

4. Risks in Practice

Implementing a new predicate offence to ML regularly bears risks that are unknown until some time after the entry into force of the statutory amendment. Only then some of the secondary effects of legislation come to light. To take an example, adding a new predicate offence to ML could be expected to increase the number of SARs being filed. But sometimes, conditions in a specific jurisdiction seem to lower the motivation of reporting entities to file SARs, e.g. if the filing of a report would lead to prosecution of the reporting entity itself for ML or a predicate offence to ML.

A few of these risks will be analysed in chapter 4. The sample is aleatory, the analysis is based on empirical experience, and the results are not statistically significant. But still, these are some of the problems faced by compliance officers, FIU staff, prosecutors and judges when dealing with tax crime as predicate offence to ML.

4.1 defensive or offensive reporting by reporting entities?

The problems described above in chapter 3, e.g. the legal complexity of tax crime as predicate offence to ML and the connected lack of resources described in chapter 3.3 could lead to two very different reactions by financial institutions and DNFBPs: either they stop to file STRs and SARs or lower their number of cases reported significantly (which would be the typical reaction of a reporting entity short on resources) or they start to systematically report every slight suspicion of a tax crime as predicate offence to ML or ML based on tax crime as predicate offence (which is the well known pattern in the conduct of those reporting entities who want to avoid the hassle of training and updating their staff constantly). Both reactions are detrimental to the efficiency of an AML/CFT regime. The number of cases reported being too low first of all increases the risk of failing to detect cases of predicate offence to ML, ML or financing of terrorism. Secondly, the lack of statistically sufficient data puts the validity of the statistical analysis of the country concerned at risk. The number of cases reported being too high increases the work overload of the FIU and the prosecutors and floods the AML/CFT network with unwanted cases of petty crime.