

Principle 5 Put in place an organisational structure with defined responsibilities

A Jurisdiction should have an organisational model with defined responsibilities for fighting tax crime and other financial crime.

Introduction

81. A range of organisational models exist for allocating the responsibilities for investigating and prosecuting tax crimes. The model adopted in a particular jurisdiction is likely to take into account the jurisdiction's history, its general structure of law enforcement and its legal system.

82. Having a clear organisational model is important because it will allow for efficient allocation of responsibilities, which can reduce the risk of duplication of efforts and gaps in law enforcement. A clear organisational structure is also important as it allows for greater transparency and accountability for the use of resources and deployment of strategies. The organisational structure should ensure that the agency responsible for the investigation and prosecution of tax crimes is independent of personal or political interests, and is also held accountable for exercising its functions with fairness and integrity.

83. Understanding the particular organisational structure that is in place in the jurisdiction is important because it will inform how a jurisdiction can best implement a number of the other Global Principles. For example, the organisational structure will affect the design of the overall compliance strategy, the range of investigatory powers that should be granted, allocating the appropriate amount of resources, and devising strategies for inter-agency co-operation and international co-operation.

Table 5.1. Four general organisational models

General Organisational Models for Investigating Tax Crimes			
Model 1	Model 2	Model 3	Model 4
The tax administration has responsibility for directing and conducting investigations, often through a specialist criminal investigations division. The public prosecutor's office does not have a direct role in investigations, though a prosecutor may provide advice to investigators with respect to matters such as legal process and the laws of evidence.	The tax administration has responsibility for conducting investigations, under the direction of the public prosecutor or, exceptionally, examining judges.	A specialist tax agency, under the supervision of the Ministry of Finance but outside the tax administration, has responsibility for conducting investigations, which may involve public prosecutors.	The police or public prosecutor has responsibility for conducting investigations.

84. However, in some jurisdictions a combination of models may be used depending on the circumstances of the case, or another model altogether may be in place.

Box 5.1. A new Tax Crime Unit in Colombia

Colombia's National Directorate of Taxes and Customs (DIAN) is a participant in the OECD-UNDP pilot project "Tax Inspectors Without Borders for Criminal Investigation" (TIWB-CI). TIWB-CI aims to build capacity in participating jurisdictions to help fight tax crimes more effectively. As part of this programme, a self-assessment exercise was conducted through the OECD's "Tax Crime Investigation Maturity Model", to ascertain the gaps in current capacity. The Action Plan prepared by the OECD, following the self-assessment process, recommended the creation of a new tax crime investigation unit within DIAN to address governance gaps and institutional shortcomings.

Following this, Colombia issued Decree 1742 of 22 December 2020, creating a new tax crime unit within DIAN. This new unit will be in charge of reporting suspicions of crimes, including tax evasion, fraud and smuggling, to the law enforcement agency, participate in joint investigative teams, and engage in domestic and cross-border exchanges of information for criminal investigation purposes.

85. Whichever organisational model is used, it is important that the agency or agencies responsible for investigating and prosecuting tax crimes have clearly defined responsibilities. This will help to ensure that responsibility for all aspects of fighting tax crimes are clearly designated, as well as to reduce the possibility of inefficient duplication of responsibilities. This should be accompanied by clear governance arrangements (such as clear decision-making responsibility, accountability and supervision), and the appropriate investigative powers (see Principle 3) and adequate resources (see Principle 6). The organisational structure should also be clearly aligned with the models for inter-agency co-operation (see Principle 8).

86. For more information, including on the organisational models used by customs, AML, anti-corruption and other law enforcement authorities, see the OECD (2017), *Effective Inter-agency Co-operation in Fighting Tax Crimes and Other Financial Crimes*, Third Edition (OECD, 2017^[1]).

References

- OECD (2017), *Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition*, OECD Publishing, Paris, <http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm>. [1]



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