

Improving Co-operation Between Tax and Anti-Money Laundering Authorities

ACCESS BY TAX ADMINISTRATIONS
TO INFORMATION HELD BY
FINANCIAL INTELLIGENCE UNITS
FOR CRIMINAL AND CIVIL
PURPOSES



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Executive summary

Financial crimes, including tax crimes, threaten the strategic, political and economic interests of both developed and developing countries and undermine confidence in the global financial system.

In a world of limited resources and increasing complexity, government authorities must work closely together in a “whole of government” approach to best address these challenges. This applies, as much as anywhere, to the authorities combatting serious financial crimes such as tax crimes, bribery corruption, money laundering and terrorism financing. Through each authority pooling their knowledge and skills, the fight against financial crimes will be more effective. This interaction between each authority’s objectives has therefore become increasingly recognised.

There are potentially significant financial and efficiency gains to be realised by both tax administrations and money laundering authorities, namely the Financial Intelligence Unit (FIU), from increasing their levels of co-operation, information sharing and, more specifically, in developing an agreed approach to the analysis of Suspicious Transaction Reports (STRs). This is recognised in the whole of government approach where tax authorities have a key role in not only identifying tax evasion but also in identifying and reporting other suspected serious crimes such as bribery, corruption, money laundering and terrorism financing. However, tax authorities are hindered in this role as it is still not universally the norm for tax authorities to have access to STRs, and even where some level of access is provided significant barriers, both of a legislative and non-legislative nature, remain.

The content of this report is based on survey data obtained from 28 countries on the access of tax administrations to STRs for both criminal and civil matters and provides a picture of the current state of play. As the report sets out, there are various models to provide for tax administration access to STRs – each with particular strengths and challenges – broadly categorised as: full unfettered access to STRs by the tax administration (whether on a push or pull basis); joint decision-making on the use of STRs by the tax administration and the FIU; and models relying on the FIU to make the decision on

what should be shared with the tax authority. Ways to overcome the associated challenges with each model are suggested in the report.

The report moves on to highlight the potential benefits of sharing STRs and documents some of the different uses of STRs in relation to tax compliance. While STRs are primarily used for criminal purposes, increasing numbers of jurisdictions are realising significant benefits from also using STRs for civil purposes. However STRs are used, in order to ensure they are used as effectively as possible, it is critical to focus on policies and procedures as well as the legal framework for tax administrations and FIUs to work closely together on an ongoing basis and for clear communication strategies to be employed with reporting financial institutions and other reporting entities.

The report also explains the types of confidentiality requirements that will need to be considered and discusses how to remove barriers to closer co-operation, while respecting these confidentiality requirements. Finally, specific recommendations are made designed to enhance levels of co-operation and therefore increase the overall effectiveness of governments in the fight against tax evasion and financial crimes, including money laundering.

Recommendations

Given the role of tax administrations in identifying and reporting serious crimes, such as tax evasion, bribery, corruption, money laundering and terrorism financing under the whole of government approach, in order to maximise the effective use of STRs:

- subject to the necessary safeguards, tax administrations should have the fullest possible access to the STRs received by the FIU in their jurisdiction; and
- to achieve this, jurisdictions should look to not only provide the legislative framework to allow tax administration access to STRs but also look to ensure the operational structure and procedures to facilitate the maximum effectiveness in the use of STRs.

Introduction

Tax crimes, money laundering and other financial crimes such as bribery and corruption threaten the strategic, political and economic interests of both developed and developing countries. They also undermine citizens' confidence in their governments' ability to ensure taxpayers pay their taxes and deprive governments of much needed revenues.

In a world of limited resources and increasing complexity it is more important than ever that government authorities work together in a “whole of government” approach to pursue shared objectives. This is certainly the case in the area of financial crimes, where financial flows are increasingly complex and the previous divide between the authorities combatting financial crimes such as money laundering, terrorism financing, bribery and corruption and those tackling tax evasion is becoming increasingly blurred.

The whole of government approach to combatting financial crimes involves recognising that separate authorities do not operate in isolation. Officials in authorities including the tax administration, the customs administration, the Financial Intelligence Unit (FIU), the police and specialised criminal law enforcement authorities, the public prosecutor's office, and financial regulators recognise that the information, knowledge and skills required to most effectively combat financial crimes are often spread across several authorities.

Historically the worlds of the FIUs tasked with combatting financial crimes such as money laundering and terrorism financing and the tax administrations in charge of ensuring tax compliance were distinct. Each authority had its own information sources and used that information independently from the other. Over recent years, however, there has been an increasing recognition of the interaction between the objectives of FIUs and tax administrations and how they each hold information that might be used by the other authority in the pursuit of shared objectives, and their worlds have therefore been brought much closer together. This in no way alters the fact that the FIUs' primary function is to tackle money laundering and terrorism financing and that of the tax administration is to ensure tax compliance, but it acknowledges that by working more closely together each authority can better achieve their objectives.

This is recognised in the whole of government approach where tax authorities have a key role in not only identifying tax evasion but also in identifying and reporting other suspected serious crimes such as bribery, corruption, money laundering and terrorism financing.

That is why, in October 2010, the OECD Council's Recommendation "to Facilitate Co-operation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes" included a recommendation to establish "an effective legal and administrative framework and provide guidance to facilitate reporting by tax administrations of suspicions of serious crimes, including money laundering and terrorism financing, arising out of the performance of their duties, to the appropriate domestic law enforcement authorities."

Similar discussions took place in relation to how FIUs can assist in tackling tax crimes. A key moment in this discussion was in February 2012 when the Financial Action Task Force (FATF) revised the *International Standards on Combatting Money Laundering, the Financing of Terrorism and Proliferation* to include tax crimes to the list of predicate offences to money laundering.¹ Therefore in cases where a financial institution or other reporting entity knows or has reasonable grounds to suspect that any assets they hold are the proceeds of a tax crime then a Suspicious Transaction Report (STR) must be filed with the relevant FIU.

Soon after, in June 2012, the OECD published the first edition of the Rome report on *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes* (OECD 2012a). This Report identified effective co-operation between tax and anti-money laundering authorities as particularly important in the fight against financial crimes, and recommended that countries consider introducing rules (including legislative rules) for all authorities holding information relevant to the administration of taxes to make this information available to the tax administration. This would include STRs held by FIUs.

Despite this increased attention, as this report will show, tax authorities are often hindered in their ability to identify and report serious crimes due to a lack of access, or restricted access, to STRs. There remains more to be done to maximise the co-operation between tax authorities and FIUs. This need for even greater progress is reflected at the political level both internationally and domestically where there is still a high degree of focus on the issues of tax crimes, money laundering and terrorism financing.

¹ On page 112 of the FATF Recommendations (FATF, 2013), under designated categories of offences, tax crimes (related to direct taxes and indirect taxes) have been included.

It should be noted that in this paper the term STR is intended to also mean other similar reports of unusual transactions received or information held by FIUs, which could therefore also include Suspicious Activity Reports (or SARs) and Cash Transaction Reports (or CTRs, the reporting of cash movements according to pre-determined criteria). It could also include the summaries of the STRs prepared by the FIU.

Work of the Task Force on Tax Crimes and Other Crimes

The OECD Task Force on Tax Crimes and Other Crimes (TFTC) is mandated to improve co-operation between tax and law enforcement authorities, to improve the ability of tax administrations to identify, audit, investigate and disrupt tax crimes and other serious crimes, and to raise global awareness of the links between tax crimes and other serious crimes. In order to maximise the effectiveness in countering these activities, improved efforts to harness the capacity of different government authorities to work together to detect, deter and prosecute these crimes requires a whole-of-government approach.

The TFTC has consequently been working intensively on these issues for several years and this report, its findings and the associated recommendations reflect this work. The report is based on extensive country surveys on the access by tax administrations to STRs for different purposes, the first of which was in mid-2013. Based on the responses it was clear that while there are significant potential benefits from improving the access of tax administrations to STRs there are very differing levels of co-operation between different jurisdictions' FIUs and tax administrations, if any at all.

Consequently in 2014, the TFTC formed a project team composed of Argentina, Australia, Austria, Canada, Ireland, Japan, Korea, the Netherlands, the United Kingdom and the United States. The project team built on the pre-existing survey by updating the results and expanding the coverage of countries. A far more extensive survey designed to obtain a more granular understanding of the precise types of co-operation and the associated benefits was then completed by 9 of the 10 project team members and Italy, who requested to be included.

The results of the surveys confirm the wide range of practices between countries in terms of permitting the tax administration access to STRs for different purposes and the different models of co-operation that have been adopted. The results also illustrate the significant fiscal benefits that a number of countries have experienced and attributed to information contained in STRs or the FIU's analysis/summaries of STRs. The survey results suggest that although legal gateways to allow the tax administration access to STRs are beneficial, it is also critical for the tax administration to

engage in ongoing and active co-operation with the FIU, as well as the institutions required to file STRs under anti-money laundering legislation, if the full benefits of access to STR information are to be achieved.

Through combining the information collected through the various surveys this report reflects the responses from a diverse set of 28 countries from across the world.²

Of the respondents to the survey, approximately 80% of countries' tax administrations have some form of access to STRs for tackling tax crimes. This falls to just under 70% of countries when considering access in relation to civil matters. So, while it is by no means universal, it should be recognised that there is a significant number of countries where access to STRs has been provided to tax administrations. However, significant challenges remain along with missed opportunities to increase the effectiveness of the fight against financial crimes and non-compliance with taxes. This is not only the case in relation to the countries where there is currently no access but also for most of those countries where some access is already provided.

The survey responses show that the quality of the access to STRs that tax administrations have differs significantly between jurisdictions. In approximately 20% of countries tax administrations have direct access to STRs, a model of access that facilitates the maximum effectiveness in their use for identifying serious tax crimes. In many other jurisdictions however, while the broad legal framework provides for the possibility to access STRs, significant barriers often remain, whether legislative or procedural and access is therefore limited in practice. There are cases where legal gateways to access STRs exist but there is no obligation for the FIU to actually share STR information, as well as situations where access is only provided on request, meaning the tax administration must already have a certain level of suspicion in order to access the STR information. Other jurisdictions rely on the FIU spontaneously exchanging the information it considers relevant to the tax administration. This is the case with respect to approximately 60% of countries for criminal purposes and approximately 45% of countries for civil matters. These results show that more can be done by governments to maximise their effectiveness in tackling financial crimes and ensuring tax compliance by removing barriers to greater co-operation between FIUs and tax administrations as set out below.

² Australia, Austria, Belgium, Canada, Chile, Colombia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Latvia, Malaysia, the Netherlands, New Zealand, Portugal, Singapore, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States.

Benefits of FIUs sharing STRs with tax administrations

Tax administrations that have access to STRs reported significant benefits from that access. The main overarching benefits are an increase in their ability to identify a range of serious crimes as well as being able to access an additional source of information that can be used to ensure tax compliance.

What differentiates STRs from other information sources tax administrations use is the nature of the interactions being reported (for example, particular insight is achieved from what is essentially a private interaction between the subject and a reporting entity, without the presence of any authorities of the State). This adds a particular quality to STRs as a source of information, which provides insight and context into the dynamics of the data subject including identifying information, details of conversations, explanations and behaviours, which are critical components in identifying areas of potential non-compliance.

How this additional information fits into the jigsaw of the information sources the tax administration has can be very diverse, but includes bringing new cases to the attention of the tax administration and accelerating or providing a missing link to existing or ongoing cases. STRs also provide additional and new ways to assess risks and target tax audits, which can increase the deterrence effect, uncover previously unassessed liabilities or the recovery of additional proceeds from crime. This additional information can also therefore contribute to better risk profiling and consequently potential resource savings, or at least allow existing resources to be focused more effectively.

Wider benefits are reported to be an additional warning system in relation to new emerging risks, the sharing of STRs catalysing more effective co-operation between the FIU and the tax administration more generally and better relationships and co-operation with the reporting entities that provide the STRs.

While quantifying the benefits of tax administrations having access to STRs and/or CTRs will always be very challenging given STRs are simply another information source that fits into a wider picture, some tax

administrations have been able to provide statistical information on the benefits of having access to STRs and/or CTRs. (Note: currency conversion rates are at the time of writing.)

- The Republic of Korea provides an interesting case study as the tax administration only recently obtained access to STRs for civil purposes (in November 2013 for civil cases and in 2001 for criminal cases). The Republic of Korea reported that KRW 367 billion (South Korean Won) of additional tax was assessed (the equivalent to approximately USD 337 million (US Dollars)) in 2013 as a result of, or facilitated by, STR information. In the first half of 2014 the Republic of Korea reported a record KRW 943 billion in tax assessed (the equivalent to approximately USD 865 million), as a result of extending STR and CTRs use to civil assessments.
- Between 2008 and 2013, in support of civil procedures, Australia reported a yearly low of AUD 131 million (Australian Dollars) (the equivalent to approximately USD 100 million) of additional tax assessed as a result of or facilitated by access to FIU information, which includes STRs and CTRs, and high of AUD 572 million (the equivalent to approximately USD 450 million respectively) in a single year.
- In 2012 in Austria 61 criminal tax prosecutions were facilitated by STRs and 4,483 CTRs were referred for civil actions.
- In 2012 Ireland assessed EUR 15 million (Euro) in tax (or approximately USD 16 million) and initiated one prosecution as a result of STR access.

Models of tax administration access to STRs

The survey results revealed several different models for making STRs available to tax administrations. While the models have necessarily been somewhat simplified to draw out the key differences to the approach being taken by countries, these can be broadly grouped under the three categories below:

- Unfettered independent tax administration access to STRs.
- Joint FIU and tax administration decision-making on allocation of STRs.
- FIU decision-making on allocation of STRs.

Under each of the models once a tax administration obtains access to STRs, whether they are available for use for identifying serious crimes including tax crimes or also for civil matters, varies depending on the local legislative context. Furthermore, even where access is permitted for civil purposes it is often, although not always, in a manner that is more restricted than the access for criminal purposes.

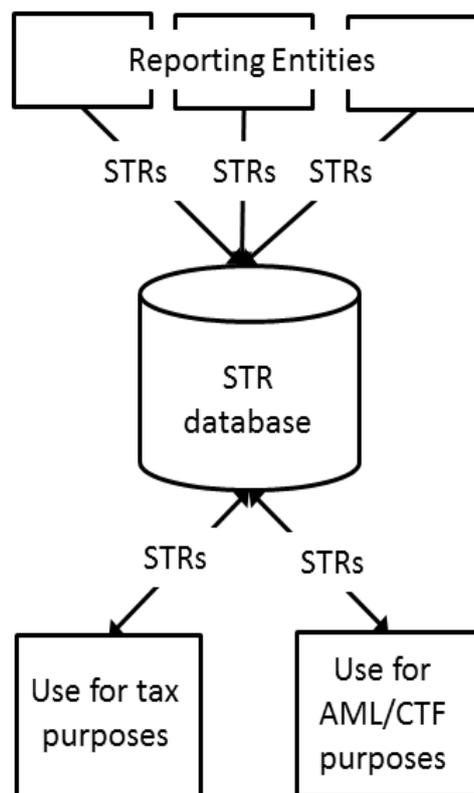
Furthermore, the legal and operational frameworks can differ between jurisdictions. In some jurisdictions there are legal requirements for certain authorities to act in particular ways (e.g. whether information provision is required or just facilitated) while in others the approach is more focused on operational practices with the domestic law providing more of a legislative framework for co-operation.

It should also be noted that under each model the communication between each authority does not necessarily end once either authority has obtained and begun using STR information. A key element to the benefits is the overarching close co-operation between the authorities and once either authority begins utilising STR information they may identify new information relevant to meeting the objectives of the other authority. It is therefore often the case that the engagement will be ongoing to ensure this new information is also shared, again further maximising the effectiveness in the fight against financial crimes including tax evasion.

Model 1: Unfettered independent tax administration access to STRs (the “unfettered access model”)

Under the unfettered access model (see Figure 1) both the FIU (for tackling serious crimes such as money laundering and terrorist financing) and the tax administration has equal opportunity to use STRs and can each make independent decisions about which cases to use and how.

Figure 1: Model 1 - the unfettered access model



This model has two key variants:

- **The location where the STR database is held:** The STR database may be held within the FIU, with the tax administration having unfettered access to the reports, or effectively jointly held by the tax administration and the FIU (with the tax administration sometimes even being a designated FIU itself).

- **The method of access to STRs by the tax administration:** In some cases the STRs are sent directly to the tax administration (the push model) and in others the tax administration can go to the database and retrieve any STRs it wishes (the pull model). There are also hybrid systems that allow for both methods of dissemination of STRs.

Strengths and challenges of the unfettered access model

Strengths

The key strength of the model is that it allows for the maximum possible flexibility in use of STRs by the tax administration and the FIU and does so in an efficient manner. Furthermore, by having both the tax administration and the FIU examining the STRs there is an increased chance of risks being identified, whether in relation to money laundering, terrorism financing or tax evasion etc. This model therefore provides the fullest opportunity for the benefits of sharing STRs to be maximised.

Challenges

There are challenges to the operation of such an open model, including possible conflicts between how each authority would approach any specific case. It is therefore likely that some ongoing co-operation between the FIU and the tax administration will be needed to ensure the activities of one do not negatively impact the other. This could be through an administrative agreement such as a memorandum of understanding between the authorities that sets out the rules of procedure on their use.

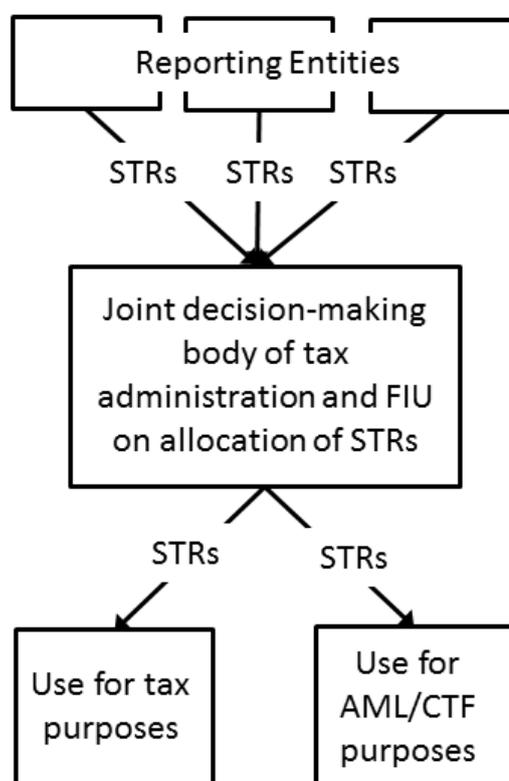
There is also a possible technological challenge in relation to this model. As information technology infrastructure is developed to support operational requirements of individual agencies, this can create additional impediments to access through compatibility and connectivity issues.

Furthermore, officials from the tax administration are, at least at first, likely to be less experienced with using STRs and how the information they contain should be treated. This will likely require some form of training on how to analyse STRs as well as any specific controls and safeguards that may be particular to STRs (in addition to the normal rules in relation to taxpayer confidentiality).

Model 2: Joint FIU and tax administration decision-making on allocation of STRs (the “joint decision-making model”)

Under the joint decision-making model (see Figure 2), instead of each authority being able to independently access and use STRs, there is a joint decision-making process between the FIU and the tax administration on how STRs will be used.

Figure 2: Model 2 - the joint decision-making model



The main variants of this model relate to the structure of the joint-decision making body. For example, sometimes tax officials are embedded within the FIU and participate in the decision-making process. Other examples are regular meetings between the tax administration and the FIU to reach decisions on the allocation of STRs.

Strengths and challenges of the joint decision-making model

Strengths

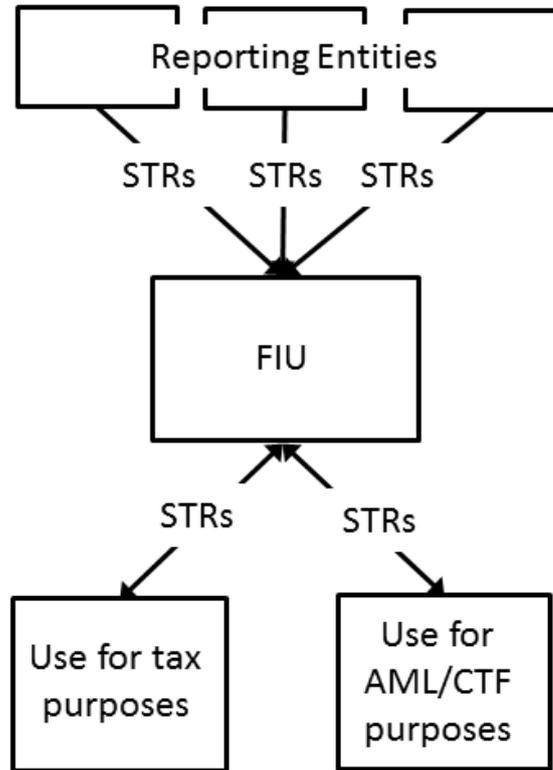
While there is potentially less flexibility provided by this model, it still provides for a full use of STRs for tackling serious crimes etc. It also provides reassurance to all authorities that STRs are being accessed consistently and in a way that both authorities agree should provide for the most effective outcomes. Furthermore, the joint process facilitates for the sharing of expertise so that both authorities achieve an increased understanding of the types of indicators and risks that the other look out for, assisting the collaboration further.

Challenges

A particular challenge to this model can be that it requires much closer administrative co-operation on an ongoing basis for it to work effectively. Without this there is risk of inefficiencies and delays. This can be addressed through building close working relationships between the responsible individuals in each authority and ensuring regular meetings where the STRs are allocated. This could also be reinforced by putting in place an agreement (such as a memorandum of understanding) between the two authorities to govern the process.

Model 3: FIU decision-making on allocation of STRs (the “FIU decision-making model”)

Under this model the FIU decides which STR related information to share with the tax administration, according to national legislation. A variant of the model is the use of the spontaneous exchange of the STR related information, where the FIU identifies whether it thinks STR related information could be useful to the tax administration and then spontaneously makes that STR related information available to the tax administration. Another variant is where the tax administration can request access to specific STR related information in relation to a particular enquiry it is carrying out.

Figure 3: Model 3 - the FIU decision-making model***Strengths and challenges of the FIU decision-making model******Strengths***

This model ensures clear lines of responsibility in relation to the allocation and treatment of STRs. Also, once the FIU becomes more familiar with identifying tax risks less resources are required to be made available by the tax authority.

Challenges

The key risks are that either not all the cases useful to the tax administration to identify serious crimes or, depending on the local framework for civil use, are identified by the FIU and made available to the tax administration or that the tax administration is provided with cases that are not of use. This is often exacerbated by the FIU lacking knowledge and experience to identify tax evasion or lacking knowledge of the other

information a tax administration might hold that could be matched to the STR to assist in identifying serious crimes etc. This is because the FIU will not necessarily have the same hallmarks of risk as the tax administration would. While the FIU will be very experienced in identifying risks of money laundering and terrorist financing within its own operational framework these will not necessarily correspond to the hallmarks that a tax administration would look out for.

These challenges can be mitigated by the tax administration informing and educating the FIU about the types of risks to look out for in order to ensure the information is being used effectively, for example by providing training and guidance. Furthermore, the challenges can also at least in part be mitigated by tax administrations working with the reporting entities themselves to assist them in understanding how to identify relevant issues from a tax administration perspective.

The tax administration could also provide secondees to the FIU to assist in detecting tax risks. Furthermore, ensuring the tax administration is able to request specific information relevant to tax cases from the FIU would also help overcome the challenges.

Use of STRs

STRs can have a wide range of uses, although this depends on the specific legal and operational framework in a jurisdiction. Where the domestic legal framework permits, STRs can be used not only for identifying serious crimes including tax crimes, bribery, corruption, money laundering, terrorism financing but also for civil purposes in relation to tax compliance. There are also more innovative uses that are possible, again dependent on the local framework.

Tax administrations already have multiple sources of information and have built compliance strategies around them, so while STRs are a new type of information, the compliance framework they feed into will likely be well established. What does make STRs different though is the insight and context they and the accompanying documents provide into the reporting entity's interaction with the subject(s), including the conversations, explanations, and behaviours, which are critical components in identifying areas of potential non-compliance.

Within this context, STRs assist in identifying new cases of serious crimes, including tax evasion and tax fraud, for investigation and to reinforce the effectiveness of anti-money laundering systems. Furthermore, they can assist in making tax assessments and support debt recovery. This can be from the identification of previously unknown bank accounts and new information on institutions, witnesses and associates to identifying cases of identity theft. This process is significantly enhanced through applying data matching processes to match the STR information against other existing records (internal and third party) so that potential individual or pools of cases can be identified.

STRs can also be used to identify additional information on existing cases. Checking STR information for existing cases can help develop a fuller understanding of the behavioural attitude of the taxpayer. This includes asset identification, their location and identifying co-conspirators.

Analytical techniques can also be applied to STR information in order to use it in more proactive ways, for example to develop hallmarks of risk so “red flags” and trends, whether in relation to particular sectors or

individuals, are identified quickly and emerging threats can be quickly addressed.

Finally, there are also examples of more innovative uses of STR data that go beyond the single use of STRs to also risk profile different types of taxpayers or specific groups of taxpayers, and use it to inform and target compliance campaigns. This is often through employing modelling and analytics to identify potential non-compliance within populations or classes of taxpayers whether by industry, region, or type of allegation or offence.

Protecting confidentiality and data security

In a data handling sense, STRs are essentially like any other source of confidential information that tax administrations hold, which are all subject to controls to protect confidentiality and keep data secure. There are also, though, characteristics of STRs that might mean there are additional restrictions on handling them contained in domestic legal frameworks.

Confidentiality of taxpayer information has always been a fundamental cornerstone of tax systems. Both taxpayers and tax administrations have a legal right to expect that information remains confidential. In order to have confidence in their tax systems and comply with their obligations under the law, taxpayers need to know that the often sensitive financial information is not disclosed inappropriately, whether intentionally or by accident. This is perhaps even more important for STRs as there could be significant implications of accidentally revealing the source of an STR.

Confidentiality is a matter of both the legal framework but also of having systems and procedures in place to ensure that the legal framework is respected in practice and that there is no unauthorised disclosure of information. The ability to protect the confidentiality of STR information is also the result of a “culture of care” within a tax administration. It includes the entire spectrum of systems, procedures and processes in place to ensure that the legal framework is respected in practice and to further ensure that information security and integrity is also maintained in the handling of information. As the sophistication of a tax administration increases, the confidentiality processes and practices must keep pace to ensure that information exchanged remains confidential.

Three building blocks are essential in ensuring appropriate safeguards are in place to protect information: (1) the legal framework, (2) information security management, both practices and procedures, and (3) monitoring compliance and sanctions to address a breach of confidentiality.

1. **The legal framework:** The domestic legal framework must ensure the confidentiality of the information and limit its use to appropriate purposes. Domestic law must also impose appropriate penalties or sanctions for improper disclosure or use of information.

2. **Information security management – practices and procedures:**
In order for the legal protections to be meaningful, practices and procedures must be in place to ensure that STR information can be used for the purposes specified and to prevent the disclosure of STR information to unauthorised persons or governmental authorities. An information security management system is a set of policies, practices and procedures concerned with information security management including IT related risks. This is not just a technical issue but also a management, cultural and organisational issue. The practices and procedures implemented by tax administrations should cover all aspects relevant to protecting confidentiality including a screening process for employees handling the information, limits on who can access the information and systems to detect and trace unauthorised disclosures. The information security management practices and procedures used by each jurisdiction's tax administration should adhere to internationally recognised standards or best practices that ensure the protection of confidential data.
3. **Monitoring compliance and sanctions to address a breach of confidentiality:** Compliance with an acceptable information security framework alone is not sufficient to protect data. In addition, domestic law must impose penalties or sanctions for improper disclosure or use of information. To ensure implementation, such laws must be reinforced by adequate administrative resources and procedures, including the policing of unauthorised access and disclosure.

Depending on the jurisdiction's local framework, there may also be requirements restricting the use of STRs aimed at protecting the reporting entity and the individual in the reporting entity that actually reports the STRs. This would likely include having in place both legislative as well as administrative measures (policies and procedures). These protections are important to maintaining the good co-operation with the private sector.

Depending on the domestic circumstances, sufficient comfort on these issues to facilitate effective co-operation between the FIU and the tax administration in relation to tax compliance can be provided both through the legislative framework and/or through putting in place an administrative agreement (such as a memorandum of understanding) between the FIU and the tax administration that covers these issues.

Removing barriers to access

The survey results also highlighted common barriers to tax administrations being able to access STRs to use for tax compliance purposes. These mainly consisted of legislative barriers and conceptual/operational barriers.

Legislative barriers

By far the most prominent barrier in those countries whose tax administrations cannot access STRs is the domestic legislative framework. This barrier can be further divided into: countries where the legislative framework does not permit any use at all by the tax administrations of STRs; and countries where the legislative framework only permits the use by the tax administration of STRs for use in criminal matters (as opposed to also being able to also use STRs for civil purposes).

Now that tax crimes have been included as a predicate offence in the FATF Standards it has become much more common for STRs to be able to be used for criminal matters. However, this is not universally the case in all jurisdictions, not least as domestic legislative measures are still necessary in order to reflect the updated FATF Standards.

While it is permitted in many jurisdictions, it is not uncommon for tax administrations to face restrictions in using STRs for civil tax matters. Given the potential benefits it is not surprising that there is a trend towards the use of STRs for civil purposes, with more tax administrations having access to STRs for civil purposes than previously. Fifty seven per cent of respondents to the survey had planned or proposed changes to widen the access to STRs by the tax administration in order to expand the possibility for their sharing and use to tackle tax non-compliance in all forms.

Conceptual/operational barriers

The relationship that exists between the tax administration and the FIU goes beyond simply a legislative one. Legislation may have brought them together; however, it's their common goal of combatting money laundering and terrorist financing that serves as the foundation for the tax administration's assistance to the FIU and vice versa. The survey results also

revealed conceptual and operational barriers, which while on the one hand can be more straightforward to address than legislative barriers, can often actually prove most difficult to shift. Due to the historic divide between the authorities tackling money laundering and terrorist financing and those ensuring tax compliance, including the institutional frameworks built thereon, there can be cultural and information barriers between those authorities. Non-compliance with tax, even of a criminal nature, is still often viewed as quite separate to money laundering and other crimes. It is not immediately recognised that each of these authorities have shared objectives and, depending on the facts of a specific case, one authority might be better placed to identify it.

The first step to removing barriers is therefore opening up clear communication channels between the tax administration and the FIU. This helps not only for each authority to better understand the objectives of the other and how their objectives interact but also then provides a platform for better co-operation and better outcomes in the future. This includes building the necessary understanding of the constraints faced by each authority and whether it is possible to work together to provide the necessary reassurance in relation to particular concerns that can facilitate close co-operation, including through putting in place a memorandum of understanding between the authorities to foster closer co-operation while providing comfort to both parties on how that relationship will work. This closer relationship will also assist in making any legislative changes to remove barriers, where necessary.

This engagement is significantly enhanced by adopting an approach using single points of contact (or sets of contacts) that facilitates clarity in communications, relationships to be built and effective co-operation. This approach is used in almost all the countries surveyed.

It is this close engagement that also ensures better outcomes across government in relation to tackling financial crime and tax evasion. FIUs and tax administrations will of course continue to maintain their primary functions, the former tackling money laundering and terrorist financing and the latter tackling tax evasion and they will each continue to be best placed and have the expertise to focus on these objectives. Through closer co-operation, however, not only will the tax administration gain an additional source of valuable information but in doing so each authority will better identify risks and information that concerns the other. For example, the tax administration can, through processing STR information, identify related information relevant to the FIU, which it should then provide to the FIU as part of the ongoing co-operation to the extent permitted by national law.

Maximising effectiveness in the use of STRs

Once barriers have been removed there are actions that can be taken to enhance the effective use of the STRs. The key areas are: engagement with the financial sector, technical capacity and training.

Engagement with the financial sector and other reporting entities

Engaging closely with the financial institutions and other reporting entities submitting the STRs can be very helpful in enhancing the quality of the STRs being filed. As reporting entities obtain a better understanding of the types of risks tax administrations look out for and the specific indicators for those types of risks the STRs become more focused on those areas. The contents of the STRs, including the narrative section can be further refined to increase the usefulness of the reports in ensuring tax compliance. For example, elements that appear to be common or central to data matching are the name, date of birth, address and offence type or category. There are then additional elements that assist in the modelling and analytics in relation to STRs, including monetary values and/or amounts, information on the financial institution and identification numbers (e.g. tax file numbers, citizen identification numbers and company registration numbers).

This increase in the quality of STRs can be, at least in part, delivered through the use of a communications strategy with those that file STRs. Survey responses show that an outreach or education program to this community can add significantly to the quality of the reporting received at the FIUs and the tax administration should have a role in such a communications strategy whatever model to share STRs is used.

Technical capacity

Another area to consider is how STRs fit into the technical capacity of the tax administration, probably alongside other bulk data sources, to provide the tax administration with a further enhanced picture of the risks to revenues and help ensure compliance investigations can be targeted most effectively. Many of the benefits to access to STRs arise from the ability to match the information contained in STRs to the other information the tax

administration has on file. This is most effectively achieved through an Information Technology solution.

The effective use of IT to facilitate the matching of STRs to taxpayer information can also then free up human resources to focus on analysing the narrative contained in STR reporting.

Training

Training tax officials in the analysis and use of STRs can also assist in the effectiveness of the use of STRs. The survey responses indicated that tax officials are often not provided with additional training. Training, though, can make the more time consuming element of analysing STRs, which is the consideration of the narrative section in the STR which necessarily involves a human interface, more efficient. STRs are allegations and require human investigation at some level to determine if they hold validity and if the subject of the allegation can be identified. Electronic data matching and analytics are able to assist in identifying suspects, the type of offence and patterns or history in offences, however, before the case can proceed to action a manual review will be required and some level of training may assist in the efficiency of this process.

To maximise effectiveness it is also important to train FIU officials on tax issues and how to identify tax risks.

Conclusions

There are potentially significant financial and efficiency gains to be realised by both tax administrations and money laundering authorities from increasing their levels of co-operation, information sharing and, more specifically, in taking a joint approach to analysing and utilising STRs. This is recognised in the whole of government approach where tax authorities have a key role in not only identifying tax evasion but also in identifying and reporting other suspected serious crimes such as bribery, corruption, money laundering and terrorism financing. Furthermore, while STRs are primarily used for criminal matters, including tax crimes, increasing numbers of jurisdictions are experiencing significant benefits through their use for civil tax matters. Indeed, some authorities use STRs primarily for civil, rather than criminal, purposes. However, tax authorities are hindered in their role as it is still not universally effective for tax authorities to have access to STRs, and even where some level of access is provided significant barriers, both of a legislative and non-legislative nature, remain.

There are various models to achieve access by the tax administration to STRs, each with particular strengths and challenges. Jurisdictions should look to implement the model that, subject to the domestic and administrative framework, offers the greatest access and flexibility. In all cases, however, to ensure STRs are used as effectively as possible it is critical to focus on policies and procedures as well as the legal framework, for tax administrations and FIUs to work closely together on an ongoing and reciprocal basis and for clear communication strategies to be employed with reporting financial institutions and other reporting entities.

Recommendations

Given the role of tax administrations in identifying and reporting serious crimes, such as tax evasion, bribery, corruption, money laundering and terrorism financing under the whole of government approach, in order to maximise the effective use of STRs:

- subject to the necessary safeguards, tax administrations should have the fullest possible access to the STRs received by the FIU in their jurisdiction; and
- to achieve this, jurisdictions should look to not only provide the legislative framework to allow tax administration access to STRs but also look to ensure the operational structure and procedures facilitate the maximum effectiveness in the use of STRs.

Possible future steps

In terms of future work in this area to further maximise the effectiveness in using STRs the key area that stands out is exploring the potential for the international exchange of STRs. Just as with other tax information, tax administrations across the world will have access to information of use to other tax administrations. As the world of finance has become increasingly globalised, tax administrations need to co-operate with each other to maintain their effectiveness in tackling serious crimes, including tax evasion. There will again of course be various models that can be adopted, including safeguards, for example the likely need to obtain prior consent from FIUs before sharing any information they have made available.

Other related OECD resources and assistance

The report *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes* (the Rome Report, OECD 2012a) is an in-depth study of models in different countries for sharing information between the tax administration, customs administration, law enforcement authorities and public prosecutors, the FIU and financial regulators. It considers mechanisms for enhanced co-operation, such as joint investigations, multi-authority intelligence centres and secondments and co-location of officials, identifies a number of successful practices and makes recommendations for improvements. The second edition of the Rome Report, launched in November 2013, contains information on 48 countries including a number of developing countries.

The OECD publication, *International Co-operation Against Tax Crimes and Other Financial Crimes: A Catalogue of the Main Instruments* (OECD, 2012b) contains details and descriptions of international co-operation instruments for use in the areas of tax, anti-money laundering, anti-corruption, and regulation and supervision, as well as other instruments for mutual legal assistance. The catalogue is a valuable tool for improving the understanding and use of mechanisms for international co-operation, and will form the basis for future work in this area.

The OECD *International Academy for Tax Crime Investigation* is a unique programme developed to help countries to detect and investigate financial crimes, and recover the proceeds of those crimes, by developing the skills of tax crime investigators through intensive training courses. In June 2014, the programme was brought under the newly inaugurated OECD International Academy for Tax Crime Investigation in Ostia, Italy, at the Guardia di Finanza Scuola di Polizia Tributaria, a state of the art training centre. As of December 2014, more than 50 investigators from developing countries have attended the Foundation Programme which is taught by an international faculty of experienced senior tax crime investigators and financial crime specialists. In December 2014, the pilot Intermediate Programme was launched. Both the Foundation and Intermediate programmes include extensive reference to the importance of FIUs and STRs in conducting tax and other financial investigations.

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