



PREDICATE OFFENCE FOR MONEY LAUNDERING

For 15 years, Billionaire Robert Smith concealed income and evaded taxes. He used foreign trusts, corporations and bank accounts to cheat the Internal Revenue Service (IRS). By cooperating in a case against Robert Brockman, Smith avoided prosecution. Brockman was accused of “using a web of Caribbean entities to hide \$2 billion in income in what prosecutors called the largest U.S. tax case ever against an individual.” Although Smith committed serious crimes, his non-prosecution agreement with federal prosecutors has steered him away from indictment. Nonetheless, the bombshell revelation will undoubtedly adversely affect his reputation and image as a brilliant investor and philanthropist.

“He signed an agreement admitting to making false filings with the IRS. Additionally, he agreed to pay more than \$139 million in back taxes, interest and penalties after a four-year investigation...” Mr. Smith’s case is a prime example of how individuals attempt to hide from tax authorities through elaborate tax schemes, often including cross-border transactions and multiple jurisdictions around the world.



Definition: The Organization for Economic Co-operation and Development (OECD): tax crime occurs when people intentionally avoid paying tax or claim money they are not entitled to.

Understanding the Nature of Tax Crime

Taxation affects all of us – whether as a taxpayer who is concerned with the prevailing effective tax rate(s) or as a consumer of goods and services provided through government funding.

A low tax rate serves the interest of taxpayers while revenue earned through taxation serves the interest of those who largely depend on services such as education and health care.

We therefore have a collective interest in ensuring that the systems of taxation are fair to all and dissuade any attempt by individuals and businesses to defraud the government’s treasury. The evolving techniques and sophistication of tax criminals mean that mechanisms to address this illegality must be standardized and consistently implemented.

Tax fraudsters use increasingly complex, transnational schemes that enable them to launder their illicit proceeds. Serious tax crimes have significant negative effects on governments’ abilities to use public finances for the benefit of society. Tax crimes are also sometimes interconnected with other financial crimes, like corruption. Therefore, the identification and combatting of tax crimes are key issues for tax authorities, Financial Intelligence Units (FIUs) and, more broadly, Law Enforcement Agencies (LEAs).

Our understanding of the roles of tax authorities must therefore move beyond simply the assessment and collection of taxes based on established or conventional rules and operating within departmental or national silos, to one of understanding its expanded role and playing its part in systematically identifying possible tax criminals.

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National Cooperation is paramount towards the identification, mitigation and prevention of threats that could pose serious risks to the stability of tax systems nationally and globally. The opening news headline in this newsletter highlights how individuals utilize sophisticated methodologies to avoid the payment of taxes to tax authorities. Efforts to combat such methodologies must therefore be intentional and strategic and include cross-border partnerships in the fight against tax crimes, and by extension, financial crimes.

Tax Crimes as a Predicate Offence for Money Laundering

In 2012, the Financial Action Task Force (FATF) included tax crimes (direct and indirect taxes) as a predicate offence for money laundering. It is estimated that billions of tax revenues are lost annually to criminals through tax fraud schemes. Transactions such as the underreporting of income, non-reporting of sales and over reporting of expenses are common methods. Additionally, the use of offshore companies, shell companies and charitable organizations also present a challenge to tax authorities. The FATF therefore urges its member jurisdictions to employ appropriate mechanisms to mitigate or deter individuals and businesses from benefiting from the proceeds of their tax crimes.

Tax authorities are privy to a wealth of information including business transactions, investments, property ownership and business contracts. Beyond this, they also maintain personal and corporate profiles and can request additional information from taxpayers and third parties in the execution of their duties to assess and collect taxes. The scope of its legislative powers places the tax authority in a unique position to identify possible transactions that would raise questions about taxpayers’ veracity and therefore become a starting point to unveiling serious tax crimes.

It is therefore important for tax authorities to share in the global fight against money laundering through their own efforts in identifying and reporting suspicious tax transactions to the FIU.

Tax Evasion Versus Tax Avoidance



Fostering A Culture of Compliance

Fostering a culture of compliance is critical to an effective program of Anti-Money Laundering (AML) within tax administrations. Timely and accurate information drives an effective AML program where deliberate attempts are made to collect, review, analyze, identify and report potential cases of tax fraud through continuous education and training. Knowledge and application of tax laws will not be sufficient to identify, investigate and deter tax crimes. This knowledge of tax legislation should be married with an understanding of the goals of an AML regime which is deliberate and systematic in its attempts to identify and report unusual or suspicious transactions. Ongoing education and training therefore become critical to this goal.

Such culture ensures that:

- ◆ High risk business activities are identified and appropriate control measures are in place to ensure adequate review;
- ◆ Adequate resources are provided for Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) efforts throughout the tax authority, including human capacity.
- ◆ A system of ongoing monitoring for the timely identification of suspicious and usual transactions is in place, including clearly outlined procedures for escalation of cases;
- ◆ Appropriate mechanisms are in place to capture and file suspicious transactions;
- ◆ Proper records on taxpayers' activities and transactions are maintained to support cases that are forwarded for further investigation; and
- ◆ Continuous and appropriate AML/CFT education and training are provided to staff.

In addition to assessing the seriousness of these types of transactions in relation to their dollar value, tax authorities should seek to continuously understand trends in taxpayer behaviour and extend risk profiling for money laundering based on the type of business activity and the type of transactions undertaken.

This understanding allows for suitable legislative amendments and/or the implementation of audit techniques to mitigate, discourage or prevent the crime. This can only be achieved through creating a culture which encourages and facilitates compliance with both tax and AML/CFT legislation. Knowledge and practical application of both should help to balance the need to assess and collect taxes and ensure that tax criminals are brought to justice for any attempts to defraud the government's treasury.



Some Indicators of Tax Crime and Money Laundering

- ◆ Standard of living inconsistent with income level/earnings;
- ◆ Questionable or unexplained circumstances surrounding a rapid rise in net worth;
- ◆ Significant assets on books without corresponding liability/debt on balance sheet;
- ◆ Loans among related parties that appear to have no real economic substance;
- ◆ High mortgages which cannot be financed with known/disclosed sources of income;
- ◆ Use of Shell companies (present unique risks);
- ◆ Complex business structures that make it difficult to identify beneficial owners;
- ◆ Inheritance from known criminals;
- ◆ Cash intensive businesses pose unique money laundering risks;
- ◆ Inability to verify receipts/invoices for large sums of money;
- ◆ Inability to verify a significant portion of expenses claimed on financial statements.;
- ◆ An unusual willingness to disclose significant amounts of income ;
- ◆ Significant related-party transactions without real business or economic substance; and
- ◆ Numerous attempts to restate and resubmit financial statements after significant errors were identified or explanations were sought for inconsistencies.



The Inland Revenue Department (IRD) is the named Competent Authority in St. Kitts and Nevis for Tax Matters which include Tax Crimes. A detailed listing of the various Tax Legislation can be found by accessing the following link.

[Tax Laws | Inland Revenue Department \(sknird.com\)](http://sknird.com)

References :

OECD "Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors"

Egmont Group. "Money Laundering of Serious Tax Crimes Enhancing Financial Intelligence Units' Detection Capacities and Fostering Information Exchange (Public Bulletin July 2020)

FATF. Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion PUBLIC HEARING ANTI-MONEY LAUNDERING AND TAX EVASION: WHO SETS THE RULES AND HOW?

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<https://www.bloomberg.com/news/articles/2020-10-15/billionaire-robert-smith-admits-he-cheated-on-taxes-for-15-years>