



FACULTAD DE TURISMO Y FINANZAS
GRADO EN FINANZAS Y CONTABILIDAD

**THE MOST NORMALIZED WHITE-COLLAR CRIME
WORLDWIDE: TAX EVASION**

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TÍTULO:

THE MOST NORMALIZED WHITE-COLLAR CRIME WORLDWIDE: TAX EVASION

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ABSTRACT:

One of the main problems around the taxation systems worldwide is the lack of a complete exchange of information between territories. International cooperation is the cornerstone of the fight against tax evasion. However, reaching fluent communication between countries, even within the European Union, is complex and far more efforts are needed to achieve the desired objective. Efforts such as the organization of the Fifth Forum by part of the OECD where the Ten Global Principles against Tax Crime were born in order to ensure tax compliance. Trying to find a solution, the analysis of financial statements and the Beneish model will be included as the main source of early identification of these fraudulent activities, in addition to the use of certain types of incentives, both tangible and intangible, as an attempt to promote the voluntary compliance. Once analysed the global situation, this paper will examine the impact of this fraud on the Spanish economy, the penalties imposed and action plans by institutions such as the AEAT.

KEYWORDS: Tax evasion; OECD; Tax compliance; Tax Administration; Special Purpose Entities.

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LIST OF ACRONYMS

ACRONYM	MEANING
OECD	Organization for Economic Co-operation and Development
EU	European Union
IT	Computers and Information Technology
VAT	Value-Added Tax
EUROPOL	European Union Agency for Law Enforcement
MTIC	Missing Trader Intra Community Fraud
EFECC	European Financial and Economic Crime Centre
FATF	Financial Action Task Force
DPRK	Democratic People's Republic of Korea
WBG	World Bank Group
DRM	Domestic revenue mobilization
PCT	Platform for Collaboration on Tax
IMF	International Monetary Fund
UN	United Nations
GDP	Gross Domestic Product
CRS	Common Reporting Standards
SPE	Special Purpose Entity
SPV	Special Purpose Vehicle
BEPS	Base and Erosion Profit Shifting Project
MTM	Mark-to-Market
SOX	Sarbanes-Oxley
FIU	Financial Intelligence Unit
AEAT	'Agencia Estatal de Administración Tributaria' (<i>State Tax Administration Agency</i>)
SEPBLAC	'Servicio Ejecutivo de Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias' (<i>Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences</i>)
SAR	Suspicious Activity Reports
ED	Excise Duties
IS	Internal Revenue Service
PIT	Personal Income Tax

INTRODUCTION

All research is born of a concern. In the case of this study, it arises from the need to emphasize the impact that our behavior as citizens has on the Tax Administration. It is also important to study the negative consequences that will influence the welfare state that citizens of countries such as Spain and the United States enjoy.

The concept "Welfare State" or welfare society is a political-economic expression that refers to the social model of a state that is responsible for covering the social rights of all its citizens. (Will Kenton and Toby Walters 2020)

The State therefore assumes certain responsibilities for the provision of certain services that will thus be considered public, such as health or education, with the main aim of preventing certain social groups from falling into marginality. (Will Kenton and Toby Walters 2020)

The main method available to governments to redistribute the wealth needed to achieve the Welfare State is the collection of taxes and fees, Hence, the main objective of the principal institutions, such as the OECD in an international field and the 'Agencia Tributaria' in the Spanish territory, is to pursue the effective application of the tax system.

As a result, a second complementary objective will be implicitly born: voluntary compliance by taxpayers. This concept is one of the main objectives of Tax Administrations worldwide.

Thus, the fundamental challenge facing administrations, both nationally and internationally, is tax evasion. The complexity of the system, together with the tax burden and the lack of economic education make tax evasion a tempting way out for many taxpayers.

In view of this situation, the Administration is generally at a disadvantage and tries to tackle very specific problems in a piecemeal manner. This scenario will further incentivize tax crime since the taxpayer does not perceive the real risk or cost of their actions.

The role of governments in this field is key and has been intensified by pressure to increase the collection of their taxes in order to meet the need to comply with the provision of public services, among other obligations.

While evasion has always been an issue of relevance, it was in the early 1980s that developing countries found themselves at a difficult crossroads. Virtually most of them were unable to meet their payment obligations and as a result began to experience a lack of funds for their development. (Cosulich Ayala 1993)

As a solution, debtor countries reached certain agreements with creditors, through the intervention of international organizations, to clean up their public accounts. In this way, the role of governments in this field is intensified with the pressure to increase the collection of their taxes to face the need to comply with the provision of public services, among other obligations. This resulted in the reduction of public expenditures and the approval of numerous tax reforms.

Currently, tax evasion continues to face a far-reaching challenge. In recent years there has been increased concern about the so-called informal economy, whose fiscal consequences will cause significant losses for the Administration.

In this way, cooperation between territories is essential for continuing progressing in the fight against tax crime, to definitively put an end to the tax hideouts of the criminals who take advantage of this lack of information exchange.

For all this, the implementation of measures to prevent and suppress evasion is considered a fundamental mission, from the moral, social, legal, and economic point of view. Taking into account the relevance of the problem, it will be considered a collective responsibility, which involves the whole society at all levels.

All of above explain the need of study some factors related with Tax evasion.

First of all, it is important to define the concept of tax evasion, and once internalized, its application in the European territory will be of special interest, where institutions such as the OECD will play a fundamental role.

Secondly, Special Purpose Entities will be analyzed as the main vehicle of expansion of this fraud, exemplifying the use of this tool by the Enron Corp scandal.

As rational beings, arises the need of finding a solution to this problem. Specifically in this document, the analysis of financial statements and the Beneish model will be included as the main source of early identification of these fraudulent activities, in addition to the use of certain types of incentives, in order to promote the voluntary compliance.

To conclude with the analysis of the situation, the attention is focused on the impact that these illicit practices have on the Spanish economy, analyzing in this way the penalties imposed and anti-fraud measures by institutions such as the AEAT will be exposed.

WHAT IS CONSIDERED 'TAX CRIME'?

If we ask someone what he or she considers as tax crime, the answer may seem obvious to them: the act of defrauding or deceiving the public treasury on the payment of taxes. And this is totally true but, most of the time, this is mixed up with other situations as the tax loopholes exploitation or tax havens. Are they legal? Are they moral? In order to clarify these doubts, we will introduce the definitions of the following terms: tax avoidance, tax flight and tax evasion.

2.1 Tax avoidance

Tax avoidance is the practice of reducing the tax payments using legal mechanisms, such as the exploitation of tax loopholes. This task is associated with terms such as 'good idea' and 'clever', as a study published by the Journal of Economic Psychology shows. This paper counts with the collaboration of 252 fiscal officers, Economics and Business Administration students, business lawyers and different entrepreneurs. (Kirchler, Maciejovsky, and Schneider 2003)

These tax loopholes mainly arise from the lack of detailed information for the taxpayers, as the legal framework cannot cover all the specific cases worldwide, together with the difficulty this implies for the tax authorities to detect the illicit activities. Additionally, some countries may have lack of fiscal capacity, which may lead to the inability to create precise accounting and fiscal rules. (Thum, Marjit, and Seidel 2016)

This legal limbo encompasses ex/cum transactions, among others. These are transactions in which the shares are paid immediately before the payment of dividends (cum dividend), but they are delivered after the payment (ex-dividend). This action creates confusion about who owns the shares at the time the payment is done, allowing both parties to claim refunds on withholdings taxes, even though they are only paid once, when the dividend is issued. It is classified as tax arbitrage and it is considered illegal in some countries as Germany. (Buettner et al. 2020)

2.2 Tax flight

Tax flight talks about reallocating the main business into a new country, called tax havens. These are territories that offers tax advantages to foreign investors, including strategies as the low or zero corporate tax rates. (Dharmapala 2008).

This activity is totally legal, but in the eyes of most of the society, is immoral. The population consider a country as a big family, so as everyone is obliged to contribute to the state treasury. This statement is exemplified by the slogan of the Spanish Treasury "Hacienda Somos Todos".

The list elaborated by the OECD in 2000, include territories such as Panama, the Principality of Monaco, the Republic of the Maldives or Gibraltar in these practices. (OECD 2000). Nowadays, these countries are classified inside the EU list of non-cooperative jurisdictions for tax purposes since 2020, as it will be mentioned in point 3.1.1.

2.3 Tax evasion

The Oxford Languages Dictionary (2022) defines tax evasion as the 'illegal non-payment or underpayment of tax'. Therefore, this activity is considered completely illegal, and for that reason, each government of each nation will establish different sanctions for its inhabitants. In the case of Spain, these penalties will be exposed in point 6.4.

This practice is committed wilfully, which implies involves the subject's knowledge of the malicious behaviour he is engaging in and the consequences it will have on government tax collection. (Yáñez Henríquez 2015)

Even so, according to the principle of presumption of innocence, any person investigated for the execution of an alleged offence shall not be guilty a priori and shall lose his or her innocence only and exclusively when there is a judicial decision made by an independent and impartial court supporting this accusation. (Belda Pérez-Pedrero 2001)

Moreover, talking about the international relations between countries, some people try to deceive tax-collecting organizations by spreading their business nucleus across different territories. It should be noted that one of the main characteristics of the tax havens mentioned above is not to declare the income obtained by its inhabitants. (Uckmar 2006)

This would complicate the question of where these individuals should report income, often causing confusion because, in accordance with the principle of World Wide Income Taxation, every person is taxed in his or her country of residence on the income he or she earns anywhere in the world. (Marín Benítez 2007)

Aimed to clarify such situations and determine the residence of the individuals, each country may maintain a double taxation agreement with the other countries with which it maintain any kind of relationship. (Uckmar 2006)

TAX EVASION AROUND EUROPE

Living in a globalized world arises the need to create or establish certain Administrations as responsible for the supervision and regulation of citizens' actions. This will also lead to a decrease in fiscal and economic crime as evaders will be persecuted and punished, and the rest of the citizens will have a basis that will help them differentiate good from bad actions.

3.1 Main institutions that ensure compliance with the law

3.1.1 European Union

The act of collecting taxes and fighting against tax evasion and fraud are competences exclusively of the EU Member States. However, all these states need a line of action to follow to ensure all tax rules are consistent with certain EU policies. This is what the European Union can provide to our globalized world. (European Union 2021)

Nowadays, thanks to the IT Services and other tools, the EU can facilitate the communication between the Member States in terms of exchange of information related to taxation. This institution focusses its attention mainly on the Value-added Tax (VAT) and the development of a fair common legislation, which will work as a starting point for the EU components. (European Commission 2020)

Moreover, the EU has built a consolidated network composed by different groups of experts to give special attention to the following topics:

- Identification of the unfair tax measures provided by *the Code of Conduct on Business Taxation* Group, in which all the EU countries take part.
- Discussion of finance issues such as double taxation and tax avoidance, thanks to the *Tax Policy Group*. This team comprises representatives of EU finance ministers of the countries members.
- Improvement in the operation of tax systems in practice, driven by the teamwork of the representatives together with the European Union as a whole.

Here also needs to be highlighted the *Fiscalis Programme*. This programme is key in the challenge against tax crime as it contributes with the tax authorities in the collaborative countries to find solutions to the issues that the international relations can produce. (Kesner-Škreb 2022)

Furthermore, the European Union has enumerated several territories dividing these between collaborating and non-collaborating jurisdictions in fiscal terms. The non-collaborating countries are those in which its fiscal policies are considered abusive and cause damaging effects to the tax revenue of the EU members. (Consejo de la Unión Europea 2020)

Some of the most common disrespectful practices are to establish an excessively low corporate tax rate in relation with the rates of the neighbouring countries, or the premeditated concealment of the activity and income of foreigners inhabitants in the territory, which would imply inequality of information between nations. (Consejo de la Unión Europea 2020)

The main objective of the list mentioned before is to encourage union between countries to improve fiscal governance worldwide. This also implies the need of facing problems related to external tax policies of the non-collaborating territories. (Consejo de la Unión Europea 2020)

3.1.2 Europol

The European Union Agency for Law Enforcement (Europol) is an institution responsible for helping the authorities of both member and non-member countries of the European Union to combat terrorism and international crime. For this reason, it can be affirmed that it does not have autonomy itself to act on the commission of crimes, but that it acts as logistical and technical support for the competent bodies (organs). (European Union 2022)

Furthermore, this agency can boast about having a great potential and technological power, being one of the main centres of criminal information for the whole of the European Union. In this field, it also works on cybercrimes and cybersecurity, what is truly beneficial to the national authorities in the prosecution of the tax evaders. (European Union 2022)

Drawing upon this technology, Europol can fight crime on several fronts. Between these dimensions, the one most important for our principal topic is the Economic Crime Area. Missing Trader Intra Community Fraud (MTIC Fraud), which is one of the areas included in the investigation led by the organization at issue. It entails the exploitation of the VAT EU rules that cost billions of euros to the member public administrations. (Europol 2021)

In order to further inquiry about this agency, it is worthy to highlight the European Financial and Economic Crime Centre (EFECC). This initiative was created, together with the EU members that collaborates with the Europol, for the sake to reinforce the fortress of the financial intelligence and economic crime capabilities of the Europol. (Europol 2022)

3.1.3 Financial Action Tax Force

In contrast to the Europol dynamic, the Financial Action Task Force (FATF) is an organism that is in charge of creating new policies. The aim of these policies is principally to attack directly the money laundering and the financial terrorism. (Financial Action Task Force 2020a)

The term of money laundering arises from the early 20s, when criminals used laundromats to include the money into the legal flow. As these machines do not provide any number of clients that have used them, it was the perfect way for the criminals to 'clean' their money. Nowadays, the same happens as the money has the ability to move faster through the financial systems, thanks largely to the globalization, faster than those who track it. Here stems the need of FAFT, as not all territories have the necessary tools to actively oversees these practices. This was the real origin of the need of this institution.(Nance 2018)

But, before the FATF was born, the worldwide problems related to the money laundering were discussed in what was called Vienna Convention. This was the first international convention where the definition of money laundering appears, even so it was classified as a by-product of the drug trade. It took almost ten years, while the number of criminals were increasing steadily as time was passing by, to release a single and singular plan.(Nance 2018)

The nations that participated in the convention realized that the implementation of those measures would not eliminate launderers, as they were very confusing and open to interpretation. This added to the fact that the interests of the different territories were completely miscellaneous, resulted in the measures never being implemented. From that point, the idea of creating a new entity capable of establishing precise, innovative and effective procedures comes up. (Nance 2018)

This organization wants to reduce the profit, so as the criminals do not see it as a profitable activity, to the point at it would have more issues than advantages for them.

As result of all the above, the principal objective for the FAFT is reducing the profit from these activities. This idea also goes with the sixth and seventh articles of the preamble, that says: *'Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing...'* *'Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic...'*(United Nations 1988)

Moreover, aiming to incentive the moral behaviour, the FAFT divide territories following a scale risk. The high-risk jurisdictions denote lack of commitment to the cause being subject to Call for Action, whatever the reason why it requires special attention. This list is commonly referred as the 'blacklist'.(Financial Action Task Force 2020b)

In addition, if these territories exceed certain limits and the organization considers that the illicit activities in this region are damaging the economy of other countries, they will be urged to take explicit measures to defuse this problem as a means to protect the integrity of these jurisdictions. In this category, regions as Iran and the Democratic People's Republic of Korea (DPRK) are included. (Financial Action Task Force 2020b)

3.1.4 World Bank Group

As its slogan says, 'Five institutions, One Group'. The World Bank Group is composed by five different institutions that works together so as to achieve an improvement to the lifestyle of the population that lives in extreme poverty. The Group acts as a source of financing, providing grants and loans for low- and middle-income regions. The member institutions are: (World Bank Group 2021c)

- The International Bank for Reconstruction and Development (IBRD)
- The International Development Association (IDA)
- The International Finance Corporation (IFC)
- The Multilateral Investment Guarantee Agency (MIGA)
- The International Centre for Settlement of Investment Disputes (ICSID)

About the taxation field, the WBG created the Global Tax Program (GTP) in 2018. It has presence in 69 different territories with 79 projects. The principal objective of this program is the application of the Bank's domestic revenue mobilization (DRM) approach. This approach arose with the intention of upgrading the quality of the revenues of the population at home. One of the main focuses of this approach falls on the pursue of wealth taxation enhancement, which has direct impact on the reduction of inequality, one of the core values of the group. Because of that, if an improvement of the quality of those revenues is achieved, the collection of taxes will be fairer, and the relevant authorities will have greater margin of manoeuvre on tax policies in each territory. In addition, this initiative had the support of the members who formed the Platform for Collaboration on Tax (PCT), which will be mentioned with greater emphasis in point 2.1.5 (World Bank Group 2021b)

It is worthy to highlight that all the measures to achieve the main goal have special focus on the new technologies as a way of digitalizing the economy to faciliate the globalization process to those developing countries. This process requires some reformulations of the taxation, for example the regulation of the cryptocurrencies market. This new technology puts on the ropes the taxation systems of the organizations, as it needs specific rules never seen before. (World Bank Group 2021b)

Furthermore, this briefing on DRM, puts another topic on the table: The Global Minimum Tax. This initiative was proposed after the impact of COVID-19. Nowadays, more than ever, governments are interested in solving certain tax problems with large companies, as many of them pay taxes elsewhere than where they run their sales. These firms decide this according to the percentage to which they are taxed in the different countries. Therefore, through this proposal, large companies would all pay a certain percentage, and the gap between regions would be eliminated. (Blum 2019)

Moreover, the World Bank Group created in 2021 a temporal fiscal policy in order to control the effects of the COVID-19 pandemic in some countries as Uganda. (World Bank Group 2021b)

The analysis of this country is very interesting in this field as, like in most developing countries, corruption and tax evasion play an important role in its society. Because of that, the group chose Uganda, among others, for the implementation of a special unit for 'high-net-wealth individuals'. (Gauthier and Goyette 2014)

In addition to that new fiscal policy, the WBG prepared a joint report with OECD, which is entitled as 'Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption'. (World Bank Group 2021a)

This document tries to provide 67 countries with different logical and concise answers through the cooperation of organizations and institutions, both within the same country or between several of them, to various internal problems related to tax crime prosecution and corruption. Therefore, one of the strengths of this ideal cooperation is, as some of the institutions described above also mention, the sharing of information that will make possible to remove barriers between regions. (Scott and Gunn 2018)

3.1.5 International Monetary Fund

The International Monetary Fund (IMF) emerged in 1944 in the United Nations Bretton Woods Conference in New Hampshire, United States. (International Monetary Fund 2021a)

Its main mission lies in the monitoring and supervision of the stability of the international monetary system. For this purpose, it gives advice to its 190 member countries with a view to ensuring the strength of economic and fiscal systems toward preventing a financial crisis and improving society as a whole. These objectives can be achieved through actions such as acting as counterpart in granting loans to member countries that need it to strengthen their economy. (International Monetary Fund 2021b)

In that way, this institution gives special attention to the fiscal policies of its member countries. In this domain, as in all the rest, the organization only works as an intermediate, facilitator or, what is to say, an advisor. The IMF tries to ensure the correct functioning of tax policies worldwide, which it achieves through the creation of a specific report called 'Fiscal Monitor'. Its first release was in 2009, and it gathers all the new updates related to the fiscal issue to facilitate the learning and growth of the member countries in that area. (International Monetary Fund 2017)

Furthermore, the IMF is also included in the Platform for Collaboration on Tax (PCT) created in 2016; a joint initiative of the institution together with the OECD, the United Nations (UN) and the World Bank Group (WBG). This project focuses its efforts on improving the Domestic Revenue Mobilization (DRM) by joining forces of these institutions with great influence, in turn, improving international cooperation. (Platform for Collaboration on Tax 2022)

3.2 OECD fifth forum

The Organization for Economic Co-operation and Development (OECD) is an intergovernmental organization that meets 34 countries committed to market economies and democratic politics systems that represents 80% of the world GDP.

In this case, this organization is also responsible for advising its member states, setting standards for different areas, including the fight against international tax evasion.

For this purpose, the institution founded the OECD International Academy for Tax Crime Investigation. It is an international program born in the OECD's Oslo Dialogue initiative, where the main topic to be discussed was the fight against tax crime and other types of financial crimes, being this part of the first Forum on Tax and Crime of the organization.(OECD 2021a) Its foundations lie on three pillars: standard setting, capacity building, and evaluation and impact measurement. (OECD 2021b)

The most relevant and recent updates in this area are reflected on the OECD Fifth Forum. It was held in 2017 in London, UK, and was attended by more than 200 experts from the world of taxation, anti-corruption, customs and police, among others, from more than 65 countries. All the attendees had one main motivation: to put an end to tax criminals. (HM Revenue & Customs 2017) It should be noted that the Sixth Forum should have taken place in 2020 in Ottawa, capital of Canada, but it has been delayed until further notice due to COVID-19. (OECD 2022)

The main trigger by which tax fraud was considered a big problem for society in general in that moment was the appearance of the so-called 'Pandora Papers' and the 'paradise papers'.(HM Revenue & Customs 2017)

Thanks to all the expert staff of large organizations such as those mentioned above, together with the incorporation of new technologies into their processes, going little by little, every day the possibility of deciphering the complicated gear used by large offshore companies is getting closer.(HM Revenue & Customs 2017)

3.2.1 Action plan

After the statement of the objectives to be achieved, all participants reached the same conclusion: the key to success lies in international collaboration between institutions to reduce financial crime and mitigate its effects on the well-being of the whole society. They also summarized all efforts in an action plan consisting of following five different processes:

- Focus on targeted responses to professional enablers: One of the strengths of any organization are the financial advisors and intermediaries, since they help the system to work without problems interceding between clients and company or directing many actions to perfect them. Even so, this advantage has turned against the organizations because the majority of fiscal crimes have been carried out due to the human factor. This has been corroborated by the institutions thanks to the great big data leak from the scandals mentioned above ('Pandora papers' and 'paradise papers'). As a result, this forum considered a variety of possible solutions including the supervision and regulation of these jobs, designing different types of strategies and regimes including the OECD's to reduce offshore systems avoiding Common Reporting Standard (CRS)¹ for global transparency,

¹ The Common Reporting Standards (CRS) is an information standard created by the OECD Council in 2014 since the G20 request, that determine the international accounting information that must be shared and the financial institutions that need to receive it. Its final objective is to

as stated in the G7 Bari Declaration on Fighting Tax Crimes and Other Illicit Financial Flows.

- Increase inter-agency co-operation across governments to partner in the fight against financial crime. As it has been explained before, the key clue in all the projects is an effective teamwork. The cooperation between countries has always been a fundamental pillar inside the work of the OECD. The report on Effective InterAgency Co-operation in Fighting Tax Crime and Other Financial Crimes, result of the third Forum of the OECD in this topic, provided the participants of this initiative with a study of the pros and cons of the measures adopted, thus presenting the steps to be followed for a successful international cooperation with more certainty. In this way, as a matter of priority, the review of the mechanisms for the exchange of information by the member countries was demanded.
- See the full picture – implement the Ten Global Principles necessary for fighting tax crime. For an organization to work together, the information provided by its members must be homogeneous, so that all institutions speak the same language. To this end, the Ten Global Principles were set out in the OECD report on Fighting Tax Crime. This will enable participants to compare their information and work towards a better future.
- Improve international co-operation amongst agencies fighting tax crimes. The OECD undertook to make available to its member countries different agencies that could make a rapid and effective response to tax crimes a reality. This will also facilitate access to information and decision-making in this area. This will be possible through systems such as FCInet, a decentralized government system that processes data accessible by privacy through a technology called ma3tch. (FCInet 2022)
- Strengthen capacity building for all to effectively combat financial crimes. Once again, inter-agency collaboration is the key to achieving results. This means that countries with more power or capacity could put more effort into the common good. For example, Germany and France helped to establish the Pilot Africa Academy Programme for Tax and Financial Crime Investigation. Thus, all member countries reviewed their efforts to give the best of themselves by expanding the capabilities of the OECD International Academy for Tax Crime Investigation.

3.2.2 Principles of the Forum:

Earlier in one of the actions in the preliminary plan, the Ten Global Principles that emerged in this forum were mentioned. These were reflected in a book called 'Fighting Tax Crime: Ten Global Principles'. This book contains the administrative, legal, institutional and operational aspects necessary to carry out these principles. Those principles are the following:

- Principle 1: Ensure Tax Offences are Criminalized. 'Jurisdictions should have the legal framework in place to ensure that violations of tax law are included as a criminal offence and that effective sanctions apply in practice.'
- Principle 2: Devise an Effective Strategy for Addressing Tax Crimes. 'In order to ensure the effectiveness of the law on tax crimes, jurisdictions should have a strategy for addressing tax crimes. The strategy should be regularly reviewed and monitored.'
- Principle 3: Have Adequate Investigative Powers. 'Jurisdictions must have appropriate investigative powers to successfully investigate tax crimes'

- Principle 4: Have Effective Powers to Freeze, Seize and Confiscate Assets. 'Jurisdictions should have the ability to freeze / seize assets in the course of a tax crime investigation, and the ability to confiscate assets'
- Principle 5: Put in Place an Organizational Structure with Defined Responsibilities. 'A jurisdiction should have an organizational model with defined responsibilities for fighting tax crime and other financial crime.'
- Principle 6: Provide Adequate Resources for Tax Crime Investigation. 'Tax crime investigation agencies should have adequate resources'
- Principle 7: Make Tax Crimes a Predicate Offence for Money Laundering. 'Jurisdictions should designate tax crimes as one of the predicate offences for money laundering.'
- Principle 8: Have an Effective Framework for Domestic Inter-Agency Co-operation. 'Jurisdictions should have an effective legal and administrative framework to facilitate collaboration between tax authorities and other domestic law enforcement and intelligence agencies.'
- Principle 9: Ensure International Co-operation Mechanisms are Available. 'Tax crime investigation agencies must have access to criminal legal instruments and an adequate operational framework for effective international co-operation in the investigation and prosecution of tax crimes.'
- Principle 10: Protect Suspects' Rights. 'Taxpayers suspected or accused of committing a tax crime must be able to rely on basic procedural and fundamental rights.'

MOST COMMON MECHANISMS USED FOR TAX EVASION

After analyzing the institutions that ensure the tax compliance, it is worthy to study the performances of the firms involved in this illicit activity. Some big scandals have brought into light the mechanism that they used for avoiding paying what corresponds. The most used tool in this case is the Special Purpose Entities (SPE).

4.1 Special Purpose Entities

4.1.1 Definition

A Special Purpose Entity (SPE), also called Special Purpose Vehicle (SPV), is an entity created with a specific objective, that can be, for example, to contract a leasing, investment property or even trade in the financial markets for swaps and other derivative instruments.

The principal characteristic of this kind of entities is that they have the ability to isolate the financial risk of its parent company, that is to say, its creator. As it is a completely independent firm, its assets, net worth and obligations are totally safe, even if its parent company goes bankrupt.

This scheme briefly sets out an example where the SPE acquires a loan for the purchase of an asset that the parent company will subsequently enjoy:

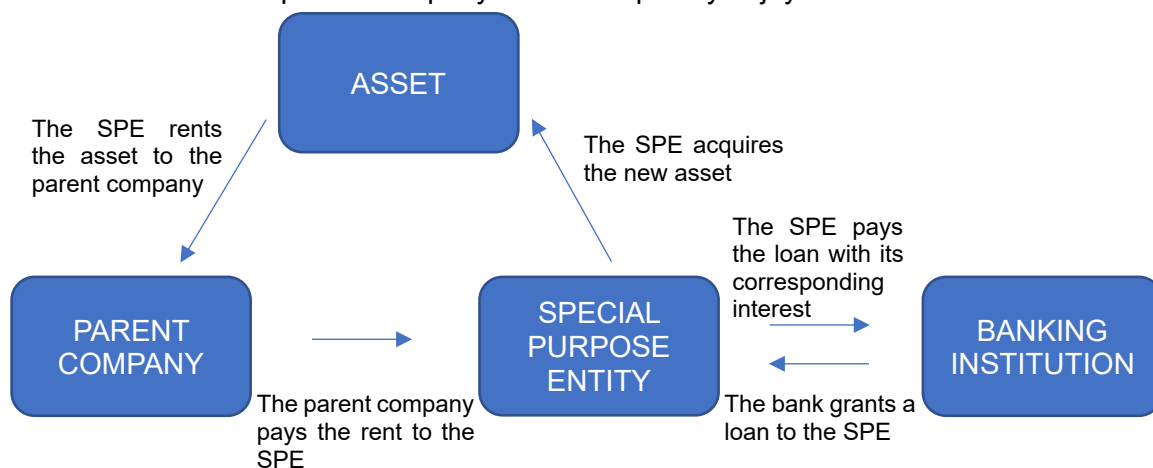


Figure 1: SPE example scheme

Mainly thanks to the above characteristics, these entities depict a clear representation of the fine line between legal limbo and illegal activities, between tax avoidance and tax evasion.

On the one hand, tax avoidance is achieved by the difference between the tax rates to be paid by each company separately. But, on the other hand, tax evasion comes into play when these unique features are used to hide the holding company's real situation, trying to hide debts or toxic assets² among a Special Purpose Vehicle (SPV) (Hayes 2021) and both companies are not perceived as a whole. (Deméré, Donohoe, and Lisowsky 2020)

This manipulation of its numbers means that the parent firm does not communicate or express the company's faithful image to external users and that it seems to be more

² Toxic assets are those that are hard or impossible to sell as the market is totally upset and the firm cannot find a counterparty for the sale. The potential buyers see it as a guaranteed loss of money. (Chen 2020)

profitable than it really is. (Hayes 2021) This situation contradicts the accounting bases that stipulate that the actual representation of the accounts is a prerequisite, since it contributes truthfulness to the accounts of the given company. (Coll Morales 2020)

4.1.2 Tax advantages of SPEs

As mentioned above, these entities are always created with a special purpose. Depending on it, the aggressiveness of the strategies carried out will oscillate.

It should be noted that the presence of these entities does not always ensure the existence of tax savings, since other factors such as the perception of the whole as a consolidated group or the correct distribution of assets come into play for them to come true. Therefore, these entities may only generate tax savings to their creators when they are linked to the term 'tax-advantaged'. (Deméré et al. 2020)

Tax-advantaged is defined as a type of asset that offers tax benefits, that can tender from some exemptions to the deferral of the taxes. The tax-deferred accounts include the advantage of possible tax deductions on the whole current taxable amount, but this quantity will be included in future years taxations. On the other hand, the tax-exempt accounts consists of a privilege as established by the Government or the Law, which excludes the payment of a tax, to a subject who would be theoretically obliged to pay it by law. (Investopedia 2021)

Once these terms have been defined, it can be stated that a SPV can generate savings in taxation through two different canals.

Firstly, SPEs can help its parent company to achieve more tax-advantaged features. This can be possible as these entities are totally independent, and their assets and transactions follow a completely different line to their holding. In that way, the SPE can support high-risk assets, relieving the debt ability of their parent, consequently leading to a reduction on tax payments and increase on the tax-deductible interest expenses. Moreover, thanks to their ability to captivate financing, they can also include in their accounts assets and projects that can increase its parent depreciation or bad debt deductions. (Deméré et al. 2020)

Secondly, they can boost the tax efficiency contributing to adoption of some business nucleus, for example the patents, and later to the relocation of them to low-tax territories. These practices are so extremely common, to the point that the OECD has had to implement measures as it considers it a tax mistreat according to the Base and Erosion Profit Shifting Project (BEPS)³. (Deméré et al. 2020)

Furthermore, on the most hostile side, the SPEs can achieve the tax saving across tax shelters. (Deméré et al. 2020) Some assets as the municipal bonds and the employment retirement plans are considered tax shelters. These shelters are legal mechanisms to cumulate assets in order to minimize its liabilities. (Kagan 2021) In some cases, this vehicle can allow a "double deduction" for a particular loss. For example, selling to another enterprise of the group the SPEs, in such a way as to generate a deductible loss.(Deméré et al. 2020)

As a conclusion, the SPEs have countless opportunities that can be used to do business, but care must be taken with the management of these entities not to cross to the dark side.

³ The tax base erosion and profit shifting (BEPS) refers to the exploitation of gaps and mismatches in tax rules achieving tax avoidance. Specifically, the BEPS project sum up fifteen actions with the objective of adjusting the international taxation.(OECD 2016)

4.1.3 Tax disadvantages of SPEs

Although, as explained above, these entities can provide us with the opportunity to save on taxes, it should be noted that these savings are not in large amounts, and therefore, in many cases it is not profitable. (Deméré et al. 2020)

Moreover, the problem arises when the costs of setting up such an entity outweighs the benefits. But, as the benefits will be obtained in the short to medium term and the costs will take longer to be reflected in the accounts because they arise as a consequence of the transaction, at first glance it seems that the project is profitable, and the managers jump in the deep. (Deméré et al. 2020)

In addition, the creation of these entities entails other problems for the image of the parent company. These entities reduce the quality of the information, as, being a completely separate entity from the holding, it will be very difficult for external users to identify the relationship if they are not recognized as a consolidated group. This will also lead the pressure, from both the competent authorities and society, to increase enormously. (Deméré et al. 2020)

Furthermore, the SPEs can cost an increase in the payment of taxes, especially after completing the task for which they were created, the tax savings at a certain moment in time. Along with this issue, they can lead to serious penalties by the tax authorities if they do not accept the tax relationship between the two companies as a result of a negative audit. (Deméré et al. 2020)

Through these audits, authorities could also adjust transfer pricing between border transactions. In this case, it must also be borne in mind that the region where the company is established must allow compensatory adjustment. If it were not accepted, it would result in double taxation⁴. (Deméré et al. 2020)

4.1.4 Enron Scandal: cooking the books

Enron Corp. was founded in 1985 in the merger of two natural-gas-transmission companies, Houston Natural Gas Co. and Omaha, Neb.-based InterNorth Inc. At that time, the energy market regulations were significantly reduced, allowing companies to gamble with future prices. Enron positioned itself as one of the most important companies in this sector, as it achieved to fix gas prices to its customers through a contract that negotiated with gas producers by a fee. It became one of the most popular intermediaries in society. Jeffrey Skilling, the head of the firm, changed from a historical cost accounting method to a mark-to-market (MTM) accounting method. (Seabury 2015)

The Mark-to-Market (MTM) method allows the continuous updating of the fair value of the firm's accounts, such as the value of the assets and the liabilities. This procedure gives more accurate information about the fair image. In contrast, in the historical cost method the assets maintain its fair value since the purchase moment. (Corporate Finance Institute 2022)

Enron used this accounting method to hide the troubles they were having at the end of the boom years. Enron managers began to register unrealized future profits, which they were able to account for thanks to this method. But even so, those efforts were not enough as the problems overflowed all the accounts of the organization. (Bondarenko 2021)

In this way, Enron began to use the creation of these entities to try to hide the situation so that the price of the shares would not collapse, since, if so, the company would go

⁴ On many occasions, the firms can take refuge in the double taxation agreements that have been established by many countries among them. These agreements try to avoid the enterprises to pay for the same reason in two different jurisdictions. (EFE 2019)

from being a benchmark to being practically bankrupt. The company created a complex set of instrumental companies that were supposedly, independent. But Enron indirectly controlled them. They were used to hide the reality through the concealment of liabilities, protect assets or hide them, create fictitious benefits...(Seabury 2015)

For example, Enron built a power-plant and immediately, accounts its projected profits on its books. If the plant revenues were less than projected, it would transfer them on its accounts. So, the loss went underreported, making the firms appearance more profitable than it really was.(Seabury 2015)

The mechanics of transactions between these two entities were based on the exchange of stocks by Enron replacing them for SPE cash. The shares received by the entities were used in turn to cover an asset in Enron's accounts. Thus, Enron would guarantee SPEs a constant commitment, apparently eliminating counterparty risk. (Seabury 2015)

Along the same lines, the capital of the companies was wholly owned by Enron, as it triggered its creation. This meant that if Enron fell, his entire army of SPEs would fall with it. In addition, this data was not transferred to investors, who knew the existence of these entities but not the capitalization of these.(Seabury 2015)

The analysts started making questions about this mechanism in April 2001. Then, Enron closed what it called its Raptor SPEs, that is to say, its SPE network, to avoid distributing the 58 million in stock shares they owned.

When the company began to be investigated, Enron revealed its \$591 million and \$628 million in losses and debt, respectively. Because of that, the Sarbanes-Oxley (SOX) Act⁵ determined a huge penalty for financial manipulation.

Finally, Enron collapsed in December 2001, and with it the values of all SPEs, compelling the guarantees of the protagonist to come into force. (Seabury 2015)

⁵ The Sarbanes-Oxley (SOX) Act of 2002 is a special law created in order to protect investors from dishonest financial reporting for enterprises. (Kenton 2020)

MEASURES FOR IDENTIFICATION OF TAX CRIME

At the present time, tax fraud has become a major issue for the society as a whole. As the volume and impact of it has increased over time, no one is dealing with it in a superfluous way.

In addition, the evolution of technology has opened many doors to the great scammers, being these increasingly strategic and sophisticated with their methods. In response to this wave, regimes have become more robust and relentless.

As rational human beings, we try to develop mechanisms to identify and, consequently, be able to eliminate these problems that endanger the natural course of things. In the financial analysis sector, the experts can assist in detecting these irregularities through various tools. Among them, two different interlinked methods can be found: the Ratio Analysis and the Beneish Model.

5.1 Financial Statements Analysis: Ratio Analysis

Economic decision-making is based on financial and accounting information gathered in the company's financial statements. In order for the information user to make decisions based on reality, especially for external users, this information must be unbiased and reflect the true image of the company at issue.(Kenton 2021b)

Here lies the main reason for the manipulation of the accounts by the executives of the company: to show the accounts of the most profitable and attractive company for potential investors. Thus, some experts consider high levels of indebtedness as a major matter, which can encourage managers to committing any illicit activities, so as to safeguard or preserve the company's reputation.(Kanapickienė and Grundienė 2015)

Consequently, the financial ratio analysis can be a great help in the investigation of financial statements fraud, as it can spot accounting irregularities. In this way, the experts study these ratios, which build direct relation between items, in order to detect those that are more likely to reflect that some irregular activities have been carried out inside the organization. (Bloomenthal 2020)

Following this stream of study, the experts divide them into five different groups: profitability, liquidity, solvency, activity and structure ratios. Furthermore, they summarize the importance of this ratios for fraud detection into profitability, activity and structure area, using the following ratios for this analysis.(Kanapickienė and Grundienė 2015)

On the one hand, some authors argue that the Gross Profit is a variable inclined to manipulation. This manipulation can be carried out through classification shifting, where the managers miscategorize the expenses, expanding the earning impact on the gross profit margin. (Poonawala and Nagar 2019) In terms of financial ratio analysis, the following ratios can show any hint of illegality:

- Gross Profit to Sales
- Gross Profit to Total Assets

On the other hand, there are two accounts that entitled to subjective estimation: Inventories and Accounts Receivables. As a result, these items can be used as a red flag for fraudulent reports, included in the subsequent ratios: (Kanapickienė and Grundienė 2015)

- Inventories to Sales
- Inventories to Total Assets
- Accounts Receivables to Sales

Once the most optimal ratios are selected for this task, the following question arises: What would be the value for each ratio that would indicate that a company's reports are fraudulent? With the above information it is almost impossible to answer this question, since this value depends on various factors such as the type of company, its previous situation or the country in which it is located. (Kanapickienė and Grundienė 2015)

In order to solve this position, the following concept is introduced: the Beneish Model.

5.2 Beneish Model

The Beneish M-Score model was born in 1999, developed by the Professor Messod D. Beneish. This statistical model emphasizes the use of various variables that have an impact on results and are likely to be manipulated, which does not necessarily imply fraud or illegality. The M-Score is calculated using eight ratios that allow comparing the evolution of financial variables from year to year and determine the year in which the irregularity occurs. (Mantone 2013)



Figure 2: Beneish Model Ratios

An M-score obtained from the computation of those eight ratios that is greater than -2.22 is an indicator of the possible alteration of the company's financial statements. (Kenton 2021a)

The first time this model was put into practice was in 1998, by part of some students at Cornell University, who used it to predict that the financial statements of Enron Corp. were being manipulated before its bankruptcy in 2001. (Kenton 2021a)

This model has also some limitations. It cannot be applied to financial firms as banks and insurance companies as these companies were not considered by the professor when he was evaluating his models. In addition, the entities must have its financial statement available for the external users, as it was considered by Beneish. (Terreno, Campana, and Sattler 2020)

Furthermore, it is a probability theory model and has not the capacity to guarantee detection of real fraud in a company. (Mantone 2013)

INCENTIVES FOR TAX COMPLIANCE

In order to increase the commitment of taxpayers, governments are in the research of some incentives which have the ability to boost tax compliance. In this way, these incentives are divided into materialistic, respectful and responsive treatment, and verbal rewards.

6.1 Materialistic Incentives

A materialistic incentive can be focused on a positive or a negative way. Inside the positive incentives can be found tax benefits or advantages such as lotteries for compliant behavior. (Smith and Stalans 1991) This gameplay was implemented for the first time in 1951 in Taiwan. The government offered lottery tickets in exchange for consumers receipts. In addition to ensuring the commitment of individuals, this system manages to improve the control of transactions among users and firms to the Administration, and, in this way, facilitates the detection of illicit activities, hindering the tax evasion. (The Economist 2019)

Some research has brought to light some defeats of the positive incentives, mainly its fleeting nature. As it forms part of extinctive motivation, when the effect or feeling that this stimulus produces evaporates, the taxpayer tends to resume its initial behavior. In this way, these incentives cause the user to fulfil their tax duties only if there is such a motivation. (Smith and Stalans 1991)

On the other hand, the materialistic incentives in a negative manner includes policies that undermine the unattractive aspects of the tax system, as for example streamlined tax forms or penalties reductions. It is closely linked to the negative reinforcement concept as its main objective is to strength a behavior by the removal of negative consequences. (Nesenoff 2020) It has fewer adverse effects, but these effects are worse when the monetary factor comes into play, assimilating it to the positive incentives behavior in matter of its short-lived essence. (Smith and Stalans 1991)

6.2 Respectful and responsive treatment

The relation that governments maintain with its citizens also determine the taxpayers' behavior. As a kind of positive incentive, when people perceived that the authorities appreciate its contribution, valuing its dignity, they recognized the country as a group. In that way, this team feeling lead to an increase in the taxpayers' commitment. (Smith and Stalans 1991)

The strategies that a government can follow in order to achieve treating people with respect include active and reflective listening, demonstrating the seriousness of the pledge and strengthening trust. (State of New South Wales 2017)

Firstly, people want to feel that its complaints and needs have been taken into account for their administration plans. Thereby, several territories have enabled what is called suggestions boxes. In the case of Spain, these procedure process complaints about the performance of the Administration and suggestions on how to improve the service to taxpayers before the Council for the Defense of the Taxpayer. (AEAT 2022b)

Secondly, especially when they are not favorable to taxpayers, the government must demonstrate the basis of its measures implemented, describing the actions that have been considered and the investigation carried out. This will also foster the transparency of the Administration, leading to the third objective for responsive treatment: trust. (State of New South Wales 2017)

Thirdly, after the 2008 economic crisis, the international tax system suffered a deterioration very quickly, as the citizens blamed the government for the side effects of it. One of the main objectives at that time was recovering the trust of the population, as

the organizations know it is the cornerstone of the relation with their people. (Saint-Amans 2014) This was a clear example of how important the reliance as an incentive for tax compliance is.

6.3 Verbal rewards

Finally, in this category must be included the verbal rewards such as praises and recognitions of the proper contribution of the taxpayers. These actions embrace the intrinsic motivation of the user, as this causes citizens to be included in the work of the Administration, thus defending its integrity. (Smith and Stalans 1991)

Following the information from experts' researches, the positive feedback in some cases becomes more relevant to individuals than material or symbolic rewards, as the user significantly values their unique identity and personal dignity. (Smith and Stalans 1991)

WHAT ABOUT SPAIN?

Once the situation of tax evasion has been exposed in a global field, attention will be focused on the Spanish territory. In the next section the following topics will be studied: the economic impact of tax evasion in Spain, what is considered as tax crime together with the penalties imposed in our country to this kind of fraud, the consequences of any kind of accounts' manipulation with the analysis of the dual-use software as the main mechanism for evasion technologically speaking, the institutions fighting against it, and finally, anti-fraud measures imposed by the Tax Administration in Spain.

7.1 Economic impact of Tax evasion.

The global economy has suffered the most direct effects of tax evasion for a long time, with the yearly amount defrauded reaching around \$427 billion (approximately 395,5 billion euros). Specially in Spain, the losses exceed \$7,222,000,000 (6,689,233,060 €) annually, equivalent to the supposed loss that would cause if the 47 million inhabitants defrauded 155\$ (143.57€) each per year.(Tax Justice Network 2021)

Moreover, this figure represents 2.5% of the total tax revenue collected by the Spanish public coffers (\$291 / 269.53€ billion in 2021). \$5 billion (4.63 billion euros) of the total amount deceived arise from the multinational enterprises' activity, and the amount left by private individuals.(Tax Justice Network 2021)

Even so, the situation is improving thanks to all the efforts of the Administration and other collaborating institutions, since according to official data of the AEAT in 2021 was collected 15.1% more than in the previous year, reaching the figure of 223.385 million euros collected. (AEAT 2021b)

7.2 Concept of Tax evasion in Spain. Penalties and punishment.

7.2.1 Concept of Tax evasion in Spain.

First of all, we will answer the following question: What is considered tax fraud? In Spain, any individual who defrauds the Public Treasury by failing to pay tax dues, withholdings or amounts that should have been withheld or income on account, resulting in unfair refunds or tax benefits that do not correspond, is considered a tax offender as long as the amount defrauded exceeds €120,000. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305)

All these actions cause material damage to the public purse, but the situation of the fraudster is aggravated when the latter incurs in the improper collection of refunds. This is explained by the fact that this reimbursement entails a cash outflow of funds from the public treasury.(Pérez Royo and Carrasco González 2020)

In addition, a concealment intervention will be required to be considered a tax crime. (Pérez Royo and Carrasco González 2020)

Moreover, since this fraud is classified as an intentional offence, it must be carried out in the knowledge of its wrongfulness. Therefore, wrongful offences will not be included in this category, and thus the corresponding penalty will not apply. (Pérez Royo and Carrasco González 2020)

Both errors with respect to a statutory element of the offense (*error de tipo*) and errors as to the prohibited nature of an act (*error de prohibición*) shall be excluded. If any of these is considered to be of a vincible ignorance, the offender will be treated as reckless or his sentence will be reduced, respectively. But if it were otherwise classified as invincible error, the individual would be exempt from criminal responsibility. (Pérez Royo and Carrasco González 2020)

In addition, the exemption must include the error with respect to the punishability of an act (*error de punibilidad*), that is, error in which the subject will incur only when it trusts that his actions are punishable in the administrative area, not in the criminal. As in the previous errors, this will have no criminal consequence. (Pérez Royo and Carrasco González 2020)

As has been mentioned before, tax fraud may arise from three different cases: the lack of revenue in the instalment of the tax liability, the lack of income in the withholding tax or income in respect of remuneration in kind or the improper obtaining of deductions or the unfair enjoyment of tax benefits or advantages. However, it always needs to fulfil the characteristic of exceeding the figure of 120.000€. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305)

Next move in determining the seriousness of the facts is to specify or delimit the composition of the above-mentioned amount. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305)

In the case of taxes, withholdings, income on account or refunds of a periodic nature, it will be considered that defrauded until that point in time. Even so, if that period were less than twelve months, it would be considered the quantity defrauded in a complete calendar year. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305)

This situation shall be different in the case of illegal activities carried out by individuals or entities pretending to carry on an economic activity or arising within a criminal organisation, since it will be considered a crime from the moment when the 120.000 € are reached. (Organic Law 10/1995 of 23 November on the Criminal Code 1995)

In all other cases, the amount will depend on the different facts liable to tax. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305).

7.2.2 Penalties and punishment.

In this way, if the existence of the crime described above is confirmed, the offender shall be punished with prison of one to five years and a fine of one to six times the amount defrauded. Additionally, the loss of eligibility for any public aid, tax or Social Security benefit for the period of three to six years. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305)

Article 305 bis sets out the penalties in the event that the situation escalates. This aggravated type will result from the fulfilment of any of the following circumstances:

- Amount of the defrauded quantity reaches more than 600,000 euros.
- Crime committed inside of a criminal organization.
- Third parties or entities are used for concealment or adding difficulty in determining the person responsible for the crime or amount defrauded.

The penalties for this kind of offence are prison of two to six years and a penalty of twice as much as six times the amount defrauded, also including the loss of the possibility of public aid of four to eight years. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 305 bis)

7.3 Fraud related to accounting.

7.3.1 Accounting fraud.

This type of crime arises when, according to Tax law, an individual obliged to keep commercial accounts, books or tax records incurs in any of the following circumstances: (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 310)

- Failure to keep these accounts.
- Concealment of the real situation of the accounts or simulation of a parallel reality through different accounts, referring to the same activity and financial year.
- Fictitious accounting entries in compulsory books and non-registration of economic operations or difference between actual figures, provided that the tax returns have been falsified or omitted and that the distorted amount is €240,000 per financial year.

In this case, the penalties will amount to imprisonment from five to seven months. (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 310)

On the other hand, knowing that the perpetrator of the offence is a legal person, the punishment follows the next procedure: (Organic Law 10/1995 of 23 November on the Criminal Code 1995, art. 310 bis)

- Twice the amount defrauded if the offence committed by the natural person entails more than two years' imprisonment.
- Two to four times the amount defrauded if the penalty of imprisonment for the natural person is greater than five years.
- Six months to one year's imprisonment provided that the circumstances referred to in the preceding paragraph are met.

7.3.2 Dual-use software technology

In July 2019, with the publication of the new law against tax evasion, the use of dual-use programs in terms of accounting was definitively prohibited. These programs are responsible for double billing or double accounting, in order to hide certain movements both to the Treasury and users. In these situations, two different software are usually found: Phantomware or Zipper. (TEFICO Asesores 2021)

On the one hand, Phantomware is a phantom software installed inside the cash register that is accessed by a password that acts as 'box B' by hiding sales from a certain amount. On many occasions, employees are even unaware of the existence of this software as it is apparently undetectable. (Montero 2020)

On the other hand, Zipper stores the information externally, as for example in a USB, authorizing to modify the accounts without anything being registered in the cash register. (Montero 2020)

This type of technology attracted the attention of the Tax Office, since it has been estimated that approximately 200,000 million euros have been hidden from the Administration thanks to this type of software. (Sacristán 2021)

In this way, this law establishes new sanctions for any self-employed person or company that does not comply with the new established regulations. Fines are mainly divided into two types of infringements. (Law 11/2021 of 9 July on measures to prevent and combat tax fraud, transposing Council Directive (EU) 2016/1164 of 12 July 2016, (Spain) 2021)

Firstly, for those companies or individuals that manufacture, produce or commercialize with this type of software that allow accounts manipulation will be imposed fines of up to 150,000€. (Law 11/2021 of 9 July on measures to prevent and combat tax fraud, transposing Council Directive (EU) 2016/1164 of 12 July 2016, (Spain) 2021)

Secondly, up to €50,000 will be sanctioned against anyone involved in the use or possession of these systems, even if they are not used for the purpose of maintaining a double-entry book is considered not to be in line with the new law requirements. (Law 11/2021 of 9 July on measures to prevent and combat tax fraud, transposing Council Directive (EU) 2016/1164 of 12 July 2016, (Spain) 2021)

7.4 Key agencies combating tax crime

Firstly, the concept of Financial Intelligence Unit (FIU) should be highlighted. It is present in all territories around the globe and is a key part of strategies to combat money laundering and the financing of terrorism. (Asociación Española de Compliance 2021)

Countries have applied different models when deciding where their FIU should be attached in the context of their financial and law enforcement system. (Asociación Española de Compliance 2021) In the case of Spain, the FIU is established as an independent body under the chairmanship of the Secretary of State of Economy and, therefore, of the Ministry of Economic Affairs and Digital Transformation. This concept in our country is contained within the SEPBLAC ('Servicio Ejecutivo de Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias' or Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences). (SEPBLAC 2021)

This agency is responsible for reporting Suspicious Activity Reports (SAR), which can be drawn up thanks to information provided centrally by financial institutions and other institutions. These reports will be passed on to the competent authorities in order to eradicate these illegal activities. (SEPBLAC 2021)

Secondly, it is worthy to highlight the role of the 'Agencia Estatal de Administración Tributaria' (AEAT), colloquially known as 'Agencia Tributaria'. It is a public entity, which has budgetary and personnel management autonomy. Its main objective is to ensure the proper functioning of the Spanish tax and customs system. Even so, within the competence of this body are not included the elaboration and approval of tax rules, nor the allocation of public expenditure. (AEAT 2021a)

Within the AEAT's organizational structure, it can be found the departments of tax management and the financial and tax inspectorate. Those groups take on special relevance in dealing with users, carrying out control actions. Taxpayers' interventions which do not comply with their tax obligations, will be detected and corrected, punishing its offenders according to the severity of its behavior or reporting the offenders to the competent authorities in criminal offences. (AEAT 2022a)

Finally, the National Police and the 'Guardia Civil' contribution must be included.

Its general function is investigating crimes thus, they have set up specialized units dealing with organized crime, drugs and economic fiscal crimes.

In the case of the National Police, these are the 'Central Economic Crime Unit and Prosecutor of the National Police' (Unidad Central de Delincuencia Económica y Fiscal de la Policía Nacional) and for the 'Guardia Civil' the 'Economic Delinquency Group of the Central Operational Unit of the Guardia Civil' (Grupo de Delincuencia Económica de la Unidad Central Operativa de la Guardia Civil). (Policía Nacional 2021)

Talking about the 'Guardia Civil', it is a military public corp, characterized by its national scope. It forms part of the State Security Forces and Corps. (Guardia Civil 2021)

In addition to other functions, it meets the needs of the Ministry of Finance relating to State Fiscal Protection and ensures compliance with the rules and regulations related to

the various bodies of the central, autonomic and local administrations.(Guardia Civil 2021)

Within the structure of the Interior Ministry, two units of the 'Guardia Civil' combat money laundering: the judicial police and the fiscal service.

The Judicial Police, composed by several units deployed throughout the national territory, combat economic crime at the national and regional levels. (Guardia Civil 2021)

In the second place, the Fiscal Service is responsible for the development of the 'Guardia Civil's' mission as Spain's fiscal investigation police in customs. The Guardia Civil monitors the movement of people and goods through customs and tracks the physical movements of funds. Here also is included the 'Guardia Civil's' Surveillance of Coasts and Borders, which contributes to the same end. (Guardia Civil 2021)

7.5 Anti-fraud measures

In recent years, due to the economic crisis that has rocked our country, the main objective of the Spanish economy has been the reduction of the public deficit through the consolidation of public accounts. This has meant that the measures adopted are governed by the short term. (AEAT 2020)

But, as in most Tax Administrations, the AEAT has always sought strategic planning through a multi-annual framework. (AEAT 2020)

Finally, in 2020 it was possible to install this model thanks to the Strategic Plan of the Tax Agency 2020-2023. Through this technique, the Administration will get a clear vision of what it wants to achieve and how to do it, in the medium and long term. (AEAT 2020)

In addition, this plan lists the priorities among all action lines mainly of the collection department, customs and excise department and the tax management department. (AEAT 2020)

It will also be responsible for the allocation of human and material resources and for establishing certain possible measures and actions, always in line with the priorities identified. (AEAT 2020)

Within the possible actions, this document describes two completely differentiated aspects: the prevention of tax and customs fraud by strengthening assistance and prevention, and the intensification of control actions on this crime. (AEAT 2020)

7.5.1 Prevention of Tax and Customs Fraud

The main function of this work line is the undertaking of projects that allow anticipating in time the adoption of measures against situations that may put at risk the future recovery of debts and extinguish the actions that may indicate the principle of evasion of collection in the near future. (AEAT 2020)

In this way, this slope is divided into two main vertebrate axes: assistance to taxpayers and preventive actions. (AEAT 2020)

7.5.1.1 Assistance to taxpayers

Mainly, taxpayer assistance focuses its attention on a new model of digital assistance. It manages the joint use of all channels (face-to-face, telephone and electronic) for the provision of information and assistance services, prioritizing telephone and electronic channels. (AEAT 2020)

This model includes the parallel implementation of a mailbox that allows to solve, by technicians technical experts in the tax, those doubts that the assistant has not been able to solve. (AEAT 2020)

Moreover, talking about the attention to taxpayers, the comprehensive Plan for the Prevention and Correction of Tax, Labor and Social Security Fraud guidelines published in 2010, highlights the importance of promoting voluntary compliance. (AEAT 2010)

The Tax Office will consider three different relevant issues: the improvement of the AEAT's relations with tax advisors, increasing the availability of telematic services to the taxpayer and improving the provision of information and assistance to the taxpayer. (AEAT 2010)

Firstly, in order to improve the relation between the AEAT and the tax advisors, Administration has opted for the creation of a Forum of Tax Advisors to discuss the main issues of interest in terms of taxation, and, in particular, share knowledge between the parties. (AEAT 2010)

Secondly, in 2008 was included the electronic access by interested parties to any information on the files of such users, in addition to telematic consultation of outstanding debts with the tax authorities, in order to facilitate a transition to more accessible information for all individuals. (AEAT 2010)

Lastly, a key element in fulfilling the obligations lies in improving the attention to the taxpayer. This will be carried out through several campaigns aimed at the collectives most disengaged from the Administration such as those involved in the informal economy, with the sole purpose of making known the obligations of each of them with the Tax Office. In addition, platforms such as INFORMA are enhanced, aimed at resolving users' doubts. (AEAT 2010)

Thus, through these measures, the AEAT would be applying one of the positive incentives for tax compliance mentioned above: the respectful and responsive treatment.

7.5.1.2 Preventive actions

These preventive actions are based on the creation of fiscal awareness, trying to improve civic-tax education in our country. In this category, must be included strengthening of tax data availability, the Immediate Provision of Information (Value-added Tax and Excise Duties), promotion of 'good practice', preventive presence in economic sectors and prevention of collection fraud, among others. (AEAT 2020)

- Strengthening of tax data availability: This action has as its main objective to minimize tax default due to errors or lack of information, increasing the existence and accuracy of the sources that provide this kind of information.
- Immediate Supply of Information (ISI or *SII* in Spanish): provides quality information to help taxpayers prepare their VAT And ED returns. The information provided is characterized mainly by its promptness.
- Promotion of 'good practice': thanks to the Forum of Large Companies emerged a Code of Good Tax Practices through which the Tax Office and the companies that sign it negotiate certain solutions to the common problems of both agents. These assume commitments for the optimization of compliance with the system, mutual cooperation and trust between the two parties, through fiscally responsible policies in these companies.
- Preventive presence in economic sectors. It will be possible to carry out these initiatives through these four tasks:

- Analysis of information on fiscal risks in different economic sectors.
- Development of the Taxpayer Visitation Plan 2020-2023: the public agency will promote the personations in different centers of several business sectors to combat unsupportive behaviors of a very small part of taxpayers who take advantage of the difficulty of contrasting data on the real volume of income.
- Implementation of phases similar to previous ones in relation to other economic sectors and other types of taxpayers: to ensure the greatest effectiveness of this plan, the previous initiative will be implemented in new sectors and taxpayers.
- Development and execution of other visits. These visits are mainly triggered by indications of irregularities.
- Prevention of collection fraud: include the reorientation of the deferral policy and other initiatives to positively influence the spontaneous compliance of taxpayers. In addition, it is intended to facilitate the payment of debts by reducing the administrative costs of compliance.

7.5.2 Tax and customs fraud control actions.

At this level, collaboration between the main actors involved in this field, both nationally and internationally, is considered of vital importance. (AEAT 2020)

In national terms, it is important to highlight the work of the Social Security Treasury, Labour Inspectorate, Directorate-General of the Cadastre and the regional tax authorities. (AEAT 2020)

Internationally, the role of both the OECD and its environment and that of the European Union is indispensable. (AEAT 2020)

In this way, in order to tackle tax fraud, it is essential the exchange of information between those agents and cooperation to bring about changes in regulations and common actions. (AEAT 2020)

These actions are classified following the type of department it belongs to. In this case the principal areas object to be analysed are the Department of Tax Management, Department of Financial and Tax Inspection and Department of Revenue. (AEAT 2020)

Moreover, the main lines of action to be promoted in this area of control and fight against fraud are the following:

- Coordinated use of Internal Revenue Service (IRS) information.
- Consolidation of control tools. Here it is included the standardization of the VAT registry books and their consolidation with the PIT (Personal Income Tax) economic activity books to facilitate a more effective analysis of these books and reduce the burdens by allowing the consolidated keeping in the same format of the VAT registry books and income tax.
- Evaluation of the ex-post behaviour of taxpayers: In the collection area, the behavior induced in other taxpayers in the same sector or who may be related to the debtors visited will also be analyzed.

In the Plan for the Prevention and Correction of Tax, Labor and Social Security Fraud mentioned before, thirteen different measures are included within the control of risk areas. Among them, the most important are a plan to combat tax fraud through tax havens, investigation of cash movements, comprehensive control over false or irregular invoices, and control of tax-deductible expenses. (AEAT 2010)

On the first place and following the recommendations of G20 and the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, the principal objective of the plan to combat tax fraud through tax havens is establishing miscellaneous international covenants in order to end up with the major obstacle of those territories qualified as offshore: the lack of exchange of information. (AEAT 2010)

In 2008, negotiations begun with territories such as Aruba, Andorra, San Marino, Singapore and Panama. Most of the discussions ended up with the firm of a convention. For example, in 2010 Panama and Spain concluded establishing a double-taxation convention. (AEAT 2010)

Secondly, the AEAT commenced cash movement investigations around our whole territory. The inform economy is one of the biggest issues in all economic sectors, as the Administration cannot follow the trace of this money. In this way, the goal of this initiative is controlling those movements of cash in order to have the origin of this kind of illicit operations. (AEAT 2010)

With the purpose of fulfilling this objective, the Administration has taken some actions, such as establishing a protocol for cash movements, for both national and cross-borders territories, in order to establish bonds between money owners and activities related to the informal economy. (AEAT 2010)

Talking about the comprehensive control over irregular invoices, AEAT has developed a protocol to verify the veracity of invoices whose origin is doubtful, through collaboration throughout the overall process of both tax management, and financial and tax inspectorate departments. (AEAT 2010)

Thirdly, for the detection of illicit tax-deductible expenses, the Administration has designed specific filters for detecting expenditure above the average for each activity sector as a precautionary indicator. In addition, taxpayers will be selected to declare certain costs items disproportionately high in relation to the total volume of expenses declared. (AEAT 2010)

Finally, an analysis of costs invoiced by suppliers of goods or services of the "luxury" type or especially related to personal consumption will be carried out to verify the linkage of these expenses with business activities. (AEAT 2010)

CONCLUSION

Over the last few years, evasion has become one of the main problems directly affecting the credibility of Tax Administrations and governments. Present throughout the globe, it carries serious economic consequences that affect all of us, but as a result of the efforts to combat it and according to the AEAT, the figures show its downward trend in Spain.

Thanks to the freedom of the territories to choose the legislation that will regulate this type of crime, it is possible to adapt it to the specific tax needs of each country. But this independence makes the efforts of organisations such as the OECD more complex.

The OECD is the visible leader in the fight against tax evasion in the international arena. Its mission is based on transparency and cooperation between territories in order to achieve a homogeneous exchange of information, which allows an optimal detection of irregularities.

The line of work that this institution pursues should be the example to be followed by all Administrations, since through action plans such as the one that emerged in the Fifth Forum, certain clear principles or commitments were created, concise and easy to implement by the collaborating territories. Here is born the key to success to stop the haemorrhage of the tax fraud: international cooperation.

This teamwork needs to be reciprocated by all its contributors. This is where the failure of the international system in this field lies, since in many cases it is chosen to put the encryption of citizens' data before the exchange of potentially useful information. A good example of this situation is the functioning of countries considered as tax havens or non-cooperative territories according to the OECD, where concealment of information is the key.

Working to combat fraud, arises the need to find tools that, through the use of quantitative information on the economic performance of companies, can detect the existence of illicit activities. This field includes the Beneish Model which, although it is a probabilistic model, helps notably in the detection of cases such as Enron, thanks to the accuracy provided by its main source of data: numbers.

In the next phase of the development of this problem, the struggle of governments to find incentives that can promote compliance with their tax obligations appears. In this case, incentives that ease the pressure of paying taxes will always have a much greater impact on the lives of citizens. That is why initiatives such as respectful treatment and verbal rewards go to the background, leaving no effect on the behavior of society.

Of course, Spain is also the victim of fraudulent tax actions, which have different connotations, in terms of definition and dimensioning, legislation and punishment of the crime. It is subject to the criteria of the Criminal Code.

Contrary to the OECD plan, as has been demonstrated throughout the investigation, the latest preventive and control measures implemented by the Tax Administration (AEAT) are clearly confusing and imprecise.

Although it was intended to follow a multiannual framework, the objectives of each department within the Administration must be more precise so that its agents can clearly understand them and, in this way, work on its implementation and achievement.

On the positive side, it highlights the hardening of penalties for which the Administration bet in 2021. In addition to the increase in fines, it is important to emphasize the inclusion

of the regularization of technological aspects such as the billing software. As technology advances by leaps and bounds, the public entities around us must move in the same direction and this initiative is a good starting point.

Definitely, the leading focus should be placed on increasing the economic-fiscal education of our society in general, through training offered by the Administration in collaboration with the central government, to make citizens aware of the impact of their actions and the consequences they entail.

The most obvious projection of this study lies with the continuation of the investigation of the mechanisms used by individuals who manage to defraud in an undetectable way, mainly in the technological field.

With the rise of technological advances, new ideas also emerge, camouflaging themselves from the ordinal detection, as happened at the time with dual-use software.

At the end of the investigation, the efforts of the Tax Office to digitize its system were highlighted, which indicates that we are working in the right direction because technology is currently the cornerstone of our daily lives.

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LEGISLATION

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