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# Leveraging Anti-money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues

Emmanuel Mathias and Adrian Wardzynski

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**Leveraging Anti-money Laundering Measures to Improve Tax Compliance and  
Help Mobilize Domestic Revenues**

**Prepared by Emmanuel Mathias and Adrian Wardzynski**

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**ABSTRACT:** The paper advocates leveraging anti-money laundering (AML) measures to enhance tax compliance, tackle tax crimes, and, in turn, help mobilize domestic revenues. While AML measures have already been deployed to improve tax compliance, including during the European debt crisis, the benefits that such measures could bring to the integrity of the tax system are yet to be fully realized. In recent years, the relevance of AML measures for tax purposes resurfaced in public discourse in light of numerous data leaks that provided ample evidence of the closely intertwined nature of tax crimes and money laundering. There might now be the right political momentum for greater utilization of AML measures given post-pandemic calls for a more progressive tax system, elevated sovereign debt burdens, a challenging global economic outlook, and widespread cost-of-living crisis. In this context, the IMF has stressed the importance of rebuilding fiscal buffers, as countries with more fiscal room are better placed to weather the economic slowdown and protect households and businesses.

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## WORKING PAPERS

# Leveraging anti-money laundering measures to improve tax compliance and help mobilize domestic revenues

Prepared by Emmanuel Mathias and Adrian Wardzynski<sup>1</sup>

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# I. Introduction

**The global economic downturn originally sparked by the COVID-19 pandemic, exacerbated by the war in Ukraine and the ongoing climate emergency, strains national budgets.** Limited economic activity during the height of the pandemic and the cost of domestic relief programs to shield national economies have led to elevated debt levels, which in some countries<sup>2</sup> may necessitate debt restructurings. The fragile economic recovery has been set back by lingering supply-demand imbalances, higher-than-expected worldwide inflation, increasing energy and food prices, more frequent and extreme climate anomalies, and geopolitical fragmentation impacting global trade and capital flows. As a result, many countries today are looking to generate more revenues in order to preserve economic stability and deliver the same level of public services. In the same vein, the social inequality exposed by the pandemic and further intensified by the cost-of-living crisis renewed calls for effective progressive taxation and protection of the most vulnerable in the society.

**Strengthening tax compliance and mobilizing domestic revenue is becoming a public policy priority for many countries.** Countries with more fiscal room are better able to protect households and businesses in times of crisis. Therefore, a number of countries are either already acting or considering taking action to increase taxes, including through the introduction of windfall taxes on excessive banking, capital markets, and energy profits, as well as other levies, such as additional solidarity contributions by the wealthiest in society. This paper notes that improving tax (and customs) compliance can indirectly help mobilize domestic revenues without the need to raise taxes, which could stifle growth and the fragile economic recovery.<sup>3</sup> In that sense, the additional revenues resulting from tighter tax compliance could not only provide for a more equitable tax system but also help preserve economic stability and enhance debt sustainability. In times of an economic slowdown and the need for disinflationary macroeconomic measures, this form of domestic revenue mobilization is equally relevant to developed and developing countries.<sup>4</sup> For example, the recently adopted Inflation Reduction Act 2022 in the United States (US) envisages a substantial increase in resources and funding for the Internal Revenue Service (IRS) in an effort to close the tax gap and help manage inflation.

**One of the tools at the disposal of the policymakers to strengthen tax compliance is to make greater use of available Anti-Money Laundering (AML) measures.** Leveraging AML measures could enhance tax compliance and contribute to tackling tax crimes. As concluded in a 2012 IMF policy paper, “An effective use of the AML framework should enhance compliance with tax laws by increasing the probability of detection of tax evaders and by imposing deterring sanctions and increasing revenues” (IMF, 2012). Similarly, the IMF’s financial integrity strategy recognizes the value of AML measures in tackling tax crimes and improving tax compliance (IMF, 2019a). AML measures were already deployed, to varying degrees, to improve tax compliance during the European debt crisis in countries such as Greece, Italy, and Portugal (Mathias and Esposito, 2015). Nonetheless, the benefits that AML measures could bring to tax compliance are yet to be fully realized, which prompted the writing of this paper.

**Leveraging AML measures to support tax compliance objectives could alleviate redundancies across the AML and tax frameworks.** There are significant commonalities and synergies between money laundering and tax crimes, which, as a matter of international standards, are now designated as predicate offenses to money laundering. According to a 2022 study carried out by the Financial Action Task Force (FATF), the prime

<sup>2</sup> The terms “country” or “countries”, as referred to throughout this paper, applies equally to territories or jurisdictions.

<sup>3</sup> Where relevant, references to the term “tax compliance” throughout the paper are to be understood to include “customs compliance”. Similarly, the term “tax authorities” is intended to encompass tax administrations, custom authorities, and other authorities that are responsible for the enforcement of taxes and other levies, including, where a country does not impose taxes, the authorities responsible for compliance with international tax cooperation standards such as the international tax transparency standards.

<sup>4</sup> The concept of domestic revenue mobilization refers to the generation of government revenue from domestic tax and non-tax sources. Typically, it is more readily associated with developing countries’ strategies at reducing poverty and achieving sustainable development goals (e.g., Benedek and others, 2012; Balima and others, 2020).

international AML standard-setter, tax crimes, along with drug trafficking, corruption, and fraud, are widely recognized as the major predicate offenses posing money laundering risks (FATF, 2022). As evidenced by numerous recent data leaks, money laundering and tax crimes can be at times very difficult to distinguish from one another. This is because the techniques utilized by offenders often rely on similar, and even identical, obfuscation methods to commit both types of crimes. Money laundering is frequently an integral and calculated component of a successful tax crime. It is facilitated by professional enablers providing “packaged” legal, accounting, and tax services.

**This paper advocates leveraging AML measures to enhance tax compliance, tackle tax crimes, and, in turn, help mobilize domestic revenues.** AML measures can help improve tax compliance in areas such as: (i) taxpayer transparency, (ii) detection of tax evasion, (iii) enforcement, and (iv) deterrence.

- **Taxpayer transparency:** Customer due diligence (CDD) required under the AML framework can help identify taxpayers, their taxable income, wealth, and assets. CDD procedures entail identification and verification of account holders and their beneficial owners, as well as the gathering of a host of other relevant information, including on the nature of business, and, where necessary, the source of funds and wealth. The information obtained needs to be recorded and its veracity kept up to date through ongoing monitoring of business relationships and transactions. Therefore, by complying with their CDD requirements, entities obliged under the AML frameworks (obliged entities) compile data relevant to both AML and tax authorities.
- **Detection of tax evasion:** Close inter-agency cooperation and sharing of information by AML authorities with tax authorities can support the detection of tax crimes, help assess risks of tax non-compliance, better target tax audits, and contribute to taxpayer risk profiling.<sup>5</sup> As part of their AML obligations, financial institutions and other businesses and professions such as lawyers, accountants, Trust and Company Service Providers (TSCPs), as well as Virtual Asset Service Providers (VASPs) are required to report suspicious activities and transactions to AML authorities – typically the local Financial Intelligence Units (FIUs). The FIUs compile, analyze, and disseminate financial intelligence to other authorities, including tax authorities, in line with the applicable domestic legal framework.
- **Enforcement:** The enforcement mechanisms available under the AML framework could reinforce and supplement the powers already at the disposal of the authorities responsible for the investigation and prosecution of tax offenses. The AML framework provides for comprehensive enforcement measures, including a civil and criminal accountability framework extending to service providers that facilitate tax crimes, broad investigative powers, freezing orders, confiscation, measures to tackle corruption of the prominent public officials in the tax administration, i.e., Politically Exposed Persons (PEPs), and wide international cooperation (including in the area of asset recovery).
- **Deterrence:** Readiness to deploy the AML framework to support tax compliance may deter a potential criminal from committing a tax crime because of the increased probability of being caught and receiving a sufficiently severe penalty. The AML framework gives effect to the adage that prevention is the first line of defense. It provides for increased transparency and a strong sanctions mechanism, including possible imprisonment, against offenders and their accomplices.

**The objective of this paper is twofold: (i) to substantiate the claim that money laundering and tax crimes are closely intertwined, and (ii) to identify specific AML measures that could aid tax compliance.** The

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<sup>5</sup> This paper focuses on the sharing of information by AML authorities with tax authorities. While it is acknowledged that close reciprocal cooperation is important to building the necessary rapport, the issues relating to the sharing of information by the tax authorities with the AML authorities are not the subject-matter of this paper.

analysis starts in section II by drawing on the commonalities between money laundering and tax crimes. Section III outlines to what extent synergies between AML and tax compliance frameworks have been realized to date. Section IV sets out the specific AML measures that can be leveraged to improve taxpayer transparency, detect tax evasion, and support enforcement and deterrence efforts (see also annex I for an overview of the relevant AML measures). Section V critically evaluates some of the key political, legal, and operational challenges to leveraging AML measures for tax compliance purposes and proposes solutions. Finally, section VI offers a conclusion.

## II. Commonalities between money laundering and tax crimes

### A. Common objective of concealing or disguising source of funds

**Money laundering and tax crimes commonly involve concealing or otherwise disguising illegal or taxable proceeds.** According to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 United Nations Convention against Transnational Organized Crime (the Palermo Convention), as endorsed by the FATF, money laundering is a process of disguising the illegal origin of criminal proceeds.<sup>6</sup> Its objective is to enable the offenders to enjoy these proceeds, avoiding any sanctions and confiscation. To this end, money laundering is customarily thought to involve three stages: (i) the placement stage, where the criminal proceeds are placed in a financial institution or used to purchase an asset (e.g., a deposit into a bank account), (ii) the layering stage, where complex schemes are used to disguise the funding source and obscure the financial trail (e.g., multiple and convoluted wire transfers), and (iii) the integration stage, where the criminal proceeds are integrated into the formal economy (e.g., buying a luxury real estate).<sup>7</sup> As noted by Tucker (2022), this commonly referenced three-stage illustration is a simplification of a dynamic and complex scheme. The respective stages may not occur sequentially, can overlap, and blur together (see also Gilmore, 2011). Moreover, in some countries money laundering charges may not always require proving concealment.<sup>8</sup>

**Likewise, tax crimes concern taxable income that needs to be hidden from the purview of the tax authorities, i.e., not declared or otherwise made to appear as non-taxable.** An important caveat is that unlike most other crimes giving rise to criminal proceeds subject to money laundering, tax crimes on their own may not necessarily concern illegal source income but rather the saving of an expense (i.e., taxes). For example, the sale of illicit drugs directly generates illegal income because it is against the law to sell drugs. In contrast, tax crime investigations often involve tax violations where the underlying income is derived from entirely legal activities, such as claiming tax deductions on legally obtained income which is not eligible for a deduction, failure to file a tax return, excise tax cases, or employment tax cases (Dubin, 2007; Storm, 2013; Tucker, 2022). Box 1 below provides an outline of the basic tax concepts.

#### Box 1. Basic tax concepts explained

**Infringements of tax laws may carry criminal or civil law consequences, and the line between what constitutes a violation of the applicable tax rules and what does not may be very thin.** The list below explains some of the key characteristics of concepts such as “tax crimes” (illegal criminal acts), “administrative tax offenses” (civil law non-compliance), “tax evasion” and “tax fraud” (either tax crimes or administrative tax offenses), and “tax avoidance” (legal ways of lowering tax liability). It is important to stress that there is no internationally accepted definition of these concepts, and their precise meaning varies between countries. Therefore, the focus is put on some of the hallmarks commonly associated with a given concept rather than its exhaustive and country-specific definition.

<sup>6</sup> Vienna Convention, Article 3; Palermo Convention, Article 6; FATF Recommendations (2012 – 2023), Recommendation 3 and its Interpretive Note. See also FATF Recommendation 36.

<sup>7</sup> For the three stages of money laundering see <https://www.fatf-gafi.org/faq/moneylaundering/> (accessed May 17, 2022).

<sup>8</sup> For example, the United States Code (USC), Title 18, section 1957, applies to knowingly engaging in monetary transactions in property derived from a specified list of offenses.



- **Tax crime:** The concept of tax crime captures conduct that violates national tax laws and can be investigated, prosecuted, and sentenced under criminal procedures under the domestic criminal justice system. It often concerns cases of a failure to pay taxes where they are legally due under the applicable tax laws, i.e., tax evasion or tax fraud. Tax crimes may also arise without taxes being due and owing, such as in the case of a fraudulent return or a failure to declare an offshore account. There is no universally accepted definition of tax crimes, and countries take different approaches as to what conduct constitutes a tax crime.<sup>9</sup> A common and key threshold is the element of willfulness, or sometimes gross negligence, that differentiates between illegal criminal acts and civil non-compliance, i.e., administrative tax offenses. Some countries introduce additional aggravating factors to differentiate between civil and criminal tax liability, such as monetary thresholds for the amount of taxes evaded, gross negligence, or recidivism (OECD, 2021c). In accordance with the international AML standards, tax crimes constitute predicate offenses to money laundering and are the focus of this paper.
- **Administrative tax offense:** If the non-compliant tax conduct does not carry criminal liability under the national criminal code, it is a civil law violation that amounts to an administrative tax offense. This typically includes various procedural omissions relating to tax registration, the filing of a tax return, or the keeping of tax records. It may also entail a failure to pay taxes which is not of the magnitude envisaged under the criminal code, such as falling below the prescribed threshold or arising from an omission that cannot be attributed to the willful act or gross negligence on the side of the taxpayer. Administrative offenses are generally not treated as predicate offenses to money laundering.
- **Tax evasion / tax fraud:** According to the Organization for Economic Cooperation and Development (OECD), tax evasion is difficult to define but it is “generally used to mean illegal arrangements where liability to tax is hidden or ignored”.<sup>10</sup> It can carry criminal (tax crime) or civil (administrative tax offense) consequences. It extends to different types of conduct aimed at eliminating or reducing tax levies, such as using false documents or fictitious invoices, forging or destroying documents, or more broadly engineering methodological steps to gain tax advantages that are against the law (*cf.* tax avoidance below). Tax evasion often relies on fraudulent conduct, and thus it may be synonymous or related to the concept of tax fraud. That is especially when it is committed on a larger scale as part of a serious organized crime. What constitutes tax evasion and / or tax fraud varies from country to country, and in some instances only tax fraud carries criminal consequences.
- **Tax avoidance:** As with tax evasion, the OECD acknowledges that the term tax avoidance is difficult to define but it is “generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow”.<sup>11</sup> In other words, tax avoidance refers to conduct whereby the taxpayer generates tax savings by acting within the letter of the tax law but in doing so exploits its inadequacies or ambiguities. In practice, it is often very difficult to draw the line between legal (i.e., tax avoidance) and illegal activities (i.e., tax evasion).

Even though the tax savings generated through tax avoidance schemes are strictly speaking legal, they are widely perceived as immoral and unfair as they take advantage of the legal loopholes and the “grey

<sup>9</sup> For example, Directive (EU) 2018/1673, Recital, paragraph 8.

<sup>10</sup> OECD Glossary of Tax Terms available at <https://www.oecd.org/ctp/glossaryoftaxterms.htm> (accessed January 18, 2023).

<sup>11</sup> OECD Glossary of Tax Terms available at <https://www.oecd.org/ctp/glossaryoftaxterms.htm> (accessed January 18, 2023).

zones” of the law.<sup>12</sup> The conceptual difference between legitimate tax planning and illegitimate tax avoidance lies in the extent to which the tax benefit obtained constitutes appropriate use (planning) of the law, on the one hand, and abuse or misuse (avoidance), on the other hand (Waerzeggers and Hillier, 2016).

Tax avoidance schemes are most commonly utilized by the more sophisticated taxpayers that can avail themselves of expert advice helping to design and implement the necessary arrangements. The key is to understand what would be considered legal and illegal under the applicable tax laws, which typically requires receiving an expert advice. For example, given that taxation is linked to one’s tax residency (or less commonly nationality), such schemes may resort to techniques enabling manipulation of the tax residency status. This can be facilitated through the misuse of citizenship / residency by investment programs.

## B. Interdependence between money laundering and tax crimes

**Money laundering and tax crimes often occur in relation to the same acts or the same causal chain of events.** At a most elementary level, money launderers do not normally report their taxes on proceeds subject to the laundering process, and thus often commit not only money laundering but also eventually a tax crime.<sup>13</sup> More importantly, however, money laundering is a distinct crime whereby the underlying proceeds arise from another and separate crime referred to as a “predicate offense”. The International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation developed by the FATF, and thus known as the FATF Recommendations, prescribe that the crime of money laundering should apply “to all serious offences, with a view of including the widest range of predicate offenses”.<sup>14</sup> The General Glossary to the FATF Recommendations prescribes a list of 21 predicate offenses to money laundering, including tax crimes (see also section III.B below).<sup>15</sup> In practice, tax crimes, along with drug trafficking, corruption, and fraud, are among the most common predicate offenses that give rise to money laundering proceeds (FATF, 2022).<sup>16</sup>

**A strict differentiation between the primary offense step, such as a tax crime, and a subsequent money laundering step may be difficult to discern.** As observed by Levi and Reuter (2006), money laundering is “conceptually elusive” as while it is legally construed as a standalone criminal activity it may be an integral

<sup>12</sup> Governments across the globe consider tackling tax avoidance to be an important policy objective and take active steps to continuously enhance their domestic tax legislation and foster international tax cooperation. This is also an area in which the OECD has been very active over the years through the Inclusive Framework on Base Erosion and Profit Shifting. For more information see <https://www.oecd.org/tax/beps/about/> (accessed April 21, 2022).

<sup>13</sup> As noted by Tucker (2022), while it may sound comical, the IRS in the US specifically requires that criminal proceeds be reported along other legitimate income. As per the IRS instructions for filling out the 2022 tax returns, “income from illegal activities, such as money from dealing illegal drugs, must be included in your income”. See <https://www.irs.gov/publications/p525> (accessed January 17, 2023).

<sup>14</sup> FATF Recommendations (2012 – 2023), Recommendation 3.

<sup>15</sup> The General Glossary to the FATF Recommendations (2012 – 2023) designates the following 21 offenses as predicate money laundering offenses: (1) participation in an organized criminal group and racketeering, (2) terrorism, including terrorist financing, (3) trafficking in human beings and migrant smuggling, (4) sexual exploitation, including sexual exploitation of children, (5) illicit trafficking in narcotic drugs and psychotropic substances; (6) illicit arms trafficking; (7) illicit trafficking in stolen and other goods, (8) corruption and bribery, (9) *fraud*, (10) counterfeiting currency, (11) counterfeiting and piracy of products, (12) environmental crime (for example, criminal harvesting, extraction or trafficking of protected species of wild fauna and flora, precious metals and stones, other natural resources, or waste), (13) murder, grievous bodily injury, (14) kidnapping, illegal restraint and hostage-taking, (15) robbery or theft, (16) *smuggling* (including in relation to customs and excise duties and taxes), (17) *tax crimes (related to direct taxes and indirect taxes)*; (18) extortion, (19) forgery, (20) piracy, and (21) insider trading and market manipulation. Emphasis added for categories relevant to tax crimes.

<sup>16</sup> Despite the FATF Recommendations, not all countries treat tax crimes as predicate offenses to money laundering. A notable exception is the US. See further discussion on this issue in section III.B below.

component of the underlying predicate offense.<sup>17</sup> That is because serious crimes, such as tax crimes, generate large proceeds that can alert law enforcement authorities unless made relatively immediately appear legitimate through the laundering process. Therefore, money laundering is often a calculated component of tax crimes, which is already factored in at the planning stage of the intended criminal tax violation. Conversely, tax crimes may be committed in an effort to disguise the proceeds from other illegal activities. For example, false invoices can be used to claim tax deductions and provide a front for the payment of bribes and other illicit proceeds (Brun and others, 2022).

**It is important to note that there may be a timing difference between the legal recognition of the underlying tax crime and the related money laundering crime.** Generally, tax crimes require an overt act or failure to act at the time a tax return is required, which can take place only after the funds that are the subject of the unreported income have been laundered. In practice, this is not necessarily a substantial problem. Despite the timing difference between the commission of the two crimes, law enforcement authorities may still be able to act because the underlying activity may be illegal for reasons other than a tax crime. For example, the underlying proceeds derive from drug trafficking or smuggling activities which are both predicate offenses to money laundering. As it is unlikely that criminals would pay taxes on such proceeds, the additional tax crime component could be implicated at a later stage, further adding to the possible criminal charges. Another practical observation is that proceedings in money laundering cases may commence after the said tax returns become due, therefore enabling parallel money laundering and tax crime investigations and prosecutions.

**Money laundering and tax crimes may also constitute one single crime, i.e., in the case of self-laundering of illegal tax savings.** The self-laundering offense occurs in cases where the same person commits both the primary offense, e.g., a tax crime, and the money laundering offense, e.g., such as through making false representations of income and tax liability during the evasion process. If the illicit tax savings are not questioned by the tax authorities, they are both produced and cleaned in a single step without reliance on the laundering support from third parties. Some countries, such as France, Japan, the US, or the United Kingdom (UK), have criminalized self-laundering even before it became more widespread with the implementation of the Sixth AML Directive in the European Union (EU).<sup>18</sup> The benefit of recognizing the crime of self-laundering is that it makes it easier to concurrently investigate and prosecute money laundering and tax crimes (Mathias and Esposito, 2015). At the same time, cases of self-laundering typically involve lower amounts and from the perspective of a risk-based approach may not necessarily be as much of a problem as third-party laundering with the help of service providers (FATF, 2022; see also section II.D below).

### C. Similar techniques employed by money launderers and tax criminals

**Money laundering and tax crimes employ similar techniques to conceal illegal or otherwise taxable proceeds.** The successive data leaks, such as the Swiss Leaks, Panama Papers, Paradise Papers, FinCEN Files, Pandora Papers and most recently the Suisse Leaks well exemplify the fact that techniques used by money launderers and tax criminals often overlap.<sup>19</sup> They are designed to hide the financial trail of income and obfuscate the ownership information to disguise the criminal or otherwise taxable nature of funds and their association with the perpetrators. The most common techniques include use of shell companies, abuse of fiduciary vehicles (such as trusts and other similar legal arrangements), reliance on professional services of intermediaries, employment of formal and informal nominee directors and shareholders, production of fraudulent business and accounting

<sup>17</sup> Money laundering is a standalone crime. While it concerns the laundering of proceeds arising from underlying crimes, i.e., a predicate offense to money laundering, it is not necessary for a person convicted of the underlying crime to be convicted on money laundering charges. See FATF Recommendations, Interpretive Note to Recommendation 3, paragraph 4.

<sup>18</sup> Directive (EU) 2018/1673, Article 3(5).

<sup>19</sup> Most of these leaks were discovered, analyzed, and reported by the International Consortium of Investigative Journalists (ICIJ). See the ICIJ's website for further details available at <https://www.icij.org/> (accessed April 21, 2022).

records, design of complex legal structures and murky international transactions, purchase of high-end real estate, yachts, airplanes, and other expensive assets. Trade-based money laundering (TBML), which is about relying on trade to convert illicit financial proceeds into revenue that appears legitimate, is another area where money laundering and tax and customs violations closely intersect. TBML is accomplished through techniques such as deliberate misrepresentation of the price, quality, or quantity of traded goods and services (Tucker, 2022).<sup>20</sup> Therefore, it allows not only to move value arising from illicit sources but also to manipulate the applicable taxes and customs duties.

### **i. International obfuscation techniques**

**Money laundering and tax crimes commonly resort to cross-border obfuscation techniques to complicate effective scrutiny and enforcement by local authorities.** Criminals may deliberately split the location of legal vehicles, ownership and administration of assets, location of professional advisers, and location of bank accounts across numerous countries to make the process of “following the money” more challenging (FATF, 2023). As noted by Gilmore (2011), “cross-border strategies reflect a natural displacement activity from jurisdictions which have been active in addressing the issue, to countries and territories that possess no or insufficient anti-money laundering measures”.<sup>21</sup> Indeed, it is easier to disguise the origin of funds in an international context, taking advantage of the delays and inefficiencies of fragmented cross-border law enforcement processes. This global nature of money laundering is behind the creation of the FATF as an international peer review and standard-setting body (see section III.B below).<sup>22</sup> Accordingly, enhancing international cooperation is one of the pillars of the FATF Recommendations.<sup>23</sup>

**Similar to money laundering, international tax avoidance and evasion schemes are often deployed to frustrate the enforcement of domestic tax obligations and limit visibility over taxable income and wealth.** Efforts on this front are spearheaded by a plethora of activities and international instruments developed by the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) (e.g., Manatta and others, 2020). The bottom line, also summarized by Tucker (2022), is that both crimes “often involve the illicit movement of funds globally, particularly to offshore tax havens and jurisdictions known for strict bank secrecy rules”.

### **ii. Beneficial ownership obfuscation techniques**

**Hiding the actual ownership of assets and income is among the key obfuscation techniques used to commit money laundering and tax crimes.** This is often achieved through the misuse of legal vehicles, including as part of complex and multi-layered legal structures designed with the purpose of hiding beneficial

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<sup>20</sup> In essence, TBML is the process of legitimizing the proceeds of crime by moving value through trade transactions to disguise their illicit origins. The FATF has been criticized for not providing an official definition for TBML until 2006 and failing to explicitly address it in the FATF Recommendations (see Delston and Wells, 2009 and 2012). That is especially in view of the fact that TBML is considered by some to be the largest money laundering methodology (Tucker, 2022). The FATF published its first study on TBML in 2006 (FATF, 2006) and released a best practices guide in 2008 (FATF, 2008). The study was subsequently updated with a typologies report produced by the Asian/Pacific Money Laundering Group (APG, 2012). More recently, the FATF and Egmont Group published a joint report on TBML (FATF and Egmont Group, 2020).

<sup>21</sup> To illustrate his point Gilmore (2011) refers to the following passage from Savona and De Feo that remark that money launderers are motivated “to find and take advantage of the weakest link in the global regulatory and enforcement chain, by shifting transactions, communications or assets to the country which has the weakest or most corruptible regulatory or police prosecution authorities, the most restrictive bank and professional secrecy, or extradition, or asset seizure law, the most ineffective bank supervision, etc”.

<sup>22</sup> The term “peer review” refers to assessments of countries against their compliance with internationally agreed standards which is carried out by other countries, i.e., peers, on the basis of an agreed methodology. The FATF peer reviews are referred to as “mutual evaluations” (see FATF Methodology (2013 – 2021)). In the context of the FATF, these terms are used interchangeably throughout the paper.

<sup>23</sup> FATF Recommendations (2012 – 2023), Recommendations 36 – 40. See also FATF Methodology (2013 – 2023), Immediate Outcome 2. Regrettably, however, investigations and prosecutions of complex money laundering cases involving a cross-border element remain rare in most countries (FATF, 2022).

ownership (Egmont Group, 2018; OECD, 2021a; TJN, 2022a; FATF, 2023). As put by the Egmont Group (2018), “Despite the legitimacy of many complex ownership and control structures, these structures can also be used to obscure beneficial ownership, avoid taxation obligations, conceal wealth, and launder the proceeds of crime”. For example, shell companies, which often are no more than a mere mailing address, may be created anonymously to own assets and engage in transactions without revealing the identity of the person in charge. This, in turn, enables criminals to distance themselves from illegal activities and wealth (Berkhout and Fernando, 2022; Tucker, 2022; FATF, 2023). Legal arrangements, such as trusts, with their enhanced anonymity through a partition between the legal and beneficial ownership of property, are also exploited for nefarious purposes, even though they feature less frequently in money laundering typology reports than legal persons, such as shell companies. This prevalence of known cases concerning legal persons could be caused by the increased complexities of investigations involving concealment of beneficial ownership with the use of legal arrangements (Egmont Group, 2018).<sup>24</sup>

**Ensuring entity transparency and the concept of “beneficial ownership” are central to the integrity and effective enforcement of AML and tax laws alike (IMF, 2022).** Beneficial ownership is concerned with the natural person who in fact owns, controls, or receives profits from a legal vehicle, transaction, or other assets.<sup>25</sup> It may differ from the legal owner who does not necessarily need to be a natural person and that may in fact not have the actual ownership or control over an asset or income (e.g., nominee directors or shareholders).<sup>26</sup> As reported by the Tax Justice Network (TJN), this dichotomy between legal and beneficial ownership can be exploited “to abuse their tax responsibilities, break monopoly laws, get around international sanctions, launder money and funnel anonymous money into political processes – all while staying anonymous and out of the reach of the law”.<sup>27</sup> Accordingly, uncovering the beneficial owners of legal persons and arrangements is high on the political agenda. It is one of the priorities of the Group of 20 (G-20) pursuant to the 2014 High Level Principles on Beneficial Ownership Transparency.<sup>28</sup> See also section III.A below.

## D. The central role of intermediaries

**Money laundering and tax crimes often depend on the services offered by financial intermediaries and related professions in laundering the underlying proceeds.** Financial intermediaries play a central role in enabling proceeds of crime to enter the financial system. Criminals often have little choice than to place their illicit proceeds or otherwise taxable income into the circulation of the financial system, not least as part of the laundering process itself. This is also due to the difficulty of physically handling large amounts of cash and the flexibility offered by the financial system to freely dispose funds in every-day life and business transactions. Placement of funds into the financial system may be further dictated by the ever-growing restrictions on the use of cash for larger transactions. The emergence of virtual assets to an extent helps avoid the traditionally regulated sectors, and in that sense poses novel challenges.

**The relevant intermediaries extend beyond banks and other traditional financial institutions.** These include lawyers, notaries, accountants, TCSPs, real estate agents, and other fiduciaries. They also cover service

<sup>24</sup> As acknowledged by the Egmont Group (2018), “Although not as common as the use of legal persons, the frequency of the use of trusts and other legal arrangements is not insignificant. It is possible that, despite the benefits associated with trusts and other legal arrangements, which offer significant opportunities to enhance anonymity by providing a partition between the legal and beneficial ownership of the property, the complexity and expenses associated with establishing and managing a legal arrangement may make them less attractive to criminals. *It is also possible that the use of legal arrangements may increase the difficulty of investigating and identifying the beneficial owner, thereby explaining their relatively low prevalence in the case study sample*”. Emphasis added.

<sup>25</sup> See the definition of the term “beneficial owner” in the General Glossary to the FATF Recommendations (2012 – 2023).

<sup>26</sup> For a discussion of the issues relating to nominee directors and shareholders, see FATF (2023).

<sup>27</sup> See TJN website at <https://taxjustice.net/topics/beneficial-ownership/> (accessed August 10, 2022).

<sup>28</sup> The G-20 High Level Principles on Beneficial Ownership Transparency are available at [http://www.g20.utoronto.ca/2014/g20\\_high-level\\_principles\\_beneficial\\_ownership\\_transparency.pdf](http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf) (accessed August 18, 2022).

providers in the nascent virtual assets sector, i.e., the VASPs. All of these intermediaries, or “gatekeepers” as they are referred to in the AML jargon, may be in one way or another complicit (either wittingly or unwittingly) in helping to disguise and legitimize proceeds of crime (FATF, 2018; MONEYVAL, 2022). For example, criminals may use lawyers’ client accounts for the placement and layering of funds or rely on the services of a notary and real estate agents to legitimize a purchase of a luxurious property with unexplained wealth. Accordingly, the AML regimes impose CDD and reporting obligations on financial institutions and other professions and businesses, including VASPs, which are collectively referred to as “obliged entities”.<sup>29</sup>

**Arguably, the role of intermediaries is even more critical for the commitment of tax crimes.** Unlike in the case of money laundering, tax crimes are not so much dependent on “gatekeepers” allowing them to place proceeds into the circulation of the formal economy (i.e., the placement stage discussed in section II.A above) as they are on “professional enablers” helping them to design creative ways to disguise the taxable status of assets and income (i.e., the layering and integration stages discussed in section II.A above). That is because tax crimes seldom concern proceeds in physical currency. Instead, most emphasis is put on concealing beneficial ownership to escape scrutiny by tax authorities. Elaborate tax evasion schemes rely therefore on professional expertise to design and implement a series of complex, and often cross-border, business, accounting, and legal schemes (OECD, 2021b).<sup>30</sup> For this reason, professionals providing tax advice are subject to extensive reporting obligations in many countries.<sup>31</sup> At the same time, it is important to note that given the intertwined nature of money laundering and tax crimes, these professional services may be part of “packaged services” covering both crimes. Tax advisors and other persons providing assistance or advice on tax matters are specifically recognized as relevant AML gatekeepers under the EU’s AML framework (that is currently not the case, at least explicitly, under the FATF Recommendations).<sup>32</sup>

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<sup>29</sup> The FATF Recommendations (2012 – 2023) apply to financial institutions and the Designated Non-Financial Businesses and Professions (DNFBPs). The FATF General Glossary defines the DNFBPs as comprising the following businesses and professions: (1) casinos, (2) real estate agents, (3) dealers in precious metals, (4) dealers in precious stones, (5) lawyers, notaries and other independent legal professions and accountants, and (6) TCSPs. More recently, the FATF Recommendation 15 brought in scope of the AML framework VASPs, which need to apply all the preventive measures set out in FATF Recommendations 10 to 21 and are subject to risk-based supervision or monitoring (FATF, 2021).

<sup>30</sup> Reliance on services offered by professional enablers is not common in simple cases of undeclared income / capital gains (OECD, 2021b).

<sup>31</sup> For example, Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Some EU Member States, for example Poland, expanded the scope of the directive to also cover reporting of domestic tax schemes, see Wardzynski (2020). In the summer of 2022, the European Commission has further launched a public consultation on measures to address the role of “enablers that facilitate tax evasion and aggressive tax planning” in the EU (Securing the Activity Framework of Enablers – SAFE).

<sup>32</sup> Directive (EU) 2015/849, with relevant amendments introduced by Directive (EU) 2018/843, Article 2(1)(a). These are referred to as the Fourth and Fifth AML Directives, respectively.

### III. Synergies between AML and tax compliance frameworks

#### A. Tax-related considerations in AML frameworks and shared concepts

**In some countries, the large amounts of evaded taxes, including those generated through tax crimes, motivated the establishment and development of AML regimes.** The national AML frameworks originated in the mid-1980s in the US and the UK as a policy response to an increasingly overwhelming drug problem. The US, in particular, was tormented by the political and social issues related to the war on drugs and instigated domestic and international efforts on this front (Levi and Reuter, 2006; Gilmore, 2011; Tucker, 2022). At the same time, various emerging national AML regimes were driven by different national influences, including tax evasion. For example, Australian AML legislation was prompted by the Royal Commissions' reports in the 1980s exposing the links between money laundering, major tax evasion, fraud, and organized crime (Chadwick and others, 2012). Australia's original AML law from 1988, which is still in force, provides that its principal purpose is to "facilitate the administration and enforcement of taxation laws".<sup>33</sup> Today, it is widely recognized that the AML frameworks are not limited to tackling money laundering resulting from drug trafficking (see section III.B below). Corruption, fraud, and tax crimes are among the top predicate offenses targeted by national AML control regimes (FATF, 2022).

**At an international level, the efforts to curb harmful tax competition and increase tax transparency are linked with the fight against money laundering.** The Group of Seven (G-7) in 1998 established the OECD Forum on Harmful Tax Practices to address the "race to the bottom" on corporate tax rates and increase effectiveness of domestic tax systems by providing for more international exchange of tax-related information.<sup>34</sup> In that year, the G-7 agreed to address "a potential weakness in international anti-money laundering systems by ensuring that financial institutions report suspicions about the movement of criminal assets regardless of whether they believe that the criminality involved is tax related". It explained that this commitment was "partly motivated by growing evidence that criminals can evade anti-money laundering systems by presenting their affairs as tax related to reassure their bankers, brokers and professional advisors".<sup>35</sup> Nowadays, the Global Forum, restructured in 2009 and the Secretariat of which is hosted at the OECD headquarters, reviews relevant aspects of the AML frameworks as part of its peer reviews of the international tax transparency standards (see section III.C below). Another key milestone at an international level was the recognition of tax crimes as predicate offenses to money laundering in the 2012 revisions to the FATF Recommendations (see section III.B below).

**At the center of the AML and tax frameworks is the concept of beneficial ownership, which is a fundamental countermeasure under the two frameworks (see section II.C.ii above).** Its first use in a major international instrument dates back to the 1977 version of the OECD Model Tax Convention on Income and Capital (OECD Model Tax Convention). It was introduced, and still exists in the current version of the model, as an anti-abuse rule to ensure that withholding tax benefits on dividends, interest, and royalties stipulated under bilateral tax treaties are enjoyed only by persons resident in the contracting parties to the treaty (Wardzynski, 2015). Given this specific purpose, a beneficial owner may be either a natural or legal person.<sup>36</sup> Nonetheless, for

<sup>33</sup> Financial Transaction Reports Act 1988, Article 4(1). The 1988 Act currently co-exists with the Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) Act 2006 and forms an integral part of the AML/CFT framework in Australia.

<sup>34</sup> See the Conclusions of the G-7 Finance Ministers Meeting in London between May 8 and 9, 1998, available at <http://www.g8.utoronto.ca/summit/1998birmingham/index.htm> (accessed August 10, 2022).

<sup>35</sup> His Majesty's Treasury Press Release regarding the G-7 Initiative on Harmful Tax Competition (May 1998).

<sup>36</sup> The specific purpose for which it was introduced is to counteract simple cases of tax treaty shopping through the use of agents and nominees. For further discussion on tax treaty shopping and the relevance of the concept of beneficial ownership see Wardzynski (2014).

other broader purposes, the term beneficial ownership is constrained to natural persons only (Knobel, 2020). For example, the 2001 OECD report on the misuse of corporate entities for illicit purposes states that, “In this Report, ‘beneficial ownership’ refers to ultimate beneficial ownership or interest by a natural person. In some situations, uncovering the beneficial owner may involve piercing through various intermediary entities and/or individuals until the true owner who is a natural person is found” (OECD, 2001). Similarly, once the term was introduced into the FATF Recommendations in 2003, the emphasis was put on “the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted”.<sup>37</sup> Today, the concept of beneficial ownership features most prominently in CDD and entity transparency measures envisaged under the FATF Recommendations.<sup>38</sup>

**The concept of beneficial ownership, as defined under the FATF Recommendations, is used across both AML and tax frameworks.** For example, the definition of beneficial ownership in the FATF Recommendations is directly cross-referred and embedded in the international tax transparency standards (see section II.C.ii above).<sup>39</sup> Similarly, the revisions introduced through the 2022 and 2023 changes to FATF Recommendations 24 and 25, which concern availability of beneficial ownership information within the country, explicitly recognize that AML authorities may turn to the registries maintained by tax authorities for beneficial ownership information on legal persons and arrangements.<sup>40</sup> On a related note, the TJN report (2022b) observes that designation of tax authorities as relevant national agencies to administer beneficial ownership data is relatively common in Latin America.

## B. Tax crimes as predicate offenses to money laundering

**The initial omission of tax crimes under the FATF Recommendations was a result of prioritization of the war on drugs, which was the most pressing issue at the time.** The FATF was created in 1989 at the Paris Economic Summit of the G-7 and just a year later produced its first version of the FATF Recommendations, today’s universally recognized AML/CFT standards. Indeed, in early 1990s there were only a handful of countries that were aware and concerned about money laundering. Not to weaken the international resolve and cognizant of the transnational dimensions of money laundering, the substantive scope of the FATF Recommendations had to be accordingly targeted and balanced against the need to enlist as many countries as possible. Accordingly, given the priority at the time being the tackling of drug trafficking and recognizing that taxation is a sensitive sovereign prerogative with economic interests at stake, the FATF chose not to initially focus on the laundering of evaded taxes (Levi and Reuter, 2006).<sup>41</sup> The relative sense of urgency to tackle these practices might have also been lower because tax crimes, unlike drug trafficking, most often do not concern income that is derived from illegal sources (see section II.A above).

<sup>37</sup> For the 2003 historical version of the FATF Recommendations see <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/review-and-history-of-fatf-standards.html> (accessed August 10, 2022). The current definition of the term “beneficial owner” is set out in the General Glossary to the FATF Recommendations (2012 – 2023), which was recently revised to provide further clarity on the meaning of the term in the context of legal arrangements such as trusts.

<sup>38</sup> FATF Recommendations (2012 – 2023), Recommendations 10, 22, 24, and 25. See also the “fit and proper” tests for the persons holding or being beneficial owners of significant or controlling interests, or holding management functions, in obliged entities under Recommendations 26 and 28 (FATF Recommendations, 2012 – 2022).

<sup>39</sup> For example, both the EOIR and AEOI standards rely on the beneficial ownership concept as used in the FATF Recommendations. See AEOI Standard, Section VIII(D)(6) and the accompanying Commentary paragraph 132. In the context of the EOIR Standard, see OECD 2021a.

<sup>40</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 24, paragraph 7(b)(i); Interpretive Note to Recommendation 25, paragraph 5(a) - (b).

<sup>41</sup> As explained in the introduction to the FATF Recommendations, “The original FATF Forty Recommendations were drawn up in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money”. Thereafter, through the subsequent revisions, their scope was broadened “well beyond drug-money laundering” (FATF Recommendations, 2012 – 2022).



**Tax crimes were creeping into the FATF Recommendations even before their explicit recognition by the FATF as designated predicate offenses to money laundering.** The first 1990 version of the FATF Recommendations left it to the discretion of the countries to decide which “serious crimes” should be considered underlying offenses to money laundering.<sup>42</sup> This provided for a certain level of flexibility which was also helpful to comfort countries that considered tax crimes to be an important part of their national AML framework. The origins of the deliberations on whether to unequivocally designate tax crimes as predicate offenses under the FATF Recommendations can be traced back to the 2003 revisions, which not only introduced the concept of beneficial ownership but also added a non-exhaustive list of predicate offenses. Some of the listed predicate offenses had close connotations with tax crimes. The introduction of “smuggling” on the list was based on the rationale that this crime can generate large proceeds from evasion of customs and excise taxes. “Fraud” was also placed on the 2003 list, which turned out to be an equally relevant addition as it was thought to cover proceeds arising from evasion of value added taxes (VAT) (FATF, 2007). However, it was not until the political momentum garnered following the 2008 financial crisis that tax crimes were expressly recognized as predicate offenses under the FATF Recommendations.

**Designation of tax crimes as predicate offenses to money laundering by the FATF was a breakthrough development for leveraging AML measures for tax compliance purposes.** The 2012 revision of the FATF Recommendations introduced a dedicated predicate offense category of “tax crimes”, extending to both direct and indirect taxes.<sup>43</sup> A clarification was further made to the pre-existing category of “smuggling”, which was now expressly said to include proceeds arising from evasion of customs and excise duties. The recognition of tax crimes as predicate offenses is of fundamental importance because it allows pursuing parallel money laundering and tax crime charges (see section IV.C below). It thereby created legal avenues to openly utilize AML measures to pursue tax crimes and provided legal basis for closer inter-agency cooperation between AML and tax authorities. It further helped to more effectively address the issue of a “tax excuse”, whereby obliged entities were widely failing to report suspicious money laundering transactions and activities pursuant to the AML framework only because they concerned tax-related transactions (see also section III.A above and section V.C.i below). However, the FATF Recommendations and related material do not provide any further guidance on the scope and coverage of tax crimes. This may impact, for example, on the effectiveness of cross-border cooperation that relies on the principle of “dual criminalization” (see section V.B.iii below). Also, tax advisors are not explicitly recognized under the FATF Recommendations as obliged entities subject to AML obligations and monitoring (*cf.* the EU’s Fifth AML Directive, see section II.D above).

**The US is a notable example of an FATF member country where tax crimes are currently not designated as predicate offenses to money laundering.** Despite the lack of this legal bridge, the IRS has the ability to investigate both money laundering and tax crimes, which are often recommended for prosecution together (Dubin, 2007). It is helpful in that regard that money laundering and tax crimes often rely on the same obfuscation techniques (see section II.C above). For instance, as reported by Tucker (2022), “prosecutors have used mail and wire fraud offenses as an indirect route to charge money laundering arising out of a tax crime”.

## C. Leveraging of AML measures for tax purposes under international standards

**The Ten Global Principles for Fighting Tax Crimes constitute an important international instrument that recommends the leveraging of AML measures to help tackle tax crimes.** These principles were devised by the OECD Task Force on Tax Crimes and Other Crimes (TFTC) with the second edition released at the end of

<sup>42</sup> The first iteration of the FATF Recommendations from 1990 stated that, “Each country should consider extending the offense of drug money laundering to any other crimes for which there is a link to narcotics; an alternative approach is to criminalize money laundering based on all serious offenses, and/or on all offenses that generate a significant amount of proceeds, or on certain serious offenses”. See <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/review-and-history-of-fatf-standards.html> (accessed June 1, 2022).

<sup>43</sup> The term “tax crime” remains, however, undefined in the FATF Recommendations. For its implications, see section V.B.iii below.

2021 (OECD, 2021c).<sup>44</sup> As of June 2022, they have the status of an OECD Council Recommendation and OECD member countries, including any interested non-OECD members, are recommended to ensure their adherence.<sup>45</sup> The Global Principles cover legal, institutional, administrative, and operational aspects necessary for putting in place an efficient system for fighting tax crimes and other financial crimes, such as money laundering or corruption. The nexus between the tax and AML fields transpires throughout the principles as they: (i) recommend that tax offenses be criminalized and that tax crimes be recognized as predicate offenses to money laundering (Principles 1 and 7), (ii) take inspiration from mechanisms known in the AML field in relation to investigative powers, freezing orders, confiscation, as well as organizational structures (Principles 3 to 5), (iii) stress the importance of close inter-agency cooperation, including between tax and AML authorities (Principle 8), and (iv) recognize the key role of international cooperation given the common transactional components of tax and financial crimes (Principle 9). All ten principles are set out in Box 2 below.

### **Box 2. OECD “Ten Global Principles” for Fighting Tax Crimes**

**Principle 1: Ensure tax offenses are criminalized**

Countries should have the legal framework in place to ensure that violations of tax law are included as a criminal offense, and that effective sanctions apply in practice.

**Principle 2: Devise an effective strategy for addressing tax crimes**

Countries should have a strategy for addressing tax crimes to ensure effectiveness in practice. The strategy should be regularly reviewed and monitored.

**Principle 3: Have adequate investigative powers**

Countries should have appropriate investigative powers to successfully investigate tax crimes.

**Principle 4: Have effective powers to freeze, seize, and confiscate assets**

Countries should have the ability to freeze and seize assets in the course of a tax crime investigation, and the ability to confiscate assets.

**Principle 5: Put in place an organizational structure with defined responsibilities**

Countries should have organizational models with defined responsibilities for fighting tax crime and other financial crime.

**Principle 6: Provide adequate resources for tax crime investigation**

Countries should allocate adequate resources to tax crime investigation agencies.

**Principle 7: Make tax crimes a predicate offense to money laundering**

Countries should designate tax crimes as one of the predicate offenses to money laundering.

**Principle 8: Have an effective framework for domestic inter-agency cooperation**

Countries should have an effective legal and administrative framework to facilitate collaboration between tax authorities and other domestic law enforcement and intelligence agencies.

**Principle 9: Ensure international cooperation mechanisms are available**

<sup>44</sup> The TFTC was founded in 2010 at the OECD, succeeding a small Sub-Group on Tax Crimes and Money Laundering. Its activities aim, among other, to improve co-operation between tax and law enforcement agencies, including anti-corruption and anti-money laundering authorities, to counter crime more effectively. The OECD initiatives in the field also include the Forum on Tax and Crime. For more details see <https://www.oecd.org/tax/crime/> (accessed June 14, 2022).

<sup>45</sup> Recommendation of the OECD Council on the Ten Global Principles for Fighting Tax Crimes approved on June 10, 2022 (OECD/LEGAL/0469). See <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0469#mainText> (accessed June 10, 2022). Argentina, Brazil, Croatia, and Romania are the first non-members declaring their adherence.

Countries should ensure that tax crime investigation agencies have access to criminal legal instruments and an adequate operational framework for effective international cooperation in the investigation and prosecution of tax crimes.

**Principle 10: Protect suspect’s rights**

Countries should ensure that taxpayers suspected or accused of committing a tax crime are able to rely on basic procedural and fundamental rights.

**The international tax transparency standards constitute one of the prime examples of how the information collected pursuant to established AML procedures can be helpful to tax compliance.** The Global Forum emerged after the 2008 financial crisis as a key peer review body of the international tax transparency standards. These standards were developed to help raise tax revenue and were a direct response to the growing frustration with banking secrecy and enforcement difficulties arising from the cross-border dimension of tax evasion and tax crimes (OECD, 2019a; Manatta and others 2020; IMF, 2022). Accordingly, the Global Forum is tasked with the review of the Exchange of Information on Request (EOIR) and Automatic Exchange of Financial Account Information (AEOI) standards. The EOIR Standard seeks to give effect to information requests made pursuant to tax treaties and other inter-governmental administrative assistance agreements, such as the OECD Multilateral Convention on Administrative Assistance in Tax Matters (OECD Multilateral Convention). The AEOI Standard, which was inspired by the US Foreign Account Tax Compliance Act (FATCA), provides for an automatic exchange of a pre-determined set of financial account information, including beneficial ownership information.<sup>46</sup> It could be argued that, given its automated nature, the AEOI Standard is currently the most comprehensive cross-border exchange mechanisms on beneficial ownership information as far as foreign financial accounts are concerned. Both the EOIR and AEOI standards leverage extensively on the information collected under the AML framework, including beneficial ownership information as defined under the FATF Recommendations (see Table 1 below).

**Table 1. The AML information leveraged under the international tax transparency standards**

<b>AEOI Standard</b>	<p>Under the AEOI Standard, the following information is collected by financial institutions under the AML CDD procedures, as supplemented by dedicated AEOI collection requirements, and utilized for purposes of cross-border tax exchange:</p> <ul style="list-style-type: none"> <li>▪ Identification data of the account holder and its beneficial owner(s) (including name, address, date and place of birth in case of an individual);</li> <li>▪ Tax identification number (or functional equivalent), if in the records or required to be collected;</li> <li>▪ Account number (or functional equivalent in the absence of an account number);</li> <li>▪ Name and identifying number (if any) of the financial institution maintaining the account;</li> <li>▪ Account value or balance; and</li> <li>▪ Various data on financial transactions such as the total gross amount of interest, dividends, proceeds from the sale or redemption of financial assets.</li> </ul>
<b>EOIR Standard</b>	<p>Under the EOIR Standard, the following information must be available and accessible to the domestic authorities, whether through the AML framework or otherwise, for the purposes of cross-border tax exchange:</p>

<sup>46</sup> The AEOI Standard was inspired and closely builds on the substantive provisions of the intergovernmental FATCA agreements. Today, all major financial centers are carrying out exchanges under the AEOI Standard with a notable exception of the US, which continues to exchange under a network of intergovernmental FATCA agreements. A key concern, however, is that, unlike the AEOI Standard, FATCA does not have full reciprocity in information sharing. See, e.g., Congressional Research paper from July 15, 2022, available at <https://crsreports.congress.gov/product/pdf> (accessed March 22, 2023).

- Ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements;
- Accounting records for all relevant entities and arrangements; and
- Banking information including all records pertaining to the accounts as well as related financial and transactional information, including information regarding the legal and beneficial owners of bank accounts.

**Crypto-assets are expected to be subject to an emerging international tax exchange framework referred to as the Crypto-Asset Reporting Framework (CARF) that also builds on the AML framework.** The CARF was released by the OECD in October 2022. Similar to the AEOI Standard, it provides for the reporting of tax information on transactions in crypto-assets in a standardized manner, with a view to automatically and annually exchanging such information with taxpayers' residence countries (OECD, 2022b). Like the two pre-existing tax transparency standards referred to above, the CARF relies on the information obtained on customers pursuant to CDD procedures under the AML frameworks. This is possible given that the national AML frameworks are now being amended to implement the 2018 and 2019 revisions to FATF Recommendation 15 and its Interpretive Note that introduced obligations with respect to crypto-assets (or virtual assets as they are referred to by the FATF). The emergence of this new standard confirms that the challenges posed by new technologies are shared between both the AML and tax fields, which further reinforces the point about their intertwined nature and synergies (OECD, 2020; FATF, 2021).

## D. Cooperation between AML and tax authorities

**Domestic AML and tax authorities increasingly draw on the interlinkages and commonalities across the two frameworks.** In July 2020, the Egmont Group published best practices on AML and tax cooperation (Egmont Group, 2020).<sup>47</sup> The publications of the Egmont Group are well regarded among the national AML authorities, especially since the FATF Recommendations require that FIUs apply for membership in the Egmont Group.<sup>48</sup> The best practices emphasize the importance of: (i) facilitating effective cooperation between FIUs and tax authorities, (ii) establishing national strategies to enhance the fight against money laundering of serious tax crimes, and (iii) ensuring international cooperation between FIUs to fight money laundering of serious tax crimes. Along these three pillars, they draw on matters such as the need for establishing close working relationships between the FIU and tax authorities; the signing of Memoranda of Understanding (MoU) to facilitate cooperation; improving understanding of how tax information may be useful for AML purposes through technical trainings, secondments of tax officers to the FIU, or employment of staff with a background in tax related-matters at the FIU; liaison officers; the organizing of joint meetings; and the cross-sharing of information at domestic and international levels. These are reproduced in annex 2. Similar approaches are discussed in a money laundering awareness handbook for tax examiners and tax auditors prepared by the OECD (OECD, 2019c; see also OECD, 2015a).

**Voluntary tax compliance programs (VTCs), and similar programs such as “tax amnesties”, are good examples of clear-cut areas where close tax and AML cooperation is necessary.**<sup>49</sup> These programs are typically resorted to in times of economic crises or in anticipation of broader tax reforms. In exchange for some form of tax impunity, taxpayers are incentivized to come forward and declare their income and wealth that would

<sup>47</sup> The Egmont Group is a global organization that serves as a platform for discussion, exchange of information, intelligence, knowledge, and cooperation between FIUs. For more information see <https://egmontgroup.org/> (accessed April 21, 2022).

<sup>48</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 29, paragraph 13.

<sup>49</sup> In broad terms, VTCs aim to regularize tax obligations of a taxpayer with respect to any taxable income, funds, or other assets, including those held offshore, that were previously unreported or incorrectly reported in contravention to the applicable tax laws. They are similar to tax amnesties which usually forgive the full tax liability in exchange for some fixed payment. For more details on VTCs and tax amnesties see Benedek and others (2022) and Beer and Mooij (2023).

typically attract a certain level of taxation (OECD, 2015b).<sup>50</sup> While these belong to a larger tax compliance strategy, they may have knock-on effects on compliance with the AML laws, and thus need to be designed with that in mind (Benedek and others, 2022). As part of their design, it needs to be ensured that such disclosure programs are not abused by money launderers to repatriate and legitimize their illegal proceeds. Fundamentally, they should not waive the applicable AML controls to verify the source of the declared or repatriated funds or other assets, and they should not provide for immunity from investigation or prosecution in case of suspicion of money laundering. There further need to be appropriate safeguards in place to ensure that operational risks are mitigated. These include complacency of obliged entities to treat the repatriated funds and assets as automatically endorsed by the authorities, their capacity constraints to properly review large volumes of transactions over a short period of time, and limited visibility regarding the legitimacy of funds and assets repatriated from abroad (FATF, 2012).<sup>51</sup>

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<sup>50</sup> Depending on the construction of a particular VTC, the taxpayers may be subject to the payment of full taxes or a flat charge in lieu of the standard tax, in both cases possibly foregoing applicable interest and penalties. For an overview of the VTC regimes see OECD (2015b).

<sup>51</sup> The FATF produced best practices on how to comply with international AML standards. These comprise four key principles: (1) application of the AML preventive measures, (2) no exemption from the AML requirement, (3) inter-agency cooperation, and (4) international cooperation. For details see FATF (2012).

## IV. AML measures relevant to tax compliance

### A. Formalization of the economy and taxpayer transparency

**The AML framework supports the formalization of the economy that, in turn, helps to identify taxpayers and taxable transactions.** In other words, the AML framework through its regulations of financial and non-financial intermediaries promotes formalization of commercial dealings and transparency that is equally relevant for tax purposes. The information collected by such AML obliged entities can be helpful to identify taxpayers and learn about their wealth, income, and business dealings that may trigger a tax liability. In many countries the information obtained under CDD, including that set out in the beneficial ownership registers maintained by AML authorities, is accessible to tax authorities. For example, the EU's Directive on Administrative Cooperation, or DAC 5, provides for access rights of tax authorities to the mechanisms, procedures, documents, and information obtained under the AML framework and relevant for the determination beneficial ownership.<sup>52</sup>

**The AML preventive measures require obliged entities to conduct CDD on their customers and keep records.**<sup>53</sup> CDD procedures impose obligations regarding identification and verification of customers and any persons acting on their behalf, determination of beneficial owners, as well as information on the purpose and intended nature of the business relationship. For legal persons and arrangements this further includes gaining an understanding of the nature of business and its ownership and control structure.<sup>54</sup> This is a continuous process entailing ongoing due diligence of the business relationship to ensure that the documentation kept on file remains up to date and the transactions being conducted are consistent with the business and risk profile of the customer.<sup>55</sup> Enhanced due diligence (EDD) needs to be applied to higher risk customers, which may entail, among other measures, obtaining information on the source of funds or source of wealth of the customer.<sup>56</sup> When an obliged entity is unable to perform CDD for a new or existing customer, it should either not commence or terminate the relationship and consider filing a suspicious activity report to the local FIU.<sup>57</sup> This should not be taken as an endorsement of informality as any refusal to open an account or start a business relationship is likely to be an isolated instance.<sup>58</sup>

**A fundamental aspect of CDD is that it pursues transparency beyond the nominal customers and entails identification of beneficial owners, a key component for the integrity of the tax system.** As explicitly recognized by the FATF, "The use of anonymous shell companies and other complex financial structures for illicit finance and tax evasion has been a major issue for some time. Criminals often use legal persons and opaque legal arrangements to hide ownership, masking both their own assets and laundered funds" (FATF, 2022; see also Egmont Group, 2018; OECD, 2021a; TJN, 2022a; Berkhout and Fernando, 2022; Tucker, 2022; FATF,

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<sup>52</sup> Directive (EU) 2011/16 (DAC 1) as amended by Directive (EU) 2016/2258 (DAC 5), Article 22(1a).

<sup>53</sup> For preventive measures, see FATF Recommendations (2012 – 2023), Recommendations 9 – 23. For details on CDD see FATF Recommendation 10 (as parallel obligations mirrored in the Interpretive Notes to Recommendations 15 and 22). The record-keeping obligations are set out in FATF Recommendation 11.

<sup>54</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 10, paragraph 5.

<sup>55</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 10, paragraph 23. As part of the ongoing monitoring of transactions, financial institutions are also required to obtain originator and beneficiary information on wire transfers. See FATF Recommendations (2012 – 2023), Recommendation 16.

<sup>56</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 10, paragraph 20.

<sup>57</sup> There are only limited circumstances where CDD could be performed after the establishment of the business relationship, i.e., where it is "essential not to interrupt the normal conduct of business", and which are subject to adoption of appropriate risk management procedures. See FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 10, paragraphs 11 and 12.

<sup>58</sup> FATF Recommendations (2012 – 2023), Recommendations 1 and 10, including the respective Interpretive Notes. In a nutshell, the FATF Recommendations enshrine a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified and ensure an efficient allocation of limited resources.

2023).<sup>59</sup> Therefore, the AML preventive measures require that not only legal owners but also their beneficial owners be identified as part of CDD procedures applicable to obliged entities. Moreover, the FATF Recommendations impose obligations on countries themselves to take measures at national level to ensure entity transparency. This involves introducing adequate laws and practices that enable identification of beneficial owners, banning the establishment of new physical bearer shares, as well as strengthening disclosure requirements for existing bearer shares and nominee arrangements (FATF, 2023).<sup>60</sup>

**Countries increasingly turn toward beneficial ownership registries to pursue entity transparency which can benefit AML and tax compliance.** The 2022 revisions to FATF Recommendation 24 require that countries establish beneficial ownership registry(ies) (or alternative mechanisms that are considered equally effective) to enhance availability of beneficial ownership information on legal persons.<sup>61</sup> The more recent 2023 revisions to FATF Recommendation 25 also envisage the possibility of beneficial ownership registers on legal arrangements.<sup>62</sup> The Fourth and Fifth AML Directives in the EU are more unequivocal on this issue and require that Member States establish beneficial ownership registries for both legal persons and arrangements.<sup>63</sup> Interestingly, the recent judgement of the Court of Justice of the European Union (CJEU), curtailed the unrestricted access by the general public to the beneficial ownership registers of legal persons within the EU as mandated under the Fifth AML Directive.<sup>64</sup> In any case, however, the FATF Recommendations, which are the global AML standards, require that access be granted to competent authorities rather than the public at large, and this was not questioned by the CJEU judgement.<sup>65</sup> Also, to the point of close inter-agency cooperation between AML and tax authorities, the beneficial ownership registries could be established or built on already available registries, including those managed by tax authorities (see section III.A above).

**Compiling beneficial ownership information in a registry supports both AML and tax compliance efforts (IMF, 2022).** These include: (i) making the information more readily accessible to competent authorities, (ii) enabling cross-checking of the information obtained by obliged entities under CDD,<sup>66</sup> (iii) promoting accountability by making it accessible to press, Civil Society Organizations (CSOs), and possibly members of the public that can demonstrate legitimate interest, and (iv) facilitating international exchange of beneficial ownership information, a key component under the international tax transparency standards (see section III.C above).

**Moreover, a national register of financial accounts provided for under some AML frameworks can further improve tax administration and recovery of taxes.** The FATF Recommendations explicitly require that countries have “effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts”.<sup>67</sup> Specific obligations in that regard exist under the EU’s Fifth AML Directive that requires Member States to introduce central registries or central data retrieval systems of bank accounts and safe-deposit boxes. The information registered under such centralized systems should include identifying data

<sup>59</sup> The importance of the beneficial ownership concept and its cross-cutting relevance for the AML and tax frameworks is addressed in sections II.C.ii and III.A above.

<sup>60</sup> FATF Recommendations (2012 – 2023), Recommendations 24 and 25, including their respective Interpretive Notes.

<sup>61</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 24, paragraph 7. See also FATF (2023).

<sup>62</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 25, paragraph 5 (*cf.* paragraph 1).

<sup>63</sup> Directive (EU) 2015/849, with relevant amendments introduced by Directive (EU) 2018/843, Articles 30(3) and 31(3a).

<sup>64</sup> CJEU Joined Cases C-37/20 and C-601/20 issued on November 22, 2022. In essence, the CJEU decision decided against unrestricted general public’s access to information on beneficial ownership of legal entities constitutes. Such broad access was judged to constitute a serious interference of the fundamental rights to respect for private life and to the protection of personal data. *Cf.* Directive (EU) 2015/849, with relevant amendments introduced by Directive (EU) 2018/843, Article 30(5)(c).

<sup>65</sup> FATF Recommendations (2012 – 2023), Recommendations 24 and 25.

<sup>66</sup> As set out in paragraph 9 of the Interpretive Note to FATF Recommendation 24, countries are further encouraged to provide for discrepancy reporting mechanisms. See also FATF (2023).

<sup>67</sup> FATF Recommendations (2012 – 2023), Recommendation 31.

on the account holders, proxy holders, and beneficial owners.<sup>68</sup> Having this information compiled and easily accessible to authorities can improve AML investigations, asset recovery, and tax compliance.

## B. Sharing of financial intelligence and detection of tax evasion

**The AML authorities have access to information that is valuable in the administration of taxes, including detection of non-compliance.** In particular, the FIUs have access to a number of valuable sources of information that can help uncover tax crimes and help verify tax liabilities. The FIUs are the central hubs for financial intelligence within their countries, tasked with the receipt, analysis, and dissemination of appropriate intelligence to relevant agencies, including tax authorities.<sup>69</sup> They prepare typology reports, guidance notes, and contribute to risk analysis reports, including the National Risk Assessment.<sup>70</sup> The FIU information and analyses may therefore provide for new ways to assess risks, help target tax audits, contribute to taxpayer risk profiling, and feed into the pending tax investigations (e.g., OECD, 2015a; Mathias and Esposito, 2015; OECD, 2019c; Brun and others, 2022).

**The FIUs have access to a wide array of financial intelligence.** Indeed, according to the FATF Recommendations, the FIU should have access to the widest range of financial, administrative, and law enforcement information to be able to properly undertake its analytical functions.<sup>71</sup> While the FIU may request information directly from other competent authorities and obliged entities, the foundation of its financial intelligence are the Suspicious Transaction Reports (STRs) filed by obliged entities. The FATF Recommendations require that obliged entities submit STRs to the local FIU when faced with transactions, including attempted transactions, that raise suspicions of money laundering or any of its predicate offenses.<sup>72</sup> Many countries require filing of information on suspicious activities more broadly, which complement the STRs and are sometimes referred to as the Suspicious Activity Reports (SARs). Beyond the STRs and SARs, the domestic legal frameworks may further require filing of information that does not necessarily give rise to any suspicions. The additional reporting obligations typically cover cash transaction reports, wire transfer reports, and other declarations and disclosures such as on foreign financial accounts. In this context, it should be also noted that the FATF Recommendations require that countries introduce a declaration system for all persons making a physical cross-border transportation of currency or bearer negotiable instruments, which are of a value exceeding a maximum threshold of USD/EUR 15,000.<sup>73</sup>

**In many countries, the FIU shares relevant financial intelligence with tax authorities.** The importance of effective sharing of information between AML and tax authorities has been the subject of best practices published by the Egmont Group (Egmont Group, 2020) and related OECD reports (e.g., OECD 2015a and OECD 2019c). Paragraph 4 of the Interpretive Note to FATF Recommendation 29 provides that the FIU should be able to disseminate relevant information spontaneously and upon request of competent authorities, which includes tax and customs authorities.<sup>74</sup> However, these modalities of sharing of information may not be the most efficient for the reasons discussed in section V.B.ii below. A number of countries provide for more direct forms of access,

<sup>68</sup> Directive (EU) 2015/849 (with relevant changes introduced by Directive (EU) 2018/843), Article 32a.

<sup>69</sup> FATF Recommendations (2012 – 2023), Recommendation 29.

<sup>70</sup> The National Risk Assessments are typically prepared to give effect to the risk-based approach aimed at ensuring adequate prioritization of resources and their efficient allocation in line with the identified risks. The risk-based approach is set out in the FATF Recommendations (2012 – 2023), Recommendation 1 and its Interpretive Note.

<sup>71</sup> FATF Recommendations (2012 – 2023), Recommendation 29, including paragraphs 5 and 6 to its Interpretive Note.

<sup>72</sup> FATF Recommendations (2012 – 2023), Recommendations 20 and 23. See also FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 20, paragraphs 1 and 3. It should be noted that the STR reporting extends also to suspicions of terrorist financing and proliferation financing as covered under the FATF Recommendations.

<sup>73</sup> FATF Recommendations (2012 – 2023), Recommendation 32 and its Interpretive Note.

<sup>74</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 2, paragraph 3.



including through shared databases or even direct reporting of STRs to tax authorities.<sup>75</sup> As shown by the example of Korea, greater access to the FIU information may directly translate into higher tax yields.<sup>76</sup> Box 3 below lists examples of a more direct and systematic forms of access to the FIU information for tax administration purposes.

### **Box 3. Access by tax authorities to the FIU information for tax administration purposes**

**It is common for tax authorities to have access to the FIU information for tax administration purposes.**

According to a 2017 study carried out by the OECD, from a total of in 51 countries surveyed, 37 countries (i.e., approximately 75% of those surveyed) allow for access to the FIU information by tax authorities for the purposes of administering taxes (OECD, 2017). The range of access modalities observed in the study ranged from direct access (5 countries), through the sharing of information spontaneously, either as an obligation (10 countries) or voluntarily (16 countries) and sharing of information on request (6 countries), to no ability to share information (14 countries). Even a higher proportion of countries allows for access to FIU information by tax authorities in relation to investigations of tax offenses, i.e., 48 out of 51 surveyed countries (i.e., approximately 94% of those surveyed).

**Direct access modalities to FIU information by tax authorities for tax administration purposes, while not currently the mainstream approach, is pursued by several countries.**

According to the OECD study, five out of the 51 surveyed countries allow for such direct access (OECD, 2017). This includes the US, the UK, and Australia which were among the pioneers of national AML frameworks (see section III.A above). A short overview of these direct access modalities is set out below:

- **Australia:** The Australian Tax Office (ATO) has direct access via a secure online connection to the Australian Transaction Reports and Analysis Centre (AUSTRAC) information, Australia's FIU, including direct access to all STRs. The AUSTRAC further provides the ATO with complete data sets of financial transactions, including STR information, which the ATO uses in its automated data matching and data mining programs. There are restrictions on the use of FIU information by the ATO, such as STRs being able to be used for intelligence but not for evidentiary purposes.
- **Ireland:** The Revenue Commissioners receive copies of all STRs directly from financial institutions and other regulated businesses. This is somewhat unique as it means that the Irish tax authorities directly and independently receive information that in most other countries must be obtained from the FIU. Moreover, specialists within the tax authority and FIU meet regularly to discuss their analyses of reports and coordinate investigations where evidence of tax and non-tax offenses exists, to ensure there is no duplication in investigations.
- **Malaysia:** A restricted number of officials of the Inland Revenue Board, including some officials within the Investigations Department, have direct access to the STRs database maintained by the Financial Intelligence and Enforcement Department (FIED), Malaysia's FIU.
- **UK:** The Criminal Intelligence Directorate of His Majesty's Revenue and Customs (HRMC) in the UK has direct access to the STRs held by the FIU through a secure online facility, Moneyweb. The information obtained can be utilized for tax assessments. Safeguards in place include: (i) accessing the information

<sup>75</sup> Indeed, shared data platforms are referred to as one of the mechanisms to facilitate effective inter-agency cooperation under the FATF Recommendations. See FATF Recommendations (2012 – 2023), paragraph 4 of the Interpretive Note to Recommendation 2.

<sup>76</sup> The changes introduced in Korea in 2013 and 2014 providing for greater access and ability to use the information contained in STRs and other cash transaction reports by tax authorities was associated with additional tax revenues of KRW 367 billion in 2013 and KRW 943 billion in 2014 (OECD, 2015a).

for a valid business reasons relating to investigation or intelligence purposes, (ii) limiting access to officers with appropriate security clearance and training, (iii) requiring specific request to access very sensitive STRs, and (iv) subsequent on-sharing of STRs with unauthorized staff subject to sanitization of sensitive information.

- **US:** The Criminal Investigation Division (CID) of the IRS has direct and immediate access to the Financial Crimes Enforcement Network (FinCEN) databases for criminal investigation, including STRs and has a liaison officer posted in the FinCEN to handle the large volume of usage of the data by CID. However, civil tax auditors may not access STRs, which are considered law enforcement sensitive.

**Given the cross-border nature of many money laundering and tax crimes (see section II.C.i above), it is important that adequate sharing of information arrangements exist at the international level.** Broadly speaking, the FATF Recommendations, the OECD Model Tax Convention, and the OECD Multilateral Convention envisage the possibility for the information obtained from abroad to be cross-shared between the AML and tax authorities, provided that such sharing and use is authorized by the supplying country and possible under its laws (see also section V.B.iii).<sup>77</sup> The FATF Recommendations specifically note that mutual legal assistance in relation to money laundering and associated predicate offenses investigations, prosecutions, and related proceedings should not be refused on the sole ground that the offense is also considered to involve fiscal matters.<sup>78</sup> While not the focus of this paper, it is acknowledged that it is important to ensure that relevant information is shared by tax authorities for AML purposes, as subject to applicable safeguards regarding confidentiality of taxpayer information.<sup>79</sup> Not least because the information available to tax authorities may be of relevance to AML authorities, but also because this would help built rapport and trust between the two types of authorities, which is essential to effective cooperation.

## C. Enhanced enforcement capabilities to pursue tax crimes

**Tax compliance can be significantly bolstered if the AML enforcement legal framework is utilized in tax crime investigations and prosecutions.** Given that tax crimes are predicate offenses to money laundering (see section III.B above), the AML enforcement measures used to pursue money laundering charges can be utilized for the investigation and prosecution of the underlying tax crimes, for example, by means of parallel financial investigations.<sup>80</sup> Indeed, pursuing parallel investigations and prosecutions could preserve a path to criminal conviction where the evidence required to prove either money laundering or tax crimes is insufficient. That is especially in view of the fact that money laundering convictions do not require proving the underlying predicate

<sup>77</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 40, paragraph 3; OECD Model Tax Convention, Commentary on Article 26, paragraph 12.3; MAC, Commentary on Article 22, paragraph 225.

<sup>78</sup> FATF Recommendations (2012 – 2023), Recommendation 37.

<sup>79</sup> For example, a new pilot project was signed between Argentina, Costa Rica, and Paraguay, which is open to other interested countries, that provides for the use of information exchanged under tax agreements to be used to counteract non-tax illicit practices, such as money laundering or corruption. See the Statement of Outcomes from the 15<sup>th</sup> Global Forum Plenary Meeting in November 2022, paragraph 13. Available at: <https://www.oecd.org/tax/transparency/documents/2022-global-forum-plenary-meeting-outcomes.pdf> (accessed November 24, 2022). Furthermore, according to the FATF Recommendations, the FIU should have access to the widest possible range of financial, administrative and law enforcement information, including that maintained by the tax authorities which are relevant to combating money laundering. See FATF Recommendations (2012 – 2023), paragraphs 3 and 4 of the Interpretive Note to Recommendation 2 and paragraph 6 of the Interpretive Note to Recommendation 29.

<sup>80</sup> Parallel financial investigations, including those relating to money laundering and tax crime charges, are among the responsibilities of law enforcement and investigative authorities under the FATF Recommendations and utilization of such parallel investigations is subject to review under the FATF mutual evaluation process. See FATF Methodology (2013 – 2021), Recommendation 30, Criterion 30.2, and, Immediate Outcome 7, Core Issue 7.1. The term “parallel financial investigations” refers to financial investigations into money laundering alongside the investigation into suspected predicate crime conduct. A “financial investigation” in this context means an enquiry into the financial affairs related to a criminal activity. See FATF Methodology (2013 – 2021), footnote 83.

offense such as a tax crime.<sup>81</sup> More broadly, the investigative reach, powers, expertise, and resources otherwise available to the AML law enforcement authorities could complement those available to authorities responsible for investigations and prosecutions of tax crimes (the legal framework for prosecuting criminal tax offenses may be within the remit of the tax authority or the general criminal justice authorities). In many countries the findings of law enforcement in money laundering investigations could be shared with tax authorities for purposes of tax audits (OECD, 2019c). The benefits of relying on the AML framework to support tax crime investigations and prosecutions is summarized in Box 4 below.

#### **Box 4. AML enforcement measures relevant to pursue tax crimes**

**There are several aspects in which the AML enforcement measures can be seen as complementary to the capabilities of tax authorities and other criminal justice authorities in combatting tax crimes.** These include the following:

- **Accountability beyond tax criminals, including complicit service providers:** The scope of investigative reach and accountability under the AML framework extends beyond tax criminals to other persons such as the various service providers or financial intermediaries, relatives, associates, and advisers that might have assisted in the laundering of the proceeds of tax crimes. These third parties may be charged with money laundering in relation to tax crimes committed by the taxpayer. That is irrespective of whether they committed the underlying tax crime.<sup>82</sup> In addition, obliged entities are specifically subject to AML supervision and may be held liable for any non-compliance with the applicable AML controls prescribed under the AML framework (see section IV.D below).

As noted by Brun and others (2022), “Expanding investigations and prosecutions to cover these enablers is key to successful prosecution because these defendants are often tempted to cooperate with authorities and provide evidence against main defendants in return for fewer or less serious charges and sentences”. The authors further observe that such broad scope may help deter professionals from facilitating financial crimes.

- **Special investigative techniques:** Money laundering investigations may allow for the use of special investigative techniques authorized by prosecutors and judges in the context of organized crimes. These include undercover operations, intercepting communications, accessing computer systems, and controlled delivery.<sup>83</sup> These may be already available, at least to some extent, in ordinary tax crime investigations (Brun and others, 2022).
- **Freezing and seizing orders:** The FATF Recommendations envisage the use of wide freezing and seizing orders, including in a transnational context, to temporarily prevent the movement of assets pending the outcome of a case.<sup>84</sup> Freezing and seizing orders help avoid dissipation of funds and assets throughout the often-lengthy judicial process, which is also relevant for tax purposes. For example, in Greece, freezing orders are most commonly used to secure collection of tax evasion proceeds.<sup>85</sup> Generally speaking, as remarked by Mathias and Esposito (2015), anecdotal evidence confirms that tax evaders are more eager to settle their tax debts to recover their assets, such as expensive villas or yachts, that were subject to freezing orders.

<sup>81</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 3, paragraph 4. See also Directive (EU) 2018/1673, Article 3(3).

<sup>82</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 3, paragraph 4. See also Directive (EU) 2018/1673, Article 3(3).

<sup>83</sup> FATF Recommendations (2012 – 2023), Recommendation 31.

<sup>84</sup> FATF Recommendations (2012 – 2023), Recommendations 4, 32, and 38. According to Article 2(f) of the Palermo Convention, “Freezing’ or ‘seizure’ shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority”. These are accordingly defined in the General Glossary to the FATF Recommendations (2012 – 2023).

<sup>85</sup> See the 2018 Activity Report of the AML Authority in Greece, p. 20. The report is available at: [http://www.hellenic-fiu.gr/images/stories/files/etisies\\_ektheseis/ANNUAL\\_REPORT\\_-\\_2018\\_-\\_EN.pdf](http://www.hellenic-fiu.gr/images/stories/files/etisies_ektheseis/ANNUAL_REPORT_-_2018_-_EN.pdf) (accessed May 24, 2022).

- **Corruption at the tax administration:** The AML framework could help investigate cases of corruption in the tax administration which may inhibit the ability to pursue tax crimes and result in revenue leakage (e.g., Chaikin and Sharman, 2009).<sup>86</sup> For example, FATF Recommendation 12 provides for EDD with respect to PEPs, including senior public officials of the tax administration. EDD in this case entails establishing the source of wealth and source of funds of PEPs, their family members, and close associates. This could help determine whether the funds are connected to corruption or bribery. Any suspicions as to the legality of the financial transactions or wealth of the PEPs need to be reported to the local FIU.
- **Extended statute of limitations:** The length of the statute of limitations for money laundering charges can be longer than in the case of tax crimes. For example, in France the statute of limitations for money laundering commences from the moment in which the facts are uncovered (Mathias and Esposito, 2015).
- **Wide international cooperation:** Section III.C above referred to some of the notable administrative international tax transparency tools that are at the disposal of tax authorities. These could be further supplemented by the wide range of bilateral<sup>87</sup>, regional<sup>88</sup>, and global<sup>89</sup> treaties and arrangements for mutual legal assistance, international cooperation, and international asset recovery available to AML authorities.

The FATF Recommendations mandate “the widest range” of mutual legal assistance and international cooperation with respect to both money laundering and its predicate offenses, including tax crimes.<sup>90</sup> The idea of AML international cooperation measures supporting cross-border efforts in tax recovery was also raised by some member countries of the Global Forum as an area of possible further advancement of the tax transparency agenda in the coming years.<sup>91</sup>

In addition to the more formal mutual legal assistance in investigations, prosecutions, and related proceedings, including cross-border freezing orders and confiscation, the international AML framework provides for more informal avenues of cooperation and sharing of expertise. These include exchange of AML-related knowledge between FIUs, financial supervisors, and law enforcement authorities. A prime example of such informal arrangements is the exchange of expertise and financial intelligence between the FIUs under the Egmont Group framework. These informal interactions could be also a source of valuable cross-border insights relevant for tax compliance purposes (see annex II).

## D. Deterrence effect of AML enforcement on tax crimes

**The increased transparency and supervision pursuant to AML measures by itself carries a deterrent effect.** These measures can dissuade some offenders from committing tax crimes and their accomplices from

<sup>86</sup> Corruption can be defined as an abuse of public office for private gain. It can weaken a country’s ability to collect revenues, with adverse consequences for deficits, debt accumulation, and the ability to provide public services. Corruption in the tax administration can undermine the tax collection function of a country. For example, in cases where public officials provide for ad hoc tax breaks for some people and firms in exchange for bribes or exploit their discretionary powers in relation to the administration of tax laws. For more details see Chapter 2 of the Fiscal Monitor from 2019 (IMF, 2019b).

<sup>87</sup> For the wide-ranging expectations of the bilateral assistance between countries in mutual legal assistance and international cooperation on money laundering and associated crimes, see FATF Recommendations (2012 – 2023), Recommendations 37 – 40. FATF Recommendation 36 specifically requires implementation of some of the multilateral instruments.

<sup>88</sup> For example, the 2005 Council of Europe Conventions on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) (the Warsaw Convention) which aims to facilitate international co-operation and mutual legal assistance in investigations, including by identifying, seizing, and confiscating the criminal proceeds. See also the EU’s AML Directives.

<sup>89</sup> For example, Article 18 of the Palermo Convention provides for the “widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings”. In the same vein, Title V of the 2003 UN Convention against Corruption (the Merida Convention) provides for the “widest measure of cooperation and assistance” in asset recovery.

<sup>90</sup> FATF Recommendations (2012 – 2023), Recommendations 37 and 40.

<sup>91</sup> See the Statement of Outcomes from the 10<sup>th</sup> Anniversary Global Forum Plenary Meeting in November 2019, paragraph 3. Available at: <https://www.oecd.org/tax/transparency/statement-of-outcomes-global-forum-10-years.pdf> (accessed April 21, 2022).

facilitating laundering of the underlying proceeds. CDD obligations and the filing of STRs, which are subject to supervision by AML authorities, provide for increased transparency, which imposes higher risks and additional costs on the offenders. Tax offenders, knowing that they cannot freely use the financial system and professional services without alerting tax authorities, would be at least in part dissuaded by the fear of being caught and punished. Moreover, obliged entities that are coopted in the AML compliance efforts and carry out CDD are subject to monitoring and supervision regarding their compliance with AML obligations.<sup>92</sup> Any non-compliance with such obligations could result in sanctions, including reputational consequences. According to the FATF Recommendations, the national AML frameworks should provide for a “range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative” to deal with persons that fail to comply with their AML obligations. This deterrent effect is further reinforced by the fact that obliged entities can be investigated and made liable for facilitating money laundering, including in relation to tax crimes. This helps alleviate the perceived impunity of obliged entities for the crimes that they did not commit in the first place but helped in laundering their proceeds (see also section V.C.ii below on the inherent conflict of interest).

**The formidable impact of the increased transparency is well illustrated by the effects of the international tax transparency standards that rely on the AML framework.** As noted in section III.C above, these standards leverage the information obtained under CDD procedures, and thus their deterrence effect can be at least partly attributed to the impact of increased transparency achieved pursuant to AML measures. It is estimated that progress on transparency and exchange of information helped to identify about EUR 114 billion in additional revenue (tax, interest, penalties) through a mix of VTCs and offshore investigations. In the period 2019 to 2021, almost EUR 2.6 billion was identified due to the EOIR Standard, almost EUR 2.4 billion pursuant to increased transparency enabled by the AEOI Standard, and over EUR 2.5 billion from VTCs and other offshore initiatives (OECD, 2022c). O’Reilly, Ramirez, and Stemmer (2019) further demonstrate that increased international tax transparency led to a decline of about 24% (or USD 410 billion) between 2008 and 2019 in offshore bank deposits by foreign residents in offshore financial centers.

**The AML framework carries the threat of sanctions that tend to be greater and have broader reach than those available under the tax framework.** Money laundering offenses usually carry higher penalties than tax crimes alone, including longer terms of possible imprisonment, which can send a “strong and powerful signal” to the potential offenders and their potential accomplices (Mathias and Esposito, 2015). In particular, the risk of imprisonment carries a strong deterrence effect (Dubin, 2007). Moreover, as argued by Mathias and Esposito (2015), the extended civil and criminal liability under the AML framework has “wider ‘fairness’ implications which should ultimately lead to improving the culture of tax compliance” (see also the first bullet point in Box 4 above). The EU’s Sixth AML Directive specifically requires that the aiding and abetting of money laundering is punishable as a criminal offense.<sup>93</sup>

**To the extent that there is no overlap, confiscation of laundered assets available under the AML framework could be used to complement confiscation measures under the tax framework.** Unlike freezing and seizing orders used to temporarily prevent the movement of assets pending the outcome of a case, confiscation allows for “the permanent deprivation of property” based on an order of a court or other competent authority.<sup>94</sup> It could therefore be an effective way to recoup the proceeds and instrumentalities of crime, including unpaid taxes, and finally deprive the offender of enjoying the fruits of the criminal activity (Brun and others, 2022).<sup>95</sup> In that sense, confiscation helps remove financial incentives to commit tax crimes. Countries are obliged to ensure adequate national AML laws and practices to enable confiscation, including providing expeditious

<sup>92</sup> FATF Recommendations (2012 – 2023), Recommendations 26 – 28.

<sup>93</sup> Directive (EU) 2018/1673, Article 4.

<sup>94</sup> For definition of the term “confiscation” referred to in this paragraph see Article 2(g) of the Palermo Convention. This term is accordingly defined in the General Glossary to the FATF Recommendations (2012 – 2023).

<sup>95</sup> The FATF Methodology for conducting mutual evaluations recognizes the potential for the cross-utilization of the confiscation measures available under the AML and tax frameworks (subject to country’s legal framework). See FATF Methodology (2013 – 2021), footnote 102.

international assistance in transnational cases.<sup>96</sup> Among the different confiscation tools and measures applied at the national level are: (i) criminal confiscation, (ii) confiscation of instrumentalities of crime, (iii) value-based confiscation, (iv) non-conviction-based confiscation, (v) compensation / restitution, and (vi) tax levies (FATF, 2022).

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<sup>96</sup> FATF Recommendations (2012 – 2023), Recommendations 4 and 38.

## V. Challenges and solutions

### A. Political challenges and proposed solutions

**There are political challenges to leveraging AML measures for the purposes of tax compliance.** All important changes to established practices require political buy-in. It is no different with embracing the benefits that AML measures can bring to tax compliance and the fight against tax crimes. In this context, political interests are closely intertwined with economic interests. Certain international financial centers (IFCs) and interest groups stand to gain from opacity, disjointed application of the two frameworks, and limited international cooperation.

#### i. Economic considerations of IFCs

**Many countries could lose economically from large scale leveraging of tax information under the AML framework, transparency, and close international cooperation.** This impacts on their readiness to deploy AML measures against tax crimes. Indeed, global undisclosed offshore wealth is estimated at USD 7 trillion, and it is thought to correlate to about 8 percent of global household wealth or 9.3 percent of global Gross Domestic Product (Zucman 2013; Alstadsæter, Johannesen, and Zucman, 2018). A lot of this foreign wealth is held in IFCs that, to attract investments, offer generous tax breaks and incentives, often coupled with strict (or obscure) privacy rules, and limited international cooperation avenues. The term “IFCs” in this context refers to all variety of financial centers and is not limited to small island jurisdictions that are commonly associated with a tax haven status. IFCs located in developed countries also stand to benefit from inflated economic activity that is driven by tax and secrecy considerations rather than legitimate economic rationale. Smaller offshore financial centers are often part of an industry piloted in major financial centers based in larger developed countries (see, e.g., TJN 2021).

**Ensuring cooperation of IFCs is crucial to changing the status quo. This can be achieved through international resolve.** IFCs may not be willing to change their practices unless pressed by the international community and international standards. Even then, they may find ways to influence the shaping of these standards to their advantage and not go beyond the politically negotiated minimum requirements. Therefore, the resolve of the international community, including an active civil society, is key to overcoming the status quo and providing for a level playing field. In the AML field, this is largely pursued through peer reviews carried out by the FATF and FATF-style Regional Bodies (FSRBs) and the related “listing” process of the FATF and other regional bodies such as the EU.<sup>97</sup> The FATF publicly identifies “Jurisdictions under Increased Monitoring” (“grey-list”) and “High-Risk Jurisdictions subject to a Call for Action” (“blacklist”). The EU has its own list of “high-risk third countries”, which draws on the FATF listing process and the FATF and FSRB peer reviews.<sup>98</sup> There are also national and international tax blacklists that concentrate on the cooperation of countries in tax matters.<sup>99</sup>

**There are economic and reputational consequences resulting from being identified by the FATF or the EU as a country with significant AML/CFT weaknesses.** The direct consequence of being listed by the international community is the threat of countermeasures that can be imposed to mitigate risks.<sup>100</sup> These

<sup>97</sup> For an overview on the FATF listing process see [https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)) (accessed February 23, 2023). See also FATF Recommendations (2012 – 2023), Recommendation 19, including its Interpretive Note.

<sup>98</sup> For the EU methodology for the identification “high-risk third countries” see [https://ec.europa.eu/info/files/200507-anti-money-laundering-terrorism-financing-action-plan-methodology\\_en](https://ec.europa.eu/info/files/200507-anti-money-laundering-terrorism-financing-action-plan-methodology_en) (accessed April 21, 2022). The respective mandate stems from Article 9 of Directive (EU) 2015/849 (with relevant changes introduced by Directive (EU) 2018/843).

<sup>99</sup> For example, see the EU list of “non-cooperative jurisdictions for tax purposes” and the accompanying criteria available at <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/> (accessed February 23, 2023).

<sup>100</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 19, paragraph 2.

countermeasures would typically take the form of requiring obliged entities to apply EDD when conducting business with such countries, which would increase compliance costs and the possibility of fines for non-compliance. As a result, banks and other intermediaries may decide to limit their exposure to such countries altogether and close local branches, franchises, and asset management seats. All of this would also add pressures on the corresponding banking relationships. The reputational damage can further affect access to foreign direct investment, credit, and more generally the business outlook of the listed countries (Kida and Paetzold, 2021; Riccardi, 2022).<sup>101</sup> In addition, countries with poor AML standards are exposed to inherent risks such as unstable financial flows, potentially increased levels of criminality, dependency on policies abroad, and possible drainage of public resources through criminal activities. The IMF recognizes that the injection of large amounts of criminal proceeds, such as in the case of wide-scale tax evasion transactions, may subject a country's financial system to volatile inflows and outflows that can threaten its financial stability (IMF, 2019a).

**The above countermeasures can be very effective.** The FATF recently disclosed that out of the over 80 countries publicly identified, 60 made the necessary changes to address the identified shortcomings (FATF, 2022). To ensure the continued effectiveness and legitimacy of international peer pressure, it is of fundamental importance that the peer reviews and the listing mechanisms be based on a set of objective and consistently applied criteria. This may be particularly difficult in relation to larger economies that carry more political clout and can exert economic pressures (Riccardi, 2022).

## ii. Vested interests and corruption

**Vested interests and corruption may pose significant obstacles to proper mobilization of AML measures to improve tax collection and help pursue tax crimes.** Organized interest groups, such as powerful bankers, lawyers, and other professional and industry associations, stand to lose economically from stronger tax compliance measures. Acting on the edge of legality and facilitating money laundering and tax crimes can be a very lucrative business, as it often involves large sums which lead to high commissions and fees (see also section V.C.ii below).<sup>102</sup> It is therefore in the interest of certain professional groups to maintain a disjointed application of the AML and tax frameworks and support strict secrecy rules preventing effective inter-agency and international cooperation. The efforts to overcome such obstacles may be further undermined by the protection of vested interests and corruption at the state level, including at the tax administration, and in cases where big tax evaders are politically connected (Mathias and Esposito, 2015; IMF, 2019b).

**An effective strategy to root out vested interests and corruption entails broader governance and institutional reforms, providing for public transparency and accountability.** The activities of interest groups, the financing of political parties, political campaigns, and public procurement tenders should be subject to regulation. Corruption may be further addressed through the creation of anti-corruption agencies, asset declaration regimes, conflict of interest and anti-bribery rules applicable to political leaders, and public officers (IMF, 2019b). An effective application of the AML measures could also help, including through EDD procedures applicable to PEPs (Chaikin and Sharmanon, 2009). An important countermeasure is transparency of the beneficial ownership information, including in relation to legal entities that participate in public procurement.<sup>103</sup> An active civil society and the activities of CSOs should also be promoted, as these can unearth the scale of the problem and bring to the public discourse the urgency of reforms and the need for action. Admittedly, however,

<sup>101</sup> For example, according to a study carried out by Kida and Paetzold (2021), the grey-listing by the FATF is associated with an average capital inflows decline of 7.6 percent of GDP. The results of the study suggest that the FDI inflows decline on average by 3.0 percent of GDP, portfolio inflows decline on average by 2.9 percent of GDP, and other investment inflows decline on average by 3.6 percent of GDP.

<sup>102</sup> The contemporary data leaks, including the FinCEN Files and the Pandora Papers, highlight the prominent role of banks and other intermediaries such as lawyers, notaries, accountants, as well as trust and company service providers in money laundering and tax evasion schemes.

<sup>103</sup> This requirement was introduced in the 2022 changes to the FATF Recommendations 24. See FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 24, paragraph 10.



domestic efforts may be somewhat subdued in societies that suffer from weak rule of law or that benefit from their countries' openness to questionable foreign wealth. In such cases, the resolve of the international community will play a key role in exerting the necessary pressure.

## B. Legal challenges and proposed solutions

**The legal frameworks need to formally recognize the interactions between the AML and tax rules for these to be utilized in line with the letter of law.** The types of legal challenges that are often referred to in this context concern confidentiality and professional secrecy matters, the different purposes pursued under the tax and criminal frameworks, and the international understanding of what is meant by the term "tax crimes" that is key for an effective international cooperation under the mutual legal assistance and other forms of international cooperation.

### i. Confidentiality and professional secrecy

**Confidentiality and professional secrecy constraints are commonly associated with limits on the sharing information.** A common argument brought against the sharing of information is the fundamental right of respect for private life and the protection of personal data. Before dwelling on the details below, it is important to stress that this paper focuses on the sharing of banking, financial, and other information by the FIU and tax authorities. Both agencies are typically subject to strict confidentiality and data protection constraints. Moreover, given the objective of the paper, it concentrates on one-way flow of information sharing, i.e., from AML authorities to tax authorities.

**Respect for private life and the protection of personal data are not absolute rights.** There is a need for access to private data sources for public policy purposes (Haksar and others, 2021). As noted by Mathias and Esposito (2015), it is "not only possible, but widely accepted that the legitimate interest in the respect of private life may be restricted under certain conditions (e.g., that the restriction is provided by law; that it pursues a legitimate aim) to protect other individuals or the society as a whole from crime". Brun and others (2022) also note the importance of striking "an appropriate balance between existing protections and information sharing to more effectively counteract crime while persevering legitimate individual rights to privacy" (Brun and others, 2022). Against this background, it would seem that the purpose of tackling tax crimes and the often strict confidentiality rules applicable to tax authorities satisfy legitimate public interest considerations and provide for the necessary safeguards.<sup>104</sup>

**Financial and banking secrecy has its limits in the AML field.** There are explicit exceptions foreseen under the domestic law and international standards and abundant national and international case-law on this matter. For example, FATF Recommendation 9 states that, "Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations". DAC 5 in the EU, referred to in section IV.A above, explicitly provides for access rights of tax authorities to information obtained by financial institutions pursuant to the AML laws and relevant for the determination of beneficial ownership. Access to FIU information, including in some cases direct access to STRs, for tax administration or tax criminal investigation purposes, is also widely possible (see section IV.B above). At the international level, instances of absolute banking secrecy came to an end with the implementation of international tax transparency standards (see section III.C above). Under these standards, the information is shared directly between foreign tax authorities (Manatta and others,

<sup>104</sup> For example, Article 8(2) of the European Convention on Human Rights states that the right to privacy may be legitimately restricted in certain circumstances, such as "in the interests of national security, public safety or the economic well-being of the country, *for the prevention of disorder or crime*, for the protection of health or morals, or for the protection of the rights and freedoms of others" (emphasis added). The prevention of crime category in this excerpt seems to be relevant in the context of tax crimes and money laundering.

2020; Manatta and others, 2021; IMF, 2022). The FATF Recommendations also provide for international cooperation, including in fiscal matters (see sections IV.B above and V.B.iii below).<sup>105</sup>

**Confidentiality and privacy laws were not intended to be used as a “wild card” in the hands of criminals, complicit service providers, and uncooperative countries.** It is important that national laws and associated procedures make it clear in which circumstances public interest exceptions can be triggered. The authorities should consider explicit enabling provisions and exemptions in the laws and guidance that can empower tax and law enforcement authorities accessing AML information in the performance of their duties. In this regard, it is important to have robust safeguards in place on how information can be used, including clear limitations, and appropriate checks and balances, such as in the form of judicial review to ensure the right balance between protection of private life and wider public interests. Any concerns regarding the handling of confidential information by the relevant authorities could be alleviated by means of sufficiently detailed MoUs or specific improvement and streamlining of existing procedures (Brun and others, 2022). That is also what transpires from the best practices on AML and tax cooperation published by the Egmont Group (see section III.D above and annex 2).

## ii. Differences in legal objectives between AML and tax authorities

**The extent of inter-agency cooperation between the AML and tax authorities may be inhibited by the different objectives pursued under the respective legal frameworks.** The AML framework pursues the criminal objective of tackling money laundering, and thus the ultimate purpose of its information sharing arrangements is to build a criminal case with all its inherent protections (Mathias and Esposito 2015). In contrast, the tax framework is concerned with the administrative objective of ensuring revenue collection. Accordingly, the information collected by tax authorities under the applicable tax reporting regimes and tax audits is of an administrative rather than criminal nature. Therefore, typically the information in the hands of the AML and tax authorities is collected, treated, and disseminated for different purposes. However, as shown below, the tax frameworks may also pursue criminal objectives.

**The revenue collection objective pursued by tax authorities in some cases may include a criminal component.** Tax optimization schemes and undeclared income and wealth may violate domestic tax laws and constitute crimes under the applicable criminal codes. For this reason, the collection of information by tax authorities may trigger a criminal case and, in that sense, the overarching objective of ensuring revenue collection may also entail a criminal component. For example, Italy’s *Guardia di Finanza*, a militarized police force under the Ministry of Economy and Finance, has a mandate extending to investigations of both tax evasion and other financial crimes.<sup>106</sup> Likewise, in Mexico, the difference in purposes pursued by the administrative tax system and criminal AML system did not prevent *Servicio de Administración Tributaria* (SAT), Mexico’s tax authority, to be designated as the AML supervisor for a vast range of businesses and professions.<sup>107</sup>

**In many countries, relevant information collected and maintained by the FIU can be shared with tax authorities for tax administration purposes (see Box 3 above).** This is an important observation, as the nature of the information in the hands of the FIU, whether it is part of the criminal justice or administrative authorities, concerns suspicions of a criminal offense (for instance, the STRs). Yet, this does not typically constitute an

<sup>105</sup> FATF Recommendations (2012 – 2023), Recommendations 37 and 40.

<sup>106</sup> “The *Guardia di Finanza*’s mandate requires it to protect the State revenue, counter infiltration of crime organisations into the economy, fight corruption, money laundering, tax and customs evasion and fraud, the underground economy, social security fraud and all other scams related to public revenue. To pursue its mission, the *Guardia di Finanza* enjoys important investigation powers and carries out both civil and criminal tax investigations”. See an OECD publication entitled “Italy’s Tax Administration: A Review of Institutional and Governance Aspects”, pages 72-73, available at <https://www.oecd.org/tax/administration/italy-tax-administration-a-review-of-institutional-and-governance-aspects.pdf> (accessed April 21, 2022).

<sup>107</sup> See the mutual evaluation report of Mexico published in January 2018 and available at <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-mexico-2018.html> (accessed on April 21, 2022).

obstacle to the sharing of relevant information with tax authorities for both criminal and administrative purposes (see section IV.B above). The confidentiality concerns can also be alleviated by MoUs and similar procedural arrangements (see section V.B.i above).

**The current default framework of dissemination of information by the FIU by means of spontaneous or upon request modalities is not optimal (see section IV.B above).** Spontaneous dissemination introduces an element of discretion and selectivity, which may be particularly challenging in the context of the highly technical tax field.<sup>108</sup> The FIU may lack the resources, tax expertise, or sensitivities to effectively sift through relevant tax information that it is obliged to share (Brun and others, 2022). This may be further exacerbated by excessive reporting of legitimate activities pursuant to the STR/SAR requirements imposed on obliged entities that risks overwhelming the FIU (Levi and Reuter, 2006). The added resource burdens and the diluted information value may lead the FIU to prioritize analyses of money laundering and overlook tax issues. The FIU may also be simply lacking knowledge of the information that requires matching with that already available to the tax authority to assist it in identifying tax non-compliance (OECD, 2015a). As for dissemination upon request, the tax authorities may not always have enough lead evidence or be sufficiently pro-active to specifically request information from the FIU. Also, the FIU retains the right to refuse to share the requested information.<sup>109</sup> All this introduces inefficiencies that could be alleviated by measures such as placing tax liaison officers in the FIU or other more direct forms of access to the FIU information, as subject to relevant confidentiality and data protection safeguards (see examples in Box 3 above).

**It is important to stress that the sharing of information by the FIU is not an end in itself.** As raised in the context of the IMF review of practices in Greece, countries should not only provide for appropriate sharing and cooperation mechanisms, but also introduce clear procedures to act upon the received or otherwise accessible information.<sup>110</sup> This includes providing training to the authorities relevant to tax compliance on how to use the financial intelligence shared or otherwise accessible from the FIU. The core value of any sharing arrangement is that it is used and processed for the intended purposes. Admittedly, however, there is already some deterrence effect attached to the mere fact of the information being shared, whether or not it is subsequently being used (see section IV.D above).

### iii. No internationally agreed definition of “tax crimes”

**There is no internationally agreed definition of the concept of “tax crimes”.** This may impact the ability of countries to provide mutual legal assistance and other forms of international cooperation under AML frameworks, as national laws differ widely in terms of the terminology used to define tax crimes and the range of conduct that falls within their scope (see Box 1 above).<sup>111</sup> What in one country may be classified as tax avoidance or a non-criminal form of tax evasion, in another country may constitute a tax crime. This mismatch may arise where one country introduces thresholds for certain conduct to be considered a criminal offense while another country does not prescribe such thresholds for the same conduct. Indeed, as recognized in the recital to the EU’s Fifth AML Directive, “FIUs have reported difficulties in exchanging information based on differences in national definitions of certain predicate offences, such as tax crimes, which are not harmonised by Union law”.<sup>112</sup> The challenge gets further compounded when seen from a global perspective.

<sup>108</sup> As expressly set out in paragraph 4 of the Interpretive Note to Recommendation 29 (FATF Recommendations, 2012 – 2022), the spontaneous dissemination by the FIU “should be selective and allow the recipient to focus on relevant cases / information”.

<sup>109</sup> FATF Recommendations (2012 – 2023), Interpretive Note to Recommendation 29, paragraph 4.

<sup>110</sup> IMF’s Report on Greece’s Ex-Post Evaluation of Exceptional Access under the 2012 Extended Arrangement (IMF Country Report No. 17/44).

<sup>111</sup> This issue does not apply to tax exchanges made under the OECD Model Tax Convention and the MAC, and by implication the AEOI and EOIR tax transparency standards, as these instruments cover both civil and criminal matters.

<sup>112</sup> Directive (EU) 2018/843, paragraph 8 of the recital. The EU AML legal framework, however, specifically provides in Article 57 of the Directive (EU) 2015/849 that, “Differences between national law definitions of tax crimes shall not impede the ability of FIUs to exchange information or provide assistance to another FIU, to the greatest extent possible under their national law”.

**The lack of an internationally agreed definition may implicate the “dual criminality” principle under the applicable international cooperation procedures.** According to this principle, the same types of crimes and conduct must be criminalized in both countries as a pre-requisite for providing international assistance. One way of addressing this issue is by excluding any “form over substance” differences. The FATF Recommendations stress that the focus should be placed on the underlying conduct rather than the labelling of the conduct.<sup>113</sup> That is, however, not a universal approach. For example, the strict application of the concept of dual criminality was recognized as an issue in the mutual evaluation report of Saint Lucia.<sup>114</sup> Even where a country makes an effort to focus on the underlying conduct, it may not be enough to overcome the very narrow domestic definition of tax contraventions that constitute tax crimes. For example, the mutual evaluation report of Liechtenstein took issue with the narrow domestic definition of tax offenses (e.g., tax fraud which involves the forging of documents). This was found to impact Liechtenstein’s ability to provide international cooperation in cases of more straightforward tax evasion, regardless of the amount of taxes evaded, that do not involve fraud but may be a criminal offense in the country seeking assistance.<sup>115</sup>

**Reaching an international consensus on the types of tax contraventions or misconduct that could give rise to cross-border cooperation in tax matters is highly desirable.** Countries have the sovereign right to criminalize tax offenses in accordance with their national contexts and priorities. Indeed, there are some countries that do not impose taxes or have a much more limited tax base (for example, there are no corporate taxes in the Cayman Islands). That should not, however, prevent them from providing mutual legal assistance and other forms of international cooperation where a given tax conduct is criminalized in another country, as determined under the laws of the requesting country and applicable in relation to its own taxpayers.<sup>116</sup> Otherwise, there is an increased risk of misuse of the domestic financial sector to launder the proceeds of tax offenses committed abroad, which may be particularly concerning in relation to some IFCs. Therefore, in the spirit of ensuring a good faith operation of this principle, the international community should endeavor to agree on the minimum and non-exhaustive list of violations of the national tax frameworks for which international assistance would not be able to be denied irrespective of the dual criminality principle and the scope of domestic definitions. In this regard, the EU’s Sixth AML Directive and its non-exhaustive list of conduct that should qualify as money laundering offense across all the EU Member States, regardless of the national definitions, could serve as an inspiration.<sup>117</sup>

## C. Operational challenges and proposed solutions

**Beyond political and legal challenges, there are also operational challenges that can have a bearing on the operationalization of the synergies between AML and tax fields.** A key issue is the conceptual and business culture differences that were fostered by the historically separate development and disjointed application of the two frameworks, as further exacerbated by the perceived legal constraints discussed in section V.B above. There are also capacity and prioritization issues that may be relevant in this context.

<sup>113</sup> The relevant passage from FATF Recommendations (2012 – 2023), Recommendations 37, reads as follows, “Where dual criminality is required for mutual legal assistance, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence”.

<sup>114</sup> The mutual evaluation report of Saint Lucia was published in January 2021 and can be accessed at <https://www.cfatf-gafic.org/home-test/english-documents/4th-round-meval-reports/15037-st-lucia-4th-round-mer-rev1> (accessed April 21, 2022).

<sup>115</sup> The mutual evaluation report of Liechtenstein was published in May 2022 and can be accessed at <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-liechtenstein-2022.html> (accessed November 25, 2022).

<sup>116</sup> Arguably, the FATF Recommendations already require that international cooperation should be provided (legally possible) in cases where a country seeks assistance for money laundering cases based on a serious domestic offense (one of the required 21 designated offenses listed in the General Glossary, see footnote 15 above), even where the requested country does not criminalize that offense. See references to the “widest range” of mutual legal assistance and international cooperation in FATF Recommendations (2012 – 2023), Recommendations 37 and 40.

<sup>117</sup> Directive (EU) 2018/1673, Article 3.

### i. Conceptual barriers and business culture

**Most national AML regimes did not initially include tax crimes in their scope, as they were not required to do so.** As elaborated in section III.B above, the original focus of the FATF Recommendations was on countering the laundering of drug-related proceeds. This was an important limitation, as it is commonly recognized that many, if not most, domestic AML frameworks were introduced to comply with the FATF Recommendations and other related international instruments (Levi and Reuter, 2006).<sup>118</sup> Therefore, the 2012 revisions to the FATF Recommendations were the motivation for many countries to bring tax crimes into the scope of their domestic AML frameworks. These changes took additional time to implement. For example, Switzerland recognized tax crimes as predicate offenses to money laundering through the 2014 amendments to its AML and penal frameworks, which came into effect on January 1, 2016.<sup>119</sup>

**For many countries treating tax crimes as predicate offenses to money laundering is still a novelty, and for some it represents a true paradigm shift.** The historically strict separation of money laundering and tax crimes might have led to the development of deeply entrenched conceptual barriers. Given this strict separation legacy, supervisors and law enforcement authorities may have doubts in which circumstances the two frameworks can act in unison and whether they would not be overstepping their mandates by exploiting their mutually reinforcing synergies. Similarly, many financial institutions and other gatekeepers may be faced with dramatic changes to their established business cultures, which might have in the past been more forgiving or even facilitating to tax evaders. A good example is the wide popularity in many countries of the “tax excuse” which was particularly problematic before the recognition of tax crimes as predicate offenses to money laundering. The pervasive nature of this practice led the G-7 and subsequently the FATF to explicitly recognize it as an issue (see section III.A above). The 1999 amendment to the STR-related Interpretive Note of the FATF Recommendations observed that, “suspicious transactions should be reported by financial institutions regardless of whether they are also thought to involve tax matters. Countries should take into account that in order to deter financial institutions from reporting a suspicious transaction money launderers may seek to state *inter alia* that their transactions relate to tax matters”.<sup>120</sup>

**These conceptual barriers and old-fashioned business cultures are practical issues that could be managed through additional guidance, enforcement, and international peer pressure.** Brun and others (2022) suggested that it is important that the relevant agencies clearly map out their respective mandates and identify any overlaps and interdependencies. Relevant guidance material and clear procedures, including MoUs, Service-Level Agreements, as well as joint investigative teams, and joint task forces should help provide the necessary clarity and awareness about the roles of the overseeing agencies. These should aim to empower and incentivize both AML authorities, on the one side, and tax authorities, on the other, to work collaboratively as this would help them pursue their own core mandates and goals. In the same vein, as a matter of general principle of good governance, any substantive legal changes should be followed by awareness-raising campaigns, dedicated trainings, publication of guidelines, and periodic reviews on the status of implementation. There may be an initial grace period for the early application of the new law or procedures, but this cannot become an excuse for perpetual ignorance and inertia.

<sup>118</sup> This could partly explain the “tick the box” approach applied by many countries to the implementation of the FATF Recommendations. The recent analysis of the results of the fourth round of mutual evaluations carried out by the FATF and FSRBs revealed that many countries have achieved a substantial progress in passing the relevant laws, but still largely fall short on ensuring effectiveness of their AML frameworks (FATF, 2022).

<sup>119</sup> See the amendments to the relevant provisions of the Swiss Penal Code and the Anti-Money Laundering Act introduced by No I 4 to the and No I 7 of the Federal Act of 12 December 12, 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force (AS 2015 1389; BBI 2014 605).

<sup>120</sup> This “warning text” was maintained in the FATF Recommendations until its 2012 version, which recognized tax crimes as predicate offenses to money laundering. This meant that tax crimes had to be filed in STRs and the continued relevancy of this text became obsolete.

## ii. Inherent conflict of interest

**The AML compliance regime puts a lot of emphasize on third party compliance and reporting, including in relation to tax crimes.** As explained in section II.D above, intermediaries are instrumental in many money laundering and tax evasion schemes, as through their activities they may help criminals gain access to the financial system and legitimize their laundering schemes. These same intermediaries are typically also obliged entities coopted in the AML compliance effort. This creates built-in tension within the compliance system, which is a real issue as shown by the successive data leaks. The Panama Papers, or the more recent Pandora Papers and FinCEN Files leaks, show now and again that the private sector intermediaries are often complicit in large-scale money laundering schemes involving corrupt politicians, as well as high-net-worth-individuals seeking to evade taxes. Indeed, private sector intermediaries stand to profit from doing business with their customers but may need to forgo profit-making opportunities to comply with their AML obligations.<sup>121</sup> Therefore, effective supervision of the private sector is one of the cornerstones of a well-functioning AML regime.

**The effectiveness of the AML supervision of both financial and non-financial intermediaries is very poor, and thus the supervisory activities need to be intensified.** As reported by the FATF, merely 10% of countries reviewed by the FATF/FSRBs under the current round of mutual evaluations, or peer reviews, have achieved satisfactory levels of effectiveness in relation to their AML supervisory arrangements (FATF, 2022).<sup>122</sup> This can have an impact on the level of AML compliance by obliged entities, and in that sense the utility of the AML measures for tax compliance purposes. According to the FATF, the largest gaps relate to the supervision and compliance of non-financial intermediaries (FATF, 2022). This might be because supervisors have traditionally focused on the financial sector, which is considered more macro-relevant.<sup>123</sup> Reflective of that focus and a risk-based approach, the FATF Recommendations generally subject the non-financial businesses and professions to less stringent oversight, including by qualifying their obligations to apply AML preventive measures and file suspicious activity reports (Tucker, 2022).<sup>124</sup> The supervisory frameworks, including actual control activities, should be stepped up for both financial and non-financial sector intermediaries. As far as the relevancy of the AML measures for tax compliance is concerned, it is particularly important to ensure adequate supervision of the non-financial sector.<sup>125</sup> Tax crimes are often dependent on the enabling services offered by professionals such

<sup>121</sup> Supervision of AML compliance is one of the key requirements under the FATF Recommendations, see FATF Recommendations (2012 – 2023), Recommendations 26 – 28.

<sup>122</sup> The AML supervision is further impacted by the fact that supervisors are struggling to effectively implement a risk-based approach to supervision as mandated for under the FATF Recommendation 1. An FATF study of 59 FATF/FSRB mutual evaluation reports under the current round of reviews revealed that only 17% of financial institutions' supervisors and 3% of non-financial intermediaries' supervisors had been able to successfully implement the risk-based approach to supervision (FATF, 2022).

<sup>123</sup> Although, as evidenced by the FinCEN Files, despite being subject to both prudential and AML supervision, even the largest international banks continue enabling large scale money laundering schemes. As noted by the ICIJ, the FinCEN Files show that large international banks are "blindly moving cash through their accounts for people they can't identify, failing to report transactions with all the hallmarks of money laundering until years after the fact, even doing business with clients enmeshed in financial frauds and public corruption scandals... Big banks continue to play a central role in moving money tied to corruption, fraud, organized crime and terrorism". See the ICIJ's website available at <https://www.icij.org/investigations/fincen-files/> (accessed June 21, 2022).

<sup>124</sup> FATF Recommendations (2012 – 2023), Recommendations 22 and 23 (qualifications in relation to the preventive measures and filing obligations applicable to DNFBPs), and Recommendations 26 and 28 (supervision of financial institutions by a dedicated supervisor vs. a possibility to be supervised by a self-regulatory body in the case of DNFBPs; the possibility of choosing to apply "monitoring" to DNFBPs (other than casinos) which is a less intrusive form of supervisory activities than that applicable to financial institutions and often represents a light-touch approach; and, DNFBPs (other than casinos) do not have to be licensed as opposed to financial institutions which entail additional requirements). Relatedly, the FATF Recommendations introduced requirements regarding DNFBP groups parallel to those applicable to financial groups pursuant to Recommendation 18 only very recently. That is following the revisions made in October 2021 to the Interpretive Note to Recommendations 22 and 23.

<sup>125</sup> For example, stepping up of the AML supervisory frameworks in relation to non-financial sector gatekeepers has been the focus of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) which is a monitoring body of the Council of Europe and one of the nine FSRBs. That is given the "the pivotal role that such types of entities play in guiding money laundering operations through their cross-border networks and group structures" (MONEYVAL, 2022).

as lawyers, notaries, accountants, tax advisors, or TCSPs. The FATF should also consider explicitly adding tax advisors to its lists of obliged entities, as was already done at the EU level (see section II.D above).

**The supervisory activities could be complemented by appropriate “checks and balances” within the control system.** These include allocating greater role to public authorities for AML compliance beyond the mere supervisory activities. This could be done, for example, by establishing beneficial ownership registries administered by public authorities rather than rely solely on the quality of CDD performed by the obliged entities (see section IV.A above). Indeed, the desire for introducing “checks and balances” was one of the motives behind the adoption of the Corporate Transparency Act in 2021 in the US, which requires entities established or registered to do business in the US to report beneficial ownership information to the FinCEN. This was further complemented by the establishment of a central beneficial ownership register under the 2021 National Defense Authorization Act.

### iii. Capacity constraints

**The lack of cooperation and linkages between the AML and tax frameworks may be further aggravated by the lack of resources and capacity constraints.** Mathias and Esposito (2015) remark that the use of AML tools for improving tax compliance necessitate certain pre-conditions. Beyond legal, procedural, and operational fundamentals linking the two frameworks, these include sufficiently skilled and staffed AML supervisors that can ensure implementation of the AML controls and give effect to the AML and tax nexus. The IMF, World Bank, and OECD, among others, offer technical assistance on these matters (e.g., IMF, 2019a). Such technical assistance should also recognize the importance of drawing on the synergies between the AML and tax framework to improve tax compliance, as argued in this paper.

**Capacity constraints are not unique to developing countries.** There are also developed countries that do not prioritize or allocate sufficient resources to tackling money laundering and/or tax crimes. This may be due to their limited understanding of the risks, or a more contrived effort to protect their economic interests by attracting foreign wealth and investment through more lax regulatory standards.

## VI. Conclusions

**Money laundering and tax crimes are intrinsically linked. They often concern the same criminal conduct and involve the same criminals.** This paper outlined the legal and practical interactions between the AML and tax frameworks. Indeed, with the international recognition of tax crimes as predicate offenses to money laundering through the 2012 revisions to the FATF Recommendations, there is no longer an excuse for the tax and AML control systems to operate in a vacuum. It is time to see tangible effects arising from this legal bridge in practice.<sup>126</sup>

**Countries should capitalize on the commonalities and synergies between money laundering and tax crimes to enhance their tax compliance efforts.** This paper pointed to specific AML measures that could be utilized to improve tax compliance and help fight tax crimes. The discussed AML measures could facilitate the formalization of the economy and the detection of tax non-compliance, as well as complement the existing enforcement and deterrence mechanisms available to tax authorities. These are summarized in annex I.

**There can be challenges to bringing the two systems closer together, but any potential issues should be critically evaluated and balanced against public interests.** This paper proposed practical solutions to the key political, legal, and operational obstacles to using AML measures for tax compliance purposes. These include setting limits to national economic self-interests, vested interests, strict confidentiality rules, and lack of international cooperation. Countries should not be allowed to become safe havens for money launderers and tax criminals, regardless of whether these are nationals or foreigners. International standards, peer reviews, listing processes, as well as an active civil society play a very important role in exerting the necessary pressure and facilitating transparency and public accountability. Private sector initiatives such as the Environmental, Social, and Governance (ESG) initiative, could also be helpful in that regard.

**The circumstances surrounding the current economic slowdown could provide the political impetus that could bring a lasting change to greater leveraging of AML measures for tax purposes.** Countries should assess their practices and re-evaluate to what extent the interactions between their AML and tax frameworks are already utilized. As argued in this paper, exploring the synergies between the two frameworks could help improve tax compliance and possibly mobilize domestic revenues without the need to raise taxes, as well as avoid redundancies across the two systems, thereby strengthening their overall integrity. Ensuring financial integrity is an important component of financial and monetary stability, and thus it is macro-critical.

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<sup>126</sup> Arguably, some countries, such as the US, were able to achieve a significant convergence even without the tax crimes being designated as predicate offenses to money laundering (see section III.B above).



## Annex I. List of selected AML measures relevant to tax compliance

Annex Table. Selected AML measures relevant to tax compliance

	AML measures	Relevancy to tax framework
Formalization	<ol style="list-style-type: none"> <li>1. CDD measures relating to identification and verification of customers, their proxies, and beneficial owners, including understanding of the nature of business, its ownership and control structure, as well as ongoing monitoring of transactions and the business relationship</li> <li>2. Record keeping obligations under CDD</li> <li>3. Beneficial ownership registries and other national measures aimed at ensuring entity transparency</li> <li>4. Country-wide bank account registries</li> </ol>	<ul style="list-style-type: none"> <li>✓ Identifying taxpayers</li> <li>✓ Extending visibility over potentially taxable income, assets, and businesses</li> <li>✓ Monitoring integrity, activities, and compliance of a wide range of businesses and professions that have tax obligations and can be a source of relevant tax information regarding their customers</li> </ul>
Detection	<ol style="list-style-type: none"> <li>5. CDD measures relating to identification and filing of suspicious transactions and activity reports</li> <li>6. Reporting of large cash transactions, cross-border movements of currency, and wire transfers</li> <li>7. Identification and analysis of assets, capital flows, and financial transactions carried out by the FIUs</li> </ol>	<ul style="list-style-type: none"> <li>✓ Helping detect tax offenses</li> <li>✓ Targeting tax audits</li> <li>✓ Assessing risks and feeding into taxpayer risk profiles and pending tax investigations</li> </ul>
Enforcement	<ol style="list-style-type: none"> <li>8. Extended investigative and accountability framework covering not just the tax criminals but also the facilitating services of obliged entities, and other accomplices such as relatives, associates, and advisers</li> <li>9. Special investigative techniques</li> <li>10. Legal measures enabling freezing and seizure of laundered property and its instrumentalities</li> <li>11. EDD measures to help tackle corruption of PEPs, including tax administration officials</li> <li>12. Extended statute of limitations</li> <li>13. Formal and informal international measures facilitating wide international cooperation</li> </ol>	<ul style="list-style-type: none"> <li>✓ Broadening the investigative powers and collecting additional information (e.g., the ability to question and hold accountable a wide range of persons and availability of special investigative techniques, where not otherwise available)</li> <li>✓ Securing collection of taxes through freezing and seizing orders</li> <li>✓ Tackling of corruption at the tax administration (e.g., source of wealth verification)</li> <li>✓ Accessing a wide range of international cooperation instruments and measures, including in the area of tax recovery</li> </ul>

	AML measures	Relevancy to tax framework
<b>Deterrence</b>	<p>14. Increased transparency over financial transactions and professional services, including supervision of compliance with AML controls by obliged entities</p> <p>15. Sanctions, including possible imprisonment</p> <p>16. Civil and criminal sanctions for facilitating money laundering related to illegal tax savings</p> <p>17. Confiscation of the laundered assets, funds, and instrumentalities</p>	<p>✓ Increasing costs and risks relating to access to the formal economy and professional services through greater transparency and supervision of the implementation of AML controls by obliged entities</p> <p>✓ Dissuading potential offenders, facilitating intermediaries, and other accomplices through the prospect of high sanctions, including possible imprisonment</p> <p>✓ Recouping unpaid taxes through confiscation measures</p>

## Annex II. Egmont Group best practices on AML and tax cooperation

### Annex Box. Egmont Group best practices on AML and tax cooperation

The below best practices were published by the Egmont Group in July 2020 and provide a list of non-exhaustive recommended practices on enhancing FIU's detection capacities of money laundering of illicit tax savings and fostering information exchange with tax authorities (Egmont Group, 2020).

#### 1. Facilitate effective cooperation between FIUs and tax authorities at the national level

- Improve the relationship between tax authorities and the FIU at national level:
  - Establish formal or informal agreement(s) between the FIU and tax authorities (e.g., Memorandum of Understanding).
  - Promote public-public and public-private agreements at the national level.
  - Facilitate the presence of a liaison officer or secondments both in the FIU and in the tax authority.
- Provide access to information (including tax declaration, immovable property, etc.):
  - Indirect access to tax administration's data without restriction is an important first step.
  - Direct access to tax data is more beneficial to all parties.
- Improve understanding and exploitation of tax information through:
  - The secondment of tax officers to the FIU or employment of officers with a background in tax-related matters at the FIU.
  - Arrangement of regular meetings between the FIU and the tax authorities.
  - Provision of technical training for FIU officials in tax affairs from tax practitioners and other professionals working in related areas.
- Train tax authority and FIU officers to better detect ML and to share quality information via:
  - Regular joint meetings between tax authorities and FIU personnel to build operational understanding of the subject matter.
  - Attendance at formal training sessions offered in-house or by other organizations.
  - Secondments / other operational activities to enable cross-skilling and active, direct, and intense exchange of knowledge in real time while fostering professional networks.
- Adopt a strategy to improve the quality of the information exchanges through:
  - Annual meetings between the head of FIU and the head of the tax authority, or high-level officers from both entities to define an annual strategy and shared priorities.
  - The implementation of a feedback process to improve the quality of information exchanged.

#### 2. Establish national strategies to enhance the fight against ML of serious tax crimes

- Legislative framework:
  - Tax authorities should be able to send information to the national FIU, and the FIU should be able to send relevant information to the national tax authorities to detect tax fraud.
  - The FIU can play an active role, in coordination with tax authorities, in advising the government on legislative modifications that would limit the opportunities to launder proceeds of tax crimes.
- Enabling FIUs to access to new data, such as:
  - A register of beneficial owners.
  - A register of domestic bank accounts (BO).<sup>127</sup>
  - The automatic exchange of information.
- Cooperation between multiple public actors:

<sup>127</sup> This register does not include bank statements. It only includes information on the nature of the account, the holder, the number, the bank, etc.

- FIU engagement with LEAs and Justice Department/Prosecutor's Office to encourage parallel financial investigations on ML of serious tax crimes.
- Formally notifying the FIU when the tax authority reports the alleged commission of a crime that falls within the FIU's mandate to the judiciary.
- Implementation of disruption strategies concerning shell/front companies through advanced typologies and the use of a BO register.
- Fostering public-public cooperation agreements between one or more competent authorities.
- Participation of FIUs, with other national competent authorities, to adopt and implement recommendations of national risk assessments.
- FIU engagement with private sector to increase the quality and quantity of STR/SAR reporting, which is key for analysis purposes can be improved through:
  - Training courses organized by competent authorities for reporting entities.
  - Effective feedback (including red flag indicators) and typologies should be provided on a regular basis by the FIU to the regulated private sector.
  - Promoting awareness, within financial institutions, about the use of international money transfers for the purpose of ML of proceeds of serious tax crimes.
  - Building trust with relevant actors of the Designated Non-Financial Businesses and Professionals (DNFBP) sector (tax advisors, auditors, accountants) which have access to particularly relevant information on tax matters.
  - Fostering Public-Private Cooperation agreements.
  - Close cooperation with academic partners to gain better academic knowledge of tax crime and seek new ways to enhance capabilities to fight against it.
- Employing the latest technologies and software products to analyze data more effectively and efficiently to enhance detection capacities of FIUs:
  - Utilize high quality technologies for FIU analysis, including data collection, data processing and case management, etc.
  - Analysis based on machine learning using existing identified data sets and typologies.

### **3. International cooperation between FIUs is essential to fight ML of serious tax crimes:**

- The ability to access tax related data on behalf of another FIU, even in the absence of previously submitted STR, and transmitting analyzed information to the requesting FIU is crucial.
- FIUs are encouraged to conduct multilateral sharing of information.
- FIUs could develop mechanisms to exchange their own experiences both at national and international level.
- FIUs should consider making spontaneous disseminations to foreign FIU counterparts.
- Improving diagonal cooperation in international ML-related cases can enable competent authorities to support existing cases more efficiently. For information exchange between non-FIU counterparts, it is recommended the request for information from a non-FIU authority to the FIU of another Egmont Group (EG) member is sent first to the national FIU which will then forward it to the intended recipient jurisdiction.
- Implementation of standardized feedback forms for all FIUs can enhance cooperation and provide an assessment of the usefulness of the information provided.
- Improving international cooperation between the EG, other multilateral bodies and academia fosters knowledge sharing and leverages common resources.
- FIUs, particularly in low or no-tax jurisdictions, should consider engaging both with their national (i.e., tax authorities) and international partners (i.e., FIUs) to implement tailored strategies to disrupt ML of serious tax crimes:
  - At the international level: (i) systematic and proactive engagement in exchanging relevant information with other FIUs is strongly required to ensure individuals and companies involved in such criminal schemes are adequately investigated, and (ii) conducting joint financial investigations between FIUs on cross-border typologies is particularly relevant in such scenarios.
  - At the national level: (i) FIUs of such jurisdictions should proactively engage in the development of strategic analyses related to ML of serious tax crimes, starting with a national risk assessment that adequately considers such threats, and (ii) these FIUs could play an active role to support their tax authority to enhance their capacity to fight ML of this type of crime.

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# PUBLICATIONS

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