

Principle 2 Devise an effective strategy for addressing tax crimes

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

Introduction

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

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

Tax fraud (serious organised crime)	Combatting and preventing fraud	Anti-fraud measures	<ul style="list-style-type: none"> • Tax investigation and audits • Prosecution and penalties • Elimination from legal financial circles • Cooperation with the judicial system/police
Tax evasion (shadow economy, income underreporting, illegal employment)	Controls and sanctions		<ul style="list-style-type: none"> • Controls, investigations • Tax audits (risk analysis) • Prosecution and penalties • Tax collection
Tax avoidance (aggressive tax planning, avoidance models)	Monitoring and cooperation		<ul style="list-style-type: none"> • Risk management • Office and field staff controls • Official first visits • Tax collection
Tax compliance (voluntary disclosure, fulfilment of tax obligations)	Support and simplification		<ul style="list-style-type: none"> • Information and forms • Cooperation with interest groups • Horizontal monitoring • Advance rulings

Identifying the risks and threats

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

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

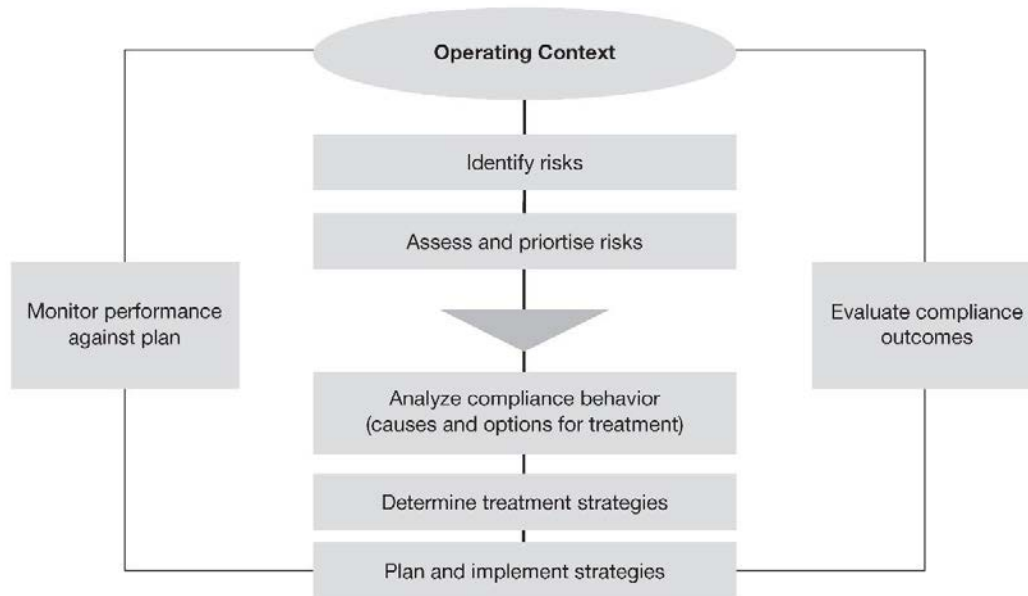
25. A threat assessment identifies the specific risks of tax crimes that are prevalent in the jurisdiction. This should take into account the particular context or environment (cultural, political, legal, economic and technological), and where relevant, draw on the insights of other agencies responsible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

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

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

Key elements of an overall strategy

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



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

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

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

- A plan for periodically reviewing performance and measuring the effectiveness and currency of the compliance strategy.

30. It is important that the strategy is based on wide consultation with all relevant stakeholders such as policy makers, investigators, enforcement and prosecution officials and other agencies such as AML authorities, in accordance with each jurisdiction's legal system, policy and legislative environment and general structure of law enforcement. In particular, given that serious tax crimes are likely to raise other matters of criminal law such as money laundering (especially as tax crimes are in most cases a predicate offence for money laundering, as set out in Principle 7 below), jurisdictions should consider including tax crimes in an overall serious crime strategy, or a strategy specifically for addressing financial crimes. A number of jurisdictions prepare their strategies in co-ordination with other agencies, such as anti-corruption, economic crime units, police, the prosecutor, financial intelligence unit, customs, securities regulators and the ministry of justice. For example:

- Norway has a national strategy for tackling the shadow labour market and economic crime.
- Austria has both a specific Tax and Customs Compliance strategy as well as annual Internal Security Strategy which focus more broadly on economic crime and money laundering.
- The United Kingdom's tax authority contributes to the National Strategic Assessment for Serious and Organised Crime.

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

32. Strategic co-ordination between the criminal and non-criminal tax officials can help to ensure a coherent use of resources, efficient prioritisation of cases and avoid duplication of efforts by both the tax administration and criminal law enforcement officials. It should also increase taxpayer compliance overall, provide a deterrent effect when the public is aware of the effective co-operation between the criminal and non-criminal functions, and enhance the perceived fairness for the compliant taxpayer. This co-ordination will have to also take into account mechanisms for protecting the rights of a person if and when a matter has criminal aspects (see Principles 6 and 10 for further information).

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

34. The exact steps for referrals will depend on each jurisdiction's legal and operational framework. For instance, civil tax auditors in jurisdictions such as Argentina and in Brazil have a legal obligation to report any suspicion of crime, including tax crime, to the competent law enforcement agencies.

35. In France, suspicions of tax crime leading to tax recalls of over EUR 100 000 are directly referred to the public prosecution service. Cases of less than EUR 100 000 are submitted to the *Commission des Infractions Fiscales* (CIF), an independent administrative authority mandated to analyse the referral before directing it to the prosecution service. France notes that it had compulsorily referred 965 civil tax audits for

criminal investigation in 2019, and that the CIF had allowed the commencement of further 672 criminal investigations for tax fraud of less than EUR 100 000 in the same period.

36. Referrals of suspicions of tax crime are taken into account in the Key Performance Indicators of Canada's revenue agency.

Jurisdiction examples of strategies for addressing tax crimes

37. 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, Her Majesty's Revenue and Customs (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. (HMRC & HMT, 2019^[1]) 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, and HMRC consults with a variety of stakeholders including law enforcement agencies, other government departments, international partners and the private sector.

38. 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. 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.

39. Israel's tax crime strategy seeks to deepen the co-operation between the Israeli 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 have been 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.

Box 2.1. Risk assessment exercises for detecting involvement of professional enablers

Many jurisdictions have dedicated teams focused on compliance work specifically relating to a known problem area, such as targeting enablers that are associated with multiple shell companies or that market the use of offshore structures. For example, jurisdictions have collected information on professional enablers connected to offshore service providers or firms for the purpose of utilising it in data analytics and audit strategies. Feedback from jurisdictions shows that offshore jurisdictions known as “hotspots” of activity for specific evasion structures are often utilised repeatedly by the same professional enablers. Once a particular structure or nefarious service provider is uncovered, this gives tax authorities the ability to target other structures established by the same professional enablers. However, feedback also shows that these hotspots can fluctuate, for example in response to detection or where a new strategy is devised, and therefore national professional enabler strategies need to be flexible to adapt to new information and intelligence received.

For risk assessment exercises to include an analysis involvement of professional enablers, some of the following indicators could be deployed:

- A company is not found at the declared premises
- Addresses of entities or directors which are not traceable
- Multiple shell companies from the same address
- Multiple companies with directors in common
- Company’s address registered at a P.O. Box address known for illegitimate businesses
- Professionals with a high turnover of business relating to liquidation of small companies
- Professionals that promote tax schemes on the basis of premium or contingent fees, or contractual protection that guarantees coverage of any financial liabilities resulting from the tax strategy
- Where one individual is attributed as a director multiple times, the extent to which the provision of substantial and meaningful directorship services could not be feasible
- Tax intermediaries with poor tax compliance and filing history • Persons with association to known professional enablers
- Persons with association to known tax evasion structures
- Persons with association to known offshore structures that obscure beneficial ownership to facilitate fraudulent behaviour

Source: OECD (2021), Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes, OECD Publishing, Paris.

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