



# CONDUCTING FINANCIAL INVESTIGATIONS (INTERMEDIATE PROGRAMME), 2022

OECD INTERNATIONAL ACADEMY FOR TAX CRIME INVESTIGATIONS

## Professional Enablers

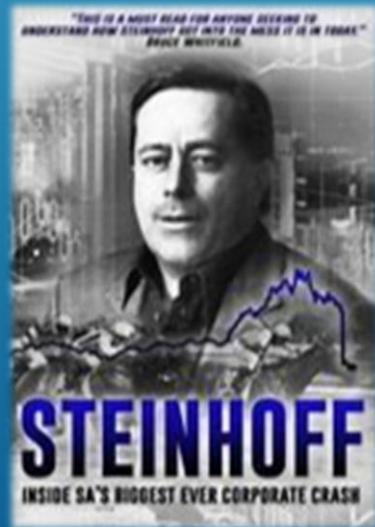
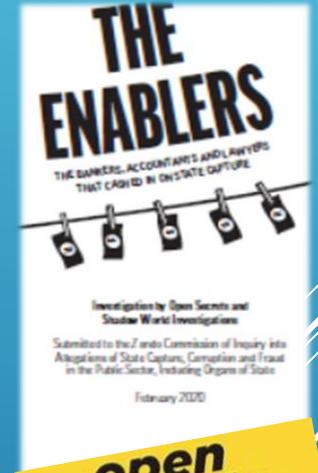
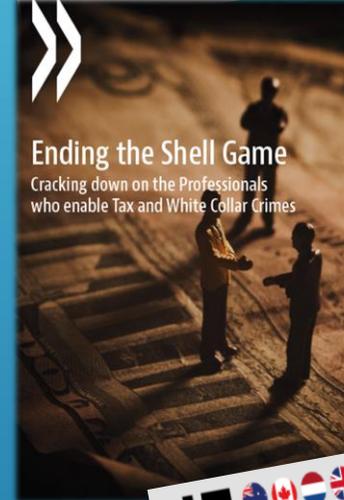
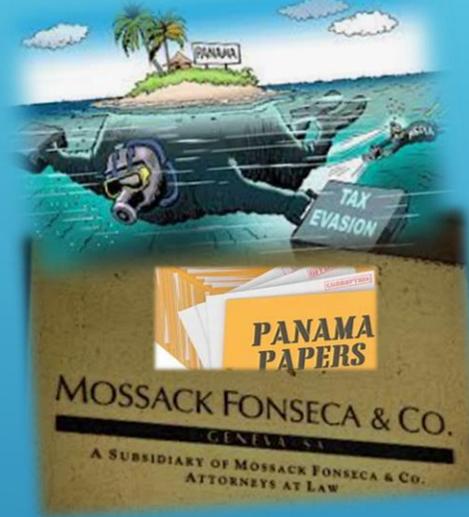
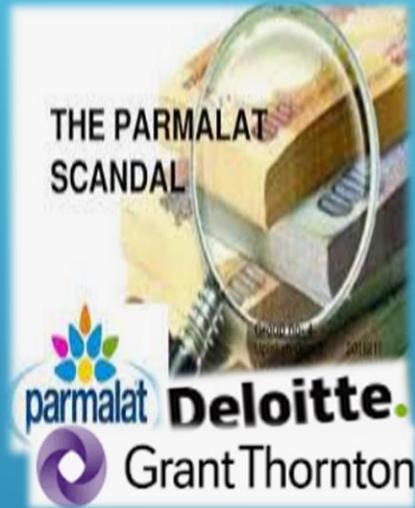
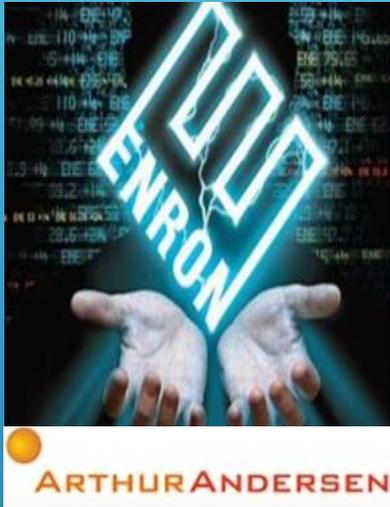
R Ismail (South Africa)

07 October 2022

# LEARNING OBJECTIVES

- ▶ How to identify professional enablers from the roles they play
- ▶ Develop risk indicators to red-flag them for risk assessment and possible investigation of them and the clients they serve
- ▶ Develop responses to deter and disrupt their participation in tax and other financial crimes

# RELEVANCE?



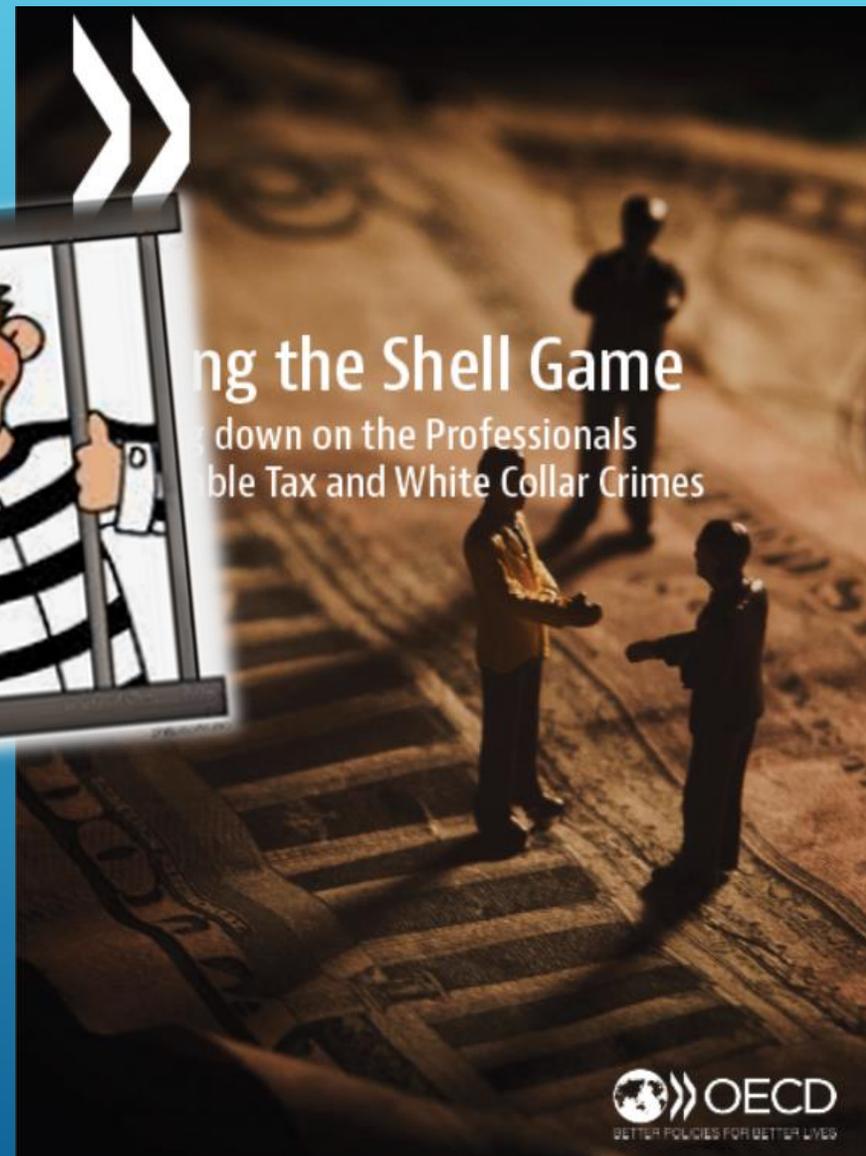
# CONCERNING BEHAVIOURS BY ENABLERS

- ▶ The gatekeepers have turned gateways
- ▶ Some are active parties to the crimes / predicate offences
- ▶ Don't fulfil their AML and CFT obligations with due diligence
- ▶ Allow themselves to be used for their specialised knowledge and expertise – to identify and exploit loopholes in legislative frameworks
- ▶ Use their reputations to lend credibility to their clients' profiles, thereby minimising suspicion and detection of tax and other financial crimes
- ▶ Hinder investigations

# RELEVANT



Fighting Tax Crime  
– The Ten Global  
Principles



# IN-CLASS DISCUSSION

What distinguishes a professional enabler from a professional?

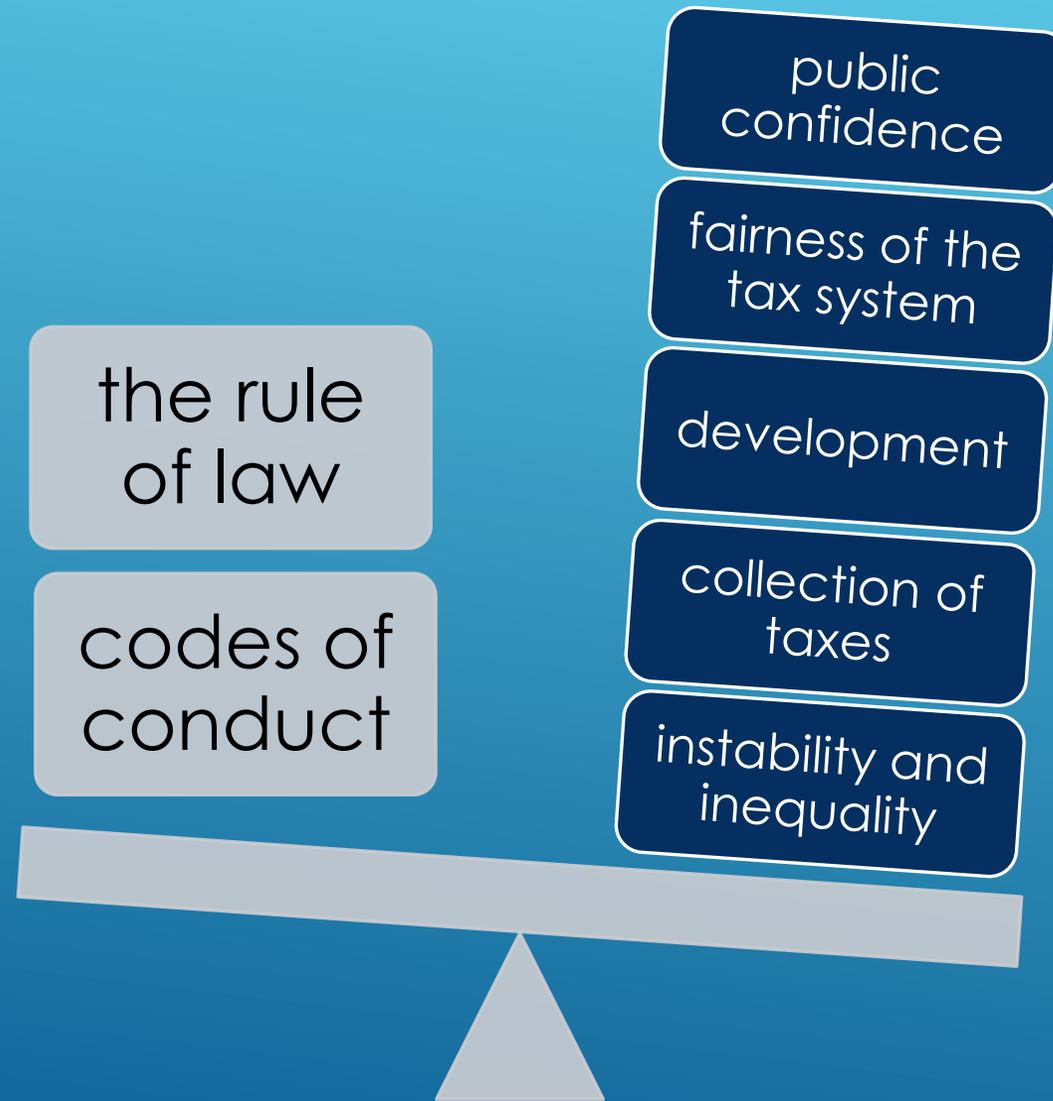
# PROFESSIONALS VERSUS PROFESSIONAL ENABLERS

## Professional enablers

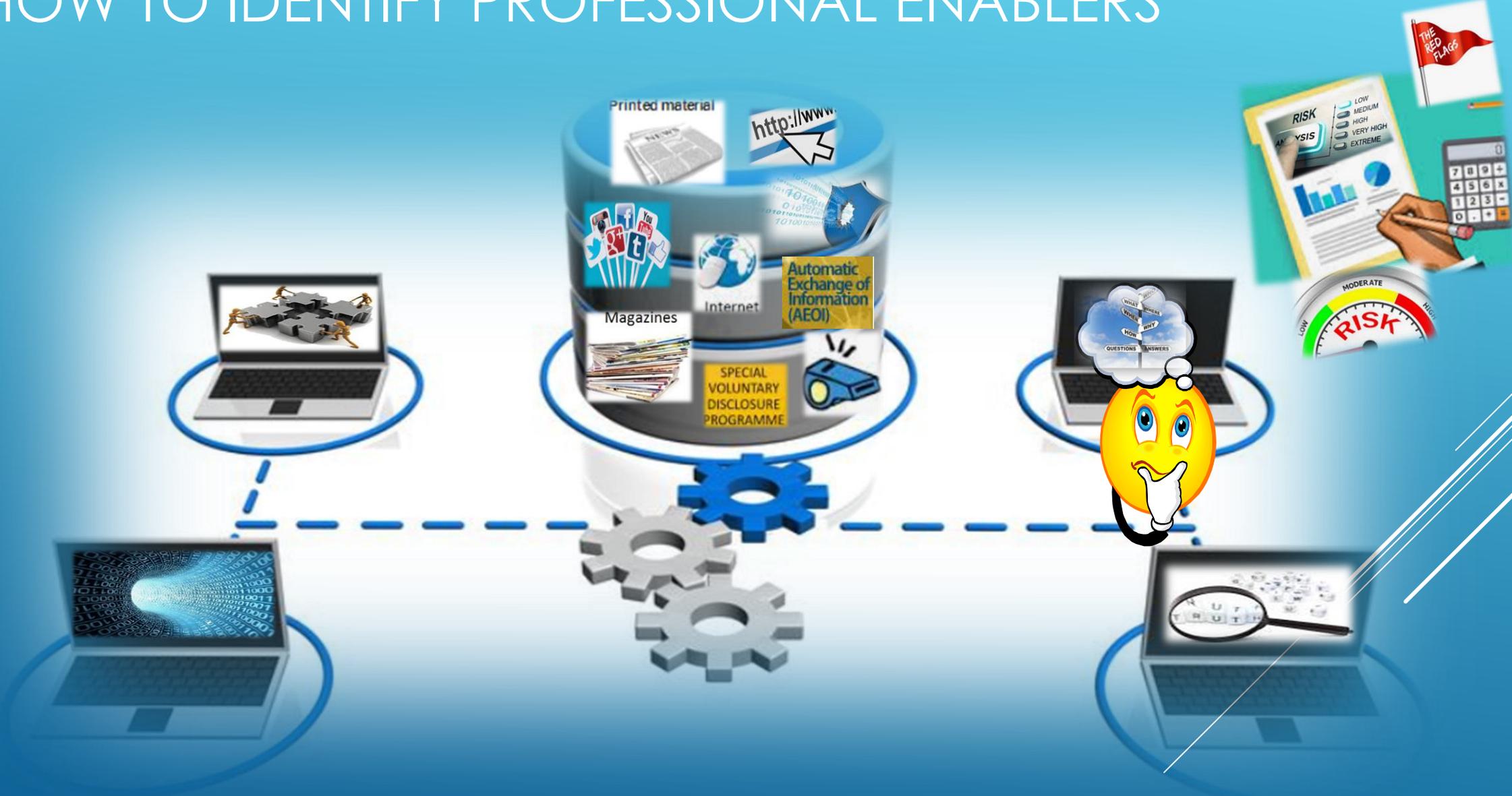
- ▶ **help** tax evaders and criminal enterprises **engineer** legal and financial structures **intended** to **facilitate** the commission and/or concealment of tax and other crimes
- ▶ **assist in planning** the crimes
- ▶ **intent on facilitating wrong-doing** by their clients
- ▶ **actively devise, promote, market and facilitate** tax evasion schemes
- ▶ **serve** criminal clients
- ▶ or are **complacent** in their actions



# IMPACTS OF TAX AND OTHER FINANCIAL CRIMES



# HOW TO IDENTIFY PROFESSIONAL ENABLERS



# CASE STUDY

07 Oct 2020

## UPDATE: VBS fraud case much stronger after former CFO's guilty plea, says Hawks, NPA

news24 Jeanette Chabalala



BUSINESS

## In a bizarre twist VBS liquidators sue KPMG for R863mn

Khaya Koko 24 Feb 2021

KPMG may have to repay VBS because of its alleged fraudulent audits if the defunct bank's liquidators have their way.



# CASE STUDY: RISK INDICATORS

- ▶ Executives of the bank were doing business with the bank under the guise of corporate entities
- ▶ Nominee directors to hide ownership of the entities
- ▶ Shell companies to hide their ownership, and to distance themselves from the crimes
- ▶ Creative accounting, which the regulatory audit partner hid
- ▶ Audit partner flaunted his attendance of a high-profile wedding, which invitation he should never have accepted
- ▶ Funded politicians and politically exposed persons

# BREAK-OUT SESSION

- ▶ Discuss, capture and provide feedback on:

## Groups 1 and 2

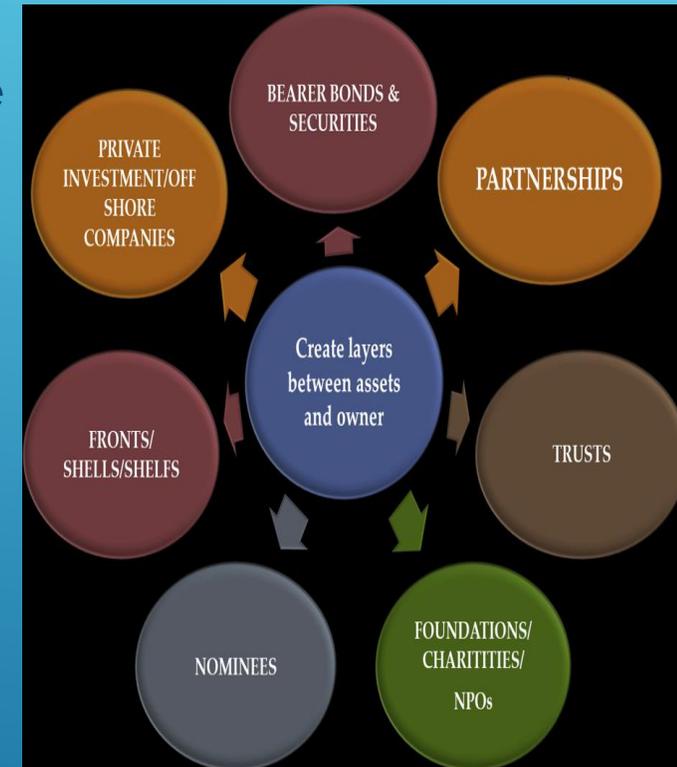
- ▶ what are the top 3 risk indicators that could be put in place to red-flag professional enablers for risk assessment and potential investigation?

Example: Structures having multiple shell companies

## Groups 3 and 4

- ▶ which has been the most successful risk indicators put in place in your jurisdictions in revealing the culpability of the professional enabler?

Example: Structures that obscure beneficial ownership



# RISK INDICATORS



- ▶ **multiple shell companies**
- ▶ multiple shell companies that “operate” from the same address
- ▶ **separate legal and beneficial ownership** of entities and/or assets, i.e. trusts
- ▶ obscure beneficial ownership structures
- ▶ **unnecessary complexity in a structure**
- ▶ **structures that lack commercial and business sense**
- ▶ use of offshore service providers; i.e. connection to company formation agents
- ▶ **use of offshore jurisdictions that are known tax havens** or hotspots of activity for specific evasion structures
- ▶ multiple companies with directors in common
- ▶ use of nominee directorships

# RISK INDICATORS



- ▶ one individual is a director multiple times, the extent to which the provision of substantial and meaningful directorship services could not be feasible
- ▶ addresses of entities or key actors which are not traceable
- ▶ addresses registered at P.O. Boxes
- ▶ **schemes based on premium or contingency fees** if the structure is deemed successful; **which have claw-back clauses / protection from liability** for the risk in a structure
- ▶ **consultants who are “deeply” involved in directing the business of their clients**
- ▶ **liquidation of entities to frustrate investigations**
- ▶ abuse of certain types of legal persons e.g. religious organisations
- ▶ use of the reputations of banks/consultants/“big business” to add a veneer of legitimacy to the criminal enterprise
- ▶ promotion by prominent & influential persons

# PROPOSING SOLUTIONS IN RESPONSE TO THE RISKS POSED

RAISE  
AWARENESS

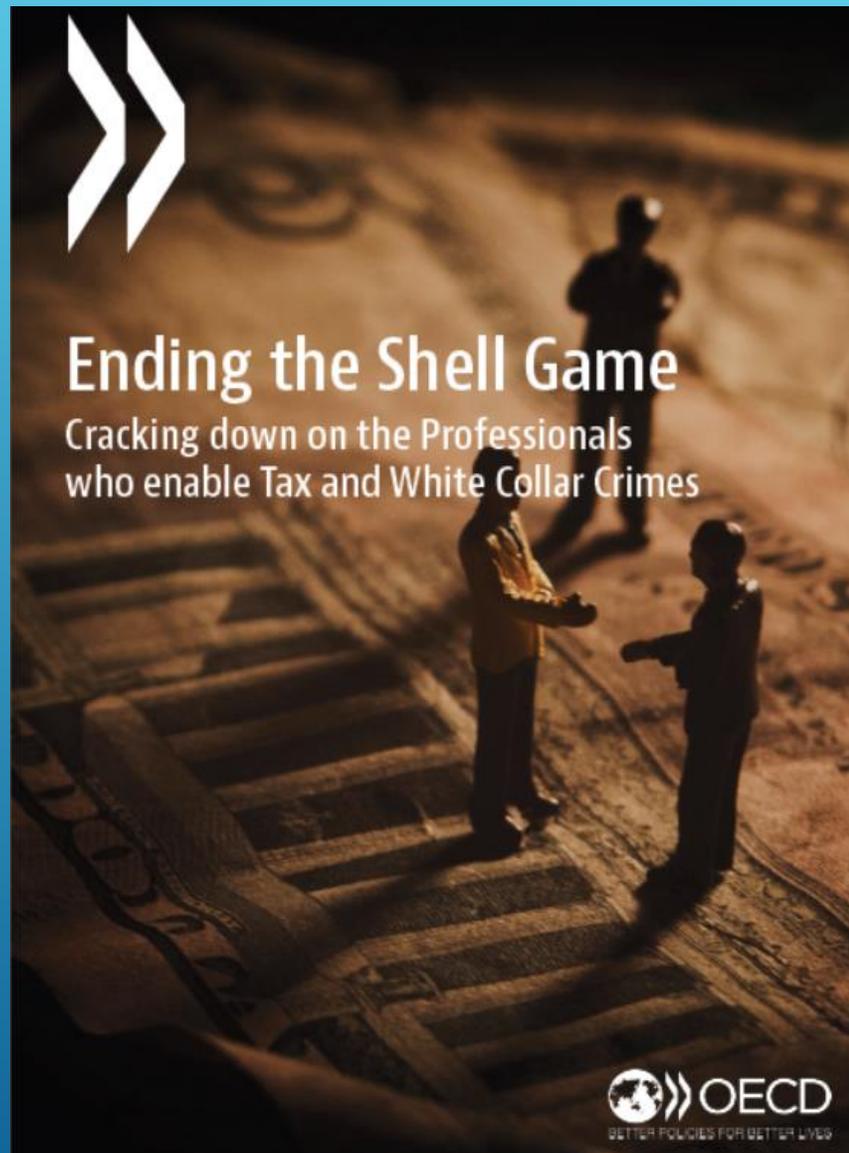


## Ending the Shell Game

Cracking down on the Professionals  
who enable Tax and White Collar Crimes

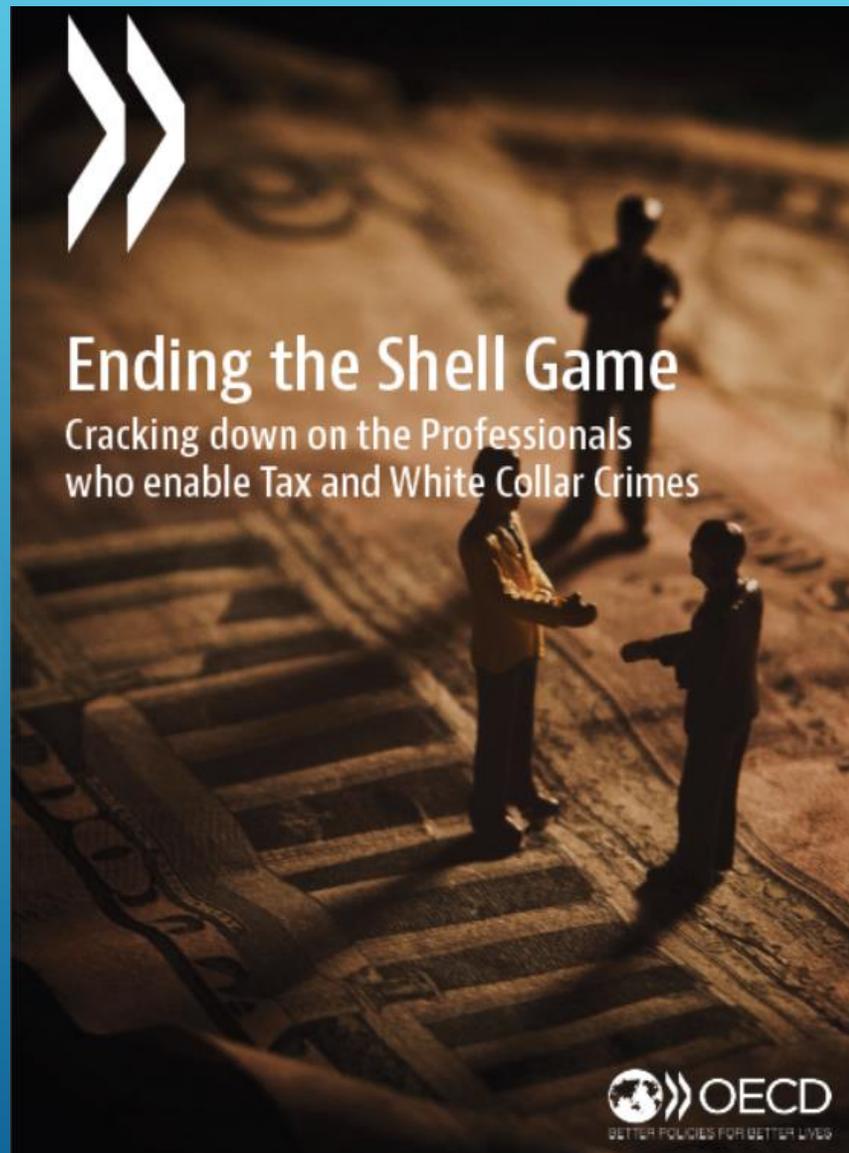


# REMEDY: RAISE AWARENESS



- ▶ common definition of professional enablers (PE)
- ▶ educate across government agencies, about the types of services provided by PE and why they pose a risk
- ▶ develop risk indicators to identify PE
- ▶ put in place systems to flag PE
- ▶ establish and maintain watch-lists of PE
- ▶ issue taxpayer alerts that feed into an early warning system

# REMEDY: LEGISLATION



- ▶ provides investigators and prosecutors with sufficient authority to investigate, prosecute and sanction PE
- ▶ consider the type of penalty regime to apply – general or specific
- ▶ consider whether settlement hinders the deterrent effect of the law
- ▶ explore whether supervisory or regulatory bodies can be used to punish / stop PE
- ▶ criminally sanction corporates and key actors that use the services of PE

# BREAK-OUT SESSION

- ▶ Discuss, capture and provide feedback on:

## Groups 1 and 2

- ▶ what are some of the counter-measures that have been implemented in your countries/administrations to address the risks posed by professional enablers?

Example: multi-agency centres of intelligence

## Groups 3 and 4

- ▶ what sanctions / measures could be put in place to deter professional enablers from devising, promoting, and facilitating tax and other financial crimes?

Example: de-bar / disassociation by professional bodies

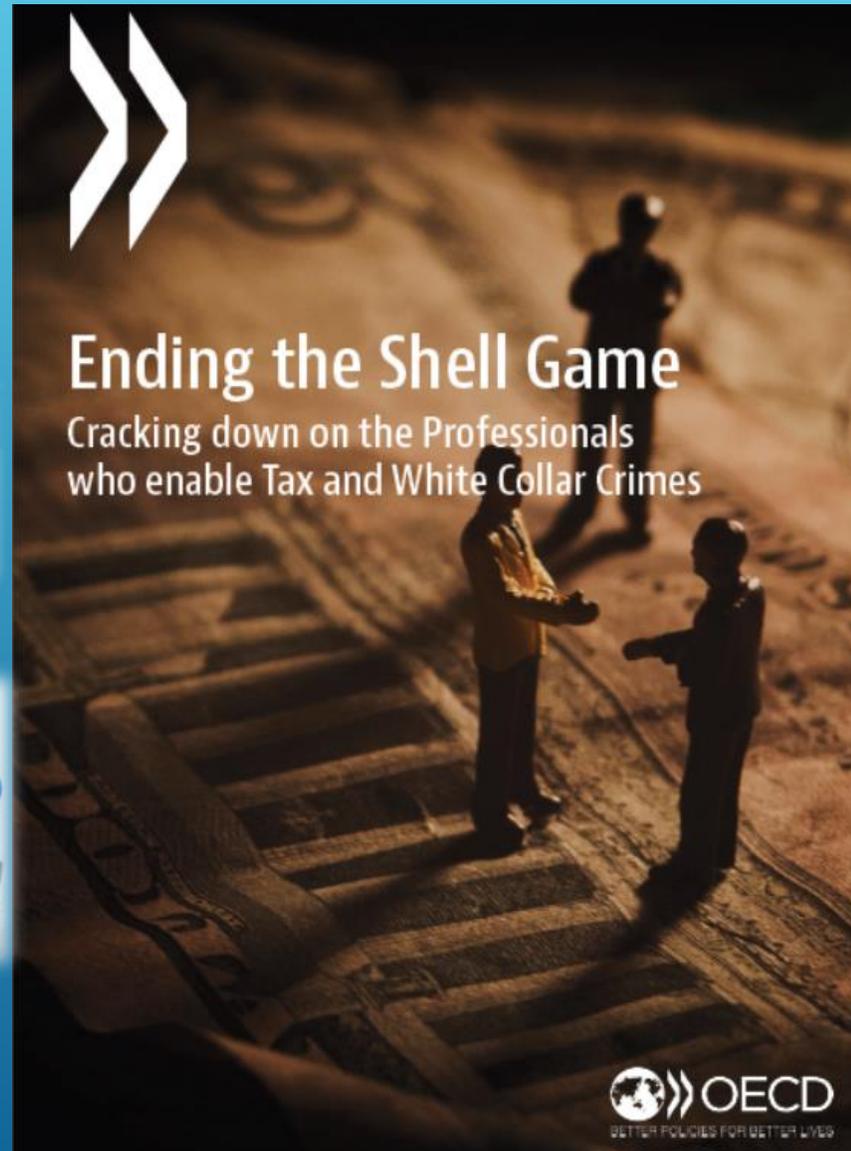
## MEASURES (PROACTIVE)

- ▶ Screening, vetting & declaration of interest checks
- ▶ Ethics & integrity watchdogs
- ▶ Training, including of & through professional & recognised bodies
- ▶ Limit the types of services that is causing conflicts of interest
- ▶ Mandatory rotation of professional service providers
- ▶ Sharing information between LEA and making those collaborations known
- ▶ Change legislation to gain access information – bank secrecy, legal professional privilege, protection of whistle-blowers, unexplained wealth orders
- ▶ Civil claims for damages – joint & several liability of legal persons and financial & controlling minds

## SANCTIONS (PUNITIVE)

- ▶ De-bar/dis-association by recognised professional bodies
- ▶ Declare as delinquent
- ▶ Cancel licences/accreditation/certificates of good standing
- ▶ Deregister as a recognised practitioner
- ▶ Name & shame
- ▶ Financial sanctions, e.g. fines, penalties, asset forfeiture
- ▶ Criminally sanction – imprisonment
- ▶ Withhold government business, on a whole of government basis

# REMEDY: TO DETER AND DISRUPT

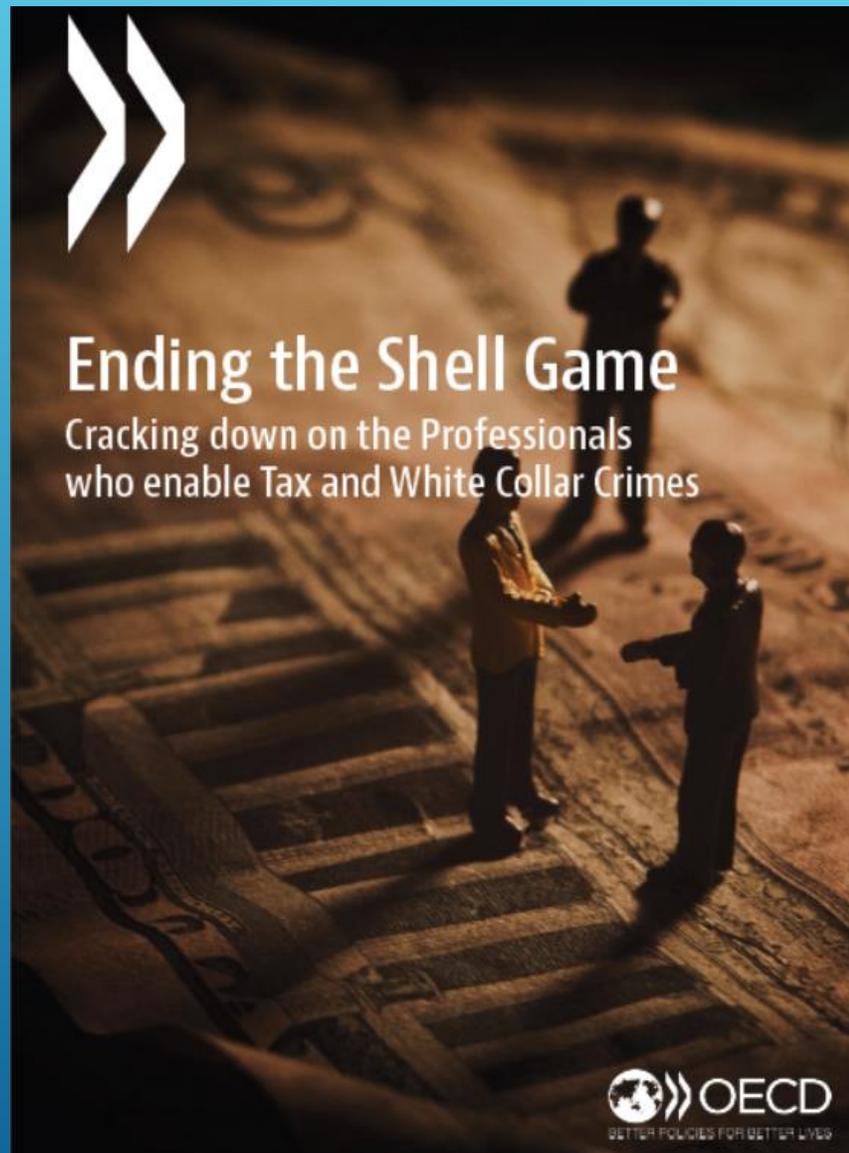


## Ending the Shell Game

Cracking down on the Professionals who enable Tax and White Collar Crimes

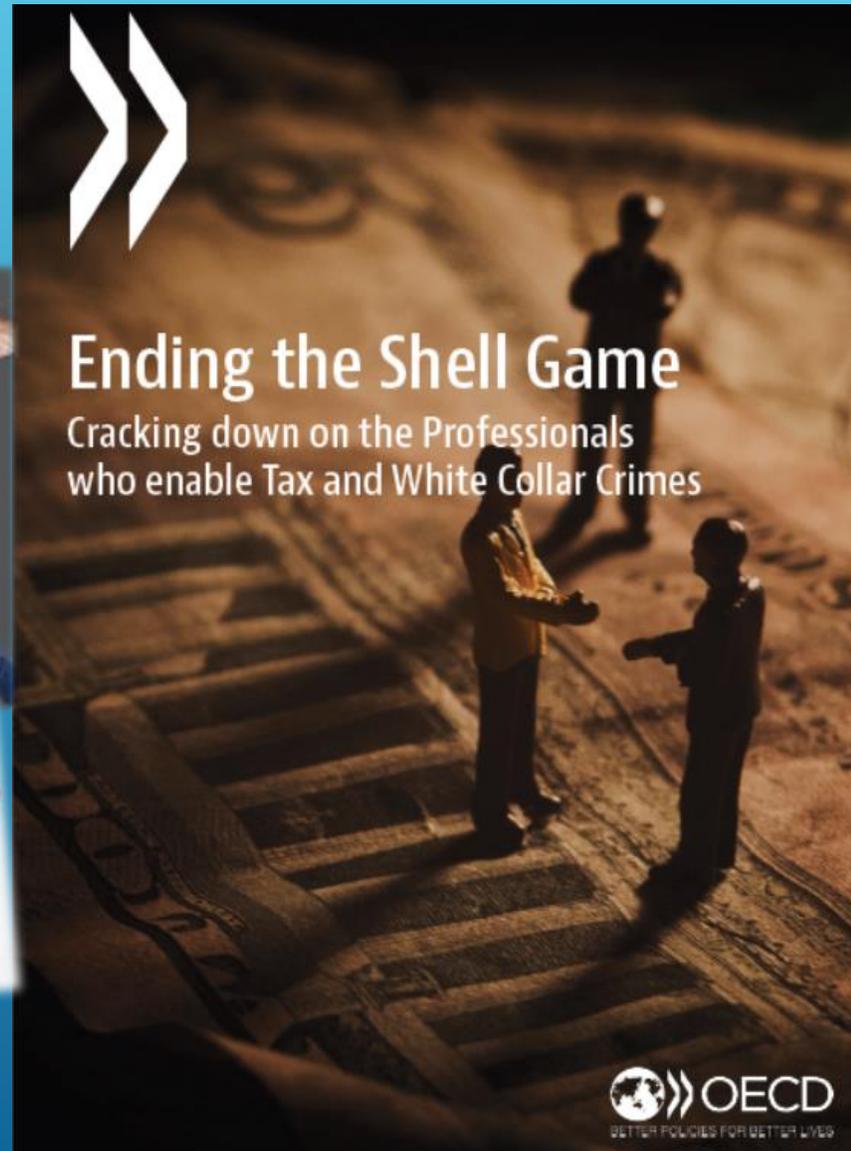
- ▶ introduce voluntary disclosure programs
- ▶ create whistle-blowing facilities
- ▶ consider introducing mandatory disclosure rules, to require intermediaries to report possible schemes early
- ▶ prevent abuse through communication with taxpayers and education of professionals
- ▶ partner with professional bodies and regulators to punish / stop PE

# REMEDY: CO-OPERATION



- ▶ collaborate domestically to share information, and conduct cross-agency investigations
- ▶ use international co-operation mechanisms to exchange information
- ▶ establish multi-agency centres of intelligence to share information, and leverage mandates
- ▶ develop integrated intelligence to ensure a single view of the perpetrators
- ▶ collaborate as joint investigation teams, and in joint operations
- ▶ second and co-locate personnel to share expertise

# REMEDY: IMPLEMENT PLANS OF ACTION



- ▶ secure commitment from senior leadership in policy
- ▶ appoint a lead person and agency to:
  - ▶ oversee implementation of the strategy
  - ▶ undertake effectiveness reviews
  - ▶ devise changes as is necessary
  - ▶ liaise among different government agencies
- ▶ ensure that the strategy and plan are adequately resourced

THANK YOU

QUESTIONS AND FEEDBACK

OECD (2021), Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes, OECD Publishing, Paris.

<http://www.oecd.org/tax/crime/ending-the-shell-game-cracking-down-on-the-professionals-who-enable-tax-and-white-collarcrimes.htm>