

MANAGING FINANCIAL CRIME INVESTIGATIONS (INTERMEDIATE PROGRAM)

OECD INTERNATIONAL ACADEMY FOR TAX CRIME INVESTIGATIONS

Professional Enablers

R Ismail (South Africa)

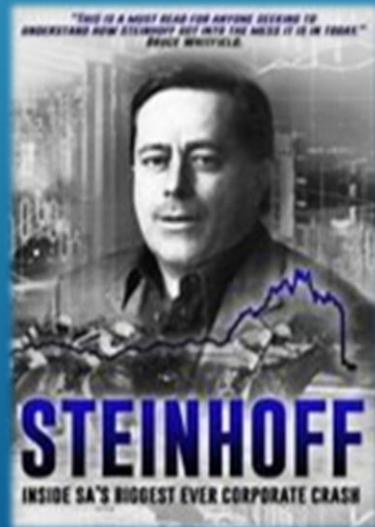
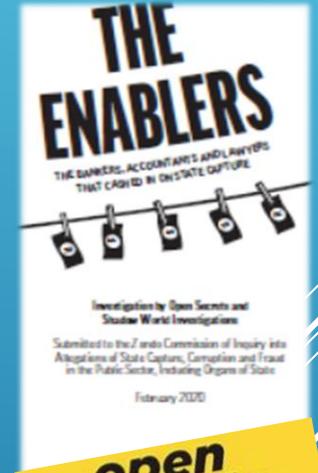
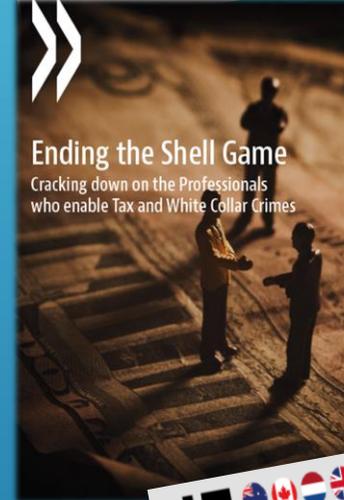
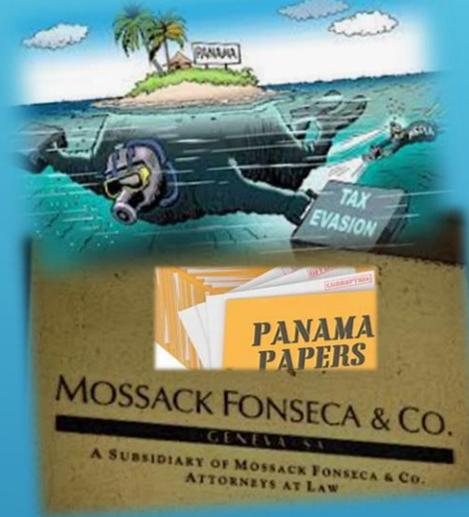
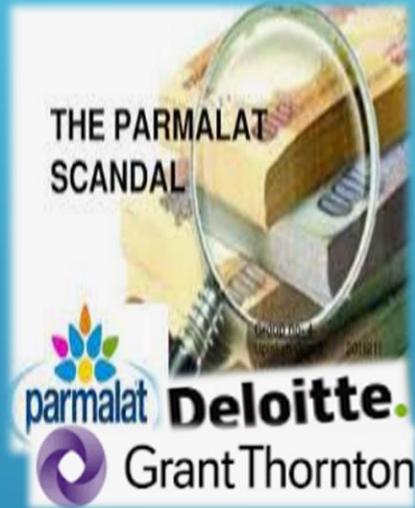
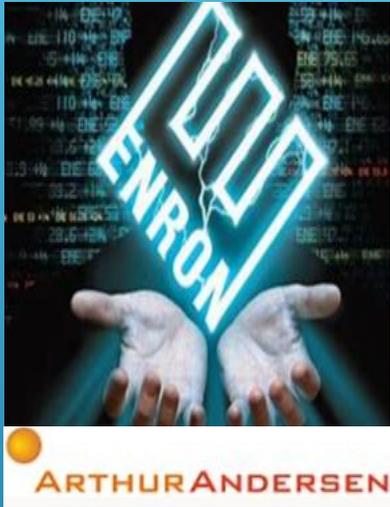
12 June 2023

OSTIA - VIRTUAL

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 the commission and concealment of tax and other financial crimes

RELEVANCE?



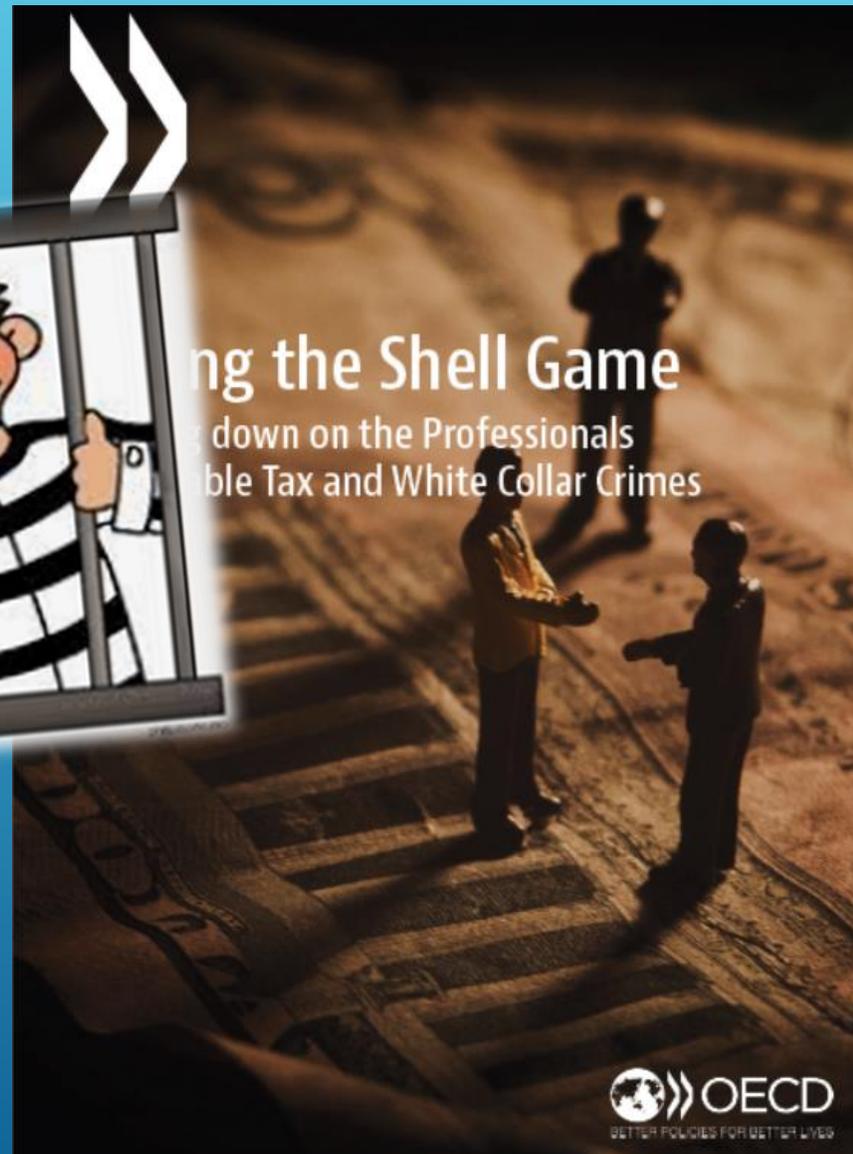
CONCERNING BEHAVIOURS BY ENABLERS

- ▶ 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



Cracking the Shell Game

Going down on the Professionals of Taxable Tax and White Collar Crimes



IN-CLASS DISCUSSION

What behaviours distinguish a professional enabler from a professional?

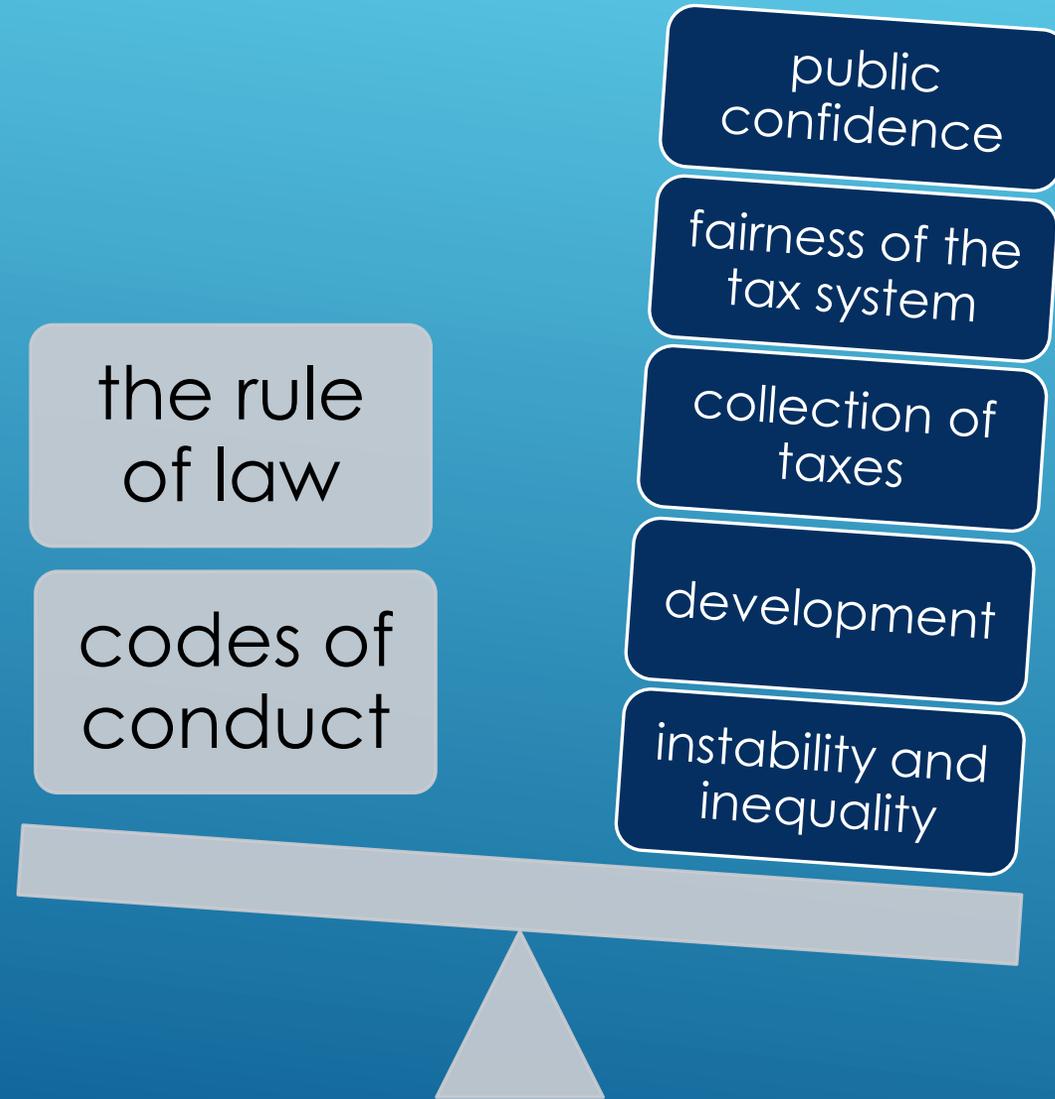
PROFESSIONALS VERSUS PROFESSIONAL ENABLERS

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** and **complicit** 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 their 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

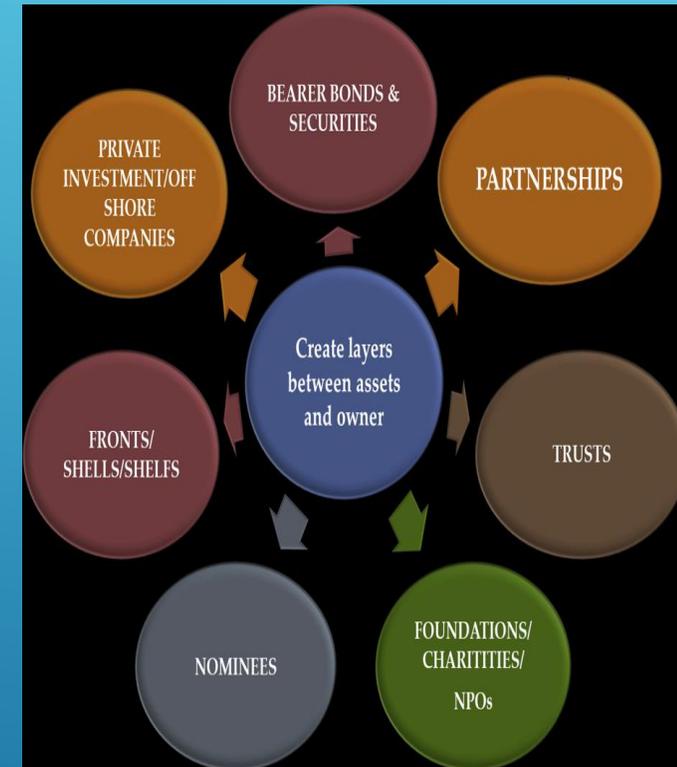
- ▶ Identify 3 risk indicators that could be put in place to red-flag professional enablers for risk assessment and potential investigation?

Example: Structures having multiple shell companies

Groups 3 and 4

- ▶ Which have 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. connections to company formation agents / Trust & Co service providers
- ▶ **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

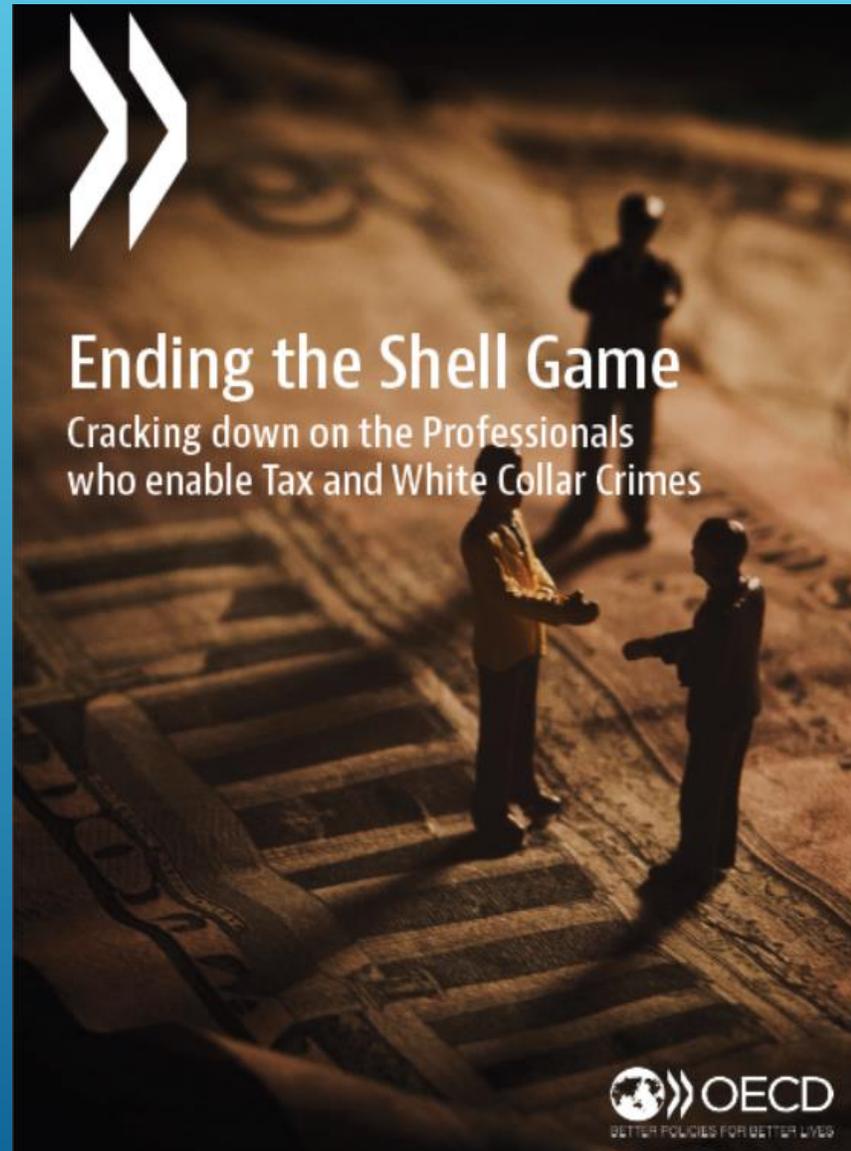


Ending the Shell Game

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

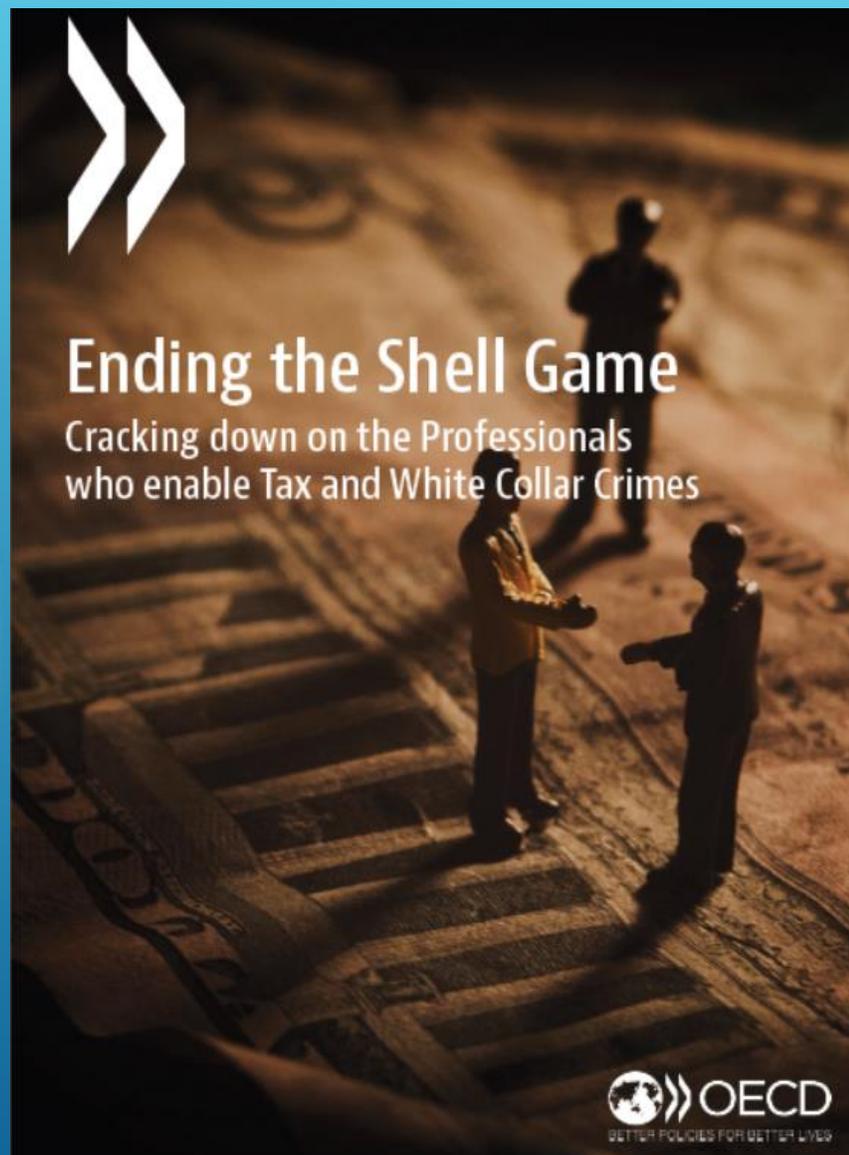


REMEDY: RAISE AWARENESS



- ▶ 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 red flag PE
- ▶ establish and maintain watch-lists of PE
- ▶ issue taxpayer alerts that feed into an early warning system

REMEDY: LEGISLATION



- ▶ provide 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
- ▶ consider whether legal professional privilege poses a barrier to successful investigations
- ▶ 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

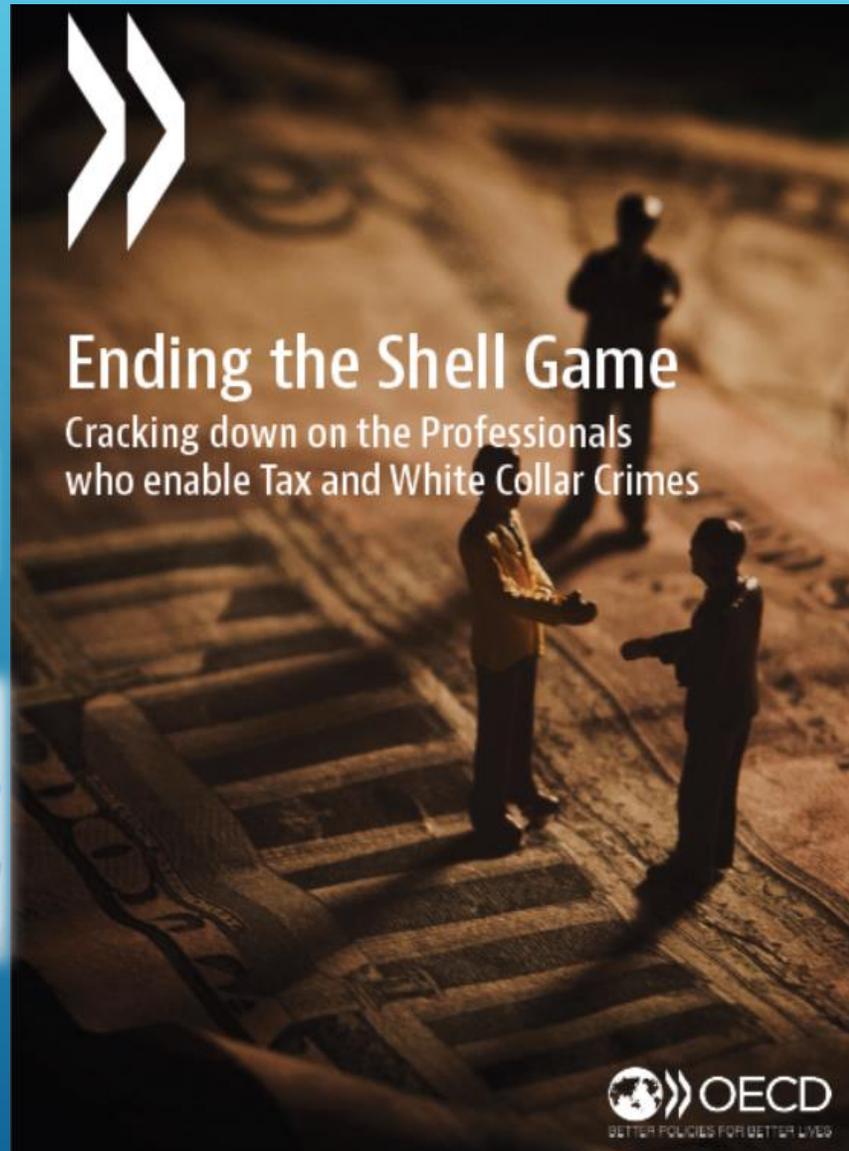
MEASURES (PROACTIVE)

- ▶ 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

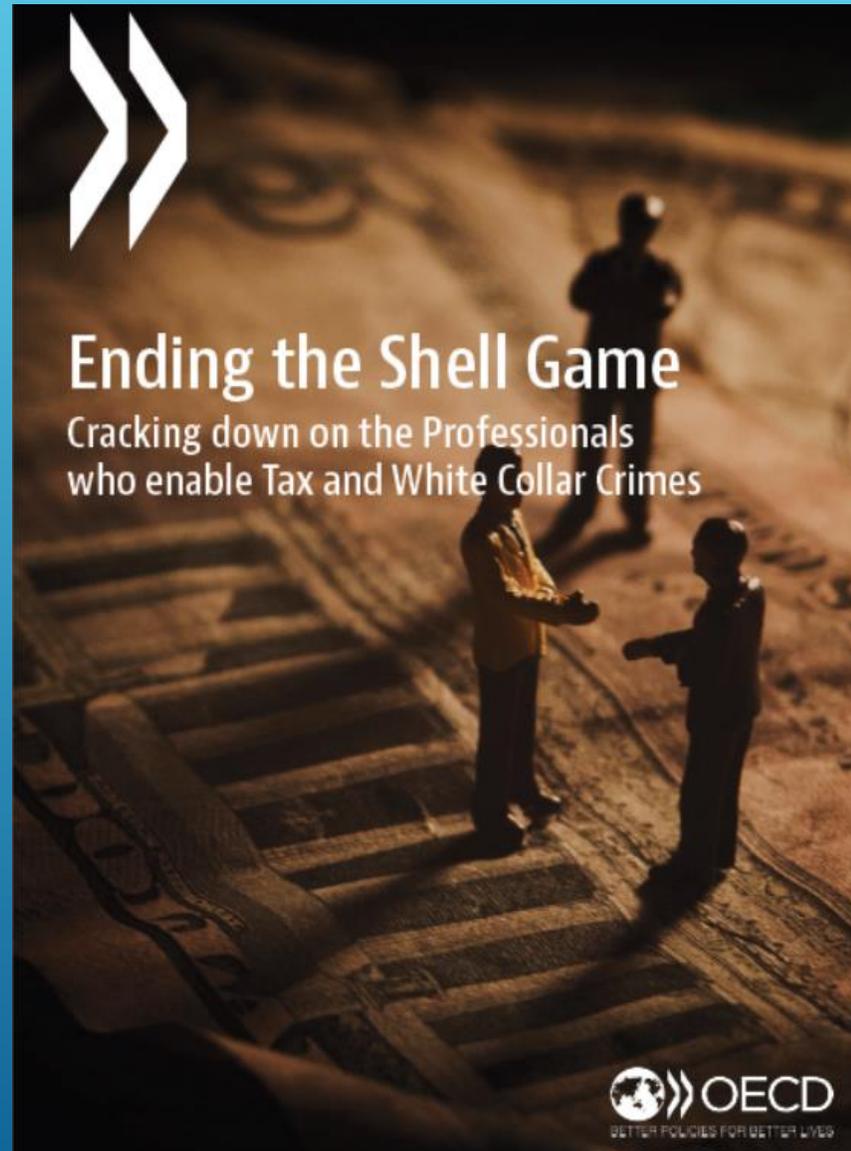


Ending the Shell Game

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

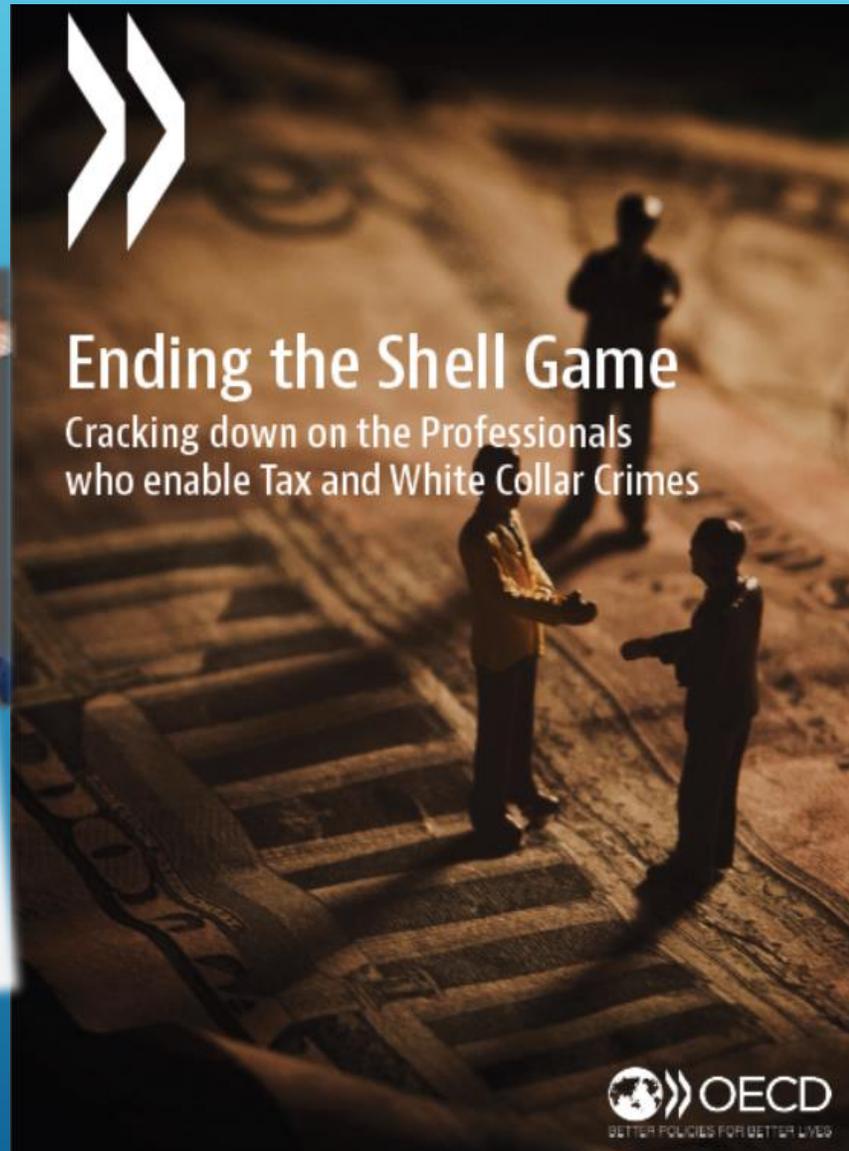
- ▶ introduce voluntary disclosure programs
- ▶ create whistle-blowing facilities
- ▶ consider introducing mandatory disclosure rules, to require intermediaries to report possible schemes early
- ▶ prevent abuse through communication with taxpayers and education of professionals
- ▶ partner with professional 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 gather, analyse and 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, build trust relations and to expedite sharing

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

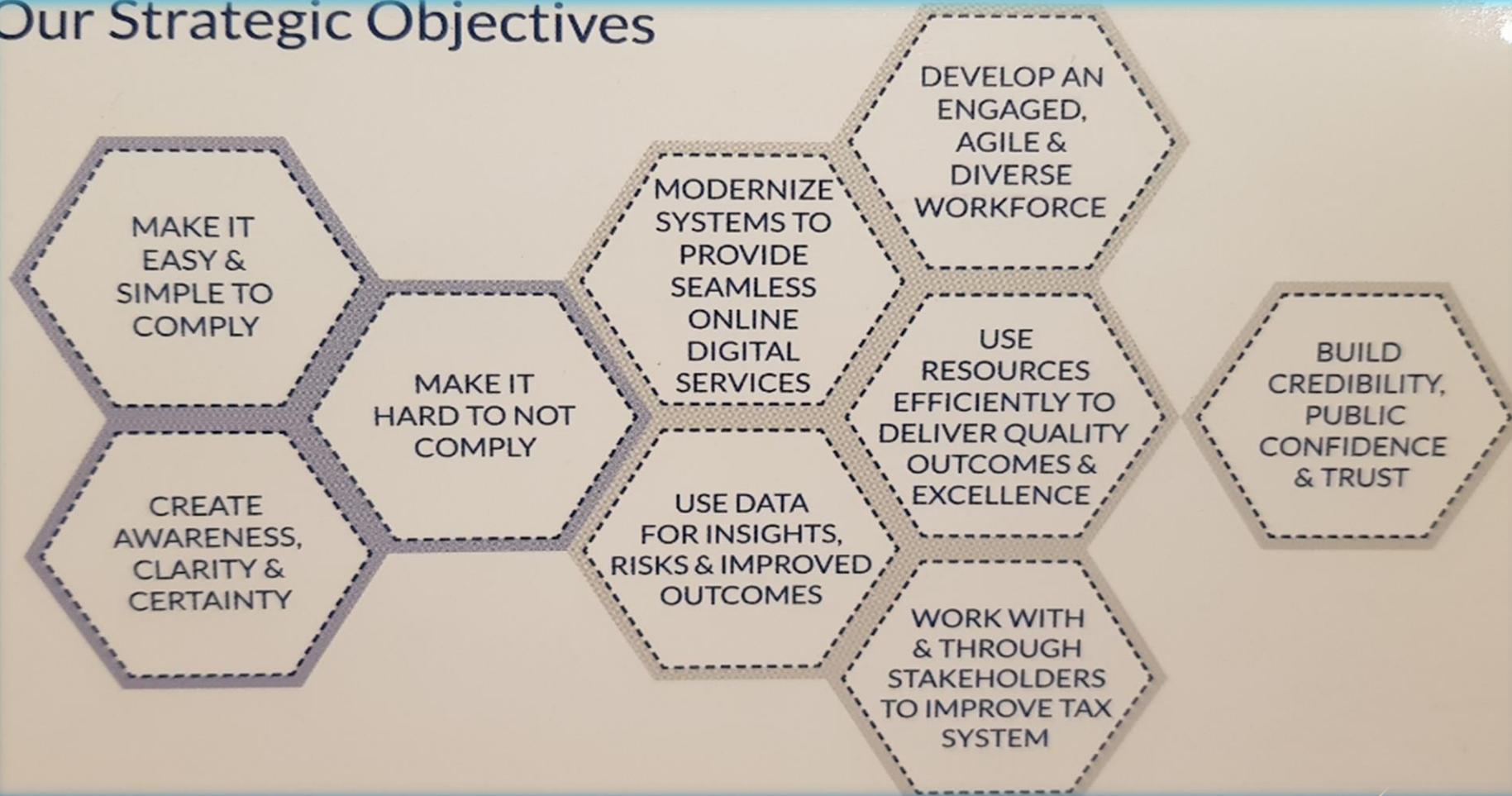
QUESTIONS AND FEEDBACK

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>

At SARS,

Our Strategic Objectives



Invited to peruse our website at www.sars.gov.za