

**MONEY LAUNDERING AND TAX EVASION:
WHERE IS THE PREDICATE OFFENCE?**

PREPARED BY
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TAX EVASION AS A PREDICATE OFFENCE

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THE AGENDA

- THE CONTEXT MATTERS
- THE SHADES OF TAX EVASION
- MEASURING THE RISKS
- MITIGATING THE RISKS

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THE CONTEXT MATTERS: From Vienna and Palermo

- DISCLOSURE OF TAX AVOIDANCE SCHEMES – DOTAS – GAAR – ANTI-ABUSE
- DISCLOSURE OF BENEFICIAL OWNERSHIP
- EXCHANGE OF INFORMATION: CRS FATCA MLI-TIEA
- HARMFUL TAX PRACTICES
 - CRIMINALISATION OF TAX EVASION
 - INTERNATIONAL COOPERATION FOR ENFORCEMENT

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THE CONTEXT: FATF RECOMMENDATION 2012

- FATF recommendation 2012: Amid Global Forum on HTP
- “The inclusion of the tax evasion risk within the relevant body’s wider financial crime risk assessment”
- THE AMLCFT RISK POLICY
- SUSPICIOUS TRANSACTION REPORTING
- AUTHOR IN CRIMINAL CONDUCT: The expansion of the scope of predicate offence to include tax crime

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TAX EVASION: SO EVASIVE?

- “Evasion’ is a word which can be put in a number of different ways and has been. Dodging a requirement is one method of looking at it. Avoiding payment is another method of looking at it...”
- The term EVASION can include evasion by means of participation in fraud and lack of entitlement to a sum as a result of the loss of the right to deduct. – eg VAT cases
- TAX AS A DECLARATION/COMPUTATION/ASSESSMENT
- NATIONAL AND FOREIGN TAX SYSTEMS

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TAX EVASION: IS IT SO EVASIVE?

- For DOTAS: Tax advantage defined as: ‘a relief or increased relief from, or repayment or increased repayment of, income tax, or the avoidance or reduction of an assessment to income tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.’ per Lord Wilberforce in CIR v Parker [1966]

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TAX EVASION: THE MTIC FRAUD

- THE MISSING TRADER INTERCOMMUNITY FRAUD: Chain sales starting with a fraudulent Importer.
- VARIANT: The fraudster uses the VAT registration details of a genuine and innocent trader, who never sees the tax on the sale to B, with which the fraudster makes off. The effect of A not accounting for the tax to HMRC means that HMRC does not receive the tax that it should. The effect of the exportation at the end of the chain is that HMRC pays out a sum, which represents the VAT payable down the chain, without having received the major part of the overall VAT due, namely the amount due on the first intra-UK transaction between A and B. This amount is a profit to the fraudsters and a loss to the Revenue.

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TAX EVASION: SHOULD HAVE KNOWN TEST

- A Co entered into six deals in which it purchased televisions from suppliers in the UK and immediately or very shortly thereafter sold them to customers. Most of the sales were to customers registered for VAT in other EU countries or in Jersey. All of the purchases related to defaulting traders who charged VAT but then disappeared without accounting for it. The Revenue refused to repay the input tax claimed by Co. A in relation to its purchases of the televisions on the ground that the transactions were connected to the fraudulent evasion of VAT and that Co.A **knew** that the transactions were connected to fraud or, alternatively, **should have known** that they were so connected.

Test should-have-known: "Trader should have known that the transactions were fraudulent because that is the only reasonable explanation that can be given in the circumstances of the transactions."

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MORALITY AND TAXABILITY

"Moral turpitude is not a touchstone of taxability. The question, rather, is whether the taxpayer in fact received a statutory gain, profit or benefit."
Commissioner v Wilcox 327 U.S. 404 (1946).

"The Revenue laws happen to say that the profits made from trades have to be taxed, and they say: 'Give us the tax'. It is not the purpose in my judgement to say: 'but the same State that you represent has said they are unlawful: that is immaterial altogether'.
Mann v Nash (H M Inspector of Taxes) [1932] 1 KB 752, 16 TC 523

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FIAMLA – Section 3(1)

Any person who –

- (a) engages in a transaction; or receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius
- (a) any property which is, or represents, **the proceeds of any crime,**
- (a) where he suspects or has reasonable grounds for suspecting that the property is **derived or realised from any crime.**

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Section 147(1) Income Tax Act

147(1) Any person who wilfully and with intent to evade income tax -

- o (a) submits a false return of income; (b) gives any false information;
- o (c) prepares or maintains or authorises the preparation or maintenance of any false books, records or documents or falsifies or authorises the falsification of any books, records or documents;
- o (d) produces for examination any false books, records or documents;
- o (e) ... (f) ...; or (g) misleads or attempts to mislead the Director-General, in relation to any matter or thing affecting his own or any other person's liability to income tax.

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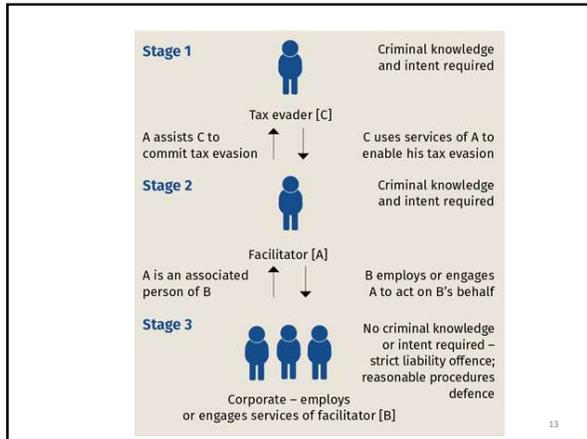
VALUE ADDED TAX Section 58

Any person who wilfully and with intent to evade VAT -

- (a) submits a return or a statement, which is false in any material particular;
- (b) makes a false claim for repayment under section 24;
- (c) gives any false information to the Director-General;
- (d) makes to the Director-General any statement which is false or incomplete in any material particular;
- (e) prepares or maintains or authorises any other person to prepare or maintain any false books, records, VAT invoices or other documents;
- (f) falsifies or authorises any other person to falsify any books, records, VAT invoices or other documents; or
- (g) misleads or attempts to mislead the Director-General in relation to any matter or thing affecting his own or any other person's liability to VAT.

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MITIGATING THE RISKS: THE CHALLENGE OF COMPLIANCE

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top level commitment
- Due diligence
- Communication (including training)
- Monitoring and review

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Sub-heading here if needed

In France
Fraude Fiscale est définie par le Code général des impôts:
 « quiconque s'est frauduleusement soustrait u a tenté de se soustraire frauduleusement à l'établissement ou au paiement total ou partiel des impôts, soit qu'il ait volontairement omis de faire sa déclaration dans les délais prescrits, soit qu'il ait volontairement dissimulé une part des sommes assujetties [...] »

IN ENGLAND:
 Common Law: Cheating the Revenue

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