

Principle 8 Have an effective framework for domestic inter-agency co-operation

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

Introduction

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

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

112. Any such co-operation is subject to the domestic law and the need to prevent any abuse of powers, which is further discussed below. In addition, depending on the organisational structure in place in a

jurisdiction, and which agency has responsibility for investigating tax crimes different forms of co-operation may be appropriate (see Principle 5 for more details).

Information sharing

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

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

115. In addition, sharing of information can be used to identify new avenues for investigation, such as where an investigation into a tax offence reveals other criminal activity and money laundering. The use of information from different sources may increase officers' understanding of an issue or of the activities of a suspect, possibly increasing the effectiveness of enquiries. Importantly, mechanisms for sharing information may be used to develop relationships between agencies, and key individuals in those agencies, which can be beneficial in developing new and enhanced forms of inter-agency co-operation.

Legal gateways for information sharing

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

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

Models of information sharing

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

- direct access to information contained in agency records or databases. This can include direct access to mass or bulk data as well as specific access rights to a particular case record or file;

- an obligation to provide information automatically (i.e. at regular intervals) or spontaneously (i.e. on the occasions when relevant information is identified), normally where the categories of such information are pre-defined (sometimes expressed as a ‘reporting obligation’);
- an ability, but not an obligation, to provide information spontaneously; and
- an obligation or ability to provide information but only in response to a specific request which is made on a case-by-case basis.

Forms of information sharing

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

- Where information is suitable for using analytics and high-level risk assessment, direct access, or automatic or spontaneous exchange could be most effective. Operationally, this will be most effective if the types of information to be shared are clearly defined and can be automated. It also can assist in the detection of previously unknown criminal activity. Training on using direct access mechanisms, including the protections and processes necessary to ensure confidentiality and data protection may be relevant in this case.
- Discretionary spontaneous sharing of information may be very effective when there is a long-standing co-operative relationship between the agencies involved, and there is a clear understanding of what information may be useful in the activities of the recipient agency. Like direct access or automatic exchange, this can assist in proactively alerting an agency to previously unknown criminal activity. This should at a minimum include spontaneous sharing of information by tax authorities with the appropriate domestic law enforcement authorities of suspicions of serious crimes, including foreign bribery, money laundering and terrorism financing. (OECD, 2009^[1]) (OECD, 2010^[2])
- Where the information needed is very specific or needs to be in a certain form, information on request or direct access to a specific case record may be most suitable. This is likely to be most relevant when an investigation is relatively well advanced and the investigating agency already has sufficient information to provide the basis of the request.

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

Other forms of co-operation

120. In addition to information sharing, there is a range of other forms of co-operation being used by law enforcement authorities, with a number of examples described below.

Joint investigation teams

121. These enable agencies with a common interest to work together in an investigation. In addition to sharing information, this enables an investigation team to draw on a wider range of skills and experience from investigators with different backgrounds and training. Joint investigations may avoid duplication

arising from parallel investigations, and increase efficiency by enabling officials from each agency to focus on different aspects of an investigation, depending upon their experience and legal powers. In some cases, gateways for sharing information are wider when agencies are engaged in a joint investigation than they would be in other circumstances.

Box 8.1. Australia's Serious Financial Crime Taskforce

The Serious Financial Crime Taskforce (SFCT), led by the Australian Taxation Office, is a 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. It also supports Australia's involvement as a member the Joint Chiefs of Global Tax Enforcement (J5).

Inter-agency centres of intelligence

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

Secondments and co-location of personnel:

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

Other models

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

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

- Granting the tax administration access to STRs (or “suspicious activity reports”) (OECD, 2015^[3])
- Granting the FIU access to information held by the tax administration
- Having a co-ordinated strategy for analysing and responding to STRs
- Putting obligations on tax officials to report suspicions of non-tax crimes to the police or public prosecutor
- The use of multi-agency task forces to combat financial crimes
- Putting in place a centralised structure for inter-agency co-operation
- Developing a co-ordinated approach to recovering the proceeds of crime
- Co-operation with the private sector in the fight against tax crime.

126. For more information on models of inter-agency co-operation, see the OECD report on Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes of 2017. (OECD, 2017^[4])

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