

VIRTEU

VAT fraud: Interdisciplinary Research on Tax crimes in the European Union

E-Technical Paper

Countering Tax Crime and Corruption: Select Recommendation for Law Enforcement Officials

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VIRTEU

*Vat fraud: Interdisciplinary Research on Tax crimes in the European Union
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COUNTERING TAX CRIMES AND CORRUPTION: RECOMMENDATIONS FOR LAW ENFORCEMENT OFFICIALS

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Introduction

VIRTEU (www.virteu.com) represents an innovative and high-profile legal research project comprising both an interdisciplinary and a comparative approach. It aims at exploring the interconnections between tax crimes and corruption so as to unravel the intimate relationships that exist between fraudulent and corrupt practices in the area of taxation with a focus on VAT fraud, which poses a direct threat to the European Union's financial interests.

This technical paper has been produced for law enforcement officials and will be distributed in an electronic format to the most relevant authorities and stakeholders in the fight against tax crimes and corruption. Following two years of comprehensive research with a diverse range of international experts and stakeholders, this technical paper provides the opportunity to outline some key challenges identified by the core research team, and provide a range of practical responses in order to meaningfully address barriers to tackling aspects of both tax crimes and corruption.

VIRTEU is funded by the European Union under the HERCULE III program, and has been conducted by an international consortium coordinated by the Centre for Financial and Corporate Integrity at Coventry University, and the Manchester Metropolitan University Law School (UK).

VIRTEU's Core Research Team comprises:

- Principal Investigator – Dr. Costantino Grasso;
- Co-Investigator - Dr. Lorenzo Pasculli, and;
- Research Associate - Stephen Holden.

Objectives

Principally, VIRTEU seeks to explore the phenomena of tax crimes and corruption before exploring the complex interconnections between the two, in addition to considering both the preventative, and reactive, responses by the appropriate authorities. In pursuit of these objectives, the project has provided special attention to six specific European jurisdictions: Bulgaria, Denmark, Greece, Italy, the Netherlands, and the United Kingdom.

The focus of the project is two-fold, as it concerns:

- a) **The interconnections between causes and forms of manifestations** of tax crime and corruption.
- b) **The various strategies to counter tax crimes and corrupt practices** (such as prevention, investigations, enforcement, sanctions, recoveries, and remedies) **and relevant shortcomings**; as well as how they intersect.



The project aims at strengthening the action of law enforcement officials involved in the protection of the EU and Member States' financial interests through the acquisition of new skills and knowledge, and fostering increased awareness of tax fraud risk indicators and the EU anti-fraud policy priorities.

Research Approach

The project relies on an **interdisciplinary and comparative approach** to better address the multifaceted issues raised by the intersections between tax crime and corruption, and the relevant regulation in different jurisdictions. The **Core Research Team** has drawn upon the specialized knowledge of a large pool of experts from different disciplinary areas (including law, criminology, finance, political science and international relations, business ethics, economics, journalism, and policing), and from different countries both within and external to the six selected jurisdictions.

Moreover, to facilitate the **production of knowledge** gathered from a range of multiple stakeholders, the research team has established a lasting collaboration with high-level academics and experts from various institutions around Europe and other countries. In particular, the project enjoys the support of;

- i) Special Advisers, who are world-leading academics having extensive expertise in specific areas of knowledge relevant to the project.
- ii) Leading Experts who are high-level specialists with established expertise in special areas of knowledge as so to ensure an interdisciplinary approach to the research or in the functioning of the domestic legal systems on which the project focuses
- iii) Research Associates, experts who can contribute to the project by (a) analyzing a specific research topic of particular relevance for the purposes of the project, (b) enhancing the interdisciplinary approach with insights from an additional scientific discipline, or (c) expanding the comparative analysis to a jurisdiction that is not directly covered by the project;
- iv) Impact Partners, a partnership of organizations will provide the Core Research Team with valuable advice on how to enhance the impact of the research.

Moreover, through national workshops and other events including roundtables and conferences, the Core Research Team has brought together experts from a range of diverse professional backgrounds, including academia, private practice, NGOs, and the public sector (e.g., prosecuting and enforcement authorities and tax agencies).

Research Methods

General Exploration of the Phenomena

Resultant of the high level of phenomenological complexity of the criminal conceptualizations investigated, and most relevantly the interconnections between them, it has been necessary to conduct a wide-scope analysis of the salient subject matter from different perspectives, and therefore to adopt a multidisciplinary approach.

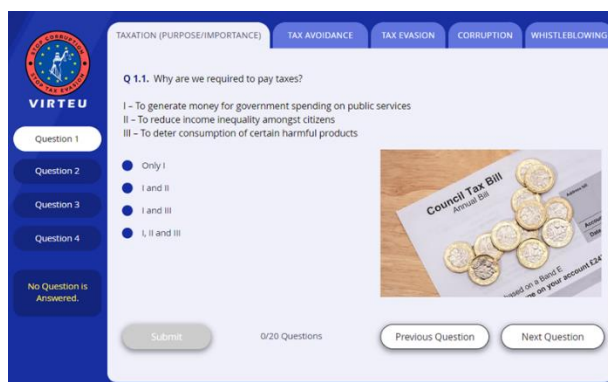
In order to do that, the VIRTEU methodology includes a multifaceted strategy that brings together different expertise gained through a series of research collaborations and scientific events including;

- **Desk Research and Literature Review**
- **Leading National Subject Reports**
- **Research Associate Reports**
- **International Roundtables**
- **International Symposium**
- **Online Survey**
- **Two-Day International Conference**
- **National Workshops**

All the documents produced over the course of the research project as well as all the video recordings of the events organized under the umbrella of VIRTEU are available on The Corporate Crime Observatory, which serves as the long-term repository of the project outcomes: www.corporatecrime.co.uk

VIRTEU project we have produced an online quiz game focused on tax abuses, corruption, and whistleblowing.

The game, which has been conceived to be used for conducting a self-assessment of one's own level of awareness of these issues, may be used for training purposes, and it's adequate for practitioners. The game, which is **absolutely anonymous**, is **available for free online** may be accessed at the following link: www.corporatecrime.co.uk/about



Select Recommendations for Law Enforcement Officials

In order to first identify specific sectoral vulnerabilities that may result in tax crimes and corrupt practices, the project benefited from a multidisciplinary perspective where the core research team has drawn upon the specialized knowledge of a large pool of experts, including tax experts, lawyers, law enforcement, journalists, representatives of relevant NGOs, whistleblowers, academics, and other interested parties, and from different countries both within and external to the six selected jurisdictions.

Resultant of the high level of phenomenological complexity of the criminal conceptualizations investigated (i.e., tax crimes and corrupt practices), and most relevantly the interconnections between them, it has been necessary to conduct a wide-scope analysis of the salient subject matter from different perspectives, and therefore to adopt a multidisciplinary approach.

In order to do that, the VIRTEU methodology includes a multifaceted strategy that brings together different expertise gained through a series of research collaborations and scientific events including but not limited to reports from national subject leading experts, research associate reports providing tailored expertise, international round table events to promote knowledge-exchange on relevant topics, an international symposium devoted to the exploration of the role of professionals as enablers of economic crime, an online survey completed by experts having specific and relevant knowledge in the area of tax crimes and corruption, and a two-day final international conference.

Through this data collection process, the core research team has been able to identify a number of reoccurring themes and vulnerabilities which occur within several of the focus jurisdictions and more broadly internationally. Accordingly, the bulk of the identified problems and corresponding recommendations aim to address these identified repeated systematic vulnerabilities and are accompanied by a contemporary example of where the problem was located within the research activities of the projects.

In order to ensure the recommendations remain accessible and concise, each recommendation is accompanied by a singular example, however, it is important to note this does not represent the only instance of the issue being raised, or suggest that that particular issue is confined to any one state or territory, but rather, acts to simply provide greater contextualization of the matters being discussed while such findings remain emblematic throughout the various aspects of the project's outcomes.

PART 1: Knowledge and Awareness

Recommendation 1: Raising the Level of Awareness of Tax Abuses

Issue

Reflective of the inherent secrecy, the connection between tax crimes and corruption is an obscure phenomenon, and frequently the links between the forms of conduct are misunderstood, or missed entirely. This is in some part resultant of the huge expansion of tax evasion and tax avoidance practices, frequently supported by enablers of tax crimes such as specialist accountants and lawyers who work to exploit systematic vulnerabilities to taxation regimes, and therefore create a 'grey area' where there is ambiguity between tax crimes and tax avoidance. Similarly, corrupt practices are subtle, multifaceted, and take many forms that are not easy to detect. Frequently, subjecting powerful and influential individuals to such forms of scrutiny is problematic, and there are identified difficulties in speaking about such sensitive topics. In addition, whistleblowers play a crucial role in the detection and combating these forms of criminality, however, whistleblowers face significant risks of retaliation and often act without recognition as their role is frequently misunderstood.

Recommendation

As the forms and links between tax crimes and corruption, and the contribution of whistleblowers in combating these forms of conduct are not easily understood, it is of the utmost importance that authorities implement sufficient training in order to support the understanding and identification of these actions, and the important role of whistleblowers. In order to support these efforts, the **VIRTEU project has developed a training tool through the use of an interactive online game**. The game may support benchmarking knowledge, expanding participants' understandings, and exposing users to new concepts regarding these forms of crimes, and the subtle interconnections between them. The game is completely free to use, records no personal information, and makes is a valuable tool in the training of individuals in the fight against tax crimes and corruption. All relevant parties are encouraged to use it at both individual levels and for training and education purposes. The VIRTEU Quiz Game is accessible at the following link:

www.corporatecrime.co.uk/about

Evidence and Source

The phenomenon of tax crime is multifaceted and complex. A combination with other potential offenses such as money laundering and corruption is often present.

Baltas, Antonis (2021) VIRTEU National Workshop - Greece, Session 1 [Online]. Video recording at 33:22. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-greece>

The interconnections between fraudulent and corrupt practices involving the public administration are a very sensitive topic and it is very difficult to speak freely about them.

Stefanov, Ruslan (2021) VIRTEU National Workshop - Bulgaria, Session 2 [Online]. Video recording at 36:09. Available at: <https://www.corporatecrime.co.uk/virteu-workshop-bulgaria>.

Recommendation 2: Strengthening Tax Compliance Culture in Society

Issue

Identified drivers of tax crimes committed by members of the public include the lack of a clear and identifiable victim, the perception that tax crimes are not serious, and a belief that tax crimes and fraud are extremely common and widespread throughout society.

Each of these points is emblematic of a broader lack of public understanding regarding the operation of taxation systems as a whole, the societal harms caused through engaging in tax crimes, difficulty in identifying a range of direct benefits from taxation, especially indirect taxation such as VAT, and the perception that engagement in tax crimes and fraud is more widespread than in reality. Cumulatively, this results in a lack of societal expectation to act truthfully with regard to tax affairs. Accordingly, these issues are reflective of a lack of mandatory obligation for domestic authorities to undertake public information campaigns or training sessions in the area of anti-tax crimes to raise both citizens and staff members' awareness of the importance of the payment of taxes and of the adverse consequences that tax crimes exert on the society.

Recommendation

In order to make members of the public better aware of the impacts of tax crimes, including victims such as reduced essential public services and infrastructure from which we all benefit, it is recommended that tax authorities engage in **widescale public information campaigns and staff training sessions**.

Ideally, these campaigns would have a wide reach and applicability, for instance utilizing both traditional and modern media methods, and advertisements on public transport, and would be characterized by demonstrating the essential nature of tax systems. In addition, it would be supportive if such campaigns had significant longevity so as to alter the public perception and discourse of tax crimes in the long term. To provide funding and longevity to public information campaigns, systems would benefit from the introduction of regulations that embed the practice into the organizational culture as a means to educate and change public opinions, and therefore tax behaviors.

With regards to staff training sessions, these may raise awareness within the public sector institutions through targeted training sessions linked to matters such as tax abuses, fraud, responsible procurement, and transparency.

The sustainability of public information campaigns and training sessions would further gain benefit from tailored funding. Tax authorities should enter into a dialogue and lobby the central government in order to obtain a reliable, continuous and appropriate amount of funding.

Evidence and Source

In the Italian legal system does not exist a positive regulatory obligation in compelling institutions to promote non-restrictive preventative measures, for example, information campaigns and staff training sessions.

VIRTEU National Workshop - Italy, Session 1 [Online]. Video recording at 31:33. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

Recommendation 3: Countering Social Bias Against Indirect Taxation

Issue

Research has identified that on both a personal and organizational level, there are significantly different attitudes towards the moral obligation to forms of direct taxation, such as income tax, and forms of indirect taxation, such as VAT, with direct taxation seen as more important and beneficial to society. This stems from the perception that indirect taxes are levied unfairly amongst the poorer and wealthy, are of less importance, and are characterized by a misunderstanding of the benefits of indirect taxation. Consequentially, this may result in attempts to evade forms of indirect tax such as VAT and provide lower levels of social condemnation from peers for engaging in forms of tax fraud.

Recommendation

The public and organizational leaders would benefit from additional information regarding the importance of indirect taxation, the value it derives to society, and the impacts, both direct and indirect, of evasion or failure to pay appropriate levels of indirect taxes such as VAT.

To achieve this, tax authorities should conduct **information campaigns specifically aimed at raising the awareness of the importance and relevance of indirect taxation and more specifically VAT**, and of the adverse consequences that tax frauds generate on the markets and society more broadly. In doing so, citizens will gain an enhanced understanding of the benefit to society of indirect taxation, and consequently, there may provide for increased levels of social pressure to comply with the appropriate payment of indirect taxes.

Evidence and Source

Social condemnation and moral blame felt in regard to tax frauds or failure to pay direct taxes is much more significant than the one felt in relation to all those behaviors concerning indirect taxes, which somehow seem to entail a lesser social stigma due to the fact that, from the community's overall perspective, not paying tax obligations that are directly connected to your own income is considered in a different way from the behavior of who tries to get off scot-free for failure to pay VAT tax.

Molino, Pietro (2021) VIRTEU National Workshop - Italy, Session 1 [Online]. Video recording at 44:27. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

PART 2: Risks of Corrupt Practices in the Area of Taxation

Recommendation 4: Corruption Risks in Tax Compensation Schemes

Issue

Significant risks of corrupt practices emerge where there is the use of bespoke and very generous compensatory regimes to be applied to tariffs or tax burdens within certain sectors. Such tax arrangements are often adjudicated at the local level and provide for large tax deductions, thereby creating potential conflicts of interest to decision-makers where they are offered personal benefits in return for providing compensatory schemes, and reducing the tax burden of the involved parties.

Recommendation

Undertaking comprehensive **risk analysis to identify the areas and industries which are particularly susceptible to corrupt practices through bespoke tax arrangements**, and establish systems to detect instances where the level of taxation levied is irregular or disproportionate to the project. This process is twofold – firstly, in advance of the commencement of the project and during the planning stages, seek to detect any proposed irregularities or departures from expected practices which confer significant tax advantages to the organization in question. Make a cost-benefit to determine if the proposed agreement is in the public interest. Secondly, following the conclusion of the project, examine the scope of what has been delivered in practice, and consider the proportionality of the compensatory tariffs against this deliverable. In both instances, where the tax arrangements seem excessive or circumspect, then consider further investigation as a means to identify possible corruption.

Evidence and Source

Significant risks of corrupt practices are related to the possibility of compensating tariffs and taxation in the construction sector with the execution of urban development projects to obtain tax deductions relating to taxes owed to local authorities. We are talking about extremely large sums of money that are mostly adjudged at the local level in situations that are often characterized by conflicts of interests and that may lead, on the one hand, to corrupt practices (the Italian case law is full of examples) and, on the other, to a loss of revenue.

Bolis, Samuel (2021) VIRTEU National Workshop - Italy, Session 1 [Online]. Video recording at 38:29. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

Recommendation 5: Adequate Value of Property to Settle Debts

Issue

Although paying taxes with goods or properties isn't commonly allowed, where tax debts may be paid through the use of property or chattels, for example, houses, commercial property, artworks, vehicles, or similar, there may exist a discrepancy between the amount of tax owed, and the value of the property offered to settle the debt. In these instances, the property or items are valued at a significantly higher price or useability reality, whereby resulting in the tax authorities being unable to dispose of the property in a way that adequately satisfies the debt. Examples of these scenarios are the possibility of paying direct taxation transferring artworks in the Italian legal system and the possibility of paying taxes transferring real estate in Montenegro and Portugal.

Recommendation

In situations where states allow for property or chattels to be used in place of revenue or cash to settle tax debts, these issues may be avoided by undertaking **independent valuations prior to accepting the property in fulfillment of debt**, and freezing the tax debt and liability until such properties or chattels have been disposed of and the tax debt and associated costs sufficiently recovered. For example, using a reliable accountancy firm, which will be accountable in case of inaccurate assessment. This will prevent situations where should a person provide a house, vehicle, artworks, or otherwise in satisfaction of tax debt, the sale of the item does not cover the tax liability and the state is deprived of revenue to the benefit of the individual who is in debt.

Evidence and Source

In Montenegro, the possibility of the payment of tax debt with immovable property is provided by the Regulation on the Procedure for Collection of Tax Claims on Taxpayers' Assets ("Official Gazette of Montenegro", No. 058/17 of September 22, 2017). This right of the taxpayers gave rise to many controversial cases which were also the subject of an audit control of the State Audit Institution of Montenegro. Where the audit assessed the value of land and buildings and business premises, it emerged a discrepancy between the value of the tax debt repaid in this way and the value of the properties that had been delivered. In particular, the audit found that the properties that were taken over were unsuitable for the purpose they were accepted, which was the accommodation of public servants, in that they were basements, garages, unfinished spaces, and spaces that do not have a use permit. Also, on many occasions, there were in a very bad condition and probably the most economical solution to be adopted was demolition.

Final Report on the Audit of Success of Efficiency of Tax Debt Collection from the Property of the Taxpayer, Republic of Montenegro, Audit of 17.10.2016

Recommendation 6: Hidden Permanent (Business) Establishments

Issue

Organizations may act extraterritorially as a means of obscuring their permanent establishment in a third-party non-EU State. By registering their permanent place of business in a non-EU Member State, which is often characterized by low taxation and high levels of secrecy, and at the same time by hiding their permanent establishment in a neighboring EU Member State where they conduct primary profit generation (permanent establishment may be understood as when an enterprise entirely or partially exercises its activity on the State's territory), organizations are able to artificially shift profits to a lower tax state, and deprive the member state of valuable taxable income.

Recommendation

When relevant organizations register a business presence within areas that neighbor or are in the proximity to non-EU territories, especially those with low taxation and enhanced secrecy, this may provide an indication that the business requires **additional scrutiny in order to identify sources of income, and that profits are not being artificially shifted to low tax jurisdictions**. This may be supported by increased controls and checks at a regional level, whereby the relevant tax authority undertakes a risk assessment to identify areas that border or are in proximity to non-EU member states, in particular those categorized by low taxation and enhanced secrecy, and are susceptible to abuse of profit shifting mechanisms. This will act to both identify hidden permanent businesses, and discourage practices of this nature.

When relevant organizations establish a new presence in such identified regional territories, it would be appropriate to subject these to enhanced scrutiny as a means of preventing and identifying these types of conduct.

Evidence and Source

[In relation to the relevance of geographic profiling in tax crimes matters] in Northern Italy, especially in the area north of Milan, the proximity to Switzerland allows for the setting up of "hidden permanent (business) establishments" that operate abroad - predominantly in Switzerland but are attracted by the Italian territory for tax purposes.

Bolis, Samuel (2021) VIRTEU National Workshop - Italy, Session 1 [Online]. Video recording at 11:02. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

Recommendation 7: Risk of Collusion

Issue

In terms of corrupt practices involving tax professionals and tax officials, specific risks of collusion between members of the tax authority and tax professionals aimed at avoiding scrutiny for the tax affairs of third-party organizations have emerged. Following regular payments from organizations to tax professionals, such as accountants or lawyers, in order to obtain tax advice, the professionals may share these payments with corrupt members of the tax authority. Resultant of the illicit payments, individuals within the tax authority act to shield the tax professional and their client organizations from meaningful scrutiny, in-depth assessments, or audits of their tax arrangements. A low level of tax compliance verification activities from authorities in a given local area or region may be symptomatic of such a scenario of collusion.

Recommendation

A level of scrutiny or verification of tax compliance in a given local area or region, which is below average or not proportionate with the economic activities present in the area, should be considered a potential red flag and trigger controls. Where such a red flag is present and there are no other reasonable explanations for such level of scrutiny (e.g. lack of manpower or resources), it may be appropriate to undertake an **investigation aimed at identifying potential cases of collusion**. Reflective of their illicit nature, such practices are obscured and deliberately difficult to detect, such investigations would benefit from a range of evidence-gathering methods, including the ability to engage in intrusive surveillance, such as private communications interceptions.

Evidence and Source

Very recent investigations have unveiled an alarming level of systemic corruption that involved officials of the Italian Tax Authority [*Agenzia delle Entrate*] as well as professionals, including lawyers and accountants. Such collusion between tax officials and tax professionals led to a flaw in tax verification activity and undermined the competition among professionals in the area because only the professionals who were involved in these forms of systemic corruption were able to obtain benefits [from the tax authorities] for their clients. In some cases, these corrupt practices reached the point where professionals colluding with tax officials would actually cause tax problems for their clients without their knowledge in order to trigger a tax investigation that would generate ill-gotten gains.

Bolis, Samuel (2021) VIRTEU National Workshop - Italy, Session 2 [Online]. Video recording at 04:15. Available at:

<https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

PART 3: Undue Influence and Conflicts of Interests

Recommendation 8: Countering Revolving Door Situation

Issue

Throughout the course of the research, numerous instances of exchange of favors between investigators, regulators, politicians, prosecutors, and others involved in the enforcement of tax regulations against powerful corporate entities became apparent.

Commonly understood as the ‘revolving door’, such conduct can take numerous forms but may include behaviors such as informal understandings that leniency in prosecution, inadequate recovery of tax debts, the pursuit of low financial sanctions, or turning a blind eye to certain actions in return for high paying jobs or consultancy positions once the person has left the public authority.

These behaviors have become commonplace in many jurisdictions and result in not only significant harm to the health of the state against the public interest but also incentivize forms of law-breaking with an understanding that if discovered, the enforcement agencies and investigators may be persuaded to treat the matter with disproportionate clemency in return for the understanding of future highly lucrative work.

Recommendation

Where members of tax enforcement authorities suspect they are dealing with previous members of regulatory authorities who have taken up paid roles within organizations being investigated, or the persons involved in undertaking the investigation have previously worked for the tax authority or any other relevant public department, in the first instance it is necessary to **verify the existence of these potential conflicts of interests** that derive from the revolving door situation. Where such concerns emerge, and there is the suspicion that due to their connections these individuals may exert an undue influence upon the scope, dimensions, and results of the investigation or any resultant sanctions, the members of tax enforcement authorities should **seek advice from colleagues** circulating the information and enhancing in such a way the level of transparency and **make more senior public officials involved**. Where the potential undue influence is exerted from an individual that has a supervisory or directing role, members of tax authorities, should **escalate the issue to the above level of management** if existent and communicate the issue to oversight bodies.

Evidence and Source

Experts identified the need to examine the way the regulatory bodies are structured. The use of the revolving door may give rise to conflicts of interest and suspicions that regulators are under the control of the regulated, resulting in the corporate grantees coming through revolving doors. Such exchange of favors swings both ways as regulators are able to also go back to corporations after a time at a regulatory body, and they know who exactly to serve.

Sikka, Prem, ‘VIRTEU Roundtable "Institutional Corruption and Avoidance of Taxation"’. (*Corporate Crime Observatory*, 12 March 2021), Video recording at 47:18. Available at: <https://www.corporatecrime.co.uk/virteu-institutional-corruption>.

Recommendation 9: Undue Influence and Exchanges of Favours

Issue

Frequently, senior members of the government and senior members of corporations are extremely well connected through elite networks gained through education, social connections, club membership, or economic and power interdependencies. This level of proximity may give rise to an exchange of favours, whereby members of an organization may exert undue influence on regulatory actions and investigations, including having investigations halted or limited, or shaping the outcome of sanctions. Such concerns give rise to a significant conflict of interests when undertaking oversight or having influence over the bodies responsible for regulating the conduct of large organizations. See the European Commission report of 2013 “[Examining the links between organised crime and corruption](#)” at page 76.

Recommendation

In order to identify such conflicts of interest, tax agencies may wish to ascertain a sufficient lack of proximity between those with responsibilities for internal auditing, and those who advise on matters such as structuring tax arrangements, for example, ensuring the internal auditor does not also work for the same organization advising on tax matters. Giving rise to suspicions of conflicts of interest, it would be supportive to **assess the quantum of non-audit fees and the relative significance to the firm that employs the auditor or is connected with such a professional**. For example, if the firm connected with the auditor is paid multiple of the cost spent on auditing to provide tax advice, this may give rise to suspicion of conflicts of interest. In the absence of appropriate or applicable sanctions, tax officials and investigators may wish to **refer the matter to the official professional oversight body** of those involved, for example, the relevant BAR Association. These regulators are frequently empowered to undertake investigations on their members and require members to abide by a code of ethics having the option to sanction individuals and organizations for non-compliance. Such a referral would also incentivize the professional oversight bodies to take a more proactive role in assessing the respect of professional ethical standards and other regulations.

Evidence and Source

A specific vulnerability is represented by the potential conflict of interests in relation to the role of the internal auditors of the companies, who may also serve the role of tax consultants. In the Italian legal system, there is an incompatibility between the audit function and the continuous provision of professional services, and the involved tax professional could be disqualified as an auditor. However, in practice, such a prohibition may be easily circumvented. For instance, in associated firms, the role of the lawyers may be interchangeable so that when a tax consultant becomes a member of the Board of Auditors his/her colleagues of the same firm may continue to provide professional advice to the client.

Bolis, Samuel (2021) VIRTEU National Workshop - Italy, Session 2 [Online]. Video recording at 04:15. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

Recommendation 10: Conflicts of Interest in Internal Audits

Issue

Internal audit is widely recognized as a core function that is required within an organization to oversee, monitor, assess, and provide assurance across a wide range of financial and non-financial systems and structures. In particular, internal auditors should be effective in conducting risk-based internal auditing also aimed at unveiling potential tax abuses. However, in circumstances where an internal auditor is appointed, by the nature of the role they must hold specific expertise in the area of taxation. Resultant of this expertise, they may also be requested by the organization to provide advice on the best methods to arrange their tax affairs, however, this creates a significant conflict of interests between the responsibilities of the two roles and may disincentivize the conduction of proper audit functions. Taking into consideration that these are individual appointments, in order to avoid the outward appearance of a conflict of interest, organizations may opt to appoint a close colleague within the same department or corporate structure to provide tax advice, whereby creating the illusion of separation while in reality the internal auditor and tax planners work in a consortium.

Recommendation

In order to identify such conflicts of interest, tax agencies may wish to ascertain a sufficient lack of proximity between those with responsibilities for internal auditing and those who advise on matters such as structuring tax arrangements. Giving rise to suspicions of conflicts of interest, it would be supportive to assess the quantum of non-audit fees and the relative significance to the firm that employs the auditor or is connected with such a professional. For example, if the firm connected with the auditor is paid several times the cost spent on auditing to provide tax advice, this may give rise to suspicion of conflicts of interest. In the absence of appropriate or applicable sanctions, **tax officials and investigators may wish to refer the matter to the official professional oversight body** of those involved, for example, the relevant BAR Association. These regulators are frequently empowered to undertake investigations on their members and require members to abide by a code of ethics having the option to sanction individuals and organizations for non-compliance. Such a referral would also incentivize the professional oversight bodies to take a more proactive role in assessing the respect of professional ethical standards and other regulations.

Evidence and Source

A specific vulnerability is represented by the potential conflict of interests in relation to the role of the internal auditors of the companies, who may also serve the role of tax consultants. In the Italian legal system, there is an incompatibility between the audit function and the continuous provision of professional services, and the involved tax professional could be disqualified as an auditor. However, in practice, such a prohibition may be easily circumvented. For instance, in associated firms, the role of the lawyers may be interchangeable so that when a tax consultant becomes a member of the Board of Auditors his/her colleagues of the same firm may continue to provide professional advice to the client.

Bolis, Samuel (2021) VIRTEU National Workshop - Italy, Session 2 [Online]. Video recording at 04:15. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

Recommendation 11: Independence of Academic Experts

Issue

It has emerged that it is common practice for academic experts to work also as consultants for large private organizations such as accountancy and law firms, which advice on tax matters. Reflective of the inherent complexity of certain types of tax arrangements, it is also expected that courts may rely on academic experts to provide guidance on shedding light on or otherwise unraveling such intricate and opaque tax schemes.

When the academic expert who provides consultancy to private organizations is also requested to act as an expert witness in judicial proceedings, this may result in a conflict of interests where the independence of the witnesses testimony is impacted through the understanding a critical evaluation may harm potential future earnings as similar firms could see the expert as less favorable.

Recommendation

In instances where prosecutors or tax authorities require the use of expert witnesses, it would be beneficial to **assess if the involved academic has dual roles which may give rise to a broader industry conflict of interests**, outside of the more strict understanding of a conflict of interests with a specific organization. Following this undertaking, prosecutors should attempt to select expert witnesses who do not have this conflict of interests, this irrespective of their academic seniority.

Evidence and Source

There is a potential conflict of interests of academics in the area of tax law, who work for big accountancy firms, this could be problematic in court proceedings whenever there is the need for truly independent expert witnesses.

Pauwelussen, Josien (2021) VIRTEU National Workshop - The Netherlands, Session 2 [Online]. Video recording at 22:45. Available at: <https://www.corporatecrime.co.uk/virteu-workshop-netherlands>.

PART 4: Whistleblowing

Recommendation 12: Whistleblowing - Working and Social Relationships

Issue

In the public sector, reflective of the established hierarchical structure, when an individual makes a protected disclosure or blows the whistle regarding potential acts of corruption from within the department, frequently such disclosing persons face acts of retaliation, including being passed over for promotion, being fired, bullying, being reassigned to menial jobs, and being ostracized. In doing so, this actively discourages internal disclosures, thereby preventing the detection of institutional corruption, leaving corrupt parties unaccountable for their action, and empowering future acts of corruption through a deduced likelihood of discovery.

Recommendation

While many organizations have internal procedures in order to protect individuals making protected disclosures, retaliation still frequently occurs. Therefore, in order to encourage future disclosures of corruption, members of tax enforcement authorities should **be mindful and aware of the need to lend moral support to the disclosing person**, including ensuring that they are not subject to bullying or social reprisal. For example, act in a way to assure that they are not isolated either socially or within the working environment by being excluded from events and meetings, from general conversation, removed from collaborative forms of working, and their work and contributions continue to be recognized and appreciated.

Evidence and Source

In my position, the last thing I ever wanted to do was blow the whistle, I had everything to lose. It was never about political allegiances, it was always about doing the right thing, and the biggest thing that affects me to this day is that, after all these things have been proven years later, there remains no resolution. My life and my career have been destroyed, and I'm basically unhirable. A lot of negative press circulated, including a lot of false stories about me. For example, the lack of security clearance, or breaches of law, and there's no resolution to that.

Chmielewski, Kevin (2022) Whistling at the Fake International Roundtable "Disinformation and the Public Sector", Session 3 [Online]. Video recording at 07:44. Available at <https://www.corporatecrime.co.uk/whistling-at-the-fake-roundtable-public-sector>.

Recommendation 13: Whistleblowing – Cultural Barriers

Issue

Reflective on historical events and societal attitudes within certain cultures, there exist significant barriers towards whistleblowing that prevent reporting persons from disclosing corruption and tax crimes. These barriers are multi-faceted and cumulate in a climate of fear of reprisals and retaliation that discourages potential whistleblowers, thereby allowing offenders to operate despite an awareness of their conduct. Such cultures are at times born of historical experiences from authoritarian regimes, where informing authorities regarding illegality was seen as 'snitching' and morally questionable, as opposed to the modern understanding of the practice of uncovering significant wrongdoing in the public interest.

Recommendation

Where such cultures and societal attitudes exist, it is important that potential disclosing parties are aware that they would be supported and not suffer reprisals. In order to do so, organizations should **establish strong anti-retaliatory cultures** which support whistleblowers through clear and defined reporting systems that members are aware of, the ability to make anonymous reports, ensuring that disclosing parties are not required to make the report several times with continual escalation, and meaningfully ensuring that systems of protection are enforced. In addition, organizations should ensure that **periodic whistleblowing training** is conducted. Such training sessions should aim not only at explaining the critical importance of whistleblowing in order to tackle corrupt practices and tax crimes but also the importance of the practice to strengthen the integrity and transparency of the organization. In doing so, the training will contribute towards a shift in organizational and societal attitudes whereby members recognize protected disclosures as a means of calling out wrongdoing that harms the organization, as opposed to an act of disloyalty to the organization.

Evidence and Source

Notwithstanding the establishment of the "Dutch House for Whistleblowers," there is still a climate of fear and uncertainty that discourages potential whistleblowers.

Lambregts, Martin (2021) VIRTEU National Workshop - The Netherlands, Session 2 [Online]. Video recording at 01:18:17. Available at: <https://www.corporatecrime.co.uk/virteu-workshop-netherlands>.

[Greece] has experienced civil war and has experienced the military regime; giving away people is considered social misbehavior.

Morozinis, Ioannis (2021) VIRTEU National Workshop - Greece, Session 2 [Online]. Video recording at 01:05:39. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-greece>

PART 5: Investigations and Best Practices

Recommendation 14: Intrusive Investigative Techniques

Issue

There is a reluctance in many jurisdictions for investigatory authorities to utilize a sufficiently broad range of investigatory tools available in the evidence-gathering process. More specifically, there is a disinclination to either use intrusive surveillance techniques that are common in tackling other forms of criminality, such as phone tapping. This is problematic where tax crimes are combined with corrupt practices, reflective of the inherent secrecy and lack of accurate record-keeping in institutional corruption. Accordingly, other investigatory methods such as document confiscation or external audits may fail to sufficiently identify instances of corruption.

Recommendation

Contemporarily, there exists a differing approach and attitude toward white-collar crimes such as corruption and tax offenses perpetrated by wealthy professionals and organizations, and what may be better understood as street crimes, such as drug trafficking, theft, or organized criminal enterprise, despite the inherent high cost to the state of the perpetrators of tax crimes and corruption. Accordingly, investigators are more likely to seek and be granted authorization for intrusive surveillance techniques for use against street crimes or organized criminal groups as opposed to white-collar crimes. In the fight against tax crimes and corruption such attitudes must be challenged, with a greater level of conceptualization of tax crimes and corruption as extremely harmful to the interests of the state, and as conducts that require a full range of investigatory techniques. This becomes especially pertinent when considering the inherent secrecy surrounding matters of corrupt practices. In order to ensure effectiveness, **when requesting authorization for intrusive surveillance measures investigators should be sufficiently prepared to justify the use of such tactics**, including ensuring a comprehensive understanding of the serious impact that actions such as tax crime and corruption have, and the extent of white-collar crimes.

Evidence and Source

Although phone-tapping is surely very effective in unveiling fraudulent and corrupt practices in the area of taxation, investigators and prosecutors are reluctant to use them for these crimes differently from other forms of criminality such as drug trafficking or robbery. On many occasions, the use of these instruments appears too resource-consuming and burdensome. Also, in several jurisdictions, these investigative techniques are accessible only to criminal prosecutors and police rather than investigators of tax authorities.

Pauwelussen, Josien (2021) VIRTEU National Workshop - The Netherlands, Session 2 [Online]. Video recording at 48:57. Available at: <https://www.corporatecrime.co.uk/virteu-workshop-netherlands>

Bolis, Samuel (2021) VIRTEU National Workshop - Italy, Session 1 [Online]. Video recording at 40:19. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-italy>.

Rachel Cook (2021) VIRTEU National Workshop - United Kingdom, Session [2] [Online]. Video recording at [48:02]. Available at: <https://www.corporatecrime.co.uk/virteu-workshop-uk>.

Recommendation 15: Criminal vs Civil Sanctions

Issue

Some jurisdictions reported that regardless of the availability of appropriate and adequate criminal sanctions against those committing tax offenses and instances of corruption, investigators and authorities are increasingly choosing to rely on civil or administrative sanctions.

The increased reliance upon non-criminal sanctions to address instances of tax crimes and corruption work to reinforce the perception that such conduct is not of particular seriousness or results in significant harm.

In addition, the implementation of non-criminal sanctions continues to fail to provide an adequate deterrence effect to others who considering engaging in similar conduct, who may gain the impression that if caught, they will simply be required to pay the correct tax and possibly a small fine. Resultantly, an overreliance on non-criminal approaches to addressing tax crime may act to incentivize attempts to exploit systematic vulnerabilities or engage in clear acts of illegality.

Recommendation

Where tax authorities may decide to proceed with a civil law case or a criminal charges, in instances where there are clear and self-evident attempts to exploit vulnerabilities in tax systems or blatant breaches of the established rules and norms, as opposed to circumstances of a genuine mistake, authorities should be mindful to **make appropriate use of criminal sanctions in order to address the conduct with a suitable and proportionate response and to provide a disincentive** to others considering a similar course of action.

Evidence and Source

With regards to criminal law, it was understood that adequate provisions exist, however, increasingly civil actions are being taken in place of criminal law, thereby blunting its potential impact.

(2022) VIRTEU International Final Conference, Day 2 - Panel 2. Video recording at 57:28.
Available at: <https://www.corporatecrime.co.uk/virteu-final-conference-day2-panel2>.

Recommendation 16: Information Sharing and Siloing

Issue

The identification, investigation, and prosecution of tax offenses and corruption are hampered by a lack of information sharing between both internal and external enforcement bodies. This lack of meaningful information sharing results in a fragmentation of intelligence whereby investigators and others are deprived of a larger understanding of the targets conduct, and embeds organizational cultures of siloing, or viewing intelligence as an asset to be traded, as opposed to a joint and coordinated response from enforcement agencies.

Recommendation

Utilize existing structures to **maximize information sharing with other national and international enforcement bodies**. This may include but not be limited to databases, information regarding the subjects of ongoing investigations, and routine requests for information regarding parallel investigations, or previous concerns raised.

Evidence and Source

The effective investigation and detection of tax crimes and corruption are somewhat hampered by a lack of meaningful information sharing, including access to databases, between various enforcement bodies, resulting in siloing of cases and a lack of cooperation.

(2022) VIRTEU International Final Conference, Day 2 - Panel 2. Video recording at 49:28. Available at: <https://www.corporatecrime.co.uk/virteu-final-conference-day2-panel2>.

Recommendation 17: Cooperation with Financial Intelligence Units

Issue

A common source of information for the prosecution of money laundering offenses is Suspicious Activity Reports (SAR), passed to Financial Intelligence Units from institutions such as banks. Money laundering by its nature typically contains predicate offenses of tax crimes and gives rise to reasonable suspicion of corruption, however, these offenses are very rarely investigated as a result of the SAR, providing a missed opportunity to identify means and methods of undertaking tax crimes, and forfeiting possible recovery of illicit funds related to tax offenses.

Recommendation

In order to tackle money laundering and tax offenses jointly, officials would benefit from establishing a stronger and permanent **collaboration with Financial Intelligence Units** whereby allowing officials to investigate the offenses concurrently.

Advantages of undertaking joint or simultaneous investigations with strong cooperation include utilizing the existing investigatory powers to tackle money laundering, which are frequently stronger than for other tax offenses, and increase the prospect of a successful prosecution reflective of the broader range of the investigation, whereby establishing a greater context of the offenses being conducted. In addition, if the offenses contain an element of corruption, this is more likely to be uncovered at an earlier stage.

Evidence and Source

Concerns raised by relevant bodies, such as banks, as to the existence of possible tax crimes are primarily viewed through the lens of money laundering as opposed to specific tax offenses and are therefore passed to the police in the first instance before the police make a decision to pass it to the tax authorities.

Olsen, Jesper (2022) VIRTEU National Workshop - Denmark, Session 1 [Online]. Video recording at 1:17:15. Available at: <https://www.corporatecrime.co.uk/virteu-workshop-denmark>.

Passas, Nikos (2021) VIRTEU National Workshop - Greece, Session 1 [Online]. Video recording at 19:29. Available at: <https://www.corporatecrime.co.uk/virteu-national-workshop-greece>

Recommendation 18: Enhanced Beneficial Ownership Transparency

tax justice
network

*Recommendation
prepared by Tax
Justice Network.*

Issue

Legal vehicles such as companies, partnerships, foundations, or trusts may engage in different types of tax abuse or allow individuals to engage in tax abuse while keeping their identities hidden. By the time authorities discover that an entity, e.g., a shell company, is issuing fake invoices or engaging in tax fraud, it may be too late to determine the identity of liable individuals.

To tackle this, countries all over the world have set up beneficial ownership registries to disclose the individuals who ultimately own, control, or benefit from companies, trusts, and other legal vehicles. In the EU, the anti-money laundering Directive (AMLD) has required countries to set up these beneficial ownership registries and make them publicly available. However, many loopholes affect effectiveness. First, the Directive covers only local legal persons, but not foreign ones. Second, high thresholds (e.g., more than 25% of ownership) make it very easy to distribute shareholdings so that no one is identified as a beneficial owner. This is problematic for investment funds, where it is unlikely for an end-investor to own more than 25% of a fund. Third, not all trusts have to register their beneficial owners.

Recommendation

All types of legal vehicles (companies, trusts, foundations, etc) should be required to **register their beneficial owners** whenever: (i) they are created according to local laws, (ii) they have assets or operations in the country, including providing goods or services, or (iii) have a local participant, eg a shareholder, trust beneficiary or director in the country. In addition, the beneficial ownership definition should apply low thresholds, or ideally no threshold at all. This way, authorities will have access to information on all the relevant legal vehicles and all the relevant beneficial owners who own, control, or benefit from these legal vehicles. **This information can be used after an investigation has started to determine who should be held responsible, as well as preventively, to run analytics and detect unknown relationships or red flags** (e.g., an individual with no declared income appearing as the owner of hundreds of companies).

Evidence and Source

Lack of beneficial ownership information costs billions of Euros to countries. One example refers to the cum-cum and cum-ex scandals, where different parties were pretending to be the same owner of shares to fraudulently obtain tax refunds. To address tax evasion, the OECD developed an automatic exchange of information, to ensure countries can identify the beneficial owners of offshore bank accounts.

Harari, Moran, et al, "[Ownership registration of different types of legal structures from an international comparative perspective. State of play of beneficial ownership - Update 2020](#)", Tax Justice Network, June 2020.

Knobel, Andres, "[Beneficial ownership in the investment industry. A strategy to roll back anonymous capital](#)", Tax Justice Network, October 2019.

Knobel, Andres, "[Transparency of asset and beneficial ownership information](#)", FACTI Panel Background Paper 4, July 2019.

VIRTEU

VAT fraud: Interdisciplinary Research on Tax crimes in the European Union

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The project explores the interconnections between tax crimes and corruption to unravel the intimate relationships that exist between fraudulent and corrupt practices in the area of taxation with a focus on VAT fraud, which poses a direct threat to the European Union's financial interests.

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