

OECD LATIN-AMERICA ACADEMY

FOR TAX AND FINANCIAL CRIME INVESTIGATION

Accumulated Results of the polls conducted on the 10 Global Principles

In each of the last **eight** Programmes delivered in the OECD Latin America Academy, a **poll** was conducted on the **10 Global Principles** for fighting tax crimes and other crimes.

The poll proposed participants to select the principle they consider her/his jurisdiction **enforces the most and the least**. More recently, as from the tenth programme (October 2021), the poll was broadened and participants were consulted in detail about a set of variables in respect of each principle.

So far eight polls were conducted, participating a total of 304 officials from different bodies involved in the investigation and fight against tax and financial crimes, from 37 different Latin America countries.

The eight programmes delivered were:

- ✓ Intermediate Virtual Programme: Managing Financial Investigations, September 2020.
- ✓ Specialty Virtual Programme: VAT/GST Fraud Investigations, October 2020.
- ✓ Specialty Virtual Programme: Investigative Techniques for the Effective Use of Banking Information, March 2021.
- ✓ Specialty Virtual Programme: Asset Recovery - Freezing and Seizing Assets, June 2021.
- ✓ Intermediate Virtual Programme: Managing Financial Investigations, October 2021.
- ✓ Specialty Virtual Programme: Investigative Techniques for the Cash Economy, March 2022.
- ✓ Specialty Virtual Programme: Anti-Money Laundering - Current Trends, Prosecutions, and the Challenges presented by Crypto Assets, June 2022.
- ✓ Foundation Virtual Programme: Conducting Financial Investigations, October 2022.

As per the consolidated result of the above-mentioned polls, it shows the following:

A.- In connection with the most voted principles as **enforced the most**, they are:

- **N° 1: "Criminalization of Tax Offences"** with **25,7%** and
- **N° 10: "Rights of Suspects or Accused of Committing Crimes"** with **16,4%** of the results.

It should be added that all participants who selected **Principle 1** as the principle enforced the most (49 participants), considered that the "criminalization of tax offences" in their jurisdiction is carried out due to the fact that "the law clearly defines the tax offences that are criminalized" (98% of the total of those who voted for Principle 1). It was noted also that not all jurisdictions stipulate that the criminalization covers legal persons (it is stipulated by 59,2 % from the total of those who voted Principle 1).

Furthermore, only 42,9% from the total of participants who voted Principle 1 agreed that criminal sanctions are effectively applied in practice, in line with this, Principle 1 resulted also as the second most voted among the principles enforced the least (with 64.7% from the total of those who voted Principle 1).

That is to say, even when participants indicate that tax crimes are criminalized, in practice they are not effectively applied. In this respect, participants outlined as the causes the following: long drawn out trials; the statute of limitations applied; moratorium regimes that authorize the termination of the criminal action when the debt is paid; very long proceedings that end without conviction due to changes in the regulations, and enforcement of the most favorable criminal law, among others. It was also noted on this regard that this situation affects the risk perception on behalf of taxpayers and creates a greater sense of impunity, as well as the loss of significant amounts for the public treasury, among others.

Regarding **Principle N° 10, “Rights of Suspects or Accused of Committing Crimes”**, as a general rule, there is a strong protection of taxpayers’ rights and safeguards, in some cases, interfering with the correct and effective enforcement of criminal rules.

B.- On the other hand, regarding the Principles that are **enforced the least**, the most voted were the following:

- **N° 6: “Provide adequate material and human resources for tax crime investigation”** with **26,4%**;
- **N° 1: “Criminalization of Tax Offences”** with **16,4%**. Subsequently, with very little difference, the principles voted are:
- **N° 2: “Devise an effective strategy for addressing tax crimes ”** with **13,5%**;
- **N° 8: " Have an effective framework for domestic inter-agency co-operation "** with **11,8%**, and
- **N° 9: "Mechanisms for International Cooperation"** with **10,2%**.

In relation to **Principle N° 6**, 63,6% of participants who selected it as the principle enforced the least (55 participants), considered that this was due to the fact of not " Having staff with the appropriate professional expertise (knowledge and skills)", and 70,9% attributed it to the lack of "material resources: data and technology".

Moreover, 78,2 % of participants who voted Principle 6 as the least enforced, outlined the fact of not “Having a sufficient number of staff”. Among the reasons stated, participants emphasized the lack of training of officials (in this regard it was also noted that the constant staff turnover jeopardize officials’ specialization), and that the number of staff assigned to the investigation of tax crimes is not adequate for the number of existing cases. As per the lack of material resources, it is noted the need for investment in new technology, as well as having sufficient technological inputs.

In connection to **Principle N° 1**, that as mentioned *ut supra* is the principle most enforced, it is also in second place as principle least enforced. This is due to the fact that, even tax crimes are criminalized under the law of the jurisdictions, in turn, in practice it is not effectively applied. In this sense, 64.7 % of the total of those who voted Principle 1 as the least enforced, concurred that criminal sanctions are not effectively applied in practice. Furthermore, 47.1% of the total of participants that voted Principle 1, noted that “the law clearly defines the tax crimes that are criminalized” and only 23,5% stated that criminalization covers legal persons.

Regarding **Principle N° 2 “Devise an effective strategy for addressing tax crimes”**, 81% of participants who voted this principle (21 persons), noted that the development of strategies has a limited scope within each body.

As per **Principle N° 8** related to “**Have an effective framework for domestic inter-agency cooperation**”, participants mentioned as the main reasons for non-compliance: the lack of an interagency cooperation mechanism when investigating tax crimes, and/or the lack of effective information sharing -which interferes the access to the data needed to improve the tax investigation, as well as the strict confidentiality of tax information held by the Tax Administration, leading to delays and/or the affectation of investigative proceedings in the fight against money laundering.

To be more precise, 86.4% of those who voted for this principle (22 participants) attributed it to problems when "sharing information", while 63.6% also pointed out the lack of other forms of cooperation: investigation teams formed by different agencies; inter-agency centres of intelligence; other models.

During the last Programme of October 2022; in addition to the poll, it was performed an activity related to Principle 8, which aimed at the identification from participants of the following:

01 10 GLOBAL PRINCIPLES

AFOP

PRINCIPLE 8

Intergovernmental Exchange of Information

EVEN GROUPS

What do you think are the main obstacles or deficiencies that affect the effective and efficient intergovernmental cooperation between the agencies responsible for preventing and combating the commission of tax and financial crimes?

ODD GROUPS

What situations or scenarios do you see in your jurisdiction that effectively contribute to efficient intergovernmental cooperation between the agencies responsible for preventing and combating the commission of tax and financial crimes?

ASSIGNMENT

- Discuss in group & list at least two, briefly explain them, and identify at least one possible measure to solve or mitigate the situation (Even groups), which sustains or strengthens it (Odd groups)

Participants agreed on the need to emphasize the **lack of communication** among government agencies responsible for the prevention and prosecution of tax crimes. They agreed on the need to deepen and improve inter-agency communication. Among the measures proposed to address this issue they mentioned: signing agreements of understanding (MOU) between the agencies, and creating work teams and committees, inviting the heads or main representatives of the agencies involved.

It was also noted the need to deepen the information sharing with **direct access** to information bases or by means of automatic exchange by the agencies involved in the investigation of crimes. So as to achieve this, they suggested moving towards the incorporation of the appropriate regulatory framework.

Another highlighted aspect was the **lack of knowledge** regarding the functions/competences of other agencies responsible for preventing and fighting against the commission of crimes, in their own jurisdictions.

Furthermore, another aspect was noted, that is the hurdle presented by some regulations on **information security (confidentiality)** -that, as being so strict- make it difficult with burdensome authorizations or procedures, to obtain information in a timely manner to carry out the investigation.

And lastly, **Principle N° 9** on "**Effective International Cooperation Mechanisms**" was also voted among the principles least enforced with 10.2%. More precisely, 78.6% emphasized –as least enforced- the development of joint investigations, and in second place, with 71.4%, obtaining evidence and testimony from witnesses.

The accumulated results of the polls conducted in the last eight training programs of the OECD Latin America Academy show and make us aware of the aspects, related to the 10 Global Principles that appear as the weakest and the strongest. Information that tries to contribute (as the feedback of other forums) with the identification of aspects to deepen, either when developing study plans, when developing activities of greater collaboration -such as the trust barometer of interagency organizations (Principle 8) proposed by SARS, etc.

Finally, it is worth mentioning an ECLAC report in which it was stated that tax evasion has been and is one of the main obstacles that public finances face, and therefore, for the development process of the Latin America and the Caribbean countries. To the unavailability of large public resources, it should be added the affectation of the very foundations on which the legitimacy of the tax system is supported, when affecting the principles of efficiency and equity that should prevail. In this sense, it is essential to ensure the amount of tax collection that currently is not being collected due to tax evasion and other structural weaknesses of the tax systems in force.

The report mentioned highlights that recurring difficulties have been faced when quantifying the magnitude of the phenomenon of tax evasion in the Latin American countries. It also noted that even with a limited diagnosis, the countries of the region made progress in a series of reforms and administrative measures aimed at combating this scourge, among others: the generalization of electronic invoicing, the adoption of automatic collection mechanisms, the segmented treatment of taxpayers; progress on international exchange of information; greater investment in human and financial resources, and in information technologies, aiming at strengthening the operational capacity of the tax administrations and promoting voluntary tax compliance; among other measures (see: *J.C. Gómez Sabaini y D. Morán, "Estrategias para abordar la evasión tributaria en América Latina y el Caribe. Avances en su medición y panorama de las medidas recientes para reducir su magnitud", serie Macroeconomía del Desarrollo Nro. 215 (LC/ts.2020/125), Santiago, Comisión Económica para América Latina y el Caribe –CEPAL. 2020*).

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ANNEX

For a better illustration, it is detailed below:

1. Chart detailing the number of votes and percentage it represents
2. Chart with the accumulated results of the eight Programmes

1.- Chart detailing the number of votes and percentage it represents

On the **principles enforced the most** in each jurisdiction, the results were as follows (from the most to the least voted):

Principle enforced the most	Number of votes	Percentage
1. Criminalization of Tax Offences	78	25,7%
10. Rights of Suspects or Accused of Committing Crimes	50	16,4%
3. Investigative Powers	38	12,5%
7. Tax Crimes a Predicate Offence for Money Laundering	34	11,2%
4. Powers to Freeze, Seize and Confiscate Assets	27	8,9%
5. Organizational structure with responsibilities for investigating and prosecuting tax crimes	21	6,9%
2. Devise an Effective Strategy for Addressing and Prosecuting Tax Crimes	19	6,3%
8. Intergovernmental Exchange of Information	13	4,3%
6. Material and Human Resources	12	3,9%
9. Mechanisms for International Cooperation	12	3,9%
TOTAL	304	

In turn, on the **principles enforced the least** in each jurisdiction, the results were as follows (from the most to the least voted):

Principle enforced the least	Number of votes	Percentage
6. Material and Human Resources	81	26,6%
1. Criminalization of Tax Offences	50	16,4%
2. Devise an Effective Strategy for Addressing and Prosecuting Tax Crimes	41	13,5%
8. Intergovernmental Exchange of Information	36	11,8%
9. Mechanisms for International Cooperation	31	10,2%
4. Powers to Freeze, Seize and Confiscate Assets	30	9,9%
7. Tax Crimes a Predicate Offence for Money Laundering	11	3,6%
5. Organizational structure with responsibilities for investigating and prosecuting tax crimes	10	3,3%
3. Investigative Powers	9	3,0%
10. Rights of Suspects or Accused of Committing Crimes	5	1,6%
TOTAL	304	

2.- Chart with the accumulated results of the eight programmes



Accumulated



Enforces THE LEAST -

10 GLOBAL PRINCIPLES

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Enforces THE MOST

