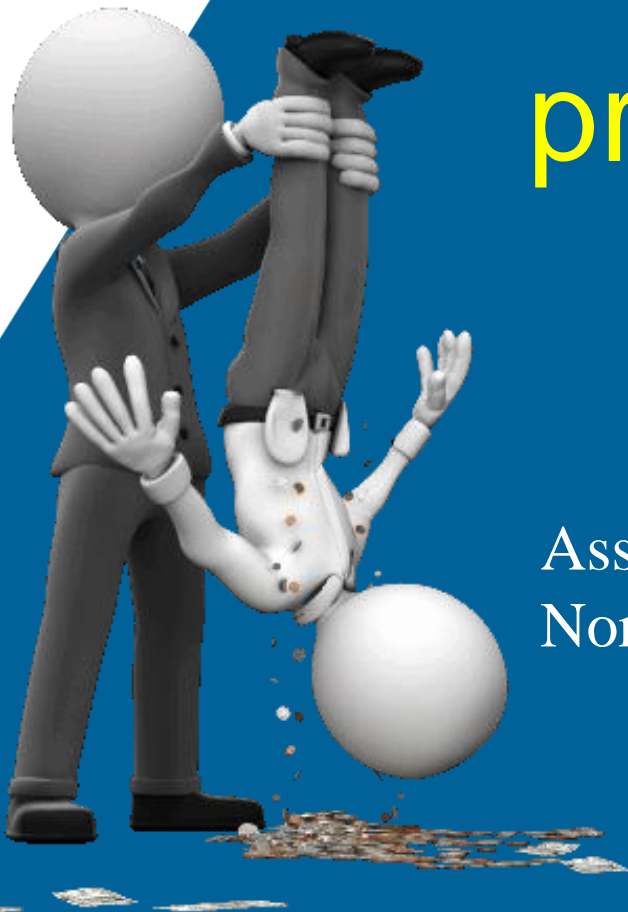




Our Goal: Recovering the proceeds of crime - But how...?



Assistant Professor Inger A. E. Coll
Norwegian Police University College



What this Module aims to teach:

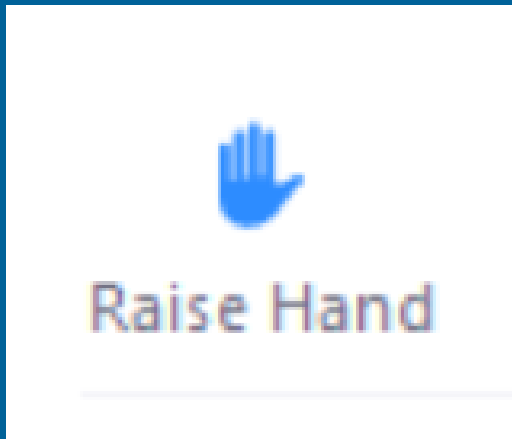
Awareness and knowledge

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



Raise hand Questions

Raise hand if **YES**



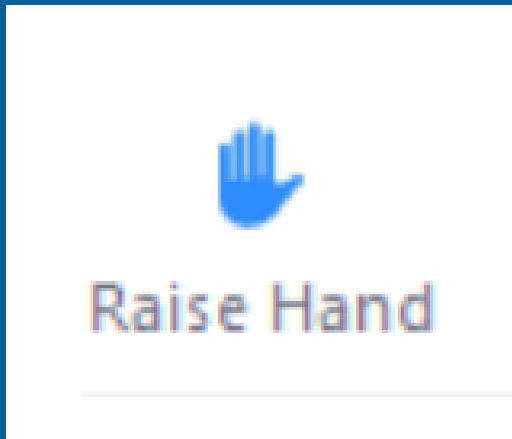
Do nothing if **NO**





Does your office/unit focus on asset recovery?

Raise hand if **YES**



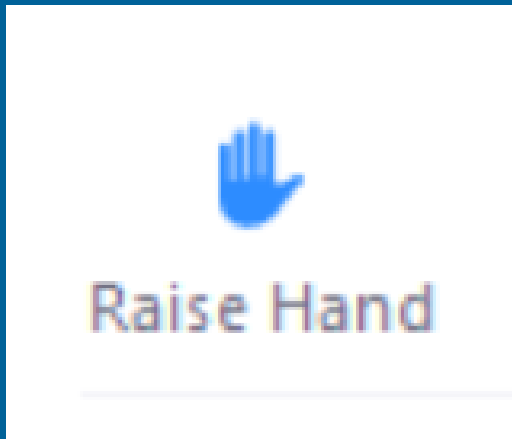
Do nothing if **NO**





Have you worked on an asset recovery case?

Raise hand if **YES**



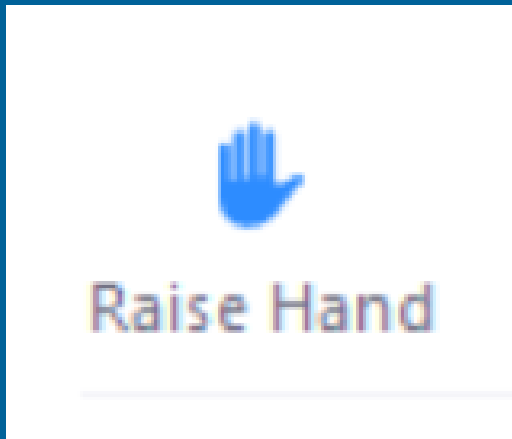
Do nothing if **NO**





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

Raise hand 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 breakout room (25 minutes):

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

In class:

Each group presents one key element from your list
+ Post your list in the chat



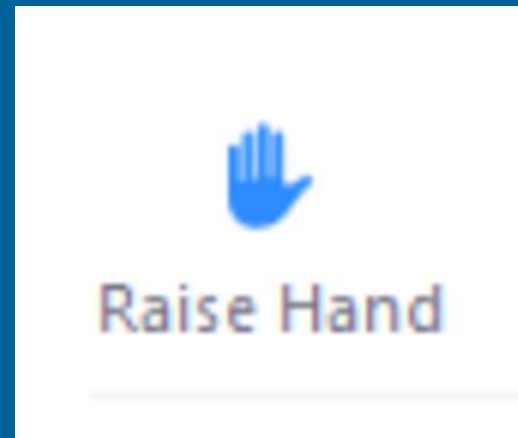
Group Assignment presentation:

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





First: What are «assets»?





What assets should you target?

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



What assets should you target?

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, registered to his friend mr. Smestad





Case example – Real ownership

- Our investigation – Paper trail
 - Mr. Smestad borrowed money in the bank, but account info shows Mr. Amundsen is paying the mortgage!
 - Mr. Smestad's income is too low to cover the loan
 - Mr. Amundsen is also paying for electricity and water for the farm
- Other investigative steps
 - Surveillance showed that Mr. Smestad had not been at the farm for several months
 - Mr. Amundsens family member tells on him...

Kontrollert for bankkreditt og med utvekslingskurs per 01.01.2012

Familieid:	Familieid:	Familieid:	Familieid:

Denne kontrollert gir en oversikt over samlete utvekslingskurs og bankkreditt per 01.01.2012 for familien.

Kontrollert for perioden 01.01.2011 til 01.01.2012

	Per data	Sum
1. Begjæringssum	01.01.2011	kr 71.417,27
2. Betalt utvekslingskurs		kr 17.749,00
3. Tilført betalt utvekslingskurs		kr 0,00
4. Utvekslingskurs		
5. Betalt utvekslingskurs		
6. Utvekslingskurs		
7. Utvekslingskurs		

Dele har du gjort i pensjon

Rutløst i pensjonspartagelse

Bankkredittssum per 01.01.2012

Valgt utvekslingskurs: 0,00

Part	Antall andeler	Kurs	Sum
Part 1	10.000	kr 11.000,00	kr 110.000,00
Part 2	10.000	kr 11.000,00	kr 110.000,00
Totalt			kr 220.000,00

På utveksling kan kurs og andeler avvike noe. Det er viktig å huske på at kursen kan endre seg.

På utvekslingssummen (pensjon) forutsettes det at utvekslingskursen er 0,00.

Utsvekslingskurs: Fra 01.01.2011 til 01.01.2012

Utsvekslingskurs: Fra 01.01.2011 til 01.01.2012



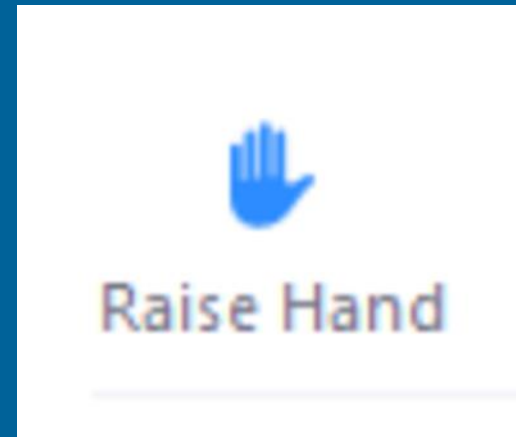
Case example – Real ownership

- 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





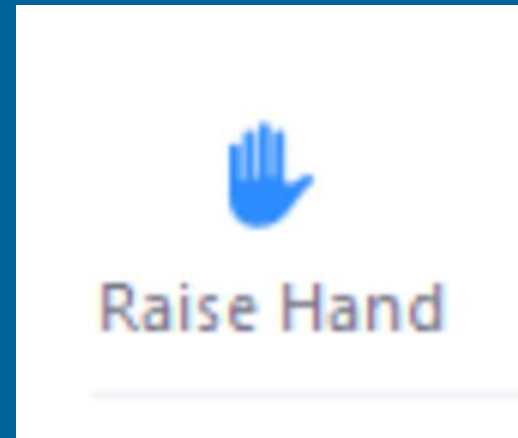
(TRICK) QUESTION: WHEN DO WE NEED TO LOOK FOR ASSETS?





Question

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»

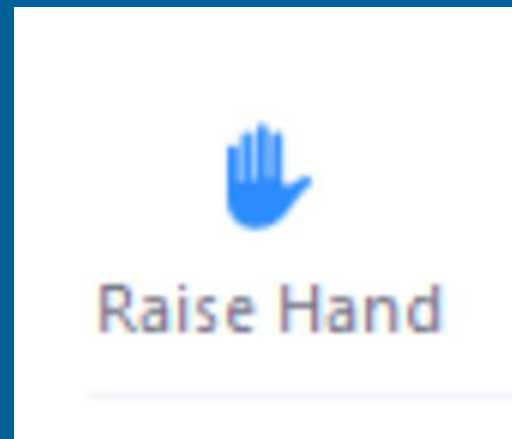
«Probable
cause» or
«Reasonable
grounds to
believe»

«Balance of
probabilities» or
«Preponderance
of evidence»

«Beyond
reasonable
doubt»



QUESTION: WHAT ARE PROCEEDS OF CRIME?





Forfeiture

“Proceeds of crime”

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





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 breakout room:

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?

In class:

Each group presents key findings from the discussion (perhaps something that that you found to be extra interesting or surprising?)

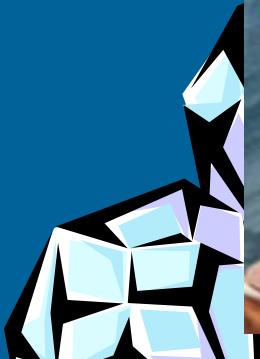


Share:
Findings from your discussion?





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

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



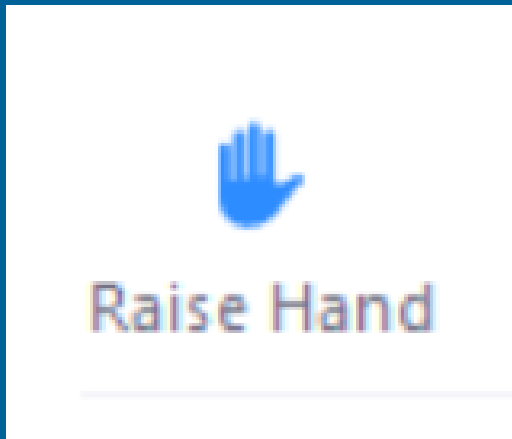
Taxing illegal income





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

Raise hand if **YES**



Do nothing if **NO**





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
- 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

- 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

- 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

- 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

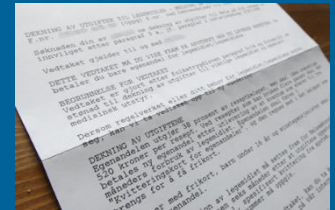
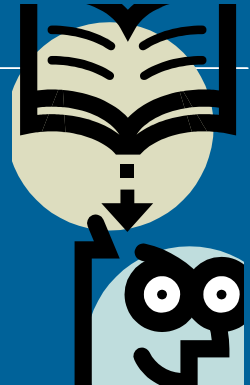
- Usually without prior notification

Write Tax Audit Report

Make a decision stating the correct tax/VAT

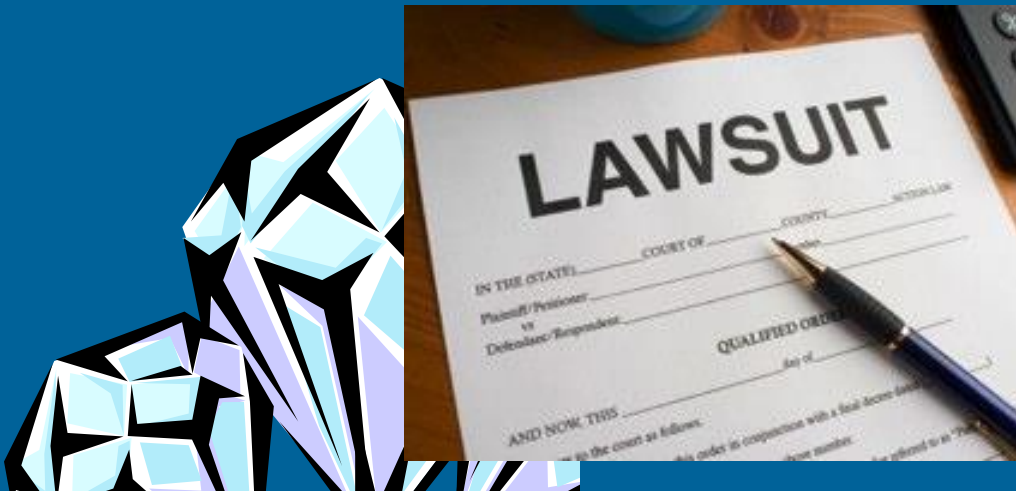
Send the debt to be collected by the Tax Collector

- Enforcement by distraint





Civil claim for Damages





Civil claim: What is it?

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



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?

- 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...

- 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...

- 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

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?

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

Secured valuable beach front house

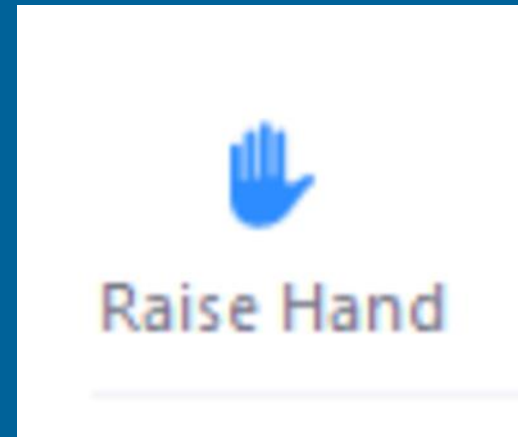
Auditors/Lawyers – Are insured!

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



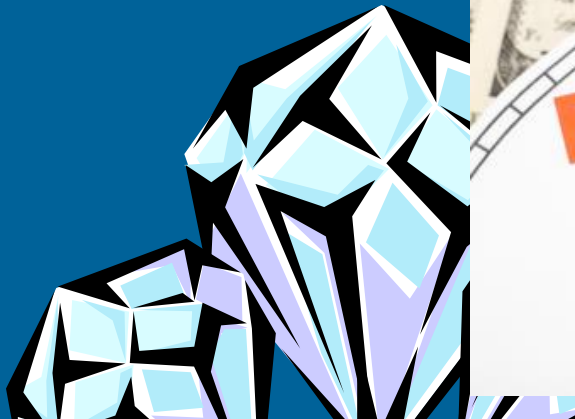


Can you think of a case where
you could have used a civil
claim?



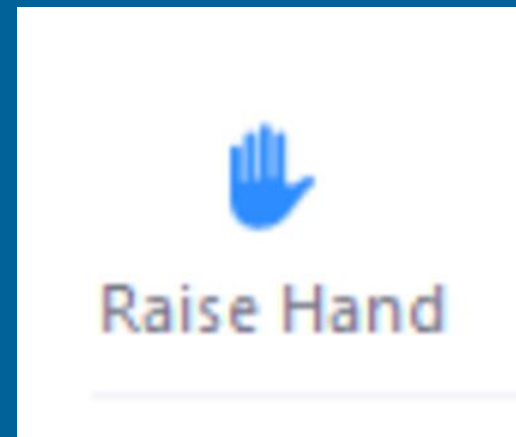


Bankruptcy Proceedings





Does your office use bankruptcy as a tool?





Bankruptcy

- 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



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	Greece 2010	Romania 2002
Benin 2015	Guinea 2015	Senegal 2015
Burkina Faso 2015	Guinea-Bissau 2015	Serbia 2004
Cameroon 2015	Israel 2018	Seychelles 2013
Canada 2005	Japan 2000	Singapore 2017
Central African Republic 2015	Kenya 2015	Slovenia 2007
Chad 2015	Malawi 2015	South Africa 2000
Chile 2013	Mali 2015	Togo 2015
Colombia 2006	Mauritius 2009	Uganda 2011
Comoros 2015	Mexico 2000	United Kingdom of Great Britain and Northern Ireland
Congo 2015	Montenegro 2002	British Virgin Islands 2003
Côte d'Ivoire 2015	New Zealand 2006	Gibraltar 2014
Democratic Republic Congo 2015	Niger 2015	Great Britain 2006
Dominican Republic 2015	Philippines 2010	United States of America 2005
Equatorial Guinea 2015	Poland 2003	Vanuatu
Gabon 2015	Republic of Korea 2006	



Summary: Methods of recovering proceeds of crime:

1. Criminal Confiscation
2. Civil Confiscation / "Non Conviction Based Confiscation"
3. Taxing criminal income (-person or company)
4. Civil claim for damages (also against co-conspirators)
5. Bankruptcy proceedings

And secure the claim as early as possible!





Practical exercise

For the text:
see email from Katja






Criminal Confiscation – Case Example – Mr. Murud

- Criminal investigation – Suspected corruption and embezzlement from Oslo Municipality
- Early in the investigation– what did Mr. Murud own?
 - Large villa in fancy neighbourhood
 - Beautiful beach house (with pool)
 - Luxurious mountain lodge
 - Stocks and bonds
 - Four imported, expensive cars
 - Large yacht



Criminal Confiscation – Case Example

– Mr. Murud

- How large had his proceed been?
 - corruption NOK 6,7 mill
 - embezzlements NOK 89,9 mill Possible confiscation claim of NOK 96,6 mill

His investments in shares had given a profit, and
value of his real estate had gone up
This increases the confiscation claim: NOK112 mill

Criminal Confiscation – Case Example

Securing the future confiscation claim during the investigation:

Directly seize, or through freezing order in court:

- Froze most of the real estate
- Seized bank account where he had recieved the bribes
- Seized the villa and the yacht
 - Practical problems for the police
 - Insurance, repairs, secure place in the winter, income from rent etc?



Conservatory Measures – Case example – Mr .Syversen

Norwegian claiming to live in Cyprus since 2001

Not paid any tax to Norway since 2005

Massive earnings in the stock market



Investigations of use of foreign credit cards used in
Norway

- He had spent most of his time IN Norway = Taxable!
- A lot of assets in Norway



Conservatory Measures – Case example – Mr .Syversen

Assets identified early in the audit:

- Seaside villa, bought for NOK 13,5 mill
- Mountain cottage, bought for NOK kr 13 mill
- Plot of land in the mountains, bought for NOK kr 12 mill
- An apartment in seaside town, (sale initiated!) bought for NOK 2 mill
- Money claim against his former company of NOK 20 mill
- Seaside apartment registered to his daughter, bought for NOK 14,5 mill

= Assets worth 75 mill NOK

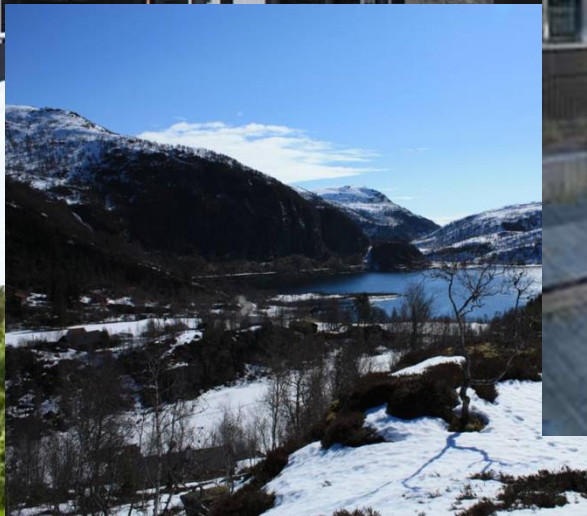


Conservatory Measures – What did we do?

One of the objectives of every case: Ensure the tax claim is paid at the end of the investigation!

- Auditor made a document stating the grounds for taxability, the income and how much tax would be owed
- Result: Tax claim of NOK 33,3 mill
- Submitted request to court for conservatory measure of all his real estate.







International Best Practice





Sources:

- [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](#)

The FATF logo is a red shield-shaped emblem. Inside the shield, the letters "FATF" are written in white, bold, sans-serif capital letters. Below the letters is a stylized white graphic consisting of three curved, overlapping shapes that resemble a stylized 'S' or a series of waves.

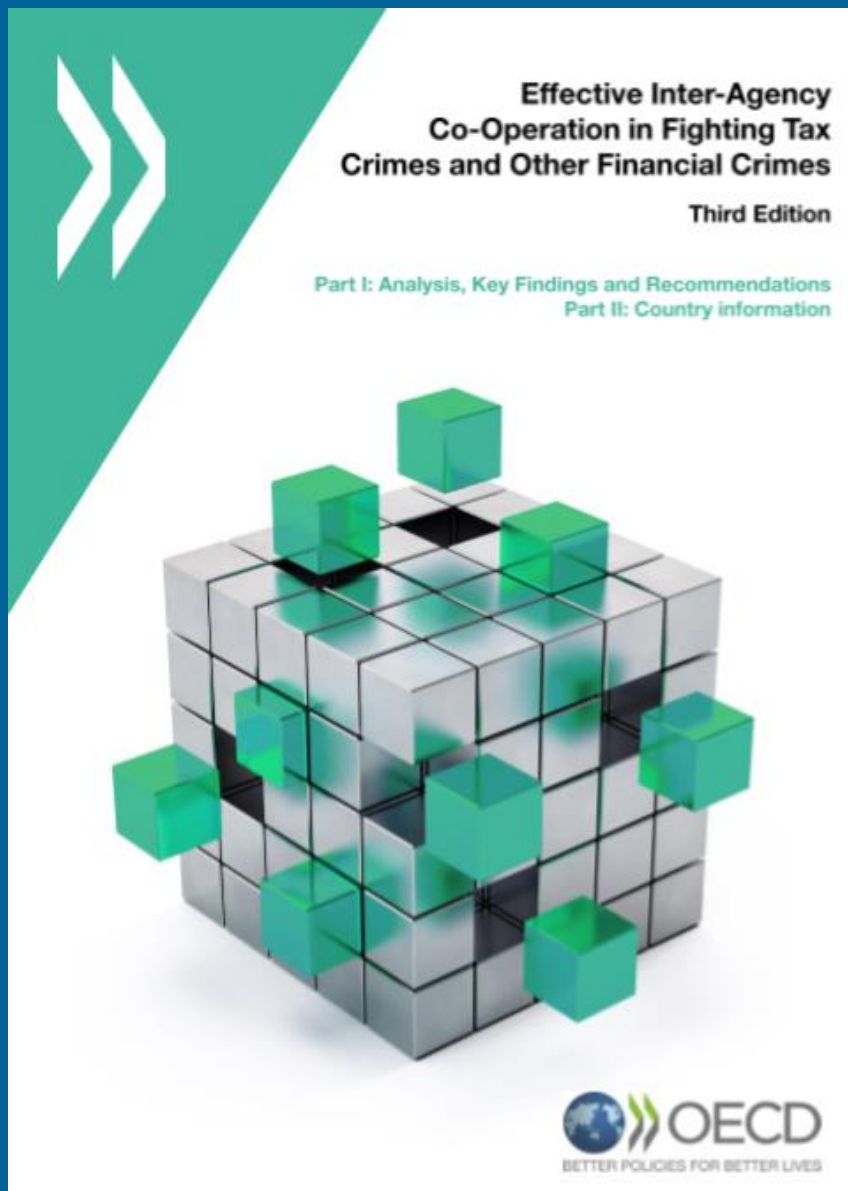
BEST PRACTICES PAPER

BEST PRACTICES ON CONFISCATION
(RECOMMENDATIONS 4 AND 38) AND A
FRAMEWORK FOR ONGOING WORK ON
ASSET RECOVERY

October 2012

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



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

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

- 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

- 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?

**ALWAYS
FOLLOW
THE MONEY!**