

2.2.6 USA

The United States of America being a member of the FATF and the APG⁷¹, they should implement the FATF recommendations. In the US, ML is punishable according to title 18 United States Code (U.S.C.) sections 1956, 1957, 1960 and according to provision of title 31, and title 26 U.S.C. section 6050L.⁷²

When looking for tax crimes as predicate offences to ML, no statutory provision can be found making tax evasion with income from legitimate sources a predicate crime for ML in the US.

Senators Leahy (Democrat-Vermont) and Grassley (Republican-Iowa) introduced the Fraud Enforcement and Recovery Act of 2009 on February 5, 2009⁷³, which in its wording passed by the Senate on April 28, 2009, would have contained an amendment making title 26 U.S.C. section 7201 (attempt to evade or defeat tax) and title 26 U.S.C. section 7206 (fraud and false statements) predicate offence to ML (i.e. by amending title 18 U.S.C. section 1956(a)(2)(A) by the relevant language)⁷⁴:

(g) MAKING THE INTERNATIONAL MONEY LAUNDERING STATUTE APPLY TO TAX EVASION.— Section 1956(a)(2)(A) of title 18, United States Code, is amended by—

(1) inserting “(i)” before “with the intent to promote”; and

(2) adding at the end the following:

“(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or”.

⁷¹ The Asia/Pacific Group on Money Laundering is the FSRB uniting Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, Canada, China, Cook Islands, Fiji, Hong Kong, India, Indonesia, Japan, South Korea, Lao, Macao, Malaysia, Maldives, Marshall Islands, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Niue, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Sri Lanka, Chinese Taipei, Thailand, Timor-Leste, Tonga, United States of America, Vanuatu, and Vietnam, see footnote 17 above and <http://www.apgml.org/>, accessed on April 10, 2016.

⁷² As explained in the Internal Revenue Service’s Manual (IRM), available from <https://www.irs.gov/irm/>, Part 9 Criminal Investigation, Chapter 5 Investigative Process, Section 5 Money Laundering and Currency Crimes, Subsection 1 Overview (IRM 9.5.5.1, number 4 in fine; see https://www.irs.gov/irm/part9/irm_09-005-005.html for direct access), both links accessed on April 10, 2016. The whole of the U.S.C. is available from <http://uscode.house.gov/browse/prelim@title31&edition=prelim>, accessed on April 10, 2016.

⁷³ See one of the press releases available from <http://www.grassley.senate.gov/news/news-releases/grassley-leahy-introduce-anti-fraud-legislation>, accessed on April 10, 2016.

⁷⁴ The protocol of the Floor Consideration is on the Congressional Record and hence available from <https://www.congress.gov/crec/2009/04/28/CREC-2009-04-28-pt1-PgS4774-2.pdf>, accessed on April 10, 2016.