



A toolkit for LEAs and tax
authorities



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List of acronyms/abbreviations

Abbreviation	Explanation
AML	Anti-Money Laundering
EFECC	European Financial and Economic Crime Centre
EPPO	European Public Prosecutor's Office
EUROPOL	European Union Agency for Law Enforcement Cooperation
EUROJUST	European Union Agency for Criminal Justice Cooperation
EU	European Union
FIUs	Financial Intelligence Units
LEAs	Law Enforcement Agencies
OECD	Organisation for Economic Cooperation and Development
OLAF	European Anti-Fraud Office
PIF	Protection of the European Union's Financial Interests
PIF Directive	Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law
SARs	Suspicious Activity Reports
TFIF	Tax Fraud Investigation Framework
VAT	Value Added Tax
WP	Work package

Executive Summary

The Tax Fraud Investigation Framework (TFIF) is a toolkit developed within the PROTAX project and designed to support law and tax enforcement agencies in order to facilitate successful investigations and prosecutions against tax fraud at national and transnational level. The TFIF aims at promoting: (i) a consistent and logical procedural approach to countering tax fraud at national and EU level; (ii) common methods and techniques for investigating and prosecuting tax fraud; (iii) a harmonised standard for working across different agencies (multi-agency working) at national and EU level; (iv) best practices in order to prevent and counter tax fraud by discouraging the criminals from expanding into new fraud ventures; (v) savings of time and resources during cross-jurisdictional legal analysis thus enhancing initial investigation; (iv) effective pathways for transforming information to intelligence and to build an effective response to transnational VAT fraud; (v) information on the different types of evidence necessary for securing a conviction in selected EU Member States. The TFIF is inspired by the general 'fraud investigation model' (Betts, 2017), and has been adapted to respond to tax fraud in particular and co-created by direct inputs from various LEAs, financial investigators, prosecutors and other practitioner and academic experts in the field of tax enforcement and tax fraud investigation.

1. Introduction to the Toolkit for Tax Authorities and LEAs

1.1. Why develop a toolkit?

Tax fraud and tax evasion are immense problems for the EU Member States. While it is difficult to calculate the exact amount of taxes evaded, the tax gap in the economies of the EU evidence the significant losses which could be, if prevented, funnelled to public services for the benefit of citizens.¹ Of course, the societal costs of tax fraud and corruption far exceed the value of assets stolen or evaded. Recognising the serious and common problem of tax fraud and the need for improved mechanisms to prosecute tax crimes, the EU has spearheaded a number of legal, political and academic initiatives. This toolkit is a product of the EU H2020 research programme via one of its projects, PROTAX.

Extensive and rigorous studies conducted by the PROTAX Consortium indicate that there is no unified or single definition and approach to tax crimes across the EU, yet every jurisdiction examined in the project has the necessary legal provisions to enable criminal investigation and prosecution of ‘tax evasion’ and ‘tax fraud’ in particular. This is the main rationale for the focus of this toolkit on tax fraud investigation as it glues the mosaic of legal approaches to tax crimes. While it is possible to assert that there is a significant degree of solidarity across the EU to tackle tax crimes, national variations of *inter alia* legal instruments, criminal justice systems, law enforcement capacities present the EU with a complex and patchwork of legal measures which hinder detection, prevention and prosecution of tax crimes (with the negative consequence of limited recovery of taxable assets).

This toolkit is designed to fill these gaps by setting common standards in the form of harmonised approaches and methods and offers a reliable and user-friendly information resource which can be applied across the EU whilst allowing national particularities to be subsequently incorporated in the toolkit to serve the LEAs operating in a specific jurisdiction and/or transnationally. This tailoring process is the second stage of the toolkit which will be concluded under the subsequent work-package (WP8 entitled “Practical demonstrations via

¹ The EU estimated only the VAT gap to be €137,470 million in the EU 2017 (EU Comm. – Sept 2019 https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-factsheet-2019_en.pdf).

webinars and recommendations”) via interactive workshops with end-user stakeholders in the tax eco-systems of 18 EU Member States.

The primary purpose of this tax fraud investigation framework (hereinafter, **TFIF**) is to identify common methods of investigation of tax crimes and facilitate successful investigations and prosecutions of tax crimes.² Some of the benefits of successful criminal prosecution for tax crimes include societal recognition of the criminal nature of these offences and the subsequent accountability of the perpetrators. In addition, sanctions and confiscation routes available under criminal law serve to prevent future serious misconducts impacting on the public financial interests. Furthermore, this toolkit stresses the relevance for the investigations of more advanced or expedited means of gathering information and intelligence, including access to data from law enforcement agencies and financial intelligence units (FIUs), use of provisional measures and coercive investigative techniques (such as searches, physical or electronic surveillance, examination of financial records or access to documents held by third parties).

1.2. How the toolkit is built

In order to develop a toolkit, PROTAX has developed a multilevel analysis within the EU Member States aimed at exploring differences and similarities concerning:

- definition of tax-related criminal offences
- investigation models of tax-related criminal offences
- jurisprudential approaches to criminal cases
- institutional and human factors impacting on the investigations
- cooperation and information-sharing models between authorities
- challenges in the investigation of tax crimes

² The civil action for tax enforcement is not considered in this toolkit.

Relevant findings achieved in the analysis of the matters mentioned above and contained within the reports developed by PROTAX will be directly included in the toolkits to guide tax authorities and LEAs in preventing and combating tax crimes and in particular tax fraud.

Figure 1 – PROTAX main reports and TFIF Toolkit



Please click on work packages to see deliverables³

The TFIF is based on research findings obtained through a pioneering strategic combination of multiple research methods:

- **Comparative legal analysis** – The toolkit was developed based, first, on the findings of the comparative study of the criminal and procedural law relating to tax crimes. This qualitative analysis consisted in developing a research on the different regulations of the EU Member States concerning the rules governing the application of criminal tax law in order to identify and analyse the main differences affecting the investigation and prosecution of tax crimes, including “fiscal corruption”, as well as European

³ This function will be available when the deliverable is publicly available on the project website, www.protax-project.eu.

cooperation in the common fight against tax fraud [[PROTAX \(2020\). Report on comparative legal and institutional analysis. Report D3.1](#)].

- **Analysis of case studies** – The toolkit is also based on the results acquired in the analysis of various case studies which have revealed relevant inputs on the approach followed in action by tax authorities and LEAs in criminal proceedings in tax matters, with particular reference to VAT fraud in the European and international context. The study of jurisprudence on European and transnational cases of tax crimes that have very complex characteristics for investigators was essential to identify the actual problems that may emerge for the purposes of successful prosecutions and the best practices that have made it possible to effectively combat tax fraud [[PROTAX \(2018\). Case studies of tax crimes in the European Union. Report D1.2](#)].
- **Focus groups with LEAs and other end-user stakeholders** – The development of the toolkit is also based on data acquired by the PROTAX consortium through focus groups in various EU Member States. The participants of the focus groups, with different professional backgrounds, had the opportunity to interact with each other and generate new reflections on the prevention and fight against tax crimes. This qualitative method of analysis highlighted the variety of approaches followed in investigations by the authorities of the different legal systems and to develop a more in-depth analysis of the real challenges that tax authorities and LEAs are called upon to face each time [[PROTAX \(2019\). Approaches to tax crimes in the European Union. Report D2.3](#)].
- **Multidisciplinary approach** – The toolkit is also based on a comprehensive analysis of the factors affecting the investigation and prosecution of tax offences. In PROTAX research, the attention to legal, economic (e.g., resources available to LEAs), sociological (e.g., institutional environment and tax compliance), human (e.g., skills and competencies of LEAs) and ethical (e.g., respect for privacy and data protection) aspects that may impact on the investigation of tax crimes has been strongly emphasised. The results of this multidisciplinary analysis constitute an integral part of

this toolkit which ensured that the rule of law and fundamental human rights and legal principles of the EU are given utmost regard to ensuring the integrity of the toolkit as well as its societal acceptance and acceptability [[PROTAX \(2020\). A comparative analysis of tax crimes in the European Union. Report D3.2](#); [PROTAX \(2020\). Analysis of data protection, privacy, ethical and social issues in the prosecution of tax crimes. Report D6.1](#); [PROTAX \(2020\). A framework for the ethical, privacy and social impact assessment of tax crimes. Report D6.2](#)].

The TFIF is inspired by the general ‘fraud investigation model’ created by Betts⁴ and has been adapted to respond to tax fraud in particular and co-created by direct inputs from various LEAs, financial investigators, prosecutors and other practitioner and academic experts in the field of tax enforcement and tax fraud investigation. Furthermore, feedback on this Toolkit has been sought from stakeholders with different backgrounds in relation to its effectiveness as a common instrument for preventing and countering tax crimes during a co-creation workshop organised by PROTAX [[PROTAX \(2020\) Report of the stakeholder workshop D7.4](#)]. Additional efforts have been conducted online to co-create this Toolkit with partners in the consortium and other stakeholders. PROTAX has successfully tested this TFIF within three different online workshops organised in three different countries (Italy, Estonia, and Romania) before this latest version was prepared. PROTAX will now disseminate its use more widely in the context of its efforts in WP8 (practical demonstrations) and seek on-going feedback and input from end-user stakeholders.

1.3. Why use the toolkit?

The TFIF aims at providing:

- a consistent and logical procedural approach to countering tax fraud at national and EU level by encouraging the adoption of common methods and techniques for investigating and prosecuting tax fraud;

⁴ Betts, M., Investigation of Fraud and Economic Crime - Blackstone's Practical Policing, (Oxford University Press, 2017).

- a harmonised standard for working across different agencies (multi-agency working) in order to foster inter-agency cooperation and information-sharing between different authorities at national and EU level;
- examples of best practices in order to prevent and stop tax fraud at national and EU level and discouraging the criminals from expanding into new fraud ventures;
- a practical guide in order to save time and resources that the LEAs use during cross-jurisdictional legal analysis thus enhancing initial investigation;
- examples of effective pathways for transforming information to intelligence and build an effective response to the transnational VAT fraud; and
- case studies which depict different types of evidence necessary for securing a conviction in selected EU Member States.

To this end, the deliverables produced so far within the PROTAX project represent an integral part of this agile, practical, and straightforward toolkit. These deliverables contain, among other things, a detailed theoretical and practical analysis of the legal frameworks from an EU and comparative perspective on the definitions and treatment of tax crimes, even in connection with money laundering, organised crime, and corruption; a broad picture of the human factors shaping tax compliance and enforcement; a comprehensive focus on the main case studies concerning successful investigations and prosecutions against tax crimes; a far-reaching overview of the existing tools at EU and international level fostering information-sharing and inter-agency cooperation at national and EU level. Reference is made to these deliverables for more in-depth analysis of these aspects and the bibliography.

The TFIF is designed to be an organic framework which can be enhanced by further input and amendments as and when necessary. While the other WP7 **toolkits for policy-makers and tax crime risk assessment methodology inform the TFIF**, the results of the activities that will be gathered in the next work packages of the project (e.g. the practical demonstration of the toolkits other dissemination events) will also be taken into account in tailoring the TFIF for use in specific domestic legal regime.

1.4. How to use the toolkit

The TFIF is designed as a quick-reference, 'how to' manual for practitioners — law enforcement officials, tax authorities, investigating magistrates, FIUs and prosecutors — as well as for asset managers and those involved in making policy decisions in both civil and common law jurisdictions. Given the diverse audiences and legal systems within the EU, it is important that readers keep in mind that a practice or strategy that has worked in one jurisdiction may not work in another.

Similarly, an investigative framework or process that is permitted in one jurisdiction may not be permitted — or may have different procedural requirements — in another. In addition, the legal regime in a country may use different terminology to describe the same legal concept such as tax offence or procedure. Different jurisdictions may assign different roles and responsibilities to those people who are involved in tax enforcement and/or countering tax crimes: in some jurisdictions, investigations are conducted by the tax authority; in others, by law enforcement agencies or prosecutors.

The toolkit is not designed to be a detailed and comprehensive resource of law and practices as these are subject to constant change. Each practitioner therefore should read the toolkit in the context of the specific legal system they are in, law enforcement structures, resources, legislation, and procedures with which they need to operate. It is also worth noting that TFIF entails an important element, identifying and securing assets of suspects, it does not include a detailed information on asset recovery mechanism.

Accordingly, the TFIF should be treated as a common basic framework to mould into/or tailored in light of the national legal instruments and requirements. It can also enable practitioners to inform themselves about other tax eco-system and legal frameworks so that collaboration and joint investigations can be initiated on a good footing.

2. Tax Fraud Investigation Framework (TFIF)

2.1. Defining tax fraud

The aim of the toolkit is to develop a common framework for detecting, investigating and prosecuting tax crimes and, in particular, tax fraud. The identification of tax fraud schemes is a fundamental precondition for preventing and countering the perpetration of tax offences [[PROTAX \(2018\). Case studies of tax crimes in the European Union. Report D1.2](#)]. In this regard, attention will be paid in particular to tax fraud at transnational level.

Box 1 – Case study – VAT Carousel Fraud and Cross-Border Organised Crime Group

Case study – VAT Carousel Fraud and Cross-Border Organised Crime Group

A case study analysed by PROTAX describes – for example – “how a company ... built up a chain of missing traders through an organised criminal group in Estonia. This organised criminal group helped to organise the necessary missing traders and organised their further activities, formalised fictitious documents, performed bank transfers and conducted other activities. The group engaged with another organised crime group in Latvia. Together, they used the same goods for similar tax fraud in both countries, doubling the criminal income of the fraud scheme. The two groups appointed an “assignee on business” trustee in Estonia, who dealt with frontmen, managed the establishment of missing traders, communicated with banks on behalf of frontmen, entered into contracts to cover crime by shadow activities (hiring rooms, equipment) and so on” [[PROTAX \(2018\). Case studies of tax crimes in the European Union. Report D1.2](#)]

The legal definition of tax fraud is a cornerstone of the TFIF as it defines the legal basis of the investigations. In this regard, TFIF takes into consideration, first, the definition of tax fraud contained in the PIF Directive. More specifically, Articles 2(2) and 3(2) contain the “core” of the **definition of tax fraud at EU level** [[PROTAX \(2020\). Report on comparative legal and institutional analysis. Report D3.1, H2020 PROTAX Project 787098](#)]. This definition was discussed during the PROTAX co-creation workshop.

Article 3**Fraud affecting the Union's financial interests**

1. Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally.

2. For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:

(c) in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) misapplication of a legally obtained benefit, with the same effect;

(d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:

(i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;

(ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or

(iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Article 2**Definitions and scope**

2. In respect of revenue arising from VAT own resources, this Directive shall apply only in cases of serious offences against the common VAT system. For the purposes of this Directive, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in point (d) of Article 3(2) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000.

Beyond this lowest common denominator at EU level, there are great differences between different jurisdictions [[PROTAX \(2020\). Report on comparative legal and institutional analysis. Report D3.1, H2020 PROTAX Project 787098](#)]. As highlighted by PROTAX, the definitions of tax crimes vary significantly from one legal system to another, so the legal basis for triggering investigations can change. In this regard, it should be noted that, depending on the type and nature of the prohibited conduct committed, the following aspects, *inter alia*, affect criminal investigations:

- **nature of the offence** (civil, administrative or criminal)
- **scope of the tax crime** (broad or narrow)
- **thresholds** of the tax crime (high, low or missing)
- **personal scope** of the tax crime (natural and legal persons)
- **territorial scope** of the tax crime (national or transnational)
- **definitions** of the tax crimes (guilty act and guilty mind)
- **aggravating circumstances** of the tax crimes
- **sanctions** applicable in relation to the tax crimes (imprisonment, fines, confiscation and accessory penalties)

Moreover, PROTAX also noted differences and interconnections in the treatment of relations between tax crimes and other financial crimes, including:

- tax crimes and **money laundering**
- tax crimes and **corruption**
- tax crimes and **organised crime**

2.2. Investigation and prevention models

The authorities involved in the investigation of tax offences within the EU Member States may be the following:

- **Tax administrations**

Box 3 – The role of tax administrations in the investigation of tax offences

Tax administrations may interact differently within the various legal systems. Based on the PROTAX findings, it can be distinguished, for example, between EU countries where tax administrations carry out investigations in relation to tax offences and tax administrations that perform a driving function of investigations. In the latter case, tax administrations often have the role of detecting tax crimes during their tax audits and assessments and communicate the *notitia criminis* to the competent police or prosecutor’s office so that they can proceed with the investigation.

- **Specialist tax agency and police**

Box 4 – The role of specialist tax agency and police in the investigation of tax offences

Within EU legal systems, there may be LEAs specialised in the investigation of tax-related crimes and authorities that have a general competence on any crimes, including tax crimes. Investigative agencies with specific expertise in the field of tax or economic crime often have high specific skills and competences to conduct investigations in tax matters. Investigative bodies with general competence can, however, make use of a broader framework of information relating to offences from which relevant elements can be derived to trigger more wide-ranging investigations.

- **Public Prosecutors**

Box 5 – The role of public prosecutors in the investigation of tax offences

Prosecutors may play a different role in the investigation of tax offences depending on the powers conferred by each legal system on tax agencies and tax administrations.

The investigation models developed within the legal systems can be divided based on **four models** in line with the OECD’s findings on tax administrations.⁵ For example:

Table 1 – Investigations models (OECD)

Model 1	Model 2	Model 3	Model 4
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⁵ Further and different tables have been elaborated by the OECD with reference, moreover, to customs administrations, financial intelligence units, and prosecution authorities.

Tax administration directs and conducts investigations	Tax administration conducts investigations, directed by prosecutor / examining judge	Specialist tax agency outside tax administration conducts investigations	Police or public prosecutor conduct investigations
<p>Germany Greece Ireland United Kingdom</p>	<p>Austria Estonia Germany Hungary Poland Portugal Spain</p>	<p>Greece</p>	<p>Bulgaria Finland France Greece Spain</p>

Source: OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes – Third Edition*, OECD Publishing, Paris, p 33.

Italy is not included within these four models by OECD since *Guardia di Finanza* is a special investigation body which carries out investigations on tax evasion and money laundering.

Other authorities can have a role in the fight against tax evasion at national level, including for example:

- **Financial Intelligence Units**

Box 6 – The role of the financial intelligence units in the detection and investigation of tax crimes

Financial Intelligence Units (FIUs) have a relevant role in detecting and identifying money laundering and tax crimes since they receive, analyse and transmit reports of suspicious activities forwarded by private entities to law enforcement agencies. PROTAX stresses that an effective anti-money laundering framework and inter-agency cooperation between FIUs and other authorities is an essential tool to counter tax crimes.

- **Anti-Corruption Agencies**

Box 7 – The role of anti-corruption agencies in the detection and investigation of tax offences

Anti-corruption agencies also have a relevant role in identifying tax crimes in their interconnections with corruption. The inter-agency cooperation and information-sharing between anti-corruption

agencies, tax administrations and law enforcement agencies is another relevant key strategy to counter tax crimes.

Compliance **cooperative and repressive schemes** can be identified within legal systems. These different schemes have a significant impact on the launch, development and outcome of investigations.

Table 2 – Cooperative and repressive compliance schemes

Model 1	Model 2
Compliance repressive scheme	Compliance cooperative scheme
<ul style="list-style-type: none"> • Mandatory criminal prosecution • Low thresholds • High sanctions • Lack of voluntary disclosure programme • Double track system 	<ul style="list-style-type: none"> • Principle of opportunity • High threshold • Negotiating justice • Voluntary disclosure programme • Further incentives

PROTAX has demonstrated that there are relevant factors that impact on the fight against tax crimes, including:

- **procedural laws and investigative powers**
- **standards of proof and laws governing evidence**
- **incentives to disclosures and whistleblowing**
- **international cooperation in criminal matter**
- **inter-agency cooperation and information-sharing**
- **enforcement in the laws and in the books**
- **further relevant factors (political, institutional, cultural, human, etc.)**

Despite the essential efforts of the EU in the field international cooperation and interagency cooperation, the abovementioned factors further corroborate the existence of strong differences between the EU Member States due to the specificities of the procedural laws within national systems. The TFIF takes into consideration these significant discrepancies in

the criminalisation, investigation, and prosecution of tax offences to identify a common denominator between legal systems.

2.3. A common investigation framework

These different approaches can make tax compliance and enforcement complex, particularly for transnational tax crimes. Hence PROTAX has recommended that the Member States should take steps toward a basic common understanding of tax offences in general and “tax fraud” in particular with the aim to facilitate mutual cooperation and enhanced compliance by citizens.

To this end, the taxonomy developed by PROTAX could serve as a useful tool [[PROTAX \(2020\). Report on comparative legal and institutional analysis. Report D3.1, H2020 PROTAX Project 787098](#)].

Having identified these different approaches, for the purposes of establishing a common tax fraud investigation framework, they nevertheless provide the legal basis for criminalisation of fraudulent tax practices.⁶ These are often articulated in two cardinal legal concepts: tax evasion and tax fraud. This TFIF is based on the latter also considering the relevant EU law, namely the PIF Directive.

The TFIF, as underlined further down, does not concern the specific investigations of the European Public Prosecutor's Office in its field of competence since these are already regulated. However, it takes into consideration the need to continue to build a 'common way' of understanding and act against tax crimes. Despite the progress made at EU level, the cooperation in tackling cases of transnational fraud and other tax crimes falling within the competence of the EU Member States should be strengthened. To this end, the TFIF takes also into consideration the need to develop new methods of combating tax crimes and corruption. In particular, PROTAX stresses the importance to take in consideration the policy

⁶ For a detailed comparative analysis of tax crime types (e.g. tax scams, tax evasion, fiscal offences, tax fraud, failure to pay tax, etc) in the EU see PROTAX D3.1.

recommendations developed in a policy toolkit, which forms an integral part of this work [[PROTAX \(2020\) A toolkit for policy-makers. Report D7.3, H2020 PROTAX Project 787098](#)].

This Toolkit offers a common framework to develop investigations against transnational serious tax fraud. Nevertheless, guidelines contained within this Toolkit can also be used to develop investigations in relation to other tax crimes, especially considering the common features between the different typologies of criminal offences.

2.4. The principles underlying the TFIF

Successful investigation and prosecution of tax fraud require a comprehensive plan of action that incorporates a number of important strategic and procedural steps and considerations.

LEAs will need to gather and assess the facts to understand each case and its merits; assemble a competent team; identify key partners (within and outside their jurisdiction); communicate with other LEAs; understand and navigate the legal, practical, and operational peculiarities of other jurisdictions; and ensure effective case management. TFIF foundations are designed to address these core elements.

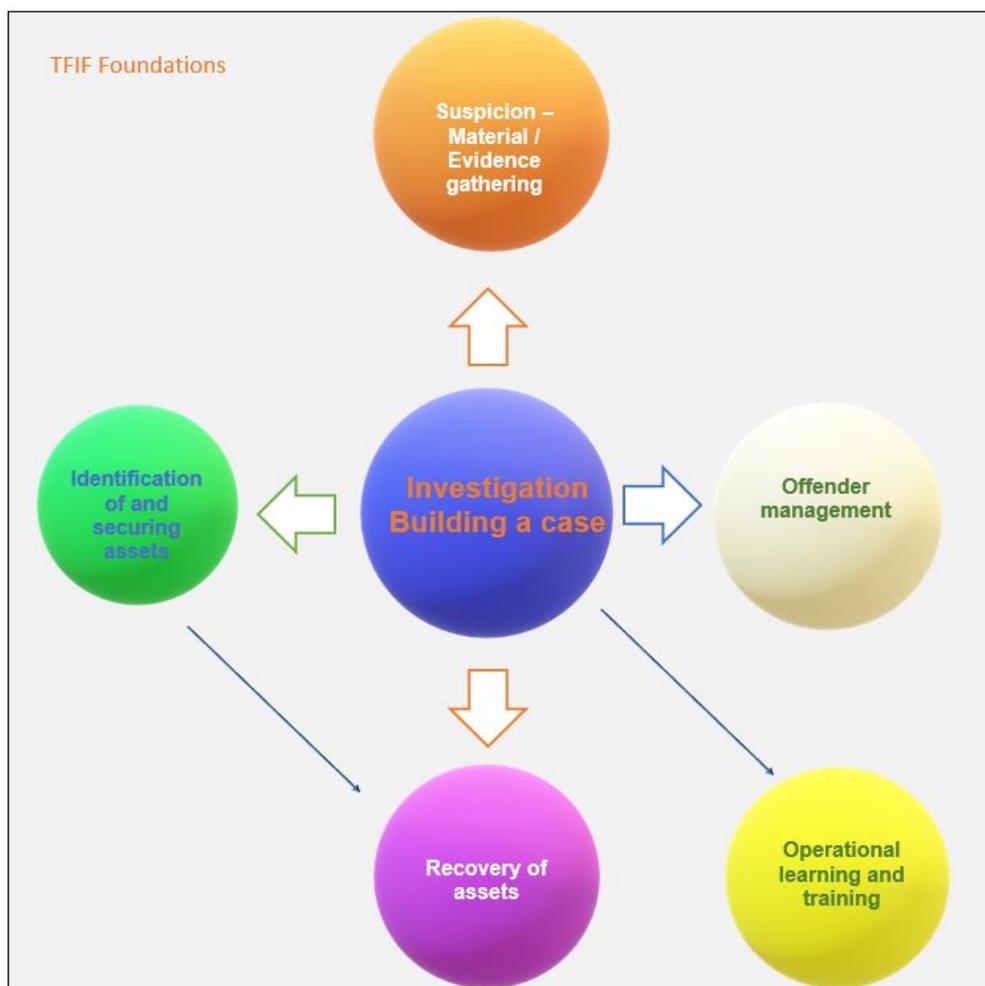


Figure 2 – TFIF Foundations

PROTAX TFIF – in line with the Fraud Investigation Model – consists of five basic foundations, as illustrated above.

The first foundation involves the collection of intelligence and evidence and tracing relevant assets which may require physical surveillance, electronic surveillance, information from public sources, interviews with relevant persons, search and seize orders. Mutual legal assistance and international cooperation may be necessary for cross border investigations, extradition of persons as well as recovery of assets located in multiple jurisdictions.

The second foundation runs in parallel with the first pillar whereby during the collection of evidence and investigation, the proceeds, assets and other enabling features subject to freezing and confiscation can be traced and secured in order to prevent dissipation,

movement, hiding and destruction thereof. It is worth remembering that while a “beyond a reasonable doubt” would be needed for criminal conviction for tax fraud, a “balance of probabilities” would be needed for confiscation of proceeds of tax crimes in most jurisdictions.

The third foundation is to conduct an assessment of the offender, carefully considering the profiles of the persons involved in the investigation and checking, for example, whether they are a professional enabler, a member of an organised crime group or a criminal network, or a legal representative of a company. In addition, attention should be paid to the extent of the offence and the impact it may have so that appropriate lines of inquiry can be developed and resources to be deployed may be adequately planned. In the case of tax fraud on a transnational scale characterised by significant damage to State budgets and the involvement of many actors, the offender assessment and management presents greater levels of complexity and requires tailoring to the specificities of the cases.

The fourth foundation consists of the building and management of the case. Case management is particularly problematic in the area of transnational tax fraud schemes, where investigators, among other things, might face a high number of perpetrators, a significant amount of VAT fraud, the need to obtain evidence in different legal systems and cooperation between multitude of authorities in different legal systems.

The fifth foundation is the development of reviews of the cases handled in order to critically reflect on the actions taken during the investigation and, above all, to transform practical experience into knowledge to share with other officers and agencies as well as with new recruits. Sharing information on successful and unsuccessful cases gives considerable economic value to investigations and, above all, offers the opportunity to develop better case management in the future, saving time and resources and ensuring a more appropriate response to cases. Such information sharing in relation to international cases can be carried out by supranational agencies, such as - for example - Eurojust and Europol, or through joint training of various authorities.

Considering that the TFIF also aims to provide guidelines relating to the investigations of transnational fraud cases, it, therefore, enhances – as highlighted – **mutual legal assistance and judicial cooperation in criminal matters**.

2.5. The TFIF as a tax investigation model

This Toolkit aims to provide guidelines for the investigation of tax fraud perpetrated both within individual legal systems and in relation to cross-border tax fraud.

Box 8 – The competence of the European Public Prosecutor’s Office

In this last respect, it should – however – be noted that with the entry into force of the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the **European Public Prosecutor’s Office** (‘the EPPO’), it will be the EPPO that will conduct the investigations relating to fraud in tax matters envisaged by the PIF Directive in relation to the Member States that have taken part in it. The competence of the EPPO – as highlighted in the previous deliverables – will be limited to transnational VAT fraud for an amount exceeding 10,000,000 euros. The **TFIF does not concern investigations of the EPPO** that are expressly regulated within the abovementioned Council Regulation.

The TFIF is divided into **five actions** that should be followed by the investigating authorities:

- **Detection**
- **Investigation**
- **Enforcement option**
- **Evidence assessment**
- **Operational learning**

These actions are summarised in the following **Tax Fraud Investigation Framework**:

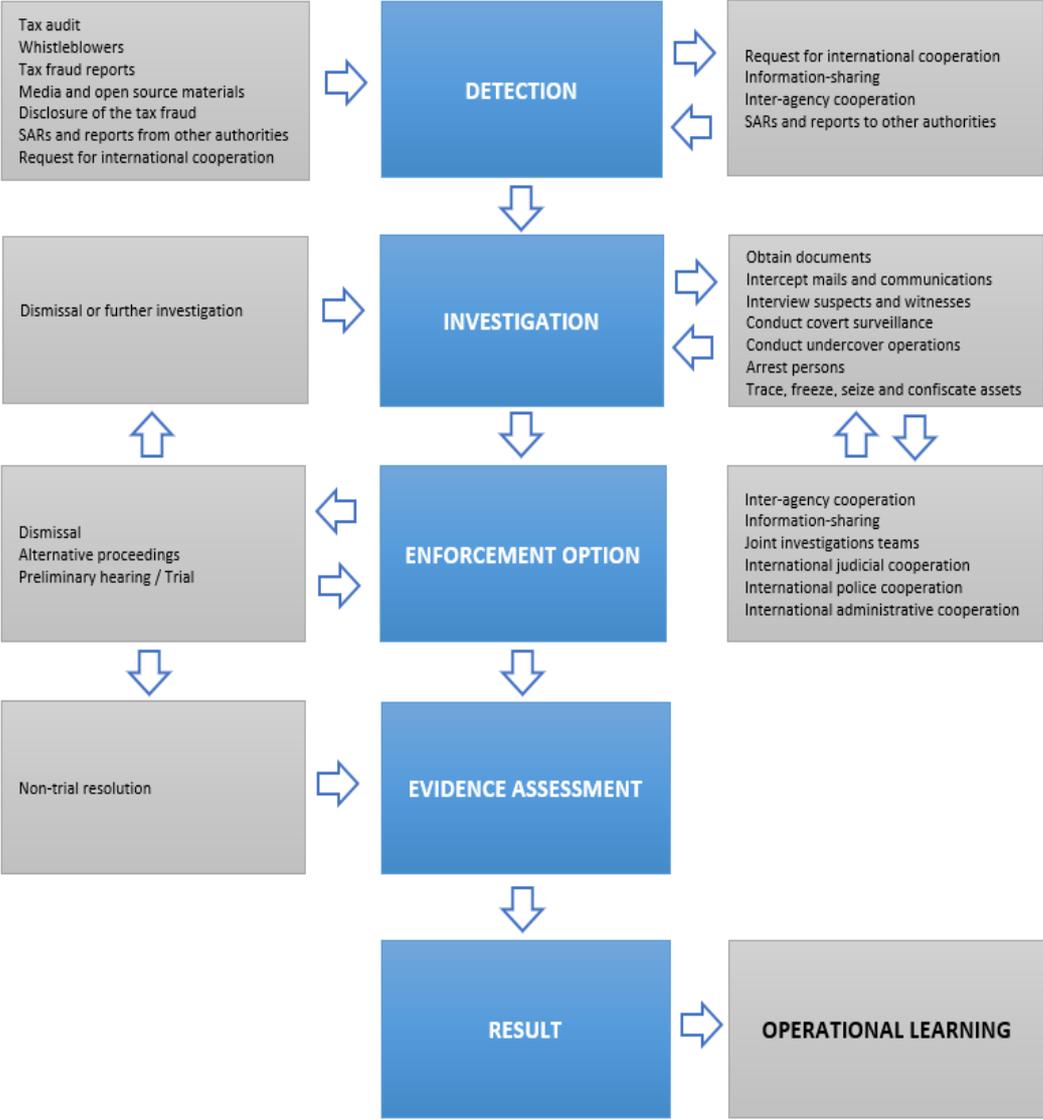


Figure 3 – Tax Fraud Investigation Framework

3. Detection and disruption

The first phase of the investigation process is the detection of tax crimes and, in particular, tax fraud. This phase is structured in a series of further steps described below.

3.1. Instigation

LEAs and relevant authorities need to analyse a variety of leads, information and reports in order to launch a tax fraud investigation. Suspicious activity and allegations of fraud can be instigated in a number of ways:

- By victims, media and whistle-blowers reporting cases through relevant agency contacts.
- By investigation into other criminal activities (e.g. selling of counterfeit goods, smuggling, employing illegal workers) which may also involve tax fraud.
- Tipping, communications and filing of complaints of criminal conduct such as fraud, corruption, bribery, embezzlement, tax evasion, mis-reporting.
- By cases or reports being analysed and sent by the police, tax administrations, FIUs.
- By reports being received directly by the police, tax authorities, judicial authorities (e.g., in civil proceedings), FIUs.
- Through liaison with other law enforcement partners.
- By MLA request which may contain leads and information about individuals and their assets.
- Audits and accounting records of companies.
- By observing the crime in action.

3.2. Preliminary assessment

Once a report or a tip off has been received, an initial evaluation should take place. More specifically, it is necessary to examine the strength of the evidence received and answer to the following questions:

- Has an offence been committed?
- Is there *prima facie* evidence that offences have been committed?
- What level of investigation is required?

The further factors in the diagram below will need to be taken into consideration when conducting an initial investigation:

Figure 4 – Preliminary assessment of a case



During the preliminary assessment, it is important to understand the general trends and motivations behind criminals who commit tax fraud and what factors and capabilities enable them to do so. Generally, the main motivation behind all economic/financial crimes is monetary gain and unfair advantage, which may be driven by *inter alia*:

- Greed for financial gain
- Financial need
- The pathological desire for crime
- The desire to beat the system – ‘catch me if you can’ attitude
- Coercion (i.e. people could be forced by their peers, family or superiors)
- Using funds to purchase criminal commodities, i.e. drugs or firearms

- Ideology (i.e. doing it for their idea of the 'greater good', such as the case of terrorist organisations)⁷
- Mistrust in the tax system
- Dissatisfaction with the public services paid by taxes.

It is also worth acknowledging that fraud could be committed if all or some of the key factors below exist:

- Opportunities to commit fraud – secrecy environment and lax tax eco-system
- Capabilities and know-how of tax criminals (e.g. professional enablers)
- Rationalisations for committing fraud
- Lack of integrity and ethical governance in the workplace
- Poor incentives in job descriptions and performance indicators.

Some of the opportunities for tax fraud can be identified as:

- Weak regulatory regime which lack of monitoring, reporting and independent auditing.
- Businesses not investing in anti-fraud controls.
- Weak enforcement regime which may give confidence that fraudsters can get away with the fraud (e.g. limited number of prosecutions and successful convictions).
- Fragmented legal frameworks which enable movement of goods, services and capital whereby criminals shift activity into areas they perceive to be of lower risk, both in terms of the likelihood and the consequences of being caught.
- Reluctance on the part of the whistleblowers or the general public to report fraud to the authorities. Direct victims of fraud are more likely to report as they often suffer as a direct result of fraud. Tax crimes are often too far from a particular person.

⁷ *Supra note*, Betts, 2017.

3.3. Prevention and disruption

The prevention and disruption processes need to follow the following steps:

3.3.1. Identification of fraud factors and the scale of fraud risk

A number of tax fraud factors enable fraudsters to defraud the public and the treasury. Therefore, fraud investigators should adopt a holistic approach and identify what the principal factors that enabled tax fraud to be committed were [[PROTAX \(2020\). Tax crime risk assessment methodology. Report D7.3](#)]. Some examples of fraud factors include the use of the internet, virtual currencies, overworked or under-resourced enforcement agencies (resource gap), ineffective tax administration, unfriendly and complex tax reporting mechanisms and the lack of public awareness of fraud. It is also important to consider which sectors, regions and cities are more likely to be targeted for tax fraud criminals in a given jurisdiction.

Furthermore, as tax fraud and tax evasion are predicate crimes for money laundering, indicators for money laundering (suspicious activities) can be considered in determining tax fraud risks. Generally speaking, a critical and risk-based approach to unusual and suspicious behaviour and/or transactions can lead to underlying tax fraud indicators which are often found also in money laundering schemes. These may include but not limited to:

- Unexplained increase in wealth
- Lifestyle beyond actual financial means
- Use of expensive assets and services
- The fact that the origin of the funds is not clear
- The fact that the beneficial ownership of the assets is not clear
- Possessions and/or increased wealth that is not proportionate to the reported taxable income
- Unusual balance sheets
- False or fictitious invoices, sales records, pricing etc.

- Unusual loan arrangements
- Large cash holdings not corresponding to type and size of business
- Unusual money transactions to and from secrecy transactions
- Exchange of large amount of fiat currency an/or crypto-currency
- The fact that the identities of the involved parties are not clear
- The transaction does not fit the person's background or reported income
- The fact that there is no economic or logical explanation for a particular transaction.
- Geographical choice and distance between client and financial services are unusual.

It should be noted that not all indicators are equally significant or reliable in predicting or revealing the presence of actual tax fraud. In addition, reporting of suspicious transactions/activity to FIUs as well as KYC and accounting, recording and auditing practices by obliged entities can differ from country to country, which can yield different results.

3.3.2. Disrupting the fraud factors

The second step should be to consider what could be done to reduce the risk of tax fraud. These steps may include requesting suspension of the factors from the partner agencies (e.g., suspension of money movement by banks); referring the case to a specialist fraud partner agency (e.g., Action Fraud); ensuring AML-reporting; raising tax fraud awareness and encouraging public interest disclosures.

Box 9 – Reporting tax evasion and fraud

The HMRC Fraud Hotline [https://www.tax.service.gov.uk/shortforms/form/TEH_IRF] and online reporting of tax fraud and evasion are such examples.

3.3.3. Where are the attack routes?

It is beyond the scope of this toolkit to list all potential avenues that can be used for tax fraud and tax evasion. As tax laws, what is taxed, criminalisation and definitions tax offences vary, each jurisdiction may inadvertently offer different opportunities to criminals. Furthermore,

beyond the tax legal framework of a given jurisdiction, there could be opportunities emanating from law enforcement capacity, geography, politics, human factors (see D3.2), technological tools, ease of doing business, bank secrecy, free movement of persons, services, goods and capital which may offer attack routes for tax fraud. Arguably, enablers such as tax advisors, accountants, auditors and lawyers may be the ones who are aware of such loopholes. In addition, LEAs can refer to past cases to identify tax fraud schemes, analyse dual use of new technologies, and engage in research projects to critique the existing legal framework (tax eco-system) in regards to its efficacy and effectiveness.

In addition to the inexhaustive list of fraud factors above, one could compile a list of common methods and structures used by tax fraudsters:

- Redirecting shipment of goods to jurisdictions with lax checks, monitoring and enforcement practices may be exploited by criminals.
- Similarly, lax auditing and accounting practices may allow false invoices and underreporting of sales figures to pass through the net without raising suspicion.
- Mergers and acquisitions whereby creating an artificial loss for adjusting real income.
- Using false foreign addresses for residency and/or company registry.
- Expectation from and acceptance by consumers a VAT deducted services and goods.
- Exploitation of unregulated sectors such as virtual assets, e-commerce, crowdfunding, etc).

3.4. Partner agencies at national and EU level

The investigation of all tax fraud offences requires a careful and logical approach, and the investigator should consider using the extensive network of skilled professionals available in the counter-fraud networks across the EU and wider a field whenever possible.

Criminals (and enablers they employ or partner with) who commit tax fraud are constantly adapting and evolving their methods and tactics. Understanding and countering these require a vigorous and proactive approach to identifying emerging trends and communicating these to the public.

Various units of law enforcement or regulatory bodies tend to have different powers and skills that are suited to respond to a particular fraudulent activity. A decision should be made as to which is the best agency or organisation(s) to take the tax fraud investigation forward.

A tax eco-system which communicates with relevant stakeholders within and beyond its jurisdiction effectively is more likely to achieve tax compliance, enhance international cooperation, and secure better rates of conviction and asset recovery.

Different **key stakeholders** may be considered in communication and public information and awareness practices. In this regard, partner agencies at national level and EU level, among the others, will be taken into consideration. Below is a non-exhaustive list considering that the interactions between authorities in this field can be multiple and unique in each legal system.

The examples of partner agencies at national level here are made with reference to the UK -⁸ that will be of help in the context of tax fraud:

Box 10 – Partner agencies at national level

<u>Trading Standards</u>	<u>Department for Work Pensions</u>
<u>Police forces</u>	<u>Financial Conduct Authority</u>
<u>Her Majesty’s Revenue and Customs</u>	<u>NHS Counter Fraud Authority</u>

⁸ Please consider that the agencies reported in the table with reference to a specific country constitute an example. Each legal system has its own agencies which generally correspond to the list of institutions and bodies already indicated who are engaged in the prevention and fight against tax crimes (tax administrations, public prosecutors, etc.). Moreover, the PROTAX Consortium is conducting further national workshops to test the TFIF and, during the practical demonstrations, it is replacing such data with those of each country concerned. The toolkit is a flexible and dynamic tool that adapts to each EU legal system.

<u>National Crime Agency</u>	<u>Serious Fraud Office</u>
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Please open the links to see the national agencies

Here are some **examples of agencies at EU level** that will be of help, among other things, in the context of transnational tax fraud:

Box 11 – Partner agencies at EU level

<u>EUROPOL⁹</u>	<u>EUROJUST</u>
<u>EU Financial Units Platform</u>	<u>OLAF</u>
<u>EPPO</u>	<u>European Justice Network</u>

Please open the links to see the EU institutions and agencies

The following box includes a **Contact List** of the agencies in all **EU Member States**:

Box 12 – Contact List of Tax Administrations, Law Enforcement Agencies and Financial Intelligence Units

<p><u>Manual for Law Enforcement Information Exchange</u></p> <p>(Contact Point Information)</p>
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⁹ More specifically, see European Financial and Economic Crime Centre (EFECC).



Please open the links to see the contact list

4. Investigation

4.1. What is a tax fraud investigation?

There are several definitions of a criminal investigation. For example, the one for England and Wales is set out in the Code of Practice to the Criminal Procedure and Investigations Act 1996 (CPIA).¹⁰ This defines a criminal investigation as:

“An investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.” (CPIA 1996)

Investigations can be either reactive or proactive and may be carried out in relation to:

- Crimes that have been committed;
- Identifying whether a crime has actually been committed, with a view to commencing criminal proceedings; and
- Crimes that the police believe may be committed, for example, when premises or individuals are kept under observation for a period of time, with a view to the possible institution of criminal proceedings.

Tax crime investigators and prosecutors ought to consider all available options and sanctions by:

¹⁰ The mentioned definition constitutes an example from the UK only. The PROTAX Consortium is conducting further national workshops to test the TFIF and, during the practical demonstrations, it is replacing such information within the context of each country concerned.

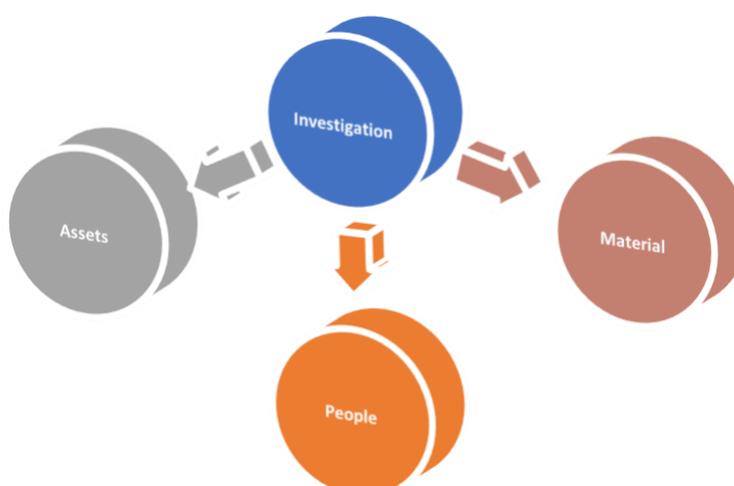
- Establishing the legal and procedural parameters for the investigation
- Gathering all of the necessary materials and information available
- Pursuing all reasonable lines of enquiry within and beyond their jurisdiction
- Assessing the facts to establish events and material
- Identifying those responsible (legal and natural persons), how they should be held to account and by whom.

4.2. What are the key components?

A key component of the TFIF is the identification and securing of **Material, Assets and People** which are essential in planning the investigation (Betts 2017: 33) as well as the subsequent enforcement and recovery of assets.

The following table provides these three main components of the TFIF that must be considered in each case when developing investigative activities. It constitutes a **MAP for investigators**.

Figure 5 – Material, Assets and People



Each investigator is expected to **address the below questions** in relation to each point.

Material

- What tax offence(s) may have been committed?
- What other non-tax offence(s) may have been committed (*i.e.*, money laundering, bribery and corruption or fraud)?
- What is the material evidence relevant to the investigation?
- Where is the material evidence located?
- When should the material be recovered?
- How should the material be recovered?
- Record your rationale for the decision made.

Assets

- Consider restraint of assets that could be dissipated from the start of the investigation.
- Engage an accredited financial investigator (e.g., regarding the use of powers)
- Instruct relevant asset holders to freeze and/or confiscate suspect's assets.

Box 13 – Asset recovery and tax crimes

Evaded taxes are one of the most important gains drawn out of tax crimes. As demonstrated by PROTAX, the responsibility for recovering evaded taxes lies on the tax agencies in nearly all examined jurisdictions which apply specific means of enforced collection. These means also comprise the possibility to attach assets and claims, belonging to the taxable person or other persons, having joint liability to pay, even as a precautionary measure if there are founded reasons, that the collection would be otherwise endangered. It can also be stated that freezing under criminal law only in exceptional cases and tax collection authorities are not aware of additional possibilities arising from criminal procedures, like enhanced asset tracing, using the knowledge and experience of asset recovery offices and their international networks. Therefore, it is recommended to have an exchange of information

between tax collecting authorities and LEAs and to find ways for a cooperation with the aim of more effective tax recovery.

People

- Manage and resource Investigation Team
- Identify the suspect(s)
- Manage the suspects and victims (if any)
- Identify actual and potential witnesses
- Classify witnesses and victims (vulnerable, key or significant)
- Manage and protect witnesses (Betts 2017:33)

Managing victims (if any) and suspects, and evaluating evidence are also key considerations for the investigator. From this perspective, it is important to take into consideration the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

4.3. What responsibilities does the investigator have?

An investigator is responsible for:

- Identifying lines of enquiry
- Securing all relevant evidence either inculpatory or exculpatory
- Recording information
- Producing a report
- Giving evidence
- Retaining records
- Take into account TFIF considerations.

LEAs and other agencies responsible for countering tax fraud should establish key strategic priorities informed by a gap and risk analysis pertaining to their jurisdiction. As a generic outline of **strategic priorities**, the following model may be considered:

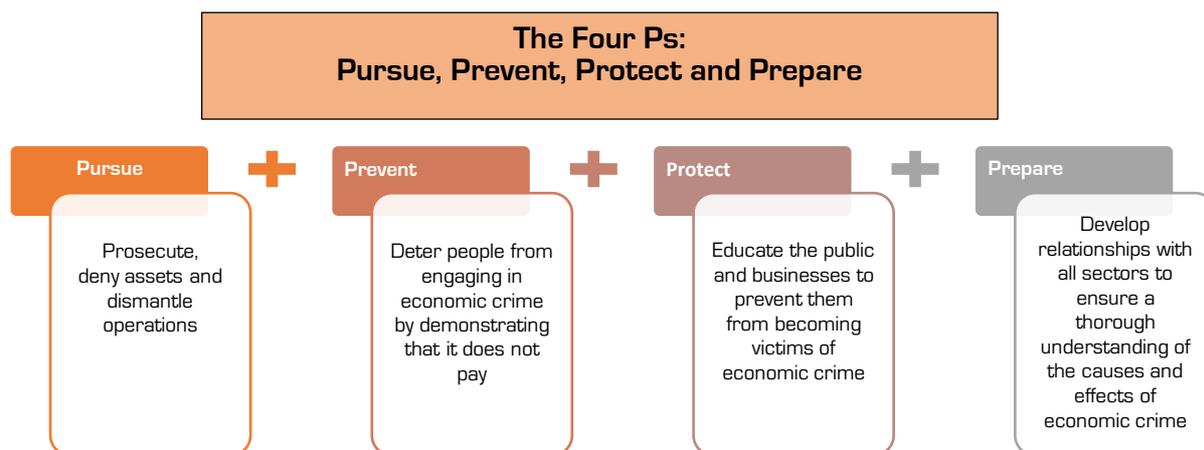


Figure 6 – The Four Ps: Pursue, Prevent, Protect and Prepare

To investigate a suspected incidence of tax fraud, LEAs need to adopt an investigative mindset.

The investigative mindset can be broken down into five principles:

- **Understanding the source of the material evidence**
- **Planning and preparation**
- **Examination**
- **Recording and collation**
- **Evaluation**

Important elements and consideration in understanding and gathering material evidence have been explained above. We now look at the remaining principles of investigative mindset.

4.3.1. Planning and preparation

You will need to do the following:

- Set clear objectives for retrieving the material from the source
- Identify the most appropriate way to carry out the examination

- Identify specialist equipment or expertise
- Identify the most appropriate location for examination (Betts 2017)

With the sources, you will need to consider the following:

Table 3 – Evidence

The witness / suspects	Evidence
Objective?	Objective?
Expertise?	Equipment /resources required?
Method of the interview? ¹¹	Method of examination?
Location of the interview?	Location of examination?
Method of recording?	Method of recording?

4.3.2. Examination

The investigator will need to identify

- What is known
- What is not known
- Consistencies

¹¹ It is worth considering the standards of investigative interviewing set by the Council of Europe. Boyle and Vullierme, A brief introduction to investigative interviewing - Promoting shared principles and professional standards in European policing, Council of Europe, 2018, <https://rm.coe.int/guide-to-investigative-interviewing/16808ea8f9>, accessed 14 July 2020.

- Conflicts (Betts 2017)

4.3.3. Recording and collection

The investigator must consider:

- The records that need to be made
- How to store the material
- The security of the material
- Access arrangements to the material (Betts 2017)

4.3.4. Evaluation

The investigator will need to:

- Identify any fast track actions (if available)
- Identify further lines of investigation (nationally and internationally)
- Apply the mindset to ensure the material is gathered
- Test reliability at the earliest opportunity
- Take immediate action
- Make relevant records and compile a case file
- Ensure materials are properly stored. (Betts 2017)

4.3.5. The route map of the investigation

Undertaking an investigation can follow the route map shown below.



Figure 7 – The route map of the investigation

A. Developing a case theory

This is the first significant point in the process that needs to be considered.

When you have received an allegation that tax fraud has been committed, you should use your previous experience and knowledge to develop a case theory. This should help give you an idea of what happened and is similar to what a scientist does when carrying out research. It will provide an excellent starting point.

The case theory in tax fraud cases should instigate four key investigative actions:

- Identify and secure the relevant material;
- Identify and support the victims (if any) and evidence their loss and the impact they have suffered;
- Identify the offender and their criminal assets and ring fence these to prevent potential flight; and
- Ensure preventive actions are instigated to prevent repeat offending.

B. Case management

Tax fraud investigations, especially if they are transnational, have the potential to generate large volumes of evidential and/or unused material, high number of people (witnesses, suspects, enablers) and companies, and assets in various forms scattered in multiple jurisdictions. It is therefore important that the fraud investigator plans ahead to manage the case.

C. Develop an investigation plan

You may need to create an investigation plan or follow one. If this is the case, it is important to recognise the key areas that will need to be included.

- Offences under investigation

- Objectives of the investigation
- Disclosure management document (in the UK, for instance, CPIA 1996 Obligations)
- Identification and location of suspects
- Building an investigation team with the appropriate skillset and legal powers
- Main lines of inquiry, resources and intelligence
- Victim management
- Opportunities for disruption and prevention
- Multi-agency working, assets and restrained funds.

D. Working with victims, informants and whistleblowers

Unlike many other forms of fraud (e.g. identity fraud, credit card fraud) tax fraud and evasion do not often have identifiable victims who can act as witnesses to the crime. However, it is worth considering a strategy to manage persons and companies who are relevant or connected to the investigation of the alleged tax crime.

- Identify all persons, witnesses and victims (if any) in the case.
- Assess the vulnerability of each category of persons involved in the case.
- Ensure management strategy for all persons involved in the case is documented.
- Maintain communication with whistleblowers, victims, ensuring regular updates are provided.
- Consider referral to other agencies where appropriate (e.g., Whistle-blower Protection NGOs, Victim Support).

E. Gathering relevant material

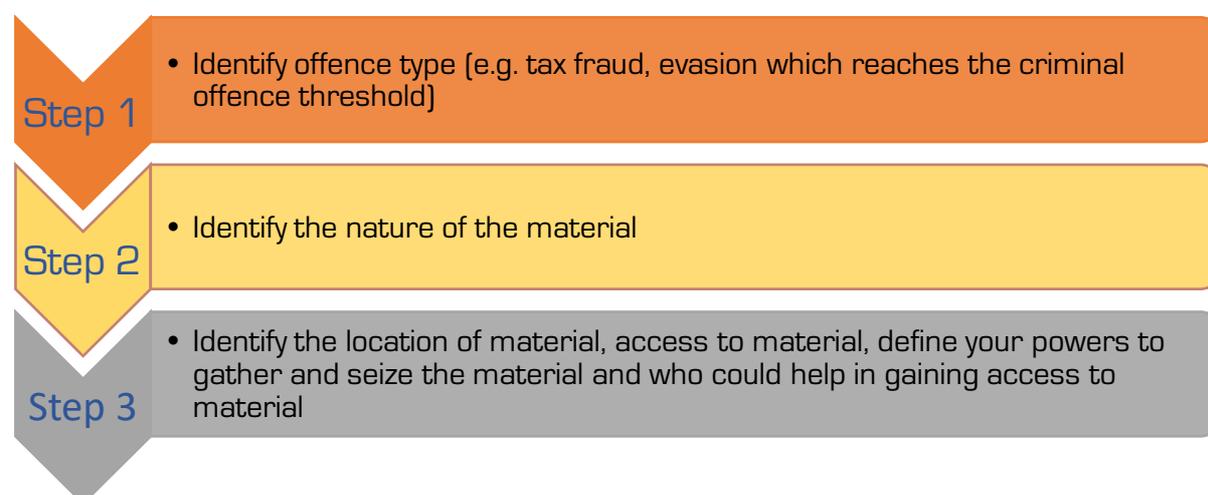
Gathering relevant material and evidence that is admissible in criminal justice processes is the most important aspects of tax fraud investigation.

In many tax fraud-related cases, the defence lawyers (and the judge) will closely examine how the material has been gathered and how disclosure has been handled throughout the

investigation. The investigator requires a comprehensive understanding of both the legislation and the procedure for gathering the material evidence encountered during an investigation. It is, therefore, vital that they follow the appropriate procedures for gathering, storing and disclosing material. Gathering the relevant evidence is the easy part, making sure that it stands up to the tests of the defence is the true challenge. Therefore, all applicable fundamental human rights and freedoms, due process rights, the rule of law, privacy along with ethical standards must be observed and upheld throughout the investigation (and of course during the prosecution).

It is extremely important that LEAs and tax authorities determine which investigation and material gathering techniques are permissible by law and that all legal requirements, policies, and procedures are followed strictly according to the law. Respect for the rule of law and the due process rights of the accused are essential core values and principles, particularly if international cooperation is being sought. Deviating from legal requirements, policies and procedures or infringing on the rights of the accused can be detrimental for a case (and the reputation of the agencies involved): it may lead to the invalidation and inadmissibility of evidence discovered through the use of that technique—and possibly the entire investigation. In cases requiring international cooperation, many jurisdictions will refuse to provide mutual legal assistance (MLA), if they perceive that the rights of the accused have not been respected.

In order to gather the relevant material appropriately, the following steps need to be followed.



The **principle of the golden hour** entails that early and effective action can result in securing significant material (including digital data) and evidence. This material would otherwise be lost to the investigation through attrition. Following up obvious lines of inquiry provides significant benefits to both the investigative team and the affected people (witnesses, victims, etc.) who need to identify vulnerabilities and protect themselves against future attacks. In criminal investigations, the term 'golden hour', therefore, relates to securing the maximum amount of material which can help build the case and produce evidence, minimising material attrition and maximising the opportunities to identify the offenders and their criminal assets.

In tax fraud cases, the investigator should consider taking the following **steps to reduce material attrition**:

- Record all stages of the case (suspicious activity report to successful conviction)
- Secure relevant digital material and records held by persons involved in the case
- Secure material held by third parties
- Secure material held by the suspect relating to the tax fraud
- Consider passive data-gathering opportunities (e.g., CCTV, public accounting and audit records, the Companies House data, etc).

When **recovering the material**, the following points from the material recovery process diagram may be taken into consideration.

Figure 8 – Material recovery – process diagram: City of London Police

Material recovery - process diagram



Source: Betts, 2017

4.4. What are the powers of the investigators?

The powers that authorities have vary significantly according to the national legal framework.

In this regard, these tools can be used:

- **Power of search**
- **Obtain documents**
- **Intercept mails and communications**
- **Interview suspects and witnesses**
- **Conduct covert surveillance**
- **Conduct undercover operations**
- **Arrest persons**
- **Trace, freeze, seize and confiscate assets.**

Below is an **example** of the legal tools available to the UK enforcement authorities to carry out evidence acquisition activities.¹²

¹² The PROTAX Consortium is conducting further national workshops to test the TFIF and, during the practical demonstrations, it is amending such info in light of each legal regime.

Box 14 – Powers and procedures available to law enforcement agencies

Powers and procedures available to law enforcement agencies in the UK are – among others:

- [Police and Criminal Evidence Act 1984 Sections 8, 9, 18, 19, 32](#)
- [Proceeds of Crime Act 2002 Sections 345, 352](#)
- [Criminal Justice and Police Act 2001 Section 52](#)
- [Serious Organised Crime and Police Act 2005 Section 62](#)

Please use the links to peruse the legislation

Moreover, investigators must carefully consider **ethical and privacy protection aspects**.

Box 15 – Ethical and privacy protection aspects

In the UK, the [Data Protection Act \(2018 Sch. 2\)](#) provides an exemption that allows data controllers to share requested information for: The prevention or detection of crime, apprehension or prosecution of offenders or the assessment or collection of a tax or duty or imposition of a similar nature. While this does not compel companies to share information, they often will.

Please use the link to peruse the legislation

5. Inter-agency cooperation in cross-border cases

Exchange of **information between tax authorities and LEAs** in multiple jurisdictions is crucial in complex cases involving assets and persons beyond a single jurisdiction. Where there are legal instruments for exchange of information in place, LEAs should consider requesting and passing on information to LEAs and/or FIUs in other countries, in a timely manner, regarding unusual and/or suspect transactions that are relevant for that country, through the competent authority for exchange of information.¹³ It is important to consider the language used and the legal provisions applicable in the country from which the information is

¹³ For more information on the exchange of information between tax authorities, see Global Forum on Transparency and Exchange of Information for Tax Purposes, www.oecd.org/tax/transparency/. The Global Forum also hosts a secure contact database for tax authorities providing details of the relevant competent authorities for the purpose of addressing such information requests. Furthermore, FIUs can be utilised for requesting information.

requested. In order to appreciate which legal provisions that are applicable on tax fraud in other countries, you may refer to D3.1 which outlines the legal framework in the selected European countries.

If permitted, **joint investigation can prevent duplication of efforts**, enhance cooperation and exchange of information and develop a common strategy across borders. For example, PROTAX Case Study from Estonia demonstrated the value and importance of joint/international task force in tackling cross-border tax crime.

In addition, you may need to put together a team of professionals with different skillset that is needed in a given case including forensic accountants, computer forensics, surveillance experts, forensic psychologists, investigative interviewing experts, tax inspectors, prosecutors, and asset managers. Similarly, a joint task force may be necessary whereby officers from customs and excise, justice, foreign affairs, FIU, treasury, immigration, intelligence services may be included in the team. Depending on the case and jurisdiction, the involvement of regulatory bodies (e.g. regulatory bodies of enabler professionals such as lawyers, accountants), asset registry departments (e.g. land, property, vehicle, business, utility registries), notaries may be necessary.

At this juncture, it may be worth considering the division of responsibilities and labour for different aspects of the case. For example, identification of criminal assets and recovery of such assets are tasks on their own right which require different set of skills, legal expertise and investigative tools. The level of involvement by such entities should be driven by the need to facilitate exchange of information and skills and assist in discussions, analysing the facts of the case, securing a conviction and recovery of assets. It will be important to clarify the respective roles of the team members and other law enforcement agencies in advance to avoid confusion or rivalries among these entities.

It is also important to be aware of potential obstacles in international cooperation on criminal matters related to tax fraud. These may include legal and practical limitations and inefficiencies. For example, it could be the case that there are no laws criminalising tax fraud or the threshold may be very high before the unlawful act (tax fraud) is considered under the

criminal justice process. Or, it could be the case that the authorities cannot provide any information before the filing of criminal charges, or statutory time limits or standards of proof may prevent them from providing assistance. The need to meet the dual criminality and evidentiary requirements may also hinder international cooperation. It could be the case that there are ongoing proceedings against the individuals in the requested jurisdiction. In cases involving high profile persons, there could be a lack of political will to endorse international cooperation.

The following box includes links to documents containing a list of **EU legal instruments** that can be used by authorities to cooperate:

Box 16 – European Union instruments in the field of criminal law and information-sharing

[EUROPEAN UNION INSTRUMENTS IN THE FIELD OF CRIMINAL LAW AND RELATED TEXTS](#)

[EUROPEAN UNION INSTRUMENTS IN THE FIELD OF INFORMATION-SHARING ON TAX MATTERS](#)

Please use the links to see the EU legal instruments

Moreover, the recommendations developed by the OECD in this area should also be taken into account:

Box 17 – OECD instruments in the field of tax and crime

[OECD DOCUMENTS AND RECOMMENDATIONS IN THE FIELD OF TAX AND CRIME](#)

Please use the links to see the OECD documents

6. Enforcement options and standard of proof

While it is beyond the scope of this toolkit to provide a comprehensive analysis of the differences among civil law jurisdictions and differences between civil law and common law

jurisdictions, an important aspect which will need to be considered in TFIF should be mentioned.

For LEAs involved in cases that require international cooperation, it is necessary not only to understand the relevant laws that must inform the case but also appreciate how each legal system differs in the terminology used and the way that the standard of proof is understood and practised.

In most common law jurisdictions, a criminal conviction requires proof “beyond a reasonable doubt”. On the other hand, in most civil law jurisdictions, while the standard of proof is similar for a criminal conviction, it requires an “intimate conviction” of the truth of the evidence. Common law jurisdictions apply a probabilistic approach to assessing the evidence; that is, the quantifiable likelihood of the occurrence of the event expressed as an odds or percentage. Civil law jurisdictions focus more on the judge’s subjective impression.

LEAs need to be aware of these distinctions to ensure that evidence produced is sufficient to meet the applicable standards in court proceedings. Where evidence is insufficient to meet the standard of proof required under one approach, practitioners may have the option to consider another avenue. For example, the inability to establish a criminal conviction “beyond a reasonable doubt” will prevent criminal confiscation. Nevertheless, it may be possible to seek enforcement via civil or administrative action.



Standard 1



Standard 2



For an effective TFIF, a holistic approach to tax enforcement is essential. Accordingly, regular and targeted engagement with members of the community which the LEAs serve is recommended. Furthermore, effective and timely communication with the public can foster trust and compliance.

Tax crime cases, particularly those involving high-profile officials, famous or high net value persons or brands, are likely to attract more media attention. LEAs should be prepared to deal with these inquiries; otherwise, the inadvertent release of confidential information is likely to have negative consequences on a case.

7. Outcome and operational learning

Every fraud investigation is unique and has its challenges. Therefore, fraud investigators need to consider how the lessons learned can be used to prevent future offences and improve enforcement practices.

In all tax fraud and other financial crime cases, operational learning and reflective practice should be a key component of the law enforcement practice. Such an approach would allow LEA personnel to appreciate their strength and weaknesses and learn from these to enhance future investigations. Accordingly, it may be useful to consider:

- What went well?
- What did not go so well or as planned?
- What can be done differently next time?
- What advice could be given to those investigating similar offences?

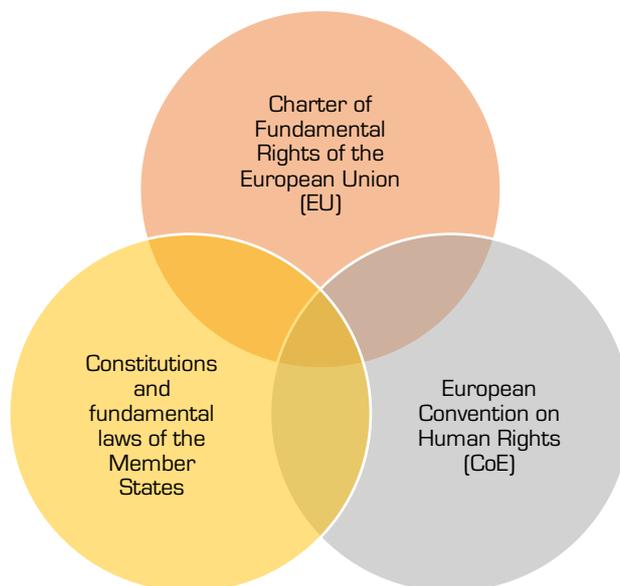
- What professional development needs arise in the course of the investigation?

LEAs can adopt the case study design created by PROTAX (D1.1) as a model for recording and analysing cases they have processed as well as cases concluded in other jurisdictions. These case studies can be a collective learning tool for new recruits as well as a good reference point for relevant investigations. To this effect, a European tax crime observatory could be established.

8. Protection of fundamental rights

PROTAX stresses that any actions to counter tax offences must comply with the human rights as recognised – in their respective fields of application – by the Charter of Fundamental Rights of the European Union (CFREU), the European Convention on Human Rights (ECHR) and the fundamental laws of Member States.

Box 18 – The European Charters of Fundamental Rights recognising the rights of suspects and accused



Please use the links provided to peruse the provisions of the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights

Any authority has to carry out its activity in compliance with – among others – the principle of legality and non-retroactivity of criminal law (Article 49, par. 1-2 CFREU and Article 7 ECHR),

the principle of proportionality between sanctions and offence (Article 49, par 3 CFREU), the presumption of innocence (Article 48 par. 1 CFREU and Article 6, par. 2 ECHR), the fair trial (Article 47 par. 2 CFREU and Article 6, par. 1 ECHR) and the *ne bis in idem* principle (Article 50 CFREU and Article 4 Prot. No. 7 ECHR).

In the research carried out by PROTAX under WP3 and the co-creation workshops, the need to respect the principles of *ne bis in idem* and proportionality have been particularly highlighted. In this respect, the case law of the European Court of Human Rights and the Court of Justice of the European Union must be followed to ensure the protection of these rights.

PROTAX also stresses the need to follow the provisions of the CFREU and directives so far adopted by the EU on the protection of the procedural rights for suspects and accused persons as laid out in the roadmap of 2009, including, among other things:

- the right to information;
- the right to interpretation and translation;
- the right to have a lawyer;
- the right to be presumed innocent and to be present at trial; and
- the right to legal aid.

Box 19 – EU legal tools on the protection of the rights of suspects and accused

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

Further rights must be respected within the development of investigations and exercise of coercive powers, including – for example – the right to liberty and security, the right to a private life and the right to property.

For more information on how to report a **breach of your rights**, please see information published on the website of the European Commission.

Box 20 – Report a breach of your rights



[REPORT A BREACH OF YOUR RIGHTS](#)