceedings, interpretation and translation services are available to Persons under investigation/prosecution at their option.
be advised of the particulars of what one is accused of	Yes	An accused person is provided with the particulars of the offence for which he/she will be charged, and will be given the opportunity to say anything they wish to in relation to the offence
access documents and case material, also known as a right to full disclosure	Yes No	Accused persons have access to documents over which they had ownership or legal custody or a legal right to control immediately before lawful seizure (which documents relevant to tax crimes normally fall within) unless the release of those documents would prejudice the administration of criminal justice. While investigation statements recorded by IFD are not normally shared, in certain circumstances the prosecution is obliged to disclose such evidence. IRAS specifies that this does not correspond to a "right of full disclosure" as they have various rules on disclosure.
a speedy trial	Yes	In practice, prosecutions are dealt with expeditiously.
protection from ne bis in idem (Double Jeopardy)	Yes	Article 11(2) of the Constitution states that a person who has been convicted or acquitted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was convicted or acquitted.

Highlights

Successful practices

- Comprehensive tax crime strategy and threat assessment
- Effective asset recovery measures
- Good mechanisms for on-sharing of information between government agencies.

Room for improvement

- Singapore could benefit from a more developed non-conviction-based confiscations regime.

Notes

¹ IRAS' media release can be found following this link: <https://www.iras.gov.sg/news-events/newsroom>.

² Examples of cases where money laundering charges were also proffered in addition to predicate tax offences can be found at the following links: <https://www.iras.gov.sg/news-events/newsroom/company-director-convicted-of-tax-evasion-money-laundering-and-cheating-offences>; and <https://www.iras.gov.sg/news-events/newsroom/night-club-operator-sentenced-to-six-months-and-34-weeks-jail-and-penalties-of-630861-for-gst-evasion-and-money-laundering>

42 Slovak Republic (NEW)

This chapter was published May 2024

Principle 1: Criminalisation of Tax Offences:

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation:

1697. The 2005 *Criminal Code* (CC) of the Slovak Republic sets out a range of tax offences, all of which require criminal intent. These offences and their corresponding criminal sanctions apply for all types of tax levied by Slovakia. Some examples of Slovak tax offences are presented in the table below:

Table 42.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Curtailment of tax or insurance payments (CC, s. 276)	Financial penalties from EUR 160. Suspension and prohibition of activity for 5 years. One year imprisonment.	Financial penalties up to EUR 331,930. Suspension and prohibition of activity for 10 years. 12 years imprisonment.	10 to 20 years according to the severity of the crime.
Failure to transfer a tax levied (CC, s. 277)	1 year imprisonment.	12 years imprisonment.	10 to 20 years according to the severity of the crime.
Tax fraud (CC, s. 277a)	1 year imprisonment.	12 years imprisonment.	10 to 20 years according to the severity of the crime.
Non-payment of tax or insurance payments (CC, s. 278)	Up to three years imprisonment (lower limit not explicitly set).	Confiscation of assets. 8 years imprisonment.	5 to 10 years according to the severity of the act.
Obstruction of tax administration actions (CC, s. 278a)	Up to two years imprisonment (lower limit not explicitly set).	8 years imprisonment.	5 to 10 years according to the severity of the act.

Note: The amount of damages caused as a result of a criminal tax offence is a key determinant of the severity of the criminal sentence applied. The thresholds of damages caused are classified as small (over EUR 266), larger (over EUR 2,660), substantial (over EUR 26,600) and extensive (over EUR 133,333).

"A sentence of prohibition of activity consists in banning an offender from performing a certain occupation, profession or function or such an activity that requires a special authorization. (...) The court may impose [such] a sentence (...) for one year to ten years" (CC, s. 61)

1698. **Statute of limitations:** Under the Criminal Code, the statute of limitations varies depending on the sanction and type of the offence, including tax offences, as set in the table below (CC, s. 87(1)). The statute of limitations is interrupted and re-started once the suspect is prosecuted for the crime in question, or if the suspect willingly committed another criminal offence (CC, s. 87(3)). Furthermore, if the suspect purposefully resides in another country to evade arrest, or if the suspect could not be brought to justice due to a legal impediment, the limitation period is not being counted (CC, s. 87(2a, 2b)).

The five-year statute of limitation applies to crimes that allow the imposition of a prison sentence with a maximum penalty of at least three years (CC, s. 87 (1)d).

Table 42.2. Statute of limitations for criminal offences

Maximum sanction / type of the offence	Limitation period
Life imprisonment	30 years
10 years	20 years
Other crimes	10 years
Misdemeanor	3 years

1699. **Complicity:** It is a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, counsel or procure the commission of an offence (CC, s. 21).

1700. **Attempt and conspiracy:** Attempt is when an offender takes a substantial step towards the commission of the target offence, but ultimately fails to complete the crime. The punishment is same as for completed/finished crime (CC s. 14).

1701. **Professional enablers:** Slovakia does not have a criminal penalty regime for professional enablers or intermediaries.

1702. **Territorial and nationality jurisdiction:** The Criminal Code of Slovakia mandates that criminal offences (including tax crimes) have an extraterritorial effect when the criminal offence proved to be a threat against the interests of the Slovak Republic and its citizens (CC, s. 3 (2a, 2b) and CC, s. 5). Criminal liability can also be applied on crimes committed entirely outside the territory of Slovakia if they have been conducted by Slovak citizens or foreign nationals permanently residing in Slovakia (CC, s. 4). Furthermore, Slovakia can impose criminal liability on offenders for crimes committed outside of Slovakia under ratified international treaties and agreements (CC, s. 7).

1703. A foreign court judgment can only be executed based on international treaties or agreements, but will consider any judgments issued by a court in other member states of the EU as equivalent to a judgment issued in Slovakia, if the criminal offence is also a criminal offence under Slovak law (CC, s. 7b).

1704. **Liability of legal persons:** In July 2016, Slovakia enacted the Criminal Liability Act (CLA), which allow legal persons to be held criminally liable for a range of criminal offences, including tax crimes (CLA, s. 3). The CLA outlines a number of criminal sanctions, including but not limited to: forced dissolution of the legal person, prohibition of activities, fines, or prohibition of accepting subsidies (CLA, s. 10). Furthermore, the CLA mandates that the court considers the protection of the interests of the legal person's employees before determining what criminal sanction it will impose (CLA, s. 11(2)). Prior to enacting the CLA, Slovakia has enacted a prohibition of retroactivity, which ensured that no criminal proceedings were brought against legal persons for acts committed prior to 2016.

Enforcement of tax crime

1705. During the period 2019-2021, the Slovak Republic handed down 2130 convictions for tax crimes (both natural and legal persons. Table 3 provides enforcement data from this period and Table 4 sets out the range of sanctions imposed on offenders.

Table 42.3. Enforcement of tax crimes in the tax years ending 2019 – 2021

Fiscal Years Ending	Concluded Investigations	Offence Detected	Cases Referred for Prosecution	Number of Cases where Prosecution was Commenced	Number of Convictions	Number of Acquittals
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		(number of cases)				
2019	5601	4000	1179	781	766	23
2020	4086	2752	1166	797	702	14
2021	4189	2602	1323	889	662	18

Table 42.4. List of other sanctions imposed in tax years ending 2019-21

Year	Fines	Prison sentences	Dissolution of legal entity	Prohibition of activity	Prohibition to receive subsidies	House arrest	Mandatory work	Publication of conviction	Residency ban	Expulsion
2019/2021	371	1748	21	490	1	10	44	15	3	2

1706. **Availability of settlements:** Slovak Republic allows first-time offenders to enter into settlement agreements up until the last day of a criminal investigation for tax offences. Individuals can only benefit from this type of settlement agreement if the offender wasn't prosecuted for the similar offense in previous 24 months or when the offender didn't use the option for settlement in the last 24 months (CC, s. 86 (2)).

1707. **Availability of tax deductions for civil and criminal sanctions:** According to Income Tax Act (s. 21 (2a)), sanctions except contractual sanctions are not deductible from income tax, therefore offender cannot deduct imposed sanctions from their tax basis.

1708. **Tax gap:** The Slovak Republic calculates the tax gap utilising two methods: (i) calculation based on the output tables; and (ii) calculation based on nominal GDP net of the items not subject to VAT. The estimates cover the whole of the Slovak economy. The two top-down methodologies, which are used to estimate the VAT gap are the consumption-based method, and the production-based method of the IMF's RA-GAP. The results of quantification show that the total VAT loss in 2019 reached EUR 1.264 billion, EUR 1.202 billion in 2020 and EUR 1 billion in 2021. According to the current estimate, the VAT gap was 18.5% of potential VAT in year 2019, 16.8% in 2020 and 12.1% in 2021.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1709. The Government of the Slovak Republic is directly responsible for dealing with tax crimes at the national level. The yearly Action Plan to Combat Tax Fraud is one of the strategic tools at the government's disposal to combat tax crimes. Individual tasks are assigned to relevant ministries, in particular, the Ministry of Justice, Ministry of Finance and the Ministry of the Interior of the Slovak Republic. However, the Slovak Republic notes that it does not currently have a comprehensive, formal strategy in place to combat tax crimes.

1710. As a response to the widening VAT gap, the Slovak government approved an "Action Plan to Combat Tax Fraud in 2012-2016" which contains numerous measures to combat VAT evasion. Measures

in the first phase focused on cleaning up the VAT registry, limiting system abuses by new applicants and preventing the most obvious fraud schemes. In the second phase, the administration established processes to fight internal corruption and detect fraud. Third phase measures included the introduction of a taxpayer risk-rating system and the obligation to indicate the risk-rating on tax documents, the establishment of a register of persons previously acting in fraudulent companies, the establishment of an insolvency register, and the introduction of more stringent conditions in the Bankruptcy and Arrangement with Creditors Act. Finally, the obligation to use cash registers was extended to doctors and other professions (experts, scientific and technical activities and accommodation services).

1711. **Threat assessment:** The Slovak Republic does not undertake a periodic tax crime threat assessment.

1712. **Communications strategy:**

1713. The Slovak Republic does not have a formal strategy to communicate successful prosecution of tax crimes to the public. However, where there is a coordinated action of the Financial Administration (joint tax and customs administration) and the Police, joint press conferences are organized and the Financial Administration conducts information campaigns to the public on how to declare and pay the right amount of tax¹.

1714. Slovak Republic also reports that investigative journalists and the media publish suspicions of tax offenses, which raises public pressure on the police and prosecutors to resolve the case.

Principle 3: Investigative Powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1715. Most tax crimes in the Slovak Republic are investigated by either the district or regional area Police Departments (PD). As of 2022, a new office has been created within the PD: the National Center for Specific types of Criminality (NCODK)¹⁰. The main exception is crimes related to value added tax on imports and excise duties or customs regulations which are the mandate of KUFS (Criminal Office of the Financial Administration).

1716. The below table shows the investigative powers available to both KUFs and Police for tax crimes within their respective mandates.

Table 42.5. Investigative powers of agencies responsible for enforcing tax crimes

Power of tax crime investigation agency to:	Availability of Power to KUFS	Availability of powers to Police (National Centrum of Special Type of Crime)
Search property and seize physical evidence such as books and records	<p>Full direct power</p> <p>Depending on the nature of the implementation of a particular authorization, it may be a previous order, court order or a prosecutor's order.</p>	<p>Full direct power</p> <p>Depending on the nature of the implementation of a particular authorization, it may be a previous order, court order or a prosecutor's order.</p>
Obtain documents from third parties	<p>Full direct power</p> <p>During criminal proceedings, prosecutor's authorization is required while before, it can be implemented by</p>	<p>Full direct power</p> <p>During criminal proceedings, prosecutor's authorization is required while before, it can be implemented by</p>

¹⁰ More information available following this link: [National Centre of Special Types of Crime, Ministry of Interior of the Slovak Republic - Police \(minv.sk\)](https://www.minv.sk/).

	KUFS.	Police.
Interview	Full direct power No consent nor court order is required.	Full direct power No consent nor court order is required.
Inquiry powers (e.g. power of coercion)	Full direct power Depending on the type of inquiry power used, some are subject to authorization from the prosecutor (e.g. detention), while others do not require authorization or court order (e.g. power of coercion enforced by KUFS).	Full direct power Depending on the type of inquiry power used, some are subject to authorization from the prosecutor (e.g. detention), while others do not require authorization or court order (e.g. power of coercion enforced by PD).
Intercept mail and telecommunications	Indirect power via another agency Subject to court order. Interception is conducted by the Police.	Indirect power via another agency Subject to court order. Interception is conducted by the Police.
Conduct covert surveillance	Full direct power Subject to court or prosecutor order. Covert surveillance is conducted by KUFS or the Police.	Full direct power Subject to court or prosecutor order. Covert surveillance is conducted by the Police.
Conduct undercover operations	Full direct power Subject to court or prosecutor's order. Undercover operations are conducted by KUFS.	Full direct power Subject to court or prosecutor's order.
Search and seize computer hardware, software and electronic storage media	Full direct power Computer hardware and data can be seized subject to a court or prosecutor's order.	Full direct power Computer hardware and data can be seized subject to a court or prosecutor's order.
Arrest	Full direct power Detention requires prosecutor's consent and arrest requires court order.	Full direct power Detention requires prosecutor's consent and arrest requires court order.

1717. **Legal professional privilege:** Slovak Republic has implemented an obligation to keep confidential all information acquired in connection with litigation, subject to certain defined exceptions (Act No 586/2003 Coll.- s 23). Legal professional privilege also covers other professions, for example tax advisors (Act No 78/1992 Coll. – s. 18). Slovak Law allows revocation of legal professional privilege, but only in relation to exemptions codified in legislation (e.g. Act No 78/1992 Coll.) and Court can also release tax advisors from their obligation to confidentiality. Finally, investigating authority may obtain communications between attorney and client, but only when they are held at the client's premises.

Principle 4: Freezing / Seizing and Confiscating Assets

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

1718. **Legal basis:** Seizure and confiscation of assets are governed by the Criminal Code (Act No 300/2005 Coll.), the Code of Criminal Procedure (Act No 301/2005 Coll.) ; Act No 7/2015 Coll. And Act No 312/2020 Coll.

1719. **Freezing of assets:** Freezing of assets is allowed if facts indicate that they are instruments or proceeds of criminal activity. Slovak law does not provide for rapid freezing orders.

1720. **Seizing of assets:** Seizing of assets is allowed if facts indicate that they are instruments or proceeds of criminal activity. During the pre-trial phase the prosecutor can issue a freezing order, during the trial phase freezing orders are issued by the courts.

1721. **Confiscation of assets:** Confiscation of assets is allowed under Slovak Law. It requires enforceable judgment issued by court in trial. (Act No 301/2005 Coll. s 423, s 425-428; Act No 7/2015 Coll.).

1722. **Non-conviction based confiscation:** The Criminal Code does not allow non-conviction based confiscation for tax crimes (only conviction-based confiscation as above). However, Slovak law does allow for non-conviction based confiscation for customs offences (Act No 199/2004 Coll.). As it is not a criminal proceeding, it does not require a court or prosecutor's order and is enforced by the customs office (KUFs) (s. 2 (g) of Act No 199/2004 Coll.).

1723. **Extended confiscations:** Slovak law recognizes extended confiscation (CC, s. 60, s. 83 and s. 83a ; Act No 91/2016 on Criminal Liability of Legal Persons (s. 13 , s. 14, s. 20a) ; Act No 101/20210 on proving the origin of property (s. 2)). Slovak law allows extended confiscation where during trial the court designates the goods in question as the proceed of *other* crimes. Extended confiscation requires court order.

1724. **Value-based confiscations:** Slovak law allows value-based confiscations. However, as value-based confiscations cannot be imposed at the same time as a monetary penalty by the court (CC, s. 34 (7)), it is up to this latter to decide which penalty will be issued in a criminal trial.

1725. **Third-party confiscations:** Slovak law allows for confiscation from third parties where the court determines that the third party participated in legalisation of proceeds from criminal activity (according to s. 233 of Act No 300/2005 Coll.).

1726. **Foreign freezing, seizure, and confiscation orders:** The courts in the Slovak Republic have the power to recognise foreign states' freezing and seizing orders related to tax crimes.

1727. **Agency / unit responsible for asset recovery:** All law enforcement agencies in the Slovak Republic have the power to conduct asset recovery operations in the course of their investigations.

1728. **Freezing, seizing and confiscation in practice:** The Slovak Republic noted that in practice, it is only possible to recover proceeds of criminal activity that is subject to the criminal proceedings. It notes that proceeds of crime are often transferred to third parties by the offender, which use it to conduct legal transactions, rendering the assets impossible to recover.

Principle 5: Organisational Structure with Defined Responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1729. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of the Slovak Republic's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Cooperation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).

Table 42.6. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
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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.
National Crime Agency (NAKA)	Detects and investigates financial crimes, including crimes against property and tax frauds, where damage caused or benefits obtained exceed EUR 6.65 million
National Financial Police Unit	Active in the field of international cooperation within the framework of the structured cooperation platform of the Member States of the European Union, the European Multidisciplinary Platform Against Criminal Threats (EMPACT), in relation to the Missing Trader Intra-Community (MTIC) Where the unit participates in the exchange of information through the EUROPOL National Center. At the same time, international joint investigation teams (JITs) are set up
National center for specific types of criminality (NCODK)	Focuses mostly on crimes related to legalization of criminal proceeds. May investigate other crimes that fall into competency of other PD if it is deemed more effective.

Principle 6: Adequate Resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1730. The Slovak Republic does not have a dedicated prosecutor's office or unit for criminal tax prosecutions. The General Prosecutor's Office is responsible for the prosecution of tax crimes. In 2015, the total expenditure of the General Prosecutor's Office was EUR 75m, of which EUR 46m were used for the salaries of its ca. 1 800 employees. In 2016, the total budget of the General Prosecutor's Office was EUR 73m, with the same amount of money allocated to salaries as in 2015.

1731. Budget is provided on an annual basis to the whole Financial administration², therefore it is not possible to quantify amount allocated to investigation of tax crimes.

Table 42.7. Databases / sources of information available to the Criminal Office of the Financial Administration (KUFS)

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Some tax databases can be directly accessed, some upon request.
Customs databases	Some customs databases can be directly accessed, some upon request.
Police databases	Direct Access
Judicial databases	Direct Access
Suspicious transaction report databases	Direct Access
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access

Training for tax crime investigators and prosecutors:

1732. Upon entering service, tax investigators have to undergo one year long mandatory preparation, which covers various range of topics under the guidance of senior tax investigator, such as criminal law,

administrative law and criminology. Tax investigators may also participate in other mandatory courses. Training is often conducted by Academy of financial administration.

Principle 7: Predicate Offences

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

1733. **Approach:** The Slovak Republic included tax crimes as a predicate offence to money laundering in 2012. The Slovak Republic has adopted an “all crimes approach” to predicate offences, which also includes crimes committed in foreign jurisdiction (s. 233 of Act No 300/2005 Coll.).

1734. **Enforcement of money laundering predicated on tax crimes:** The Slovak Republic notes that it currently does not have the resources necessary to simultaneously investigate and prosecute both the predicate offence and the money laundering offence. It highlights that the main challenge lies in the identification of the proceeds of crime.

Principle 8: Inter-agency Co-operation

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

Reporting of suspected crimes by civil tax authority to law enforcement authorities

1735. The referral program of the Slovak Republic requires civil tax authorities to report suspicions of a tax offence, should they encounter one during their civil investigations. In 2015 and 2016, 484 and 888, respectively, cases were referred to the criminal tax investigation officials in this way. Conversely, should the criminal tax investigators encounter an offence that is not of criminal in nature, they would refer the relevant cases back to the civil authorities.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1736. The below tables set out the information sharing gateways that the Slovak Republic has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of the Slovak Republic’s frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes](#)

Table 42.8. Models for sharing information related to tax crime and other financial crime

Authority receiving information							
	Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigation	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority

					g non-tax offences			
Authority providing information	Tax administration		Mandatory spontaneous sharing (MSS) ^(a)	On Request	On Request ^(b)	On Request ^(c)	On Request	On request
	Agencies investigating tax offences	On Request		On Request	On Request	DSS	DSS	DSS
	Customs administration	On Request	MSS		MSS	MSS	On Request	On Request
	Police or public prosecutor	MSS	On Request ^(d)	MSS		MSS	MSS	MSS
	Financial Intelligence Unit	Discretionary spontaneous sharing (DSS) ^(e)	DSS	MSS	MSS		MSS	MSS
	Corruption investigation authority	On Request	MSS	On Request	Direct Access	On Request		On Request
	Financial regulator	On Request	DSS	On Request	DSS	DSS	DSS	DSS
	Asset Recovery Authority	On Request	DSS	On Request	On Request	MSS	DSS	

Notes:

- (a) The prosecutor or court may also request tax information covered by secrecy rules, for use in tax crime investigations.
- (b) Information not covered by tax secrecy laws is also available to the public prosecutor on request. In addition, under the Code of Criminal Procedure, all entities and individuals are under an obligation to report to the police suspicions of all types of crime.
- (c) This obligation is subject to tax secrecy laws.
- (d) Police officials conducting tax crime investigations may only obtain information held by the police relating to other cases on request.
- (e) The FIU may inform the tax administration of any information that the FIU believes may result in new civil tax proceedings, or would be relevant to ongoing civil tax proceedings. However, this obligation does not apply where informing the tax administration could endanger the success of the FIU's activities.

Asset Recovery Authority refers to the unit or agency responsible for the recovery of assets in financial crime cases (whether an independent authority or a unit housed within another agency (e.g. Police).

Table 42.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Project Tax Cobra, based on Memorandum of understanding between the agencies.
Disclosure of foreign trusts	Yes, upon request.
Joint operations and taskforces	Project Tax Cobra, based on a Memorandum of Understanding between the agencies, to detect and investigate the most serious tax offences.
Parallel investigations	Yes.
Joint intelligence centres	N.A.
Secondments and co-location of staff	Four officials from the Financial Administration are working with the Slovak Police Academy on a research project concerning tax evasion and fraud.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes, but only if they are required on a case by case basis, no court order being needed.
Multi-agency training	Each agency does its own training, but often participants from other agencies are invited.
Other	Tax Cobra, inter agency memorandums.

Principle 9: International Co-operation

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.

1737. **Legal basis:** The Slovak Republic has exchange of information relationships with 71 jurisdictions through 70 bi-lateral tax treaties and one Tax Information Exchange Agreement (TIEA).

1738. It is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows the exchange of information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1739. The Slovak Republic is also party to bilateral and multilateral conventions that allow for mutual legal assistance in relation to criminal tax matters. For example, the Police would use the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union to exchange information with their foreign counterparts in relation to an ongoing tax crime investigation.

1740. **Competent authority:** The Criminal Office of the Financial Administration is the competent authority for EOI in criminal tax matters. The competent authority for sending and receiving MLA requests related to tax crimes is the Office of International Police Cooperation. It is also possible to exchange information according to domestic legislation through prosecutor's office, Europol, or through a police liaison officer.

1741. **International co-operation in practice:** The Slovak Republic generated 4399 requests for assistance in 2015 under MLA treaties, and received 3182 requests for assistance under EOI agreements.

Principle 10: Fundamental Rights of a Suspect or Accused person

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

1742. **Legal basis:** The Slovak Republic provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. In the Slovak Republic it is not possible to have a civil/administrative tax audit conducted in parallel with a criminal investigation.

1743. The Slovak Republic is a civil law jurisdiction, and as such, tax crimes are defined *stricto sensu* by sections 276 onwards of its *Criminal Code*.

1744. The fundamental rights of the accused are enshrined in domestic law and in international human rights treaties ratified by the Slovak Republic. Sections 46-50 of the Slovak Constitution establish the judicial and legal rights of accused persons within the jurisdiction of the Slovak Republic. The rights of the accused are also recognised in the *Criminal Code* and other national legislation.

1745. The below table sets the rights of individuals suspected or accused of having committed a tax crime in the Slovak Republic:

Table 42.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times.
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times.
remain silent	Yes	At all times.
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times.
interpretation and translation	Yes	At all times.
be advised of the particulars of what one is accused of	Yes	At all times.
access documents and case material, also known as a right to full disclosure	Yes	At all times.
a speedy trial	Yes	At all times.
protection from ne bis in idem (Double Jeopardy)	Yes	At all times.

Highlights

Successful practices

- Wide range of investigative powers that can be used by tax crime investigators.
- Comprehensive asset recovery regime.

Room for improvement

- Slovakia could benefit from introducing an increased penalty for professional enablers who assist their clients in the commission of tax crimes.
- Slovak Republic would benefit from the introduction of a comprehensive tax crime strategy.

More information on this topic can be found on the following links : https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_posled-dva-dni-na-dp-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_cieleny-softwarewarning-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_vypocet-dan-b-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_karta/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_predvypln-dzmv-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_formular-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-noviniiek/detail-novinky/_danova-poradna-ts/bc

² For annual budgets of financial administration see <https://opendata.financnasprava.sk/opendata/category/168-vydavky-a-rozpocet>

43 Slovenia (NEW)

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1746. Tax crime offences in Slovenia are set out in the *Criminal Code* (CC) and require criminal intent. Slovenian tax crime offences, together with their respective sanctions and limitation period, are listed in the table below. Slovenia provides that the main sentence for tax evasion is imprisonment. However, if the criminal offence is committed out of self-interest³, a fine may be imposed as a secondary punishment.

Table 43.1. Rights of persons suspected or accused of having committed tax crimes

Offence	Natural Persons			Legal persons
	Minimum sanction	Maximum sanction	Statute of Limitations	Sanctions
Tax evasion (CC, art. 249)	1 year	12 years	30 years	Fine of at least EUR 50 000 or a maximum of two hundred times the amount of the damage caused or illegal financial gain obtained from the crime; confiscation of property may be imposed instead of a fine; in certain cases instead of a fine, the penalty of termination of the legal entity may be imposed (if the activity of the legal entity was used entirely or predominantly for the commission of criminal acts).
Forgery or destruction of business documents (CC, art. 235)	1 month	2 years	10 years	As above.
Forgery of documents (CC, art. 251)	1 month	2 years	10 years	As above.

1747. **Statute of limitations:** According to Article 91 CC, the limitation period starts on the day the criminal offence is committed. The statute of limitations shall be suspended for a period of time when the prosecution cannot be initiated or continued, or when the perpetrator is inaccessible to state authorities. The statute of limitations shall be suspended if the perpetrator commits a further criminal offence of the same or greater gravity before the expiry of the limitation period and begins to run anew after such suspension.

1748. **Complicity:** Article 37 of the CC sets out that any person who is an accessory to a crime is to be punished as if they were the principal offender. Furthermore, intentionally soliciting another person to

commit a criminal offence that is punishable by at least three years of imprisonment is punishable even if the offence itself is never attempted.

1749. **Attempt and conspiracy:** Attempt is punishable according to the general rules of the CC (article 34). The CC does not use the term conspiracy, but other forms of participation (e.g.: solicitation to the commission of a criminal offence (article 37); aiding and abetting (article 38); the liability of members and leaders of criminal organisations (article 41)) are all criminal offences).

1750. **Professional enablers:** There is no special regime for professional enablers in place in Slovenia. However, the general rules for complicity outlined above apply and the fact that a perpetrator is a professional can also be an aggravating circumstance in sentencing (CC, article 49).

1751. **Territorial and nationality jurisdiction:** Slovenia has jurisdiction over tax crimes committed wholly or partly in the territory of the Republic of Slovenia (articles 10-13 & 19 CC). A criminal offence is committed both where a perpetrator acts or should have acted as well as, in the place, where the prohibited consequence occurs.

1752. Therefore, according to these laws every crime where the Slovenian budget is evaded may be prosecuted by Slovenian authorities – even if the perpetrator is established in another country, as long as the tax obligations are in Slovenia.

1753. **Liability of legal persons:** In Slovenia, legal persons may be held criminally liable for tax offences in accordance with Liability of legal persons for criminal offences Act and subject to fines and confiscation of assets, or termination of business. The available fines for legal persons for tax crimes are set out Table 1 above.

Enforcement of tax crime

Table 43.2. Enforcement Tax evasion under Article 249 of Criminal Code from 2018-21

Tax years ending	Concluded investigations	Offence detected (number of cases)	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2018	54	128	49	86	41	2
2019	77	180	74	117	30	10
2020	101	203	95	184	22	0
2021	93	138	91	113	30	11

Table 43.3. List of sanctions imposed in tax years ending 2018-21

Year	>0-3 years' imprisonment	>3-5 years imprisonment	Fine	Community Work	Post Detention Conditions/Supervision	Others
2018	19	0	3	0	0	44
2019	12	0	4	4	4	32
2020	4	1	5	0	0	26
2021	6	0	5	7	7	34

1754. **Availability of settlements:** Slovenia does not make settlements or deferred prosecution agreements available for tax crimes set out in the CC. However, settlements are available in cases where the prescribed sanction is up to three years imprisonment, so it is possible for less serious offences such as forgery or destruction of business documents.

1755. However, it is possible to conclude a plea-bargaining agreement for tax crimes. In criminal proceedings, the defendant, may propose to the other party that he pleads guilty to the offence. The parties may negotiate the terms of the plea of guilt to the offence for which the suspect or the accused is the subject of during the pre-trial or criminal proceedings, as well as the content of the agreement. The plea agreement must be in writing and signed by the parties and the defence counsel.

1756. **Availability of tax deductions for civil and criminal sanctions:** Slovenia does not allow tax deductions or corrections for civil or criminal sanctions imposed in tax crimes.

1757. **Tax gap:** The Financial Administration of the Republic of Slovenia (FARS) does not measure the tax gap, but Slovenia uses the estimations prepared by the EU Commission (VAT gap). The latest report states that Slovenia had a VAT gap of EUR 206 million.⁴

1758. In Slovenia the VAT gap is estimated by the Statistical Office of the Republic of Slovenia, the latest estimate from 2019 had the tax gap set at EUR 215.8 million.⁵

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1759. The Republic of Slovenia has a special national strategy dedicated to crime in general. In 2019 the Resolution on the national programme for the prevention and suppression of crime 2019-23 was adopted. Chapter 6.4 is dedicated to Economic (tax) crime in the protection of financial interests in the Republic of Slovenia and the EU. The activities include the analysis of organisers or actual perpetrators of economic crimes in connection with fraudsters and non-paying entities, as well as the preparation of proposals to change the legislation based on an analysis of harmful practices in business operations.

1760. **Threat assessment:** Slovenia notes that, in terms of fulfilling VAT obligations, the risk level for each taxable person is based on the so-called “eRisk indicators”, which are classified in two groups: pre-registration VAT risk indicators and VAT risk indicators. The key elements of the threat assessment by eRisk indicators are registration details of the taxpayer, VIES data and data from VAT forms. The calculation of the risk level takes data from different periods, namely: data in the current state, data for the last month, the last 3 months, the last 12 months and the last 36 months.

1761. In order to define and manage tax risks, working groups of experts were established for individual tax areas, which prepare risk management strategies. The tasks of the mentioned groups, for assessing unpaid tax, are:

- assessment or definition of risks in an individual area,
- development of a risk management strategy,
- preparation of supervision/audit guidelines,
- monitoring the success of the strategy and possible adjustment of the criteria for the selection of hits,
- preventive action (informing the public, initiatives to change legislation, etc.).

1762. When preparing strategies, the working groups, in addition to other criteria, also consider the so-called risk level of the individual taxpayer. The specified level is determined by taking into account data obtained from internal and public databases, from other EU member states, statements that the taxpayer submits to the tax authority, irregularities found in previous controls, etc.

1763. When implementing strategies, the working groups use the analytical tool SAP Fraud Management (FM), which enables them to select taxpayers according to the entered criteria, assigning the highest risk taxpayers into supervision and obtaining feedback on the performance of the supervision. This allows the working group to monitor the success of each strategy and the correctness of the selection criteria.

1764. **Communications strategy:** Slovenia notes that it does not have a formal public communications strategy for tax crimes.

Box 43.1. Example of successful implementation of tax crime strategy: Slovenia

According to article 160a of the Criminal Procedure Act, in individual cases of demanding investigations, especially in the fields of economic crime and organised crime, the head of the competent state prosecution office may *ex officio* or at the written initiative of the police, together with the heads of individual bodies and institutions from competent state authorities and institutions in the field of taxes, customs, financial operations, securities, protection of competition, prevention of money laundering, prevention of corruption, illicit drugs and inspection service, establish a specialised investigative group. Usually in this group, police, prosecutors, tax administration and FIU officials work together, at the same time, on one case. This allows solving cases within the country in a similar way to investigations in the international field within the framework of the JIT.

In 2018, a specialised investigative team (composed of Police, FARS, FIU and lead by the State Prosecutor) was set up in a case concerning tax evasion and money laundering offences committed within a criminal organisation (active in several EU countries). It was a complex scheme where the criminal group committed tax evasion crimes, operating in at least six countries, with taxes being evaded mainly in two countries. The group evaded VAT and tax on motor vehicles with the import of luxury vehicles, mostly from Germany. The suspects controlled a Slovenian company that was registered as an advertising agency and its de facto successor, after tax proceedings were initiated against the first company. The companies did not do business at the headquarters of the company, but at the place where the branch was located, where there was a car showroom that mainly sold imported used luxury vehicles from abroad. Neither the first nor the second company were registered for VAT purposes.

The defendants have repeatedly failed to report the circumstances affecting the determination of corporate taxes.

The two taxpayers carried out their activity by using VAT ID numbers of “straw” companies or “missing trader” companies.

Within the framework of the investigation team, individual authorities in Slovenia and abroad coordinated their action, and specialised financial experts provided expert assistance to the police and prosecutor. The coordination resulted in house searches in three countries at the same time and in covert measures against several defendants in two countries.

The result of the specialised investigative team was an indictment against 8 natural persons and one legal person for the offence of tax evasion in a criminal organisation, while the money laundering offence is still under investigation. They are accused of obtaining unlawful proceeds in the form of a tax of EUR 1.3 million. In another country, 10 natural persons and several legal persons are indicted, and the total amount of tax omitted in that country is around EUR 2 million.* Some defendants in another country have already pleaded guilty of the crime and have already been finally convicted.

Note:

* In Slovenia, the case is currently at the indictment stage, against which the defendants and defense attorneys have submitted objections, therefore senate will have to decide on these answers and only then a trial will be possible.

In another country, where another indictment has been filed for similar acts committed in that country, but against members of the same criminal group, the foreign court has already rejected objections to the indictment and the start of the trial is pending. In this country, 6 defendants have already pleaded guilty, been convicted, sentenced to criminal sanctions, and ordered to pay back partial restitution of the illicit gains. Decisions regarding these persons are already final.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

1765. The below table shows the investigative powers available to the Slovenian Police in tax crime investigations:

Table 43.4. Investigative powers of tax crime investigation agency (Slovenian Police)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Judicial authorisation is required
Obtain documents from third parties	Full direct power If a third party voluntarily hands over documents then no order is needed, otherwise judicial authorisation is required
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power Judicial authorisation is required
Conduct covert surveillance	Full direct power Judicial authorisation is required
Conduct undercover operations	Full direct power Judicial authorisation is required
Search and seize computer hardware, software and electronic storage media	Full direct power Judicial authorisation is required If the person whose objects were seized gives consent, then judicial authorisation is not needed
Arrest (for a certain period of time – d-tention)	Full direct power (for a certain period of time - maximum 48 hours. If the detention lasts more than 6 hours, the police must issue a decision)

1766. **Legal professional privilege:** In Slovenia, attorney-client-privilege is governed by the Attorneys Act. Article 6 deals with the rights and duties of lawyers and specifies that a lawyer shall not disclose any information that his client entrusted to him.

1767. According to Article 183 of the General Administrative Procedure Act, a lawyer can refuse to testify about what a client has entrusted to h'm as his attorney. In criminal proceedings, the defendant's defence counsel may not be questioned about what the defendant has entrusted to him as his defence counsel, unless the defendant himself so requests (Criminal Procedure Act, Article 235). A lawyer is released from the duty to testify about the facts of which he learned during the practice of his profession, if the duty to keep secret of what he learned in the practice of his profession, applies (Article 236).

1768. The described regulation has no special impact on the investigation of tax offences, since the attorney's role to provide legal assistance and the information itself is provided by the client. For persons such as accountants, tax advisors, etc., there are no professional secrecy obligations.

Principle 4: Freezing, seizing, and confiscating assets

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

1769. **Legal basis:** Asset recovery in Slovenia is governed by the Criminal Code, the Criminal Procedure Code, the Confiscation of Assets of Illicit Origin Act and by the Prevention of Money Laundering and Terrorist Financing Act.

1770. **Freezing orders:** Slovenian courts do not have powers to execute rapid freezing of assets. However, the Prevention of Money Laundering and Terrorist Financing Act (Official Gazette of Republic of Slovenia No. 48/22 and 145/22 – hereinafter: ZPPDFT-2), permits the postponement of a transaction whenever there is reasonable grounds of suspicion of money laundering and or terrorist financing. The FIU may, by written order, suspend the transaction temporarily for a maximum of three working days and inform the competent authorities thereof (ZPPDFT-2, Art. 105).

1771. According to the Article 502 Criminal Procedure Act (CPA) freezing assets in bank accounts is possible for all types of crime, including tax crime where is a danger that the accused alone or through other persons might use these proceeds for a further criminal activity or to conceal, alienate, destroy or otherwise dispose of them in order to prevent or render their confiscation substantially difficult after completion of the criminal proceedings. The court, on a motion of the State Prosecutor, orders the confiscation of proceeds. Such orders may be made against the accused or suspect, against the recipient of the proceeds or against another person to whom they were transferred provided they can be confiscated as laid down in the provisions of the Criminal Code.

1772. **Seizing orders:** Seizure is possible according to the Article 220 of the CPA – which defines that objects which must be seized under the Penal Code, or which may prove to be evidence in criminal procedure, shall be seized and delivered to the court for safekeeping or secured in some other way.

1773. **Confiscation orders:** The Confiscation of Assets of Illicit Origin Act regulates different types of confiscation procedures. The Act allows non-conviction-based confiscations, permitting the commencement of a financial investigation if there is a suspicion that a certain criminal offence has been committed and/or if there is a suspicion that the assets are criminal proceeds. This applies to all tax crimes. The assets in question can therefore be confiscated, and during the ensuing civil procedure, the defendant must prove the legal origin of those assets.

1774. The Act also allows extended confiscations and value-based confiscations. In the latter case, when the property benefit or a property equivalent to the property benefit cannot be confiscated from the perpetrator or other recipient, the perpetrator shall be obliged to pay a sum of money equivalent to this property benefit (CPCA, art. 75 (2)).

1775. Slovenian authorities may use third party confiscations, when the proceeds of criminal offences were transmitted to a third party either free of charge, or for a sum of money that does not correspond to the assets' actual market value. However, this only applies if that person knew, or could have known, that the assets were the proceeds of illicit activities. The assets can even be confiscated in this manner if the third person is a close relative of the perpetrator of the criminal offence. When assets are transferred to the third party in question, the burden of proof that the assets were obtained legally lies on the third party.

1776. **Foreign freezing, seizure, and confiscation orders:** Finally, Slovenian authorities can apply seizing and confiscation powers in respect of foreign tax investigations and judgments according to the mutual legal assistance requests they receive.

1777. **Agency/unit responsible for asset recovery:** In Slovenia, there is no specialised unit dedicated to asset recovery. The courts are responsible for approving Police applications to freeze, seize, and/or

confiscate assets in all criminal tax matters. According to the Police powers, determined in the CPA and in the Decree on the co-operation of the state prosecutorial service, Police and other competent state bodies and institutions in detection and prosecution of perpetrators of criminal offences and operation of specialized and joint investigation teams, Police can in parallel with the criminal investigation conduct financial investigation and if the conditions for freezing are met, can give initiative for temporary securing of the claim to the prosecutor together with enclosed evidence.

1778. **Asset Confiscation in Practice:** The below table shows the number of seizures of assets in criminal tax matters in Slovenia between 2019 and 2021.

Table 43.5. Number of seizures of assets in criminal tax matters in Slovenia in 2019-21

	2021	2020	2019
Total value of assets <i>frozen</i> in connection with criminal tax matters (in EUR)*	790 389	468 931	670 606
Total value of assets <i>seized</i> in connection with criminal tax matters**			
Total value of assets <i>confiscated</i> in connection with criminal tax matters***			

Note:

* The values provided refer to the estimated value of the frozen assets, i.e. the value of assets that the holder cannot freely dispose of (because of the imposed restrictive measure) - for an individual year.

** Data on seized assets are not recorded.

*** Slovenia also cannot provide reliable data on confiscated property for individual years, as the courts often do not inform the state prosecutor's office about the finality of rulings on confiscation of benefits (or the notifications are received with considerable delay).

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1779. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Slovenia's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of the [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁶

Table 43.6. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Police	In Slovenia, the police is responsible for the prevention and detection, and investigation of financial crimes, including tax evasion.
Office for Money Laundering Prevention	Slovenia's FIU, the Office for Money Laundering Prevention has a central role in the anti-money laundering system, and it performs tasks relating to the prevention and detection of money laundering, as well as investigating terrorist financing. It also performs the role of a clearing house between the institutions in the financial system, on the one hand, and the judicial bodies and the police on the other.
National Bureau of Investigations (NBI)	The National Bureau of Investigation is a specialised criminal investigation unit at the national level for the detection and investigation of serious criminal offences, especially economic and financial crime and corruption and in certain cases organised crime, cybercrime and more difficult forms of conventional crime.
Specialised Prosecutor's Office (SSPO)	The most complex crimes, the prosecution of which requires special organisation and training of public prosecutors and the highest level of efficiency, are handled by the Specialised Public Prosecutor's Office of the Republic of Slovenia (SSPO). The SSPO is responsible for the prosecution of offenders against 'the economy, which may be punishable' by at least five years' imprisonment or at least ten years' imprisonment if the offence was committed in a criminal association. This includes tax evasion. The SSPO also deals with cases of bribe-taking, bribe-giving, acceptance of benefits for unlawful intervention,

	giving gifts for unlawful intervention, unlawful acceptance of gifts, unlawful giving of gifts; of terrorism, financing of terrorism, incitement to and public glorification of terrorist acts, recruitment and training for terrorism; and of enslavement and trafficking in human beings.
Public Prosecution Authority	General prosecution authority for all crimes, including lower level tax and financial crimes that do not fall within the mandate of the SSPO.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1780. Slovenia notes that there is no special prosecution office or unit dedicated to tax or financial crimes, and that the duty is carried out by the public prosecution authority. Similarly, there are no specific units or teams within Police that are exclusively responsible for the investigation of tax crimes Slovenia is therefore unable to identify the annual budget and the number of staff members dedicated to combatting tax crimes.

Table 43.7. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access - publicly available data
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	No Access
Customs databases	No Access
Police databases	Direct Access
Judicial databases	No Access
Suspicious transaction report databases	No Access
Domestic bank account databases - bank account numbers (not turnover)	Direct Access
Car registry	Direct Access
Boat registry	Access on Request
Airplane registry	Access on Request
Register of registered pledges and mortgaged movable property	Direct Access
Central Securities Clearing Corporation (KDD – data about securities)	Direct Access
Surveying and Mapping Authority (real-estate data)	Access on Request

Training for tax crime investigators

1781. The Slovenian police organises trainings on investigating tax crime every year. In these trainings, the police invite other state institutions involved in the detection, investigation and prosecution of tax crime (the Financial Administration of the Republic of Slovenia, the State Prosecutor's Office, the Office for the Prevention of Money Laundering, the Court of Justice) to participate, both on the part of the lecturers and the trainees. Topics include current issues related to the investigation of tax offences and changes in legislation in both administrative and criminal law. Case studies, presentations of good practice are also discussed. Specifically for the crime of tax evasion, one training day is provided each year, along with other lectures on crimes related to tax evasion offences and falling within the scope of tax crime investigation. In addition, investigators/criminal investigators also attend training courses organised by external institutions, all on the subject of investigating and detecting tax crime. Figures on the annual budget for these trainings are not available.

Principle 7: Predicate offences

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

1782. **Approach:** Slovenia adopted an “all crimes” approach in 1999, meaning that it is an offence to launder the proceeds of *any* crime. Persons may be charged and convicted of money laundering regardless of whether a person has been charged or convicted of the predicated offence, and regardless of whether the crime was committed under Slovenia’s jurisdiction.

1783. **Enforcement of money laundering predicated on tax crimes:** Slovenia notes that, since the “all crimes” approach has been introduced, there has been an improvement in inter-agency co-operation, access to information has become easier and there are more resources dedicated to fighting tax crimes as well as an increase in the number of prosecutions.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1784. According to article 145 of the Criminal Procedure Act (CPA), all state agencies and organizations having public authority shall be bound to report criminal offences liable to public prosecution of which they have been informed or which were brought to their notice in some other way. Thanks to this provision, civil tax authorities reported to the police or to the public prosecutor 175 cases in 2018, 210 cases in 2019, 283 cases in 2020 and 109 cases in 2021.

1785. The police, too, shall report relevant cases to the civil tax authorities; it does not, however, keep a record of the number of cases that have been referred.

Information sharing between agencies involved in the investigation and prosecution of tax crime other financial crimes

Table 43.8. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences*	Customs administration**	Police or public prosecutor investigating non-tax offences*	Financial Intelligence Unit	Corruption investigation authority*	Asset Recovery Authority***
Authority providing information	Tax administration		MSS ^(a)	MSS	MSS ^(a)	MSS ^{(b)(c)}	MSS	MSS ^(a)
	Agencies investigating tax offences	DSS		DSIDSS				
	Customs administration	MSS	MSS ^(a)		MSS ^(a)	DSS ^{(b)(e)}	MSS	MSS ^(a)
	Police or public prosecutor	DSS ^(d)		DSS ^(d)		DSS ^{(b)(f)}		

Financial Intelligence Unit	Sharing Prohibited ^(g)	MSS ^(h)	DSS ⁽ⁱ⁾	MSS ^(j)		MSS	MSS ^(j)
Corruption investigation authority	DSS		DSS	Direct Access	DSS ⁽ⁱ⁾		
Financial regulator	DSS	MSS	DSS	DSS	MSS	DSS	DSS
Asset Recovery Authority	DSS ^(d)		DSS ^(d)		DSS ^{(b)(f)}		

Notes:

DSS = Discretionary Spontaneous Sharing / MSS = Mandatory Spontaneous Sharing

* In Slovenia the police is the body that investigates all criminal acts. The police perform tasks of agencies investigating tax offences, of police or public prosecutors investigating non-tax offences and of the corruption investigation authority.

** The Tax Administration and Customs Administration are merged since 2014.

*** Slovenia has no specialised unit dedicated to asset recovery (see more details in paragraph 1777.)

(a) The Financial Administration (tax and customs administration) is obliged to report every crime and state all relevant evidence to the police/public prosecutor.

(b) The Financial Administration is obliged to provide information to the FIU where it is relevant to a possible money laundering investigation. The Financial Administration also provides information to the FIU on request.

(c) If the FIU deems that there are grounds for suspecting money laundering, related predicate criminal offences, or terrorist financing in relation to a particular transaction, person, property, or assets, or for the purposes of a financial investigation pursuant to the Confiscation of Assets of Illicit Origin Act, the FIU may request relevant data, information and documentation from state authorities and holders of public authority. Authorities shall forward the data, information or documentation to the FIU without delay and at the latest within 15 days of receipt of the request, or shall allow the FIU direct electronic access to certain data and information.

(d) Co-operation between the Financial Administration and the police (including tax crime investigators) is established under a memorandum of understanding and facilitated via a liaison officer who has direct access to both authorities' databases and systems. Information may also be exchanged directly without use of the liaison, both at the central and local level.

(e) The Financial Administration shall provide the FIU with information on cross-border currency movements and suspicious transactions.

(f) The Slovenian FIU may receive certain data electronically from Police records (as determined in a bilateral memorandum between the police and the FIU) for the purposes of the FIU's activities in preventing and detecting money laundering and terrorist financing. The police is obliged also (at least once a year, but no later than by the end of January of the following year) to inform the FIU about the measures they have taken on the basis of the information received from the FIU and about the results of the investigations based on this data.

(g) The FIU does not provide information to the Financial Administration for the purposes of making civil tax assessments. However, where the Financial Administration has received FIU information related to suspected tax offences, it may also use this information for the purposes of assessing taxes in order to determine, whether a tax offence might have been committed.

(h) In Slovenia, tax offences are investigated by the police. The FIU must inform the Financial Administration and police if it obtains information which indicates that reasons are given in relation to a transaction, person, property or funds for suspicion of committing criminal acts specified in the Criminal Code, which are prosecuted *ex officio* and for which a prison sentence is prescribed. The latter includes tax crime as well.

(i) The FIU provides the Financial Administration with information where it considers in connection with a transaction or person that there are grounds to suspect that a specified criminal offence has been committed.

(j) The Slovenian FIU is obliged to inform competent authorities (including the police) where, based on analyses, it believes there is reason to suspect money laundering, predicate offence or terrorist financing offences, or other specified offences which are set forth in the Criminal Code, prosecuted *ex officio*, and punishable by imprisonment, have been committed.

Table 43.9. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Agreement on mutual co-operation between the police and the Financial Administration of Slovenia (FARS) between the Police and the FIU, and Regulation on co-operation between the Public Prosecutor's Office, the police and other competent state bodies and institutions in the detection and prosecution of offenders and the operation of specialised and joint investigation teams.
Disclosure of foreign trusts	Yes, in case of sufficient legal basis
Joint operations and taskforces	Yes
Parallel investigations	Yes
Joint intelligence centres	No

Secondments and co-location of staff	Yes
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes
Multi-agency training	Yes

Principle 9: International co-operation

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.

1786. **Legal basis:** Slovenia may exchange tax information with foreign authorities in relation to criminal tax matters through Europol, INTERPOL, and liaison officers, as governed by bilateral and multilateral treaties. To date, Slovenia has exchange of information relationships with 64 jurisdictions through 61 bilateral tax treaties and 3 Tax Information Exchange Agreements.⁷

1787. **International co-operation in practice:** In 2018 the Slovenian police sent 6 requests to Europol, receiving 17 and sent 64 requests to Interpol (we have no data for receiving requests in 2018). In 2019, it sent 24 requests to and received 15 from Europol and sent 76 to and received 32 from Interpol. In 2020, it sent 37 requests to and received 10 from Europol and sent 95 to and received 51 from Interpol. In 2021, it sent 17 requests to and received 27 from Europol and sent 118 to and received 75 from Interpol. INTERPOL Slovenia estimates that approximately 90% of the requests sent were answered in a timely manner. All these stats relate are specific to tax crime.

1788. **Enhanced form of international co-operation:** Slovenian authorities can apply seizing and confiscation powers in respect of foreign tax investigations and judgments according to the mutual legal assistance requests they receive.

1789. All requests for co-operation have to be based on treaties or other legal bases. These may be bi- and multilateral conventions within the area of mutual legal assistance, police co-operation agreements or directly applicable European Union law. Within the European Union the Swedish Initiative and the European Investigation Order may be applied.

Principle 10: Fundamental rights of a suspect or accused person

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

1790. Slovenia provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by the Constitution of the Republic of Slovenia and other pieces of domestic legislation.

Table 43.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	
remain silent	Yes	When deprived of freedom
access and consult a lawyer and/or entitlement to free legal advice	Yes	During the investigative interview
interpretation and translation	Yes	During the investigative interview

be advised of the particulars of what one is accused of	Yes	During the house searches and investigative interview
access documents and case material, also known as a right to full disclosure	Yes	During the investigative interview
a speedy trial	No	
protection from ne bis in idem (Double Jeopardy)	Yes	

Highlights

Successful practices

- Handling the most demanding tax crime cases simultaneously through specialized investigation teams.

Room for improvement

- Lack of specialised investigators for tax and financial crimes.

Note

¹ More information on this topic can be found on the following links : https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_posled-dva-dni-na-dp-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_cieleny-softwarewarning-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_vypocet-dan-b-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_karta/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_predvypln-dzmv-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_formular-ts/bc
https://www.financnasprava.sk/sk/pre-media/novinky/archiv-novinek/detail-novinky/_danova-poradna-ts/bc

² For annual budgets of financial administration see <https://opendata.financnasprava.sk/opendata/category/168-vydavky-a-rozpocet>

³ A self-interested inclination or motive means that the perpetrator has a motive or inclination to enrich themselves or tries to enrich themselves. A criminal act is committed out of self-interest, even when the perpetrator committed it to obtain a financial benefit for someone else.

⁴ The latest report is available under: https://taxation-customs.ec.europa.eu/taxation-1/value-added-tax-vat/vat-gap_en

⁵ <https://pxweb.stat.si/SiStatData/pxweb/si/Data/-/0301990S.px>

⁶ See Rome Report, Chapter 5 – Country Information – Slovenia. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf

⁷ <http://www.eoi-tax.org>

44 South Africa

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

1791. The Tax Administration Act (TAA)¹ of South Africa sets out a range of tax offences, some of which either require criminal intent (*mens rea*) or negligence (*culpa*)² and apply to all tax types under a tax act, such as income tax or VAT (GST). Some examples of South African tax offences are offered in the table below, together with their minimum and maximum sanctions.

Table 44.1. Tax offences requiring criminal intent or negligence

Offences related to	Minimum sanction*	Maximum Sanction
<p>Tax non-compliance (TAA, s.234), including where a person wilfully:</p> <ul style="list-style-type: none"> • submits a false certificate or statement; • issues an erroneous, incomplete or false document; • fails to reply to or answer truly and fully any questions put to the person by a SARS official; • obstructs or hinders a SARS official in the discharge of the official's duties; • dissipates that person's assets or assists another person to dissipate that other person's assets in order to impede the collection of any taxes, penalties or interest. 	At the discretion of the judge.	A fine or to imprisonment for a period not exceeding two years.
<p>Criminal offences relating to non-compliance with tax acts requiring intent or negligence including (Section 234(2): Any person who wilfully or negligently fails to—</p> <ul style="list-style-type: none"> • retain records as required under a tax Act; • furnish, produce or make available any information, document or thing, excluding information requested under section 46(8), as and when required under this Act; • disclose to SARS any material facts which should have been disclosed under a tax Act or to notify SARS of anything which the person is required to so notify SARS of under a tax Act. 	At the discretion of the trial court	A fine or to imprisonment for a period not exceeding two years.

Common law offence of Fraud Generally referred to as tax fraud in the context of tax evasion) as main charge for statutory serious tax offences)**	A statutory mandatory minimum sentencing regime is available, but courts are permitted to depart from prescribed minimums	At the discretion of the trial court
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Note:

* South Africa notes that, under its legal system, sentencing is considered the primary prerogative of trial courts and they enjoy wide discretion to determine the type and severity of a sentence on a case-by-case basis. In doing so, they follow judge-made, broad sentencing principles known as the “triad of Zinn,” which require that, when making sentencing determinations, that judges consider three elements: the gravity of the offence, the circumstances of the offender, and public interest.³

** Common law fraud is a serious offence and listed, amongst others, in Schedules 1 of the Criminal Procedure Act (‘CPA’) and the Prevention of Organised Crime Act (‘POCA’). This means that where a common law fraud tax investigation supports a ‘pattern of racketeering activity’ which entails the planned, ongoing, continuous or repeated participation or involvement in two or more Schedule 1 offences i.e. tax fraud; the prosecution may charge or indict an accused for racketeering as prescribed by section 2 of the POCA. A conviction on the latter charge attracts a sentence of a fine not exceeding ZAR 1 000 million⁴ or to imprisonment for a period up to imprisonment for life in the High Court and provides for enhanced Regional Court penal jurisdiction of a fine not exceeding ZAR 1 000 million or to imprisonment for a period not exceeding 30 years.

1792. **Statute of limitations:** The Criminal Procedure Act (CPA, s18) sets out the statute of limitations for all crimes to be 20 years, unless explicitly provided otherwise by a provision governing a specific criminal offence.⁵

1793. **Accessory liability:** It is a criminal offence, punishable by the same maximum penalties as the principal offence, to aid, abet, incite or conspire with another person to commit any of these offences. Section 155 of the Criminal Procedure Act, 51 of 1977 regulates the procedural aspects connected to the doctrine of participation that forms part of the substantive criminal law. It is also noteworthy that section 234(1)(g) and 235(1) of the TAA criminalises the rendering of assistance to another person to evade tax or obtain an undue refund under a tax Act.

1794. **Territorial and nationality jurisdiction:** In South African law there is no general provision establishing nationality jurisdiction in respect of natural or legal persons for tax crimes. South African law establishes general territorial jurisdiction over natural and legal persons in terms of the provisions of the Magistrates’ Courts Act (section 90) and the Superior Courts Act (section 21). A court having jurisdiction over the area in which the offence was committed will have jurisdiction in respect of the relevant tax crime. The col have jurisdiction if the elements of the offence have been committed in its territory. It is sufficient that some, albeit not all, of the elements have been committed in its territory. Furthermore, section 238 of TAA founds jurisdiction in the area where the taxpayer resides or carries on business, in addition to jurisdiction conferred upon a court by any other law (e.g. Magistrates’ Courts Act and Superior Courts Act). For example, a taxpayer resident and conducting business in South Africa may be tried in South Africa on charges of fraud, various elements of which were perpetrated in South Africa. The South African court would exercise jurisdiction notwithstanding for instance that some of the documents used to perpetrate the fraud were false invoices created in a foreign state.

1795. South Africa notes that its statutes make no provision for extra-territorial jurisdiction in respect of tax offence. Unless specific provisions were made in a particular Double Taxation Agreement between South Africa and the foreign state where the offence is committed, South Africa would not exercise jurisdiction over its citizens and residents who commit a tax offence entirely outside of its territory. An exception to this rule would be where a legal person registered in South Africa committed corruption or money laundering in another state, which could be prosecuted in South Africa under the Prevention and Combatting of Corrupt Activities Act.

1796. **Legal persons:** Legal persons are criminally liable in South Africa and can be sentenced to the same sanctions as those that may be imposed on individuals (CPA, s332(1)).

1797. **Professional enablers:** South Africa does not have a special penalty regime for professional enablers, but those can be tried under the general rules of primary or secondary participation.

Enforcement of tax crime

1798. The table below provides information on the enforcement of tax crimes in South Africa in tax years 2017-18.

Table 44.2. Enforcement of tax crimes in the tax years 2017-19

Tax years ending	Investigations carried over from last tax year (opening balance)	Number of new cases received	Number of re-activated cold cases	Number of abandoned cases	Cases where action short of prosecution was taken*	Cases referred for prosecution	Number of cases where prosecution was commenced	Number of convictions	Number of acquittals
2017	472	730	130	116	47	332	447	165	9
2018	569	539	59	162	16	411	397	84	4

* The column "Cases where action taken short of prosecution" refers to civil shortfall penalties as provided for in Part IX of the TAA. These include evasion shortfall penalties, where the offending amounts to the offence of tax evasion, but it is considered that liability is satisfactorily dealt with by a civil penalty. This approach is in accordance with the Solicitor-General's guidelines, which restrict prosecution to cases where the public interest demands it.

Table 44.3. List of other sanctions imposed in tax years 2017-18

Sanction	Number of times imposed	2017	2018
Imprisonment		95	86
Fine		48	19
Home Detention		n/a	n/a
Community Work		n/a	n/a
Reparation		n/a	n/a
Post Detention Conditions/Supervision		20	0
Community Detention		n/a	n/a
Community Service		10	1

1799. **Availability of settlements:** South Africa does not make settlements or deferred prosecution agreements available for individuals or legal persons for tax offences.

1800. **Availability of tax deductions for civil and criminal sanctions:** In South Africa, civil sanctions are not imposed through the criminal justice system in the case of tax crime cases. Furthermore, no such tax deductions are allowed under any tax law as a general deduction 'in the production of income' pursuant to jurisprudence. Some are expressly prohibited in tax legislation, for example corruption payments, fines and penalties under section 23(o) of the Income Tax Act, 1962, which prohibits deductions in respect of:

- any expenditure incurred where the payment of that expenditure or the agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); or
- any expenditure incurred which constitutes a fine charged or penalty imposed as a result of an unlawful activity carried out in the Republic or in any other country if that activity would be unlawful had it been carried out in the Republic.

1801. **Tax gap:** SARS has consistently estimated the tax gap in South Africa to be between 15% and 30% of actual tax revenue collected.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1802. The Annual SARS Compliance Programme, as one of the levers used to manage taxpayer and trader compliance risk management (amongst other mitigation strategies), articulates South Africa's tax crime strategy with respect to prevention, detection, investigation and prosecution of criminal tax offences. It considers a broad range of risks (e.g. overall industry risks, specific lifecycle risks, consumer protection risks, or systemic legislative and policy risks) in order to identify priority industries and segments to focus their resources on. The SARS tax crime strategy for the criminal investigations of tax crimes and for the selection of taxpayers' inspection, verification or audit is limited to tax, customs and excise crimes; however, it takes into consideration the bigger national and international contexts. It further recognises the importance of working with other enforcement agencies. Within SARS, the Criminal Investigation Division (CID) is the primary law enforcement unit responsible for tax and customs crimes, and is entrusted with launching criminal investigations upon indication of possible tax or customs crimes.

1803. In South Africa, the referral of cases from the civil tax audit division to SARS CID is regulated by section 43 of the TAA. Accordingly, if indications of a serious tax offence come up during the course of a tax audit, it must be reported to a senior SARS official responsible for Criminal Investigations, who shall decide whether to pursue a criminal investigation. South Africa notes that despite the fact that SARS represents both the civil tax authority and the criminal tax authority, civil tax audits and criminal tax investigations are conducted separately.

1804. **Threat assessment:** The Annual SARS Compliance Programme is informed by an assessment of threats and risks.

1805. **Communication strategy:** SARS has a division, which deals with communicating with the media in general, and will as a matter of business, communicate successes in criminal prosecution to the media for general public consumption.

Box 44.1. Example of successful implementation of tax crime strategy: South Africa

In 2014-15, Tax Administration led Project A, a successful multi-agency operation to combat offshore tax evasion. Following the success of this operation, the agencies involved agreed to work together with a broader focus on serious financial crime. Following an intelligence assessment, agencies identified a number of threats and significant gaps in its strategy for combatting financial crime, including investment and financial market fraud, superannuation fraud, revenue and tax fraud, the use of professional facilitators, offshore trust structures, and phoenixing activity.

Following this assessment, the Government established the Serious Financial Crime Taskforce (SFCT) within the Fraud and Anti-Corruption Centre (FAC) (established in February 2013 to combat offences relating to corruption, complex and serious fraud, and identity crime). Within FAC, SFCT is responsible for intelligence sharing, detection, and enforcement of major fraud and tax evasion. To date, SFCT has 26 operations in progress: 19 criminal investigations, and 7 civil investigations.

As of 30 April 2017, SFCT has:

- raised approximately R199 million in liabilities from 526 audits and reviews, and collected approx. USD 110 million in cash;

- 45 audits in progress, 17 of which relate to the Panama Papers;
- conducted four successful prosecutions against individuals resulting in terms of imprisonment ranging from two to eight years; and
- permanently banned a lawyer and accountant from providing financial services after being found of not good fame and character.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

Investigative powers

1806. The table below details the availability of investigative powers of the tax crime investigation agency of South Africa.

Table 44.4. Investigative powers of tax crime investigation agency (SARS)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Subject to prior judicial authority and supervision.
Obtain documents from third parties	Full direct power
Interview	Full direct power Subject to limitations. Limitations include, amongst others, taxpayer can invoke the right to remain silent, the right against self-incrimination and all other rights that pertain to a suspect during a criminal investigation.
Inquiry powers (e.g. power of coercion)	Full direct power Formal Inquiry subject to prior judicial authority and supervision by a presiding officer. A witness may not refuse to answer on the basis that witness may incriminate him-or herself but such evidence is then not admissible in subsequent criminal proceedings against the witness.
Intercept mail and telecommunications	Indirect power via another agency Subject to prior judicial authority and strict supervision.
Conduct covert surveillance	No power
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to prior judicial authority and supervision
Arrest	No power The powers to arrest a person on suspicion of having committed a tax offence or execute a warrant of arrest is vested in the South African Police Service. An arrest warrant is issued in terms of the Criminal Procedure Act and is essentially an instruction by the court to all police officers to execute the warrant. A decision to prosecute is solely that of the NPA.

1807. **Need for additional powers:** The relevant legislation is reviewed periodically and if the need arises for additional powers, those would be addressed through the introduction of appropriate amendments.

1808. **Legal professional privilege:** Sections 42A and 64 of the TAA deal with legal professional privilege (LPP). Section 42A provides for a procedure where LPP is asserted when information is required from taxpayers. Section 64 provides that if SARS foresees the need to search and seize material that may be subject to legal professional privilege, it must arrange for an attorney appointed by the High Court to be

present during the seizure. Besides, if during a search and seizure operation a person alleges the existence of legal professional privilege in respect to relevant material, SARS must seal the material and present it to the attorney appointed by the High Court. In both cases, the attorney has 21 days to decide whether the material is compromised by LPP.

Principle 4: Freezing, seizing, and confiscating assets

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

Freezing, seizing and confiscating assets

1809. **Legal basis:** South African courts have broad powers to issue preservation orders and warrants of execution of assets. South Africa can apply seizing and preservation powers with respect to foreign tax investigations and judgments. The term “freeze” is often used loosely in the context of securing assets. In terms of the provisions of the TAA, section 163 of the TAA refers to a “preservation order” by a judge but SARS may seize the assets 24 hours prior to application for a preservation order *ex parte* to the High Court.

1810. **Freezing and seizing orders:** SARS CID has the authority to perform rapid freezing of assets, in order to prevent any attempts to obscure or transfer the assets in question. It must then apply for a preservation order with 24 hours.

1811. **Confiscation orders:** Under South African law, non-conviction based confiscations are allowed. South African courts also have the authority to perform extended confiscations under POCA, if the offender has obtained criminal proceeds from any criminal activity sufficiently related to the offences being prosecuted. If the court finds that the defendant has derived extensive benefits from their criminal action, it may order an additional value-based confiscation for the amount the court deems appropriate and fair under POCA.

1812. **Foreign freezing, seizure and confiscation orders:** South African would be able to execute foreign freezing, seizure and confiscation orders subject to bilateral or multilateral treaties and South African law.

1813. **Agency/unit responsible for asset recovery:** In South Africa, the authority for freezing, seizing and confiscating assets related to criminal matters resides in the Asset Forfeiture Unit (AFU), which is an independent unit functioning as a division under the National Prosecuting Authority (NPA). Prior to the outcome of criminal prosecutions, SARS is permitted to freeze assets, whenever there is the instance of damages (e.g. a tax debt) payable to SARS.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1814. The South African Revenue Service (SARS) is the sole agency responsible for the collection of taxes and ensuring compliance with tax legislation in South Africa. Housed within SARS, the Criminal Investigation Division (CID) is tasked with the detection and investigation of criminal tax offences that were

identified throughout the course of a civil tax audit. Although SARS CID has wide-ranging investigative powers, it closely co-operates with the South African Police Service (SAPS), who ensure the execution of certain warrants (e.g. warrants for arrest).

1815. From the outset of a CID investigation, a prosecutor from the National Prosecuting Authority (NPA) is tasked with supervising and ensuring the legality of actions taken by the CID throughout the course of their investigation. Upon completion of the investigation, the case is transferred to the supervising prosecutor, who then decides whether to pursue the case and launch pre-trial proceedings.

1816. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of South Africa's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁶

Table 44.5. Agencies responsible for investigating financial crimes

Agency	Role with respect to financial crime
South Africa Revenue Service (SARS)	SARS is a separate semi-autonomous state agency under the control of the Ministry of Finance and the National Treasury. It is statutorily tasked to collect revenue for the government and enforce compliance with tax and customs legislation.
Criminal Investigation Division (CID)	Housed within SARS, CID is tasked with criminal tax investigation, of tax and customs offences, combating tax evasion, and providing assistance to the NPA and general law enforcement authorities in the prosecution and investigation of financial and custom crimes.
Commercial Crime Unit (CCU) of the South African Police Service	The Commercial Crime Unit is a specific unit within the South African Police Service (SAPS) in charge of combating financial crimes.
Asset Forfeiture Unit (AFU)	As a unit within the National Prosecuting Authority (NPA), the AFU is statutorily empowered to seize criminal assets, in particular the proceeds of organised crime.
Special Investigating Unit (SIU)	SIU is statutorily empowered to combat and investigate serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct that may seriously harm the interest of the public.
Financial Intelligence Centre (FIC)	South Africa's FIU is statutorily required to act as a Money Laundering Advisory Council in order to combat money laundering activities, financing of terrorist and related activities, and to monitor compliance with obligations under anti-money laundering and terrorist financing legislation by financial institutions and other designated bodies.
Directorate for Priority Crime Investigations (DPCI) of the South African Police Service	Forming part of SAPS, the DPCI is responsible for the investigation of serious commercial crimes and serious corruption.
Investigating Directorate (ID) –housed within NPA–	A unit within the National Prosecuting Authority (NPA) headed by a special Director and tasked to investigate amongst others financial crimes involving politically exposed persons and misappropriation of government funds.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1817. SARS' budget for criminal investigations is allocated on an annual basis and supports the work of the 201 members of staff dedicated to tax crime investigations, and it corresponded to approximately ZAR 140.3 million in 2017 and ZAR 169.7 million in 2018.

1818. The budget is based on the number staff members in the division and the resources they will need to execute their duties. All criminal investigators have 'performance scorecards' against which they are

assessed. Their main performance goal is to ensure that a set number of cases are successfully investigated and transferred to the NPA for prosecution.

1819. The main performance goal of cases that are successfully investigated and transferred to the NPA for prosecution is revised annually based on several factors that include focus, risk, capacity and resources. It can also be adjusted during a financial year due to unexpected and varying factors, for example, the lockdown measures during the COVID pandemic required an adjustment.

Table 44.6. Data bases/sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Access on Request
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	Access on Request
Judicial databases	Access on Request
Suspicious transaction report databases (e.g. FIC)	Access if related to tax offences
Domestic bank account databases	Access on Request
Car registry	Access on Request
Boat registry	Access on Request

Training for tax crime investigators

1820. SARS provides its criminal tax investigators with various training interventions, including programmes on criminal procedure, cybercrime, illicit financial flows and management of criminal investigations.

Principle 7: Predicate offences

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

1821. **Approach:** South Africa adopted an ‘all crimes’ approach to predicate offences for money laundering. Money Laundering is criminalized in terms of Chapter 3, sections 4-8 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998). The definition of ‘proceeds of unlawful activity’ in section 1 of POCA includes any property or service, advantage, benefit or reward derived, received or retained directly or indirectly in South Africa or elsewhere in connection with unlawful activities. In addition, the definition of ‘unlawful activity’ mean any conduct which constitutes a crime, or which contravenes any law whether such conduct occurred in South Africa or elsewhere. This includes proceeds from offences committed in other jurisdictions.

1822. **Enforcement of money laundering predicated on tax crimes:** A Memorandum of Understanding (MOU) is in place between SARS and the NPA. The MOU is an operational agreement to facilitate co-operation and collaboration between the agencies. The only predicate offence for money laundering which can be criminally investigated by the tax authority is that of tax evasion/evasion of tax of the taxable criminal proceeds of another offence such as corruption. The MOU has no effect on the statutory mandate of SARS criminal investigations.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1823. In South Africa, a civil tax matter becomes a criminal tax matter the moment a taxpayer is regarded as a suspect and a decision is taken to pursue a criminal investigation. The decision to undertake criminal investigation depends on whether there is evidence to support the criminal process and whether this approach is warranted given the circumstances of the case. SARS provides that it protects suspects' rights by ensuring that civil tax audits are run independently of criminal investigations.

1824. From the inception of a criminal investigation, there is the option for the CID investigator to seek guidance by a prosecutor from the NPA to assist with supervising and ensuring the legality of actions taken by the CID throughout the investigation, through initiating a Prosecutor Involved Investigation (PII) as provided for in the MOU between SARS and the NPA. Upon completion of the investigation, the case is transferred to the supervising prosecutor, who then decides whether to pursue the case and launch pre-trial proceedings.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1825. The tables below show the models for sharing information related to tax crime and other financial crime, and the availability of enhanced forms of co-operation in combatting tax crimes in South Africa.

Table 44.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		DSS	N/A (SARS is a joint customs/tax agency)	DSS*	MSS**	No separate agency. Referral is to prosecution service.
	Customs administration	N/A (SARS is a joint customs/tax agency)	DSS		DSS	MSS**	N/A
	Police or public prosecutor	DSS	MSS***	DSS		MSS	N/A
	Financial Intelligence Unit	On request	MSS***	MSS**	MSS**		N/A
	Corruption investigation authority	N/A	N/A	N/A	N/A	N/A	
	Financial regulator	On request	MSS***	N/A (SARS is a joint customs/tax agency)	MSS	DSS**	N/A

Note: Within the context of ongoing criminal investigations and prosecutions, the exchange of information occurs freely among agencies and is determined by the evidentiary or information requirements of the specific case. For this purpose, SARS is statutorily permitted to share information with financial regulatory agencies such as the FSB, FIC, SA Reserve Bank and the National Credit Regulator. This information disclosure is limited to information necessary for the purpose of exercising a power or performing a regulatory function or duty under the legislation administered by these agencies.

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

* SAPS can generally only obtain information relevant to non-tax investigations from SARS through an ex parte court application or under specific legislation related to the prevention and investigation of serious organised crime. Information requests under this legislation must be specific. SARS may also inform the police where it discovers evidence of a possible non-tax offence, but only if it first obtains specific consent from the court pursuant to an ex parte application.

** SARS is obliged to disclose certain information to the FIC under sections 36 and 37 of the FIC Act, which disclosure is not limited by SARS statutory duty of confidentiality.

*** In respect of the discovery of tax evasion, other law enforcement agencies may report such suspicions to SARS, but SARS has a discretion to lay criminal charges for the purposes of prosecution. When laying charges, SARS may only disclose information related to, or which constitutes material information for the proving of, a tax offence. If SARS imposes civil sanctions for tax evasion, such as administrative noncompliance or understatement penalties, this is generally not relevant to the criminal investigation and prosecution and not disclosed when SARS lays a criminal charge and prosecution is instituted.

Table 44.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	The Constitution of the Republic of South Africa, 1996, encourages the co-operation between government departments and organs of state based on mutual trust and good faith. Additionally to this, government departments and organs of state are legally able to make reasonable procedural arrangements to co-operate with each other. Several MOUs exist where additional operational arrangements were needed, i.e. between SARS and the NPA, SARS and the FIC, SARS and the SAPS, to name a few.
Disclosure of foreign trusts	Yes, but only where relevant and legally permissible.
Joint operations and taskforces	Various joint operations and taskforces are in place. Examples include the Anti-Corruption Task Team (ACTT), Inter-Agency Working Group on Illicit Financial Flow and the Inter-Departmental Committee (IDC) on AML/CTF.
Parallel investigations	Parallel financial investigations (PFIs) are undertaken in all cases of organised crime, serious commercial crime, and serious corruption.
Joint intelligence centres	The National Joint Operational and Intelligence Structure (NATJOINTS), is mandated to co-ordinate all security and law enforcement operations throughout South Africa.
Secondments and co-location of staff	Yes, examples include the secondment of SARS officials to the Investigating Directorate in the Office of the National Director of Public Prosecutions as well as the co-location of staff within the Fusion Centre, which is hosted by South Africa's Financial Intelligence Centre.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes, i.e. through the SARS Liaison Unit.
Multi-agency training	The Justice College is a State Academy that is located within the Department of Justice and Constitutional Development. Their central focus is on offering a high quality, relevant expanded programmes designed to offer functional skills that enhance participant's knowledge, skill and behavioural competencies. Additionally, government agencies extend training invitations to other government agencies from time to time.
Any other mechanisms	The Judicial Commission of Inquiry into Allegations of State Capture

Principle 9: International co-operation

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.

1826. **Legal basis:** South Africa may exchange information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. To date, it has entered into exchange of information relationships with over 100 jurisdictions through DTCs and TIEAs.⁷

1827. If SARS, in accordance with an international tax agreement, wishes to spontaneously exchange information SARS may disclose the information for transmission to the competent authority of the other country as if it were relevant material required for purposes of a tax Act and must treat the information obtained as taxpayer information (Section 3(3)(a)(i) of the Tax Administration Act).

1828. **International co-operation in practice:** South Africa estimates that approximately 70% of the requests that were sent were responded to by the counterpart jurisdictions in a timely manner. In their experience, if the requests for information is in accordance with an international tax agreement from a foreign tax authority, the information requested is received provided it is relevant to the administration of tax and not for use as evidence in a criminal matter before court. In the latter case, the legislation concerning Mutual Assistance in Criminal Matters needs to be pursued which falls outside the tax legislation.

Principle 10: Fundamental rights of a suspect or accused person

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

1829. South Africa provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by Chapter 2 of the Constitution of the Republic of South Africa, which serves as the country's Bill of Rights.⁸

Table 44.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until conviction
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	When regarded as a suspect.
remain silent	Yes	Always unless compelled in legislation, in which case incriminating evidence cannot be used against a person so compelled.
access and consult a lawyer and/or entitlement to free legal advice	Yes	From the moment when a person is considered a suspect. Free legal advice is available from the moment a person is Indicted.
interpretation and translation	Yes	During criminal proceedings.
be advised of the particulars of What one is accused of	Yes	When arrested, detained, accused and summonsed.
access documents and Case material, also known as a right to full disclosure	Yes	When indicted.
a speedy trial	Yes	From the commencement of criminal proceedings.
protection from ne bis in idem (Double Jeopardy)	Yes	Always.

Highlights

Successful practices

- Successful multi-agency co-ordination
- Solid tax crime strategy

Room for improvement

- South Africa may benefit from deploying parallel financial investigations (PFIs) in cases of tax crimes irrespective of them taking place within the framework of organised crime, serious commercial crime or serious corruption.

Notes

¹ The Tax Administration Act No. 28 of 2011 was published in the Government Gazette of 4 July 2012. An official version of the act can be found at: <https://www.gov.za/documents/tax-administration-act>.

² See amendments to s234 by TALAA 2020.

³ More information regarding sentencing guidelines in South Africa can be found at: <https://www.loc.gov/law/help/sentencing-guidelines/southafrica.php>.

⁴ In April 2021, EUR 1 = ZAR 17.15.

⁵ In terms of section 99(2)(a) of the TAA SARS is entitled to reopen an assessment despite the fact that the tax periods under audit or for which proposed adjustments are asserted may have prescribed. The effect of the provision is to allow SARS to extend the period for raising an additional assessment if there is evidence of fraud, misrepresentation or non-disclosure of material facts.

⁶ See Rome Report, Chapter 5 – Country Information – South Africa. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

⁷ See <http://www.eoi-tax.org> for up-to-date figures.

⁸ For Bill of Rights, see Chapter 2: <https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.

45 Spain

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1830. Spain's Criminal Code ("CC") sets out a series of tax offences, which apply to both income tax and VAT/GST and require criminal intent (*mens rea*). Examples of some of these tax crimes and their minimum and maximum sanctions are set out in the table below.

Table 45.1. Tax offences requiring criminal intent

Offence	Minimum criminal sanction	Maximum criminal sanction
Tax evasion, when the amount of evaded tax exceeds EUR 120 000 (CC, art. 305)	One year imprisonment and monetary fine equivalent to the amount of tax evaded.	Five years' imprisonment and monetary fine equivalent to six times the amount of tax evaded.
Unlawful award of tax benefits (CC, art. 305)	One year imprisonment and monetary fine equivalent to the amount of tax evaded.	Five years' imprisonment and monetary fine equivalent to six times the amount of tax evaded amount
Tax evasion, when the amount of evaded tax exceeds EUR 600 000	Two years' imprisonment and monetary fine equivalent to two times the amount of tax evaded.	Six years' imprisonment and monetary fine equivalent to six times the amount of tax evaded.

1831. **Statute of limitations:** Spanish law provides for a five-year statute of limitations for tax crimes when maximum criminal sanction is five years' imprisonment and ten years statute of limitations if the tax crime has a maximum criminal sanction higher than five years (CC, art. 131.1). The limitation period starts on the day of the deadline for filing tax returns and is suspended upon the commencement of a criminal investigation (CC, art. 132).

1832. **Complicity:** While Spanish law does not have a specific regime for secondary offenders of tax crimes, individuals can be charged tax crimes if they have co-operated in their commission. Secondary offenders face a sentence that is between half the minimum and the complete minimum sentence for primary offenders (CC, arts. 63 and 70.2)

1833. **Attempt and conspiracy:** Attempt to commit a tax crime could be a criminal offence in Spain in the event of improper requests for refunds, even refused by tax authorities. Conspiracy is only a crime when it is expressly established by law and the Spanish criminal code does not define conspiracy as a tax offence (arts 15, 16 and 17 and case law). Although conspiracy to commit a tax crime is not defined in Spanish Criminal Code, it is defined to participate in a criminal organization to commit such a tax crime.

1834. **Professional enablers:** Spain does not have targeted regime for professional enablers but notes that they are subject to the general laws on primary and accessory participation.

1835. **Territorial and nationality jurisdiction:** Spain has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly within Spanish territory. The Spanish Criminal Code does not provide for the prosecution of offences committed entirely outside of Spain.

1836. **Liability of legal persons:** Legal persons can be held criminally liable under Spanish law, including for tax offences. Criminal sanctions for legal persons include: fines, the definitive dissolution of the legal person, suspension of activities for a period of time, closure of the establishment, judicial intervention to safeguard the rights of workers or creditors for up to five years, permanent or temporary prohibition to carry out activities in the field on which the crime was committed, loss of the possibility of obtaining public subsidies or benefits for a period between three and six years, and prohibition to contract with the government (CC, arts.33.7 and 310 bis).

Enforcement of tax crime

Table 45.2. Enforcement of tax crimes in the years ending 2015-18

Tax years ending	Concluded investigations	Number of convictions	Criminal fines imposed	Amount of underlying tax evaded
2015	304	317	EUR 496 827 446	EUR 667 248 488
2016	213	334	EUR 1 065 178 860	EUR 497 842 272
2017	255	376		
2018	177			

1837. The below table shows the type of sanctions imposed for tax crimes in Spain in tax years ending 2015-18. Spain notes that, in addition to prison sentences, it imposed 1 837 sanctions of other types in 2015-16 and that 11 legal entities were convicted of tax crimes during the same period.

Table 45.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years' imprisonment	1 874
>3 – 5 years' imprisonment	62

1838. **Availability of tax deductions for civil and criminal sanctions:** Spanish law prohibits tax deductions for civil and criminal sanctions (Income Tax Law, 30 and Corporation Tax Law, 14).

1839. **Availability of settlements:** The Criminal Code of Spain provides that if an alleged offender pays the underlying amount of evaded tax before being notified of the commencement of a criminal investigation, such investigation shall not be pursued (CC, art.305.4).

1840. The legal effects of the payment depend on when it is performed: if it is done before the commencement of the criminal investigation, it will stop the pursuing of the investigation. If it is done after sentencing, it will suspend the execution of the sentencing (CC, arts. 305.4 and 308).

1841. **Tax gap:** In January 2020, Spain estimated its total tax gap at EUR 28.3 billion, or 2.36% of the country's GDP. Around half of this is related to national taxes collected by Spain's tax administration (AEAT), while the other half is related to social security contributions and state and local taxes collected by each of the country's autonomous communities.¹

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1842. Each year, Spain's tax administration agency (AEAT) updates and publishes a "Plan of Tax and Customs Control". The plan is centred around five main actions – tax and customs fraud control, tax and customs investigations, promoting voluntary compliance, promoting the use of online services, and enhancing information exchange practices with the tax agencies of the 17 Spanish autonomous communities. This strategy is informed by inputs from other financial crime authorities, including the Anti-Corruption Prosecutor.

1843. For the 2020-23 period, the main targets set out in the strategy include tax compliance in large companies; analysis, intelligence-gathering and investigations in cases of fraud; the fight against smuggling, particularly of tobacco; and the analysis of money laundering associated with customs offences.

1844. **Threat assessment:** AT's "Plan of Tax and Customs Control" also includes a tax crime threat assessment, which is updated every year.

1845. **Communications strategy:** Spain reports that it issues press releases to the media and publishes them on its website.

Box 45.1. Example of a successful case: Spain

In 2017, an investigation carried out by the tax inspection bodies, together with the customs inspection service, dismantled a carousel-type VAT fraud scheme which involving EUR 3 million in evaded taxes. Several participants were sentenced to prison time and fines, and one of them, a Spanish businessperson, who acted as the mastermind, was sentenced to over 13 years in jail on various counts of tax fraud, illicit association, and forgery of public documents.

The mastermind of the plot set up a business for the creation and sale of companies, which had been in operation for several years, through which he would have put approximately 9 000 companies up for sale, offering them over the Internet or by other means for a minimum price of 1 800 euros. Among the services offered were the sale of the company with a possible administrator of it, so that the real owner of the company remained hidden. The real owners could remain anonymous in two ways, either by appointing individuals with limited economic means who, for a small fee, agreed to appear as apparent administrators of the company; or by using the identity documents of third parties who had no knowledge of the facts, thereby misleading the notaries. Later, these identities were used to open online bank accounts and the access codes were given to the real owners, who remained behind the scenes. Through this organisation, companies were offered buffers for VAT carousel fraud schemes for which the aforementioned mastermind charged a commission.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

Table 45.4. Investigative powers of tax crime investigation agency (AT)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Indirect power through another agency Requests are channelled through the Anti-Corruption Prosecutor and the Custom Investigation Service or the police
Obtain documents from third parties	Full direct power / Indirect power through another agency Outside of tax information, AT relies on the Custom Investigation Service, Police, and the Anti-Corruption Prosecutor to obtain documents from third parties.
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Indirect power via another agency Court order required and the request is then channelled through the Custom Investigation Service or Police.
Conduct covert surveillance	Indirect power via another agency Court order required, request is then channelled through the Custom Investigation Service or the police
Conduct undercover operations	Indirect power via another agency Court order required and the request is then channelled through the Custom Investigation Service or Police.
Search and seize computer hardware, software and electronic storage media	Full direct power
Arrest	Indirect power via another agency Arrest has to be done by the Custom Investigation Service or Police under judge control

1846. **Legal professional privilege:** Spain's Law on the Organisation of the Judiciary provides that all communications between a lawyer and his/her client are confidential (*article 542.3*). However, privilege is waived where the lawyer participated in the commission of an offence. Legal professional privilege does not extend to accountants.

Principle 4: Freezing, seizing and confiscating assets

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

1847. **Legal basis:** Spain's asset recovery regime is set out in the CC, the General Tax Code and the Criminal Procedure Law. Spain's regime allows for the freezing, seizing and confiscation of both the instruments and proceeds of tax crimes.

1848. **Freezing orders:** According art. 81 of the General Tax Code, AEAT may issue freezing orders directly, as a precautionary measure of a provisional nature that may last between 6 months and 24 months, provided there are reasonable grounds for believing that recovery of the asset would otherwise be frustrated or seriously impeded. When a complaint or lawsuit has been filed for a tax crime or judicial proceedings have commenced for such an offence, the precautionary measure adopted by AEAT shall be notified to the public prosecutor and the courts and shall be maintained until the courts decide to either convert it into a judicial freezing of assets or lift it.

1849. **Seizing orders:** Asset seizure is available in Spain, provided there are reasonable grounds for believing that the recovery of assets would otherwise be frustrated or seriously impeded. AEAT is in charge of ordering the seizure, subject to judicial review.

1850. **Confiscation orders:** Spanish law allows for both conviction and non-conviction-based confiscations. Non-conviction-based confiscation can be applied as an exception, under the authorisation of the courts, only where the confiscated asset is perishable, was abandoned by the owner, its conservation costs are greater than the asset itself, its conservation is dangerous for public health or safety, and if it depreciates over time (Criminal Procedure Law, art. 621 ter). In all other cases, assets may only be confiscated on conviction for a tax crime. Spanish law allows for extended confiscations value-based confiscations, and third-party confiscations, provided the third party is not a bona fide possessor of the asset (CC, arts. 374, 127, and 127.1 respectively).

1851. **Foreign freezing, seizure, and confiscation orders:** Freezing, seizure and confiscation of assets in tax crime procedures are established in international judicial co-operation framework. The Spanish tax administration can be requested by foreign counterparts to take precautionary measures within the framework of mutual assistance (art 81.2 General Taxation Law). The procedure for mutual assistance is established in articles 177 bis et seq. General Taxation Act. In case of money laundering, foreign requests of European Union FIU for freezing assets can be processed through the Spanish Financial Investigation Unit (Sepblac).

1852. **Agency/unit responsible for asset recovery:** The seizure and confiscation of assets related to criminal tax matters in Spain is under the competence of the courts and the prosecution service. Spain established its Asset Recovery Office in 2015 (*Oficina de Recuperación y Gestión de Activos*, ORGA) under the Ministry of Justice. ORGA's main function is managing recovered assets and engaging in international co-operation in combatting serious forms of crime.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1853. The *Agencia Española de Administración Tributaria* ("AEAT") is Spain's national tax and customs agency, whose functions include detection and administrative investigation of tax crimes and money laundering predicated on tax offences. Audits that are most likely to become tax crime investigations are predominantly handled by specific units spread throughout Spain specialised in tax crimes. Where in the course of an audit, a tax officer suspects a criminal offence, the case is referred to the public prosecutor or directly to the courts.

1854. Although the law allows the facts to be brought to the attention of the public prosecutor or the judge without distinction, internal AEAT guidelines provide suspicions of a tax crime should be referred to the public prosecutor, who will send the case to the courts for commencing a criminal investigation, or dismiss it depending when no grounds for action are found. Following the investigation, which is conducted either by the judge or the prosecutor and with the assistance of the AEAT, the judge will decide whether to refer the case for trial (presided by a different judge or panel of judges), or to waive criminal charges. During trial, AEAT officials can also be asked to act as expert witnesses in criminal proceedings, explaining and upholding the findings of the administrative enquiry that were reported when the case was forwarded.

1855. Prosecutors in Spain are under the authority of the Director of Public Prosecutions and as such they are independent from AEAT. While there is no branch of the DPP specifically dedicated to tax crimes,

such cases are usually handled either by general criminal prosecutors or by the Special Prosecution Offices against Drug Trafficking and against Corruption and Organised Crime (see descriptions in table below).

1856. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Spain's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 45.5. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
AEAT (Spanish Agency of Tax Administration)	Spain's tax and customs administration, responsible for the detection, administrative investigation, and referral for prosecution of tax crimes and money laundering predicate on tax crimes.
Central Unit against Tax and Economic Offences of the National Police	Specialised unit of the National Police dealing with cases of economic or tax crimes. The Spanish National Police is one of the Spanish law enforcement agencies that can investigate all kinds of crime, included tax crime. The units of law enforcement agencies can send the criminal report about tax crimes directly to the judge. In this case, the magistrate will ask an expert report to the AEAT.
Economic Crime Group of the Central Oper ⁵⁴⁴ authorizet of the <i>Guardia Civil</i>	Specialised unit of the Police dealing with organised crime, drug related crimes, economic or fiscal crimes, and serious felonies. <i>Guardia Civil</i> is another of the Spanish law enforcement agencies that can investigate all kinds of crime, included tax crime. The law enforcement agency that starts an investigation continues the investigation. The co-ordination between law enforcement agencies is made in CITCO (Co-ordination Centre). When the criminal report arrives to the examining magistrate, he can decide which of the law enforcement agencies will continue the investigation. In this case, also, the magistrate will ask an expert report to the AEAT.
Executive Service of the Commission for the Prevention of Money Laundering (SEPBLAC)	SEPBLAC is the Spanish Financial Intelligence Unit, which receives and analyses communications of suspicious and unusual transactions, and prepares money laundering intelligence reports. Reports that involve suspected money laundering predicated on tax crime are sent to AEAT.
Director of Public Prosecutions (DPP)	Prosecutors in Spain are under the authority of the Director of Public Prosecutions.
The Special Prosecution Office against Drug Trafficking	Office within DPP responsible for the investigation and prosecution of all offences having to do with illicit drug dealing, and criminal money laundering offences connected wit ⁵⁴⁴ authorized ⁵⁴⁴ ficking.
Special Prosecutor against Corruption (ACCO)	ACCO is a specialised unit within the State Prosecution Service and has a mandate to investigate and prosecute bribery and corruption-related offences of "special importance".

Independence of Tax Crime Investigations and Prosecutions

1857. Spain notes that its Public Prosecution Service ("*Ministerio Fiscal*") is an independent branch of government, as enshrined in the Spanish Constitution of 1978.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1858. Spain notes that AEAT receives an annual budget but that it is not possible to specify the amount that goes towards the investigation of tax crimes. It reports the number of AEAT staff which work on tax crimes and other crimes at around 4 800 agents. According to its efficiency index, the AEAT collected between EUR 11.14 and 11.51 euros for every euro spent on tax investigations, including tax crimes, in the years 2015 to 2019.

1859. The below table shows the sources of information that are available to tax crime investigators in Spain.

Table 45.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	No Access
Judicial databases	No Access
Suspicious transaction report databases	Access on Request
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Direct Access
Beneficial ownership register	Access on Request

Training for tax crime investigators

1860. All tax inspectors are required to undergo an 11-month training programme prior to commencing service. Tax crime investigators in Spain also undergo ongoing training at least twice per year, which is carried out by trainers from the tax agency and from other government agencies. Every year AEAT holds trainings for all of its staff in several topics, including a course in tax crimes.

1861. Public prosecutors undergo a 2-year entry course, which includes modules on tax crime offences. Throughout their careers, judges and prosecutors undergo further permanent training on the topic.

Principle 7: Predicate offences

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

1862. **Approach:** Spain adopted an ‘all crimes’ approach to money laundering in 2003, meaning that it is an offence to launder the proceeds of any offence, including tax crimes. Individuals may be charged with money laundering regardless of whether a person has been charged or convicted of the predicate offence or whether the predicate offence took place in a foreign state (*CC arts. 301.1 and 301.4*).

1863. **Enforcement of money laundering predicated on tax crimes:** Spain notes that since tax crimes were included as a predicate offence there has been an increase in the number of tax crime prosecutions and improvements in inter-agency co-operation between financial crime authorities.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1864. Spanish law mandates that civil tax authorities must report any possible criminal offence to the prosecution service (Criminal Procedure Law, art. 262). There is also a specific duty on AEAT civil servants that find evidence of a tax crime to refer the matter to the competent authority so that criminal proceedings can commence.

1865. In practice, where AEAT auditors have sufficient grounds to suspect a tax crime, the case is forwarded to the court or the public prosecutor by the regional heads of AEAT, or where a case has been investigated nationwide, by national divisional directors (art. 197 bis, Royal Decree 1065/2007).

1866. Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1867. The below tables show the models for sharing information related to tax crime and other financial crime in Spain, and the availability of enhanced forms of co-operation. A more detailed analysis of Spain's information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of [the Rome Report](#).

Table 45.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agency responsible for investigating tax crimes	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration		Direct Access & On Request	Direct Access	On Request ^(a)	MSS ^(b)	Direct Access
	Customs administration	Direct Access	Direct Access	I Request ^(a)	MSS ^(c)	Direct Access	
	Police or public prosecutor ^(c)	MSS ^(d)	On Request ^(c)		MSS ^(b)	MSS	
	Financial Intelligence Unit	MSS ^(e)	MSS ^(e)	MSS ^(e)	MSS ^(f)		MSS
	Corruption investigation authority	DSS	DSS	DSS	DSS	DSS	
	Financial regulator	On Request ^(c)	On Request	On Request ^(c)	MSS	MSS ^(b)	MSS

Note:

DSS = discretionary spontaneous sharing / MSS = mandatory spontaneous sharing

(a) Public prosecutors and examining judges may request information for use in the investigation of crimes. Judicial police may obtain information on request where the request has been ordered by a judge or public prosecutor. AEAT cannot provide information directly to the police outside these provisions. In addition, the Criminal Procedure Law establishes an obligation to report suspicions of public crimes immediately to the public prosecutor, competent tribunal or investigating magistrate. This obligation is developed in the General Regulation for Tax Management and Inspection Proceedings, to require tax officials to inform the criminal courts or State Prosecution Service, via the competent authority, of facts uncovered in the course of their activities which could constitute crimes.

- (b) All public officials must report information relevant to money laundering investigations to SEPBLAC. SEPBLAC can request from AEAT any information held in tax databases that might be relevant for their investigations. SEPBLAC also has direct and immediate access to statistical information on movement of capital and overseas financial transactions from the Bank of Spain.
- (c) All public authorities are obligated to provide the AEAT, on request, with information directly or indirectly relevant to the assessment of taxes.
- (d) Examining judges are obliged to share with AEAT investigators information relevant to suspected offences. Spanish police, on the other hand, may only provide information to tax crime investigators on request.
- (e) The AT does not have direct access to Suspicious Transaction Reports held by SEPBLAC. However, under a memorandum of understanding signed in 2006, SEPBLAC must spontaneously inform the AEAT if its analyses suggest that tax crime or other non-compliance exists, which may be used to conduct further investigations and also in the administration and assessment of taxes. This information is sent by telematic means to guarantee speed of the process and confidentiality and integrity of the information transmitted. Reports on tax risk are made available to the AT as soon as they are finalised by SEPBLAC. The AEAT may also request further information on particular taxpayers. Where SEPBLAC has previously sent reports on the same persons to the police or public prosecutor, SEPBLAC will inform the EAAT, so the tax administration may seek information from the recipient of the report. SEPBLAC must also inform the public prosecutor or judicial authority, which has responsibility for directing tax crime investigations in Spain, if it obtains any evidence or indications of criminal offences.
- (f) Public prosecutors, examining judges and the police (with the authorisation of the public prosecutor or examining judge) may also request information held by SEPBLAC, where this will be used for the purposes of preventing or suppressing money laundering or terrorist financing.

Table 45.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Agreements exist between AEAT, SEBLAC and the Social Security Authority.
Disclosure of foreign trusts	N/A
Joint operations and taskforces	Yes, between law enforcement agencies, AEAT and the public prosecution service.
Parallel investigations	Yes
Joint intelligence centres	The Centre of Intelligence against Terrorism and 547uthorize Crime (CITCO) receives and analyses information in the fight against all types of serious organised crime, and designs prevention strategies to tackle these threats. Its members include the customs agency, law enforcement agencies, the Armed Forces and the National Intelligence Centre. SEBLAC, Spain's FIU, is also a joint centre on its own, because apart of the staff from the Bank of Spain, there are units from the National Police, Civil Guard, Tax Agency and Insurance Directorate; Financial Intelligence Committee (<i>Comité de Inteligencia Financiera</i>) and Financial Intelligence Operating Group (<i>Grupo Operativo de Inteligencia Financiera – GOIF</i>)
Secondment547uthorized547nation of staff	AEAT, SEBLAC, and DPP all second and co-locate staff within each other's organisation.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes (<i>General Tax Law</i> , article 250.3). AEAT has a digital system that is in charge of receiving court rulings and referring them to tax auditors for the re-assessment.
Multi-agency training	CITCO conducts multi-agency training for its staff.

Principle 9: International co-operation

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.

1868. **Legal basis:** AEAT may exchange tax information with foreign authorities in relation to tax matters pursuant to bilateral and multilateral agreements. It does not exchange information in the absence of a treaty, unless the other party is a tax administration of the European Union, pursuant to Directive 2011/16/UE. To date, Spain has exchange of information relationships with 100 jurisdictions through bilateral tax treaties and Tax Information Exchange Agreements.³ Spain is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which allows AEAT to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1869. **Competent authorities:** AEAT is the central authority for sending and receiving requests for information under EOI instruments, while the Ministry of Justice is the competent authority for sending and receiving requests related to criminal tax matters pursuant to MLA agreements.

1870. **International co-operation in practice:** Between 2016 and 2018, Spain made 4 292 requests for assistance in tax matters including criminal tax matters under EOI instruments and 1 685 requests for assistance in all kinds of criminal matters from the prosecution under MLA treaties. In the same period, it received 7 204 requests for assistance in tax matters including criminal tax matters under EOI instruments.

Principle 10: Fundamental rights of a suspect or accused person

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

1871. Spain provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are enshrined in several pieces of legislation, most notable by Spanish Constitution of 1978. In Spain, a civil tax matter becomes a criminal tax matter the moment a tax officer or investigator detects a conduct that is defined as a criminal offence.

Table 45.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Comprehensive and periodical threat assessments
- Effective enforcement of tax crimes against legal persons

Room for improvement

- Access to police and judicial databases

Notes

¹ https://www.agenciatributaria.es/static_files/AEAT/Contenidos_Comunes/La_Agencia_Tributaria/Planificacion/PlanEstrategico2020_2023/PlanEstrategico2020.pdf (in Spanish, page 20).

² See Rome Report, Chapter 5 – Country Information – Spain. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

³ See <http://www.eoi-tax.org> for up-to-date figures. <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Memorias/>.

46 Sweden

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1872. Criminal tax offences in Sweden are set out in Tax Offence Act (TOA), with their underlying penalties regulated by the Penal Code (PC). All of these require criminal intent, and are set out in the table below.

Table 46.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Statute of limitations
Tax offence: Intentionally giving incorrect information or failing to provide a tax return thereby creating a risk of tax evasion (s. 2, TOA)	None	Imprisonment for a period of up to two years.	Five years
Minor tax offence (s. 3, TOA)	None	Fine	Two years
Serious tax offence (s. 4, TOA)	Imprisonment for a period of six months	Imprisonment for a period of up to six years	Ten years

1873. Sweden notes that the seriousness of the offence is assessed based on the amounts involved, whether the perpetrator used false or misleading documents and the number of times the offence was committed.

1874. **Statute of limitations:** The limitation period lasts five years from the offence or five years from a decision regarding a tax audit has been made (14 § TOA). The limitation period can be lengthened for five years under certain circumstances for tax offences and serious tax offences (14 a-c §§ TOA). The limitation period can be interrupted if the subject is arrested or indicted.

1875. **Complicity:** Accomplices of tax crimes are criminally liable in Sweden (PC, chapter 23, section 4).

1876. **Attempt and conspiracy:** Chapter 23, Section 4 of the PC sets out accessory liability for those that aid, abet, instigate or otherwise solicit the commission of a criminal offence. Accomplices are judged based on the degree of intent or negligence attributable to them.

1877. **Professional enablers:** Professional enablers are tried under the general rules of complicity and conspiracy but there is also a separate penal regime for their sanctioning (Law of prohibition against legal and economic advice, SFS 1985:354). This means that anyone who provides legal or financial assistance and thereby, through gross negligence, promotes a punishable act, is sentenced for negligent assistance to a fine or imprisonment for a maximum of two years. The law of prohibition against legal and economic

advice is however not applicable if the promotion constitutes complicity to a crime according to the general penal rules on complicity. According to the law of prohibition, prohibition to provide legal or financial assistance may be issued to a person who, when such assistance has been provided, has committed a crime, which is not minor. Prohibitions may be issued for a maximum period of ten years.

1878. **Territorial and nationality jurisdiction:** Sweden has jurisdiction over tax crimes committed wholly or partly in Sweden. It also has jurisdiction over crimes committed abroad, if the effects of the offence occurred in Sweden (PC, Ch. 2).

1879. **Liability of legal persons:** In Sweden, companies cannot be held criminally liable for criminal tax offences. In criminal tax cases involving a legal entity, the natural person that was responsible for the company at the time of the commission of the offence is held criminally liable. Additionally, the company may be ordered to pay a fine, tax surcharge or co-operate fine.

Enforcement of tax crime

Table 46.2. Enforcement of tax crimes in the tax years ending 2015-19

Tax years ending	Reported offences (criminal suspicions and criminal cases)	Investigated offences	Number of completed investigations at the tax agency (approximately) see table below	Number of cases where prosecution was commenced
2015	54 678	27 420	1 109	5 798
2016	52 706	31 728	1 199	4 961
2017	53 784	29 342	1 108	8 020
2018	58 778	29 970	1 210	7 269
2019	58 946	35 673	1 230	16 289

1880. STA and SECA do not have information on the type of sanctions imposed to tax crime offenders.

1881. Availability of tax deductions for civil and criminal sanctions: Sanctions are non-deductible from tax in Sweden.

1882. **Availability of settlements:** Sweden does not allow for settlements in tax crime cases.

1883. **Tax gap:** While Sweden does not measure its total tax gap, it estimates its VAT gap at SEK 10 billion,¹ or 2.2% of the theoretically correct taxes, its excise duty on alcohol at SEK 2.4 billion (14% of the theoretically correct taxes), and its excise duty on tobacco at SEK 200 million (1.4% of the theoretically correct taxes). Using mathematical models, STA and Statistics Sweden have also estimated a tax gap with respect to social security contributions, VAT and corporate income tax at SEK 14.4 billion per year, which corresponds to 3.4% of assessed taxes. For private individuals the income tax gap has been estimated to SEK 10.6 billion, or 1.5% of assessed taxes. Sweden notes that these estimates are partial, as there are several areas that are not included, e.g. taxation of foreign or hidden assets and other activities that leave no trace in companies' accounts or private individuals' tax returns.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1884. In Sweden, responsibility for the strategy to respond to and fight tax crimes lies in the co-operation between the Swedish Tax Agency's Tax Fraud Investigation Unit (STA/TFIU) and the Swedish Economic

Crime Authority (SECA). Generally speaking, STA/TFIU carries out criminal investigations, which are led by prosecutor from SECA. The latter is also responsible for ensuring that all authorities working against financial crimes in Sweden co-operate with each other. STA has been part of a wider national strategy to combat organised crime since 2007. However, in an effort to focus on tax crime specifically, STA has put in place a strategic plan for 2018-20 where the fight against tax crimes features as one of its top objectives. The plan is divided into two parts: the shadow economy and international tax evasion and will be further updated in 2021.

1885. **Threat assessment:** STA uses a risk-based approach in its threat assessment, with the objective to use resources efficiently, targeting areas of high risk. In order to do so, STA has set up an organisational structure whereby different agencies deal with different types of threats; the idea is to identify high-risk areas more easily, creating a ‘common-risk picture’ used to design and then prioritise between the different ‘treatment’ activities. The different areas that STA has identified are tax evasion and other economic crimes (civil side); high-priority risk areas/ threats; intra-Nordic threats and “horizon threats” of future and rising importance.

1886. On the civil side, several agencies (STA/TFIU, Swedish Enforcement Authority, SECA, Social Security Administration, Employment Agency and Swedish Migration Agency) co-operate and develop a common risk picture, including updated risks, once a year. The development of each risk is based on its impact, its extent and its frequency. The data used in this exercise comes from information and analysis from the operations of the different agencies involved, as well as co-operative arrangements with other authorities and quantitative data stored in STA’s data warehouse.

1887. On the criminal side, TFIU deals with high-priority threats, such as attacks on the system of the welfare state, identity-related criminality and labour market-related tax crimes. TFIU carries out its assessment every other year, in consultation with SECA, Swedish Police, Swedish Prosecution Authority (SPA), the Swedish Enforcement Authority (SEA) and Swedish Customs, and it gathers intelligence and information from co-ordinated multi-agency operations.

1888. Finally, the national tax agencies of Denmark, Finland, Norway and Sweden utilise collected information and analysis about national threats to deal with intra-Nordic threats and threats of future and rising importance. This “Nordic Agenda Group 5” is updated every two years and analyses the threats that are of highest strategic importance, including cyber-crime, and white-collar crime.

1889. **Communications Strategy:** While Sweden does not have a formal communications strategy, it provides online information about how to declare and pay the right amount of taxes.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

Table 46.3. Investigative powers of tax crime investigation agency (SECA / STA)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power/Indirect power via another agency SECA has full direct power. TFIU within STA can assist the police when searching a property based on the decision of the prosecutor. TFIU can seize physical evidence after decision of prosecutor, but it cannot resort to coercion.
Obtain documents from third parties	Indirect power via another agency As above
Interview	Full direct power

Inquiry powers (e.g. power of coercion)	Full direct power On behalf of the investigation's prosecutor
Intercept mail and telecommunications	Indirect power via another agency Prosecutors on SECA can order police officers to assist in all kind of cases. TFIU cannot act on its own. The unit has to go through the prosecutor.
Conduct covert surveillance	Full direct power TFIU have the powers to physically conduct surveillance, but not surveillance with remotely controlled cameras.
Conduct undercover operations	Full direct power
Search and seize computer hardware, software and electronic storage media	Full direct power/Indirect power via another agency Same conditions apply as for the seizure of physical evidence (see above)
Arrest	Full direct power SECA has the power to arrest a person. The STA has no arrest powers

1890. **Legal professional privilege:** In Sweden, attorneys can only be heard as witnesses in matters entrusted to them if their client gives consent (Code of Judicial Procedure, Chapter 36).

Principle 4: Freezing, seizing and confiscating assets

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

1891. **Legal basis:** Sweden applies a conviction-based system of asset recovery, where responsibility is shared between STA and SECA.

1892. **Freezing and seizing orders:** Whenever there is a risk that a person or a company will actively avoid paying the due taxes, STA can request a restraining order ("freezing of assets") to an administrative court. The court may decide that there is a risk according to the order and commission the Swedish Enforcement Authority to secure the assets in question. STA may also take property into custody if there is a risk that the property will be sold or given to a third party before court order. In this case, STA must validate its actions through the court within five days. Sweden permits the rapid (between 24 and 48 hours) freezing of assets: SECA can execute it whenever there is a reasonable suspicion of a tax fraud.

1893. **Confiscation orders:** Non-conviction based confiscation are, however, not possible in Sweden, and neither are third-party confiscations. SECA can carry out extended confiscations when the crime is organised and punishable with at least four years imprisonment.

1894. **Foreign freezing, seizure, and confiscation orders:** Sweden applies seizing and confiscating powers in respect of foreign tax investigations and judgements.

1895. **Agency/unit responsible for asset recovery:** In Sweden, the responsibility for freezing/seizing and confiscating assets in criminal tax matters lies with SECA.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1896. The below table provides a high level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of Sweden's organisational models for fighting tax

crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).²

Table 46.4. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Tax Fraud Investigation Unit (TFIU)	Responsible for carrying out criminal investigations, led by a prosecutor, as well as devising preventive measures concerning tax fraud and carrying out intelligence in the field of tax fraud.
Swedish Economic Crime Authority (SECA)	A prosecuting authority divided into teams co-operating with tax fraud investigators; SECA also ensures co-operation between all authorities combating economic crimes in Sweden.
Finanspolisen	Swedish FIU, responsible for combating money laundering and terrorist financing
National Anti-Corruption Unit (NACU)	Responsible for anti-corruption I554uthorizeement
The Commission	Ensuring efficient and sustainable operations for combating serious organised crime
The Operational Council	Prioritising and to decide on the use of action groups and other multi-disciplinary resources
Secretariat of Co-operative Council	Plan and prepare cases, make proposals for decisions, monitor Co-operative Council and the Operational Council meetings
The National Intelligence Centre (NIC)	Strategic function for intelligence analysis and an operational function for intelligence co-ordination
Regional Intelligence Centres (RIC)	Carry out inter-agency intelligence work in the region

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1897. STA/TFIU had around 200 staff working on tax crime investigations in 2015-19. SECA employs around 600 people in 2015-19, including police officers, prosecutors, economic auditors, civil investigators and financial specialists and analysts. Sweden does not calculate a return on investment for tax crime investigations and prosecutions.

Table 46.5. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access and Access on Request
Customs databases	Access on Request
Police databases	Direct Access
Judicial databases	No Access
Suspicious transaction report databases	Access on Request
Domestic bank account databases	No Access
Car registry	Direct Access
Boat registry	N/A

Training for tax crime investigators

1898. All tax fraud investigators working within STA/TFIU are required to complete a basic training course covering a range of topics such as: preliminary investigation, criminal interrogation techniques, etc. This

basic training is carried out every other year. This training, attended upon employment, takes five weeks in total and is carried out over a period of five months, with on-the-job training in between.

Principle 7: Predicate offences

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

1899. **Approach:** Sweden adopted an ‘all crimes’ approach to money laundering in 2014, meaning that it is now an offence to launder the proceeds of any offence. Tax crimes are predicate offence (Act on Penalties for Money Laundering Offences, sections 3-7, The Swedish Tax Offences Act (1971:69). Persons may be charged and convicted of money laundering regardless of whether a person has been charged or convicted of a predicate offence or whether the predicate offence was committed in a foreign jurisdiction.

1900. **Enforcement of money laundering predicated on tax crimes:** Sweden reports that since the introduction of the ‘all crimes’ approach there has been an improvement in inter-agency co-operation between different financial crimes authorities and the number of prosecutions for money laundering predicated on organised tax-crimes has increased.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1901. The civil tax auditors report suspicious crimes to the prosecutor, and the prosecutor decides if a criminal investigation shall start or not. When the prosecutor has decided to start an investigation he/she sends a request to the tax fraud investigation unit at the Tax Agency to assist in the criminal investigation.

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1902. Since 2016 Sweden’s Data Disclosure Act aims to facilitate the exchange of information between government agencies in the field of organised crime. Data disclosure is limited to cases where there is a strong, motivated need for information. Since 1 June 2020, STA’s criminal and civil units must share information regarding suspicions of criminal activity.

Table 46.6. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Au	Tax administration		Direct Access ^(a)	Direct Access ^(b) /DSS ^(c)	On Request ^(d)	MSS	

Customs administration	DSS	DSS		Direct Access	Direct Access	Direct Access ^(e)
Police or public prosecutor	DSS	DSS ^(f)	DSS		Direct Access ^(g)	Direct Access
Financial Intelligence Unit	On Request	DSS ^(f)	DSS ^(f)	MSS ⁽ⁱ⁾		MSS
Corruption investigation authority	MSS	MSS	MSS	Direct Access	MSS	
Financial regulator	DSS	DSS	DSS	MSS ^(k)	DSS	MSS ^(k)

Note:

MSS = Mandatory Spontaneous Sharing / DSS = Discretionary Spontaneous Sharing

(a) Since 1 June 2020, legislation established an obligation to share information between the civil and criminal side of STA.

(b) Since 1 January 2013 the customs administration has had direct access to the Excise Movement and Control System, which is held by the tax administration and contains information on movements of goods such as tobacco, ethyl alcohol, spirits and energy products. Other information may be obtained on request. Information covered by tax secrecy may only be shared where permitted by the Secrecy Act or other legislation.

(c) The tax administration may provide information that is required in a preliminary investigation. It may also provide information requested by the intelligence unit, so long as conditions are met. Suspicions of criminal activity must be reported to the public prosecutor, the Swedish Tax Agency is legally obliged to report suspicion of bribery to the public prosecutor. National legislation against money laundering and terrorism financing focuses on the sphere of private trade and business, where far-reaching obligations have been introduced. Notwithstanding an extensive tax secrecy legislation the Tax Agency may report suspicion of serious crimes, regardless of the character of the predicate offence

(d) To obtain information from the tax administration, the FIU must demonstrate the specific facts and circumstances which may be confirmed by the information requested.

(e) Direct access to information has been available since July 2017.

(f) Information may be provided to the TFIU Intelligence unit on request and spontaneously

(g) The FIU is part of the National Criminal Intelligence Service, which is a division of the National Police Board, and has direct access to police information.

(h) The FIU is able to provide information spontaneously or on request, to the extent this is permitted under the Secrecy Act.

(i) Information concerning suspected money laundering or any predicate offence is provided to the appropriate police or law enforcement authority. In ongoing investigations directed by a prosecutor, the prosecutor may also request information.

(j) Finansinspektionen has an obligation to report suspicions of certain offences, such as insider dealing, to the public prosecutor. Other relevant information may be provided to the police or prosecution at the regulator's discretion.

Table 46.7. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Data Disclosure Act 556 authorize facilitate the exchange of information between authorities that co-operate to prevent or detect certain organised crime. The Swedish tax administration has wide collaboration with a number of authorities and organisations
Disclosure of foreign trusts	Yes.
Joint operations and taskforces	Taskforces will work nationally and flexible and almost exclusively in action decided by the Operating Council
Parallel investigations	The tax investigation often continues after a crime has been reported to the police/prosecutor.
Joint intelligence centres	The National Intelligence Centre (NIC) and Regional Intelligence Centres (RIC)
Secondments and co-location of staff	Yes, between STA and the Police and the National Intelligence Centre.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Yes.
Multi-agency training	Yes.

Principle 9: International co-operation

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.

1903. **Legal basis:** The Swedish Tax Authority may exchange information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. To date, Sweden has exchange of information relationships with 127 jurisdictions, through 82 bilateral tax treaties and 47 Tax Information Exchange Agreements.

1904. **International co-operation in practice:** While STA/TFIU cannot itself exchange sensitive intelligence with foreign agencies responsible for tax-crime investigations at the pre-investigations stage.

1905. **Enhanced form of international co-operation:** Sweden allows the execution of foreign asset recovery orders (Law on the Recognition of European Union Freezing Orders and Law on International Legal Assistance in Criminal Matters), and this has happened in practice in several occasions.

Principle 10: Fundamental rights of a suspect or accused person

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

1906. Sweden provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by international human rights treaties ratified by Sweden, and by the Swedish Constitution.

Table 46.8. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	In Swedish law, there is no obligation in the administrative procedure for the tax agency to inform the taxpayer of his rights. If it can be assumed that the taxpayer may be subject to a tax surcharge or have committed a crime, there is a prohibition of using a directive on penalty of fine. Information of rights is given during the criminal investigation.
remain silent	Yes	Information on rights to remain silent is given at the same time as suspicious information during the criminal investigation
access and consult a lawyer and/or entitlement to free legal advice	Yes	At the same time as information of Suspicion is given.
interpretation and translation	Yes	At the same time as information of suspicion is given.
be advised of the particulars of what one is accused of	Yes	
access documents and case material, also known as a right to full disclosure	Yes	The suspect has the right to all documents but only after the prosecutor has finalized the investigation.
a speedy trial	Yes	Only when the suspect is in detention. If the suspect is in detention the court is obliged to set out the case to the main trial within one week.
protection from ne bis in idem (Double Jeopardy)	Yes	

Highlights

Successful practices

- Robust legal framework of investigative powers
- Strong inter-agency co-ordination

Room for improvement:

- The criminal investigation unit at the Swedish Tax Agency would like to be included in the council framework decision 2006/960/JHA – on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.
- STA is currently looking at what opportunities it has to be a competent law enforcement authority under the framework decision 2006/960/JHA.
- STA would like to have own preliminary investigation leader (for simpler investigations). Today all investigation regarding economic crimes are lead by prosecutor.

Notes

¹ In April 2021, EUR 1 = SEK 10.11.

² See Rome Report, Chapter 5 – Country Information – Sweden. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

47 Switzerland

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1907. Tax crimes in Switzerland are set out in various pieces of legislation, including the Federal Direct Tax Act, the Federal Act on Value Added Tax, the Federal Act on Stamp Duties, the Federal Act on the Harmonisation of Cantonal and Communal Direct Taxes and the Federal Administrative Criminal Code. These require criminal intent (*mens rea*). Strict liability offences do not apply to tax or financial crimes in Switzerland. Examples of Swiss tax crime offences are set out in the table below.

Table 47.1. Tax offences requiring criminal intent

Offence	Minimum Sanction	Maximum Sanction
All taxes: Intentional or negligent failure to carry out procedural duties (FDTA, 174; FAHDT, 55; FAAT, 47; FAVAT, 98)	N/A	Fine of CHF 1 000 / CHF 10 000
Direct tax / anticipatory tax: Intentionally or negligently causing the tax authority to issue an incomplete assessment or no assessment (FDTA, 175; FAHDT, 56; FAAT, 61)	Fine of 33% of the evaded tax (22% for attempt)	Fine of 300% of the tax evaded (200% for attempt).
VAT: Intentionally or negligently reducing the tax claim to the detriment of the state (FAVAT, 96 and 97)	N/A	Fines of CHF 200 000 / 400 000 / 800 000 or up to twice the amount of the tax advantage (if higher than these limits)
Direct taxes: intentional use of a false certificate in order to commit a tax evasion, use of tax deducted at source for the benefit of a third party	N/A	CHF 1 080 000 fine or three years' imprisonment.
Tax fraud indirect taxes: intentionally misleading the tax authority in order to (a) unduly get a reimbursement (i.e. obtaining undue input VAT or refund of anticipatory tax, FACC, Art. 14(1)) or (b) deny the state taxes at a considerable* extent (FACC, Art. 14(2))	N/A	(a) Three years' imprisonment or a fine up to CHF 1 080 000** (b) One year's imprisonment or a fine up to CHF 1 080 000***
Felony indirect taxes: Qualified taxes and duties fraud (committed as part of a conspiracy and involving a substantial advantage or substantial damage) (FACC, Art. 14(4)).	N/A	Fine of up to CHF 1 080 000*** and/or five years' imprisonment.

Note:

In April 2021, EUR 1 = CHF 1.10.

* According to the Swiss Supreme Court, in relation to VAT, CHF 15 000 is considered a large amount.

** May reach up to 300% of the tax evaded, if higher than CHF 1 080 000.

*** May reach up to 300% of the tax evaded, if higher than CHF 1 080 000.

Note on abbreviations:

FAAT: Federal Act on Anticipatory Tax

FACC: Federal Administrative Criminal Code

FAHDT: Federal Act on the Harmonisation of Cantonal Direct Taxes

FAVAT: Federal Act on Value Added Tax

FADT: Federal Act on Direct Taxes

1908. **Statute of limitations:** The limitation period for tax crimes in Switzerland varies in length relative to the seriousness of the crime. For example, income tax filing infringements have a three-year limitation period from the moment the tax return is filed. Intentional or negligent non-taxation or incomplete taxation carries an accessory ten-year limitation period from the end of the relevant tax year (six years for attempt), whereas more serious offences have a 15-year limitation period which begins at the moment the last criminal act was committed.

1909. **Complicity:** In Switzerland, complicity to commit a tax crime is punishable by a maximum fine of CHF 10 000 (or CHF 50 000 in severe or repeat cases) for direct taxes, and it also includes a joint obligation to repay the evaded taxes. For indirect taxes, the Swiss penal code applies. According to these provisions, the penalty for complicity is reduced compared to the punishment of the perpetrator.

1910. **Attempt and conspiracy:** Attempt and conspire to commit a tax crime are punishable as criminal offences in Switzerland.

1911. **Professional enablers:** Switzerland does not have a separate penalty regime for professional enablers. These are prosecuted as perpetrators, co-perpetrators or abettors.

1912. **Territorial and nationality jurisdiction:** Switzerland's jurisdiction covers all tax offences where the effect of the alleged offence occurs wholly or partly in Switzerland. The connecting factor is a tax liability (fully or partially) in Switzerland. Thus, Switzerland's jurisdiction applies for offences against Swiss tax law regardless of the actual domicile of the author or abettor.

1913. **Liability of legal persons:** Under Swiss law, legal persons are only liable for evasion of profit tax and – for cantonal and communal taxes – the capital tax (FAHDT, 29). The sanctions are the same as those that apply to individuals, being a minimum fine of 33% of the evaded taxes and a maximum fine of 300% of the amount of taxes evaded. Under some circumstances, legal persons may be sentenced not to have committed the offence, but to pay fines of up to CHF 5 000 regarding anticipatory tax or CHF 100 000 for VAT respectively. The definition of a “legal person” in Switzerland includes corporations (public limited companies, limited partnerships, and limited liability companies), foundations, associations and investment companies (FDTA, 49; FAHDT, 20).

Enforcement of tax crime

Table 47.2. Enforcement of tax crimes in Switzerland in tax years ending 2017-19

Tax years ending	Number of investigations opened in severe cases (FTA, direct taxes)	Amount of fines imposed and tax recovered following such investigations (direct taxes, CHF millions)	Number of criminal tax proceedings concluded by cantonal tax authorities (direct taxes)	Number of new tax evasion proceedings commenced re anticipatory tax (FTA)	Number of closed criminal investigations (FTA, VAT)
2017	22	268.7	7 929	323	134

2018	16	24.8	6 943	315	112
2019	14	221.6	8 980	873	53

1914. While Switzerland does not maintain statistics on the number of prison sentences imposed in tax crime cases, it notes that first time tax offenders usually receive a conditional custodial sentence.

1915. **Availability of settlements:** Settlements are not allowed for the penal qualification and the sanction. On the other hand, the authority can agree on the relevant facts if the results of the investigation show that some or other facts can be appreciated differently. Such discretion is allowed. The result may lead to a different taxable basis and/or a different amount of the financial sanction (cf. tab 1, interdependency between fine and the direct tax evaded).

1916. **Availability of tax deductions for civil and criminal sanctions:** Sanctions are non-deductible from tax in Switzerland (FDTA, 59.1.a; FAHDT 25.1.a.). However, due tax that is recovered through criminal confiscation is deductible for fiscal purposes in commercial activities.

1917. **Tax gap:** The Swiss federal tax authority does not estimate the dark figure of tax evasion.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

1918. The Federal Tax Administration of Switzerland (FTA) and the Conference (Association) of Swiss Tax Administrations jointly lead Switzerland's tax crime strategy for direct taxes and anticipatory tax. The strategy aims to ensure the equal application of federal tax law in all cantons, in both administrative and penal procedures, through the development of the tax administration's practices, exchange of best practices between federal and cantonal authorities, and enhancing the co-operation between federal and cantonal prosecutors. The strategy is not formalised, but rules as a guideline the activities of FTA and CTA. As an example, public seminars to raise taxpayers and tax consultants' awareness of the risks and consequences of falling foul of Swiss tax laws are strongly supported by experts of Swiss tax administrations.¹ In regards to VAT, the AFC follow a non-formalised strategy. Different working groups and in-house seminars serve as platforms to align the work on that common basis. Finally, the federal tax administration and the federal customs administration adhere in the limits of the legislation to the "Countering Organised Crime (COC) concept", a method established by the federal police to follow a holistic approach in combating crimes.

1919. **Threat assessment:** The working groups and the exchange within the COC-concept allow to identify actual threats.

1920. **Communications strategy:** The federal tax authority as well as cantonal tax authorities inform actively about new duties to raise awareness. In parallel, the tax authorities constantly work on facilitations for the taxpayers to comply with their duties. The results of criminal tax investigations are regularly published in figures on a non-name basis.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

Table 47.3. Investigative powers of Cantonal Tax Authorities

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power to seize evidence / No power to house searches
Obtain documents from third parties	Full direct power Except from banking institutions, where prosecutor order is required
Interrogation	Full direct power
Inquiry powers (e.g. power of coercion)	No power
Intercept mail and telecommunications	No power
Conduct covert surveillance	No power
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power to seize evidence / no power to search houses
Arrest	No power

Table 47.4. Investigative powers of the Federal Tax (FTA) and Customs (CTA) Authorities

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power to house searches and seizures
Obtain documents from third parties	Full direct power
Interrogation	Full direct power
Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	No power
Conduct covert surveillance	FTA: No power FCA: direct power
Conduct undercover operations	No power
Search and seize computer hardware, software and electronic storage media	Full direct power to house searches and seizure
Arrest	FTA: Indirect power FCA: direct power

1921. **Legal professional privilege:** In Switzerland, legal professional privilege comprises all communications between client and attorney related to providing legal advice. Attorneys cannot be obliged to disclose such communications. The privilege is limited to attorneys-at-law registered with a cantonal Bar council (art. 46 (3) Federal Administrative Criminal Law), but it does not apply to attorneys-at-law accused in the same context.

Principle 4: Freezing, seizing and confiscating assets

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

1922. **Legal basis:** FTA's Division of Penal Affairs and Investigation (DPAI) and its VAT criminal Service so as the Customs Investigation of the FCA have direct power to seize and confiscate assets in criminal

tax matters that fall within their mandate. These direct decisions may be appealed to the federal penal courts of Switzerland.

1923. **Freezing and seizing orders:** Seizure of assets by FCA and FTA has two purposes: (i) inhibiting the suspects to dispose of the proceeds of the illicit acts, and (ii) covering the damage to the public caused by the tax crime. Thus, seizure is only possible up to the amount of the illicit profit (i.e. the tax evaded), but not to cover the monetary fines. If the investment of the illicit outcome to the assets (accounts, real estate, other) can be traced, the respective assets are confiscated. If this track is not proved, the seized assets are realized as a substitutional claim. The seizure is regularly accompanied by authority's order to freeze the respective assets, addressed to the financial institution concerned.

1924. By late 2019, FTA has assets of a total value of ca. CHF 506.6 million under seizure in connection with criminal tax matters in direct taxes and anticipatory tax. Figures for the total amount of assets confiscated in connection with tax crimes are not available.

1925. **Confiscation orders:** Under Swiss law, confiscation (i.e. forfeiture) of property related to tax crimes is conviction based, meaning that property cannot be forfeited to the state without a conviction. Switzerland allows extended confiscations in the sense that where specific assets cannot be located for confiscation, assets amounting to the same monetary value may be confiscated instead. Authorities may also confiscate assets from third parties, where they can prove a link between the proceeds of the crime and the assets they propose to seize, provided the third party did not acquire the assets in good faith.

1926. **Foreign freezing, seizure, and confiscation orders:** Under the Federal Act on International Mutual Assistance in Criminal Matters,² the authorities competent to fiscal criminal procedures may request foreign states to seize and confiscate assets located in that state, provided this is in line with Switzerland's bilateral and multilateral treaties on mutual legal assistance. FTA and FCA apply such requests.

1927. **Agency/unit responsible for asset recovery:** The FCA and FTA are the two responsible units for asset recovery in Switzerland.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1928. In Switzerland, the investigation of tax crimes is the responsibility of the Federal Tax Authority (FTA), the Cantonal Tax Administrations (CTA) and the Federal Customs Authority (FCA).

1929. CTAs are responsible for assessing and collecting federal and cantonal direct taxes; conducting tax audits of enterprises; and conducting investigations into and reaching decisions on minor cases of evasion of direct taxes. As tax fraud on direct taxes is a separate offence, its prosecution is an exclusive competence of the cantonal prosecutors.

1930. FTA, on the other hand, is responsible for monitoring self-assessed indirect taxes (esp. VAT and withholding taxes) and supervising CTAs' administration of federal direct taxes. Within FTA, a separate and specialised unit, DPAI, is responsible for conducting investigations and reaching decisions regarding the evasion of withholding taxes and stamp duties. DPAI is also responsible for investigations into serious cases of evasion of direct taxes, though in such cases, the sentences are pronounced by CTAs. Within the FTA, the VAT criminal Service is in charge of every investigations and other related activities regarding VAT, releases the decisions and represents the cases in court. The agents of FTA act with competencies of prosecutors. Thus, no cantonal or federal prosecutors are involved in these penal procedures.

1931. The FCA is the competent federal authority for the collection of VAT and other excise duties on the import of goods. It is also responsible for the investigation and criminal prosecution of offences. Within the FCA, the Customs Investigation Department is a criminal prosecution unit that investigates offences against all import and consumption taxes. The FCA also represents criminal cases in court. The agents of FCA act with competencies of prosecutors. Thus, no cantonal or federal prosecutors are involved in these penal procedures.

1932. The Cantonal Police is responsible for the investigation of general financial crime and the Federal Police investigates cases of money laundering, organised crime, terrorist financing, and other crimes that have a transnational element or take place across several cantons. The OAG prosecutes these cases. No police force has competence to investigate tax crimes except from tax fraud regarding direct taxes. All other tax crimes are at the sole mandate of FTA, CTAs and FCA.

1933. The below table provides a high-level overview of the agencies responsible for combatting financial crimes. A more comprehensive analysis of Switzerland's organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).³

Table 47.5. Agencies and other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Federal Tax Administration	Investigates and renders judgments on every time of crime regarding indirect taxes, and investigates serious cases of evasion of direct taxes
Federal Customs Agency	Investigates and renders judgments on crimes regarding import VAT
Cantonal Tax Administrations	Investigates all tax offences (direct taxes) that are not competence of the FTA. Renders judgments on every offence related to direct tax law.
Cantonal Police	Investigates general financial crimes
Federal Police	Investigates cross-border financial crimes (e.g. money laundering)
Office of the Federal Attorney General	Prosecutes criminal acts against the Swiss Confederation, organised crime, financing of terrorism and financial crimes (esp. serious cross border crimes). Prosecutes in particular cases of corruption of a federal public official and cases of transnational corruption.
Cantonal Prosecution Authorities	Prosecute most categories of crime, including tax fraud re direct taxes, but not evasion of direct tax.
Money Laundering Report Office (MROS)	Switzerland's FIU, MROS collects, analyses and disseminates financial intelligence relating to suspicious transactions/activities, money laundering, predicate offences, and terrorism financing. MROS is an administrative body within the Federal Police.
Financial Markets Supervisory Authority (FINMA)	Supervises financial institutions for AML/CFT compliance.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1934. As outlined earlier, DPAI is a specific unit within AFC dedicated to tax crime investigations, as the VAT criminal Service for domestic VAT cases and Customs Investigation of FCA is for import VAT. DPAI's budget is allocated on an annual basis. Its budget funds 23 employees (22.6 FTE). DPAI's budget is not performance-based, and investigators do not have financial performance targets, but investigators aim to complete investigations within at maximum 3.5 years. VAT criminal Service follows the same conditions, whereas its budget funds 10 employees (9.8 FTE) and the FAVAT sets a 5 years limit to get a first decision.

1935. A budget is also allocated to the Customs Investigation unit at FCA. It funds around 150 specially trained staff members. The cantons dedicate a budget specifically focused to tax crime investigations if the respective units have a certain size. Otherwise, the HR budgets cover the whole tax administration or the total staff of prosecutors.

1936. Switzerland estimates a return on investment in tax crime investigations of 20 times the total costs of its tax investigations staff.

Table 47.6. Data bases and sources of information available to tax crime investigators

	Access^(a)
Company formation/ ownership registry	Direct Access ^(b)
Land Registry	Access on Request
Registry of citizens	Access on Request
Tax databases	Direct Access
Customs databases	Direct (FCA) / Request (FTA,CTA)
Police databases	Direct Access (FCA), no (FTA,CTA) ^(c)
Judicial databases	No Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Access on Request
Car registry	Direct (FCA) / Request (FTA,CTA)
Boat registry	Direct (FCA) /Request (FTA,CTA)

Note:

(a) Access depends on the agency

(b) Direct access presumes that investigators can also request information from these databases

(c) Access to prosecutors in procedures under the competency.

Training for tax crime investigators

1937. Switzerland offers a suite of training for tax crime investigators, ranging from basic to advanced, depending on the topic and participants. Topics covered include tax law, penal law, penal procedure, money laundering, corruption, IT forensic, house searches, interrogation, and technologies. FTA investigators participate in one to five training sessions per year, which range in length from one hour to two-day seminars. Cantonal and federal prosecutors are informed on a case-by-case basis on actual challenges regarding tax crimes in order to raise their awareness.

Principle 7: Predicate offences

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

1938. **Approach:** Switzerland introduced the crime of gang-related smuggling as a predicate offence to money laundering in 2009. This offence covered VAT on imports. In 2016, Switzerland extended this offence to cover all indirect taxes. It also introduced tax crimes as a predicate offence to money laundering in the field of direct taxes. These offences are listed as: (i) “qualified tax fraud” (FACC, art. 14.4), which must have been committed repeatedly or as part of a conspiracy and with a result of substantial damage to the state budget; and (ii) “aggravated tax misdemeanour” (Criminal Code, art. 305^{bis}, 1^{bis}), referring to evasion of direct taxes through the use of false/falsified documents amounting to more than CHF 300 000 per tax year.

1939. **Enforcement of money laundering predicated on tax crimes:** As the predicate crime provision on direct taxation has only recently entered into force, Switzerland does not yet have any comments to provide on its impact.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

1940. Offences against Federal Administrative Law have to be reported to the competent administrative authority or to the police (art. 19 FACC). In addition, since 1 January 2011, Swiss federal law obliges all federal civil servants, including tax officials, to report to the public prosecutor suspicions of all misdemeanours or felonies, which they become aware of in the course of their professional activity. FTA has nominated two of its units to assist tax officials in complying with this obligation and reporting crimes. For cantonal civil servants, the respective cantonal law provide for similar reporting obligations. In addition, officials working with FTA and CTAs who are responsible for administering and assessing taxes are required to share with their agencies' criminal investigators, any information that is required for the purposes of investigating a tax crime (art. 111 FDTA, art. 39 FAHDT).

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

1941. The below tables set out the information sharing gateways that Switzerland has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of Switzerland's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of [the Rome Report](#).

Table 47.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing information	Tax administration	MSS ^(a)	MSS ^(b)	MSS	MSS ^(c)	On request ^(d)	MSS
	Customs administration	MSS	MSS		MSS	Sharing prohibited ^(e)	MSS
	Police or public prosecutor	MSS ^(f)	MSS	MSS		Direct Access ^(g)	Direct Access
	Financial Intelligence Unit	Sharing prohibited ^(h)	DSS	Sharing prohibited	MSS		DSS

Corruption investigation authority	MSS	MSS	MSS	Direct Access	MSS	
Financial regulator	DSS ⁽ⁱ⁾	MSS	On Request	MSS	MSS	MSS

Note:

DSS = Discretionary spontaneous sharing. Able to provide information on request and spontaneously with discretion. This means that the agency is in a position to provide information on request and that furthermore there are legal gateways in place that allow, but do not require the agency to provide information spontaneously to another agency.

MSS = Mandatory spontaneous sharing. Able to provide information, on request and spontaneously without discretion. This means that the agency is in a position to provide information upon request and that not only it is able, but it is also required by law to report information to another agency

(l) Between federal and cantonal tax authorities

(b) Any information that is required for the investigation of a tax offence

(c) Any information of which the tax administration becomes aware in the course of performing its functions that may relate to a misdemeanor or felony(l) In order to obtain tax information, MROS must justify the request by indicated which facts it aims to confirm through it.

(e) MROS prohibited from sharing information with the Customs Administration.

(f) The police must provide AFC and CTAs with any information they obtain that may be useful in the administration and assessment of taxes.

(g) MROS has direct 567 authorized certain police databases. Other information is provided spontaneously where it is relevant to MROS's work.

(h) MROS not authorised to share information with AFC and CTAs.

(i) FINMA will provide on request all information needed for the execution of tax laws.

Table 47.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	Where the OAG and FTA conduct investigations on the same matter, procedures are implemented to enable the exchange of documents through mutual legal assistance as well as regular meetings between the two agencies.
Disclosure of foreign trusts	no specific mechanism
Joint operations and taskforces	Different agencies can agree in specific cases to conduct joint operations (e.g. house searches)
Parallel investigations	Agencies can agree to conduct specific operations in parallel if needed
Joint intelligence centres	No such centres as formalised institutions
Secondments and co-location of staff	Possible on a case-by-case basis, especially to deepen specific knowledge
Ability to review tax affairs of persons sanctioned for other serious financial crimes	In case of suspicion to non-declared income / wealth, criminal authorities are entitled to report to the competent tax authorities in order to review the tax situation and to proceed on the civil (taxation) as on the penal (tax investigation) way
Multi-agency training	In specific areas, agencies team up for joint training

Principle 9: International co-operation

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.

1942. **Legal basis:** Federal and cantonal tax authorities may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements. The procedures are governed by the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) and for VAT purposes by the Anti-fraud Agreement.⁴ The international mutual assistance in criminal matters is limited to tax fraud. Furthermore, Switzerland has bilateral tax treaties with more than 100 jurisdictions (65 treaties include a provision for the exchange of information on request in accordance with the OECD Model Convention, 58 already entered into force) and 10 Tax Information Exchange Agreements. Switzerland endeavours to further expand the network of agreements.⁵ It is also a party to

the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCAA)⁶ which allows federal and cantonal tax authorities to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. With regard to automatic exchange of information, Switzerland exchanges information with 97 partners.⁷

1943. **International co-operation in practice:** The international mutual legal assistance unit⁸ within Federal Office of Justice is the central authority for MLA requests in Switzerland. According to the specific bilateral agreement, requests can directly be addressed to the competent prosecution authority.

1944. From 2015 onwards, Switzerland requested the assistance in criminal matters of 31 jurisdictions pursuant to MLA treaties and under TIEAs. All the requests were answered in a timely manner. The number of such requests vary from year to year, reaching between five and ten per year. Switzerland does not maintain statistics on the number of such requests received.

Principle 10: Fundamental rights of a suspect or accused person

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

1945. Switzerland provides persons accused or suspected of having committed a crime, including all tax crimes, with a full range of procedural and fundamental rights. The *Swiss Constitution* and the *European Convention on Human Rights* affirm these fundamental rights.

1946. An important mean to grant suspects' rights is the requirement that civil tax audits are run independently of criminal investigations. For this reason, administrative procedures are usually suspended the moment a suspicion of a tax crime arises and a criminal case is opened. Thus, the results of the criminal procedure can fully be used for civil tax purposes. Usually the civil procedure is resumed before the criminal procedure passed through all appellations.

Table 47.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	From first contact with the accused
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Very high return-on-investment in tax crime investigations
- Strong inter-agency co-operation between cantonal and federal agencies and between federal investigation authorities

Room for improvement

- Formalisation of the tax crime strategy and communications strategy

Notes

¹ For example, yearly “conference on penal tax law”: https://www.cosmosverlag.ch/business/veranstaltungen/steuerstrafrechtstagung.html?store=fr&from_store=fr.

² Mutual Assistance Act, IMAC, SR 351.1: <https://www.admin.ch/opc/en/classified-compilation/19810037/index.html>.

³ See Rome Report, Chapter 5 – Country Information – Switzerland. Available at www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf.

⁴ The anti-fraud agreement is the last agreement of the second series of bilateral negotiations between Switzerland and EU-member states: <https://www.efd.admin.ch/efd/en/home/themen/steuern/steuern-international/anti-fraud-agreement/fb-betrugsbekaempfungsabkommen.html>.

⁵ <https://www.sif.admin.ch/sif/en/home/bilateral/steuerabkommen/doppelbesteuerungsabkommen.html> (status: February 2020).

⁶ SR 0.653.242.3 <https://www.admin.ch/opc/fr/classified-compilation/20173086/index.html>.

⁷ https://www.sif.admin.ch/sif/fr/home/multilateral/steuer_informationsaust/automatischer-informationsaustausch/automatischer-informationsaustausch1.html (status: February 2020).

⁸ <https://www.bj.admin.ch/bj/en/home/sicherheit/rechtshilfe.html>.

48 Türkiye (NEW)

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Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime, and penalised accordingly.

Tax crime legislation

1947. Tax crimes in Türkiye are defined in article 359 of the Tax Procedure Code. These require criminal intent (*mens rea*) and apply to both income tax and VAT/GST. Examples of tax crime offences in Türkiye, together with their minimum and maximum sanctions, are listed in the table below.

Table 48.1. Tax offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction
Committing calculation and accounting fraud in books and records or opening accounts in the name of unreal people or persons who are not related to the transaction, or falsifying or hide books, records, or documents to mislead the tax administration.	18 months of imprisonment	Five years of imprisonment
Destroying books, records, and documents.	Three years of imprisonment	Eight years of imprisonment
Printing and using fake invoices or receipts, tearing off or replacing pages of a tax books, or falsifying documents.	Two years of imprisonment	Eight years of imprisonment

1948. Türkiye also notes that it may impose administrative penalties apart from the criminal sanctions.

1949. **Statute of limitations:** Tax crime offences have a limitation period of 15 years in Türkiye (article 66(d) of the Türkiye Penal Code). The limitation period starts on the date of the commission of the offences.

1950. The limitation period is suspended in cases where for conducting a criminal investigation, an authorisation or decision is required from another agency, and until that decision or authorisation is granted. Where a court decides that the suspect is a fugitive, the limitation period is also suspended until that court decision is revoked (article 77 of the Türkiye Penal Code).

1951. **Complicity:** Article 360 of the Tax Procedure Law regulates the complicity in the commitment of tax crimes under the title of reduction of penalties. This article indicates that “[i]n case joint offenders who participate in committing the offences mentioned in article 359 have no interest and no intent towards committing such offences, their penalties to be imposed according to the provisions of the Turkish Criminal Code on participating in an offence are reduced by one half”.

1952. **Professional enablers:** The provisions of the Criminal Code of Türkiye on participating in an offence (see para. 5) cover all professional enablers including tax advisors, lawyers, accountants, financial

institutions, and other intermediaries. There is no profession-specific penal regime that applies to those who participate in the acts (tax evasion offences) specified in Article 359 of the Tax Procedure Law.

1953. **Liability of legal persons:** In Türkiye, legal entities cannot be held criminally liable for tax crimes. Criminal sanctions such as imprisonment shall be imposed by the individual who committed the crime on behalf of the legal person. Administrative (monetary) tax penalties (i.e. irregularity, special irregularity, tax loss penalty) may be imposed onto legal entities.

Enforcement of tax crimes

1954. **Availability of tax deductions for civil and criminal sanctions:** Türkiye's Tax Procedure Law No. 213 allows a deduction of 50 percent on imposed penalties if the person guarantees to make the payment of the tax difference assessed within three months beginning from the end of the due date. In cases where a reconciliation agreement is concluded and the tax or tax difference agreed upon and 75 percent of the tax penalty is paid within the set timeframes, the tax penalty will be reduced by 25 percent.

1955. The table below shows the enforcement of tax crimes in tax years ending 2018-21 in Türkiye.

Table 48.2. Enforcement of tax crimes in tax years ending 2018-21

Tax year ending	Total number of criminal investigations*
2018	14 144
2019	15 019
2020	15 173
2021	18 837

*Note: Table shows number of taxpayers inspected for tax crimes by the Tax Inspection Board (TIB) in the context of TPL Article 359. As it is indicated by article 367 of TPL, tax inspectors who detect that a tax crime has been committed during their examination, must report the crime directly to the Chief Public Prosecutor's Office for judicial review. The numbers of enforcement for tax crimes becomes definite after the judicial review process.

1956. The total amount of underlying tax evaded in Türkiye during the period 2015-21 is set out in the table below.

Table 48.3. Total amount of underlying tax evaded in Türkiye during the period 2015-21 (in TRY)*

	2015	2016	2017	2018	2019	2021	2021
Total amount of underlying tax evaded	1 664 105 863	1 479 267 016	1 743 804 323	8 756 964 653	7 506 566 104	13 905 681 853	12 692 600 832

* In May 2023, EUR 1 = TRY 21.35 (Turkish liras)

1957. The total amount of fines imposed for tax crimes in Türkiye during the period 2015-21 is set out in the table below.

Table 48.4. Total amount of fines imposed for tax crimes in Türkiye during the period 2015-21 (TRY)

	2020	2021
	2 2 2 2 2	
	0 0 0 0 0	
	1 1 1 1 1	
	5 6 7 8 9	

Total amount of fines imposed for tax crimes	2	1	2	4	7	7 399 730 513	16 236 643 607
	4	9	6	6	0		
	8	2	8	2	2		
	3	9	4	3	9		
	9	1	1	6	0		
	2	9	2	2	6		
	4	4	3	8	1		
	9	2	6	8	1		
	9	7	6	8	9		
	2	9	5	6	4		

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

1958. **Tax crime strategy:** Efforts to combat tax crime are carried out through the collaboration of various governmental agencies, the Financial Crimes Investigation Board (MASAK), the Tax Inspection Board (VDK), The Department of Anti-Smuggling and Organised Crime (within the Ministry of Interior) and Turkish Revenue Administration (TRA). These agencies work together to investigate suspicious tax-related activities, prosecute offenders, and implement measures to enhance tax compliance and transparency in the country. The Tax Inspection Board (TIB) conducts intelligence work through risk analysis to identify risk taxpayers by analysing the informal economy and assessing economic sectors with intense tax evasion in order to ensure efficient and effective auditing. These practices in parallel with obligations imposed on taxpayers to prevent informality, such as the use of e-books (General Journal, General Ledger, Inventory Book), e-invoices and e-audits have improved the examinations not only in quantity but also in quality.

1959. In addition, the Turkish Revenue Administration carries out field activities for the prevention of tax loss and evasion. If a tax crime is detected during such field audits, necessary checks and protocol documents are issued and the case is shared with other relevant institutions to conduct a tax audit.

1960. Furthermore, the Financial Crimes Investigation Board (within the Ministry of Treasury and Finance) performs the following functions: research and sectoral study on developments in laundering of crime-sourced income and methods for prevention and detection of money laundering; development of measures; data collection and analysis; delivery of data and research results to the related officials. The Tax Inspection Board performs research on the methods of detection and prevention of tax evasion and developments in the field of tax evasion.

1961. The Department of Anti-Smuggling and Organised Crime (within the Ministry of Interior) performs activities on measures for the detection of criminal organisations in co-operation with the related institutions in order to protect the rights of citizens. A special work team is set up for forged document issuance organisations, where tax frauds are large in number, and the acts of using false invoices arising from them, and the police and judicial authorities carry out a coordinated work. At the same time, joint studies are conducted with the Turkish Revenue Administration in order to identify and examine forged document issuing organisations. Efforts are continuing to provide third-party data and ensure data diversity.

1962. **Threat assessment:** Türkiye conducts a thorough threat assessment for tax audits by making use of the Future Risk Analysis System of its tax administration. Regular updates are made regarding the changing taxpayer behaviour.

1963. With the help of knowledge gained as a result of previous tax audits and information from research about economic sectors, specialised tax inspectors prepare several scenarios for various tax evasion situations. Then these scenarios are implemented to a special software application and risky taxpayers are filtered according to their liability information, written statement and other data obtained from the Turkish Revenue Administration.

1964. Furthermore, in relation to the threat assessment, the Turkish Revenue Administration notes that analyses are carried out to detect taxpayers who have a high risk of issuing fake documents. The methodology consists of identifying the taxpayers who bare the pre-defined criteria, and they are forwarded for a tax audit. The data that used for this methodology involves tax returns and declarations filed by taxpayers, as well as audit results. There are no specific agencies consulted *per se*. The threat assessment is updated monthly.

1965. **Communications strategy:** Overall, Türkiye does not have a particular strategy to communicate successful prosecutions of tax crimes to the public. However, media sometimes report on important cases, while respecting the confidentiality rules. For instance, the prosecution stage is confidential in Türkiye, and it is illegal to disclose prosecution files.

Box 48.1. Example of a successful implementation of the tax crime strategy: Türkiye

Technical analysis and evaluations are made through the Risk Analysis System of the Tax Inspection Board (VDK-RAS) in terms of issuing false invoices. The concentration of counterfeit documents issued by taxpayers is investigated, and it is observed that counterfeit taxpayers are gathered in some provinces and by some accountants. Special teams are established within the administration for false document issuance organisations. Also, coordination with the Anti-Smuggling & Organised Crime Department (KOM) is achieved. Organisations identified in line with information such as invoice flow, partnership relations and accountancy relations between taxpayers issuing fake documents and taxpayers who receive invoices from them are simultaneously audited in a coordinated manner.

By using VDK-RAS which is established within the Tax Inspection Board, the activities of the taxpayers in line with the statistics obtained from collecting continuous and periodic information about the obligation from public/other institutions and organisations and natural persons or legal entities, are analysed by groups and sectors and risk areas are identified in this way. Through the VDK-RAS, denunciation reports, opinion and suggestion reports, research and development reports, projects, action plans, all kinds of correspondence from other public institutions and the data arising from the media follow-up studies are associated with taxpayers, analysed and referred for examination.

In the current tax period, taxpayers, who are active and determined to issue false documents, are sent to tax inspectors as direct examination without waiting in the task pool, and efforts are continued to increase their deterrence by ensuring that they are examined in the current tax period.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes

1966. The list below shows the investigative powers of the Tax Inspection Board.

Table 48.5. Investigative powers of the Tax Inspection Board

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Indirect power via another agency
Obtain documents from third parties	Full direct power
Interview	Full direct power
Inquiry powers (e.g. power of coercion)	No
Intercept mail and telecommunications	No
Conduct covert surveillance	Indirect power via another agency
Conduct undercover operations	Indirect power via another agency
Search and seize computer hardware, software and electronic storage media	Indirect power via another agency
Arrest	No

1967. **Legal professional privilege:** Legal professional privilege in Türkiye is governed by article 151(3) of the Tax Procedure Law No. 213, which states that conversations, mail and, more generally, any communication between a lawyer and their client and between lawyers is subject to professional secrecy. Lawyers and solicitors may not be asked to reveal facts and particulars which have been trusted to them or which they have learnt through their duties. However, Türkiye notes that legal privilege does not apply to certain tax information, including the identity of the client, the amount, date, and form of payments done by the client to the lawyer and supporting evidence.

Principle 4: Freezing, seizing and confiscating assets

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

1968. **Legal basis:** Tax offices which are affiliated to the Turkish Revenue Administration conduct the activities related to the tracking and collection process under the Law on the Procedure for the Collection of Public Receivables No. 6183.

1969. **Freezing orders:** Türkiye allows for the rapid freezing of assets according to article 13 of the Law on the Procedure for the Collection of Public Receivables No. 6183. The freezing of assets shall be applied immediately without any delay by the decision of the highest local official of the creditor public administration. The freezing of assets can take place via a “provisional attachment” if there are circumstances which indicate that recovery of assets will be uncertain in the future.

1970. **Seizing orders:** Türkiye allows for the rapid freezing of assets (Türkiye’s Code of Criminal Procedure, art. 123 and 127). The judge or in the case of emergency, a prosecutor (general jurisdiction and not for special tax crimes), can decide to seize assets. A court order is required for search and seizure. If there is peril in delay, the warrant provided by the public prosecutor shall be sufficient and this decision shall be submitted for the approval of the judge within 24 hours.

1971. **Confiscation orders:** In Türkiye, provisions on confiscation are governed by articles 54 and 55 of Türkiye’s Criminal Code No. 5237. Türkiye’s legislation provides the options to confiscate gains and assets. The following conditions must be met to confiscate assets: (1) The assets must have been used in the commission of an intentional offence, (2) the assets must be linked to the offence, (3) the assets must not belong to bona fide third parties, and (4) confiscation of assets should not violate equity. And the following conditions must be met to confiscate gains: (1) A deliberate offence must be committed, (2) the gain must be obtained in connection with the offence, (3) the connection of the gain with the offence must be established and proven, (4) the monetary benefits or economic gains obtained must not belong to bona fide third parties or they must not have been returned to the offended party.

1972. Türkiye allows for non-conviction-based confiscations and value-based confiscations (Turkish Penal Code, art. 54-55), but does not allow extended confiscations and third-party confiscations.

1973. **Foreign freezing, seizure, and confiscation orders:** Türkiye's legislation allows and facilitates freezing and seizing of assets (under the provisions of Law No 6183) with respect to requests received under Double Taxation Agreements that contain Assistance in Collection and Administrative Assistance clauses and the Convention on Mutual Administrative Assistance in Tax Matters. These clauses foresee administrative assistance between states, and signatory countries are obliged to assist each other in the collection of taxes of the other country.

1974. **Agency/unit responsible for asset recovery:** Tax offices which are affiliated to the Turkish Revenue Administration conduct the activities related to tracking and collection under the Law on the Procedure for the Collection of Public Receivables No. 6183. This process is carried out by the Enforcement Unit in tax offices which is specialized in this area.

1975. In relation to good practices, Türkiye notes that a large majority of asset research can currently be made online, meaning that, for example, bank accounts and vehicles of the debtor can be seized electronically.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

1976. According to Presidential Decree No. 1, the Tax Inspection Board is responsible for conducting tax investigations. Tax inspectors who detect a committed tax crime during their examination, must report the crime directly to the Chief Public Prosecutor's Office with the opinion of the report evaluation commission (Tax Procedure Law No. 213, article 367).

1977. The table below lists the agencies and responsibilities for enforcing other financial crimes in Türkiye.

Table 48.6. Agencies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Tax Inspection Board	<ul style="list-style-type: none"> • Carries out tax investigations. • Analyses the activities of taxpayers in terms of groups and sectors through the Risk Analysis System by collecting information, data, and statistics, making comparisons, and thus determining the risk areas. • Evaluates notices and complaints regarding tax obligations. • Ensures the necessary coordination and co-operation with the Revenue Administration during tax investigations. • Monitors and evaluates the results of examinations and audits to create statistics. • Develops standards, principles, methods and techniques for tax investigations and audits and reporting, to prepare investigation and audit guides, to determine ethical rules to be followed by those authorized to conduct tax inspections. • Carries out research on developments in the field of tax evasion and tax avoidance and their identification and to conduct research on prevention methods.
Financial Crimes Investigation (MASAK)	<ul style="list-style-type: none"> • Türkiye's FIU, attached to the Ministry of Treasury and Finance. • MASAK responsible for detecting and preventing money laundering and terrorism financing. • Aside from its basic FIU functions, MASAK supervises obliged parties to ensure their compliance with AML/CFT obligations. • In cases where the assets are the subject to a transaction suspected to be linked to ML or TF offences, the

	Minister of Treasury and Finance is authorized to suspend the attempted or current transactions within or through obliged parties for seven work days or disallow the performance of those transactions for the same period of time so that MASAK can verify the suspicion, analyse the transaction and convey the results of those analyses to competent authorities when necessary according to Article 19/A of the Law No.5549.
Public Prosecution Office	<ul style="list-style-type: none"> • There are chief prosecutor offices in every province of Türkiye who conduct criminal investigations according to their regional jurisdictions. If they find enough evidence, they prepare an indictment and file it to the Criminal Court, which will conduct the trial. • In larger cities, like Istanbul and Ankara, courthouses have prosecution offices dedicated to financial crimes. In small courthouses, one of the prosecutors working in that courthouse shall deal with the case.
Banking Regulatory and Supervisory Agency	<ul style="list-style-type: none"> • BRSA is responsible for regulating and supervising banks, financial leasing, factoring and finance companies.
Ministry of Treasury and Finance	<ul style="list-style-type: none"> • Supervises exchange offices, insurance, reinsurance and pension companies and precious metals intermediary institutions.
Capital Markets Board	<ul style="list-style-type: none"> • Primarily responsible for the regulation and supervision of capital markets and institutions.
Coordination Board for Combatting Financial Crime	<ul style="list-style-type: none"> • Established with the Presidential Decree No.1 (previously with Law No.5549) to evaluate draft legislation on prevention of laundering proceeds of crime and to coordinate relevant institutions and organisations regarding the implementation [Article 232(1) of the Presidential Decree No.1]. The Board has a consultative role in essence and has no function in analysis, evaluation, or examination of STRs, judicial requests or other triggers. • Under the Chairmanship of the Deputy Minister of Treasury and Finance, the Coordination Board consists of the senior level managers of relevant public institutions, and it convenes at least twice in a year [Article 232 (2 and 3) of the Presidential Decree No.1].

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

1978. Large cities such as Istanbul and Ankara have prosecution offices dedicated to financial crimes. In small districts, one of the prosecutors working in the district shall deal with these cases.

1979. The number of investigations staff in charge of civil audits at the Tax Inspections Board fluctuated between 7 700 and 8 200 in the years between 2018 and 2021. The budget fluctuated between TRY 822 million and 1.3 billion over the same period.

Table 48.7. Databases / sources of information available for tax crime investigators

	Access
Company formation/ownership registry	Direct Access
Land Registry	Direct Access
Registry of citizens	Direct Access
Tax databases	Direct Access
Customs databases	Direct Access
Police databases	No Access
Judicial databases	No Access
Suspicious transaction report databases	No Access
Domestic bank account databases	Direct Access
Car registry	Direct Access
Boat registry	Direct Access
Other	N/A

Training for tax crime investigations

1980. Tax inspector assistants are given in the first stage of their profession a seminar on Tax Procedure Law for ten working days as part of the basic training program, where tax crimes are explained in detail, with all their elements and using examples. Within the scope of in-service training, tax crimes are explained in more detail and with various examples in the Tax Procedure Law seminar for five working days to all assistant tax inspectors and full-time tax inspectors.

1981. In addition to the theoretical training given at the beginning of the profession, all tax inspectors receive training on “Qualified Report Writing Techniques” at regular intervals in order to transfer the knowledge that they have gained from their examination and audit experiences into their reports.

1982. Joint seminars and panels are organised with non-governmental organisations on tax crimes. Also, trainers are assigned to inform Police Units, universities, and other various non-governmental organisations on tax offences.

Principle 7: Predicate offences

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

1983. **Approach:** Türkiye’s anti-money laundering legislation applies a “threshold approach” to define predicate offences. Offences requiring a minimum penalty of six months imprisonment are considered as a predicate offence for money laundering. Tax crimes were included as predicate offences with the AML legislation, Law No. 4208, which came into force in 1996.

1984. If a crime committed abroad by a foreign citizen is also a crime according to the Turkish Criminal Law and requires a minimum penalty of six months imprisonment, the money laundering offence committed in Türkiye can be prosecuted. Turkish Criminal Law (TCL) does not distinguish between predicate offences committed outside and inside Türkiye. An offence committed abroad would be considered predicate offence if it corresponds to the criteria listed in Article 282(1) of the TCL. Legal grounds of Article 282 of the TCL clearly indicate that proceeds derived from an offence committed abroad shall constitute ML offence. In this regard, committing ML offence in Turkey is sufficient to initiate proceedings; however dual criminality concerning predicate offence is sought for the prosecution. In addition, pursuant to Articles 11 to 13 of the TCL, the Turkish Criminal Courts has broad jurisdiction over the serious crimes committed in a foreign country, and Turkish courts may prosecute predicate crimes even if they were committed abroad. Besides, Türkiye is a party of the relevant UN Conventions and Articles 6(2)(c) of Palermo, 23(2)(c) of Merida Conventions are directly applicable as a special provision in line with Article 90 of the Turkish Constitution. This is applicable for tax crimes too, meaning that Türkiye could bring a money laundering prosecution case where the tax crime is committed by a foreign citizen in a foreign jurisdiction, but the money is laundered through Türkiye.

1985. **Enforcement of money laundering predicated on tax crimes:** Within the AML/CFT framework, results of analyses, evaluations, examination studies, and intelligence obtained by MASAK are exchanged to other relevant public authorities spontaneously or upon request. In this context, financial intelligence regarding 2.978 people on tax evasion has been shared by MASAK in 2021.

1986. Türkiye also notes that analysis, evaluation, or examination of money laundering cases associated with tax crimes, conducted by MASAK, also contribute to efforts on fighting these crimes. Tax inspectors are among examiners who conduct money laundering examinations. The number of reports of suspicions of tax crime reported by MASAK were 49.645 in 2019, 61.687 in 2020, and 64.721 in 2021.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authorities to law enforcement authorities

1987. Tax inspectors are obliged to report directly to the Chief Public Prosecutor's Office that crimes listed in Article 359 have been committed during their examination with the opinion of the relevant report evaluation commission. The Chief Public Prosecutor's Office which receives the conclusion that the offences set out in Article 359 have been committed, shall immediately notify the relevant tax office, and request further examination. Initiation of a public prosecution requires that the Public Prosecutor's Office shall be notified with the results of examination.

1988. Reports on offences specified in paragraph (ç) (d) of Article 359 by Tax Inspectors and Assistant Tax Inspectors shall be issued and the matter shall be submitted to the Public Prosecutor's Office with the opinion of the report evaluation commission without waiting for the completion of the examination.

1989. Completion of the examination shall not be required for the opening of a public case. In cases where it is identified that the act which is subject to investigation and prosecution and conducted regarding the offences in Article 359 was committed by or in conjunction with another person, it is not required to prepare a report and provide an opinion in order to file a public lawsuit against this person. The provision of a penalty for the crimes in Article 359 does not prevent the separate application of tax loss penalties or irregularity penalties.

Information-sharing between agencies involved in the investigation and prosecution of tax crime and other financial crime

1990. The below table lists the models for information-sharing related to tax crime and other financial crimes in Türkiye.

Table 48.8. Models for information-sharing related to tax crime and other financial crimes

		Authority receiving the information					
		Tax administration for civil tax assessment	Agencies investigating tax offences	Customs administration	Police or Public Prosecutor investigating tax offences	Financial Intelligence Unit	Corruption Investigation Authority
Authority providing information	Tax administration		Direct Access	MSS	DSS	Direct Access	N/A
	Agencies investigating tax offences	MSS		On request	MSS ^(f)	MSS ^(g)	N/A
	Customs administration	MSS	DSS		DSS	DSS	N/A
	Police or public prosecutor	On request	DSS ^(a)	MSS		DSS ^(b)	N/A
	Financial Intelligence Unit	DSS	DSS ^(c)	On request ^(d)	MSS ^(e)		N/A

Corruption investigation authority	N/A	N/A	N/A	N/A	N/A	N/A	
Financial regulator	DSS	DSS	DSS	MSS	DSS	DSS	N/A

Notes:

DSS = Discretionary Spontaneous Sharing. / MSS = Mandatory Spontaneous Sharing.

(a) The police do not conduct investigations on tax crimes but provide all the information to the Tax Inspection Board which carries out the investigation.

(b) Although the police may exercise discretion in providing information spontaneously to MASAK, the Public Prosecutor's Office must inform MASAK about the results of court decisions related to money laundering and terrorism financing offences.

(c) Information on possible tax offences reported to the Tax Inspection Board for investigation.

(d) MASAK may also share information with other authorities for analysis.

(e) MASAK is under an obligation to share information relevant to non-tax offences with the Public Prosecutor. MASAK may also share information with the police but is not under an obligation to do so.

(f) Tax inspectors are obliged to report directly to the Chief Public Prosecutor's Office that crimes listed in Article 359 have been committed during their examination. (See. Principle 8- Reporting of suspected financial crimes by civil tax authorities to law enforcement authorities, para. 41-43).

(g) Information on possible money laundering cases are shared with MASAK.

1991. The table below shows the availability of enhanced forms of co-operation in combatting tax crimes.

Table 48.9. Available of enhanced forms of co-operation

Mechanism	Description
Co-operation agreements	It is possible to conclude co-operation agreements with various units (TRA, MASAK, Land registry, etc.) for the purpose of providing information.
Joint operations and taskforces	Not in use
Parallel investigations	Not in use
Joint intelligence centres	Not in use
Secondments and co-location of staff	Not in use
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Taxpayers may be subject to examination due to reports and information received from other public institutions and organizations.
Multi-agency training	Joint seminars and panels are organised with non-governmental organisations on tax crimes. Also, trainers are assigned to inform Police Units, universities, and other various non-governmental organisations on tax offences.

Principle 9: International co-operation

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.

1992. **Legal basis:** Türkiye may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. To date, it has entered into several Mutual Legal Assistance Treaties and has signed the European Convention on Mutual Legal Assistance in Criminal Matters, and its Protocols I and II. Türkiye is also signatory to the Convention on Mutual Administrative Assistance in Tax Matters which allows for the exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

1993. **International co-operation in practice:** Turkish Revenue Administration has not received EOI requests in terms of criminal tax matters.

1994. **Competent authorities:** The competent authority for sending and receiving *requests for administrative assistance* in criminal tax matters is the Turkish Revenue Administration. The competent authorities for sending and receiving MLA requests for requests in criminal matters is the Ministry of Justice.

Principle 10: Fundamental rights of a suspect or accused person

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

1995. Türkiye provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are affirmed by a series of international human rights treaties signed by Türkiye which take precedence over domestic law, according to Article 90 of the 1982 Constitution.

1996. The table below details the rights of persons suspected or accused of having committed a tax crime in Türkiye.

Table 48.10. Rights of persons suspected or accused of having committed a tax crime

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Until Sentence
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
Interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	No	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Effective enforcement in practice with a number of criminal convictions for tax crimes
- Good access to sources of information and of analytics for detecting and assessing potential risks

Room for improvement

- Türkiye would benefit from having a formal tax crime strategy in place setting up priorities and mechanisms for achieving measurable results.

49 Ukraine (NEW)

This chapter was published May 2024

Principle 1: Ensure that violations of tax offences are criminalised by:

- a) having legal frameworks in place that criminalise some violations of tax laws by natural persons;
- b) making available effective criminal sanctions that apply in practice to natural persons who violate tax laws;
- c) having a penalty regime in place for legal persons who violate tax crimes; and
- d) ensuring that professionals who enable tax crimes are also subject to criminal liability.

Criminal Tax Offences

1997. Article (Art.) 212 of the Criminal Code of Ukraine (CC) criminalises tax evasion and requires criminal intent (*mens rea*). This offence covers both income tax law and VAT/GST. The offence is outlined in the table below together with corresponding sanctions.

Table 49.1. Offences requiring criminal intent

Offence	Minimum sanction	Maximum sanction	Availability of non-criminal sanctions
Evasion of taxes, duties, or other compulsory payments (art. 212 CC)	A fine of five thousand to ten thousand tax-free minimum incomes, with deprivation of the right to hold certain positions or engage in certain activities for up to three years (where 1 tax-free minimum income is UAH 1 514).	A fine of fifteen thousand to twenty-five thousand tax-free minimum incomes of citizens with deprivation of the right to hold certain positions or engage in certain activities for up to three years, and forfeiture of property (where 1 tax-free minimum income is UAH 1 514).	According to the part 4 of Art.212 of the Criminal Code of Ukraine a person shall be released from criminal liability if he/she paid taxes, duties (compulsory payments), as well as compensated the damage caused to the state by their overdue payment (financial sanctions, fines). This was adopted in an attempt to liberalise the criminal legislation and expedite the recovery of revenue without the need of going to criminal trial. In 2023, the operation of Art. 212(4) resulted in UAH 544 million being recovered for the state budget

Note: EUR 1 = UAH 42 as of March 2024

1998. **Statute of limitations:** The statute of limitations varies depending on the seriousness of the offence. The starting point for calculating the limitation period is the day of the criminal offence and the end point is the entry into force of the verdict. As tax evasion under Art. 212 of the CC carries a twenty-five thousand tax-free minimum incomes maximum sanction, it is considered a “grave offence” as per Art. 12 of the CC. In accordance with Part 1 of Art. 49 of the CC, the statute of limitations for tax evasion is therefore ten years.

1999. **Complicity:** Criminal complicity is defined in Art. 26 of the CC as the “wilful co-participation of several criminal offenders in an intended criminal offence”. According to Art. 27 of the CC, an organiser, abettor, or accessory may be deemed accomplices to a criminal offence, together with a principal offender. Moreover, Art. 28 of the CC provides that a criminal offence shall be deemed to have been committed by a group of persons where two or more principal offenders participated in that criminal offence, acting without prior conspiracy. A criminal offence is deemed to have been committed by a group of persons upon their prior conspiracy where it was jointly committed by two or more persons who have conspired prior to the commencement of the offence, to commit it together. Part 2 of Art. 212 of the CC provides that wilful evasion of taxes, duties, or other compulsory payments, committed by a group of persons upon their prior conspiracy is punishable by a fine of ten thousand to fifteen thousand tax-free minimum incomes, with deprivation of the right to hold certain positions or engage in certain activities for up to three years.

2000. **Attempt and conspiracy:** Art. 14 of the CC criminalises the ‘preparation’ of a criminal offence, broadly defined as: choosing or adapting means and tools; looking for accomplices; conspiring to commit an offence; removal of obstacles to an offence; or otherwise intended conditioning of an offence. Art. 15 of the CC criminalises the attempt of a criminal offence with intent.

2001. **Liability of legal persons:** Ukrainian legislation does not provide that legal entities may be liable for criminal sanctions (fines, forfeiture of property, or liquidation), instead their ‘subjects’ who commit certain categories of criminal offences, including wilful evasion of taxes or duties are held liable. Art. 212 of the CC specifies the subjects of the offence as officials of the enterprise, institution, or organisation regardless of the type of ownership; non-incorporated persons who conduct economic activities; and any other person liable to pay such taxes.

2002. **Availability of settlements:** As noted in Table 1 above, Part 4 of Art. 212 of the CC provides an exemption from criminal liability where an offender pays outstanding taxes and duties and compensation by way of the applicable civil/administrative fines that accrue from late payment of the said tax or duties. However, both of these conditions must be completed prior to the offender being notified by authorities that they are suspected of committing a criminal offence. Furthermore, the offender themselves must personally pay the relevant taxes and penalties to be eligible for criminal liability to be waived. The current legislation of Ukraine does not allow for deferred prosecution agreements for individuals or legal persons in criminal tax matters.

2003. **Nationality jurisdiction:** The Tax Code of Ukraine defines the subjects of taxation per each tax and duty that is levied by the State. If a natural or legal person is a taxpayer in Ukraine, Art. 212 of the CC in relation to tax evasion can be applied irrespective of the country of commission of the criminal offence, provided taxes evaded are owed to the government of Ukraine.

2004. **Availability of tax deductions for civil and criminal sanctions:** The Tax Code of Ukraine does not allow for the deduction of amounts incurred by way of civil or criminal sanctions.

2005. **Professional enablers:** Ukraine does not have a separate criminal penalty regime for professional enablers who facilitate the commission of tax and other financial crimes. However, the provisions on complicity, attempt, and conspiracy set out above can be applied to professional enablers.

Enforcement of tax crime

2006. In 2023, the Economic Security Bureau of Ukraine (ESBU) conducted 666 criminal investigations regarding contraventions of Article 212 of the CC. Eighty criminal charge notifications were issued and 67 matters were referred to the courts for criminal trial.

Principle 2: Devise a strategy for addressing tax crimes, which includes:

- a) the identification of existing and emerging risks and threats; and
- b) mechanisms for the regular review and monitoring of the implementation and effectiveness of the strategy.

Tax Crime Strategy

2007. **Tax Crime Strategy:** The Decree of the President of Ukraine No. 347/2021 approved the Economic Security Strategy of Ukraine. The strategy sets out Ukraine's plan to secure its economic security from its adoption in 2021 through to 2025 through the development of an effective model to combat economic crimes, including tax crimes, by empowering the operations of the ESBU. The ESBU is tasked with ensuring the economic security of the state by preventing, detecting, and investigating criminal offences affecting the state economy. Annually, the ESBU devises long-term (strategic) and current plans for the agency, including those related to combating tax crimes. It applies different methodologies that incorporate learnings from its operational experience investigating these crimes depending on the manner and nature of their commission. Of note, pursuant to a Memorandum with the International Monetary Fund, amending legislation was prepared to improve the ESBU's operability through "The Law of Ukraine On Amendments to the Law of Ukraine on the Economic Security Bureau of Ukraine to Improve the Work of the Bureau (No. 10439)" and was adopted on first reading in April 2024 for debate in the Verkhovna Rada of Ukraine.

2008. **Threat assessment:** The ESBU carries out threat assessments to identify, assess, and address risk areas in the economic security of the state. The ESBU conducts analysis of both structured and unstructured datasets and also maintains information on offences that have affected the economic security of the data and identifies processes to prevent their reoccurrence in the jurisdiction. In 2023, the ESBU created 1 277 analytical products on offences affecting the economic security of the state totalling UAH 207.5 billion. 650 referral recommendations were sent to other government agencies and budget managers to take corrective measures aimed at preventing budget losses, which resulted in the prevention of UAH 8.8 billion in state losses.

2009. **Communications strategy:** The ESBU informs the public of its activities through the media, its official website, social networks, and other messenger services. The ESBU prepares weekly news digests that summarise their results and other actions taken which is published on the ESBU's media resources as well on a number of regional television channels. The Ukrainian and English versions of the ESBU official website are regularly kept up to date and the ESBU communicates directly with the civil society through its social media accounts on Facebook, Instagram, X (formally Twitter) and its dedicated ESBU Telegram channel to inform the public of their priorities, actions and results.

Principle 3: Ensure that competent authorities have adequate powers to effectively detect, investigate, and prosecute tax crimes

2010. The below table sets out the investigative powers of the ESBU.

Table 49.2. Investigative powers of the Economic Security Bureau of Ukraine (ESBU)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	By court decision and with the consent of the prosecutor
Obtain documents from third parties	Direct power
Interview	Direct power
Inquiry powers (e.g. powers of coercion)	Direct power
Intercept mail and telecommunications	By court decision and with the consent of the prosecutor
Conduct covert surveillance	By court decision and with the consent of the prosecutor
Conduct undercover operations	By decision of the prosecutor
Search and seize computer hardware, software, and electronic storage media	By court decision and with the consent of the prosecutor
Arrest	By court decision and with the consent of the prosecutor

Digital media

2011. Ukraine notes that the seizure of virtual assets, such as cryptocurrencies, is not specifically regulated in the current legislation, which prevents the protection of such assets from both physical evidence and asset recovery purposes. The ESBU also notes it currently lacks the technological capabilities to obtain password protected or encrypted information and also information held in cloud storages without obtaining administrator passwords.

Professional privilege

2012. **Legal professional privilege:** Information that is subject to attorney-client privilege is defined as any information that has become known to an attorney or any of their related staff, about a client, as well as all electronic information and documents provided to the lawyer in the course of their practice of law. Further, the issues on which a client sought advice, consultation, explanation and any documents drafted are protected by attorney-client privilege.

2013. **Other professional secrecy obligations:** Professional secrecy also applies to the banking, notarial, and insurance industries. There are also other restrictions on obtaining information on other categories of persons including journalists, clergy, and healthcare professionals.

2014. **Professional privilege and criminal investigations:** Attorneys cannot be interrogated as witnesses about information that is subject to attorney-client privilege. In instances where an attorney's home, property or professional premises are the subject of a search or inspection, they can only be conducted with the court's approval and is carried out on the basis of a court decision made at the request of the Prosecutor General or his deputies. An investigating judge or court must specify in its decision, the items and documents that are intended to be found, discovered, or seized, whilst maintaining legal professional privilege. A representative from the Regional Bar Council is also required to be present during any such search or inspection.

Principle 4: Freezing, seizing and confiscating assets

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

Table 49.3. Freezing, seizure and confiscation powers in Ukraine

Powers to recover assets linked to tax crimes	Availability of power (Yes/No)	Additional information	Agency responsible for executing the order
Power to freeze assets	Yes	The State Financial Monitoring Service of Ukraine can freeze accounts of individuals and legal entities for up to 30 business days where there are signs of legalization (laundering) of proceeds of crime, terrorist financing, and/or financing of proliferation of weapons of mass destruction.	The State Financial Monitoring Service of Ukraine
Power to rapidly freeze asset (within 24-48 hours)	Yes	Part 9 of Art. 170 of the Criminal Procedure Code of Ukraine (CPC) allows the ESBU Director to freeze funds for up to 48 hours. In the first 24 hours, the prosecutor must apply to the investigating judge to obtain a seizure order over the property.	The Economic Security Bureau of Ukraine, in agreement with the Office of the Prosecutor General of Ukraine (with the prosecutor who provides procedural guidance in a pre-trial investigation).
Power to seize assets (i.e., temporarily pending a decision on confiscation/forfeiture)	Yes	The investigating judge is required to make an order to effect seizure.	The Economic Security Bureau of Ukraine, in agreement with the Office of the Prosecutor General of Ukraine (with the prosecutor who provides procedural guidance in a pre-trial investigation), the Court.
Power to confiscate	Yes	Ukraine has a conviction-based confiscation regime. Asset forfeiture to the state is imposed for convictions of grave and special grave crimes, including evasion, and all national and public security convictions.	The court that delivers a sentence containing confiscation orders will send a 'writ of execution' that includes a property inventory and a copy of the sentence. The Asset Recovery and Management Agency manages assets seized in criminal proceedings.
Power to execute foreign states' orders to freeze/seize/confiscate assets	Yes	The request for international legal assistance and the order of the investigating judge are required.	According to the CPC of Ukraine, the pre-trial investigation authorities in Ukraine may carry out any procedural actions provided for by this Code or an international treaty on behalf of the Office of the Prosecutor General of Ukraine in order to fulfill a request for international legal assistance.
Scope and enforcement of confiscation measures			
Value-based confiscation	Art. 96-1 of the CC provides for the seizure of the tools of crime belonging to the accused and also money, valuables and other assets acquired by criminal means.		
Extended confiscation	Asset forfeiture can also be extended beyond the proceeds of crime and applied to legally acquired property as a punishment and reformative measure.		
Third-party confiscation	Art. 96-1 of the CC allows the confiscation of property held by third parties where it is proven that the person either: acquired the property at a non-arms length value or should ought to have known the property was obtained illegally.		
Asset recovery in practice	ESBU seized UAH 1.2 billion of property in completed proceedings in 2023.		

Principle 5: Put in place an organisational structure with defined responsibilities for fighting tax crimes and other financial crimes

Agencies responsible for investigation and prosecution of tax crimes

2015. ESBU is the agency with primary responsibility for conducting tax crime investigations. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally.

Table 49.4. Agencies responsible for detecting, investigation, and prosecuting of financial crimes

Agency	Role with respect to financial crime
Tax Administration (State Tax Service of Ukraine)	The service is responsible for control over the timeliness, accuracy, and completeness of the calculation and payment of taxes and duties established by the Tax Code of Ukraine.
State Customs Service of Ukraine	The Service is responsible for customs administration and for controlling the timeliness, accuracy and completeness of the calculation and payment of customs duties established by the Customs and Tax Codes of Ukraine, as well as for combating smuggling.
Agency/Unit responsible for tax crime investigations (ESBU)	The Bureau is responsible for the prevention, detection, stopping and investigation of criminal offenses that affect the functioning of the state economy, including crimes relating to tax and excise.
National Police of Ukraine	The Police is responsible for preventing the commission of criminal offences, including serious and violent crime, drug-enforcement, certain economic offences, cybercrime, as well as general law enforcement duties and patrols.
Office of the Prosecutor General of Ukraine regional prosecutor's offices	The Office is responsible for coordinating the activities of law enforcement agencies and supervising the observance of laws by these agencies conducting operational search actions, inquiries, and pre-trial investigations. The Office is also responsible for supporting public prosecution in court proceedings on criminal offences.
Asset Recovery and Management Agency (ARMA)	The ARMA is responsible for detection (activities to establish the existence of assets) and searching (activities to locate assets) assets and property that may be seized in criminal proceedings or in a case of recognizing unjustified assets and recovering assets to the state's budget. ARMA also cooperates with the relevant authorities of foreign states (at the level that precedes international cooperation in criminal proceedings) and international organizations whose competence covers issues related to asset tracing and finding, as well as sending them relevant requests for asset tracing and finding and also participates in the representation of the rights and interests of Ukraine in foreign jurisdictional bodies in cases related to the return to Ukraine of assets derived from corruption and other crimes.
Courts (local, appellate and supreme courts)	Courts are responsible for administration of justice.
National Anti-Corruption Bureau of Ukraine (NABU)	NABU is responsible for the investigation of corruption in Ukraine committed by high-ranking government officials.
The State Financial Monitoring Service of Ukraine (SFMSU)	SFMSU is the Financial Intelligence Unit and is responsible for receiving and analysing suspicious transaction reports, and other information relating to the prevention and counteraction to legalisation (laundering) of the proceeds of crime, terrorist financing, and financing of proliferation of weapons of mass destruction. The Service is empowered to freeze assets and is responsible for conducting a national risk assessment, establishes cooperation, interaction and information exchange with state authorities, the National Bank of Ukraine, competent authorities of foreign countries and other international organisations.

Principle 6: Provide adequate resources to competent authorities in order to support:

- a) the development of robust organisational structures and governance;
- b) appropriate training and development of staff; and
- c) IT infrastructure, access to data, and use of appropriate analytical resources.

Resources for combatting tax crime

2016. **Human resources:** As of April 2024, the ESBU has 333 officers conducting pre-trial investigations of criminal matters. Of these, 133 are based in the central office in Kyiv and the remaining 200 officers are based in 8 territorial offices.

2017. ESBU detectives currently have access to company formation ownership registry, real estate register (land register), and tax information of legal entities which includes information on open/closed company accounts.

2018. Furthermore, the ESBU structure has an analytical department, with access to various databases. As part of criminal proceedings, detectives can contact the analytical department and other authorities for information.

Table 49.5. Data bases/sources of information available to tax crime investigators

Type of Register	No access, access on request, or direct access
Land Registry	Full Direct Access
Registry of citizens	Full Direct Access
Legal entities and arrangements (other than trust and fiduciary arrangements)	Full Direct Access
Trust and fiduciary arrangements	No Register
Bank accounts	Discretionary access on request
Financial assets (e.g. cash or cash equivalents, bonds, fixed deposits, equity shares, mutual funds, exchange traded funds, insurance contracts, derivatives, employment benefit schemes etc.)	No Register
Motor vehicles	Discretionary access on request
High value goods/assets (e.g. aircrafts, boats/ships, artworks, precious metals and stones etc.)	Discretionary access on request
Register of persons subject to AML/CFT sanctions under domestic legislation	The State Financial Monitoring Service of Ukraine maintains a freely available list of all persons linked to terrorist activity and those to whom international sanctions have been applied on its website. The State Register of Sanctions also provides free public access to relevant information about entities that are subject to sanctions.

Training for tax crime investigators

2019. The development and institutionalisation of processes in the ESBU has been taking place under martial law. Significant changes in the functioning of the state necessitates amendments to the legislation, in particular codified acts such as the CPC and the CC. In turn, the ESBU systematically trains and informs

detectives of all amendments in the dynamic environment to ensure that they conduct effective, timely and impartial pre-trial investigations.

Principle 7: Designate tax crimes as a predicate offence for money laundering

2020. **Approach:** Ukraine adopts an “all crimes” approach whereby any criminal offence can be a predicate offence to money laundering (defined as the ‘legalisation of property’). Art. 209 of the CC criminalises the acquisition, possession, use, and disposal of property deemed to be the proceeds of crime. It further criminalises the act of conducting financial operations or actions to conceal, hide, or transform the origins of this property by a person who knew or should have known that such property proceeded from crimes. These offences are punishable by imprisonment for a term of three to twelve years, depending on the sums involved, as well as forfeiture of the property and deprivation of rights to hold certain positions or engage in certain activities.

2021. Where a crime is committed outside the jurisdiction of Ukraine, it can still be considered a predicate offence for money laundering, provided the predicate act is also a crime pursuant to the CC. There is no requirement for an offender to have been convicted of a predicate offence for authorities to prosecute money laundering, however the investigating authority must prove that the proceeds are of a criminal origin.

Principle 8: Establish effective legal, administrative, institutional, and operational frameworks for domestic inter-agency co-operation, including:

- a) reporting and information sharing by tax authorities of suspicions of tax crimes and other financial crimes, including corruption, money laundering and terrorism financing, arising out of the performance of their duties, to the appropriate domestic law enforcement authorities and, where applicable, to the Financial Intelligence Units;
- b) reporting and information sharing between all appropriate domestic authorities, including law enforcement authorities, with respect to the enforcement of tax crimes and other financial crimes within their respective mandates; and
- c) mechanisms to support enhanced forms of co-operation among tax authorities, competent authorities, and other appropriate domestic law enforcement authorities responsible for enforcing financial crimes, such as joint operations and taskforces, parallel investigations, staff secondments, co-ordination fora, and joint intelligence centres.

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

2022. Civil tax auditors working within the State Tax Service of Ukraine are required to report suspicions of a crime that arises in the course of their work to the relevant law enforcement authority. A civil tax matter becomes a criminal tax matter when the investigating authority makes a decision to initiate criminal proceedings and the matter is entered into the Unified Register of Pre-Trial Investigations.

2023. It is possible for civil tax audits and criminal investigations to be conducted in parallel and this is usually in instances where criminal proceedings are initiated on bases other than the outcome of a civil tax audit. In the criminal investigation, the rights of the accused are provided for in the CPC of Ukraine and in the Tax Code of Ukraine with respect to the civil tax audit.

2024. Criminal investigators working within the ESBU are likewise required to report suspected criminal activity to the public prosecutor and have the ability, but are not required to, report suspected crime to other agencies. However, the ESBU is prohibited from reporting suspected criminal activity to the Customs Authority.

Table 49.6. Models for reporting of suspected financial crimes by civil tax authority to law enforcement authorities

	Authority receiving report of suspected crime					
	Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor	Financial Intelligence Unit	Corruption investigation authority
Requirement for tax auditors working on civil tax assessment to report suspected crimes to other financial crime agencies		Mandatory reporting	Reporting prohibited	Mandatory reporting (Police)	Reporting prohibited	Discretionary reporting (DSS)
Requirement for agency responsible for tax crime investigations (ESBU) to report suspected crimes to other financial crime agencies	Mandatory reporting*		Reporting prohibited	Mandatory reporting (Prosecutor's Office)	Mandatory reporting*	Reporting prohibited

* The recipient agency is required to advise the ESBU of its decision following its receipt of materials from the ESBU.

Information sharing between agencies involved in the investigation and prosecution of tax crimes and other financial crimes

2025. The procedure for exchange of information, including operational information, and joint activities of the ESBU and other state authorities is established by legislation, orders of the ESBU and joint orders of the ESBU and the corresponding state authorities.

2026. According to Art. 222 of the CPC, information relating to pre-trial investigations may be disclosed to another financial crime agency with the permission of the responsible investigator or the public prosecutor, and in the scope they deem possible. In many instances, information may only be shared between agencies pursuant to a court order.

Table 49.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information						
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority	Asset Recovery Authority
Authority providing information	Tax administration		Direct Access	Sharing Prohibited	On Request	On Request	On Request	On Request
	Agencies investigating tax offences	DSS		Sharing Prohibited	MSS*	DSS	Sharing Prohibited	Sharing Prohibited
	Customs administration	Direct Access	Direct Access		On Request	Direct Access	Direct Access	On Request
	Police or public prosecutor	On Request	Sharing Prohibited	Sharing Prohibited		DSS	N/A	Sharing Prohibited
	Financial Intelligence Unit	On Request	DSS	Sharing Prohibited	DSS		DSS	Sharing Prohibited
	Corruption investigation authority	Sharing Prohibited	Sharing Prohibited	Sharing Prohibited	MSS*	DSS		Sharing Prohibited
	Asset Recovery Authority	On Request	Direct Access	Sharing Prohibited	On Request	On Request	On Request	
	Financial regulator	On Request	On Request	Sharing Prohibited	Sharing Prohibited	On Request	On Request	On Request

*To Prosecutor's Office only.

Table 49.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	On January 14, 2022, Agreement of Information Cooperation between the State Tax Service of Ukraine and the Economic Security Bureau of Ukraine was signed. On January 21, 2022, Memorandum of cooperation and partnership between the State Tax Service of Ukraine and the Economic Security Bureau of Ukraine was signed. On January 24, 2022, Agreement of Information Cooperation between the State Tax Service of Ukraine and the Economic Security Bureau of Ukraine was signed. On September 4, 2023, Agreement of cooperation and information interaction between Asset Recovery and Management Agency of Ukraine was signed. The purpose of the Agreement is cooperation between the parties in the field of detection, stopping, investigation, and disclosure of criminal offences assigned to the jurisdiction of the ESBU through timely exchange of information.
Joint operations and taskforces	ESBU detectives can cooperate within the framework of criminal proceedings with all law enforcement agencies of Ukraine (relevant units of the National Police Service, SSU, SBI, etc.) by involving operational units (Art. 41 of the CPC) on the detective's behalf. During the execution of the assignment, the operational employee uses the powers of a detective (investigator). Interaction with state authorities, local self-government bodies, enterprises, institutions, and organizations is also carried out by requesting and receiving documents, information, expert opinions (Art. 93 of the CPC).
Parallel investigations	No mechanism is provided in the legislation regarding parallel investigations by ESBU and other financial crime agencies.
Joint intelligence centres	There is no joint intelligence centre.
Secondments and co-location of staff	Not available.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	It is possible to review tax affairs of persons prosecuted for other serious financial crimes either at the request of the ESBU detectives or by obtaining a decision of an investigating judge (so-called temporary access to things and documents).
Multi agency training	Yes.

Principle 9: International Co-operation

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.

2027. **Legal basis:** Ukraine is party to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. In addition, Ukraine is a party to multiple bilateral treaties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and capital as well as bilateral and multilateral mutual legal assistance (MLA) agreements. Ukraine is also a Member of the Global Forum on Transparency and Exchange of Information and a party to the European Convention on Mutual Assistance in Criminal Matters and exchanges information through the European Police Office.

2028. **Competent authorities:** The Competent Authority for assistance pursuant to the OECD Convention on Multilateral Convention on Mutual Administrative Assistance in Tax Matters is the State Tax Service of Ukraine and the Pension Fund of Ukraine. The Minister of Finance of Ukraine is the competent authority with regards to bilateral Conventions for the avoidance of double taxation and the prevention of fiscal evasion. The Prosecutor General Office and the Ministry of Justice of Ukraine are the component authorities for requests relating to bilateral MLA agreements and the European Convention on Mutual Assistance in Criminal Matters. The ESBU can request assistance from a foreign counterpart agency through these competent authorities with the approval of the Public Prosecutor.

Table 49.9. International co-operation in practice

Requests processed by ESBU	Money laundering MLAs	Tax crime MLAs	Outgoing information exchange	Incoming information exchange
2023	20	4	56	27

Principle 10: Fundamental Rights of a Suspect or Accused person

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

2029. The table below provides an overview the rights of persons suspected or accused of having committed tax crimes.

Table 49.10. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	When serving a suspicion, conducting investigative actions, serving an indictment
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	From the beginning of criminal prosecution (serving of suspicion)
interpretation and translation	Yes	From the initiation of pre-trial investigation
be advised of the particulars of what one is accused of	Yes	From the beginning of criminal prosecution (serving of suspicion)
access documents and case material, also known as a right to full disclosure	Yes	From the beginning of criminal prosecution (serving of suspicion), at the stage of completion of the pre-trial investigation.
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- The introduction of Part 212(4) of the Criminal Code resulted in the recovery of over UAH 544 million in 2023 without matters needing to go to trial, ensuring effective investigative resource allocation and timely recovery of tax liabilities owed to the Ukrainian state budget.
- Publication of successful case outcomes on the ESBU's website.
- Implementation of threat assessments to identify, assess, and address risk areas in the economic security of the state.

Room for improvement:

- Ukraine would benefit from a review of its legal gateways for the sharing of information between different financial crime agencies, which are currently very restrictive.

50 United Kingdom

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

2030. The United Kingdom has a range of legislation containing tax offences including the Taxes Management Act 1970 (TMA), Customs and Excise Management Act 1979 (CEMA), Valued Added Tax Act 1994 (VATA) and the Criminal Finances Act 2017 (CFA).

2031. In total, there are around 300 tax related offences in the United Kingdom. This includes criminal offences requiring *mens rea* (i.e. intent) as well as strict liability offences (wherein no guilty state of mind or dishonesty is required for at least one element of the offence). Examples of each category of tax offence and the corresponding sanctions are set out in Table 50.1 and Table 50.2 below.

Table 50.1. Strict liability offences

Offence	Tried on indictment or summarily	Maximum sanction
Failing to give notice of being chargeable to tax (TMA, 106(b))	Summary only	Six months' imprisonment
Failing to deliver return (TMA, s106C)	Summary only	Six months' imprisonment
Making an inaccurate return (TMA, 106(d))	Summary only	Six months' imprisonment
Supplying or being supplied with goods or services in contravention of schedule 11 para 4(2) VATA, s72(11))	Summary only	GBP 20 000 fine
Untrue declarations (CEMA, s167(3))	Either	Two years' imprisonment
Offences in relation to Landfill tax (schedule 5, para 15(7), Finance Act (FA) 1996).	Either	Seven years' imprisonment
Corporate failure to prevent facilitation of UK tax evasion offences (CFA, s45)	Either	Unlimited fine
Corporate failure to prevent facilitation of foreign tax evasion offences (CFA, s46)	Either	Unlimited fine

Note:

In April 2021, EUR 1 = GBP 0.87

Table 50.2. Tax offences requiring criminal intent

Offence	Tried on indictment or summarily	Maximum Sanction
Cheating the public revenue (<i>R v Hudson</i> [1956] 2 QB 252)	Either	No statutory maximum
Fraudulent evasion of income tax (TMA, s106)	Either	Seven years' imprisonment
Offences in relation to landfill tax (schedule 5, para 15(1), FA 1996)	Either	Seven years' imprisonment
Fraudulent evasion of(VATA, s72(1))	Either	Seven years' imprisonment
Fraudulent evasion of excise duty (CEMA, s 170(2))	Either	Seven years' imprisonment
Being knowingly concerned in the fraudulent evasion of excise duty (CEMA, s170(2))	Either	Seven years' imprisonment

2032. **Statute of limitations:** Typically, offences that can only be tried summarily carry a six-month limitation on the commencement of proceedings from the date of commission of the offence (Magistrates Court Act 1980, s.127). However, summary only offences created by CEMA and VATA have a three year limitation period provided proceedings are commenced within six months of the prosecutor having sufficient knowledge of the offence.

2033. Offences triable on indictment (including offences that can be tried either way) typically have no limitation period unless specified by the offence in question. For example indictable offences in CEMA and VATA have a 20 year limitation period on the commencement of proceedings from the date of commission of the offence (CEMA, s146|A as applied to VATA by s72(12)).

2034. **Complicity:** Anyone who aids, abets, or counsels, or procures the commission of *any* offence, including tax frauds (based in common law or statute) shall be tried and sentenced as a principal offender (Accessories and Abettors Act 1861 (AAA), s8)

2035. **Attempt and conspiracy:** It is also an offence to attempt, conspire, assist, or encourage the commission of tax frauds (AAA, s8). While one can conspire, assist, or encourage the commission of a summary offence, it is not possible to attempt a summary offence (S1(4) Criminal Attempts Act 1981).

2036. **Professional enablers:** Schedule 38 of the FA (“dishonest tax agents”) creates a penalty of up to GBP 50 000 and public naming for deliberate, dishonest conduct by “tax agents” with a view to bringing about a loss in tax revenue. “Tax agent” is defined as an individual (i.e. natural person) who in the course of business, assists other persons (“clients”) with their tax affairs. This includes lawyers and legal advisors if the advice they give relates to a tax matter. In addition, the FA creates a penalty of up to 100% of the lost revenue against persons (natural or legal) who deliberately provide false information or withhold information in taxpayer documentation.

2037. **Territorial and nationality jurisdiction** There are three separate legal jurisdictions in the United Kingdom: England and Wales, Scotland, and Northern Ireland. The courts generally have jurisdiction over offences where the conduct constituting the alleged offence takes place wholly or partly or where the consequence of the offence occurs in the United Kingdom. For example, a fraud where the conduct takes place in the United Kingdom or where the loss is suffered in the United Kingdom. It also has jurisdiction over any act against the UK public revenue regardless of where the conduct takes place.

2038. **Liability of legal persons:** Save for certain exceptions (including murder and bigamy), legal persons such as companies can be held liable for crimes in the United Kingdom. Generally speaking, for dishonesty offences the criminal acts of a company’s “directing mind and will” are attributed to the company itself. This typically includes the acts of the board of directors and/or other senior officers of a company) meaning that when these persons commit tax frauds, both the individuals and the company can be held liable (*Tesco Supermarkets v Nattrass* [1972] AC 153).

2039. In addition, any partnership or body corporate, wherever located, that fails to prevent an associated person from criminally facilitating a tax evasion offence can be held criminally liable and is subject to an unlimited fine. However, it is a defence if the legal person can prove that it had reasonable preventative

procedures in place to prevent that facilitation activity from taking place (CFA, Part 3). An “associated person” is a person who is: (a) an employee of the relevant body who is acting in the capacity of an employee; (b) an agent of the relevant body (other than an employee) who is acting in the capacity of an agent; or (c) any other person who performs services for or on behalf of the relevant body who is acting in the capacity of a person performing such services.

Enforcement of tax crimes

2040. The table below sets out the United Kingdom’s enforcement actions against natural persons for tax crime and tax evasion in the tax years ending 2017-19, including all closed cases. Some cases will be closed as No Further Action (NFA), and some will be non-yielding as it was decided they should not be progressed. The tables do not include data for the following offences: Drugs, International Trade, Miscellaneous Obstruction, Money Laundering, Money Laundering Regs, Other, Other Prohibitions & Restrictions. The United Kingdom was not able to provide statistics relating to the enforcement of tax crimes against legal persons.

Table 50.3. Enforcement of tax crimes against natural persons in the tax years ending 2017-19

Tax years ending	Number of criminal investigations concluded	Number of individuals referred for prosecution	Number of individuals convicted	Number of acquittals	Number of positive charging decisions made by the court
2017	824	1224	769	77	1 067
2018	964	1132	817	81	914
2019	839	962	611	96	757

Table 50.4. List of other sanctions imposed on natural persons in tax years ending 2017-19

Sanction	Number of times imposed
>0 – 3 years’ custodial sentence	568
>3 – 5 years’ custodial sentence	117
>5 – 8 years’ custodial sentence	41
>8 years’ custodial sentence	22
>0 – 3 years’ suspended sentence	688
>3 – 5 years’ suspended sentence	2
>5 – 8 years’ suspended sentence	1
>8 years’ suspended sentence	1
Non-Custodial Sentence	715

Box 50.1. Example of successful prosecution of a tax crime case: United Kingdom

HMRC caught and prosecuted a high-flying businessman, who masterminded a sophisticated GBP 9.8 million international VAT fraud, in which he attempted to hide in a complex trading chain involving companies in the United Kingdom, Gibraltar, Spain, and the United States, to fund his lavish lifestyle of expensive cars, a luxury Spanish home, and substantial property portfolio in the United Kingdom. HMRC investigators successfully pieced together the convoluted transactions and identified the false invoices used by this businessman to disguise the fraud. He was sentenced to nine years imprisonment and proceedings have started to recover his illicit proceeds.

2041. **Availability of settlements and deferred prosecution agreements:** Prosecutions are only brought when in the public interest. In some cases, Her Majesty's Revenue and Customs (HMRC) may consider it proportionate to respond to a tax offence by collecting the tax and levying civil penalties rather than referring the matter for criminal prosecution. HMRC's policy on when it will seek the prosecution of tax offences is available online.¹ HMRC sometimes investigates offences using Code of Practice 9 (COP9)² whereby HMRC can agree not to open a criminal investigation in return for a taxpayer's complete disclosure of all tax frauds and other tax non-compliance.

2042. Where an offence committed by a *legal person*, it is referred to the Crown Prosecution Service (CPS), it is possible for the prosecutor in England and Wales to offer a deferred prosecution agreement (DPA).³ A DPA is agreement reached between the prosecuting authority and a corporate offender (and approved by a court) whereby the offender co-operates with an investigation, and agrees to both a financial penalty and to taking steps to ensure the offending is not repeated. If the corporate offender abides by this agreement, it will not be subject to criminal prosecution.

2043. **Availability of tax deductions for civil and criminal sanctions and confiscated assets:** In the United Kingdom, civil and criminal penalties cannot be set off against tax liability.

2044. **Tax gap:** The United Kingdom does not estimate the tax gap or total amount of underlying tax evaded but estimates the revenue loss prevented as GBP 2.2 billion in 2018-19, GBP 1.9 billion in 2017-18 and GBP 1.6 billion in 2016-17.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

2045. **Tax crime strategy:** The United Kingdom has a range of documents that contribute to its overall strategy for the prevention, investigation, and prosecution of tax crimes. In March 2019, HMRC, in partnership with Her Majesty's Treasury (HMT) published the United Kingdom's approach to tackling tax avoidance, evasion, and other forms of noncompliance.⁴ This document outlines the United Kingdom's strategy and approach to compliance for different taxpayers. As part of its overall strategy, the United Kingdom conducts intensive threat assessments.

Box 50.2. Example of successful implementation of tax crime strategy: United Kingdom

HMRC has a team of professionally trained intelligence analysts that produce threat assessments across a range of taxes covering the most serious threats faced by HMRC. The assessments provide customers from across HMRC and externally, with a strategic understanding of the threats posed to HMRC, highlighting trends and emerging issues in the methods used to conduct fraud against the

Department; and provide policy and operational colleagues with the best available intelligence and evidence on which to inform and influence their decision-making. These are “all-source assessments” meaning they include all relevant data that can be legally obtained, including open source data.

In developing the assessment, HMRC consults with a variety of stakeholders (depending on the tax regime/threat), including other HM Government Departments, law enforcement partners, the UK intelligence community, international partners and the private sector. Threat assessments have a particular focus on:

- Scale (amount of tax at stake);
- Intent (what fraudsters are planning to do); and
- Capability (the fraudsters’ ability to carry out their attacks successfully)

The assessments seek to answer the “Who”, “What”, “When”, “Why”, “Where”, “How” and “What’s Next. Finally, HMRC also contributes to and plays an integral role in a variety of cross government strategic assessments including the United Kingdom’s National Strategic Assessment for Serious and Organised Crime and the National Risk Assessment on Anti Money Laundering and Counter Terrorist Financing.

2046. **Communications strategy:** HMRC’s specialist investigation division, The Fraud Investigation Service’s (FIS), media strategy plays an essential role in changing public perceptions and delivering compliance. FIS works with Communications Teams and Press Office to produce press releases highlighting successful prevention strategies. These are issued nationally, regionally, or to professional/trade press (or for the biggest cases, issued to all three groups). For the most newsworthy cases, the Press Office then works with the media to secure interview opportunities for TV, radio, and online to amplify its messages.

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

2047. As the agency responsible for investigating tax crimes, HMRC can exercise a broad range of criminal investigative and civil inspection powers - using a suite of legislation to achieve these goals. The below table is a snapshot of this.⁵

Table 50.5. Investigative powers of tax crime investigation agency (HMRC-FIS)

Power of tax crime investigation agency (i.e. authorised officers of HMRC FIS) to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power When exercised through civil inspection powers, a court warrant is not required. For the exercise of criminal powers, HMRC applies for a search warrant from the relevant court. There are also powers to search premises controlled by a person who has been arrested (S18 Police and Criminal Evidence Act 1984) and to seize relevant evidence if an officer is lawfully on premises (S19 of the same Act)
Obtain documents from third parties	Full direct power HMRC can issue production orders to compel third parties to produce documents relevant to the investigation. In criminal investigations, this is subject to a PACE application order.
Interview	Full direct power This applies to both civil and criminal proceedings. Suspects have a right to silence, though adverse inferences can be drawn if suspects fail to mention, without good reason, something they later rely on in court.

Inquiry powers (e.g. power of coercion)	Full direct power
Intercept mail and telecommunications	Full direct power Application must be made to secretary of state for a warrant and any warrant issued approved by judicial commissioner.
Conduct covert surveillance	Full direct power This applies to both directed and intrusive surveillance as well as covert internet monitoring. Governed by the Regulation of Investigatory Powers Act 2000. Covert surveillance must be authorised by an HMRC "authorised officer"
Conduct undercover operations	Full direct power. Also governed by RIPA and must also be authorised by an HMRC "authorised officer"
Search and seize computer hardware, software and electronic storage media	Full direct power Covered by the same warrant (in criminal investigations) as the search and seizure of physical evidence.
Arrest	Full direct power Procedural safeguards for arrests and detention of suspects are set out in PACE Code C.

2048. **Legal professional privilege:** In the United Kingdom, legal professional privilege comprises legal advice privilege (anything evidencing the legal advice given by a lawyer to his client or the instructions to advise) and litigation privilege (any document created for the dominant purpose of contemplated adversarial litigation). UK courts have confirmed that legal advice privilege only applies to the advice of lawyers (no accountants or tax professionals) and does not extend to details of client accounts. Items held with the intention of furthering a criminal purpose are not items subject to privilege. Generally speaking, authorities cannot seize materials subject to LPP. However, section 50 of the Criminal Justice and Police Act 2001 may be used to seize LPP material where it is mixed with non-LPP material. A search of the material can then be conducted to separate out relevant evidence that may be seized (i.e. material that doesn't attract LPP).

Principle 4: Freezing, seizing, and confiscating assets

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

2049. **Legal basis:** The United Kingdom's Proceeds of Crime Act 2002 (POCA) establishes both conviction and non-conviction based asset confiscation regimes that allow for the freezing, seizing, and confiscation of proceeds and instruments of crime, including taxation offences. POCA is a value-based confiscation regime, which also allows for extended confiscation orders for the proceeds of all crimes committed up to six years before the start of the relevant court proceedings as well as confiscation of tainted gifts or assets linked to a third party.

2050. **Freezing orders:** During a criminal investigation, HMRC, working with the appropriate prosecuting authority, has the power to freeze assets via a restraint order. Applications for these orders can be made expeditiously within 24 to 48 hours – i.e. if intelligence received suggests an immediate risk the asset could be moved out of the jurisdiction, or ownership transferred – although the court must be convinced that the individual associated with the asset poses a risk of removing or dissipating the asset to frustrate any future confiscation order. These orders are applicable pre and post-charge, and there is no financial threshold, although each restraint application is assessed for its applicability to the circumstances of the case. Once granted, HMRC works with the relevant prosecuting authority to manage the restraint order, ensuring the individual adheres to the conditions of the order. Account Freezing Orders operate on the same civil-based system as physical cash seizures and forfeitures. These powers can be used during a criminal investigation to complement POCA confiscation, or as a standalone opportunity based on financial intelligence.

2051. **Seizure and confiscation orders:** As noted, POCA provides for non-conviction based confiscation and following amendments introduced by CFA, HMRC is now designated an Enforcement

Authority and can pursue its own Part 5 investigations (i.e. investigations into assets valued at GBP 10 000 or more, with suspected offending happening within 20 years of the investigation commencing). The only exception is Scotland, where cases are referred to the CRU for investigation and enforcement. Many of the POCA powers applicable to money laundering or confiscation investigations can also be used in Part 5 investigations. However, Part 5 comes with its own property freezing provisions (Property Freezing Orders), which can be made *ex parte* (i.e. without notice to the relevant party⁶). If HMRC successfully concludes a Part 5 case following hearing in the High Court, a Civil Recovery Order is granted. This means the property is vested in the Trustee for Civil Recovery (in HMRC's case a senior civil investigator) who is responsible for realizing the maximum amount of monies to be returned to the Treasury.

2052. Where confiscation follows a successful conviction, the threshold for granting a confiscation order is reduced. For extended confiscation, the regime applies a reverse burden of proof on the offender to show that assets HMRC identifies should not be considered as part of their benefit figure and therefore not included in the recoverable amount.

2053. POCA's cash seizure and forfeiture provisions are extremely powerful, with a minimum amount of GBP 1 000 that is liable to seizure if it is suspected of being the proceeds of crime or will be used to fund criminal conduct.

2054. **Other forms of asset recovery:** Where POCA confiscation or civil recovery is deemed inappropriate or is not the most cost-effective asset recovery mechanism, HMRC can pursue other forms of asset recovery. This includes traditional tax investigations, which result in the evaluation of taxes owed and an assessment applied to an individual. These investigations can happen entirely under HMRC's own authority, without need to seek permission from the court in using these powers. However, in some cases, for example where there is a risk of money leaving the United Kingdom, HMRC can assess the tax debt and apply to the High Court for a civil freezing order. These orders are entirely distinct from similar powers under POCA. HMRC often uses its tax investigation powers in supporting the work of other law enforcement partners, who may struggle to reach the threshold to pursue a criminal conviction.

2055. **Enhanced forms of asset recovery:** In addition, the CFA introduced Unexplained Wealth Orders (UWO) as part of the POCA toolkit. The qualifying thresholds for these orders include assets suspected of being worth GBP 50 000 or more, and that the individual subject to the order is suspected of involvement in serious organised crime or is a politically exposed person in breach of their obligations. The UWO applies a rebuttable presumption that property identified is the proceeds of crime, including tax offences. The respondent has six months to provide suitable evidence to offset the UWO, otherwise the High Court can grant the Enforcement Authority (such as HMRC, CPS, CRU, NCA, DPP Northern Ireland or the Financial Conduct Authority) a Civil Recovery Order. These orders are a new and innovative tool, and several have been granted to date.

2056. **Foreign freezing, seizure, and confiscation orders:** For England and Wales, the Crown Prosecution Service or Scotland's Crown Office or DPP Northern Ireland, as directed by the court, may also enforce foreign states' seizure and confiscation orders, which forfeit the property to the relevant foreign state. Several orders of this kind have been enforced and money repatriated to the requesting jurisdiction.

2057. **Agency or unit responsible for asset recovery:** Within FIS, suitably authorised investigators can access powers under POCA. For the most complex, complicated or high-value restraint and confiscation investigations, FIS has a specialist Proceeds of Crime Operations (POC Ops) team which is staffed by financial investigators accredited with the National Crime Agency's Proceeds of Crime Centre. These officers have specific authority to use the POCA powers to pursue confiscation outcomes, in addition to the civil tools available in POCA. Once a confiscation order is granted, HMRC works with the prosecuting authority to ensure the order is satisfied. When dealing with recidivist offenders or those linked to high-value offenders, the confiscation order is referred to HMRC's dedicated Offender Management Enforcement Team. This team also monitors HMRC's prisoner population and those subject to Serious

Crime Prevention Orders (SCPOs). These orders can restrict behaviour or place conditions on individuals to reduce their likelihood of reoffending – e.g. owning more than one bank account.

2058. In addition to POCA investigations, POC Ops also has specialist civil investigators skilled in bankruptcy and insolvency proceedings, as well as tax investigators, who work together on the most complex cases to maximise asset recovery outcomes. Some of the United Kingdom’s prosecuting authorities also have specialist litigators that deal with complex confiscations or POCA civil recovery investigations. For example, in England and Wales CPS has a specialist Proceeds of Crime division which deals with complex or high-value confiscation investigations, including those pursued by HMRC. In Scotland, the Civil Recovery Unit is a dedicated team that deals with all non-conviction based asset recovery under Part 5 of POCA.

2059. **Freezing, seizing, and confiscation in practice:** HMRC routinely seizes and forfeits suspicious cash amounts as they are often linked to excise frauds or money laundering. In the tax years ending 2018 and 2019, HMRC’s FIS recovered more than GBP 400 million of suspected proceeds of crime using the powers referenced above. The majority of these receipts were delivered by COP9 investigations. However, when pursuing criminal prosecutions, HMRC’s primary asset recovery method is POCA confiscation, although the POC Ops operating model is to use a blend of all available powers to cause maximum financial disruption of tax cheats and organised crime groups

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

2060. HMRC is the United Kingdom’s tax, payments and customs authority. The Customer Compliance Group within HMRC is responsible for ensuring that HMRC successfully collects the right amount of money due from UK taxpayers, investigates offences against the tax system and takes action to identify and mitigate potential threats. Within this Group, HMRC’s Risk Intelligence Service provides risk assessment and intelligence analysis to enable HMRC to understand and manage risks to the tax system. And HMRC’s FIS is responsible for the HMRC’s civil and criminal investigations into the most serious tax crimes.

2061. The United Kingdom has three prosecuting authorities: CPS (England and Wales); the Crown Office and Procurator Fiscal Service (Scotland) and the Public Prosecution Service for Northern Ireland (Northern Ireland). These prosecution authorities are responsible for prosecuting criminal cases investigated by HMRC (as well as the police and NCA see below). Within the Crown Prosecution Service (CPS), there is a specialist team, the CPS Specialist Fraud Division, that is responsible for tax crimes and which deals with the most serious, complex and difficult economic crime cases.

2062. The table below provides a high level overview of the agencies responsible for combatting other financial crimes in the United Kingdom. A more comprehensive analysis of the United Kingdom’s organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁷

Table 50.6. Agencies and bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Her Majesty’s Revenue and Customs	Detects and investigates crimes involving taxes, duties, and other areas it administers.
National Crime Agency	Prevents, detects, and investigates serious and organised crime including corruption and money

	laundering resulting from grand corruption overseas.
Metropolitan Police Service	Investigates serious and organised crime.
City of London Police	Lead police force for the investigation of fraud and money laundering.
Regional and Organised Crime Units	Investigate cases relating to serious and organised crime that do not meet the criteria for investigation by one of the specialised agencies
Serious Fraud Office	Investigates and prosecutes serious and complex fraud, including foreign bribery.
National Economic Crime Centre	Established in 2018, NECC brings together law enforcement agencies, government departments, regulatory bodies and the private sector with a shared objective of tackling serious and organised economic crime. NECC prioritises and plans the multi-agency response to key threats and brings the full force and capabilities of partners to secure co-ordinated criminal, civil and regulatory action.
Financial Intelligence Unit	Housed within the NCA, the FIU receives, analyses, and disseminates data obtained from Suspicious Activity Reports (SARs).
Financial Conduct Authority	Rule-making, investigative, and enforcement powers to protect and regulate the financial services industry.
Territorial Police Forces	Investigate primarily financial crime linked to predicate offending

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

2063. HMRC is not able to provide detailed information relating to its budget for the investigation and prosecution of tax crimes. In general terms, HMRC's intelligence and investigation functions receive a delegated budget from HMRC's annual funding envelope but which is subject to Departmental pressures and priorities. HMRC has received separate funding through the UK Budgets and Spending Reviews (in 2015 and 2017) which have provided significant uplifts in resources to target Tax Crime and the Enablers of Criminality, which included increased resources for CPS. HMRC's investigation budgets are not performance based.

Table 50.7. Data bases/sources of information available to tax crime investigators

Database	Access	Additional Information
Company formation/ ownership registry	Access on Request	Companies House via HMRC's National Co-ordination Unit (NCU)
Land Registry	On request	Different levels of Check available through NCU
Registry of citizens	On request	Passport and Driving Licence checks through NCU
Tax databases	Direct Access	Direct and Indirect Tax. Cross database check facility
Customs databases	Direct Access	Import and Export Access
Police databases	On request	Police Record Check through HMRC's NCU
Judicial databases	On request	Previous Conviction check through HMRC's NCU
Suspicious transaction report databases	Direct Access	Financial Investigators direct access to Suspect Activity Reports
Domestic bank account databases	On request	Access only after Production Order obtained at Criminal Court
Car registry	On request	Request via HMRC's NCU
Boat registry	On request	Request via NCU
Connect	Direct Access	Connect technology, cross-references more than 28 billion lines of data including customers' self-assessment returns, corporation tax returns, property, financial data and other sources to detect patterns, hidden relationships, inconsistencies and suspicious activity

Note: Direct Access presumes that investigators can also request information from these databases.

2064. HMRC's Criminal Justice Academy (CJA) provides a wide range of training, including specialist subjects bought in from external suppliers. Foundation training for criminal investigators and intelligence officers is mandatory (unless in exceptional circumstances the recruit has previous qualifying training) and, in a change from a unified four-week programme is now delivered in independent events. The Criminal Investigation Foundation course commences with Stage 1, a three day pass/fail Officer Safety Training, including hand-cuffing followed by five weeks of Stages 2 and 3 covering powers and procedures; case handling; cash seizure; warrants and orders and forensic awareness followed by arrest; search; seizure; interview under caution; and giving evidence/court exercise. Stage 4 draws all these skills together in a two week event that leads to a house search; arrest in a public place; recce, observations and arrest all followed by witness statements and a courtroom exercise conducted by barristers.

2065. Intelligence officers undertake a five-week operational intelligence course that includes intelligence basics, operational analysis; surveillance theory; and log-keeping. Both events are preceded by issue of a guided learning unit with trainees allowed 4 weeks to read and conclude with a Final Exercise (FINEX) involving role play scenarios.

2066. All criminal justice professionals enter a continuous professional development programme in which it is essential that they acquire 40 points, allocated for a variety of activity, including safety training, reading a quarterly Organisational Learning bulletin, attendance at conferences, classroom training, and completion of circa 90 e-learning products and other self-development.

2067. In addition to the mandatory training above, CJA delivers specialist courses on a range of topics including foot surveillance (two weeks), mobile surveillance (four weeks), investigative interviewing, (one week), financial intelligence (four days); financial investigation (one week); restraint & confiscation (one week); open source research (five days); and digital media investigation (five days). Students are either nominated by their managers or volunteer to work in specialised areas and this training is only mandatory if the officer has been recruited into a specific field of work and requires that training. HMRC has also delivered international training, both bilaterally and through the provision for instructors for the OECD International Academy for Tax Crime Investigation. HMRC's training budget for 2018-19 was approximately GBP 1.6 million.

2068. **Prosecutors:** Tax crimes investigated by HMRC are prosecuted by the Crown Prosecution Service and more specifically by the Specialist Fraud Division or one of the Fraud Hubs. Prosecutors within the division or hub are provided with training by way of an induction and are provided with an experienced mentor. Cases prosecuted by the Specialist Fraud Division are dealt with by Specialist and Senior Specialist Prosecutors many of whom have years of experience prosecuting tax offences. In some cases teams of prosecutors will be assigned to a case depending on the size and complexity and in this way the less experienced prosecutors develop the necessary skills required for prosecuting tax crimes. When new legislation introduces new tax crimes, e.g. Criminal Finances Act 2017, then bespoke training is delivered in advance of the implementation date. The CPS is committed to continuous improvement and developing the skills of the prosecutors and there is a wide and varied training programme for all prosecutors to ensure a high quality service.

Principle 7: Predicate offences

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

2069. **Approach:** The United Kingdom adopted an "all crimes" approach to money laundering over a decade ago, meaning that it is an offence to launder the proceeds of *any* crime.⁸ There is also no obligation to prosecute an individual for a predicate offence before pursuing money laundering charges meaning that natural and legal persons can be charged with standalone money laundering offences. In such cases, there is no obligation for the prosecutor to identify a specific predicate offence. Instead the prosecutors

can invite the court to make an irresistible inference that the property could only be derived from criminal conduct.⁹ In addition, a person can be charged with money laundering in the United Kingdom if the proceeds of foreign offending pass through the United Kingdom. The maximum custodial sentences for POCA s327 and s328 offences is 14 years, and if convicted can result in extended confiscation proceedings.

2070. Prosecution authorities have the option of pursuing predicate offences, money laundering offences, or both. HMRC works with the prosecuting authorities to decide the most effective and impactful prosecution strategy, including the application of charges.

2071. **Enforcement of money laundering predicated on tax crimes:** Money laundering has routinely been used to target and disrupt alcohol smuggling organised crime groups, as their inability to legitimately explain substantial cash movements makes them susceptible to money laundering charges. Money laundering prosecutions are also an effective method of disrupting the financial enablers of tax crimes. This includes professionals or businesses with knowledge of anti-money laundering procedures. Sentencing guidelines state that such professionals or businesses should face stiffer penalties for deliberately and knowingly circumventing their AML obligations.

2072. Enforcement authorities report that the “all crimes” approach makes prosecution for money laundering more straightforward than it was under the preceding legislation (which listed a limited number of predicate offences) and the prosecution only needs to show that the defendant knew that they were dealing with the proceeds of a *crime*, rather than a specific crime.

2073. In addition to the POCA money laundering offences, HMRC and prosecutors can also charge individuals or businesses for failure to meet AML regulatory obligations. These are set out in the Money Laundering Regulations 2017, which are derived from EU Money Laundering Directives. If a business or individual has been found liable for serious or sustained breaches of the regulations they can be prosecuted and face up to two years imprisonment, a financial penalty or both.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

2074. There is no legal obligation on HMRC’s tax auditors to refer suspicions of tax crimes to FIS. However, legal gateways exist for discretionary reporting and an Evasion Management Team exists for this purpose. EMT manages the Evasion Referral Process (ERP) by acting as a central point of contact between the criminal and civil investigative teams. The ERP is mandatory for all caseworkers within HMRC’s Customer Compliance Group. It is a national process ensuring direct tax, indirect tax and duty evasion is dealt with by the most appropriate method (criminal and civil), provides a clear audit trail for such cases and also informs the strategic risks analysis. When a case worker suspects a tax crime and the referral criteria are met, they submit the referral to EMT who then carries out checks and considers the potential for criminal and/or civil action. Relevant cases are then taken up for criminal investigation by FIS. If a referral sent to FIS for criminal action, it will be considered for a specialist civil team or returned to the original referring officer to continue with their action. All referrals will be pursued with an appropriate criminal or civil action. A database is maintained to record the various stages of the referral, including adoption/non-adoption decisions, which are visible to eventual case workers.

Table 50.8. Evasion referral process outcomes in tax years ending 2017-19

Financial Year	Number of cases referred to EMT	Number of cases referred to FIS for criminal investigation	Number of cases referred for civil investigation	Number under of cases still under review
2017	3 216	1 428	1 788	-
2018	3 809	1 864	1 941	-
2019	2 906	1 596	1 500	18

2075. In addition to the EMT referral programme, tax auditors are able (but not obliged) to refer suspicions of other non-tax related offences to law enforcement authorities (e.g. fraud, money laundering, bribery, corruption etc.).

2076. HMRC has various powers to disclosure information to other bodies. These powers include the power in section 19 of the Anti-Terrorism, Crime and Security Act 2001 to make a disclosure for the purpose of another body's criminal investigation, prosecution, or deciding whether to commence such an investigation or prosecution. HMRC also has duties under the United Kingdom's anti-money laundering legislation to inform the NCA (the United Kingdom's FIU) of suspicions of money laundering.

Information sharing between agencies involved in investigation and prosecution of tax crime and other financial crimes

2077. As set out in Principle 2 above, as a matter of course, strategic intelligence assessments developed by HMRC and other UK law enforcement agencies are shared and, in some cases, developed together. NCA annually publishes the National Strategic Assessment of Serious and Organised Crime (SOC), which is an intelligence-based assessment building on those previously issued to provide a single picture of the threat to the United Kingdom from serious and organised crime over the course of the past year. It is drafted with support from many organisations including HMRC.

2078. HMRC also routinely shares and receives tactical intelligence with other UK law enforcement agencies. For example, HMRC submits and receives Suspicious Activity Reports (SARs) to and from the United Kingdom's Financial Intelligence Unit (UKFIU). HMRC also has access to the Police National Computer (PNC), which is a national database of information available to all UK police forces and some non-police organisations. Information held on the PNC allows HMRC to carry out checks, for example, on a person's criminal record or vehicle registration. HMRC also has access to Organised Crime Group Mapping, which is a UK law enforcement tool which maps characteristics of individuals and groups involved in serious and organised crime.

2079. The tables below set out some of the information sharing gateways that the United Kingdom has in place between different financial crimes agencies, as well as mechanisms for enhanced co-operation. A more detailed analysis of the United Kingdom's frameworks for inter-agency co-operation in fighting tax crime and other financial crimes is set out in the Third Edition of the Rome Report.

Table 50.9. Models for sharing information related to tax crime and other financial crimes

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Authority providing	Tax administration		Direct Access ^(a)	Direct Access	DSS	MSS ^(b)	DSS
	Customs administration	Direct Access	Direct Access		DSS	MSS	DSS

Police or public prosecutor	DSS	DSS	DSS		MSS	DSS
Financial Intelligence Unit	Direct Access ^(c)	Direct Access ^(c)	Direct Access ^(c)	Direct Access		MSS
Corruption investigation authority	DSS	DSS	DSS	DSS	MSS	
Financial regulator	DSS	DSS	DSS	DSS	MSS	DSS

Note:

DSS = Discretionary Spontaneous Sharing/ MSS = Mandatory Spontaneous Sharing

(a) Any information held by HMRC is available to be used by officers of HMRC for any other function thus FIS may use any information held by HMRC for criminal investigation. Criminal investigators have direct access to HMRC databases containing taxpayer details, and may obtain other information on request to the relevant area.

(b) The FIU has no direct access to tax administration information. HMRC supervises compliance with antimoney laundering regulations by certain industry sectors, including money service businesses, high value dealers, trust or company service providers and accountancy service providers. Where, in this capacity, HMRC obtains information concerning possible money laundering, it is obliged to inform the FIU. However, the FIU is not permitted under law to receive information held by HMRC in its capacity as tax administration unless authorised by an HMRC Commissioner.

(c) HMRC (Criminal Intelligence directorate) has direct access to SARs held by the FIU, via a secure online facility, Moneyweb. Very sensitive reports are not available on Moneyweb, but can be obtained on request, where appropriate. Access to Moneyweb within HMRC is restricted to officers with appropriate security clearance and training and who have a valid business reason for access for investigation or intelligence purposes. There is a solid firewall between the investigatory and the Money Laundering Regulations supervisory functions of HMRC (the supervisory function does not have access). Information obtained from the FIU can be used in determining civil tax assessments, but Suspicious Activity Reports cannot be shared with unauthorised staff unless the reports are first sanitised to protect the source of information. The FIU refers almost all cases involving tax matters to the tax administration.

Table 50.10. Availability of enhanced forms of co-operation to combat tax crimes

Agency	Description
National Economic Crime Centre (NECC)	HMRC is a member of the NECC, a multi-agency hub hosted by NCA which brings together law enforcement, regulators, HM government and private sector partners (including through JIMLIT – see below) to co-ordinate the overall response to Economic Crime.
Joint Financial Analytical Centre	Housed within NCA, the brings together officers, analytical capability, skills and intelligence from four agencies – the NCA, HMRC, FCA, and SFO – in a collaborative and innovative working environment. This Centre was established to analyse all the information that was made available from the International Consortium of Investigative Journalists Panama Papers data leak.
Economic Crime Strategic Board	Government taskforce which works with senior figures from the UK financial sector to tackle economic crime
Joint Money Laundering Intelligence Taskforce (JMLIT).	Partnership between the UK government, the British Bankers Association, law enforcement, and more than 40 major UK and international banks under the leadership of the Financial Sector Forum to combat high end money laundering.
UK Money Laundering Advisory Committee	Forum for government departments, industry representatives and law enforcement agencies to develop a strategic approach to tackling money laundering.
Joint Investigations	In certain cases, investigations will be undertaken by joint investigation teams in order to draw on a wider range of skills and experience from investigators with different backgrounds and training.
Joint operations and taskforces	HMRC/SFO Joint Task Force and Joint Financial Analysis Centre
Parallel investigations	In such circumstances agencies agree who has primacy or develop a joint investigation
Joint intelligence centres	Examples include multi-agency task force set up to deal with intelligence following the release of the so-called Panama Papers (includes HMRC, SFO, NCA, FCA).
Secondments and co-location of staff	Secondments are in place with a number of key partners such as the NCA, and Police Regional Intelligence Units.
Training	The Proceeds of Crime Centre in the NCA manages the training and accreditation of all financial investigators in the United Kingdom as determined by the Proceeds of Crime Act. Collaboration on training material includes input principally from the NCA itself, as well as the SFO, City of London Police and HMRC alongside other National Financial Investigation Working Group members

Principle 9: International co-operation

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.

2080. **Legal basis:** The United Kingdom may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. The United Kingdom has exchange of information relationships with 147 jurisdictions through 130 Double Taxation Agreements and 26 Tax Information Exchange Agreements. It is also a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which allows HMRC to exchange information with other Parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided. In the absence of a treaty or convention or convention, the United Kingdom. could still share information with other jurisdictions pursuant to the Crime (International Co-operation) Act 2003.

2081. **Competent authorities:** HMRC is the UK central authority for incoming MLA requests in England, Wales, and Northern Ireland relating to tax or fiscal customs matters only (for example, the collection and management of revenue, the payment of tax credits). MLA requests from the United Kingdom for evidence (outgoing MLA) must be issued by a court or a designated prosecuting authority. A court may issue requests on behalf of the defense once proceedings have been instituted.¹⁰

2082. **International co-operation in practice:** Between 2017 and 2019 received 384 requests for assistance from foreign jurisdictions pursuant to MLA treaties and 440 European Investigation Orders received.¹ These figures represent all offences within HMRC's investigative mandate that are under investigation by its foreign counterparts.

2083. **Enhanced form of international co-operation:** HMRC is also a member of the Joint Chiefs of Global Tax Enforcement (J5), which was established in 2018 to tackle international tax crime and money laundering. The group brings together leaders of tax enforcement authorities from Australia, Canada, the United Kingdom, the United States, and the Netherlands. Through the J5, experts on tax, crypto and cyber crime sharing intelligence and collaborate on operations to target those who enable global tax evasion. The J5 is working on a significant number of cross border investigations including those involving sophisticated international enablers of tax evasion, a global financial institution and its intermediaries who facilitate taxpayers to hide their income and assets.

Principle 10: Fundamental rights of a suspect or accused person

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

2084. **Legal basis:** The United Kingdom provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights are set out in various places, including: the- Human Rights Act 1998, the Data Protection Act 2018, Criminal Procedure and Investigations Act 1996, Police and Criminal Evidence Act (PACE) 1984, PACE Codes of Practice and the common law. UK legislation also sets out the legal obligations of investigators for disclosure of material to suspects or their representative. Where legislation is only applicable within England and Wales, both Scottish and Northern Irish legislation provides similar safeguards.

Table 50.11. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	At all times
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	At all times
remain silent (but inferences drawn from silence)	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At all times
be advised of the particulars of what one is accused of	Yes	At all times
access documents and case material, also known as a right to full disclosure	Yes	At all times
a speedy trial	Yes	At all times
protection from ne bis in idem (Double Jeopardy)	Yes	At all times

Highlights

Successful practices

- Effective use of a broad range of criminal and civil powers to combat serious fraud demonstrated through ongoing investigations, prosecution and awards of life-changing penalties, seizure of assets, and sanctions.
- Introduction of corporate liability for failure to prevent tax evasion which gives HMRC the power to take criminal action against firms if they have not put in place reasonable procedures to prevent the facilitation of tax evasion by their employees.
- Comprehensive “whole of government” tax crime strategy which includes periodic threat assessments and an effective public communications strategy
- Extensive powers to freeze, seize and confiscate the proceeds of tax crimes, including through the production of Unexplained Wealth Orders
- Comprehensive and graduated training for tax crime investigators with dedicated funding
- Effective enforcement of money laundering predicated on tax offences.
- Effective use of enhanced forms of international co-operation through the Joint Chiefs of Global Tax Enforcement (J5).

Room for improvement:

- The United Kingdom could consider the need to establish a legal obligation on HMRC’s tax auditors to refer suspicions of tax crimes to FIS.

Notes

¹ <https://www.gov.uk/government/publications/criminal-investigation/hmrc-criminal-investigation-policy>.

² <https://www.gov.uk/government/publications/code-of-practice-9-where-hm-revenue-and-customs-suspect-fraud-cop-9-2012>.

³ <https://www.cps.gov.uk/publication/deferred-prosecution-agreements-code-practice>.

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785551/tackling_tax_avoidance_evasion_and_other_forms_of_non-compliance_web.pdf.

⁵ There are also similar statutes in Scottish Law that are used to achieve these goals.

⁶ A court would allow an application to be heard ex parte if there were reasonable grounds for believing the respondent would seek to render any order ineffective if he knew of the application in advance.

⁷ See Rome Report, Chapter 5 – Country Information – United Kingdom. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁸ All POCA money laundering offences are set out in ss327 to 329 and ancillary offences in ss330 to 333.

⁹ R v Anwoir and others 2008 sets out the case law for prosecuting money laundering. The court could prove money laundering in two ways – i) by associating the property with a specific offence or offences, or ii) by evidence of circumstance which gives rise to an irresistible inference.

¹⁰ Further information is available online: <https://www.gov.uk/guidance/mutual-legal-assistance-mla-requests#case-handling-arrangements-in-the-uk-central-authority>

51 United States

This chapter was published June 2021

Principle 1: Criminalisation of tax offences

Countries should have the legal framework in place to ensure that violations of tax law are categorised as a crime and penalised accordingly.

Tax crime legislation

2085. Tax crimes related to violations of federal income tax laws are set out in Title 26 of the United States Code (26 U.S.C.) which is separately titled the Internal Revenue Code (IRC). Other financial-related crimes, such as money laundering, are set out in Title 18. There is no federal level VAT/GST in the United States but states apply their own state-level VAT/GST and income taxes to which state tax laws apply. The information contained in this chapter relates solely to federal income tax laws. Examples of federal income tax offences that require criminal intent (i.e. *mens rea*) are set out in the Table 51.1 below.

Table 51.1. Income tax offences requiring criminal intent

Offence	Maximum sanction (natural person)	Maximum sanction (legal person)	Statute of limitations
Willful attempt to evade or defeat tax (26 U.S.C. § 7201)	Five years' imprisonment and / or maximum fine of USD 250 000	Maximum fine of USD 500 000	Six years from the date of the last affirmative act taken in furtherance of the alleged offence. (26 U.S.C. § 6531)
Fraud and false statements (26 U.S.C. § 7206 (1) and (2))	Three years' imprisonment and / or maximum permissible fine of USD 250 000	Maximum fine of USD 500 000	Six years from the signature date or the filing date, whichever is later. (26 U.S.C. § 7206 (1))
False, fictitious or fraudulent claims – Conspiracy to defraud the Government (18 U.S.C. § 286)	Ten years' imprisonment and maximum permissible fine of USD 250 000, with additional provisions allowing for fines in the amount of two times the gain / loss caused by the offense.	Maximum fine of USD 500 000 with additional provisions allowing for fines in the amount of two times the gain / loss caused by the offense.	Five years from the commission of the offense (18 U.S.C. § 3282)

Note:

In April 2021, EUR 1 = USD 1.20

* For more information on the criminal offences, see the *United States Department of Justice's (DOJ) Criminal Tax Manual (CTM)* available from: <https://www.justice.gov/tax/foia-library/criminal-tax-manual-title-page-0>

2086. **Statute of limitations:** US law provides that the time during which the alleged offender is outside of the United States or is a fugitive from justice does not count as part of the limitation periods specified in the table above, referred to as tolling (U.S.C. 26 § 6531).

2087. **Complicity:** In the United States, it is a criminal offence to aid, abet, facilitate, or otherwise enable the commission of tax crimes. The sanctions for aiders and abettors vary according to the sanctions imposed for the underlying crime (18 U.S.C. § 2).

2088. **Attempt and conspiracy:** Any person who attempts to evade or defeat a tax imposed by the U.S.C or payment thereof, shall be guilty of a felon. The maximum sanctions for attempt are USD 100 000 (USD 500 000 for legal persons), or five years' imprisonment, or both, together with the costs of prosecution and any other penalties provided by law (26 U.S.C. § 7201).

2089. **Professional enablers:** The United States allows for criminal liability for professional enablers, with a maximum fine of USD 500 000 for anyone who “[w]illfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorised or required to present such return, affidavit, claim, or document.” (26 U.S.C. § 7206(2)).

2090. **Territorial and nationality jurisdiction:** The United States has jurisdiction over all crimes where the conduct constituting the alleged offence occurs wholly or partly in the United States. Case law also allows for the extraterritoriality of US jurisdiction in certain criminal cases.¹

2091. **Liability of legal persons:** In the United States, it is possible to hold legal entities criminally liable, with a maximum sanction in the form of a fine of USD 500 000. The United States reports that, in general, it tends to prioritise the prosecution of officers or owners of legal entities, rather than the legal entities themselves. In the 2015 and 2016 fiscal years, the United States convicted 20 corporations of tax crimes while 1 700 individuals were convicted of tax crimes in the same period.

Enforcement of tax crime

2092. The below table shows the enforcement of tax crimes in tax years ending 2015-18 in the United States.

Table 51.2. Enforcement of tax crimes in the tax years ending 2015-18

Fiscal Years Ending	Concluded Investigations	Offence Detected (number of cases)	Cases Referred for Prosecution	Number of Cases where Prosecution was Commenced	Number of Convictions	Number of Acquittals
2015	2 623	2 246	1 729	1 666	1 653	82
2016	2 202	1 963	1 442	1 437	1 454	64
2017	1 787	1 811	1 177	1 196	1 255	52
2018	1 736	1 714	1 050	950	987	55

Note: The information shown in the table above reflects tax investigations for full fiscal years 2015 through 2018. The number of acquittals include cases dismissed by the US courts.

2093. The United States investigated approximately USD 2.6 billion in tax evaded in fiscal year 2017 and approximately USD 9.7 billion in tax evaded in fiscal year 2018. In this same period, it imposed 2 242 convictions on individuals for tax crimes, resulting in total criminal fines of over USD 70 million and the imposition of 2 355 prison sentences.

Table 51.3. List of other sanctions imposed in tax years ending 2015-18

Sanction	Number of times imposed
>0 – 3 years' imprisonment	2 892
>3 – 5 years' imprisonment	1 480
Fine	1 376
Reparation	3 593
Probation	5 276

2094. **Availability of settlements:** In the United States, individuals may plead guilty to criminal tax charges. The Tax Division of the US Justice Department, which reviews and authorises all criminal tax prosecutions has procedures in place for criminal tax pleas.²

2095. The United States notes that deferred prosecution agreements are typically used to defer active prosecution of a corporation for a specified period (usually 12 to 18 months). A deferred prosecution agreement will include terms, under which the charged corporation admits to factual representations about the misconduct leading to the agreement and agrees to undertake specific types of co-operation with law enforcement investigations by public authorities, make payments of civil penalties and victim restitution. Furthermore, the corporation in question will institute operating reforms aimed at preventing further offences.

2096. **Availability of tax deductions for civil and criminal sanctions:** In criminal investigations, the taxpayer is allowed to appropriate credits and deductions when calculating tax due and owed. Taxpayers are not allowed to apply a deduction or a credit to a fine or restitution. Any additional fines (such as late payment) are applied after the case has been adjudicated. Any tax due and owed must be proven beyond a reasonable doubt in criminal tax cases.

2097. **Tax gap:** The Internal Revenue Service (IRS) estimates its net tax gap for the tax years 2011-13 at USD 385 billion. For the same period, the gross tax gap, which also includes taxes that have been enforced, is estimated at USD 441 billion.³

2098. The tax gap is primarily attributable to income tax as there is no federal VAT/GST in the United States. Approximately 20.8% of the tax gap (est. USD 95.4 billion) is attributable to employment, estate, and excise taxes.

Principle 2: Having a strategy for addressing tax crimes

In order to ensure the effectiveness of the law on tax crimes, countries should have a strategy for addressing tax crimes which is subject to regular review and monitoring.

Tax crime strategy

2099. The *Internal Revenue Service – Criminal Investigation Division* (IRS-CI) is responsible for setting the tax crime strategy in the United States, which involves the annual release of investigation priorities and a business plan. The business plan establishes priorities for IRS-CI in support of IRS Strategic Plan. Key elements of the strategy are case selection, employee engagement, case development and investigation, publicity and media communications, and workforce development and technology. Factors affecting these key elements are considered and strategies are designed to achieve IRS-CI's mission. IRS-CI also collaborates with other business units within IRS and the Department of Justice (DOJ) when planning strategies to combat tax crimes.

2100. **Threat assessment:** IRS-CI conducts its own threat assessment, which assesses threats to both US Treasury and IRS on a regular basis. Trends, patterns, and best practices from various sources are

used in order to arrive at IRS-CI's annual investigative priorities and determine the best use of employees' time. IRS-CI consults both DOJ and Treasury when undertaking its periodic threat assessment. Threats to IRS considered in the threat assessment include cybercrime attacks to IRS' intranet, phishing and other types of email-related attempts to access confidential information, as well as other types of cyber-attacks against IRS.

2101. IRS-CI identifies investigative priorities and lists the types of investigations that are prioritised for each year. In 2016, the priorities were; International Tax Fraud, Employment Tax, Abusive Tax Schemes, Identity Theft/Questionable Refund Fraud/Return Preparer Fraud, IRS Fraud Referral Program, Public Corruption, Cybercrimes, and Narcotics related financial crimes and Counterterrorism/Terrorist Financing. In 2017, the investigative priorities were; Employment Tax, Corporate Fraud, International Tax Fraud, General Fraud, Abusive Tax Schemes, Identity Theft, Return Preparer Fraud, Public Corruption, Crimes, Terrorist Financing, and Narcotics. For 2018 the priorities were; Employment Tax, International Tax Fraud, Abusive Tax Schemes, Conventional and General Tax Fraud, Cyber Crimes / Virtual Currency, Public Corruption, Refund Fraud, Terrorist Financing, and Narcotics.

2102. **Communications strategy:** IRS employs various communications strategies to engage with the public. Joint press releases with DOJ are often conducted on successful prosecutions. Sentencing hearings in court are open to the public. Members of the press ordinarily attend these hearings, providing basis for media coverage in newspapers, television, radio, social media and websites.

Box 51.1. Example of successful implementation of tax crime strategy: United States

The Swiss Bank Program, which was announced on 29 August 2013, provides a path for Swiss banks to resolve potential criminal liabilities in the United States. Swiss banks eligible to enter the programme were required to advise the department by 31 December 2013, that they had reason to believe that they had committed tax-related criminal offenses in connection with undeclared US related accounts. Banks already under criminal investigation related to their Swiss-banking activities and all individuals were expressly excluded from the programme.

Under the programme, Swiss banks are required to:

- Make a complete disclosure of their cross-border activities;
- Provide detailed information on an account-by-account basis for accounts in which US taxpayers have a direct or indirect interest;
- Co-operate in treaty requests for account information;
- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Agree to close accounts of accountholders who fail to come into compliance with US reporting obligations;
- Pay appropriate penalties.

Note: For more information, see: <https://www.justice.gov/tax/swiss-bank-program>

Principle 3: Investigative powers

Tax crime investigation agencies must have appropriate investigative powers to successfully investigate tax crimes.

2103. IRS – Criminal Investigations has authority to investigate crimes arising from the IRC, money laundering offences and bank secrecy crimes in the United States.

Table 51.4. Investigative powers of tax crime investigation agency (IRS-CI)

Power of tax crime investigation agency to:	Availability/Comments
Search property and seize physical evidence such as books and records	Full direct power Subject to search and seizure warrants obtained from a judge.
Obtain documents from third parties	Full direct power 12 U.S.C. § 3408 gives the authority to use a <i>Formal Written Request</i> to obtain financial records from financial institutions, which can be used both in criminal and civil proceedings.
Interview	Full direct power Special agents of IRS-CI are authorised to conduct interviews during investigations. IRS policy states that during non-custodial interviews, the special agent must advise the individual of their constitutional rights when the individual is a subject of an investigation, a corporate officer / employee who may be implicated in an alleged wrongdoing involving a corporation under investigation, or when a witness' statement would incriminate the witness. (26 U.S.C § 7602).
Inquiry powers (e.g. power of coercion)	Full direct power When conducting an administrative investigation, a summons is served to compel testimony of a witness. In grand jury investigations, a grand jury subpoena is served to compel testimony of a witness.
Intercept mail and telecommunications	No direct power The non-consensual interception of oral and wire communications is restricted to those investigations which involve the felonies listed in 18 U.S.C. § 2516, which does include tax crimes.
Conduct covert surveillance	Full direct power IRS policy authorises special agents to use surveillance during their investigations as necessary - subject to approval from a Supervising Special Agent (SSA). During general surveillance, only the activity of the target individual and other ongoing activities are monitored, while conversations are considered incidental to the surveillance and not monitored or recorded (IRM, s. 9.4.6.3.1, of 24 September 2003).
Conduct undercover operations	Full direct power IRS policy differentiates between Group I and Group II undercover operations. Group I requires the approval of the IRS-CI Chief and Group II requires the approval of the Director of Field Operations (IRM, s. 9.4.8.3, of 27 August 2007). The United States notes that, in general, due to the complexity and risks involved, undercover operations are usually limited to priority areas for IRS-CI, as described in the Internal Revenue Manual.
Search and seize computer hardware, software and electronic storage media	Full direct power Subject to search and seizure warrants obtained from a judge.
Arrest	Full direct power Under 26 U.S.C. § 7608, special agents of IRS-CI have statutory authority to make arrests with or without a warrant. When making arrests without a warrant, the special agent must have reasonable grounds to believe that the person to be arrested has committed, or is committing an offence to under the IRC.

2104. **Legal professional privilege:** In the United States, attorney-client privilege includes all privileged communications between a client and that client's attorney. However, attorney-client privilege does not apply in situations where the attorney is furthering the crime committed by the client. The United States notes that its impact on investigations is minimal. For example, when executing search and seizure warrants at a person's residence, business, or electronic storage media, documents that appear to be privileged in nature are separated. A 'taint team' of lawyers and investigators is typically formed, to review those documents and separate privileged documents from other documents. The sole purpose of the taint team is to review potentially privileged documents and decide whether the documents are truly privileged

documents or not. The taint team is independent of, and not a part of, the investigating team. No other professional secrecy obligations affect the investigation of tax offences, except in cases of communication between a suspect and their accountant, who also serves as their attorney. In that case, their communication may be considered privileged.

Principle 4: Freezing, seizing, and confiscating assets

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

2105. **Legal basis:** The 1984 Comprehensive Crime Control Act, which introduced 18 U.S.C. § 981 on civil forfeiture, gives US law enforcement authorities a broad remit for carrying out civil-based forfeitures of assets that constitute criminal proceeds. The United States notes that as this is an action directed against the property and not against the individual, no criminal charge is necessary against the owner. Civil forfeitures are mostly limited to offences related to money laundering or other financial investigations, for which IRS-CI has investigatory jurisdiction. IRS-CI will only forfeit assets in tax and tax-related investigations in situations involving egregious circumstances, where no reasonable IRS collection alternative is available. These circumstances typically arise in, and are limited to, refund fraud investigations. Furthermore, IRS-CI can only apply civil forfeiture in tax related cases with the approval DOJ's Tax Division (DOJ-TAX), which has sole authority to approve tax-related prosecutions.

2106. Unlike civil forfeiture, criminal forfeitures in the United States are limited to the property interests of the defendant and may only be pursued as part of a criminal prosecution. A judge has sole power to impose criminal forfeiture upon conviction. The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) made it possible to criminally forfeit the proceeds of any specified unlawful activity without a specific statutory forfeiture provision. Prior to this, a money laundering violation was a requirement to forfeit proceeds of a specified unlawful activity without statutory criminal forfeiture provisions.

2107. **Freezing orders:** This type of seizure is only permitted where it is related to suspects' attempts either to conceal themselves or their assets; their financial solvency is imperilled; or they are in possession of large amounts of cash (above USD 10 000) that are presumed to be in jeopardy. The legal authority to conduct rapid freezing of assets is based on the IRC, 26 U.S.C. § 6851 (termination assessment), or 26 U.S.C. §§ 6861 and 6862 (jeopardy assessment) and is carried out by IRS Collection.

2108. **Confiscation orders:** The IRC provides for two methods of both administrative and civil judicial forfeiture. Administrative forfeitures are conducted solely by IRS-CI without judicial involvement. A civil judicial forfeiture is a judicial action where a prosecutor files a civil forfeiture complaint in US District Court. However, as outlined above, IRS-CI does not have the authority to seize assets in tax investigations unless authorised by DOJ-TAX. The violations noted in Table 1 of this chapter do not have any seizure/forfeiture authority under the IRC irrespective of DOJ-TAX approval. This is because tax crimes are not specified unlawful activities that form a basis for forfeiture. The IRC does have forfeiture statutes that allow for the seizure/forfeiture of property used, or intended to be used, to violate the Internal Revenue laws. Proceeds of such a violation are not forfeitable. Furthermore, Directive No. 145 specifically prohibits seizure/forfeiture in cases, where the assets seized are tax dollars unrelated to refund fraud/identity theft.

2109. IRS-CI is only able to conduct **extended confiscations** in refund fraud investigations. In other types of criminal tax matters, extended confiscations are not allowed.

2110. IRS-CI does not conduct **value-based confiscations**, as per US DOJ policy. Generally, only a court has the authority to assess fines and penalties as well as order restitution. Furthermore, IRS-CI does not conduct **third-party confiscations** in criminal tax matters. The IRC grants IRS powers to forfeit property only when such property was used or was intended to be used to violate tax laws. The statute

does not include a tracing provision. Therefore, if property connected with the crime is sold, traded, or exchanged for other property, then that other property is not forfeitable. The United States highlights that it would be preferable to have a statute that allows the forfeiture of substitute assets in cases like these.

2111. **Foreign freezing, seizure, and confiscation orders:** The Office of International Affairs of the Department of Justice (DOJ-OIA) is the US agency in charge of co-ordinating foreign requests. DOJ-OIA will then designate IRS as the competent authority in order to provide information requested through the MLAT process as it pertains to tax investigations. No data is available on the total value of seized or confiscated assets in connection with foreign criminal tax matters.

2112. **Agency/unit responsible for asset recovery:** As outlined above, IRS-CI is responsible for freezing, seizing, and confiscating assets in the course of a tax crime investigation, on approval of DOJ-TAX. IRS-CI has a dedicated unit of Asset Forfeiture Co-ordinators that are subject matter experts and assist special agents with seizures and forfeitures during the investigative process.

Principle 5: Organisational structure with defined responsibilities

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

Agencies responsible for investigation and prosecution of tax crimes

2113. IRS is the sole federal agency responsible for federal tax administration in the United States. As outlined earlier, states also possess local tax agencies that manage the collection of state taxes. IRS' role is to administer the tax assessments of compliant taxpayers, while making sure that non-compliant taxpayers are sanctioned in accordance with the law.

2114. IRS-CI is the only federal agency that has the statutory authority to investigate criminal violations of the IRC, and refer those cases for prosecution. IRS-CI ordinarily co-operates with other government agencies, such as the Federal Bureau of Investigation (FBI) and Homeland Security Investigations (HBI), but remains the principal body for investigating and tax crimes.

2115. IRS-CI has dedicated attorneys who advise special agents on legal issues and review cases before they are referred for criminal prosecution. These attorneys are assigned to IRS Chief Counsel's office, Criminal Tax Section. After IRS-CI prepares a case for criminal prosecution, the case is forwarded to DOJ-TAX which has sole authority for approving tax-related prosecutions. Although DOJ-TAX can also prosecute tax cases, the US Attorney's Office, which also sits within DOJ, has primary responsibility for prosecuting tax crimes after receiving authorisation from DOJ-TAX.

2116. The below table provides a high-level overview of the agencies responsible for combatting financial crimes more generally. A more comprehensive analysis of the United States' organisational models for fighting tax crime and other financial crimes is set out in the Third Edition of [the OECD Report on Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes \(Rome Report\)](#).⁴

Table 51.5. Agencies & other bodies responsible for enforcing other financial crimes

Agency	Role with respect to financial crime
Internal Revenue Service (IRS)	Sole agency responsible for federal tax administration in the United States.
IRS – Criminal Investigations (IRS-CI)	Investigates potential criminal violations of US tax laws and related financial crimes, including tax evasion. Sole federal agency with statutory authority to investigate criminal violations of the IRC and refer those cases to prosecution.
Immigration and Customs Enforcement (ICE)	Principal investigative arm of the US Department of Homeland Security. Responsible for investigating a wide range of domestic and international activities, including immigration crime, human rights violation, narcotics,

	and cross-border and transnational financial crimes.
Department of Justice (DOJ)	In charge of the Office of the US Attorney, which co-ordinates public prosecutions in the United States, including prosecutions of federal income tax crimes. DOJ also has primary responsibility for the criminal enforcement of corruption offences at the federal level through its respective sections on Public Integrity, Fraud, Criminal Section, and Organised Crime and Racketeering.
DOJ Tax Division (DOJ-TAX)	Division within DOJ responsible for enforcing US tax laws in order to promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promotes the sound development of the law. Sole power to approve prosecutions for IRC violations.
Federal Bureau of Investigation (FBI)	The FBI has the authority to investigate corruption matters throughout the federal government and at the state and municipal levels. It is the primary investigative agency for public corruption offences. The FBI has Public Corruption, International Corruption, Governmental and Fraud Units in its Criminal Investigative Division.
US Secret Service	The mission of the United States Secret Service is to safeguard the nation's financial infrastructure and payment systems to preserve the integrity of the economy,
Financial Crimes Enforcement Network (FinCEN)	The Financial Intelligence Unit (FIU) of the United States, housed within Treasury.
Police	There are many law enforcement agencies in the United States at the local, state and federal levels of government. Local police agencies are responsible for investigating crime with their jurisdiction, including violations of local tax laws. The Federal system does not prosecute state tax violations. State tax agencies likely have investigative authority over state tax crimes.
Office of Terrorist and Financial Crimes (TFFC)	Housed within Treasury, the TFFC is the policy development and outreach office for the Under Secretary. TFFC works across all elements of the national security community, including the law enforcement, regulatory, policy, diplomatic and intelligence communities, and with the private sector and foreign governments to identify and address the threats presented by all forms of illicit finance to the international financial system.
Securities and Exchange Commission (SEC)	Protects investors, maintains fair, orderly and efficient markets and facilitates capital formation.
Financial Industry Regulatory Authority (FINRA)	Independent regulator of securities in the United States, oversees every aspect of the brokerage activity.

Principle 6: Adequate resources

Tax crime investigation agencies should have adequate resources to effectively and efficiently fulfil their task.

Resources for combatting tax crime

2117. The annual budget of IRS-CI is usually over USD 600 million, the majority of which is used for tax crime investigations. This budget is not based on any specific performance metric. The number of investigators in IRS-CI gravitates around 2 200, including investigators in supervisory positions.

Table 51.6. Databases / sources of information available to tax crime investigators

	Access
Company formation/ ownership registry	Access on Request and Direct Access
Land Registry	Access on Request and Direct Access
Registry of citizens	Access on Request and Direct Access
Tax databases	Direct Access
Customs databases	Access on Request
Police databases	Access on Request
Judicial databases	Access on Request and Direct Access
Suspicious transaction report databases	Direct Access
Domestic bank account databases	Access on Request
Car registry	Direct Access
Boat registry	Access on Request

2118. The United States notes that the access to different databases and sources of information may vary on a state-by-state basis. For example, some databases may be free and available online, while others may require payment, or a formal request. Furthermore, while an IRS-CI special agent may have direct access to a database, an official request may be necessary for the information obtained through the database to be admissible as evidence at court.

Training for tax crime investigators

2119. All IRS-CI special agents attend a basic criminal investigator training programme and learn about special agent investigative techniques. This initial training is held for six-months. Topics in basic training include a wide range of standard investigative and law enforcement skills (including the use of force and firearms training), as well as a large selection of specialised topics related to the financial crime and forensic methods of evidence analysis. From the period of time covering 2015-18, the National CI Training Academy has delivered the following Intermediate/Advanced courses for IRS-CI Special Agents: Intermediate Special Agent Training – The focus of the Intermediate Special Agent Training Program (ISAT) is on enhancing and expanding the technical and leadership skills possessed by agents with two to four years of on the job experience. The training is delivered in a safe environment for participants to practice, and refine their skills.

2120. ISAT is a blended-content learning environment. Lessons are first presented as an overview providing the participants the opportunity to share their experiences with fellow agents. Second, the lessons expand upon the participants' basic knowledge by providing a discussion of advanced techniques. The participants are then provided the opportunity to practice what is discussed through a highly interactive and complex case activity which integrates the lesson content with practical field application of the techniques. The majority of the classroom time is spent presenting, sharing and applying investigative techniques that can be utilised in field investigations. Topics include Case Development, Developing Sources of Information, Fraud Referrals, Special Investigative Techniques, E-Crimes, International Investigations, Money Laundering, Asset Forfeiture, Prosecution Considerations, and Technical Writing. IRS-CI also runs Master Your Craft Workshops – which is a four-day training programme taught through case presentations by peers from around the country. Training topics included leadership, case development and selection, special investigative techniques and conducting cyber investigations. Last summer (2019) 192 agents and professional staff attended eight Master Your Craft workshops. IRS-CI also runs Use of Force Instructor Training which is designed to train and develop new UOF instructors to teach CI Integrated UOF Program in field offices.

2121. After completion of basic training, special agents receive a range of on-the-job training which can take up to two years. Furthermore, specialised training classes are also held on a regular basis, where agents can expand upon their particular interests in specialist topics (e.g. cybercrimes and computer forensics). Finally, special agents can attend international fora and training sponsored by other government agencies, which allow them to receive training on investigating other financial crimes.

2122. The Department of Justice, Office of Legal Education, provides specialized training to Federal prosecutors, including, for example, white collar crimes and criminal tax seminars.

Principle 7: Predicate offences

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

2123. **Approach:** The United States adopts a 'list' approach to predicate offences for money laundering (18 U.S.C. §1956 and §1957 & *Money Laundering Control Act of 1986*). This includes a range of financial

crimes involving fraud and corruption, but does not include any of the tax crimes outlined in Table 1 of this chapter.

Principle 8: Inter-agency co-operation

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

Reporting of suspected financial crimes by civil tax authority to law enforcement authorities

2124. On a day-to-day basis, IRS tax auditors are trained to detect indicators of fraud and may refer those cases to IRS-CI if they identify firm indications of fraud. In the fiscal years ending 2017, 2018 and 2019, 786 cases were referred to IRS-CI this way. IRS-CI Investigations that fail to meet the criminal elements of tax offences are referred to civil enforcement when there are indications of under-reporting or over-statement of expenses. In the fiscal years ending 2017, 2018 and 2019, 503 cases were referred back to IRS by IRS-CI.⁵

Information sharing between agencies involved in investigation and prosecution of tax crime other financial crime

2125. IRS-CI facilitates its information sharing either through direct co-operation on cases, or through the Financial Crimes Enforcement Network (FinCEN). Established in 1990 by Treasury, FinCEN is the United States' financial intelligence unit (FIU), providing a government-wide multisource financial intelligence and analysis network. Each large federal agency in the United States has a full time FinCEN liaison posted at FinCEN Headquarters. This facilitates exchange of information, typologies and trends from each agency to the FIU.

2126. The United States notes that a successful practice in facilitating inter-agency co-operation is the ability of a federal agency to partner with other agencies in joint investigations, to capitalise on each other's unique expertise. Each investigator contributes their agency's unique investigative techniques, personnel, and technical resources to conduct financial crime investigations. However, the United States also notes some limitations to this practice. For example, when there is a duly authorised tax investigation, use of tax information is limited to tax administration and may not be disseminated outside of the law enforcement agencies, which make up the joint investigation. Despite the limitation, the United States notes this practice has helped to successfully conclude several investigations.

2127. The below table shows the models for sharing information related to tax crime and other financial crimes in the United States. A more detailed analysis of the United States' information sharing frameworks for fighting tax crime and other financial crimes is set out in the Third Edition of the Rome Report.⁶

Table 51.7. Models for sharing information related to tax crime and other financial crime

		Authority receiving information					
		Tax administration for civil tax assessments	Agencies investigating tax offences	Customs administration	Police or public prosecutor investigating non-tax offences	Financial Intelligence Unit	Corruption investigation authority
Autho- rity	Tax administration		Direct Access ^(a)	On Request ^(b)	DSS ^(c)	Sharing Prohibited	DSS ^(d)

Customs administration	DSS	DSS		DSS	DSS	DSS
Police or public prosecutor	On Request	Direct Access ^(e)	DSS		On Request	On Request ^(f)
Financial Intelligence Unit	Direct Access ^(g)	Direct Access ^(h)	DSS	Direct Access		Direct Access
Corruption investigation authority	On Request ⁽ⁱ⁾	On Request	On Request	On Request ^(j)	Sharing Prohibited	
Financial regulator	DSS	DSS	DSS	DSS	DSS	DSS

Note:

DSS = discretionary spontaneous sharing

(a) IRS-CI has complete access to tax information where the investigation concerns tax charges and it is the sole investigating agency. If the investigation concerns non-tax charges or involves other agencies, then the rules for sharing information with the other agency will also apply to IRS-CI. In these cases, IRS can also provide information on trends and typologies to IRS-CI, so long as no taxpayer data is included.

(b) Return information regarding taxpayers is confidential by statute and cannot be disclosed except as authorised by the IRC. The customs administration, through DOJ, can seek a court order for access to specified return information to assist it with investigation of non-tax crimes provided certain statutory prerequisites are met. IRS can also disclose limited return information to the customs administration, but only to the extent it must do so in order to obtain information it needs from the customs administration for use in tax investigations or examinations.

(c) IRS may share information with law enforcement agencies that are conducting a joint investigation with IRS-CI and the investigation has been approved by DOJ-TAX. Otherwise, IRS may only provide taxpayer information on request under an ex-parte order that has been signed by a federal judge. IRS officials are under an obligation to report suspicions of non-tax offences, but only where a Treasury employee, former employee, contractor, subcontractor, or potential contractor is engaged in criminal conduct; or the violation involves foreign intelligence or national security.

(d) IRS may share information with law enforcement agencies that are conducting a joint investigation with IRS Criminal Investigations and the investigation has been approved by DOJ-TAX. Otherwise, the tax administration may only provide taxpayer information on request under an ex parte order that has been signed by a federal judge. IRS must report suspicions of corruption to IRS-CI. IRS-CI evaluates the report and initiates a request for a grand jury investigation if the suspicions are viable. The request must be approved by DOJ-TAX before suspicions of corruption may be reported to the public prosecutor.

(e) IRS-CI investigators have direct access to all criminal history information held by law enforcement agencies, through the National Crime Information System. Where further information is required, tax crime investigators can request it from the originating law enforcement agency. Through various task forces and teams, investigators can also obtain trends and typologies from other law enforcement agencies upon request.

(f) Information held by the police or law enforcement authorities may be shared on request only under an ex parte order that has been signed by a federal judge. In terms of information held by prosecutors, subject to certain exceptions, disclosure of information occurring before the grand jury may be made without a court order to an attorney for the government for use in the performance of such attorney's duty. Court approval by an ex parte motion may have to be obtained to share information obtained through a grand jury proceeding.

(g) IRS civil division has direct and immediate access to all FIU information except Suspicious Transaction Reports, which are considered law enforcement sensitive. The FIU frequently writes reports on trends, typologies and statistics and are published on their website for the public to view.

(h) FinCEN provides Federal, State, and local law enforcement and regulatory authorities with different methods of direct access to reports that financial institutions submit. FinCEN also combines this data with other sources of information to produce analytic products supporting the needs of law enforcement, intelligence, regulatory, and other financial intelligence unit customers. Products range in complexity from traditional subject-related research to more advanced analytic work including geographic assessments of money laundering threats.

(i) Public corruption investigations are typically conducted through a grand jury investigation. Federal Rules of Criminal Procedure establish the rules for grand jury secrecy. Access to information is limited only to those individuals to whom a disclosure has been made and has been advised of their obligation of secrecy under the rule. An application to obtain a court order may be filed to request the information gathered during the grand jury investigation if the requesting authority was not part of the grand jury investigation. Upon granting and receipt of a court order, information may be provided.

(j) Subject to certain exceptions, disclosure of information occurring before the grand jury may be made without a court order to a public prosecutor for use in the performance of such prosecutor's duty.

Table 51.8. Availability of enhanced forms of co-operation in combatting tax crimes

Mechanism	Description
Co-operation agreements	IRS has co-operation agreements to combat tax crimes with state taxing authorities, federal agencies, and other foreign partners.
Disclosure of foreign trusts	To the extent that knowledge of a foreign trust's existence is return information (as defined in the IRC, section 6103(b)(2)), IRS may disclose such information to other government agencies as permitted by the US IRC.
Joint operations and taskforces	Through deconfliction, a law enforcement agency can determine whether the same individual or company is being investigated by another law enforcement agency. This is typically discovered in joint investigations where allegations of corruption are received by the anti-corruption authorities.
Parallel investigations	In the United States, it is possible for enforcement agencies to conduct parallel investigations by way of the Simultaneous Criminal Investigation Program where existing agreements are in force with various countries.
Joint intelligence centres	Financial Crimes Enforcement Network (FinCEN) maintains an on-line database that contains Bank Secrecy Act (BSA) information. IRS field agents in tax examinations, collection and criminal investigations, as well as federal law enforcement agencies, access the database to conduct research
Secondments and co-location of staff	IRS routinely assigns special agents on a temporary basis to other agencies, task forces, and investigative authorities to share expertise and collaborate on joint investigations.
Ability to review tax affairs of persons sanctioned for other serious financial crimes	Individuals sentenced on corruption and tax crime charges may be ordered by the court to pay restitution. They may also be ordered to continue to file timely and accurate tax returns. In those cases, the tax authority collects restitution payments and checks to ensure that the full amount of restitution has been paid IRS-CI checks to ensure that the conditions of probation, including restitution payments, are met.
Multi-agency training	IRS-CI regularly attends and offers training for other federal agencies, as well as state and local law enforcement officers.

Principle 9: International co-operation

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.

2128. IRS-CI provides that it maintains strong relations with foreign law enforcement partners when requesting and responding to international assistance via formal and informal mechanisms.

2129. The United States may exchange tax information with foreign authorities in relation to criminal tax matters pursuant to bilateral and multilateral agreements, or domestic legislation. To date, the United States has exchange of information relationships with over 85 jurisdictions through double tax conventions (DTCs), Tax Information Exchange Agreements, and Mutual Legal Assistance Agreements and Intergovernmental Agreements (IGAs) under the US Foreign Account Tax Compliance Act (FATCA).

2130. Certain multilateral agreements to which the United States is a party also authorise EOI for tax purposes, such as the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention), the Hague Convention on the Taking of Evidence, and the Inter-American Convention on Mutual Assistance in Criminal Matters. Exchange under the Multilateral Convention allows for exchange of tax-related information with many countries. The Multilateral Convention also allows IRS to exchange information with other parties for non-tax purposes (such as investigation of money laundering and corruption) to the extent that this is allowed domestically in both jurisdictions and where authorisation is provided.

2131. DOJ-OIA is the United States' central authority for incoming and outgoing MLAT requests in criminal tax matters.

2132. **International co-operation in practice:** The United States notes that in fiscal year 2020, it received 55

2133. **Enhanced form of international co-operation:** IRS-CI is also a member of the Joint Chiefs of Global Tax Enforcement (J5), which was established in 2017 to tackle international tax crime and money laundering. The group brings together leaders of tax enforcement authorities from Australia, Canada, the Netherlands, the United States, and the United Kingdom. Through the J5, experts on tax, crypto and cybercrime sharing intelligence and collaborate on operations to target those who enable global tax evasion. The J5 is working on more than 50 cross-border investigations including those involving sophisticated international enablers of tax evasion, a global financial institution and its intermediaries who facilitate taxpayers to hide their income and assets.

Principle 10: Fundamental rights of a suspect or accused person

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

2134. **Legal basis:** The United States provides persons accused or suspected of having committed a criminal offence, including all tax offences, with a full range of procedural and fundamental rights. These fundamental rights enshrined in the Constitution of the United States and its successive amendments. The *Crimes and Criminal Procedure Code* (18 U.S.C.) further specifies the application of the fundamental rights of suspects in criminal proceedings in practice. Furthermore, case law provides additional protections to suspects and defendants in criminal proceedings.

2135. In the United States, a civil tax matter becomes a criminal tax matter the moment a civil tax auditor finds indicators of tax fraud during the audit and refers the case to IRS-CI (as is required by policy).

2136. The below table shows the different rights granted to persons suspected or accused of having committed tax crimes in the United States.

Table 51.9. Rights of persons suspected or accused of having committed tax crimes

Right to:	Yes/No	Additional Information
presumption of innocence	Yes	Before guilty verdict by the jury or when information is filed with the court
be advised of his/her rights, including a process for ensuring this is done when a civil inquiry turns into a criminal investigation	Yes	Upon arrest
remain silent	Yes	At all times
access and consult a lawyer and/or entitlement to free legal advice	Yes	At all times
interpretation and translation	Yes	At trial
be advised of the particulars of what one is accused of	Yes	During the interview and after the safe execution of an arrest warrant.
access documents and case material, also known as a right to full disclosure	Yes	After a person has been charged or indicted
a speedy trial	Yes	After a person has been indicted
protection from ne bis in idem (Double Jeopardy)	Yes	When the person is charged with a tax crime and acquitted by the jury or there was a mistrial

Highlights

Successful practices

- Comprehensive tax crime strategy and threat assessment
- Comprehensive training programme for IRS-CI tax crime investigators
- Enforcement in practice of tax crimes against legal persons
- Effective use of multiple enhanced forms of inter-agency co-operation in tax and other financial crimes cases.
- Effective use of enhanced forms of international co-operation through the Joint Chiefs of Global Tax Enforcement (J5).

Room for improvement

- The IRC grants IRS powers to forfeit property only when such property was used or was intended to be used to violate tax laws. The statute does not however, include a tracing provision. Therefore, if property connected with the crime is sold, traded, or exchanged for other property, then that other property is not forfeitable. The United States highlights that it would be preferable to have a statute that allows the forfeiture of substitute assets in cases like these.
- Generally speaking, IRS-CI can only use seizure/forfeiture authority in money laundering investigations. Such powers can only be used in tax or tax-related investigations in egregious situations, typically related to refund fraud investigations and where no reasonable alternative is available. The United States notes that it would be beneficial if the use of such seizure/forfeiture authority were not limited.

Notes

¹ United States Supreme Court, *RJR Nabisco, Inc. v. European Community*, No. 15-138, 20 June 2016.

² More information on the specific procedures of the Tax Division of the US Justice Department can be found here: <https://www.justice.gov/sites/default/files/tax/legacy/2012/12/05/CTM%20Chapter%205.pdf>.

³ More information on the annual tax gap in the United State can be found here: <https://www.irs.gov/pub/irs-pdf/p1415.pdf>.

⁴ See Rome Report, Chapter 5 – Country Information – United States. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

⁵ Referred back means fraud referrals were declined or those that were originally accepted but later discontinued by CI.

⁶ See Rome Report, Chapter 5 – Country Information – United States. Available at <https://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes-third-edition.pdf>.

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Annex A. List of participating jurisdictions

While the intention is that this report will stay as an open document, available for any jurisdiction willing to participate in the benchmarking exercise in the future, the statistics and successful case studies in this edition were last updated in May 2024. The list below details the name of each participating jurisdiction in alphabetical order, and the agency which acted as point of contact for discussing the contents of their respective country chapters with the Secretariat.

1. Argentina: Federal Administration of Public Revenue (AFIP)
2. Australia: Australian Taxation Office
3. Austria: Federal Ministry of Finance (BMF)
4. Azerbaijan: State Secretariat of Taxes
5. Belgium: Federal Public Service Finance
6. Brazil: Federal Revenue of Brazil (RFB)
7. Bulgaria: National Revenue Agency (NRA)
8. Canada: Canada Revenue Agency – Criminal Investigations Directorate
9. Chile: Internal Taxes Service (SII)
10. Colombia: Directorate for National Taxes and Customs (DIAN)
11. Costa Rica: Ministry of the Treasury
12. Croatia: Croatian Tax Administration
13. Czechia: Ministry of Finance
14. Denmark: Danish Tax Agency
15. El Salvador: General Directorate for Internal Taxes (DGIT)
16. Estonia: Investigations Department of the Estonian Tax and Customs Board
17. Finland: Finnish Tax Administration (FTA)
18. France: General Directorate of Public Finances (DGFIP)
19. Georgia: Investigations Service of the Ministry of Finance
20. Germany: Federal Ministry of Finance (BMF)
21. Greece: Independent Authority of Public Revenue (AADE)
22. Honduras: Tax Crime Unit of the Income Administration Service (SAR)
23. Hungary: Criminal Directorate of the National Tax and Customs Administration
24. Iceland: Directorate of Tax Investigations
25. Indonesia: Directorate General of Taxes (DGT) of the Ministry of Finance
26. Ireland: Revenue Commissioners
27. Israel: Israel Tax Authority
28. Italy: *Guardia di Finanza* and Ministry of Economy and Finance
29. Japan: Criminal Investigations Division of the National Tax Agency
30. Korea: National Tax Service

31. Lithuania: State Tax Inspectorate (STI)
32. Luxembourg: Luxembourg Inland Revenue (ACD)
33. Malaysia: Inland Revenue Board of Malaysia (IRBM)
34. Mexico: Tax Prosecution Agency of the Federation (PFF)
35. Netherlands: Fiscal Information and Investigation Service (FIOD)
36. New Zealand: Inland Revenue
37. Norway: Tax Administration
38. Poland: National Revenue Agency (NRA)
39. Portugal: Portuguese Tax and Customs Authority
40. Romania: National Agency for Fiscal Administration (NAFA)
41. Singapore: Inland Revenue Authority of Singapore (IRAS)
42. Slovak Republic: Criminal Office of the Financial Administration
43. Slovenia: Financial Administration of the Republic of Slovenia (FARS)
44. South Africa: South African Revenue Service
45. Spain: Spanish Agency of Tax Administration (AEAT)
46. Sweden: Tax Administration
47. Switzerland: Federal Tax Administration
48. Türkiye: Turkish Revenue Administration
49. Ukraine: Economic Security Bureau of Ukraine (ESBU)
50. United Kingdom: Her Majesty's Revenue and Customs (HMRC)
51. United States: Internal Revenue Service – Criminal Investigations

Fighting Tax Crime – The Ten Global Principles

COUNTRY CHAPTERS, MAY 2024

This document complements *Fighting Tax Crimes – Ten Global Principles, Second Edition* and reports the results, by jurisdiction, of self-assessments that were undertaken to benchmark domestic frameworks against the Ten Global Principles. It covers the legal, institutional and operational frameworks that are in place within those jurisdictions for fighting tax crime and other financial crimes, highlights best practices and identifies areas for further improvement. The information contained in the country chapters was submitted by and under the responsibility of the participating jurisdictions.



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