

By the time the Fraud Enforcement and Recovery Act became law, this amendment had disappeared.⁷⁵ When looking for a definition of the term “proceed”, the very same Fraud Enforcement and Recovery Act clearly defines that “the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.”⁷⁶ Retaining property through some form of unlawful activity seems to cover the non-payment of tax due.

As the US is a common law country, courts have tried to remedy the shortcoming of the legislator. The most important decision seems to have been taken by the US Supreme Court, the so called *Pasquantino* decision. Some practitioners interpret it as a decision in which the Supreme Court “determined that a foreign government has a valuable property right in collecting taxes, and that right may be enforced in a U.S. court of law”⁷⁷, others hold that “the Court held that a foreign government has a valuable right in collecting taxes, and that if the tax evasion proceeds are used to purchase assets the parties involved face criminal prosecution for tax crimes and money laundering (...)”⁷⁸. A few seem to be of the same opinion as the latter, but use a less specific language like “Tax evasion with income from legitimate sources is considered a predicate crime for money laundering in the United States, if intent to violate federal law can be proven”⁷⁹. This could lead to the conclusion that foreign tax crimes are not predicate offence to ML in the US. The IMF also concluded in June 2015 that serious tax crimes are not predicate offence to ML in the US.⁸⁰ As there was no amendment to title 18 U.S.C. section 1956 (a)(2)(A) since June 2015, the conclusion seems to hold until today.

⁷⁵ See the public law 111-21, available from <https://www.gpo.gov/fdsys/pkg/PLAW-111publ21/html/PLAW-111publ21.htm>, accessed on April 10, 2016.

⁷⁶ See the public law 111-21, Section 2(f)(1), the website being mentioned in footnote 75.

⁷⁷ Andrew H. Weinstein and Kevin E. Packman, What Private Wealth Attorneys Need to Know About Money Laundering, Estate Planning Journal, 2010, p. 2, available from <https://www.hklaw.com/files/Publication/c9d76047-6b77-4532-8390-8e04014c1c2e/Presentation/PublicationAttachment/4fd2780f-75de-459b-9c6b-fc15a2bde3e3/55014.PDF>, accessed on April 10, 2016.

⁷⁸ Gary S. Wolfe, Esq., Tax Evasion and Money Laundering: US Real Estate, p.2, available from <http://www.ustaxfs.com/tax-evasion-and-money-laundering-us-real-estate/>, accessed on April 10, 2016.

⁷⁹ See the “Guide to U.S. Anti-Money Laundering Requirements”, FAQ, 6th edition, published by Protiviti Inc., can be downloaded for free from <http://www.protiviti.co.uk/en-US/Pages/Anti-Money-Laundering.aspx>, accessed on April 10, 2016.

⁸⁰ See the IMF Country Report No. 15/174 of July 2015 on the United States, footnote 2 on page 5 (AML/CFT technical note within the IMF’s financial sector assessment program FSAP), available from <https://www.imf.org/external/pubs/ft/scr/2015/cr15174.pdf>, accessed on April 10, 2016.