



INTERNATIONAL ASSET RECOVERY

CIVIL TAXATION AND DEBT
RECOVERY



Asset recovery – civil or criminal

What kind of asset recovery do you go for?

1. Criminal?

2. Civil?

Depends on?

3. Time perspective?

4. The evidence you have?

5. Status of your investigation?





Standards of proof

Tracing
assets/
evidence

Freezing/
seizure order

Criminal or
Civil
confiscation
order

Criminal
conviction

Low

High

Reasonable
grounds to
suspect

Probable
cause or
Reasonable
grounds to
believe

Balance of
probabilities or
Preponderance
of evidence

Beyond
reasonable
doubt



Taxation and Debt Recovery

Using civil powers to recover funds from criminality:

1. Taxing criminal income (person or company)
2. Civil claim for damages (also against co-conspirators)
3. Insolvency or bankruptcy proceedings
4. Civil or administrative forfeiture





What assets can be targetted?

- Assets owned by the suspect
- Assets that can be tied to the suspect
 - What was the price of the asset?
 - What source of funds used to pay for the asset?
 - Who is paying the expenses associated with the asset?
 - The registred owners capacity to purchase/ maintain the asset?
 - Who is occupying/controlling the asset?



TAXING ILLEGAL INCOME





Taxation of illegal income

- Against person or company with income from crime
- Secondary to criminal proceedings
 - If criminal case, the proceeds will be confiscated under criminal law, no need to tax, may be no power?
 - Or tax it at the same time – second chance
- Alternative to civil confiscation
 - What is the easiest tool to use in the specific case?
 - Civil confiscation requires an order by court
 - Taxation only requires a tax assessment



Your jurisdiction's rules on taxable income?

- Limited to income from “a trade”?:

“...involves the acquisition and provision on a commercial basis, of goods or services to a customer for reward” (UK)

- Will all types of criminal income be taxable?
- NO, i.e. burglary – if money is gained out of it....YES!

- Or specifically including illegal income?: *“Charge to tax of profits or gains from unknown or unlawful sources. Shall be described in the tax assessment as “Miscellaneous Income.”*

- Or all income in general?:

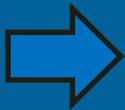
“Gross income” (...) is “all income from whatever source derive, including, (but not limited to) the following items” (...) income derived from a business”



Taxation of illegal income

- Why?

- Excellent tool against organized crime!
- Especially when no criminal case is opened
- Not grounds for civil forfeiture?
- Tax the income from criminal activity



Both UK and USA have government units targeting criminals by taxing their illegal income – in Germany and other EU countries no special units - tax investigation



Taxation of illegal income

- Also use Penalties and Interest in these cases
 - Increases the claim against the debtor – he gets to keep less of the proceeds himself....
- The tax claim can be used as basis for bankruptcy proceedings



Taxing illegal income – Case example

Drug Dealer Case



Taxing illegal income – Case example

Arrested with 500 gr Marihuana by car checks - searches

Real estate worth 1,5 Mil €

Cars worth 250.000 €

Bank accounts 120.000 €

No income?

What did the police ?



Taxing illegal income – Way forward

What are the steps to tax the illegal income?



Need to secure tax claims during audit: Tax office's primary measures

Tax Audit/Investigation of a company/person

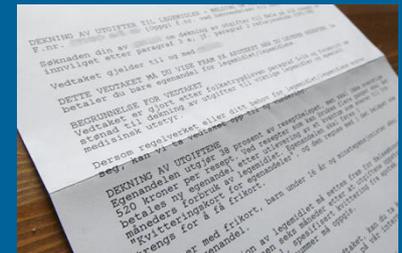
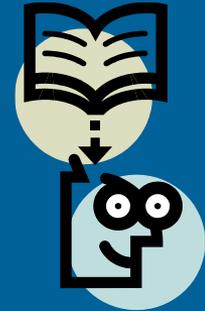
– Usually without prior notification

Write Tax Audit Report

Make a decision stating the correct tax/VAT

Send the debt to be collected by the

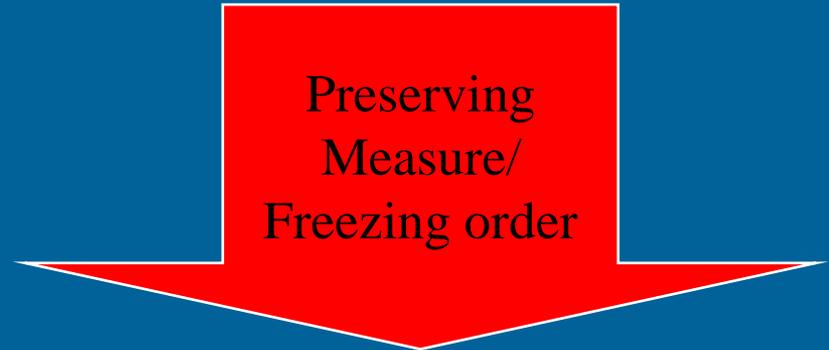
Tax Collector - Enforcement by distraint





Tax office's extraordinary measures

For use in the gravest cases!





CIVIL CLAIM FOR DAMAGES





Civil claim for Damages - Legal grounds

- Discovered tax fraud in company
- Company goes bankrupt
 - No money to pay the taxes? = Loss for the revenue!
- Your jurisdiction may have provisions to let the government sue individuals for damages





Who can be liable?

- Company has submitted fraudulent tax/VAT reports
 - Which individual(s) responsible for this according to rules in your jurisdiction?
 - Chairman/Board of Directors?
 - Chief Executive Officer?
 - This person(s) may be liable
 - Problem: nominee/ «straw man»?
 - Also his advisors/accessories
 - More than one: Joint and several liability



INSOLVENCY/BANKRUPTCY PROCEEDINGS





Bankruptcy

- The government is an involuntary creditor!
 - Tax debt
 - Confiscation/forfeiture/damages verdict
- Can petition for bankruptcy
 - Person
 - Company
- Court appoints a liquidator/ administrator, responsible for tracing all assets to be sold, and money distributed to the creditors



Bankruptcy - benefits

- Possible for the liquidator to utilise information: Debtor may have no right to silence
- Different set of rules for retrieving assets from abroad
 - The liquidator/administrator is in charge of the estate!
- Ability to act with speed



Bankruptcy - benefits

- Your jurisdiction may have rules for piercing of the corporate veil in bankruptcy cases
 - Civil recovery against a company's directors/shareholders and third parties (advisors)
 - Lower burden of proof due to civil action



- 1997 - UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment
- Legislation based on the Model Law has been adopted in 41 states:

Australia	2008	Guinea	2015	Seychelles	2013
Benin	2015	Guinea-Bissau	2015	Slovenia	2007
Burkina Faso	2015	Japan	2000	South Africa	2000
Cameroon	2015	Kenya	2015	Togo	2015
Canada	2005	Malawi	2015	Uganda	2011
Central African Republic	2015	Mali	2015	British Virgin Islands	2003
Chad	2015	Mauritius	2009	Gibraltar	2014
Chile	2013	Mexico	2000	Great Britain	2006
Colombia	2006	Montenegro	2002	United States of America	2005
Comoros	2015	New Zealand	2006	Vanuatu	2013
Congo	2015	Niger	2015	Zambia	2002
Côte d'Ivoire	2015	Philippines	2010		
Democratic Republic of Congo	2015	Poland	2003		
Equatorial Guinea	2015	Republic of Korea	2006		
Gabon	2015	Romania	2002		
Greece	2010	Senegal	2015		
		Serbia	2004		



CIVIL or ADMINISTRATIVE FORFEITURE



Seizure of Goods





Cash Seizure and Forfeiture

- Onus on individual to explain origin
- Failure to satisfy court = loss of funds
- Definition of Cash Expanded
 - Gaming Vouchers, Casino Tokens, Betting Receipts





Personal & movable Property

- Precious Metals
- Precious Stones
- Watches
- Works of Art
- Postage Stamps





Civil Methods of Recovering Proceeds of Crime

1. Taxing criminal income (-person or company)
2. Civil claim for damages (also against co-conspirators)
3. Bankruptcy proceedings
4. Civil or Administrative Forfeiture

And secure the claim as early as possible!

(And as debt survives death, seek the appointment of an Administrator over a deceased persons estate, or make the forfeiture/ tax/ damages claim against the estate...)





Best Practice - Suggestions

- Central unit for asset recovery?
- Employees seconded from multiple agencies
- Targeting 50 «worst criminals» and their family/network?
- Or targeting grave organized crime in general?



Best Practice Suggestions

Centres of Excellence on Asset Recovery and Training (CEART), 2012

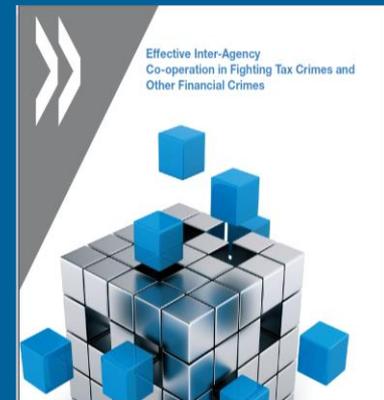
- The EU-comission, Rey Juan Carlos University, different contries' police authorities and Europol
- Recommends
 - Establish «Asset Recovery Bodies»
 - Legislative: Money laundering as a criminal offence
 - Focus on taxing illegal income
 - Thorough financial investigation





Best Practice Suggestions

- Report from 2017
- How do authorities in 48 countries work together to combat economic crime
- Recommends:
 - Taxing of criminal income
 - Sharing of information between FIU and Tax
 - Coordinated effort for recovering proceeds of crime





Further reading material:

https://star.worldbank.org/star/sites/star/files/asset_recovery_handbook_0.pdf

The screenshot shows a web browser window with the URL https://star.worldbank.org/star/sites/star/files/asset_recovery_handbook_0.pdf. The main content area displays the cover of the 'Asset Recovery Handbook: A Guide for Practitioners'. The cover features a collage of 500 Euro banknotes at the top and a photograph of a large, modern house with a white boat docked in front of it at the bottom. The authors listed are Jean-Pierre Brun, Larissa Gray, Clive Scott, and Kevin M. Stephenson.

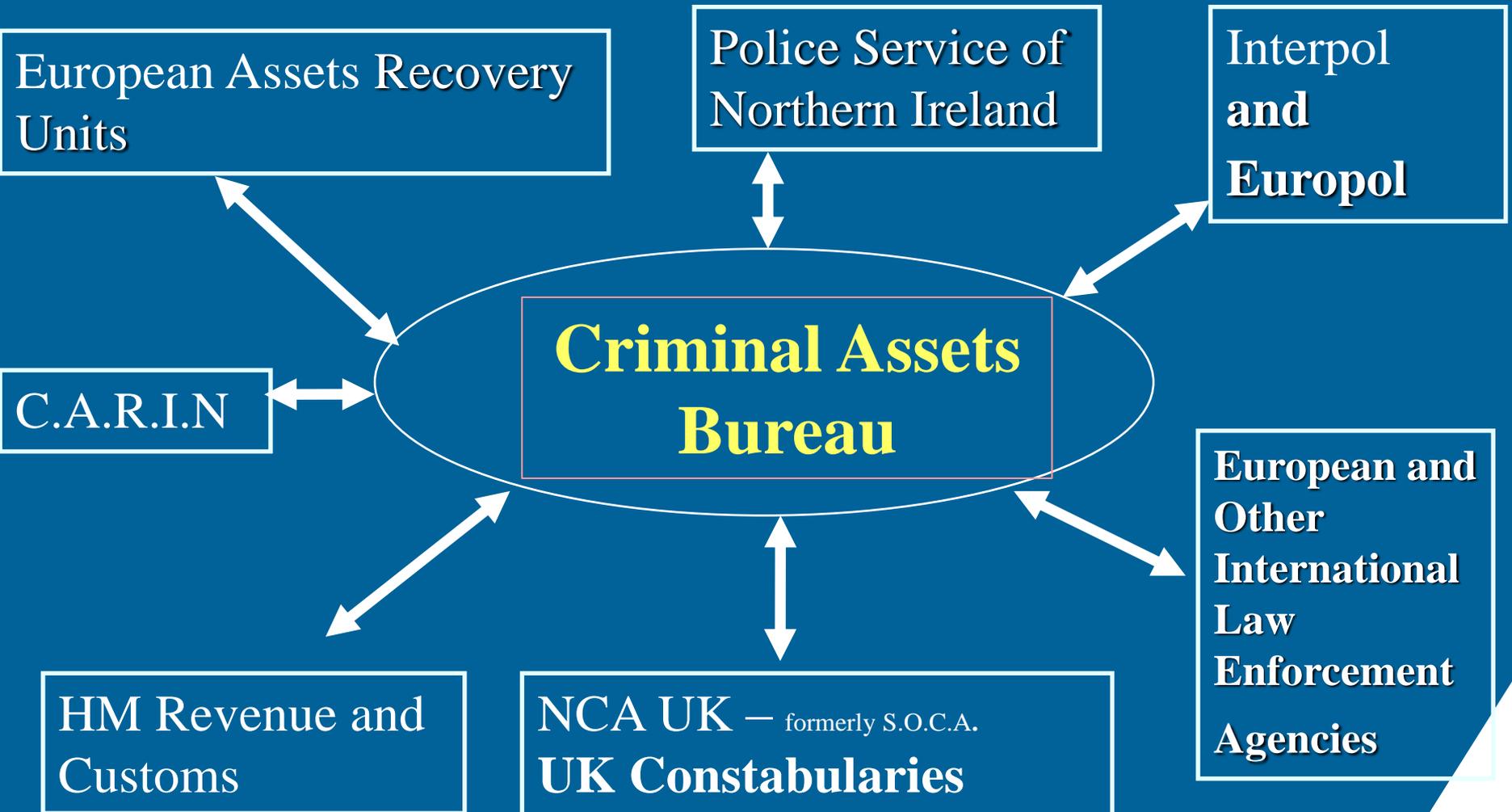
On the left side of the browser, a table of contents is visible, listing the following sections:

- Contents
- Preface
- Acknowledgments
- Acronyms and Abbreviations
- Introduction
 - Methodology
 - How the Handbook Can Be Used
- 1. Overview of the Asset Recovery Process and Avenues for Recovering Assets
 - 1.1 General Process for Asset Recovery
 - 1.2 Legal Avenues for Achieving Asset Recovery
 - 1.3 Use of Asset Recovery Avenues in Practice: Three Case Examples
- 2. Strategic Considerations for Developing and Managing a Case
 - 2.1 Gathering Facts: Initial Sources of Information
 - 2.2 Assembling a Team or Unit, Task Forces, and Joint Investigations
 - 2.3 Establishing Contact with Foreign

The browser's taskbar at the bottom shows several open applications, including 'Innboks - IngerAs...', 'https://star.world...', 'ePhorte (Inger Ast...', 'Fratagelse av utby...', '2015', 'Module 11 - Asset...', 'Module 13 - Tax f...', and 'White paper on b...'. The system tray on the right indicates the time as 17:54 on 14.04.2015.



International Co-Operation





Asset Recovery Investigation Strategy

1

Determine your aims

2

Identify obstacles

3

Plan your way forward

4

Always have a backup

5

Review, review, review



Questions?

**ALWAYS
FOLLOW
THE MONEY!**