

Note: The set of questions given for answering do not strictly fall within the remit of tax and crime though it has close linkages. Therefore, attempts have been made to answer some of the questions raised through the general statement but approaching the issue from tax perspective.

‘Impact of tax evasion and money laundering on local real estate markets in particular in European cities’

1. Countries around the globe are facing a common threat posed by increasingly complex and innovative forms of interlinked financial crimes, such as, tax evasion, corruption, banking fraud, money laundering, corporate frauds, investment frauds etc. In this new era of “banking without borders”, substantial sums can be moved covertly between multiple jurisdictions with relative ease and great speed by exploiting modern technology and with the help of professional enablers. It allows the transactors to be relatively invisible and virtual. Thus, financial crimes committed within a domestic jurisdiction of a country often have international linkages due to the multi-jurisdictional and complex legal structures used to conceal illicit activities or the proceeds of crime. Proceeds of crimes are often laundered and find their way back into the financial system or may be hidden in offshore assets such as precious metals, yachts, real estate etc.

2. The Real Estate sector in the European cities is witnessing an infusion of laundered money in the recent years. Several media reports have extensively covered this issue, revealing that this phenomenon exists not only in Europe but is a global phenomenon. According to FATF¹, real estate accounted for up to 30 per cent of criminal assets confiscated worldwide between 2011 and 2013, demonstrating that this sector is a clear area of vulnerability. In various public debates, it is argued that the identification of the beneficial owners of legal entities, trusts and other legal arrangements is still not the norm in real estate transactions.

3. The effects of illicit funds finding their way to the Real Estate markets in European cities are reportedly reflected in (i) Sharp rise in property prices (ii) Increase in rent due to artificial shortage and (iii) Syndrome of unoccupied houses (It is reported ²that 11 million houses are empty against 4.1 million homeless people). In order to conceal the true nature of money used to acquire the property, owners may also not report the rental income or prefer to keep the property unoccupied.

4. Acknowledging the importance of transparency, there is tremendous interest and support for ensuring the availability of accurate and up to date beneficial ownership information of legal entities and arrangements, and for providing anti-money laundering (AML), anti-corruption as well as tax authorities with timely access to such information both domestically and internationally. The importance of beneficial ownership of legal entities and arrangements is recognised across agencies and across countries of all sizes, as without it, the ability of governments to fight illicit flows, financial crimes, corruption, money laundering, terrorist financing and tax evasion is greatly undermined.

5. The FATF Recommendations require countries to ensure that adequate, accurate and timely information on the beneficial ownership of corporate vehicles is available and can be accessed by the competent authorities in a timely fashion. The OECD hosted Global Forum has also been mandated since 2009 by the G20 to ensure effective implementation of the international standards of transparency and exchange of information on request (EOIR) for tax purposes. The EOIR standard requires countries and jurisdictions to ensure availability of a wide range of information which may be foreseeably relevant to the tax investigations of another jurisdiction, its timely access by tax authorities and exchange with treaty partners through a wide network of exchange agreements. Since 2016, the EOIR standard requires the availability of beneficial ownership information of all legal entities and arrangements as well. Tax authorities

¹ [FATF Money Laundering vulnerabilities of Legal Professionals](#)

² [Guardian report](#)

can now request other jurisdictions for a wide range of information including that relating to real-estate ownership and transactions where this information is foreseeably relevant to their investigations.

6. In 2014, the OECD published the Common Reporting Standard (CRS), which sets a global standard for the automatic exchange of information concerning financial accounts, including a component requiring the reporting of the beneficial ownership of legal entities and arrangements that hold passive assets and of certain non-participating financial institutions. The new standard of automatic exchange of information provides, on an automatic basis, information to tax authorities of all financial assets of their tax residents located offshore. This information from the CRS is vast and unprecedented in its coverage, including not only annual information on the beneficial owners of passive entities and arrangements around the world, but also information on the financial assets they hold, value of financial assets and the location of those financial assets, all of which can be used for further investigations. While information relating to property ownership is not transmitted automatically, in most cases property transactions are made through the financial accounts, information of which is now accessible to tax authorities. Further investigations can expose such concealed assets and their beneficial owners.

7. The recent proliferation of Residence by Investment (RBI) and Citizenship by investment (CBI) schemes floated by various jurisdictions could facilitate this process of money laundering if unchecked and if the RBI and CBI policies are tied to the ownership of real estate in the new destination countries. OECD has recognised the risk of these schemes being used to circumvent the standard of AEOI and issued a list of schemes³ that present a high risk of facilitating CRS circumvention. Potentially high-risk CBI/RBI schemes are those that give access to a low personal income tax rate on offshore financial assets and do not require an individual to spend a significant amount of time in the location offering the scheme. The OECD has analysed over 100 CBI/RBI schemes, offered by CRS-committed jurisdictions and identified a few schemes that potentially pose a high-risk to the integrity of CRS. Financial Institutions are required to take the outcome of the OECD's analysis of high-risk CBI/RBI schemes into account when performing their CRS due diligence obligations in order to determine the correct tax residence of an account holder.

Whole of Government Approach: Wider use of Tax Information

8. For many years, the OECD has worked towards and advocated greater co-operation and information sharing between different government agencies involved in the fight against financial crimes, including tax evasion. This work was reflected in the 2009 and 2010 OECD Council Recommendations⁴ and in the 2013 OECD Report on effective inter-agency co-operation in fighting tax crimes and other financial crime (the "Rome Report"⁵). The Recommendations and the Rome Report recommend that governments take a holistic approach to combating financial crime including tax evasion, recognising that the activities of separate agencies including the tax administration, the customs administration, the Financial Intelligence Unit (FIU), the police, specialised criminal law enforcement agencies, anti-corruption authorities, the public prosecutor's office, and financial regulators should not operate in isolation.

9. Both Article 26 of the OECD Model Tax Convention and Article 22 of the Convention on Mutual Administrative Assistance in Tax Matters contain provisions protecting the confidentiality of information exchanged and restrict its use only for tax purposes. However these Articles also allow the sharing of information received from a treaty partner with other relevant governmental agencies provided that (i) such use is permissible under the laws of both jurisdictions and (ii) the competent authority of the sending

³ [Residence/Citizenship by investment schemes](#)

⁴ OECD Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 25 May 2009 [C\(2009\)64](#) and Recommendation to Facilitate Co-operation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes, 14 October 2010, [C\(2010\)119](#)

⁵ [Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes, 2nd Edition, 7 November 2013](#)

jurisdiction gives its consent for such use. This sharing of data in possession of tax authorities with other enforcement agencies can help countering other financial crimes including money laundering that has afflicted the European Real Estate Market.

10. For example, where a tax authority receives information of financial accounts of their taxpayer under the CRS, including the Beneficial Owner of a company with substantial funds in a foreign jurisdiction, further investigation can be made including through use of EOIR. Where such investigation reveals valuable real estate not previously known and the investigation also raises ML risks, pursuant to whole of government approach, the tax authority can spontaneously report to their AML authority which in turn can allow the AML authorities to pursue the investigation. The substantial progress made on the tax information side coupled with the Whole of Government approach put forward by the OECD therefore opens up the potential for effectively fighting other financial crimes. The OECD has published a Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors⁶ which provides guidance in identifying money laundering during the conduct of normal tax audits, and describes the nature of money laundering activities so that tax examiners and auditors can better understand how their contribution can assist criminal investigators in countering money laundering.

11. OECD is working on operational solutions to facilitate the sharing of CRS information with other law enforcement agencies, as permitted by the international exchange instruments. This information has significant potential for other law enforcement agencies in particular for anti-money laundering authorities. In this regard a draft Multilateral Competent Authority Agreement (MCAA) that would allow the domestic sharing of CRS information received through the exchange of information with other relevant law enforcement agencies has been prepared. This is at a discussion stage, and a global consensus needs to be built for wider use of CRS and other data by other enforcement agencies.

Enhanced due diligence by Professionals:

12. Under the 4th EU Anti-Money Laundering Directive (4AMLD), real estate agents have a stand-alone duty of due diligence not only on their clients but also on the counterparties involved in the property transaction. The real estate agents would be not only required to ask ever more intrusive questions around salary, current financial commitments like savings and debts, household expenditure as well as personal information such as marital and job status, but also to seek relevant information on the party they have no contract with. Under the risk-based customer due diligence procedures, the real estate agents would be required to conduct enhanced due diligence for customers presenting a higher risk. The domestic enforcement agencies can effectively seek better intelligence with which to pursue criminals by enlisting estate agents to be their “eyes and ears”. Effective due diligence and generation of timely suspicious transaction reports will help enforcement agencies immensely.

13. In its July 2018 report ⁷“Professional Money Laundering”, FATF has also identified a group of professional money launderers (PML) who provide services that include locating investments or purchasing assets; establishing companies or legal arrangements; acting as nominees; recruiting and managing networks of cash couriers or money mules; providing account management services; and creating and registering financial accounts. Results of FATF’s fourth round of mutual evaluations reveal that many countries are not sufficiently investigating and prosecuting complex money laundering that involve PML launderers but are confined to self-launderers. Effective dismantling of PMLs requires focused intelligence collection and investigation of the laundering activities, rather than the associated predicate offences of the groups using the services of the PMLs. The dismantling of PMLs, can impact the operations of their criminal clients, and

⁶ [Money Laundering Handbook](#)

⁷ [FATF July 2018 Report](#)

can be an effective intervention strategy against numerous criminal targets. Effective inter-agency coordination would be very helpful in dismantling PMLs by pooling various agencies' resources.

14. The Fifth Anti-Money Laundering Directive (5AMLD) was adopted by the Council of the EU on 14 May 2018 and came into force on 9 July 2018 with an 18-month transposition period. One of the key objectives set forth in the 5AMLD is the heightening of the overall transparency requirement of the Directive. The 5AMLD builds on the earlier directives in three ways:

- ✓ Firstly, by introducing an explicit obligation for beneficial owners themselves to provide obliged entities with such information.
- ✓ Secondly, by widening the circle of persons who have access to such information.
- ✓ Thirdly, the 5AMLD will require the 'register of beneficial owners of corporate entities' to be interconnected on an EU level, facilitating cross-border cooperation and access to information.

Possible OECD contribution: Strengthening the beneficial ownership work

15. The FATF Recommendations specify the beneficial ownership information that needs to be available and contain rules on adequacy, accuracy and timeliness, but do not currently mandate or give guidance on the form or formats within which such information needs to be kept. Similarly the requirement for availability of beneficial ownership in the Global Forum's standard of EOIR is not prescriptive and the obligation is for jurisdictions to have the information available regardless of who maintains that information and in which format.

16. The OECD has developed structured formats for the purposes of the CRS. The standardized format has facilitated collection and reporting by the financial institutions, which would be very helpful for effectively using the information. A similar searchable structured format for BO can facilitate access to and use of data contained therein. Preparing a similar schema for maintaining beneficial ownership information can be helpful. For instance, where a country creates a beneficial ownership register, it could use this structure to organise what is effectively a database. Where a country uses a more decentralised approach, as is also permitted by the FATF Recommendations, each repository of ownership information could use the same structure and format for the part of ownership information it maintains. In an age of big data, effective analytics and risk assessment becomes more important and so having a standardised, searchable format would facilitate faster investigations by law enforcement which is important when time is of the essence and money / ownership changes hands quickly.

Enhancing Transparency in the Real Estate Sector:

17. Tax authorities have access to a wealth of data. Tax Authorities should be aware of the risks of the real estate sector and other ML risks and a sense of their broader role in helping to combat other financial crimes. They have a wide range of tools for international cooperation and EOI. Therefore, taking proactive steps to work with international counterparts can be very effective and particularly important to help developing countries. In a recent example of international cooperation in cracking down on tax evasion in the real estate sector, the UK provided details of properties owned by Pakistani residents in the UK to the Pakistan Tax Authorities through spontaneous exchange of information⁸. In turn, the Tax Authority in Pakistan has launched investigations into these cases to examine whether the ownership of these properties has been disclosed to the tax authorities within Pakistan.

⁸ <https://www.dawn.com/news/1425024>

18. While a lot of progress has been made through implementation of transparency standards, there is scope for improving transparency in the real estate sector. Under the current EOIR standard, the requesting authority is required to have some indication about the location of a property belonging to a taxpayer in another jurisdiction. This may not always be the case. The AEOI standard does not require any prior knowledge and is very comprehensive in its scope. However, this standard covers a wide range of financial assets not real estate. Tax evasion in the real estate sector can be tackled more effectively through automatic exchange of legal and beneficial ownership information of real estates. In order to do this however, a global consensus will have to be built. Where such information is automatically available to tax authorities, a Whole of Government approach which allows information received to be used for other law enforcement purposes may be very helpful in cracking down on money laundering and tax evasion in the real estate sector.