

# Principle 7 Make tax crimes a predicate offence for money laundering

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

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## Introduction

100. The FATF Recommendations provide that: “...Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences” (Recommendation 3) (FATF, 2012-2020<sub>[1]</sub>).

101. A predicate offence is a crime that is a component of a more serious crime. In regards to money laundering, predicate offences may give rise to funds or assets that may then be laundered to obscure the illegal source. For example, the predicate offence of drug trafficking can generate revenue, and through one of the basic steps of placement, layering and integration, conceal the illegal source of the funds, allowing the drug trafficker to use the funds without generating suspicion of criminal activity.<sup>1</sup>

102. The designation of certain crimes as predicate offences means that a person can be charged with the offence of money laundering as well as with the predicate offence itself.

103. During the latest revision of the FATF Recommendations, “tax crimes (related to direct and indirect taxes)” were separately identified in the existing list of specific categories of offences that should be predicate offences for money laundering (FATF, 2012-2020<sub>[1]</sub>).<sup>2</sup>

104. Including tax crimes as a predicate offence for money laundering is important because it means that:

- A person that has committed money laundering can also be charged with the underlying predicate offence. This may allow the authorities greater scope to secure a conviction and / or to impose greater penalties. In practice, whether the investigation or prosecution of one or both offences are

pursued will depend on the case and factors such as the nature of the evidence and the elements of the offence which must be proven.

- Financial institutions and other designated professionals and reporting entities are required to file suspicious transaction reports (STRs), which report suspicions that a client's funds are the proceeds of a criminal activity, including money laundering as well as predicate offences. As such, STRs can include suspicions of where a client's funds are the proceeds of tax crimes. This can provide greater intelligence from the private sector to the government authorities. In order for this to be more effective, awareness of the risks and indicators of funds being the proceeds of tax crimes is needed amongst the relevant reporting entities. These reports are filed with the financial intelligence unit (FIU).
- STRs are analysed by the FIU and, where relevant, intelligence is disseminated to the domestic competent authorities responsible for investigating and / or prosecuting the relevant predicate offence. As such, it is possible for STRs to be shared by the FIU with the authority responsible for investigating and / or prosecuting tax crimes (OECD, 2015<sup>[2]</sup>) (See also Principle 8).<sup>3</sup>
- The mechanisms for international co-operation under the FATF Recommendations apply as between authorities that have responsibility for investigating and or prosecuting money laundering and predicate offences. Where tax crimes are included as predicate offences, those avenues for international co-operation are expanded to include authorities responsible for investigating and / or prosecuting tax crimes. This includes direct exchange of information and mutual legal assistance, both between tax investigatory and prosecution authorities and between tax and non-tax investigatory and prosecution authorities (see also Principle 9).

105. In practice, virtually all jurisdictions surveyed have noted that the inclusion of tax crimes as a predicate offence has had a practical and positive impact on their work. Based on survey data, the most reported impact of tax crimes being a predicate offence was better inter-agency co-operation. This included increased ability to work with other agencies on particular cases and more generally on strategic and policy matters, more awareness amongst other law enforcement, intelligence agencies and amongst the private sector of the possibility of tax crimes occurring, and better avenues for communication with other agencies. Many jurisdictions also reported having better access to information (particularly from the FIU and increased STRs). Some jurisdictions also reported that prosecutions were easier to undertake and that there was an increase in prosecutions.

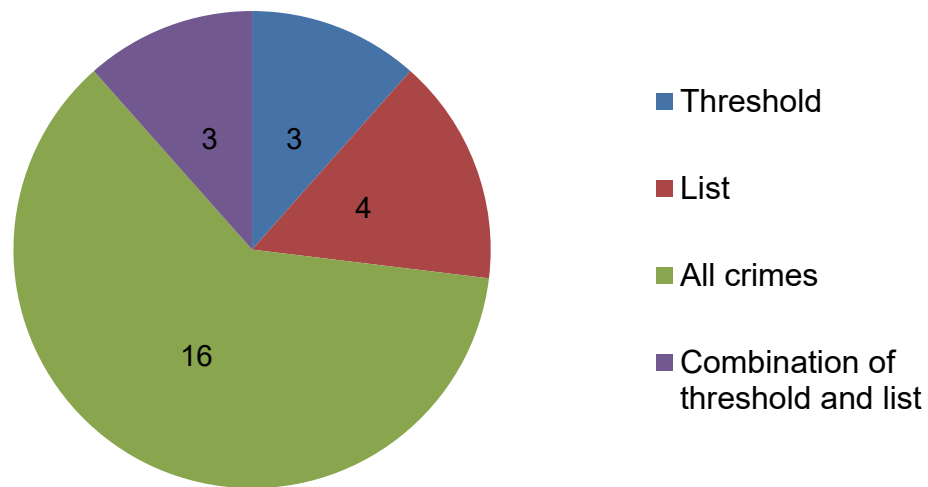
106. Although "tax crimes" is not defined, the FATF Interpretive Note to Recommendation 3 states that jurisdictions are required to apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Each jurisdiction must determine how the requirement will be implemented in their domestic law, including how it will define the offence and the elements of those offences that make them serious offences.

107. There are different ways for jurisdictions to designate tax crimes as predicate offences for money laundering. For example, jurisdictions may:

- use an **inclusive approach** and identify all criminal offences as predicate offences;
- use a **threshold approach** and designate as a predicate offence all offences meeting a certain threshold, such as being punishable by one year imprisonment or more, or offences designated in a category of "serious offences;" or
- use a **list approach** and create an explicit list of offences that are predicate offences.

108. All surveyed jurisdictions with the exception of Honduras have designated tax crimes as predicate offences for money laundering. Jurisdictions are using the following approaches in practice:

Figure 7.1. Approach to including tax crimes as a predicate offence for money laundering



Note: **Threshold:** Australia, Austria, Canada; **List:** Colombia, Germany, Israel, Korea; **Combination:** Greece, Japan, Switzerland; **All crimes:** Argentina, Brazil, Czech Republic, France, Georgia, Hungary, Iceland, Ireland, Italy, Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, United Kingdom.

109. Three jurisdictions reported using the “threshold approach” (alone or as part of a combination of approaches). Some of these defined the threshold as offences punishable by a prison term exceeding a certain time (ranging from six months to four years) and others defined the threshold as those offences prosecuted by indictment.

## References

- FATF (2012-2020), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>. [1]
- OECD (2015), *Improving Co-operation between Tax and Anti-Money Laundering Authorities*, OECD Publishing, <https://www.oecd.org/tax/crime/improving-cooperation-between-tax-and-anti-money-laundering-authorities.htm>. [2]

## Notes

<sup>1</sup> See also OECD (2009), *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Paris, [www.oecd.org/ctp/crime/money-laundering-awareness-handbook.htm](http://www.oecd.org/ctp/crime/money-laundering-awareness-handbook.htm).

<sup>2</sup> The list of designated categories of offence included in the FATF Recommendations are: participation in an organised criminal group and racketeering; terrorism, including terrorist financing; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling (including in relation to customs and excise duties and taxes); tax crimes (related to direct taxes and indirect taxes); extortion; forgery; piracy; and insider trading and market manipulation.

<sup>3</sup> See also principle 8 for more details and OECD, (2015), *Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes*, OECD, Paris, <http://www.oecd.org/tax/crime/improving-co-operation-between-tax-and-anti-money-laundering-authorities.htm>.



**From:**  
**Fighting Tax Crime – The Ten Global Principles,  
Second Edition**

**Access the complete publication at:**

<https://doi.org/10.1787/006a6512-en>

**Please cite this chapter as:**

OECD (2021), “Make tax crimes a predicate offence for money laundering”, in *Fighting Tax Crime – The Ten Global Principles, Second Edition*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/bda3dbe6-en>

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