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Tax evasion and money laundering: The "Whole of Government" OECD Approach

Guillermo O. Teijeiro (Bomchil) · Thursday, September 24th, 2015

In a globalized economy, financial crimes –including tax crimes– threaten the strategic, political and economic interest of developed and developing countries as well, and undermine confidence in the global financial system.

The traditional perception was that tax evasion, even of a criminal nature, was somehow different from money laundering and other financial crimes (*e.g.*, corruption), and, as such, should be fought against by different public bodies, sources of information and procedures.

On the contrary, no doubts exist nowadays on the relationship between money laundering and tax evasion;(1) moreover, the perception of tax evasion being somehow linked to money laundering has existed for a long period of time now.(2) Built on this fact, there has been a move towards approaching these issues by sharing available information at the government level between financial intelligence units, tax administrations and other governmental bodies with associated competences; steps in that direction have been taken at the national level as well as recommended by international organizations, including OECD.

Conceptually, tax evasion exists whenever a taxpayer intends to defraud the tax authorities by intentionally avoiding to pay the true tax liability; it usually leads to reassessment, substantial penalties, as well as criminal prosecution. Statutory definitions of tax evasion vary among national jurisdictions, and tax evasion may take different forms. Significant tax evasion forms when studying the relationship with money laundering include the intentional, fraudulent omission to report all or part of the taxpayer's income, or its offshore income or assets (*e.g.*, bank accounts or other financial assets). And this is so because the concealment of income or assets for tax purposes may possibly involve money laundering practices; this is, the act of filtering ill-gotten gains or dirty money back into de formal economic circle.(3)

The following common features may be found by comparing the definitions of tax evasion and money laundering: (i) both activities are unlawful in nature, (ii) involve a deliberate violation of laws, and (iii) both offences disguise or conceal the money received. As a practical rule, tax evasion does not automatically implies laundering; but, on the contrary, whenever money is being laundered, chances of tax evasion being part of the equation increase exponentially.(4)

The situation is even more complex because the experience indicates that money launderers and tax evaders do not function alone but with a troupe of financial and other advisers (lawyers,

accountants) to perpetrate their crimes, and because the geographical scenario of these offences is increasingly international, so that international transparency, cooperation and exchange of information become vital to combat sophisticated tax and financial offences.

In the same line, the OECD First Forum on Tax and Crime(5) supported countries in combating there threats through greater transparency, more effective intelligence gathering, and improvements in co-operation between government agencies and countries to prevent, detect and investigate offences, prosecute criminals and recover the proceeds of their illicit activities.(6)

The Second Forum on Tax and Crime was held in Rome, hosted by the Italian Guardia di Fidanza,(7) and the Third in Istanbul, Turkey. The Outcomes Statement of this last meeting stated that G20 Leaders at the Saint Petersburg Summit had emphasized how cross-border tax evasion, money laundering, terrorism financing and corruption undermine public finance, impede economic growth and poverty reduction, threaten financial stability and undermine the rule of law. On this premises and the need to combat financial crimes, the political leaders at the Saint Petersburg Summit supported the ongoing work of the OECD, the Financial Action Task Force (FATF), the World Bank and other organizations to combat these threats.

The Fourth OECD Forum on Tax and Crime was held this month in the Netherlands.(8) The meeting gathered senior officials and experts from over seventy countries and international organizations to address priority issues and support and ambitions future program. The panels over the two-day discussions included, *inter alia* (i) the fight against terrorist financing; (ii) emerging tax evasion risks in an era of greater transparency, (iii) enabling developing countries to tackle illicit flows, (iv) alternative payment platforms used to facilitate tax crime and other financial crimes, (v) financial professional enablers and their role in organized crime, and (vi) improving co-operation between tax and anti-money laundering authorities. The ongoing FIFA investigation was discussed in a special session and shown as a prime example of how inter-agency co-operation can be used to deliver results in an effective manner.

The OECD Report *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*(9) was released at the meeting.

The key recommendation of the Report focuses on the need that, subject to appropriate safeguards, tax administrations be granted the fullest possible access to the Suspicious Transaction Reports (STRs) received from responsible parties by the Financial Intelligence Units (FIUs) in their jurisdictions. For this goal to be achieved, according to the Report, the jurisdictions should not only provide a suitable legislative framework that allow that access, but also ensure the operational structure and the procedures to facilitate the maximum effectiveness in the use of STRs.

The Report calls for a “whole of government” approach to combat money laundering and other financial crimes, recognizing that knowledge kills required to effectively fight against these offences are often spread across different bodies, such as tax and customs administrations, FIUs, specialized criminal law enforcement authorities, financial regulators and the public prosecutor’s office. As the Report recognized, this approach does not imply altering the fact that FIUs primary function is to tackle money laundering and that of tax administrations to ensure tax compliance; it simply acknowledges that by working closely together all these bodies would be better positioned to achieve their objectives.

Based on a survey prepared by OECD Task Force on Tax Crimes and Other Crimes (TFTC) in 2013 (later updated and enlarged in 2014), the Report confirmed the existence of a wide range of practices among countries as regards allowing tax administrations access to STRs. Of the respondents to the survey (28 countries from across the world)(10) approximately 80% of those countries provide some form of access to STRs for tacking tax crimes, and, in approximately 20% of those countries the tax administrations have direct access to STRs.

The different models for making STRs available to tax administrations can be grouped in three main categories (i) unrestricted independent tax administration access to STRs, (ii) joint FIU and tax administration decision-making allocation of STRs, and (ii) FIU decision making allocation of STRs. The Report details the strengths and challenges of each model in accordance with countries' practices.

The Report further recommends that as long as the domestic legal framework permits, STRs be used at the tax administration level not only for identifying tax crimes but also for civil purposes, this is, in connection with tax compliance.

When addressing the issue of confidentiality and data protection, the Report identifies three essential building blocks (i) the legal framework, (ii) information security management (practices and procedures) and (iii) monitoring confidentiality, compliance and sanctions to address breaches (improper disclosure or use of information). The report further states that depending on the national jurisdiction legal framework, there may be also requirements restricting the use of STRs aimed at protecting the reporting entity and the individuals in the reporting entity who actually report the STRs.

Based on the Survey, the Report recognized that still existing barriers at the national levels for tax administrations to access STRs are either legislative and/or conceptual/operational, and that phasing out or removing those barriers will help enhancing the reach of both money laundering and tax authorities. Even though overall effectiveness is, hence, beyond doubt in case of harmonized operation, cultural barriers between money laundering and tax authorities may still impede a better functioning; for instance, tax non-compliance, even of a criminal nature, is still often viewed as a quite separated issue from money laundering and other crimes in many jurisdictions.

When it comes to recommendations, the Paper once more emphasizes the need of given tax administrations the fullest possible access to STRs received by FIUs in their jurisdiction, providing the legislative framework to allow it and ensuring the operational structure and procedures to facilitate the maximum effectiveness in the use of STRs.

Finally, concerning possible future steps, the Report singles out a highly ambitious objective: To explore the potential for the international exchange of STRs. Under this new path, and just as with any other tax information, tax administrations could have access to information of use to other tax administrations, though prior consent from FIUs before sharing internationally any information they have made available is likely to be needed.

(1) See, *inter alia,* Tavares R., *Relationship between Money Laundering, Tax Evasion and Tax Heavens*, EU Special Committee on Organized Crime, Corruption and Money Laundering (CRIM) 2012-2013, Thematic paper on Money Laundering, January 2013; Storm A., *Establishing the Link between Money Laundering and Tax Evasion*, The Clute Institute Academic Conference, Munich, 2014.

(2) Oliver, *International Taxation: Tax Evasion as a Predicate Offense to Money Laundering*, International Legal Practitioner, June 2002.

(3) The expression originated back in the times when the Mafia owned laundromats in the United States. Laundromats were legal business (basically cash businesses) use to "laundering" huge amounts of cash from dirty businesses (gambling, liquor bottling, prostitution), blending it with the laundromats' legitimate (mostly cash) proceeds (see Krishna V., *The Legacy of Al Capone in Tax Law*, The Lawyer´s weekly, August 29, 2008).

(4) Storm, id. footnote 1.

(5) Oslo Meeting, March 2011.

(6) See OECD, *The Launch of the Oslo Dialogue*, Closing Statement by Norway and OECD, March 23, 2011. See also OECD, *The Oslo Dialogue, A Whole Government Approach to Fighting Tax Crimes and other Financial Crimes*, Information Brief, June 2012.

(7) Rome, June 14-15, 2012.

(8) Fourth OECD Forum on Tax and Crime, Amsterdam, the Netherlands, September 16-17, 2015.

(9) OECD Report, *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*, September 2015.

(10) Countries are Australia, Austria, Belgium, Canada, Chile, Colombia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Latvia, Malaysia, the Netherlands, New Zealand, Portugal, Singapore, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the U.K., and the United States.

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