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CHAPTER 10

# Exchange and Collaboration with Tax Administrations



**Corruption is intrinsically linked to tax crimes, as corrupt persons do not report their income from corrupt activities for tax purposes.** The Financial Action Task Force (FATF) includes tax crimes in the set of designated predicate offenses for money laundering purposes, explicitly recognizing the linkages between tax crimes and money laundering. Moreover, the extensive level of corruption related to tax has serious implications for government revenues and thus economic development, as indicated in Box 10.1.

**Inter-agency collaboration strengthens the efforts of tax administrations to combat corruption.** In its 2010<sup>1</sup> recommendations, the OECD advocated greater cooperation and better information sharing between different government agencies active in the fight against financial crimes both domestically and internationally. Agencies, including financial intelligence units (FIUs), anti-corruption units, police, customs authorities, and the public prosecutor's office are also involved in countering corruption. While most of the administration for prosecuting tax crimes related to corruption can be undertaken by tax authorities, they often require support in the form of information sourcing or expertise from other agencies who are also combating corruption. Entering into inter-agency collaboration may substantially enhance the efforts of a tax administration and other agencies combating corruption. Guidance on how this can be achieved is given in Case Study 20, along with references from Africa and other regions of the world.

**Investigating and prosecuting alleged corruption requires robust evidence, which is often scattered across agencies that are accustomed to working independently.** Data sharing is an initial gateway for collaboration. In general, inter-agency cooperation between tax administration, financial intelligence units

(FIUs), financial institutions, anti-corruption authorities, and other enforcement agencies can strengthen efforts to uncover cases of corruption through the sharing of information. The variety of expertise, skills, knowledge and experience offered by cooperation, not only provides joint teams with significant resources, but it also ensures that all offenses are properly identified, investigated and prosecuted. As the OECD has noted, many countries are looking at ways to enhance inter-agency cooperation so that they are working toward a common goal.<sup>2</sup>

**There are multiple benefits that can be gained from a joint effort to prosecute tax evasion and other financial crimes including:**

- Ensuring evidentiary standards are met for all charges through cooperation with the prosecuting authority;
- Access to mutual legal assistance from foreign law enforcement agencies;
- Access to specialized tribunals, including tax tribunals and anti-corruption tribunals, giving rise to a greater likelihood of success where the judicial process may take more time; and
- Prevention of any duplication of effort and any likelihood of compromising the actions of one agency.

Case Study 21 explores the basic requirements for effective prosecutions of financial crimes, the role of the tax administrations, and the limitations that must be overcome for them to happen. Experiences are highlighted from South Africa and Brazil.

## BOX 10.1

### The Extent of Corruption

"...in countries perceived to be less corrupt; the least corrupt governments collect 4 percent of GDP more in taxes than those at the same level of economic development with the highest levels of corruption....and if all countries were to reduce corruption in a similar way, they could gain \$1 trillion in lost tax revenues, or 1.25 percent of global GDP" - IMF

## CASE STUDY 20

## EXCHANGE AND COLLABORATION WITH TAX ADMINISTRATIONS

# Inter-agency Collaboration to Detect Corruption

## Introduction

The ability of a tax administration to share relevant information is often a key indicator of its effectiveness to proactively identify risks pertinent to its mandate. This requires mechanisms to ensure that law enforcement and other tax authorities have full access to accurate and up-to-date information. If adequately planned, inter-agency collaboration is one of the ways to combat corruption. From the perspective of developing countries, the limited capacity of tax administrations could be in part overcome in cooperation with other law enforcement agencies.

## Challenges encountered by tax administrations, customs, FIUs and other agencies

Challenges to effective cooperation between tax administration and other law enforcement agencies responsible for combating corruption and other financial crimes include the following:

- **Administrative challenges:** traditionally, the obstacles to coordination between government agencies stem from fundamental cultural differences and motivations of different agencies.

These include issues such as:

- » lack of interoperability among different IT systems, lack of secure email systems resulting in inability to send high-security material and widely differing software capabilities resulting in information transfer capacity limitations;
  - » each agency seeking to preserve its independence and autonomy;
  - » difficulty in synchronizing and coordinating organizational procedures and working approach;
  - » different organizational objectives among collaborating agencies;
  - » constituents bringing different expectations and pressures to bear on each agency;
  - » questions of who claims success for successful prosecutions; and
  - » the time period for pursuing cases.
- **Legal challenges:** these include specific restrictions and prohibitions, which may prevent an agency from obtaining access to relevant information from counterparty agencies.
  - **Operational barriers:** these include time-consuming or complicated procedures for obtaining information from another agency, a lack of awareness of the availability of information or other mechanisms for cooperation.
  - **Political challenges:** these include a lack of support for agencies to adopt the changes required to remove or reduce legal and operational barriers.

## Models for sharing information

A study by OECD on inter-agency cooperation identifies the following four types of cooperation among different agencies:<sup>3</sup>

### 1. Direct access to records and databases

Tax authorities or other law enforcement agencies involved in investigating and prosecuting financial crimes may grant direct access to their records and information stored on their databases to designated individuals within other agencies or tax authorities. This access may be for a wide range of purposes or restricted to specific cases or circumstances. Direct access has the advantage that an agency requiring information can search for the information directly and, in many cases, can obtain it in real time. For example, in Iceland, tax crime investigators within the Directorate of Tax Investigations have direct access to databases held by the tax administration. However, allowing direct access carries the risk of access to data for purposes other than those for which it was initially contemplated. Countries may, therefore, seek to introduce safeguards to protect the confidentiality of sensitive information, by taking measures such as restricting access to databases to a few nominated individuals and maintaining access logs.

### 2. Mandatory sharing of information

An agency may be required to provide specific categories of information spontaneously, without requiring a request to be made. It has the advantage that officials within the agency holding the information identify what is to be shared, and they are likely to have a greater understanding of the information in their records. However, for this to be effective, an agency must have clear rules and procedures in place to identify the information that must be shared. Spontaneous sharing may be straightforward where an obligation exists to provide all information of a particular class, but it is more complicated where the exercise of judgement must be made to identify information that would be relevant to an investigation. Further, by itself, this method does not allow officials investigating to specify the information required. However, it may facilitate the detection of previously unknown criminal activity.

### 3. Spontaneous sharing of information

An agency may have the ability to provide specific categories of information spontaneously but can exercise its discretion in deciding whether to do so. Where this operates well, it can be at least as effective as the previous method. Information is shared spontaneously, but officials in the agency holding the data can exercise their judgement as to what to share. This model is particularly useful when it is backed by close cooperative working arrangements and a good understanding by officials in each agency of the information requirements of the other agencies. Models for information sharing that allow discretion to be exercised require clear rules for how this is to be done. For example, decisions as to whether or not relevant information is to be shared may be limited to individuals in certain positions or levels of management. At the same time, guidelines may set out the factors that can be taken into account in making a decision. The effectiveness of this type of legal gateway is also based on the ability of officials to identify relevant information and their willingness to exercise discretion to provide information. However, where there is no previous experience of inter-agency cooperation, the benefits to both agencies of sharing information must be made clear, or there may be a danger that officials exercise their discretion and choose not to share valuable intelligence.

### 4. Sharing information on request

An agency may provide information only when specifically requested. This may be seen as the simplest of the four methods for sharing information, as there is less need for rules or mechanisms to identify information for sharing or provide access to records. It also has the advantage of allowing officials to specify precisely the information they require. In the context of an ongoing transaction where investigators have identified specific necessary information, this can be a valuable mechanism. However, in many cases, an agency may hold information that an investigator is not aware of. This may mean that the investigator is unable to request information or is only able to do so at a later stage when the value of the information may be reduced.

## Successful practices

### Several countries have introduced different models or operational mechanisms to allow agencies to work together in lieu of “legal gateways.”

All countries assessed by the OECD<sup>4</sup> have legal gateways in place to allow tax administrations to share information collected for the purpose of a civil tax audit or assessment with agencies conducting tax crime investigations and with the customs administration.<sup>5</sup> However, in many countries, FIUs, the police or the public prosecutor are not obliged to report information to the tax administration to evaluate taxes, and vice versa. **Belgium** and **Korea** explicitly prohibit the tax administration from sharing information related to non-tax crimes.<sup>6</sup> Fourteen countries assessed by the OECD prohibit the FIUs from obtaining tax information from the tax authority.<sup>7</sup> Thus, despite the legal gateways to enable information sharing amongst agencies, some countries have introduced different models or operational mechanisms to facilitate collaboration between agencies.

### A whole-of-government approach can be particularly effective.

Different government agencies collect and hold information on individuals, corporations and transactions, which can be directly related to the activities of other agencies in combating financial crime and tax evasion, including money generated from corruption. To be effective, a tax administration should establish cooperation with these law enforcement agencies, building a “whole of government approach” to improve the prevention and detection of financial offenses, leading to faster and more successful prosecutions, and increasing the probability of the recovery of the proceeds of corruption.<sup>8</sup> For example, **Canada** has established a whole-of-government working group, which includes the Canada Revenue Agency, the Public Prosecution Service of Canada, the Department of Justice, the Canada Border Services Agency, FINTRAC, the Royal Canadian Mounted Police and Public Safety Canada.<sup>9</sup> In the working group, Canada’s response to financial crime at large is discussed and opportunities to increase effectiveness are raised and studied, often resulting in recommendations for policy or legislative changes.

**Information sharing has to be balanced with confidentiality and the right to privacy.** Right to privacy, coupled with confidentiality requirements can also have an impact on the information sharing between

the tax administration and other law enforcement agencies. Different agencies share information under all types of cooperation. It is, however, critical to protect the confidentiality associated with the information in addition to the integrity of work carried out by other agencies. **Sweden** has enacted a new Data Disclosure Act, which provides for greater cooperation in tackling organized crime.<sup>10</sup> The law aims to facilitate the exchange of information between authorities that cooperate to prevent or detect certain forms of crime. The information sharing and data disclosure is limited to cases where the need for an effective exchange of information is particularly strong and grounds for the protection of privacy do not prevail over the benefits of disclosing information. Also, the information shared between agencies through legal gateways is at all times required to comply with the provisions of the Secrecy Act.

### Each country must design its own tailor-made model for inter-agency cooperation.

The international community has recognized the value of inter-agency cooperation. Many developed countries have initiated special programs based on inter-agency cooperation as an effective and efficient way of preventing, detecting, tracking and prosecuting corruption. A country should take into account its specific needs, the legal and organizational structure it has adopted and the particular risks that it faces in designing an appropriate model for inter-agency cooperation.

### Finland has adopted a centralized approach for combating the grey economy.<sup>11</sup>

It has established the Grey Economy Information Unit (GEIU) to promote the fight against the shadow economy by producing and disseminating reports about grey economy activities and how they may be controlled. The GEIU is a division of the Finland tax administration specifically established to work closely with other government agencies. It collects information from different government agencies regardless of existing confidentiality provisions. In preparing reports about grey economic activities, the GEIU has the right to receive, on request, necessary information held by other authorities, even where that information would not normally be available to the tax administration due to secrecy provisions.

### The Netherlands has opted for a cooperative approach for tackling money laundering.<sup>12</sup>

It has established the Financial Expertise Centre (FEC), which is a joint project between the National Tax and Customs Administration (NTCA), the Fiscal Intelligence and Investigation Service (which is structurally part of

the NTCA), the National Police, the General Intelligence and Security Service, the Public Prosecution Service, the Netherlands Financial Markets Authority, De Nederlandsche Bank, and the Ministry of Finance and Ministry of Security and Justice (who are involved in regulating and monitoring activity in the financial sector). The mission of the FEC is to monitor and strengthen the integrity of the financial sector, and tackle issues of financial integrity through inter-agency cooperation. This entails sharing information.

**Giving tax administrations access to suspicious transaction reports (STRs) would be beneficial in the fight against corruption.**

In many countries, there is no obligation on the police, public prosecutor or FIU to report information to the tax administration. In addition, many countries do not have legislation to allow the tax administration access to STRs. Allowing such access will have several benefits, including an improvement in the detection of money laundering offenses and proceeds from corruption, greater success in tax crime investigations and prosecutions, and an increase in the actual quantity of tax assessed and recovery of the proceeds of crime. Further, access by FIU to other information held by the tax administration, such as declared income, tax payments, real estate as well as other property, cross-border financial transactions, and the results of tax audits, will help to detect corruption, though this has not yet been widely implemented.

**In Italy, the FIU has direct access to the Account and Deposit Register (Anagrafe dei Conti) maintained by the tax administration.**<sup>13</sup>

The Account and Deposit Register includes information on accounts and financial transactions carried out by financial intermediaries, including banks, trust companies, brokerage companies and post offices. Legislation has also been passed, which allows the FIU direct access to the Tax Register (*Anagrafe Tributaria*). Further, tax officials must report to the FIU any suspicious transactions they encounter in the course of their work.

Other examples of information sharing include:

- **Estonia:**<sup>14</sup> The police and the Tax and Customs Board share information through a common intelligence database.
- **Iceland:**<sup>15</sup> Directorate of tax investigations conducting tax crime investigations has direct access to information contained in police databases.

- **Serbia:**<sup>16</sup> All state authorities and organizations, bodies of territorial autonomy and local government are required to report spontaneously to the tax administration all facts and information detected in the performance of their duties that are relevant to the assessment of tax liability.

## Inter-agency cooperation is increasing across the globe

**The concept of inter-agency cooperation is widespread among EU countries.**

One such initiative is the establishment of the **Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption**. This is a Croatian Agency, supervised by the state attorney's office but which also cooperates with the tax administration.<sup>17</sup> Similarly, the **Czech Republic** has established Tax Cobra, a cooperation of police, customs, and finance administration.<sup>18</sup> Using smart technology to triangulate data shared by agencies would make dissemination even more effective.

**In Southeast Asia, Malaysia has established the National Revenue Recovery Enforcement Team (NRRET) to improve cooperation between law enforcement agencies.**<sup>19</sup>

The NRRET, which is headed by the Attorney General, is an inter-agency initiative aimed at fighting tax crimes and other financial crimes. Its members include the tax administration, Company Commission Malaysia, Central Bank of Malaysia, Malaysian Anti-Corruption Commission and Royal Customs Department. Its role is to improve cooperation between law enforcement agencies to ensure a holistic approach to development, good governance, and combating corruption, as well as to assist agencies in fighting financial crimes. The NRRET also monitors the sharing of information and planning of joint operations among law enforcement agencies in high profile cases.

**In South Asia, India has set up the Economic Intelligence Council (EIC), which acts as the main body to ensure coordination among various agencies.**<sup>20</sup>

The EIC meets twice a year and holds extraordinary meetings as and when considered necessary. The EIC is mandated to discuss multiple aspects of intelligence relating to economic security and to develop a strategy for the effective collection and collation of intelligence and its dissemination to various law enforcement agencies. It reviews crucial

cases involving inter-agency coordination and approves mechanisms for improving such coordination. As far as sharing of information among multiple agencies is concerned, the EIC generally performs this through the meetings of its Regional Economic Intelligence Councils (REICs).

## Recommendations

- Establish a bilateral agreement or memorandum of understanding (MOU) to share information between the tax administration and agencies involved in detecting and preventing corruption.** This ensures a clear legal framework for any information sharing with the agencies concerned. MOUs typically contain details of the types of information that will be shared, the circumstances in which sharing will take place, and any restrictions on sharing information (e.g., the information may only be used for specified purposes). It may also include other terms agreed by the agencies, such as the format of any request for information, details of competent officials authorized to deal with requests, agreed notice periods and time limits, and a requirement for the agency receiving information to provide feedback on the results of investigations in which the information was used. For example, in **New Zealand**, based on an information sharing agreement between the Inland Revenue and the New Zealand Police, the tax administration can share information with the police for the prevention, detection or investigation of a serious crime, or for use as evidence of a serious crime. The Inland Revenue of New Zealand can also share taxpayer information with the police or other agencies in cases related to the administration of taxation, investigation of tax crimes, and the facilitation of asset recovery.
  - Establish a national task force.** The task force should be responsible for the timely collection and dissemination of relevant information to concerned agencies and for developing a framework that enables it to examine specific cases. This will help to identify a number of areas for further investigation across the full range of tax and economic crimes.
  - Ensure connectivity between agency databases.** Lack of interconnectivity of databases of different government agencies is the biggest issue faced
- while sharing information with different agencies tackling corruption. Blockchain technology may be an appropriate platform for developing a common database system accessible to the agencies concerned. The Blockchain system may also facilitate the consolidation of information received by more easily identifying transactions undertaken by the same entity but reported by different companies/individuals.<sup>21</sup> The **United States** Air Force is currently planning to test a Blockchain based database that will allow it to share documents internally as well as throughout the various branches of the Department of Defense and allied governments.<sup>22</sup>
  - Review limitations in tax treaties on the sharing of information with non-tax departments.** This can help in removing barriers to information sharing.
  - Conduct capacity building exercises to develop a culture of cooperation with different agencies working together.** For example, setting up joint task forces or seconding personnel to different agencies to work together is an effective way of enabling skills to be transferred while allowing personnel to build contacts with their counterparts in another agency.
  - Establish a system that balances the sharing of information with confidentiality.** A suitable system is one where the information can be shared only in cases where the need for an effective exchange of information is particularly strong and grounds for the protection of privacy do not prevail over the benefits of disclosing information. This helps to overcome the intense concerns about privacy and potential lack of trust among agencies.

### Example 1: Kenya's success with inter-agency cooperation to obtain and use data

Despite the myriad of laws in place to combat corruption, Kenya ranked 145<sup>th</sup> (out of 176 countries) on Transparency International's Corruption Perceptions Index in 2016. To deal with the corruption, Uhuru Kenyatta, the President of Kenya in 2016, directed the

Office of the Attorney General and the Department of Justice to undertake a thorough review of the legal, policy, and institutional framework for fighting corruption in Kenya. A taskforce<sup>23</sup> was formed to oversee the whole process, drawing its membership from all ministries, departments, and agencies charged with fighting corruption in Kenya. One notable issue identified by the taskforce was the lack of proper coordination among agencies, resulting in duplication of effort. Combating corruption was an uphill task due to the lack of a coordinated framework for reporting corruption, information gathering, intelligence sharing, and cooperation in investigation, among other areas.

### The birth of the multi-agency team

To tackle corruption and other economic crimes, Kenya established a multi-agency team (MAT)<sup>24</sup> to ensure cooperation and synergies among a number of agencies involved in combating corruption. The MAT was composed of the Kenya Revenue Authority; Ethics and Anti-corruption Commission (EACC); Office of the Director of Public Prosecutions; Directorate of Criminal Investigations; National Intelligence Service; Financial Reporting Centre; Asset Recovery Agency; and Office of the President.

### Terms of reference of the MAT

The MAT's terms of reference were:<sup>25</sup>

- To enhance cooperation, coordination and collaboration among the agencies;
- To engage other relevant agencies in order to enhance the effectiveness of the graft war;
- To identify resource needs for each agency and lobby for the same; and
- To develop effective communication strategies for awareness creation on the gains and achievements made in the fight against corruption.

### Successes of the MAT

MAT has been successful in enhancing cooperation and collaboration amongst the agencies and in providing real-time information gathering and intelligence sharing. As of October 2016, Kenya had 406 corruption and economic crime cases pending in court. Out of these, 98 involved high-profile personalities such as cabinet secretaries, members of parliament, and chief executive officers of parastatals and state agencies. Kenya secured several convictions with various penalties, including imprisonment, mandatory fines, and restitution of

property. One of the celebrated convictions involved a former member of parliament who was found guilty of 9 corruption counts relating to the loss of KSh4.5 million; the member of parliament, her husband, and 4 others were convicted and sentenced to payment of KSh24.95 million (about USD2.495 million) and 18 years imprisonment.<sup>26</sup> In respect to asset recovery, Kenya has so far traced and recovered assets worth KSh9.8 billion between 2005 and 2016. In March 2017, the President reported that approximately KSh3 billion had been recovered or preserved. As of November 16, 2016, there were 174 civil cases pending in court for recovery of illegally acquired assets worth KSh3 billion.<sup>27</sup> Further, in one interview, the EACC CEO Twalib Mbarak<sup>28</sup> revealed that "there are numerous governors, MPs, and county officials and top government officials on its radar."

### Challenges identified

Despite some great successes, MAT has faced a number of challenges:

- The biggest challenge is the lack of legality of some of MAT's operations, which have been challenged in the courts.
- Archaic court procedures with respect to acceptance of documentary evidence, which required the originator of the evidence to appear before the court, and at times injunctions that derailed the prosecution, have made the work of MAT difficult.<sup>29</sup>
- Politicization of the cases against high-ranked politicians has led to claims that MAT is discriminating against or favoring someone in the war on corruption.<sup>30</sup>
- Public awareness about the need for transparency is poor.

### Lessons learned

MAT has been largely successful in prosecuting corruption and recovering assets. Some of the lessons learned are:

- Individual institutions face capacity constraints and combining the collective expertise and information pool certainly helps in combating corruption.
- A central depository for data is needed, not only on asset recovery but also for economic crimes and corruption-related cases.
- The capacity of officers needs to be built continuously through training and cooperation with other similar bodies.



## Example 2: Nigeria's challenges in achieving inter-agency cooperation to obtain and use data

Nigeria is an interesting example of an African country where lack of effective inter-agency cooperation is responsible for inefficiency in detecting and prosecuting corruption. Until 1999, Nigeria was under military rule. In 1999, the former military head of state, Olusegun Obasanjo, was elected as a civilian president on the platform of addressing corruption. In 2015, Muhammadu Buhari (current President re-elected in 2019), from the All Progressive Congress, won the election on a platform where the fight against corruption featured prominently. Upon assuming office, he established the Presidential Advisory Committee on Anti-Corruption. Over the years, Nigeria established a range of anti-corruption institutions to address various aspects of the fight against corruption. These include the following key agencies:<sup>31</sup>

- **Institutions addressing corruption in public procurement:** Bureau of Public Procurement; Code of Conduct Bureau; and Code of Conduct Tribunal;
- **Institutions dealing with law enforcement:** Economic and Financial Crimes Commission; Nigerian Financial Intelligence Unit; Independent Corrupt Practices (and other Related Offenses) Commission; Special Control Unit on Money Laundering; and
- **Institutions dealing with public complaints, public information and government policy coordination:** Presidential Advisory Committee against Corruption; Public Complaints Commission; Technical Unit on Governance and Anti-Corruption Reform/Inter-Agency Task Team, Bureau of Public Service Reform.

The government also established a National Anti-Corruption Strategy and Action Plan for the period 2017–2021. Despite having multiple regulatory agencies, including the tax authority, the nation still ranked 144<sup>th</sup> (out of 180 countries) on Transparency International's Corruption Perceptions Index<sup>32</sup> and continues to grapple with corruption scandals amid calls for fiscal transparency and accountability in governance.

The situation may be the result of not only the inadequate capacities of existing institutions but also the lack of a coordinated approach and undue rivalry among the anti-corruption agencies, including the tax authorities. Some government departments were unwilling to share information and some responsibilities between agencies were duplicated.<sup>33</sup> Also, most government systems are manual and therefore, retrieval of information becomes difficult. This situation has proved to be counter-productive, resulting in a string of losses of cases brought against high-profile suspects. In what counted as a major setback to the government, cases against Mike Ozekhome, a Senior Advocate of Nigeria (SAN)<sup>34</sup>; Joe Agi, also a SAN; and Adeniyi Ademola, a Justice of the Federal High Court; and his wife, Olubowale, were all dismissed within a few days. In most of the cases, the judges cited lack of convincing prosecution.<sup>35</sup>

### Lessons learned

A number of lessons can be drawn for countries moving in a similar direction:

- Recognize the need for a clear policy and legal framework for cooperation;
- Develop a common technology platform to collect information and ensure interconnectivity of databases;
- Undertake capacity building exercises to train personnel on sharing information and building a culture of cooperation; and
- Establish a national agency responsible for overseeing the sharing of information between different agencies.