



OECD International Academy
for Tax Crime Investigation

Conducting Financial Investigations Foundation Programme International Cooperation



**Raghav Gupta, I.R.S.
India**

16-17 Feb 2022

 @RaghavGuptaIRS  @raghavgupta7
All Views are Personal.

An Overview

SESSION 1

1. Revenue Loss & Need for Global Cooperation
2. Modes of tax evasion
3. Shell Cos., Tax Havens, Money Laundering
4. Beneficial Ownership

SESSION 2

1. Types of global cooperation
2. Covid and Financial Crimes
3. Exchange of Information (EoI)
4. Case Study
5. Challenges to global cooperation
6. The Road Ahead

The Central Theme

Increasingly, it is being observed that a crime cannot be committed in isolation. Often, global crimes attract several penal provisions, spanning across jurisdictions, agencies and legislations.



Appreciating this interlinking of crimes is crucial for a successful and holistic investigation involving inter-agency as well as international cooperation and subsequent actions such as prosecution and recovery.

Interlinked crimes: An example of **tax evasion**

Tax Planning

- Permissible

Tax Mitigation

- Permissible

Tax Avoidance

- Anti-Avoidance Rules

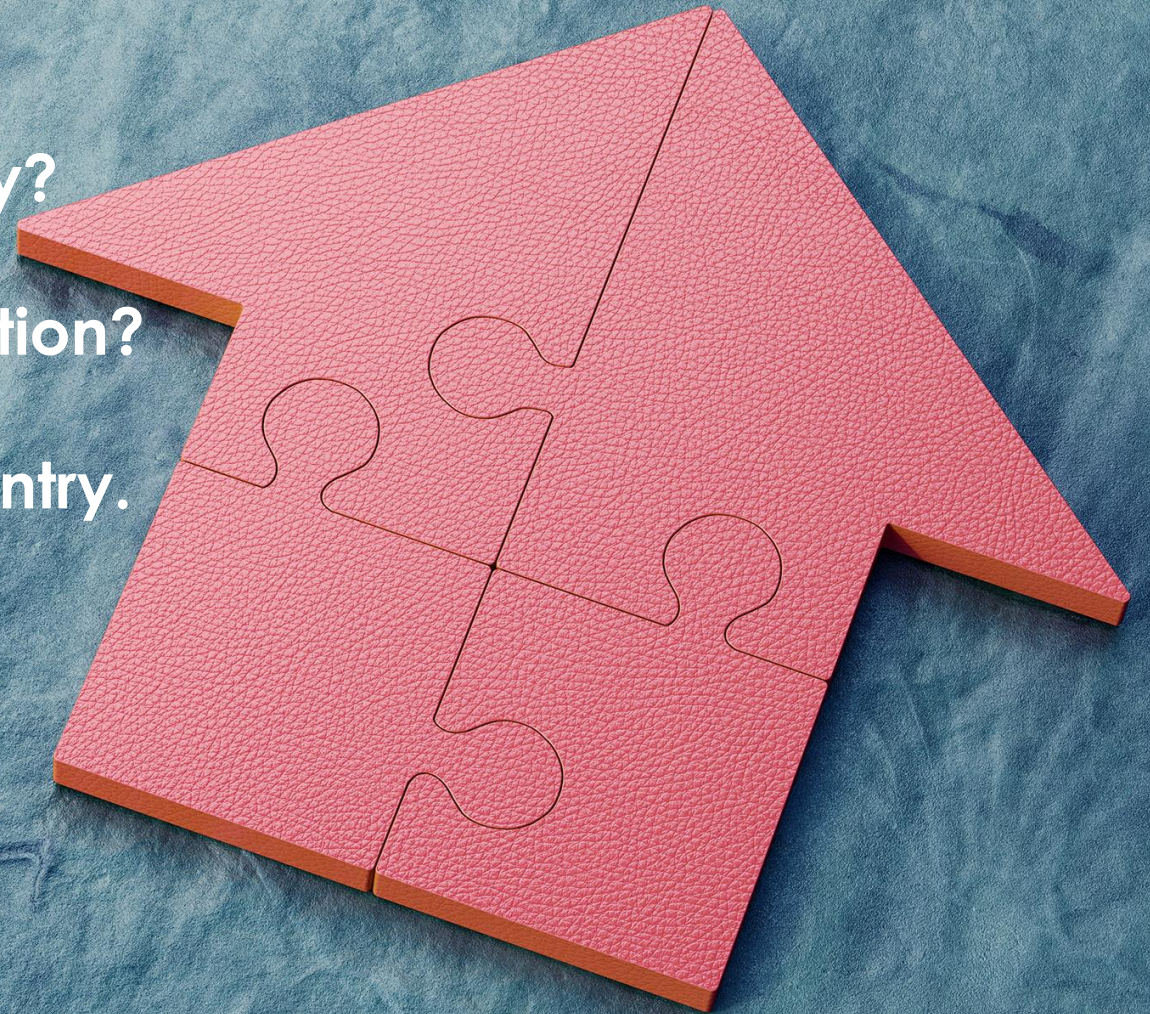
Tax Evasion

- Illegal

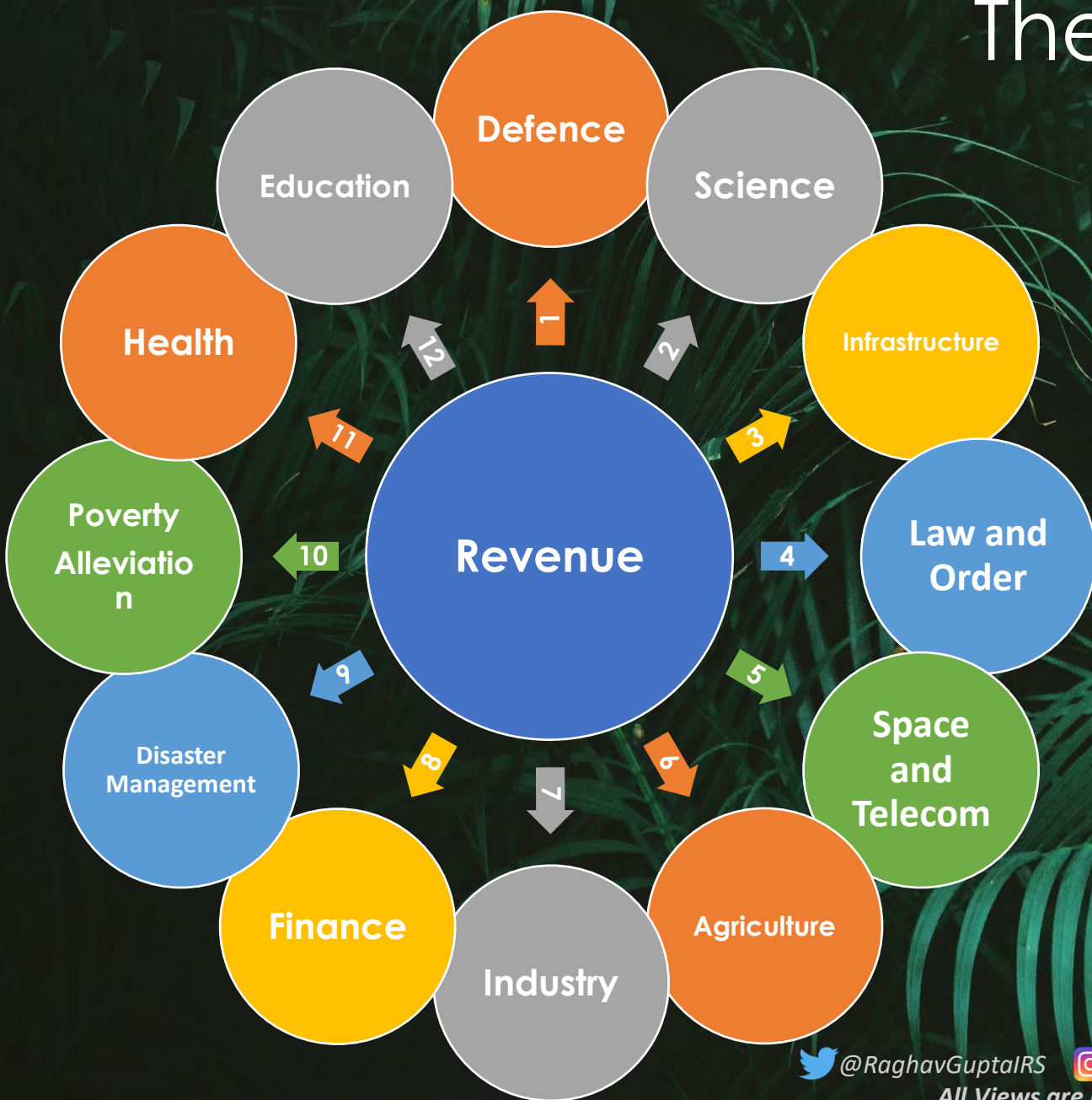


Breakout Session # 1

- (1) What causes loss of revenue globally?
- (2) What is the need for global cooperation?
- (3) Identify the uses of revenue in a country.
- (4) How to minimize revenue loss?



The Utilization of Revenue



SUSTAINABLE DEVELOPMENT GOALS



@RaghavGuptaIRS



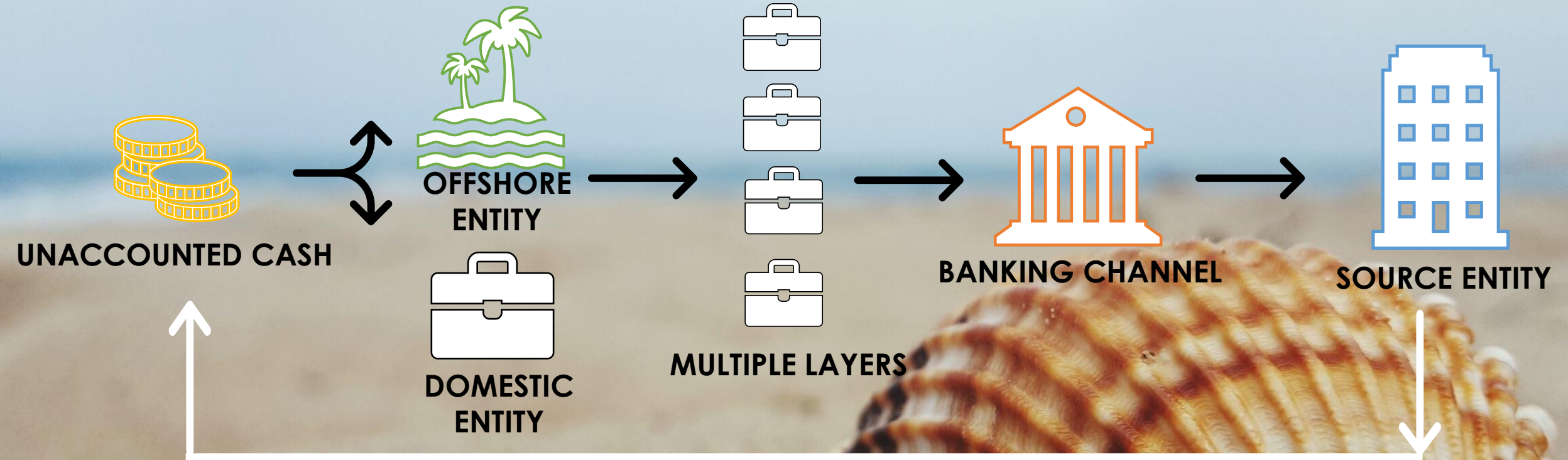
@raghavgupta7

All Views are Personal.

Modes of Tax Evasion



The misuse of Shell Companies



Breakout Session # 2

You have been asked to send a proposal to define a “shell company” in your jurisdiction. Discuss with your Group to construct a clear definition of “Shell Company.”



Some characteristics of Shell Companies

Not showing profit, which is the very purpose of setting up a business concern.

Not showing turnover or showing negligible turnover.

Not having business activity or having doubtful/insignificant income generation.

Not paying taxes since the profits are either nil or insignificant.

Not having employees or workers.

Not showing expenses normally required for running of business.

Not charging/paying interest for unsecured loans.

Having directors showing meagre income.

Having directors not qualified enough to make business decisions for company.

Having shareholders that are shell companies or companies with poor financials.

Having shareholders that are shell companies or companies with poor financials.

Having shareholders who are individuals with insufficient income.

Having multiple concerns running from the same address.

Having only a namesake office being used as a post-box.

Showing matching credits and debits in bank account, often synchronously.

Misrepresenting / not disclosing financial credentials to shareholders.

Using books of accounts for accommodation entries.

Having short-lived bank accounts, unexpected for any going concern.

Showing a mismatch between Balance Sheet and Profit/Loss Account.*



@RaghavGuptaIRS



@raghavgupta7

All Views are Personal.

Probing global **Shell Companies**

- “Shelf” company or “Shell” company?
- Ease of creation, and the luxury of anonymity
- Red Flags: Common Directorship, Contact details, address, Company Secretary, etc.
- Breaking the layers
- Crimes, financial and otherwise

Risks posed by **Tax Havens**



- **Reduced taxation**



- **Low economic activity**



- **Financial secrecy**



- **Ineffective Exchange of Information**

Addressing Money Laundering



Defining Beneficial Ownership

FATF defines “Beneficial Owner” as:

*“Beneficial owner refers to the **natural person(s)** who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.” (FATF)*



@RaghavGuptaIRS



@raghavgupta7

All Views are Personal.

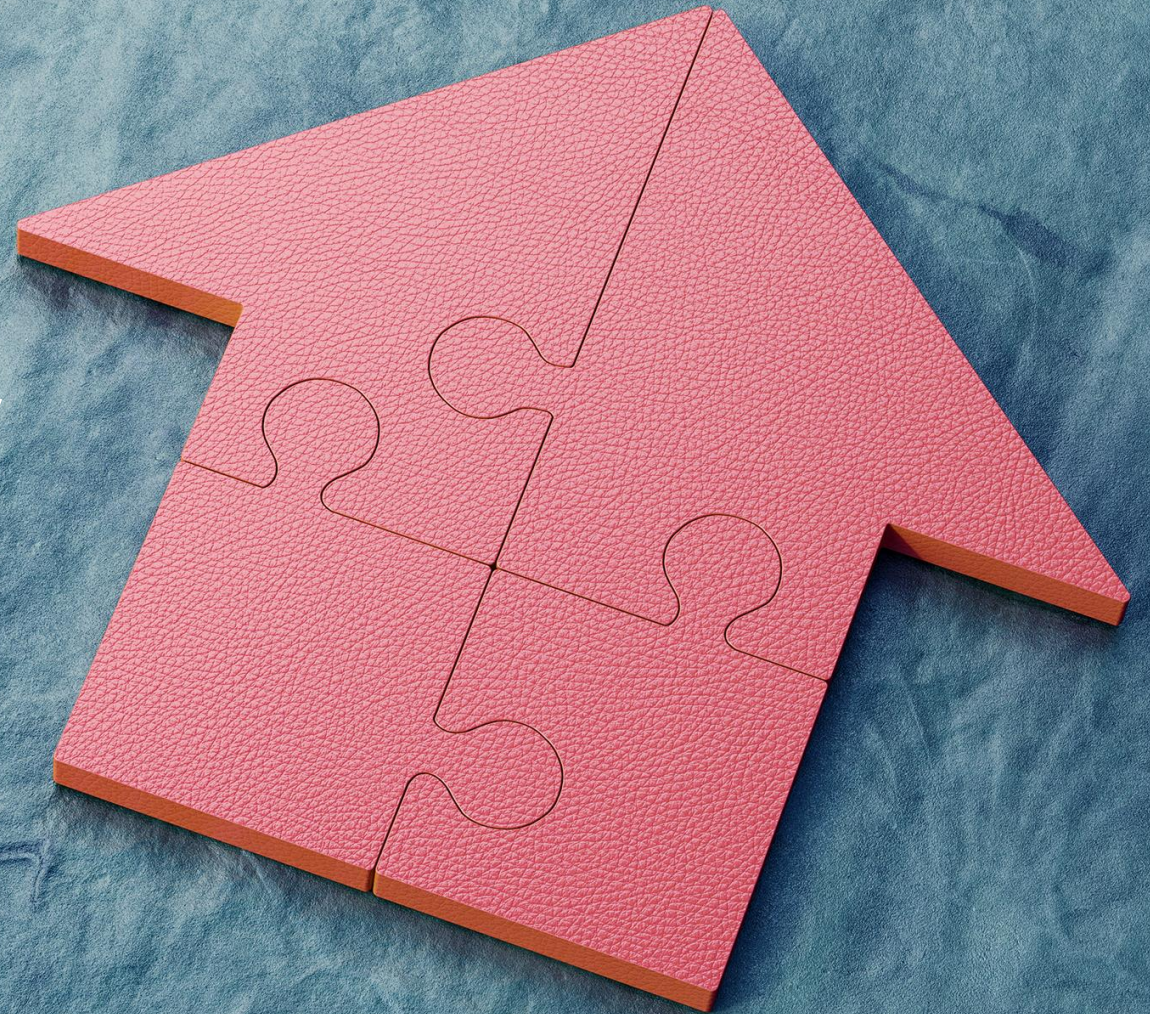
Breakout Session # 3

(1) & (2)

In what ways can beneficial ownership of assets or transactions be disguised?

(3) & (4)

How would international cooperation help you?



Obscuring Beneficial Ownership: Modes (FATF)

- a) **shell companies** (which can be established with various forms of ownership structure), especially in cases where there is foreign ownership which is spread across jurisdictions
- b) **complex ownership and control structures** involving many layers of shares registered in the name of other legal persons
- c) **bearer shares** and **bearer share warrants**
- d) **unrestricted use of legal persons as directors**
- e) **formal nominee shareholders and directors** where the identity of the nominator is undisclosed
- f) **informal nominee shareholders and directors**, such as close associates and family,
- g) **trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets.
- h) **use of intermediaries in forming legal persons**, including professional intermediaries



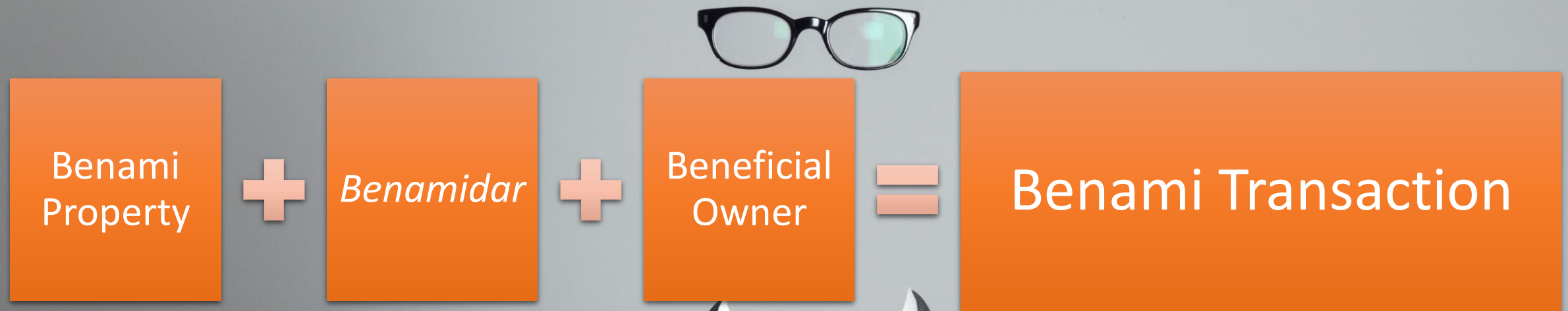
@RaghavGuptaIRS



@raghavgupta7

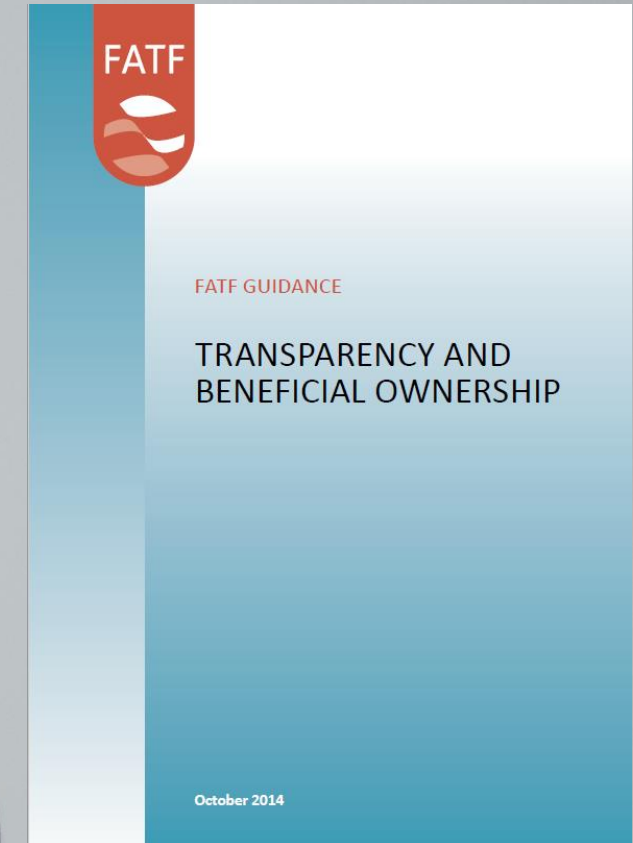
All Views are Personal.

An Example of **Beneficial Ownership** Legislation: India's *Benami* Act



Role of International Cooperation in finding Beneficial Ownership

- B.O. Legislation
- B.O. Registers
- Addressing ML / TF, Tax Evasion, etc.



*Thank you,
See you tomorrow!*





OECD International Academy
for Tax Crime Investigation

Conducting Financial Investigations Foundation Programme International Cooperation



**Raghav Gupta, I.R.S.
India**

16-17 Feb 2022

[@RaghavGuptaIRS](https://twitter.com/RaghavGuptaIRS) [@raghavgupta7](https://www.instagram.com/raghavgupta7)
All Views are Personal.

Breakout Session # 4

Covid-19 has brought about unprecedented challenges globally and has posed threats not only for the health of individuals but for the health of economy. Using this pandemic as an opportunity, several types of financial and related crimes have been observed in almost all countries. Now that you know about the modalities of financial crimes, each Group is to discuss the case of such a crime(s) from one of the Group's member countries, how the crime was identified, how to prevent it from occurring, and whether international cooperation can help in its investigation. Do remember that each Group will have 5 minutes to present, so please be mindful of time!



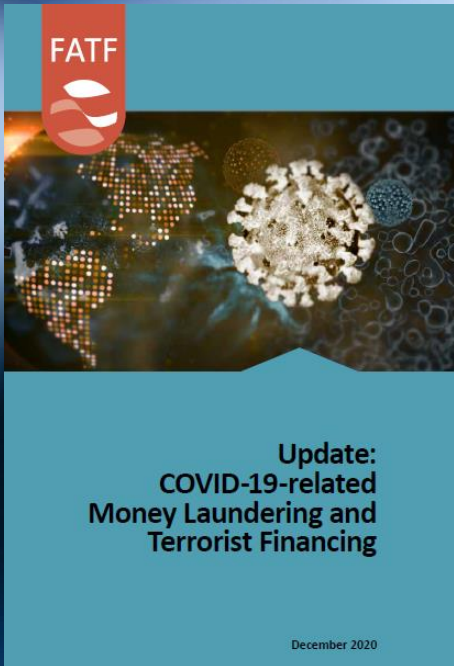
@RaghavGuptaIRS



@raghavgupta7

All Views are Personal.

Risks due to Covid-19



- Fraud
- Theft and larceny
- Data privacy breaches & cybercrime
- Collusion, Corruption, Embezzlement
- ML and FT risks
- Exploitation of vulnerable groups

Global Cooperation and Assistance

Tax and Civil Matters:

1. Double Taxation Avoidance Agreement (**DTAA**) & OECD/UN Model Tax Convention (**MTC**)
2. Tax Information Exchange Agreement (**TIEA**)
3. Convention on Mutual Administrative Assistance in Tax Matters (**MAAC**)
4. Multilateral Competent Authority Agreement (**MCAA**)
5. Multilateral Instrument (**MLI**)

Criminal Matters:

1. Mutual Legal Assistance Treaty (**MLAT**) or Mutual Legal Assistance Agreement (**MLAA**)
2. Mutual Legal Assistance (**MLA**) Request
3. Letter Rogatory (**LR**)

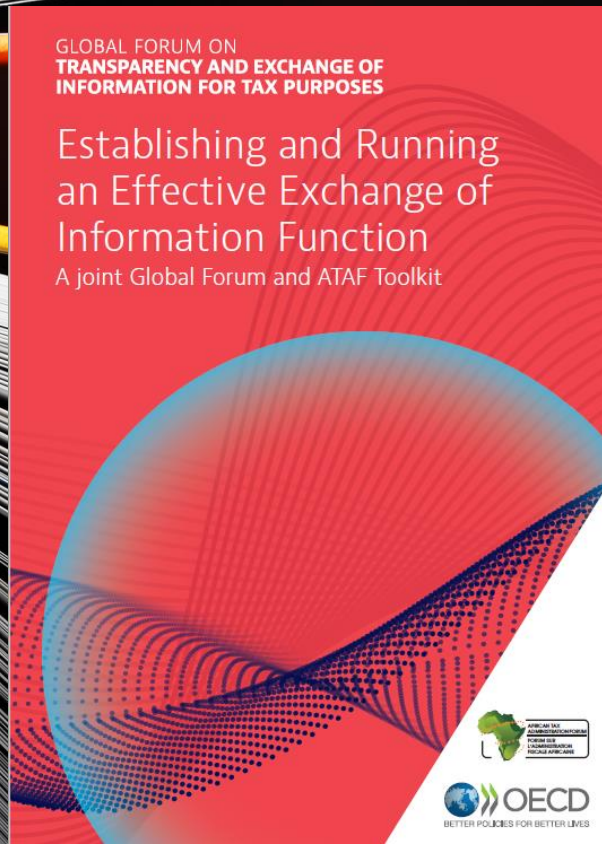
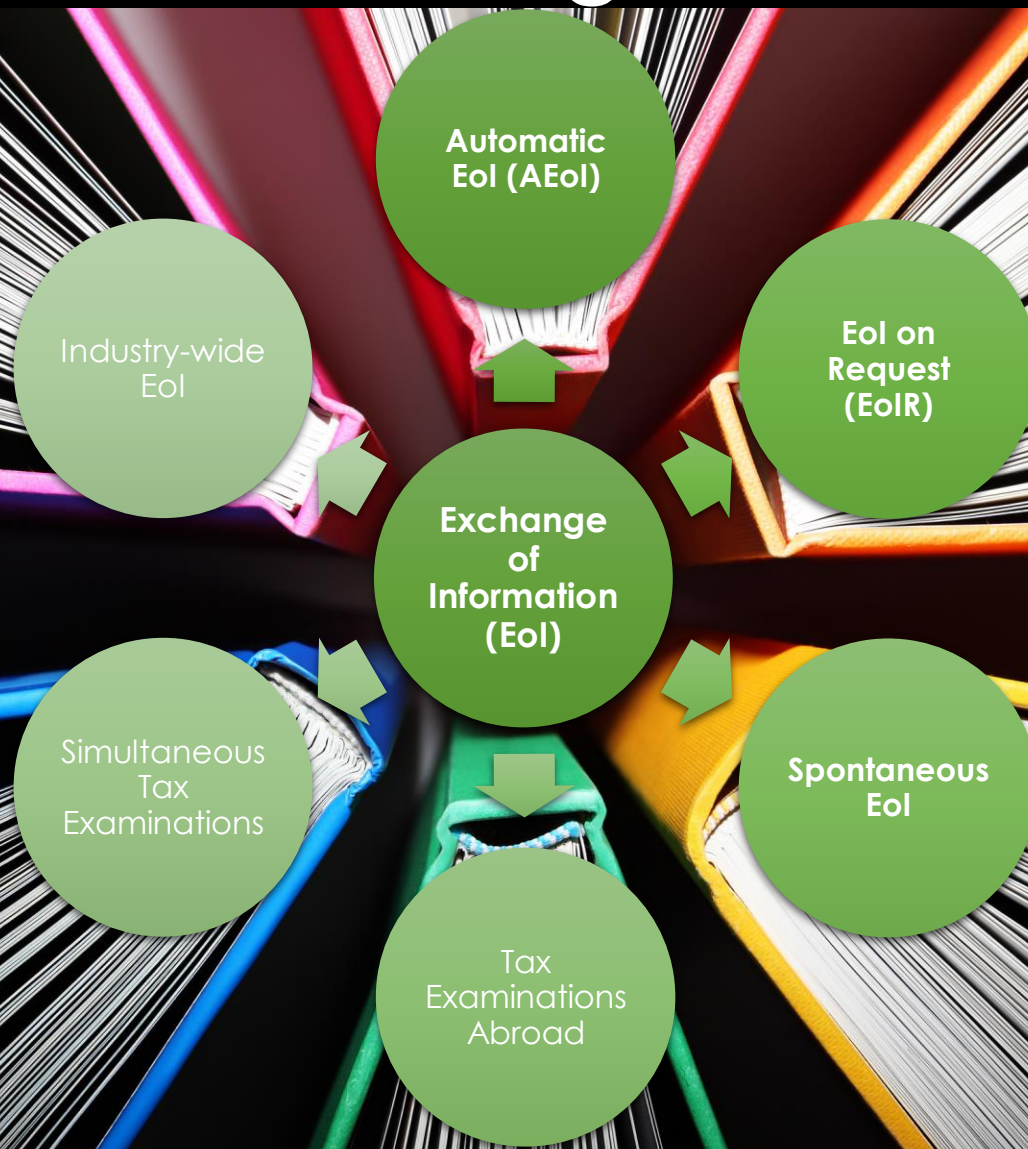
Other Assistance:

1. Financial Intelligence Unit
2. Interpol



Mode of cooperation	Scope	Benefits	Problems & Challenges
FIU	Civil (tax) and Criminal (laundering) Information	Various offences, several sources of information. Multi-agency intelligence gathering. Information easy to share across jurisdictions Specific information can be called for.	Hesitation or delay in disclosure of information. Not having full repository
Interpol	Information gathering and exchange	1. Tracking movements across borders 2. Real-time and ground level information (for assets and people) can be obtained.	Largely focusses on counter-terrorism, cybercrime, and Organized and emerging crime. Information is not evidence
Letter Rogatory	Court to the Court for arrest, service of documents, seizure, etc.	1. Directly sent from court to court, potentially bypassing administrative delays.	1. Risk of leaking information. 2. May run into litigation
MLAT	Legal assistance between two jurisdictions in criminal matters	1. Effective cooperation.	1, Central Agency 2. Information cannot be used for any other purpose other than stated in request.
DTAA	Comprehensive taxation-related treaty with Eol and some assistance inc. tax crime	1. Powerful tool for double taxation avoidance and also double non-taxation avoidance besides Eol.	1. Detailed negotiations required. 2. Only related to income tax 3. No fishing expedition.
TIEA	Information exchange, some assistance available	1. Small document and works faster because it focuses only on administrative assistance. Many administrations are willing to go for TIEA. Common problems are resolved. Can bring in more types of tax	1. Many negotiations required with separate countries 2. Only tax related 3. No fishing expeditions
MAAC	Administrative assistance, Eol and this is universal	Only one signature required and automatic inclusion of various signatories	1. Meet global requirements. 2. Only related to tax

Modes of Exchange of Information



Eol on Request (EolR)

JURISDICTION A



Competent Authority of A

JURISDICTION B



Competent Authority of B

REQUEST



RESPONSE



Auditors of A

WHAT INFORMATION?

"Foreseeably relevant" for the administration or enforcement of the domestic tax laws of other tax jurisdiction or for carrying out the provisions of a relevant tax agreement, e.g. legal and beneficial information, accounting records and bank information.



Various information sources in B



@RaghavGuptaRS

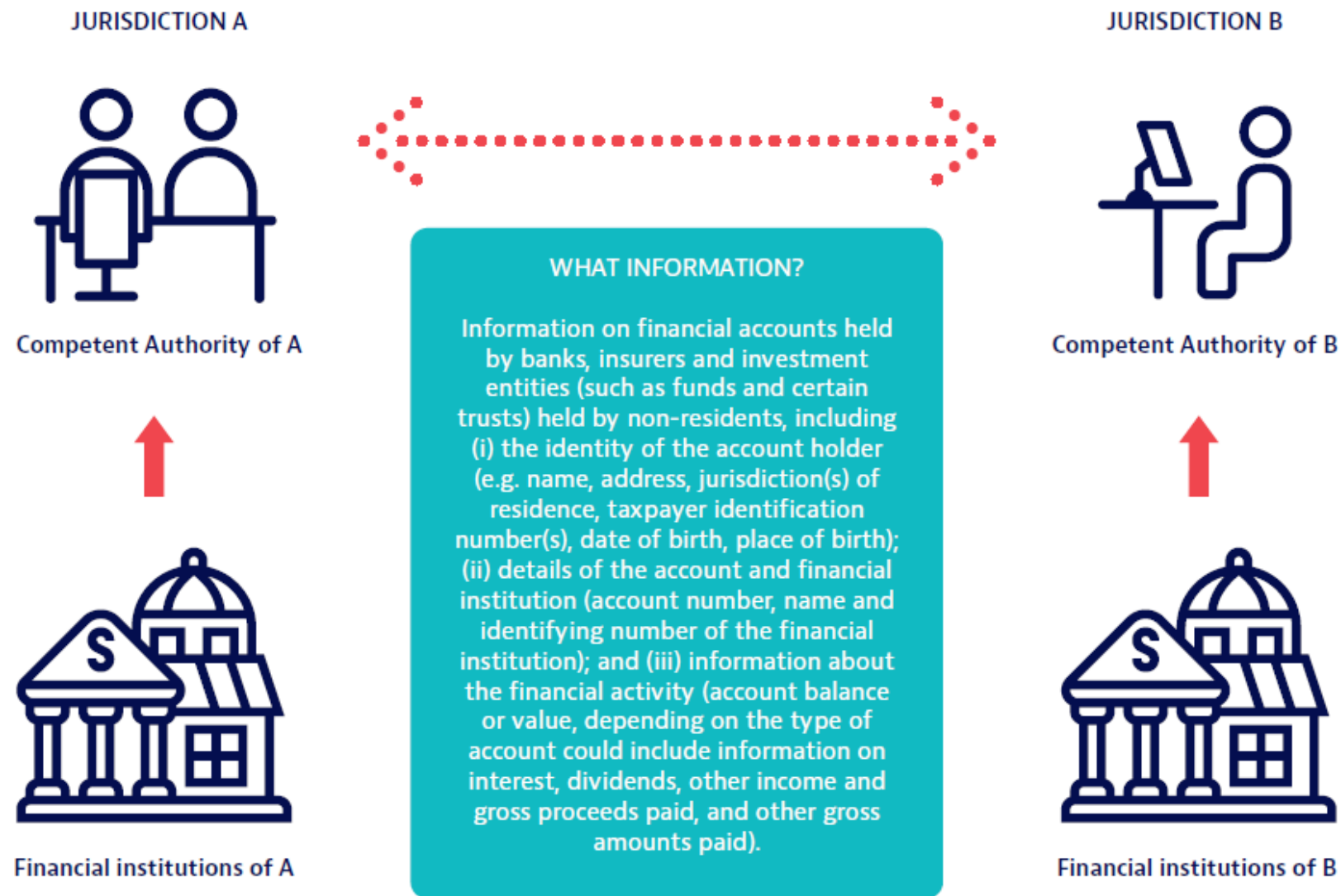


@raghavgupta7

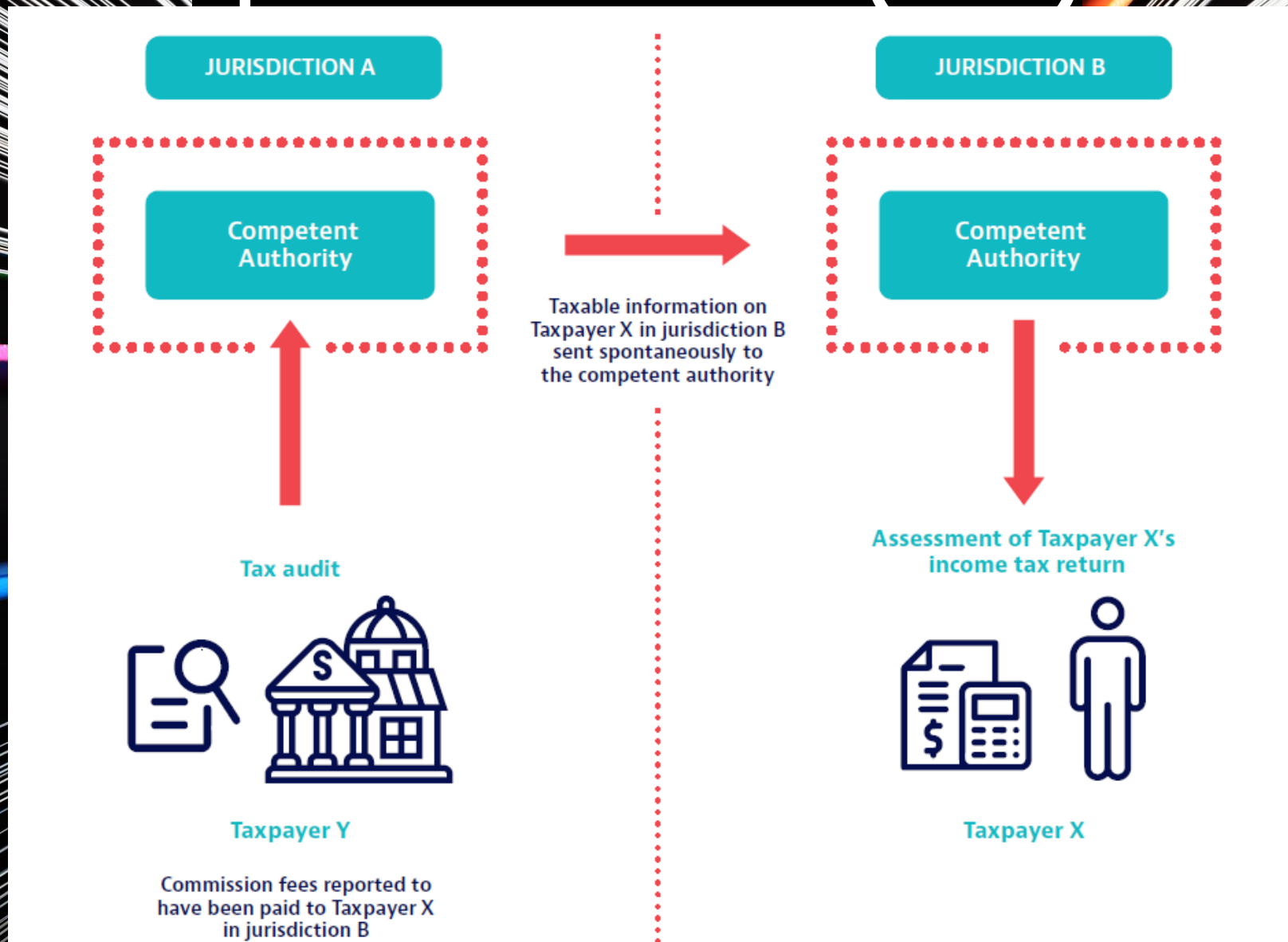
All Views are Personal.

Source: "Establishing and Running an Effective Exchange of Information Function" (Global Forum)

Automatic Eol (AEol)



Spontaneous Eoi (SEoi)



Thoughts to bear in mind regarding EoIR

1. Role of “foreseeable relevance” in EoI
2. Making complete & accurate EoI requests
3. Maintaining confidentiality
4. Intelligence vs. Information (Leaks, etc.)
5. Using only formal channels for information
6. Information for non-tax purposes
7. Feedback on EoI



A sample template for EoIR

APPENDIX FORM A: REQUEST FOR ADMINISTRATIVE ASSISTANCE UNDER THE PROVISIONS OF TAX TREATIES

PART I OF FORM A

Basic Information		
1. Taxpayer under investigation / entity/individual in India ¹	Name	Max characters limit is 75
	Full Address	Max characters limit is 255
	PAN	
	Current Jurisdiction	Max characters limit is 255
2. Country/jurisdiction to whom request is being made ²		
3. Contact details of Assessing Officer/ DDIT (Investigation)/ Transfer Pricing Officer ³	Name	Max characters limit is 120
	Designation	Max characters limit is 100
	Address	Max characters limit is
	Email	
	Telephone	
	FAX	
4. Contact details of Range/ Unit Head ⁴	Name	Max characters limit is 120
	Designation	Max characters limit is 100
	Address	Max characters limit is 255
	Email	
	Telephone	
	FAX	
5. Contact details of Pr. CIT/CIT/ Pr. DIT/DIT concerned ⁵	Name	Max characters limit is 120
	Designation	Max characters limit is 120
	Address	Max characters limit is 255
	Email	
	Telephone	
	FAX	
6. Name of the foreign taxpayer/holder of information if referred to in the request (Row 15 of Part II) ⁶	Max characters limit is 200	

Last updated : 26 October, 2017



@RaghavGuptaIRS



@raghavgupta7

All Views are Personal.

Case study

Mr. X, is resident of jurisdiction 'A' runs an unregistered business of locally producing and selling goods. Income from this business generates cash, not fully accounted for in his books of accounts.

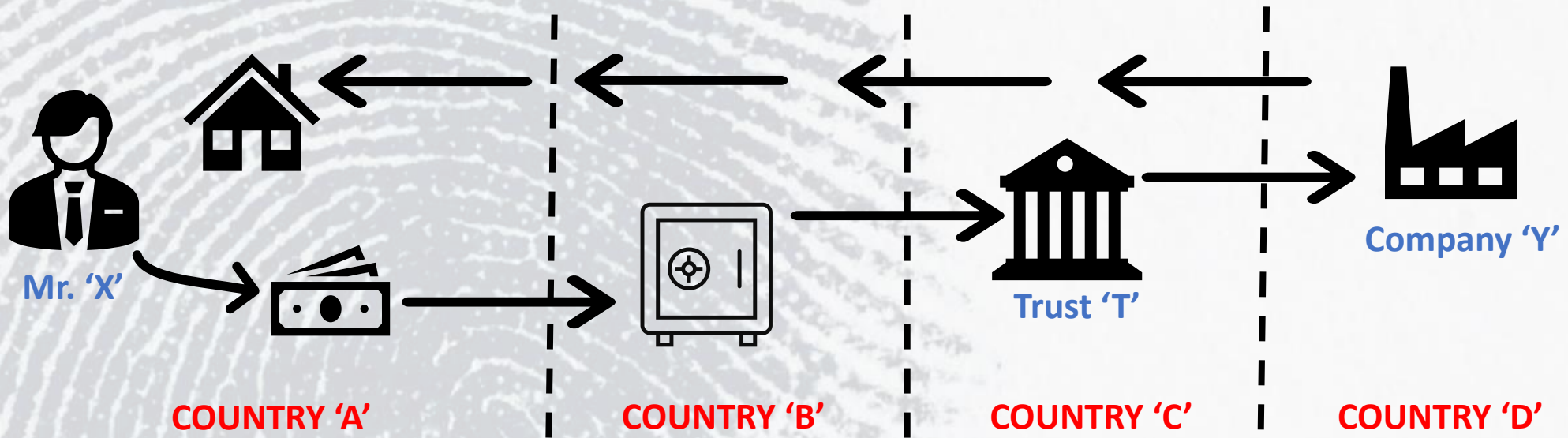
Mr. X decides transfer his surplus cash funds to a foreign jurisdiction 'B', a tax haven having opaque banking laws.

Mr. X then routes these funds to a Trust 'T' based in jurisdiction 'C.'

Trust 'T' invests in company 'Y' incorporated in country 'D.'

Mr. X purchases a house in 'A' through company 'Y' and is currently staying at this house. These facts are unknown to the respective jurisdictions.

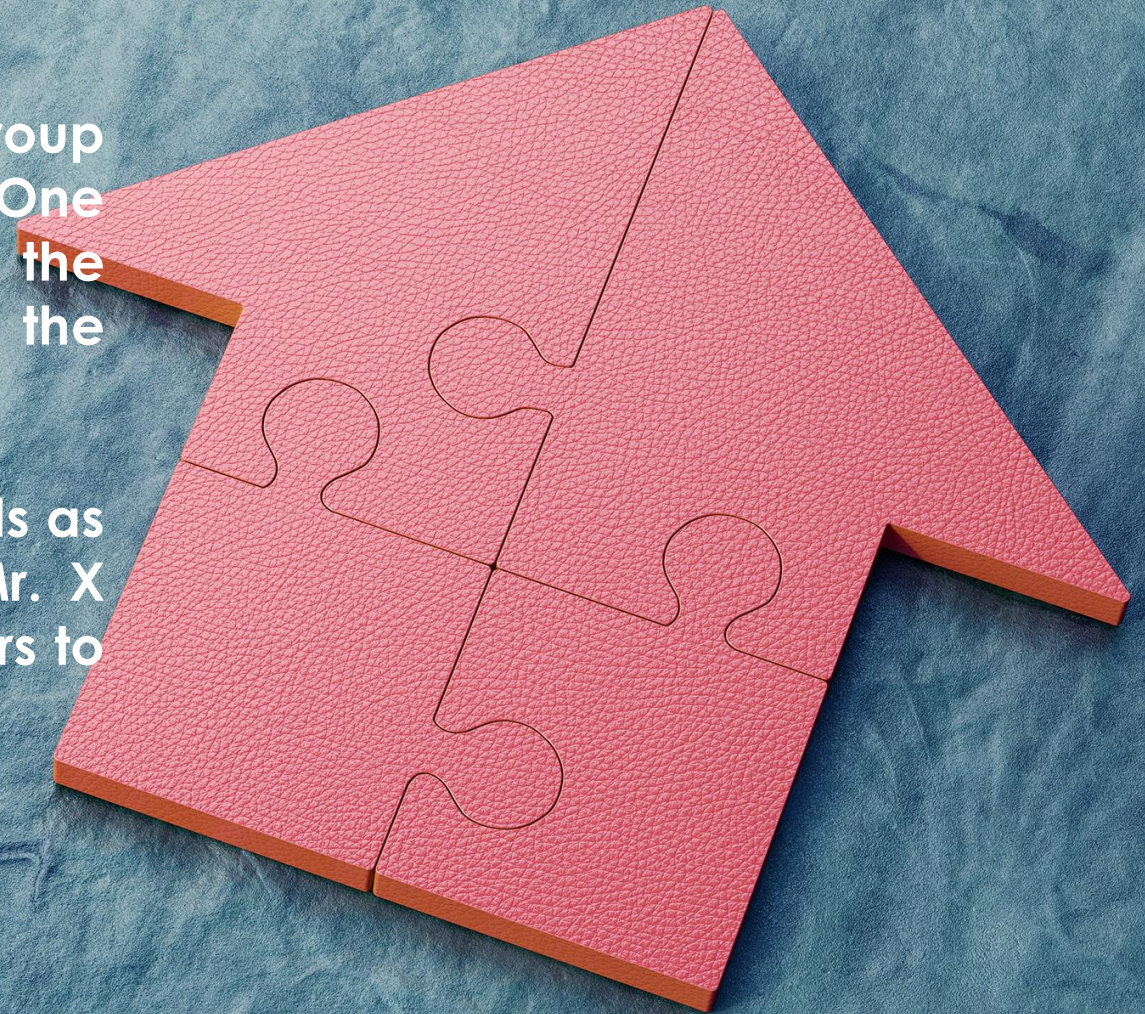
Case study



Breakout Session # 5

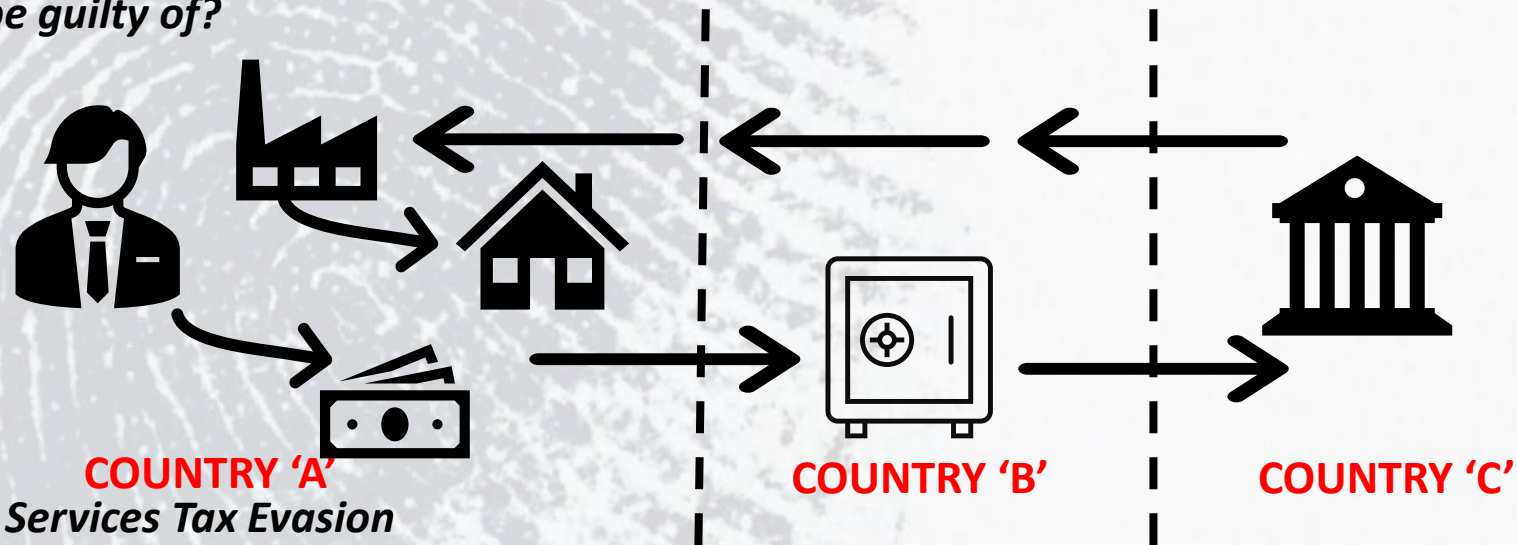
Two members to be nominated from each group being countries A, B, C and D respectively. One member from each group would represent the interests of Mr. X and one represent the investigators of the respective jurisdiction.

Each group will design a way to route the funds as mentioned in the case study on behalf of Mr. X and also describe the strategies of investigators to effectively address this complex scheme.



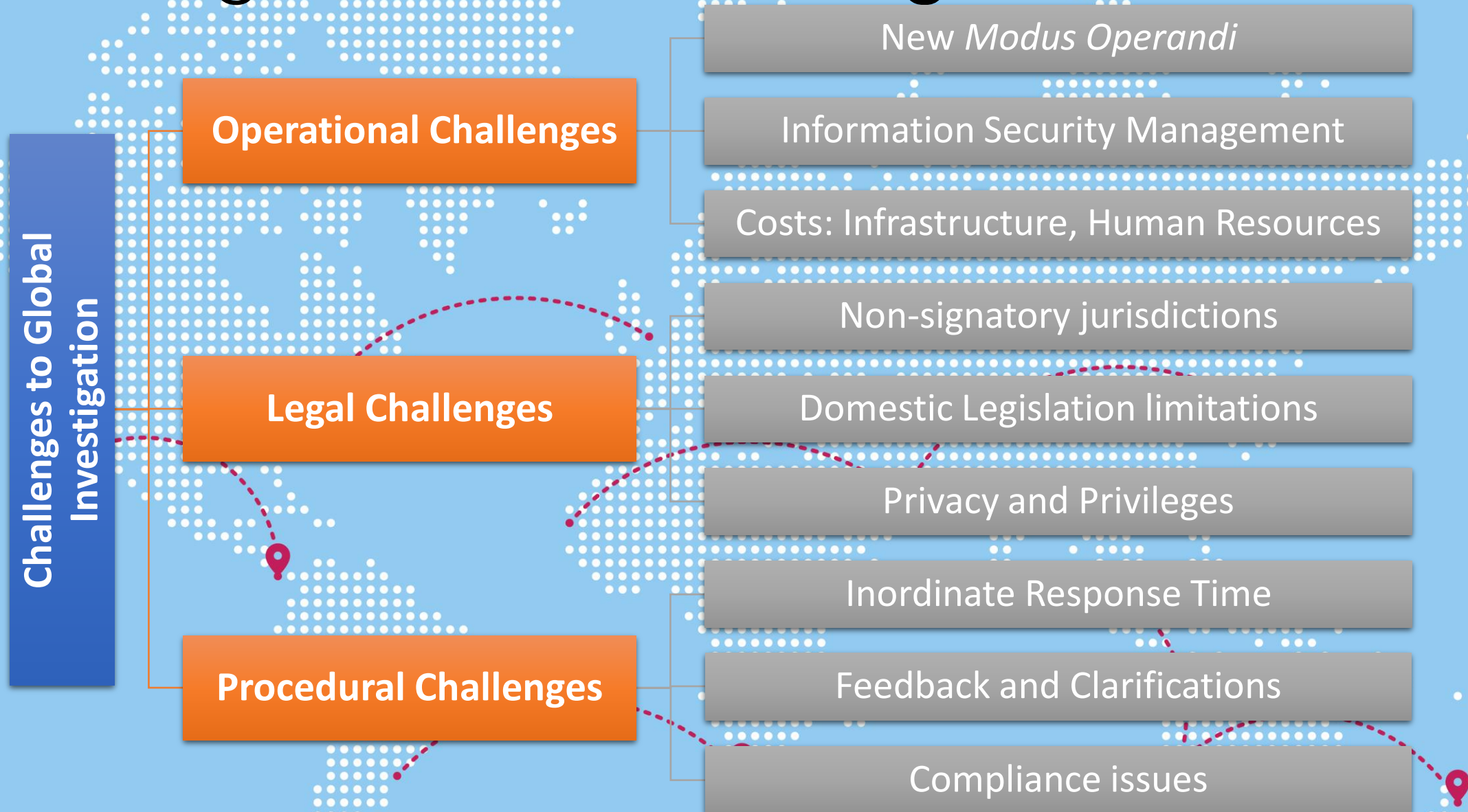
The Actual Facts

Mr. X, an Indian resident runs an unregistered business of locally producing and selling goods. Income from this business generates cash, not fully accounted for in his books of accounts. Mr. X decides to use hawala to transfer the surplus cash funds to a foreign jurisdiction 'A', a tax haven having opaque banking laws. Mr. X then routes these funds to a Trust 'T' based in jurisdiction 'B.' This Trust then invests in the form of share premium in company 'C' in India. Mr. X purchases a house in India in the name of company 'C' not doing any substantial business and is currently staying at this house. These facts are unknown to India. Tax Officials of country 'B' notice that funds of 'T' are siphoned off in a very short period. Alerted, their competent authority sends this information under AEOI to Indian tax authorities. What offences was he found to be guilty of?



1. Goods and Services Tax Evasion
2. Income tax Evasion
3. Evasion of Tax under Black Money Act, 2015
4. Money Laundering under PMLA, 2002
5. Benami Transaction under PBPT Act, 1988

Challenges to Global Investigation



The Road Ahead



Cryptocurrency and other exotic investments



Resolving Legal Issues



Artificial Intelligence and Machine Learning (AIML)



Effective Exchange of Information (EoI)



Cooperation among Investigation & Enforcement Agencies

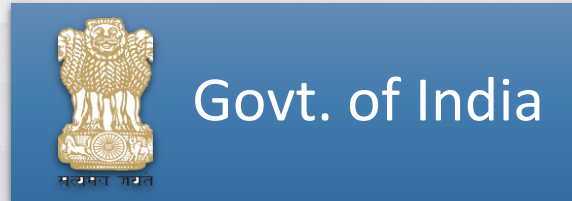
Thank you!



Case study-2

Ms. Y and Ms. Z have been acquaintances for a long time. During one of the searches conducted by GST Department at factory premises of Ms. Y, suspicious documents related to immovable property held abroad are found. GST Department refers this information to REIC, which further shares the same with stamp duty authorities and Income tax Department. It is revealed that the property P has been purchased in the name of a domestic maid employed by Ms. Y and the property is being occupied by Ms. Z. It was also gathered that no stamp duty has been paid thereon. Both stamp duty authorities, and income tax authorities issue notices respectively for evasion of stamp duties and income tax and for holding the property as benami property.

Federal Tax & Investigative **Agencies** of India



- Income tax
- Corporate tax
- Benami Transactions
- Foreign Income/Assets tax
- Securities Transaction tax
- Equalization Levy



- Customs
- Goods and Services Tax
- Narcotics
- Excise



- Money Laundering
- Foreign Exchange



- Intelligence gathering
- Information dissemination



- Corruption
- Multi-agency

Red Flags for Terrorist Financing

- Presence of extremist literature / artefacts/ contact with recruiters
- Multiple low level remittances to fund expenses or travel
- Work in/ travel to / transfers to conflict zones
- The business / charity does not add up as a business / charity
- Imports/ export to or through conflict zones
- Money remittances via MSB's / informal routes rather than banks
- Third Party Payments
- Use of false or multiple identities
- Highly structured ("smurfed") transactions
- Unexplained Cash Expenditure in foreign account/ ATM's
- Concealment of beneficial ownership