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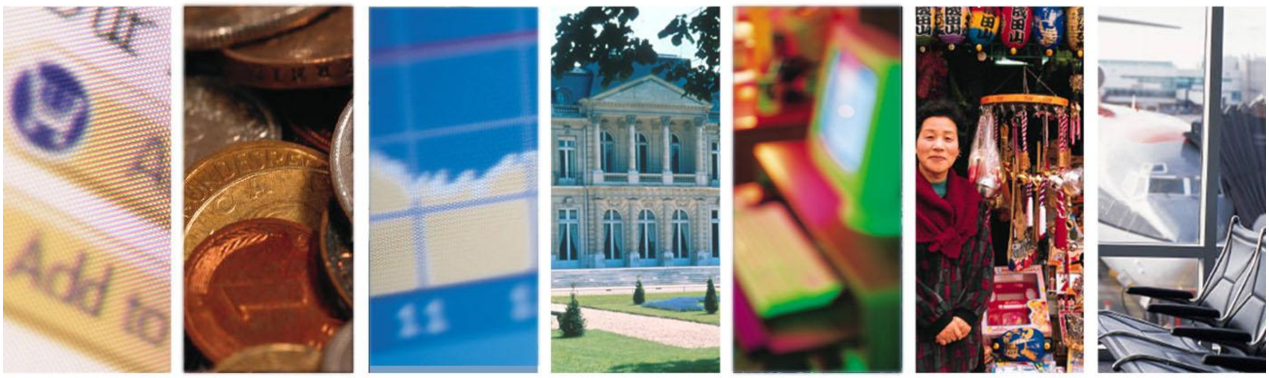

ACCESS FOR TAX AUTHORITIES TO INFORMATION GATHERED BY ANTI-MONEY LAUNDERING AUTHORITIES

CENTRE FOR TAX POLICY AND ADMINISTRATION

BACKGROUND

In May 1998, the G7 Finance Ministers encouraged international action to enhance the capacity of anti-money laundering systems to deal effectively with tax related crimes. The G7 considered that international action in this area would strengthen existing anti-money laundering systems and increase the effectiveness of tax information exchange arrangements.

The CFA agreed to mandate its Working Party No.8 on Tax Avoidance and Evasion to undertake a country survey on tax authorities' access to information obtained from anti-money laundering activity. The Working Party developed a questionnaire for that purpose. The questionnaire contained questions related to the responsibility for anti-money laundering programmes; the types of information gathered by, or available to, anti-money laundering authorities; and confidentiality requirements. All Member countries except Iceland responded to the questionnaire. The original survey was approved in 2002 and subsequently posted on the OECD website. FATF delegates have found the survey useful and invited CFA to update.

Member countries were subsequently invited to provide updates or amendments to the survey. The updated note contains all responses received, including amendments and updates provided by Australia, Austria, Belgium, Canada, Czech Republic, France, Germany, Ireland, Italy, Japan, Norway, Portugal, the Slovak Republic, Spain, Sweden, Turkey and the United Kingdom. Finland, New Zealand and Switzerland indicated that they had no changes to report. It also includes a response from Argentina, an observer country to the CFA. Overall, the update reveals a trend towards countries enabling more effective exchange of information between tax authorities and anti-money laundering authorities. The report reveals in particular

- In more than half the countries responding money laundering regulations cover fiscal fraud and other tax crime

- Reporting of suspicious transactions now applies to large sections of the non-financial sector such as lawyers, accountants, notaries and estate agents

- In only 5 countries the tax authorities do not have access to suspicious transaction reports

- In the vast majority of countries joint investigations by anti-money laundering authorities and tax authorities are possible.

The survey provides valuable information about current country practices which may assist those countries interested in improving cooperation between tax and money laundering authorities.

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Background

1. This survey report provides updated detailed information regarding access for tax authorities to information gathered by anti-money laundering authorities. The information was initially obtained via a questionnaire issued by OECD Working Party No. 8 on Tax Avoidance and Evasion (DAFFE/CFA/WP8(99)5/REV1). All OECD Member countries except **Iceland** responded to the questionnaire. Countries contributing to this updated note include **Argentina**, **Australia, Austria, Belgium, Canada, the Czech Republic, France, Germany, Ireland, Italy, Japan, Korea, Netherlands, Norway, Portugal,** the **Slovak Republic, Spain, Sweden, Turkey** the **United Kingdom** and the **United States**. **Finland, Hungary, New Zealand** and **Switzerland** indicated that they had no changes to report. This update reflects the position at 1 September 2007.

Coordination of anti-money laundering activities

2. All countries that responded have a comprehensive anti-money laundering system. The vast majority of the countries involved in this survey have a single national government agency or body that is responsible for co-ordinating anti-money laundering activities. In the remaining countries (**Australia**, **Canada**, **Germany**, **Japan**, the **Netherlands**, the **Slovak Republic**, the **United Kingdom** and the **United States**) there is no centralised institution, but a shared responsibility by two or more government agencies for co-ordinating anti-money laundering activities.

I. Money Laundering and Tax Crimes

3. In more than half of the countries involved in this survey, the money laundering regulations cover crimes involving fiscal fraud or other tax crimes. This situation is different in **Australia, Austria, Canada, Denmark, Greece, Japan, Korea, Luxembourg, New Zealand, Poland, Portugal,** the **Slovak Republic, Switzerland** and the **United States**. In these countries, domestic laws or regulations on money laundering may indirectly cover fiscal fraud and other tax crimes, for example, if the fiscal fraud or the other tax crime is committed as part of a criminal offence involving money laundering such as fraud, false representation or conspiracy. Tax crimes may also be covered by money laundering regulations where all crimes punishable by a certain amount of years are defined as predicate offences to money laundering and tax evasion is one of these crimes.

II. Reporting requirements of suspicious transaction reports

4. Suspicious transactions are required to be reported in all the countries that responded to the questionnaire. Approximately half of them have a definition of a "suspicious transaction". In the remaining countries a "suspicious transaction" is not defined but the meaning is derived from anti-money laundering regulations, or, as is the case in the **United Kingdom**, industry-produced guidance and

guidance produced by HM Revenue & Customs[1] to assist those in the "regulated sector" to make the assessment.

5. Suspicious transactions have to be reported by banks, sometimes including central banks, in all the countries that responded to the questionnaire and this obligation is also imposed on the non-bank financial sector as a whole or specific parts of it, such as investment companies, stock brokers, credit card companies, foreign currency dealers, insurance companies, mortgage companies, money transmitters, etc.

6. Most countries also require the reporting of suspicious transactions by the non-financial sector or parts of it, such as the gambling sector, lawyers, accountants, notaries, estate agents (**Australia**, **Austria**, **Belgium**, **Canada**, the **Czech Republic**, **Denmark**, **Finland**, **Germany**, **Hungary**, **Italy**, **Netherlands**, **New Zealand**, **Norway**, **Poland**, **Portugal**, **Spain**, **Switzerland**, **Turkey**, and the **United Kingdom**).

7. In the vast majority of countries that responded, suspicious transaction reports have to be filed with the domestic Financial Intelligence Unit. In **Japan** these reports must be lodged with the financial authorities supervising the financial institution which files the report. In **Poland**, reports on suspicious transactions are required to be filed with the General Inspector of Financial Information (GIFI) who, after peer analysis and only in cases of justified suspicion that a given transaction constitutes a crime, passes information to a prosecutor along with documents justifying a suspicion. It is up to the GIFI to decide whether information has to be passed, or not, to the prosecutor. In **Portugal** these reports are required to be filed with the public prosecutor.

8. In **Austria** and in **Poland**, dealers in high-value goods (such as precious stones or metals) or works of art as well as auctioneers are covered by the anti-money laundering (AML) regime to report suspicious transactions.

9. In **Hungary**, the amendment to the Anti Money Laundering (AML) Act of 1994 extended the scope of the Act XXIV of 1994 to additional professions as specified in the list of Article 2a of Directive 91/308/EEC as part of harmonisation with EU regulations. Financial institutions, insurance companies, investment funds, private pension funds and casinos were already covered under the previous legislation. The new professions[2] now have to meet the same requirements with which financial institutions and insurance companies have had to comply.

10. In **Italy**, persons and entities required to report suspicious transactions include those involved in credit collection on behalf of third parties; custody and transport of cash, securities or other assets; real estate brokering; dealing in gold; manufacturing, brokering and dealing in valuables, including export and import; management of casinos; manufacture of valuables by craft undertakings; loan brokering and financial agency; lawyers, notaries, accountants, chartered accountants, labour advisers and auditors. In **Spain**, persons and entities involved in the trade of jewels, precious stones, precious metals, works of art, antiques or in investment in philately and numismatics are also required to report suspicious transactions. **Turkey** requires sports clubs to report.

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1 The functions of HM Customs & Excise and the Inland Revenue were brought together in a new single department, HM Revenue & Customs, on 18 April 2005.

2 Real estate agents, accountants, auditors, high value traders (such as precious metals or precious stones, goods and jewels, cultural assets, works of art), legal advisers, legal advisers' offices, advocates, advocates' offices and notaries.

11. In the **United Kingdom**, the Proceeds of Crime Act 2002 requires certain people working in the "regulated sector" to report to the Serious Organised Crime Agency[3] whenever they know, suspect, or have reasonable grounds to know or suspect that activities or transactions involve the laundering of the proceeds of any crime including tax evasion. This also applies to institutions outside the regulated sector that have chosen to appoint "nominated officers". The "regulated sector" includes financial institutions, legal advisers, accountants, auditors, tax advisers, insolvency practitioners, casinos, estate agents and dealers in goods who accept or are prepared to accept cash payments of 15,000 EUR or over.

Reporting requirements of other types of financial activity

12. In addition to suspicious transaction reports, some countries require reports of other types of financial activity. **Australia**, **Canada**, **Italy**, **Korea**, **Mexico**, **Netherlands**, **Norway**, **Spain** and the **United States** require reporting of large cash transactions. Reports on cross border cash movements are required in **Australia**, **Austria**, **Canada**, **Czech Republic**, **France**, **Germany**, **Greece**, **Hungary**,[4] **Italy**, **Korea**, **Netherlands**, **New Zealand**, **Norway**, **Portugal**, **Slovak Republic**, **Spain**, **Sweden**, **Turkey** the **United Kingdom** and the **United States**. Reports of International Funds Transfer Instructions are also required in **Australia.** **Canada** also requires reports of international electronic funds transfers.

13. Reports on large cash transactions generally have to be filed with the Financial Intelligence Unit, although the **United States** require filing with the IRS. In the countries that require reporting of cross border cash movements, the reports have to be filed with Customs or the Central Bank. In **Italy** the declaration of cross-border movement is received by the Unità di Informazione Finanziaria (UIF, ex Ufficio Italiano dei Cambi – UIC) - see table entry on page 11) through customs offices, banks, post offices or Guardia di Finanza officers that collect and transmit them.

III. Access to suspicious transaction reports

14. Of the countries that responded to the questionnaire, only **Australia** and the **United States** grant tax authorities direct access to information on suspicious transactions. In the **United Kingdom**, the tax authority has staff seconded to the Serious Organised Crime Agency. These staff have unfettered access to suspicious activity reports to evaluate their worth and, if appropriate, to send them to HM Revenue & Customs which enhances and sanitises the intelligence as appropriate before it is used.

15. In the **Czech Republic**, **Japan**, **Luxembourg**, **Mexico** and **Poland**, the tax authorities have no access to suspicious transaction reports. In **Finland**, **France**, **Hungary** and **Luxembourg**, the anti-money laundering legislation stipulates that information on suspicious transactions may only be used to combat money laundering, although **France** covers tax crimes as a money laundering offence. In **Hungary** an exception is made in the case of criminal proceedings initiated in connection with another criminal offence. In **Ireland**, as a result of changes to the Criminal Justice Act, 1994, the Revenue Commissioners receive suspicious transaction reports in their own right since 1st May 2003.

16. In **Belgium**, **Canada**, **Denmark**, **France**, **Finland**, **Germany**, **Greece**, **Italy** (*Guardia di Finanza* that in its capacity as a specialised Police Force receives suspicious transactions reports from UIF, the Italian FIU), **Korea**, **Mexico**, the **Netherlands**, **New Zealand**, **Norway**, **Poland**, **Portugal**, **Spain**, the

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[3] The UK's Serious Organised Crime Agency (SOCA) came into being on 1 April 2006. It subsumed the functions of the former National Criminal Intelligence Service as well as work from other agencies.

[4] Any individual crossing the border of the Republic of Hungary shall report to the customs authority if he holds a sum of money amounting to or exceeding altogether HUF 1 million in HUF or any foreign currency, and shall provide the data listed in AML Act as well as declare the amount and the currency unit of the cash held by him to the customs authority.

Slovak Republic, **Sweden**, **Switzerland** and **Turkey**, the tax authorities may have access to reported suspicious transactions. Sometimes there are very strict conditions to this access, or there is only indirect access through a judicial or law enforcement authority. In **Austria**, the tax authorities have access to suspicious transactions reports concerning customs fraud and evasion of import and export duties, but it is intended to include also all tax crimes punishable by at least three years. The legislative process is in preparation.

17. All countries have strict confidentiality provisions on the information obtained by the anti-money laundering authorities. In the countries where the tax administration has access to this information, there is a legal basis to provide this access. If this access is provided, there are generally no restrictions other than that the information may be used only for tax purposes.

Access for tax authorities to reports on large cash transactions and cross border cash movements

18. In **Australia**, **Mexico**, **Norway,** the **Slovak Republic**, **Turkey** and the **United States**, the reports on large cash transactions and cross border cash movements are maintained in centralised databases. Except for **Mexico** and the **Slovak Republic**, tax authorities have access to these reports. **Canada**, the **Czech Republic** and **Ireland** do not provide information on a central database; in these countries tax authorities have no access to the reports. In **Italy**, the tax administration is given access to information concerning transactions over €10,000; however a database for cross-border cash movements has not been set up yet. In the **United Kingdom**, there are no requirements for the reporting of large cash transactions or cross border cash movements. However there is a power to seize, detain and forfeit cash sums of £5,000 or more that are suspected to be the proceeds of crime or intended for use in crime. Records of such seizures are kept on a national database that can be accessed by law enforcement or the tax authorities.

19. In some countries the anti-money laundering authority has the authority to provide information about a specific report to the tax authority (e.g., spontaneously) or the tax authority can make a request for information about a specific report. This is possible in **Australia**, **Austria** (for customs purposes only), **Canada** (with restrictions), **Italy** (for cross border cash movements only), **Korea**, **Norway**, **Poland**, the **Slovak Republic**, **Spain**, **Sweden**, **Turkey** (with restrictions) the **United Kingdom** (with restrictions), and the **United States**.

20. All countries have strict confidentiality provisions on the information obtained by the anti-money laundering authorities. In the countries where the tax administration has access to this information, there is a legal basis to provide this access. If this access is provided there are generally no other restrictions than that the information may be used for tax purposes only.

IV. Other Criminal Intelligence

21. Anti-money laundering authorities can also gather or otherwise have access to criminal intelligence information other than that received through suspicious transaction reports or other reports. This type of information could include information concerning patterns or trends in money laundering activities.

Access for tax authorities to other criminal intelligence

22. In **Austria**, the **Czech Republic**, **Greece**, **Ireland**, **Mexico**, **Norway**, **Poland**, **Portugal** and the **Slovak Republic**, tax authorities have no access to other criminal intelligence. Annual reports on activities including patterns and trends in money laundering are published in **Belgium** by the CTIF, in **Luxembourg** by the Service Anti-Blanchiment and in **France** by TRACFIN. These reports are publicly available and may be used by the tax administrations. In **Finland**, this information is available in the phase of a pre-trial investigation if the tax authority is a complainant. In **Australia**, **Italy** (only *Guardia di Finanza*, in its

capacity as police body competent in anti-money laundering activities), the **Netherlands**, **Spain**, **Sweden**, **Turkey** and the **United States**, tax authorities have full access to this information, whereas in **Germany** and **Switzerland** only indirect access through a judicial or law enforcement authority is possible. In **Canada** the tax authorities have access to intelligence on patterns and trends produced by FINTRAC, CISC (the Criminal Intelligence Service of Canada) or other law enforcement bodies. They also have access in cases where they are pursuing criminal investigations to police databases holding nominative information and criminal records of the targets of CRA's criminal investigations. In **Hungary** the tax authorities have no access except upon written request, if the required information concerns the tax assessment. In **Japan**, this information is not available from the money laundering authorities. In **Korea**, this information is available to the tax administration at the discretion of the anti-money laundering authorities. In the **United Kingdom**, the tax authorities have staff seconded to the Serious Organised Crime Agency. These secondees have unfettered access to suspicious activity reports to evaluate their worth and, if appropriate, send them to HM Revenue & Customs which enhances and sanitises the intelligence as appropriate before it is used.

23. Apart from annual reports on patterns or trends in money laundering, which are generally publicly available, the information, if available to tax authorities, would be restricted to information necessary for the assessment of taxes. Disclosure of this type of information may be restricted in cases where disclosure might be prejudicial to other agencies' own investigations, by laws relating to legal professional privilege, by the fact that the material is strictly secret (e.g. if the material is sensitive information in a strategic report) or permission is denied by those responsible for the intelligence.

V. Access to Information Gathered in the Context of a Specific Investigation

24. In some countries money laundering authorities are permitted to provide, either as a spontaneous exchange or in response to a specific request, information to tax authorities pertaining to a possible tax related crime. Money laundering authorities can do so in **Australia, Belgium**, **Canada**, the **Czech Republic**, **Denmark**, **Finland**, **Germany**, **Greece**, **Ireland**, **Japan**, **Korea**, **Mexico**, the **Netherlands**, **New Zealand**, **Norway**, **Poland**, **Spain**, **Turkey**, the **United Kingdom** and the **United States**. They are not allowed to do so in **Austria** (apart from customs fraud, evasion of import and export duties) and **Sweden**. In **France**, **Luxembourg** and **Portugal** this is only allowed through judicial authorities. In **Hungary** the tax authorities can only be provided with information after they have requested it in writing and if the information is necessary for the tax assessment. In **Switzerland**, it depends on the criminal law of the canton concerned which may differ from canton to canton.

25. Money laundering investigations can also involve tax-related crimes. In the vast majority of the countries that responded to the questionnaire, joint investigations by money laundering authorities and tax authorities are possible. In **Austria, Belgium**, **France**, **Greece**, **Hungary**, **Japan**, **Luxembourg**, **New Zealand**, **Norway**, **Poland** and **Switzerland** these joint investigations are not permitted. In **Italy**, investigations are carried out by *Guardia di Finanza*, which plays the role not only of criminal police in the fight against money-laundering activities, but also of tax police in the fight against tax evasion.

26. If the information gathered in the context of a specific money laundering investigation can be shared with tax authorities, in general it can only be shared for tax purposes.

VI. Exchange of Information with Tax Treaty Partners

27. If the tax authorities have received information from anti-money laundering authorities, in general this information can be exchanged under tax treaties with a treaty partner. In some cases the tax authorities can only exchange this information after consultation with the money laundering authorities. In **Austria**, (apart from customs fraud and evasion of import and export duties) the **Czech Republic**, **France**,

Italy, **Japan**, **Luxembourg**, **Mexico** and **Turkey** fiscal authorities have no access to this information, so this information cannot be exchanged under tax treaties. In the **Slovak Republic**, if this information is available to the tax authorities, it may not be exchanged under tax treaties.

VII. Usefulness of Information

28. In the countries where tax authorities have full access to the suspicious transaction reports (**Australia**, the **United Kingdom** and the **United States**) the co-operation proved to be very successful. Also in the countries where access is restricted, the co-operation was considered very useful.

29. **Australia** identified some difficulties mainly related to the integrity of the data received by the Australian Transaction Reports and Analysis Centre (AUSTRAC) and therefore its value to the ATO. The integrity of the information contained in the reports is generally dependent on the accuracy and completeness of the information provided by the cash dealers. This is of particular importance in establishing the correct identity of the transacting parties. **Germany** noted that in the brief period since these reporting obligations were introduced, some problems have of course been encountered, for example with regard to the scope of the reporting obligations or the extent to which tax authorities have access to the results of investigations by the law enforcement authorities. Internationally, the **United States** authorities have experienced difficulties when information gathered pursuant to an MLAT request relating to a money laundering investigation cannot be used for a tax investigation.

ANALYSIS OF THE RESPONSES TO THE QUESTIONNAIRE ON ACCESS TO INFORMATION GATHERED BY ANTI-MONEY LAUNDERING AUTHORITIES

30. As of September 2007, responses have been received from all Member countries except **Iceland**. Argentina, an Observer country to the CFA, has also provided a response which has been included in this update.

31. **Canada's** response is now based on the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

32. **Korea** reported that anti-money laundering laws were enacted in 2001 to effectively combat money laundering and KoFIU, the Korea Financial Intelligence Unit, was launched as an independent authority to tackle money-laundering issues. Since its establishment, the Suspicious Transaction Reporting System, Currency Transaction Reporting System, and Customer Due Diligence, the three core elements that make up an AML system (Anti-Money Laundering) were adopted and are in operation now.

33. The **United Kingdom** provided information on the position of the Assets Recovery Agency (ARA). ARA was set up under the Proceeds of Crime Act 2002 and commenced operations in February 2003. ARA investigates specific cases with a view to recovering or taxing the proceeds of crime. ARA can carry out taxation functions other than prosecution of tax crime, where there are reasonable grounds to suspect that taxable income arises from crime. It also has criminal confiscation and civil recovery functions. It does not have criminal prosecution powers. It is required to follow a strict hierarchy which means that taxation will only be considered where both criminal confiscation and civil recovery have failed or are inappropriate. It has access to information from, amongst others, the Serious Organised Crime Agency and HM Revenue & Customs, for use in carrying out any of its functions, subject to any specific restrictions set by the information providers.

I. Money Laundering and Tax Crimes

A. *Is there a national government agency or body that is primarily responsible for co-ordinating anti-money laundering activities in your country? If so, please identify the agency.*

34. Twenty two (22) countries have an institution that is responsible for co-ordinating anti-money laundering activities. In the remaining countries (**Australia, Canada, Germany, Japan, the Netherlands,** the **Slovak Republic**, the **United Kingdom** and the **United States)** there is no centralised institution responsible for co-ordinating anti-money laundering activities. In 2001, the Hungarian Government fully reviewed its anti-money laundering policy.[5]

[5] As a result of the revision process Act No XXIV of 1994 on the Prevention and Impeding of Money Laundering (the "AML Act") has been substantially amended, complementary legislation passed and new secondary legislation adopted. Important regulatory and administrative actions have been initiated.

Policy co-ordination has been substantially strengthened both by creating a new high-level commission involving all relevant institutions, and by the establishment of the post of a special Government Commissioner with appropriate, legally defined special powers. This Inter-Ministerial Commission is responsible for policy setting and monitoring the implementation process.

Country	Responsible Authority
Argentina	Financial Reporting Unit (UIF – Unidad de Información Financiera) an autonomous unit under the jurisdiction of the Ministry of Justice and Human Rights
Austria	The Money Laundering Unit (Geldwäschemeldestelle), which is part of the CISA (Criminal Intelligence Service Austria) in the Federal Ministry of Internal Affairs
Belgium	The CTIF/CFI (Cellule de Traitement des informations Financières/ Cel voor Financiële informatieverwerking)
Czech Republic	The Financial Analytical Unit, which is the competent organisational component of the Ministry of Finance
Denmark	The Money Laundering Secretariat (under the Public Prosecutor for Serious Economic Crime)
Finland	The National Bureau of Investigation/Money Laundering Clearing House (Rahanpesun selvittelykeskus/Keskusrikospoliisi)
France	TRACFIN, service spécialisé du Ministère de l'Economie des Finances et de l'Industrie
Greece	Committee of Financial Crime Investigations (C.F.C.I)
Hungary	National Police Headquarters (Hungarian FIU). The Inter-Ministerial Commission is responsible for policy setting, monitoring the implementation process of the AML legislation and makes proposals for regulatory changes. The general regulation (preparation of the legislation) is performed by the Ministry of Finance.
Ireland	An Garda Siochána, Garda Bureau of Fraud Investigation (GBFI)
Italy	The Financial Intelligence Unit (until 31 December 2007 the Ufficio Italiano dei Cambi - UIC) operates from 1 January 2008 within the Bank of Italy (Unità di Informazione Finanziaria – UIF) and carries out supervisory and financial intelligence activities aimed at detecting and preventing money laundering in the financial system. In this capacity UIF is the recipient of suspicious transaction reports. As for investigation activities related to suspicious transactions, the competent authorities are *Guardia di Finanza* and, for the cases of Mafia-style associations only, the *Direzione Investigativa Antimafia* (Anti-Mafia Investigation Directorate or DIA).
Japan	The national police agency **(**JAFIC: Japan Financial Intelligence Center) took over FIU responsibility from the financial authorities (JAFIO) on 1 April 2007
Korea	The Korea Financial Intelligence Unit (KoFIU) is authorised to co-ordinate relevant policies, laws and regulations and anti-money laundering activities. It collects and analyses information on suspicious financial transactions. It is authorised to supervise and inspect the implementation of the suspicious reporting system by financial institutions. It provides information on certain financial transactions to law enforcement agencies such as the Public Prosecutor's Office, the National Police Agency, the National Tax Service, the Korea Customs Service and the Financial Supervisory Commission, and promotes strong co-operation with them. The KoFIU holds conferences with law enforcement agencies on a regular basis to discuss how to effectively deal with the information provided. The feedback provided by law enforcement agencies will be reflected in institution adjustment and information analysis.

Country	Responsible Authority
Luxembourg	Le Service Anti-Blanchiment auprès du Parquet du tribunal d'arrondissement de Luxembourg
Mexico	The General Attorney's Office and the Attached General Directorate for Transaction Investigations (DGAIO)-Financial Intelligence Unit within the Secretariat of Finance and Public Credit**.** The DGAIO-Financial Intelligence Unit has the following duties: a.) in conformity with the National Legislation DGAIO contributes with the Federal Public Prosecutor in carrying out investigations, analysis and if any, secure proof, evidence, certificates, documentation and reports on the commission of illicit behaviour provided for in article 115 Bis, Federal Fiscal Code and article 400 Bis, Federal Penal Code, and other similar provisions. This Unit integrates the files to verify the elements of the offence and the possible criminal responsibility, to make, if applicable, complaints or accusations; b.) to formulate, execute, and act as a competent authority in financial information exchange treaties and agreements, and others on matters within its competence, as well as in programs related with them; c.) to receive, input, and analyse information on the reports of unusual, or suspicious, large value, transactions reports, in conformity with that established on the General Provisions issued by the Secretariat of Finance and Public Credit to prevent and detect acts or transactions, carried out with resources, rights or assets that originate or are the fruit of an alleged crime. This includes information contained in the cross-border movement of currency statements referred to in article 9º of the Customs Law; d.) to maintain an up-dated data base that stores information procured during the exercise of its functions. A strict and absolute secret is kept on the information, unless such information is provided to the Federal Public Prosecutor by means of either a complaint or an accusation, or to the judicial authorities during criminal prosecutions; e.) to obtain and provide information in conformity with international treaties and agreements entered into with other countries; f.) to participate in the analysis and preliminary drafts of bills of laws, decrees and rules related to article 400 Bis, Federal Penal Code and other similar provisions; g.) to implement actions for the exchange of technical and training knowledge on the national level and with other countries with whom agreements or treaties on matters within its competence have been entered into; h.) to work with the fiscal authorities on examinations where elements are detected that enable to presume the existence of money laundering transactions. With the purpose of investigating and prosecuting money laundering the General Attorney's Office created on January 1st, 1998 the Special Unit to combat Money Laundering (UECLD). This Unit reports directly to the General Attorney. It works jointly with the Special Unit to combat Organised Crime (UEDO) and with the Special Prosecutor Office to combat drug-related crimes (FEADS) because, in conformity with national legislation, money laundering is a crime committed by organised crime, and drug trafficking is considered to be one of the main illicit sources that generates resources likely to being laundered.

Country	Responsible Authority
New Zealand	The New Zealand Police, Financial Investigation Unit
Norway	The national Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (ØKOKRIM).
Poland	The General Inspector of Financial Information (GIFI) is responsible for obtaining, gathering, processing and analysing information in order to detect suspicious transactions and to counteract financial crimes, and in particular money laundering. The GIFI is under secretary of state in the Ministry of Finance.
Portugal	The Judiciary Police
Spain	Comisión de Prevención del Blanqueo de Capitales e Infractions Monetarias (CPBCIM)
Sweden	Finanspolisen, which is also the clearinghouse for financial information
Switzerland	l'Administration fédérale des finances, Division Monnaie, Economie, Marché financiers
Turkey	Financial Crimes Investigation Board (MASAK) of the Ministry of Finance

No centralised institution responsible for co-ordinating anti-money laundering activities

35. In **Australia,** the Australian Transaction Reports Analysis Centre (AUSTRAC) collects financial intelligence and disseminates information to a range of government agencies in order to assist them in the investigation of suspected money-laundering activities. These agencies include the Australian Crime Commission (ACC), the Australian Taxation Office (ATO), the Australian Federal Police (AFP) and the Australian Customs Service (ACS). The ACC has a co-ordinating role which is used in relation to money laundering investigations. **Australia** is a federation and has six States and two Territories. Each State and Territory police force, as well as other state agencies such as Crime Commissions, has investigative responsibility for money laundering under State and Territory legislation.

36. In **Canada,** the Royal Canadian Mounted Police (RCMP) is the lead law enforcement agency responsible for the investigation of money laundering offences. However, all police services in Canada share this mandate. The Department of Finance is primarily responsible for FINTRAC, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and associated regulations, and deals with money laundering policy issues in consultation with other interested departments and agencies. The Minister of Finance has primary responsibility for the Proceeds of Crime (Money Laundering) Act and associated regulations and is also responsible for FINTRAC.

37. In **Germany,** the prosecution of money laundering activities is almost exclusively in the hands of the police, judicial authorities of the constituent states (the "Länder") and customs investigation offices. However, the Federal Investigation Office (Bundeskriminalamt) serves primarily as a central agency, in particular as far as co-operation with foreign authorities is concerned. In general, reports on suspicious transactions shall be passed onto the chief state prosecutor.

38. In **Hungary**, policy co-ordination has been substantially strengthened both by creating a new high-level commission involving all relevant institutions, and by the establishment of the post of a special Government Commissioner with appropriate, legally defined special powers. The Inter-Ministerial

Commission is responsible for policy setting, monitoring the implementation process of the AML legislation and makes proposals for regulatory changes.

39. The member institutions of this Commission are as follows: Ministry of Finance, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice, Hungarian Financial Supervisory Authority, National Bank of Hungary, National Police Headquarters (Hungarian FIU), Gaming Board of Hungary, Tax Office, Main Prosecutor Office, and Hungarian Bankers Association. The general regulation (preparation of the legislation) is performed by the Ministry of Finance. The Ministry of Justice is responsible for Hungarian Criminal Code, including fight against money laundering. Ministry of Interior and the Ministry of Justice conclude collectively the international agreements in this field. The Hungarian FIU is an active member of the EGMONT Group.[6]

40. In **Japan,** the co-ordination of anti-money laundering activities was strengthened on 1 April 2007 when the FIU (JAFIO) was transferred from the financial authorities to the national police agency **(**JAFIC**:** Japan Financial Intelligence Centre).

41. In the **Netherlands,** the Minister of Finance and the Minister of Justice are primarily responsible for the co-ordination of anti-money laundering activities. Several governmental and non-governmental specialised bodies are involved in anti-money laundering activities. These bodies are only responsible for anti-money laundering activities within the areas they work. In order to co-ordinate their activities, the relevant partners in the fight against money laundering participate in a number of co-ordination fora. The Financial Intelligence Unit Netherlands (FIUNL) is an administrative body for whose general management, organisation and administration the Netherlands Police Agency is responsible. The FIUNL is independent from law enforcement. It receives records, processes and analyses reports of unusual transactions. The FIUNL thus acts as a filter between the financial institutions and investigating authorities by only passing on those reports of unusual transaction which it determines to be suspicious. It keeps a database containing information on all reports made, and all reports are matched with police databases, and can also be compared with files held by other parts of the Ministry of Justice, by municipal authorities and chambers of commerce. Unusual transactions are identified by applying objective and subjective indicators set out in the Disclosure Act. If according to the indicators a transaction is considered to be unusual, a report has to be made to the FIUNL. The FIUNL determines whether the transaction has a suspicious character, and if so it passes this information on to the police and Prosecutor for further investigation. So a suspicious transaction is an unusual transaction that has to be reported to the police and Prosecutor.

42. The aims of the responsible government agency in **Spain**, the Comisión de Prevención del Blanqueo de Capitales e Infractions Monetarias (CPBCIM**),** are to prevent and hinder money laundering, which could be carried out through the financial system or through certain professional or commercial activities (such as casinos, real estate undertakings or immovable property purchasing and sales). The CPBCIM (created by Law 19/1993) is supported by two organs in performing its tasks, the Commission's Secretariat and the Commission's Executive Service (SEPBLAC). The SEPBLAC, run by the Bank of Spain, is of a mixed nature, midway between an administrative unit and a police unit, and acts as Spain's Financial Intelligence Unit (FIU) in the context of the Egmont Group.

43. In the **Slovak Republic**, the Ministry of Interior, the Ministry of Interior, the Financial Intelligence Unit and the Supreme Supervision Office are responsible for co-ordinating the anti-money laundering activities.

6 The EGMONT Group consists of the financial intelligence units (FIUs) of a number of countries and has been operating since 1995. The goal of the group is to provide a forum for FIUs, to improve support to their respective national anti-money laundering programmes.

44. HM Treasury is the **United Kingdom's** lead agency in international bodies such as the Financial Action Task Force. It issues the UK's Money Laundering Regulations, negotiates European Money Laundering Directives and has policy responsibility in respect of financial regulatory issues. Other relevant bodies, institutions and organisations include:

- The Home Office - responsible for the UK primary legislation setting out the criminal law on money laundering and terrorist financing. It has policy responsibility in respect of the criminal justice system.

- The Financial Services Authority - makes and enforces Money Laundering regulatory Rules. It also has powers to initiate criminal prosecutions for breaches of the Money Laundering Regulations (but not the primary money laundering legislation).

- The Serious Organised Crime Agency (SOCA) - the UK's central Financial Intelligence Unit - is the chief recipient of suspicious activity reports (SARs) made by the reporting sector. It also has a Terrorist Finance Unit to co-ordinate intelligence on terrorist financing.

- Police and HM Revenue & Customs - responsible for investigating money laundering and terrorist financing cases. HM Revenue & Customs operate the supervision of Money Service Businesses (bureaux de change, cheque cashers and money remitters) and High Value Dealers (dealers in goods of any description by way of business (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of 15,000 EUR or more) under the Money Laundering Regulations 2003.

- The Crown Prosecution Service (CPS), the Serious Fraud Office (SFO) and the Revenue and Customs Prosecution Office (RCPO)[7] are all prosecuting authorities. In practice, SFO prosecute money laundering cases where the underlying predicate offence is fraud and RCPO where it is direct or indirect tax evasion (or money laundering predicated on such evasion) or drug trafficking investigated by HM Revenue & Customs with the CPS dealing with the rest (and fraud/drug cases investigated by the police).

- The Assets Recovery Agency (ARA) - established under the Proceeds of Crime Act, has in conjunction with other operational agencies in the UK, recognised the importance of obtaining accurate information on money-laundering and tax evasion. To assist in the accurate and timely reporting on the progress of such cases, it has developed and implemented the Joint Asset Recovery Database (JARD). JARD will enable Government Agencies to record the initiation of investigations, check previous relevant subject and the case history and then record the progress of any resulting prosecutions and civil proceedings through the judicial system. Partner Agencies will be able to compile reports on the progress of outstanding cases, provide information on the value of cash or other assets still to be recovered and also highlight the need for further action. The process established for the operation of JARD will have applicability for other areas of criminal and civil prosecutions.

45. In the **United States,** the investigative authority rests with a number of agencies in the United States Departments of Treasury and Justice. The United States "FIU" is the Treasury's Financial Crimes Enforcement Network (FinCEN). In addition, a number of states have made money laundering within their jurisdictions a crime and thus have investigative authority within the state. Finally, both national and state financial supervisors and other regulators include maintenance of anti-money laundering controls by financial institutions under their respective jurisdictions.

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7 This new fully independent prosecuting authority was established on 18 April 2005

B. *Do your domestic laws or regulations on money laundering cover crimes involving fiscal fraud or other tax crimes? If so, please describe the nature of tax crimes covered.*

46. Money laundering regulations cover crimes involving fiscal fraud or other tax crimes in **Austria (**customs fraud or evasion of import and export duties), **Belgium,** the **Czech Republic, France, Finland**, **Germany, Hungary, Ireland, Italy, Korea, Mexico,** the **Netherlands, Norway, Spain, Sweden, Turkey** and the **United Kingdom**. The domestic laws or regulations on money laundering do not directly cover fiscal fraud or other tax crimes in **Australia**, **Canada**, **Denmark**, **Greece, Japan**, **Luxembourg**, **New Zealand**, **Poland**, **Portugal**, the **Slovak Republic, Switzerland** and the **United States**. However, in these countries, domestic laws or regulations on money laundering may indirectly cover fiscal fraud and other tax crimes. This could be the case, e.g. if the fiscal fraud or the other tax crimes are committed as part of a criminal offence concerning money laundering such as fraud, false representation, conspiracy, or if all crimes punishable by a certain amount of years are predicate offences to money laundering and tax evasion is one of these crimes, etc.

47. In **Argentina** all crimes, including fiscal crimes, are predicate offences of money laundering under Act 25.246. The Penal Tax Act 24.769 defines fiscal crimes.

48. In **Belgium** the anti-money laundering law aims at offences linked with serious and organised fiscal fraud, which puts into place complex mechanisms or uses procedures with an international dimension. The seriousness of the fraud can result from forgery and use of false documents, by corrupting public officials, but mainly because of the damage that the fraud causes to the National Treasury and to the social-economic order. The criterion for the organisation of the fraud can be defined by the use of shell companies, a front man, setting-up of complex legal schemes and multiple bank accounts used for the international transfer of capital.

49. In **Canada** tax offences are excluded by regulation from the proceeds of crime regime under part XII.2 of the Criminal Code.

50. According to the **Czech Republic** anti-money laundering legislation (Act. No. 61/1996 Coll. on Selected Measures Against Legalisation of Proceeds from Criminal Activity) the Financial Analytical Unit of the Ministry of Finance has the obligation to lodge the complaint in the case of any crime. It also means that any tax crime is covered in the Czech anti-money laundering legislation:

Section No. 10, par. 2:

"If the Ministry ascertains facts warranting a suspicion that a criminal offence was committed, it shall file a complaint pursuant to the Code of Penal Procedure and at the same time shall provide to the authority active in penal proceedings all the information and the supporting evidence it has at its disposal, if they relate to its complaint."

This law also enables the Financial Analytical Unit to ask for information from tax authorities:

Section No. 8, par. 2:

"When conducting an investigation, the Ministry may request information from tax administrators, if the case cannot be sufficiently clarified in a different way."

51. **France** includes tax crimes as money laundering offences. However, information on suspicious transactions may be disseminated only to combat money laundering.

52. In **Finland** no specific crime is predicate to money laundering, but tax crimes are included as money laundering offences if the essential elements of concealing the origin of funds gained by crime are met.

53. In **Germany,** money laundering is regarded as a criminal offence in relation to assets deriving from certain other criminal offences. Among these are the following offences specified in the German Fiscal Code ("Abgabenordnung"):

- gainful evasion of import duties and taxes;
- gainful import, export or transit of contraband in contravention of monopoly regulations;
- handling contraband using a weapon or other implement or means to prevent or overcome the resistance of another person by force or the threat of force, or using a firearm;
- commission of such offence as member of a gang set up for the repeated evasion of import duties and taxes or the handling of contraband, in collaboration with another member of the gang; and
- gainful evasion of tax or commission of such offence through a gang, e.g. VAT carrousels.

54. Any persons purchasing or otherwise acquiring for their own account or for account of a third person tax-evaded, duty-evaded or contraband goods, or selling or helping to sell such goods with the aim of enriching themselves or a third person, are liable to punishment for the offence of handling untaxed goods. The smuggled goods involved in the evasion of taxes are also deemed to derive from one of the above mentioned offences.

55. In **Hungary** according to Section 303 Paragraph (1) on money laundering of the Act IV of 1978 of the Criminal Code[8] the person who - among others - conceals the pecuniary assets resulting in

[8] "Money Laundering"

Section 303

(1) Any person who uses items obtained by the commission of criminal activities punishable by imprisonment in his business activities and/or performs any financial or bank transaction in connection with the item in order to conceal its true origin is guilty of felony punishable by imprisonment not to exceed five years.

(2) The punishment shall be imprisonment between two to eight years if money laundering

a) is committed in a pattern of criminal profiteering,

b) involves a substantial or greater amount of money,

c) is committed by an officer or employee of a financial institution, investment firm, investment fund manager, clearing house, insurance institution, or an institution engaged in gambling operations,

d) is committed by a public official,

e) is committed by an attorney-at-law.

(3) Any person who collaborates in the commission of money laundering is guilty of misdemeanor punishable by imprisonment not to exceed two years.

(4) The person who voluntarily reports to the authorities or initiates such a report shall not be punished for money laundering, provided that the act has not yet been revealed, or it has been revealed only partially.

(5) The term "item' referred to in Subsection (1) shall also cover instruments embodying rights to some financial means and dematerialized securities, that allow access to the value stored in such instrument in itself to the bearer, or to the holder of the securities account in respect of dematerialized securities.

Section 303/A

(1) Any person who uses an item obtained from criminal activities committed by others

a) in his business activities, and/or connection with the perpetration of a crime punishable with imprisonment of more than five years commits a crime and shall be punishable with imprisonment of up to five years. According to Paragraph (4) of Section 310 on tax and social security fraud of the same Act the punishment shall be imprisonment between two to eight years if the amount of tax revenue as the result of the fraud is reduced in a particularly high degree (at present from 6 million HUF) or the fraud was committed as part of a criminal organisation. According to the definition of paragraph (1) of Section 310 on tax and social security fraud, a person commits tax fraud if he untruthfully states, or conceals any fact (data) relevant for the assessment of tax liability before the authorities and thereby or by other fraudulent conduct reduces tax revenue.

56. In **Ireland,** Section 31 of the Criminal Justice Act 1994 deals with the offence of money laundering**.** It covers the proceeds of drug traffic and "other criminal activities". The latter reference would include tax evasion, which is a criminal offence.

57. In **Italy,** according to the Italian Penal Code, all intentional crimes can constitute predicate offences for money laundering; consequently, all intentional tax crimes are relevant for the application of anti-money laundering regulations.

58. In **Korea**, under the Proceeds of Crime Act, the cases of fiscal fraud, tax crimes are regarded as specific crimes (predicate offences). Money laundering related to such crimes should be punished and the proceeds generated by those crimes may be confiscated.

- Fiscal fraud - cases where a government official in charge of account embezzled national funds or committed a breach of trust (Article 5 of the Act on the Aggravated Punishment, etc. of Specific Crimes.

- Tax crimes - cases where a person commits a tax crime, including refunds of taxes and evasion of customs duties involving large amounts of money etc, in a fraudulent and unfair manner.

Crimes falling under the aforementioned offences provided in the Financial Transaction Reports Act are subject to STR.

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b) performs any financial or bank transaction in connection with the item, and is negligently unaware of the true origin of the item is guilty of misdemeanor punishable by imprisonment not to exceed two years, work in community service or a fine.

(2) The punishment shall be imprisonment for misdemeanor not exceeding three years if the act defined in Subsection (1)

a) involves a substantial or greater amount of money,

b) is committed by an officer or employee of a financial institution, investment firm, investment fund manager, clearing house, insurance institution, or an institution engaged in gambling operations,

c) is committed by a public official.

Non-performance of Reporting Obligation in Connection with Money Laundering

Section 303/B

(1) Any person who fails to comply with the reporting obligation prescribed for financial service organisations by the Act on the Prevention and Combating of Money Laundering is guilty of felony punishable by imprisonment not to exceed three years.

(2) Any person who negligently fails to comply with the reporting obligation referred to in Subsection (1) is guilty of misdemeanour punishable by imprisonment not to exceed two years, work in community service or a fine."

59. In **Mexico** Article 400 bis, Federal Penal Code, defines the offence of Transactions with Resources from Illicit Origin (money laundering), as follows: “imprisonment term from five to fifteen years and a fine from one to five thousand days wage, to whoever by himself or through a third party carries out any of the following behaviours: acquires, alienates, administers, guards, changes, deposits, gives on guarantee, invests, transports or transfers, within national territory; from **Mexico** to abroad or inversely, resources, rights or assets of any nature, knowing they originate or are the product of an illegal activity, with any of the following purposes: to conceal or attempt to conceal, disguise or impede the detection of the origin, location, destiny or property of said resources, rights or assets or encourage any illegal activity.” From the above, it is understood that any offence that generates resources, is considered a predicate offence for the purpose of the offence of transactions carried out with resources from illicit origin. Likewise, in the fifth paragraph, article 400, states that “when the Secretariat of Finance and Public Credit, in exercise of its examination authority finds elements that allow it to presume the commission of the offences referred to in the above paragraph, it shall exercise its verification powers conferred by law, and if applicable, denounce the facts that may constitute said offence.” Resulting from the above, the tax authorities and the Financial Intelligence Unit (within the Secretariat of Finance and Public Credit), have established a co-ordination process to investigate transactions carried out with resources from illicit origin, in the cases in which the services of the institutions integrating the financial system have been used. Because this is the case, legal process requires that in order for the Federal Public Prosecutor to be able to take criminal action, it is necessary for the Secretariat of Finance and Public Credit to file an accusation. If, within the investigations carried out of a possible offence of transactions carried out with resources from illicit origin, no elements are found to frame said behaviour, said information shall be provided to the tax authorities so it can determine pursuant to its authority if there has been a tax omission, or if applicable, tax fraud.

60. In the **Netherlands,** the anti-money laundering legislation is applicable to all sorts of money laundering, irrespective of the predicate criminal offence. Consequently, the legislation also applies to tax crimes.

61. In **New Zealand** the law on money laundering does not cover fiscal fraud. However, tax evasion being a criminal offence punishable by five years imprisonment is a predicate offence to money laundering.

62. In **Norway,** domestic laws on money laundering cover all crimes. It is considered a legal offence according to Norwegian Law if a person, with intention or serious negligence, does one of the following:

- gives the tax authorities incorrect or incomplete information, if he understands or ought to understand that this might lead to tax advantages,

- prepares an incorrect document, if he understands or ought to understand that the document might enable him to achieve tax advantages,

- violates the rules given in the Act of Foreign Exchange Regulations, if he understands or ought to understand that this violation might serve as a means of enabling him to achieve tax advantages, in any other way makes an essential violation to the regulations given in the Assessment Act.

63. In **Poland**, the Act of 16 November 2000 on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism applies to property values from both illegal and also from undisclosed sources, therefore any intentional tax related crimes are also included. Money laundering is penalised by the provisions of Article 299 of the Penal Code, according to which money laundering includes all funds and property values connected with committing prohibited acts.

64. In **Spain,** Article 301 of the Penal Code states that a predicate offence will be any crime punishable by more than three years in prison. This definition includes tax crimes as they can be punished with up to four years in prison. Law 19/93 on measures to prevent money laundering, as amended by Law 19/2003, now has the same scope as Article 301 and includes tax crimes along with other offences.
65. In **Sweden,** money laundering is criminalized through the provisions in the Penal Code Chapter 9 Sections 6 a and 7 a. Money laundering is defined as measures taken in order to conceal that somebody has been enriched through crime. In addition to this, tax crimes are criminalized through the provisions in the Tax Crime Law (1971:69). Tax crime according to the Tax Crime Law is when somebody deliberately supplies incorrect information to an authority or fails to supply information to an authority, where there is an obligation to do so, and by doing this creates a risk for tax being wrongly kept back from the state or the local government. The provisions in the Penal Code Chapter 9 Sections 6 a and 7 a concerning money laundering were introduced in July 1999 with the purpose of extending the money laundering crime to cases where the assets derive from tax crime. Furthermore, the scope of the Law (1993:768) on measures to prevent money laundering was extended to cases where the underlying crime is a tax crime.

66. In **Turkey**, under Law 5237 of the Turkish Penal Code, offences, for which the minimum punishment is at least one year imprisonment, are predicate offences for money laundering. Tax offences punishable by a minimum sentence of one year are this regarded as predicate offences.

67. In the **United Kingdom** under the Proceeds of Crime Act 2002 the reporting offences and the main money-laundering offences are both based on the laundering of the proceeds of any crime. Tax-related offences are not in a special category. Property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or in part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit. In order to secure a conviction it will be necessary to prove that the laundered property was criminal property, generated as a result of criminal conduct. Criminal conduct is in turn defined as conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there.

II. Access to Suspicious Transaction Reports

A. *Are suspicious transactions required or permitted to be reported in your country? If not, proceed to Part III of the questionnaire.*

68. Suspicious transactions are required to be reported in all the states that responded to the questionnaire.

B. *What constitutes a suspicious transaction under your laws, regulations or guidelines? Do your laws, regulations, or guidelines provide a definition of suspicious transactions or guidelines that describe what may constitute a suspicious transaction? If so, please provide the definition and/or guidelines.*

69. In fourteen countries that responded to the questionnaire (**Argentina**, **Australia**, the **Czech Republic**, **France**, **Italy, Japan**, **Korea**, **Mexico**, **New Zealand**, **Norway**, the **Slovak Republic, Spain**, **Switzerland, Turkey** and the **United States**) there is a definition of "suspicious transaction". In **Austria**, **Belgium**, **Canada**, **Denmark**, **Finland**, **Germany**, **Greece**, **Hungary**, **Luxembourg**, **Ireland,** the **Netherlands**, **Poland, Portugal, Sweden** and the **United Kingdom,** a "suspicious transaction" is not defined but the meaning may be derived either from anti-money laundering regulations or, as is the case in the **United Kingdom**, industry-produced guidance and guidance produced by HM Revenue & Customs can assist those in the regulated sector to make an assessment. In **Poland** certain persons and bodies are required to report any suspicions that a transaction may be connected with money laundering and the guidance takes the form of typologies of the suspicious transactions.

70. Most definitions have in common the element of an out of the ordinary, unusual commercial transaction or behaviour in relation with the person affecting it. Some definitions also have a link to transactions related to drug trafficking or activities of organised crime.

71. In **Argentina**, suspicious transactions are defined in legislation as those which are, in relation to the activity, unusual or economically or legally unjustified, or of unusual or unjustified complexity, whether they are performed in isolation or in a repeated way (Act 25.246, Article 21 b). In addition regulations under this Act list specific events or transactions that must be reported in particular by metal and gem traders, cash courier services, insurance businesses, notaries, auctioneers, accountants and other professional service providers.

72. In **Australia,** the latest guidelines issued by AUSTRAC define a "Suspicious Transaction" as any transaction which causes a cash dealer to have a feeling of apprehension or mistrust about a transaction considering:

- its unusual nature or circumstances;
- the known background of the person or persons conducting the transaction;
- the production of seemingly false identification in connection with the transaction;
- admissions or statements of involvement in tax evasion or criminal activities;
- regular or unusual transactions involving known narcotic source or transit countries;
- the personal appearance and behaviour of the person or persons conducting the transaction.

Section 16(1) of the Financial Transaction Reports Act 1988 (FTR Act) specifies where:

(a) a cash dealer is party to a transaction; and

(b) the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction:

1. may be relevant to investigation of an evasion, or attempted evasion, of a taxation law;
2. may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a Territory; or
3. may be of assistance in the enforcement of the "Proceeds of Crime Act 1987" or the regulations made under that Act;
4. the cash dealer, whether or not required to report the transaction under Division 1 or 3, shall, as soon as practicable after forming that suspicion:

I. prepare a report of the transaction; and

II. communicate the information contained in the report to the Director (AUSTRAC).

The Director of AUSTRAC has the power under law to issue guidelines to assist Cash Dealers to apply a subjective test.

73. The Banking Act in **Austria** does not provide for a definition of suspicious transactions. However, the Austrian Financial Intelligence Unit ("Geldwälschemeldestelle") has published guidelines with certain indicators for suspicious transactions (available only in German). Apart from that, EDOK the Geldwälschemeldestelle is regularly organising awareness campaigns at banking institutions concerning detection and enforcement of money laundering activities. See also the answer to question C.

74. **Belgian** legislation does not explicitly define a suspicious transaction. It obliges certain persons and bodies (see C) to report to the CTIF/CFI if they know or suspect that a transaction is connected with money laundering or if they have knowledge of a fact that might be an indication of money laundering.

75. In **Canada,** the guidelines issued by FINTRAC define a suspicious transaction as one for which there are reasonable grounds to suspect that the transaction is related to a money laundering offence or a terrorist activity financing offence. Guidance is also provided on how to identify a suspicious transaction, including general and industry-specific indicators that may help when conducting or evaluating transactions. These can be viewed at www.fintrac.gc.ca.

76. In the **Czech Republic**, there is a definition in the Money Laundering Act, officially known as Act No. 61/1996 Coll. on Selected Measures Against Legalisation of Proceeds from Criminal Activity as amended by Act No. 15/1998 Coll. and Act No. 159/2000 Coll. For the purpose of this Act "a suspicious transaction" shall mean a transaction effected under conditions generating suspicion of attempted legalisation of proceeds, including, but not limited to:

1. Cash deposits and their immediate withdrawal or transfer to another country;

2. Opening by one client of numerous accounts, the number of which is in obvious imbalance with the client's business activities or wealth, and transfers among these accounts;

3. Client transactions which do not correspond to the scope or nature of client's business activities or wealth;

4. Number of transactions effected in a single day or over several days is in imbalance with the usual flow or transactions of the given client.

77. In **Denmark,** there is no legal definition of suspicious transactions. However, the Money Laundering Act imposes a duty on persons/entities, covered by the Act to have anti-money laundering guidelines. These guidelines - which usually are made by the relevant professional organisation, e.g. the Bankers Association - give some examples of suspicious transactions which should be reported.

78. In **Finland,** when there is a reason to doubt the legal origin (doubt that it is legally obtained) of the property used in a transaction or other property, the person who is liable to report suspected money laundering cases has a duty to take care and this duty is the basis for using discretion (the amount of money is exceptionally high, unordinary services are used, etc.).

79. In **France,** the Act of 12 July 1990 gives the following definition: The amounts and transactions which appear to be derived from drug trafficking or the activities of organised crime.

80. In **Germany,** the Money Laundering Act provides no definition of a suspicious transaction. In accordance with the Guidelines of the Federal Agency on Financial Services on measures to be taken by credit or financial services institutions, a suspicious transaction involving a reporting obligation is deemed to exist where there are objective indications of a transaction by which illicit funds are to be rendered inaccessible to the law enforcement authorities or by which the source of unlawfully acquired assets is to be concealed, and criminal connections cannot be ruled out. The law enforcement authorities have also

drawn up in collaboration with the banking industry and distributed to the institutions a list of "criteria suggestive of money laundering".

81. In **Greece**, legislation does not explicitly define a suspicious transaction. However, the authorities which supervise the legal persons liable to submit suspicious transactions reports, have issued indicative lists of transactions that may be suspicious for money laundering and are used as basic guidelines for the said legal persons. Furthermore in some cases the above-mentioned authorities have issued objective criteria for transactions that should always be examined with special attention and if after the examination there are still doubts as to the lawful origin of funds, they should be treated as suspicious.

82. In **Hungary**, based on the AML Act the Ministry of Finance, the National Police Headquarters, the Supervisory Authorities and the Chamber of Auditors have issued guidelines to the financial service providers.

According to the guidelines being in force (AML Act), suspicions transactions are:

<u>Suspicious transactions (accountants and auditors):</u>

- submitting false information by the customer on itself, the beneficial owner or a given business event;
- issuing or acceptance of documents on fictitious economic events;
- acceptance of documents on economic events relating to non-existent or unidentified business organisations (enterprises);
- money transfers, cash movements of unknown origins, without proper legal titles (not supported by statutory rules, statements made by customers or contracts or agreements);
- in the case of entrepreneurs the booking of extraordinarily high sales revenues that are not matched by proportionate costs (cost increases);
- increasing net worth by unusually large amount of cash or provision of an extraordinarily large owner’s loan which is not justified by the operation of the enterprise;
- request or order concerning the booking of invoices made out on fictitious economic events or of unidentified invoices or receipts;
- manipulation, altering or falsification of data or documents;
- regular and large amount of unjustified surplus inventories or shortages of inventories, without actual specification of the causes of or reasons for such;
- a large amount investment effected by a business organisation operating with a minimum amount of net worth (equity) not justified by a loan or credit taken out in a regular way;
- regular settlement of liabilities or requirements of the customer by others or that of others by the customer without contract or agreement;
- issuance of invoices or receipts for actually not performed business activities;

- currency transactions of unusually large amounts or of unusual denominations.

Suspicious transactions (high-value trader):

- Where a customer has submitted false information on a given business event or its activities;

- Establishment of the purchase price of a high value item in an amount that differs from the market price by an unusually high percentage;

- Sale of the item immediately after its purchase or sale if in view of all circumstances of the transaction it entails an unreasonably high rate of loss.

Suspicious transactions (real estate agent):

- Where a customer has submitted false information on a given business event or its activities;

- Establishment of the purchase price of item in an amount that differs from the market price by an unusually high percentage;

- Sale of an item immediately after its purchase or sale if in view of all circumstances of the transaction it entails an unreasonably high rate of loss.

83. While these set out some basic guidelines in relation to the implementation of the anti-money laundering provisions, each institution is required to draft its own internal regulations based on the model rules. It should be noted that it is almost impossible to prepare a complete list of behaviours and conditions that should be treated as information, fact or behaviour indicating money laundering. However, the above mentioned guidelines set up a list of elements which in the case of Insurance Companies may give rise to suspected money laundering. These are for instance on the customer side: payment in large amounts of cash for a short-term and quickly re-purchasable life insurance contract or annuity, significant increase before maturity of life-insured sums by paying in cash, significant premium amounts regularly paid in cash by economic operators, payment from a third party by cheque issued for substantial sums to the benefit of the customer, payments by several persons for the same insurance contract etc. A payment is considered substantial if it exceeds 1 million HUF with regard to the customer's personal position as well. Short-term life insurance contract is considered a contract for 1 to 3 years.

84. On the employee side the following may give rise to suspected money laundering: changes in lifestyle such as high spending, taking holidays, changes in performance of the employee (e.g. significant increase in cash payments), any business relation between the employee where the identity of the final beneficiary or partner is unclear etc. As far as the Financial Service Providers are concerned the following facts may give rise to suspected money laundering in the case of cash transactions: unusually high amount of cash paid for an individual or corporate account which is normally paid by cheque or in a way other than cash payment, significant amount of cash payment by an individual or corporation to be transferred in a spot transaction or very soon to a destination of no relationship with the customer, frequent exchange of convertible currencies into other convertible currencies, unusual practices by customers in general banking services (e.g., a customer has held a large amount for a long period of time in a non-interest bearing account), several individuals who deposit large amounts of money in the same account without appropriate reasons, transactions conducted with the assistance of “no name” off-shore companies (where the owner is unknown), customer transfer order without identifiable beneficiary, etc.

85. The following transactions relating to investment and capital accounts should be treated as suspicious: enhanced demand for investment services where the source of funds is unclear or unrelated to

the customer's core activity, buying precious securities for cash, transfer of equity capital paid in by a non-resident to a foreign country in a short time etc. In the field of loan transactions, suspicious transactions are the following: customers who suddenly repay their problematic loans with respect to their conditions, application for loan with collateral where its origin is unknown or inconsistent with his or her financial position. In the casinos the following may give rise to the suspicion of money laundering: regular buying of tokens by means of a large amount of notes of small denominations, if the gambler applies for a certificate of winnings of a sum higher than his or her real winnings, etc.

86. In **Italy,** great importance is attached to the active co-operation requested from the persons and entities obliged to report transactions which are likely to involve funds of illegal origin and who are guided in performing their task by the definition of "suspicious transactions" provided by law. Such entities are helped in performing their task by the definition of suspicious transactions, which is provided for by the Law. According to articles 6 and 41 of Legislative Decree 231/2007, the transactions to be reported are those which, by virtue of their characteristics, entity or nature, or by virtue of any other circumstances that are recognised because of the function performed, also taking into account the economic capacity of and the activity carried out by the persons and entities to which it refers, leads one to believe, based on the facts available to him, that the money, assets or goods involved may derive from intentional crimes or may be used for Terrorism Financing (covered under Articles 2 and 41 of Legislative Decree 231/2007.

87. To provide further assistance in the detection of suspicious transactions, some guidelines have been issued by the Bank of Italy in which several indicators of anomaly have been specified of banks' and insurance companies' transactions. Such guidelines are applicable also for other categories of reporting entities, provided that the relevant differences are taken into account. The guidelines are subdivided into different sections dealing with indicators related to, respectively, anomalies for: cash transactions, securities transactions, cross-border transactions, other transactions and services, use of accounts and customer behaviour.

88. In addition, UIC Operating Instructions of 24 February 2006 addressed respectively to legal professionals and non-financial intermediaries (DNFPBs: designated non-financial businesses and professionals) set forth indicators relevant to individual sectors to assist DNFBPs in detecting STRs related to money laundering.

89. Some general indicators specified in the guidelines, applicable to all types of transactions, are in particular worth mentioning. Transactions should be deemed as anomalous if:

- They appear to be disproportionately large or economically unwarranted in relation to the person effecting them or the account with the intermediary;

- They are of the same kind repeated at a single establishment in a way that suggests the purpose is concealment (e.g. subdividing transactions in order to avoid recording requirements);

- They are carried out frequently on behalf of third parties who never appear in person, unless they clearly reflect the practical or organisational needs of the customers, especially when pretexts or unverifiable reasons are adduced (e.g. illness, other engagements).

- They are requested through order containing obviously false or incomplete information that suggest the purpose is the deliberate concealment of essential information, especially in connection with the persons involved.

90. In **Ireland,** Section 57 of the Criminal Justice Act 1994 requires the reporting by persons to whom section 32 of the Act applies of information concerning offences under sections 31 and 32 of the Act. This includes reports of transactions suspected of involving the proceeds of crime.

91. In **Japan,** Article 54 of the Law for Punishment of Organised Crimes, Control of Crime Proceeds and Other Matters stipulates as follows: Any bank or other financial institution provided for in the Cabinet Ordinance or any other person provided for in the Cabinet Ordinance (hereinafter referred to as a "financial institution or the like" in this article) shall promptly report to the Minister in charge (the Commissioner of the Financial Supervisory Agency in cases where the Minister in charge is the Financial Reconstruction Commission, and a prefectural governor in the case of a financial institution or the like specified in the Cabinet Ordinance) those matters provided for in the Cabinet Ordinance in accordance with the provisions of the Cabinet Ordinance, when there is a suspicion that the property received by such financial institution or the like in the course of its business provided for in the Cabinet Ordinance is crime proceeds or the like or drug crime proceeds or the like, or when it is deemed that there is a suspicion that the other party to a transaction for such business of such financial institution or the like is committing an act constituting an offence provided for in Article 10 or in Article 6 of the Anti-Drug Special Law in connection with such business.

92. In **Korea**, Articles 2 and 4 of the Financial Transaction Reports Act prescribes that reports should be made on suspicious financial transactions if there are reasonable grounds to suspect:

- The assets received with respect to financial transactions are illegal, or that a person conducting a financial transaction is laundering money; or

- A person conducting a financial transaction is dividing the money for the purpose of evading disclosure and the total amount of the divided transaction exceeds the aforementioned amount.

"Illegal assets" means assets related to serious crimes including specific crimes and drug related crimes (criminal proceeds, property derived from criminal proceeds and any other property in which either one of the above properties is indistinguishably mixed with other kinds of property).

"Specific crimes" covers 36 types of crimes provided in 24 laws including organised crimes such as forming criminal organisations, large economic crimes such as smuggling and the corruption of employees of financial institutions.

"Drug-related crimes": proceeds associated with drug-related crimes as prescribed in the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp.

"Money laundering" means disguising the fact of acquisition and disposition of illegal assets or concealing such assets; and disguising the fact of acquisition and disposition of assets for the purpose of committing tax crimes by using foreign exchange transactions and international transactions.

93. Guidelines for anti-money laundering and suspicious transactions are prepared by the association of financial institutions.

94. In **Luxembourg,** in general everything that may be an indication of money laundering has to be reported. La Commission de Surveillance du Secteur Financier has informed the financial sector by letter of 25 November 1994 that when there is an indication of a suspicious transaction, this ought to be reported.

95. In **Mexico** a Suspicious or Unusual Transaction shall be understood as follows. “Any transaction carried out by any legal or natural person that according to the institution, and pursuant to General Provisions may be framed under the terms of acts or transactions referred to in article 400 Bis, Federal Penal Code, based on any of the following elements: amount, frequency, type and nature of the transaction; place, area or zone where it is carried out; background and activity of the legal or natural person, as well as criteria contained in standard handbooks which the financial entities shall develop and register with the Secretariat of Finance and Public Credit”. Additionally, within the Provisions, and in the standard handbooks, examples are provided, but reportable transactions are not limited to these.

96. In the **Netherlands,** instead of a legal definition of an “unusual transaction”, there is a wide range of indicators provided in the guidelines, on which the provider of the financial services decides whether a transaction is ‘unusual’ or not. In particular, each large transaction must be checked against the guidelines (indicators) to see if it has to be reported as ‘unusual’. These guidelines consist of both objective as well as subjective indicators. For instance, one of the objective criteria is the amount of the money concerning the transaction. If according to the guidelines a transaction is considered to be unusual, a report has to be made to the FIUNL. Finally, after investigation of a reported unusual transaction the FIUNL decides whether a transaction will be passed on to the law enforcement authorities as a suspicious transaction.

97. In **New Zealand,** Guidance Notes for Financial Institutions were issued by the NZ Police, Financial Intelligence Unit, following the enactment of the Financial Transactions Reporting Act 1996. The guidelines define a “suspicious transaction” as: A transaction that is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of customer. The following guidelines may be used as indicators of suspicious transactions:

1. For no apparent or logical reason the individual travels a great distance to use an institution's services when it is known that the equivalent is available much closer to their home.

2. Unusually large cash deposits made by an individual or company whose ostensible business activities would normally be generated by cheques and other instruments.

3. Substantial increases in cash deposits of any individual or business without apparent cause.

4. Customers who seek to exchange large quantities of low denomination notes for those of higher denomination.

5. Frequent exchange of cash into other currency where there appears no logical explanation for such activity.

6. Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.

7. Large cash deposits locations using ATM or drop boxes thereby avoiding direct contact with the bank staff.

8. Customers who insist on using an institution’s services for transactions not within that institution’s normal business and for which there are other firms with publicly acknowledged expertise.

9. Customers who are reluctant to co-operate with verification of their identity or provide false or misleading information.

10. Customers who wish to buy an insurance or investment product and seem to be more interested in cancellation or surrender terms.

11. Customers who for no apparent or logical reason ask to cancel or surrender a long-term investment soon after setting up the contract.

12. Customers who wish to invest significant sums using cash, or make top-up payments using cash.

13. Customers who wish to make an investment that has no obvious purpose.

14. Customers who ask for settlement to a third party where there appears to be no apparent reason for the investor to be acting on someone else's behalf and where it would appear simpler or more logical for payment to be made to the original investor.

98. In **Norway,** regulations as well as guidelines give guidance on what may constitute a suspicious transaction. Regulations on Identification and Measures to Combat Money Laundering laid down by the Ministry of Finance provide:

Among the circumstances that may trigger the duty to carry out enquiries, are:

- that the transaction appears to lack a legitimate purpose,
- that the transaction is unusually large or complex,
- that the transaction is unusual in relation to the customer's habitual commercial or personal transactions,
- that the transaction is done with a customer in a country or area without satisfactory actions against money laundering, or
- that the transaction is otherwise of an anomalous nature.

In the guidance notes (laid down by "Kredittilsynet", the Norwegian Financial Supervisory Authority) some other signals of suspicious transaction are mentioned:

- Swift and extraordinary payment of loans by cash
- Use of banker's drafts that are constantly renewed
- Large exchange operations when old notes become invalid
- Large exchange operations at the introduction of EURO
- Use of unusual means of payment in relation to the underlying operation
- Large cash-transactions
- Use of payment-cards when an unusually large number of transactions take place within a short time-period.

99. **In Portugal,** the law does not establish a definition of a suspicious transaction. However, there are some guidelines in different legislation. As a result, suspicious transactions may be described as those which, by their amount or by their nature, are not in accordance with the common standard rules or behaviour.

100. In the **Slovak Republic** a suspicious banking transaction shall be one deemed suspicious by a bank or a branch of a foreign bank (hereinafter, "Bank") on the basis of the nature of the transaction or information relating to it. In particular, this shall refer to:

1. a one-off cash deposit or withdrawal by a customer in excess of SKK 500,000 (US$ 12.000) of foreign currency equivalent of the same amount;

2. frequently recurring cash deposits of amounts less than SKK 500,000 (US$ 12.000) or its foreign currency equivalent, resulting in a substantial overall deposit or when such deposits are subsequently transferred to destinations not commonly used by the customer;

3. non-cash customer or third-party transactions crediting an account and followed by subsequent cash withdrawals by the customer for purposes typically taken care of by the other payment instruments, such as cheques, letters of credit or bills of exchange;

4. frequent deposits effected using large numbers of small denomination bank notes;

5. the use of letters of credit and other payment instruments that are common abroad but not customary in the course of the customer's known business transactions;

6. frequent purchases of travellers cheques denominated in foreign currencies followed by their repeated sales back to the Bank;

7. cash payments by the customer in consideration of bank drafts or other negotiable securities;

8. frequent conversions of cash into foreign currency without depositing that currency in a bank account;

9. deposits followed by instantaneous withdrawals or transfers to other accounts;

10. customer activities that consist in opening multiple accounts, whose number evidently contradicts the nature of the customer's business, and fund transfers between such accounts;

11. transactions in customer accounts that do not conform to the nature and scope of customer business;

12. reluctant disclosure or failure to disclose information relating to a banking transaction or attempts to minimise disclosure or disclosure of information which is difficult to verify or whose verification is associated with substantial costs;

13. attempts by a customer to enter into a contractual arrangement with the Bank or to perform a banking transaction based on an inadequately defined project;

14. the number of transactions in an account in the course of one or several consecutive days, which is contrary to the customer's usual monetary transactions;

15. fund transfers from abroad to a non-transacting customer account or transfers from a non-transacting account to which an amount was credited from abroad;

16. loans secured by cash in a third party foreign-currency deposit, the third party being less known to the Bank than the borrower;

17. the early repayment of a loan, especially when the origin of the funds used to repay the loan is unclear or when the customer's track record suggests past difficulties in repaying loans;

18. recurring fund transfers to and from foreign banks with business addresses in high-risk areas;

19. the purchase and sale of securities in excess of the customer's common practice.

101. In **Spain,** a suspicious transaction is defined as any event or transaction that raises indications or the certainty of being related to money laundering derived from any serious crime (punishable by a sentence of three years or more), as well as any circumstances connected with that event or transaction which subsequently occur. Other transactions that can be considered suspicious are those that do not fit with the nature, size or the pattern of transactions of the customers involved and for which no legitimate economic or business explanation is apparent. The following situations are specifically mentioned:

1. The nature or volume of a customer’s operations with the entity is not consistent with his business activity or records.

2. For no apparent reason a bank account receives cash deposits made by many different people or the same person makes multiple cash deposits in one account.

3. Funds received from or sent to bank accounts located in certain countries or territories determined by order of the Minister of Economic and Financial Affairs.

4. Transfer received when the identity of the person making the transfer or the account number of the bank account of origin have been omitted.

5. Complex or unusual operations or those with apparently no legal or economic purpose in accordance with the types defined by the CPBCIM. These types will be published or otherwise made known to reporting entities directly or through their industry associations.

102. In any event, information on the following operations should be furnished to the SEPBLAC:

1. Transactions involving physical movements of cash, traveller’s cheques, cheques or other bearer documents etc. (unless they are credited or debited to a customer’s account), whose value exceeds EURO 30000 or its equivalent in foreign currency;

2. Transactions by or with natural or legal persons resident or acting for residents in countries or territories determined by order of the Minister for Economic and Financial Affairs, wherever the amount of such transactions exceeds EURO 30000, or its equivalent in a foreign currency.

When clients split one transaction into several to elude those provisions, the amounts of each transaction are to be added together and the transaction duly reported by the obligated parties.

103. In **Sweden,** any suspicious transaction that indicates money laundering is to be reported to Finanspolisen. According to the Bill on Money Laundering (prop. 1992/93:207 pp. 19-21), the amount of

the transaction and the way it is carried out might indicate money laundering. Also other factors, such as the behaviour of the customer, can be indicative. The following examples serve as a guideline:

- one or several transactions seem unusual regarding the institute's experience of the involved persons
- the structure of a transaction implies that its underlying purpose is illicit or that the economical incentive cannot be grasped
- big amounts are deposited and shortly thereafter withdrawn without, as known, that the customer carries out any business that explains the transactions
- that a transaction apparently deviates from what is normal for the institute or the customer, and
- that an account that has been inactive is suddenly and without explanation being used to a great extent.

According to the Financial Supervisory Authority's guidelines (FFFS:8, 4 §) specific attention should be paid to:

- transactions involving persons or companies in countries without acceptable money laundering legislation or where it is otherwise difficult to obtain information about the customer, and
- transactions connected to the conversion of national currencies into EURO.

104. In **Switzerland,** Article 9 of the Law on Money Laundering provides that a financial intermediary, who knows or suspects on well based grounds, that property rights are connected to money laundering, originate from a crime, or are in the power of a criminal organisation, should immediately inform the Money Laundering Reporting Office (MROS).

105. In **Turkey,** based on the Act No. 4208 on Prevention of Money Laundering, Communiqué No. 2 of the MASAK defines a suspicious transaction as "the case where there is a suspicion or a suspicious situation in which money or convertible assets used in transactions carried out or attempted to be carried out within the obligors mentioned above or through them, stem from illegal activities".

106. **United Kingdom** legislation does not define what constitutes knowledge, suspicion or reasonable grounds to know or suspect that proceeds are being laundered. That assessment can only be made in the context of the knowledge that an institution should have about their customers' business, and on the nature of the transaction or activity in question. Industry guidance (or, in case of certain businesses, guidance produced by HM Revenue & Customs) can however assist those working in relevant institutions to make that assessment.

107. In the **United States,** depository institutions are required to file reports on transactions involving at least $5,000 where the depository institution knows, suspects, or has reason to suspect that:

1. the transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

2. the transaction is designed to evade any requirements of the Bank Secrecy Act record keeping or reporting requirements; or

3. the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the depository institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

C. *Please identify the types of persons/entities required to report suspicious transactions.*

108. In all the countries that responded to the questionnaire, banks are required to report suspicious transactions sometimes including central banks as well. This obligation is not limited to banks. In all the countries the obligation to report also is imposed on the non-bank financial sector as a whole or specific parts of it, such as investment companies, stock brokers, credit card companies, foreign currency dealers, insurance companies, mortgage companies, money transmitters, etc.

109. Some countries also require the reporting of suspicious transactions by the non-financial sector or parts of it, like the gambling sector, lawyers, accountants, notaries, estate agents, to report suspicious transactions (**Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Korea, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Switzerland, Turkey,** and the **United Kingdom).**

110. In **Argentina,** Article 20 of Act 25.246 specifies those persons who are required to report suspicious transactions. In addition to the financial sector this includes dealers in high value goods (works of art, antiques, stamp and coin collections, jewels and precious metals), carriers of valuables, public notaries and public administration agencies exercising supervisory duties on economic and legal activities.

111. In **Austria**, dealers in high-value goods (such as precious stones or metals) or works of art as well as auctioneers are covered by the AML regime and are required to report suspicious transactions.

112. In **France**[9], persons and entities involved in the trade of jewels, precious stones, precious metals, works of art or antiques are required to report suspicious transactions.

113. In **Germany** gambling casinos, credit institutions, financial services providers, financial institutions and insurance companies offering accident insurance with premium refund or life assurance policies are required to report. In addition, there is a reporting obligation imposed on lawyers, accountants, notaries, tax advisers, real-estate brokers and other persons that professionally manage other person's assets. Also, any other person carrying on a business, e.g. a car dealership, must report the acceptance of cash in excess of €15 000.

114. **Italy** includes intermediaries in the gold sector as well as persons operating in other sectors such as custody and transfer of cash, securities or other assets, be it by means of or without the use of security guards; dealing in antiques, operating auction houses or art galleries, manufacturing brokering and dealing with valuables, including import/export.

115. **Korea** includes the Korea Credit Guarantee Fund, the Korea Technology Credit Guarantee Fund, investment partnerships for new technology projects, small and medium enterprise establishment investment companies and partnerships, corporate restructuring companies and limited partnerships, forestry co-operatives and the National Forestry Co-operative Federation and bureaux de change.

[9] Law n° 2004-130, of 11 February 2004.

116. In the **Netherlands** dealers in high value goods (such as precious stones or metals, expensive cars and boats, works of art and antiques), the gambling sector, lawyers, notaries, estate agents and also the tax administration are required to report suspicious transactions.

117. In **Norway**, according to Act 20 June 2003 No. 41 relating to measures to combat money laundering of the proceeds of criminal activities, etc. (Money Laundering Act) section 4, the Act applies to the following undertakings and legal persons: financial institutions, Norges Bank (Central Bank of Norway), e-money companies, persons and undertakings operating activities consisting of transfer of money or financial claims, investments firms, management companies for securities funds, insurance companies, pension funds, postal operators in connection with provision of postal services, securities registers, state authorized and registered public accountants, authorized accountants, estate agents and housing associations that act as estate agents, insurance brokers, project brokers, currency brokers, lawyers and other persons who provide independent legal assistance on a professional or regular basis when they assist or act on behalf of clients in planning or carrying out financial transactions or such transactions concerning real property or movable property as are referred to in item 8 of annex I to Directive 2000/12/EC, dealers in objects[10] (including auctioneering firms, commission agents and the like) in connection with cash transactions of NOK 40 000 or more or a corresponding amount in foreign currency. The Act also applies to persons and undertakings that, in return for remuneration, offer services corresponding to those referred to in items 1 to 8 of annex I and other undertakings whose main activity is subject to items 2 to 12 and 14 of annex I relating to the taking up and pursuit of the business of credit institutions, including the provision of loans, stock broking, payment transmission, financial leasing, advisory services and other services associated with financial transactions and letting of safe deposit boxes.

118. The Money Laundering Act also applies to persons and undertakings that perform services on behalf of or for persons or undertakings obliged to report.

119. When a lawyer acts as manager of a bankrupt's estate, the provisions laid down in the Money Laundering Act sections 7, 8, 11, 16 and17 shall apply.

120. In **Poland** persons and entities required by the AML/CFT regulations to report on suspicious transactions are: entities conducting activity involving games of chance, mutual betting and automatic machine games and automatic machine games with low prizes, state public utility enterprise Poczta Polska (Polish Post), notaries public, counsels, legal advisers, foreign lawyers, competent auditors, tax advisers, entrepreneurs running auction houses, antique shops, conducting letting and factoring activity, activity in the precious and semi-precious metals or stone trade, commission sale, giving loans on pawn (pawnshops), real estate agents and foundations.

121. The King (the Ministry of Finance) may in regulations lay down provisions concerning the application of this Act to gaming activities, debt collection agencies and regulated markets. So far, the Ministry has not used this competence.

122. In **Spain,** persons and entities required to report suspicious transactions are casinos; estate agents and those involved in real estate development and brokerage; professional auditors, accountants or tax advisers; notaries, lawyers and court representatives; traders in jewellery, precious stones and metals, art works and antiques, postage stamps and coins; those involved in the professional transport of cash or means of payment; postal services in relation to international transfers and drafts, and lotteries in relation to the payment of prizes.

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[10] This shall only apply to transactions involving payment cards when so provided in regulations laid down by the Ministry.

123. **Turkey** requires sports clubs to report as well.

124. In the **United Kingdom,** the Proceeds of Crime Act 2002 requires all those working in the "regulated sector" to report to the Serious Organised Crime Agency whenever they know, suspect or have reasonable grounds to know or suspect that activities or transactions involve the laundering of the proceeds of any crime including tax evasion. This also applies to institutions outside the regulated sector that have chosen to appoint "nominated officers". (The "regulated sector" includes financial institutions, legal advisers, accountants, auditors, tax advisers, insolvency practitioners, casinos, estate agents and dealers in goods who accept or are prepared to accept cash payments of €15,000 or over.)

125. In addition, any person who knows or suspect that they are about to commit or have committed an offence involving the laundering of the proceeds of any crime, including tax evasion, must report this to and seek consent to proceed with the activity from, the Serious Organised Crime Agency, a police officer or an officer of HM Revenue & Customs in order to gain access to the legal defence to a charge of money laundering. All reports in the UK where these are made to meet legal obligations must be made as soon as is practicable. It should be noted that the legal defence is not gained automatically.

***D**. Please identify the national agency or body with which suspicious transaction reports are required to be filed. If the reports are required to be filed with more than one agency or body, please describe briefly the responsibilities that each agency or body has with respect to the information (e.g., compilation of data, analysis of data, identification of transactions to investigate).*

In	**Reports are required to be filed with**
Argentina	Financial Reporting Unit (UIF – Unidad Informaión Financiera)
Australia	Australian Transaction Reports & Analysis Centre (AUSTRAC)
Austria	The Money Laundering Unit (Geldwälschemeldestelle), which is part of the CISA (Criminal Intelligence Service Austria) in the Federal Ministry if Internal Affairs.
Belgium	CTIF/CFI
Canada	The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
The Czech Republic	Ministry of Finance Financial Analytical Unit
Denmark	The Money Laundering Secretariat, SOK
Finland	The National Bureau of Investigation/Money Laundering Clearing House (Rahanpesun selvittelykeskus/Keskusrikospoliisi)
France	TRACFIN, service spécialisé du Ministère de l'Economie des Finances et de l'Industrie
Germany	Responsible law enforcement authorities
Greece	Committee of Financial Crime Investigations (CFCI)
Hungary	The National Police headquarters
Ireland	Money Laundering Unit (GBFI)
Italy	Ufficio Italiano dei Cambi (UIC)
Japan	The Financial Authorities supervising the financial institution which files the report
Korea	The Korea Financial Intelligence Unit (KoFIU)

In	Reports are required to be filed with
Luxembourg	Service Anti-Blanchiment at the Parquet du Tribunal d’arrondissement de Luxembourg
Mexico	Secretariat of Finance and Public Credit’s Financial Intelligence Unit-DGAIO.
The Netherlands	Financial Intelligence Unit Netherlands (FIUNL)
New Zealand	New Zealand Police, Financial Investigation Unit
Norway	ØKOKRIM, The National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway
Poland	The Prosecutor, The General Inspector of Financial Information (GIFI)
Portugal	Ministério Público
Slovak Republic	Financial Intelligence Unit
Spain	The executive service of Comisión de Prevención del Blanqueo de Capitales e Infractions Monetarias (SEPBLAC)
Sweden	The Swedish Financial Unit at the National Criminal Investigation Department
Switzerland	Money-Laundering Reporting Office Switzerland (MROS)
Turkey	MASAK
The United States	FinCEN
The United Kingdom	Almost all reports (disclosures) are made to the Financial Intelligence Unit based within the Serious Organised Crime Agency. Reports can also be made to a police officer or an officer of HM Revenue & Customs, but in practice this is very rare.

126. In **Germany,** suspicious financial transactions must be reported to the responsible law enforcement authorities. The Money Laundering Act does not provide any further details. In practice, reports are made to the central financial investigation unit at the Bureau of Criminal Police of the respective Lander or to specific public prosecutor's offices. The central financial investigation units at the Bureau of Criminal Police of the Länder are staffed principally by criminal investigation officers of the police service and by customs investigation officers. These units compile and analyse the reports they receive and in co-ordination with the public prosecutor’s office - either conduct the necessary investigations themselves or assign them to other law enforcement authorities.

127. In **Hungary,** the reports on suspicious transactions are required to be filed with the National Police Headquarters (the financial service provider should appoint one or more persons with the responsibility of forwarding to the Police the forms containing reports submitted by employees on transactions suspected to be associated with money laundering - "liaison officer"). Based on the reports the police may request for additional information relating to suspicious transactions from the financial service provider. These organisations must provide the police with all the requested data (including any secret information or data).

128. In **Italy,** the UIF has been since 1997 (then as the former UIC) the sole recipient of suspicious transaction reports. It carries out financial analysis of the reports, asking the intermediaries to provide further specific data or information and availing itself of all the databases at its disposal. It can also ask for the co-operation of the sector supervisory authorities and exchange information with foreign anti-money laundering units. After the analysis, which is performed from a purely financial standpoint, the UIF passes the reports on to the competent investigative bodies (the Nucleo Speciale di Polizia Valutaria of the Guardia di Finanza, which is the Italian Financial Police and, for the cases relating to investigations into Mafia-style associations only, the Antimafia Investigate Directorate) which carry out all the necessary investigations. According to the structure of the entire procedure, a precise division exists in Italy between financial analysis activity of the suspicious transaction reports and investigative activities. In performing the former, the UIF can have indirect access to the police databases; on the other hand, the police bodies start the investigation on suspicious transactions on the grounds of the content of the technical report issued by the UIF. It is noteworthy that article 151 of Law n.388 dated 23 December 2000 (now article 9 of Legislative Decree 231/2007, which came into force on 29 December 2007 and contains provisions to implement in Italy the third EU AML Directive) entitles the UIF to ask law enforcement agencies for information either taken from their database or held by them, in order to implement the information the UIF transmits to other Financial Intelligence Units.

129. In **Japan,** suspicious transaction reports have to be filed with the Financial Authorities supervising the financial institution in question. When the reporting institution has two Ministers in charge, suspicious transaction reports are required to be filed with both Ministers.

130. In **Poland,** information concerning suspicious transactions is transferred directly by the GIFI to the investigative body, which is the prosecutor; there is no intermediary agency.

131. In the **United Kingdom,** Part 7 of the Proceeds of Crime Act 2002 provides that the regulated sector must make reports to the Serious Organised Crime Agency (SOCA). "Nominated officers" in business outside the regulated sector must also send any relevant report to SOCA. However, voluntary reports made by the general public or by people working outside the regulated sector in companies without a nominated officer can still report to a police officer or an officer of HM Revenue & Customs. All suspicious activity reports received by the Financial Intelligence Unit (FIU) based within SOCA are reviewed by specialised teams and targeted intelligence is forwarded to law enforcement agencies for investigation. Police forces and other law enforcement agencies have direct access to a database containing information from all Suspicious Activity Reports received by the FIU.

E. *These questions relate to situations where tax authorities have direct access to information provided in suspicious transaction reports.*

Is the information obtained from suspicious transaction reports maintained in a centralised database? If so, do the tax authorities have access to the database? If so, under what circumstances do they have access?

If the information is not maintained on a database, do the tax authorities have access to the information? If so, under what circumstances do they have access?

Are there restrictions on the use of the information by the tax authorities (e.g., for the pursuit of tax crimes only and not for other tax purposes?)

132. Of the countries that responded to the questionnaire, only **Australia** and the **United States** grant tax authorities direct access to information on suspicious transactions. In the **United Kingdom,** HM Revenue & Customs has direct access to suspicious transaction reports. In **Ireland** with effect from 1st

May 2003, suspicious transaction reports are reported directly to the Revenue Commissioners in addition to the Irish Police. In **Argentina, Austria** (apart from customs fraud and evasion of import and export duties), **the Czech Republic, Hungary, Italy** (except for *Guardia di Finanza*, which is given access to this information in its capacity as tax police body playing the role of investigation authority for anti-money laundering activities)**, Japan, Luxembourg**, tax authorities have no access to suspicious transaction reports. In **Belgium, Canada, Denmark, France, Finland, Germany, Greece, Korea, Mexico**, **the Netherlands, New Zealand, Norway, Poland, Portugal, Spain**, the **Slovak Republic, Sweden, Switzerland** and **Turkey**, tax authorities may have, sometimes under strict conditions, access to reported suspicious transactions. See F.

133. In **Australia,** the information obtained from suspicious transaction reports is maintained on a centralised database at AUSTRAC. The Australian Taxation Office (ATO) has direct access to suspicious transactions provided to AUSTRAC by cash dealers. This accords with relevant provisions of the FTR Act and a Memorandum of Understanding (MOU) between the Director of AUSTRAC and the Commissioner of Taxation.

134. There are no specific restrictions on the use of information by the tax authorities. Section 4(1) of the FTR Act specifies "the principal object of this Act is to facilitate the administration and enforcement of taxation laws", whilst further objects of the Act are to facilitate the administration and enforcement of laws of the Commonwealth and Territories (other than taxation laws). A further objective is to make the information collected available to State authorities to facilitate the administration and enforcement of the laws of the States.

135. In the **United Kingdom**, officers of HM Revenue & Customs have access to a restricted version of the Serious Organised Crime Agency's database (ELMER) which holds details of Suspicious Activity Reports made by the reporting sector. All other Law Enforcement Agencies in the UK have similar access. The team of officers of HMRC seconded to SOCA have direct access to the full database, although use of the information is restricted if it is then passed to investigation teams in HMRC.

136. In the **United States,** the Criminal Investigation Division of the Internal Revenue Service and the Office of Investigations of the United States Customs Service have on-line access to the database of suspicious activity reports maintained by FinCEN. The Examination Division of the Internal Revenue Service has on-line access to the same database in its capacity as an auditor of Bank Secrecy Act compliance by non-bank financial institutions. It does not have access to the data for civil tax examination purposes, but it may receive particular suspicious activity reports in connection with particular examinations following a name-specific request for such information to FinCEN.

F. *These questions relate to situations where the anti-money laundering authority has the authority to provide information about specific suspicious transaction reports to the tax authority (e.g., spontaneously) or where the tax authority may make requests for information about specific transaction reports.*

Are the anti-money laundering authorities which receive suspicious transaction reports permitted to pass suspicious transaction reports on to tax authorities which they believe may involve a tax related crime (spontaneously or pursuant to a request)?

If so, how is the determination made? Are any guidelines given to anti-money laundering authorities to make this determination? If so, please provide a copy.

137. In **Australia, the United Kingdom,** and the **United States**, the tax authorities have direct access to information provided in suspicious transaction reports, so this question is not applicable to them. In

Ireland, as the Revenue Commissioners receive suspicious transaction reports directly with effect from 1st May 2003 this question is not applicable to them.

138. In **Argentina, Austria** (apart from customs fraud and evasion of import and export duties) **the Czech Republic, Japan**, **Luxembourg** and **Mexico,** tax authorities have no access to suspicious transaction reports. In **Finland, France, Hungary** and **Luxembourg,** the anti-money laundering legislation stipulates that information on suspicious transactions may only be used to combat money laundering, although France covers tax crimes as a money laundering offence. In **Hungary** an exception is made in the case of criminal proceedings initiated in connection with another criminal offence.

139. In **Belgium, Canada, Denmark, France, Finland, Germany, Greece, Italy** (only Guardia di Finanza in its capacity as tax police body)**, Mexico**, **the Netherlands, New Zealand, Norway, Poland, Portugal, Spain**, the **Slovak Republic, Sweden, Switzerland, Turkey** and the **United Kingdom**, tax authorities may have access to reported suspicious transactions. Sometimes there are very strict conditions to this access, or there is only indirect access through a judicial or law enforcement authority.

140. In **Austria,** the tax authorities do not have direct access to the data bank of the FIU. The Austrian FIU may only pass on information to fiscal authorities when the suspicious activity relates to customs fraud and evasion of import and export duties. Other fiscal offences are specifically prohibited from being disclosed by the FIU to fiscal authorities, but it is intended to include all tax crimes punishable by at least three years. The legislative process is in preparation.

141. In **Belgium**, when the body responsible for treatment of financial information (CTIF) establishes that an transaction which has been reported, contains some serious indications of money laundering or financing of terrorism originated from an act

- constituting an offence linked to serious and organised tax fraud which makes use of a complex mechanism or which uses schemes with an international dimension, or

- constituting an offence within the competences of The Customs and Excise Duties Administration and,

- that it transmits this information to the judicial authorities and it also informs the Ministry of Finance about the transmission.

142. It might also concern cases linked to VAT carrousel frauds and the traffic of goods and merchandise.

143. Besides the direct communication of the CTIF, the tax administration is likewise informed indirectly by the judicial authorities. They have actually the obligation to provide the tax authorities upon request with any information they have to enforce taxation. Furthermore, the Public Prosecutor has the obligation to inform the Ministry of Finance immediately of any suspicious of fraud he may have concerning direct and indirect taxes.

144. In **Canada,** the information obtained from suspicious transaction reports will be maintained in FINTRAC database. There is no direct access for the tax authorities. The Proceeds Crime (Money-Laundering) and Terrorist Financing Act (PCMLTFA) clearly prohibits any direct access by tax authorities to the information contained in suspicious transaction reports provided to FINTRAC. Only if FINTRAC has reasonable grounds to suspect that "designated information" would be relevant to investigating or prosecuting both money laundering and tax evasion offences, will FINTRAC provide the Canada Revenue Agency with that information. The Canada Revenue Agency may use the information for the pursuit of any

tax matter. "Designated information" (see section 55(7)(a) to (e)) is defined in the Act and regulations and is limited to certain identifying information related to the reported transaction. The PCMLFTA sets the conditions under which “designated information” contained in suspicious transaction reports (as well as prescribed transaction reports and cross-border currency reports) is permitted to be and will be disclosed to the Canada Revenue Agency (refer to sub-section 55(3) of the PCMLFTA). FINTRAC shall disclose designated identifying information to the Canada Revenue Agency in instances where it:

i) has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence, and

ii) the Centre determines that the information is relevant to an offence of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue.

145. Suspicion of money laundering is the key criteria that must be met first and foremost. If the Centre had reason to suspect tax evasion, but no money laundering, it could not, under the provisions of the PCMLFTA, disclose this information to Canada Revenue Agency.

146. In **Denmark,** the Money Laundering Secretariat or the police district handling further investigation informs the tax authorities of the relevant facts for taxpayers’ tax liability or tax assessments. There are no guidelines since this exchange of relevant information between public authorities is a normal part of the co-operation between Danish authorities. This is the case regardless of whether the information is from a STR (Suspicious Transaction Report) or from other sources on which no special restrictions are imposed.

147. In **France,** the entity with which suspicious transaction reports are required to be filed (TRACFIN) is not allowed to provide the tax authorities with any information. The other authorities involved in combating money laundering, like the judicial authorities, may send any information to the tax authorities in order to have it verified or to start a fiscal investigation.

148. In **Finland,** information obtained during a police investigation (intelligence phase) that has been initiated due to a suspicious transaction report is confidential and may be used for the prevention and clearing of money laundering offences only. If a pre-trial investigation is initiated due to a suspicious transaction report or a pre-trial investigation is already in progress, information may be disseminated to parties that are involved, including the tax authorities as a complainant.

149. In **Germany,** the tax authorities have no direct access to information provided in suspicious transaction reports. Once criminal proceedings have been instituted for a money laundering offence, the tax authorities must be informed of this and must be notified of the facts on which the proceedings are based. Hence there is no need to determine whether or not the information is of use to the tax authorities. The tax authorities may make unrestricted use of such information both for taxation purposes and for criminal proceedings in tax fraud cases. Notwithstanding the reporting obligations under the Money Laundering Act, all courts and authorities are, in principle, obliged to notify the tax authorities if there are grounds to suspect tax fraud.

150. In **Greece** the information obtained from suspicious transaction reports is maintained in the Committee of Financial Crime Investigation’s centralised database. Tax authorities have no access to this database. If the information is submitted to the public prosecutor, the latter is competent to decide to provide the tax authorities with this information. There are no restrictions on this decision.

151. In **Hungary** the anti-money laundering authorities are not permitted to pass suspicious transaction reports on to tax authorities because the tax authorities are not competent in cases involving tax related crimes (except to the Criminal Directorate of the Hungarian Tax and Financial Control Office). The National Police Headquarters may use the information concerning suspicious transactions only for the purposes of the fight against money laundering, except in the case of criminal proceedings initiated in connection with another criminal offence.

152. **Italy** pointed out that article 6 of the 91/308/CEE Directive states as a general rule that the information provided to the competent authorities of the Member States can be utilised only for anti-money laundering purposes. In order to strengthen the efficiency of the anti-money laundering measures and enhancing the collaboration of the disclosing entities, Italian legislation provides for a strict confidentiality regime applicable to the suspicious transactions reports filed with the UIF. The issuing of the reports is itself confidential; as to their content, it can be disclosed only to the investigative agencies to which the UIF transmits the reports after the analysis conducted on the financial profile of the transactions involved. All the information held by the UIF related to the implementation of the suspicious transaction reports procedure is covered by official secrecy, even with respect to Public Administration entities. Official secrecy applies even when a penal proceeding is started. The identity of the persons and of the intermediaries involved in the reports may be revealed only when the judicial authorities, in a warrant specifying the grounds, hold that it is indispensable for the criminal investigation they are conducting. The information obtained from suspicious transactions is maintained by the UIF in a centralised database.

153. In **Japan,** the information obtained from suspicious transaction reports is maintained in a centralized data base at JAFIC. However, tax authorities do not have access to this database and JAFIC is not authorized to provide information about specific suspicious transaction to tax authorities.

154. In **Korea**, the Korea Financial Intelligence Unit (KoFIU) maintains information obtained from suspicious transaction reports on a centralised database. The KoFIU has the authority to provide information about specific suspicious transaction reports to the tax authority. Under Article 7(1) of the Financial Transaction Reports Act it may report to the tax authority the information on suspicious transactions and analysed information when such information is regarded necessary for investigations into criminal cases related to tax and customs.

155. In **Mexico** the information obtained from suspicious transactions is maintained in the central financial database of the Financial Intelligence Unit Computer Centre (DGAIO) but tax authorities do not have direct access to it. On February 1993, the General Attorney's Office and the Secretariat of Finance and Public Credit established a co-ordination agreement on drug-related crimes matters was officially issued. Said instrument provides that as soon as the Federal Public Prosecutor submits the preliminary investigation, and has verified the corpus delicti and the strong suspicion of guilt of the suspect; a written report will be made to the Secretariat of Finance and Public Credit. The fiscal authorities will be allowed to visit the alleged criminal, and examine his statements, accounting, assets and merchandise. Likewise, the fiscal authorities will be empowered to verify if the suspect by himself or through a third party is a partner or shareholder.

156. To comply with the preceding agreement, the Federal Fiscal Attorney's Office and the Under Secretariat of Income entered into a Co-ordination Agreement, to efficiently and timely execute their verification powers on fiscal matters to detect alleged money laundering transactions. The foregoing provided for in paragraph 5, article 400 Bis, Federal Penal Code, expressly establishes that whenever the Secretariat of Finance and Public Credit, during the exercise of its examination authority finds elements that enable it to presume the commission of the offences referred to in the cited, must execute its verification authority, as conferred by Law, and if applicable, file an accusation through the Fiscal Attorney's Office on the facts that could constitute the offence of transactions carried out with resources

from illicit origin (Money Laundering). Article 9, Federal Law against Organised Crime in force since November 7, 1996, establishes that whenever the Federal Public Prosecutor carries out an investigation about the activities of members of organised crime, related to the offence of transactions with resources from illicit origin, the Federal Prosecutor must co-ordinate the investigation with the Secretariat of Finance and Public Credit.

157. These co-ordination mechanisms have enabled effective collaboration between the Secretariat of Finance and Public Credit and the Public Prosecutor, to obtain evidence and elements, to lodge, in the first instance, a complaint or accusation for the offence of money laundering. Afterwards, the Public Prosecutor will bind over to the judge. Co-ordination between several agencies has enabled to obtain documents in true and expeditious manner, mainly from the financial entities.

158. In the **Netherlands,** if the FIUNL assesses the reported transactions as suspicious of any crime (including tax-crimes), the reports are passed on to the Prosecutors Office and the Police. The tax authorities have access to the database of suspicious transactions. They may actively seek access to the FIUNL's reports within the framework of an ongoing fiscal-criminal investigation. They may also be informed by the FIUNL of a suspicious transaction report if it is relevant to a serious fiscal crime. After the conclusion of the criminal case the public prosecutor can give his consent to the tax-authorities to use the information which has been gathered for tax purposes. No specific guidelines are applicable. If the FIUNL finds an unusual transaction to be suspicious, directly or after further investigation, it will pass the information on to the law enforcement authorities. The tax authorities have access only through the FIOD-ECD (Fiscal Intelligence Investigations Service – Economic Inspection Service).

159. In **New Zealand,** tax authorities do not have direct access to the Police database but indirect access to the extent that the Police can pass information to the tax authorities. The information is obtained under a Memorandum of Understanding between the Police and the Inland Revenue Department and/or directly by the tax authority using Section 17 of the Tax Administration ACT 1994. There are no restrictions on the use of information by the Inland Revenue Department. No guidelines have been issued for the determination of having the Inland Revenue Department informed as all suspicious transaction reports are made available to the IRD, which then decides what action to take. The Memorandum of Understanding, The Tax Administration Act 1994, the Official Information Act and the Privacy Act all govern the use and dissemination of information obtained.

160. In **Poland,** the General Inspector of Financial Information (GIFI) has the authority to provide information on request of directors of fiscal chambers and directors of fiscal control offices or their deputies, but only in cases relating to tax obligations. Moreover, the GIFI may provide them with information also on his own initiative.

161. In **Portugal,** tax authorities do not have access to information on suspicious transactions because it is constitutionally forbidden. Access to information related to tax crimes is only possible through a certificate from a judicial authority (Ministério Público) drawn out from the judicial inquiry into a money laundering crime. The information obtained can only be used to pursue tax crimes and to enforce tax assessments.

162. In the **Slovak Republic**, the Financial Intelligence Unit is a unit receiving the reports in the suspicious bank operation authorized to use the received reports only for the purposes of the tasks imposed by the Law on the Police Force no.171/1993 (Col. of Laws). The tasks of the Financial Intelligence Unit are specified in §2 par. 1e) and d) of the given Law as detection of crimes and identification of relevant perpetrators, co-operation in detection of tax evasion and illegal financial operations. In this context, the Financial Intelligence Unit is authorized to use the information involved in the reports on the suspicious bank operations also for the purposes of detection of tax related crimes.

163. In view of the fact that the Slovak tax authorities are not in charge of documentation and (criminal) investigation of tax crimes, they are not provided with information from reports on suspicious bank information (spontaneously). However, there may be some jointly implemented measures with the relevant tax-office in specific cases of reported suspicious bank information with the aim of checking the suspicion of a committed crime. That means the tax authorities could be involved and would have the right to access the reports of suspicious bank information when the data from such reports relate also to the taxation.

164. In **Spain**, there is no regulation that specifically establishes that information about specific suspicious transaction reports is to be passed on to the tax authorities. However, in accordance with the General Tax Law 58/2003, the SEPBLAC has to pass on to the tax authorities any data it receives in the exercise of its authority, provided that data is relevant for tax purposes.

165. In **Sweden,** information may be passed on to the tax authorities but the Swedish Financial Unit has to examine the material before passing it on to the tax authorities (i.e. information can be passed on spontaneously or pursuant to a request, but not automatically). This possibility is laid down in the secrecy law, but the Swedish Financial Unit has no experience so far in applying the law. If the information is passed on to the tax authorities, the Financial Unit has to consider the inconvenience for the person involved compared with the public damage, e.g. the aggravation of crime.

166. In **Switzerland,** tax authorities have no direct access to information on suspicious transactions obtained by the Bureau de Communication. However, indirect access is possible to information that the Bureau de communication has sent to the cantonal criminal magistrate's court. Tax authorities also may have access in cases where the fiscal law contains a provision on internal mutual assistance. On the information obtained, the fiscal pledge of secrecy has to be respected.

167. In **Turkey,** the information obtained from STRs is maintained in the database of the MASAK. Tax authorities do not have access to this database. However, the tax authorities have indirect access to this database since the various tax inspectors (Finance Inspectors, Expert Accountants, and Revenue Controllers) carry out most of the money laundering investigations. Article 22 of Act No. 5549 prohibits the MASAK staff and investigators from disclosing the secrets or other confidential information which they acquire while exercising their functions, about personalities, transactions and account statements, businesses, undertakings, properties or professions of the persons or other persons having relation with them. As explained above, tax inspectors can use the information during money laundering investigations requiring tax examinations but not to any other aim because this would contradict the secrecy provision for money laundering examinations. Also tax secrecy (article 5 of the Tax Procedure Act No. 213) and bank secrecy (article 22 of the Banks Act No. 4389) rules must be followed. Information is provided to tax authorities according to the result of pre-investigation reports with regard to money laundering cases related to tax crimes. The MASAK President makes the determination. Although there are no written guidelines, there are many taxation oriented staff members within the MASAK.

168. In the **United Kingdom,** there is a central database of Suspicious Activity Reports (SARs) to which HM Revenue and Customs may have access in certain controlled circumstances. HMRC has staff seconded to the Serious Organised Crime Agency (SOCA) These secondees have unrestricted access to SARs and are responsible for forwarding targeted intelligence to HMRC for further investigation. SOCA's ability to share or obtain information comes from the powers conferred on it through the gateways designated in the Serious Organised Crime and Police Act 2005. In addition, SOCA is a law enforcement agency and can refer intelligence to the Assets Recovery Agency (ARA), or request the ARA to commence a civil recovery or taxation investigation once a criminal investigation has taken place.

***G*.** *Please describe briefly the confidentiality provisions which may restrict the disclosure of information contained in suspicious transaction reports by anti-money laundering authorities. If possible, please provide a copy of such provisions.*

169. In **France**, **Hungary** and **Luxembourg,** the anti-money laundering legislation stipulates that the information on suspicious transactions may be disseminated only to combat money laundering. In **Austria,** the FIU may only pass on information concerning customs fraud and evasion of import and export duties; purely fiscal offences are specifically prohibited from being disclosed to the fiscal authorities. In **Argentina,** the **Czech Republic, Finland, Japan and Luxembourg**, tax authorities have no access to suspicious transaction reports. All countries have strict confidentiality provisions on the information obtained by the anti-money laundering authorities. In the countries where the tax administration has access to this information, there is a legal basis to provide this access. If this access is provided there are generally no restrictions other than that the information may be used for tax purposes only.

170. In **Argentina**, the legislation on suspicious transaction reports specifically imposes a duty of confidentiality on the UIF in respect of the information received and disclosure is punishable by a prison sentence (article 22 of Act 25.246). This provision also applies to persons and entities with reporting obligations.

171. In **Australia,** pursuant to the secrecy and access provisions contained in the Financial Transaction Reports Acts 1988 (FTR Act), a member of the staff of AUSTRAC shall not make a record of any information or divulge or communicate to any person any information obtained by the person in the course of performing duties under the FTR Act, except where it is necessary to do so for the purposes of carrying into effect the provisions of the FTR Act. Similar restrictions apply in relation to the communication of suspicious transaction reports disseminated to AUSTRAC's law enforcement, revenue and security partner agencies. Officers of the ATO are also bound by strict confidentiality rules in respect of the information they receive from AUSTRAC. There are also FTR Act provisions prohibiting the disclosure of suspicious transactions reports information in legal proceedings.

172. In **Belgium,** the CTIF is subject to a very strict professional secrecy. Besides the cases where testimony is required in court, the staff of the CTIF may only provide information to the judicial authorities, foreign organisations which have the same mandate as the CTIF, to the European Committee Unit for combat of fraud, to control authorities or the oversight board or the competent disciplinary authority, to fiscal authorities and to the Safety of State or the General Intelligence and Security Service of the Armed Forces.

173. In **Canada**, the key confidentiality and disclosure provisions are found in sections 55 through 60 of the Proceeds of Crime (Money-Laundering) and Terrorist Financing Act. Subsection 55(1) contains a general prohibition on the disclosure of certain types of information by FINTRAC. Subsection 55(3) describes the conditions under which "designated identifying information" can be disclosed to certain parties, including the police and Canada Customs and Revenue Agency.

174. In the **Czech Republic,** the person making a report shall keep secret the report on an unusual transaction or on steps taken by the Ministry under the Money Laundering Act in respect of third persons, including persons whom the reported information concerns; the obligation to maintain this confidentiality applies to every employee of the reporting institution as well as to every person who acts on his behalf on the basis of a contract. The special Act stipulates the obligation of employees of the Ministry to maintain confidentiality about steps taken under the Money Laundering Act and about the information obtained in the course of its implementation.

175. In **Denmark,** exchange of information with non-law enforcement authorities is carried out in accordance with the principles of section 28 of the Danish Public Administration Act. This provision concerns the exchange of information between Danish authorities. According to this provision, exchange of confidential information can be carried out, e.g. when the following conditions are fulfilled: 1) private or public interests are more important than the secrecy of the confidential information, 2) the information is necessary for the requesting authority, so that it can carry out its tasks concerning supervision or control or 3) the information is of essential importance for the activities of the authority or for a decision, which the authority is going to make. Before every exchange, an individual assessment concerning the compliance with the conditions needs to be made. For the Danish STR-system there are no general restrictions in relation to tax crimes. If the Money Laundering Secretariat receives STR-information from other countries for restricted use, the tax authorities only have access to the information in so far as it is accepted by that country. This is not formulated in a provision but is the accepted interpretation of the scope of the mentioned provision in the Danish Public Administration Act.

176. In **Finland,** the Money Laundering Clearing House is entitled, on the basis of Act on Prevention and Investigation of Money Laundering and in spite of confidence rules, to obtain the information needed for clearing money laundering both from those who are obliged to report and from public authorities and corporations with public duties. For this reason there are restrictions to the use and transfer of received information. In the transfer of information the purpose for the information was given must be considered. Thus information may be used only for the purpose for which it was given. Information received in the context of the clearing money laundering therefore can only be used for preventing and clearing money laundering. If it is clear in the context of a money laundering investigation that there are good reasons to suspect money laundering, the matter is transferred into pre-trial investigation and then the information may be given under the rules concerning pre-trial investigations. The documents of the pre-trial investigation are in Finland accessible to the parties involved so that parties are entitled to get from the information, which may affect the handling of the matter. Tax authorities are complainants in tax crimes and thus they are entitled to use the documents of pre-trial investigation for the criminal process, although these documents otherwise have been ordered to be kept secret before the trial.

177. In **Germany,** the information contained in a suspicious transaction report under the Money Laundering Act may not be used for the prosecution of criminal offences punishable by a term of imprisonment not exceeding three years. This does not apply to its use for taxation purposes and for criminal proceedings in tax fraud cases.

178. In **Greece,** the credit institutions and the financial organisations, the employees and the directors of these entities, are prohibited from notifying the person concerned or a third person of the fact that information was given or that such information was required or that an investigation is carried out. A penalty of imprisonment and a monetary penalty punish violations of this obligation. The members and employees of the Committee of Financial Crime Investigation and the employees involved have the duty of secrecy.

179. In **Hungary** the National Police Headquarters may use the information concerning suspicious transactions only for the purposes of the fight against money laundering, except in the case of criminal proceedings initiated in connection with another criminal offence.

180. In **Ireland,** the tax authorities have full access to suspicious transaction reports and there is a legal basis to provide this access.

181. In **Italy**, all the information held by the UIF is subject to confidentiality provisions set out by Legislative Decree 231/2007 (article 9).

182. In **Japan** the confidentiality regulation derives from the duty to protect privileged information based on the provisions of the National Public Servant Law.

183. In **Korea**, according to Article 9 of the Financial Transaction Reports Act, the staff of the KoFIU or persons involved in the investigation of certain criminal offences, should not provide or disclose information obtained while doing their duty or use such information for purposes other than those prescribed. Reports on suspicious transactions are not valid as evidence in court and employees of financial institutions have the right to refuse to testify.

184. In **Mexico** banking, fiduciary and securities secrecy are ruled by the Credit Institutions Law, Stock Market Law and Investment Associations Law, respectively. Article 117, Credit Institutions Law provides that credit institutions shall not for any reason give notice or provide information on deposits, services or any kind of transactions to anyone other than the person that carries out the deposit, the debtor, the holder or the beneficiary, to their legal agents or whoever is authorised to use the account, or to interfere in the transaction or service, unless requested by the legal authority as a result of a trial where the holder is involved or accused and by the federal finance authorities, through the National Banking and Securities Commission, for tax purposes. Credit Institutions employees and officers shall be responsible under the terms of the applicable provisions, for the violation of the banking secrecy referred to in said precept. Said institutions are obligated in case of disclosure, to repair any damage caused.

185. Likewise, Article 118 of the same law also governs the fiduciary secrecy by establishing that the disclosure of information related to fiduciary transactions will result in the civil liability of the institution for damages caused, without prejudice to the imposition of corresponding criminal responsibilities. Also, Article 25, Stock Market Law, establishes that brokerage firms cannot give notice on the transactions they carry out or take part in, unless previously requested by the customer, or his legal agent or the person who is entitled to interfere in such transactions. This prohibition shall not be applicable to information provided to the legal authority -as a result of judgement issued during a trial in which the customer is involved or accused- to the competent authorities, through the National Banking and Securities Commission, nor shall it apply to the statistical information that such brokerage firms provide to the Commission. Likewise, article 33, Investment Association Law, establishes the obligation for the Associations that operate investment associations, to keep strict confidentiality on the services that they render, in the same manner as in the securities secrecy referred to in article 25, of the preceding paragraph.

186. In the **Netherlands** the information regarding reported unusual transactions is confidential and the information regarding suspicious transactions can be used in an official investigation by the FIOD-ECD (Fiscal Intelligence Investigation Service – Economic Inspection Service). The Disclosure of Unusual Transactions Act contains confidentiality rules in Article 18 and Article 19. Any person who makes a disclosure is obliged to keep this information confidential and will commit a criminal offence if he does not do so. There is a similar obligation of secrecy imposed on all employees of the MOT or persons who perform any task under the Disclosure Act. Furthermore, the secrecy obligation of Article 67 of the General Tax Act applies to the FIOD.

187. In **New Zealand,** there are no restrictions on the information provided by the New Zealand Police to the Inland Revenue Department. The information gathering provisions of the Tax Administration Act 1994 override the Privacy Act.

188. In **Norway**, the new Anti-money Laundering Act does not have its own confidentiality and access provisions. It is therefore the confidentiality and access provisions in the Criminal Procedure Act and the Police Act which apply in these situations. The principal rule is professional secrecy for the Police and Prosecution Authority concerning information in criminal cases. This is provided in the Prosecuting Act paragraph 61a. There are several exceptions from the main rule which allows the police and

prosecution authorities to reveal information for example to the tax authorities. According to the Prosecution Act paragraph 61c no. 2 the police and prosecution authorities are allowed to reveal information bounded with professional secrecy when this may serve the purpose for which the information are given or collected. In criminal investigations it is customary for the police and prosecution authorities to co-operate with different control authorities, for example the tax authorities. When police and prosecution authorities are investigating a criminal case connected to a suspicious transaction report, they may reveal information which benefits the criminal case to the tax authorities.

189. In **Poland**, provisions on the protection and disclosure of data by GIFI (the FIU) are contained in chapter 7 of the Act of 16 November 2000 including the cooperation and sharing of information with the public prosecutor, intelligence and security agencies and various other agencies.

190. In **Portugal,** since 1 January 2005 changes to the law on bank secrecy mean that access to such information for tax purposes is now possible without a judicial authorisation when there are reasonable grounds to believe that a tax crime has been committed or when there is concrete evidence that a person provided false information to the tax authorities.

191. In the **Slovak Republic,** the protection of classified information is dealt with by:

1. Law No. 100/1 996 (Coll. of L.) about the Protection of the Governmental Secrecy (i.e. the highest possible level of the protection of classified information), Official Secrecy (i.e. the second highest level of the protection of classified information) and the Cipher Protection of Information (encryption); and

2. the § 2 of the Decree of the Ministry of Interior No. 181/1997 (Coll. of L.) of the Suspicious Bank Operations; and

3. the § 38, par. 3) of the Law No. 21/1992 on Banks (as amended).

192. In **Spain,** the confidentiality obligation extends (by virtue of the duty of professional secrecy), to all persons who are working or have worked for the Commission and have learned about its operations or of data meant to be kept secret. Even after having ceased in his/her post, those persons are not allowed to publish, pass on or show confidential data or documents, unless they are expressly authorised by the Commission. The law contains a few exceptions;

(a) if the person concerned gives his/her consent,

(b) for statistical purposes, etc;

(c) following a request from Parliamentary Committees or from Judiciary or Administrative authorities.

193. This confidentiality obligation also extends to persons, agencies or authorities receiving confidential information from the Commission, information that then could be used only in the framework of their legally defined functions. The confidentiality is circumscribed to the scope of the Law, that is to say preventing the financial system from being used for money laundering.

194. In **Sweden,** the information received by disclosures has the same secrecy level as the information contained in the criminal register. Practically, this implies that other police units can obtain information on demand if it is of importance in their investigation.

195. In **Switzerland,** Article 32 of the "Loi sur le Blanchiment d'Argent" (LBA) provides that the co-operation of the MROS with the foreign penal prosecution authorities is laid down by article 13, second paragraph, of the Federal Act of 7 October 1994, concerning "les Offices centraux de police criminelle de la Confédération". In addition, the MROS may provide personal information to foreign authorities if this is set forth in an act or international convention, or if the information is required exclusively to combat money laundering, or a Swiss request for information is in the interest of the person whom it concerns, in which case either the person involved must have consented or the circumstances allow the presumption of his consent.

196. In **Turkey,** Article 22 of Act No. 5549 prohibits the MASAK staff and investigators to disclose the secrets or other confidential information which they acquire while exercising their functions, about persons, transactions and account statements, businesses, undertakings, properties or professions of the persons or other persons having relation with them. Tax secrecy (article 5 of the Tax Procedure Act No. 213) and bank secrecy (article 22 of the Banks Act No. 4389) rules have to be complied with as well.

197. In the **United Kingdom,** the Serious Organised Crime Agency (SOCA) may, in general, pass intelligence to other competent investigating bodies only for the purpose of criminal investigations within their province. However, under section 436 of the Proceeds of Crime Act 2002, SOCA may pass information to the Assets Recovery Agency (ARA) for the purpose of any of its functions including civil recovery of assets and non-criminal taxation functions. The terms and conditions governing disclosure of information by UK anti-money laundering authorities to UK fiscal authorities has traditionally been set out in Memoranda of Understanding (MOU). The existing MOUs are currently being revised now that HM Revenue & Customs and SOCA have been established, and there will in future be one MOU between SOCA and HMRC for these purposes.

198. In the **United States,** the access to suspicious transaction reports is limited only by the general provisions of the statute called The Privacy Act of 1974, with whose terms the above described arrangements comply. Accordingly, tax authorities generally have access to information gathered by anti-money laundering authorities for purposes of investigating tax-related crimes and in certain other circumstances.

III. Access to Other Reports

199. In addition to suspicious transaction reports, some countries require reports of other types of financial activity. These may include reports of large currency transactions, cross-border movements of currency, electronic transfers of funds in and out of the country, and reports of other transactions.

A. *Please identify and describe any other types of transaction reports that are required or permitted to be filed with an anti-money laundering authority.*

200. The following countries require reporting of large cash transactions**: Argentina, Australia, Canada, Hungary, Italy, Korea, Mexico, Netherlands, Norway, Spain, Turkey** and **the United States.** Reports on cross border cash movements are required in **Australia, Austria, Canada, Czech Republic, France, Germany, Greece, Hungary, Italy, Korea, Netherlands, New Zealand, Norway, Portugal, Slovak Republic, Spain, Sweden, Turkey** and **the United States**.

201. In **Argentina**, the following reports are required to be filed with the UIF:

- gambling prizes over 50000 pesos are required to be reported by the gambling entity;

- contracts and sales over 200000 pesos in cash, loans over 50000 pesos payable in cash and all cross-border sales of real estate are required to be reported by public notaries;

- loans, deposits, drafts and bank transfers of 10000 pesos or more are required to be reported half-yearly by financial entities and foreign exchange companies;

- cross-border transportation of money in amounts over US$ 10000 is required to be reported by the fiscal authority (AFIP).

202. In **Australia,** the following reports are required to be filed with AUSTRAC:

1. Significant Cash Transaction Reports (Cash transactions involving the transfer of currency (cash) of not less than $10,000 in value are reported by cash dealers and solicitors/lawyers to AUSTRAC as Significant Cash Transactions).

2. International Currency Transfer Reports (International Currency Transfer Reports are prepared by persons who transfer currency of $A 10,000 or more, or its foreign currency equivalent, into or out of Australia. Most commonly, this information is collected by the Australian Customs Service at international departure and arrival points and forwarded to AUSTRAC.)

3. International Funds Transfer Instructions (An International Funds Transfer Instruction is an instruction for a transfer of funds (no minimum limit) that is transmitted into or out of Australia electronically or by telegraphic transfer.)

203. In **Austria**, customs authorities have to supervise transportations of cash or equal means of payment (bearer monetary instruments) across Austrian borders. Upon request the persons have to inform the customs authorities if they have cash or equal means of payment of € 15.000 or more with them. In this case they have to inform about the origin, the beneficial owner and the intended purpose. If the factual circumstances seem to suggest that the transportation of cash or equal means of payment serves the purpose of money laundering the customs authorities are entitled to seize the cash or the equal means of payment provisionally in cases of pending danger. The customs authorities may gather, process and use personal data which result from a control of cash or equal means of payment. The customs authorities shall provide the Prosecutor's Office and the Financial Intelligence Unit (Geldwälschemeldestell) with all data that are necessary for the fulfilment of their statutory duties.

204. In **Canada,** mandatory reports must be filed with FINTRAC for cash transactions for cash transactions involving $10,000 or more, international electronic fund transfers involving $10,000 or more, and the import or export of $10,000 or more in currency or monetary instruments.

205. In the **Czech Republic**, reporting is required in relation to importing or exporting valid Czech or other currency or travellers cheques or money orders exchangeable for cash, bearer securities or securities transferable to order or any high-value goods such as precious metals or precious stones where the total value exceeds EURO 15000. Reporting is also required in relation to a letter or package containing any such items where the total value exceeds EURO 15000.

206. In **France,** TRACFIN may collect information on criminal aspects of a financial operation at the police, the gendarmerie and the offices of the Public Prosecutor. Physical persons that are not financial intermediaries are required to report to Customs import and export of funds in excess of EURO 2600. The FIU has access to these reports

207. **Germany** carries out checks on cross-border transport of cash. If such checks give grounds to suspect money laundering, the officers conducting the checks (customs officers or border guards) will report the case to the responsible customs investigation office or, in most of the Länder, to a joint police/customs financial investigation group. These reports are maintained in a centralised database on suspected money laundering. Due to an amendment of the customs administration act in 2000, the customs offices are now required to forward – irrespective of whether a money-laundering investigation has been initiated – the respective reports to tax authorities if the checks revealed cross-border transport of cash in excess of €15,000.

208. In **Greece,** export of cash or monetary instruments in excess of US$ 2000 and import of cash or monetary instruments in excess of US$ 10.000 must be declared.

209. In **Hungary**, any individual crossing the border of the Republic of Hungary shall report to the customs authority if he holds a sum of money amounting to or exceeding altogether HUF 1 million in HUF or any foreign currency, and shall provide the data listed in AML Act as well as declare the amount and the currency unit of the cash held by him to the customs authority.

210. In **Ireland,** not only suspicious transactions concerning money laundering have to be reported but any suspicion on transactions concerning drugs trafficking or other criminal activity including tax evasion.

211. In **Italy,** any physical transfer of cash, securities and valuables at the border or by postal parcel, to or from a foreign country, by residents and non residents, in an amount exceeding €10,000 or the equivalent must be declared and transmitted to the UIF.

The declarant has to indicate, in particular:

1. his personal data and the details of his identification card as well as, if a resident, his tax identification number;

2. the personal data of the person on behalf of whom the transfer is made as well as the person’s tax identification number, if he resides in Italy.

3. the amount of the cash, securities and valuables being transferred.

4. the transfer is to or from a foreign country.

212. Furthermore, financial intermediaries are requested to transmit to the UIF on a monthly basis data in an aggregated form concerning their overall operation. The aggregations are made on information related to financial transactions exceeding the threshold of €10,000.

213. The UIF performs analysis on such data aimed at identifying possible money-laundering or terrorism financing phenomena on a local basis. The UIF is authorised to gather the aforementioned data, even through direct access from the electronic archive held by each intermediary.

214. In **Korea**, the KoFIU receives information or documents on inflow and outflow of means of payment, especially foreign currency and securities exceeding certain amounts of US dollars from the Korea Customs Service.

215. For foreign exchange transactions exceeding US$10,000, the KoFIU receives relevant documents on cash transactions (deposits and withdrawals), selling and buying foreign exchange and cross-border transactions from the Bank of Korea.

216. In **Mexico** the obligation exists to report large sums and concerning transactions. Article 115, Credit Institutions Law and article 52 Bis-3, Stock Market Law and article 95, General Law of Organisations and Auxiliary Credit Activities, establish: The Secretariat of Finance and Public Credit, based on the opinion of the National Banking and Securities Commission, will issue the General Provisions with the purpose of establishing measures and procedures to prevent and detect acts or transactions provided for in article 400 bis, Federal Penal Code- at Credit Institutions and Non-Bank Banks, Brokerage Firms, Securities Specialists and Money Exchange Businesses. The procedures include the obligation to submit for the consideration of this Secretariat and through the above Commission, reports about transactions and services carried out by their customers and users, for the amounts and in the cases, established by such General Provisions. Additionally, article 9, Customs Law establishes that persons who enter the country and are transporting amounts in cash, or checks, or a combination of both, that exceed the equivalent of US $10,000 in the currency or currencies dealt with, are obligated to report this to the customs authorities at the Customs Office. For this reason, Declaration Forms have been issued, that contain, among others, information regarding cash transactions.

217. In **the Netherlands** cash transactions of EURO 15000 or more should be reported. Import and export of cash of monetary instruments of EURO 15000 or more should be reported as well.

218. In **New Zealand**, in relation to every transaction conducted through a financial institution, the financial institution shall keep such records as are reasonably necessary to enable the transaction to be readily reconstructed at any time. There is no requirement for a financial institution to report a normal business transaction although when the transaction exceeds NZD$9,999.99 it triggers various responsibilities under the Financial Transaction reporting.

219. In **Norway**, the Currency Register Act will come into force from January 2005. The aim of the act is mainly to prevent and combat white collar-crime including money laundering, and also to contribute to accurate payments of taxes. It is the Directorate of Customs and Excise and not the Norwegian Anti-Money laundering Authority which will be responsible for the register.

220. Banks and financial institutions shall report to the register. The banks shall report about cross-border transactions in and out of Norway. These reports shall contain information identifying for example the parts of the transaction and the amount of the transaction. If a transaction out of Norway amounts to NOK 100 000 or more, the banks also will have a duty to report the content of the transactions. Banks shall also report about buying and selling of currency (exchange) if the amount exceeds NOK 5 000. Financial institutions shall report cross-border transactions made with international credit- or payment cards, if the transaction is amounting to NOK 25 000 or more. For transactions under this limit there will be reported aggregated sums each month.

221. In addition, there is a duty in the Customs Act, to declare cross-border movements of currency in and out of **Norway**, amounting to NOK 25 000 or more (or equivalent in other currencies) to the Norwegian Customs and Excise Authority. These declarations also shall be registered in the new Currency Register. Anyone bringing with them or transporting cash has a duty to declare this to the Norwegian Custom and Excise Authority. This includes couriers, post- and delivery-firms and private-travellers.

222. In **Portugal**, cash or monetary instruments of PTE 2.500.000 must be declared at import or export.

223. In the **Slovak Republic,** under the Foreign Exchange Act No. 202/95 Col. of Laws, in the sense of the Decree 203/95 Col. of Laws (in the wording of the Decree 335/96 Coll. of Laws), transmission of foreign currency in cash over 150 000. - SKK must be reported.

224. In **Spain,** cross border movements (inflows and outflows) of any means of payment (cash, traveller's cheques, bearer banker drafts or any other means including in electronic format) have to be reported if they exceed EURO 10,000 for each movement. Movements within the country of means of payment that exceed EURO 100,000 also have to be reported. Transfers or payments made to or received from non-residents above EURO 12,500 conducted through regulated entities have to be reported by the entity involved to the Central Bank.

225. For a long time in **Sweden**, there has been an obligation to report cross border payments to and from natural and legal persons in excess of 150,000 SEK to the Tax Agency. The statement shall specify the amount and purpose of the payment, country and, in the case of payments to another country, the name of the recipient. The obligation applies in principle to all kind of cross border payments.

226. In **Turkey,** in accordance with Article 22 of Act No. 5549, the obligated institutions are required to report to MASAK transactions to which they are parties or intermediaries, which exceed an amount determined by the Ministry of Finance.

227. In the **United Kingdom,** the focus of the anti-money laundering intelligence is on suspicious activity reports.

228. In the **United States,** the Bank Secrecy Act also requires the filing of numerous other reports of financial activity, including: 1. currency transactions in excess of $10,000, 2. maintenance by U.S. citizens or residents of bank or brokerage accounts outside the U.S. with balances of at least $10,000, and 3. transportation of at least $10,000 in currency and bearer instruments into or out of the United States. Certain exceptions apply to these broad reporting definitions.

B. *For each of the reports mentioned in paragraph A, identify the persons/entities required to file the report(s).*

229. In the countries where these transactions have to be reported, persons and entities that conduct the transactions on their own behalf or on behalf of other persons are required to file the reports.

230. In **Australia,** cash dealers are required to report on Significant Cash Transaction Reports and International Funds Transfer Instructions. The persons who transfer currency into or out of Australia are required to report those transfers under the International Currency Transfer Reports provisions of the FTR Act. Likewise, solicitors and lawyers are required to report Significant Cash Transaction Reports.

231. In **Canada,** concerning cross-border reporting, in the case of hand carried movements, a report must be filed by the person carrying the goods. In the case of commercial shipments, the report will be filed by the carriers. In the case of shipments sent by mail or courier, the report is filed by the person exporting the goods from Canada or by the person who sent the shipment to Canada. Large cash transactions are to be reported by "reporting entities". Reporting entities include financial institutions (banks, credit unions, trust and loan companies, etc.) casinos, foreign exchange dealers, money services businesses, real estate agents, brokers and developers, accountants engaged in certain activities, life insurance companies and brokers, and securities dealers (or engaged in portfolio management or investment counselling). International electronic funds transfers must be reported by financial institutions (banks, credits unions, trust and loan companies, etc.) foreign exchange dealers, money services businesses and casinos.

232. In the **Czech Republic,** a physical or legal person entering the Czech Republic from outside the European Community customs area or exiting the Czech Republic to an area outside the European Community customs area shall report to the customs authorities any importation or exportation of valid Czech or foreign currency, traveller's cheques or money orders exchangeable for cash, bearer securities or

securities transferable to order or any high-value goods such as precious metals or precious stones where the value exceeds EURO 15000. A physical or legal person sending from the Czech Republic to an area outside the European Community customs area or receiving from that area a package by mail or any other postal consignment containing valid items listed in the previous sentence, where the total value exceeds EURO 15000, is required to declare such consignment to the customs authorities and make sure that it will be submitted for inspection.

233. The customs authorities shall, with no delay, submit to the Ministry of Finance – Financial Analytical Unit reports on compliance with the reporting duty at the points of entry; as well as reports containing all available data on senders, addressees and parcels subject to the reporting duty, including reports on breaches of the reporting duty.

234. In **Ireland,** all the persons and entities that have to report the suspicious transactions on money laundering also have to report any suspicion on transactions concerning drugs trafficking or other criminal activity including tax evasion.

235. In **Italy,** concerning the transfer of cash etc., every physical person, even if transferring the amount on behalf of third parties or a legal entity, has to respect the threshold fixed by article 49 of Legislative Decree 231/2007 (€5,000 from 30 April 2008). Up to the above mentioned threshold, the cash transfer shall be effected through banks, Italian post offices and electronic money institutes. All the persons subject to the Legislative Decree 231/2007 have to report to the Treasury any violation of the law concerning the cash transfer.

236. In **Korea**, reports are required from foreign exchange banks and customs offices.

237. In **Mexico** Credit institutions, non-bank banks, stock exchange firms and securities specialists, money exchange businesses, mutual insurance associations and administrations, bond institutions, and the retirement fund administrators are obliged to file large value and concerning transactions reports, pursuant to the national legislation. Regarding cross border movements of currency declarations, customs law, Article 9 obligates all natural persons to make the declarations. Said declarations are received by the Customs General Administration and sent to the Financial Intelligence Unit.

238. In **Norway**, all banks and financial institutions are obliged to report cross-border transactions in and out of Norway and buying and selling of currency as described under IIIA above. The Norwegian Custom and Excise Authority will also be required to report to the Currency Register declaration of cross-border movements of cash made to them.

239. In the **Slovak Republic,** all physical persons crossing the border have to report if they meet the criteria.

240. In **Spain,** any natural or legal person who carries out a cross-border or internal movement of any means of payment above the stated threshold is obliged to file a declaration. In addition financial entities (banks, insurance companies, securities dealers, money transfer companies, etc) have to make monthly reports of all such transactions in which they have been involved. In respect of a transfer or payment made to or received from a non-resident, the bank or financial institution involved is responsible for requiring the resident to file the report. Such reports are sent every ten days to the Central Bank.241. The obligation to report in **Sweden** rests upon the institution that transmits a payment, i.e. banks, currency exchange companies and paying agents.

242. In **Turkey** the Customs Administration requires the filing of the reports.

243. In the **United States,** reports of currency transactions in excess of $10,000 are filed by most financial institutions (with the exception of insurance companies and commodities futures merchants). U.S. citizens or residents must report on their tax returns if they hold bank or brokerage accounts outside the U.S. with balances of at least $10,000 and persons entering the U.S. must report cross-border transportation of at least $10,000 in currency and bearer instruments.

C. *For each of the reports mentioned in paragraph A, identify the national agency or body with which the report is required to be filed. If the report is required to be filed with more than one agency or body, please describe briefly the responsibilities each agency or body has with respect to the information (e.g., compilation of data, analysis, of data, identification of transactions to investigate).*

In the countries that require reporting of large cash transactions	Reports have to be filed with
Argentina	Financial Reporting Unit (UIF – Unidad Informaión Financiera)
Australia	AUSTRAC
Canada	FINTRAC
The Czech Republic	Financial Analytical Unit of the Ministry of Finance through the General Directorate of Customs
Hungary	Customs Authority
Italy	UIF as regards suspicious transactions and cross border transactions and Treasury as regards cash transactions.
Korea	For foreign exchange transactions exceeding US$10,000, relevant documents are reported/filed to the tax authority and the KoFIU through a computerised information system.
Mexico	DGAIO
Netherlands	FIUNL
Norway	Directorate of Custom and Excise
Spain	Information about movement of means of payment is centralised at SEPBLAC. Information about transactions between residents and non-residents is sent to the Central Bank and SEPBLAC has access to it.
Sweden	This is now entirely administrated by the Tax Agency. Formerly, the Bank of Sweden collected the information on payments to and from legal persons for statistical purposes.
United States	FinCen

244. In the countries that require reporting of cross border cash movements, the reports have to be filed with Customs or the Central Bank. In **Italy,** the declaration of cross-border movement is received by the UIF through customs offices, banks, post offices or Guardia di Finanza officers that collect and transmit them. The data are utilised by the UIF for purposes of combating money laundering and for other institutional purposes. As derogation to the official secrecy rule, the information received by the UIF can be transmitted to the tax authorities, which utilise them for their institutional ends.

D. *Please answer the questions below with respect to each type of report mentioned in paragraph A. These questions relate to situations where tax authorities have direct access to the information provided in the reports.*

Is the information obtained from the report maintained in a centralised database? If so, do the tax authorities have access to the database? If so, under what circumstances do they have access?

If the information is not maintained on a database, do the tax authorities have access to the information? If so, under what circumstances do they have access?

Are there restrictions on the use of the information by the tax authorities (e.g., for the pursuit of tax crimes only and not for other tax purposes?)

245. In **Australia, Korea, Mexico, Norway, the Slovak Republic, Spain, Sweden. Turkey, the United Kingdom and the United States**, the reports are maintained in centralised databases. Except for **Mexico** and the **Slovak Republic**, tax authorities have access to these reports. **Argentina, Canada, the Czech Republic, Ireland and Italy** (Italian law provides for the release of data regarding cross-border movement statements to tax authorities; such a provision has not been implemented yet) did not provide information on a database; in these countries tax authorities have no access to the reports.

246. In **Australia,** the information is stored on AUSTRAC's centralised database. The ATO has access by law and through an MOU. Section 4(1) of the FTR Act specifies "The principal object of the Act is to facilitate the administration and enforcement of taxation laws", whilst further objects of the Act are to facilitate the administration and enforcement of laws of the Commonwealth and Territories (other than taxation laws). A further objective is to make the information collected available to State authorities to facilitate the administration and enforcement of the laws of the States. The MOU between the ATO and AUSTRAC restricts access to Suspicious Transactions information to specified officers.

247. In **Canada,** the tax authorities have no direct access to these reports.

248. In the **Czech Republic,** the tax authorities have no access to the information provided in the reports.

249. In **Ireland,** the legislation does not specifically permit a transfer of these reports to the tax authorities.

250. In **Italy,** it is foreseen that any information collected by the UIF on cross-border movements over €10,000, as described at Question III, section A, are transmitted to the Ministry of Finance for tax purposes. Said procedure has not been implemented yet.

251. In **Korea**, tax authorities do not have direct access to the database. However, they are provided with reports containing the same information.

252. In **Mexico,** these reports are maintained in the financial intelligence system developed within the Financial Intelligence Unit's computer centre. Fiscal Authorities do not have access to the data base. See paragraph II, section F.

253. In **Norway** the information in the Currency Register will be maintained in a centralized database (electronic register). The Police and Prosecution Authority (including the Anti-Money Laundering Authority), the Tax Authority and the Custom and Excise Authority, amongst others, will get access to the database by direct electronic access or a copy of the required information will be sent electronic by to the

requiring authority. This means that authorities with direct access – under certain conditions – may be able to accomplish electronic searches themselves.

254. The Tax Authorities and the Custom and Excise authorities will be authorized to use information from the register in connection with their inspection activity. These authorities will therefore be able to search in the register both in concrete cases, and in connection with activity having character more of sampling tests. They will also be able to use information from the register in connection with their ordinary control activity.

255. In the **Slovak Republic** the information obtained from the report is maintained in a centralised data base and the tax authorities do not have free access to the data base; they may obtain information only upon a written request. There are certain restrictions on the use of this information by the tax authorities - Article 23 - Obligation to preserve secrecy of the Law on Tax and Fees Administration (No. 511/1992 Coll. of Laws). It is possible to pass information only to courts, authorities active in criminal proceedings and to provide the treaty partner with tax information according to the relevant Article of the Tax Convention.

256. In **Sweden**, the information is stored in a nationwide database. Tax officials have access to the information for operational purposes within their respective areas of responsibility as well as for more general analyses. It isn't entirely clear to what extent other agencies may have access to the information.

257. In **Turkey,** Article 6 of the Act No.4208 prohibits the MASAK staff and investigators to disclose the secrets or other confidential information which they acquire while exercising their functions, about persons, transactions and account statements, businesses, undertakings, properties or professions of the persons or other persons having relation with them. Tax secrecy (Article 5 of the Tax Procedure Act No. 213) and bank secrecy (Article 22 of the Banks Act No. 4389) rules have to be complied with as well. Additionally, a copy of customs investigation reports is filed with the General Directorate of Revenues of the Ministry of Finance if there is a taxation aspect.

258. In the **United States,** generally all of the information described in the sections A, B and C is available to federal tax authorities and is maintained on-line by both the Internal Revenue and Customs Services. In addition, federal tax authorities receive reports (for example, reports of the receipts of more than $10,000 in currency by non-financial trades or businesses) that they may use in money laundering investigations that also involve income tax charges but that may not be shared with other federal or state investigators. The same condition, of course, applies to tax returns themselves.

E. *These questions relate to situations where the anti-money laundering authority has the authority to provide information about a specific report to the tax authority (e.g., spontaneously) or where the tax authority may make a request for information about a specific report.*

Are the anti-money laundering authorities which receive the reports identified in paragraph A permitted to pass specific reports on to tax authorities which they believe may involve a tax related crime (spontaneously or pursuant to a request)?

If so, how is the determination made? Are any guidelines given to anti-money laundering authorities to make this determination? If so, please provide a copy.

259. In **Argentina,** the **Czech Republic** and **Mexico** tax authorities have no access to the reports identified in Section A. In **Austria** (for customs purposes only)**, Australia, Canada** (with restrictions), **Italy** (only Guardia de Finanza in its capacity as tax police body), **Norway**, the **Slovak Republic, Spain, Sweden**, **Turkey** (with restrictions) the **United Kingdom**, and the **United States**, the reports identified in section A, are accessible by the tax authorities.

260. In **Australia**, AUSTRAC is permitted to pass all financial transaction reports information on to the ATO. Other anti-money laundering authorities, which are responsible for the investigation of crimes associated with money laundering activities are authorised to pass FTR information to the ATO regarding tax-related crime (subject to relevant MOU). In respect of AUSTRAC, there is no requirement for a determination to be made as the ATO has access to all financial transaction reports held by AUSTRAC. This negates the need for any guidelines, notwithstanding the provisions of the MOU between the ATO and AUSTRAC.

261. In **Austria,** the FIU may only pass on information concerning customs fraud and evasion of import and export duties. Other fiscal offences are specifically prohibited from being disclosed to the fiscal authorities, but it is intended to include all tax crimes punishable by at least three years. The legislative process is in preparation.

262. **Canada** referred for this question to the answer on part II, section F, question 2, where Canada noted that, the information obtained from suspicious transaction reports will be maintained in FINTRAC's database. There is no direct access for the tax authorities. However, if FINTRAC has reasonable grounds to suspect that the "designated identifying information" would be relevant to investigating or prosecuting both money laundering and tax evasion offences, FINTRAC will provide Canada Revenue Agency only with limited "designated identifying information". Canada Revenue Agency may use this information for the pursuit of any tax matter. The Centre would be able to disclose this information to Canada Revenue Agency in cases where it determines that a) a reasonable suspicion of money laundering exists; and b) the information is relevant to an offence of evading or attempting to evade taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue. Suspicion of money laundering is the key criteria and must be met first and foremost. If the centre has reason to suspect tax evasion, but no money laundering, it could not disclose this information to Canada Revenue Agency.

263. In the **Czech Republic,** the tax authorities have no access to the information provided in the reports.

264. In **Italy,** the Legislative Decree n. 125/1997 specifies that the nominative data and information gathered by the UIF concerning physical cross-border movements of valuables for anti-money laundering purposes can be transmitted to the tax authorities, which can utilise them for their fiscal purposes.

265. In **Korea**, the KoFIU may report to the tax authority the information on suspicious transactions when such information is regarded as necessary for the investigation into tax or customs-related crimes.

266. In **Mexico,** the information is maintained in the central financial database of the Financial Intelligence Unit Computer Centre (DGAIO). Tax authorities have no direct access to this database. On February 1993, an Agreement establishing the co-ordination among the General Attorney's Office and the Secretariat of Finance and Public Credit on drug-related crimes matters was officially issued. Said instrument establishes that as soon as the Federal Public Prosecutor submits the preliminary investigation, and has verified the corpus delicti and the strong suspicion of guilt of the suspect; a written report will be made to the Secretariat of Finance and Public Credit. The preceding will be made so that the fiscal authorities visit the alleged criminal, and examine his statements, accounting, assets and merchandise. Likewise, the fiscal authorities shall also be empowered to verify if the suspect by himself or through a third party is a partner or shareholder. See Paragraph II, section F.

267. In **Norway** it is the Directorate of Custom and Excise which receives the specific reports about cross-border transactions (of currency) in and out of Norway and declarations of cross-border movements of currency and not the Anti-Money laundering Authority. The Tax Authority, among other authorities, has

direct access to the reports. The reports are centralised in the Currency register. See paragraph IIID for further information about this types of reports.

268. In the **Slovak Republic,** the anti-money laundering authorities which receive the reports identified in paragraph A are permitted to pass reports on to tax authorities which they believe may involve a tax related crime and this can be done spontaneously. There are no guidelines in this regard.

269. In **Spain,** the Tax Agency has access to the centralised database of reports for tax purposes without restriction. Information about transactions between residents and non-residents is passed to the Tax Agency annually and is then available for tax purposes without restriction.

270. In **Sweden,** if the Swedish Financial Unit detects a suspicious transaction indicating tax crime, the information can be passed on to tax authorities under the conditions given in II F 2 above.

271. In **Turkey**, Article 22 of Act No. 5549 prohibits the MASAK staff and investigators to disclose the secrets or other confidential information which they acquire while exercising their functions, about personalities, transactions and account statements, businesses, undertakings, properties or professions of the persons or other persons having relation with them. Tax secrecy (article 5 of the Tax Procedure Act No. 213) and bank secrecy (article 22 of the Banks Act No. 4389) rules have to be complied with as well. Additionally, a copy of customs investigation reports is filed with the General Directorate of Revenues of the Ministry of Finance if there is a taxation aspect.

272. In the **United Kingdom**, these reports may be made spontaneously to HM Revenue & Customs in accordance with the arrangements summarised in paragraph 130 above**.** As the Serious Organised Crime Agency (SOCA) is not a law enforcement agency it cannot, in general, spontaneously refer information direct to ARA, but such information may be contained within referrals made to ARA by law enforcement agencies. However, in very limited circumstances, where ARA is already investigating a case, SOCA may refer suspicious activity reports direct to ARA. Any sharing of information between ARA and SOCA is governed by a Memorandum of Understanding.

273. In the **United States**, FinCEN does not spontaneously forward such reports to the IRS (because, as noted, the IRS has full on-line access to this information).

F. *Please describe briefly the confidentiality provisions which may restrict the disclosure of information contained in the reports identified in A*[11] *by anti-money laundering authorities. If possible, please provide a copy of such provisions*

274. In **France**, **Finland** and **Luxembourg,** the anti-money laundering legislation stipulates that the information on suspicious transactions may be disseminated only to combat money laundering. In **Austria** the FIU may only pass on information concerning customs fraud an evasion of import and export duties; purely fiscal offences are specifically prohibited from being disclosed to the fiscal authorities. In **Argentina**, the **Czech Republic, Finland and Luxembourg**, tax authorities have no access to suspicious transaction reports. All countries have strict confidentiality provisions on the information obtained by the anti money laundering authorities. In the countries where the tax administration has access to this information, there is a legal basis to provide this access. If this access is provided there are generally no other restrictions then that the information may be used for tax purposes only.

[11] In the questionnaire this question referred to suspicious transaction reports, which was incorrect as that subject had been dealt with in Paragraph II, section G.

275. In **Argentina**, the legislation on suspicious transaction reports specifically imposes a duty of confidentiality on the UIF in respect of the information received and disclosure is punishable by a prison sentence (article 22 of Act 25.246). This provision also applies to persons and entities with reporting obligations.

276. In **Australia**, pursuant to the secrecy and access provisions contained in the FTR Act, a member of the staff of AUSTRAC shall not make a record of any information or divulge or communicate to any person any information obtained by the person in the course of performing duties under the FTR Act, except where it is necessary to do so for the purposes of carrying into effect the provisions of the FTR Act. Similar restrictions apply in relation to the communication of FTR information disseminated to AUSTRAC's law enforcement, revenue and security partner agencies.

277. In **Canada,** with respect to information set out in cross-border reports made to the Canada Border Services Agency, the Canada Border Services Agency may only disclose such information to the police where they have reasonable grounds to suspect a money laundering offence. All cross-border reports must be forwarded to FINTRAC. Confidentiality provisions pertaining to the Canada Border Services Agency and cross border currency reports are contained in sections 36 and 37 of the PCMLTFA. The general confidentiality provisions applicable to FINTRAC (i.e. sections 55 through 60) are relevant to information contained in cross-border and "prescribed transaction" reports.

278. In the **Czech Republic**, the person making a report shall keep secret the report on an suspicious transaction or on steps taken by the Ministry under the Money Laundering Act in respect of third persons, including persons whom the reported information concerns; the obligation to maintain this confidentiality applies to every employee of the reporting institution as well as to every person who acts on his behalf on the basis of a contract. The special Act (Labour Code) stipulates the obligation of employees of the Ministry to maintain confidentiality about steps taken under the Money Laundering Act and about the information obtained in the course of its implementation. Moreover, the special provision on the Duty of Confidentiality, which is defined in the Administration of Taxes Act, is applied to the tax and customs authorities.

279. In **Italy**, the UIF can pass the information processed in its anti-money laundering and counter terrorism financing activities only to the competent investigative agencies. This applies for both the suspicious transaction reports and the results of the analysis conducted on aggregated data transmitted by the intermediaries. The confidentiality provisions, which impede to disclose information related to suspicious transaction reports to tax authorities, have been indicated at Question II, sections E, F and G.

280. In **Korea**, under Article 9 of the Financial Transaction Reports Act, the staff of the KoFIU or persons involved in the investigation of certain criminal offences should not provide or disclose information obtained while doing their duty or use such information for purposes other than those prescribed. Reports on suspicious transactions are not valid as evidence in court, and employees of financial institutions have the right to refuse to testify.

281. In **Mexico**, Banking, Fiduciary and Securities Secrecy are ruled by the Credit Institutions Law, Stock Market Law and Investment Associations Law**.** See Paragraph II, section G, where these regulations are discussed in detail.

282. Please see paragraph III, section D for the situation in **Norway**.

283. **Spain** referred for the confidentiality provisions to those indicated in paragraph II, section G.

284. In **Sweden,** information of this kind is protected under the general provisions of the secrecy law and special regulations regarding police register. Generally, information can be given to other authorities further to the conditions laid down in the secrecy law.

285. In **Turkey**, the information is provided to the tax authorities according to the result of the pre-investigation report with regard to money laundering cases related to tax crimes. The MASAK President makes the determination.

286. In the **United Kingdom**, the conditions and restrictions described at paragraphs 130 and 192 above apply to reports made to HM Revenue & Customs**.** Under the Proceeds of Crime Act 2002, the Serious Organises Crime Agency (SOCA) may pass information to the Assets Recovery Agency (ARA) for the purposes of any of its functions including civil recovery of assets and non-criminal taxation functions. Any such disclosures are governed by the memorandum of Understanding between ARA and SOCA.

287. In the **United States,** the information can generally be obtained by federal tax authorities without restrictions.

IV. Other Criminal Intelligence

288. Anti-money laundering authorities may also gather or otherwise have access to criminal intelligence information other than that received through suspicious transaction reports or other reports. This type of information could include information concerning patterns or trends in money laundering activities.

A. *Do the tax authorities have access to criminal intelligence information (other than the reports referred to in Parts II and III) gathered or accessed by anti-money laundering authorities?*

289. In **Argentina, Austria,** the **Czech Republic, Greece**, **Ireland, Mexico**, **Norway**, **Poland, Portugal** and the **Slovak Republic,** tax authorities have no access to this information. In **Mexico** and in **Poland** tax authorities are provided with courses and seminars to enable them to detect these types of transactions. Annual reports on activities including pattern and trends in money laundering are published in **Belgium** by the CTIF, in **Luxembourg** by The Service Anti-Blanchiment, in **France** by TRACFIN and in **Poland** by GIFI. These reports are publicly available and may be used by the tax administrations. In **Finland**, this information is available in the phase of a pre-trial investigation if the tax authorities are complainant. In **Australia, Italy** (only *Guardia di Finanza*, in its capacity as criminal and tax police body)**,** the **Netherlands, Sweden, Turkey** and the **United States,** tax authorities have full access to this information, whereas in **Germany Spain** and **Switzerland** only indirect access through a judicial or law enforcement authority is possible. In **Canada** the tax authorities have access to intelligence on patterns and trends produced by FINTRAC, CISC (the Criminal Intelligence Service of Canada) or other law enforcement bodies. They also have access in cases where they are pursuing criminal investigations to police databases holding nominative information and criminal records of the targets of CRA's criminal investigations. In **Hungary** the tax authorities have no access except upon written request, if the required information concerns the tax assessment. In **Japan,** this information is not available with the money laundering authorities.

290. In **Australia** and **New Zealand,** the tax administrations have full access to criminal intelligence information related to specific tax matters, as do HM Revenue & Customs and the Assets Recovery Agency (all in restricted circumstances) in the **United Kingdom**.

291. In **Denmark,** the tax authorities can have all information, which is relevant either for committed tax fraud or the prevention of tax fraud. Furthermore, they can have all information, which might be useful for their role in the anti-money laundering system. This role is based on the normal co-operation between public authorities, i.e. it is assumed that the information is essential to their operations. All local customs- and tax authorities are instructed to report through the Tax Control Information Center (KIC) to the Money Laundering Secretariat. There is no distinction between information from STRs and other information held by the Money Laundering Secretariat.

292. In **Germany,** tax authorities have no direct access to this information but all authorities and courts are, in principle, obliged to notify the tax authorities if there are grounds to suspect fraud.

293. In **Hungary,** the tax authorities generally have no access to the information concerning criminal Intelligence except upon written request - if the information is connected to the tax, assessment.

294. In **Italy,** tax authorities have access to information concerning general typologies of transactions that come to light, as well as patterns or trends in money laundering activities (in accordance with article 9 of Legislative Decree 231/2007).

295. In **Japan,** JAFIC does not gather any criminal intelligence information other than that received through suspicious transactions reports.

296. In **Korea**, the National Tax Service has access only to the information which the Head of the KoFIU, an ant-money laundering body, deems necessary to provide for the investigation of criminal tax cases.

297. In **Mexico** and in **Poland** the tax authorities do not have access to the intelligence information, but courses or seminars are provided to the tax authorities, to enable them to detect this type of transaction, during the course of an examination.

298. In the **Netherlands,** the investigation tax authorities (FIOD-ECD) have in principle access to all criminal intelligence information, but not to the unusual transaction reports, since these are not yet suspicious. Nevertheless, information gathered by the FIUNL can be used by tax authorities for analysing patterns or trends and other studies of (tax) crimes in general.

299. In **Spain,** information concerning patterns or trends in money laundering activities is normally included in reports or memoranda from national bodies (such as SEPBLAC or the Police) or international bodies (such as the FATF). Consequently, they are common knowledge and easily accessible, in particular when they are published. In that sense, it seems irrelevant to talk about confidentiality provisions, which may restrict or hinder access on the part of tax authorities. On the other hand, tax authorities can, as a general rule and by virtue of Art. 112 of the Ley General Tributaria, request from other authorities and from any public official, data which the former deem to be of fiscal importance, being the latter obliged to provide them.

300. In **Sweden,** the tax authorities have direct access to this information.

301. In **Switzerland**, only indirect access is possible to information that the Bureau de communication has sent to the cantonal criminal magistrate's court. Access is possible as far as the information is necessary for the application of the fiscal law. In any case, the fiscal secrecy rules must be applied.

302. In **Turkey,** Article 22 of Act No. 5549 prohibits the MASAK staff and investigators to disclose the secrets or other confidential information which they acquire while exercising their functions, about personalities, transactions and account statements, businesses, undertakings, properties or professions of

the persons or other persons having relation with them. Tax secrecy (article 5 of the Tax Procedure Act No. 213) and bank secrecy (article 22 of the Banks Act No. 4389) rules have to be complied with as well.

303. In the **United States,** tax authorities generally have broad access to criminal intelligence information gathered or accessed by anti-money laundering authorities, but in general, only for the investigation of tax-related crimes.

B. *If so, what type of information does this include and under what circumstances do the tax authorities have access?*

304. Apart from annual reports on patterns or trends in money laundering, which are generally publicly available, the information, if available to tax authorities, would be restricted to information necessary for the assessment of taxes.

305. In **Australia,** the information sought would generally be limited to information relevant to establishing a person's Australian tax liability.

306. In **Belgium,** the annual report of the CTIF contains information on the activities of the CITF, notably at the international level, a typological analysis of the cases which the Committee has sent to the judicial authorities, statistics on the cases dealt with, and an overview on case law concerning money laundering. The annual reports of the CTIF might be downloaded from the CTIF website (http://www.ctif-cfi.be/index.htm).

307. In **Hungary** the information must be connected to the tax assessment and can only be obtained upon written request made by the tax authorities.

308. In **Italy** *Guardia di Finanza*, in its capacity as police body, has access to the *Archivio Interforze di Polizia* (Shared Archives of Police Forces), which comprises past records gathered by all of the Italian police forces.

309. In **Luxembourg** the annual report of the Service Anti Blanchiment contains a section with the latest trends on money laundering and other information not related to specific cases. Other information obtained by the Service Anti Blanchiment (e.g. as a result of exchange of information with foreign anti-money laundering authorities) which relates to specific cases may not be sent to the tax authorities.

310. In **Mexico** tax authorities only have access for purposes of detection of money laundering crimes but not for tax purposes.

311. In **New Zealand** the Inland Revenue Department can access any information, which is required for the enforcement of the Act. This includes Customs movement checks, assets held overseas, financial transactions (business and personal).

312. In **Poland** the annual report of the GIFI contains information on its activities, trends in money laundering, typologies and methods used by criminals. It also includes data on exchange of information with reporting entities and foreign counterparts of GIFI and statistics on the cases dealt with.

313. In **Sweden** the names of individuals, companies and transactions can be passed on to the tax authorities. Information of this kind is protected under the general provisions of the secrecy law and special regulations regarding police register. Generally, information can be given to other authorities further to the conditions laid down in the secrecy law. In addition, the Swedish Financial Unit can pass on all kinds of information concerning new modus operandi and strategic information.

314. In **Turkey** this includes information related to identification of the taxpayer and his transactions.

315. The **United Kingdom**'s Serious Organised Crime Agency (SOCA) gathers intelligence from a wide range of sources. See paragraph 130 above as regards what information can be shared. Under the Proceeds of Crime Act 2002 (POCA), SOCA may pass information to the Assets Recovery Agency (ARA) for the purpose of any of its functions including civil recovery of assets and non-criminal taxation functions. POCA also provides gateways for information to be supplied to ARA from the police and other law enforcement and prosecuting agencies for the purpose of any of its functions.

316. In the **United States**, the types of information include so-called "pattern and trend" information (which law enforcement agencies typically compile to determine likely activity patterns and preferred methods of operation of financial criminals).

C. *Please describe briefly the confidentiality provisions which may restrict the disclosure of this type of information.*

317. Disclosure of this type of information may be restricted in cases where disclosure might be prejudicial to other agencies' own investigations, by regulations on legal professional privilege, by the fact that the material is strictly secret (e.g. if the material is sensitive information in a strategic report) or permission is denied by those responsible for the intelligence.

318. In **Australia**, disclosure of this information to the Australian tax authorities would not generally be precluded by privacy principles or other confidentially provisions. However, disclosure may be precluded in circumstances where disclosure might be prejudicial to other agencies' own investigations.

319. In **Belgium** and **Luxembourg,** the annual reports are, as mentioned before, public.

320. In **Denmark,** the disclosure of this information is governed by section 28 of the Danish Public Administration Act. See Paragraph II, section G.

321. In **Hungary,** the general confidentiality rules apply to this information.

322. In **Italy,** there are no limitations as to the exchange of information between anti-money laundering authorities concerning general typologies of transactions, as well as patterns or trends in money laundering activities.

323. In **Korea**, the disclosure of this information is governed by Article 9 of the Financial Transaction Reports Act (Guarantee of Secrecy of Financial Transaction Information).

324. In the **Netherlands,** the privacy of persons and reporting institutions is safeguarded by the Act on the disclosure of unusual transactions. This act prohibits the persons and institutions that have a task under this law, to make further or other use of any data or information supplied or received in accordance with the act or to disclose such data or information for any purpose other than what is required by the performance of his duties or by the act.

325. In **New Zealand,** the only information, which the Inland Revenue Department cannot access, is information, which is governed by legal professional privilege. However, this does not include details of financial transactions.

326. In **Sweden,** if there is sensitive information in a strategic report or modus operandi, the Swedish Financial unit has the possibility to classify the material as strictly secret.

327. In **Switzerland,** Article 110 of the “Loi sur l’Impôt fédéral direct” requires the persons in charge of the application of the Act and those with whom they collaborate to keep secret all facts they get knowledge of in the course of their duties as well as the discussions of the authorities and must refuse consultation of fiscal files to third parties. Information may be obtained only in cases where the federal law provides an explicit legal basis for the disclosure.

328. In **Turkey**, Article 22 of Act No. 5549 prohibits the MASAK staff and investigators to disclose the secrets or other confidential information which they acquire while exercising their functions, about personalities, transactions and account statements, businesses, undertakings, properties or professions of the persons or other persons having relation with them. Tax secrecy (article 5 of the Tax Procedure Act No. 213) and bank secrecy (article 22 of the Banks Act No. 4389) rules have to be complied with as well.

329. In the **United Kingdom**, the conditions that apply to disclosure of information to HM Revenue & Customs are as set out in paragraphs 130 and 192 above. The transmission of information to the Assets Recovery Agency (ARA) is permitted rather than mandatory but the relevant agencies will seek wherever possible to supply as much information as they can. Any disclosures made by SOCA or other agencies to the ARA may be used for any of ARA’s functions subject to any general restrictions set by the information provider under a Memorandum of Understanding or specific restrictions related to a specific case. In general, restrictions apply to the use of sensitive information by ARA rather than its supply to ARA.

330. In the **United States,** these types of criminal intelligence are generally available to the IRS only for purposes of investigating tax related crimes.

V. Access to Information Gathered in the Context of a Specific Investigation

A. *Please identify the governmental bodies or agencies with principal responsibility for the investigation of potential money laundering offences and briefly describe their roles in money laundering investigations.*

331. In **Australia, Denmark, France, Germany, Hungary, Italy, Japan, Korea, Mexico, the Netherlands, Norway, Poland, Spain, the Slovak Republic, Sweden, Switzerland, Turkey, the United Kingdom**, and the **United States** there is a shared responsibility between governmental bodies for the investigation. In twelve (12) countries that responded to the questionnaire, there is a governmental body or agency, which is principally responsible for the investigation.

In	The responsible authority is
Argentina	Financial Reporting Unit (UIF – Unidad Informaión Financiera)
Australia	the Australian Federal Police (AFP), Australian Crime Commission (ACC)
Austria	The Money Laundering Unit (Geldwäschemeldestelle), part of the Criminal Intelligence Service Austria.
Belgium	l’Office Central de lutte contre la delinquance économique et financière organisée
Canada	The Royal Canadian Mounted Police
Czech Republic	Police Service for Combating Corruption and Major Economic Crime
Finland	the Money Clearing House

In	The responsible authority is
France	TRACKFIN, the Judicial Authorities and the Judicial Police
Greece	Financial and Economic Crimes Office (FECO)
Ireland	GBFI
Italy	Special Team of *Guardia di Finanza's Polizia Valutaria*/Anti-Mafia Investigation Directorate (DIA)
Korea	The Supreme Public Prosecutors Office and the Korean National Police Agency
Luxembourg	la Section criminalité organisée du Service de police judiciaire sous le Service Anti-Blanchiment auprès du Parquet du tribunal d'arrondissement Luxembourg
New Zealand	the New Zealand Police, Serious Fraud Office
Norway	The National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM),
Portugal	the Ministério Público through the Judiciary police

332. In **Argentina**, the UIF is in charge of investigating suspicious transaction reports.

333. In **Australia,** the AFP is the principal investigative arm of the Commonwealth providing policing throughout Australia in relation to the detection and prevention of crime. The ACC also performs an active role in the investigation of money laundering, particularly in the co-ordination of multi-agency task forces drawn together for investigative purposes.

334. In **Austria**, the Geldwäschemeldestelle, has been created as a specialized unit for all money laundering cases and investigations. It is part of the CISA (Criminal Intelligence Service Austria), a specialized police unit within the Federal Ministry of Interior.

335. In **Belgium,** the OCDEFO is a police service that is in charge of combating all economic, financial or serious fiscal infringement related to organised crime. This includes money laundering, the crime of insider dealing, abuse of public money, financial swindle, and serious fiscal infringements where complicated schemes are used. The OCDEFO is a central office, which works in the Commisariat général de la Police under the control of a judicial official appointed by the General Committee of Public Prosecutors.

336. In **Canada,** the Royal Canadian Mounted Police (RCMP) is the lead law enforcement agency responsible for the investigation of money laundering offences; however, all police services across Canada share this mandate. Under the leadership of the RCMP, 13 Integrated Proceeds of Crimes (IPOC) Units currently exist across Canada. These units are dedicated solely to targeting proceeds of crime, including money laundering. They represent a collaborative effort between the RCMP, local police services, forensic accountants, the Public Prosecution Service of Canada and the Canada Revenue Agency.

337. In the **Czech Republic**, besides the Financial Analytical Unit, which is a component of the Ministry of Finance, there is a special agency for disclosure of corruption and serious economic criminal

activity. This agency, which is a component of the Police of the Czech Republic, is responsible for investigation of potential money laundering crimes.

338. In **Denmark,** money laundering offences are normally investigated in the 54 police districts. Some of the cases are investigated by the Public Prosecutor for Serious Economic Crime who has an attached police force or by the Money Laundering Secretariat (which is placed under this prosecutor).

339. In **France,** the authorities engaged in combating money laundering are TRACFIN, the Judicial Authorities and the Judicial Police.

340. In **Germany,** while the Federal Agency on Financial Services is mandated to ensure that the provisions of the Money Laundering Act are implemented in the banking, insurance and financial services industries, they have no powers of conducting investigations into criminal offences. The investigation of possible money laundering offences lies in principle in the sphere of responsibility of the police services of the Länder and the Federation, the customs investigation services and the public prosecutor's offices. The location and the factual content will determine which authority investigates a specific case.

341. In **Hungary,** as indicated in Paragraph I, section A, the core organisation of anti-money laundering activity is the Anti-Money Laundering Section (FIU) of the Directorate against Organised Crime of National Police Headquarters. The FIU has 30 days to conduct a preliminary investigation following the registration of the suspicious transaction reports. The time period may be extended for reasonable cause. While conducting a preliminary investigation the FIU may ask for additional information from the financial service provider making the report or other financial service providers, other government agencies (e.g. tax authorities under prosecutor's order), foreign counterparts (e.g. FIUs, Interpol, Europol) under agreements on mutual legal assistance, public commercial databases and other police databases. The information obtained by the preliminary investigation may then be further investigated by the FIU or can be referred to police districts of investigation. A criminal investigation is opened by the decision of the Head of the FIU. At the end of this phase of investigation the completed investigations are forwarded to the Prosecutor's Office.

342. In **Italy,** a special authority in the field of money laundering offences is attributed to Direzione Investigativa Antimafia – DIA – (Antimafia Investigative Directorate) and to Nucleo Speciale di Polizia Valutaria (Special Monetary Police Unit) of the Guardia di Finanza. It is to be underlined that Guardia di Finanza is a military corps under the Minister of Finance, having a special competence in tax and economic field. The Nucleo Speciale di Polizia Valutaria carries out monetary police tasks differing from the ones of tax nature usually carried out by the Guardia di Finanza, mainly in the field of assessment, thus supporting the activity of the Tax Administration. Should the aforesaid Nucleo be confronted with tax-related situations, making use of the Polizia Valutaria’s powers, it shall inform the Commands that are competent for the territory which, in turn, are to decide whether to perform a tax audit of taxpayers concerned or not.

343. In **Japan,** the public prosecutor, a public prosecutor’s assistant officer, a police official and a narcotics control officer are responsible for the investigation of potential money laundering offences. These authorities conduct criminal investigation of money laundering offences under their respective jurisdiction.

344. In **Luxembourg,** the investigation of money laundering offences is conducted by the Section criminalité organisée du Service de police judiciare under the responsibility of the Service Anti Blanchiment.

345. In **Mexico,** the General Attorney's Office and the Attached General Directorate for Transaction Investigations (DGAIO)-Financial Intelligence Unit within the Secretariat of Finance and Public Credit are responsible for investigating money-laundering offences.

346. In **Norway,** the National Authority for Investigation and Prosecution of Economic and Environmental Crime–(ØKOKRIM), which is the responsible authority for co-ordinating anti-money laundering activities, also has principal responsibility for the investigation of potential money laundering offences. They investigate and take out application for a prosecution in a few cases per year themselves. The majority of the cases are sent over to the local police and prosecution authorities for the same follow-up.

347. In **Poland,** the competent bodies responsible for carrying out an investigation in the case of money laundering offences are public prosecutors, who can assign the conduct of such an investigation to the police.

348. In **Portugal,** the governmental body responsible for the investigation is the Ministério Público through the Judiciary police. At the Judiciary police there exists a department mainly devoted to combating corruption and economic and financial fraud (Direcção central para o combate à Corrupção, fraude e infracções Económicas e Financeiras) both at national and international levels. This department collects information and asks for inquiries, inspection and other measures of financial crime or an act of corruption.

349. In **Spain**, the governmental bodies with responsibility for the investigation of potential laundering offences are, apart from the SEPBLAC, the investigative units of the Security Forces (Fuerzas y Cuerpos de Seguridad, FSC) with the following qualifications. Both at the level of the national territory as a whole and at the level of its administrative subdivisions, the FCS have at their disposal special units of Judiciary Police devoted to the investigation of those crimes. In particular, at the national level, the Civil Guard (Guardia Civil, CG) and the National Police Corps (Cuerpo Nacional de Policia, CNP) have investigative units specialised in money laundering, whereas at the level of the Autonomous regions (Comunidades Autónomas) of Catalonia and the Basque Country, and along with the aforementioned CG and CNP their respective Autonomous Police also have investigative units to this effect. The SEPBLAC takes care of streamlining and analysing the information provided by the persons/entities obliged to furnish it. If, after analysing it, signs of money laundering can be detected, preliminary proceedings start. Depending on the seriousness of the potential irregularity detected, the investigation follows either a purely administrative action or, if indications of a crime are apparent, a judicial action. The investigation can be carried out either by the police unit attached to the SEPBLAC or by any other specialised unit belonging to the FCS, the decision being made on the basis of criteria fixed by the SEPBLAC.

350. In the **Slovak Republic,** the Police Force, Prosecution, Courts and the Supreme Supervision Office are the authorities, which are responsible for investigation of all crimes including investigation of the cases of legalisation of proceeds of crime in compliance with Art. 252 of the Criminal Code.

351. In **Sweden,** when a preliminary investigation is opened the information has to be handed over to an investigation department.

352. In **Switzerland,** the Bureau of Communication receives the information concerning suspicious transactions and sends it to the canton involved. The responsible authorities for the prosecution are the cantons. In the future, this criminal procedure will be centralised at the federal level.

353. Although MASAK is the co-ordinating body for anti-money laundering activities in **Turkey,** money laundering investigations are carried out by auditors of other departments of the Ministry of Finance or, if needed, other ministries. In addition, security forces perform their functions related to anti-

money laundering. According to Article 279 of Turkish Criminal Act No. 5237, all government and public officers are obliged to report any crime they have faced while performing their duties and tasks to either the public prosecutor or relevant government body. Article 148 of the Tax Procedure Act grants the Ministry of Finance and its officials, who are authorised for tax examination purposes, to request tax related information directly from the taxpayer and other physical and legal persons who have a transaction with the taxpayer.

354. In the **United Kingdom,** "Appropriate officers" under the Proceeds of Crime Act 2002 may investigate money laundering offences. "Appropriate officers" are Constables, Officers of HM Revenue & Customs and "accredited" financial investigators (e.g. civilian staff working for the police service or other law enforcement agencies). In addition, the Financial Services Authority investigates suspected breaches of legal and regulatory anti-money laundering "systems and controls" obligations and HM Revenue & Customs also carries out these functions for Money Service Businesses and High Value Dealers as the regulator for these businesses.

355. In the **United States**, the investigation of money laundering offences is not assigned to any particular law enforcement agency. Rather, responsibility is shared by a large number of agencies, depending upon the nature of the underlying predicate crime. For example, the Federal Bureau of Investigation (FBI) has responsibility for investigating a wide variety of money laundering offences, but other agencies, such as the Securities and Exchange Commission (SEC), the U.S. Customs Service, and the Immigration and Naturalization Service (INS) also investigate money laundering offences that relate to their areas of expertise.

1. Are these anti-money laundering authorities permitted to provide (either as a spontaneous exchange or in response to a specific request) information to tax authorities pertaining to a possible tax related crime? If so, under what circumstances?

356. Money laundering authorities can send information to tax authorities in **Belgium, Canada**, the **Czech Republic**, **Denmark**, **Finland**, **Germany**, **Greece**, **Ireland**, **Japan**, **Korea**, **Mexico**, the **Netherlands**, **New Zealand**, **Norway**, **Poland**, **Spain**, **Turkey**, the **United Kingdom** and the **United States**. They are not allowed to do so in **Austria** and in **Sweden**, except in certain cases. In **France**, **Luxembourg** and **Portugal** this is only allowed through judicial authorities. In **Hungary** the tax authorities can only be provided with information after they have requested it in writing and the information is necessary for the tax assessment. In **Switzerland**, it depends on the criminal law of the canton concerned and these laws may differ in the cantons.

357. In **Australia,** when required, the ATO participates with the Australian Federal Police, the Australian Crime Commission and other Commonwealth Agencies in relation to money laundering investigations but generally only when revenue is potentially at risk.

358. In **Austria,** the FIU may only pass on information concerning customs fraud and evasion of import and export duties. Other fiscal offences are specifically prohibited from being disclosed to the fiscal authorities, but it is intended to include all tax crimes punishable by at least three years. The legislative process is in preparation.

359. In **Belgium,** the members of the OCDEFO are not allowed to send information gathered while fulfilling their duties, to the tax authorities. There is no direct exchange of information organised between the police and the fiscal authorities. Nevertheless, fiscal authorities may gather certain information through the judicial authorities. The Public Prosecutors at the courts are obliged to inform directly the Ministry of Finance of any information they get which might be an indication of fraud concerning direct or indirect taxes.

360. In **Canada,** the Royal Canadian Mounted Police (RCMP) has the authority to investigate violations of all federal statutes. Canada Revenue Agency may request and obtain access to documents seized and retained by the RCMP pursuant to a Criminal Code warrant as long as there are no explicit restrictions in the original detention order, obtained under section 490 of the Criminal Code, pertaining to 'persons who have an interest in what is detained' in other words, to persons who have a bonafide legal interest or a legal concern for the purpose of administration and enforcement of a statute (in this case, Canada Revenue Agency). Furthermore, it should be noted that to have access to the seized documents does not necessarily include making copies of them. To make copies, an order under subsection 490(15) of the Criminal Code is necessary. There is no legal statutory restriction binding the ability of the police to allow Canada Revenue Agency access to the seized documents. Indeed, the RCMP has full authority to investigate violations of federal law, which includes investigations of violations of Canada Revenue Agency statutes. In summary, it must be shown that

- Canada Revenue Agency is an interested party;
- There is a basis for the party's interest and
- access is required for the administration of a Canada Revenue Agency statute.

361. In the **Czech Republic,** the Police Service for Combating Corruption and Major Economic Crime is authorised to provide information pertaining to a potential tax related crime under the provision of the Administration of Taxes Act.

362. In **Denmark,** the Money Laundering Secretariat or the police district handling further investigation informs the tax authorities of the relevant facts. There are no guidelines since this exchange of relevant information between public authorities is a normal part of the co-operation between Danish authorities. This is the case regardless of whether the information is from an STR (Suspicious Transaction Report) or from other sources on which no special- restrictions are imposed.

363. In **Finland,** Information obtained during a police investigation (intelligence phase) that has been initiated due to a suspicious transaction report is confidential and may be used for the prevention and clearing of money laundering only. If a pre-trial investigation is initiated due to a suspicious transaction report or pre-trial investigation is already in progress information may be disseminated to parties that are involved; also to tax authorities as complainants.

364. In **France,** the judicial authorities and the judicial police are allowed to provide information obtained in the course of an investigation, to the tax authorities.

365. In **Germany,** once criminal proceedings have been instituted for a money laundering offence, the tax authorities must be informed of this and must be notified of the facts on which the proceedings are based. The tax authorities may make unrestricted use of such information both for taxation purposes and for criminal proceedings in tax fraud cases. Notwithstanding the reporting obligations under the Money Laundering Act, all courts and authorities are, in principle, obliged to notify the tax authorities if there are grounds to suspect tax fraud.

366. In **Greece,** the Financial and Economic Crimes Office (FECO) is permitted to provide, even spontaneously, information to tax authorities relevant to a possible tax related crime.

367. In **Hungary,** the anti-money laundering authorities are not permitted to provide information to tax authorities pertaining to a possible tax related crime unless the information requested in writing is necessary for the tax assessment.

368. In **Ireland,** there is no specific legislative requirement, but information may be provided either spontaneously or on request.

369. In **Italy**, *Guardia di Finanza* is in charge of the prevention and punishment of tax law offences of an administrative or criminal nature. As regards Italy, assuming that the fundamental issue refers to the access for tax authorities to information gathered by FIU but not vice versa, it is important to underline a peculiarity related to one of the main functions of the UIF. In compliance with article 20 of L.413/1991 and article 37 of Law Decree 223/2006, the UIF has direct access to the *Anagrafe dei Conti e dei Depositi* (the Italian accounts and deposits register) and to the *Anagrafe Tributaria* (the Italian Tax Register). As stated above, on the basis of the financial analysis made on received reports, the UIF transmits gathered information to *Guardia di Finanza* and DIA. It is noteworthy that such an activity is performed by pointing out the elements, if any, implying the possible existence of a related tax crime.

370. In **Japan,** anti-money laundering authorities may provide information pertaining to a possible tax related crimes with tax authorities if they determine, on a case-by-case basis, that it is necessary and proper to do so. There is no statutory provision, which specify the condition under which such information may or shall be provided.

371. In **Korea**, in principle the investigative authorities may provide the tax authorities with the information requested concerning a possible tax crime. In reality, however, there have been no cases for providing information in this manner yet.

372. In **Luxembourg,** the Public Prosecutor may prosecute if it appears in the course of an investigation that a tax related crime is involved.

373. **Mexico** referred to paragraph I, section A, where it is explained that DGAIO is responsible for the co-ordination of the work with the fiscal authorities on examinations where elements are detected that lead to a presumption of the existence of money laundering transactions.

374. In the **Netherlands,** the Public Prosecutors' Office provides guidance to the investigators of the police or the FIOD-ECD (Fiscal Intelligence Investigation Service – Economic Inspection Service) which is part of the Tax Administration.

375. In **New Zealand,** the tax authorities will receive this information under Section 17 of the tax administration Act 1994.

376. In **Norway,** it is the confidentiality and access provisions in the Criminal Procedure Act and the Police Act, which come to use in these situations. A description of the provisions is provided above in paragraph II, section G.

377. In **Poland,** the prosecutor may transfer information to the competent tax authorities if in the course of investigation the prosecutor considers that the information obtained may be useful for tax purposes.

378. In **Portugal,** access to information related to tax crimes is only possible through a certificate from a judicial authority (Ministério Público) drawn out from the judicial inquiry into a money laundering crime. The information obtained can only be used to pursue tax crimes and to enforce tax assessments.

379. In the **Slovak Republic,** in March 1999 an Agreement was signed between the Police Force, Central Tax Directorate and Customs Directorate on mutual assistance**.**

380. In **Spain,** SEPBLAC has to pass on to the tax authorities any information it received in the exercise of tits authority and which is relevant for tax purposes.

381. In **Sweden**, the Swedish Financial Unit has the main responsibility for gathering and analysing relevant information and detecting money laundering. When a preliminary investigation is opened the information has to be handed over to an investigation department and the Swedish Financial Unit does not take active part in the investigation.

382. In **Switzerland,** there is no such authority at the federal level. The criminal law procedures concerned may differ in the cantons.

383. Although MASAK is the co-ordinating body for anti-money laundering activities in **Turkey,** money laundering investigations are carried out by auditors of other departments of the Ministry of Finance or, if needed, other ministries. In addition, security forces perform their functions related to anti-money laundering. According to Article279 of Turkish Criminal Act No. 5237, all government and public officers are obliged to report any crime they have faced while performing their duties and tasks to either public prosecutor or relevant government body. Article 148 of the Tax Procedure Act grants the Ministry of Finance and its officials, who are authorised for tax examination, to request tax related information directly from taxpayer and other physical and legal persons who have a transaction with the taxpayer.

384. In the **United Kingdom,** the Serious Organised Crime Agency (SOCA) may pass on information. SOCA acts as the conduit to HM Revenue & Customs for any such reports from the police, FSA and SFO. Under the Proceeds of Crime Act 2002 (POCA), SOCA may pass information to the Assets Recovery Agency (ARA) for the purposes of any of its functions including civil recovery of assets and non-criminal taxation functions. POCA also provides gateways for information to be supplies to ARA from the police and other law enforcement and prosecuting agencies for the purpose of any of its functions. It should be noted however, that ARA's functions do not include the prosecution of tax crime.

385. In general, in the **United States**, case-specific information is shared among law enforcement agencies (including the IRS's Criminal Investigation Division) through multi-agency task forces and other inter-agency co-ordination groups. Law enforcement agencies generally share case-specific information according to their own internal policies (i.e., they are not required to share information with other agencies), but the inter-agency process is generally characterised by a significant amount of co-operation with respect to information sharing. In addition, law enforcement agencies often conduct joint investigations of possible financial crimes, and the IRS's Criminal Investigation Division is a regular participant in such joint investigations.

2. Are tax authorities permitted to participate in money laundering investigations that may also involve tax-related crimes? If so, under what circumstances? Is there a specific legal basis for such participation?

386. In principle joint investigations are possible in **Australia**, **Canada**, the **Czech Republic**, **Denmark**, **Finland**, **Germany**, **Ireland**, **Korea**, **Mexico**, the **Netherlands**, **Portugal**, **Spain**, the **Slovak Republic**, **Sweden**, **Turkey**, the **United Kingdom**, and the **United States**. In **Argentina, Austria**, **Belgium**, **France**, **Greece**, **Hungary**, **Japan**, **Luxembourg**, **New Zealand**, **Norway**, **Poland** and **Switzerland** these joint investigations are not possible. In **Italy**, *Guardia di Finanza* holds investigations at once as criminal police and tax police.

387. In **Australia,** the Commissioner's statutory authority to administer the various taxing statutes provides sufficient legal basis for him to participate with other agencies in the discharge of his revenue collection duties. In more serious matters, it is also open to the Commissioner to refer taxation matters to

the ACC, the AFP or the Director of Public Prosecutions for further investigation and prosecution under the Crimes Act 1914 or the Criminal Code Act 1995.

388. In **Belgium,** since the 1st of November 2001, tax officials have been seconded to the OCDEFO in order to improve the efficiency of this body in cases of fiscal fraud. Since the end of 2002 these tax officials have the legal capacities of police officer. During their secondment, they are not allowed to communicate to tax authorities any information they obtain while fulfilling their duties. Neither are they allowed to take up any cases in which they were involved before their secondment.

389. In **Canada,** tax authorities are permitted to assist in money laundering investigations by lending their expertise to proceeds of crime cases. The assistance of tax authorities intensifies and enhances the effectiveness of enforcement efforts by the Integrated Proceeds of Crime (IPOC) units creating a co-ordinated approach to targeting those profiting from crime and depriving such individuals of criminally obtained assets, thereby disrupting organised crime.

390. In the **Czech Republic,** the tax authorities participate in money laundering investigations that may involve tax avoidance.

391. In **Denmark**, if the expertise of the tax authorities is needed or the participation will result in a shorter period of investigation, the tax authorities participate in the investigation. In other cases, they are kept informed. This co-operation has no specific legal basis.

392. In **Finland,** the Money Laundering Clearing House always co-operates with the tax authorities when a money laundering report has been moved to a pre-trial investigation and the tax authorities are in a position of a complainant in that matter.

393. In **France,** information obtained by TRACFIN may only be used for combating money laundering and may not be used for other purposes.

394. In **Greece,** tax authorities are not permitted to participate in money laundering investigations.

395. In **Germany,** joint action between law enforcement and tax authorities (tax investigation agencies) is conceivable in specific instances; it should be noted, however, that as a rule the tax authorities are only informed when criminal proceedings in respect of a money laundering offence have already been instituted.

396. In **Hungary,** the tax authorities are not permitted to participate in money laundering investigations that may involve tax related crimes due to the fact that this kind of investigation is the competency of the investigating authorities (e.g. police, prosecutors).

397. In **Ireland,** an agency has been established in 1996, called the Criminal Assets Bureau (CAB), to co-ordinate the actions of the Tax Authorities, the Social Welfare authorities and the Garda Siochana (Irish Police) in relation to the taking of measures to deprive criminals of the benefit of proceeds of crime generally, but in particular in relation to drug trafficking. The CAB is staffed by Tax officials, Social Welfare officials and Police officers. Money laundering investigations concerned with individuals involved in organised crime would usually come within the ambit of the CAB who would use the tax code and other non-tax legislation to achieve their objective of depriving the criminals of their assets.

398. In **Japan,** tax authorities are not permitted to participate in money laundering investigations. Based upon the information provided by the above-mentioned authorities, however, an independent tax audit or investigation maybe launched.

399. In **Korea**, upon request, the tax authorities may participate in money laundering investigations that involve tax-related crimes.

400. In **Luxembourg,** there is no legal basis for joint activities and the tax authorities do not participate in investigations on money laundering.

401. In **Mexico,** in February 1993, an Agreement establishing the co-ordination among the General Attorney's Office and the Secretariat of Finance and Public Credit on drug-related crime matters was officially issued. Said instrument establishes that as soon as the Federal Public Prosecutor submits the preliminary investigation, and has verified the corpus delicti and the strong suspicion of guilt of the suspect; a written report will be made to the Secretariat of Finance and Public Credit. The preceding will be made so that the fiscal authorities visit the alleged criminal, and examine his statements, accounting, assets and merchandise. Likewise, the fiscal authorities shall also be empowered to verify if the suspect by himself or through a third party is a partner or shareholder. Whenever the Secretariat of Finance and Public Credit, during the exercise of its examination authority finds elements that enable it to presume the commission of money laundering offences, must execute its verification authority, as conferred by Law, and if applicable, file an accusation through the Fiscal Attorney's Office on the facts that could constitute the offence of transactions carried out with resources from illicit origin (Money Laundering).

402. In the **Netherlands,** the FIOD-ECD (Fiscal Intelligence Investigation Service – Economic Inspection Service), as part of the Tax Administration, participate in money laundering investigations that (also) involve tax related crimes. The law enforcement authorities are in principle permitted to give any information regarding tax-related crimes to the FIOD-ECD, but not to the general tax authorities. In this respect, it should be noted that close co-operation exists between the police and the FIOD-ECD.

403. In **New Zealand,** the Inland Revenue does not participate in joint investigations with other agencies due to the secrecy provisions. However, it may conduct an independent tax investigation.

404. In **Norway**, there is no specific legal basis for the authorities to participate in money laundering investigations that may also involve tax-related crimes. However, in practice the confidentiality and access provisions of the two authorities allow them to share information with each other in concrete cases. The confidentiality and access provisions of the two authorities allow them to share information with each other in concrete cases. The confidentiality provisions in the Tax Assessment Act permits the tax authorities to give information concerning offences outside the tax authorities area such as fraud, embezzlement, money laundering or drug-related crimes and the police and prosecution authorities. This information may only be given if there are adequate grounds to suspect violation, and the violation according to the law has to have a minimum sentence of six months imprisonment. The information may be given if the police or the public prosecutor asks for such information, or on the tax authorities own initiative. This way one may say that the tax authorities take part in for example money laundering investigations of the police and prosecuting authorities.

405. In **Poland,** tax authorities are not permitted to participate in anti-money laundering investigations.

406. In **Portugal,** a joint investigation is possible if it is requested by the Ministério Público, e.g. if a fiscal investigation is necessary.

407. In **Spain,** if, in the process of the money laundering investigation, the FCS would get to know about a possible tax crime, the relevant facts would be communicated to the Judiciary Authority. Pre-trial inquiries on crimes of any type must be conducted by a judge: tax audits are suspended when indications of a would-be crime arise and the case is referred to the court. The involvement of the tax administration can

be indirect only: the judge conducting the pre-trial inquiry may request the tax authority to appoint one or more tax auditors to assist him with the investigation.

408. In the **Slovak Republic,** under the Law on Police Force No. 171/1993, par. 29a, the tax authorities are permitted to participate in money laundering investigations that may also involve tax related crimes and they may, together with the Police Force enter the premises determined for undertaking and co-operating with the Police Force.

409. In **Sweden,** when a preliminary investigation has been opened the prosecutor can demand assistance from the tax authorities according to the Swedish Code of Judicial Procedure.

410. In **Switzerland,** there is no legal basis for a joint investigation.

411. In **Turkey,** tax examinations can only be performed by the officials specified in Article 135 of the Tax Procedure Act. However, tax authorities are allowed to participate in money laundering investigations.

412. The various Crown prosecuting authorities in the **United Kingdom** have entered into a convention governing the work of prosecutions in which more than one agency has an interest. This convention would allow HMRC officials to be invited by other investigating authorities (e.g. the police) to participate in money laundering investigations involving a tax crime. In the event of a joint investigation, any intelligence gathered by HMRC officials other than under HMRC's own powers could not be used by HMRC directly as evidence. The participating HMRC officials would also remain bound by the generally applicable statutory prohibition on disclosure of information obtained or held in the exercise of their tax functions.

413. The Proceeds of Crime Act 2002 provides for the disclosure of information between HMRC and the Assets Recovery Agency. HMRC may disclose information to the Director of the Assets Recovery Agency for the exercise of his functions; this may be used by him for the purposes of any of his functions, but may not be further disclosed except with the consent of HMRC. Information obtained by the Director in connection with his taxation function may only be disclosed to HMRC (or in Scotland, to the Lord Advocate for criminal confiscation, so that he is in the same position as the Director).

414. In the **United States,** although there is no specific legal basis for such participation, the long-standing practice in the law enforcement community has been to conduct joint investigations when appropriate.

B. *Please describe briefly the confidentiality provisions, under either domestic law or international agreements, which may restrict the disclosure of information gathered in the context of a specific money laundering investigation.*

415. If the information gathered in the context of a specific money laundering investigation could be shared with tax authorities, in general this information may only be shared for tax purposes.

416. In **Argentina**, the legislation on suspicious transaction reports specifically imposes a duty of confidentiality on the UIF in respect of the information received and disclosure is punishable by a prison sentence (article 22 of Act 25.246). This provision also applies to persons and entities with reporting obligations.

417. In **Australia,** where other agencies participate with the Australian Taxation Office (ATO) in the investigation of a taxation offence, specific provisions governing secrecy prevail and flow with the information supplied to the participating agencies. Where information is passed to the Australian Crime

Commission (ACC) for a tax related investigation that it is pursuing, obligations that arise under the secrecy provisions still apply, but tax information may be passed to other agency task force members by virtue of their status as ACC task force members. Information received by the ATO under international agreements is generally received on the basis that it cannot be disseminated elsewhere. However, if necessary, consent could be sought from the international source.

418. In **Canada,** tax authorities generally are not permitted to disclose information obtained for tax purposes (i.e. section 241 of the Income Tax Act) for non-tax purposes. Information may be shared with the police only under the following circumstances:

1. where a criminal information (charge) has been laid (paragraph 241(3)(a) of the Income Tax Act), and the information requested is relevant to the accused person, or

2. where the police acquire a court order (section 462.48) under the Criminal Code for access to tax information in relation to designated drug offences only.

419. In the **Czech Republic,** there is a particular provision relating to confidentiality in the Act of the Police of the Czech Republic. Under this provision, the Police Service for Combating Corruption and Major Economic Crime is entitled to ensure the safety of its agent who is/was connected in the investigation of any criminal activity. In this case, some restrictions of providing information can arise.

420. In **Denmark,** the exchange of information with non-law enforcement authorities is carried out in accordance with the principles of section 28 of the Danish Public Administration Act. See the Danish answer to paragraph II, section G.

421. In **Finland,** information obtained in the context of a money laundering investigation can only be used to combat money laundering. However, if a pre-trial investigation is started, under the rules concerning pre-trial investigations, this information is accessible to all parties entitled to this information. If the tax authorities are complainants in tax crimes, this information is accessible to them as well.

422. In **Germany,** the tax authorities may use the information transmitted by the law enforcement authorities (cf. II. F) for taxation purposes and in criminal proceedings for tax fraud. For the rest, in ratifying the Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Germany refrained from making a declaration pursuant to Article 32 (2). Under this provision, the requested Party may stipulate that information will be provided only on condition that such information or evidence is not used or transmitted without its consent by the authorities of the requesting party in investigations or proceedings other than those specified in the request. However, this merely implies that there are no general reservations against the requesting State using the information supplied for other criminal prosecution purposes. Any use for other than criminal prosecution purposes will require the prior consent of the German authorities. The same applies with respect to information exchanged upon request if no bilateral or multilateral agreement exists.

423. In **Greece,** the Committee of Financial Crime Investigation may use the information concerning suspicious transactions only for the purposes of the fight against money laundering and in trials where the predicate offence for money laundering is judged. However, the Financial and Economic Crimes Office (FECO) is permitted to provide, even spontaneously, information to tax authorities relevant to a possible tax related crime.

424. In **Hungary,** the general confidentiality rules would apply to this information.

425. In **Ireland,** to the extent that information of the CAB comes into the hands of Irish tax authorities, the normal domestic confidentiality rules concerning taxpayer information would apply. Such

information could be exchanged in accordance with the exchange of information provisions in a double taxation treaty.

426. In **Italy**, information and data gathered during the Criminal Police's investigations are kept secret (*segreto istruttorio* or inquiry secrecy) as late as the first hearing of a trial, in compliance with the provisions of the *Codice di Procedura Penale* (the Italian code of criminal procedure).

427. In **Japan,** the confidentiality regulation derives from the duty to protect privileged information based on the provisions of National Public Servant Law, the Local Public Servant Law and the Code of Criminal Procedure.

428. In **Korea**, the confidentiality of the intelligence information held by the tax authorities is protected under the statutory prohibition on disclosure of information obtained or held in the exercise of their functions. This is provided for under paragraph 8 of Article 81 of the Basic Law for National Taxes.

429. In **Mexico**, this information can only be used to counteract money laundering.

430. In the **Netherlands**, in the different areas of the governmental responsibilities, special legislation about privacy is applicable. For example the law on judicial information regulates:

- the kind of information that has to be collected for judicial purposes,
- for what periods of time that information must be stored, and
- under what conditions the information can be disclosed.

431. The act on police registers regulates how the police forces have to store information and under what conditions the information can be made available to other law enforcement agencies in the Netherlands or abroad. The law on police registers is also applicable to the information exchange of the Netherlands Office for the disclosure of unusual transactions (MOT).

432. In **New Zealand,** there are no confidentiality provisions that apply to other enforcement agencies when providing information to the Inland Revenue Department. However, IRD does not provide any information to other enforcement agencies. International information is obtained through the Double Taxation Agreements, which the Inland Revenue Department has with twenty-five countries. However, to obtain international information through a New Zealand enforcement agency, once again there are no confidentiality provisions. The information must be made available on request by the Inland Revenue Department although the agency may specify that the information may be used for reference only and not form part of any court proceedings.

433. The confidentiality provisions under domestic law which regulate disclosure of information gathered in the context of a special money laundering investigation in **Norway**, are described above in paragraph II, section G.

434. In **Poland,** information obtained in the course of an investigation may be protected from disclosure by state official Secrecy, bank secrecy, fiscal and professional secrecy.

435. **Spain** (see answers in paragraphs II, section G and III section F). Information of a strictly police nature can be disclosed to the appropriate authorities, with the logical confidentiality limitations. However, if the piece of information or the documents at issue are subject to procedural secret, their possible disclosure is conditioned upon the authorisation of the appropriate judge. As for disclosing information to those units of the FCS specialised in investigating tax crimes, that could be done using the internal

channels previously established for exchange of information. With reference to possible exchanges with other countries, police information gathered in the context of a specific investigation on money laundering, may be exchanged in accordance with the guidelines laid down in the international agreements, taking into account the reciprocity principle.

436. In the **Slovak Republic,** the confidentiality provisions under domestic law which restrict the disclosure of information gathered in the context of a specific money laundering investigation are:

1. Article 2 of the Decree of the Ministry of Interior No. 181/1997(Coll. of Laws) on the Suspicious Banking operations;

2. Article 38, par 3) of the Banking Act No. 21/1992 (as amended);

3. Criminal Law No. 140/1961 Coll. of Laws, as amended - Article 122 (Violating the business secrecy, banking secrecy or tax secrecy) and Article 178 (An unauthorised disclosure of personal information)

437. The **Swedish** secrecy law has to be observed even where there are international agreements. Concerning exchange of information with other countries, the Swedish Financial Unit has to apply the international law of legal aid.

438. In **Turkey**, Article 22 of Act No. 5549 prohibits the MASAK staff and investigators to disclose the secrets or other confidential information which they acquire while exercising their functions, about persons, transactions and account statements, businesses, undertakings, properties or professions of the persons or other persons having relation with them. Tax inspectors can use the indirect information during money laundering investigations requiring tax examinations but not for any other purpose because this contradicts the secrecy provision for money laundering. Also tax secrecy (article 5 of the Tax Procedure Act No. 213) and bank secrecy (article 22 of the Banks Act No. 4389) rules have to be complied with. Information is provided to tax authorities according to the result of a pre-investigation report with regard to money laundering cases related to tax crimes. The MASAK President makes the determination. Although there are no written guidelines, there are many taxation oriented staff members within the MASAK.

439. In the **United Kingdom,** the Serious Organised Crime Agency (SOCA) may, in general, pass intelligence to other competent bodies only for the purpose of criminal investigations within their province. In the case of any such information passed to HMRC, the confidentiality of the intelligence information in the hands of HMRC officials is protected under the statutory prohibition on disclosure of information obtained or held in the exercise of their tax functions. This is provided for under Section 182 of the Finance Act 1989. Under section 436 of the Proceeds of Crime 2002 (POCA), SOCA may pass information to the Assets Recovery Agency for the purpose of any of its functions including civil recovery of assets and non-criminal taxation functions. POCA also provides gateways for information to be supplied to ARA from the police and other law enforcement and prosecution agencies for the purpose of any of its functions. The transmission of information to ARA is permissive rather than mandatory but the relevant agencies will seek wherever possible to supply as much information as they can. Any disclosures made by SOCA or other agencies to the ARA may be used for any of the ARA’s functions subject to any restrictions related to a specific case. In general, restrictions apply to the use of sensitive information by ARA rather than its supply to ARA.

440. In the **United States**, as a matter of practice among law enforcement agencies, case-specific information is available only for the purpose of crimes. Accordingly, the IRS would have access to such information only in the context of investigating tax-related crimes.

VI. Exchange of Information with Tax Treaty Partners

A. *If the tax authorities have access to the information described in Parts I and/or II, are there any restrictions that would apply to providing such information to a treaty partner (assuming the requirements of Article 26 or the relevant exchange of information instrument are otherwise met)? If so, please describe the restriction and its legal basis.*

441. In **Argentina, Austria** (apart from customs fraud and evasion of import and export duties), **the Czech Republic, France, Italy, Japan, Luxembourg**, **Mexico and Turkey,** fiscal authorities have no access to the information described in Parts I and II for tax purposes, so this information cannot be exchanged under tax treaties. In the **Slovak Republic**, if this information is available to the tax authorities, it may not be exchanged under tax treaties. In the other countries this information, if available, may be exchanged, but sometimes only after consultation with the money laundering authorities.

442. In **Australia,** agreements based on the OECD Model Tax Convention Exchange of Information Article 26 containing the provision that the requested state is not obliged to supply information where there is

- Lack of reciprocity (i.e. the requesting State could not legally or would not in practice obtain or supply similar information); or
- There is a risk of disclosure of business or professional secrets; or
- Cases where disclosure of information would be contrary to public policy.

443. The FTR Act provides that the ATO is entitled to access FTR information. Additionally, the Director of AUSTRAC may provide FTR information to a foreign country under certain conditions. These include satisfying the conditions of reciprocity, confidentiality and the use of disclosure as set out above, as well as the following conditions:

- The financial intelligence unit of a foreign country must have signed an MOU with AUSTRAC, setting out the conditions under which financial intelligence in the form of FTR information may be provided to that foreign country.
- FTR information provided to the financial intelligence unit of a foreign country in accordance with a MOU described above may only be provided to the foreign country for intelligence purposes.
- The foreign financial intelligence unit must give an undertaking relating to protecting the confidentiality of the information.

444. Foreign financial intelligence units that AUSTRAC has established a Memorandum of Understanding with, are: Argentina (UIF); Bahamas (FIU); Belgium (CTF/CITF); Bermuda (BPSFIU); Brazil (Atividades Financeiras); Bulgaria (Financial Intelligence Agency); Canada (FINTRAC/CANAFE); Chile (Unidad De Analisis Financiero); Colombia (UIAF); Cook Islands (FIU); Croatia (AMLD); Cyprus (MOKAS); Denmark (SØK/Hvidvasksekretariatet); Estonia (FIU); France (TRACFIN); Guernsey (FIS); Hong Kong (HKJFIU); Isle of Man (Financial Crime Unit); Israel (IMPA) Italy (UIF); Indonesia (PPATK); Korea (FIU);); Latvia (Office for Prevention of Laundering of Proceeds Derived from Criminal Activities); Lebanon (SIC); Malaysia (Bank Negara Malaysia); Mauritius (FIU); Marshall Islands (DFIU); New Zealand (NZ Police FIU); Panama (UAF); Philippines (AMLC);Poland (GIIF); Portugal (UIF); Romania (Oficiul Nacional de Prevenire se

Combatere a Spalarii Banilor); Singapore (STRO); Slovakia (FIU); Slovenia (OMLP); South Africa (FIC); Spain (SEPBLAC); Thailand (AMLO); the Netherlands (MOT); United Kingdom (SOCA); United States (FinCEN); Vanuatu (FIU) and Venezuela (UNIF).

445. In **Belgium**, if the fiscal authorities are in the possession of information that would help to make a correct assessment of taxes on income or capital, they may exchange that information with treaty partners. Belgium notes that the same is true for indirect taxes under the European regulations concerning administrative cooperation. The information intended for the foreign tax administration are collected under the same conditions as the collection of similar information collected for the purposes of the Belgian tax administration.

446. In **Canada,** any "designated information", (see section 55(7)(a) to (e)) received from FINTRAC is strictly used for the administration or enforcement of an Act of Parliament that imposes a tax or duty. Consequently, we have no other restrictions on the type of information, received from FINTRAC, that can be exchanged other than those established by our tax treaties. Any other related information received from a police force or any other «investigating agency» requires official approval by that agency before providing it to a treaty partner. Some agencies use specific Memoranda of Understanding (MOU) which include disclosure and exchange of information provisions. We have no other restrictions on the type of information that can be exchanged other than those established by our tax treaties.

447. In **Denmark,** there are no general restrictions but, based on specific problems in a case, there might be cases where the information is not passed on at an early stage to the Danish tax authorities or is passed on with restrictions concerning further use (in Denmark or abroad) for the time being. Such a decision will normally relate to a very difficult or sensitive investigation (e.g. in a period with wire tapping).

448. In **Finland,** information obtained in the context of a money laundering investigation can only be used to combat money laundering. However, if a pre-trial investigation is started, under the rules concerning pre-trial investigations, this information is accessible to all parties entitled to this information. If the tax authorities are complainants in tax crimes, this information is accessible to them as well and the information could be given to a Tax Treaty partner.

449. In **Germany,** under the exchange of information clauses in double taxation agreements, the competent authority exchanges the information required for the application of the agreement or the domestic law of the Contracting States relating to the taxes covered by the agreement. The information may be disclosed by the other Contracting State only to persons or authorities (including courts) concerned with the assessment, collection, enforcement, prosecution or decision on appeals in respect of taxes which are the subject of the agreement. Such persons or authorities may use the information only for those purposes. The same applies to the exchange of information between tax authorities of the Member States of the EU (Directive 77/799/EWG of 19 December 1977). On this basis, the tax authorities may make information obtained from anti-money laundering authorities available to foreign tax authorities.

450. Depending on the various treaties concluded by **Hungary** the exchange of information concerning all these kind of data is possible according to the general rules.

451. In **Ireland**, there are no restrictions in law to exchanging information. Consideration is being given to exchanging such information on the basis of a reciprocal arrangement.

452. In **Italy,** Tax Authorities have no access to information on suspicious transactions. As to the cross-border movements over €10,000, there will not be any obstacle to the exchange of information

between the Italian Ministry of Finance and the Tax Authority of the other countries, once the procedures allowing the Ministry of Finance to collect regularly such data are in operation.

453. In **Korea**, according to Article 9 of the Financial Transaction Reports Act (Guarantee of Secrecy of Financial Transaction Information), information provided by the KoFIU (anti-money laundering body) to the tax authorities is strictly restricted from further disclosure for any purposes other than tax investigation. According to Article 8 of the Act (Information Exchange with other FIUs), .the Head of the KoFIU may provide certain financial transaction information to other countries' competent authorities in accordance with the principle of reciprocity.

454. In the **Netherlands,** with the consent of the Public Prosecutor, after the criminal case has been concluded, the information in possession of the money laundering authority can be passed on to the tax authorities. If this would be relevant to the treaty partner, this information could be provided spontaneously, assuming that the underlying treaty permits the exchange of information for the application of the domestic laws of the treaty partner, that reciprocity is foreseen, and that the information concerns taxes mentioned in the treaty.

455. In **New Zealand,** the Inland Revenue Department may withhold information under the following circumstances:

1. Disclose information, which is subject to an obligation of confidence and would prejudice the supply of information from that source in the future.

2. Disclose the name of the person who supplied the information where there was a promise of confidentiality.

3. Endanger the safety of any person.

4. Prejudice any negotiations.

5. Constitute contempt of Court or Parliament.

6. Prejudice the economic interests of New Zealand.

The above circumstances and further non disclosure provisions are covered, under the Official Information Act, Privacy Act and Part IV of the Tax Administration Act 1994.

456. In **Norway**, to the extent that the tax authorities have access to this kind of information, its disclosure is regulated by the fiscal secrecy provisions in the Assessment Act. On certain conditions these provisions allow disclosure to public authorities who need such information in connection with their work. Provided the treaty permits the exchange of information, and the treaty requirements are fulfilled, such information may be passed on to a treaty partner.

457. In **Poland,** information obtained by tax authorities from anti-money laundering authorities would be included in tax case records, and will be covered by fiscal secrecy provisions, as all information gathered in the course of fiscal proceedings. Therefore tax authorities take a stand that there are no restrictions on providing such information to treaty partners on the basis of Article 26 of Poland's DTAs.

458. In so far as the tax authority in **Spain** has access to this information, it is possible in principle to pass it on (as the case may be) to a treaty partner's tax authorities, provided that the treaty permits the exchange of information. The information thus exchanged shall be dealt with by the other State with due

regard to the limitations contained in the relevant articles of the bilateral treaty, which usually follow the pattern established in Article 26 of the OECD Model Convention.

459. The principle laid down in the law in **Sweden** is that secret information cannot be passed on to foreign agencies or organisations. However, there are two important exceptions to this rule.1) Information can be supplied when this is provided for in a law or a government regulation. 2) Information can also be supplied if, in a similar situation, it could have been passed on to a Swedish agency and disclosure is apparently in line with Sweden's interests. The exception under 1) above means that information can be passed on to a treaty partner to the extent that the treaty provides for exchange of information.

460. In the **United Kingdom**, the existing MOUs between the tax and anti-money laundering authorities contain an undertaking that information received by the tax authority will not be passed on without the express consent of the providing authority. These former MOUs are currently being revised, as explained at paragraph 192 above, in light of the establishment of HMRC and SOCA, but it will remain the case that HMRC shall not pass on information to third parties without SOCA's express consent. The Head of the Financial Intelligence Division may authorise disclosure to a foreign FIU, which may include Revenue staff i.e. AUSTRAC. The Assets Recovery Agency (ARA) may disclose information that it has obtained in carrying out its taxation functions to HMRC. Such disclosures would be subject to any restrictions placed by the agencies, including SOCA, which had initially supplied the information to ARA.

461. In the **United States**, in general, all of the information provided by anti-money laundering authorities to other law enforcement agencies (including the IRS) may be restricted from further disclosure by the so-called "Third Agency Rule." This rule, which is designed to protect those involved in law enforcement (such as undercover agents or informants) from possible injury or death if such information was disclosed to the public or the target of an investigation, prohibits a law enforcement agency from passing on information provided by another agency to any third party (including a treaty partner) without the permission of the agency that provided the information. This rule is not codified, but it is the long-standing and nearly universal practice among law enforcement agencies in the United States. Accordingly, if the IRS received a request from a treaty partner concerning information that it has received from another law enforcement agency the IRS would generally consult with that other agency regarding exchange of the information.

VII. Usefulness of Information

A. *For those countries that have some access to information gathered by anti-money laundering authorities, please indicate:*

1. What is your experience regarding co-operation with anti-money laundering authorities?

462. In the countries where tax authorities have full access to the suspicious transaction reports (**Australia**, **Ireland**, the **United Kingdom** and the **United States)** the co-operation proved to be very successful. In the countries where access is restricted, the co-operation was considered very useful. The **Czech Republic, France, Finland, Japan, Norway** (where the Anti-Money Laundering Act is relatively new)**, Poland, Portugal** and **Switzerland** had no experiences on this matter to report.

463. In **Australia,** there has always been a strong level of co-operation between the ATO and AUSTRAC. The ATO has a national team of ten officers who work closely with AUSTRAC officers in an endeavour to maximise the use of FTR information. Furthermore, in the interests of enhancing its relationship with Australia's major financial investigative agencies, AUSTRAC provides office accommodation to officers from the ATO, the ACC and the AFP.

464. In **Belgium,** the CTIF can only, since the beginning of 2004, provide information directly to the fiscal authorities. Before then, this information could only reach the fiscal authorities through the judicial authorities. Since the second half of 1998, the fiscal administration is provided, through the judicial authorities, with all the denunciation that the CTIF has sent to the judicial authorities concerning VAT carrousel fraud. These denunciations do not only reveal violations of the indirect tax legislation but also violations of the income tax. It appeared that this information is very useful for the fiscal administration to counteract this type of fiscal fraud. The fiscal authorities have asked the judicial authorities to accelerate the information originating from the CTIF and to add some additional information like the origin and the destination of the money, so that the fiscal administration can react more promptly to these fraudulent schemes.

465. In 1972, the **Canada** Revenue Agency created the Special Enforcement Program (SEP) within the Enforcement and Disclosures Directorate in response to the seriousness of organised crime and the negative impact proceeds of crime can have on our society. Over the years, this program evolved from an investigative function to a civil audit function. SEP has been very successful in auditing and assessing the persons who have accumulated wealth from proceeds of crime by enforcing the Income Tax Act and Excise Tax Act (GST).

466. In **Finland**, Anti-money laundering authorities have provided information to tax authorities. In cases where a pre-trial investigation has been initiated and the predicate offence is a tax offence, tax authorities are contacted for their status as complainant. Tax authorities are contacted in all pre-trial investigations in which tax authorities are complainants. Most pre-trial investigations initiated on the basis of a suspicious transaction report are forwarded to the local police for investigation. There are no statistics on the matter available at this stage. Enhancing the exchange of tax related and money laundering related information in the intelligence phase is very important.

467. In **Germany,** the obligation of the law enforcement authorities referred to under II. F, above, to notify the tax authorities once criminal proceedings have been instituted for a money laundering offence as well as the reporting obligations imposed on customs authorities (cf. IIIA) has had an extremely positive result. For example, the reports led to the initiation of several hundred tax fraud investigations in 2003. In many cases the information originated from suspicious transaction reports made by financial institutions (se II.C.). The reports enabled tax authorities to uncover VAT-carousels in the area of computer components, mobile phones and cars. Other areas of tax frauds that the reports revealed included the construction industry (payments made to sub-contractors) and the cleaning business. It is also worth mentioning that the new obligation imposed on tax authorities (se II.A.) led to a number of reports made to anti-money-laundering authorities. In order for tax authorities to provide useful information to anti-money-laundering authorities, special training has been provided to tax officials.

468. **Luxembourg** reported that although there is no exchange of information between the anti-money laundering authorities and the fiscal authorities, in the past the Service Anti Blanchiment has exchanged information with foreign anti-money laundering authorities. It appeared that in some cases this information has also been used by the fiscal authorities for a fiscal investigation. In this way the principle of the Luxembourg anti-money laundering legislation was disregarded. When this occurred, the information providers had been more reluctant to transmit the necessary information to the Luxembourg anti-money laundering authorities, and therefore, the effectiveness of the anti-money laundering legislation had been affected.

469. In **Korea**, in accordance with the relevant law, the KoFIU is directly responsible for the analysis of all suspicious transaction reports. Further, a strong level of co-operation exists between the KoFIU and the tax authorities in a manner where officials at the National Tax Service are despatched to the KoFIU and work together to investigate and analyse suspicious transaction reports that include a tax related crime.

470. In **Mexico,** the Tax authorities and the Financial Intelligence Unit *(Unidad de Inteligencia Financiera)* which is part of the Federal Fiscal Attorney apply the 1995 Agreement which sets out the co-ordination between authorities in charge of the detection of money laundering transactions. It is important to mention that Tax authorities and the Federal Fiscal Attorney are subordinated to the Minister of Finance and Public Credit, which allows an efficient co-operation. The Federal Fiscal Attorney uses the information gathered by tax authorities and by other means to increase the elements provided by such authority when presenting the money laundering crime accusation before the Prosecuting Attorney. In investigations for tax purposes, carried out by tax authorities, it would be very useful to have information on suspicious or unusual, outstanding or large value transaction reports. Having access to this information would enable tax authorities to compare the contents of the reports against the income reported by the taxpayer for tax purposes. And should any discrepancy arise, there would be a presumption that the taxpayer is failing to report income and thus, taxes.

471. In the **Netherlands,** the FIOD-ECD (Fiscal Intelligence Investigation Service – Economic Inspection Service) works directly together with the anti-money laundering authorities like the FIUNL, the Public Prosecutor and the Police**.** All crime related information is available for the FIOD-ECD. The information is most useful for the investigation of VAT fraud and other tax related crimes.

472. In **New Zealand,** there have been no problems in accessing information from the anti-money laundering authority. The important thing for the authority is to realise that money laundering is not only a criminal offence but also has serious tax implications. Further, in certain cases, it is difficult to prove a criminal offence due to the stringent evidential requirements and international laws that govern money-laundering offences. In such instances, tax authorities can play a major role in bringing offenders to justice and stripping them of their ill-gotten assets.

473. The co-operation of Ministry of Finance of the **Slovak Republic**, Central Tax Directorate, and Customs Directorate with anti-money laundering authorities is good and there are no problems so far.

474. The information obtain by the Tax Agency in **Sweden**, in individual cases is of value for the control of income tax as well as value-added tax, mainly as an indication that there are reasons to find out more, i.e. primarily to request more information from banks and other businesses. In Sweden, unlike many other countries, tax control is normally oriented towards the latest return filed. Information from the FIU regards recent transactions and is useful when applying measures of conservancy to ensure payment of tax to be debited. Information collected by the FIU is also of use in identifying new trends and payment patterns. Co-operation between FIU and the Tax Agency on this kind of issues is very rewarding.

475. In **Turkey,** the co-operation gives both sides an opportunity to perform their functions effectively.

476. In the **United Kingdom,** HMRC's experience regarding access to information from suspicious transaction reports has been excellent.

477. Within the **United States**, co-operation between the different agencies that have jurisdiction over anti-money laundering efforts has been good. Each agency maintains a unique system of storing and cataloguing information useful in both anti-money laundering and tax investigations. As noted above, such agencies often allow sharing of the same computer databases, thus making it easier to obtain and exchange information. Internationally, the United States has had good experiences relating to exchanges of information with FlUs. Through FinCEN, the United States has requested and received financial information from FlUs located overseas that was useful in both anti-money laundering and tax-related investigations. Domestically, financial privacy laws (designed to protect the financial privacy of citizens) limit access to information gathered by anti-money laundering authorities. These disclosure laws

sometimes prevent agencies from disseminating information, which was gathered for anti-money laundering or criminal tax purposes, to civil tax authorities. For example, the Bank Secrecy Act prevents the use of Suspicious Activity Reports for civil tax compliance.

2. What difficulties have you encountered?

478. Most countries did not report any difficulties. **Australia** identified minor difficulties mainly related to the integrity of the data received by AUSTRAC and therefore its value to the ATO. That is, whilst AUSTRAC receives the great bulk of its financial transaction reports electronically, the integrity of the information contained in the reports is generally dependent on the accuracy and completeness of the information provided by the cash dealers. This is of particular importance in establishing the correct identity of the transacting parties. Nevertheless, AUSTRAC has in place a range of automated and manual systems and programs for improving the integrity of the data it receives from cash dealers. **Germany** noted that when the reporting obligations were introduced, problems have of course been encountered, for example with regard to the scope of the reporting obligations or the extent to which tax authorities have access to the results of investigations by the law enforcement authorities. Experience has shown that the fight against money-laundering is most effective when there is close co-operation between the respective law enforcement authorities. To that end, special units have been established within the police, customs authorities and criminal tax investigations offices. They do closely co-operate. **Korea** noted that some difficulties have arisen due to the fact that the National Tax Service has no direct access to all suspicious transaction information held by the KoFIU. **Sweden** noted that problem identified have to do with the role of the Swedish FIU and secrecy provisions. There is a relatively unhampered flow of information between the Tax Agency and police/prosecutors in cases where a criminal investigation has started. However, the FIU isn’t empowered to carry out its own investigation, Instead, after a basic investigation regarding a suspicious transaction report, it hand the material over to the ordinary police for further investigation and, possibly, prosecution. Thus the way operations are organised limits the flow of information directly between the FIU and the Tax Agency. Internationally, the **United States,** authorities have experienced difficulties when information gathered pursuant to an MLAT request relating to a money laundering investigation cannot be used for a tax investigation.

3. What types of information obtained from anti-money laundering authorities have proven to be most useful?

479. All types of information have proven to be useful. Even publicly available pattern and trends information on money laundering has proven to be useful to tackle international fraud schemes on indirect taxes.

480. In **Australia,** all types of FTR information obtained by the ATO have proven to be useful. Whilst the major results achieved by the ATO from using FTR information have generally been attributed to the direct use of Suspect Transaction Reports and International Funds Transfer Instructions, these reports, when combined with reports of International Currency Transfers and Significant Cash Transactions have also proven to be of substantial value to the ATO.

481. In **Canada,** all of the information obtained in the FINTRAC disclosures has proven useful. However it is anticipated that the recent amendments to enhance the information FINTRAC can disclose will increase the value of FINTRAC disclosures. FINTRAC disclosures to the Canada Revenue Agency can currently include:

a. Name of person(s) or company(ies) involved in the transaction(s);

b. Address of person(s) or company(ies);

c. Date of birth;

d. Citizenship;

e. Passport, record of landing or permanent resident card number, name address and type of business where the transaction occurred;

f. Date and time of the transaction(s);

g. Type and value of the transactions including the amount and type of currency or monetary instruments involved, and;

h. Transaction, transit and account number.

As a result of the new legislative amendments to the PCMLTFA, they may include:

i. The name of any person or entity that is involved in the transaction, attempted transaction, importation or exportation, or any person or entity acting on their behalf;

j. The name and address of the place of business where the transaction occurred or the address of the customs office where the importation or exportation occurred, and the date the transaction, importation or exportation occurred;

k. The amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;

l. In the case of a transaction, the transaction number and the account number, if any;

m. The name, address, electronic mail address and telephone number of each partner, director or officer of an entity referred to in sub-paragraph i. above and the address and telephone number of its principal place of business;

n. Any other similar identifying information that may be prescribed for the purposes of this section;

o. The details of the criminal record of a person or entity referred to in sub-paragraph a. and any criminal charges laid against them that the centre (FINTRAC) considers relevant in the circumstances;

p. The relationships suspected by the Centre (FINTRAC) on reasonable grounds to exist between any persons or entities referred to in paragraph i. and any other persons or entities;

q. The financial interest that a person or entity referred to in paragraph i. has in the entity on whose behalf the transaction was made or attempted, or on whose behalf the importation or exportation was made;

r. The name of the person or entity referred to in sub-paragraph i. suspected by the Centre (FINTRAC) on reasonable grounds to direct, either directly or indirectly, the transaction, attempted transaction , importation or exportation;

s. The grounds on which a person or entity made a suspicious transaction report (report made under section 7 of the PCMLTFA) about the transaction or attempted transaction and that the Centre considers relevant in the circumstances;

t. The number and types of reports on which a disclosure is based;

u. The number and categories of persons or entities that made those reports; and

v. Indicators or money laundering offence or terrorist activity financing offence related to the transaction, attempted transaction, importation or exportation.

482. In **Denmark,** the information received from the money laundering authorities has in most cases been useful for the purpose of investigating tax-related crimes, including VAT crimes.

483. **Ireland** stated that documentary evidence (bank statements, title documents, share certificates, invoices, written instructions etc) to establish ownership of financial and other assets by the taxpayer concerned, with supporting depositions by key witnesses where necessary, might be useful.

484. In **Mexico**, financial information has proven to be the most useful information gathered by money laundering authorities.

485. In **New Zealand** the following information has proved to be most useful:

1. The name, address, date of birth, and occupation (or, where appropriate, business) of each person conducting the financial transaction(s).

2. The name, address, date of birth, and occupation (or, where appropriate, business) of any person on whose behalf the transaction is conducted.

3. Where a facility with a financial institution is involved in the transaction, the type of facility, details of the person in whose name the facility is operated and names of the signatories to the facility.

4. Nature of the transaction.

5. Amount of the transaction.

6. Type of currency involved.

7. Date of the transaction.

8. Details of any documentary evidence that may assist in establishing the identity of the person who conducted the transaction and the person on whose behalf the transaction was conducted.

9. Details of the person and the financial institution, which provided the transaction report.

486. At present in **Sweden**, most of the information regards transactions where payment of invoices are turned into cash, to be used for payment of black labour mainly in the construction and cleaning businesses. This information is highly valuable, as black labour is estimated to account for more than half of the total revenue losses. Formerly the tax Agency has obtained information about cross border transactions, useful for the detection of evasion and as proof in VAT enquiries (missing traders and carrousel trade within the EU). Also payments with tax havens involved have proven to be useful mainly for the purpose of income tax control. There are indications that banks have become less willing to report that kind of transactions.

487. In **Turkey,** information related to taxpayer, tax related transactions and persons having a relation with the taxpayer have proven to be most useful.

488. In the **United Kingdom,** HM Revenue & Customs has received a wide range of useful information from the Serious Organised Crime Agency, ranging from instances of complete disclosure of how tax has been evaded through a transaction or scheme of transactions, to information on isolated transactions or assets in relation to which tax evasion has only been established after considerable further investigation. Data can be used to enhance existing intelligence or to initiate an investigation. But the existence of the database provides the means of building a case once an investigation of an individual or organisation is commenced.

489. In the **United States,** information obtained from Currency Transaction Reports ("CTRs") and Suspicious Activity Reports ("SARs") has been most useful. The financial data and identifying information contained within these reports are useful in both money laundering and criminal tax investigations when it is directly tied to a subject or a critical witness. CTRs have also been useful in civil tax compliance.

B. *What types of information would be most useful for tax authorities to obtain from anti-money laundering authorities for purposes of investigating tax-related crimes? Please explain briefly why the information would be useful.*

490. In general, tax administrations would prefer to have better access to information gathered by anti-money laundering authorities. Some countries provided extensive lists of information that might be useful, whereas other countries just provided some examples.

491. In the light of the current legislation in **Austria** this question is not applicable. However, from the Austrian tax administration's view, access to information from money laundering authorities would be desirable at least in cases of commercial tax fraud.

492. **Australia** and **New Zealand** referred to the report types listed above under paragraph VII, section a, question 3. **Australia** added that the use of this information has directly contributed to an increase in tax assessments and penalties in the order of over A$269m over a recent four year period. Furthermore, the ATO has completed a study which concludes that the additional indirect benefits from using FTR information are significant. **New Zealand** added that it is difficult to identify the type of information, which would be useful, apart from that listed above. However, the information required will vary for each case and will have to be identified on a case by case basis.

493. In **Canada,** the Canada Revenue Agency (CRA) has recently implemented a policy of providing voluntarily, under strict conditions, information to FINTRAC for purposes of administering the acts for which the CRA is responsible. As a result FINTRAC may find the information useful in its analysis of money laundering and, if warranted and relevant to a tax offence, FINTRAC may provide a disclosure of designated information to the CRA. However, enhanced access to FINTRAC data would provide very useful information for the administration and enforcement of tax legislation. Direct access to suspicious transactions would provide leads for non-compliance in tax matters and direct access to FINTRAC data would facilitate the analysis of the flow of funds, which remains important in any tax investigation, especially international funds transfers. The ability to query or access FINTRAC data would provide very useful information for the administration and enforcement of tax legislation.

494. **Denmark** reported that the investigation of tax-related crimes could be improved if the anti-money laundering authorities were permitted to pass any information on money laundering to the tax authorities.

495. **Finland** stated that enhancing the spontaneous exchange of tax related and money laundering related information in the intelligence phase would be of value for instance when the money laundering information can be used to prevent a possible tax offence or a debtor's fraud at an early stage.

496. In **Hungary,** the tax authorities have no power to investigate tax-related crimes therefore there is not any need to obtain such information.

497. In **Germany** in general, almost any money-laundering related information collected by law enforcement authorities is of interest to tax authorities. Of particular importance are bank statements over a certain period of time.

498. In **Japan,** the discussion is under way as to what information would be useful. One example would be the information relating to the transactions conducted by Japanese taxpayers which was provided to foreign anti-money laundering authorities.

499. In **Korea**, the National Tax Service would prefer to have direct access to all suspicious transaction information gathered by the KoFIU.

500. In **Mexico,** the information established in the Report on Suspicious or Unusual and Relevant Transactions has proven to be the most useful information for tax authorities in the investigation of tax-related crimes due to the fact that such information is helpful in determining the veracity of the information included in the income tax return. If the aforementioned information is not consistent with the annual tax return it is presumed that the taxpayer is avoiding taxes.

501. The **Netherlands** thought that useful information would be the source of the income, the buyers and suppliers of goods, who transported them, who is behind certain bank account numbers. If investments have been made, where and how was the money invested.

502. In **Norway,** tax evasion and avoidance are offences, and these kinds of crimes are investigated by the Police and Prosecution Authorities. However, in the administrative phase of the case it may be very useful for the tax authorities to receive information from the anti-money laundering authority. Because of the new legislation it now will be possible for the Police and Prosecution Authorities to hand over information to the tax authorities in concrete cases. As mentioned above, the new Anti-Money Laundering Act does not allow the anti-money laundering authority to generally disclose information to the tax authorities. It is clear that if this was possible, it would be a vast improvement on the tax authorities' selection of taxpayer for tax audits. The new legislation is on the other hand an improvement compared with earlier legislation in this area. Taken into consideration that the legislation is relatively new – it is, as mentioned in paragraph VII, section A.1 – too early to give an opinion on the usefulness of the possibilities to exchange information between the anti-money laundering authority and the tax authorities.

503. **Poland** reported that information on transactions between capital and personal connected companies and on foreign transfers in virtue of export/import transactions would be most useful.

504. **Portugal** thought it not possible to identify the most useful information because it depends on the type of investigation. However, as the tax authorities in Portugal only have only access to the information related to tax crimes through a certificate drawn out from the judicial inquiry into a money laundering crime, it is necessary to specify the type of information needed for each investigation.

505. **Spain** reported that the Tax Agency and the anti-money laundering authorities are working jointly trying to improve the communication of information related to suspicious transactions. Access to an enhanced flow of data on such transactions could be helpful for tax examination purposes. Cases opened

on the basis of such information could be settled by an assessment made by the tax administration or they could lead to criminal proceedings if there is evidence of tax crime.

506. In the **Slovak Republic,** the most useful information for the tax authorities would be the information about foreign bank accounts and keeping this information confidential in accordance with the domestic law.

507. **Turkey** thinks information related to taxpayer, tax-related transactions and persons having a relation with the taxpayer to be most useful.

508. The **United States** considers information obtained from Currency Transaction Reports and Suspicious Activity Reports most beneficial. In addition, as noted above, certain institutions are generally required to report transactions where over $10,000 in cash is received from customers, and such information has proven very useful in tax-related investigations. Other information required to be reported by state, local and federal laws could also be useful in investigating tax-related crimes. Such information can help identify the ownership or control of a corporation or other assets, can help document an unusual accumulation of wealth or assets, and can be critical in tracing and identifying funds disbursed or received by an individual who is under investigation.