

## **COMBATING TAX CRIME IN THE FISHERIES SECTOR**

Tax crime in the fisheries sector covers a wide range of offences, including the evasion of tax on income, Value Added Tax (VAT) and customs duty and social security fraud. These include offences which may be found in most industries, as well as those which exist because of specific features of the fisheries sector (though these may also be found in similar commodity based businesses). This chapter considers a range of government responses that have been used to prevent, detect and investigate tax crime in the fisheries sector. The responses covered are:

- Programmes to raise awareness;
- Intelligence gathering;
- Tax examinations and audits;
- Inter-agency co-operation; and
- International co-operation.

### **Raising awareness**

Raising awareness of the impact of tax crime and the fact that the tax administration is taking steps to combat the problem, can be a powerful tool, both to deter individuals and companies from engaging in criminal activities, and to enable the gathering of intelligence to combat offences that do occur. Campaigns to raise awareness can be focussed on particular groups of taxpayers (such as fishing companies, brokers or importers) or target the general population.

Compliance strategies focussed on key stakeholders, including industry groups and taxpayers, promote an understanding of the legal obligations on companies and the possible civil law and criminal law consequences of non-compliance. Voluntary disclosure regimes may provide an opportunity for companies to disclose previous non-compliance, and pay any unpaid taxes or duties, while avoiding further penalties and possible imprisonment of responsible individuals. Campaigns to raise general awareness provide information on the harm to the economy, society and the marine environment from tax crime and other crime in the fisheries sector, as well as details of successful prosecutions and (where

appropriate) other strategies to target tax evaders. This can have an important impact in areas where crimes such as tax fraud are regarded as harmless or socially acceptable. These campaigns may be run directly by the tax administration, or jointly with other government authorities and NGOs. The tax administration may also take advantage of the national media as a vehicle for raising awareness, through press releases and announcements concerning high profile cases

These strategies can act as a direct deterrent to those who may be tempted to participate in a tax evasion scheme, by highlighting the potential consequences of their actions to them personally. They can place pressure on fishing companies and other participants in the value chain to be more compliant, as consumers increasingly demand that food and other products are sourced from ethical companies which comply with the law in countries where they operate. They can also result in valuable information being provided to the tax administration by informers who disagree with the actions of tax evaders. Therefore a campaign to raise awareness should also include details of the tax administration's informant programme, where one exists, explaining how members of the public can report their own suspicions or evidence of tax offences.

### **Intelligence gathering**

A key element for all tax administrations in combating tax crime in the fisheries sector is the quality of the intelligence gathered to focus compliance actions, plan audits and detect and investigate tax crimes. Intelligence should be gathered from as wide a range of sources as possible, including shipping registers, licensing authorities, company searches, the internet and public resources, financial institutions, and domestic and overseas government authorities and regulators. Important information includes that concerning the ownership, control and movements of fishing vessels, but the ultimate aim of effective intelligence gathering is to build an accurate picture of participants and activities throughout the value chain, in order to allow an effective risk analysis which can in turn form the basis for unilateral or multilateral actions.

### ***Vessel tracking systems***

Monitoring, Control and Surveillance, as applied by the Food and Agriculture Organisation of the United Nations (FAO), is an important tool for establishing effective fisheries regulation, ensuring compliance with fishing and environmental laws, and combating illegal, unreported and unregulated fishing. A key component of the surveillance stage is the use of Vessel Monitoring Systems (VMS), which use Global Positioning System (GPS) technology to track the movements of individual vessels over time and, in some cases, record and monitor catch information. VMS information is automatically transmitted to the Fisheries Monitoring Centre in the vessel's home country, but broad international agreements provide that where a vessel passes into the waters of another country, all information must also be forwarded to the Fisheries Monitoring Centre in that country. While not removing the need for traditional surveillance techniques, such as surface and aerial patrols, on-board observers, logbooks and dockside interviews, VMS provides up to date and reliable data that can be used to support other fisheries management tools. Many countries operate VMS using standard software packages, and there are also regional systems operating in the Antarctic, Europe, Northeast Atlantic, Northwest Atlantic, Pacific Islands, Southern Africa and West Africa.

VMS is principally used for the purposes of fisheries regulation, but provides important information that may be used by tax administrations for the purpose of gaining information on the route and catch activity of individual vessels.

Other systems, such as the Automatic Identification System (AIS), Vessel Traffic Services (VTS) and the Global Maritime Distress and Safety System (GMDSS) are principally used for marine traffic safety, enabling captains, navigators, harbourmasters and government authorities to track the position of vessels. These may also be used by the tax administration and law enforcement to obtain real-time information on the location, direction, speed and the last port visited of vessels anywhere in the world.

### **Tax examination and audit**

The tax examination and audit are a tax administration's primary tools for gathering information about a taxpayer, their business and transactions. When conducting an examination or audit, examiners and auditors will seek to gather all supporting

document relating to a business activity or transaction, and build a thorough understanding of the money trail.

The fisheries sector is complex and, as fish and fish products move through the value chain, they will pass through many stages, often in different countries. However, at most stages of this chain, detailed documentation requirements will apply to ensure that key facts are recorded, providing a valuable source of information for tax examiners and auditors. The annex to this report contains an outline of some documents that may be obtained by the tax administration from the taxpayer or directly from other authorities.

Following the money in order to understand the motivation and tax implications of a transaction is fundamental. However, in the fisheries sector, a range of factors may complicate this. The use of offshore companies and registration of vessels under flags of convenience means that the beneficial ownership of companies, vessels and assets is often unclear. Transactions at ports often take place in cash, which means there may be breaks in electronic records of money flows. In addition, transactions and money may pass through countries where tax authorities and other government bodies have limited resources to obtain and hold financial information, or do not currently participate in effective exchange of information in tax matters. These difficulties make it even more important that, to the extent information is available, tax administrations and other authorities engage in full and effective co-operation, both domestically and internationally.

Financial institutions, including banks and insurance companies, are an important source of information regarding a fishing company, its ownership and its financial transactions. The fisheries sector, both in terms of fishing activity and aquaculture, is capital intensive and a number of banks and financial institutions are likely to be providing finance. Each of these banks will undertake its own customer due diligence to understand who it is dealing with, manage its risk and comply with regulatory requirements such as national anti-money laundering legislation. Insurance companies underwriting fishing vessels, equipment or catch will also be keen to understand precisely the risks that they are taking, including the ultimate beneficial owner of the insured assets. Although financial institutions may apply secrecy rules that make accessing information difficult, the

information they hold is extremely valuable and tax examiners and auditors may seek to obtain access in order to gain a full understanding of a fishing company's activities. If required for tax purposes, and where a suitable tax treaty or Tax Information Exchange Agreement exists, this information may also be requested from an overseas tax administration. Under the internationally agreed standard on transparency and exchange of information in tax matters, countries should ensure that ownership and identity information for all entities and arrangements is available to their tax administration, and banking information should be available for all account holders.

Where a tax administration requests this information for tax purposes, the authorities in the country where the information is held must have the power to obtain and exchange the information in a timely manner. There should be no restrictions on the exchange of information caused by bank secrecy rules or the fact that the information is not required for tax purposes in the country where the information is held.

### **International co-operation**

In the fisheries sector there is already extensive practise of international co-operation between national authorities and regulators. Regional Fisheries Management Organisations (RFMO) are formed by countries which have fishing interests in a particular region, or in the fishing of a migratory species such as tuna over a wide geographic area. Within the European Union, the European Fisheries Control Agency (EFCA) organises operational co-ordination of fisheries control and inspection activities. Platforms for international co-operation by law enforcement in the fisheries sector include the International Monitoring Control and Surveillance Network and the Interpol Working Group on Fisheries Crime.

Ensuring tax compliance and fighting tax crime in an international business such as the fisheries sector demands a global response. For the exchange of tax information, there already exists a wide network of instruments, including bilateral tax treaties (based largely on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention or United Nations (UN) Model Tax Convention).

# **SPECIFIC VULNERABILITIES TO TAX CRIME IN THE FISHERIES SECTOR**

## ***Offshore jurisdictions***

The fisheries sector is a truly global business, with owners, fishing companies, customers and other participants in the value chain spread across the world. Fish are caught in open waters and shipped or transhipped to be landed and processed in a wide range of countries, with substantial sums paid to intermediaries, agents and service providers in other countries who co-ordinate the sale and processing of fish and maintenance of fishing vessels. This global reach can make it easier for fishing companies to hide their ownership structure, shelter income or disguise the destination of funds through the use of entities located in offshore jurisdictions which do not engage in effective exchange of information. This may be to conceal illegal fishing, to facilitate tax crime and other offences, or to disguise the destination of payments.

## ***The use of flags of convenience***

One of the most prevalent tactics utilized by those engaged in all types of crime in the fisheries sector is the flying of a flag of convenience, which involves registration of a fishing vessel in a jurisdiction that is different to that of its owner.

## ***Falsified books and records***

In all sectors, inaccurate reporting through falsified books and records is a known technique for businesses seeking to hide income, assets or transactions from the tax administration.

## ***Resale of fishing vessels and assets***

The lack of transparency in the fisheries sector, caused by the use of flags of convenience of offshore companies, means that where fishing vessels and other capital assets are re-sold, transactions may go unreported or the sale price may be under-reported for tax purposes.

## **Other serious crimes**

**Money laundering** – Money laundering within the fisheries sector may be the laundering of the proceeds of crimes committed in the course of fisheries activity, or of the proceeds of other crime

**Smuggling** – Fishing vessels are often seen as a suitable vehicle for all types of smuggling and illicit trade. This might be smuggling to evade duties on illegal tobacco and alcohol, or trafficking in illicit products such as narcotics and arms.

**Human smuggling and human trafficking** – Human smuggling involves the transport of individuals to evade immigration regulations. Fishing vessels may visit a number of ports in developing and developed countries in the course of regular activity, and may be used to smuggle people in return for payment. Fishing vessels may also be used in human trafficking, which involves the exploitation of individuals, who are kept as virtual slaves onboard ship, working long hours and living in poor conditions and subject to physical abuse.

**Piracy** – Piracy involves illegal attacks and hijacking of vessels and the theft of assets and property, and threats, violence or kidnapping of passengers or crew. Piracy is not a crime associated with commercial fishing vessels, though these can be the victims of piracy attacks. However, illegal, unreported and unregulated fishing may be one factor that has driven local fishers in countries such as Somalia to adopt piracy as a means to compensate for the loss of their income from fishing.