

2.2 National Implementation

How do countries have to implement tax crime as predicate offence to ML in their national law? The so far most practical answer, although again in lengthy language, is given in the interpretive note to recommendation 3 of the FATF recommendations, which gives the following guidance:

INTERPRETIVE NOTE TO RECOMMENDATION 3 (MONEY LAUNDERING OFFENCE)

1. Countries should criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).

2. **Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.** Predicate offences may be described by reference to all offences; or to a threshold linked either to a category of serious offences; or to the penalty of imprisonment applicable to the predicate offence (threshold approach); or to a list of predicate offences; or a combination of these approaches.

3. Where countries apply a threshold approach, predicate offences should, at a minimum, comprise all offences that fall within the category of serious offences under their national law, or should include offences that are punishable by a maximum penalty of more than one year's imprisonment, or, for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences that are punished by a minimum penalty of more than six months imprisonment.

4. Whichever approach is adopted, each country should, at a minimum, include a range of offences within each of the designated categories of offences. The offence of money laundering should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. When proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence.

5. **Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically.** Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence, had it occurred domestically.

(...)

(text in bold letters highlighted by the author)