



The Money Laundering (ML) Offence

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Ancillary Offences to the Money Laundering Offence

- ✓ There should be appropriate ancillary offences to ML in a country's framework. These include:
 - Participation in;
 - Association with or conspiracy to commit;
 - Attempt;
 - Aiding and abetting;
 - Facilitating;
 - Counselling the commission



Approaches to describing Predicate Offences to ML

There are three possible approaches (See Interpretive Note for Recommendation 3 (INR.3):

1. All crimes approach – where all crimes are predicate offences for ML.
2. Threshold approach – where the predicate offences for ML are a defined category of “serious offences”, or where they are all offences punishable by a maximum penalty of more than one year in prison or a minimum penalty of six months in prison.
3. List approach – there is a list of offences which are predicate offences for ML.

These approaches may also be combined.



Designated Categories of Predicate Offences – 2012 Revision

- ✓ For the list approach, there is a list of **21** designated categories of predicate offences in the FATF Glossary.
- ✓ As a minimum, countries should include a range of serious offences within each of the designated categories as predicate offences for ML.
- ✓ Tax crimes (related to direct taxes and indirect taxes) were included in the list of designated categories of predicate offenses to ML in 2012.
- ✓ Smuggling was clarified in relation to evading customs and excise duties.



Designated Categories of Predicate Offences – 2012 Revision

- ✓ Countries that use the list approach must ensure tax crimes are included in their list of predicate crimes.
- ✓ Countries can decide which tax crimes are included as serious offences for ML.
 - A range of tax crimes offences must be used as predicates.
- ✓ Requirement remains to apply the crime of ML to all serious offences.



Tax Crimes as Predicates– Consequences for FATF Recommendations

- ✓ There should be an Authority responsible for investigating and prosecuting tax crimes which should be considered as a competent authority.
 - Tax investigative/prosecutorial authorities meet the definition of a competent authority under the FATF Glossary (2012).
- ✓ National coordination and cooperation (Rec. 2)
 - All competent authorities should be included in domestic cooperation and coordination mechanisms.
- ✓ Provision of international cooperation to authorities in other countries (Recs. 36/40).
 - Tax authorities as competent authorities must fill this requirement.



Tax Crimes as Predicates– International Cooperation

- ✓ Mutual Legal Assistance (Rec. 37)
 - Countries should provide the widest possible range of mutual legal assistance in relation to ML, **associated predicate offences** and terrorist financing investigations, prosecutions, and related proceedings.
- ✓ Other forms of international cooperation (Rec. 40)
 - Countries should ensure that their competent authorities can provide the widest range of international cooperation in relation to ML, **associated predicate offences** and terrorist financing.
- ✓ Transparency and beneficial ownership of legal persons and arrangements (Recs. 24 and 25)
 - Countries should provide international cooperation in relation to beneficial ownership information on legal persons and arrangements – tax authorities may often have this information.



Tax Crimes as Predicates– Reporting Suspicious Transactions

- ✓ Reporting of Suspicious Transactions (Rec. 20)
 - If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU).
- ✓ “Criminal activity” in Rec. 20 refers to all criminal acts that would constitute a predicate offence for money laundering or, at a minimum, to those offences that would constitute a predicate offence, as required by Recommendation 3.
- ✓ Funds suspected to be the proceeds of tax crimes should therefore be reported.



ML Offence and Virtual Assets (VAs)

- ✓ Interpreting the Funds- or Value-Based Terms (see FATF Guidance for a Risk Based Approach to Virtual Assets and Virtual Asset Service Providers)
 - Countries should consider all funds- or value-based terms in the Recommendations, such as “property,” “proceeds,” “funds,” “funds or other assets,” and other “corresponding value,” as including VAs, such as in Rec. 3
- ✓ VAs should be considered “property,” regardless of its value once it directly represents the proceeds of crime.
- ✓ Proof that property is the proceeds of crime should not be dependent on a person being convicted of a predicate offence, including the case of VA-related proceeds.
 - ML offence measures should apply to proceeds of crime involving VAs.