

3RD INTERNATIONAL ASSOCIATION
OF PROSECUTORS AFRICAN –
INDIAN REGIONAL CONFERENCE

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THEME

- Getting a fair bargain for Africa and the developing world
- The role of the prosecutor in combating financial crime including Tax Evasion

*THE ROLE OF FINANCIAL & NON FINANCIAL
PROFESSIONS IN FACILITATING TAX CRIMES
AND ILLICIT FINANCIAL FLOWS.*

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OUTLINE

- DEFINE TAX CRIMES
- EXAMPLES
- INSTITUTIONS THAT CAN FACILITATE TAX CRIMES
- CASE STUDY – THE 5WS & 1H
- ROLE OF PROSECUTORS

TAX CRIMES & ILLICIT FINANCIAL FLOWS - DEFINITION

“This is the unrecorded and {mostly} untaxed illicit leakage of capital and resources out of a country.”

- This is domestic wealth permanently put out of reach for domestic authorities
- Much of the value unrecorded and attempts to hide the origin, destination and true ownership of the capital
- This can also be sudden short term capital outflows, including both licit and illicit flows.

ROLE OF FINANCIAL PROFESSIONALS IN FACILITATING TAX CRIMES

Banks as facilitators of tax crimes.

- Play an active role.
- FI market methods of hiding money from national tax authorities in secrecy jurisdictions.
- Many FI are non compliant with regard to customer due diligence principles.

- Management of the payment system – level of sophistication varies.
 - Complex schemes include multiple jurisdictions
 - Large number of bank accounts in an array of banks
 - Money moved through a maze of shell companies and respectable nominees.

Examples of banking features used for illicit transfer of funds.

| feature | How it may facilitate illicit activity |
|---|--|
| Multiple accounts Banker opens multiple accounts in multiple names jurisdictions for clients | Impedes monitoring and tracing client activity and assets and allows quick, confidential movement of funds. May hide or facilitate illicit activity. |
| Offshore accounts “Shell” corporations or trusts formed to hold client assets offshore. Banker opens accounts in name of offshore entities. | Impedes monitoring and tracing client activity and assets. May hide or facilitate illicit activity. |
| Special name or numbered accounts Banker opens account in code name. | Impedes monitoring and tracing client activity and assets. May hide or facilitate illicit activity. |
| Wire transfers. Banker facilitates complex wire transfer from multiple accounts to destinations with substantial amounts | Allows quick, complex movement of substantial funds across jurisdictional lines |

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| | |
| <p>Concentration account Banker conducts client business through one single account that facilitates the processing and settlement of multiple individual customer transactions. The account that commingles the funds is used for internal purposes of the bank, but it can also be a method of hiding the origin of funds.</p> | <p>Impedes monitoring and tracing client activity and assets. May hide or facilitate illicit activity.</p> |
| <p>Offshore record keeping. Bank maintains client records offshore and minimizes or eliminates information in the country of residence.</p> | <p>Impedes bank, regulatory and law enforcement oversight.</p> |
| <p>Secrecy jurisdiction Bank conducts business in a jurisdiction which criminalizes disclosure of bank information and bars bank regulators from some other countries.</p> | <p>Impedes bank, regulatory and law enforcement oversight.</p> |
| | |

EXAMPLES OF TAX CRIMES

- Tax Evasion
- Tax Fraud
- Filing a False Return
- Underreporting income
- Willful failure to return or supply requested information
- Willful failure to collect or pay over VAT
- Prepare false tax returns or submitting false tax documents
- Making false statements to get tax officials

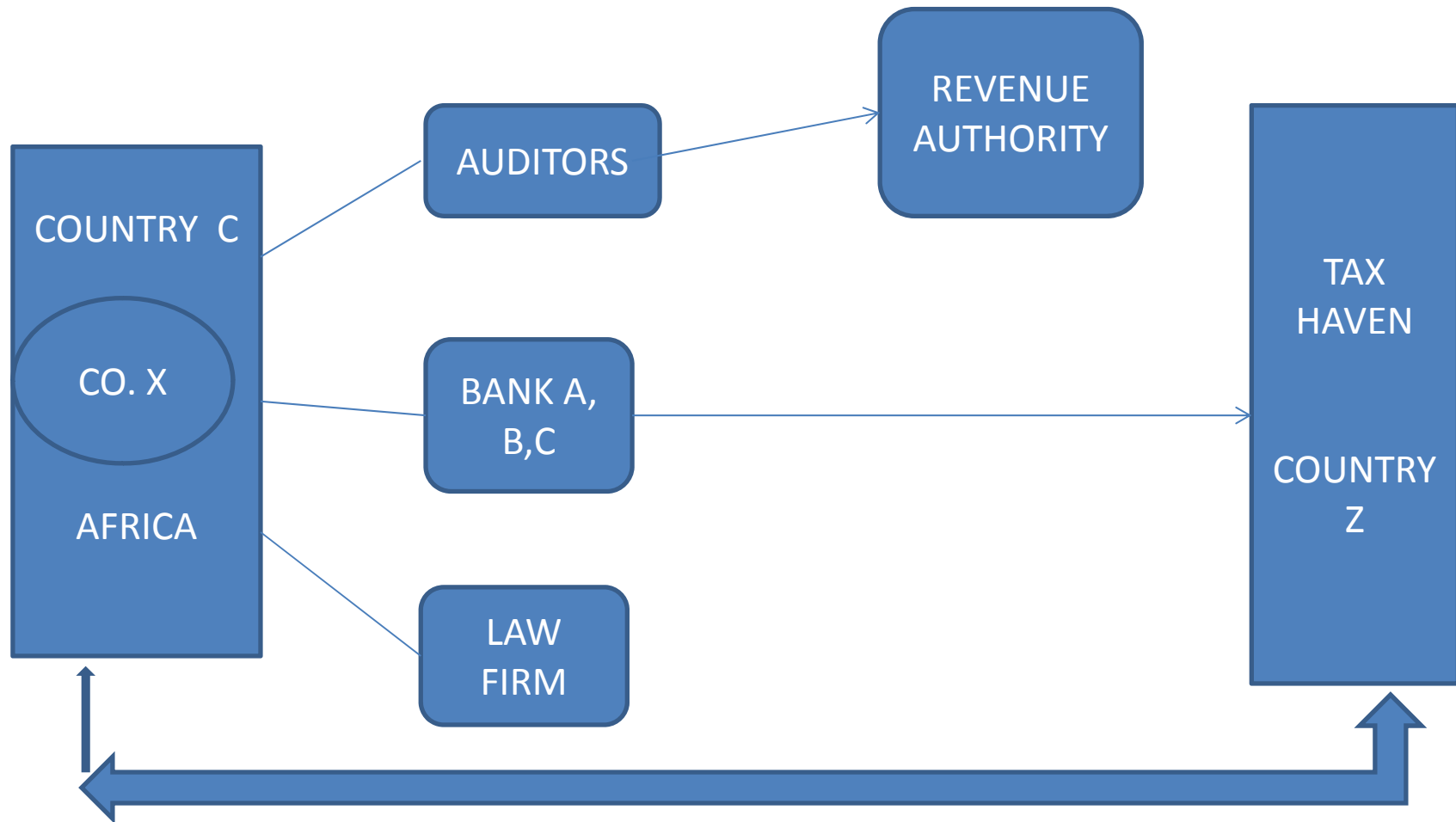
EXAMPLES C'TD

- Making false claims
- Perjury, bribery, aiding and abetting in the preparation of false documents and failure to file currency transaction reports
- Evasion of payment in tax collection cases
- Stacking of corporate and individual Tax liabilities
- Aiding and abetting tax fraud
- False withholding tax statements
- Conspiracy to impede or defeat the collection of tax

METHODOLOGY

- Public loans turned into private assets.
- Use of offshore banks, secrecy jurisdictions and tax havens.
- Use of lawyers, accountants, trust companies and others who assist customers to access services offered by secrecy jurisdictions [secrecy providers]

IFF THROUGH THE USE OF THE BANK AND AUDITORS - Simple case scenario



CASE SCENARIO CONTINUED

- Company C starts business in country Y (African country)
- Opens bank accounts in banks A,B,C.
- Engages independent auditors to:
 - audit financial statements
 - and provide an un qualified statement and submit to revenue authority who does not do a proper analysis and accept as true.

CASE SCENARIO

❖ Conspiracy

❖ Aiding and abetting

❖ Filing false returns

❖ Under declaration

❖ Transfer pricing



TAX CRIMES

CASE SCENARIO

- Bank transfers to offshore destinations in the name of repaying loans, paying for goods which never came etc.
- Funds are invested abroad in a tax haven country z.
- Country Y remains deprived of the much need revenue.

WHAT PROSECUTORS SHOULD LOOK FOR IN A CASE

- WHERE the crime took place
- WHEN the crime took place
- WHAT happened
- WHY it happened
- WHO is involved

AND

- HOW it all happened

This is in addition to the individual ingredients of the charge preferred.

SOLUTION TO TAX CRIMES

- Create clear control mechanisms, policies and procedures.
- Regular training of staff.
- Comprehensive KYC routines for FI.
- Streamline reporting routines.
- Management to take responsibility.
- Capacity building in asset recovery cases.
- Identification of bank customers using standardized identification papers.
- Governments should establish legislation that makes aggressive marketing of banking in tax haven with the boundaries of their country more difficult.

CONCLUSION

LETS ALL PLAY OUR PART.

THANK-YOU