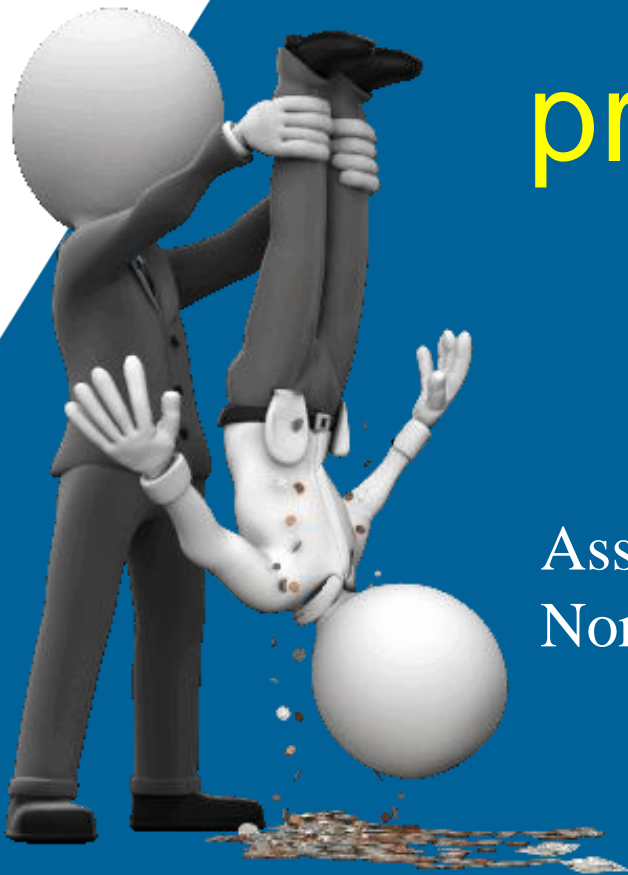




# Our Goal: Recovering the proceeds of crime - But how...?



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## What this Module aims to teach:

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### Awareness and knowledge

- What are «Assets»?
- Which tools can we use to remove assets?



# Raise hand Questions

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Stand up if **YES**



Do nothing if **NO**





Does your office/unit focus on asset recovery?

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Stand up if **YES**



Do nothing if **NO**





Have you worked on an asset recovery case?

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Stand up if **YES**



Do nothing if **NO**





Do you know of an asset recovery case from your country?

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Stand up if **YES**



Do nothing if **NO**





# Why focus on the proceeds of crime?

- Secure income for the Government
- Prevention of future crimes
- Following and taking their money upsets criminals & disrupts crime!
  - More than sentencing...





# Group Assignment:



On your own:

Use 5 minutes to write down what you think are key elements to succeed in a case involving recovering the proceeds of crime

In the group (15 minutes):

Share and discuss the answers and make a list of 5 key elements



## Group Assignment presentation:

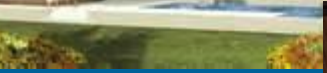
Key elements to succeed in a case involving recovering the proceeds of crime are ...?





Discuss with your partner:  
What are «assets»?





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## What assets should you target?

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- Any assets owned by the suspect
- Does it need to be particularly valuable?
  - No



Discuss with your partner:  
-Any experience with assets  
owned through a straw  
person?





## What assets should you target?

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Assets that can be tied to the suspect

- How to prove real ownership?
  - Who is occupying/controlling the asset?
  - What was the price of the asset?
  - The registered owners capacity to purchase/maintain the asset?
  - What source of funds used to pay for the asset?
  - Who is paying the expenses associated with the asset?



## Case example – Real ownership

- Mr. Amundsen; tax fraudster and former politician, owing 10 mill NOK to Norwegian Revenue
- Buys a farm, registred to his friend mr. Smestad







## Case example – Real ownership

- End result:
  - Tax office gets distraint over the farm in court
  - Value of the farm was less than 10 mill NOK
    - Tax Office filed for bankruptcy against Mr. Amundsen
  - His bankruptcy estate sold the farm for 2,5 mill NOK





# (TRICK) QUESTION: WHEN DO WE NEED TO LOOK FOR ASSETS?





# Remember: Timing is everything!

Find and secure the assets during the investigation/audit!

Do not wait until the investigation/assessment/court order has been completed!





# Question

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What legal tools to recover the  
proceeds of crime  
do you know about?





# A reminder: Standards of proof

Tracing  
assets/  
evidence

Restraining/  
freezing or  
Seizure order

Criminal or  
Civil  
confiscation  
order

Criminal  
conviction

+50 %

Low

High

«Reasonable  
grounds to  
suspect»

«Probable  
cause» or  
«Reasonable  
grounds to  
believe»

«Balance of  
probabilities» or  
«Preponderance  
of evidence»

«Beyond  
reasonable  
doubt»



Discuss with your partner:

# WHAT ARE PROCEEDS OF CRIME?





# Forfeiture

## “Proceeds of crime”

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Can be ANY benefit derived from a crime

- Ex: Embezzled amount, money from drug sale, saved taxes or -custom fees

Also Substitutes: Assets bought for money from crime

- Sale of drugs 2 mill USD –  
invested in house.  
House = Proceeds





# Forfeiture

## – What are “Proceeds of crime”?

- Invested money from crime has given a profit – The profit will be seen as proceeds of crime
  - Invested money from crime in legal business, the profit from the business = Proceeds
- Invested money from crime AND legal means in an asset which gives profit?
  - Proportionate part of both the asset and the profit = Proceeds





# “Proceeds of crime”

## Property or value based rules?

### Value-based confiscation

Is the calculated criminal benefit

- Any asset can be used to cover this!

### Property-based confiscation

Is the benefit itself, or a substitute

**The crime**

So only the benefit or it's substitute  
can be confiscated using this rule



# Developing asset recovery cases

Crime is motivated by profit

Profits can be:

- consumed
- invested legally
- invested in future crime

These actions leave trails!



Our starting point is the paper trail

“Close the doors” of all other legal income





# QUESTION: HOW CAN YOU LEGALLY OBTAIN ASSETS?





# The interview can be essential!

Where did you  
get the money  
from?!





# Securing Assets

Pre charge, may or may not require court order:

- Seizing = Taking physical possession of the asset to prevent owner from using/selling it.
- Restraining order = Legal process to prevent use/sale, but not taking physical possession.

Final court decision:

- Confiscation = Forfeiture = Final order to remove assets



# Group Assignment:



On your own:

Use 5 minutes to write down the facts of a case involving asset recovery in your country

In the group 45 minutes:

Share the cases briefly and choose a case one of you has worked on and discuss: Are there ways the investigation could have been handled differently?



Share:  
Findings from your discussion?





# Civil Confiscation/ Forfeiture





# Civil Forfeiture/Confiscation

- Legislation to enable the Government to take over all assets derived from or used in crime
  - “Balance of probability” is often enough
  - Reason: Assets derived by crime deserves no protection
- Does not require a criminal conviction to confiscate the assets



# Civil Forfeiture/Confiscation

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- Important: Secure the claim as early as possible!
  - Prevents the owner from hiding assets before trial
  - By use of seizing or freezing/restraining order



# Taxing illegal income





Do you have rules for taxing illegal income in your country?

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Stand up if **YES**



Do nothing if **NO**





## Taxation of illegal income

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- 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
- Alternative to civil confiscation
  - What is the easiest tool to use in the specific case?
    - Civil confiscation requires a verdict 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, e.i. burglary
- 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.” (Ireland: Section 58 of the Taxes Consolidation Act 1997)
- 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” (US Code section 61, Title 26)



# Taxation of illegal income

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- Why?
  - Excellent tool against organized crime!
  - Specially when no criminal case is opened
  - Not grounds for civil forfeiture?

 Tax the income from criminal activity

Many countries have government units targeting criminals by taxing their illegal income



## Taxation of illegal income

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- Also use penalty tax 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 - Illegal taxi cab operation

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- Criminal investigation - narcotics
  - Search private home - found NOK 800 000 in cash
  - Suspect explained «*Earned on illegal cab operation*»
- Criminal narcotics case was dismissed
  - The NOK 800 000 to be returned to the suspect!
  - But police submitted inf to Tax authorities about the income
- Tax filed for freezing order in the NOK 800 000 to secure tax claim based on the illegal cab operation
  - Court agreed
- Tax made assesment and used the frozen cash to cover the claim



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

Tax Audit/Investigation of a company/person

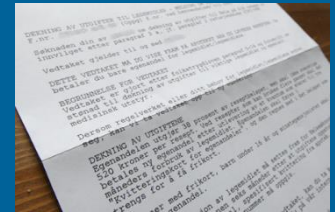
- Usually without prior notification

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





# Civil claim for Damages





## Civil claim: What is it?

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- Liability in negligence
  - Culpable negligence? —————> Willful neglect?
- Economic loss
- Causation between the liable action and the economic loss
- Standard of proof: Balance of probability



Do you have any experience with civil claims?

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Stand up if **YES**



Do nothing if **NO**





## Civil claim for Damages - Legal grounds

- Discovered tax fraud in LTD
- 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?

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



## Case example – Mr. Andreassen's LTD

- 2007: Janka LTD sells real estate for NOK 50 mill. Tax return «*Sold for NOK 25 mill*»
- Tax revenue loss of 28% company tax = **NOK 7 mill**
- Uncovered in tax audit in 2010
- LTD goes bankrupt in 2011 –  
No money to cover the loss...



Janka LTD

# Who did what? Who did we target?



«Gate  
keeper»  
Chair & CEO:  
Mr Wellen



Actual Chair &  
CEO, owner:  
Mr  
Andreassen



Lawyer:  
Mr Spjel



Auditor:  
Mr Fogg



# Mr. Andreassen's LTD – Legal action taken...

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- Against «gate keeper» Chair Mr. Wellen (brother of Mr. Andreassen)
  - Registered as Chair of the company after the sale, but before the tax return was submitted
  - Signed the Tax Return
  - Never in touch with the Auditor, or asked to see the accounts
- Against actual Chair and CEO Mr. Andreassen
  - At the time of the sale and at the time of the tax return being submitted he was actual CEO and Chair
  - Suggested that his brother become gate keeper



# Mr. Andreassen's LTD – Legal action taken...

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- Against the company's lawyer Mr. Spjel
  - Who had been responsible for the sale and got the amount into his bank account
  - What is the standard of due care for lawyers?
- Against the company's auditor, Mr. Fogg
  - According to Norwegian law, strict professional responsibilities
  - He had not seen that the amount into the bank account was twice as big as the amount given in the tax return
    - He had signed the tax return
    - The sale was the **ONLY** transaction that year!
  - What is the standard of due care for auditors?



# Mr. Andreassen's LTD – Legal action - Results

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## District court:

- Mr. Andreassen: Liable for NOK 7 mill
- Lawyer Spjel: Acquitted
- Auditor Fogg: Liable for NOK 5 mill  
(jointly liable with Andreassen and Wellen)
- Gate keeper Wellen: Liable for NOK 2,1 mill  
(jointly liable with Andreassen and Fjogstad)



# Mr. Andreassen's LTD – Legal action - Results



## Appeal court:

Mr Andreassen withdrew his appeal

Lawyer Mr Spjel: Out of court settlement –

- He paid 800 000 NOK + covered own costs of 1,2 mill NOK

Auditor Fogg and Gate keeper Wellen were both found liable for 6,2 mill NOK



# Mr. Andreassen's LTD – Securing of assets?

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When case started – Filed for freezing order against Mr. Andreassen

Secured valuable beach front house

Auditors/Lawyers – Are insured!

Less need to secure during Investigation as insurance company will pay us directly





Can you think of a case where  
you could have used a civil  
claim?





# Bankruptcy Proceedings





Does your office use  
bankruptcy as a tool?





# Bankruptcy

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- 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

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- 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

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- 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



## Case example - Bankruptcy – Sheik LTD



- Goldsmith company in Norway, extensive import and export
- Audit initiated May, and report by the end of following year
  - Massive under-reporting on tax & VAT over a four year period
  - Customs also audited the company
  - Assessments would be substantial, tax, VAT and customs fees



## Case example - Bankruptcy – Sheik LTD



- During audit, Customs seized 5 kg used gold from the business – on the way for export
- Tax filed for freezing order to secure the gold
- Immediately afterwards Tax filed for bankruptcy in the company
- Bankruptcy liquidator acquired the gold from the enforcement officer
  - Value NOK 500 000
  - Gave the liquidator money to work for to cooperate with police and foreign jurisdictions (Dubai), to uncover further assets



# Bankruptcy

- 1997 - UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment

- Legislation based on the Model Law in 44 States in a total of 46 jurisdictions:

Australia 2008

Benin 2015

Burkina Faso 2015

Cameroon 2015

Canada 2005

Central African Republic 2015

Chad 2015

Chile 2013

Colombia 2006

Comoros 2015

Congo 2015

Côte d'Ivoire 2015

Democratic Republic Congo 2015

Dominican Republic 2015

Equatorial Guinea 2015

Gabon 2015

Greece 2010

Guinea 2015

Guinea-Bissau 2015

Israel 2018

Japan 2000

Kenya 2015

Malawi 2015

Mali 2015

Mauritius 2009

Mexico 2000

Montenegro 2002

New Zealand 2006

Niger 2015

Philippines 2010

Poland 2003

Republic of Korea 2006

Romania 2002

Senegal 2015

Serbia 2004

Seychelles 2013

Singapore 2017

Slovenia 2007

South Africa 2000

Togo 2015

Uganda 2011

United Kingdom of Great  
Britain and Northern Ireland

British Virgin Islands 2003

Gibraltar 2014

Great Britain 2006

United States of America 2005

Vanuatu



# Practical exercise

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# International Best Practice





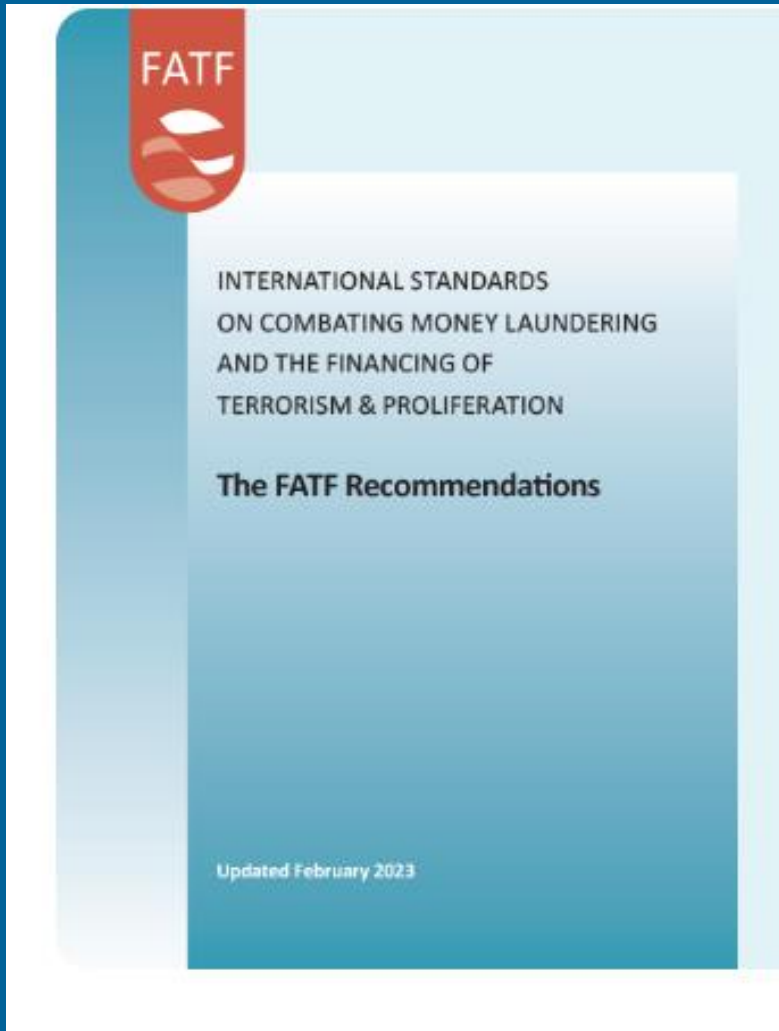
## Sources:

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- [Stolen Asset Recovery \(UN\)](#)
- [Interpol on Asset Recovery](#)
- [Financial Action Task Force](#)
- [International Center for Asset Recovery](#)
- [Report: TRAINING WORKSHOP ON ASSET RECOVERY 2018, BANGKOK, THAILAND](#)
- [Basel Institute - Online tool](#)



## Recommends:



- Allow informal exchanges of information to take place, also prior to the formal letter of request
- Promote a culture of reciprocity between countries
- Establishing specialised units to focus on asset tracing and confiscation
- Establishing a Confiscation Fund for beneficial purposes
- Introduce Civil Confiscation to all legal systems


## Recent Risk-based approach guidance:



Real Estate Sector



Virtual Assets and Virtual Asset Service Providers



Risk-Based Supervision



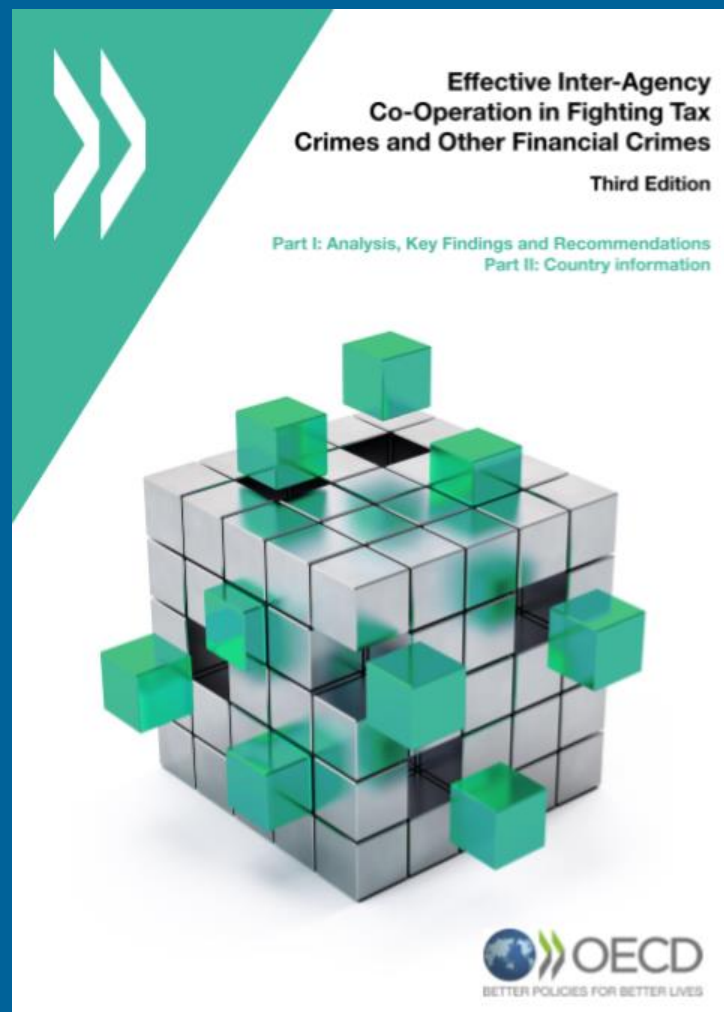
Legal Professionals

[More about the FATF Recommendations and guidance](#)

## How can these recommendations be implemented, effectively?

The FATF Recommendations are the building blocks for an effective framework to combat money laundering and terrorist financing. But what is essential, is that they are implemented effectively, not merely transposed into a national legal, regulatory or operational framework, as a tick-box exercise. The measures need to be adapted to a country's national context and mitigate the specific risks it faces.

The FATF Methodology identifies 11 key areas, or immediate outcomes, that an effective framework to protect the financial system from abuse should achieve. The FATF Methodology is also used to assess the effectiveness of country's actions and their compliance with the technical requirements of the FATF Recommendations.



# How 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
- Training programmes
- Stronger inter-agency cooperation



## Question

How would you design a central unit for asset recovery in your country ?

- Staff
- Strategy
- Legal tools





## Best Practice - Recommendations

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### Central unit for asset recovery

- Employees seconded from Police, Tax, Customs, Social Welfare
- Targeting 50 «worst criminals» and their family/network?
- Or targeting grave organized crime in general?



## Strategy of such a unit

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- Carry out financial profiling of the target
- Raise & issue Tax/Customs/Soc. Welfare assessments
- Collection/enforcement proceedings
- Prosecutions
- Negotiate & reach settlements



## Strategy of such a unit

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- Consider all mechanisms at the same time
  - Choose which to use
- At all times protect legitimate rights of people in the property
- Need for legislation on duty of confidentiality
  - Ex Irland: “Disclosure of Certain Information for Taxation and Other Purposes Act, 1996”
- Need for extensive international cooperation



WHAT TOPICS FROM THIS  
LECTURE CAN YOU USE  
IN YOUR JOB IN THE  
FUTURE?





Questions?

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**ALWAYS  
FOLLOW  
THE MONEY!**