

2.1.1 International Standard: FATF recommendations (February 2012)

The definition of “designated categories of offences” as predicate offences to ML includes “tax crimes (related to direct taxes and indirect taxes)”⁴. This definition is picked up in the interpretive note to recommendation 3. In number 4 of this interpretive note to recommendation 3, it says “4. Whichever approach is adopted, each country should, at a minimum, include a range of offences within each of the designated categories of offences. (...)”⁵. Recommendation 3 itself does not speak of designated categories of offences, it refers to “(...) all serious offences, with a view to including the widest range of predicate offences”⁶.

The terminology in the FATF recommendations might be seen as somewhat ambiguous, because recommendation 3 speaks of serious offences, and the Glossary refers to “tax crimes” instead of using the more precise terminology “tax felonies” or “tax misdemeanours”. Are “tax misdemeanours” to be defined as predicate offence to ML or not? Implementing the new FATF recommendations would be clearer if the FATF had used the hyponym instead of the hypernym as shown in the following chart.

Hypernym:

tax crimes

Hyponyms:

tax felonies

tax misdemeanours

Figure 1: Tax crimes and their sub-categories (or hyponyms) tax felonies and tax misdemeanours

Being a missed opportunity to make things clearer, not even the FATF methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems (February 2013) gives any guidance at all how the assessors should evaluate and rate compliance with the FATF recommendations in terms of tax crime as predicate offence to ML. One could come to the conclusion that the FATF had to do something due to political pressure, but could not go beyond the lowest common denominator. It would make it clearer for evaluators in mutual evaluations if the FATF methodology would define tax crimes as being tax felonies, or, in the case of countries without a single tax felony in their national law (as will be shown below when analysing implementation on national levels), a qualified tax misdemeanour for direct and indirect tax each.

⁴ See the „General Glossary“ of the FATF Recommendations, p. 112.

⁵ FATF Recommendations, p. 34. The important parts of the interpretive note can be found in chapter 2.2 below.

⁶ FATF Recommendations, p. 12.