

FREQUENTLY ASKED QUESTIONS

Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes

1. Who are professional enablers of tax crimes?

Professional enablers of tax crime and other financial crimes are intermediaries with specialised knowledge who facilitate the commission of a tax offence (and possibly other related financial crimes) by others. They can include individuals such as tax professionals, lawyers and legal advisors, accountants, financial advisors, company formation agents, registered agents, notaries, business trustees, and other promoters of tax evasion schemes; and legal entities such as banks, and financial institutions, and trust and corporate service providers. For some countries, the concept of a professional enabler can be narrow and focus on the most proactive, intentional conduct; while others take a broader view and include those that know or have reason to know that their services are being misused.

It is important to stress that this report focusses on professional enablers who facilitate illegal activities. The difference between legitimate legal counsel, versus professional advice that facilitates the commission of a crime, resides in the type of advice offered by the professional and whether illegal activities derive from it. Professionals engaged in aggressive tax planning and tax avoidance are not the subject of this report but are addressed by the OECD through other initiatives such as the Base Erosion and Profit Shifting (BEPS) Project.

2. How do professional enablers facilitate tax crimes and other financial crimes?

Professional enablers use their specialised expertise to help their clients to commit crimes in various ways. To name a few, this could include:

- setting up companies, trusts or offshore business structures to obscure beneficial ownership and hide their client's money (and its sources) from tax and other authorities;
- falsifying documentation for their clients to evade taxation; and
- facilitating illegal tax schemes on behalf of their clients.

3. Is what professional enablers do to facilitate crimes illegal?

Tax crime is illegal. In the majority of countries, the aiding and abetting of crimes is generally considered a criminal act. What distinguishes the majority of law-abiding “professionals” from the criminal “professional enablers” referred to in this report, is that they devise strategies and act as intermediaries to facilitate the commission of crimes, whereas other professionals stay within the limits of the law, even if some may exploit the “grey areas of the law” for their clients.

4. What are the OECD recommendations to address the issue of professional enablers of tax crimes?

The OECD's latest study, *Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes*, calls for governments to consider adopting a national strategy, or to strengthen their existing strategy, for addressing professional enablers. The report offers guidance on five key areas that should be considered in developing national strategies:

- **Skills and awareness:** Ensuring that tax crime investigators are equipped with the understanding, intelligence and analytics skills to identify the types of professional enablers operating in their jurisdiction, and to understand the risks posed by the ways that professional enablers devise, market, implement and conceal tax crime and financial crimes.
- **Effective legislation:** Ensure the law provides investigators and prosecutors with sufficient authority to identify, prosecute and sanction professional enablers, so as to deter and penalise those found to be professional enablers of tax crime.
- **Disruption strategies:** such as engagement with industry and leveraging the role of professional bodies to prevent abusive behaviour, incentivising early disclosure and whistle-blowing and taking a strong approach to enforcement in practice.
- **Co-operation:** Ensure relevant authorities are proactively maximising the availability of information, intelligence and investigatory powers held by

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other domestic and international agencies to tackle professional enablers that are sophisticated and operating cross-border.

- **Effective implementation:** appointing a lead person and agency in the jurisdiction with responsibility for overseeing the implementation of the professional enablers strategy, including to undertake a review of its effectiveness over time and devise further changes as necessary.

5. How will this work make a difference?

Tax crimes and other financial crimes can be very damaging to society¹, posing systemic risks for the financial system and for tax revenue, and undermining public confidence and trust, which can adversely impact compliance attitudes more generally. While addressing professional enablers is just one element of dealing with tax crimes, it is an important component. Why? Because in many cases criminals will not have the legal or financial expertise themselves to be able to hide large sums of money or their illegal activities on their own.

Professional enablers are typically highly skilled, sophisticated professionals that have expertise in navigating the international financial system and laws around the world, as well as concealing the criminal conduct of their clients as well as their own complicit actions. By implementing strategies to combat professional enablers as outlined in the report, countries will be able to focus domestic resources to better safeguard against the damage caused by these crimes.

Furthermore, increased global attention on the role of professional enablers will foster greater international co-operation, intelligence sharing, and multilateral efforts to tackle enablers who operate in multiple jurisdictions, creating a more difficult environment for enablers to operate globally, and making it harder for them to hide their illicit activities.




6. Who was involved in drawing up this report?

Recognising the need to help countries address the problem posed by professional enablers, the OECD has been working with countries from around the world to strengthen their tax systems and build capacity to combat tax crimes and other financial crimes. The report, *Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes*, has been prepared to inform decision-makers about the risks and provide a set of key strategies that can be used to reduce those risks². It was produced by the OECD Task Force on Tax Crimes and Other Crimes (TFTC) using evidence and experience gathered from TFTC member countries, and assesses the different methodologies and strategies used by TFTC members to identify and tackle professional enablers of tax crime and other financial crime. The report draws on the diverse experience and knowledge of the TFTC membership to conduct a broad analysis of professional enablers and how their facilitation of tax crimes can be disrupted through targeted measures to deter the provision of services by enablers, enhancing co-operative compliance, legal sanctions for professional enablers, and ensuring effective investigations across government and across borders. All TFTC members have reported the activities of professional enablers in their jurisdictions to be a continuing and evolving problem that requires dedicated and co-ordinated efforts, domestically and internationally.

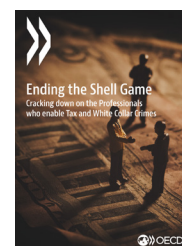
7. What next in this area?

This topic will be discussed at an upcoming meeting of the TFTC which will include looking at how the OECD report on professional enablers can be updated as new strategies and successful practices evolve, including from feedback and dialogue with professional associations.

For more information:

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¹ The United Nations Office on Drugs and Crimes has made some broad measurement on illicit financial flows and estimates money laundered per year throughout the world accounts for 2 to 5% of the global GDP, i.e. between USD 800 billion and USD 1 trillion.

² These strategies are outlined in Annex 1 to these FAQs.

Annex 1. Background from the Report

This report calls on countries to consider adopting a strategy, or strengthen their existing strategy, for addressing professional enablers. In devising or strengthening their national strategy, countries should consider the recommended counter-strategies to combat professional enablers outlined in Table 1.

Table 1. Recommended counter-strategies to combat professional enablers

Recommendation	Key elements
Awareness Ensure tax crime investigators are equipped with the understanding, intelligence and analytics skills to identify the types of professional enablers operating in their jurisdiction, and to understand the risks posed by the ways that professional enablers devise, market, implement and conceal tax crime and financial crimes.	<ul style="list-style-type: none"> Consider the need for a common definition of professional enablers, recognising the role and different levels of culpability within different sectors Educate across government agencies about the types of services provided by professional enablers and why they pose a risk Develop risk indicators for identifying professional enablers, drawing on a wide range of available data sources
Legislation Ensure the law provides investigators and prosecutors with sufficient authority to identify, prosecute and sanction professional enablers, so as to deter and penalise those found to be professional enablers of tax crime.	<ul style="list-style-type: none"> Consider whether there is a need for a specific professional enabler liability regime, to further deter this behaviour Assess whether the legal framework provides sufficient ability for prosecutors to prove the offence of acting as a professional enabler Reflect on whether professional privilege poses a barrier to successful investigation and prosecution Consider whether the ability of suspects to settle cases hinders the deterrent effect of the law Explore whether professional supervisory or regulatory bodies can be used to stop professional enablers from operating
Deterrence and disruption Ensure there is a coherent and multi-disciplinary strategy for preventing and disrupting the behaviour of professional enablers, including engaging in communication, leveraging the role of supervisory bodies and industry sectors, incentivising early disclosure and whistle-blowing and taking a strong approach to enforcement in practice.	<ul style="list-style-type: none"> Prevent abuse through communication with taxpayers and education of professionals Leverage the role of, and information available to, professional supervisory bodies and regulators Incentivise good corporate governance and a culture of compliance Create voluntary disclosure, reporting and whistle-blowing facilities Consider introduction of mandatory disclosure rules to require intermediaries to report on possible schemes early in the life cycle
Co-operation Ensure relevant authorities are proactively maximising the availability of information, intelligence and investigatory powers held by other domestic and international agencies to tackle professional enablers that are sophisticated and operating cross-border.	<ul style="list-style-type: none"> Use domestic whole of government mechanisms, such as reporting of suspicions, information sharing, cross-agency investigations, and other proactive co-operation mechanisms; Use international co-operation mechanisms, including the broadest range of exchange of information (including on request and automatic, group requests, spontaneous exchange, and on-sharing with other agencies), as well as multilateral co-operation mechanisms.
Implementation Appoint a lead person and agency in the jurisdiction with responsibility for overseeing the implementation of the professional enablers strategy, including to undertake a review of its effectiveness over time and devise further changes as necessary.	<ul style="list-style-type: none"> Secure commitment from senior leadership in policy and law enforcement agencies to address and tackle professional enablers, contribute to the strategy, and implement the relevant aspects of the strategy; Appoint a national focal point who will liaise among different government agencies and assess the needs, challenges and strengths of each government agency in regards to tackling professional enablers; Engage in open discussions across government, businesses, the public, academia and professional associations to draw on experiences and opinions from all sectors; Ensure appropriate resources are provided for effective implementation of the professional enabler strategy.