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OECD Report: The Role of Corporations in Fighting White Collar Crime Enablers

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The Organisation for Economic Co-operation and Development (OECD) published a report in February 2021 titled "Ending the Shell Game: Cracking Down on the Professionals Who Enable Tax and White Collar Crimes" (Report), which highlights the role that "professional enablers" play in the commission of economic crimes and the importance of enforcement to fight them.

According to the Report, white collar crimes such as fraud, bribery and corruption that have international dimensions are often facilitated if not promoted by unsavory professionals, financial institutions and other surrogates by creating complex webs of legal structures and financial transactions in an attempt to mask these offences. The Report stresses that although these individuals and entities are but a small minority, the importance of the role they play cannot be understated or overlooked. The Report outlines that these elaborate and transnational schemes can only be countered by effective cooperation between states. For instance, Canada recently joined a number of other countries in the Joint Chiefs of Global Tax Enforcement group – or J5 – to strengthen international prosecution of tax crimes and to increase enforcement collaboration.

What Is a Professional Enabler?

The Report defines "professional enablers" as "individual[s] or entit[ies] with professional expertise to perform a specific service to aid their customer in carrying out a tax offence or other financial crime."[1] They can be both facilitators and instigators of these frauds, or they can be only a smaller – but key – cog in a greater machination. That definition may vary from country to country and with the nature of the alleged offence.

The Report "focusses on the situations when the services and advice provided by professionals go beyond the interpretation and search for legal loopholes, and reach the point where professionals enable the commission of tax fraud and tax evasion through active support and participation."[2] The Report recommends various governmental actions, including establishing or strengthening national strategies to battle these international white collar crime accomplices more effectively, notably, through increased awareness and cooperation.

Key Takeaways for Businesses

While the Report addresses mainly governmental actions to deter professional enablers from committing or inciting these crimes, some recommendations should also be considered and applied by businesses, including the following:

- Understand and recognize *what professional enablers are* and how they conceive, market, implement and conceal criminal tax schemes in order to better detect and possibly prevent fraud. The Report highlights that usually not all parties involved are aware of the illegal conduct. Therefore bona fide third parties can be "deceived or defrauded"[3] by professional enablers.
- Adopt a *culture of good governance* and compliance. Avoid using direct incentives such as "a bonus system that encourages risk taking, deficiencies in systems such as employee training, or a culture that turns a blind eye to certain practices such as poor know-your-customer practices, or a lack of clarity from top-level management on refusing to engage in tax fraud."[4]
- Ensure and promote an *open organizational culture* to encourage employees to speak up about any perceived wrongdoings. The disclosures could allow a company to benefit from self-reporting programs that ensure leniency or reduction of sanctions. Spontaneous reporting programs are identified by the OECD as an effective method of combatting professional enablers. The

Canada Revenue Agency has the Voluntary Disclosures Program in place and Revenu Québec has the same type of program in place.

- Be aware of *legislative changes* that can transform a practice that used to be legal into a criminal one. The "German Dividend Tax Scandal," which made headlines in 2010, illustrates the importance of this awareness. A tax optimization strategy known as "dividend arbitrage" allowed shares to be transferred to a foreign entity to avoid dividend tax before selling them back to their original owner. After the ban on dividend arbitrage in Germany, tax intermediaries implemented a new strategy called cum-ex which involved several companies exchanging shares repeatedly over a very short period of time around the dividend payment date, thus preventing the tax authorities from identifying the true owner. However, this new mechanism no longer falls within the "grey area of the law," but rather constitutes a fraudulent scheme.
- The report encourages countries to *strengthen communication strategies*. In Canada, the Canada Revenue Agency and Revenu Québec have already published communications such as interpretation bulletins or folios to help taxpayers better understand tax rules and the consequences of non-compliance. Corporations should not hesitate to seek legal advice in addition to referring to these information sources.

As reiterated many times, preventing financial crimes is a daily challenge that requires the commercial world and society as a whole to become aware of the necessity of effecting a real culture shift. Although legislation and internal policies remain essential, they may prove insufficient to prevent corruption. They must be supplemented by a genuine anti-corruption culture – that is, a mentality and values that deem corrupt practices unacceptable and that promote integrity as part of the daily routine of all actors in society, including businesses and those who advise them. This paradigm corporate cultural shift can take the offensive against professional enablers, as a "company's attitude towards tax compliance can directly affect the behaviour of a professional enabler providing services on behalf of that company."[5] The Report also noted that maintaining a socially responsible image is important to most businesses and ought to encourage "corporates to be selective in the tax professionals and intermediaries they hire to ensure there is no association with recalcitrant professional enablers."[6]

[1] OECD Report, para 2.
[2] OECD Report, para 5.
[3] OECD Report, para 16.
[4] OECD Report, para 63.
[5] *Ibid.*
[6] OECD Report, para. 64.

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