Dividend Tax Fraud

RAISING AWARENESS OF DIVIDEND STRIPPING SCHEMES

OECD

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Foreword

This report, based on the experiences of a number of jurisdictions, seeks to raise awareness among investigators and policymakers of different schemes that have been used to circumvent the payment of dividend taxes, including through co-ordinated cross-border activities. Some of these schemes, which can result in substantial revenue losses, have been categorised as criminal behaviour by domestic courts, while others may fall within the realm of tax avoidance or aggressive tax planning.

As well as describing some of the most commonly seen schemes, the report suggests a series of countermeasures that jurisdictions may wish to consider to address abusive dividend stripping. These include raising awareness among key stakeholders, both public and private sector, improving domestic co-ordination and expanding international co-operation mechanisms. In particular, it suggests that jurisdictions may wish to consider establishing timely and efficient sharing of information between supervisory authorities, tax authorities and law enforcement to detect dividend stripping schemes, as well as to set up cross-agency joint investigation teams where appropriate.

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Abbreviations and acronyms

AFM	Dutch Authority for the Financial Markets
AEX	Amsterdam Exchange Index
AML	Anti-money laundering
CFT	Countering the Financing of Terrorism
EBA	European Banking Authority
FATF	Financial Action Task Force
FEC	Financial Expertise Centre
FIOD	Fiscal Intelligence and Investigation Service of the Netherlands
FIU	Financial Intelligence Unit
JIT	Joint Investigation Teams
MDR	Mandatory Disclosure Rules
NTRS	Northern Transaction Reporting System
OECD	Organisation for Economic Co-operation and Development
SAR	Suspicious Activity Report
STOR	Suspicious Transactions and Order Reports
STR	Suspicious Transaction Report
TAV	Tax Administration and VAT Division

Executive summary

This report is intended to raise awareness of dividend stripping frauds and provides a number of recommendations for countries around recognising the risk, improving domestic coordination and expanding international cooperation.

Dividend stripping consists of a complex mechanism of trading, selling and repurchasing shares over a certain period to avoid payment of dividend taxes, or to claim unjustified tax reimbursements. Dividend stripping in its many forms poses a great challenge to the tax bases of numerous jurisdictions. It also may create market distortions that corrode the integrity of the financial system.

The criminal nature of the dividend stripping offence will vary depending on the jurisdiction and type of transaction. Some countries have successfully prosecuted certain types of dividend stripping under criminal law provisions. Others have taken cases, where appropriate, through the civil or administrative route where the activity has been considered to be a tax avoidance scheme.

While some countries have effective strategies in place, that may not be the case in all jurisdictions even where there is awareness of the risks. The lack of effective measures may be attributed at least in part to the complexity of dividend stripping schemes, and in some cases to an insufficient awareness among key stakeholders of the risks and impacts and the necessity of a coordinated response.

In particular, tackling dividend stripping requires strong domestic inter-agency co-ordination and international co-operation. Countries may therefore wish to prepare targeted actions and comprehensive strategies against this phenomenon, including not only tax administrations and law enforcement, but also financial regulators and supervisory authorities, as well as anti-money laundering competent authorities. Legislative changes in some cases may also be required. Sharing of information between jurisdictions is also crucial for the success of dividend stripping investigations.

Countries should adopt a series of recommended countermeasures to fight dividend stripping

Main findings	Key recommendations
Raise awareness among relevant stakeholders	
There is in many jurisdictions a general lack of awareness on dividend stripping among key stakeholders (tax administrations, financial supervisory authorities, law enforcement).	Disseminate knowledge on dividend stripping among key stakeholders, including by providing the tax administration and financial supervisory authorities with a list of possible indicators for detecting dividend stripping manoeuvres, and on its damaging effects for the economy and market integrity.
The public should be kept informed of the damaging effects of dividend stripping	Launch strong media campaigns focused specifically on dividend stripping to educate the public about the risks and consequences associated with dividend stripping.
Improve domestic co-ordination	
Dividend stripping occurs where offenders may take advantage of an outdated legal framework	Adapt legislation to market realities to prohibit dividend stripping and where applicable to criminalise the offence
Dividend stripping prevails where there are no timely exchanges of information between relevant agencies	Establish timely and efficient mechanisms for sharing of information on dividend stripping (including spontaneous sharing of information) between

	supervisory authorities, tax authorities and law enforcement.
Dividend stripping investigation requires sets of skills and powers that are present in multiple enforcement agencies	Joint investigative taskforces or teams, composed of officers from all relevant agencies, that have a specific mandate for investigating dividend stripping
Relevant agencies have each a different set of powers that may be of use for disrupting dividend stripping	Demolish firewalls that prevent agencies from working together and co-ordinate their approach to cases to use all available powers to maximise disruption.
Expand international co-operation mechanisms	
Dividend stripping is a prevailing cross-border phenomenon	Establish the necessary operational and legal framework for international co-operation among investigators of dividend stripping, including on timely sharing of information between jurisdictions
Lack of consistency on foreign requests creates unnecessary delays and hinders the success of dividend stripping investigations	Establish common templates and standards for foreign requests to minimise delays and misunderstandings
International co-operation mechanisms should be deployed at maximum capacity to successfully investigate dividend stripping	Countries should envisage the creation of cross-border joint investigative teams, with investigators from different jurisdictions, to enhance the chances of successful disruption.
Dividend stripping has happened or is happening in several jurisdictions across the world	Countries should share with international partners successful practices in identifying and tackling dividend stripping, including through the use of new technology tools

Caveat

This report seeks to serve as an awareness-raising document on dividend stripping mechanisms for tax auditors, tax crime investigation units and financial crime law enforcement agencies. It does not address tax policy issues related to the use of tax treaties, which are covered in BEPS Action 6, and other OECD work regarding dividend tax. Tax administrations, tax crime investigation units and other financial crime law enforcement agencies operate in varied environments. The way in which they carry out their tasks differs in respect to their policy and legislative environment and their administrative practice and culture. As such, a standard approach may be neither practical nor desirable in a particular instance. This report and the observations it makes need to be interpreted with this in mind.

1 Understanding harmful dividend tax arbitrage schemes

At its core, dividend stripping involves a deliberate manipulation of share transactions with the sole purpose of reducing or evading tax obligations on dividend payments, or to create fraudulent reimbursement. This practice can erode the tax base of countries and lead to substantial losses in public revenue. The manipulation can also create market disparities that affect the integrity of the financial system.

In most countries, dividends, i.e., the sum of money paid by a company to its shareholders when it makes profits, are subject to withholding tax, which is deducted at source. Dividend stripping consists of different manoeuvres that either allow taxpayers to avoid the withholding of the due tax, or to claim reimbursements over tax that has or has not been paid. This chapter provides an overview of some of the mechanisms that enable dividend stripping. In all cases, the main characteristic of dividend stripping schemes is that a person transfers the legal ownership of their shares temporarily to another while keeping the economic interest over them. This can involve fraud, where the dividend is claimed back or offset twice, or a form of aggressive tax planning. A glossary including some of the terms employed in this document is provided in the annex.

The table 1.1 lists some of the countries that withheld dividend tax in 2017, which is the last available data. As such, this publication may be of particular interest for policymakers, investigators and auditors working in these jurisdictions.

Table 1.1. Countries withholding dividend tax for residents and non-residents in 2017

Argentina	Austria	Belgium	Bulgaria	Canada
Chile	China	Colombia	Costa Rica	Croatia
Cyprus	Czech Republic	Denmark	Finland	France
Georgia	Germany	Greece	Hungary	Iceland
India	Indonesia	Ireland	Israel	Italy
Japan	Kenya	Korea	Latvia	Lithuania
Luxembourg	Malaysia	Malta	Morocco	Netherlands
New Zealand	Peru	Poland	Portugal	Romania
Russia	Slovak Republic	Slovenia	South Africa	Spain
Sweden	Switzerland	Thailand	Türkiye	

Note: Countries in italics withhold dividend tax for non-residents only. Countries underlined withhold dividend tax for residents only.
Source: (OECD, 2019[1])

The "cum-ex" and "cum-cum" schemes

The revenue impacts of dividend stripping can be huge. On 15 June 2023, the European Parliament adopted a resolution which noted that "the dividend-stripping scandals known as 'cum-ex' and 'cum-cum' were two of the largest tax fraud scandals in EU history, which cost EU Member states EUR 140 billion". (European Parliament, 2023[2]). "Cum-ex" and "cum-cum" are the two most reported schemes for dividend stripping. The criminal implications of "cum-ex" have been attested by courts in several jurisdictions while "cum-cum" schemes so far have been considered to fall, depending on the country, into the categories of aggressive tax planning, tax evasion or tax avoidance.

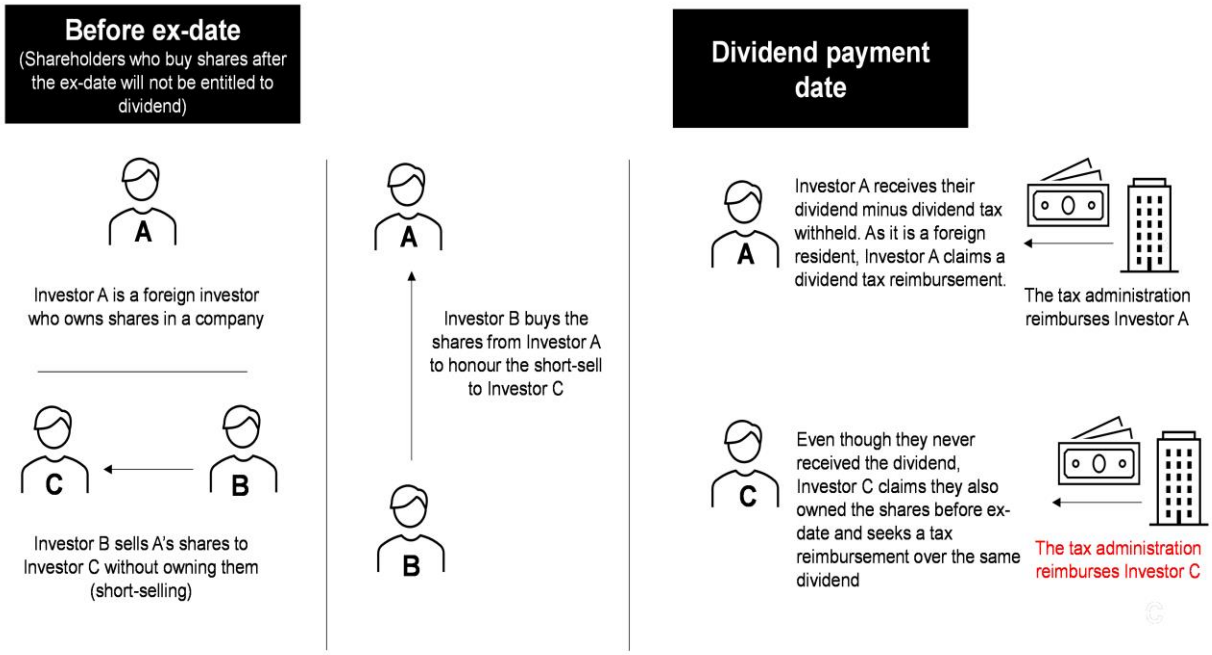
Cum-ex schemes

Taxation treaties usually provide that foreign dividends are subject to tax in the country of residence of the shareholder (see e.g., Article 10 of the OECD Model Tax Convention on Income and on Capital). In practice, however, dividends of a company may be subject to withholding tax in the company's jurisdiction. To prevent cases of double taxation over a single dividend, the foreign shareholder may be allowed to claim a reimbursement of (part of) the dividend tax withheld in the country where the company is located. Further, the foreign shareholder will usually be allowed to claim a form of relief for the taxation witheld at source in their country of residence. Cum-ex strategies seek to exploit this legal arrangement by creating opacity over the ownership of the shares on the two days between the ex-date[1] and the dividend record date. Their goal is to create a confusing image for tax authorities that there were several foreign owners of the same shares at the ex-date, allowing them to claim multiple reimbursements. Only one of these reimbursements is legal.

To do this, cum-ex perpetrators will trade the same shares over a very short period between both dates. Through this, one person will be legally entitled to claim for the reimbursement, while the other people who temporarily owned the shares will also ask for the reimbursement falsely claiming that they were shareholders entitled to the reimbursement.

The graph below illustrates how cum-ex schemes operate. It should be noted that in the below cases, Investors B and C are expected to be complicit and share the illegal profits made from the reimbursement. In other cum-ex cases, Investor A will also be a part of the scheme.

Figure 1.1. Basic diagram of a cum-ex scheme



Making multiple reimbursement claims of the same withholding tax could amount to a tax crime in many jurisdictions and could also trigger money laundering investigations as handling the proceeds of tax crime may amount to the commission of the money laundering offence (EBA, 2020[3]).

Box 1.1. German case law on cum-ex's tax crime implications

In March 2020, the Regional Court of Bonn, Germany, delivered for the first time a criminal sentence on a cum-ex case. The court sentenced two stock traders to suspended imprisonment and confiscation of assets, and further sentenced a private bank to pay over EUR 176 million for participating in cum-ex schemes. The court considered that the cum-ex manoeuvres employed in the case constituted serious criminal tax evasion. In its ruling, the court noted that there was no discernible economic sense for the short-sell transactions other than to claim unjustified reimbursements, and that cum-ex transactions where not "arbitrage inefficiencies", as claimed by the defendants.

The ruling was confirmed by the Federal Court of Justice on 28 July 2021.

Source: LG Bonn, Judgment of 18 March 2020, 62 KLs – 213 Js 41/19 – 1/19.

Cum-ex schemes have been reported in various jurisdictions across Europe (Buettner et al., 2020[4]). Schemes have been noted to spill over to more favourable markets upon the introduction of legal measures that restrict them (Laturnus, Richel and Wahrenburg, 2021[5]). In Germany, they led to the creation of a Special Investigative Committee of the German Parliament, whose final report further noted the criminal implications of the scheme (German Bundestag, 2017[6]). It has been noted that cum-ex schemes seem to appear in general in jurisdictions where:

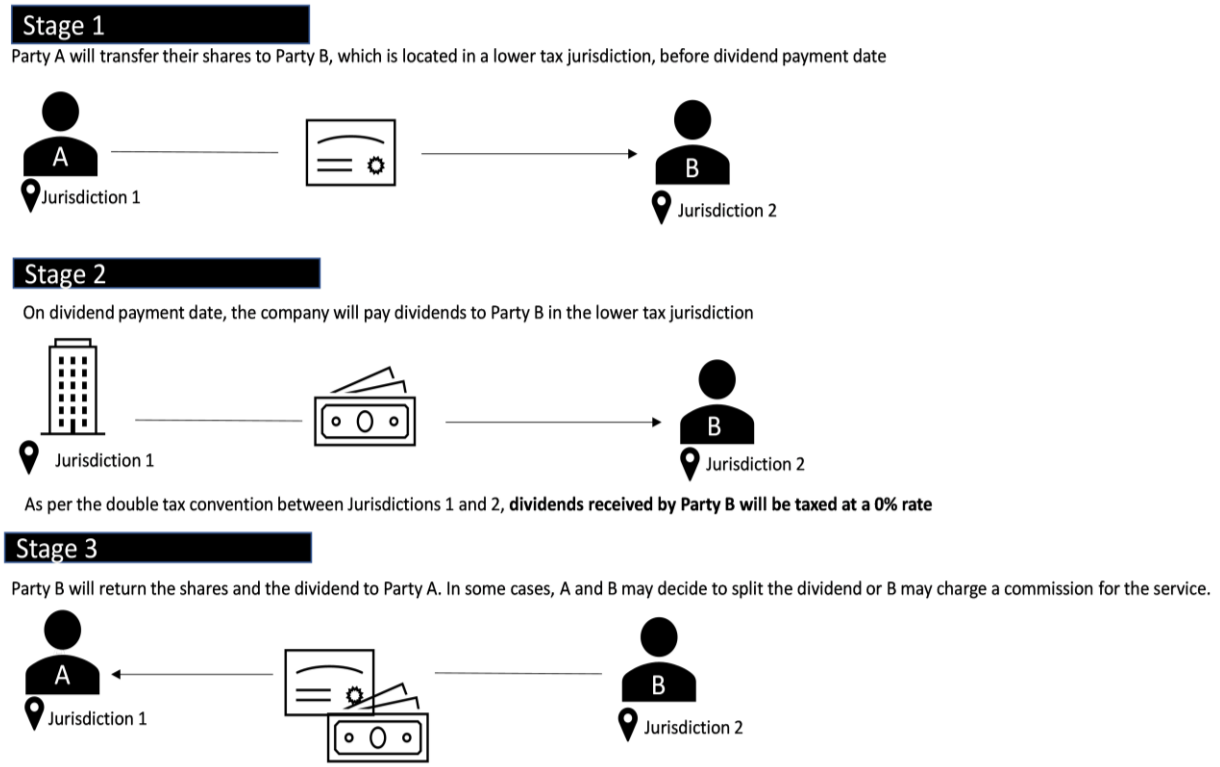
- Foreign shareholders are allowed to claim a refund of dividend tax over shares held in domestic companies.
- All parties involved in the transactions can request dividend withholding tax certificates, which would enable them to make separate refund claims.

Cum-cum schemes

Cum-cum strategies are often structured in a way that an investor lends or sells their shares to a borrower or buyer domiciled in a foreign jurisdiction that applies a lower dividend tax rate. Its aim is not to claim undue tax reimbursements, as in cum-ex schemes, but rather to reduce and minimise dividend tax liabilities. The buyer of the shares receives the dividend and returns them to the previous owner, minus the dividend tax and a percentage negotiated between the parties. The main benefit of cum-cum strategies is to reduce the amount of tax burden on the payment of dividends, generating a tax benefit which is generally shared between the participants to the arrangement.

The graph below illustrates how cum-cum schemes operate.

Figure 1.2. Example of a cum-cum scheme



To date, the legal framing of cum-cum schemes is a matter of debate in jurisdictions. In general, as they operate within the grey area of the law, some jurisdictions consider them under the rules of aggressive tax planning, while others will apply civil tax enforcement mechanisms to prevent them. It should be noted, though, that at least two OECD Member countries have started criminal investigations on cum-cum schemes, on charges of aggravated tax evasion against the entities that facilitated the manoeuvre (Ministry of Justice of France, 2023[7]) (Public Prosecution Service of the Netherlands, 2023[8]).

Box 1.2. Dividend stripping as a money laundering risk

Tax crimes and money laundering are closely intertwined, with recent literature suggesting that specific AML measures may be employed to foster tax compliance (Mathias and Wardzynski, 2023[9]). The *OECD Council Recommendation on the Ten Global Principles for Fighting Tax Crime* (OECD, 2022[10]) and the *Recommendations* of the Financial Action Task Force (FATF, 2012-2023[11]) provide that countries should make tax crimes a predicate offence for money laundering.

Dividend stripping has been noted as a risk for money laundering which demands increasing monitoring from financial supervisory bodies. In 2010, the European Banking Authority noted, given that tax crimes are a predicate offence for money laundering, "AML/CFT supervisors should reach out to local tax authorities to establish whether certain dividend arbitraging schemes constitute tax crimes, and, if so, inform competent authorities" and establish co-operation mechanisms including sharing of information. (EBA, 2020, p. 9[3])

In June 2023, France's prudential supervisory authority stressed that, in the investment services sector, there was a risk of laundering proceeds of tax crimes, "for example those that have taken place at the international level in matters pertaining to taxation of dividends" (Banque de France, 2023, p. 77[12]).

The role of professional enablers

It has been noted by the jurisdictions participating in the drafting group, and on media coverage of dividend stripping scandals, that dividend stripping may require the services of professional enablers who possess specialised knowledge and skills that may be used to orchestrate the complex manoeuvre. These professionals play a critical role in orchestrating and implementing the complex schemes. By leveraging their knowledge, perpetrators ensure that the scheme is executed in a manner that maximises complexity and minimises the likelihood of detection. In numerous cases, jurisdictions observed networks of organised collaboration involving cross-border professional enablers and financial institutions working together with the purpose of creating the necessary financial arrangements for the scheme.

The role of professional enablers in dividend stripping schemes, and mechanisms for deterring and investigating them, were covered in a previous OECD report, "Ending the Shell Game: Cracking down on the professionals who enable tax and other white-collar crimes", which sets out a range of strategies and countermeasures for countries to consider. These include mechanisms for disrupting and sanctioning professional enablers, such as imposing them professional and administrative sanctions (e.g., disqualification) and, for the most grievous offenders, criminal sanctions that penalise their wrongdoing (OECD, 2021[13]).

Box 1.3. Maximising disruption

Countries may wish to consider different strategies for maximising disruption in dividend stripping cases. This may include using different sets of powers available to different agencies, as well as deploying different legal approaches depending on the particular circumstances of each case.

In a case involving cum-ex, one jurisdiction decided to start a civil claim for recovering the monetary damage, rather than manage it through tax law procedures. This allowed the jurisdiction to recover money both from the entities that made the fraudulent reimbursements and from the professionals who had enabled the cum-ex scheme.

Similarly, one country reported a criminal case where the entities accused of benefitting from cum-ex schemes were convicted on the counts of fraud, forgery, money laundering and participation in a criminal organisation. The court ruled that the facts were particularly serious given the amounts involved, and that they may shake the confidence on both the financial and tax systems.

Detecting dividend stripping

Dividend stripping schemes may be difficult to detect by tax and other law enforcement authorities. The need to empower relevant authorities with the necessary tools for detecting this type of fraud has been mentioned by several enquiry mechanisms, such as the European Parliament (European Parliament, 2018[14]), the European Banking Authority (EBA, 2020[3])and the European Securities and Markets Authority (ESMA, 2020[15]) .

Regarding dividend stripping, the normal tax crime detection mechanisms (OECD, 2021[16]) need to be enhanced given the financial environment where the schemes take place. In particular this means raising awareness of the tax implications of dividend stripping among stock exchanges, financial institutions, supervisory authorities and financial regulators.

Box 1.4. Policy solutions

Throughout the past decades, several systems have been either implemented or suggested for streamlining and strengthening the processes for claiming dividend withholding tax relief. Examples of such systems include the Qualified Intermediary System in place in the United States and the OECD TRACE Authorised Intermediary System (OECD, 2013[17])

The TRACE Authorised Intermediary system is a standardised system for claiming withholding tax relief at source on portfolio investments. It enhances the ability of both source and residence countries to ensure proper compliance with tax obligations. It effectively mitigates the risk of duplicative refund claims associated with cum-ex transactions by providing for: 1) relief at source as the main relief method (hence reducing the number of refunds), 2) standardised electronic reporting requirements allowing tax administrations to reconcile dividend payments throughout the entire custody chain; 3) thorough due diligence requirements and strict liability provisions applicable to authorised intermediaries.

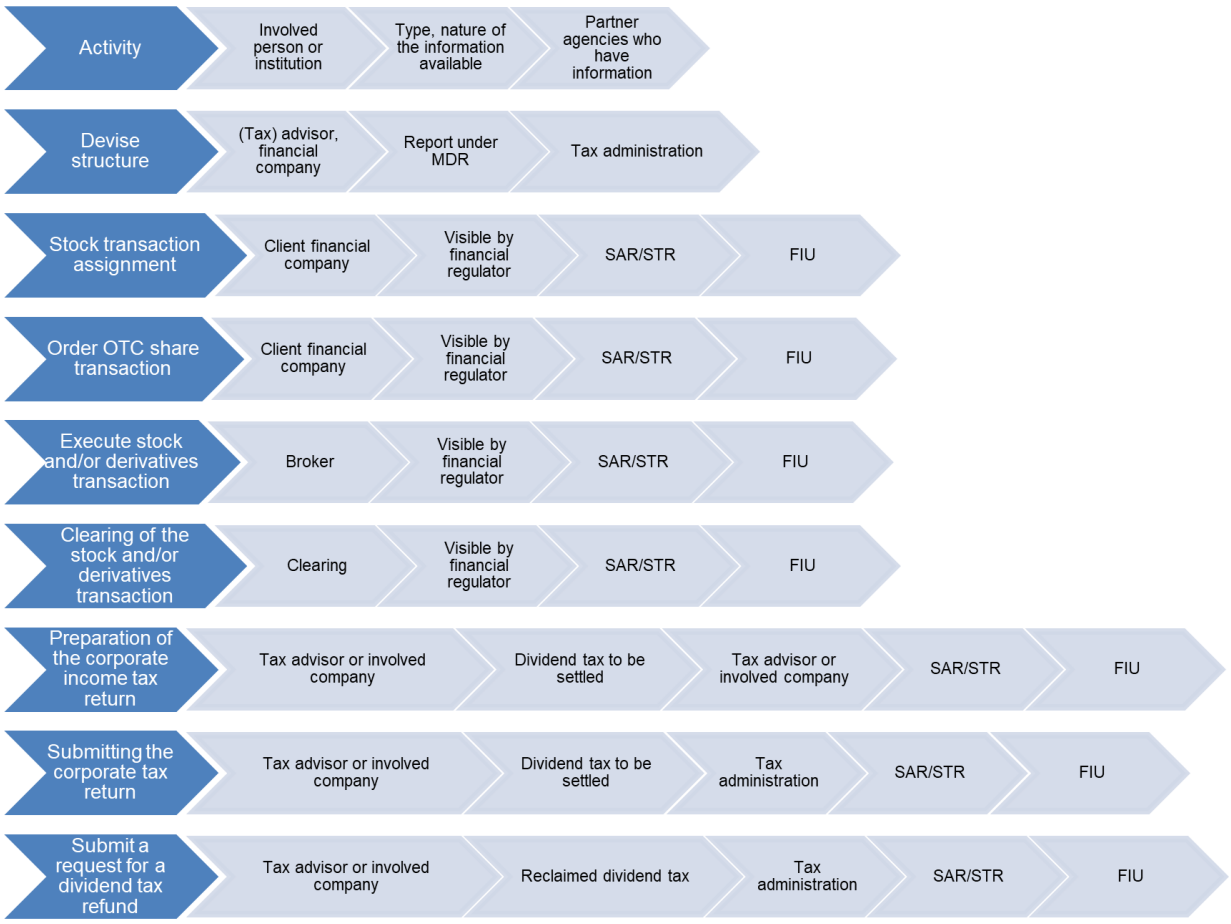
Detecting the timeline

Dividend stripping structures have a certain sequence of actions that may be identified by different government agencies within their respective mandate, even if this may not be directly relevant to the specific area of work of each of them. A joint assessment by all involved agencies would allow the creation of an inventory of the different stages of dividend stripping schemes and make it easier to co-ordinate actions to detect the scheme.

There is also need to understand the "timeline" of dividend stripping as most of the acts that make up the scheme can appear as straightforward legal acts that are part of regular financial transactions. However, if these acts take place in a certain order, and the beneficial owners retain their economic interest in the shares, dividend stripping may be the end result.

An overview of the distinct events related to dividend stripping transactions is provided below. The figure shows which events may related to dividend stripping, the acts that that materialize it, and the type of information that should be available to each respective agency. It should be noted that the agency which may hold information (for example, due to mandatory disclosure rules) may differ from one country to another.

Figure 1.3. Overview of different events related to dividend stripping



Source: OECD Secretariat based on input from the Netherlands

Detection of dividend stripping may be divided into active and passive detection. Passive detection starts with reports and signals that reach financial regulators, the financial intelligence unit, or the tax administration. Examples include indications from a persons' tax returns, reports of mandatory disclosure rules, and suspicious transaction reports. A more active approach is to look for potential dividend stripping situations, by using for instance the list of potential indicators available in Box 1.5.

Passive detection

In general, tax administrations will often find signs of possible dividend stripping in corporate income tax returns and retrospective applications for dividend tax refunds. In general, l tax administration may not receive indications of a possible dividend stripping scheme until the year after it took place due to the way tax declarations are received through the year. In limited cases, it may also be possible to infer the possibility of dividend stripping by analysing the type of questions submitted by taxpayers to the tax administration on regarding rules that pertain to the taxation of foreign dividends.

The use of Mandatory Disclosure Rules (MDRs), as recommended by BEPS Action 12 (OECD, 2015[18]) (OECD, 2018[19]), tries to circumvent this lack of information by the tax administration by providing a disclosure regime to obtain early information on potentially aggressive or abusive tax planning schemes, and as well as the promoters of such schemes. Dividend stripping should in principle be included in the MDRs, but one jurisdiction notes that, in practice, so far few notifications of dividend stripping arrangements have taken place.

Finally, key information on potential market abuse, such as the Suspicious Transactions and Order Reports (STORs) of the European Securities and Markets Authority, could be used for detecting dividend stripping. STORs are filed by financial firms to report suspicious market abuse activities to the financial regulator. Similarly, and given the underlying connection between tax crimes and money laundering, it is expected that financial institutions will file suspicious transaction reports (STRs) in the event of discovering any suspicions of criminal activity. In this regard, sharing of information between the financial intelligence unit, the financial supervisory authority and the tax administration, within the boundaries and confidentiality provisions set out in the law, could be extremely beneficial for detecting the signs of possible dividend stripping.

Active detection

The box below provides potential indicators of dividend stripping which may be of use for actively detecting the practice.

Box 1.5. Potential indicators of dividend stripping

The list below provides some potential indicators of activities that may hint that dividend stripping is taking place (points 1 to 5) as well as potential indicators of dividend stripping when the activity has already been detected (points 6 to 8).

1. Significant increases in the trading volume of the stock market around ex-dividend date, particularly in regard to lending from non-residents.
2. Significant increases in the volume of market claims settled by custodians.
3. Utilisation of repurchase agreements (REPO).
4. Utilisation of long/short strategies with stocks and derivatives.
5. Assessing the amount of dividend withholding tax claims that are related to entities that have limited or no economic activity.
6. Use of accounts for trading shares that are only active around ex-dividend date and have minimal or no movements during the rest of the year.
7. Referring to the transactions as an “arbitrage strategy” which exploits existing price discrepancies (in dividend stripping, these discrepancies are created artificially and consistently benefit one of the involved parties).
8. Labelling forward contracts as “futures”, giving the impression of engaging in genuine market transactions, while being in fact Over the Counter derivatives, i.e., contracts arranged between counterparties without intermediation and that are not listed in the asset exchange.

When faced with a dividend stripping investigation, investigators should be able to assess tax returns, which in some jurisdictions are required to include information on the dividend paid to non-resident shareholders. For example, in Finland the tax return must include full information of the recipient of the dividend if a zero withholding rate was granted at the source.

Further, investigators may want to collect information on the specific details of the transactions. This includes the type of acquisition (borrowing or purchase), its pricing, the type of disposal (return of a securities loan, sale), the disposal pricing, as well as information on derivative transactions. Communications between the participants when they agreed the arrangement are also useful, such as emails and other communications. It should be noted that co-operation with other law enforcement agencies may be needed to obtain some of this information.

Box 1.6. Use of the Northern Transaction Reporting System by the Dutch Supervisory Authority

The Dutch supervisory authority (AFM), together with the supervisors of Denmark, Finland, and Sweden, is part of the collaborative project "Northern Transaction Reporting System" (NTRS) which allows sharing reports of market abuse. Following this, AFM has set up a query in which the most striking transaction combinations from NTRS are highlighted regarding dividend data. After an initial assessment, such information will be shared with the other partners through the Financial Expertise Centre.

Based on several indicators, the AFM has made a selection on the NTRS data for two AEX stocks in the context of this project. The purpose of this is to determine whether the said data, and in particular the NTRS data, can be used for detecting transactions that may involve dividend stripping. The results of this were shared with the Dutch tax administration, which analysed it and concluded a strong indication that dividend stripping was taking place. The Dutch tax administration can only make a final assessment of this once a request for a refund or a tax return has been received.

NTRS is therefore used as an "early warning" for the detection of dividend stripping. This is a reason for the tax administration to include a treatment intention in the customer treatment system, or to influence the procedure in order to prevent a possible incorrect tax return.

2 Assessing and updating existing frameworks

Dividend stripping has several economic consequences, leading to substantial revenue losses for governments. It also creates market discrepancies, affects market integrity, and undermines the overall stability of the tax and financial systems. Countries may wish to assess the effectiveness of their current legal and operational frameworks to detect and investigate cases of dividend stripping and update them where appropriate.

Dividend stripping often involves the establishment of layered corporate structures across multiple jurisdictions which enable the manipulation of transactions and the movement of funds, adding further complexity to the schemes. The use of offshore entities, offshore financial centres and complex ownership chains allows participants in the scheme to exploit legal disparities. These complex cross-border chains also make it difficult to trace the funds, impeding efforts to establish liability and gather evidence effectively.

Participants in dividend stripping schemes will deliberately use complex arrangements and financial flows to obscure the underlying transactions and the identities of those behind the schemes. They may employ derivatives, structured financial products, and other sophisticated instruments that involve intricate contractual arrangements, as well as complex transaction chains (involving share transfers, loans, stock repurchases and dividend entitlements). These instruments and transactions add layers of complexity, making it difficult for authorities to trace the movement of funds and understand the true nature of the transactions.

Assessing the adequacy of the legal framework

Jurisdictions should assess the adequacy of their legal framework considering the persistent dividend stripping risks. This includes, where appropriate, updating their statutes to prevent loopholes and grey areas of the law that may enable the commission of dividend stripping. Several jurisdictions have noted that modifying their reimbursement provisions has enabled them to prevent dividend stripping, particularly by adding minimum shareholding periods around dividend payment date. By way of example, such provisions are now included in the General Tax Code of France and in the German Income Tax Act. It should be noted that statutory changes should find the right balance between the need to stop dividend stripping schemes from taking place and ensuring the right functioning of stock markets.

Box 2.1. Update to the German Income Tax Law to prevent dividend stripping

To counteract dividend stripping arrangements, new provisions were created under the German Income Tax Act (*Einkommensteuergesetz*). Sections 36a and 50j of the Act now make crediting or refunding of capital income tax conditional on a series of new additional requirements. Under the new provisions, a complete crediting or refunding of capital income tax is only permissible if the claimant has complied with a minimum holding period of 45 days, and, in addition, has assumed a price risk of at least 70% during this period. The new provisions are intended to prevent dividend stripping cases, as perpetrators will want to hold the shares for the shortest possible time and exclude price risks.

A review of the adequacy of the legal framework should also include assessing the existing statutes of limitations. A practical consequence of having a sufficiently long statute of limitations for dividend stripping cases is that it provides agencies with sufficient time to identify and investigate the acts. This is especially important in this type of cases, which can take a long time to successfully investigate.

Box 2.2. New dividend stripping regulations in Indonesia

In Indonesia, dividend stripping can be categorised as a tax offence committed by reducing or eliminating the amount of payable tax. The Indonesian Minister of Finance issued Regulation 111/PMK.03/2023, with effects from 01 September 2023, concerning the Procedures for Withholding, Depositing, and Reporting Income Tax on Dividends Received or Obtained by Domestic Individual Taxpayers. The regulation states that the income tax rate on dividends, which is normally of 10%, may be doubled if a domestic individual taxpayer engages in a transaction intended to reduce or eliminate the payable tax. By “transaction”, the regulation includes the purchase of shares shortly before the dividend is announced and then selling them on the first day of ex-dividend trading.

Similarly, jurisdictions may wish to re-assess the existing powers of each agency for detecting and investigating dividend stripping, and whether these are adequate in light of the complexity and cross-border nature of dividend stripping. Countries should in particular consider challenges around obtaining digital evidence stored outside their borders and in the cloud (OECD, 2021, pp. 29-39[16]).

Box 2.3. Updates to Belgian legislation to prevent dividend stripping

In January 2019 Belgium added an anti-fraud and abuse measure to its Income Tax Code regarding dividends received by a pension fund. The new Article 266(4) states that if a pension fund did not maintain full ownership of the shares for an uninterrupted period of at least 60 days, there exists a rebuttable presumption that the legal act or set of legal acts with which the dividends are connected to are artificial. In practice, this means the burden of proof to claim dividend tax reimbursements is on the taxpayer, rather than on the tax administration.

Since 2023, Belgium also extended the period for audit and assessment in dividend tax from 3 to 6 years if the case involves deductions or reductions granted on the bases of a double-taxation agreements or European directives This will allow the tax administration to perform additional audits and assess omitted tax in more complex dividend stripping cases. In cases of fraud, the audit and tax assessment period was also extended from 7 to 10 years.

Information-sharing provisions

Jurisdictions should assess whether existing barriers prevent information-sharing between relevant agencies on dividend stripping cases, including but not limited to the tax administration, law enforcement and the financial regulator. As mentioned before, dividend stripping takes place through multiple transactions which, when analysed in isolation, can be legal and not raise suspicions. Sharing of information for detecting these transactions, including through the agreement of risk flags, in a timely and efficient manner is therefore vital for the success of dividend stripping prevention strategies.

To implement information-sharing in the most effective ways, jurisdictions should:

- Map the existing information held by each agency related to dividend stripping, in order to determine what types of information will be of relevance to each agency;
- Train and increase awareness of the role of, and information held by, other agencies regarding dividend stripping;
- Identify a point of contact in each agency for receiving and disseminating reports of suspicious activity regarding dividend stripping;
- Have the ability in law and in practice to protect the confidentiality of information and the integrity of work carried out by other agencies.

For information to be shared, legal gateways must exist between the relevant agencies. These may take a number of forms (OECD, 2021[16]). Primary legislation will often provide the basic framework for co-operation. This could be by explicitly requiring that an agency shares certain types of information in specified circumstances (such as suspicions of dividend stripping, or investigations concerning dividend stripping), or by generally allowing information sharing between agencies subject to limited exceptions.

Where permitted by law, agencies involved in preventing dividend stripping may enter into bilateral agreements, agreeing to share information where this is of relevance to the other agency's activities. These agreements typically contain details of the types of information that will be shared, the circumstances in which sharing will take place and any restrictions on sharing information such as that the information may only be used for specified purposes. The agreement may also include other terms agreed by the agencies, such as the format of any request for information, details of competent officials authorised to deal with requests, and agreed notice periods and time limits. They may also include a requirement for the agency receiving information to provide feedback on the results of investigations in which the information was

used. This can help both in improving understanding of core information to exchange and enhance motivation of the relevant actors.

Different forms of information sharing may be particularly effective for detecting and investigating dividend stripping. These include spontaneous sharing of information and exchanges of information on request where there are suspicions of dividend stripping, and exchanging information on request where the investigation is well advanced, and the investigative agency already has sufficient information to provide the basis for the request (OECD, 2017[20]).

Cooperation agreements

Apart from updating their legal framework where needed, jurisdictions may consider enhanced mechanisms for domestic inter-agency co-ordination in dividend stripping cases. Examples of co-operation agreements in the domestic sphere include joint intelligence centres and joint investigative teams.

Joint intelligence centres

Inter-agency intelligence centres are typically established to centralise processes for information gathering and analysis for a number of agencies. Inter-agency centres may be established to focus on operational information (case-specific information and investigations) or strategic information (broader assessment of risks and threats, focusing on a specific geographic area or type of criminal activity, or having a wider role in information sharing). These centres conduct analysis based on primary research as well as information obtained by participating agencies. By centralising these activities, officials can obtain experience of particular legal and practical issues, and specialised systems can be developed which can increase their effectiveness. In particular, there may be an important role to be played in future by the use of advanced analytical tools, such as artificial intelligence. Cost savings may also be achieved, as the expense of collecting, processing and analysing data can be shared between participating agencies.

Box 2.4. The Financial Expertise Centre in the Netherlands

As part of the efforts to strengthen integrity in the financial system, the Financial Expertise Centre (FEC) was established as a partnership between various authorities with supervisory, monitoring, prosecution and investigative powers. The FEC takes preventive and active measures against potential threats to financial integrity, including through exchanges of insights, knowledge and skills between the relevant agencies.

Within the FEC, government authorities collaborate based on their own powers and mandates insofar as these relate to the integrity of the financial sector. The FEC is composed of seven agencies: the Dutch Financial Markets Authority, the Dutch Tax Administration, the Central Bank (*De Nederlandsche Bank*), the Financial Intelligence Unit, the Fiscal Intelligence and Investigation Service (FIOD), the Public Prosecutor's Office, and the National Police. The Ministry of Finance and the Ministry of Justice and Security are involved in the FEC as observers, and there are also public-private partnerships with major banks.

The FEC's information platform is composed of participants belonging to the seven FEC partner organisations. Its aim is to reinforce each agency's information position and to undertake interventions together to strengthen the integrity of the financial sector. Exchange of information regarding subjects and phenomena takes place in response to the introduction of a signal, which could be a transfer of information or a request for information. These signals relate to all aspects of financial crime. FEC joint investigations occur through taskforces, including on tackling serious crime, terrorism-financing, and other threats.

Joint investigative teams

Joint investigative teams enable agencies with a common interest, such as preventing and investigating dividend stripping, to work together in an investigation. In addition to sharing information, this enables an investigation team to draw on a wider range of skills and experience from investigators with different backgrounds and training. Joint investigations may also help to avoid duplication arising from parallel investigations and increase efficiency by enabling officials from each agency to focus on different aspects of an investigation, depending upon their experience and legal powers. In some cases, gateways for sharing information are wider when agencies are engaged in a joint investigation than they would be in other circumstances.

Whole-of-government training

Training programmes that bring together officials from a range of agencies provide an important opportunity for building personal relationships and sharing experiences in dealing with common problems. Targeted whole of government training programmes focusing on dividend stripping, with participation from different agencies, can be an effective way to share information on trends, guidance on investigative techniques, best practice in managing cases and methods for identifying concerns of relevance to another agency.

Communications strategy

Preparing a communications strategy about the implications of dividend stripping is important to shape public perceptions and behaviour, as it can be a reminder of the sanctions that can be imposed and act as

a deterrent. It can also help to educate the public and build public confidence in the fair enforcement of tax laws.

The communications plan may include different media (press, TV, social media) and incorporate messages that raise awareness among different publics on the relevance and the implications of dividend stripping, including how it harms public revenues and creates market discrepancies affecting the financial system. Communicating successful investigations and sanctions should also have a positive deterrence effect and increase trust in the tax and financial systems.

3 Expanding international co-operation mechanisms

Dividend stripping is by essence a cross-border phenomenon. Agencies should have the appropriate tools to co-operate with foreign counterparts when investigating dividend stripping. This includes effective exchanges of information, as well as newer forms of real-time international co-operation.

Dividend stripping is a cross-border phenomenon that requires a global solution. Jurisdictions should establish the necessary operational and legal framework for international co-operation among investigators. This includes facilitating timely sharing of information and creating cross-border investigation teams to enhance successful disruption.

Exchanges of information

With a view to having a successful approach to detecting and investigating dividend stripping, it is important that jurisdictions have a far-reaching and functioning international co-operation network. This network should be characterised by the following features:

- be in place between jurisdictions that have significant financial flows and stock market transactions;
- cover a wide range of types of assistance, including exchange of information and other forms of assistance in investigation and enforcement (OECD, 2012[21]);
- be supported by a domestic legal framework that allows the sharing of information both sent and received under international legal instruments with all relevant agencies where appropriate;

- be given effect in practice, including having a clear operational framework for international co-operation. This should include having dedicated and identified contact points that foreign agencies can contact in case of a request for assistance, sufficient resources to fulfil requests for assistance, as well as training and awareness for domestic investigation agencies as to the availability of international co-operation and how to make effective requests (OECD, 2021, p. 64[16]).

Although the legal gateways are in place in many cases, practical obstacles can have a significant impact on effective international co-operation. Some obstacles may be caused by a lack of clear communication channels, confusion about the organisational structure or mandate of the counterpart as well as practical communication difficulties, including language, or lack of clarity in the presentation of the facts of the request. This can lead to delays in both identifying the correct agency to whom to address the request as well as in the responsiveness to requests.

Cross-border investigation teams

An international joint investigation team, akin in form to domestic joint investigation teams, can be highly effective. This form of international cooperation is based on an agreement between competent authorities of two or more jurisdictions, established for a limited duration and for a specific purpose, to carry out investigations in one or more of the said jurisdictions. In the tax crime context of the European Union, cross-border investigation teams are known as Joint Investigation Teams (JITs) (European Council, 2017[22]).

In practice, such investigation teams have the advantage of pulling together investigators from different jurisdictions, enabling direct gathering of information and evidence without the need to use traditional channels of legal assistance (such as Mutual Legal Assistance Treaties). Investigative measures may also be conducted in different jurisdictions in a co-ordinated manner.

In the global field, the Joint Chiefs of Global Tax Enforcement (the “J5”), composed of the tax crime agencies of Australia, Canada, the Netherlands, the United Kingdom and the United States work on cross-border investigations targeting sophisticated international enablers of tax evasion (HMRC, 2023[23]). In that regard, the traditional channels of legal assistance need to be used for exchanging information and evidence.

Annex A. Glossary of terms

Arbitrage: The simultaneous purchase and sale of an asset in different markets to take advantage of a price difference and generate a profit.

Derivative contract: A financial contract whose value is derived from the performance of underlying market factors, such as interest rates, currency exchange rates, and commodity, credit, and equity prices.

Forward/Future: These are interchangeable terms for a financial contract between two parties that commit to trading a certain quantity of a product or financial instrument at a certain time and at a pre-determined price. Futures are traded on the stock exchange and forwards are traded OTC.

Hedging: A strategy that aims to limit risks in financial assets. It involves taking the offsetting position in a related security or asset to minimise the impact of market fluctuations.

Inter-Dealer Broker (IDB): A specialist financial intermediary that facilitates share transactions between parties.

Linguistic concealment: A strategy to conceal dividend stripping by using certain phrases and terms, such as "arbitrage strategy"; "futures" and "yield enhancement products".

Long/Short strategy: A methodology which involves obtaining shares (the long position) while also entering derivative positions with those shares serving as the underlying asset (the short position), This allows the acquirer of the shares to divest economic interest and potential dividends.

Option: An option gives the right to buy or sell certain shares at a pre-determined price and time.

Put/Call Combo (PCC): Put options give the right to sell shares over time at a pre-determined price. Call options give the right to buy shares in the future at a pre-determined price. In a transaction, both can happen at the same time, in combination.

Repurchase Agreement (REPO): A legal transaction where shares are sold from Party A to Party B, then resold at the same price, with Party B delivering the shares later.

Securities Lending/Equity Lending: A practice where legal ownership is transferred from the lender to the borrower. The lender receives compensation in the form of interest or fees.

Total Return Swaps: An agreement where one party makes payments according to a set rate, while another party makes payments based on the rate of an underlying (reference) asset.

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Note

[1] The *ex*-date is the date on which the ownership of the shares is fixed for the purposes of receiving the dividend. Shareholders who buy shares after the ex-date will not be entitled to dividend.

Dividend Tax Fraud

RAISING AWARENESS OF DIVIDEND STRIPPING SCHEMES

Dividend stripping is a type of fraud that is committed through a complex mechanism of trading, selling and repurchasing shares over a certain period to unlawfully avoid payment of dividend taxes, or to claim unjustified tax reimbursements. Dividend stripping in its many forms poses a great challenge to the tax bases of numerous jurisdictions and may create market distortions that corrode the integrity of the financial system. This report is intended to raise awareness of dividend stripping frauds and provides a number of recommendations for countries around recognising the risk, improving domestic co-ordination and expanding international co-operation. In particular, tackling dividend stripping requires strong domestic inter-agency co-ordination and international co-operation, as well as the sharing of information between jurisdictions. Countries may therefore wish to prepare targeted actions and comprehensive strategies against this phenomenon, including not only tax administrations and law enforcement, but also financial regulators and supervisory authorities, as well as anti-money laundering competent authorities. Legislative changes may also be required in some cases.

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