

1. Introduction

Adding tax crime to the list of predicate offences to money laundering seems to be necessary and hence logical in order to ensure that everyone pays a fair share of tax. Or is it?

Tax crime is the only predicate offence where there is no proceeds of crime to be laundered at the moment the assets usually are transferred to a bank account, because in most income tax systems, the taxable base of this year is relevant only to next year's tax period. As an example, legal and legitimate income can be placed on a bank account in 2016 and stay there without any breach of law. Only when this income is not declared lawfully in 2017's tax returns, a crime has happened. Once the tax crime has happened, the assets on the bank account appear to be an amalgamate of legal income and proceeds of a tax crime.

This crime normally happens without the victim being dispossessed of any values, i.e. without any transaction away from the victim. This is due to the fact that the tax man normally does not hold any money in his hand which is taken away from him by the offender (with the exception of value added tax (VAT) fraud), but only receives less than due. Therefore, all transaction related red flags and indicators for money laundering are useless when facing tax crime as predicate offence to money laundering.

In addition, the fact that tax crime normally happens in cross border situations makes it very burdensome for the private sector and the public administration to get on top of the topic, because there is no harmonized definition of a tax crime available globally, and not even in the European Union. Hence the compliance officers in the private sector as well as the analysts at the Financial Intelligence Units or the public prosecutors have to learn and update continuously the different definitions of tax crime in a multitude of different jurisdictions.

This has already shown effects in certain countries; where a significant percentage of all Suspicious Activity Reports (SARs) are related to tax crime. In addition to the existing tax authorities, who continue to fight tax crimes, the private sector, the Financial Intelligence Units and the prosecutors investigating money laundering cases have to apply their resources to tax crime once it has become a predicate offense to money laundering. The tax man's interests have been protected by tax authorities since the inception of tax in ancient times, while the protection of the integrity of private persons had to be developed through the declarations of human rights and the rule of law and has to be enforced by Law Enforcement Agencies and courts.

Based on the assumption that public spending will not be allowed to increase in most countries due to austerity and based on the experience that the private sector does not allocate additional resources before legally obliged to do so, one may ask the question whether the allocation of resources to investigating, reporting, analysing, distributing and investigating again these cases of tax crime is not for the benefit of drug dealers, child abusers, fraudsters, weapons dealers and all other criminals. The risk