Indicators concerning payments and money flows

Introduction

Much bribery and corruption consists of the illicit transfer of assets, which the parties to a transaction will try to disguise as legitimate business payments. However, because many taxpayers will still seek to claim a tax deduction with respect to bribes and other payments made for the purposes of corruption, a paper trail is likely to be left behind which can be uncovered by tax examiners and auditors.

Tax examiners and auditors may come across a wide range of indicators in the course of their normal activities, which relate to payments and money flows between the parties to bribery or a corrupt transaction. These include anything which makes a payment or money flow appear unusual, which might concern the amount or frequency of payments, where payments are made to or received from, or arrangements for approving the payment that differ from normal.

Indicators

Indicators concerning where payments are being made to or received from

- Payments to or from persons in high risk countries, who cannot be identified, or are companies whose beneficial owners cannot be identified.
- Payments made or received through intermediaries in third countries.
- High payments for handling services in high risk countries.
- Payments to foreign accounts of individuals or companies with which there is no business relationship.
- Payments made for travel and lodging of PEPs.
- Commission payments split into parts, paid into different offshore bank accounts.
- Payments made to countries with bank secrecy rules, which do not exchange bank information.

- Payments to bank accounts in countries other than those where the recipient is located.
- Payments to personal bank accounts rather than to business accounts.
- Payments to entities that did not take part in projects or transactions.

Indicators concerning the terms of payments

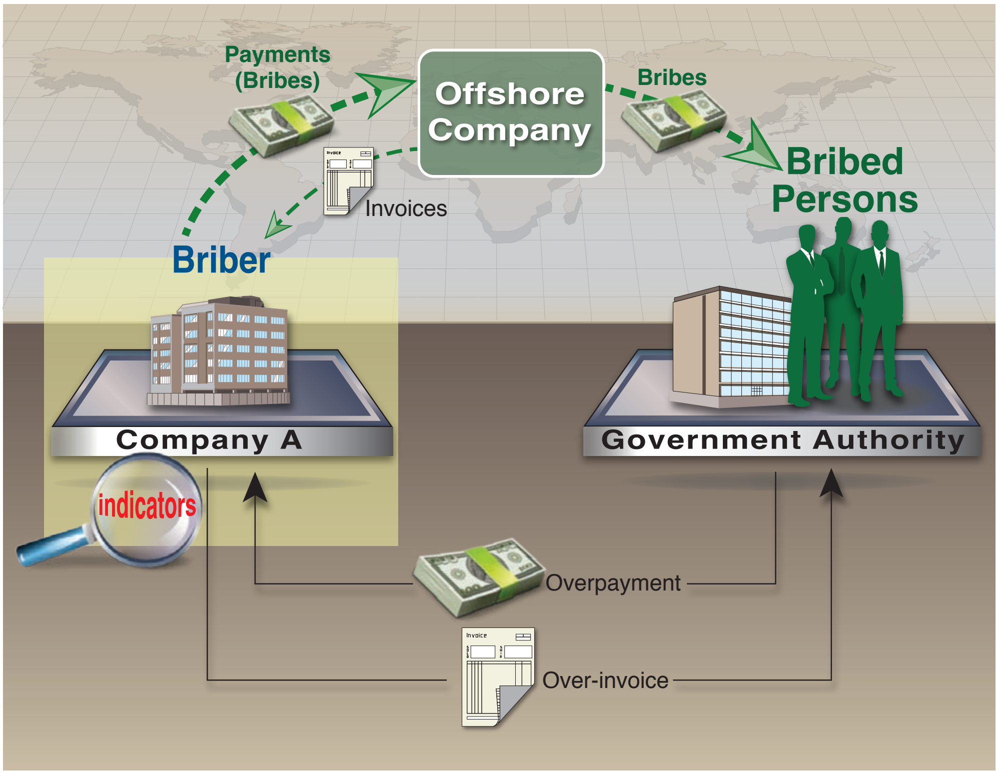
- Large or frequent, rounded payments or receipts.
- Deviation from normal procedures in approving payments.
- Payments made or received where no written contract exists, or where written contracts are unclear or unavailable.
- Invoices paid which are not required under contracts.
- Payments made under invoices that do not fit the taxpayer's usual profile (for example, in terms of amount, timing, location of recipient etc.).
- Payments made under self-prepared vouchers rather than third party invoices.
- High commission payments made around certain dates (for example, when contracts are concluded).
- Payments made immediately upon (or before) receipt of an invoice or signing a contract.
- Third party makes payments directly to creditors on behalf of the taxpayer, or to entities controlled by the taxpayer.
- Favourable treatment shown to certain creditors (e.g. paying one supplier faster than others for no clear reason).
- Amounts received appear excessive for the goods or services provided.
- Amounts paid to intermediaries or consultants appear excessive.

Other indicators concerning payments and money flows

- Significant, unexplained cash withdrawals.
- Notary's or lawyer's third party account used where there is no apparent need.
- Origin of funds for a transaction is not clear.
- History of frequently opening and closing bank accounts.
- Significant unexplained payments into and out of the taxpayer's bank accounts.
- Evidence of payments that are not recorded in financial records.
- Certain payments cannot be satisfactorily explained.

Examples

Commission payments to a high risk country

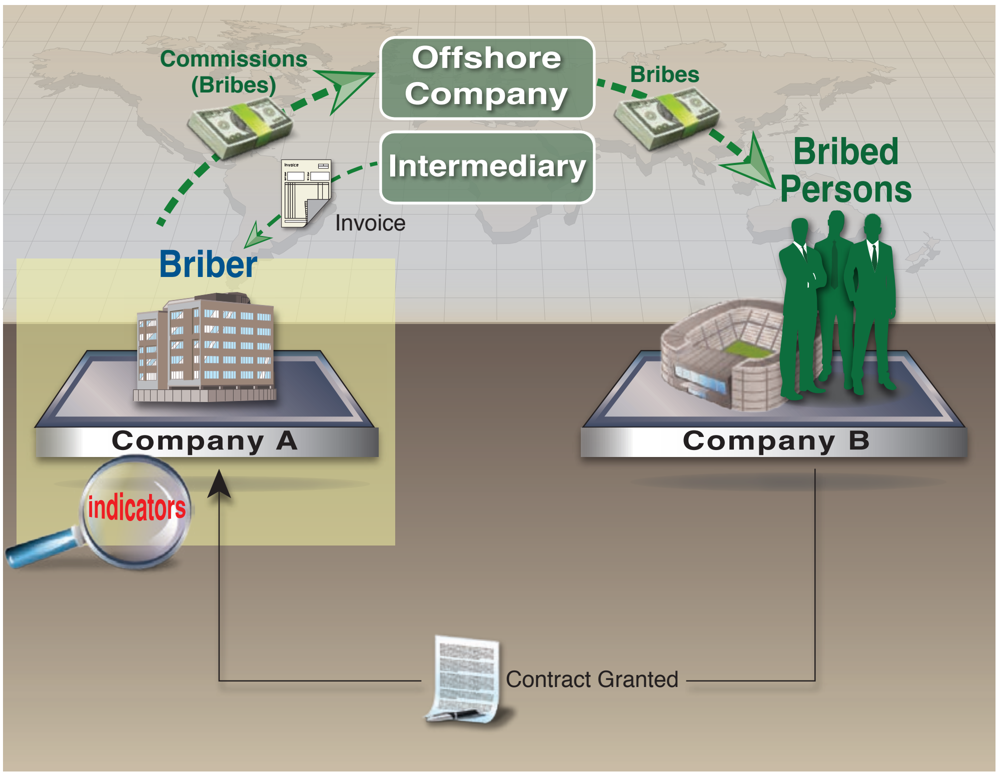


Company A (Briber) is a currency printing company. During a tax audit it was discovered that Company A had made payments of USD 20 million to an Offshore Company located in a country which does not share tax information. In Company A's records, these payments were shown as being in return for "business handling" services with respect to contracts with the government of Country X for printing bank notes. However, the tax auditor could not find any evidence of services provided by Offshore Company.

The tax auditor suspected that the payments were in fact bribes, and the money would somehow be paid to foreign public officials (Bribed Persons) in Country X in return for the contract being granted to Company A. The tax auditor also suspected that members of management at Company A would share in the money paid to Offshore Company. The tax auditor therefore wrote to Company A informing it that the payment to the tax haven company would not be deductible for tax purposes, as it was a suspected bribe. As a result, the supervisory board of Company A fired the management team involved in the transaction and reported the issue to the public prosecutor's office. The new management team has since stated that they will no longer conduct business in Country X.

In this case, the key indicator that caused the tax auditor to suspect possible corruption was that large commission payments were being made to a company in a high risk country, where no services appeared to be received in return.

Payments sent via offshore companies

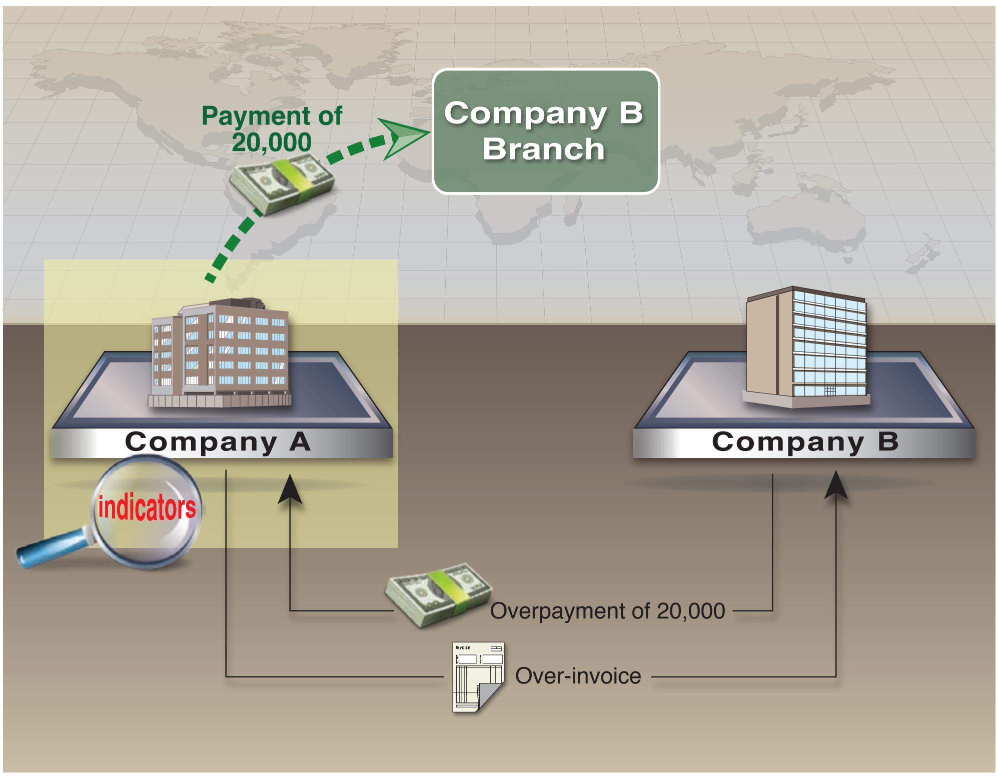


Company B, a State-owned Company in Country X, had authority to grant a contract to build a new sports stadium. To help it win this contract Company A (Briber), a construction business, entered into an agreement with an Intermediary. Under this agreement, Intermediary would broker contracts, assist in conducting site inspections and provide other support related to the completion of contracts. In return, Company A paid Intermediary a commission of USD 17.5 million, which was 5% of the total contract value.

During a routine audit, the tax auditor discovered that the invoice from Intermediary required Company A to pay its commission to an Offshore Company which was located in a country which did not exchange bank information. Further enquiries revealed that Intermediary and Offshore Company were owned by the same individuals (Bribed Persons). These individuals were also government employees in Country X, employed by Company B which was responsible for granting the contract to Company A. In substance, the 5% "commission" was in fact a bribe paid by Company A to the foreign public officials in order to secure a profitable contract.

In this case, the key indicator that caused the tax auditor to suspect possible corruption was the fact that Company A was directed to pay the commission to Intermediary via an Offshore Company located in a high risk jurisdiction. Other indicators included the fact that Company A operated in a high risk industry, the fact that a valuable contract was awarded without a public tender, and the fact that both Intermediary and Offshore Company were owned by foreign public officials of Country X.

Over-invoicing of certain customers

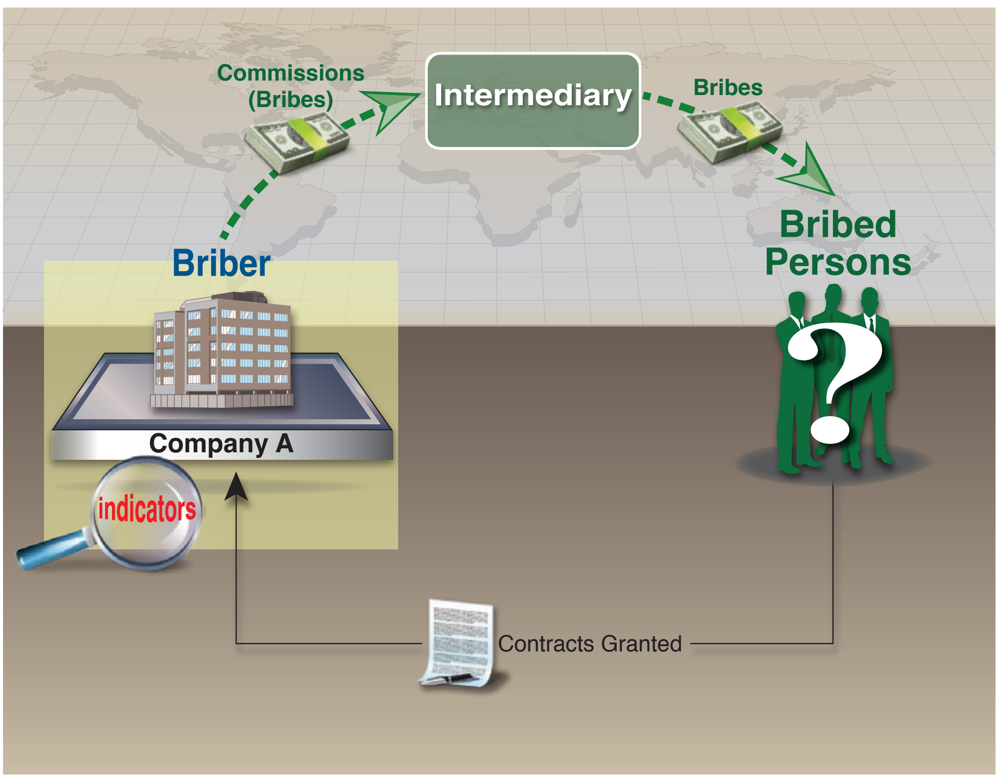


Company A is a company engaged in international trade. During a tax audit, the tax auditor noticed that Company A repeatedly invoiced higher amounts to one of its customers, Company B, than it did to other customers for similar products. For example, where other customers were invoiced USD 100 000 for goods, Company B would be invoiced USD 120 000. Company B is located in Country X, which has strict currency exchange controls. Following payment of the invoices by Company B, Company A issued credit notes for the amount equal to the over-payment (in this example USD 20 000) to a branch of Company B located in a country which did not exchange tax or bank information. Company A then paid the USD 20 000 to a bank account of the Company B branch in this country.

When questioned by the tax auditor, management at Company A explained that this arrangement was entered into in order to facilitate business with Company B, by helping it to avoid Country X's currency exchange controls. Based on the information available, it was not clear to the tax auditor whether this explanation was correct. However, the tax auditor had enough information to suspect that the company was engaged in, or facilitating, some form of corruption, tax evasion or other serious criminal activity. The tax auditor therefore referred her suspicions to the appropriate law enforcement authority.

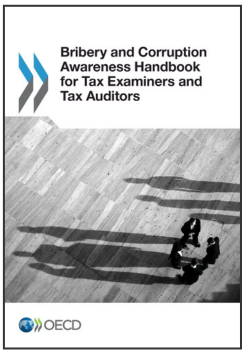
In this case, the key indicator that caused the tax auditor to suspect possible corruption was that Company A was routinely over-invoicing a certain customer. Other indicators included the fact that Company A issued a large number of credit invoices; and large payments were being made to a high risk country.

Use of self-prepared vouchers



Company A (Briber) was a construction company that undertook large projects overseas. During a tax audit of the company, it was found that Company A often used a consultancy company, Intermediary, to deal with foreign governments when negotiating contracts. Intermediary received a commission of up to 5% of the contract value. However, no invoices were received from Intermediary, and all commission payments were made on the basis of self-prepared vouchers. Further enquiries revealed that payments to Intermediary were made in cash, while no detailed contracts existed to detail precisely what services Intermediary provided in return for its commission. This was sufficient for the tax auditor to suspect that the "commission payments" made to Intermediary were in fact bribes which would ultimately be paid to foreign public officials in the overseas countries. The tax auditor therefore referred these suspicions for criminal investigation. The foreign public officials were not identified.

In this case, the key indicator that caused the tax auditor to suspect possible corruption was the fact that commissions were being paid to Intermediary on the basis of self-prepared vouchers and not invoices. Other indicators included the fact that these payments were made in cash and contracts between Company A and Intermediary lacked detailed clauses concerning the services to be provided.



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