

Towards developing a legal framework to combat money laundering and tax evasion in South Africa

A Storm

 **orcid.org/0000-0003-3478-8193**

Thesis accepted for the degree *Doctor of Philosophy* in
Taxation at the North-West University

Promoter: Prof K Coetzee

Graduation: November 2019

Student number: 11933461

ACKNOWLEDGEMENTS

“Wat ek is, is net genade. Wat ek het, is net geleen.” (Koos du Plessis).

How does one begin to express the deep gratitude residing in one’s heart for all the people who played such a vital role in completing this thesis? Those who motivated, listened, lead, helped, but most of all, those who believed in me.

First I want to thank the Lord God for blessing me with this opportunity and mental capability to to complete this study. If it was not for Him, none of this would have been possible.

To my family. Thank you for your support, patience and faith in me. My children, Danae and Danru: for sacrificing time with me, so I could complete this degree; I know it was not always easy. My husband, Markus: Thank you for everything, you have helped me in so many ways.

To my father, Thys, my mother, Mariane and my brother, Reno for being such great role models. You do not shy away from challenges in life – you have always shown up, and have never given up. Hard work, perseverance and determination are characteristics visible in your daily life and ultimately, in the successes you have made. I could not have asked for anyone better.

To Gene, my best friend. Thank you for supporting me and for just being there.

To Professor Karina, my study leader. Thank you for your guidance and patience with me. It was a privilege to have had you as my study leader.

To Professor Jan van Romburgh and Doctor Duane Aslett, my colleagues for your contribution and input to this thesis.

To Mr Herman de Beer for giving up your time and for sharing your insights and wisdom.

“Genade onbeskryflik groot, het U aan my bewys...” (John Newton).

REMINDER

The reader is reminded of the following:

1. This PhD thesis is presented in the article format in accordance with the policies of the North-West University's Faculty of Economic and Management Sciences and comprises three (3) research articles, two (2) of which have already been published in DHeT accredited peer-reviewed journals as indicated, and the remaining one (1) was submitted to a peer-reviewed journal as indicated.
2. In the instance of an article format PhD thesis, the Faculty of Economic and Management Sciences' Regulation E.9.3 requires that the thesis consists of at least three (3) articles, of which at least one (1) publishable article must already have been submitted to a DHeT accredited peer-reviewed journal for evaluation purposes.

ABSTRACT

Corruption has shown an increase in South Africa over the last few years, with citizens demanding justice for those implicated. There are regular reports in the news on corruption exposed (usually within government); however, reports on arrests or sentences are not as frequent. The question arose as to why there are so few arrests and sentences. Many answers may be found, but one that stood out was the lack of an independent law enforcement agency that can act without fear, favour or prejudice.

The researcher set out to develop a legal framework with law enforcement and financial intelligence to combat economic crimes such as tax evasion and money laundering. The research was conducted in the interpretive paradigm, utilising qualitative methods, which led to doctrinal, legal interpretive research. Consultations with experts were held where-after a thematic network analysis were done to group the basic themes, organising themes and the global theme together. The independent anti-corruption agency (the framework) was also tested against a South African corruption case.

By comparing South Africa's legislation to the United States of America, the United Kingdom and Australia, it was found that it is not the legislation that is at fault, but rather the enforcement thereof.

Since the Scorpions have been disbanded in 2007, South Africa does not have a crime fighting agency with the necessary independence needed to effectively combat crime. The Hawks, who took over from the Scorpions, were incorporated into the South African Police Service and it was established by the Constitutional Court that they (the Hawks) are not sufficiently independent. The Hawks is not nearly as successful as their predecessors. This statement can be substantiated by referring to the decline in the number of convictions and prosecutions. There was a decline of 60 percent and 80 percent, respectively.

The legal framework took the form of an independent anti-corruption agency, because it was found that corruption can take on many forms, of which tax evasion and money laundering are just two of them. The suggestion to incorporate this agency into the National Prosecuting Authority (NPA) was based on the investigative and prosecutorial powers of the NPA. Changes to South Africa's legislation, the NPA and the Financial Intelligence Centre will be key to ensure the success of the findings.

As part of this independent anti-corruption agency, an Administration Penalty Unit was also developed. Nothing similar to this type of unit exists in South Africa. This Administration Penalty Unit is based on the United States' Department of Justice and the Securities and Exchange

Commission's partnership with regard to the Foreign Corrupt Practices Act (1977). It will offer corporations the option to self-report if corrupt activities were identified in order to escape criminal prosecution (should this be a first-time offence). Non-prosecution agreements will be entered into, giving the corporation the chance to eradicate the corrupt activities and to get their policies and internal control procedures in place. Although they will not be prosecuted, an administrative penalty will be payable, of which the amount will depend on the scope of the corruption.

After consultations with experts, as well as applying it to a South African corruption case, it was found that this legal framework may assist in the fight against economic crimes in South Africa.

KEY TERMS

Australia; Corruption; Financial intelligence; Independent Anti-corruption Agency; Law enforcement; Money laundering; Tax evasion; United States of America: Department of Justice and Securities and Exchange Commission; United States of America: Foreign Corrupt Practices Act; United Kingdom.

TABLE OF CONTENTS

CHAPTER ONE

An Introduction to Developing a Legal Framework to Combat Economic Crimes in South Africa: Tax Evasion, Money Laundering and Corruption

1.1 INTRODUCTION.....	1
1.1.1 Forensic science.....	1
1.1.2 Background regarding tax evasion and money laundering.....	3
1.1.3 Tax evasion	3
1.1.4 Money laundering	5
1.1.5 Corruption.....	6
1.1.6 Tax morale.....	9
1.1.7 Corruption prevalent in South Africa.....	10
1.1.8 The link between tax evasion, money laundering and corruption.....	13
1.2 MOTIVATION OF TOPIC ACTUALITY	14
1.3 PROBLEM STATEMENT	15
1.4 RESEARCH OBJECTIVES	16
1.5 RESEARCH DESIGN AND METHODOLOGY.....	19
1.5.1 Research methodology	19
1.5.1.1 Positivism, post-positivism or empirical	20
1.5.1.2 Interpretive or non-empirical.....	20
1.5.1.3 Ontology	20
1.5.1.4 Epistemology	21
1.5.1.5 Doctrinal research	21
1.5.1.6 Inductive and deductive approaches.....	22
1.5.1.7 Literature review.....	22
1.5.2 Selection of countries	24
1.6 CHAPTER DIVISIONS	25

CHAPTER TWO

Research Design and Research Methodology

2.1 INTRODUCTION	27
2.2 RESEARCH DESIGN	29
2.2.1 Philosophy	29
2.2.2 Theory and abstractions	30
2.2.3 Abstractions	30
2.2.4 Deduction and Induction	31
2.2.5 Design	34
2.3 THE RESEARCH METHODOLOGY	36
2.3.1 Basic stage	41
2.3.2 Applied stage	42
2.3.3 Practical research	50
2.4 CONCLUSION	54

CHAPTER THREE

Establishing the Link between Money Laundering and Tax Evasion

3.1 INTRODUCTION	58
3.2 TAX EVASION AND MONEY LAUNDERING	59
3.2.1 The link between tax evasion and money laundering	59
3.3 TAX EVASION	60
3.4 MONEY LAUNDERING	62
3.4.1 The role of illicit financial flows in money laundering and tax evasion	64
3.5 BANKING INSTITUTIONS: TAX EVASION AND MONEY LAUNDERING MADE EASY?	67
3.6 TAX HAVENS AND/OR OFFSHORE ACCOUNTS	68
3.7 INTERNATIONAL AND SOUTH AFRICAN COURT CASES	70
3.7.1 International court cases	70

3.7.2 Court cases in South Africa	71
3.8 CONCLUSION	73

CHAPTER FOUR

Towards Improving South Africa's Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the United States of America, United Kingdom, Australia and South Africa

4.1 INTRODUCTION.....	80
4.2 TAX EVASION: THE PROBLEM.....	81
4.2.1 The importance of taxes.....	81
4.2.2 An international problem.....	82
4.3 THE TAX JUSTICE NETWORK.....	84
4.4 THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD).....	86
4.5 THE AVAILABLE LEGISLATION ON TAX EVASION IN THE UNITED STATES OF AMERICA, THE UNITED KINGDOM, AUSTRALIA AND SOUTH AFRICA.....	86
4.5.1 The United States of America.....	87
4.5.2 The United Kingdom.....	90
4.5.3 Australia.....	93
4.5.4 South Africa	96
4.5.5 Summary	99
4.6 KEY POINTS TO CONSIDER FOR SOUTH AFRICAN LEGISLATION	101
4.7 CONCLUSION	102

CHAPTER FIVE

Concerning Refining South Africa's fight against Money Laundering: A Comparison of Legislation on Money laundering of the United Kingdom, the United States of America, Australia and South Africa

5.1 INTRODUCTION.....	111
5.2 DEFINITION AND PROCESS OF MONEY LAUNDERING	112

5.2.1	Definition.....	112
5.2.2	Process.....	114
5.3	THE FINANCIAL ACTION TASK FORCE (FATF)	115
5.4	THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD).....	117
5.5	INTERNATIONAL MONETARY FUND (IMF).....	118
5.6	LEGISLATION ON MONEY LAUNDERING.....	118
5.6.1	Australia.....	118
5.6.2	United States of America.....	123
5.6.3	The United Kingdom	130
5.6.4	South Africa	133
5.7	KEY POINTS TO CONSIDER FOR SOUTH AFRICAN LEGISLATION	139
5.7.1	General assessment of weaknesses: All four countries	139
5.7.2	Key points for South Africa to consider.....	139
5.8	SUMMARY	140
CHAPTER SIX		
A Comparison of Certain Law Enforcement Agencies Across the United States of America, the United Kingdom, Australia and South Africa to Determine Areas where South Africa can Improve		
6.1	INTRODUCTION.....	150
6.2	HISTORY OF LAW ENFORCEMENT	151
6.3	MONEY LAUNDERING INVESTIGATION METHODS.....	154
6.3.1	Covert operations	155
6.3.2	The financial investigation techniques	156
6.4	UNITED STATES OF AMERICA.....	157
6.4.1	Federal Bureau of Investigation (FBI).....	159
6.4.2	National Security Agency/Central Security Service (NSA/CSS).....	161

6.4.3	Criminal Division	163
6.4.4	Internal Revenue Service's Criminal Investigation Unit	164
6.4.5	The Central Intelligence Agency (CIA)	166
6.4.6	Financial Intelligence Units	167
6.5	UNITED KINGDOM	171
6.5.1	National Crime Agency	171
6.5.2	Civil Recovery and Tax (CRT)	174
6.5.3	International Corruption Unit (ICU)	174
6.5.4	UK Financial Intelligence Unit (UKFIU)	174
6.5.5	Proceeds of Crime Centre (PoCC)	177
6.5.6	The Government Communications Headquarters (GCHQ)	177
6.5.7	Her Majesty's Revenue and Customs (HMRC)	177
6.5.8	Serious Fraud Office (SFO)	178
6.5.9	Secret Service and Secret Intelligence Service	179
6.6	AUSTRALIA	180
6.6.1	Australian Security Intelligence Organisation (ASIO)	180
6.6.2	The Australian Secret Intelligence Service (ASIS)	180
6.6.3	The Australian Signals Directorate (ASD)	180
6.6.4	The Defence Intelligence Organisation (DIO)	180
6.6.5	The Australian Geospatial-Intelligence Organisation (AGO)	181
6.6.6	The Office of National Assessments (ONA)	181
6.6.7	The Australian Transaction Reports and Analysis Centre (AUSTRAC)	181
6.6.8	The Australian Federal Police (AFP)	182
6.6.9	The Australian Criminal Intelligence Commission (ACIC)	182
6.6.10	The Australian Tax Office (ATO)	183
6.7	SOUTH AFRICA	184
6.7.1	South African Police Service (SAPS)	184

6.7.2	Directorate of Priority Crime Investigation (Hawks)	184
6.7.3	Special Investigations Unit (SIU)	185
6.7.4	The National Prosecuting Authority (NPA)	186
6.7.5	The State Security Agency (SSA).....	187
6.7.6	The South African Revenue Service (SARS)	189
6.7.7	The Financial Intelligence Centre (FIC)	190
6.8	SUMMAR OF AGENCIES.....	193
6.9	GAPS AND IMPROVEMENTS: RECOMMENDATIONS FOR SOUTH AFRICA	198
6.10	SUMMARY	201

CHAPTER SEVEN

The Development of a Legal Framework to Combat Money Laundering and Tax Evasion in South Africa

7.1	INTRODUCTION.....	202
7.2	RATIONALE BEHIND AN INDEPENDENT ANTI-CORRUPTION AGENCY	202
7.2.1	Directorate of Special Operations (DSO).....	204
7.2.2	The Directorate of Priority Crime Investigation (DPCI)	206
7.2.3	The National Prosecuting Authority (NPA)	206
7.3	TOWARDS THE DEVELOPMENT OF A FRAMEWORK	208
7.3.1	Development of an independent anti-corruption agency	210
7.4	THE INDEPENDENT ANTI-CORRUPTION AGENCY: PROPOSED STRUCTURE	218
7.4.1	Human resources and finance.....	220
7.4.2	Training.....	220
7.4.3	Investigations: Working with the Financial Intelligence Centre or Special Investigations Unit	220
7.4.4	Tax unit dedicated to SARS.....	221
7.4.5	Research unit.....	222
7.5	INTRODUCING THE ADMINISTRATION FINES AND PENALTIES UNIT	223

7.5.1	Background: The Department of Justice and the Securities and Exchange Commission	223
7.5.2	Settlements by companies: Department of Justice and Securities and Exchange Commission	224
7.5.3	Foreign Corrupt Practices Act: Department of Justice, Securities and Exchange Commission	229
7.5.4	U.S. Securities and Exchange Commission v. Siemens Aktiengesellschaft (Case 1:08-cv-02167)	230
7.5.5	Prevention and Combating of Corrupt Activities Act: The National Prosecuting Authority and Financial Intelligence Centre	231
7.6	ADMINISTRATION PENALTY UNIT	233
7.7	APPLICATION OF INDEPENDENT ANTI-CORRUPTION AGENCY ON CARNILINX TOBACCO COMPANY: A SOUTH AFRICAN INCIDENT NOT FOLLOWED UP ON.....	236
7.7.1	Background.....	236
7.7.2	Application of framework to incident.....	237
7.7.3	Summary	241
7.8	FEEDBACK FROM FORENSIC EXPERTS	241
7.9	TAX EVASION	249
7.9.1	Gordhan's ten-point solution.....	249
7.9.2	Elaboration on Gordhan's ten-point solution.....	250
7.10	CONCLUSION	254
CHAPTER EIGHT		
Summary of Study Results, Conclusions and Recommendations		
8.1	INTRODUCTION	256
8.2	PROBLEM STATEMENT, RESEARCH QUESTIONS AND RESEARCH OBJECTIVES..	256
8.3	A REVIEW OF THE RESEARCH RESULTS	257
8.3.1	Chapter 2	257
8.3.2	Chapter 3	258

8.3.3 Chapter 4	258
8.3.4 Chapter 5	259
8.3.5 Chapter 6	259
8.3.6 Chapter 7	259
8.4 RECOMMENDATIONS AND CONCLUSIONS REGARDING THE RESEARCH OBJECTIVES AND RESEARCH RESULTS	260
8.4.1 Establishing the link between money laundering and tax evasion.....	260
8.4.2 Towards improving South African Legislation on tax evasion: A comparison of legislation on tax evasion of the United States of America, the United Kingdom, Australia and South Africa	261
8.4.3 Concerning refining South Africa's fight against money laundering: A comparison of legislation on money laundering of the United Kingdom, the United States of America, Australia and South Africa	262
8.4.4 A comparison of certain law enforcement agencies across the United States of America, the United Kingdom, Australia and South Africa to determine areas where South Africa can improve	263
8.4.5 The development of a legal framework with law enforcement and financial intelligence to combat money laundering and tax evasion in South Africa.....	265
8.5 RECOMMENDATIONS FOR FUTURE STRATEGIES TO IMPROVE THE EFFORTS OF LAW ENFORCEMENT IN ENFORCING THE LAW SUCCESSFULLY	267
8.6 RECOMMENDATIONS FOR FUTURE RESEARCH	267
APPENDIX A	269
APPENDIX B	279
APPENDIX C	282
APPENDIX D	287
APPENDIX E: Author guidelines: INTERNATIONAL BUSINESS AND ECONOMICS RESEARCH JOURNAL.....	288
APPENDIX F: Article One as published: INTERNATIONAL BUSINESS AND ECONOMICS RESEARCH JOURNAL	291

APPENDIX G: Formatting guidelines: JOURNAL FOR APPLIED BUSINESS RESEARCH ...	292
APPENDIX H: Article Two as published: JOURNAL FOR APPLIED BUSINESS RESEARCH	294
APPENDIX I: Formatting guidelines for ACTA CRIMINOLOGICA.....	295
APPENDIX J: Article Three as submitted to ACTA CRIMINOLOGICA.....	306

LIST OF ABBREVIATIONS

ACIC	Australian Criminal Intelligence Commission
AFP	Australian Federal Police
AFU	Asset Forfeiture Unit
AML	Anti-Money Laundering
AGO	Australian Geospatial-Intelligence Organisation-
ASD	Australian Signals Directorate
ASIO	Australian Security Intelligence Organisation
ASIS	Australian Secret Intelligence Service
ATO	Australian Tax Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BC	Before Christ
CDPP	Commonwealth Director of Public Prosecutions
CHIPS	Clearing House Interbank Payment System
CIA	Central Intelligence Agency
CIPCE	Centro de Investigación y Prevención la Criminalidad Económica
CRT	Civil Recovery and Tax
CSS	Central Security Service
CTF	Counter Terrorist Financing
CTRs	Currency Transaction Reports
DHET	Department of Higher Education
DIO	Defence Intelligence Organisation
DOJ	Department of Justice
DPCI	Directorate of Priority Crime Investigations
DSO	Directorate of Special Operations
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force

FBI	Federal Bureau of Investigation
FCPA	Foreign Corrupt Practices Act
FEDWIRE	Federal Reserve Wire Network
FICA	Financial Intelligence Centre Act
FIC	Financial Intelligence Centre
FinCEN	Financial Crimes Enforcement Network
GDP	Gross Domestic Product
GCHQ	Government Communications Headquarters
HMRC	Her Majesty's Revenue and Customs
HUMINT	Human Intelligence
IACA	Independent Anti-Corruption Agency
ICU	International Corruption Unit
IMF	International Monetary Fund
IRBA	Independent Regulatory Board for Auditors
IRS	Internal Revenue Service
JMLIT	Joint Money Laundering Intelligence Taskforce
MI5	Security Service
MI6	Secret Intelligence Service
MLARS	Money Laundering and Asset Recovery Section
NCA	National Crime Agency
NDPP	National Director of Public Prosecutions
NPA	National Prosecuting Authority
NSA	National Security Agency
OECD	Organization for Economic Co-operation and Development
OFAC	Office of Foreign Asset Control
ONA	Office of National Assessments
PCLU	Priority Crimes Litigation Unit

POCA	Prevention of Organised Crime Act
PoCC	Proceeds of Crime Centre
POCDATARA	Protection of Constitutional Democracy against Terrorism and Related Activities
PRECCA	Prevention and Combatting of Corrupt Activities Act
SA	South Africa
SAPS	South African Police Service
SARs	Suspicious Activities Reports
SARS	South African Revenue Service
SCCU	Specialized Commercial Crime Unit
SEC	Securities and Exchange Commission
SFO	Serious Fraud Office
SIU	Special Investigations Unit
SOCA	Serious Organised Crime Agency
SSA	State Security Agency
TJN	Tax Justice Network
TRAINS	Trade and Analysis Information System
UK	United Kingdom
UKFIC	United Kingdom Financial Intelligence Centre
UNCTAD	United Nations Conference on Trade and Development
UN COMTRADE	United Nations International Trade Statistics Database
USA	United States of America
USA PATRIOT ACT	Uniting and Strengthening America by Providing Appropriate Tools required to Intercept and Obstruct Terrorism
USC	United States Code
US	United States
VAT	Value-Added Tax

SCHEDULE OF FIGURES AND TABLES

FIGURES

	Description	Page
Figure 1-1	Illustration of Discipline of Study	2
Figure 1-2	Estimates of Illicit Financial Flows, 2005 – 2014. Percent of Total Trade	14
Figure 1-3	Illustration of Research Mehtodology	23
Figure 2-1	Inductive Reasoning	32
Figure 2-2	Three Research Stages	42
Figure 2-3	Legal Research Styles	46
Figure 3-1	Primary Findings of Global Financial Integrity (2012)	65
Figure 6-1	Agencies in the United States of America	158
Figure 6-2	Criminal Division Organizational Chart	162
Figure 6-3	Excerpt from Department of Treasury Organizational: Office of Terrorism and Financial Intelligence	169
Figure 6-4	Organizational Chart of the National Crime Agency	172
Figure 6-5	Breakdown of the Economic Crime Command's Units	173
Figure 6-6	Excerpt from Organizational Structure of the NCA	176
Figure 6-7	Branches of the SSA	188
Figure 6-8	The Financial Intelligence Centre and its Partners	192
Figure 7-1	Preliminary matters Identified to be Addressed within the Agency	213

	Description	Page
Figure 7-2	Proposed Structure: Distribution of the Various Units Envisioned	219
Figure 7-3	United States of America: Total Aggregate Corporate Cases	225
Figure 7-4	United States of America: Total Fines Imposed	226
Figure 7-5	United States of America: Average Corporate Penalties	227
Figure 7-6	Thematic Network Analysis: Expert's Comments	244

TABLES

	Description	Page
Table 2-1	Difference in Research Approaches	37
Table 2-2	Comparison between Arthur's taxonomy and the Pearce Committee's Categories	49
Table 2-3	Executing a Thematic Network Analysis	53
Table 3-1	Tax Evasion as a Percentage of the Gross Domestic Product	61
Table 3-2	The Top 10 Countries with the Highest Illicit Financial Flows	66
Table 4-1	Top 10 Countries' Loss to Tax Evasion: 2011	83
Table 4-2	Estimated Tax Evasion: 2013	84
Table 4-3	Internal Revenue Service: Tax Statistics	89
Table 4-4	United Kingdom: Tax Statistics	93
Table 4-5	Australia: Serious Tax Crime Offences (tax crime prosecution results)	95

	Description	Page
Table 4-6	Australia: Summary Prosecutions (tax crime prosecution results)	96
Table 4-7	Summary of Legislation	100
Table 5-1	Summary of Section 135 of Part 12	120
Table 5-2	Three Elements of Section 4 of PRECCA	134
Table 5-3	Summary of Legislation	137
Table 6-1	Summary of Agencies	193
Table 6-2	Calculation with Regards to Proportionality	195
Table 7-1	Similarities Identified	232
Table 7-2	Summary of Themes per Expert	245

CHAPTER 1

AN INTRODUCTION TO DEVELOPING A LEGAL FRAMEWORK TO COMBAT ECONOMIC CRIMES IN SOUTH AFRICA: TAX EVASION, MONEY LAUNDERING AND CORRUPTION

The aim of this chapter is to explain the global problem that is experienced with tax evasion, money laundering and corruption. The motivation of the importance to study this problem in order to find a possible solution will also be discussed, where-after the problem statement and research objectives will be provided. A short discussion on the research design and methodology will follow, and then the motivation for the selection of the specific countries. This chapter will conclude with the chapter divisions.

1.1 INTRODUCTION

As the aim of this thesis was to develop a legal framework to combat economic crimes such as tax evasion, money laundering and corruption, it must be noted that a multi-disciplinary approach was followed. This approach included law, taxation, law enforcement, and financial intelligence in an attempt to optimize the development of the legal framework.

Economic crimes are defined as illegal acts committed to obtain a financial or professional advantage, where the offender's main motive is economic gain (Kohalmi & Mezei, 2015; USLegal). According to CIPCE, economic crime covers a wide range of offenses including (but not limited to) tax evasion, money laundering, and corruption. These concepts will be discussed in more detail in paragraphs 1.1.3; 1.1.4; and 1.1.5 as to illustrate the link between these offenses. Thus, when referring to economic crimes, the researcher specifically refers to tax evasion, money laundering and corruption.

To place the study in context, an explanation of the domain (or body of knowledge) on which this study was build will be given. As forensic science is the starting point, a discussion thereon together with the applicable categories and subcategories will be clarified.

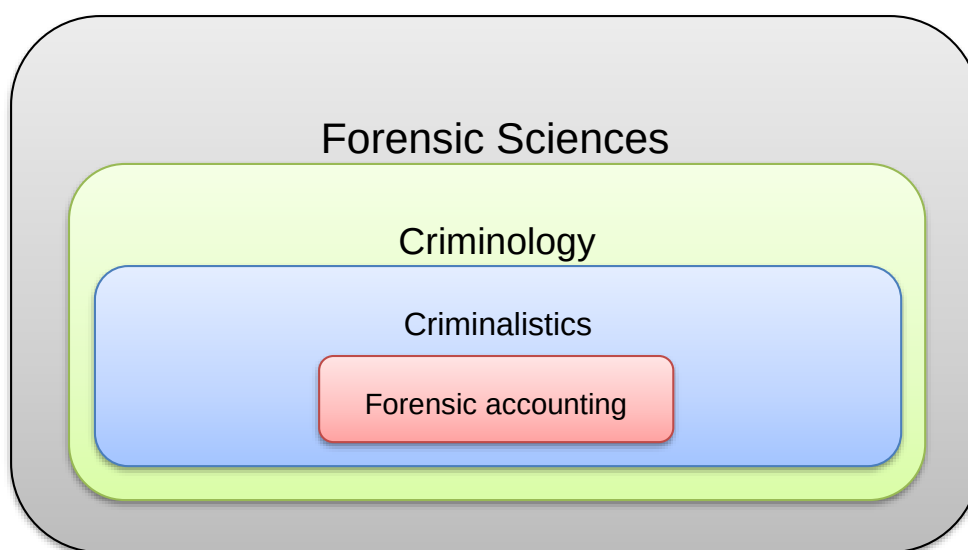
1.1.1 Forensic science

Forensic science is the application of science to legal matters, especially criminal matters (Gray, 2008:119). There are many divisions in the field of forensic science: Forensic pathology, odontology, endomology, accounting, engineering, and criminology. Criminology can be explained as the scientific study of crime: the reasons, the reactions of law enforcement as well as the modus operandi of prevention. There are numerous subcategories within

criminology of which four of the most commonly studied are penology, biocriminology, feminist criminology, and criminalistics. (CAC, 2019; Crowe, 2003).

Criminalistics is forensic science applied to solve crimes, focusing on proper collection, preservations and analysis of evidence. The analysis of evidence includes (but is not limited to) fingerprint-analysis, blood, hair, and DNA. Forensic accountants practice criminalistics, with the main focus on computer and documentary evidence. (Gray, 2008:119; Valdez, 2018:1). The field in which this study is conducted, can be summarised as follows:

Figure 1-1: Illustration of Discipline of Study



(Source: author)

Forensic accounting is the use of accounting, auditing and investigative skills to analyse information that will be admissible in a court of law (MDD, 2019). Forensic accounting also describes actions that result from real or expected disputes or litigation (FCPAS). “You have an external auditor – that’s like a guard dog. Maybe a bulldog...An internal auditor is a seeing eye dog. A forensic accountant is a bloodhound” (Crumbly as cited by Pope, 2002).

According to Crumbley (2006) a forensic accountant should have the following skills: a solid background in accounting; a profound background in investigative auditing, and knowledge of certain legal concepts. Furthermore, they need to be skilled in written and oral communication, while having a deep knowledge of computer techniques and interviewing skills.

Forensic accountancy encompasses two areas: Litigation support and investigation. Within this capacity, the forensic accountant calculates the damages of the parties involved in legal disputes. Within the area of investigation, the forensic accountant determines whether criminal matters (fraud) or civil matters (hidden assets in divorce cases) have occurred. Thus, forensic

accounting not only entails applying accounting knowledge to legal matters, but to assist in civil and criminal investigations as well. (Zysman, 2006; Owojori & Asaolu, 2009; FCPAS; OHSC; Foundation Education, 2016).

This study was thus conducted within the forensic sciences' criminology, specifically criminalistics with the main foundation being forensic accounting with taxation. The next paragraph will give a background on tax evasion and money laundering; two concepts (or crimes) which may form part of a forensic accountant's investigation.

1.1.2 Background regarding tax evasion and money laundering

On 17 July 2012, Aamo (president of the Financial Action Task Force, an inter-governmental body) said in his speech at the APG Annual Meeting that tax crimes are included among the predicate offences for anti-money laundering measures: "This (the inclusion of tax crimes as a predicate offence for anti-money laundering measures) will provide a better foundation for international cooperation against tax crimes and tax evasion." (Crumley, 2012; Georgiopoulos, 2012). A few recent news headlines will be provided and briefly discussed:

1. HSBC Holdings Plc estimates penalties exceeding \$1.5 billion as a result of multiple investigations into allegations that its Swiss private bank unit aided clients to evade paying taxes (Finch, 2018; Keohane & Arnold, 2017).
2. Lionel Messi (a famous soccer player) and his father were charged "with using tax havens in Uruguay and Belize and shell companies in the United Kingdom and Switzerland to avoid paying taxes". The estimated amount of tax fraud is 4.1 million euros (\$4.6 million) (Gains, 2017; Marsden, 2017).
3. A former President and CEO of a Pennsylvania health services management company was indicted by a federal grand jury in Pittsburgh for, among others, filing fraudulent income tax returns (Department of Justice, 2018; Clift, 2018).
4. Gucci, the famous fashion brand, is being investigated for tax evasion (Friedman, 2017; Reuters, 2018).

One of the important issues for the purposes of this research is that of tax evasion, which will be discussed in the following section.

1.1.3 Tax evasion

As mentioned in paragraph 1.1, tax evasion is only one of many offenses included in the concept of economic crimes. There are various explanations of what tax evasion is, but for purposes of this research, only a broad definition will be provided. Tax evasion is an illegal practice where there is an intentional avoidance to pay the true tax liability (FindLaw). The

perpetrators who are caught evading taxes are generally subject to criminal charges and substantial penalties (FindLaw; HMRC, 2015; Stiglingh, Koekemoer, Van Heerden, Wilcocks, De Swardt & Van der Zwan, 2018). For criminal charges to be brought against someone, a crime had to be committed. In order to link tax evasion to the term 'crime', the definition of a crime together with the analysis of the descriptions on tax evasion and crime will be discussed in the following paragraph.

A crime is an illegal or unlawful activity, a violation of a law in which there is injury to the public or a member of the public and a term of jail or prison and/or fine as possible penalties exist (The Free Dictionary; Snyman, 2012). In comparing the definitions of tax evasion and crime, it can be stated that both are illegal practices. Although this statement is a clear conclusion on the comparison of the two definitions, there is another characteristic that can be derived from the explanations on tax evasion and a crime. This characteristic is the fact that by evading taxes there is 'injury' to the public.

Tax evasion is not a new phenomenon; however, it is a huge problem for every government and it cripples the economy. "Tax evasion has been an endemic problem in the developing world for many years, but as more and more countries struggle to balance their budgets it has become an extremely prescient issue in the developed world as well" (Dugdale, 2012). To further establish the 'injury' of tax evasion to the public, Murphy (2011) said that "[tax evasion is] a crime against the people" after compiling a report for the British NGO Tax Justice Network on tax fraud in November 2011. This 'injury' occurs when there is not enough money to be set aside by the government to, for example, improve hospitals, police force efficiency and education. Therefore, the public becomes the party who suffers at the hands of the tax evaders by having to pay more taxes.

Murphy (2012) further argued that tax evasion by wealthy individuals and/or corporations often shifts the burden of paying for public services or debt to the poorest members of society. To substantiate Murphy's statement, a list of international and local celebrities who have been indicted and, in some instances, incarcerated for tax fraud, was compiled:

1. The actor Wesley Snipes served a three-year jail sentence in America for tax evasion (Friedman, 2010). He was released from jail on 2 April 2013 and was under house arrest, which ended on 19 July 2013 (Oldenburg, 2013);
2. The former African National Congress youth league president, Julius Malema, faced charges of tax evasion and corruption (Bauer, 2012). He was found guilty on tax evasion charges and the South African Revenue Service calculated the tax owed by Malema to be R16.1 million (Anon, 2012).

3. Jacob Zuma faced 16 counts of fraud, corruption and tax evasion, but the charges were dropped in 2009 just before he became president of the Republic of South Africa (Conway-Smith, 2012; BBC, 2018). It was recently (2017) reported to be 18 charges with 783 payments received from Shabir (Africa Check, 2017; Thamm, 2017c).
4. The Gupta brothers are also being investigated for tax evasion, internationally and locally (Serrao & Myburgh, 2017; Hosken & Quintal, 2017).

The most important manner of tax evasion for purposes of this research is the failure to report all of your income, offshore bank accounts and/or foreign income (Marquit, 2012; AUSTRAC, 2012). Failing to report all income, offshore bank accounts and/or foreign income can or possibly may constitute money laundering.

1.1.4 Money laundering

As with tax evasion, money laundering is part of the definition of economic crimes (paragraph 1.1). According to the Prevention of Organized Crime Act (121 of 1998) and the Financial Intelligence Centre Act (38 of 2001) Amendment Bill (2017), money laundering is

The activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence.

Money laundering is “a complicated activity in which the source and the nature of the money are disguised in order to make the money look lawful and then become usable, transferable and negotiable” (Ping, 2010). From the descriptions given by Ping (2010), the Prevention of Organised Crime Act (121 of 1998) and the Financial Intelligence Centre Act (38 of 2001) Amendment Bill (2017), money laundering is seen as any act or attempted act to disguise the source of the money or assets derived from criminal activity.

The commonalities that were identified by comparing the definitions of tax evasion and money laundering are:

1. Both are unlawful activities;
2. Both are the violations of laws;
3. The acts are deliberate in both tax evasion and money laundering; and
4. Both of these offences disguise or conceal the money received (Source: author).

There have been many people who have argued that the proceeds of tax evasion are different to the proceeds of conservative criminality (Spreutels & Grijseels, 2000; Tavares, 2013; Zoppei, 2012; Evans, 2014; MoneyVal, 2015). One of those arguments is that the underlying

conduct that generated the profit was legally done, thereby making the non-payment of the subsequent tax on these profits not equal to the proceeds of criminal conduct. The argument, however, is that although the underlying conduct is legal, the retention of money that should be paid over as tax is the actual criminal conduct (Oliver, 2002). From Oliver's (2002) argument, one can take it a step further and state that where tax evasion is involved, it does not automatically indicate money laundering. However, where money is being laundered, the chances of tax evasion being part of the equation are perceived to be 100% (Storm, 2013 as referenced by Al-Abdullah, 2015; Bojinov, 2015; Bojinov, 2016; Korniawan, 2016; Gibbs, 2017; Aljawder, 2018; Ilan, 2019; Teijeiro and Ballone, 2015 for Kluwer International; Savona & Riccardi, 2017 for Crime Programme for European Union; Unger, 2017 for the EU Horizon 2020 Project; Owens *et al*, 2017 for ePubWU, the institutional repository of the WU Vienna University of Economics and Business).

Some of the consequences of money laundering are:

1. It is undermining financial systems by expanding the segment of a country's economic activity that is derived from sources, legal or illegal, which fall outside of the country's rules and regulations regarding commerce.
2. It also expands crime because criminals can now effectively use and deploy illegal funds.
3. The most important consequence is that money laundering is reducing revenue to the state and control. Money laundering achieves this by diminishing government tax revenue and weakening government control over the economy causing 'injury' to the public. (Bester, Chamberlain, De Koker, Hougaard, Short, Smith & Walker, 2008; Ping, 2010).

1.1.5 Corruption

It has been established in the paragraphs above that money laundering is detrimental to a country's economic progress, and the same can be said about corruption (Musila, 2019). Paragraph 1.1 stated that the aim of this thesis is to develop a legal framework to combat economic crimes in South Africa. It has also been illustrated that, due to the definition being so broad, tax evasion, money laundering and corruption forms part of the concept of economic crimes. The focus of this study weighs more towards tax evasion and money laundering but it is important to establish the link between corruption, money laundering and tax evasion with reference to the framework that will be developed. This link will be discussed in paragraph 1.1.8.

Hatchard (2014) cited Justice Potter Stewart in the United States Supreme Court:

I shall not today attempt any further to define the kinds of [activity] I understand to be embraced within that shorthand description [corruption]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it...

(*Jacobellis v Ohio*, 1964).

Transparency International (2011) defines corruption as “the misuse of entrusted power for private gain”, while the Organization for Economic Co-operation and Development and the UN Conventions establish offences for a variety of corrupt behaviours rather than using a generic definition. However, for policy purposes, they use the term “abuse of public or private office for personal gain” to define corruption (Van Vuuren, 2004:11; OECD, 2007).

Section 3 of the Prevention and Combating of Corrupt Activities Act (12 of 2004) defines corruption as:

Any person who, directly or indirectly

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner

(i) that amounts to the-

(aa) illegal, dishonest, unauthorized, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to –

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or set of rules,

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorized or improper inducement to do or not to do anything, is guilty of the offence of corruption (Prevention and Combating of Corrupt Activities Act, 2004).

In colloquial terms, a person who breaks the rules (and the law) to gain economic or financial benefits (gratification), will be guilty of corruption. This type of gratification is not only limited to money, but includes any benefit that will befall the offender.

The Prevention and Combating of Corrupt Activities Act (12 of 2004) defines 'gratification' (section 1(ix)) as including:

- a) money, cash or otherwise.*
- b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;*
- c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;*
- d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;*
- e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;*
- f) any forbearance to demand any money or money's worth or valuable thing;*
- g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;*
- h) any right or privilege;*
- i) any real or pretended aid, vote, consent, influence or abstention from voting; or*
- j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;*

Turner (2008:30) and Fleming and Zyglidopoulos (2009:6-7) compiled a list of the various forms of corruption, which contains, among other, the following:

1. Tax evasion, excessive profiteering and money laundering;
2. Black market operations and links with organised crime;
3. Misappropriation, diverted funds, misuse of funds;
4. Theft and fraud by means of illegal transactions; and

5. Institutional corruption.

As tax evasion and money laundering are one of the most recognised forms of official corruption (Turner, 2008:30; Fleming & Zyglidopoulos, 2009:6-7), developing a framework with the name 'Independent anti-corruption agency' was the more obvious choice.

In order to develop the independent anti-corruption agency, one has to understand how corruption, tax evasion and money laundering relate to one another to establish why the name 'independent anti-corruption agency' will be used. This is discussed in paragraph 1.1.8.

To summarise corruption: there must be a giver, a recipient and "an undue pecuniary or other advantage" (Loxton; OECD, 2008). However, the definition of the Prevention and Combating of Corrupt Activities Act (12 of 2004) will be used as the basis of the term corruption as this is the definition accepted by the courts in South Africa.

The definitions of tax evasion, money laundering and corruption have been clarified in paragraphs 1.1.3 to 1.1.5. Although these three offenses are different constructs, they have a common feature which is economic gain, and they are included in the definition of economic crimes (paragraph 1.1).

The following paragraph will aim to offer a possible explanation (in the form of low tax morale) for the increase in tax evasion while it will also illustrate how low tax morale could also be a catalyst for money laundering and corruption.

1.1.6 Tax morale

The extent to which citizens pay or evade taxes depends on a simple cost benefit calculation: the additional income by not paying taxes is compared with the expected punishment, following the economic theory of criminal behaviour (Kirchgassner, 2009: 347, 348). Tax morale moves towards citizens considering it their moral duty to pay their taxes even though it would be profitable to evade it. Tax morale regards the question to what extent citizens consider it their moral duty to pay taxes (Kirchgassner, 2009: 347, 348). Smith (1759:1) stated that humans are moral beings. How open an individual will be for moral arguments might depend on the institutional conditions under which he/she will act (Kirchgassner, 2009:363).

According to Crowe (1944) and McGee (2006), there are three ethical positions with respect to tax evasion. These three positions are:

1. There is no justification at all for tax evasion;
2. It is generally allowed because of how they perceive their government; and
3. The question of ethics depends on concrete circumstances.

These concrete circumstances include whether the tax system is considered to be fair or unfair by the citizens; what is done with the tax revenue; and how far taxpayers can influence what is done with their tax money (Weck-Hannemann & Pommerehne, 1989). Citizens feel more justified to evade taxes the less they perceive the tax system as fair. (Kirchgassner, 2009:351). However, it is not only the perception of the tax system by the citizens that is important, but also the trust the citizens have in their political and legal system, which is crucial (Crowe, 1944; McGee, 2006).

Hammer (2009:39) also stated that “it is important for politicians to be perceived as trustworthy in order to be able to collect taxes.” Kirchgassner (2009:351) supported the trustworthiness aspect of politicians to use the tax revenue responsibly since “taxes are prices for goods and services provided by the government” (Kirchgassner, 2009:348).

The question of whether this price corresponds with the value of these services is a relevant question for the moral evaluation of taxes. Therefore, it is a moral duty to pay these taxes, as long as those services rendered by the government are publicly provided for and are efficient. If these services are provided efficiently, and taxes are evaded, it can qualify as being similar to theft on the citizens’ part. However, if these services are not provided or are below standard, it can also be morally qualified as being theft on the government’s part. (Author).

The citizens’ trust in their government is under pressure, as well as their trust in the legal system and the enforcement thereof (Pauw, 2017a). The behaviour of government officials and law enforcement might be having a negative effect on the tax morale in this country, thereby not only leading to higher levels of tax evasion, but also to a possible increase in money laundering and corrupt activities. The following paragraph aims to illustrate how widespread corruption currently is in South Africa.

1.1.7 Corruption prevalent in South Africa

This paragraph aims at proving the need for an independent anti-corruption agency by elaborating on the problems currently experienced with corruption. The proposals for implementing independent anti-corruption agencies made by various international conventions and organisations will also be addressed.

According to Neild (2002), the amount of corruption in any society will be determined by the gap between:

- 1. The number of decisions to be made by public persons (which given the size of the society, will depend on the extent of government), and*

2. *The extent to which those decisions are made dishonestly, i.e. influenced by the prospect of private gain.*

The Corruption Perceptions Index (2017) for South Africa was shown as 43 out of 100, with an average (over five years) of 43.6 out of 100. South Africa is also placed 71 out of 180 countries. (Transparency International, 2017a).

Since the Corruption Perceptions Index (2017) for South Africa is below 50, South Africa is seen as a corrupt country. To put this Corruption Perceptions Index into context, Transparency International's view is that the lower-ranked countries "are plagued by untrustworthy and badly functioning public institutions like the police and judiciary". They argue that the anti-corruption laws are in place, but in practice, it is not enforced as it should be (Transparency International, 2017a). The corruption problem South Africa is facing will be substantiated in the next few paragraphs by discussing corruption cases involving government officials.

Jackie Selebi was appointed as National Director of the South African Police Service in 2000. In 2002, Selebi was elected Vice-president of the African region Interpol. During 2004, he was elected President of Interpol. However, during 2007, a warrant for his arrest was issued on charges of corruption, fraud, racketeering and defeating the ends of justice. Selebi was put on extended leave during 2008 and resigned as President of Interpol. During his trial, Selebi admitted his ties to Glenn Agliotti who was involved in a large drug deal as well as organised crime. Agliotti confessed payment of bribes to Selebi since 2000. On 2 July 2010, Selebi was convicted of corruption (South African History Online, 2012; Anon, 2015a).

Coming from the arms deal in 1999, former president Zuma potentially has 18 charges of corruption, stemming from 783 questionable payments, facing him (Thamm, 2017c; Masego, 2018). He allegedly accepted a R500 000 bribe per year from Thales in exchange for political protection in the arms deal probe as well as expecting to acquire future business (Thamm, 2017c; Hofstatter, Afrika, Rampedi & Jurgens, 2014). The Seriti Commission (Commission of Inquiry) was appointed by former president Zuma to investigate allegations of fraud, corruption, impropriety or irregularity in the arms deal. According to Mbeki (2015), Quinthal (2016), and Thamm (2017b), the Commission ignored evidence contained in affidavits and when receiving evidence, suspicious procedures were applied. In 2015, Judge Seriti found that there had been no evidence of corruption or wrongdoing during the procurement of the arms deal in 1999 (Mbeki, 2015; Editorial, 2016; Quinthal, 2016; Thamm, 2017b).

Pityana (2017) reported on the alleged state capture by the Gupta family wherein former president Zuma allegedly played a vast roll in receiving instructions on who to appoint as

ministers or in prominent positions. Newham (2015) reported on the unstable leadership in the South African Police Service and the National Prosecuting Authority. He stated that “holding the president liable may, however, be justified when it comes to the unparalleled leadership crises...” The minister of police, Nathi Ntleko, has appointed Major General Berning Ntlemeza as head of the Hawks, even though the North Gauteng high court found Ntlemeza “to be dishonest, lacking integrity and honour for lying under oath” (Newham, 2015). This crisis in leadership in the South African Police Service and the National Prosecuting Authority is not only undermining their ability to combat corruption, but is also undermining the trust of the public in these institutions.

The question arose why former president Zuma is repeatedly appointing unethical and incompetent individuals to lead the criminal justice system.

Perhaps Zuma has to protect many of his benefactors who are involved in crime and corruption? Or perhaps he believes a compromised justice system will assist him in the future if he ever has to answer to the 783 criminal charges for fraud and corruption... (Newham, 2015; Corruption Watch, 2015).

From the information uncovered by Pauw (2017a), it seems that the above-mentioned reasons are true, adding personal financial gain.

The release of thousands of personal e-mails from the Gupta family ... has exposed Duduzane Zuma (former president Zuma's son) as the key middleman for the Guptas to ensure that their choice of ministers, parastatal CEOs and top officials were appointed to divert lucrative contracts to some of their companies (Pauw, 2017a).

Madonsela (2016) released a report documenting the evidence uncovered during the Public Protector's investigation into the state capture allegations. Several key allegations were made against the Guptas and former president Zuma, ranging from the appointment of ministers in certain positions without proper procedure, to corruption and undue enrichment (Madonsela, 2016).

According to Pauw (2017a), the country's tax system, law enforcement and the National Prosecuting Authority were compromised by the Gupta brothers and former president Zuma. Key personnel were fired by former president Zuma or those who report to him directly, when they refused to stop their investigations into the former president and his benefactors. The magnitude of the corruption is yet to be determined.

Tamukamoyo (2015) stated “South Africa cannot afford to have unstable anti-corruption institutions”. South Africa’s state institutions are critical to keep the country safe – to protect its democracy. As can be seen from the case of former president Zuma and the Gupta brothers, political interference, corruption and manipulation are a vast problem for South Africa’s state institutions. Because of this vast problem, the motivation of establishing an independent anti-corruption agency will be made in the following paragraphs.

1.1.8 The link between tax evasion, money laundering and corruption

The definitions of tax evasion (paragraph 1.1.3), money laundering (paragraph 1.1.4) and corruption (paragraph 1.1.5) have already been established in the previous paragraphs. To simplify the definition of corruption further, the Merriam-Webster dictionary’s definition of corruption is considered. It states that corruption is:

1. “dishonest or illegal behaviour especially by powerful people (such as government officials or police officers); and
2. Inducement to wrong by improper or unlawful means (such as bribery)”.

The Prevention and Combating of Corrupt Activities Act (12 of 2004) is the key statute on corruption in South Africa (Corruption Watch). According to this Act, corruption can be divided into four elements:

1. Someone giving (offering to give)/Someone receiving (or agreeing to receive);
2. Someone in a position of power;
3. Gratification; and
4. To use their power illegally or unfairly.

The Organization for Economic Co-operation and Development stated that “corruption and money laundering are intrinsically linked”. This link is explained as:

Corruption offences, such as bribery or theft of public funds, are generally committed for the purpose of obtaining private gain. Money laundering is the process of concealing illicit gains that were generated from criminal activity. By successfully laundering the proceeds of a corruption offence, the illicit gains may be enjoyed without fear of being confiscated. (OECD: Money Laundering).

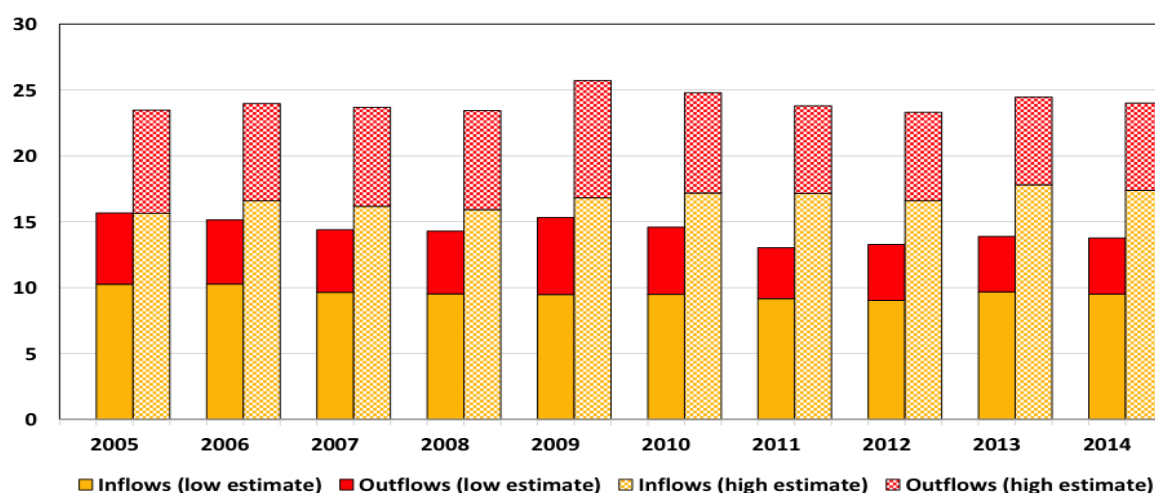
In paragraph 1.1.5, the various forms corruption can take on have been mentioned. It has been established that tax evasion and money laundering can be one of those forms; therefore, establishing how tax evasion and money laundering can be linked to corruption, and in turn to economic crimes.

1.2 MOTIVATION OF TOPIC ACTUALITY

Illicit financial flows occur when money is illegally earned, transferred, or spent. The primary findings of Global Financial Integrity in their Illicit Financial Flows December 2014 Report (published in 2017) were that developing countries lost up to US\$970 billion in illicit financial outflows in 2014. The rates at which illicit financial outflows grew were 7.2% to 8.1% per annum over the 2005 to 2014 period. The total illicit financial flows (outflows plus inflows) grew at an average rate of 8.5% to 10.1% over this period. These illicit financial flows stem from corrupt activities such as the fraudulent miss-invoicing of trade and tax evasion. (Global Financial Intelligence).

They reported that from 2005 to 2014 there was a growth in each and every region (Sub-Saharan Africa, Asia, Developing Europe, Middle East and North Africa; and the Western Hemisphere) regarding illicit financial flows.

Figure 1-2: Estimates of illicit Financial Flows, 2005 – 2014. Percent of total trade



(Source: The Global Financial Integrity Report 2014, 2017)

The high estimates as shown in Figure 1-2 were calculated using a mixed-method approach, which depended on the availability of data. The comprehensive bilateral data was obtained from the World Integrated Trade Solution's Trade Stats, which is a database created by aggregating data from the United Nations International Trade Statistics Database and the United Nations Conference on Trade and Development's Trade and Analysis Information System (World Integrated Trade Solution Trade Stats; UN Trade Statistics; Trade Analysis Information System).

“A country’s total trade is defined as its exports plus its imports” (Global Financial Integrity, 2017). The total trade figures are provided by the compilers of the International Monetary Fund’s Direction of Trade Statistics. The low estimates as shown in Figure 1-2 are constructed on bilateral trade data between developing and advanced countries only. The estimations of total trade were calculated as an average of the amount reported by the developing countries and the amount reported by those developing countries’ trade partners. (Global Financial Integrity, 2017).

As already mentioned, these illicit financial flows are a result of corrupt activities (paragraph 1.1.7), which may include money laundering and tax evasion (paragraph 1.1.8).

1.3 PROBLEM STATEMENT

In order to address the problems discussed in the paragraphs above, an independent anti-corruption agency needs to be established that will deepen the fight against tax evasion, money laundering and corruption (Camerer, 1999; Newham, 2012; De Swardt & Uwimana, 2013; Gumede, 2017; Hlongwane, 2018; Bateman 2019).

The occurrence of corruption differs from society to society. It can be sporadic, prevalent or systemic. As already established, corruption is prevalent in South Africa; making it difficult to control. (Berning, 2014:47). At this stage, South Africa can still change it before it becomes systemic, hence the suggestion of an independent anti-corruption agency. Systemic corruption can have a disastrous effect on the economy, because when corruption is systemic, it becomes “a way of life”. Institutions, rules and peoples’ conduct and frame of mind conform to the corrupt way of doing things. (Berning, 2014:47).

In 2012, Majila (2012) (as cited by Majila, Taylor & Raga, 2017:94) assessed South Africa’s anti-corruption agencies and found their success to be limited due to weak political will, lack of resources, political interference, inadequate laws, and insufficient accountability. After previous president Jacob Zuma’s State of the Nations Address in 2015, Africa Check (2015) made the following claims (among others):

1. Some of the key anti-corruption organisations were in chaos;
2. With the suspension of Anwa Dramat (head of the Hawks), the Hawks (meant to investigate organised crime and corruption) was in disarray;
3. Concern for the independence of the National Prosecuting Authority;
4. Allegations of a “rogue investigation unit” and the removal of key managers, the South African Revenue Services were put under pressure.

Berning and Montesh (2012:7) argues that “government is duty bound to ensure that an agency responsible for investigating corruption is sufficiently independent to prevent political interference...”. The disbandment of the Scorpions is an example of extreme political pressure as a ramification in continuing investigations that involved high level politicians. (Berning & Montesh, 2012:7). Based on the above, Majila, Taylor and Raga (2017:95) came to the conclusion that political interference is the cause for South Africa’s failure to fight corruption. According to Berning (2014:71), the lack of political will and proper resourcing in the implementation of an anti-corruption agency are reasons why such organisations fail.

South Africa have 12 anti-corruption agencies (multi-agency approach) on which the Public Service Anti-Corruption Strategy insisted that fragmentation, inadequate coordination, poor representation of responsibility and integration of corruption work into “a broader mandate directly affects the resourcing and optimal functioning of these agencies”. (Public Service Anti-Corruption Strategy, 2002:14). Boone (2002:43) confirmed the above statement by the Public Service Anti-Corruption Strategy by stating that the number of agencies in South Africa makes a combined national approach difficult.

Majila *et al.* (2017:96) propose a single-agency approach based on South Africa being a developing country and argues that the available resources would be optimally applied should there be only one agency. However, the Public Service Commission (2001:5) voiced their argument on the establishment of a new agency as it should first be determined if existing agencies can be restructured as the current systems are not working properly.

South Africa is faced with a significant challenge with respect to fraud and corruption. The establishment and then disbandment of anti-corruption agencies and units are evidence of poor political leadership. (Berning, 2014:74). Dudla (2019) reported that president Ramaphosa also called for harsher punishment for corruption after it was announced that South Africa ranked among the world’s most corrupt countries.

Referring to the paragraphs (especially paragraph 1.1.8) above in terms of the magnitude of the problems with tax evasion, money laundering and corruption, developing a legal framework to combat economic crimes in South Africa is deemed necessary by the author.

1.4 RESEARCH OBJECTIVES

The research objectives are divided into main and secondary objectives.

1.4.1 Main objective

The general objective of this study is the development of a legal framework that can be implemented in South Africa to combat economic crimes.

1.4.2 Secondary objectives

- 1.4.2.1 To determine the appropriate research methodology to achieve the main objective. This will include a review of methodology and justification thereof. This will be done in Chapter 2.
- 1.4.2.2 To establish a link between money laundering and tax evasion. An article “Establishing the Link between Money Laundering and Tax Evasion” has already been published in the International Journal of Business and Economic Research (a DHET-accredited journal) in September 2013 from the research done for this study. The motivation for this chapter is to prove, on a scientific level, that there is a relation between these crimes. This will be discussed in Chapter 3.
- 1.4.2.3 To identify and analyse legislation that is used in the fight against tax evasion. An article “Towards Improving South Africa’s Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the USA, UK, Australia and South Africa” was published in the Journal for Applied Business Research (a DHET-accredited journal) in January 2018. A few pages will be dedicated to a discussion of the definition of tax evasion, the link with corruption and the history of tax evasion as well as the points of view of the Financial Action Task Force and the Organization for Economic Co-operation and Development on this misdemeanour. An explanation of tax evasion is necessary before the legislation can be understood. This will be discussed in Chapter 4.
- 1.4.2.4 To identify and analyse legislation that is used in the fight against money laundering. Beforehand, a few pages will be dedicated to a discussion of the definition of money laundering and the history of money laundering as well as the points of view of the Financial Action Task Force, the Organization for Economic Co-operation and Development, and the International Monetary Fund on this crime. An explanation of money laundering is necessary before the legislation can be understood. This will be discussed in Chapter 5. This chapter has been submitted for publication to Acta Criminologica, a DHET-accredited journal.
- 1.4.2.5 To obtain methods used by law enforcement and financial intelligence agencies to investigate economic crimes. After the methods have been identified, an

analysis and comparison will be conducted between these various institutions. This will be discussed in Chapter 6.

1.4.2.6 To develop a legal framework for South Africa based on the research conducted in the previous chapters. This framework will be tested by applying it to a real South African scenario as well as with consultations (unstructured interviews) with experts. This is done in Chapter 7.

1.4.2.7 To conclude on the results of the research done and make recommendations for future research. This can be found in Chapter 8.

The research questions arising from the main and secondary objectives are:

1. What legislation is available in South Africa, the United States of America, the United Kingdom and Australia to combat tax evasion and money laundering?
2. How does the different countries' legislation compare to each other?
3. What law enforcement is available in South Africa, the United States of America, the United Kingdom and Australia that has been or is being used to combat tax evasion and money laundering?
4. On a smaller scale, how does the different countries' financial intelligence compare to each other? How does it work and what can South Africa learn from it?
5. Will the development of a legal framework for South Africa (based on the research of previous chapters) to combat these crimes, be possible? And if so, what will this framework entail?

1.4.3 Expected contribution of the study

The expected contribution of this study can be summarised as follows:

1.4.3.1 By comparing and analysing the various legislations of the United States of America, the United Kingdom, Australia and South Africa, changes to South Africa's legislation can be suggested. This may result in a higher conviction rate and may improve the prevention of tax evasion and money laundering.

1.4.3.2 By comparing various law enforcement agencies of the United States of America, the United Kingdom, and Australia to South Africa's law enforcement agencies, can improve certain identified areas. Specific reference to the National Prosecuting Authority, the Financial Intelligence Centre, the Department of Justice (USA) and the Securities and Exchange Commission will be made.

1.4.3.3 By developing an administration penalty unit within the legal framework to deal with settlement agreements, the caseloads in courts can be reduced. The said unit will also create the opportunity for companies to self-report on corruption, thereby avoiding criminal prosecution.

1.4.3.4 By developing a framework to combat tax evasion, money laundering and corruption to assist law enforcement and the South African Revenue Service in their fight against these economic crimes, it could benefit South Africa's economy because more assets will be identified and the tax thereon collected.

1.5 RESEARCH DESIGN AND METHODOLOGY

This whole research process used in conducting this study was done from an applied research context. Applied research is “a systematic and organized effort to investigate a specific problem that needs a solution” (Sekaran, 2007:4). One can thus argue that research is often about the process on solving real problems (Gill & Johnson, 2002). According to Gray (2017:3), this have a real-world focus, highlighting obtaining measurable outputs that are specific to a particular society.

In this study, the problem are the high levels of corruption (paragraph 1.1.7) and the solution is the independent anti-corruption agency. This thesis does have a real-world focus (corruption, tax evasion and money laundering) with its measurable outputs being the legal framework that was developed to assist law enforcement (the particular society) in combatting these crimes.

1.5.1 Research methodology

The research methodology summarises the research process (Chilisa & Kawulich; Research Support; Struwig & Stead, 2001:44). Research's basic objective is the gathering and breakdown of:

1. Information required to solve the problem;
2. Information to support the explanation of a problem; and
3. Information required to endorse or rebut a specific hypothesis (Struwig & Stead, 2001:4).

Selecting a methodology starts with a choice of the research paradigm. A paradigm can be defined as a basic belief system based on ontological, epistemological and methodological assumptions (Potter, 2006; Stack); or as Schwandt (2001) defined it: “a shared world view that represents the beliefs and values in a discipline and that guides how problems are solved”.

Paradigms can be divided into two categories (Stack; Struwig & Stead, 2001; Trochim & Donnelly, 2008; Mouton, 2015):

1.5.1.1 Positivism, post-positivism or empirical

Positivism combines deductive reasoning with an accurate quantity of quantitative data to discover and confirm fundamental laws that might predict human nature (Stack; Neuman, 2000; Shanks, 2002; Struwig & Stead, 2001). Therefore, the methodology utilised within a positivism framework is usually a quantitative research methodology (Struwig & Stead, 2001).

Because the positivism, post-positivism or empirical paradigm is more technical, investigating cause and effect results can be generalised and may have predictive capability (Stack).

1.5.1.2 Interpretive or non-empirical

The main purpose of this paradigm is to understand. Research findings within this paradigm are usually unique and cannot be generalised as with the positivism framework (Stack). Since the main purpose of this paradigm is to understand, the methodology is usually qualitative research methodologies (Stack). Within this category, one can refer back to formal logic and deduction because of the main purpose to understand and the fact that one cannot generalise.

1.5.1.3 Ontology

Philosophers have divided the connection of all the aspects of experience into two sorts of theories. The ontological theory is described as being about the nature of the world: what it consists of, what entities operate within it and how they interrelate to each other. "Different ontologies make different assumptions" (Potter, 2006). This statement made by Potter (2006) relates back to what theories were, the assumptions, and abstractions as well as the kind of abstractions. Ontology can also be described as "a philosophical belief system about the nature of the social reality – what can be known and how" (Hesse-Biber & Levy, 2011; Clouser, 2013: 70). A distinction can be made between the two paradigms' ontological views: positivism assumes an external reality that is rational and observable, while interpretative assumes that multiple realities exist, which were created through shared cultural and social practices and a shared belief system (Livesey as cited by Vosloo; Stack, Denzin & Lincoln, 2017; Scotland, 2012).

The 'reality' that will be used in this research is that tax evasion, money laundering and corruption are criminal offences. Tax evasion, money laundering and corruption are costing economies money and it is indirectly responsible for the impoverishment of those nations.

1.5.1.4 Epistemology

Epistemology is a philosophical belief system; a general theory of knowledge. (Denzin & Lincoln, 2017; Clouser, 2013:70; Potter, 2006; Anon(a)). Trochim and Donnelly (2008) describe epistemology as "the philosophy of knowledge or of how you come to know", while Clouser (2013:71) defines it as "to account for what is essential to all knowledge". Epistemology and methodology are closely related in the sense that epistemology is the philosophy of how you come to know and methodology is the practice (methods) wherein you try to understand the world better (Scotland, 2012; Denzin & Lincoln, 2017; Trochim & Donnelly, 2008). Epistemologists recognise four different sources of knowledge, namely intuitive, authoritative, logical, and empirical knowledge.

Within these paradigms, epistemology also differs. The difference is that positivism claims that the truth can be observed by an objective, detached researcher, while interpretative shows that the researcher cannot necessarily be objective due to his/her inter-subjectivity (Scotland, 2012; Denzin & Lincoln, 2017; Struwig & Stead, 2008; Stack). The research design that will be utilised during this study has been discussed and now a look at the research methodology will commence.

Figure 2-2: Illustration of the researchThe main research methodology that will be used is qualitative, legal interpretive research. Exploratory as well as descriptive studies will be conducted. These two methods may be combined because it is considered to be non-experimental or non-empirical research.

1.5.1.5 Doctrinal research

One category of legal research is doctrinal research. According to McKerchar (2008), doctrinal research provides a systematic exposition of the rules governing a particular legal category, analysing the relationship between rules and explaining the areas of difficulty. This type of research is based purely on documentary data. Comparing the legal systems of different countries, namely comparative law, falls in this category (McKerchar, 2008; Gawas, 2017; Hutchinson, 2008). In this research, there will be analyses of different countries' legal systems and existing law enforcement agencies

with the aim of developing a framework for South Africa to combat tax evasion, money laundering and corruption more effectively.

1.5.1.6 Inductive and deductive approaches

There are two approaches that can be followed, namely an inductive and a deductive approach. The main difference between these approaches is that the deductive approach tests theories, while the inductive approach is generating new theory from emerging data. The deductive process starts with a research question or a hypothesis and is usually associated with quantitative research. After the research question or hypothesis has been formulated, the data collection begins, which is followed by the data analyses. After the data has been analysed, the conceptual framework can be established. An inductive approach uses research questions to narrow the scope and is usually associated with qualitative research (Burney, 2008; Anderson, 2010; Soiferman, 2010; Gabriel, 2013). A deductive process to this research will be followed in order to reach the objectives as set out in paragraphs 1.4.1 and 1.4.2.

1.5.1.7 Literature review

A literature review will be done under the exploratory study and as part of the descriptive study; a synthesis of the findings will be conducted to determine whether the research objectives have been reached. A literature review is a “systematic search of published work to find out what is already known about the intended research topic” (Larabee; Robertson & Reed, 1998: 58). Within the context of a thesis, the literature review is a critical synthesis of previous research and leads to the research question (Bolderston, 2008).

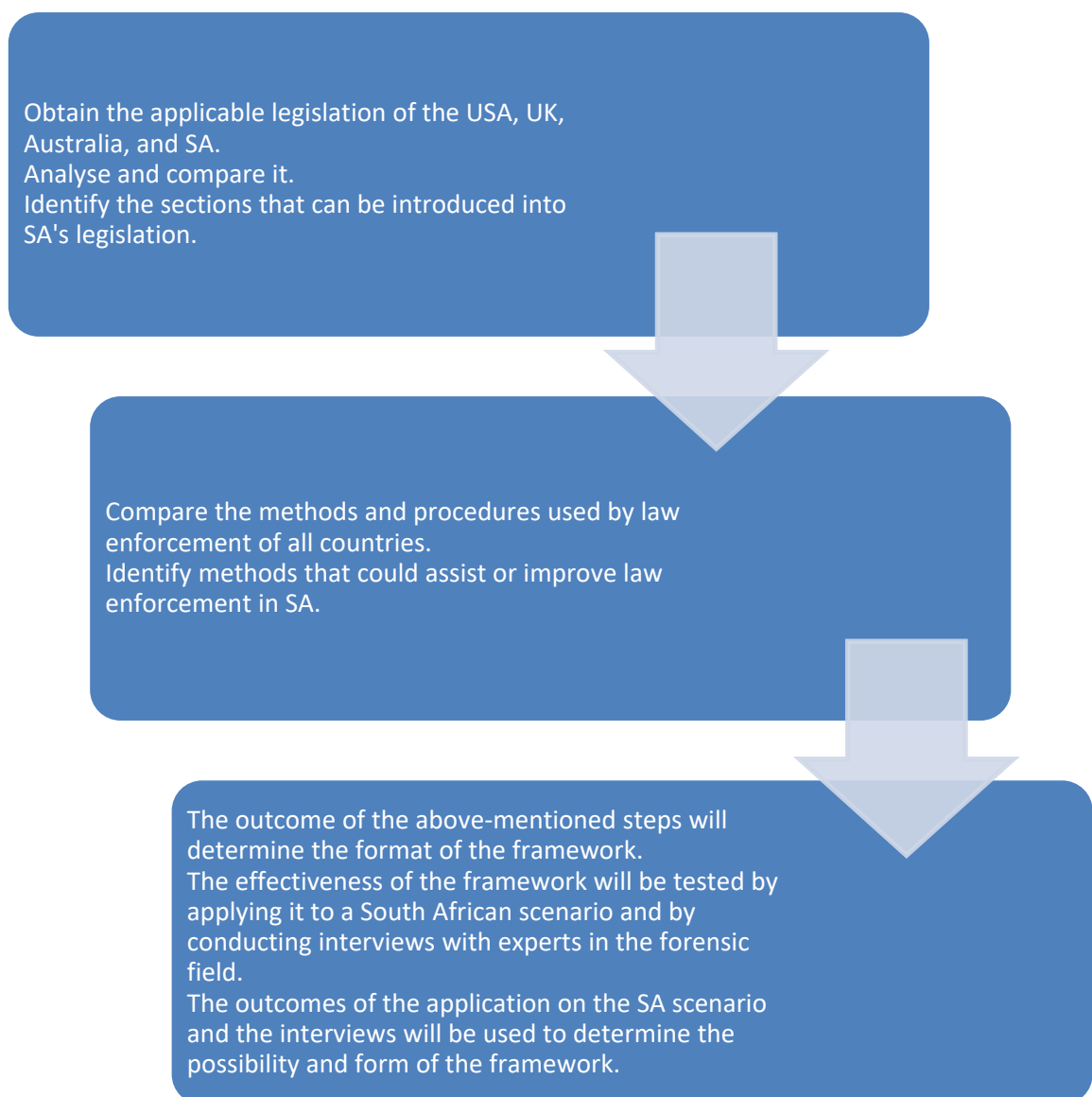
A literature review provides the background to the research being proposed (Steward, 2004; Winchester & Salji, 2016). Hart (1998) listed 11 purposes of a review, which Stack simplified into only five. They are:

1. To identify a research topic;
2. To find out what other research has been done in the field;
3. To refine our research topic into a specific problem that can be expressed in the form of a working hypothesis or question;
4. To identify possible theoretical frameworks or models on which to base our research; and
5. To justify our research in the research proposal.

The literature review for purposes of this research study and thesis will focus on aspects of tax evasion, corruption, money laundering, applicable legislation on tax evasion and money laundering as well as the Financial Action Task Force, the Organization for Economic Cooperation and Development, and the International Monetary Fund.

The next figure illustrates the steps taken in the research process to achieve the main and secondary objectives. These steps represent the actual (practical) work done.

Figure 1-3: Illustration of Research Methodology



(Source: Author).

The sources that will be used are books, research journals, newspaper articles and the internet. Relevant materials that were published between 2009 and 2018 will be identified. This information will be updated where applicable. There will be older articles used, but only to determine the history and definitions that will contribute to the researcher's knowledge and insight into the concept that is being researched.

The articles used for the purpose of compiling this research proposal were found using the following databases and computer searches: Emerald; Google Scholar; EBSCOhost; Google; and SAGE Publications.

1.5.2 Selection of countries

1.5.2.1 The United States is one of the countries in the world that has taken the threat of organised crime seriously after the unfortunate events of 11 September 2001. Organised crime can be summarised as illegal activities planned and carried out by groups (more than two) of people. Organised crime includes money laundering, which is linked to tax evasion in Chapter 3. The prevention of money laundering has been put very near the top of the United States' administration's agenda (Lilley, 2012). The Federal Bureau of Investigation is an elite law enforcement agency that has a dedicated department dealing only with white collar crimes such as money laundering (Mission & Priorities). Furthermore, the cooperation between the United States' Department of Justice and the Securities and Exchange Commission over the last 13 years has proven successful in combating corruption. Their successes and the statistics will be discussed in detail in Chapter seven.

1.5.2.2 Australia was chosen due to their vigorous attempts (and successes) to control and measure money laundering (Lilley, 2012). It was also the first country in the world to establish a financial intelligence centre, thus being on the forefront of new developments on how to improve and make the centre more effective. Australia scored 77 out of 100 in the Corruption Perceptions Index (2017), giving them thirteenth place on the list of 180 countries. Transparency International use a scale of zero to 100 to rate the level of corruption in a specific country. A score of zero means that a country is highly corrupt while a score of 100 means that a country is very clean. Thus, the score of 77 mean that Australia is considered to have little corruption taking place. (Transparency International, 2017a).

1.5.2.3 The United Kingdom was chosen not only because of their position on the Corruption Perceptions Index (2017) but also because of its history with South Africa and Australia. On the Corruption Perceptions Index (2017), they occupy the eighth place on the list with a score of 82 out of 100 (Transparency International, 2017a). Furthermore, because Australia and South Africa once were colonies of the United Kingdom, the taxation systems of both Australia and South Africa is similar to that of the United Kingdom (Anon(c); Anon(d)). Australia, South Africa and the United Kingdom's laws are based on common law (Australian Government).

Furthermore, the United States, the United Kingdom, Australia and South Africa follows a multi-agency approach. According to Meagher (2002) "traditional judicial and administrative agencies retain their core capabilities and legitimacy while additional structures are put in place to address gaps, weaknesses, and newly-emerged opportunities for corruption".

1.6 CHAPTER DIVISIONS

Chapter 1	An Introduction to Developing a Legal Framework to Combat Economic Crimes in South Africa: Tax evasion, Money laundering and Corruption
Chapter 2	Research Design and Research Methodology
Chapter 3	Establishing the Link between Money Laundering and Tax Evasion
Chapter 4	Towards Improving South Africa's Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the United States of America, United Kingdom, Australia and South Africa
Chapter 5	Concerning Refining South Africa's Fight against Money Laundering: A Comparison of Legislation on Money Laundering of the United Kingdom, the United States of America, Australia and South Africa
Chapter 6	A Comparison of certain Law Enforcement Agencies across the United States of America, the United Kingdom, Australia and South Africa to Determine Areas where South Africa can Improve
Chapter 7	The Development of a Legal Framework to Combat Money Laundering and Tax Evasion in South Africa

Chapter 8 Summary of Study Results, Conclusions and Recommendations

Bibliography

CHAPTER 2

RESEARCH DESIGN AND RESEARCH METHODOLOGY

The research design and research methodology utilised to reach the objectives as set out in paragraph 1.4.1 (main objective) and paragraph 1.4.2 (secondary objectives) will be discussed in this chapter. Specific reference is made to paragraph 1.4.2.1, which is to determine the appropriate research methodology to achieve the main objective, including a review of methodology and the justification thereof.

2.1 INTRODUCTION

The purpose of this chapter is to outline and discuss in detail the path taken in conducting research for this study. The goal of this study is towards developing a framework that can be implemented in South Africa to combat tax evasion, money laundering and corruption by means of financial intelligence and law enforcement. The secondary objectives, as mentioned in Chapter 1, paragraph 1.4.2, are to identify and analyse legislation used in the fight against tax evasion and money laundering, after which a legal framework will be developed to assist in the said fight. Three first-world countries, namely the United States of America, the United Kingdom and Australia (paragraph 1.5.2) have been selected to measure South Africa's legislation and law enforcement against, in order to improve South Africa's legislation and law enforcement, if necessary.

The paradigm, philosophy, quantitative research versus qualitative research, legal interpretive research and doctrinal legal research in terms of this study will be elaborated on. Furthermore, the outline used to obtain experts in the field of forensics' comments, the results thereof, and the application of said framework to a known South African corruption case will be expanded on. The results of the consultations with the experts together with the application on the corruption case are discussed in-depth in Chapter 7.

Criteria for selected countries

In order to improve South Africa's legislation and to develop a framework, it was necessary to compare existing legislation and active law enforcement agencies with that of countries classified as First-world Countries. The reasons for the selection of the United States of America, the United Kingdom and Australia can be summarised as follows:

As discussed in paragraph 1.5.2, the United States has taken the threat of organised crime seriously and positioned the prevention of money laundering very near the top of the United States administration's agenda (Lilley, 2012). Not only is the United States considered to be

a leader in most fields, they also occupy 16th place out of 180 countries with a score of 75 out of 100 (Transparency International, 2017a). A scale of zero to 100 is used to rate the level of corruption in a country. A score of zero means that a country is highly corrupt, while a score of 100 means that a country is very clean (Transparency International, 2017a). Furthermore, the cooperation between the United States' Department of Justice and the Securities and Exchange Commission over the last 13 years has proven successful in combating corruption (paragraph 7.5.2; paragraph 7.5.3).

Australia was chosen due to their vigorous attempts (and successes) to control and measure money laundering (Lilley, 2012). It was also the first country in the world to establish a financial intelligence centre, thereby being on the forefront of new developments on how to improve and make the centre more effective. Australia scored 77 out of 100 in the Corruption Perceptions Index (2017), giving them 13th place on the list of 180 countries. According to Transparency International's scale, Australia is considered to have very little corruption taking place (Transparency International, 2017a).

The United Kingdom was chosen not only because of their position on the Corruption Perceptions Index (2017), but also because of its history with South Africa and Australia. On the Corruption Perceptions Index (2017), they occupy the eighth place on the list with a score of 82 out of 100, which means the United Kingdom is therefore better than Australia (Transparency International, 2017a). Due to Australia and South Africa having once been colonies of the United Kingdom, the taxation systems of both Australia and South Africa are similar to that of the United Kingdom (Anon(c); Anon(d)). Australia, South Africa and the United Kingdom's laws are based on common law (Australian Government).

The above-mentioned countries all have a score of 75 and more, placing them in the region where very little corruption takes place. These scores may be the result of effective law enforcement and financial intelligence agencies executing their legislation successfully.

According to the Corruption Perceptions Index (2017), South Africa has a score of 43. This score might be explained by ineffective law enforcement and financial intelligence agencies incapable of executing their legislation. It might also be that South Africa's legislation is not on par with that of the United States, the United Kingdom or Australia. This will be investigated in Chapter 3, Chapter 4, Chapter 5 and Chapter 6.

The criterion for the selection of countries has been established and the rest of this chapter will be dedicated to explain and discuss research design and research methodology.

2.2 RESEARCH DESIGN

It has already been established in paragraph 1.5 that the research was done within an applied research context because it seeks to create solutions to problems and it also develops findings of practical relevance (Gray, 2017:3). In order to design the research path to be taken to discover the answers to the research questions as stated in paragraph 1.4.2 (Chapter 1), one needs to start at the foundation of research designs and methodologies. This study's research design starts with philosophy and constructing theories and developing the design from there.

2.2.1 Philosophy

Aristotle was considered one of the most important philosophers up until the eighteenth century, mainly because of his contributions to symbolic logic and scientific thinking (Kenny & Amadio, 2017). He was the founder of formal logic (Kenny & Amadio, 2017), which is the “abstract study of propositions, statements, or assertively used sentences and of deductive arguments” (Hughes & Schagin, 2017). Formal logic can further be explained as being a *priori* and not an empirical study (Hughes & Schagin, 2017). *Priori* knowledge is independent of all particular experiences. *Priori* (from what is before) and *posteriori* (from what is after) were used in philosophy to distinguish between arguments from causes and arguments of effects (Editors of Encyclopaedia Britannica (a)).

According to Hughes and Schagin (2017), formal logic must be distinguished from:

1. The empirical study of the processes of reasoning;
2. The art of correct reasoning, which is the practical skill of applying logical principles to particular cases; and
3. The art of persuasion, in which invalid arguments are sometimes more effective than valid ones.

The most natural approach to formal logic is through the idea of the validity of an argument of the kind known as deductive. A deductive argument can be roughly characterized as one in which the claim is made that some proposition (the conclusion) follows with strict necessity from some other proposition or propositions (the premises) (Hughes & Schagin; 2017).

Both deductive and inductive reasoning will be discussed within the context of this research in paragraph 2.2.4 of this chapter. The next paragraphs will first elaborate on what is meant by theory and abstractions before discussing abstraction, deduction and induction in more detail.

2.2.2 Theory and abstractions

Two types of constructing theories can be identified:

1. Theories constructed by scientists and philosophers; and
2. Theories constructed of common sense (Clouser, 2013:63).

The difference lies in the abstract nature of the theories. Theories by scientists and philosophers are more abstract than those of common sense; and evaluation methods of the theories of scientists and philosophers are more complex and sophisticated (Clouser, 2013:63). The constructing theory, which best suits this research, is a theory constructed by common sense. The reason being that after the problem has been identified, a solution will be sought. This solution (the framework) is a suggestion based on the literature study, consultations with experts, and application to a South African corruption case; the solution is a deduction through common logic.

2.2.3 Abstractions

Abstraction can be defined as “the quality of dealing with ideas rather than events” or “the process of considering something independently from its associations or attributes” (English Oxford Dictionaries; Merriam-Webster). Clouser (2013:64) defines it as extracting or removing something mentally from its wider background. Abstraction can further be divided into low level and high level abstraction. Low level abstraction is extracting information *of* something while high level abstraction refers to extracting information *from* something. High level abstraction can be accomplished in one of three ways:

1. Asking questions that the theories are anticipated to answer;
2. To invent the hypothesis proposed as answers to questions; or
3. Evaluating the truth of the hypothesis by arguments and evidence. (Clouser, 2013:65-66).

High level abstraction not only allows for abstraction of information from something, but also abstracting the kinds of abstraction from ordinary experiences. These “kinds” of abstraction has the property of restricting distinct fields of research. The kinds of abstraction applicable to this study are fiduciary, ethical and justiciable. (Clouser, 2013:66).

2.2.3.1 Fiduciary

It refers to the trustworthiness an object or a person may have. The fiduciary aspect is important when looking at human relations of all sorts. Where there is a lack of trust, trustworthiness disintegrates rapidly. (Clouser, 2013:246). The possibility of tax evasion due

to low tax morale was discussed in paragraph 1.1.6 (Chapter 1). How this low tax morale may be due to the lack of trust citizens of South Africa have in government was explained, illustrating how it can contribute or aggravate the problem of not only tax evasion, but money laundering and corruption in general.

2.2.3.2 Ethical

Ethical is a general term to refer to the concept of right or wrong. This term can be divided further into what is “wrong or right according to justice and what is right or wrong according to morality”. (Clouser, 2013:245). This is where the questions arise of: is it right or wrong to evade taxes? According to the law, it is wrong. Morality however, depends on an individual’s own world views and background. The same principles can be applied to money laundering and corruption: both are illegal, but again morality depends on the individual.

2.2.3.3 Justiciable

This “kind” refers to “the norms that apply to our attitudes and actions concerning what is fair” (Clouser, 2013:245-246). Justiciable and ethical are related in the sense of both having to do with what is fair or unfair (justiciable) and what is right or wrong (ethical). There is an action to be taken when something is perceived as wrong or unfair.

Two theories have been developed by philosophers to connect all the aspects of experience into an overview of the general theory of reality, and the general theory of knowledge. These theories are called ontology (paragraph 2.2.5.2) and epistemology (paragraph 2.2.5.3) respectively. (Clouser, 2013:70). The ontological and epistemological theories can differ depending on the research paradigm used.

2.2.4 Deduction and Induction

“The essence of reasoning is a search for truth” (Farnam Street). The concept of “truth” can be described as that which is in accordance with fact or reality. If the evidence at one’s disposal, seem to verify a conclusion as truthful, it can be considered as the truth; thus the more evidence, the stronger the conclusion. As deductive and inductive reasoning are both based on evidence, there are different types of evidence that can be used to reason to a point of truth. These can be listed as:

1. Direct or experimental evidence which relies on “observations and experiments”. The results should be repeatable with consistent results.
2. Anecdotal evidence is based on the assumption that two coexisting factors are linked even though alternative explanations have not been explored. The main use of

anecdotal evidence is for forming hypotheses which can then be tested with experimental evidence.

3. Argumentative evidence can be described as drawing conclusions based on facts, where if the facts are not directly testing a hypothesis, the evidence is unreliable.
4. Testimonial evidence can be described as an individual presenting an opinion. Due to bias and the lack of direct, this too is considered to be unreliable evidence. (Farnam Street).

The types of evidence that are applicable in this study is the experimental; argumentative; and testimonial evidence. First, the researcher made the argument that South Africa needs an independent anti-corruption agency based on the corruption epidemic. Secondly, the researcher experimented with developing a framework for said agency based on observations from experts, and lastly utilising testimonials from experts in this field to comment on the agency developed.

According to Gabriel (2013), inductive reasoning is generating new theory from data which can also be described as the generalisation from specific observations (Trochim, 2006; Bradford, 2017). This process is illustrated in Figure 2-1:

Figure 2-1: Inductive reasoning



Source: Anon(e)

Inductive reasoning can be categorised into the following:

1. Generalised: a conclusion is drawn from a generalisation.
2. Statistical: a conclusion is based on statistics.
3. Sample: a conclusion is drawn about one group based on a different sample group.
4. Analogous: a conclusion is drawn based on shared properties of two groups.
5. Predictive: a conclusion is drawn using a past sample upon which a prediction was made.

6. Causal inference: a conclusion is drawn based on a causal connection. (Farnam Street).

Applying the above mentioned to this study, it may be argued that a conclusion was drawn from more than one category, namely: Generalisation, statistical, analogous and casual inference. In the light of the current corruption endemic and the lack of action from law enforcement, the generalisation that South Africa is in need of an independent anti-corruption agency was drawn. Reviewing the statistics regarding the success of the Scorpions versus the Hawks, a conclusion was drawn that there is a need for a similar agency than that of the Scorpions. Analogous, inductive reasoning became noticeable when the researcher compared the NPA and the FIC with the United States of America's DOJ and SEC whereas the causal inference was established when it became apparent that both the NPA and FIC can adopt the working relationship of the DOJ and the SEC.

As already mentioned in paragraph 2.2.1, deductive reasoning is the most natural approach to formal logic (Hughes & Schagin, 2017). Two conditions must first be met before it can be said that a deductive argument has succeeded in establishing the truth of its conclusion:

1. The first condition is that the conclusion must follow from the premises (one or more propositions) meaning the conclusion (new proposition) have to be logically correct (Hintikka); and
2. The second condition is that the premises themselves must be true. (Hughes & Schagin, 2017).

An argument can only be deemed sound if both these conditions are met. The researcher is only concerned with the first condition because when the conclusion of an argument is correctly deducible from its premises, the inference from the premises to the conclusion is said to be (deductively) valid, irrespective of whether the premises are true or false. (Hughes & Schagin, 2017).

The premises of this study includes the legislation on tax evasion (Chapter 4) and on money laundering (Chapter 5) of four countries (paragraph 2.1.1) as well as a discussion and comparison of their law enforcement agencies (Chapter 6). The framework is the conclusion after the premises has been studied.

The discussion on philosophy, theory, abstraction and deduction was merely the foundation from which the design will now be built in order to answer the research questions in Chapter 1.

2.2.5 Design

Philosophy, the nature of theory and abstraction together with inductive reasoning form the basis from which the design will be developed. A research design is a plan or a blueprint of how you intend to conduct the research (Mouton, 2015: 55). The research design focuses on the end result, starting with a research problem or research question with the emphasis on the logic of the research (Mouton, 2015: 56; Hintikka).

2.2.5.1 Paradigms and research approaches

A paradigm is

a set of assumptions or beliefs about fundamental aspects of reality which gives rise to a particular world view – it addresses fundamental assumptions taken on faith, such as beliefs about the nature of reality, the relationship between knower and known, and assumptions about methodologies (Nieuwenhuis, 2017:52).

“Paradigms represent what we think about the world (but cannot prove). Our actions in the world, including the actions we take as inquirers, cannot occur without reference to those paradigms: ‘As we think, so do we act’” (Lincoln & Guba, 1985:15).

A paradigm can be defined as a basic belief system based on ontological, epistemological and methodological assumptions (Potter, 2006; Stack). Paradigms can be divided into two categories (Stack; Struwig & Stead, 2008; Trochim & Donnelly, 2008; Mouton, 2015):

a) Positivism, post-positivism or empirical paradigm

Positivism aims to apply the natural sciences model of research to research of the social world (Descombe, 2008 as cited by De Vos et al., 2018). This approach involves a belief that the natural sciences’ methods are suitable to the social sciences, that an unbiased truth exists outside of personal experience (Babbie & Mouton, 2001:23). Positivists believe that knowledge can only be justified by the observable, thus through gathering verified facts, scientific knowledge is found (Bryman, 2000:15).

In contrast to positivism, post-positivism believes that reality “can never be fully apprehended, it can only be approximated”. Multiple methods are dependent on to capture as much of reality as is possible. (Denzin & Lincoln 1994:5). Postpositivists believe in multiple perspectives rather than a single reality (Creswell, 2007:20) which allows researchers in this paradigm to use more subjective methods of collecting information.

Because the positivism, post-positivism or empirical paradigm is more technical, investigating cause-and-effect results can be generalised and may have predictive capability (Stack).

b) Interpretive or non-empirical paradigm

This paradigm is also referred to as the phenomenological approach which is a method with the purpose to understand people (Babbie & Mouton, 2001:28). According to Dilthey there are two different types of science: natural sciences and human sciences. While natural sciences are abstract in nature, human sciences have an empathetic understanding of every day experiences of people. (Neuman, 2003:75). Babbie and Mouton (2001:28) is of the opinion that this method upholds that all human beings are involved in the process of making sense of their worlds and constantly interpret, generate, give meaning, describe, validate and rationalise daily actions.

As the main purpose of this paradigm is to understand, findings within this paradigm are usually unique and cannot be generalised as with the positivism framework, thus the methodology utilised is usually qualitative research (Stack). Within this category, one can refer back to formal logic and deduction because of the main purpose of this paradigm.

The paradigm that will be used in this research is qualitative in nature, which is in the non-empirical or interpretive paradigm. Qualitative research does not have only one research method, but is associated with multiple research approaches. Because qualitative research can be found in many disciplines, it can be seen as multi-disciplinary, multi-paradigmatic and multi-method (Creswell & Miller, 2000; Denzin & Lincoln, 2002; Struwig & Stead, 2008; Stack).

2.2.5.2 Ontology

As previously mentioned in paragraph 2.2.1, philosophers have divided the connection of all the aspects of experience into two theories. The ontological theory is described as being about the nature of the world: what it consists of, what entities operate within it and how they interrelate with each other. "Different ontologies make different assumptions" (Clouser, 2013; Potter, 2006). This statement made by Potter (2006) relates back to what theories were, the assumptions and abstractions as well as the kind of abstractions. Ontology can also be described as "a philosophical belief system about the nature of the social reality – what can be known and how" (Hesse-Biber & Levy, 2011; Clouser, 2013).

A distinction can be drawn between the two paradigms' ontological views: positivism assumes an external reality that is rational and observable, while interpretative assumes multiple realities exist, which were created through shared cultural and social practices and a shared belief system (Stack).

The 'reality' that will be used in this research is that tax evasion, money laundering and corruption are criminal offences (paragraph 1.1.8), and that these criminal conducts are costing economies money and it is indirectly responsible for the impoverishment of those nations (Chapter 3, paragraph 3.2).

2.2.5.3 Epistemology

Epistemology is a philosophical belief system; a general theory of knowledge (Clouser, 2013:70; Potter: 2006; Anon(a)). Trochim and Donnelly (2008) describe epistemology as "the philosophy of knowledge or of how you come to know", while Clouser (2013:70) defines it as "to account for what is essential to all knowledge". Epistemology and methodology are closely related in that epistemology is the philosophy of how you come to know and methodology is the practice (methods) wherein you try to understand the world better (Trochim & Donnelly; 2008). Epistemologists recognise four different sources of knowledge, namely:

1. Intuitive;
2. Authoritative;
3. Logical; and
4. Empirical knowledge.

Within these paradigms, epistemology also differs. The difference is that positivism claims that the truth can be observed by an objective, detached researcher, while interpretative shows that the researcher cannot necessarily be objective due to their inter-subjectivity (Struwig & Stead, 2008; Stack).

Summary

The paradigm that will be used is the non-empirical or interpretive paradigm, leading to qualitative research. Qualitative research can be seen as multi-disciplinary, multi-paradigmatic and multi-method (Cresswell & Miller, 2000; Denzin & Lincoln, 2002; Struwig & Stead, 2008, Stack). The research methodology will now be discussed.

2.3 THE RESEARCH METHODOLOGY

It has been established in the above paragraph that two research approaches exist within the two paradigms within philosophy. Research methodology entails focusing on the research

process together with the processes to be used. Its point of departure is data collection or sampling with a focus on non-linear steps in the research process and the most unbiased procedures to be employed (Mouton, 2015).

Consider Table 2-1, which shows the difference between quantitative and qualitative research approaches. Comparing the differences with the problem statement (paragraph 1.3), it becomes clear that the qualitative approach will suit this study best. One of the most prominent facts is that qualitative research relies strongly on data that are not in numerical form, but rather in the form of text, audio data recording and unstructured interviews.

Table 2-1: Difference in research approaches

	Quantitative	Qualitative
Belief	An objective reality exists that can be measured	Multiple constructed realities exist
Audience	Acquainted and supportive of quantitative research	Acquainted with and supportive of qualitative research
Research question	Confirmatory, predictive	Exploratory, interpretive
Literature available	Quite large	Inadequate or absent
Focus of research	Covers a great deal of breadth	Comprises in-depth studies
Available time	Fairly short	Fairly long
Desire/availability to work with people	Medium to low	High
Desire for structure	High	Low
Skilled in the areas of	Statistics and deductive reasoning	Attention to detail and inductive reasoning
Writing skills strong in the area of:	Technical, scientific writing	Literary, narrative writing

(Source: Leedy, 1997; Struwig & Stead, 2008)

Other reasons for choosing this research approach can be found in the four characteristics of qualitative research, which are:

1. Generating new theories or hypotheses;
2. Achieving a deep understanding of the issues;
3. Developing detailed stories to describe a phenomenon; and
4. When mixed methods will be used (Struwig & Stead, 2001; Trochim & Donnelly; 2008).

The problem statement (paragraph 1.3) and main objective (paragraph 1.4.1) refer to a legal framework that will be developed to combat tax evasion, money laundering and corruption, thereby generating a new 'theory' while achieving a deeper understanding of tax evasion, money laundering and corruption as well as the legislation applicable in each of the four countries chosen. For research to be seen as qualitative in nature, only one of the four characteristics needs to be present (Trochim & Donnelly; 2008). Achieving deeper understanding and generating a new theory are two of the characteristics present in this study.

Four criteria for judging qualitative research exist (Lincoln & Guba, 1985 as *cited by* Trochim & Donnelly, 2008):

1. Credibility;
2. Transferability;
3. Dependability; and
4. Conformability.

Credibility will be confirmed when the consultations with the experts take place (Chapter 7) because the credibility criteria involve establishing that the results of qualitative research are credible from the perspective of the expert. (Trochim & Donnelly, 2008). Therefore, the experts can confirm whether the framework developed can be implemented and whether it will achieve the goal of combatting tax evasion, money laundering and corruption.

Evaluating the transferability of the research done, it can be said that the results cannot be generalised because of the specific crimes (and legislation), but it will be possible to transfer the research results to other contexts. Dependability in qualitative research describes the "degree to which the research adequately describes the continuously changing context and its effects on conclusions" (Trochim & Donnelly; 2008). Due to the broadness of the framework to be developed, dependability can only be dealt with after the development of the legal framework and the consultations are concluded. The possibility of laws changing remains a reality. Dealing with dependability is an area for future research (chapter 8).

Conformability refers to “the degree to which others can confirm or *corroborate* the results in qualitative research” (Trochim & Donnelly; 2008). This criterion will be met after consultations with the experts and applying the legal framework on a known corruption case. Feedback from the experts will be a reasonable method of measuring conformability; in other words, to determine whether the results of the research can be corroborated by them. The corruption case will illustrate how the legal framework can contribute to the fight against tax evasion, money laundering and corruption in general.

Due to the number of methods that exist in qualitative research, each methodology has its own principles (Denzin & Lincoln, 1994; Quick & Hall, 2015). Traditionally, all methodologies use a small sample of participants because qualitative research focuses on the quality of the research gathered. Fossey, Harvey, Mcdermott and Davidson (2002) (*as cited by Parker & Northcott, 2016*) stated that:

Qualitative sampling is rather focused upon small sample sizes aiming to produce information richness that offers better understandings of phenomena we study. To this end, the researcher seeks to identify and include those actors and sources that can best inform the focus of their inquiries and produce the richest account of the phenomenon under investigation.

“Participants in qualitative research are selected from the target population of the setting” (Quick & Hall, 2015). The result of this is a purposive sample of people “who have had exposure to the topic under investigation and whose experience will achieve the aim of the research” (Ryan, Coughlin & Cronin, 2007). Purposive sampling forms part of the nonprobability sampling method. Nonprobability sampling does not entail using random selection as is the case with the probability sampling method (Trochim & Donnelly, 2008).

Purposive sampling can be divided into seven subcategories:

1. Maximum variation;
2. Homogeneous;
3. Typical case;
4. Extreme or deviant case;
5. Critical case;
6. Total population; and
7. Expert sampling (Etikan, Musa & Alkassim, 2016).

The advantages of purposive sampling are:

1. There is a wide range of qualitative research designs with a wide range of sampling techniques;
2. It can provide researchers with the justification to make generalisations from the sample being studied; and
3. It can involve multiple phases (Laerd).

The disadvantages, however, are that purposive sampling can be prone to researcher bias and it can be difficult to defend the representativeness of the sample (Laerd).

The critical case sampling method has been applied in order to determine whether further studies on corruption are warranted (Etikan, Musa & Alkassim, 2016; Laerd). Due to the number of corruption cases in the South African media as well as South Africa's Corruption Perceptions score (2017), exploring the development of a framework to combat said crime seemed valid. The next step was to identify the sampling method that will assist with the development.

The expert sampling method has been identified because input from proficient individuals (Trochim & Donnelly, 2008; Laerd; Etikan, Musa & Alkassim, 2016), who have worked for more than 15 years in the forensic and taxation field, is necessary to test or assess the framework developed. For this sampling method, experts can be defined as individuals with the necessary experience in forensic investigations where their experience should exceed 15 years (as derived from Laerd).

The qualitative research methodology that will be followed is action research, broken down into legal interpretive and then to doctrinal legal research. Action research entails developing solutions to practical problems (Holloway & Wheeler, 2010; Quick & Hall, 2015). The main objective (Chapter 1, paragraph 1.4.1) of this study is to attempt to develop a legal framework that can be implemented in South Africa to combat tax evasion, money laundering and corruption in general.

As elaborated on in paragraph 1.1.7 (Chapter 1), South Africa has an endemic problem with corruption. Developing and implementing such a framework may reduce the amount that tax evasion, money laundering and corruption are costing the Republic of South Africa over time. Therefore, by developing this framework, a solution to practical problems may be found. However, to achieve and refine this framework, consultations with experts in the field of taxation and forensic accounting must first be sought.

In utilising qualitative interviewing, it can be said that the consultations will be used as a basis to refine the framework for further research (Bauer & Gaskell, 2000). An unstructured interviewing method will be used where no predetermined interview protocol or survey exists and where the questions emerge and evolve as the consultation proceeds (Trochim & Donnelly; 2008). Consultations (in the form of unstructured interviews) will be conducted with experts in the field of forensic accounting with a taxation background to get feedback on the feasibility of the framework that was developed in Chapter 7, paragraphs 7.3, 7.4, 7.5 and 7.6.

Up to seven experts will be consulted. The reason for such a small group lies in the quality of their knowledge and experience (as well as this being a niche) instead of the quantity of people being interviewed (Bauer & Gaskell, 2000; Fossey *et al.*, 2016 *as cited by* Parker & Northcott, 2016). Baker and Edwards (2012) addressed the issue of “how many numbers” when it comes to qualitative research and interviews will be enough. According to them, the best answer is to gather data until empirical saturation has been achieved (Baker & Edwards, 2012).

The rationale behind using unstructured interviews also lies in the questions being open-ended and it having little control over the interviewees’ answers. Unstructured interviews also have the benefit of opportunity for new ways of developing the said framework. Another benefit is focusing the interviewees’ attention on a specific topic to test the researcher’s preliminary understanding (Cohen & Crabtree, 2006).

These unstructured interviews will be conducted in person as far as possible, but some of these interviews will also be conducted via e-mails. According to Jonassen, Tessmer and Hannum (1998), interviews can be conducted using e-mails or the World Wide Web. The reason for the e-mails being used in this study is because some of the selected experts are either working overseas or are travelling overseas conducting forensic investigations. The advantages of e-mail interviewing can be summarised as follows:

1. It is more cost-effective than a face-to-face interview;
2. Range of participants;
It can broaden the range of participants because an individual can now be interviewed anywhere in the world as long as he or she has access to e-mail.
3. Time for reflection;
E-mail interviews give the interviewee and the interviewer more time to reflect on the questions. It enables deeper processing of the information and a more complete review of the issues being discussed.
4. Saying things that would not be said face-to-face;

5. Working with a set of interviews simultaneously;
E-mail interviews enable the interviewer to conduct several interviews at once, which assists in collecting data more quickly and interaction between interviews.
6. Rapport; and
7. Overcoming interviewer effects. (Hunt & McHale, 2009).

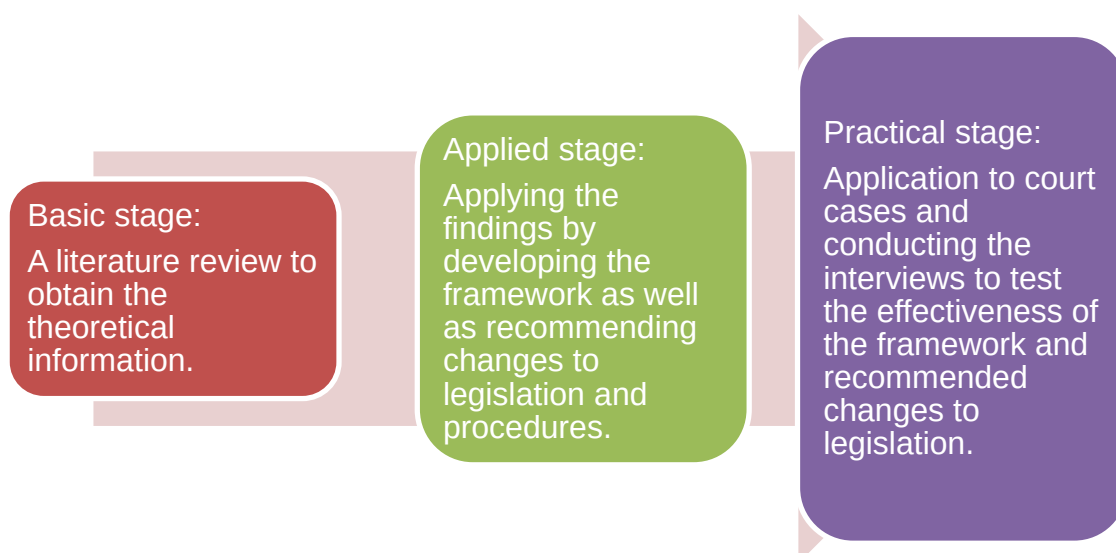
The disadvantages of e-mail interviewing entails:

1. Problems with the sample;
2. The interview taking too long and losing its focus;
3. Ethical issues;
4. Working with a set of interviews simultaneously;
5. Missing nonverbal cues; and
6. Impersonality. (Hunt & McHale, 2009).

In this study, the advantages outweighed the disadvantages and the results were adequate and added valuable insights into the framework developed.

In Chapter 1, paragraph 1.5.1, the stages in this research were discussed and divided into three phases, namely the basic, applied and practical stages.

Figure 2-2: Three research stages



(Source: Author)

2.3.1 Basic stage

It was established that a literature review will be done in the basic stage in order to gather information that directed the rest of the research. The objective of a literature review is to obtain the most “recent, credible and relevant” information on the topic to be researched (Mouton 2015:86-87). Using the research conducted in this study, the information obtained during a literature review consists of the following:

1. Definitions of tax evasion, money laundering and corruption;
2. Different legislation available per country selected;
3. Existing data and empirical findings on the magnitude of tax evasion, money laundering and corruption;
4. Measuring instruments that have been developed to measure the magnitude of tax evasion, money laundering and corruption;
5. Recommendations already in place to combat tax evasion, money laundering and corruption.

According to Mouton (2015:87), the importance of a literature review lies in the following:

1. To ensure that no duplication on previous studies occurs;
2. Discovering the most recent and authoritative information about the subject;
3. Determining the most widely accepted empirical findings in the field of study;
4. Identifying the available instrumentation that has proven validity and reliability; and
5. To ascertain what the most widely accepted definitions of key concepts in the field of study are (Mouton, 2015).

The main sources of information acquired for this field of study, consisted of:

1. Books, both national and international;
2. Journal articles, both national and international;
3. Newspaper reports, both national and international;
4. Other theses and dissertations, both national and international.

Online databases used were EBSCOhost, Google Scholar, the local university library, Emerald, and ProQuest. The internet was used to gain access to websites such as News24, Mail & Guardian, different legislation, the various law enforcement agencies’ home pages and the various financial intelligence centres’ home page. It was found that a great deal of research has been conducted on the topics of money laundering, tax evasion and corruption, but nothing could be found on developing a legal framework. Therefore, the applied research

sought to develop the framework that could be implemented to combat corruption and, in effect, money laundering and tax evasion as well.

2.3.2 Applied stage

After the basic stage has been conducted and the areas for research have been identified, the findings were applied by developing the framework and testing it against a known corruption case, as well as recommending changes to legislation on tax evasion and money laundering for South Africa. Three other countries were identified to measure South Africa's legislation against: The United States, the United Kingdom and Australia. The criteria for selecting these three countries have been discussed in paragraph 2.1.1.

After the basic stage's research findings have been applied to develop the legal framework, unstructured interviews were conducted with various experts in the field of forensic accounting, where after the framework was applied to a South African corruption case. The objective was to determine whether this framework can be feasible.

2.3.2.1 Legal interpretive research: Doctrinal research

Before narrowing the discussion down to legal interpretive research and eventually to doctrinal research, the two approaches that can be followed, namely an inductive and a deductive approach, will be discussed. The main differences between these approaches are that the deductive approach tests theories, while the inductive approach is generating new theory from emerging data.

The deductive process starts with a research question or a hypothesis and is usually associated with quantitative research. After the research question or hypothesis has been formulated, the data collection begins, which is followed by the data analyses. After the data has been analysed, the conceptual framework can be established. An inductive approach uses research questions to narrow the scope and is usually associated with qualitative research (Burney, 2008; Gabriel, 2013). An inductive approach to this research will be followed in order to reach the objectives as set out in Chapter 1, paragraph 1.4.1 and 1.4.2.

As already discussed in previous paragraphs, a literature review will be done under the exploratory study and as part of the descriptive study; a synthesis of the findings will be conducted to determine whether the research objective has been reached. A literature review is a "systematic search of published work to find out what is already known about the intended research topic" (Robertson & Reed, 1998: 58). Within the context of a thesis, the literature review is a critical synthesis of previous research and leads to the research question (Lie).

A literature review provides the background to the research being proposed. Hart (1998) listed 11 purposes of a review, which Stack simplified into only five. They are:

1. To identify a research topic;
2. To find out what other research has been done in the field;
3. To refine our research topic into a specific problem that can be expressed in the form of a working hypothesis or question;
4. To identify possible theoretical frameworks or models on which to base our research; and
5. To justify our research in the research proposal.

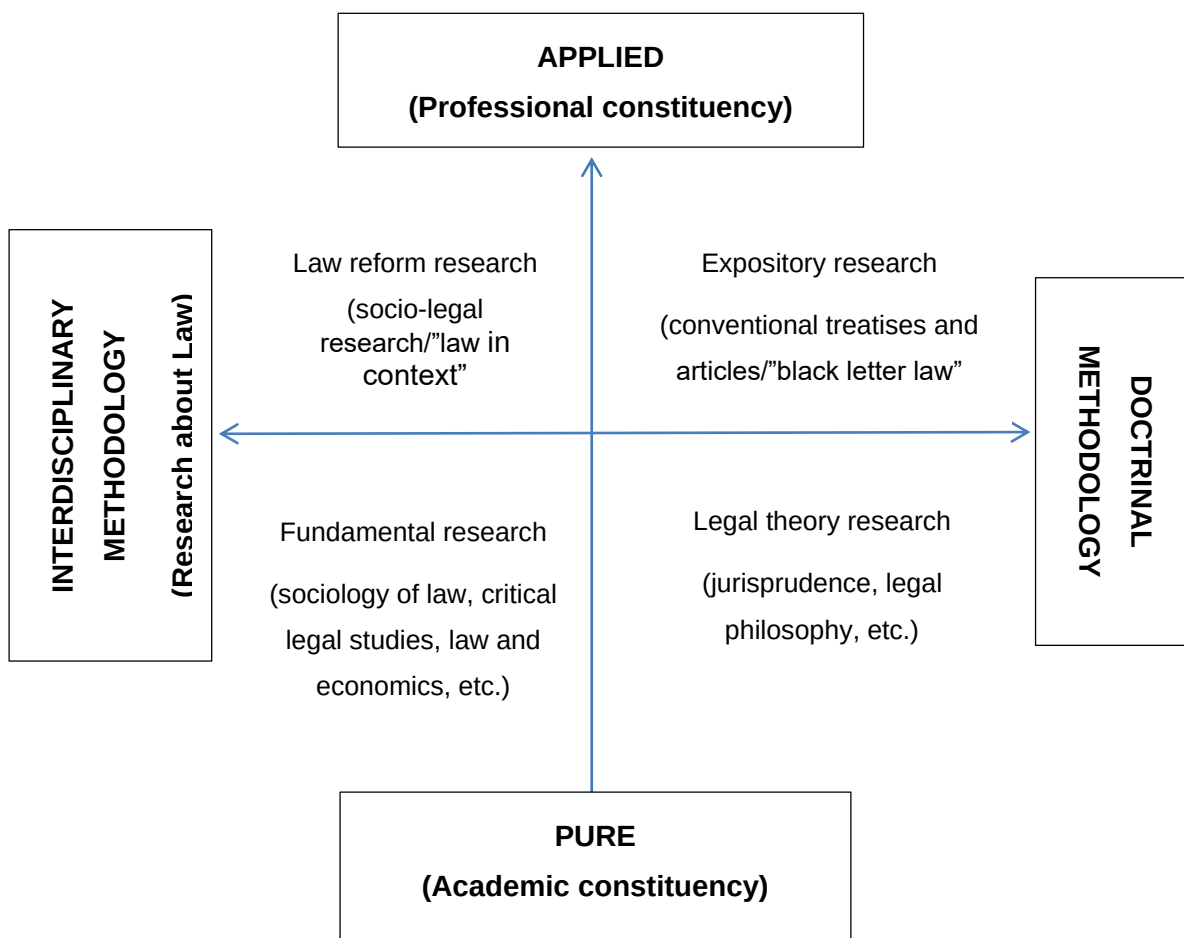
The above-mentioned purposes of a literature review confirm that qualitative research will be conducted as no empirical data will form part of this study. The objective after conducting this research is to give a proposed legal framework. In order to reach this goal, legal research will need to be conducted wherein doctrinal research plays a huge role. However, before discussing doctrinal research, the foundation of legal research needs to be laid down first.

First, the need for extrication in 'law' needs to be addressed in order to understand what is meant when using the term 'law'. 'Law' is a practical discipline exercised within a professional setting; 'law' is a body of normative rules and principles (jurisprudence); and 'law' as an academic discipline (Hutchinson & Duncan, 2012). Legal research as an academic discipline started in the late 1800s, while the study of law (jurisprudence) and law started long before law as an academic discipline (Hutchinson & Duncan, 2012).

"The language of judicial decision is mainly the language of logic...but certainty generally is an illusion" (Hutchinson & Duncan, 2012). This is a good description as to what to expect from legal research as the findings will be 'the language of logic', but due to research being doctrinal in nature, 'certainty is an illusion'.

As to mostly working with non-empirical data, the main research methodology that will be used is qualitative, legal interpretive research. Exploratory as well as descriptive studies will be conducted. These two methods may be combined, because they are considered to be non-experimental or non-empirical research. Arthurs (1983) (as cited by Chynoweth (2008)) proposed a taxonomy of legal research styles in order to illustrate the different types of legal research.

Figure 2-3: Legal research styles



(Source: Arthurs, 1983 as cited by Chynoweth, 2008))

This study, in terms of Arthurs' (1983) (as cited by Chynoweth, 2008) proposed taxonomy, can be set out as follows:

a. Interdisciplinary methodologies

"In practice, even doctrinal analysis usually makes reference to other, external factors as well as seeking the answers that are consistent with the existing body of rules" (Chynoweth, 2008). The external factors that Chynoweth (2008) refers to can be to view the legal ruling to be explained from a historical or social context or from the environment on which that specific ruling will have an effect.

Refer to Figure 2-3's horizontal axis: moving from doctrinal research where the exploration was mainly *in law*, to the interdisciplinary method where the

exploration was mainly *about* law, a greater willingness by the legal scholar to accept the epistemologies and methodologies of social sciences is encountered (Chynoweth, 2008).

This study started with research about the laws of taxation (Chapter 4) and the laws addressing money laundering (Chapter 5), to the phase where the research started to be in the laws of taxation and the laws addressing money laundering. The research about the laws addressing taxation, corruption and money laundering, and the different laws under which a conviction can be obtained was identified and then the applicable sections in those laws were investigated. The investigation of those 'doctrines' made it possible to establish the area where South African legislation can be improved; and it proved that South Africa's legislation on most of the identified sections is not wanting.

b. Pure and applied studies

The vertical axis of Arthurs' (1983) (*as cited by* Chynoweth, 2008) proposed taxonomy represents the difference between pure and applied studies: pure academic knowledge lies in what is known about the operation of the law, while applied studies refer to the same knowledge produced with a certain purpose. During this study, the researcher took what was known about the legislation of the four selected countries and produced a legal framework with recommendations in law reform for South Africa.

c. Doctrinal legal research

According to Chynoweth (2008), this type of research "is concerned with the formulation of legal 'doctrines' through the analysis of legal rules". This was achieved through the analysis of different types of legislation in order to recommend certain changes that might improve South African legislation; therefore, the proposed formulation of new legal 'rules' through the analysis of other countries' legal rules.

According to Arthurs' (1983) (*as cited by* Chynoweth, 2008) proposed taxonomy, there are four categories of legal research. However, the Pearce Committee (1987) (*as cited by* Barker, 2004) categorised legal research into three types. This was done after reviewing research that came from Australian law schools. Their categories are as follows:

a. Doctrinal research

“Research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps predicts future developments”. Comparing it to Arthurs’ (1983) (*as cited by* Chynoweth, 2008) proposed taxonomy, one can determine, by using the matrix, that within the categories published by the Pearce Committee (1987) (*as cited by* Barker, 2004), their doctrinal research combines Arthurs’ (1983) (*as cited by* Chynoweth, 2008) doctrinal and interdisciplinary methodology.

b. Reform-orientated research

“Research which intensely evaluates the adequacy of existing rules and which recommends changing to any rules found wanting”. By comparing Arthurs’ (1983) (*as cited by* Chynoweth, 2008) taxonomy, this category also falls within the interdisciplinary methodology, where law reform research can be found in the upper left corner of the matrix (Figure 2-3).

c. Theoretical research

“Research which fosters a more complete understanding of the conceptual bases of legal principles and of the combined effects of a range of rules and procedures that touch on a particular area of activity? Theoretical research falls within the doctrinal methodology in the lower right corner of the matrix (Figure 2-3) (Arthurs, 1983 *as cited by* Chynoweth, 2008; the Pearce Committee, 1987 *as cited by* Barker, 2004; Hutchinson & Duncan, 2012).

Table 2-2: Comparison between Arthurs' taxonomy and the Pearce Committee's categories

<u>Arthurs</u>	<u>Pearce Committee</u>
Doctrinal methodology: Research in law	Doctrinal research: Research in law as well as research about law. Theoretical research: Research in law
Pure: Academic constituency	None
Interdisciplinary methodology: Research about law	Reform orientated research: Research about law
Applied: Professional constituency	None

(Source: author)

Applying the above information to this study, it has already been established that a doctrinal as well as a reform-oriented research approach can be followed. The reason for following a doctrinal approach will be to identify the various rules governing the legal category of tax, money laundering and corruption for the United States, the United Kingdom, Australia and South Africa. After this systematic exposition, a reform-oriented research approach will be followed to evaluate South Africa's existing rules, its adequacy and afterwards recommending changes to South African legislation with the purpose of improving it. Another researcher, Minow (2013), also contributed to the steps taken in the legal research and the intellectual contributions resulting from it.

Minow (2013) outlined the types of intellectual contributions resulting from legal research, which is much more detailed than that of Arthurs (1983) (*as cited by* Chynoweth, 2008) and the Pearce Committee (1987) (*as cited by* Barker, 2004 and Hutchinson & Duncan, 2012).

She outlined it as:

1. Doctrinal restatement;
2. Recasting project;

3. Policy analysis;
4. Test a proposition;
5. Study, explain and access legal institutions, systems or institutional actors;
6. Critical projects;
7. Comparative and historical inquiries;
8. Jurisprudence, philosophy of law; and
9. Combination of all of the above.

Comparing Minow (2013) to Arthurs (1983) (*as cited by Chynoweth, 2008*), it can be seen that Minow's types of intellectual contributions can be positioned on nearly the exact same place on the matrix (Figure 2-3); and even though more detailed, it does not differ from Arthurs or the Pearce Committee's categories (Arthurs, 1983 *as cited by Chynoweth, 2008*; the Pearce Committee, 1987 *as cited by Barker, 2004*; Hutchinson & Duncan, 2012; Minow, 2013).

Applying the types of intellectual contributions as set out by Minow (2013) in order to determine the methodology or methodologies utilised for this thesis produced the following: Doctrinal restatement involves the organisation and reorganisation of case law into understandable information; acknowledging distinction between settled and emerging law; and to identify the variance between 'popular' and 'better' practice (Minow, 2013). In Chapter 4 (tax evasion) and in Chapter 5 (money laundering), the researcher investigated the different types of legislation to recognise the differences between the countries' legislation with the purpose of improving South Africa's legislation.

In the recasting project type, the researcher can offer a new legal framework to address the difficulties with tax evasion, money laundering and corruption. Offering or recommending a solution also falls within the policy analysis type.

The fifth method entails studying, explaining, and assessing legal institutions, systems, or institutional actors in order to offer a normative assessment or agenda for further study. This was done in Chapter 6 where the different types of law enforcement were identified and discussed. The normative assessment or agenda will be applied in Chapter 7 as part of the proposed changes in legislation that will have to occur in order for this framework to be effective.

Comparative and historical inquiry methods (number seven on Minow's list) were utilised in Chapter 4, Chapter 5 and Chapter 6 for the purpose of explaining where the legislation and type of law enforcement agencies come from. After the discussion of the different types of intellectual contributions resulting from legal scholarship, one can see that the methods used

in this study were a combination of the mentioned approaches by Minow (2013), Arthurs (1983) (as cited by Chynoweth, 2008), and the Pearce Committee (1987) (as cited by Barker, 2004); and Hutchinson and Duncan (2012).

Doctrinal research has been referred to in many of the above paragraphs. The next discussion point is what doctrinal legal research entails and where it fit in.

2.3.2.2 Doctrinal legal research

Doctrinal research can be defined as “a synthesis of various rules, principles, norms, interpretive guidelines and values. It explains, makes coherent or justifies a segment of the law as part of a larger system of law” (Hutchinson & Duncan, 2012). The word ‘doctrinal’ is closely linked “with the doctrine of precedent – legal rules take on a quality of being doctrinal because they are not just causal or convenient norms, but because they are meant to be rules which apply consistently and which evolve organically and slowly” (Hutchinson & Duncan, 2012).

The following, however, remains in the researcher’s opinion, the best definition of what doctrinal research involves:

To a large extent, it is the doctrinal aspect of law that makes legal research distinctive and provides an often under-recognized parallel to ‘discovery’ in the physical sciences. Doctrinal research, at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials. The very best notion of ‘legal reasoning’ is a subtle and sophisticated jurisprudential concept of a unique blend of deduction and induction, that has engaged legal scholars for generations, and is a key to understanding the mystique of the legal system’s simultaneous achievement of constancy and change, especially in the growth and development of common law. Yet this only underlines that doctrinal research can scarcely be quarantined from broader theoretical and institutional questions. If doctrinal research is a distinctive part of legal research, that distinctiveness permeates every other aspect of legal research for which the identification, analysis and evaluation of legal doctrine is a basis, starting point, platform or underpinning (Council of Australian Law Deans, 2005; Hutchinson & Duncan, 2012; Baker, 2014).

Hutchinson and Duncan (2012) also explained that the doctrinal methodology lies at the basis of the common law and is the core legal research method. It should also be noted that no effective metric measures exist of the citation for law.

According to McKerchar (2008), doctrinal research provides a systematic exposition of the rules governing a particular legal category, analysing the relationship between rules and explaining the areas of difficulty. This type of research is based purely on documentary data. Comparing doctrinal research to all other styles of research, one can identify that there are “actually fundamental epistemological differences between doctrinal analysis and all styles of scientific research” because doctrinal research findings is unaffected by the empirical world (Chynoweth, 2008). Comparing the legal systems of different countries, namely comparative law, falls in the doctrinal research methodology.

2.3.3 Practical research

As already mentioned in paragraph 2.3 and paragraph 2.3.2, conducting the unstructured interviews to obtain comments from experts on the legal framework will be one of the final steps in determining whether the research problem has been solved. The other two steps are the application to a corruption case and reference to Gordhan’s (2016) ten-point solution for tax evasion in South Africa.

An unstructured interviewing method will be used where no predetermined interview protocol or survey exists and where the interview questions emerge and evolve as the interview proceeds (Trochim & Donnelly, 2008). Unstructured interviews will be conducted with experts in the field of forensic accounting with a taxation background to get feedback on the feasibility of the framework. The individuals to be interviewed will consist of no more than seven experts. The reason for such a small group lies in the quality of their knowledge and experience instead of the quantity of people being interviewed. The rationale behind using unstructured interviews also lies in the questions being open-ended and it having little control over the interviewees’ answers. Unstructured interviews also have the benefit of opportunity for new ways of developing the said framework. Another benefit is focusing the interviewees’ attention on a specific topic to test the researcher’s preliminary understanding, and therefore will this legal framework be feasible (Cohen & Crabtree, 2006).

The analysis of the consultations and comments from the experts will be done by hand via thematic networks (paragraph 7.8). A thematic network “is a widely used procedure in qualitative analysis” (Attride-Stirling, 2001:388). Table 2-3 illustrates the steps taken to do a

thematic network analysis. This will be applied to the comments received from the experts and applied in detail in paragraph 7.8 (Chapter 7).

Table 2-3: Executing a thematic networks analysis

Analysis stage A: Reduction or breakdown of text
Step 1: Code material a. Devise a coding framework b. Dissect text into text segments using the coding framework
Step 2: Identify themes a. Abstract themes from coded text segments b. Refine themes
Step 3: Construct thematic networks a. Arrange themes b. Select basic themes c. Rearrange into organising themes d. Deduce global themes e. Illustrate as thematic networks f. Verify and refine thematic networks
Analysis stage B: Exploration of text
Step 4: Describe and explore thematic networks a. Describe the network b. Explore the network
Step 5: Summarise thematic networks
Analysis stage C: Integration of exploration
Step 6: Interpret patterns

(Source: Attride-Stirling, 2001: 391)

The researcher is aware of the available data analysis software of which the top ten currently are ATLAS.ti, QDA Miner, Tams Anazyler, Dedoose, NVivo, MaxQDA, HyperRESEARCH, Aquad, Mendeley and Transana (EvaSys). Because these programs were developed to analyse large quantities of data, it cannot be utilised by the researcher due to the small sample size of the experts. The comments received from the experts cover a wide variety of aspects – there is no mutual element between the four of them (Appendix A to B).

Another motive for not utilising ATLAS.ti is according to Woodall (2016), by coding and developing themes by hand the researcher becomes more and more familiar with the data, making it a “tactile experience”. As already mentioned in paragraph 2.3, up to seven experts

will be consulted to test this framework. Only four of the seven gave feedback, and from the feedback received, no common component could be established (see, Chapter 7).

Programs such as ATLAS.ti were developed to assist researchers who must analyse a large body of textual, graphical, audio and video data (What is ATLAS.ti?). It is mainly used by researchers to analyse qualitative data. Dedoose and NVivo were developed for researchers utilising both qualitative and mixed-methods to analyse their data (EvaSys). Although these programs can be of great assistance, it appears that for a very small sample with no common aspect identified, these programs will not be feasible.

2.4 CONCLUSION

This chapter focused on the research design and research methodology that will be followed in order to answer the research questions as stated in paragraph 1.4.2 (Chapter 1). There are three steps in the research process:

1. Basic research, which is the literature review;
2. The applied research, being the development of a conceptual framework; and
3. The practical research, which is conducting the interviews and applying the conceptual framework to a corruption case.

The main paradigm that will be used is qualitative, where the legal interpretive method consisting of doctrinal research forms one of the legal interpretive methods. One reason to follow this specific method lies in the data that will be analysed, which will consist of already existing documentary data. After the analysis, an inductive approach will be followed in order to develop the legal framework. After the practical research has been done, a synthesis of the findings will be conducted to determine whether the research objective has been reached. This synthesis will consist of testing the framework as follows:

1. Consultations with experts (paragraph 7.8);
2. Applying it to a South African corruption case (paragraph 7.7.2); and
3. Discussing Gordhan's (2016) ten-point solution for South Africa's tax evasion problem to support the argument for a legal framework (paragraph 7.9).

Secondary objective number 1.4.2.1 (Chapter 1) was to determine the appropriate research methodology to achieve the main objective (paragraph 1.4.1, Chapter 1) which included a review of methodology, and the justification thereof has been reached.

The next chapter will aim to establish the link between money laundering and tax evasion. It has already been published in the International Business and Economic Research Journal during 2013 and was presented at a conference in Munich in June 2014.

CHAPTER 3: RESEARCH ARTICLE ONE

Title: Establishing the link between money laundering and tax evasion

Important remarks

The reader is requested to take note of the following:

1. This article was ***published*** in the following peer-reviewed DHeT accredited academic journal as follows:
Storm, A. 2013. Establishing the link between money laundering and tax evasion.
International Business & Economics Research Journal. Vol.12(11): 1437-1449.
(IBSS/ISSN 1535-0754)
2. The article has been written in line with the journal's submission guidelines for articles which are included in Appendix E.
3. The first page of the article as published in the journal appears in Appendix F.

Title

Establishing the link between money laundering and tax evasion

Abstract

No clear link has yet been made between tax evasion and money laundering although many (or all) of the professionals in this field may have already assumed the relation. The aim of the research that was conducted for the purposes of this article was to explore whether there is a clear link between tax evasion and money laundering. This was done by studying the relevant literature available on both subjects. The findings, that there is a clear link between these two offences, were confirmed not only by analyzing definitions but also, and most importantly, by an overview of court cases and the judgments made in these court cases. In theory, the results have proven that one cannot look at money laundering without considering tax evasion as well but tax evasion does not necessarily constitute the act of money laundering. This is of value to the individuals and organizations working in the field of taxation and organized crime, because when prosecuting a perpetrator on a count of money laundering, by adding the charge of tax evasion to his or her charge sheet, it can strengthen the case against the accused.

Keywords

Tax Evasion; Money Laundering

3.1 INTRODUCTION

Money makes the world go round and this may be the reason why it is widely believed that tax evasion and money laundering will be the demise of all economies. Recently, Greece made headlines in the news because of their failing economy (Dugdale, 2012:1). Following that news break, *The Guardian* reported that “Greece is not alone – tax evasion is a British problem too”. A few months after Greece made headlines, Crumley (2012) reported that Italy, Spain and Portugal were only delaying their banishment in the undesirable zone. Tavares (2013:2) also wrote of the euro crisis where “several countries have been submitted to international bailout programs” in his thematic paper on money laundering.

Money laundering, the name given to the act of filtering ill-gotten gains or ‘dirty’ money, is said to have originated in the time when the Mafia owned laundromats in the United States of America (USA). Laundromats were legal businesses used to legitimise huge sums of cash from extortion, gambling, bootleg liquor and prostitution. This was done by blending the illegal gains with the earnings received by these laundromats. Something that made these laundromats to be of an indubitable advantage was the fact that they were cash businesses. Although Al Capone was convicted for tax evasion, his conviction may have been the trigger for lifting the money laundering business off the ground (Dadoo, 2012; Krishna, 2008; Al Capone: Biography, 2012).

It is said that Al Capone did not trust banks – he never had a bank account and conducted all of his financial transactions in cash. The Internal Revenue Service (IRS) could not even find a single transaction where Al Capone purchased securities. Although the authorities knew that Al Capone was behind most of the murders that took place during his reign as mafia boss, no evidence could ever be found or brought against Capone. Therefore, the federal government made a two-pronged attack plan: collecting evidence of Prohibition Law violations and collecting evidence of Capone not paying taxes on his income. The IRS found an incriminating ledger and some witnesses who were able to testify against Capone on tax evasion. He was charged with 22 counts of tax evasion and 5 000 violations of the Prohibition Law. Later Capone was found guilty on only five of the tax evasion charges (Krishna, 2008; Al Capone: Biography, 2012). After the conviction and incarceration of Capone, Meyer Lansky, who was also called ‘The Mob’s Accountant’, was afraid that the same fate would befall him, and therefore he started searching for a better way to launder money and evade taxes. Lansky discovered the benefits of numbered Swiss Bank accounts – starting the culture of money laundering – and went on to become one of the most influential money launderers of all time (Krishna, 2008; Dadoo, 2012).

The United Nations Office on Drugs and Crime (UNODC) estimated that the amount of money laundered globally in one year is two to five percent of global gross domestic product (GDP), or \$800 billion to \$2 trillion in current US dollars, and commented: "Though the margin between those figures is huge, even the lower estimate underlines the seriousness of the problem governments have pledged to address" ("Money-Laundering and Globalization, 2012").

Although research has been done on both tax evasion and money laundering, no research could be found that pertinently established the link between tax evasion and money laundering. The research conducted established how these two offences relate to each other. The focus of the research was on an international and local level, because tax evasion and money laundering are a world-wide problem. The findings of the research are discussed in the following paragraphs.

3.2 TAX EVASION AND MONEY LAUNDERING

As previously mentioned, no literature was found that significantly established the link between tax evasion and money laundering. The scope and the focus of the literature review were mainly on applicable legislation, court cases, legal definitions, scholarly articles, reports published by applicable organisations and news headlines. To establish whether or not there is a link between tax evasion and money laundering, the literature was analysed and the findings are discussed in the paragraphs that follow. The court cases were also studied and the relation between the court cases and literature are subsequently discussed and the relevant conclusions are indicated.

From the paragraph above, it is clear that the aim of the research was to determine whether a link exists between tax evasion and money laundering. As a prelude to the arguments around establishing the link, there will be a brief discussion in the following section about some of the literature found on the link between tax evasion and money laundering.

3.2.1 The link between tax evasion and money laundering

Tavares's (2013) thematic paper focused on the extent and context of the crime, the societal aspects of the fight against money laundering and tax evasion, tax evasion as a multi-faceted challenge, tax havens, and interlinking policy fields in relation to tax havens. Unger (2009) only touched on the "precarious relation" between these two offences before it took a mathematical approach to measure money laundering and tax evasion. Although these two authors took two different approaches in their articles, the focus of this article will be on literature and not on mathematical approaches as the latter is perceived to be a subject for later research.

Spreutels and Grijseels (2010) discussed tax evasion as a predicate offence for money laundering and looked at, among other things, the different legislation and the consequences that resulted from the Organization for Economic Co-operation and Development (OECD) Council Meeting held in 1998. Oliver (2002), who looked at tax evasion as a predicate offence to money laundering, considered international taxation and the hotchpotch of laws in Britain that addressed the issues of money laundering and tax evasion. Taking the above-mentioned articles into consideration, it can be stated that the perception of tax evasion being linked to money laundering has existed for some time now. Later in the article, the court cases studied will show that where the accused were charged with money laundering, the charge of tax evasion was also added to the list of offences.

There are two important concepts that feature in this article, namely tax evasion and money laundering. The first discussion will be on tax evasion and what it entails and then the discussion on money laundering will follow.

3.3 TAX EVASION

As previously stated, the concept of tax evasion is a key element in this article. Various definitions of tax evasion are available. A few of these definitions will be given to establish common ground for the rest of this section. Tax evasion is an illegal practice where there is an intentional avoidance to pay the true tax liability. The perpetrators who are caught evading taxes are generally subject to criminal charges and substantial penalties (Stiglingh, 2013, p. 773). For criminal charges to be brought against someone, a crime had to be committed. In order to link tax evasion to the term 'crime', the definition of crime together with the analysis of the descriptions of tax evasion and crime will be discussed in the following paragraph.

A crime is an illegal or unlawful activity, a violation of a law in which there is injury to the public or a member of the public and a term of jail or prison and/or fine as possible penalties exist (Snyman, 2012). The definitions of tax evasion and crime indicate that both are illegal practices. Another characteristic that can be derived from the definitions of tax evasion and crime is that by evading taxes there is 'injury' to the public. This 'injury' occurs when there is not enough money to be set aside by the government to improve hospitals, police force efficiency and education, to name but a few government responsibilities. Therefore, the public becomes the party who suffers at the hands of the tax evaders. Now that tax evasion has been defined and analysed together with the definition of crime, a few activities that can be classified as tax evasion can be discussed.

These activities include the refusal to file a tax return, deducting more than one actually spent,

claiming credits one is not entitled to and lying on one's tax return (Marquit, 2012, par 5; AUSTRAC). For the purpose of this research, the most important activities of tax evasion were deemed to be the failure to report all of one's income, offshore bank accounts and/or foreign income. The reason for this statement is that failing to report all one's income, offshore bank accounts and/or foreign income can or possibly may constitute money laundering.

In identifying the most important activities of tax evasion with regard to possible money laundering practices, the proof that a link exists between these two offences is strengthened.

It has been stated that by evading taxes, there is 'injury' to the public. To demonstrate the degree of tax evasion, Tax Justice Network compiled a table in 2011. The names of six countries with the highest tax evasion cases, the total amount of the tax evaded and the percentage of the tax evasion with relation to the global gross domestic product were given (see Table 3-1: Tax evasion as a percentage).

Table 3-1: Tax evasion as a percentage

Country	US \$	% of gross domestic product
United States	337 349 000 000	8.6%
Bolivia	3 727 000 000	66.1%
Russia	221 023 000 000	43.8%
Italy	238 723 000 000	27.0%
Greece	30 791 000 000	27.5%
Ireland	9 922 000 000	15.8%

(Source: Tax Justice Network, 2011)

The above-mentioned figures prove the magnitude of tax evasion as well as the fact that tax evasion is an international problem, as emphasised by Dugdale (2012): "Tax evasion has been an endemic problem in the developing world for many years, but as more and more countries struggle to balance their budgets it has become an extremely prescient issue in the developed world as well." Murphy (2011) commented that "[tax evasion is] a crime against the people" after compiling a report for the British NGO Tax Justice Network on tax fraud in November 2011. Murphy further argued that tax evasion by wealthy individuals and/or corporations often shifts the burden of paying for public services or debt to the poorest

members of society (Foreign Policy, 2012 par. 2). To substantiate Murphy's statement, a list of international and local celebrities has been indicted and in some instances incarcerated for tax fraud was compiled. Some of these public figures are mentioned below.

1. The actor Wesley Snipes served a three-year jail sentence in America for tax evasion (Friedman, 2010). He was released from jail on 2 April 2013 and is currently under house arrest, which will end 19 July 2013 (Oldenburg, 2013).
2. The former prime minister of Italy, Mr Silvio Berlusconi, was convicted of tax fraud and sentenced to four years in prison (Blake & Pisa, 2012). However, Berlusconi appealed the court's decision and the court agreed to adjourn his appeal for one month (Reuter's, 2013). This appeal will continue on 20 April 2013.
3. In South Africa, the former ANC Youth League president, Julius Malema, faced charges of tax evasion and corruption (Bauer, 2012). He was found guilty on tax evasion charges and the South African Revenue Service calculated the tax owed by Malema to be R16.1 million.
4. Mr. Jacob Zuma faced 16 counts of fraud, corruption and tax evasion but the charges were dropped in 2009 just before he became president of the Republic of South Africa (Conway-Smith, 2012).
5. The French minister tasked with battling tax fraud, Mr. Jerome Cahuzac, resigned after allegations of tax fraud and money laundering (Samuel, 2013).

The list goes on and it seems as if the people who have to set the example are in fact the perpetrators. One may ask whether this is why tax crimes never attract much attention or muster substantial political will to counteract their occurrence.

Tax evasion, its magnitude as well as how it links to crime have been discussed in the previous paragraphs. The next step in the attempt to link tax evasion with money laundering is a discussion on money laundering itself.

3.4 MONEY LAUNDERING

As is the case with tax evasion, various definitions exist for money laundering. In order to bring money laundering into perspective and further strengthen the argument of the existence of a link with tax evasion, a few of these descriptions will be given before analysing this concept. Money laundering is "the activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which

constitutes an offence" (The Prevention of Organized Crime Act No 121 of 1998). "Money laundering is a criminal offence aimed at presenting wealth of illicit origin or the portion of wealth that has been illegally acquired or concealed from the purview of tax and other authorities, as legitimate, through the use of methods that obscure the identity of the ultimate beneficiary and the source of the ill-gotten profits" (Tavares 2013). Money laundering is "a complicated activity in which the source and the nature of the money are disguised in order to make the money look lawful and then become usable, transferable and negotiable" (Ping, 2010). From the definitions provided above, it appears as if money laundering is seen as any act or attempted act to disguise the source of the money or assets derived from criminal activity. Now that the term 'money laundering' has been clarified, the next step will be to analyse the various definitions of this term and compare them to the various explanations given in the previous paragraphs with regard to tax evasion.

The following commonalities were identified by comparing the definitions of tax evasion and money laundering: both are unlawful activities; both involve the violation of laws; the acts are deliberate in both tax evasion and money laundering; and both of these offences disguise or conceal the money received. It was necessary to analyse the definition of tax evasion in terms of a crime, because it has frequently been argued that the proceeds of tax evasion are different to the proceeds of conservative criminality. One of those arguments is that since the underlying conduct that generated the profit was legal, the non-payment of the subsequent tax on those profits could not be equated to the proceeds of criminal conduct. A counter-argument, however, is that although the underlying conduct is legal, the retention of money that should be paid over as tax is the actual criminal conduct (Oliver, 2002, p57). One can take Oliver's argument a step further and state that where tax evasion is involved, it does not automatically indicate money laundering. However, where money is being laundered, the chances of tax evasion being part of the equation are perceived to be 100%.

Another way of proving that a link exists between tax evasion and money laundering is to take a look at the reasons why criminals launder money. Some of the reasons are that they are trying to hide wealth; they want to evade taxes in order to increase their profits; they want to legalise the money and they want to avoid prosecution. An interesting point is that, according to the South African Income Tax Act No. 58 of 1962, an individual is obliged to pay taxes on his/her earnings irrespective of where the earnings come from. Therefore, illegal funds must be declared to the South African Revenue Services. However, this never happens because of the risk of being prosecuted for the offence of money laundering and/or other applicable offences.

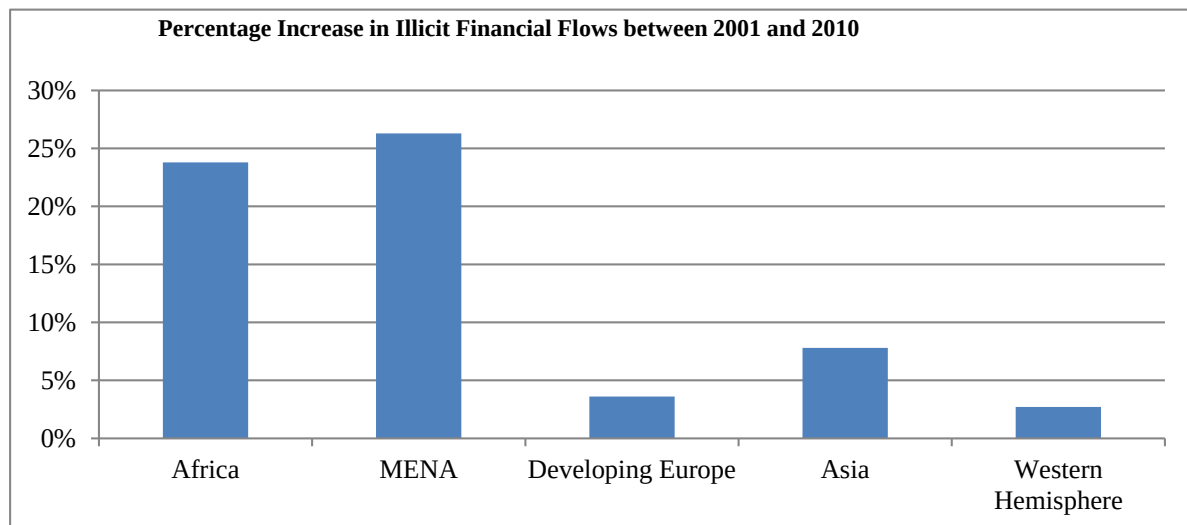
To further prove the link between money laundering and tax evasion, one can name a few of the consequences there are to laundering money. Firstly, money laundering undermines financial systems by expanding the segment of a country's economic activity that is derived from sources, legal or illegal, that fall outside of the country's rules and regulations regarding commerce. Secondly, it promotes crime because it enables criminals to use and deploy illegal funds effectively. Lastly, the most important consequence is that money laundering reduces revenue and control by diminishing government tax revenue and weakening government control over the economy, causing 'injury' to the public.

Since illicit financial flows are just one of the systems that involve the laundering of money from ill-gotten gains, the concept of illicit financial flows is discussed in the following section. This will not only explain one of the systems through which money is laundered, but it will also prove how illicit financial flows assist in the evasion of taxes.

3.4.1 The role of illicit financial flows in money laundering and tax evasion

Illicit financial flows are discussed in this section to explain one of the systems through which money is laundered and to prove how it assists in tax evasion. The cross-border movement of money that is illegally earned, transferred, or utilised, is referred to as the flow of illicit funds (Renner, 2012). This usually involves the transfer of money earned through illegal activities, for example criminal deeds (money laundering) and corruption, as well as efforts to hide wealth from a country's tax authorities. Deriving from this explanation of illicit financial flows, it can be stated that the offences of both money laundering and tax evasion are included in illicit financial flows. The question surrounding the magnitude of the flow of illicit funds was raised during the research illustrates the growth in the flow of illicit funds between 2001 and 2010 (Kar & De Freitas, 2012).

Figure 3-1: Primary findings of global financial integrity (2012)



(Source: Kar & De Freitas, 2012)

The results shown in Figure 3-1 prove the statement that the flow of illicit financial funds is problematic for some developing countries. Money laundering and tax evasion have already been included in the term 'illicit financial flows', and therefore this is yet another way of putting the problem of money laundering and tax evasion into perspective. To quantify this problem, the same primary findings in the Global Financial Integrity report of 2012 showed that developing countries lost US\$859 billion in illicit financial flows in 2010. In total, for the period 2001 to 2010, developing countries lost US\$5.86 trillion to illicit financial outflows. The question was raised to identify the countries with the highest measured cumulative illicit flows between 2001 and 2010 in order to bring the data provided in Table 3-2 into perspective. In Table 3-2, the top 10 countries are listed together with the total cumulative illicit financial flow (Kar & De Freitas, 2012).

Table 3-2: The top 10 countries with the highest illicit financial flows

Country	Cumulative illicit financial outflow
China	US\$2.74 trillion
Mexico	US\$476 billion
Malaysia	US\$285 billion
Saudi Arabia	US\$210 billion
Russia	US\$152 billion
Philippines	US\$138 billion
Nigeria	US\$129 billion
India	US\$123 billion
Indonesia	US\$109 billion
United Arab Emirates	US\$107 billion

(Kar & De Freitas, 2012)

The data provided in Table 3-2 correlates with the information shown in Figure 3-1. Most of the countries listed in Table 3-2 are in the Middle East and Northern Africa (MENA), Africa and the Western Hemisphere. South Africa was ranked in the 12th place with a cumulative illicit financial flow of US\$8.39 billion. That is US\$839 million each year that is lost to the South African government and that could have been used to improve South African infrastructure.

In the previous section, one of the methods of laundering money was discussed and quantified. The magnitude of illicit financial flows has been discussed and it was stated that illicit financial flows include the offences of evading taxes and laundering money. However, perpetrators seldom work alone and most of the time help is needed to move the money or to legitimise it. The role that banking institutions play in facilitating money laundering and tax evasion is discussed in the following section.

3.5 BANKING INSTITUTIONS: TAX EVASION AND MONEY LAUNDERING MADE EASY?

In the previous paragraph, it was stated that money launderers and tax evaders do not work alone. This claim is substantiated by the following:

Firstly, Detective Superintendent Des Bray of the Commercial and Electronic Crime Branch stated in an interview:

What is being increasingly identified is the infiltration of criminal identities into otherwise legitimate business interests. None of these people could get away with a lot of what they were doing if it wasn't for lawyers, accountants, financial advisors and the like, knowingly assisting them to launder and hide assets.

Secondly, since bank secrecy is being upheld by most or all of the banks, tax evasion (and even money laundering) is made easy because the strict bank secrecy rules prevent the exchange of information with the individual's country of residence. This makes it difficult for the domestic tax authorities to track capital income. Ping (2010) specifically refers to the use of banking institutions for money laundering purposes. It was found to be a popular route to follow, as it is convenient and quick to transfer funds across international borders. Since bank secrecy exists in almost every country, financial institutions are very vulnerable to money laundering (Ping, 2010). Bank secrecy enables criminals to cover up or conceal the nature and source of the illegally obtained proceeds, thereby evading taxes at the same time. A good example is that of three Zurich-based bankers who were charged with helping US taxpayers hide approximately \$1.2 billion from the Internal Revenue Service. These three bankers now face up to five years in prison because they allegedly helped more than 100 clients between 2005 and 2010 to hide assets (O'Toole, 2012).

The banking institutions that are involved are not necessarily institutions within the resident's country, as Owens (2007) points out:

Offshore tax evasion is not about small islands that do not impose income taxes: it is about all the countries [for example Liechtenstein], that lack transparency and that are not prepared to cooperate to counter tax abuse. These practices make it difficult for other countries [for example USA] to enforce their own tax laws.

Countries can no longer rely on their own sources of information to ensure compliance with their domestic tax laws. Prosperous individuals easily evade income taxes in their country by transferring capital to offshore jurisdictions. Even money launderers can now legitimise their

ill-gotten gains.

As mentioned previously, Owens used the term 'small islands', which implies that such countries are seen as tax havens, depending on the tax levied by those 'small islands'. This term leads to the following discussion on tax havens and offshore accounts.

3.6 TAX HAVENS AND/OR OFFSHORE ACCOUNTS

This discussion is aimed at shedding light on the internationalism of money laundering and tax evasion. The international press lumps together tax havens and offshore financial centres, focusing on their facilitation of money laundering, tax evasion and other financial crimes (Rider, 2009). The most common place to hide money or to launder money – in other words for purposes of tax evasion – is in an offshore account in a tax 'haven'. A haven can be described as being "autonomous or semi-autonomous jurisdictions offering a combination of lax legislation, low or zero taxation on income and capital of non-residents, secrecy facilities for banking or corporate ownership, and absence of effective information exchange with the authorities of third party countries" (Christensen, 2011).

According to the Organization for Economic Co-operation and Development, four factors are used to determine whether a jurisdiction is a tax haven. These four factors are the existence of no or nominal taxes, the lack of transparency, the prevention of the effective exchange of information for tax purposes, and an absence of a requirement that the activity must be substantial. The exchange of information mentioned here is between other governments on taxpayers benefiting from the no or nominal taxation. These four factors are substantiated in Christensen's (2011) definition of a tax haven. Tax havens have become major providers of operational bases used by financial professionals and their clients to take advantage of legislative gaps and laidback regulation for grand-scale corruption. They encourage and enable tax evasion as well as capital flight and they facilitate illicit financial flows that originate from the proceeds of corruption.

Another reason why offshore accounts are such popular destinations is that, just like most banks, they still argue or uphold client privacy when confronted with the violation of legislation. Even when faced with the new Foreign Account Tax Compliance Act adopted by the USA in March 2010, some of these tax havens do not want to co-operate (Fiamma & Kavaldjieva, 2012).

The provision of conditions of secrecy which is created through banking secrecy laws or *de facto* judicial arrangements and banking practices is the most defining characteristic of tax havens. This characteristic, which might be the biggest reason for launderers to use tax

havens, is also an effective barrier to investigators wanting to investigate Christensen's (2011) view that "in many cases the situation has deteriorated because the use of sophisticated offshore structures using secrecy jurisdictions has become very much more widespread in recent decades".

The Tax Justice Network is an organisation that strongly expresses its dislike in tax havens. They address the nature of tax havens as the corruption they entail and the magnitude of the problem. For instance, the estimated assets held by tax havens are \$11.5 trillion. This means that tax revenue of \$250 billion is lost each year ("Tax Havens Cause Poverty", 2010). To further illustrate this so-called 'devastation' that tax havens cause, the Tax Justice Network (2010) also issued the following statement:

"...activities that were booked through the tax haven". These provisions for secrecy also assist in the laundering of proceeds of criminal activity. (Christensen & Hampton, 1999b). The proceeds of crime and tax evasion are brought into commercial transactions using multi-jurisdictional structures. Lord Templeton, in the case of *AG for Hong Kong v. Reid (1994)*, stated: "[T]he court must prevented ill-gotten gains being whisked away to some Shangri-La which hides bribes and other corrupt moneys in numbered bank accounts." Because the concerns about tax havens made way for concerns about tax evasion, the G20 announced in 2009 that the "era of banking secrecy is over". The question remains, is it really over? However, this is a question that will require extensive research before it can be answered.

With reference to tax havens and how they assist in tax evasion and money laundering, the statement made by Dugdale (2012) that tax evasion is endemic to the developing world, echoes:

Countries that lose tax revenues become more dependent on foreign aid. Recent research has shown, for example, that sub-Saharan Africa is a net creditor to the rest of the world in the sense that external assets, measured by the stock of capital flight, exceed external liabilities, as measured by the stock of external debt. The difference is that while the assets are in private hands, the liabilities are the public debts of African governments and their people.

Figure 1-2, which shows the growth in illicit financial flows, also indicates that the highest increase was in Africa and the Middle East.

To illustrate the ignorance of some governments when it comes to fighting crime, the example of the Liechtenstein affair will be discussed next. In mid-February 2008, it emerged that LGT Bank, a prominent Liechtenstein bank, was under close scrutiny due to allegations of tax

evasion. It was later described as the “biggest complex of investigations ever initiated for tax evasion in the Federal Republic of Germany”. Liechtenstein is a tax haven with a mere 0.1% tax on offshore trusts. The way in which this investigation started is interesting. A former LGT employee stole a compact disc containing the names of high-profile suspects and offered it to the UK authorities in 2006. They turned it down. The German authorities, however, snapped it up for 4.2 million euros. Then the investigation began. It was later reported that the USA, Finland, Sweden and the UK were also investigating financial dealings linked to Liechtenstein (Matheza, 2008).

There have been other attempts to tackle illicit financial flows through tax havens, but those have been unproductive, mainly because international organisations charged with tackling illicit financial flows have taken a too narrow a definition of what money laundering really is (Christensen & Spencer, 2008, p. 13).

It is well known that corruption is damaging to the viable development of third world countries, but *how* tax havens contribute to the privation of these countries is less well known.

The section above demonstrated how tax havens assist perpetrators in tax evasion and money laundering. It also gave evidence of the challenges the world faces in its attempt to eradicate corruption. In the next section, relevant court cases and the judgements that were made are discussed.

3.7 INTERNATIONAL AND SOUTH AFRICAN COURT CASES

In the paragraphs to follow, some of the court cases found in the literature are discussed. This is the last stepping stone in establishing the link between tax evasion and money laundering. No court case could be found where the accused were convicted on counts of evading taxes as well as laundering money, but in all of the court cases mentioned in this discussion, the accused were charged with both tax evasion and money laundering.

3.7.1 International court cases

The first court case that will be discussed is that of the owner of the Fruitland Bar in the USA who was sentenced for tax evasion, illegal gambling and money laundering. The United States Department of Justice released a report on the Fruitland Bar owner case on 5 December 2012. Thomas Dale Overstreet (68) was sentenced to 46 months in prison followed by three years of supervised release on counts of income tax evasion, operating an illegal gambling business and conspiracy to commit money laundering (U.S. Department of Justice, 2012).

The second court case in this discussion is that of *United States v. Smith (2005) 424 F.3d 992 (9th Cir. 2005)*. The Ninth Circuit affirmed defendants' convictions for violating 26 U.S.C. §

7206(2), tax fraud; 18 U.S.C. § 1341, mail fraud; 18 U.S.C. § 1343, wire fraud; 18 U.S.C. §§ 1956, 1957, money laundering; and 18 U.S.C. § 371, conspiracy.

In the third court case, \$40 million in assets were restrained because of a tax evasion and money laundering scheme that was uncovered in Australia. As part of Project Wickenby, the Australian Federal Police charged a 67-year-old man with conspiring to dishonestly cause a loss to the Australian Tax Office to deal in the proceeds of crime to the value of \$63 million (Moor, 2012).

The second to last court case in this discussion is that of *Spies v U.S* 317 U.S 492 (1943). In this case, the Supreme Court observed: "... singly or in combination [in income tax crimes] were calculated [by Congress] to induce prompt and forthright fulfilment of every duty under the income tax law and to provide a penalty suitable to every degree of delinquency". IRC sec 7206(2) states that a person is guilty of a crime if he or she wilfully "aids or assists in or procures, counsels, or advises the preparation or presentation ... of a return, affidavit, claim or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or documents." Although this case does not refer to money laundering, but only to tax evasion, the observation of the court that needs to be highlighted for the purpose of this article is that a person is considered to be guilty of a crime.

The last court case in this discussion on international court cases is that of *Tinkoff v U.S* 86, F. 2d 868 (1936). In this case, an accountant was convicted of tax evasion because he or she prepared fraudulent returns for clients, bringing the attention back to the fact that (sometimes) the perpetrators are trying to make use of the services of lawyers, banking institutions and accountants to assist them in their crimes (and in some instances, succeed in doing so).

In the five court cases discussed in the paragraphs above, in (nearly) all cases where the accused was charged with money laundering, he or she was also charged with tax evasion. It appears as if the authorities had already accepted the link between tax evasion and money laundering when the charges were written up on the charge sheet.

3.7.2 Court cases in South Africa

In order to give a balanced viewpoint, the following examples are from South Africa. The first South African court case is that of the National Director of Public Prosecutions (NDPP) v Abrina 6822 Ltd and Others 2011(1) SACR 419 (KZP). This case raised a point about the proper interpretation of s 38 of the Prevention of Organised Crime Act No 121 of 1998 (the Act). The circumstances surrounding this case were that the JA & F Charnaud Trust conducted

farming operations on six properties in KwaZulu-Natal and two in the Free State. For business reasons, it was decided to put the farms on the market. A father and son wished to acquire the farms in a company called Abrina 6822 Limited. The shares in Abrina 6822 Ltd are owned by the Rosco Family Trust, of which Mr Roshen Sewpersad is a trustee and beneficiary. The Sewpersads faced difficulty in acquiring the farms in that they needed finance. The circumstances surrounding the obtaining of finance gave rise to this case.

Referring to the *Seevnarayan* case, it was held that “a restrictive interpretation should be given to the notion of property being derived, received or retained in connection with, or as a result of, unlawful activities”. That court relied on the fact that referring to the title (long or short) of the Act, it was directed at the combating of organised crime, money laundering and criminal gang activities. On that basis, it held that tax evasion could not be considered organised crime, and that “the Act was never intended to be applied in situations such as the present”. However, this basis was rejected by the court in the following ruling of Judge Wallis: “We cannot agree with this construction, which radically truncates the scope of the Act. It leaves out portions of the long title, as well as the ninth paragraph of the preamble. These show that the statute is designed to reach far beyond organised crime, money laundering and criminal gang activities. The Act clearly applies to cases of individual wrong-doing.” This judgement by Wallis was reaffirmed by the judgment in *NDPP v Van Staden and Others* (2011).

The second court case is the case between *NDPP v King* (2010). The respondent, Mr DC King, was indicted on 322 counts, including fraud, tax evasion and evasion of the exchange control regulations, as well as money laundering and racketeering. The counts relate, among others, to a failure to submit tax returns, fraudulent misrepresentations in his tax returns, and devising and implementing an allegedly fraudulent scheme to ‘externalise’ his assets to evade income tax and obligations under the regulations, involving amounts in excess of R1 billion. The main complainant was the South African Revenue Service. It apparently had a claim of some R3 billion against King flowing from some of the allegations.

Lastly – and probably the most famous court case of 2007 to 2009 – was that of *NDPP v Zuma* (2009). Mr Mokotedi Joseph Mpshe, the acting NDPP, decided on 27 December 2007 once again to indict Mr Jacob Zuma (the current president of South Africa). That decision was followed by an indictment of 87 pages with 18 main counts of racketeering, corruption, money laundering, tax evasion and fraud. Much was based on the same subject matter that was dealt with in the Shaik trial; however, according to the NDPP, the facts and circumstances differed substantially because the evidence against Mr Zuma had become more compelling and the legal impairments to charging him had been reduced.

In each of the above-mentioned South African court cases, it is clear that wherever there was a count of money laundering brought against the accused, tax evasion was also brought against them. Again, it seems that the authorities responsible for charging the perpetrators had, as in the international court cases, already accepted an existing link between tax evasion and money laundering because where there was a count of money laundering, a count of tax evasion was also brought against the accused.

The judgement that most clearly states the link between money laundering and tax evasion is the one made by Wallis J in *Abrina 6822 Ltd*. In short, he stated that the ninth paragraph of the preamble to the statute (of Prevention of Organised Crime Act) is designed to reach far beyond organised crime, money laundering and criminal gang activities. The Act also undoubtedly applies to cases of individual wrong-doing.

Although individual wrong-doing is a very broad term that can include a magnitude of activities, tax evasion can undoubtedly also be included as one, based on all the definitions that were analysed in the sections above.

3.8 CONCLUSION

The main aim of this research was to establish whether or not there is a link between tax evasion and money laundering. Relevant literature, legal definitions, court cases, reports published by relevant organisations, scholarly articles and news headlines were studied. Although all of the above-mentioned sources provided valuable information, the source that illustrated the answer to the research question the best, was that of the court case judgements.

The findings in the analysis of definitions on tax evasion and money laundering also proved the link between these two offences. However, for this fact to be validated, the judgement made by Judge Wallis in the South African court case of *Abrina 6822 Ltd* was found to be the most conclusive answer to the research question. He pronounced that the “ninth paragraph of the preamble to the statute (of Prevention of Organised Crime Act) is designed to reach far beyond organised crime, money laundering and criminal gang activities. The Act also undoubtedly applies to cases of individual wrong-doing”. As already mentioned in the last paragraph of the section on court cases, the term ‘individual wrong-doing’ is a very broad term, but in view of the analysis done on the explanation of tax evasion, the act of evading taxes can be added to the definition of ‘individual wrong-doing’.

The recommendation derived from the research is that legal authorities should consider investigating the act of evading taxes in addition to their policy of investigating money laundering. Although evidence from the court cases shows that the authorities may already

be doing this, it might just be more appropriate to add it officially to their existing policy.

The contribution of this research is the establishment of the link between the offence of money laundering and that of tax evasion. Although this statement can be substantiated by the evidence found in this research, it should still be taken into account that almost no literature could be found that had already connected money laundering to tax evasion. Furthermore, no court case could be found where the accused was found guilty of both tax evasion and money laundering.

Based on the outcomes of the research and information contained therein, the perception that money makes the world go round is a contentious statement when paired with crimes such as money laundering and tax evasion.

Secondary objective number 1.4.2.2 has been reached by establishing the link between money laundering and tax evasion. The next chapter will aim to identify and analyse legislation that is used in the fight against tax evasion.

3.9 REFERENCES

Al Capone. (2012). The Biography Channel website. Retrieved from:

<http://www.biography.com/people/al-capone-9237536>

Al Capone. (2013). The Spartacus Educational website. Retrieved from:

<http://spartacus.schoolnet.co.uk/USAcapone.htm>

Bauer, N. (2012). Hawks ready 'to arrest and charge' Malema. The Mail and Guardian.

Retrieved from: <http://mg.co.za/article/2012-09-02-hawks-ready-to-charge-malema>

Blake, M & Pisa, N. (2012). Berlusconi sentenced to four years for tax fraud but will he EVER go to jail? Judge cuts sentence by three quarters with appeal far from over. Mail Online News. Retrieved from: <http://www.dailymail.co.uk/news/article-2223603/Silvio-Berlusconi-jailed-years-tax-fraud.html>

Christensen, J. (2011). The looting continues: tax havens and corruption. Critical Perspectives on International Business. Emerald Group Publishing Limited. Retrieved from: <http://www.emeraldinsight.com/1742-2043.htm>

Christensen, J. (2011). The looting continues: tax havens and corruption. Critical Perspectives on International Business. Emerald Group Publishing Limited. Retrieved from: <http://www.emeraldinsight.com/1742-2043.htm>

Christensen, J. & Hampton, M. (1999b). A legislature for hire: the capture of the state in Jersey's Offshore Finance Centre, in Hampton, M. and Abbott, J. (Eds), *Offshore Finance Centres and Tax Havens: The Rise of Global Capital*, Macmillan, Basingstoke, pp. 166-191.

Christensen, J. & Spencer, D. (2008). Comment: Stop this timidity in ending tax haven abuse. *Financial Times*, 5 March, p. 13.

Clark, J. Why was tax evasion the only thing pinned on Al Capone. How Stuff Works. Retrieved from: <http://history.howstuffworks.com/history-vs-myth/capone-tax-evasion.htm>

Conway-Smith, E. (2012). Jacob Zuma: Leaked KPMG report shows S. Africa president was a 'kept politician'. *The Telegraph*. Retrieved from: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/9730449/Jacob-Zuma-Leaked-KPMG-report-shows-S.Africa-president-was-a-kept-politician.html>

Crumley, B. (2012). It's official: Eurozone enters second recession in three years. *Time*. Retrieved from: <http://world.time.com/2012/11/15/its-official-eurozone-enters-second-recession-in-three-years.htm>

Dadoo, A. Money Laundering. *The Global Politician website*. Retrieved from <http://www.globalpolitician.com/print.asp?id=4153>

Definition of "Tax Evasion". Retrieved from: <http://www.investopedia.com/search/default.aspx?q=Tax%20Evasion>

Dugdale, N.W. (2012). Is reform possible at a time of political crisis? An assessment of Greece's efforts to combat tax evasion and shadow economy participation. *CDDRL Stanford*.

Friedman, E. (2010). Actor Wesley Snipes reports to Pennsylvania federal prison. ABC News. Retrieved from: <http://abcnews.go.com/Entertainment/wesley-snipes-report-federal-prison-year-sentence/story?id=12345648>

Fruitland Bar Owner Charged with Income Tax Evasion and Illegal Gambling. (2011). The United States Attorney's Office: District of Idaho. Retrieved from: <http://www.justice.gov/usao/id/news/2011/sept/overstreet09142011.html>

Income Tax Act No 58 of 1962.

Kar, D. & Freitas, S. (2012). Illicit financial flows from developing countries: 2001-2010. A December 2012 Report from Global Financial Integrity. Retrieved from: <http://iff.gfintegrity.org/iff2012/2012report.html>

Kleutgens, I., Sambur, J.A., Grieser, S.G. & Gunther, S. (2011). FATCA: Tax risks for US investments. Mayer Brown. Retrieved from: <http://www.mayerbrown.com/publications/fatca--tax-risks-for-us-investments-09-23-2011/>

Krishna, V. (2008). The legacy of Al Capone in tax law. *The Lawyers' Weekly*. Retrieved from <http://www.lawyersweekley.ca>

Legal definition of “Illegal activity”. Retrieved from: <http://legal-dictionary.thefreedictionary.com/illegal+activity>

Marquit, M. (2012). What is tax evasion and how it could affect you? Retrieved from <http://freefrombroke.com>

Matheza, T. (2008). Tax fraud and money laundering today: Lessons from Germany? Retrieved from: [http:// www.icpat.org/.../36-tax-fraud-and-money-laundering-today-lessons...](http://www.icpat.org/.../36-tax-fraud-and-money-laundering-today-lessons...)

Money Laundering. Retrieved from: http://www.austrac.gov.au/elearning/pdf/intro_amlctf_money_laundering.pdf

Money-Laundering and Globalisation. (2012). The United Nations Office on Drugs and Crime. Retrieved from: <http://www.unodc.org/unodc/en/money-laundering/globalization.html>

Murphy, R. (2011). Tax evasion costs the world \$3.1 trillion a year – more than 5% of world GDP. Tax Research UK. Retrieved from: <http://www.taxresearch.org.uk/Blog/2011/11/25/tax-evasion-costs-the-world-3-1-trillion-a-year-more-than-5-of-world-gdp/>

National Director of Public Prosecution v Abrina 6822 Ltd & others.

National Director of Public Prosecutions v King 2010(2) SACR 146.

National Director of Public Prosecutions v Zuma 2009(1).

O’Leary, N. (2013). Berlusconi trial hearing postponed due to Italian president vote. Reuters. Retrieved from: <http://www.reuters.com/article/2013/04/18/us-italy-berlusconi-idUSBRE93H0HZ20130418>

Oldenburg, A. (2013). Report: Wesley Snipes finishes prison time for tax evasion. Retrieved from: <http://www.azcentral.com/thingsstodo/celebrities/free/20130405wesley-snipes-finishes-prison-tax-evasion.html>

Oliver, K.E. (2002). International taxation: Tax evasion as a predicate offence to money laundering. International Legal Practitioner. Retrieved from <http://heinonlinebackup.com>

O’Toole, J. (2012). Swiss bankers charged in \$1.2 billion tax fraud. CNNMoney.com. Retrieved from: http://money.cnn.com/2012/01/03/news/swiss_bankers_charged/index.htm

Owens, J.P. (2007). Offshore tax evasion. The Globalist. Retrieved from: <http://www.theglobalist.com/printStoryId.aspx?StoryId=6212>

Prevention of Organized Crime Act No 122 of 1998.

Ping, H. (2010). A typological study on money laundering. *Journal of Money Laundering Control*. Emerald Group Publishing Limited. Retrieved from: <http://dx.doi.org/10.1108/13685201011010182>

Renner, P. (2012). What are Illicit Financial Flows? KYC Map. Retrieved from: <http://kycmap.com/illicit-financial-flows-what-are-illicit-financial-flows-iffs/>

Samuel, H. (2013). French budget minister resigns after tax fraud allegations. *The Telegraph*. Retrieved from: <http://www.telegraph.co.uk> › Finance › Economics

Snyman, C.R. (2006). *Strafreg*. Durban: LexisNexis Butterworths.

Spies v U.S 317 U.S 492 497 (1943). Retrieved from: <http://www.heinonline.org>

Spreutels, J. & Grijseels, C. (2000). Interaction between money laundering and tax evasion. Belgian and international measures in the fight against money laundering. Retrieved from: http://www.ctif-cfi.be/website/images/EN/pub_art/s9T10088.pdf

Stinglingh, M. & Koekemoer A.D. *et al.* (2013). *Silke: South African Income Tax*. Durban: LexisNexis.

Tavares, R. (2013). Relationship between money laundering, tax evasion and tax havens. Special Committee on Organized Crime, Corruption and Money Laundering (CRIM) 2012-2013. Retrieved from: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/crim/dv/tavares_ml_/tavares_ml_en.pdf

Tax Havens Cause Poverty. The Tax Justice Network. Retrieved from: http://www.taxjustice.net/cms/front_content.php?idcatart=2&lang=1

The Cost of Tax Abuse: A briefing paper on the cost of tax evasion worldwide. (2011). The Tax Justice Network. Retrieved from: <http://www.taxresearch.org.uk/Blog/2011/11/25/tax-evasion-costs-the-world-3-1-trillion-a-year-more-than-5-of-world-gdp/>

Tinkoff v U.S 86, F.2d 868. Retrieved from: <http://www.heinonline.org>

Unger, B. (2009). The Gravity Model for Measuring Money Laundering and Tax Evasion. Paper prepared for the Workshop on Macroeconomic and Policy Implication of Underground Economy and Tax Evasion, February 5-6, 2009 at Bocconi University, Milan Italy. Retrieved from: <http://www2.econ.uu.nl/.../unger/.../Unger%20for%20BUSATOconference.doc>

United States v Smith 424F 3d 992. Retrieved from: <http://www.heinonline.org>.

CHAPTER 4: RESEARCH ARTICLE TWO

Title: Towards Improving South Africa's Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the United States of America, United Kingdom, Australia and South Africa

The reader is requested to take note of the following:

1. This article was **published** in the following peer-reviewed DHeT accredited academic journal as follows:

Storm, A. & Coetzee, K. 2018. Towards Improving South Africa's Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the United States of America, United Kingdom, Australia and South Africa. *Journal of Applied Business Research*. Vol.34(1): 151-167. (IBSS&Scopus/ISSN 0892-7626)

2. The article has been written in line with the journal's submission guidelines for articles which are included in Appendix G.
3. The first page of the article as published in the journal appears in Appendix H.
4. The article was researched and written by the first author (Storm, A) as the PhD candidate and primary author, while the second author (Coetzee, K) fulfilled a reviewer function thereto as the PhD project's promoter.

Title

Towards Improving South Africa's Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the United States of America, United Kingdom, Australia and South Africa

Abstract

The fight against tax evasion in South Africa is an ongoing battle. The tools available to law enforcement boil down to legislation and the enforcement thereof. The purpose of the study that was done for this article was to compare available legislation of the United States of America, United Kingdom, Australia and South Africa to determine if South Africa's legislation can be improved. This was done by studying the relevant literature and legislation of all four countries. The findings, that there are some clauses that can be added to improve South Africa's legislation, were confirmed by analyzing the legislation available. In theory, the results have proven that although South Africa's legislation can compete with that of the United States of America, United Kingdom and Australia, there is some improvement that can be considered. This is of value to the individuals and professionals who deal with the offence of tax evasion on a daily basis, ensuring that the reviewed legislation will deter perpetrators or that the charges brought against them in the court of law will ensure harsher punishment.

Keywords

Tax Evasion; Comparison of legislation on tax evasion; South Africa

4.1 INTRODUCTION

“The income tax created more criminals than any other act of government” (Monti).

These criminals do not only refer to tax evaders, but also to those resisting taxes. According to an encyclopaedia article, tax resistance can be defined as “the refusal to pay tax because of opposition to the government that is imposing the tax or to government policy as opposition to the concept of taxation itself. Tax resistance is a form of direct action and if in violation of the tax regulations, a form of civil disobedience.” There are two techniques of tax resistance methods, namely legal and illegal. An example of a legal technique is tax avoidance, while tax evasion is an example of one of the illegal techniques (The Free Dictionary).

Kirchler (2007) stated that it has been suggested that tax resistance might have played a huge role in the collapse of several empires, including the Egyptian, Roman, Spanish and Aztec (p.182). The American Revolution, Great Revolt and the French Revolution were some of the historic events where tax uprisings began. Tax resistance can be traced back as far as the first century B.C. (Kirchler, 2007; Burg, 2004).

In the first century B.C. in Judea, the Jewish extremists fought the poll tax established by the Roman Empire (Gross; 2008). According to Swartley (1980) in Luke 23:2, Jesus was accused of promoting tax resistance. The period before 1500 B.C. includes historic events such as the Great Revolt, the first Jewish-Roman War; the “Norman anti-tax riots (1348 – 1351)” and “Wat Tyler’s Rebellion (1381)”. Recent tax resistance events in the 21st century include the Tax protest and strike in Romania in 2010; the Nepalese doctor who planned to engage in tax resistance in 2010 to protest the government and the organized resistance to paying the Mafia in 2006 (Burg, 2004).

Little could be found on the history of tax evasion. “Unfortunately, there is no such history...no systematic investigation of tax evasion through the centuries” (As Maine Goes). According to Foreman (2015), tax evasion has been around since ancient Mesopotamia where Sumerians were known to have worked the black market. Evidence of this was found on a nineteenth century B.C. Sumerian cuneiform tablet.

Emperor Nero of the Roman Empire ruled from 54 to 68 B.C. His predecessors utilised an excessive growth, minimal tax policy during their reign. Nero, however, abandoned these policies and instead created a downward spiral of inflationary measures together with extreme taxation. Due to this, widespread tax evasion forced the economically strained Rome to practise expropriation by the third century. Emperors such as Diocletian, Constantine and Julian tried to restore fiscal order, but Rome collapsed in 476 A.D., by which time great

landowners outside the city had already turned against its authority and stopped paying taxes (Adams, 2001; Foreman, 2015). From the information gathered, it appears that the collapse of the Roman Empire might have been caused by tax evasion (Adams, 2001).

Another example of an empire that fell due to tax evasion is that of the Ming Dynasty in China. According to O'Brien (2007), the Ming Dynasty was plagued by tax evasion to such an extent that it experienced financial difficulties. After trying to reform its tax system, which failed, the Dynasty ended in 1644.

The Qing Dynasty took over and had zero tolerance for tax evaders. The Qing Dynasty knew that tax evasion was responsible for government deficits during the Ming Dynasty's reign. Government's revenues rebounded due to the Qing Dynasty's harsh punishment for taxpayers evading or who abused the exemption system. By the late 1660s, the taxpayers were too beaten and cowed to risk not paying their taxes (O'Brien, 2007; Thackeray & Finding, 2012; Foreman, 2015).

From the above information, it is apparent that tax evasion and harsh taxes were a major cause of the downfall of empires and dynasties throughout history. This is a very important fact (lesson) that governments need to consider in their pursuit of eradicating tax evasion. It is important to learn from the mistakes that previous governments made, and to be continually searching for a better solution. The problem of tax evasion as well as the importance thereof will be discussed in the following paragraphs to emphasise the need of the research done for this article.

4.2 TAX EVASION: THE PROBLEM

4.2.1 The importance of taxes

The Encyclopaedia Britannica defines the purpose of taxation as primarily to raise revenue for government expenditure. A very good explanation of what taxation entails is that "[taxation] is a system of compulsory contributions levied by government on persons, corporations, and properties, primarily as a source of revenue for government's expenses and other public purposes. It is for this reason, in order for the government to provide the public with the necessary goods and services; revenue must be raised through taxation" (Inland Revenue Division of Dominica). The Organization for Economic and Co-Operation Development (OECD) defines tax as a compulsory unrequited payment to the government (Messere & Owens). According to Venter, Stiglingh, Koekemoer, Oosthuizen, Cass *et al.* (2015), the purpose of taxes is to enable government to provide services to the people. These four definitions clarify the purpose of taxation as raising revenue for government expenditure.

The definition of tax evasion on which the rest of the article will be based has been established as the non-payment or underpayment of taxes. This presents a problem to any country's government that has to render services to its citizens, but that does not have adequate funds (from tax collection) to do so. In the next part of this article, the international problem of tax evasion will be discussed.

4.2.2 An international problem

In 2011, the Tax Justice Network (TJN) compiled a paper that used the following approach in order to calculate the best estimates on the cost of tax evasion:

1. A country's estimate was done on the absolute size of the shadow economy based upon published estimates of that country's gross domestic product (GDP) as well as recently-reported data on the size of shadow economies published by the World Bank. The shadow economy can be defined as "the part of an economy involving goods and services which are paid for in cash, and therefore not declared for tax" or illicit economic activity existing alongside a country's official economy (BusinessDictionary.Com; Oxford Dictionaries). The TJN's definition of the economic activity in a country's shadow economy refers to tax evasion.
2. Next, they made an estimation of taxes lost as a consequence of the shadow economy by calculating the relation of average tax to GDP as well as the relation of average tax to the shadow economy of that country under review. To put the data into perspective, they compared the lost taxes to healthcare spending. For purposes of this paragraph, however, there will be no referral to healthcare spending.

The TJN's research estimated total tax evasion of more than US\$3.1 trillion or 5.1% of the global GDP that can be attributed to the shadow economy (The Tax Justice Network (TJN), 2011).

The following is an abstract from a table compiled by the TJN showing the top ten countries' loss to tax evasion.

Table 4-1: Top 10 countries' loss to tax evasion: 2011

Country	GDP	Tax burden overall	Magnitude of shadow economy	Magnitude of shadow economy	Tax lost attributed to shadow economy
	US\$ 'm	%	US\$ 'm	%	US\$ 'm
United States	14 582 400	26.9	1 254 086	8.6	337 349
Brazil	2 087 890	34.4	814 277	39.0	280 111
Italy	2 051 412	43.1	553 881	27.0	238 723
Russia	1 479 819	34.1	648 161	43.8	221 023
Germany	3 309 669	40.6	529 547	16.0	214 996
France	2 560 002	44.6	384 000	15.0	171 264
Japan	5 497 813	28.3	604 759	11.0	171 147
China	5 878 629	18.0	746 586	12.7	134 385
United Kingdom	2 246 079	38.9	280 760	12.5	109 216
Spain	1 407 405	33.9	316 666	22.5	107 350

(Source: Tax Justice Network, 2011)

The information in Table 4-1 was obtained from the World Bank for the GDP, OECD and the Central Intelligence Agency. Australia ranked 19th out of 145 countries with total tax lost as a result of the shadow economy of US\$39 879 million and South Africa ranked 26th with a total tax loss of US\$25 518 million.

In order to estimate the tax lost as a result of the shadow economy for 2013, the same approach as that of the TJN was followed. The information used was obtained from the following websites:

1. World Bank for the GDP
2. Schneider's (2013) "Size and Development of the Shadow Economies of Portugal and 35 other OECD Countries from 2003 to 2013: Some New Facts", for the size of the shadow economy in percentage.
3. The Central Intelligence Agency's The World Fact Book for the percentage of the tax burden overall.

The size of the shadow economy (US\$) and the tax lost as a result of the shadow economy were calculated. Unfortunately, not all figures for South Africa were available.

Table 4-2: Estimated tax evasion: 2013

Country	World Bank: GDP	Tax burden overall (according to the CIA)	Magnitude of shadow economy	Schneider: Magnitude of shadow economy	Tax lost attributed to shadow economy
	US\$ 'm	%	US\$ 'm	%	US\$ 'm
United States	16 770 000	17.0	1 106 820	6.6	188 159
United Kingdom	2 678 000	41.1	259 766	9.7	106 764
Australia	1 560 000	33.2	146 640	9.4	48 684
South Africa	350 000	25.0	Not available	Not available	-

(Source: author)

4.3 THE TAX JUSTICE NETWORK

The Tax Justice Network Limited is a British registered company and a worldwide system established "in 2003 dedicated to high-level research, analysis and advocacy in the field of international tax as well as the international aspects of financial regulation". Among others, the Tax Justice Network explains the harmful impacts of tax evasion and "has been one of the most important players bringing tax justice to global attention since 2003". One of the Tax Justice Network's fundamental objectives is "to create understanding and to promote reform in poorer countries". Since the Tax Justice Network's establishment in 2003, they have grown

globally to include allies such as Australia, the United States of America and Africa (The Tax Justice Network).

The Global Alliance for Tax Justice seceded in 2013 from the Tax Justice Network and is a movement of civil society organisations and activists “united in campaigning for greater transparency, democratic oversight and redistribution of wealth in national and global tax systems.” The reason for their beginning is universal tax avoidance and tax evasion, which are twisting economies and depriving people of the public services needed. This universal tax avoidance and tax evasion are caused by wealthy people, banks and multinational corporations who deliberately pay less and less tax on their profits, causing losses to ordinary individuals in terms of wealth flowing from society to a handful of particular individuals (Global Alliance for Tax Justice).

According to the Global Alliance for Tax Justice, there is a massive necessity for honest tax proceeds to help alter the increase in disparity, to fight impoverishment and to plough money into infrastructures. Their vision is to “create a world where fair and progressive tax policies support people to share in local and global prosperity” and to have access to the public services and community-based defences. Included in its goals are the following:

1. To end secrecy and create more public accountability for companies;
2. To develop or create or assist in the development of international tax rules that are fair for all countries;
3. To bring about progressive, transparent and sufficiently resourced tax systems;
4. To realise public investment in services and sustainable development.

They want to achieve this “by exposing the negative impact of tax injustices on ordinary people, taking transformative actions and campaigning for solutions to end tax injustices” and by “building a global movement to increase awareness and solidarity around tax justice issues” (Global Alliance for Tax Justice).

The Tax Justice Network created and is still active in exposing offshore tax evasion and tax avoidance, forcing governments to develop plans to combat this. With the help of the Global Alliance for Tax Justice, which focuses primarily on fair tax revenues and improving the lives of all, this might make a difference in the fight against tax evasion on a global scale.

4.4 THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Unlike the Tax Justice Network and Global Alliance for Tax Justice, the objective of the OECD is to assist governments to nurture wealth and fight poverty through economic growth and financial stability.

The organisation was created in 1960 by 18 European countries, the United States and Canada, dedicated to global development. Membership of the OECD has since grown to include 34 countries across the globe. These countries include Australia, the United States and the United Kingdom. Although Africa (or South Africa) is not a member of the OECD, the OECD indicates that they are working together with Africa (Organization for Economic Co-operation and Development).

The “Global Forum on Transparency and Exchange of Information for Tax Purposes” on automatic trade of data was supported in 2014 by all OECD and G20 countries. The ‘Global Forum’ is the largest global network for international collaboration with regard to tax and the trade of financial data. The Standard for Automatic Exchange of Financial Account Information in Tax Matters provides for the exchange of all financial information on an annual basis, automatically. The Global Forum also encouraged emergent nations to participate in the convergence of the automatic trade of data. According to the OECD’s newsroom, governments of African countries decided to introduce an “African Initiative” to raise attentiveness of the advantages of transparency in Africa. The fact that so many jurisdictions agreed to automatically exchange information led to the OECD Secretary-General Angel Gurría’s statement that there is tangible growth in the convergence of the G20 objective of successfully combating tax evasion. He further stated that “the world is quickly becoming a smaller place for tax cheats, and we are determined to ensure that developing countries also reap the benefits of greater financial sector transparency” (Organization for Economic and Co-operation Development, 2014).

4.5 THE AVAILABLE LEGISLATION ON TAX EVASION IN THE UNITED STATES OF AMERICA, THE UNITED KINGDOM, AUSTRALIA AND SOUTH AFRICA

The United States is the one country in the world that has taken the threat of organised crime seriously after the unfortunate events of 11 September 2001. The prevention of money laundering has been put very near the top of the US administration’s agenda (Lilley, 2012). The United States is considered to be a first-world country and is a leader in most fields, and

therefore it is selected as one of the countries to be analysed in order to answer the research questions.

Australia was chosen to be analysed due to their vigorous attempts (and successes) to control and measure money laundering (Lilley, 2012).

The United Kingdom was selected due to its rich history with South Africa, being a large international financial centre (Banker's Academy) and according to the Corruption Perceptions Index for 2017, the United Kingdom scored 82 out of 100 and it ranks eighth out of 180 countries. From all four countries chosen, the United Kingdom ranks the highest, with Australia 13th out of 180, the United States at 16th out of 180 and South Africa at 71st out of 180 (Corruption Perceptions Index, 2017). This means that from all four countries, the United Kingdom is the 'cleanest' when it comes to corruption.

South Africa is number 71 on a list of 180 countries, and there are daily reports in newspapers of corruption, and the Financial Action Task Force states on its website that "Corruption and money laundering are intrinsically linked" (Corruption).

4.5.1 The United States of America

The Internal Revenue Service (IRS) is the United States of America's tax organisation and administers the Internal Revenue Code enacted by Congress (About IRS). The history of the IRS can be traced back to 1862 when President Lincoln and Congress passed an income tax law to settle war expenditures. In 1872, the income tax was repealed only to be revived again in 1894 by Congress, but in 1895 the Supreme Court ruled it unconstitutional.

In 1913, the 16th Amendment was ratified, which resulted in Congress having the authority to enact an income tax. In the 1950s, the agency's name was changed from 'The Bureau of Internal Revenue' to the 'Internal Revenue Services' (Brief History of IRS).

Tax investigations can be divided into two divisions within the IRS: civil fraud or criminal fraud. They have two departments that deal with these investigations. The department that investigates civil fraud is called the Civil Division, and the other department, which investigates criminal fraud is called the Criminal Investigation Division (Odom: 2015; IRS: Criminal Investigation at a glance). Sometimes, the Criminal Division works with the Federal Bureau of Investigation (FBI) to investigate potential tax evasion.

In Title 26 of the Internal Revenue Code, chapter 75 deals with crimes, other offences and forfeitures, which are written up under section 7201 to section 7217. Section 7201 deals with "Attempt to evade or defeat tax". Section 7201 states: "Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in

addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100 000 (\$500 000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution” (The Internal Revenue Code). This is also called the tax evasion statute (Odom, 2015). The definition of a felony is a major crime with a minimum penalty of one year in prison (Your Dictionary).

Another code under which a person or a business can be criminally prosecuted is Title 18 of the “United States Code”. Title 18 deals specifically with “crimes and criminal procedure”. Under Part 1 of Chapter 19 of Title 18, section 371 deals with plots to commit offences or to deceive the United States. This section states: “If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to affect the object of the conspiracy, each shall be fined under this title or imprisoned not more than 5 years, or both” (United States Code: Title 18).

The Internal Revenue Code (Title 26 USC) and Title 18 of the United States Code contain several illegal fines relevant to tax cases; however, according to Odom (2015), “almost all criminal tax investigations and prosecutions concern five statutes, four felonies and one misdemeanour” (Odom, 2015). A summary of these five statutes will be provided.

1. 26 USC 7201: “Attempt to evade or defeat tax”.

This section of the “Internal Revenue Code” has already been mentioned earlier. According to the Supreme Court, section 7201 contains two types of evasion, namely “the wilful attempt to evade or defeat the assessment of tax” and “the wilful attempt to evade or defeat the payment of tax”. This was established in a court case: Sansone v, US, 380US 343, 354 (1965).

The elements of the offence can be broken down as:

- a. an effort to avoid tax or the payment thereof; and
- b. wilfulness.

Wilfulness is defined as the “voluntary, intentional violation of a known legal duty” (US v. Pomponio, 429 US 10, 12 (1976)).

2. 26 USC 7206(1): “Fraud and False Statement”.

According to this section, it is a crime for a person to sign a tax return knowing that it is false or that there is a material misstatement in this return. 26 USC 7206(2): “Assisting in the preparation of a false return”.

In “US v Williams, 644 F. 2d 696, 701 (8th Cir. 1981)”, the court described this section as the “aiding and abetting” section of the Internal Revenue Code. Most often, the tax preparers are the targets under this section of the law.

3. 26 USC 7203: “Failure to file, supply information or pay tax”.

Four distinct offences can be identified under this statute, namely “failure to pay an estimated tax or tax; failure to file a return; failure to keep records and failure to supply information”.

4. 18 USC 371: “Conspiracy to defraud the United States”.

Because the Internal Revenue Code does not include a statute that deals with conspiracy, government indicts tax-related plots under 18 USC 371. According to this statute, there are two categories of plots, namely “a conspiracy to commit any federal offense and a conspiracy to defraud the United States” (also called the Klein conspiracy) (Odom, 2015).

The following tax statistics were published in 2016 on the website of the IRS (SOI – Tax Stats):

Table 4-3: Internal Revenue Service: Tax statistics

Year	Investigations completed	Referrals for prosecution	Indictments and information	% indictments and information	Convictions	% convictions
2014	4 606	3 478	3 272	94	3 110	89
2013	5 557	4 364	3 865	89	3 311	76
2012	4 937	3 701	3 390	92	2 634	71
2011	4 697	3 410	2 998	88	2 350	69
2010	3 415	3 034	2 645	87	2 184	72

(Source: Internal Revenue Service, 2016)

Indictments and information refer to accusations of criminal charges. Indictments are accusations made by a Federal prosecutor and issued by a Federal grand jury, while information is accusations made by a Federal prosecutor that do not require a grand jury.

The percentages of indictments and information were calculated using the following formula:

$$Y1 = (A1 \div B) \times 100$$

Where Y1 = %

A1 = total indictments and information for a specific year

B = referrals for prosecutions for that specific year

The percentage of convictions was calculated using a similar formula:

$$Y2 = (A2 \div B) \times 100$$

Where Y2 = %

A2 = total convictions for a specific year

B = referrals for prosecutions for that specific year

The average successful indictment and information rate over a five-year period was 90%, while the average successful conviction rate over the same five-year period was 75%.

Another piece of legislation that was developed in the fight against tax evasion was the Foreign Account Tax Compliance Act. The Foreign Account Tax Compliance Act (FATCA) was passed as law during March 2010 and entered into effect on 1 January 2013 (IRS: Foreign Account Tax Compliance Act; CITCO). The purpose of this legislation “is to target tax non-compliance by United States taxpayers with foreign accounts”; the objective is the reporting of foreign financial assets (IRS: Foreign Account Tax Compliance Act). According to CITCO (2011), FATCA will require foreign financial institutions to enter into an agreement with the IRS under which the foreign financial institution is obligated to report directly to the IRS certain information about financial accounts and investments held by US individuals or by foreign entities in which a US individual holds an ownership interest. If institutions fail to comply, FATCA requires a withholding tax of 30% on certain income and gross proceed payments made to them (BlackRock, 2011). There is no mention of any criminal or civil prosecution for a non-compliant institution.

4.5.2 The United Kingdom

Her Majesty’s Revenue and Customs (HMRC) and the National Crime Agency (NCA) investigate alleged tax fraud. The Taxes Management Act of 1970, which deals with fraudulent evasion of income tax, is only one of many acts in the UK that deals with tax fraud. Other examples are the Value-Added Tax Act 1994 and the Customs and Excise Management Act

1979 (HM Revenue and Customs). As a limitation of scope, only income tax will be focused on.

The primary tax scheme felonies in the UK are the “fraudulent evasion of income tax, fraudulent evasion of VAT, cheating the public revenue, providing false documents or information to HMRC and fraudulent evasion of excise duty on imported goods or smuggling goods”. The popular tax felonies are created by statute, except for the offence of cheating the public revenue. This is a common law offence and is dealt with under the Theft Act 1968 (Tax evasion offences).

Section 106A of the Taxes Management Act 1970 states:

1. “A person commits an offence if that person is knowingly concerned in the fraudulent evasion of income tax by that or any other person.
2. A person guilty of an offence under this section is liable
 - a. on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding statutory minimum, or both, or
 - b. on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
3. In the application of subsection (2)(a) -
 - a. In England and Wales in relation to offences committed before the commencement of section 282(3) of the Criminal Justice Act 2003; and
 - b. In Northern Ireland, for “12 months”.
4. This section does not apply to things done or omitted before 1st January 2001” (The Taxes Management Act 1970)

The definition of ‘knowingly concerned’ is that a person had knowledge of the fraud and was involved in the fraud. The behaviour must also be of a deceitful nature. This dishonesty is measured by the ethics of an ordinary individual where a perpetrator comprehended that his behaviour was deceitful (Tax evasion offences).

As already mentioned in section 106A of the Taxes Management Act 1970, the “maximum sentence on conviction is imprisonment not exceeding seven years or a fine, or both. On summary conviction the maximum penalty is six months’ imprisonment or a fine not exceeding £5 000”. From 12 March 2015, there is no upper limit to the fine that the magistrates can impose for offences committed in England and Wales (Ministry of Justice, 2015).

Offences can be divided into three categories according to the British criminal justice system. These categories are: summary, either way or indictable. A summary offence is dealt with only

in the magistrate's court, because these offences are usually minor offences (Duhaime's Law Dictionary), for example assault (Criminal Justice Act 1988, s39). The either way offence is the more serious offence, for example theft (Theft Act 1968: s1). An indictable offence is the most serious crime, for example murder (Law Teacher).

In the case of "Attorney General's References No. 86 and 87 of 1999", the provoking features of tax (and excise) evasion for condemning purposes were recognised. It included:

1. "The sophisticated nature of the fraud;
2. The exploitation of a scheme;
3. The breach of trust;
4. The fraudulent obtaining of money pursuant to the scheme coupled with suppression of profits;
5. The amount of loss to the Revenue;
6. The personal benefit; and
7. The concealment of the fraudulent nature of the claims at audit".

In the Thornhill [1980] court case, it was stated that: "Defrauding the Inland Revenue is a serious offence because it means defrauding the vast body of honest taxpayers." The court further stated that an immediate verdict of incarceration may be the consequence of acknowledging guilt or by being found guilty. In another case, Alibhai [1992], the perpetrator was sentenced to seven years in prison after the court found it to be appropriate, while in the case of Azziz [1996], a sentence of four and a half years was handed down during judgement. These judgments are an illustration of section 106A of the Taxes Management Act, 1970 (Prosecuting Tax Evasion, 2013).

The responsibility of the Crown Prosecution Service (CPS) is to indict tax-based fraud; however, the HMRC's policy deals with fraud by utilising the Civil Investigation of Fraud (CIF) measures, because it tends to cost less than criminal trials do. Criminal prosecutions are usually set aside for the utmost severe cases. Examples of the circumstances where a criminal prosecution may be initiated are written in the policy of the HMRC. These examples include the following:

1. "In cases of organized crime gangs attacking the tax system;
2. Where materially false statements are provided in the course of a civil investigation;
3. Where deliberate concealment, deception, conspiracy or corruption is suspected".

The following statistics with regard to tax fraud prosecutions were published by HM Revenue and Customs (2014):

Table 4-4: United Kingdom: Tax statistics

Year	Prosecutions	% rise in prosecutions	Convictions	% convictions
2010/11	420	-	336	80%
2011/12	545	29.7%	413	76%
2012/13	770	41.2%	540	70%
2013/14	915	18.8%	716	78%

(Source: HM Revenue and Customs, 2014)

There has been a rise in the total prosecutions since 2010 of 117.85% and 113.09% rise in the total convictions on tax evasion. The collective total of 2 700 years of custodial sentences were handed down from April 2010 up until March 2014 (HMRC fast facts: 2014). The HMRC's target for 2014/2015 was set at 1 165 prosecutions. It is unclear whether they have reached their target, as no information is yet available (HMIC, 2013).

4.5.3 Australia

The Australian Taxation Office (ATO) is the main agency of the Australian Government for collecting revenue. They also work with other government agencies to combat tax evasion. The ATO refers to tax crimes, which include the act of tax evasion. Their definition of a tax crime is "the abuse of tax and superannuation systems through intentional and dishonest behaviour with the aim of obtaining financial benefit" (Tax Crime Explained). A superannuation system can be explained as the monthly payment made to someone who is retired from work (Thesaurus). According to the ATO, convictions can take place as follows:

1. Serious tax crimes: Prosecution by the Commonwealth Director of Public Prosecutions. The criminal convictions are recorded and, in addition to this, the court can enforce "security bonds, community service orders, fines, additional penalties and prison sentences".
2. Summary offences: Prosecuted by the ATO under the Tax Administration Act 1953. If it is decided not to follow through with prosecution, administrative fines for failing to meet tax responsibilities can be enforced (The Australian Tax Office).

Part three, division three of the Tax Administration Act contains all sections with regard to the prosecution of tax offences. Section 8ZA, which specifically deals with the prosecution of tax offences, states:

- (1) A taxation offence that is punishable by imprisonment for a period of 12 months is, when committed by a natural person, an indictable offence.
- (2) A taxation offence that is punishable by imprisonment for a period not exceeding 12 months is, when committed by a natural person, punishable on summary conviction.
- (3) A prescribed tax offence, when committed by a natural person is punishable on summary offence.
- (4) A taxation offence, when committed by a corporation is punishable on summary conviction.
- (5) In spite of anything in the preceding provisions of this section, if:
 - (a) a person is convicted of two or more offences against section 8T (incorrectly keeping records with intention of deceiving or misleading) or 8U (Falsifying or concealing identity with intention of deceiving or misleading) or both, before the same court at the same sitting; and
 - (b) assuming that the person had only been convicted of one of those offences, that offence would have been punishable on summary conviction;

All those offences are punishable on summary convictions.

- (6) A reference in subsection (5) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the Crimes Act 1914 in relation to the person in respect of the offence.
- (7) A reference in subsection (5) to an offence against section 8T or 8U includes a reference to an offence against section 11.1 of the Criminal Code that relates to an offence against section 8T or 8U, as the case may be (Tax Administration Act 1953).

The Taxation Administration Act refers to the application of the Criminal Code in section 2A. According to this section, Chapter 2 of the Criminal Code Act (1995) sets out the general principles of criminal responsibility and applies to all offences against the Taxation Administration Act (Commonwealth Consolidated Acts).

However, the main offences used to prosecute tax evasion are found in sections 134.1(1), 134.2(2) and 135.4(3) of the Criminal Code 1995. These sections being:

1. 134.1(1): Dishonestly obtaining Commonwealth property;
2. 134.2(1): Obtain financial advantage by deception;
3. 135.4(3): Dishonestly causing a loss to the Commonwealth.

The penalty for the offences against the above-mentioned sections of the Criminal Code is ten years' imprisonment. The prosecution of tax fraud is done by the Commonwealth Director of Public Prosecutions (CDPP), which was referred to them by the Serious Non-compliance area of the Australian Tax Office, the Australian Federal Police and the Australian Crime Commission (Tax Fraud).

The Australian Tax Office tax crime prosecution's results is reflected in Table 4-5.

Table 4-5: Australia: Serious tax crime offences (tax crime prosecution results)

Year	Cases	Convictions	% convictions of total cases	Custodial sentences	Reparation orders (\$m)	Court fines (\$)
2014 /15	37	33	89	30	9.94	4,600
2013/14	45	34	76	26	3.36	3,800
2012/13	52	52	100	38	3.50	26,000
2011/12	39	39	100	37	4.80	10,500
2010/11	62	60	97	53	17.00	7,500

(Source: Australian Tax Office)

Over a five-year period, the Commonwealth Director of Public Prosecutions had an average successful conviction rate of 92.40% for serious tax crimes.

Table 4-6: Australia: Summary prosecutions (tax crime prosecution results)

Year	Cases	Convictions	% of total Cases	Dismissals and withdrawals	Fines (\$m)
2014-2015	1 614	1 540	95	74	9.59
2013-2014	1 773	1 540	87	233	13.02
2012-2013	1 944	1 691	87	253	7.38
2011-2012	2 146	1 961	91	185	7.41
2010-2011	1 747	1 518	87	229	7.51

(Source: Australian Tax Office)

Over a five-year period, the ATO had an average successful conviction rate of 89.40%.

4.5.4 South Africa

Baragwanath J stated in *Miller v CIR* and *McDougall v CIR* that in the end, avoidance and evasion are to be decided by the Commissioner, the Tax Review Authority and ultimately the court (Kumarasingam, 2010). The South African Revenue Service (SARS) is the tax collecting authority in South Africa, which was established as an autonomous agency under the South African Revenue Service Act 34 of 1997 (the SARS Act).

Their main responsibilities are:

1. To collect and administer all national taxes, duties and levies;
2. To collect revenue that may be imposed under any other legislation as agreed on between SARS and a state entity entitled to the revenue;
3. To provide a customs service that facilitates trade, maximises revenue collection and protects South Africa's borders from illegal importation and exportation of goods; and
4. To advise the Minister of Finance on all revenue matters.

This SARS Act mandates SARS to collect all revenues that are due; to ensure maximum compliance with relevant legislation; and to provide a customs service that will maximise revenue, facilitate trade and protect ports of entry against smuggling and other illegal trade (Taxation in South Africa, 2014/2015).

The South African Revenue Service does not define tax evasion, but their website explains what this autonomous body sees as tax crime. The examples mentioned are the following:

1. People do not declare income in order to not pay the tax on that income.
2. People lie about their expenses to reduce the tax they pay. For example, they may lie about their business mileage, business expenses or even medical contributions.
3. People simply do not submit a tax return to SARS or fail to truthfully respond to our questions.
4. Employers sometimes deduct tax from employees and never pay it over to SARS.
5. Businesses sometimes charge VAT and never pay it over to SARS (What is tax crime?)

Comparing the above-mentioned examples to the definition of tax evasion, it is clear that it corresponds with the definition and it is therefore safe to say that the term 'tax crimes' also includes the act of tax evasion.

The South African Revenue Service works together with other government agencies when enforcing tax laws. SARS not only enforces tax laws, but also plays a role in administering other laws not related to tax, but that are vital to protect the South African economy against money laundering and corruption. They are active participants in the Multi-Agency Working Group and the Anti-Corruption Task Team charged with combating corruption in government. Laws such as the Financial Intelligence Centre Act (38 of 2001), the Prevention of Organized Crime Act (121 of 1998) and the Prevention and Treatment of Drug Abuse Act also lead SARS to join forces with the South African Police Department and the Financial Intelligence Centre (SARS and the Criminal Justice System).

The primary legislation administered by SARS includes, among others, the Income Tax Act No. 58 of 1962 as well as the Tax Administration Act No. 28 of 2011. The Income Tax Act (58 of 1962) contains the impermissible tax avoidance arrangements in section 80A to 80L. Since tax avoidance is defined as arranging one's tax affairs in a legal manner to reduce income to pay minimal tax or no tax at all, these sections will not be discussed.

The Tax Administration Act (2011), however, contains sections 234 and 235, which levy penalties where non-compliance with tax acts and tax evasion have occurred. Section 234 deals with criminal offences related to non-compliance with tax acts, while section 235 deals with tax evasion and obtaining undue refunds by means of fraud or theft. For purposes of this article, only section 235 will be discussed due to its direct link to this chapter's subject.

Section 235 states that:

- (1) A person who with intent to evade or to assist another person to evade tax or to obtain an undue refund under a tax Act –*
- (a) makes or causes or allows to be made any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true;*
 - (b) gives a false answer, whether orally or in writing to a request for information under this Act;*
 - (c) prepares, maintains or authorizes the preparation or maintenance of false books of account or other records or falsifies or authorizes the falsification of books or account or other records;*
 - (d) makes use of, or authorizes the use of, fraud or contrivance; or*
 - (e) makes any false statement for the purposes of obtaining any refund of or exemption from tax,*

Is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding five years. According to subsection (3) of section 235, a high-ranking SARS executive can inform the “South African Police Department” or the “National Prosecuting Authority”. (Tax Administration Act No 28 of 2011).

The Prevention of Organized Crime Act (121 of 1998) deals, in Chapter 3, with offences related to proceeds of unlawful activities. The definition of unlawful activities, according to the Prevention of Organised Crime Act (121 of 1998), is “any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere...” This definition is broad enough to include the act of tax evasion, because tax evasion is the contravention of the Tax Administration Act 2011.

In section 5 of Chapter 3, POCA (121 of 1998) refers to assisting another to benefit from proceeds of unlawful activities, which reads as follows:

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby-

- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or*

(b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way, shall be guilty of an offence.

Section 8 of Chapter 3 states that “any person found guilty of an offence as contemplated in section four, five or six shall be liable to a fine not exceeding R100 million or imprisonment of a period not exceeding 30 years” (Prevention of Organized Crime Act, 1998).

There are many information sites available about the crime rates and the convictions thereof for South Africa. Unfortunately, statistical information on the prosecution and conviction rates of tax evasion or tax crimes in South Africa could not be found.

Here is a summary of statistical data that were found on the topic:

SARS declared in June 2015 that it achieved a 92% conviction rate in tax and customs fraud cases for the 2015 financial year. There were 256 individuals and entities involved with a further 30 cases approved for criminal prosecution. The results of these convictions were an effective 555 years’ imprisonment, 258 months of correctional services, 2 480 hours of community services and fines totalling R9 600 000 (SARS, 2015).

4.5.5 Summary

An analysis of the available legislation on the evasion of taxes in the United States of America, the United Kingdom, Australia and South Africa has been done in order to identify key points that could be considered for incorporation in the South African legislation. It was established in all four countries that the tax revenue bodies work with law enforcement to combat tax evasion. It was also established that all four countries regard the act of tax evasion as a serious unlawful act. However, it appears that the United States of America and Australia are the only countries (within this context) that view tax evasion as a crime against its government. The following table is a summary of the legislation involved in all four countries, the components of ‘tax evasion’ and the penalties involved.

Table 4-7: Summary of legislation

	USA	UK	Australia	SA
Acts involved	Internal Revenue Code; United States Code; FATCA.	Taxes Management Act 1970; Theft Act 1968.	Tax Administration Act 1953; Criminal Code Act (1995).	Income Tax Act 1962; Prevention of Organized Crime Act; Tax Administration Act.
Components of tax evasion or tax crime	Wilful attempt to evade or defeat	Knowingly concerned; fraudulent evasion	ATO refers to tax crimes, which include tax evasion. Components: abuse of tax systems, intentional, dishonest behaviour, aim to obtain financial benefit.	Intentional, dishonest behaviour.

	USA	UK	Australia	SA
Penalties	An amount not exceeding \$100 000, or A prison sentence not exceeding five years, Or both. Together with paying the expenses of prosecution	Depends on type of verdict. Summary conviction: not more than 12 months in prison, or a fine, or both. The fine does not exceed £5 000. From 12/03/2015 no upper limit for England or Wales. When convicted on prosecution: Imprisonment of not more than seven years, or a penalty, or both.	Depends on type of verdict. Serious tax crimes: criminal prosecutions are recorded. "Security bonds, community service orders, fines, additional penalties and prison sentences" could be imposed by court. Summary offences: administrative penalties.	Depends on type of conviction. TAA refers to a penalty or imprisonment not exceeding five years. POCA refers to penalties not higher than R100 million or incarceration of not more than 30 years.

(Source: Author)

4.6 KEY POINTS TO CONSIDER FOR SOUTH AFRICAN LEGISLATION

From the summary made in Table 4-7, it is evident that all four countries have the same understanding when it comes to the act of tax evasion. The levels of how serious it is taken by these countries' authorities are unclear. The Australian Tax Office states very clearly that *"We take all forms of tax crime seriously"* (Tax Crimes Explained). The fact that Australia and the United States of America view tax evasion as a crime against its government, as well as their high conviction rates, also indicates how serious they are about combating tax evasion.

The key points for South Africa to consider are:

1. Adopting the "crimes against the state" in the Tax Administration Act or in the Prevention of Organized Crime Act.
2. Implementing a more vigorous attitude towards prosecuting tax evaders. This may lead to appointing additional investigators and prosecutors in the South African Revenue Service or the National Prosecuting Authority of South Africa with the

necessary knowledge and skills to achieve a successful conviction in terms of tax evasion or tax fraud.

3. Flowing from point b) above, increasing the appointment requirements for new employees at the South African Revenue Service. Depending on the department where the appointment will be made, a minimum of a Bachelor's degree from an accredited tertiary institution applicable to the job description.
4. An intern specialist programme to keep all employees up to date.
5. For the employees working in the investigation's department: special training in forensic accountancy and forensic techniques to increase their ability to detect and deter.

4.7 CONCLUSION

The main aim of this research was to identify and analyse applicable legislation of the United States, the United Kingdom, Australia and South Africa towards improving South Africa's legislation used to combat tax evasion. Appropriate literature, legal definitions, applicable legislation, reports published by applicable organisations and scholarly articles were studied. The solution to the research question can best be described through the analysis of the legislation of all four countries.

The findings in the analysis of the legislation lead to the identification of five key points in total. One key point can be considered by South African legislature for inclusion in the Prevention of Organized Crime Act or the Tax Administration Act. Four of these key points can be laid before the Commissioner of the South African Revenue Service for consideration. However, for these key points to be validated, one must refer back to Title 18 of the United States Code 371 as well as section 135.4(3) of Australia's Criminal Code 1995, where both express that it is a crime against the State.

The recommendation derived from the research is that South African legislature should consider adding "...crime against the Republic..." in the Prevention of Organized Crime Act or in the Tax Administration Act together with suitable penalties.

The contribution of this research is towards improving South Africa's legislation used to combat tax evasion. The key points identified can be corroborated by the proof found in this study. However, should the legislature add these key points to one of the Acts mentioned above, the extent and success thereof in terms of prosecutions will only be measurable in a minimum of five years' time.

Secondary objective number 1.4.2.3 (Chapter 1) was achieved through the identification and

analyses of legislation used in the fight against tax evasion. By reaching the said objective, research question number 1 was also partially answered (tax evasion). The next chapter aims to answer the other part of research question number 1 (money laundering).

4.8 REFERENCES

About IRS. Retrieved from: <https://www.irs.gov/uac/about-irs>

Adams, C. (2001). *For good and evil: The impact of taxes on the course of civilization*.

Madison Books. Retrieved from:

https://books.google.co.za/books?id=YKMhQYfkJ5UC&pg=PA75&lpg=PA75&dq=history+of+tax+evasion+rome&source=bl&ots=OI2J_5M5cS&sig=6v5rC-4jWrvrQcTqW7TfgRKL9NA&hl=en&sa=X&ved=0ahUKEwj42u2X7rrLAhXGnBoKHVuXD6EQ6AEIQzAI#v=onepage&q=history%20of%20tax%20evasion%20rome&f=false

As Maine Goes: A history of tax evasion. (2012). Retrieved from:

<http://www.asmainegoes.com/content/history-of-tax-evasion>

Attorney General's References No.'s 86 and 87 of 1999 [2001] 1 Cr App R (s) 141.

Australia. (1953). *Tax Administration Act*. Common Wealth Consolidated Acts. Retrieved from: http://www.austlii.edu.au/au/legis/cth/consol_act/taa1953269/

Banker's Academy. *Anti-Money Laundering (AML) in United Kingdom*. Retrieved from:

<http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials/607-aml-uk-sp-635>

BlackRock. (2011). *Foreign Account Tax Compliance Act: Challenges for investors*.

Retrieved from: <http://www.blackrock.com/corporate/en-za/literature/whitepaper/viewpoint-foreign-account-tax-compliance-act-may-2011.pdf>

Brief History of IRS. Retrieved from: <https://www.irs.gov/uac/brief-history-of-irs>

Burg, D.F. (2004). *A world history of tax rebellions: An encyclopaedia of tax rebels, revolts, and riots from antiquity to the present*. Routledge.

Business Dictionary. *Definition of shadow economy*. Retrieved from:

<http://www.businessdictionary.com/definition/shadow-economy.html>

CITCO. *IRS regulations – The Foreign Account Tax Compliance Act (FATCA) and its impact on the US foreign withholding tax and reporting system*. Retrieved from:

<http://www.citco.com/sites/default/files/FATCA%20general%20facts%20-%20October%202011.pdf>

Corruption Perceptions Index. 2016. Retrieved from:

http://www.transparency.org/news/feature/corruption_perceptions_index_2016

Duhaime's Law Dictionary. *Definition of summary offence*. Retrieved from:

<http://www.duhaime.org/LegalDictionary/S/SummaryConvictionOffence.aspx>

Encyclopaedia Britannica. Retrieved from:

<http://global.britannica.com/EBchecked/topic/584578/taxation>

Foreman, A. (2015). Tax evasion's bite, from the ancient world to modern days. *The Wall Street Journal*. Retrieved from: <http://www.wsj.com/articles/tax-evasions-bite-from-the-ancient-world-to-modern-days-1443028212>

Global Alliance for Tax Justice. Retrieved from: <http://www.globaltaxjustice.org/about-us/>

Gross, D.M. (2008). *We won't pay: a tax resistance reader*. CreateSpace Independent Publishing Platform. Retrieved from:

[https://books.google.co.za/books?id=pmLdrKqBcmYC&pg=PR2&lpg=PR2&dq=David+M.+Gross,+ed.+\(2008\).+We+Won%E2%80%99t+Pay:+A+Tax+Resistance+Reader.&source=bl&ots=8A-j5eLDJZ&sig=XUZvfi-C8HR0YfZOYQacEer_ft8&hl=en&sa=X&ved=0ahUKEwjU2sLzndPTAhVEOMAKHU-4DjgQ6AEILTAD#v=onepage&q=David%20M.%20Gross%2C%20ed.%20\(2008\).%20We%20Won%E2%80%99t%20Pay%3A%20A%20Tax%20Resistance%20Reader.&f=false](https://books.google.co.za/books?id=pmLdrKqBcmYC&pg=PR2&lpg=PR2&dq=David+M.+Gross,+ed.+(2008).+We+Won%E2%80%99t+Pay:+A+Tax+Resistance+Reader.&source=bl&ots=8A-j5eLDJZ&sig=XUZvfi-C8HR0YfZOYQacEer_ft8&hl=en&sa=X&ved=0ahUKEwjU2sLzndPTAhVEOMAKHU-4DjgQ6AEILTAD#v=onepage&q=David%20M.%20Gross%2C%20ed.%20(2008).%20We%20Won%E2%80%99t%20Pay%3A%20A%20Tax%20Resistance%20Reader.&f=false)

HM Revenue & Customs: Taxation. A tax to beat Napoleon. Retrieved from:

www.hmrc.gov.uk/history/taxhis1.htm

HM Revenue & Customs: Taxation. Retrieved from:

<http://webarchive.nationalarchives.gov.uk/http://www.hmrc.gov.uk/history/taxhis6.htm>

HMIC. (2013). *Her Majesty's revenue and customs disclosure compliance with criminal investigations*. <https://www.justiceinspectorates.gov.uk/hmic/media/hmrccs-disclosure-compliance-with-criminal-investigations-20130610.pdf>

HM Revenue and Customs. (2014). *HMRC fast facts: Record revenues for the UK*. May 2014 Bulletin. Retrieved from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326579/HMRC-fast-facts.pdf

Inland Revenue Division of Dominica. *Taxation – It's nature and purpose*. Retrieved from:

http://ird.gov.dm/index.php?option=com_content&view=article&id=60:taxation-its-nature-and-purpose-&catid=25:present&Itemid=27

IRS: *Criminal investigation at-a-glance*. Retrieved from: <https://www.irs.gov/uac/criminal-investigation-ci-at-a-glance>

IRS: *Foreign Account Tax Compliance Act*. Retrieved from: <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>

Kirchler, E. (2007). *The economic psychology of tax behaviour*. Cambridge: Cambridge University Press.

Kumarasingam, S. (2010). *Tax avoidance and tax evasion explained and exemplified*. Retrieved from: <http://ezinearticles.com/?Tax-Avoidance-and-Tax-Evasion-Explained-and-Exemplified&id=3590555>

Law Teacher. *The classification of criminal offences*. <http://www.lawteacher.net/law-help/lpc/criminal-litigation/classification-criminal-offences.php>

Lilley, P. (2012). *Dirty Dealing: The untold truth about global money laundering, international crime and terrorism*. Great Britain. Henry Ling Limited.

Messere K.C and Owens, J.P. *International comparisons of tax Levels: Pitfalls and insights*. Retrieved from: <https://www.oecd.org/eco/outlook/35589632.pdf>

Ministry of Justice. (2015). *Unlimited fines for serious offences*. Retrieved from: <https://www.gov.uk/government/news/unlimited-fines-for-serious-offences>

Monti, M. Government quotes. Retrieved from: www.doublequotes.net/government_quotes/from-mario-monti

O'Brien, P. K. (2007). *Atlas of World History*. Oxford University Press. Retrieved from: https://books.google.co.za/books?id=ffZy5tDjaUkC&pg=PA139&lpg=PA139&dq=china+qing+dynasty+war+against+tax+evasion&source=bl&ots=pb45Ap-e5f&sig=2NNra7ecdD275qHPH3LKtoXBhgU&hl=en&sa=X&ved=0ahUKEwjn7rvM_LrLAhUFWBoKHSyfAsMQ6AEILDAE#v=onepage&q=china%20qing%20dynasty%20war%20against%20tax%20evasion&f=false

Odom, W. (2015). *Anatomy of a criminal tax case*. Retrieved from: <https://www.wendellodom.com/anatomy-of-a-criminal-tax-case-part-one/>

Organization for Economic Co-operation and Development. (2014). *Major new steps to boost international cooperation against tax evasion: Governments commit to implement automatic exchange of information beginning 2017*. Retrieved from: <http://www.oecd.org/newsroom/major-new-steps-to-boost-international-cooperation-against->

tax-evasion-governments-commit-to-implement-automatic-exchange-of-information-beginning-2017.htm

Oxford Dictionaries. Definition of shadow economy. Retrieved from: https://en.oxforddictionaries.com/definition/shadow_economy

Prosecuting Tax Evasion. (2013). The Crown Prosecution Service. Retrieved from: http://www.cps.gov.uk/news/articles/prosecuting_tax_evasion/

Sansone v, US. (1965). *United States Supreme Court: Sansone v. United States, (1965), No. 365*. Retrieved from: <http://caselaw.findlaw.com/us-supreme-court/380/343.html>

SARS and the Criminal Justice System. The South African Revenue Service. Retrieved from: <http://www.sars.gov.za/TargTaxCrime/WhatTaxCrime/Pages/SARS-and-the-Criminal-Justice-System.aspx>

SARS. (2015). *Huge successes in criminal convictions for tax crimes in 2014/15*. Retrieved from: <http://www.sars.gov.za/Media/MediaReleases/Pages/25%20May%202015%20-%20Huge%20successes%20in%20criminal%20convictions%20for%20tax%20crimes%20in%202014%20and%202015.aspx>

Schneider, F. (2013). *Size and development of the shadow economies of Portugal and 35 other OECD Countries from 2003 to 2013: Some New Facts*. Retrieved from: http://www.nipe.eeg.uminho.pt/Uploads/Seminarios%202013/2013-03-31_Schneider35otherOECD.pdf

SOI – Tax Stats. Internal Revenue Services. Retrieved from: <https://www.irs.gov/uac/SOI-Tax-Stats-Criminal-Investigation-Program-by-Status-or-Disposition-IRS-Data-Book-Table-18>

South Africa. (2011). *Tax Administration Act No 28 of 2011*. Retrieved from: <http://www.lexisnexis.co.za/pdf/download-Tax-Adminstration-Act.pdf>

Swartley, W. M. (1980). *The Christian and the Payment of Taxes Used for War*. Retrieved from: <http://peace.mennolink.org/articles/wartaxes.html>

Tax Administration Act, 1953. Common Wealth Consolidated Acts **see** Australia.

Tax Administration Act No 28 of 2011 **see** South Africa.

Tax Crimes Explained. The Australian tax office. Retrieved from: <https://www.ato.gov.au/general/the-fight-against-tax-crime/tax-crime-explained/>

Tax Crime Prosecution Results. The Australian tax office. Retrieved from:
<https://www.ato.gov.au/General/the-fight-against-tax-crime/news-and-results/tax-crime-prosecution-results/>

Tax Evasion Offences. Lexis PSL corporate crime. Retrieved from:
<https://www.lexisnexis.com/uk/lexispsl/corporatecrime/document/391421/55KB-9471-F188-N1BB-00000-00/Tax%20evasion%20offences%E2%80%94%20overview>

Tax Fraud. Commonwealth Director of Public Prosecutions. Retrieved from:
<http://www.cdpp.gov.au/crimes-we-prosecute/fraud/tax-fraud/>

Taxation in South Africa 2014/2015. Retrieved from:
<http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-Gen-G01%20-%20Taxation%20in%20South%20Africa%20-%20External%20Guide.pdf>

Taxation in South Africa 2014/2015. South African Revenue Service: Legal and Policy. Retrieved from: http://c.ymcdn.com/sites/sait.site-ym.com/resource/resmgr/2015_SARS_-_March/LAPD-Gen-G01_-_Taxation_in_S.pdf

Thackeray, F.W. & Finding, J.E. (2012). *Events that formed the Modern World*. ABC CLIO, LLC. Retrieved from: https://books.google.co.za/books?id=O2MhulpUa_cC&pg=RA1-PA195&lpg=RA1-PA195&dq=china+qing+dynasty+war+against+tax+evasion&source=bl&ots=oQCCtbV9qu&sig=jMGIAUJt84VSpURxxGVv6bPQ9RE&hl=en&sa=X&ved=0ahUKEwjn7rvM_LrLAhUFWBoKHSyfAsMQ6AEIMjAG#v=onepage&q=china%20qing%20dynasty%20war%20against%20tax%20evasion&f=false

The Free Dictionary: Tax Resistance. Retrieved from:
<http://encyclopedia.thefreedictionary.com/Tax+resistance>

Thesaurus. Definition of *superannuation*. Retrieved from:
<http://www.freethesaurus.com/superannuation>

The Australian Tax Office. Retrieved from: <https://www.ato.gov.au>

The Internal Revenue Code: Title 26 **see** United States of America.

The Tax Justice Network. *The Cost of Tax Abuse: A briefing paper on the cost of tax evasion worldwide*. 2011. Retrieved from:
http://www.tackletaxhavens.com/Cost_of_Tax_Abuse_TJN_Research_23rd_Nov_2011.pdf

The Organization for Economic and Co-operation Development. *What we do and how*. Retrieved from: <http://www.oecd.org/about/whatwedoandhow/>

The Organization for Economic and Co-operation Development. *Major new steps to boost international cooperation against tax evasion: Governments commit to implement automatic exchange of information beginning 2017*. Retrieved from:

<http://www.oecd.org/newsroom/major-new-steps-to-boost-international-cooperation-a...>

The Tax Justice Network. Retrieved from: <http://www.taxjustice.net/about/who-we-are/goals>

The Taxes Management Act 1970 **see** United Kingdom.

The United States Code: Title 18 **see** United States of America.

The World Factbook. Central Intelligence Agency. Retrieved from:

<https://www.cia.gov/library/publications/the-world-factbook/fields/2221.html>

United Kingdom. (1970). *The Taxes Management Act*. Retrieved from:

<http://www.legislation.gov.uk/ukpga/1970/9/contents/enacted>

United States of America. *The United States Code: Title 18*. Retrieved from:

<https://www.law.cornell.edu/uscode/text/18>

United States of America. *The Internal Revenue Code: Title 26*. Retrieved from:

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/pdf/USCODE-2011-title26.pdf>

US v Pomponio. (1976). *United States Supreme Court: UNITED STATES v. POMPONIO, (1976), No. 75-1667*. Retrieved from: <http://caselaw.findlaw.com/us-supreme-court/429/10.html>

US v Williams. (2001). *Taxcrime! Obstructing the Due Administration of the Tax Code: The Orwellian Implications of 26 U.S.C. § 7212(a)*. Retrieved from:

<http://www.swansonmcnamara.com/wp-content/uploads/2012/03/7212-Article.pdf>

Venter, J.M.P, Stiglingh, M., Koekemoer, A.D., Oosthuizen, A., Cass, S.C. et al. (2015).

Student approach to business activities. South Africa: LexisNexis. P. 517 – 537.

What is tax crime? Retrieved from:

<http://www.sars.gov.za/TargTaxCrime/WhatTaxCrime/Pages/default.aspx>

World Bank. Retrieved from: <http://data.worldbank.org>

Your Dictionary. *Definition of “felony”*. Retrieved from: <http://www.yourdictionary.com/felony>

CHAPTER 5: RESEARCH ARTICLE THREE

Title: Concerning Refining South Africa's fight against Money Laundering: A Comparison of Legislation on Money laundering of the United Kingdom, the United States of America, Australia and South Africa

The reader is requested to take note of the following:

1. This article was **submitted** to the following peer-reviewed DHeT accredited academic journal as follows:

Storm, A. 2018. Concerning Refining South Africa's fight against Money Laundering: A Comparison of Legislation on Money laundering of the United Kingdom, the United States of America, Australia and South Africa. *Acta Criminologica*. (ISSN 1012-8093)
2. The article has been written in line with the journal's submission guidelines for articles which are included in Appendix I.

Title

Concerning Refining South Africa's fight against Money Laundering: A Comparison of Legislation on Money laundering of the United Kingdom, the United States of America, Australia and South Africa

Abstract

The global fight against money laundering is an ongoing battle. Legislation and the enforcement thereof is critical to combat money laundering. The purpose of the study was to compare obtainable legislation of the United States of America, United Kingdom, Australia and South Africa to determine if South Africa's legislation can be improved. This was done by studying the relevant literature and legislation of all four countries. The findings, that there is some changes that can be made to assist South Africa's legislation as well as the enforcement thereof, were confirmed by analysing the legislation available. The countries' perception indexes were also studied. In theory, the results have proven that although South Africa's legislation is on par with that of the United States of America, United Kingdom and Australia, there is some enhancement that can be considered. Effective enforcement of the legislation is an important issue that requires urgent attention.

Keywords

Money laundering, evaluation of legislation on money laundering, South Africa, enforcement of legislation.

5.1 INTRODUCTION

Even though the act of money laundering is as old as crime itself, money laundering only attracted interest during the 1980s because of drug trafficking (Levi & Reuter, 1997). Governments created legislation with the aim to take away illicit gains generated by criminals. This was a result of a growing awareness of the vast profits produced from this criminal activity and an apprehension at the enormous drug abuse problem in Western society. Governments also acknowledged that drug dealers could “contaminate and corrupt the structures of the state at all levels” (De Koker, 2003; Steele).

The main purpose of this article is to identify and analyse legislation that is used in the fight against money laundering with the aim of determining whether South Africa’s (SA) legislation can be improved. To improve SA’s legislation, a comparison of existing legislation with that of countries classified as First-world Countries was made. The reasons for the selection of the United States of America (USA), the United Kingdom (UK) and Australia can be summarised as follows:

The threat of organised crime has always been viewed by the USA as severe and a danger to society. After the attacks on 9/11, the deterrence of money laundering has been a priority (among others) of the USA administration’s agenda (Lilley, 2012). The USA is considered to be a First-World Country and is a leader in most fields.

Australia was chosen due to their dynamic efforts (and accomplishments) to control and measure money laundering (Lilley, 2012). It was also the first country in the world to establish a financial intelligence centre, thereby being on the forefront of new developments on how to improve and make the centre more effective. Australia scored 77 out of 100 in the Corruption Perceptions Index 2017, giving them 13th place on the list of 180 countries. Transparency International uses a scale of zero to 100 to rate the level of corruption in a specific country. A score of zero means that a country is highly corrupt, while a score of 100 means that a country is very clean. Therefore, the score of 77 means that Australia is considered to have little corruption taking place (Transparency International, 2017a).

The UK was chosen because of their position on the Corruption Perceptions Index 2017 and because of its history with SA and Australia. On the Corruption Perceptions Index 2017, they occupy the eighth place on the list with a score of 82 out of 100 (Transparency International, 2017a). Furthermore, because Australia and SA once were colonies of the UK, and because the taxation systems of both Australia and SA are similar to that of the UK (Anon(c); Anon(d)).

Furthermore, Australia, SA and the UK's laws are based on common law (Australian Government).

SA is currently number 71 on a list of 180 countries and scored 43rd out of 100 on the Corruption Perceptions Index 2017, with daily reports of corruption in the media, and the Financial Action Task Force (FATF) states on its website that "Corruption and money laundering are intrinsically linked" (Corruption).

Beforehand, a discussion will follow on the definition and process of money laundering as well as the work of the Financial Action Task Force, the Organization for Economic Co-operation and Development and the International Monetary Fund. These three organisations are at the forefront in trying to fight, among others, money laundering. It is also necessary to understand the international views and efforts on combating money laundering.

5.2 DEFINITION AND PROCESS OF MONEY LAUNDERING

Before analysing the existing legislation on money laundering, one needs to understand money laundering as well as the processes utilised by criminals.

5.2.1 Definition

The objective of organised crime is to produce proceeds for the individual or group involved in organised crime. The process of money laundering is of critical importance as it enables the criminal to enjoy these profits without jeopardising the source (FATF).

In order to give rise to money laundering, there has to be a predicate offence that generates the money. This predicate offence can be anything from drug trafficking, human trafficking, prostitution or even tax evasion (Cox, 2011:5). After the illicit funds have been obtained, the process of money laundering begins.

Money laundering is defined by the United States Customs Service as "*the legitimization of the proceeds from illegal activity*", while the International Monetary Fund (2016) defines it as "*a process in which assets are generated or obtained by criminal activities are concealed or moved to create a link between the crime and the assets which is difficult to understand*". De Koker's (2003) general description of money laundering is "*any act that obscures the illicit nature or the existence, location or application of the proceeds of crime*". According to Woods (1998), it is the disguising or concealment of illicit income to make the income appear legitimate.

Internationally, the definition of money laundering can be found in article 6, paragraph 1 of the United Nation's Convention against Transnational Organized Crime (2000):

... when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) Subject to the basic concepts of its legal system:*
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*
 - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

Domestically, the definition of money laundering can be found in the Financial Intelligence Centre Act (FICA) (38 of 2001) as well as the Prevention and Combatting of Corrupt Activities Act (12 of 2004). FICA (38 of 2001) describes money laundering as “*an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of section 64 of this Act or section 4, 5 or 6 of the Prevention of Organized Crime Act*”.

The Prevention and Combatting of Corrupt Activities Act (12 of 2004) defines it as “*concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof;*

- (ii) of enabling or assisting any person who has committed or commits an offence,*

whether in the Republic or elsewhere—

- (aa) to avoid prosecution; or*

- (bb) to remove or diminish any property acquired directly, or indirectly, as a*

result of the commission of an offence”

Comparing the domestically accepted definition to the internationally accepted definition, one can derive that SA’s legislatures have already adopted the internationally accepted definition. The definitions as written in the Financial Intelligence (38 of 2001) and the Prevention and Combatting of Corrupt Activities Act (12 of 2004) will be referred to further in this article.

The domestic as well as the internationally accepted definition of money laundering has been explained. The process of money laundering will be discussed to put the crime within context.

5.2.2 Process

Lilley (2012: 1) states that *“to understand and appreciate the all-consuming power and influence of money laundering one needs to go back to the purpose of crime”*. He argues that the objective of organised crime is to obtain money. He further states that *“if money is generated by crime, it is useless unless the original tainted source of funds can be disguised or preferably obliterated”* (Lilley; 2012).

The course of money laundering can be divided into three steps:

1. Placement;
2. Layering; and
3. Integration,

although not all money laundering schemes necessarily reflect these stages (De Koker, 2012).

During the placement stage, the criminal brings the illegal profits into the financial system by breaking up large sums of cash into less obvious smaller sums, which are deposited into a bank account. It can also be done by purchasing financial instruments that are then collected and deposited into accounts at another location or by purchasing works of art, property, precious metals and jewellery (Cox; De Koker, 2003; Financial Action Task Force; Turner; 2011; Woods, 1998). The placement stage is the stage at which the criminal is most vulnerable to detection. This is also the most difficult stage due to the problems associated with converting and concealing large amounts of cash (Woods, 1998).

The second stage, layering, involves stratifying the financial transaction. The more layers that are added to the process, the more difficult it will be to prove the illicit basis for the funds. The use of various accounts at a number of different banks for laundering is especially prevalent in jurisdictions that do not collaborate in anti-money laundering investigations (Turner, 2011; Financial Action Task Force, Cox, 2011).

Integration is the third stage, where the funds re-enter the legitimate economy. In this step, the illicit income is returned in a form that appears legitimate, integrating the funds in the criminal's life. This can be achieved by using front companies to 'borrow' funds from the foreign financial institution holding the illicit funds or the overstatement of goods or services on invoices sold to front businesses or foreign organisations (Turner, 2011; Financial Action Task Force, Cox, 2011).

5.3 THE FINANCIAL ACTION TASK FORCE (FATF)

The FATF was established in 1989 as an inter-governmental, policy-making body that uses their political strength to bring about regulatory and legislative change on a national and international level (Cox, 2011:16; Turner, 2011:20). FATF provides procedures for a consistent global model, but as this is not enforceable, the implementation of these procedures varies from country to country, giving money launderers the chance to take advantage of these deviations (Turner, 2011:20). The objective of FATF can therefore be described as the creation of processes and definitions to enhance the effectiveness and efficiency of global anti-money laundering efforts (Turner, 2011:21).

FATF had 36 members and, at the end of 2010, there were only two countries, namely Ethiopia and the Democratic People's Republic of Korea listed that were not compliant with FATF's recommendations. Unfortunately, there were also 31 countries with significant deficiencies. An analysis of these 31 countries revealed that money laundering has a strong financial impact giving rise to significant pressure against any real compliance with the FATF recommendations (Turner, 2011:21).

In 1990, FATF developed the original Forty Recommendations to fight the exploitation of financial systems by persons laundering drug money. These recommendations were revised in 1996 to mirror the growing money laundering tendencies and practices as well as to broaden their scope beyond drug-money laundering (FATF, 2012).

In October 2001, FATF developed a further eight recommendations, which were later expanded to nine, after a decision to expand their mandate to deal with the issue of the funding of terrorist acts. The 11 September 2001 attacks on the World Trade Centre and the Pentagon gave rise to these nine recommendations (Jackson, 2012:1). In 2003, the recommendations were revised for a second time. During 2012, the Forty Recommendations and the Nine Recommendations were combined into the current Forty Recommendations. The purpose was to clarify the existing recommendations to strengthen consistency and address issues that lowered the compliance levels of countries (De Koker, 2012).

The mandate of FATF is to set morals and to endorse the effective enactment of legal, regulatory and operational measures for fighting money laundering (among other crimes) threatening the integrity of the international financial system. Based on their mandate as well as their effort to identify national-level vulnerabilities with the aim to protect the international financial systems from misuse, they have developed the FATF Recommendations. These recommendations set out the vital processes that countries should have in place to:

1. *“Identify risks, and develop policies and domestic coordination to address these risks;*
2. *Pursue money laundering, terrorist financing and the financing of proliferation;*
3. *Apply preventative measures for the financial sector and other designated sectors;*
4. *Establish powers and responsibilities for the competent authorities;*
5. *Enhance the transparency and availability of beneficial ownership information for legal persons; and*
6. *Facilitate international cooperation”* (De Koker, 2013; Financial Action Task Force).

Should a country (jurisdiction) not comply with these recommendations, they are blacklisted by FATF. Based on the results of the review by the International Co-operation Review Group (ICRG), these jurisdictions are publicly identified in one of two FATF public documents. In the first public document, namely FATF’s Public Statement, the organisation identifies jurisdictions with strategic anti-money laundering deficiencies and to which strategic counter-measures apply as well as jurisdictions with strategic anti-money laundering deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with FATF to address these deficiencies (FATF, 2014).

In the second public document, *“Improving Global AML/CFT Compliance: Ongoing Process”*, FATF identifies jurisdictions with strategic anti-money laundering deficiencies that have provided a high-level political commitment to address these deficiencies by implementing an action plan developed with FATF (FATF, 2014). The process that FATF follows in order to make the necessary recommendations to the various countries is by assessing the countries’ current policy framework with reference to the international standards issued by them with respect to the anti-money laundering measures it expects a country to have applied (Cox, 2011:16). FATF issues annual reports on compliance, effectiveness and recommended enhancements (Turner, 2011:21).

Even though FATF’s recommendations are not enforceable, countries have made an effort to protect the global economy by implementing these recommendations in their different

jurisdictions. These countries are in agreement with FATF that there must be a continuance on the development of anti-money laundering policies (Turner, 2011:22).

Organisations assisting FATF are the Organization for Economic Co-operation and Development (OECD), and the International Monetary Fund (IMF), which will be discussed in the following paragraphs.

5.4 THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The OECD originated at the end of World War II where European leaders were determined to avoid their predecessors' mistakes after the wake of World War I by trying to ensure lasting peace by encouraging co-operation and reconstruction. This was accomplished through the establishment of the Organization for European Economic Cooperation in 1948 to run the US-financed Marshall Plan for reconstruction of the European continent. The Organization for European Economic Cooperation assisted individual governments to recognise their economies' interdependence. Canada and the US were encouraged by the Organization for European Economic Cooperation's success and with the prospect of carrying its work forward on a global stage, they signed the new Organization for Economic Cooperation and Development Convention on 14 December 1960 and entered into force on 30 September 1961. The OECD has 34 member countries worldwide that help one another to identify problems, discuss and analyse it, and promote policies to solve these problems (OECD: History).

Their mission is *"to promote policies that will improve the economic and social well-being of people around the world"* (OECD: About). As mentioned earlier, the objectives of FATF are to set standards and promote the effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system (FATF: About). Although the mission of the OECD is much wider than that of FATF, it is clear why these two organisations are co-operating on issues of mutual concern.

The OECD's work on money laundering is intended to complement the work carried out by FATF. This work includes typology exercises, the development of hands-on guidance on uncovering money laundering for tax auditors, scrutinising key risk areas and revising current country practices for sharing information between tax and anti-money laundering authorities (OECD: Money laundering).

Another international organisation that aims to ensure the stability of the international monetary system is the International Monetary Fund (IMF).

5.5 INTERNATIONAL MONETARY FUND (IMF)

The IMF's primary concern is to ensure the stability of the international monetary system. The IMF was established in 1945 in the US at a United Nations Conference and "*sought to build a framework for economic cooperation to avoid a repetition of the competitive devaluations that had contributed to the Great Depression of the 1930s*" (The IMF at a glance).

It achieves its fundamental mission through surveillance, lending and capacity development. The first leg of achieving its fundamental mission is by keeping track of their 189 member countries' economic and financial policies. This enables the IMF to raise awareness on possible risks to stability and to advice on needed policy adjustments. In the second leg of the three-pronged approach, the IMF also provides loans to member countries with actual or potential balance of payment problems. The last leg entails basic technical assistance and training by the IMF to its member countries to develop and implement economic policies that will promote stability and growth (Our work).

The IMF prevents money laundering by forming domestic and international anti-money laundering and combating of finance terrorism policies. Not only does it provide financial and technical advice, but it also evaluates countries' compliance with the international anti-money laundering and combating of terrorist financing standards. In turn, this enables the IMF to develop programmes to address that country's weaknesses (The IMF's role in AML/CFT efforts, 2017).

After reviewing the international views of three of the organisations committed to fight money laundering, the available legislation of the four countries will be discussed.

5.6 LEGISLATION ON MONEY LAUNDERING

In an attempt to improve SA's legislation on money laundering, a comparison with other countries' legislation will be performed to identify key aspects.

5.6.1 Australia

The Federal Prosecution Service defines money laundering as "... *involves hiding, disguising or legitimizing the true origin and ownership of money used in or derived from committing crimes*". Division 400 of the Criminal Code Act (1995) also defines money laundering, but broader than the Federal Prosecution Services. In the Criminal Code Act (1995), money

laundering is the concealment of the proceeds of crime, which is an offence. The Criminal Code Act (1995) also makes dealing with the proceeds of crime an offence.

Like the US, Australia was among the first countries to instigate legislation designed to counter the act of money laundering. Australia requires direct reporting of significant as well as unusual transactions (Woods, 1998:57).

The following legislation has been identified:

1. Anti-Money Laundering and Counter-Terrorism Financing Act 2006
2. The Criminal Code Act (1995)
3. The Proceeds of Crime Act 2002
4. Financial Transaction Reports Act 1988

5.6.1.1 Anti-Money Laundering and Counter-Terrorism Financing Act 2006

This Act is part of Australia's Anti-Money Laundering/Counter Terrorism Financing regime, which comprises the Anti-Money Laundering and Counter-Terrorism Financing Regulations and the Anti-Money Laundering and Counter-Terrorism Financing Rules. This regime was implemented to combat the threats of money laundering and terrorism financing to national security and to bring Australia into compliance with international Anti-Money Laundering/Counter Terrorism Financing standards developed by FATF (Nicholson, Fraser & Farnsworth, 2014).

This Act defines money laundering as “a conduct that amounts to:

- (a) an offence against Division 400 of the Criminal Code; or
- (b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or
- (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a)” (Anti-Money Laundering and Counter-Terrorism Financing Act 2006).

Division 400 of the Criminal Code Act (1995) deals with the offence of money laundering and defines proceeds of crime as “any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence)”. According to the Crime Act (1914), an indictable offence is an offence against a law of the Commonwealth punishable by imprisonment for a period exceeding 12 months, unless the contrary intention appears.

Section 400.3 up to section 400.9 regulates punishments depending on the value of the money and property involved. These punishments comprise imprisonment or penalty units or both. Section 4AA subsection (1) of the Crime Act (1914) defines 'penalty units' as the amount of \$180 (subject to indexation under subsection (3)). Subsection (3) of section 4AA states that on 1 July 2018 and each third 1 July following that day (an indexation day), the dollar amount mentioned in subsection (1) is replaced by the amount worked out using the following formula: (Indexation factor for that indexation day) x (Dollar amount immediately before indexation day), where indexation factor = (Index number for reference quarter) ÷ (Index number for base quarter) (subsection (4)).

The imprisonment terms range from 25 years in prison to only six months, whereas the penalty units range from 1 500 units (\$180 x 1 500 = \$270 000) to 30 units (\$180 x 30 = \$5 400) (Criminal Code Act (1995); Crime Act (1914)).

Part 12 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 defines offences and sets out the applicable punishment according to the offence committed.

Table 5-1: Summary of Section 135 of Part 12

Offences	Punishment
Produce false or misleading information	Imprisonment for ten years or 10 000 penalty units (\$180 x 10 000 = \$180 000), or both.
Produce false or misleading documents	Imprisonment for ten years or 10 000 penalty units (\$180 x 10 000 = \$180 000), or both
Provide or receive a designated service using a false customer name or customer anonymity	Imprisonment of two years or 120 penalty units (\$180 x \$21 600), or both.
Structure a transaction to avoid a reporting obligation under this Act	Imprisonment of five years or 300 penalty units (\$180 x 300 = \$54 000), or both.

(Source: Anti-Money Laundering and Counter-Terrorism Financing Act 2006).

5.6.1.2 The Criminal Code Act (1995)

This Act sets forth a series of statutes that deal specifically with money laundering offences. Chapter 10, Part 10.2, division 400 contains these statutes applicable to the offence of money

laundering. Section 400.2 refers to a person dealing with money or other property if that person:

- i. receives, possesses, conceals or disposes of money or other property;*
- ii. imports money or other property into, or exports money or other property from, Australia; or*
- iii. engages in a banking transaction relating to money or other property.*

According to White (2007:749), the actual offence depends upon whether the person had actual knowledge while dealing, or whether said person was negligent or reckless as well as the value of the money or property involved at the time of dealing.

Section 400.3 sets forth the nature of the money and other property referred to in section 400.2 as well as the punishment according to this Act. According to section 400.3, a person will be guilty of an offence if the person:

- (a) deals with money and other property, and either the money or the property is, or is believed by that person to be proceeds of crime; or*
- (b) deals with money and other property, and either the money or the property will become an instrument of crime; or*
- (c) is reckless or negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime.*

The penalties in section 400.3 to section 400.9 depend on the value of the money (section 400.3 to section 400.8) or the property (section 400.8 to section 400.9). It ranges from imprisonment for 25 years, or 1 500 penalty units or both to ten penalty units, depending on the severity of the case (Criminal Code Act (1995)).

5.6.1.3 The Proceeds of Crime Act 2002

The objective of this Act is the recovery of criminal assets associated with Federal crimes (Gibson, 2014). The Act offers a system to trace, detain and seize the profits of crime against Commonwealth law and in some circumstances, the confiscation of the proceeds of crime against foreign law (Australian Federal Police).

The pivotal chapter of this Act is Chapter 2, the Confiscation Scheme, which sets out a number of processes related to confiscation. Six types of recovery orders are included in this Act, namely “freezing orders, restraining orders, forfeiture orders, pecuniary penalty orders, literary proceeds order and unexplained wealth orders”. Freezing orders (Part 2-1A, Divisions 1 to 6) are the first step towards confiscating the property and it limits withdrawals from accounts

before the court decides on applications for restraining orders. A restraining order (Part 2-1, Divisions 1 to 6) prohibits the perpetrator to dispose of or deal with the property.

Forfeiture orders (Part 2-2, Divisions 1 to 7; Part 2-3, Divisions 1 to 4)) can be made if certain offences have been committed, while pecuniary penalty orders (Part 2-4, Divisions 1 to 5) are made if certain offences have been committed, ordering payments to the Commonwealth of amounts based on the benefits that a person has derived from such an offence.

Literary proceed orders (Part 2-5, Divisions 1 to 6) are made if certain offences have been committed, ordering payments to the Commonwealth of amounts based on the literary proceeds that a person has derived in relation to such an offence. An unexplained wealth order (Part 2-6, Divisions 1 to 5) requires the person to pay an amount equal to the person's total wealth if the person cannot satisfy the court it is not derived from certain offences (Proceeds of Crime Act 2002; Gibson, 2014).

Apart from the confiscation scheme contained in this Act, it also contains information related to information gathering and monitoring provisions in Chapter 3. This chapter contains three types of orders, namely examination orders, production orders and monitoring orders. Examination orders (Part 3-1, Divisions 1 to 4) and production orders (Part 3-2) place the responsibility on the accused to prove that the property under question was derived in a legitimate way. Examination orders specifically require persons to appear and give evidence, while production orders require persons to produce or make available applicable documents. The monitoring orders (Part 3-4) require a financial institution to provide information about transactions made by a particular person (Proceeds of Crime Act 2002; White, 2008:748)

5.6.1.4 Financial Transaction Reports Act 1988

According to White (2007: 742), this Act together with the Proceeds of Crime Act 2002 forms the main framework of anti-money laundering and counter-terrorism financing efforts in Australia. The primary objective of this Act is to facilitate the administration and enforcement of taxation laws. Further objectives include the facilitation and enforcement of other Commonwealth and Territories laws as well as assisting the State in the administration and enforcement of the State's laws (White, 2007:742-743).

AUSTRAC is Australia's financial intelligence agency with governing accountability for anti-money laundering and counter-terrorism financing, which also works with other agencies to keep Australia safe against financial crime. The financial intelligence gathered by this agency helps detect, prevent, investigate and prosecute terrorist financing, serious and organised crime, money laundering and tax evasion (AUSTRAC).

5.6.2 United States of America

The legislation of the USA is much entwined with other existing laws, specifically the United States Code, which is a consolidation of all the acts. In this Code (Title 18 § 1956), money laundering is described as:

(a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—...

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity (Money Laundering Control Act)).

The following laws were identified:

1. The USA PATRIOT Act of 2001
2. The Bank Secrecy Act
3. Office of Foreign Assets Control (OFAC)
4. The Money Laundering Control Act of 1986
5. The Annunzio-Wylie Anti-Money Laundering Act 1992
6. The Money Laundering Suppression Act 1994
7. The Money Laundering and Financial Crimes Act 1998
8. The Intelligence Reform and Terrorism Prevention Act 2004
9. The Foreign Account Tax Compliance Act 2010.

5.6.2.1 The USA PATRIOT Act of 2001

USA PATRIOT Act stands for Uniting and Strengthening America by Providing Appropriate Tools required to Intercept and Obstruct Terrorism and was enacted by the US government after the 11 September 2001 terrorist attacks. The objective of this Act is to “*deter and punish terrorism acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes*” (USA PATRIOT Act).

International money laundering is dealt with under Title III of this Act, which can be referred to as the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001. The purpose of Title III was to intensify the legislation in the US to prevent, detect and

prosecute national and international money launderers as well as the financing of terrorism. Congress found that:

1. Money laundering provides the necessary funds for transnational criminals to conduct and expand their operations;
2. The financial transparency is defective;
3. The financial mechanisms and banking relationships are undermined by these money launderers to be used to cover the movement of their criminal proceeds and the use of these proceeds to fund crime and terrorism;
4. Other jurisdictions offering offshore banking institutions that offer anonymity as well as the defects in their financial supervision and weakness in enforcement regimes also offer great opportunities to money launderers to move their criminal proceeds;
5. This offshore banking makes following the transactions by these criminals nearly impossible for law enforcement;
6. Manipulation of correspondent banking facilities as well as those of private banking services;
7. That their current legislation and statutory provisions are insufficient; and
8. That national, joint and multifaceted approaches will be needed to set effective anti-money laundering measures in place (Amaro, 2017).

The purpose of Title III can be summarised as strengthening the measures available to the US in preventing, detecting and prosecuting international money laundering and the financing of terrorism. This is a broad summary, but forms part of section 302 of the USA PATRIOT Act and is a long list elaborating on the above summary given.

As part of Title III, is subtitle A, which deals with International Counter Money Laundering and Related Measures. Section 5318 (a) states that, in general, if reasonable grounds exist that lead the Secretary to believe that a jurisdiction outside the United States where one or more classes of transactions or one or more types of accounts are of primary money laundering concern in accordance with subsection (c), domestic financial entities may be required to take special measures in accordance with subsection (b). The special measures in subsection (b) include the following: “*recordkeeping and reporting certain financial transactions*”. It clearly sets out the requirements expected of domestic financial entities in terms of:

1. Recordkeeping (subsection (b)(1));
2. Information related to beneficial ownership (subsection (b)(2));
3. Information related to certain payable-through accounts (subsection (b)(3));
4. Information related to certain correspondent accounts (subsection (b)(4); and

5. Prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.

Section 314 deals with “*Cooperative efforts to deter Money Laundering*”. In subsection (a)(1), certain regulations were adopted to inspire financial institutions, their regulatory authorities and law enforcement to work together and share information where reasonable suspicion based on credible evidence exists of money laundering activities and terrorist acts. Subsection (a)(2) contains the “*cooperation and information sharing procedures*”. This subsection is further divided into three parts:

1. This part focuses on the financing of terrorist activities and how the money is moved internationally and within the US. Investigations into financial institutions involved as well as the risk related to such financial institutions are a result.
2. This part focuses on the financial relationship between international narcotics traffickers and foreign terrorist groups. It also focuses on “*the extent to which their memberships overlap and engage in joint activities, and the extent in which they cooperate with each other in raising and transferring funds for their respective purposes...*”
3. The means of facilitation to identify the accounts and transactions involving terrorist groups as well as the facilitation of the information of such accounts and transactions between financial institution and law enforcement, is focused on in this part.

Section 315, which deals with the “*Inclusion of Foreign Corruption as Money Laundering Crimes*”, is concerned with section 1956 of title 18 of the United States Code, 18 U.S. Code. Section 1956 is directed at the laundering of monetary instruments. This specific section was amended to include more detailed definitions and legislation, making the USA PATRIOT Act more effective.

For example: in section 1956(c)(7)(B)(ii), the following phrase was added – “... or a crime of violence (as defined in section 16)”. (USA PATRIOT Act; 18 U.S Code § 1956)

“The United States Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. It is prepared by the Office of the Law Revision Counsel of the United States House of Representatives” (Office of the Law of Revision Council).

Section 317: “*Long-Arm Jurisdiction over Foreign Money Launderers*”.

When it comes to the jurisdiction over foreign persons, the district courts will have jurisdiction over any foreign person against whom the action is brought. Section 317(2) is divided into

three parts, elaborating on and adding more detail to this section. The first part deals with the financial transaction of the foreign person, meaning that if that transaction took place as a whole or in part of the US, it is seen as an offence. The second part deals with the property of the foreign person in which the United States has an ownership interest obtained by order of forfeiture by a court of the US. The last part deals with the situation should the foreign person be a financial institution maintaining a bank account at a financial institution in the US.

Section 318 includes foreign banks used to launder money. The definition of a foreign bank can be found in section 1956(c)(6)(B).

Section 330: *“International Cooperation in Investigations of Money Laundering, Financial Crimes, And the Finances of Terrorist Groups”*. Subsection (a) deals with negotiations between the US when it comes to US financial institutions doing business with any other foreign financial institutions. These negotiations will only take place if suspected that US financial institutions are used by any foreign terrorist groups, anyone who is a member or representative of that group or anyone who is engaged in money laundering, financial and other crimes. Subsection (b) describes the purpose of these negotiations and cooperative efforts and, in subsections (b)(1) and (b)(2), the requirements. The first requirement (subsection (b)(1)) is to ensure “that foreign banks and other financial institutions maintain adequate records of the transactions and account information relating to any terrorist group, a member or representative of such a group or a person guilty of money laundering and other crimes”. The second requirement (subsection (b)(2)) is to establish a way by which such records can be made available to US law enforcement when appropriate (USA PATRIOT Act).

State and federal money laundering law differs significantly when it comes to the punishment of this crime. Convictions can lead to penalties, imprisonment, probation or a combination of the mentioned punishment. To illustrate the difference between state and federal money laundering laws, the following paragraph will elaborate on penalties, imprisonment and probation.

Imprisonment:

Money laundering can either be charged as a felony offence or a misdemeanour depending on the state where you are prosecuted. A misdemeanour conviction will lead to imprisonment of up to one year, while felony convictions will lead to imprisonment of one year or more. In more serious situations, imprisonment can last up to 35 years. Examples of such situations are where money laundering is related to terrorist activities, where money laundering formed part of an ongoing criminal enterprise, or where the person is a repeat offender.

Penalties:

The penalties for misdemeanour convictions will be no more than a few thousand dollars, while a federal conviction will result in fines of up to \$500 000 or double the amount of money that was laundered, whichever is greater.

Probation:

Courts can impose probation sentences between one and three years. However, if the probation is violated, the court can revoke the probation sentence and give a prison sentence. The court can also decide to lengthen the probation sentence or impose a penalty (Theoharis; 18 U.S Code §1956).

The penalties, if convicted of a money laundering offence, are set out in 18 U.S Code §1956(b)(1) in general as a civil penalty of not more than the greater of:

- 1) the value of the property, funds, or monetary instruments involved in the transaction; or
- 2) \$10 000.

5.6.2.2 Bank Secrecy Act

The Bank Secrecy Act was passed in the US by Congress in 1970 as one of the first laws to combat money laundering (IRS: Bank Secrecy Act). The purpose was to establish regulatory reporting and recordkeeping requirements. This was done to discourage utilising foreign bank accounts. The consequences of this legislation would have been very resourceful for law enforcement, assisting them to follow the audit trail in order to identify the source, the volume and the movement of money into or out of the US. However, this Act was significantly amended through the years by other legislations (Protiviti; 2014).

This Act commands the reporting of certain currency transactions conducted with a financial institution, the disclosure of foreign bank accounts, and the reporting of the transfer of currency above \$10 000 (IRS: Federal Statutes).

5.6.2.3 Office of Foreign Asset Control (OFAC)

OFAC governs and imposes economic sanctions against countries and individuals. These sanctions can be divided into comprehensive and selective sanctions (US Department of the Treasury). Comprehensive sanctions generally prohibit all direct and indirect imports/exports. A specific license is needed to transact with someone or an entity in the US (Office of Foreign Assets Control). A selective sanction enforces trade restrictions that target specific activities (Barry, 2012). These sanctions use the blocking of assets and trade restrictions for national security purposes (US Department of the Treasury).

Compliance with OFAC is mandatory. This compliance entails many processes to ensure that the person concerned at the applicable institution is not on the OFAC's list. OFAC maintains the following lists:

1. Specially Designated Nationals and Blocked Persons;
2. Specially Designated Terrorists; and
3. Specially Designated Narcotics Traffickers.

Therefore, as a practical matter, all transactions of all the names on the lists must be screened. The system will also be able to screen for politically exposed persons as well as individuals whose activities are suspicious after analysing these activities on public databases (Moscow, 2007).

5.6.2.4 Money Laundering Control Act of 1986

The Money Laundering Control Act 1986 consists of two parts: sections 1956 and 1957 of Title 18 of the United States Code. The purpose of this act is to recommend criminal prosecutions against the violations of sections 1956 and 1957 (IRS: Federal Statutes). Section 1956 has already been discussed in the paragraphs above.

Section 1957 of Title 18 of the United States Code deals with "*Engaging in monetary transactions in property derived from specified unlawful activity*". According to section 1957(f)(1), the definition of 'monetary transaction' is "*...deposit, withdrawal, transfer or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through, or to a financial institution including any transaction that would be a financial transaction in terms of section 1956(c)(4)(B)*". In section 1957(f)(2) 'criminally derived property' includes any property obtained from a criminal offence (18 U.S Code §1957). Both these subsections mentioned include the criminal offence of money laundering.

5.6.2.5 Annunzio-Wylie Anti-Money Laundering Act 1992

The Annunzio-Wylie Anti-Money Laundering Act was signed into law in 1992. A new provision introduced was that banks convicted of either money laundering offences or certain offences under the Bank Secrecy Act could lose their charter or insured status. Section 1502 of the Annunzio-Wylie Anti-Money Laundering Act as amended in Title 12 United States Code §93 states that "*if a national bank, federal branch or federal agency is convicted of a criminal offence under 18 United States Code §1956 and §1957*" the comptroller of that currency shall issue a notice to the banks concerned of its intention "*to terminate all rights, privileges, and franchises of the bank, federal bank or federal agency and schedule a pretermination hearing*".

The Annunzio-Wylie Anti-Money Laundering Act also contained similar provisions for foreign banks with state-licensed branches and agencies as well as “*federal savings associations, federal credit unions, insured state depository institutions and insured state credit unions*” (Kini, Lee & Micarelli, 2013).

5.6.2.6 Money Laundering Suppression Act 1994

This Act required the federal registration of money transmitting businesses because money transmitting businesses were unregulated; it was frequently used in sophisticated schemes that transferred large amounts of proceeds from unlawful activities and to evade the requirements of the Internal Revenue Code. Various amendments were also made to the Bank Secrecy Act, including a provision of a criminal penalty of a maximum of five years’ imprisonment if certain reporting requirements under the Bank Secrecy Act were evaded (Kini *et al.*, 2013).

5.6.2.7 Money Laundering and Financial Crimes Act 1998

The key points of this Act can be summarised as follows:

1. Banking agencies had to develop anti-money laundering training for examiners to improve the identification of money laundering schemes;
2. The Department of the Treasury and other agencies had to develop a National Money Laundering Strategy; and
3. It created the High Intensity Money Laundering and Related Financial Crime Area Task Forces. The objective of these task forces was to focus law enforcement on levels where money laundering was dominant (UNCAC; Office of the Comptroller of the Currency).

5.6.2.8 Intelligence Reform and Terrorism Prevention Act 2004

This Act also amended the Bank Secrecy Act. A provision was added that required the Secretary of the Treasury to prescribe regulations to certain financial institutions to require them to report cross-border electronic transmittals of money should he determine that such reporting is “reasonably necessary” to help in the fight against money laundering and terrorist financing (UNCAC).

5.6.2.9 Foreign Account Tax Compliance Act (FATCA)

Many of the Acts above highlight exchanging information between countries as an important method of combating money laundering, among other things. FATCA was developed with this goal as a final outcome for US citizens. This Act implemented an international standard for the

automatic exchange of information, but the main objective was to promote cross-border tax compliance (IRS, 2016; Thomson Reuters). Although tax compliance was the main objective, it can also prove to be an effective anti-money laundering tool. Random lifestyle audits by the Internal Revenue Services can help law enforcement identify possible money laundering activities.

5.6.3 The United Kingdom

The legislation of the UK is very broad, surpassing the first, second and third directive of the European Commission Money Laundering Directives. The newly formed Serious Organized Crime Agency determined that the threat to the UK is still very high, and therefore money laundering and organised crime are taken very seriously. The definition of money laundering is “... *the process of hiding illegal sources of money*” (Proceeds of Crime Act).

The UK has a pillar ‘system’. Although these pillars work separately from each other, they are also interconnected. These pillars are:

1. Money Laundering Regulations 2007
2. The Financial Conduct Authority
3. The Prudential Regulation Authority
4. Proceeds of Crimes Act 2002

5.6.3.1 Money Laundering Regulations 2007

Before the money laundering regulations can be analysed, it is important to know its origin. The regulations implement directives that were set by the European Commission in 1991. Because of the escalation in money laundering and the potential effects thereof, the European Union enacted its First Directive in 1991 to combat money laundering. “*The European Union Anti-Money Laundering and Financing of Terrorism Directives were designed to protect the financial system and other vulnerable professions*” (Welch, Del Guayo, Ragnolini, Averginos, Butkiewicz, Wojdylo, Stasevicius & Balciunaite, 2006; IBA Anti-Money Laundering Forum).

The Second Directive amended the First Directive; its aim was to refine existing provisions and close the loop holes in the First Directive identified by the Forty Recommendations of FATF. The Second Directive also adopted a comprehensive definition of money laundering, which expanded the predicate offences. Another addition made was the authority to identify, trace, freeze, seize and confiscate any property and proceeds linked to severe criminal activity (Welch *et al.*, 2006; IBA Anti-Money Laundering Forum).

The regulations do not only implement the requirements of the Second European Commission Money Laundering Directive, but also a part of the Third European Commission Money

Laundrying Directive, particularly the scope. The scope of the Third Directive included professionals, such as lawyers, after realising how susceptible professionals are to money laundering transactions. The reason for these regulations was to establish relevant business controls and systems to prevent money laundering. The controls and systems implemented were:

1. Bringing in non-financial businesses and professions, client identification, record-keeping and the reporting of suspicious transactions;
2. Professionals: controls were to be extended to auditors, external accountants, tax advisers, notaries and legal professionals;
3. Estate agents, casinos and dealers in high value goods were also included in the scope; and
4. Identification of customers (Clark & Burrell, 2003; Welch *et al.*, 2006).

In sections 45 to 46, the Money Laundering Regulations 2007 contain criminal penalties. Section 45 contains the necessary information on offences, which is:

45. *(1) A person who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1)(a), (b) or (c), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33, or a direction made under regulation 18, is guilty of an offence and liable—*

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(2) In deciding whether a person has committed an offence under paragraph (1), the court must consider whether he followed any relevant guidance which was at the time—

(a) issued by a supervisory authority or any other appropriate body;

(b) approved by the Treasury; and

(c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(3) In paragraph (2), an “appropriate body” means anybody which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 42.

Regulation 46 regulates the prosecution of the offences, which can be summarised as follows:

1. The proceedings under section 45 can be instituted by some of the following institutions:
 - a. The Director of Revenue and Customs Prosecutions or by the Commissioners;
 - b. The Office of Fair Trading;
 - c. The Department of Enterprise, Trade and Investment;
 - d. Director of Public Prosecutions.
2. For measures to be taken for an offence under section 45, implementation may only be against a relevant person, or body corporate, a partnership, an unincorporated association and against any person liable under section 47.

Section 46 further refers to whom the proceedings can be instituted by and which procedures they should follow (Money Laundering Regulations 2007).

5.6.3.2 Proceeds of Crime Act 2002

The purpose of this Act was to establish the Asset Recovery Agency and to provide, among other things, for money laundering and connected purposes. Part 7 of the Proceeds of Crime Act deals with money laundering. Sections 327 to 333 deal with the offences of money laundering covered by this act. Section 334 states the penalties involved when convicted of money laundering.

The penalties are divided into serious money laundering offences and minor money laundering offences. Section 334(1) states that a person guilty of an offence under section 327 (concealing), 328 (arrangements) or 329 (acquisition, use or possession) is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or*
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.*

Section 334(2) states that a person guilty of an offence under section 330 (failure to disclose: regulated sector), 331 (failure to disclose: nominated officers in the regulated sector), 332 (failure to disclose: other nominated officers) or 333 (tipping off) is liable:

- (a) *on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or*
- (b) *on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.* (Proceeds of Crime Act).

5.6.4 South Africa

De Koker's (2012) general definition of money laundering is "*any act that obscures the illicit nature or the existence, location or application of the proceeds of crime*". The following laws were identified:

1. The Prevention and Combatting of Corrupt Activities Act, 12 of 2004
2. The Financial Intelligence Centre Act, 38 of 2001
3. The Protection of Constitutional Democracy against Terrorism and Related Activities Act, 33 of 2004.

5.6.4.1 The Prevention and Combatting of Corrupt Activities Act, 12 of 2004 (PRECCA)

The objective of this Act was to introduce measures to combat, among other crimes, money laundering and to provide for the prohibition of money laundering and for an obligation to report certain information etc. (Prevention and Combatting of Corrupt Activities Act). The Act also focuses on other crimes, such as organised crimes, but the sections dealing with money laundering will be the focus.

In Chapter 3 of PRECCA, it specifically deals with money laundering in section 4 as an unlawful activity. Section 4 states that "*any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and*

- a) *enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property. Whether such agreement, arrangement or transaction is legally enforceable or not: or*
 - b) *performs any other act in connection with such property, whether it is performed independently or in concert with any other person,*
- which has or is likely to have the effect—*

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or its ownership or any interest which anyone may have in respect thereof; or

(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere—

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence” (Prevention and Combatting of Corrupt Activities Act).

The three elements of section 4 of PRECCA are described in Table 5-2.

Table 5-2: Three elements of Section 4 of PRECCA

Elements	Explanation
First element: “guilty action”	Under South African law, one of the common elements is a guilty action or an omission. According to section 4, the guilty action is that of entering into “an agreement or arrangement in connection with the property” in question. This action must have a certain consequence or at least be likely to have a certain consequence. These consequences need not be realised, but as long as it was likely that the agreement would have resulted in a consequence, it will still be an offence in terms of section 4 (Anti-Money Laundering Law: International Law and Practice).
Second element: “proceeds of an objective fact”	The property referred to in the first element must have the condition of being ‘proceeds of unlawful activities’. Section 1 defines ‘proceeds of unlawful activities’ as “any property or part thereof or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in connection with or as a result of any unlawful activity carried on by any person, whether in the Republic or elsewhere...” (Prevention and Combatting of Corrupt Activities Act). The main characteristic identified here is that of “unlawful activity”. It can also be noted that no timeframe or location (internationally or nationally) exists in either section 1 or section 4.

Elements	Explanation
Third element: “Intent and negligence”	Section 5 states that the person “<i>knows or ought to have known</i>” relates to the ‘intent’ part of this element. Whether this knowledge was actual or constructive, it does not matter. The ‘negligence’ part can be proved by the phrase “<i>ought reasonably to have known</i>”. This refers to a person with the general knowledge, skills, training and experience that could be reasonably expected of a person in such a position (Prevention and Combatting of Corrupt Activities Act).

(Source: Smit (2007))

Smit (2007) also stated “*that South Africa followed an all crimes approach when defining the scope of the money laundering offence*” meaning that the underlying crime, from which the proceeds were derived, will qualify as a predicate offence and does not require a conviction under PRECCA.

According to section 8 under Chapter 3 of PRECCA, the penalty can be a fine of R100 million or imprisonment not exceeding 30 years (Prevention and Combatting of Corrupt Activities Act).

5.6.4.2 Financial Intelligence Centre Act 38 of 2001

Woods (1998) stated that because SA is the major financial centre in Southern Africa, it has great potential as a money laundering base. Furthermore, financial institutions have the ability to move substantial sums of money globally (Fundira, 2000). According to Barry (2014), the South African Reserve Bank fined the country’s four largest banks a total of R125 million in 2014 for not having the adequate anti-money laundering controls as required by the Financial Intelligence Centre Act (FICA) in place. “*The danger of not fulfilling compliance measures can open the door to criminals abusing our institutions for criminal activities*” (Barry, 2014). During 2016, these four banks again received fines totalling R30 million due to non-compliance with the provisions as set out in FICA in terms of money laundering (Fin24, 2016).

FICA established the Financial Intelligence Centre (FIC) with the main objective to assist in the “identification of the proceeds of unlawful activities and the combating of money laundering and terrorist financing activities”. The functions of the FIC contained in section 4 include processing, analysing and interpreting information gathered by the FIC. The main reason is to inform, advise and co-operate with investigating authorities, supervisory bodies, the South

African Revenue Service and the intelligence services (Financial Intelligence Centre Act; Smit, 2007).

Section 29 of FICA specifically refers to suspicious and unusual transactions; and section 29(1)(c) of FICA clearly states *“the business has been used or is about to be used in any way for money laundering purposes, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions”*. Section 44 of FICA states that, should the FIC become aware of any contravention or failed compliance with the Act, they can refer the matter to a relevant investigating authority (Financial Intelligence Centre Act). Therefore, no penalties can be imposed by them; only a referral is within their powers.

5.6.4.3 Protection of Constitutional Democracy against Terrorism and Related Activities Act 33 of 2004 (POCDATARA)

The main purpose of this Act is to address a broad range of issues related to the combating of terrorism. This Act must be read with FICA and PRECCA. POCDATARA amended FICA and the PRECCA to ensure that these Acts support, among others, the combating of money laundering and terrorism (IRBA, 2011).

Section 4 of POCDATARA deals with offences associated with the financing of a specified crime. Section 4(1) specifies the obtaining, providing or utilisation of property, directly or indirectly to any person or entity that knows or should reasonably have known to commit, facilitate or for the benefit of committing a specified offence, will be guilty of an offence. Section 4(2) deals with any person who enters into or facilitates any transaction and who knows or reasonably should have known that a specified offence will be committed, will be guilty of an offence. This section also includes performing any other act in connection with the property concerned. Lastly, section 4(3) deals with any person who knows or should reasonably have known that the property concerned is property as referred to in subsection 2(a) and still gets involved with any act that is likely to have the effect of facilitating or controlling the property concerned for any entity who is likely to commit a specified offence. This section also includes the conversion, concealment, removal or transferal of such property. Should the person concerned have done anything mentioned in section 4(3), he or she will be guilty of an offence.

Although the above-mentioned paragraph is very broad, section 1 defines ‘property’ as *“money or any other movable, immovable, corporeal or incorporeal thing, and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof”* (Protection

of Constitutional Democracy against Terrorist and Related Activities Act), thereby making money laundering one of the specified offences.

The penalties instituted by this Act for specified offences are stated in Chapter 3, section 18(1)(c). The penalties are divided into two subsections because of the type of court imposing the sentence. Section 18(1)(c)(i) states that the sentence imposed by the High Court or a regional court will be a fine not exceeding R100 million or to imprisonment not exceeding 15 years. Section (18)(1)(c)(ii) states that when the sentence is imposed by a magistrate's court, the fine will not exceed R250 000 or imprisonment not exceeding five years.

Summary

A summary of the available legislation in the US, the UK, Australia and SA has been done in Table 5-3 in order to identify key points that could be considered for South African legislation. The following table is a summary of the legislation involved in all four countries, the components of money laundering and the penalties involved.

Table 5-3: Summary of legislation

	USA	UK	Australia	SA
Legislation	USA PATRIOT Act Bank Secrecy Act Money Laundering Control Act Annunzio-Wylie Money Laundering Act Money Laundering Suppression Act Money Laundering and Financial Crimes Act Intelligence Reform and Terrorism Prevention Act Foreign Account Tax Compliance Act	Money Laundering Regulations The Financial Conduct Authority The Prudential Regulation Authority Proceeds of Crime Act Anti-terrorism Provisions	Anti-money Laundering and Counter-terrorism Financing Act The Criminal Code Act Proceeds of Crime Act Financial Transactions on Reports Act	Prevention and Combatting of Corrupt Activities Act Financial Intelligence Centre Act The Protection of Constitutional Democracy against Terrorism and Related Activities Act (POCDATARA)

	USA	UK	Australia	SA
Components of money laundering	Financial transaction scheme Aim is to conceal the source, identity and destination of the money Generated by committing a specified unlawful activity	Process of hiding illegal sources of money	Hiding, disguising or legitimising the true origin and ownership of money Derived from committing crimes	Any act obscuring the illicit nature or existence, the location or application of money Derived from the proceeds of crime
Penalties	The USA PATRIOT Act of 2001: - Imprisonment - Penalties - Probation The punishment handed down in the above-mentioned depends on whether or not it was State or Federal.	POCA s334(1): On summary conviction: Imprisonment of maximum six months or a fine or both; On conviction on indictment: Imprisonment of maximum 14 years or a fine or both. POCA s334(2): On summary conviction: Imprisonment of maximum six months or a fine or both; On conviction on indictment: Imprisonment of maximum five years or a fine or both.	Anti-Money Laundering and Counter-Terrorism Financing Act 2006: Imprisonment: maximum 25 years. Penalty units: maximum of 1 500 units.	Prevention of the Organized Crime Act: Maximum penalty: R100 million. Maximum imprisonment: 30 years. POCDATARA: Sentence imposed by High Court or regional court: Maximum penalty: R100 million. Maximum imprisonment: 15 years. Sentence imposed by magistrate's court: Maximum penalty: R250 000. Maximum imprisonment: five years.

(Source: Author)

5.7 KEY POINTS TO CONSIDER FOR SOUTH AFRICAN LEGISLATION

From the summary above, it is apparent that all four countries have the same understanding of money laundering. The levels of how serious it is taken by these countries' authorities are not certain, but with the Corruption Perceptions Index (2017) as an indicator, SA does not take the act of money laundering seriously enough.

5.7.1 General assessment of weaknesses: All four countries

The US was praised by FATF to have vigorous anti-money laundering efforts that are scored as highly effective against countering terrorist financing. However, the country also received inadequate scores for its efforts to prevent the laundering of criminal proceeds by shell companies, accountants and real estate agents (Schechtman & Wolff, 2016). The Australian government wants to extend their existing anti-money laundering and counter-terrorist financing laws to include lawyers, accountants, real estate agents and jewellers (Lynch, 2016).

In the UK, Deutsche Bank was fined \$204 million for serious anti-money laundering control measures. More than \$6 billion were transferred in a process called mirror trades from Russia to foreign accounts. This is the biggest fine to be imposed by the British Regulator and is indicative of the seriousness of the flaws in the Bank's controls (Amaro, 2017).

In SA, the South African Reserve Bank fined five banks R30 million after exposing flaws in their anti-money laundering and terrorist financing control measures. Administrative sanctions were also imposed. These fines and sanctions were not imposed due to the facilitation of transactions involving money laundering. It was a proactive step in combating these crimes (Anon, 2016).

5.7.2 Key points for South Africa to consider

The US and Australia want to extend their anti-money laundering laws to include lawyers, accountants and real estate agents, which will lead to more business entities having to report suspicious transactions. Currently, banks and financial institutions are the business entities that have to comply with financial laws in these two countries. The same can be said about SA and the UK when considering their current financial laws.

Therefore, the key points for SA to consider, overall, are:

1. Include accountants in their anti-money laundering laws;
2. Implement a more vigorous attitude towards combating money laundering; and not just in financial institutions. Barry (2014) and Fin24 (2016) reported on the fines received by South African Banks for not adhering to the provisions as set out in FICA.

Therefore, by implementing a more vigorous attitude towards combating money laundering, *“the country’s banking system cannot be abused for criminal elements”* (Fin24);

3. As part of implementing a more vigorous attitude, the requirements and skills to be met by employees within this line of work should also be reviewed and adjusted accordingly;
4. Establish a central database accessible to all law enforcement and financial intelligence agencies to cross-reference individuals and suspicious transactions and/or previous convictions for this offence. This database should also include national and international transactions.

5.8 SUMMARY

In this article, different countries’ legislation has been analysed with the objective to identify key points that may improve SA’s efforts to combat money laundering. The conclusion was that SA’s legislation is on par with that of the United States, the United Kingdom and Australia. However, four key points have been suggested to assist with SA’s fight against money laundering.

Secondary objective number 1.4.2.4 (Chapter 1) has been reached by identifying and analysing the available legislation on money laundering, thereby answering research question number one.

The next chapter aims to describe methods used by law enforcement and financial intelligence agencies in their investigations into economic crimes. A comparison will follow where-in areas will be identified for South Africa’s agencies to consider.

5.9 REFERENCES

18 U.S Code § 1956: Laundering of monetary instruments **see** United States.

18 U.S Code § 1957: Engaging in monetary transactions in property derived from specified unlawful activity **see** United States.

Amaro, S. 2017. *Deutsche Bank fined \$204 million by British regulator FCA for serious anti-money laundering control failings*. CNBC. Available at: <http://www.cnbc.com/2017/01/31/deutsche-bank-fined-204-million-by-british-regulator-for-serious-anti-money-laundering-control-failings.html> (accessed on: 9 February 2017).

Anon. *Money laundering: an overview*. Available at: https://www.law.cornell.edu/wex/money_laundering (accessed on: 8 February 2017).

Anon. 2016. *R30m fine: Sarb nails 5 banks after money-laundering probe*. Fin24. Available at: <http://www.fin24.com/Economy/r30m-fine-sarb-nails-5-banks-after-money-laundering-probe-20160808> (accessed on: 9 February 2017).

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 **see** Australia.

AUSTRAC. *About Austrac*. Available at: <http://www.austrac.gov.au/about-us/austrac> (accessed on: 20 August 2016).

Australia. 1914. Crime Act. Available at: http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/ (accessed on: 22 October 2016).

Australia. 1988. Financial Transaction Reports Act. Available at: <https://www.legislation.gov.au/Details/C2016C00783> (accessed on: 20 August 2016).

Australia. 1995. Criminal Code Act. Available at: http://www.opbw.org/nat_imp/leg_reg/australia/crimcode.pdf (accessed on: 22 October 2016).

Australia. 2002. Proceeds of Crime Act. Available at: <https://www.legislation.gov.au/Details/C2016C00616> (accessed on: 20 August 2016).

Australia. 2006. Anti-Money Laundering and Counter-Terrorism Financing Act. Federal Register of Legislation. Available at: <https://www.legislation.gov.au/Series/C2006A00169> (accessed: 22 October 2016).

Australian Federal Police. The Proceeds of Crime Act 2002. Available at: <https://www.afp.gov.au/what-we-do/crime-types/proceeds-crime> (accessed: 20 August 2016).

Bank of England: Prudential Regulation Authority. Available at: <http://www.bankofengland.co.uk/pr/Pages/default.aspx> (accessed on: 20 January 2017).

Barry, W. *et al.* 2012. Understanding OFAC – administered sanctions programs. Corporate Secretary. Available at: <https://www.corporatesecretary.com/articles/regulation-and-legal/12330/understanding-ofac-administered-sanctions-programs/> (accessed: 1 February 2017).

Barry, H. 2014. MoneyWeb: Banks to pay R125 million in fines. Available at: <https://www.moneyweb.co.za/archive/sarb-fines-top-four-banks-over-antimoney-launderin/> (accessed on: 21 September 2017).

- Bunye, A.I.R. 2012. Laundering history. Available at: <https://pinoyinvestors.wordpress.com/2012/02/27/laundering-history/> (accessed on: 9 April 2014).
- Clark, A. & Burrell, P. 2003. A practitioner's guide to international money laundering law and regulation. England: Sweet & Maxwell.
- Coker, D. 2017. Anti-money laundering laws and practices for banks, individuals, and corporations involved with AML Litigation. Available at: <https://www.hg.org/article.asp?id=18853> (accessed on: 2 February 2017).
- Cornell University Law School: Legal Information Institute. Available at: <https://www.law.cornell.edu/uscode/text/18/1957> (accessed on: 1 February 2017).
- Corruption. Available at: <http://www.fatf-gafi.org/topics/corruption/> (accessed on: 14 April 2013).
- Corruption Perceptions Index. 2017. Transparency International. Available at: https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (accessed on: 26 March 2018).
- Cox, D. 2011. An introduction to money laundering deterrence. John Wiley & Sons Ltd.
- Crime and Misconduct Commission. 2005. Background intelligence brief: Money laundering. p1. Available at: <file:///C:/Users/11933461/Downloads/money-laundering-2005.pdf> (accessed: 15 November 2016).
- Crime Act of 1914 **see** Australia.
- Criminal Code Act of 1995 **see** Australia.
- De Koker, L. 2003. Money laundering trends in South Africa. *Journal of Money Laundering Control*, Vol. 6 Iss: 1, pp.27-41.
- De Koker, L. 2012. South African Money Laundering and Terror Financing Law. LexisNexis. South Africa.
- De Koker, L. 2013. The 2012 revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework. 8 Wash. J.L. Tech. & Arts 165 (2013). Available at: <http://dro.deakin.edu.au/eserv/DU:30060694/dekoker-revisedfatf-2013.pdf> (accessed on: 18 August 2017).

Douglas, L.J.D. 2012. Money laundering and asset forfeiture: Taking the profit out of crime. FBI Law Enforcement Bulletin. Available at: <https://leb.fbi.gov/2012/april/money-laundering-and-asset-forfeiture-taking-the-profit-out-of-crime> (accessed on: 8 February 2017).

FATF: About. <http://www.fatf-gafi.org/about/> (accessed on: 16 March 2013).

Financial Action Task Force. What is Money Laundering? Available at: <http://www.fatf-gafi.org/faq/moneylaundering/> (accessed on: 4 April 2014).

FATF. 2012. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. Updated October 2016. FATF. Paris, France. Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (accessed on: 16 April 2017).

FATF. 2014. Improving Global AML/CFT Compliance: Ongoing Process. Available at: <http://www.fatf-gafi.org/media/fatf/documents/statements/Compliance-24-October-2014.pdf> (accessed on 5 December 2014).

Federal Prosecution Services. Money Laundering. Available at: <https://www.cdpp.gov.au/crimes-we-prosecute/money-laundering> (accessed on: 7 February 2017).

Fin24. 2016. R30m fine: Sarb nails 5 banks after money-laundering probe. Available at: <http://www.fin24.com/Economy/r30m-fine-sarb-nails-5-banks-after-money-laundering-probe-20160808> (accessed on: 21 September 2017).

Financial Conduct Authority. 2017. Available at: <https://www.fca.org.uk/about/the-fca> (accessed on: 19 January 2017).

Financial Intelligence Centre Act 38 of 2001 **see** South Africa

Financial Services Act 2012 **see** United Kingdom.

Financial Services Authority. 2014. Available at: http://www.fsa.gov.uk/about/what/financial_crime/money_laundering (accessed on: 18 January 2017).

Financial Transaction Reports Act 1988 **see** Australia.

Fundira. 2000. Implications of foreign banking and offshore financial centres for money laundering in the region. Available at:

<http://www.iss.co.za/pubs/monographs/no90/ExecSum.html/> (accessed on: 21 September 2017).

Gibson, S. 2014. The Proceeds of Crime Act (CTH): A brief overview of it and literary proceeds orders. Available at: <http://www.gibsonssolicitors.com.au/news/hello-world/> (accessed on: 20 August 2016).

IBA: Anti-Money Laundering Forum – Europe. Available at: <http://www.anti-moneylaundering.org/Europe.aspx> (accessed on: 16 January 2017).

International Monetary Fund. 2016. The IMF and the fight against money laundering and the financing of terrorism. Available at: <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism> (accessed on: 22 October 2016).

International Money Laundering Information Bureau. History of Money Laundering. Available at: http://www.imlib.org/page1_hist.html (accessed on: 7 February 2017).

IRBA: A guide for registered auditors. 2011. Combating money laundering and financing of terrorism. Available at: [https://www.irba.co.za/upload/irba-guide-for-ras-combating-money-laundering\(1\).pdf](https://www.irba.co.za/upload/irba-guide-for-ras-combating-money-laundering(1).pdf) (accessed on: 3 February 2017).

IRS: Bank Secrecy Act. Available at: <https://www.irs.gov/businesses/small-businesses-self-employed/bank-secrecy-act> (accessed on: 1 February 2017).

IRS. Federal Statutes. Available at: <https://www.irs.gov/uac/federal-statutes-money-laundering> (accessed on: 1 February 2017).

IRS. Foreign Account Tax Compliance Act 2010. Available at: <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca> (accessed on: 7 February 2017).

Jackson, J.K. 2012. The Financial Action Task Force: An overview. Congressional Research Service. Available at: <https://fas.org/sgp/crs/misc/RS21904.pdf> (accessed on: 4 April 2014).

Kini, S.M., Lee, P.L. & Micarelli, C. 2013. Regulation of foreign banks and affiliates in the United States. Thomas Reuters. http://www.debevoise.com/~media/files/capabilities/banking/regulation_banks_pdf.pdf (accessed on: 2 February 2017).

LawTeacher. The early history of money laundering. The law essay professionals. Available at: <https://www.lawteacher.net/free-law-essays/commercial-law/the-early-history-of-money-laundering-commercial-law-essay.php> (accessed on: 22 October 2016).

Lilley, P. 2012. *Dirty Dealing: The Untold Truth about Global Money Laundering, International Crime and Terrorism*. Kogan Page.

Lynch, N. 2016. Australia to extend money laundering laws. Reuters. Available at: <http://www.reuters.com/article/australia-moneylaunders-regulations-idUSL3N1BP2A7> (accessed on: 9 February 2017).

Manning, G.A. 2005. Financial investigation and forensic accounting. Boca Raton: Taylor & Francis Group. pp.309-369.

Money Laundering: A banker's guide to avoiding problems. 2002. Office of the Comptroller of the Currency. Washington DC. Available at: <https://www.occ.gov/topics/bank-operations/financial-crime/money-laundering/money-laundering-2002.pdf> (accessed on: 2 February 2017).

Money Laundering Control Act **see** United States of America.

Money Laundering Regulations 2003. Available at: http://ec.europa.eu/internal_market/finances/docs/actionplan/transposition/uk/d4.1-ml-uk.pdf (accessed on: 16 January 2017).

Money Laundering Regulations 2007. Available at: http://www.legislation.gov.uk/ukxi/2007/2157/pdfs/ukxi_20072157_en.pdf (accessed on: 16 January 2017).

Moscow, J.W. 2007. Anti-money laundering: International law and practice. England: John Wiley & Sons. pp 111-123.

Muller, W.H., Kalin, C.H. & Goldsworth, J.G. 2007. Anti-money laundering: International law and practice. England: John Wiley & Sons Ltd. pp 3-9.

Nicholson, R., Fraser, K. & Farnsworth, B. 2014. International Business Review: Focus: Anti-Money Laundering Laws Review Announced. Ison
<http://www.allens.com.au/pubs/ibo/foibo8jan14.htm> (accessed on: 23 July 2016).

OECD. About. Available at: <http://www.oecd.org/about/> (accessed on: 5 December 2014).

OECD. History. Available at: <http://www.oecd.org/general/historyoftheoecd.htm> (accessed on: 5 December 2014).

OECD. Money Laundering. Available at:

<https://www.oecd.org/cleangovbiz/toolkit/moneylaundering.htm> (accessed on: 14 January 2015).

Office of Foreign Assets Control. University of Central Florida: Office of export compliance.

Available at: <http://www.research.ucf.edu/ExportControl/ofac.html> (accessed on: 1 February 2017).

Office of the Comptroller of the Currency. 2002. Money laundering: A banker's guide to avoiding problems. Available at: [https://www.occ.gov/topics/bank-operations/financial-crime/money-laundering/money-laundering-2002.pdf](https://www OCC.gov/topics/bank-operations/financial-crime/money-laundering/money-laundering-2002.pdf) (accessed on: 2 February 2017).

Office of the Law of Revision Council. United States Code. Available at:

<http://uscode.house.gov/> (accessed on: 31 January 2017).

Our Work. The Monetary Fund: About IMF. Available at: <http://www.imf.org/en/About> (accessed on: 18 August 2017).

Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 **see** South Africa

Prevention and Combating of Corrupt Activities Act, 12 of 2004 **see** South Africa.

Proceeds of Crime Act 2002 **see** Australia.

Proceeds of Crime Act 2002 **see** United Kingdom.

Protiviti: Risk & Business Consulting. 2014. Available at:

https://www.protiviti.com/sites/default/files/united_states/insights/guide-to-us-aml-requirements-6thedition-protiviti_0.pdf (accessed on: 1 February 2017).

Purkey, H. 2010. The Art of Money Laundering. Florida Journal of International Law, Vol 22, Issue 1, pp111. Available at: <http://connection.ebscohost.com/c/articles/51490931/art-money-laundering> (accessed on: 4 April 2014).

Sathye, M. & Patel, C. 2007. Developing Financial Intelligence: an assessment of the FIUs in Australia and India. Journal of Money Laundering Control, Vol. 10 No. 4. Emerald Group Publishing. pp. 391-405.

Schectman, J & Wolff, B. 2016. Reuters. The United States received failing scores for its efforts to prevent money laundering by shell companies. Available at:

<http://www.businessinsider.com/r-us-failing-to-curb-money-laundering-by-shell-companies-task-force-report-2016-12> (accessed on: 9 February 2017).

Smit, P. 2007. Anti-money laundering: International law and practice. England: John Wiley & Sons. pp781-794.

South Africa. 1998. Prevention of Organized Crime Act. Available at:
<http://www.gov.za/sites/www.gov.za/files/a121-98.pdf> (accessed on: 20 January 2017).

South Africa. 2001. Financial Intelligence Centre Act. Available at:
<http://www.acts.co.za/financial-intelligence-centre-act-2001> (accessed on: 20 January 2017).

South Africa. 2004. Prevention and Combatting of Corrupt Activities Act. Available at:
https://www.saps.gov.za/dpci/downloads/prevention_combating_corrupt_activities_act.pdf
(accessed on 20 January 2017).

South Africa. 2004. Protection of Constitutional Democracy against Terrorist and Related Activities Act. Available at:
http://www.saps.gov.za/resource_centre/acts/downloads/juta/terrorism_act.pdf (accessed on: 3 February 2017).

Steele, B. Money laundering: A brief history. Available at: <http://www.sid.in-berlin.de/hedkelly-world/moneylaunderingbriefhistory.html> (accessed on: 9 April 2014).

The IMF at a glance. International Monetary Fund: About the IMF. Available at:
<http://www.imf.org/en/About> (accessed on: 18 August 2017).

The IMFs role in the AML/CFT efforts. 2017. The Monetary Fund: The IMF and the fight against money laundering and the financing of terrorism. Available at:
<http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism> (accessed on: 18 August 2017).

Theoharis, M. Money laundering. Available at: <http://www.criminaldefenselawyer.com/crime-penalties/federal/money-laundering.htm#> (accessed on: 8 February 2017).

Thomson Reuters. FATCA and CRS. Available at: <https://tax.thomsonreuters.com/fatca-crs/what-is-crs-fatca/> (accessed on: 7 February 2017).

Turner, J.E. 2011. Money laundering prevention: Deterring, detecting, and resolving financial fraud. John Wiley & Sons.

United Kingdom. 2000. Financial Services and Markets Act. Available at:
<http://www.legislation.gov.uk/ukpga/2000/8/contents> (accessed on: 19 January 2017).

United Kingdom. 2000. Terrorism Act. Available at:
<http://www.legislation.gov.uk/ukpga/2000/11/contents> (accessed on: 19 January 2017).

United Kingdom. 2002. Proceeds of Crime Act. Available at:
http://www.legislation.gov.uk/ukpga/2002/29/pdfs/ukpga_20020029_en.pdf (accessed on: 8 February 2017).

United Kingdom. 2012. Financial Services Act. Available at:
<http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted> (accessed on: 20 January 2017).

UNCAC. Article 14. Thematic Compilation of Relevant Information Submitted by the United States of America: Prevention of Money Laundering. Available at:
https://www.unodc.org/documents/corruption/WG-Prevention/Art_14_Prevention_of_money-laundering/USA.pdf (accessed on: 2 February 2017).

United States. 1986. Money Laundering Control Act. Available at:
https://www.ffiec.gov/bsa_aml_infobase/documents/regulations/ML_Control_1986.pdf (accessed on: 21 September 2017).

United States. 2001. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act). Available at:
<http://news.findlaw.com/wsj/docs/terrorism/hr3162.pdf> (accessed on: 30 January 2017).

United States. 18 U.S Code § 1956: Laundering of monetary instruments. Available at:
<https://www.law.cornell.edu/uscode/text/18/1956> (accessed on: 30 January 2017).

United States. 18 U.S Code § 1957: Engaging in monetary transactions in property derived from specified unlawful activity. Available at:
<https://www.law.cornell.edu/uscode/text/18/1957> (accessed on: 30 January 2017).

Uribe, R. 2003. Changing Paradigms on Money Laundering. Available at:
<http://webcache.googleusercontent.com/search?q=cache:d9UnqviSQukJ:www.anti-moneylaundering.org/Document/Default.aspx%3FDocumentUId%3D81F17D8F-5C74-415F-BD58-01EEB164AA44+&cd=3&hl=en&ct=clnk&gl=za> (accessed on: 23 July 2016).

US Customs Service. Money Laundering. Official website of Homeland Security. Available at: <https://www.ice.gov/money-laundering> (accessed on: 22 October 2016).

US Department of the Treasury. Updated 2017. Resource centre: Sanctions programs and country information. Available at: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> (accessed on: 1 February 2017).

US PATRIOT Act 2001 **see** United States of America.

Weimer, M. & Vines, A. 2011. Chatham House. UK-South Africa Relations and the Bilateral Forum. Available at: https://www.chathamhouse.org/sites/files/chathamhouse/19481_sa-uk_links.pdf (accessed on: 18 August 2017).

Welch, J., Del Guayo, J.M., Ragnolini, L., Averginos, Y., Butkiewicz, E., Wojdylo, K., Stasevicius, G. & Balciunaite, S. 2006. Comparative implementation of EU Directives (II) – Money Laundering. The British Institute of International and Comparative Law. https://www.cityoflondon.gov.uk/business/economic-research-andinformation/research-publications/Documents/2007-2000/Comparative%20Implementation%20of%20EU%20Directives%20II_Money%20Launde ring.pdf (accessed on: 16 January 2017).

White, A. 2007. Anti-money laundering: International Law and Practice. England: John Wiley & Sons. Pages 739 to 762.

Woods, B.F. 1998. The Art and Science of Money Laundering. Colorado: Paladin Press.

CHAPTER 6

A COMPARISON OF CERTAIN LAW ENFORCEMENT AGENCIES ACROSS THE UNITED STATES OF AMERICA, THE UNITED KINGDOM, AUSTRALIA AND SOUTH AFRICA TO DETERMINE AREAS WHERE SOUTH AFRICA CAN IMPROVE

The objective of this chapter was to investigate methods used by law enforcement and financial intelligence agencies to investigate economic crimes. The various institutions of all four countries were also investigated to determine whether South Africa can improve on their law enforcement and financial intelligence agencies (secondary objective 1.4.2.5, Chapter 1).

6.1 INTRODUCTION

Law enforcement can be defined as “preventing and detecting criminal activities as well as maintaining the peace in accordance with the law” (Collins English Dictionary) or in short, “the activity of making certain that the laws of an area are obeyed” (Cambridge Dictionary). Financial intelligence is the “processed financial information where such processing follows a definitive analytical rigor. Financial information, when it is evaluated and analysed by a process set by the financial intelligence unit becomes ‘financial intelligence’” (Sathye & Patel, 2007). A financial intelligence unit can be described as a “central, national agency with a computerized data base, available to competent authorities for use in money laundering and terrorist financing cases” (FATF, 2010). Financial intelligence centres work with law enforcement to fight tax evasion, money laundering and terrorist financing.

According to Couper (2013), the police are the first line of justice. Police officers play a crucial role in any law enforcement system, not only monitoring criminal activity, but also taking part in investigations, testifying in court, issuing tickets to reckless drivers and helping citizens when and after a natural disaster occurred; therefore, deterring illegal and dangerous behaviour (Kokemuller).

Law enforcement can be divided into two groups, namely policing and high policing. Policing can be defined as “the responsibility for maintaining public order and safety, enforcing the law, and preventing, detecting, and investigating criminal activities”. This definition has been criticised by police scholars, for among other reasons that police intervene in much more than just law enforcement and order maintenance. This led to a new definition developed by Bittner (1970), an American sociologist. Researchers agree that this ‘new’ definition encompasses the essence of policing much better than the ‘old’ definition did. Bittner (1970) said that the

“legal competence to enforce coercive, non-negotiable measures to resolve problematic situations” is the common feature among all the different policing agencies.

High policing is executed by both national police and specialised agencies. Examples of specialised agencies are the Federal Bureau of Investigation (USA), MI5 (UK) and the Australian Security Intelligence Organization. The main objective of these specialised agencies is to deal with domestic or internal threats to national security (Banton, Whetstone, Kelling, Brodeur & Walsh).

The United States of America, the United Kingdom, and Australia were chosen to analyse and compare with South Africa. The reasons for choosing these countries have already been discussed in Chapter 1, paragraph 1.5.2 and Chapter 2, paragraph 2.1.1.

The rest of this chapter is dedicated to discussing the history of law enforcement, the different types of law enforcement agencies and the methodology used in investigating tax evasion and money laundering. A summary will be given afterwards in table format to allocate all the agencies into groups of similar functions by country. After the summary, all proposed areas where South Africa can improve will be discussed.

6.2 HISTORY OF LAW ENFORCEMENT

Before the history on law enforcement for the above countries can be discussed, an oversight will be given from the era in which policing was first established and its growth from then until now. The reason is: the policing system that started in England was ‘transferred’ to other Anglo Saxon Countries such as the United States of America and Australia, which are part of this study.

Approximately 3 000 B.C., the Egyptians were the first to establish policing. The pharaoh divided the empire into administrative jurisdictions and appointed an official for each of these jurisdictions who was accountable for justice and security. This official was assisted by the chief of police who was, in turn, responsible for the everyday tasks assigned to them (Banton *et al.*).

In ancient Greece, the policing system was a little more organised. Policing duties were assigned to magistrates who were assisted by different groups who had their duties to perform. Ten individuals (astynomoi) were responsible for public places, ten magistrates (agoranomoi) kept peace in the marketplaces, while another ten public officials (metronomoi) oversaw the measuring standards. Only the ‘eleven’ (officers specifically chosen for this position) dealt with criminal justice (Banton *et al.*, Stamatis *as cited by* Tsolakidou, 2013; Kelling, Brodeur & Walsh).

During the Middle Ages, offences were resolved by the parties involved, and therefore England too had a community-based responsibility system. After the Norman Conquest in 1066, the Normans added the office of constable. Despite this addition, offences were still handled privately by the parties involved. The Statute of Winchester of 1285 organised the social obligation and formed the basis of legislation for law enforcement (Summerson, 1992; Banton *et al.*). It stated that:

1. *...[A]ny citizen could arrest an offender;*
2. *Unpaid, part-time constables operating at various levels of governance; in towns they would be assisted by their inferior officers, the watchmen;*
3. *If the offender was not caught red-handed, a hue or a cry would have to be raised;*
4. *Everyone was obliged to keep arms and to follow the cry when required; and*
5. *Constables had among their varying responsibilities a duty to present the offender at court tests.* (Summerson, 1992; Banton *et al.*).

The Justice of the Peace Act of 1361 played a role in developing centralised justice administration in England (Summerson, 1992). The office of the justice of the peace was responsible for policing, judicial and administration. Due to this act, the community-based service by all individuals ended. The local justices of the peace, constables, and the watch and ward's responsibilities remained that of public order and safety (Editors of Encyclopaedia Britannica (b); SAGE Publications, 2015).

The Thames River Police was created in 1798 and was the first police force in London. Patrick Colquhoun directed the Thames River Police Force with the main objective of reducing the high theft rates in the port of London. At this time, the force was financed by the merchants. This force had two distinctive characteristics: they used visible, preventative patrols and the officers of this force received salaries instead of stipendiaries together with the order that they are prohibited from taking fees. The creation of this force proved to be a success as reports of crime dropped significantly. Even though this force proved to be effective, the provincial leaders in the rest of England still clung to the constabulary system. Many political leaders in England feared a standing police force. They argued that such a force would be used for political purposes. However, while the political leaders were busy contemplating a standing police force, other English politicians created a standing police force in Dublin, Ireland. In 1786, the Dublin Police Act was passed, creating "a professional uniformed and armed centralized police force in Dublin". Robert Peel, who is considered to be the founder of modern

professional policing in England, was appointed as chief secretary for Ireland in 1812. By that time, Dublin was considered fairly free of crime (Anon 2015b; SAGE Publications, 2015).

The Metropolitan Police Department was established in 1829 by the Metropolitan Police Act. This department became the standard on which future police departments in Great Britain, the British Commonwealth and United States were based. This is the first department where a hierarchy of ranks in military fashion was incorporated. A mission statement (also known as Peel's principles) was used in the training of officers. This mission statement contains nine principles, which include the following:

1. *Police should demonstrate impartiality,*
2. *Focus on crime prevention,*
3. *Carry out their duties within the limits of the law,*
4. *Work in cooperation with the public so that the public voluntarily observes the law, and*
5. *To use force only to the extent necessary to restore order and only when other means have been exhausted.* (Anon 2015b, Banton *et al.*, Bittner, 1970; Roufa; SAGE Publications, 2015).

The policing system in the United States was based on the standard of the Metropolitan Police Department established in 1829 in England. Before this policing system, the first known regulating system was created in Boston in 1631. It initially comprised townspeople called the "watch". The "watch" consisted of one constable and several volunteers; not exceeding six individuals in total. The volunteers' primary duties were to patrol the streets at night reporting fires; capture and arrest criminals; and maintain order in the streets. The constable was responsible for escorting suspects and witnesses to court and maintaining health and sanitation (National Law Enforcement Museum). New York established their "watch" in 1658 and Philadelphia established theirs in 1700; however, the "watch" was ineffective in curbing the crime rates (Bittner, 1970; Potter, 2013).

Philadelphia was the first city to have passed a law in 1749 in order to solve the problems created by the night watch. This law provided for (among other things):

1. That watchmen can now be appointed as needed,
2. They will be paid a salary instead of the stipendiary, and
3. Their authority was increased. (National Law Enforcement Museum, 2012).

In Washington, the centralisation of police authority took place in 1802 after the original charter of Washington was approved. This meant that the authority was granted to create patrols and

impose fines, among other procedures (Wilson, 2016). In 1833, Philadelphia created a day watch in addition to the night watch and New York followed suit and established their day watch in 1844. By 1880, all big cities in the United States had established municipal police forces. One of the factors that necessitated this was the expansion of cities. Disorder in the cities increased as the number of citizens rose, which made the “watch” system inadequate (Bittner, 1970; Potter, 2013).

Summary

Egypt was the first country to establish policing as early as 3 000 B.C. The policing in Egypt was done in an orderly manner: each administrative jurisdiction had its own official who was assisted by the chief of police. Ancient Greece showed an even more organised policing system than that of Egypt: ten individuals were assigned to public places; ten magistrates were assigned to marketplaces; while ten more were assigned to oversee measuring standards. To deal with criminal justice, 11 officers were chosen specifically for this duty.

England's policing system evolved from a community-based responsibility to the office of the justice of the peace to the first police force, namely the Thames River Police. Due to political concerns regarding a standing police force, other politicians created a standard force in Dublin, Ireland. Although the Thames River Police proved to be effective, the Metropolitan Police Department was established, which became the standard for future police departments in Great Britain, the British Commonwealth and the United States.

The policing system was originally formed as a reactive entity, but the centralised police departments began to emphasise acting proactively to control crime. This changed the definition of the police function (Bittner, 1970; SAGE Publications, 2015).

6.3 MONEY LAUNDERING INVESTIGATION METHODS

In Chapter 3, paragraph 3.2.1, it has been established that money laundering is a predicate offence. A predicate offence under criminal law refers to “a crime that provides the resources for, or contains some of the elements of a more serious crime. A predicate offense is committed for the purpose of committing the greater crime” (Legal Dictionary). Therefore, the ‘greater crime’ must first be investigated before the investigation into the money laundering offence can begin (Morehart, 2006; Donciu).

The investigation into the ‘greater crime’ will not be addressed in this chapter. The focus will be on the techniques used to investigate this predicate offense. After research has been conducted, it became apparent that the investigation into money laundering has a set of generic steps that are followed. The procedures used during a money laundering investigation

are the same as when conducting a financial crime investigation. However, the circumstances of the specific case will determine whether the usual steps will be taken as in financial crimes or whether these steps will be combined with covert operations (Money Laundering Policy Implementation Guide, 2010; Nedelcu, 2010).

An overt operation or the usual investigative methods entail obtaining all financial records of the suspect and auditing those records. A covert operation is more sophisticated than an overt operation, because it includes the traditional investigative techniques but, before instigating those, certain other steps must be taken first. These other steps will depend on the circumstances surrounding the investigation. These covert steps first will be discussed before elaborating on the financial investigative techniques.

6.3.1 Covert operations

A covert operation is defined as “an operation that is so planned and executed as to conceal the identity of or permit plausible denial by the sponsor”, whereby ‘sponsor’ refers to governmental departments or agencies (Department of Defence Dictionary, 2017).

The Federal Bureau of Investigation (FBI Jobs) published three steps that can be taken when a covert operation is the best method of investigation. These steps include pen registers, wiretaps and undercover operations.

According to Title 18 of the U.S. Code section 3127(3), a pen register is defined as

a device or process which records or decodes dialling, routing, addressing, or signalling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication... (U.S Code).

Therefore, a pen register is a document or documents containing the date, time and telephone numbers of the callers and of the recipients. This is valuable in “assisting the identification of co-conspirators, establishing the existence of relationships with subjects under investigation or with individuals previously convicted of a crime” (Money Laundering Policy Implementation Guide, 2010; Nedelcu, 2010).

Wiretaps or ‘bugs’ enable the investigator to listen to real-time conversations of the subject on either a telephone or in a particular location. Permission can also be obtained to observe individuals’ actions physically. The importance of this step is to show intent, admission of guilt or the subject in the process of committing a crime (Money Laundering Policy Implementation Guide, 2010; Nedelcu, 2010).

Undercover operations involve the use of an undercover agent to gather evidence during the investigation of money laundering activities. The benefits of these types of investigations are to access evidence that would otherwise not be accessible; to be proactive and prevent criminal activity; the capacity to shape the investigation to the specific evidentiary and prosecutorial needs; and to deter future criminal activity by using a successful undercover operation for publicity (Money Laundering Policy Implementation Guide, 2010; Nedelcu, 2010).

6.3.2 The financial investigation techniques

As already mentioned, the financial investigation techniques employed are the same as the methods used in other financial crimes – auditing the financial records of the individual or of the business entity (Madinger, 2012). The goal, among other things, is to link financial transactions to corruption. Usually, the investigator will start with identifying the individuals, the business entities, the assets involved and the connection between them before analysing the financial flows. The financial data referred to can include income, expenses, assets and liabilities of both the individuals and the business entities. Sources of documents essential to this type of investigation include, but are not limited to:

1. The internet;
2. Other publicly available sources;
3. Government agencies;
4. Financial institutions;
5. Money service providers;
6. Law, auditing and accounting firms;
7. Trust and company service providers;
8. Real estate agents;
9. Art dealers;
10. Businesses, relatives, employees and associates of the suspects; and
11. The suspects themselves (World Bank Group).

The auditing procedures are parallel with the methods used by criminal investigators in the sense that the end result is to issue a report on the findings. However, the difference between auditing and criminal investigation is that criminal investigators are looking for “issues of guilt and proof beyond reasonable doubt” (Madinger, 2012). Auditors are “responsible for evaluating the validity and the reliability of a company or organisation’s financial statements” (Reviso) and are concerned with recommendations of changes for management and the detection of problems that can result from the outflow of financial assets (Madinger, 2012).

When conducting the financial investigation, five questions have to be answered in order to provide context to investigate the underlying criminal activity. These questions are:

1. Where did the suspect get the money?
2. How much money did the suspect get?
3. Where is the money going?
4. How is the money moving? and
5. Is the suspect keeping the money, or is the suspect only a conduit to someone else?

(Madinger, 2012).

Combining the financial investigation with that of covert operations creates context for each and is therefore most effective when combined (Madinger, 2012).

Both techniques of investigating money laundering offences have been discussed in the previous paragraphs. The next step will be to identify the different law enforcement agencies and financial intelligence units involved with combating this predicate offense.

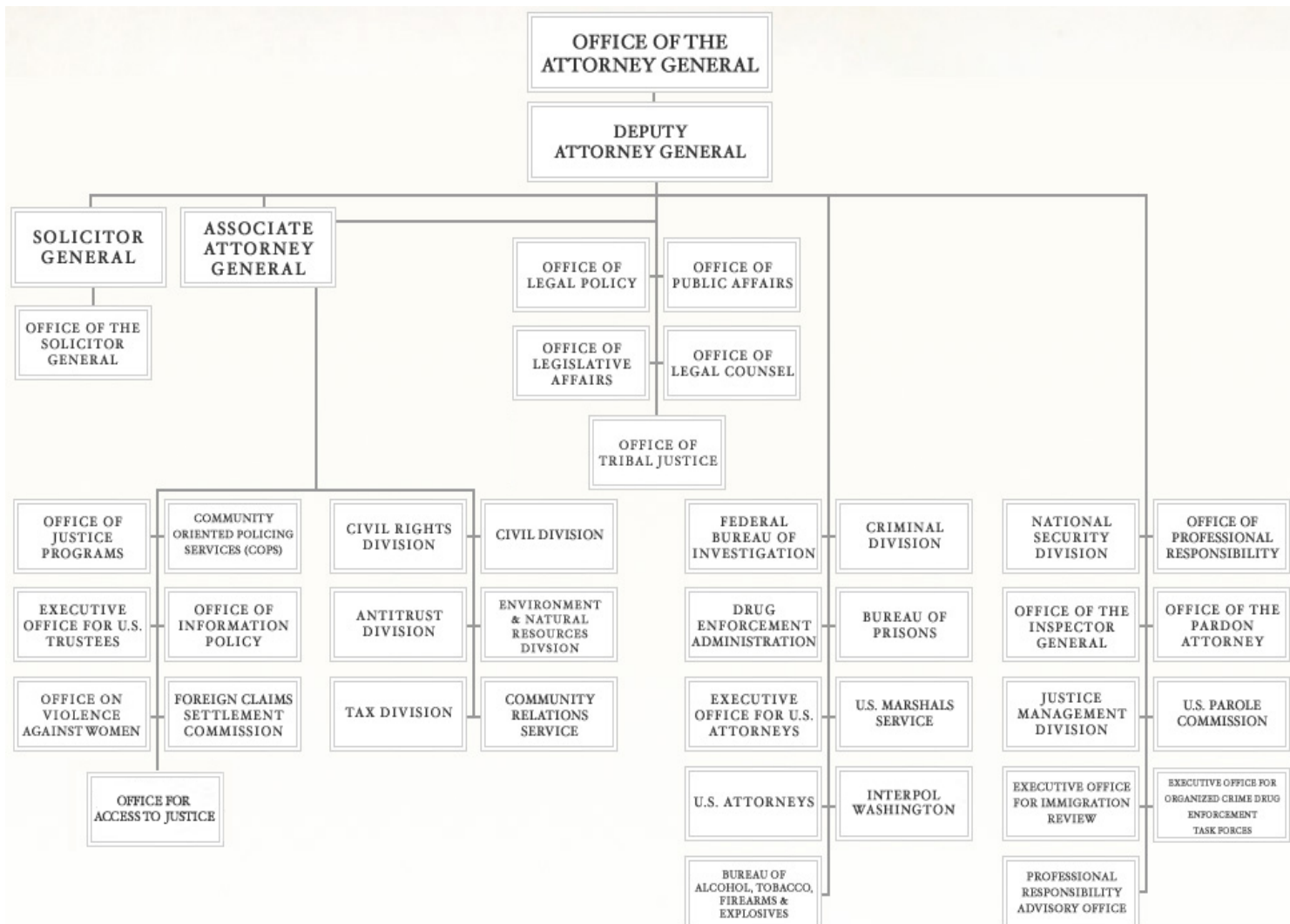
6.4 UNITED STATES OF AMERICA

The law enforcement agencies of the United States of America who report to the Office of the Attorney General are shown in Figure 6-1. Not all of these agencies are involved with money laundering and tax evasion investigations, and therefore only those involved will be discussed. The general police forces applicable will not be elaborated on, as they refer money laundering cases to the agencies that will be discussed.

According to Figure 6-1 (on the next page), the Office of the Attorney General is the head of the Department of Justice with its primary goal to represent the United States in legal matters and give advice and opinions to the President as well as to the heads of the executive departments of the Government when so requested (About the Office, 2017).

The Deputy Attorney General assists and advises the Attorney General “in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department” (Department of Deputy Attorney General, 2014).

Figure 6-1: Agencies in the United States of America



Approved by:  Date: 6/5/2015
 LORETTA E. LYNCH
 Attorney General

(Source: United States Department of Justice, 2015)

The Federal Bureau of Investigation was identified as one of the agencies reporting to the Deputy Attorney General, whose functions are worth analysing for this research.

The main reasons are:

1. They combat major white-collar crime; and
2. They combat public corruption at all levels (Mission and Priorities).

They are also a part of a programme called the Organized Crime Drug Enforcement Task Force Program. This programme is run by the Executive Office for Organized Crime Drug Enforcement Taskforce (Figure 6-1), which also reports to the Deputy Attorney General (Organized Crime Drug Enforcement Taskforces, 2015).

The Central Intelligence Agency is not a law enforcement agency and receives its instructions from the White House. Their main responsibility is providing national security intelligence on foreign threats to the United States. This is done by counterintelligence or covert operations (paragraph 6.3.1). This agency will be discussed in detail in paragraph 6.4.5.

6.4.1 Federal Bureau of Investigation (FBI)

The Federal Bureau of Investigation was founded in 1908 by order of United States Attorney General Charles Bonaparte. A more efficient investigative division was needed. The first agents were a group of federal investigators who were former Secret Service employees. They reported to the Chief Examiner of the Department of Justice. In 1909, the name of the department changed to the Bureau of Investigation (History, 2010; The Nation Calls).

The Bureau was first used to investigate immigrants suspected of radicalism, criminals evading prosecution by crossing over state lines, violators of the Espionage Act 1917 and draft registers. The Bureau was significantly expanded and restructured by its then director J. Edgar Hoover during the 1920s. These changes made the Bureau a more effective crime-fighting unit. It was only in 1935 that the name of the department was changed to the Federal Bureau of Investigation (History, 2010; The Nation Calls).

The Mission of the Federal Bureau of Investigation is to “protect the American people and uphold the Constitution of the United States” through their vision, which is to be “ahead of the threat through leadership, agility and integration”. Two of the Federal Bureau of Investigation’s priorities that relate to this study are to combat major white-collar crime and to combat public corruption at all levels (Mission and Priorities). It was already established in Chapter 1 and Chapter 3 that money laundering is included in the definition of corruption. White-collar crime can be defined as fraud committed by business and government professionals and it is categorised by “deceit, concealment, or violation of trust and are not dependent on the application or threat of physical force or violence” (White-Collar Crime). Money laundering, of which the definition was also established in Chapter 5, may also be seen as part of white-collar crime.

The asset forfeiture/money laundering unit in the Criminal Investigative Division was established because illicit proceeds are a continuing and growing problem for the United

States of America. The aims of this unit are to “identify, target, disrupt, and dismantle criminal and terrorist organizations and individuals engaged in money laundering schemes” (FBI Money Laundering).

The Federal Bureau of Investigation is now targeting the middlemen who facilitate the hidden flow of money such as accountants, lawyers, real estate agents and brokers who have the ability to facilitate the process of moving money. “Our focus is on third-party facilitators” (FBI News, 2016; ACAMS, 2017).

The Federal Bureau of Investigation is also a participant in a programme called the Organized Crime Drug Enforcement Task Force Program. This programme is run nationwide by the Executive Office of Organized Crime Drug Enforcement Taskforces under the direction of the Deputy Attorney General. Their main mission is to disrupt and dismantle major drug trafficking organisations, money laundering organisations and related criminal enterprises (Criminal Division, 2015).

The methods utilised by the Federal Bureau of Investigation’s Money Laundering Unit include trying to gather intelligence by watching tendencies and different types of crime problems. This unit works alongside other Federal Bureau of Investigation divisions with the sole objective of disrupting criminal operations. The private sector is one of the Bureau’s most critical partners (FBI News, 2016; ACAMS, 2017).

The basic method used is to first address the underlying criminal activity, and secondly, to track the money (Morehart, 2006). When tracking the money, the first step is to analyse financial transactions. It is also important to track the assets when investigating the money laundering offence (World Bank Group). The following steps (not necessarily in this order) are taken to trace and obtain bank accounts:

1. Recent Mortgages;
2. SARs (Suspicious Activity Reports);
3. CTRs (Currency Transaction Reports);
4. Subpoenas to FEDWIRE (Federal Reserve Wire Network);
5. CHIPS (Clearing House Interbank Payment System);
6. Patriot Act 314(a) request (Section 314(a): information sharing with federal law enforcement by financial institutions and other regulatory bodies);
7. EGMONT request. The Egmont Group facilitates the exchange of expertise and financial intelligence to combat money laundering on a global scale. (Egmont Group);
8. Mutual Legal Assistance Treaties. (World Bank Group).

6.4.2 National Security Agency/Central Security Service (NSA/CSS)

The National Security Agency/Central Security Service is part of the Department of Defence as well as the Intelligence Community Agency (What We Do, 2016). The Department of Defence forms part of the Criminal Division (Figure 6-2), which is under the direction of the Deputy Attorney General (Figure 6-1).

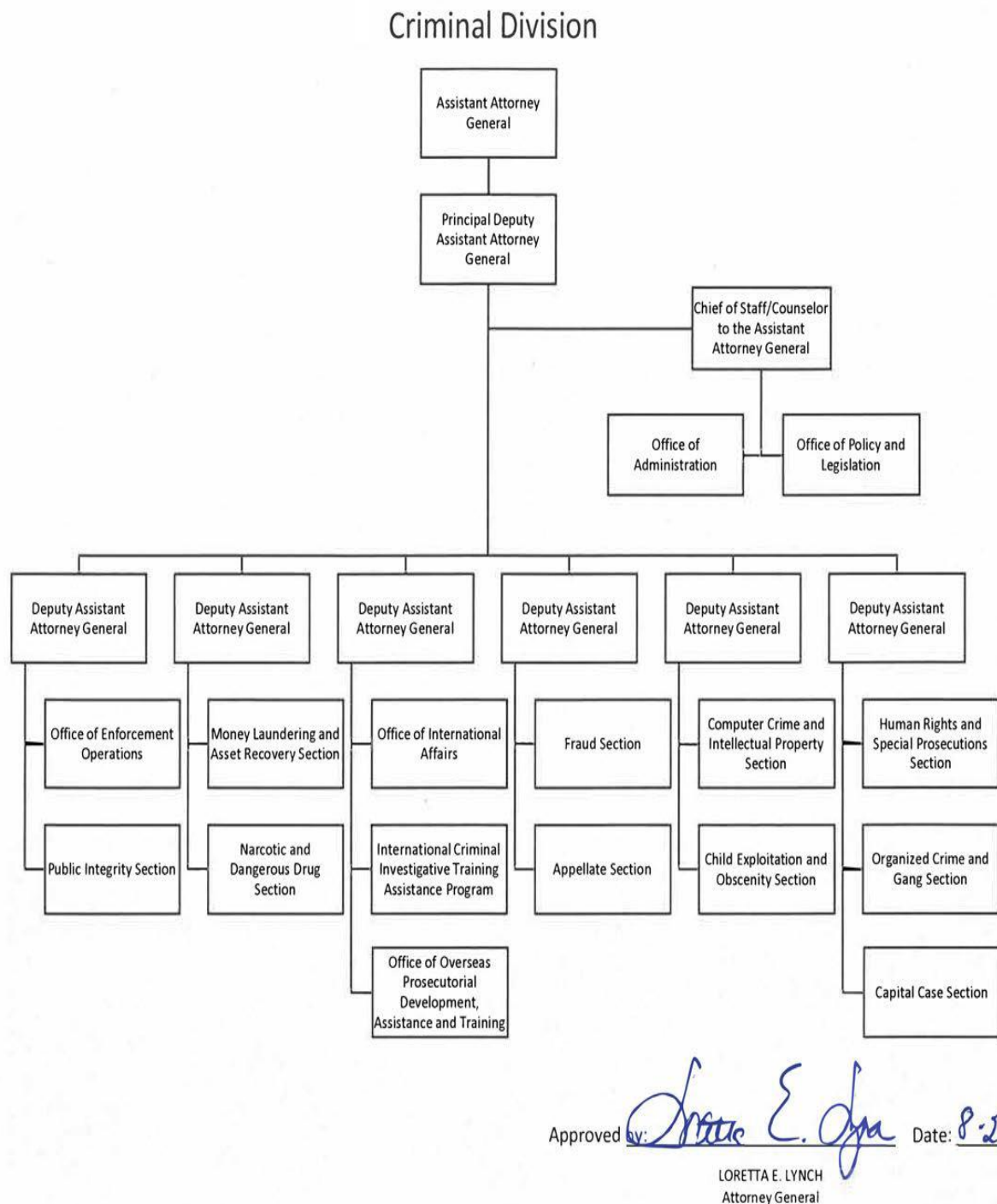
The National Security Agency/Central Security Service is the leader in cryptology, which includes signals intelligence and Information Assurance products and services. It also allows Computer Network Operations with the goal of gaining a decision advantage for the United States and its partners (Mission & Strategy, 2016).

The National Security Agency/Central Security Service defends essential networks; it protects privacy rights, advances United States goals and alliances and is a unique asset to its country. It supplies the following information to the national decision-makers in order to make decisions and execute policies and operations:

1. The activities and capabilities of adversaries;
2. Enabling secure communication and exchange of information; and
3. To outwit the adversaries in cyberspace wanting to cause harm to the United States (What We Do, 2017).

The Central Security Service coordinates and develops policy and guidance on the Signals Intelligence and Information Assurance missions to ensure military integration. It upholds full partnership between the National Security Agency and cryptologic elements of the Armed Forces to address and act on critical military-related issues (Central Security Service, 2016). The organisational chart of the Criminal Division is illustrated in Figure 6-2 on the next page.

Figure 6-2: Criminal Division organisational chart



(Source: Department of Justice, 2016).

Figure 6-2 gives a breakdown of the Criminal Division, which is part of all the law enforcement agencies reporting to the Deputy Attorney General (Figure 6-1). Figure 6-2 shows, among

other sections, a Money Laundering, a Fraud and an Asset Recovery Section, which will be discussed in the following paragraph.

6.4.3 Criminal Division

This division's main responsibilities are to develop, enforce and supervise the application of all federal criminal laws except those specifically assigned to other divisions. The Division and the 93 U.S. Attorneys have to oversee criminal matters as well as certain civil litigation. Many nationally significant cases are prosecuted by the Criminal Division's attorneys. The Division is also tasked with formulating and implementing criminal enforcement policies and it provides advice and assistance on criminal matters (Criminal Division, 2017).

It consists of the various offices depicted in Figure 6-2, which work together to achieve the Division's goals. Sixteen offices are depicted in Figure 6-2, but not all of them are applicable to this study. Therefore, only the offices that will assist in achieving the goal as set out in paragraph 6.1 will be discussed.

6.4.3.1 Money Laundering and Asset Recovery Section (MLARS)

The Money Laundering and Asset Recovery Section's main objective is leading the Department of Justice's asset forfeiture and anti-money laundering enforcement efforts. This section provides leadership through the following:

- 1. Prosecuting and coordinating complex, sensitive, multi-district, and international money laundering and asset forfeiture investigations and cases;*
- 2. Providing legal and policy assistance and training to federal, state and local prosecutors and law enforcement personnel, as well as to foreign governments;*
- 3. Assisting Departmental and Interagency Policymakers by developing and reviewing legislative, regulatory and policy initiatives; and*
- 4. Managing the Department's Asset Forfeiture Program, including distributing forfeited funds and properties to appropriate domestic and foreign law enforcement agencies and to community groups within the United States, as well as adjudicating petitions for remission or mitigation of forfeited assets.*

In order to achieve the above-mentioned, the Money Laundering and Asset Recovery Section consists of seven units and associated teams. They are the:

1. Bank Integrity Unit,
2. International Unit,
3. Money Laundering and Forfeiture Unit,
4. Policy Unit,

5. Program Management and Training Unit,
6. Program Operations Unit, and
7. Special Financial Investigations Unit (Money Laundering and Asset Recovery Section).

Of these seven units, only the Money Laundering and Forfeiture Unit and the Special Financial Investigations Unit will be discussed. These two units are the only ones that have a direct impact on this study.

6.4.3.1.1 Money Laundering and Forfeiture Unit

This unit investigates and prosecutes professional money launderers, gatekeepers (provides services to serious criminal organisations) and individuals and entities using modern and most refined money laundering techniques. Other functions of this unit are litigating civil forfeiture cases for the Criminal Division, supporting the Division in cases that involve substantial or multifaceted criminal forfeiture allegations and it is the Division's experts on domestic forfeiture (Money Laundering and Forfeiture Unit).

6.4.3.1.2 Special Financial Investigations Unit

This unit assists the Money Laundering and Asset Recovery Section in complex financial investigations. Because of the fact that this unit is the Money Laundering and Asset Recovery Section's experts on financial investigations, the Special Financial Investigations Unit supplements the law enforcement partners to conduct intricate financial investigations together with the Money Laundering and Asset Recovery Section litigating units. Other functions of this unit are to help the litigating units to set investigative priorities, it is the liaison to the interagency operational law enforcement centres and the intelligence community, and it coordinates the Money Laundering and Asset Recovery Section's classified litigation (Special Financial Investigations Unit).

6.4.4 Internal Revenue Service's Criminal Investigation Unit

The Intelligence Unit in the Internal Revenue Service was created in 1919 to investigate allegations of tax fraud. In 1978, this unit became the Criminal Investigation Unit. According to the Internal Revenue Service, their conviction rate has never fallen below 90% and it is a success that is unmatched by federal law enforcement (History of IRS Criminal Investigation, 2016).

The mission of the Criminal Investigation Unit is to serve the American public "by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law". The special agents of the Internal Revenue Service have investigative jurisdiction over tax, money

laundering and the Bank Secrecy Act. The Internal Revenue Service is the only federal agency that can investigate potential criminal violations of the Internal Revenue Code. The Criminal Investigation Unit's special agents not only have financial investigative skills, but they also have the skill to use specialised forensic technology.

If there is no compliance with tax laws, offenders may face a civil audit or a criminal investigation. To achieve the strategic priorities, three interdependent programmes were implemented. The Legal Source Tax Crimes, the Illegal Source Financial Crimes and the Narcotics Related and Counterterrorism Financial Crimes. To combat tax evasion, money laundering and currency crime violations, the use of all statutes in the Criminal Investigation Unit's jurisdiction, the grand jury process and enforcement techniques are encouraged (Criminal Investigation At-a-glance, 2016).

The sources of the criminal investigations include information obtained within the Internal Revenue Service, information received from the public and information obtained from other law enforcement agencies or the United States Attorney's Offices. This information is analysed to determine whether tax fraud or another financial crime has been committed. Relevant information is evaluated and the approval or decline of further investigation is determined. When a 'subject criminal investigation' has been initiated, the facts and evidence are obtained in order to form the elements of criminal activity (Tax Division, 2016; How criminal investigations are initiated, 2017).

The same investigation techniques as discussed in previous paragraphs are utilised by the Criminal Investigation Unit. The evidence that has been gathered and analysed will determine whether the case will be stopped or whether a recommendation of prosecution will be prepared. A 'special agent report' is compiled detailing the findings of violation of the law together with a recommendation of prosecution. If the case must be criminally prosecuted, this report is forwarded to the Department of Justice's Tax Division (if it is a tax investigation) or to the United States Attorney for all other investigations. This 'special agent report' has to pass four levels before it is forwarded to the Department of Justice or the United States Attorney. During the review in each of these levels, it can be found that the evidence does not validate criminal charges and therefore should not be prosecuted (How criminal investigations are initiated, 2017).

The Tax Division of the Department of Justice enforces

the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation, in order to promote voluntary compliance with the tax laws,

maintain public confidence in the integrity of the tax system, and promote the sound development of the law (Tax Division, 2016).

6.4.5 The Central Intelligence Agency (CIA)

The Central Intelligence Agency's main responsibility is to provide national security intelligence to senior United States policy-makers on foreign threats to the United States. This is achieved by conducting counterintelligence or covert operations relating to foreign intelligence and national security when the president requests it. The agency's vision is to provide "tactical and strategic advantage for the United States" through their information, insights and actions (About CIA, 2016). The Central Intelligence Agency is not a law enforcement agency and receives its instructions from the White House where the president must authorise any covert operations. The agency consists of five components:

1. The Directorate of Operations;
2. The Directorate of Analysis;
3. The Directorate of Science and Technology;
4. The Directorate of Support; and
5. The Directorate of Digital Innovation. (Today's CIA, 2015; CIA: Our Mission, 2013; Pincus, 2010).

Its responsibilities can be set out as follows:

1. The Directorate of Operations is the covert arm of the agency as well as the national authority for "the coordination, de-confliction and evaluation of clandestine operations across the Intelligence Community of the United States" (Clandestine Services, 2016);
2. The Directorate of Analysis converts incomplete and contradictory information to useful information that informs United States policy-makers (Intelligence & Analysis, 2015);
3. The Directorate of Science and Technology solves intelligence problems through effective targeting, technology and outstanding tradecraft. This component of the Central Intelligence Agency creates, adapts, develops and operates technical collection systems as well as applying supporting technologies to collect, process and analyse information (Science & Technology, 2015);
4. The Directorate of Support's responsibility is to ensure that the Central Intelligence Agency has everything it needs to accomplish its missions (Support to Mission, 2016); and

5. The Directorate of Digital Innovation's duty is to accelerate "innovation across the Agency's mission activities with cutting-edge digital and cyber tradecraft and IT infrastructure" (Digital Innovation, 2015).

6.4.6 Financial Intelligence Units

Financial intelligence as well as financial intelligence units were defined in the introduction to this chapter. The history of financial intelligence and financial intelligence units is not as old as the history of law enforcement. It was only during the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988 that the need for a modern anti-money-laundering strategy was identified and accepted internationally. As countries were developing their anti-money laundering strategies, it was found that law-enforcement agencies had inadequate access to financial information. This modern anti-money laundering strategy will consequently require making the financial system part of the effort to fight money laundering. It was further found that the implementation of a system requiring disclosures of suspicious transactions from financial institutions created the need to establish a central body to process, analyse and distribute this information (World Bank, 2004).

Fighting cross-border and international money laundering required an international financial intelligence agency that was established in 1995 and is called the Egmont Group. It is an unofficial organisation and consists of 152 financial intelligence units from across the globe. Its primary goal is to provide a platform for the exchange of expertise and financial intelligence in the fight against money laundering and terrorist financing. This organisation also continues to give effect to the resolutions and statements by the United Nations Security Council, the G20 Finance Ministers, and the Financial Action Task Force. As part of the Financial Action Task Force's Recommendation 29, countries must ensure that their Financial Intelligence Unit pays careful attention to this group's Statement of Purpose and its Principles for Information Exchange. Recommendation 29 also states that "the Financial Intelligence Unit should apply for membership in the Egmont Group". The Egmont Group adds value by improving the understanding of money laundering and terrorist financing risks among its stakeholders, thereby making it the operational arm of the international anti-money laundering and combating the financing of terrorism tool (Egmont Group, 2017; De Koker, 2013).

There are four models of financial intelligence units (FIU): judicial, law enforcement, administrative and hybrid. The respective responsibilities of these units can be summarised as follows:

1. The judicial model is established in the judicial branch of government where disclosures of suspicious transactions are received from the financial institutions by the investigative agencies initiating the judiciary powers.
2. The law enforcement model implements money laundering countermeasures together with other law enforcement agencies to ensure support with regard to numerous law enforcement agencies or judicial authorities with simultaneous jurisdictional authority.
3. The administrative model can be seen as the barrier between the financial and the law enforcement authorities. This model is a “centralized, independent, administrative authority which receives and processes information from the financial sector and transmits disclosures to judicial or law enforcement agencies for prosecution”.
4. The hybrid model assists as a link to a disclosure intermediary as well as a link to both judicial and law enforcement, combining at least two elements of the other FIU models (Egmont Group, 2017).

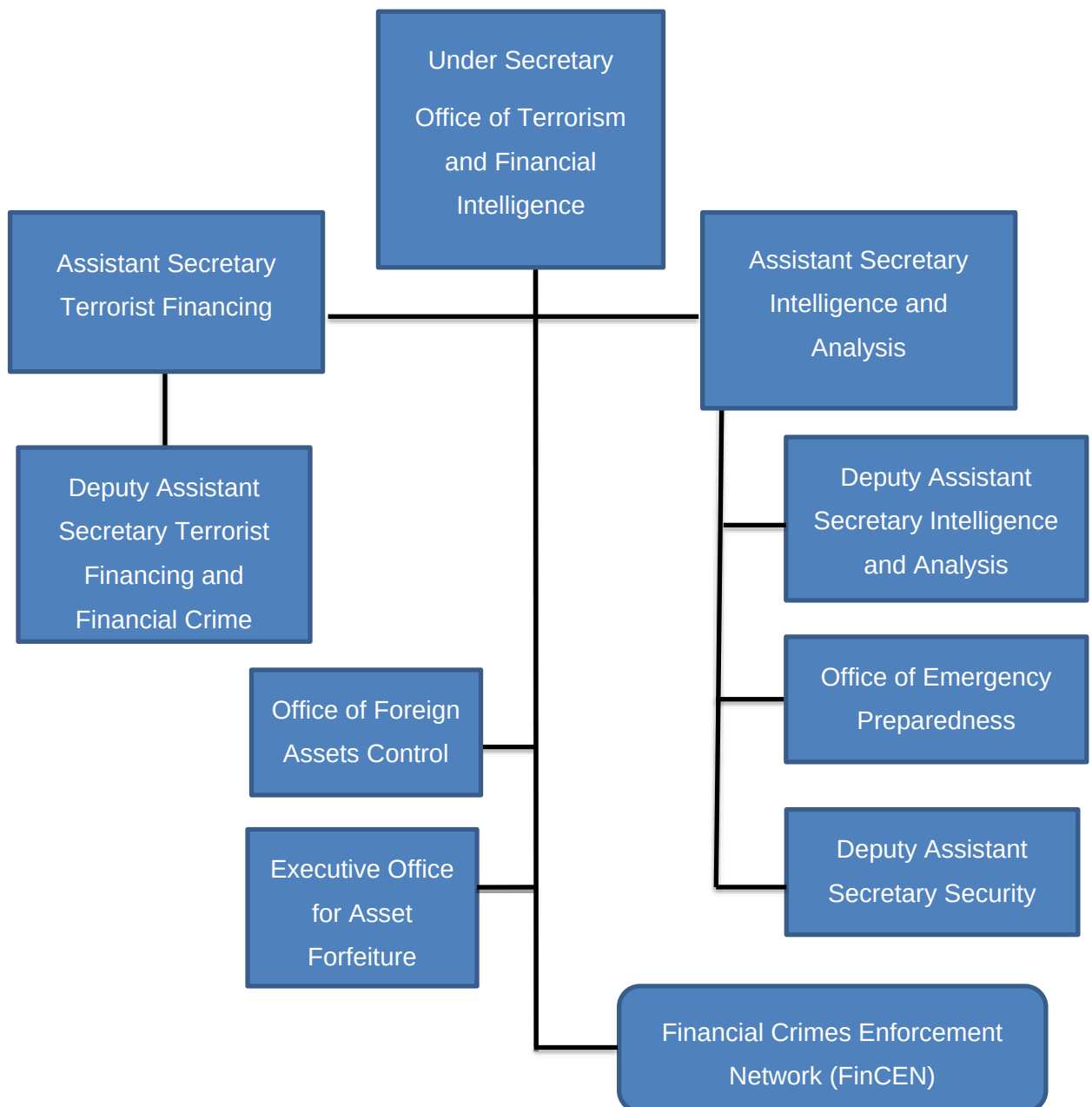
The financial intelligence unit established for the United States of America is called the Financial Crimes Enforcement Network.

6.4.6.1 Financial Crimes Enforcement Network (FinCEN)

The Financial Crimes Enforcement Network was established in April 1990 by the United States of America’s Department of the Treasury. Their original mission was to provide “a government-wide, multi-source intelligence and analytical network to support the detection, investigation and prosecution of domestic and international money laundering and other financial crimes”. The Financial Crimes Enforcement Network was made a bureau of the Treasury in 2001, and is now their primary agency to supervise and implement policies to avert and identify money laundering. In order to achieve these goals, the Financial Crimes Enforcement Network works with a two-pronged approach. Firstly, they work with financial institutions to deter and detect money laundering by using counter-money laundering laws that require reporting and recordkeeping by financial institutions. Secondly, they support law enforcement by providing financial intelligence and analytical backing as well as maximising the sharing of information among law enforcement agencies (FinCEN).

Figure 6-3 (on the next page) shows an excerpt from an organisational chart that depicts the Department of the Treasury together with the Treasury Bureaus. This table also illustrates where in the Department of Treasury the Financial Crimes Enforcement Network is positioned as well as all the offices responsible for producing the financial intelligence. This is important when the analysis of the various financial intelligence units of the other three countries is done to see what South Africa can learn to improve their own financial intelligence centre.

Figure 6-3: Excerpt from Department of Treasury Organizational: Office of Terrorism and Financial Intelligence



(Source: Department of the Treasury, 2005)

For the United States of America, the Bank Secrecy Act is their first and most comprehensive anti-money laundering and terrorist finance statute. The Secretary of the Treasury is authorised by the Bank Secrecy Act to issue regulations that require financial institutions to take precautionary steps toward financial crime. These steps include establishing anti-money laundering programmes and filing reports on suspicious transactions. These reports have proved to be very useful in criminal, tax and regulatory investigations as well as in certain counter-terrorism and intelligence matters. The Director of Financial Crimes Enforcement Network is authorised by the Secretary of the Treasury to implement, administer and enforce compliance with the Bank Secrecy Act and other related regulations (FinCEN).

The Financial Crimes Enforcement Network was given certain duties and responsibilities by Congress in order to support government and financial industry partners at Federal, State, local and international levels. These duties and responsibilities include the “central collection, analysis, and dissemination of data reported under the Financial Crimes Enforcement Network’s regulations and other related data”. In order to fulfil their duties and responsibilities, the Financial Crimes Enforcement Network has the following processes in place:

1. Regulations authorised by statute are issued and interpreted;
2. They support and enforce compliance with the above-mentioned regulations;
3. They support, coordinate and analyse data regarding compliance examination functions delegated to other Federal regulators;
4. They manage the collection, processing, storage, dissemination and protection of data that was filed under their reporting requirements;
5. They maintain a government-wide access service for their data and network users with overlapping interests;
6. As already mentioned, they support law enforcement investigations and prosecutions;
7. They produce data to recommend the internal and external allocation of resources to areas showing greatest financial risk;
8. They share information with foreign financial intelligence units on anti-money laundering and combating of the financing of terrorism. They also coordinate with other foreign financial intelligence units on money laundering and terrorist financing; and
9. They conduct analyses to support policymakers, law enforcement, regulatory agencies, intelligence agencies, financial intelligence units and financial institutions (FinCEN).

A discussion of the Federal Bureau of Investigation, the Criminal Division of the Department of Justice, the Internal Revenue Service Criminal Investigation, the Central Intelligence

Agency and the Financial Crimes Enforcement Network was done in paragraph 6.4. It is apparent from the study that the United States of America are serious in their fight against money laundering and tax evasion. The investigation techniques, financial and traditional, have also been discussed and it was discovered that the agencies investigating money laundering and tax evasion use the same methods. It has also been established that the methods used will be determined by the circumstances of each case. The next country that will be investigated is the United Kingdom.

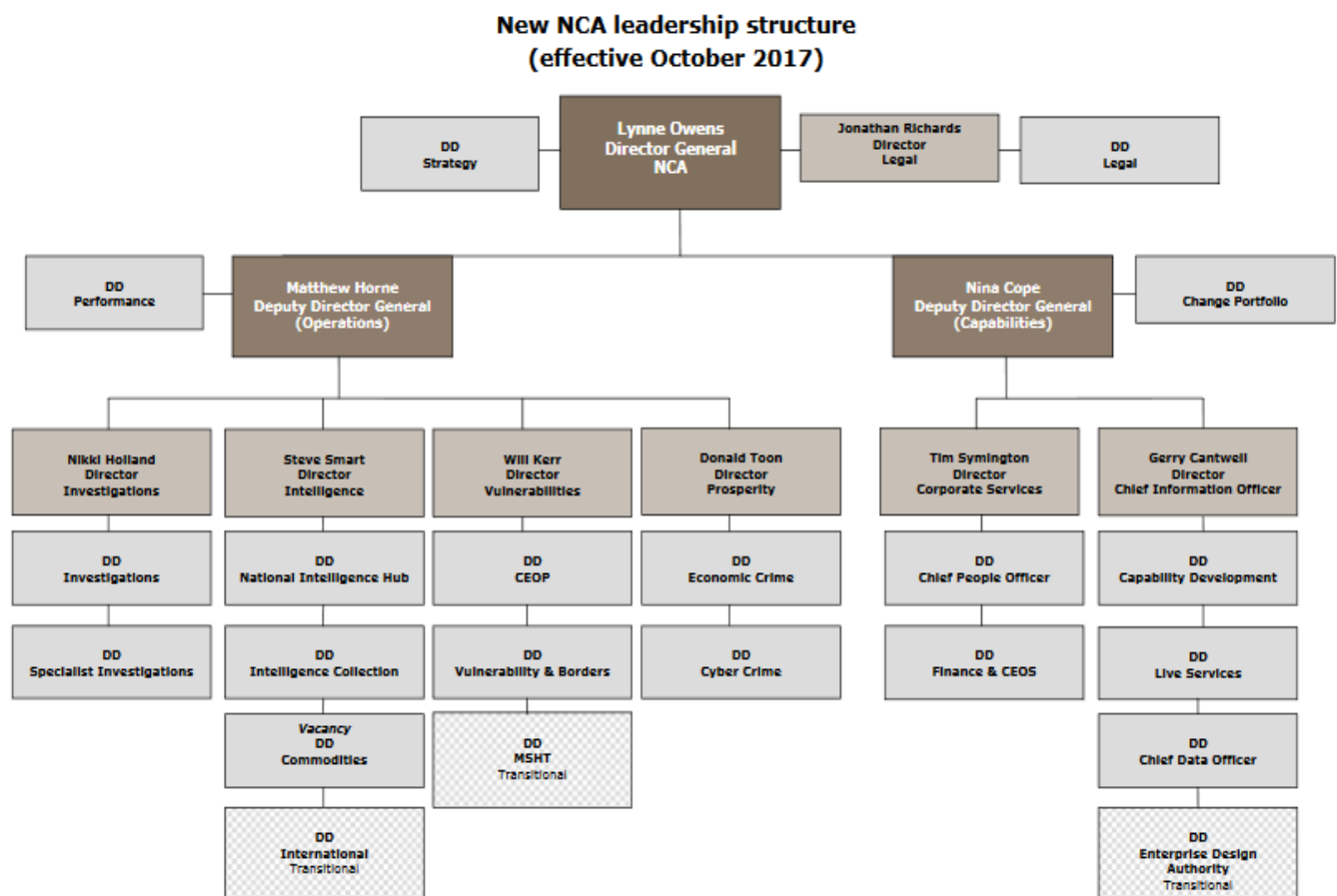
6.5 UNITED KINGDOM

6.5.1 National Crime Agency

In 1998, the government of the United Kingdom established the National Crime Squad that was based in London. In 2006, this organisation was disbanded and replaced by the Serious Organized Crime Agency. The difference between these two bodies was the extension in the role played by the Serious Organized Crime Agency. On 7 October 2013, the National Crime Agency replaced the Serious Organized Crime Agency. The difference between the National Crime Agency and the Serious Organized Crime Agency again lies in the extension of power, meaning that the National Crime Agency's role is larger and it has more responsibilities. The National Crime Agency can instruct police and other agencies; a power the Serious Organized Crime Agency did not have (NCA, 2016a; SOCA).

The National Crime Agency is being compared to the Federal Bureau of Investigation of the United States, mainly because it seems that the National Crime Agency was closely modelled on the Federal Bureau of Investigation (Info Security). The National Crime Agency's mission is "to protect the public from the most serious threats by disrupting and bringing to justice those serious and organized criminals who present the highest risk to the UK" (Our Mission). The organisational chart of the National Crime Agency is depicted in Figure 6-4 on the next page.

Figure 6-4: Organisational chart of the National Crime Agency



(Source: NCA, 2016b)

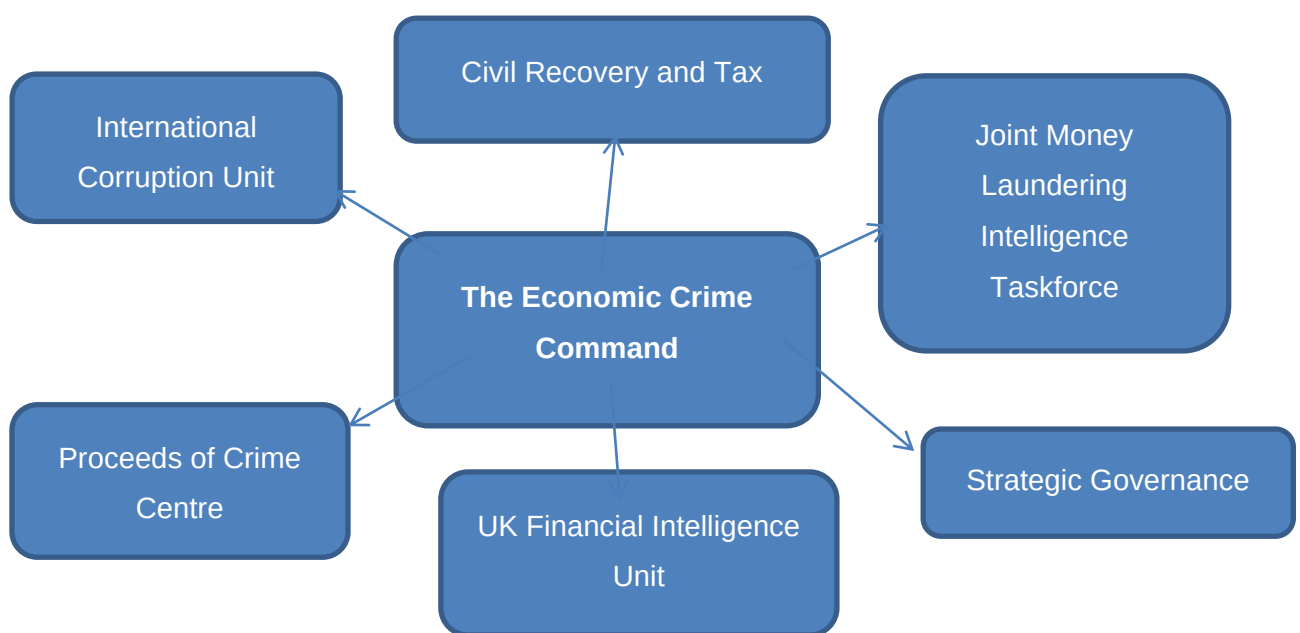
Figure 6-4 shows the structure of the National Crime Agency with its separate divisions. The Economic Crime Command falls within the Prosperity Division of the National Crime Agency with its main resolution to “reduce the impact of economic crime on UK society and UK economy”. The ‘economic crimes’ referred to include money laundering, international corruption, fraud and counterfeit currency.

The Economic Crime Command’s priorities can be divided into three areas, of which money laundering is the first. They are:

1. Combatting money laundering and criminal assets “by leading multi-agency action” on money laundering on a national and international scale;

2. Disrupting criminal access to professional skills with the help of law enforcement, regulators, banks and professional bodies and by increasing the impact of the National Crime Agency's operative skills in financial investigation, civil recovery and taxation; and
3. Leveraging change in the economic crime operating environment through, among others, the Joint Money Laundering Intelligence Taskforce (Economic Crime Command).

Figure 6-5: Breakdown of the Economic Crime Command's units



(Source: Author)

The Joint Money Laundering Intelligence Taskforce (JMLIT)

The Joint Money Laundering Intelligence Taskforce works with the financial sector to combat high-end money laundering. High-end money laundering is defined as “specialist, usually involves transactions of substantial value, and involves the abuse of the financial sector and so-called professional enablers”. In major frauds and overseas corruption, money laundering is specifically relevant because the crime is electronic and using cash will only be found further down the laundering process; it disguises audit trails. These “so-called professional enablers” are usually individuals in a profession such as lawyers, bankers and accountants who can set up a complex process to hide the identity of the perpetrator (Money Laundering).

This taskforce has four key operational priorities:

1. *Understanding and disrupting the funding flows linked to bribery and corruption;*

2. *Understanding and disrupting trade-based money laundering;*
3. *Understanding and disrupting the funding flows linked to organised immigration crime and human trafficking; and*
4. *Understanding key terrorist financing methodologies* (Joint Money Laundering Taskforce).

6.5.2 Civil Recovery and Tax (CRT)

The objective of this unit is to recover property obtained through illegal activities. Because this unit has non-conviction power, it is used when the criminal process has failed or cannot continue or when the civil recovery and tax approach characterises a better placement of resources. Civil recovery will be utilised in the event that proof can be presented that the assets in question have been obtained through illegal activities.

The tax powers are utilised when reasonable grounds exist that income was obtained relatively through illegal activities and was not declared to Her Majesty's Revenue and Customs (HMRC). The National Crime Agency is authorised to then take over from Her Majesty's Revenue and Customs and raise an assessment with penalties and interest on the tax due.

6.5.3 International Corruption Unit (ICU)

This unit has three main functions as part of the Economic Crime Command:

1. To investigate money laundering in the United Kingdom resulting from corruption of high-ranking officials overseas;
2. To investigate bribery involving United Kingdom-based companies or nationals that have an international element; and
3. To investigate cross-border bribery where there is a link to the United Kingdom. As part of their duties, they also trace and recover proceeds of international corruption (International Corruption Unit).

6.5.4 UK Financial Intelligence Unit (UKFIU)

As the Financial Crimes Enforcement Network is the financial intelligence centre of the United States of America, this unit is the financial intelligence centre of the United Kingdom. The main obligation of this unit is to receive, analyse and distribute financial intelligence gathered from suspicious activity reports (SARs). "A SAR is a piece of information that alerts law enforcement of potential money laundering or terrorist financing". During the study on when to file a suspicious activity report, no set amounts could be found. The current requirements are as soon as suspicion arises of money laundering and dealings in criminal property, a suspicious

activity report must be completed and sent to the National Crime Agency (UK FIU; Introduction to suspicious activity reports, 2015; SAR regime).

However, the United Kingdom government is planning on changing the suspicious activity reporting system. Three possibilities have been identified:

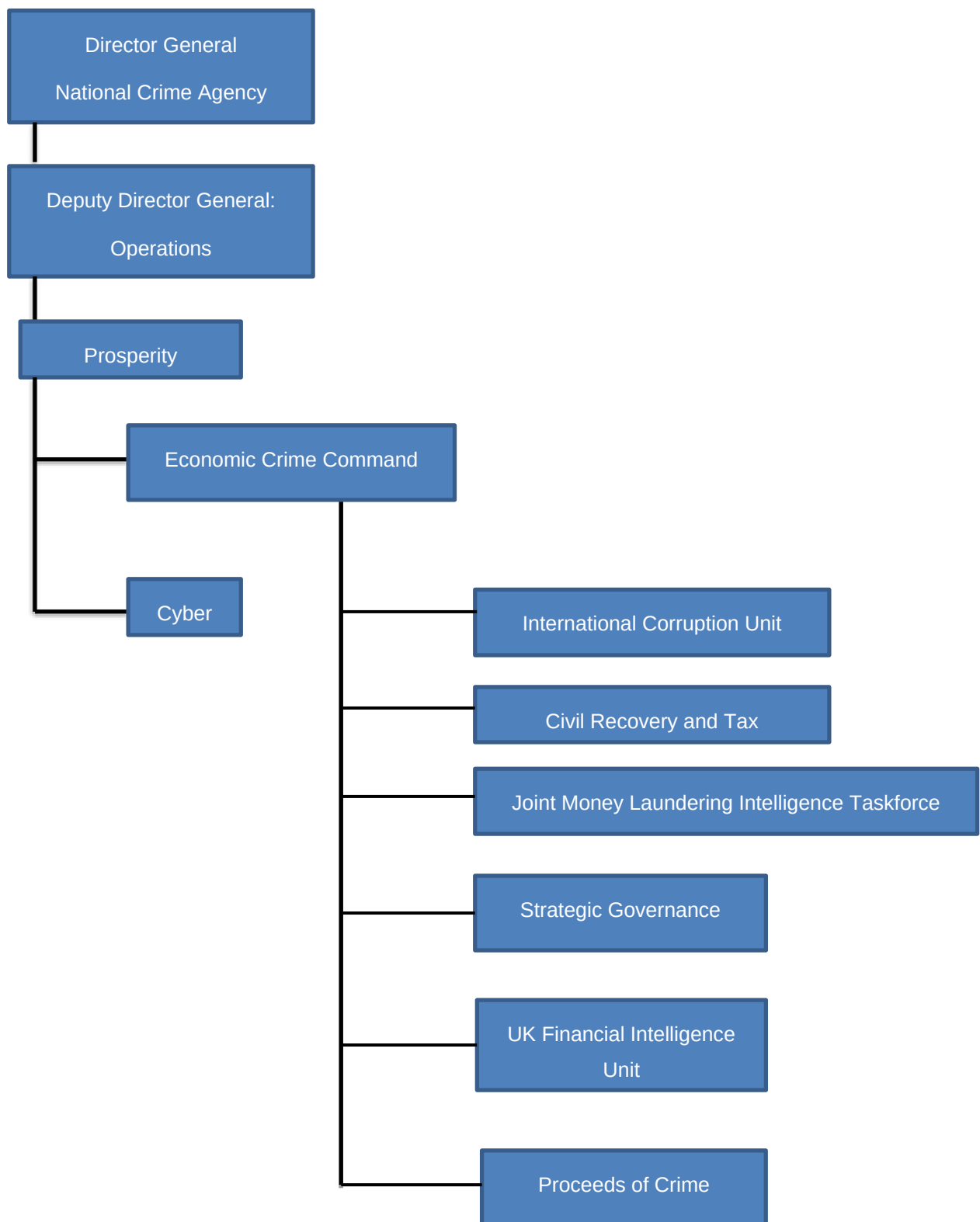
1. A tiered approach whereby suspicious activity reports are graded according to the degree of suspicion,
2. A set threshold amount, and
3. A *de minimus* value for suspicious activity reports (Pinsent Masons, 2016).

While conducting this study on suspicious activity reports in the United Kingdom, no information could be found on whether or not the United Kingdom government has decided on an approach or when they tend to change the suspicious activity reporting system.

The United Kingdom's Financial Intelligence Unit has the same objective as that of Financial Crimes Enforcement Network, but is structured differently within the United Kingdom's government. The United Kingdom Financial Intelligence Unit is positioned as part of the National Crime Agency instead of the Department of the Treasury as is the case with Financial Crimes Enforcement Network in the United States of America. Although their positions within their respective government differ, they have a common goal, which is to fight money laundering and terrorist financing. They are also both members of the Egmont Group (UK FIC; The Egmont Group).

As with the process used by Financial Crimes Enforcement Network to fulfil their duties and responsibilities, only the suspicious activity reports regime process could be found for the United Kingdom's Financial Intelligence Unit. Figure 6-6 (on the next page) illustrates the organisational structure as derived from literature and from Figure 6-4 and Figure 6-5.

Figure 6-6: Excerpt from organisational structure of the NCA



(Source: Author)

6.5.5 Proceeds of Crime Centre (PoCC)

This centre is tasked with the accreditation and monitoring of all financial investigators' performance. It also provides training in financial investigation, asset recovery and the operation of the Proceeds of Crime Act 2002. The Joint Asset Recovery Database and the Financial Investigation Support System are also managed by the Proceeds of Crime Centre. The Joint Asset Recovery Database holds information on asset recovery cases going through the criminal justice system, while the Financial Investigation Support System is a professional register, providing resources for investigators (Proceeds of Crime Centre).

6.5.6 The Government Communications Headquarters (GCHQ)

The Government Communications Headquarters is working with Her Majesty's Government and the industry to defend government systems from cyber threat and to provide support to the Armed Forces. According to Government Communications Headquarters, they face four threats to the United Kingdom: cyber threats, threats from serious crime, threats from terrorism and threats from espionage. For purposes of this research, only the threats from serious crimes will be discussed (GCHQ: What We Do).

The Government Communications Headquarters are working closely with the National Crime Agency and Her Majesty's Revenue and Customs as well as other government agencies in order to protect the United Kingdom from serious criminals by identifying who these criminals are, what they do and how they operate. There is a wide range of high-priority topics of which money laundering is one (GCHQ: The threat from serious crime, 2015).

6.5.7 Her Majesty's Revenue and Customs (HMRC)

The Her Majesty's Revenue and Customs is the equivalent of the United States of America's Internal Revenue Service; both being the revenue services of their respective countries. Her Majesty's Revenue and Customs is the tax and customs authority in the United Kingdom (HMRC). Her Majesty's Revenue and Customs Fraud Investigations Service Unit has the responsibility of investigating serious tax fraud and aggressive tax avoidance (Gilbert Tax, 2017). This unit conducts criminal and civil investigations. Criminal investigations will usually be done in cases of

organised criminal gangs attacking the tax system or systematic frauds where losses represent a serious threat to the tax base and in cases involving money laundering with particular focus on advisors, accountants, solicitors and others acting in a 'professional' capacity who provide the means to put tainted money out of reach of law enforcement...

among others (HMRC, 2015).

The Fraud Investigation Service is notorious for investigations under Code of Practice 8 and Code of Practice 9. The main difference between these two codes being that an investigation under Code of Practice 9 can escalate into criminal prosecution. An investigation under Code of Practice 8 is conducted when there is suspicion of tax avoidance, whereas an investigation under Code of Practice 9 is conducted when there is a notion of fraud or dishonesty involving large tax amounts (Code of Practice 8, 2016; Code of Practice 9, 2014; Mazars).

6.5.8 Serious Fraud Office (SFO)

“The Serious Fraud Office is a specialist prosecuting authority tackling the top level of serious or complex fraud, bribery and corruption”. This organisation takes on a small number of large economic crime cases, and investigates and prosecutes them (What We Do, 2017).

The types of cases investigated and prosecuted by this organisation mainly:

involve activity in many countries; involve alleged criminals who go to great lengths to hide their activity and the money they make from it; require analysis of very large quantities of information and take longer than normal criminal cases to investigate and prosecute (More about our cases and how we work, 2017).

There are four stages to a case:

1. Gathering information

During stage 1, the Serious Fraud Office's intelligence unit assesses the information received (from various sources) and generated (by the intelligence unit) to determine whether the alleged activity exists. Then it becomes the subject of a criminal investigation.

2. Investigation and prosecution

In stage 2, the Roskill model is used as basis for the investigation and prosecution. The Roskill model refers to a report where it was recommended that investigators and prosecutors work together from the beginning. This is a model that is unique to the Serious Fraud Office as it is not normal practice for investigators and prosecutors to work together. “...because our cases need strong cooperation and management from both lawyers and investigators all the way through, to make sure that the lines of investigation are the best ones to uncover criminal activity, and eventually prove it in court”. If enough evidence exists to support the prospect of a

successful conviction, and prosecution is seen as being in the public's interest, charges will be filed.

3. Trial

In stage 3, the trial will take place in a court of law and normally takes longer than other trials.

4. Proceeds of crime

Stage 4 of a case involves the recovery of the proceeds of the crime to compensate victims wherever possible (Stages of a Case, 2017).

6.5.9 Secret Service and Secret Intelligence Service

The Secret Service is also known as MI5. This organisation investigates threats of terrorism (internationally and domestic), espionage, threats of cyber as well as the proliferation of weapons of mass destruction (MI5: What We Do). Pincus (2010) compares MI5 to the Federal Bureau of Investigation, stating that MI5 is a domestic service. Unfortunately, there is not much information available to elaborate further on this organisation. An assumption made, however, is that money laundering will possibly form part of the terrorism threat as the financing of terrorism usually also entails money laundering. Based on the information obtained on the Serious Fraud Office, it may be possible that the Secret Service refers some of these financing of terrorism or money laundering top-level cases to the Serious Fraud Office (author).

The Secret Intelligence Service (MI6) works abroad to develop foreign contacts and to gather intelligence to make the United Kingdom safer and more successful. Pincus (2010) also compares MI6 to the Central Intelligence Agency, stating that "...like the CIA, [MI6] operates outside the British homeland, gathering information primarily from human sources". MI6 operates outside the United Kingdom to gather information, to counter terrorism, to "resolve international conflict and to prevent the spread of nuclear and other non-conventional weapons" (Pincus, 2010; Global Intelligence). Its mission is to provide the United Kingdom's Government with "global covert capability" in order to keep the continent's people safe. The agency not only gathers secret intelligence, it also conducts operations abroad to prevent and detect serious crime, and it also promotes and defends the national security and the economic security of the United Kingdom (MI6: Our Mission). MI6 works closely with MI5 and GCHQ and is governed by the British National Security Council.

A discussion on the intelligence and law enforcement agencies of the United Kingdom was done in paragraph 6.5 to establish their methods used to combat money laundering and tax evasion and to discover what agencies are involved and on what level. As with the United States of America, the United Kingdom is also serious in their fight against money laundering

and tax evasion and from the analysis of their law enforcement and intelligence agencies it can be concluded that their system is basically the same as that of the United States of America. Again, overt and covert techniques are used to investigate the specific crime. The next country to be investigated is Australia.

6.6 AUSTRALIA

Australia's intelligence agencies and law enforcement agencies applicable to this study, consist of ten organisations, respectively.

6.6.1 Australian Security Intelligence Organisation (ASIO)

The Australian Security Intelligence Organisation can be compared to the Federal Bureau of Investigation (United States of America) and MI5 (United Kingdom) in being Australia's domestic security agency. Its main responsibility is to gather and analyse intelligence to warn the government of national security threats (Collins, 2013; Inspector-General of Intelligence and Security).

6.6.2 The Australian Secret Intelligence Service (ASIS)

The Australian Secret Intelligence Service can be paralleled with the Central Intelligence Agency (United States of America) and MI6 (United Kingdom) in being Australia's international security agency, also called HUMINT (human intelligence). Their main responsibility is to obtain and communicate intelligence that is not readily available by other means, about the capabilities, intentions and activities of individuals or organisations outside Australia (Collins, 2013; Inspector-General of Intelligence and Security).

6.6.3 The Australian Signals Directorate (ASD)

This agency's main function is to collect, analyse and distribute foreign signals intelligence and forms part of the Department of Defence. It can be compared to the United States' National Security Agency and the United Kingdom's Government Communications Head Quarters. As with Government Communications Head Quarters and National Security Agency, it is also the national authority on communications and computer security (Collins, 2013; Inspector-General of Intelligence and Security).

6.6.4 The Defence Intelligence Organisation (DIO)

The main responsibility of this organisation is to analyse foreign developments and to report to the Australian Government in the form of intelligence assessments. These assessments can enclose reports on political, social, military, scientific and technological developments and has the goal to report on developments that may "affect another country's ability to wage war

or to threaten regional or international stability” (Collins, 2013; Inspector-General of Intelligence and Security).

6.6.5 The Australian Geospatial-Intelligence Organisation (AGO)

The Australian Geospatial-Intelligence Organisation’s responsibility is to “provide geospatial intelligence, from imagery and other sources, in support of Australia's defence and national interests” and is also a part of the Department of Defence (Collins, 2013; Inspector-General of Intelligence and Security).

6.6.6 The Office of National Assessments (ONA)

This office collects information and assessments on international political, strategic and economic developments from all the other agencies and reports its findings to the Prime Minister, senior ministers in the National Security Community of Cabinet and senior officials of government departments. It is also tasked with the coordination and evaluation of Australia’s foreign intelligence activities. The Office of National Assessments operates under its own legislation, stipulating the independence of its judgements (Collins, 2013; Inspector-General of Intelligence and Security).

6.6.7 The Australian Transaction Reports and Analysis Centre (AUSTRAC)

Australian Transaction Reports and Analysis Centre is Australia’s financial intelligence unit and is considered to be the best financial intelligence unit in the world (Sathye & Patel, 2007; Richards, 1998). A financial intelligence unit can be defined as “a central, national agency responsible for receiving (and as permitted requesting), analysing and disseminating to the competent authorities, disclosures of financial information concerning suspected proceeds of crime and potential financing of terrorism, or required by national legislation or regulation in order to counter money laundering and terrorism financing” (Egmont Group, 2004).

Australia was one of the first OECD countries to establish a financial intelligence unit (Sathye & Patel, 2007). This unit has the same responsibilities as that of the United States of America’s Financial Crimes Enforcement Network and the United Kingdom’s Financial Intelligence Unit, namely to fight serious and organised crime by analysing reports filed by businesses and reporting any suspicious matters or transactions to the relevant agency. This centre is working with law enforcement, national security, revenue agencies, human services and international counterparts to achieve this goal (AUSTRAC). The Australian Transaction Reports and Analysis Centre regulate the compliance of Australian businesses to help protect them from criminal abuse. The businesses regulated by them can be divided into five areas: financial

services, gambling, bullion dealers, remittance service providers and cash dealers (AUSTRAC).

The Australian Transaction Reports and Analysis Centre's vision is to have a financial system that is free from the exploitation of criminals. They fulfil this vision by "detecting, deterring and disrupting money laundering and terrorist financing risks and threats that affect Australia's financial system and thereby contributing to the growth of Australia's economy". Their process can briefly be explained as:

1. Businesses send reports on financial transactions and suspicious matters;
2. The analysts at the Australian Transaction Reports and Analysis Centre use these reports to connect people and events with each other to understand what is happening;
3. The financial intelligence compiled by these analysts is provided to partner agencies such as law enforcement, national security, human services, revenue agencies and a number of international counterparts.

The financial intelligence generated by the above-mentioned analysts assists in detecting, preventing, investigating and prosecuting terrorist finance, serious and organised crime, money laundering and tax evasion. Like the Financial Crimes Enforcement Network and United Kingdom Financial Intelligence Unit, the Australian Transaction Reports and Analysis Centre is also a member of the Egmont Group (AUSTRAC).

6.6.8 The Australian Federal Police (AFP)

The Australian Federal Police is a global policing agency whose role is not only to protect Commonwealth and national interests from crime, but also to enforce Commonwealth criminal law. They are responsible for the prevention, detection and investigation of criminal offences such as money laundering and tax fraud, among others. On an international level, they are committed to international relations, which enables them to fight transnational crime anywhere in the world. On a national level, they are working with the Australian Government and other key agencies on countering terrorism as well as crime-fighting and capacity-building initiatives. The Australian Federal Police is Australia's equivalent of the United States of America's Financial Bureau of Investigation and to the United Kingdom's MI5 (Australian Federal Police; Year book Australia, 2010; Davis, 2016).

6.6.9 The Australian Criminal Intelligence Commission (ACIC)

The Australian Criminal Intelligence Commission is Australia's national criminal intelligence agency whose functions are to investigate, research and deliver information to law enforcement agencies to improve their ability to prevent and deter criminal activity. The

Australian Criminal Intelligence Commission's mission is to protect Australia through "improved national ability to discover, understand and respond to current and emerging crime threats and criminal justice issues, including the ability to connect police and law enforcement to essential policing knowledge and information" by working with a comprehensive range of national and international partners (Australian Criminal Intelligence Commission, 2016).

6.6.10 The Australian Tax Office (ATO)

The Australian Tax Office is the main revenue collection agency in Australia and its function is to manage the tax and superannuation systems supporting and funding services for Australia. Its duties include the collection of revenue, the administration of goods and services tax, governing a range of programmes that benefit the community, the administration of the major aspects of the Australian superannuation system, and it is the custodian of the Australian Business Register. The mission of the Australian Tax Office is to "contribute to the economic and social wellbeing of Australians by fostering willing participation in our tax and superannuation systems" (Australian Taxation Office, 2015).

As with the United States of America's Internal Revenue Service's Criminal Investigation Unit and the United Kingdom's Her Majesty's Revenue and Customs Fraud Investigations Services Unit, no unit could be found in the Australian Taxation Office that deals specifically with criminal or fraud investigations. However, the Australian Tax Office does have independent internal functions, which include an internal audit department, and fraud prevention and internal investigations department. The functions of these two departments can be described as follows:

1. Internal audit deals with improving the effectiveness of risk management, control and governance processes (Internal Audits: Australian Taxation Office, 2015); and
2. Fraud prevention and internal investigations deal with allegations of fraud, serious misconduct and other criminal activity involving the employees of the Australian Tax Office (Fraud Prevention and Investigations: Australian Taxation Office, 2015). As can be seen from the information on these two departments, they seem to only deal with internal affairs.

The Australian Tax Office does invite the citizens of Australia to report fraud, scams, tax evasion and tax planning scams (Report fraud, Tax Evasion or a Tax Planning Scheme, 2017), but no direct unit could be found to report this to. The only assumption that could be made, using this information, is that the Australian Tax Office has its own auditors or accountants

who investigate these allegations and, if enough evidence could be found of criminal activity, then they report it to the appropriate law enforcement agency.

After discussing three first world countries' law enforcement and financial intelligence units, South Africa, a third-world country, will be analysed. The objective is to determine what South Africa can learn from these three first-world countries.

6.7 SOUTH AFRICA

6.7.1 South African Police Service (SAPS)

The South African Police Service originated in 1902 after the Second Anglo-Boer War. Prior to the establishment of the South African Police Service, every colony had its own law enforcement organization (SAHO, 2012). After 1994, when South Africa became a democracy, the democratic order brought a significant change to the policing system. Before the change in 1994, the total policing system in South Africa equalled 11 agencies; consisting of ten homelands and the South African Police. These homeland regions as well as the old development regions were ended by the interim Constitution and replaced with nine provinces, integrating the homelands and development regions into a unified South Africa. The significant change to the policing system was mainly brought on by the Constitution, which established a single National Police Service under the command and control of a National Commissioner appointed by the President (SAPS: History, 2014).

The Code of Conduct of the South African Police Service mainly comprises the creation

of a safe and secure environment for all people in South Africa by participating in endeavours to address root causes of crime in the community; preventing action which may threaten the safety of any community; and investigating criminal conduct which has endangered the safety or security of the community and bringing perpetrators thereof to justice (SAPS: Code of Conduct, 2014).

It is the researcher's observation that this Code of Conduct is very broad and includes a myriad of criminal offences as well as civil proceedings.

Although the South African Police Service is the main law enforcement agency in South Africa, there are other investigation and enforcement agencies that handle cases of which money laundering and tax evasion can be part.

6.7.2 Directorate of Priority Crime Investigation (Hawks)

The Directorate of Priority Crime Investigation (Hawks) was established as part of an independent directorate within the South African Police Service. Their responsibilities include

combating, investigating and preventing serious organised crime, serious commercial crime and serious corruption (Hawks, 2014).

The predecessor of the Directorate of Priority Crime Investigation was the Directorate of Special Operations (Scorpions). There is a core difference between these two directorates: The Scorpions were a multidisciplinary agency of the National Prosecuting Authority, while the Hawks fall under the Minister of Police. The Scorpions were modelled after the Federal Bureau of Investigation of the United States of America; the same cannot be said about the Hawks (Laurence, 2008). The Scorpions were disbanded during January 2009 by acting president Motlanthe after receiving this recommendation from South Africa's minister of safety and security. When the statistics of the successes of the Scorpions are compared to that of the Hawks from January 2009 up until 2016, there is a decline in arrests and a decline in convictions of 60 percent and 80 percent, respectively (Anon, 2016, Berger 2008, Roelf, 2008). After the Khampepe Commission's report in 2008, the African National Congress made the decision to merge the Scorpions with the South African Police Service to reduce the Scorpions' power. After the disbandment of the Scorpions, the Hawks were established (Anon, 2016; Berger, 2008; Roelf, 2008).

6.7.3 Special Investigations Unit (SIU)

The main difference between the SAPS and the Special Investigations Unit is that the South African Police Service is a government entity dealing with criminal and civil cases, while the SIU is a public entity dealing only with civil actions against State Institutions. The Special Investigations Unit was established by the President in 1996 and has the power to investigate and to litigate. The Special Investigations Unit also has the authority to subpoena, search, seize and interrogate witnesses under oath. The mandate of the Special Investigations Unit "is to recover and prevent financial losses to the state caused by acts of corruption, fraud and maladministration". From this mandate, the primary functions of the Special Investigations Unit can be derived as the investigation of serious corruption, fraud and maladministration in connection with state institutions as well as taking appropriate and effective civil action against perpetrators and assisting in holding the perpetrators accountable by way of misconduct proceedings and criminal prosecutions (SIU: Who We Are, 2016; SIU: FAQ, 2016).

The Special Investigations Unit has most of the law enforcement authority when it comes to state institutions and civil conduct, especially when interrogating individuals. These individuals are compelled to answer the Special Investigations Unit's questions, even if it incriminates them. However, although this testimony can be used in the civil proceeding, it may not be used in a criminal proceeding (SIU: Who We Are, 2016; SIU: FAQ, 2016).

It is important to note that where any criminal conduct is uncovered, the Special Investigations Unit will bring it to the attention of the National Prosecuting Authority and the Hawks, who will take the investigation and prosecution further. The Special Investigations Unit will still assist to ensure an effective investigation and prosecution. The Special Investigations Unit also works closely with the Asset Forfeiture Unit of the National Prosecuting Authority to recover the proceeds of crime (SIU: Who We Are, 2016; SIU: Our Mandate, 2016).

The services offered by the Special Investigations Unit are:

1. Conducting and completing forensic investigations;
2. The facilitation and/or initiation of appropriate remedial action; and
3. The development and maintenance of co-operation with state institutions and other law enforcement agencies.

The meaning of 'remedial action' is the reference of evidence to the relevant prosecution authority and state institution for appropriate actions as well as the facilitation of initiation of civil proceedings (SIU: FAQ, 2016).

6.7.4 The National Prosecuting Authority (NPA)

The main difference between the Special Investigations Unit and the National Prosecution Authority lies in the type of conduct they investigate. The Special Investigations Unit deals with civil proceedings, while the National Prosecuting Authority deals with criminal proceedings. The powers of the National Prosecuting Authority are "to institute and conduct criminal proceedings on behalf of the State; to carry out any necessary functions incidental to instituting and conducting such criminal proceedings (this includes investigations) and to discontinue criminal proceedings" (Justice and Correctional Services, 2016; About the NPA, 2017).

The National Prosecuting Authority has seven core business units, namely the:

1. National Prosecutions Service,
2. Asset Forfeiture Unit,
3. Sexual Offences and Community Affairs,
4. Specialized Commercial Crime Unit,
5. Witness Protection Unit,
6. Priority Crimes Litigation Unit; and
7. Administration.

Only the units that have a direct link to money laundering and tax evasion cases will be discussed.

6.7.4.1 The Asset Forfeiture Unit (AFU)

The Asset Forfeiture Unit was established in 1999 to focus on the enactment of Chapters 5 and 6 of the Prevention of Organized Crime Act, 1998. This unit has to ensure that the criminal assets seized would be used to their maximum effect in the fight against organised crime. The Asset Forfeiture Unit seeks to, among others, build capacity to ensure that asset forfeiture is used as widely as possible to make a real impact on organised crime and to establish outstanding relationships with the South African Police Service and the South African Revenue Service (Asset Forfeiture Unit, 2017).

6.7.4.2 The Specialized Commercial Crime Unit (SCCU)

As the name of this unit suggests, their mandate is to prosecute complex commercial crime cases originating from the South African Police Service's commercial branches. These commercial crime cases do not include only state institutions, but also private individuals as well as corporate entities (Justice and Correctional Services, 2016).

6.7.4.3 The Priority Crimes Litigation Unit (PCLU)

The Priority Crimes Litigation Unit deals with cases that threaten national security. These cases are either allocated by the President or by the National Director of Public Prosecutions. The main function of the Priority Crimes Litigation Unit is to manage and direct investigations and prosecutions with respect to the following:

1. The non-proliferation of weapons of mass destruction;
2. The regulation of conventional military arms;
3. The regulation of mercenary and related activities;
4. The International Court created by the Statute of Rome;
5. National and international terrorism; and
6. Prosecution of persons who were refused or failed to apply for amnesty in terms of the South African Truth and Reconciliation Commission processes.

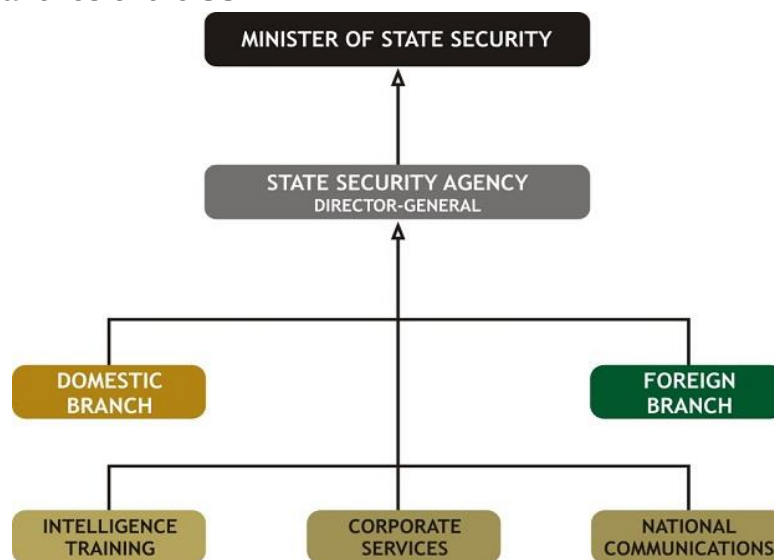
Although there is no mention of money laundering and/or tax evasion in the above paragraph, the inference can be made that one or all of the above-mentioned cases, money laundering and/or tax evasion will be a by-product offence; therefore, the reason for discussing Priority Crimes Litigation Unit.

6.7.5 The State Security Agency (SSA)

During 2009, the minister of the Cabinet was asked to review the structure of the civilian intelligence community in order to develop a more effective intelligence organisation. The

State Security Agency arose as the new intelligence organisation, with a mandate to provide the government with intelligence on domestic and foreign threats or potential threats to national stability, the constitutional order, and the safety and wellbeing of our [South Africa's] people. When reading the mandate, it can be deduced that the State Security Agency is the equivalent to the United States' Central Intelligence Agency, the United Kingdom's MI6 and Australia's Secret Intelligence Service. Figure 6-7 below shows the branches of the State Security Agency. A discussion on the domestic and foreign branch as well as on the intelligence training, corporate services and national communications will follow.

Figure 6-7: Branches of the SSA



(Source: Structure of the State Security Agency, 2016)

The foreign branch of the State Security Agency was formerly known as the South African Secret Service, which was incorporated into the State Security Agency in 2009 as per a presidential proclamation. The functions of this branch are to gather, correlate, evaluate and analyse foreign intelligence; to institute counter-intelligence measures nationally and internationally; and to gather departmental intelligence on the request of any interested department of State (SSA Foreign Branch, 2016).

The National Intelligence Agency was also incorporated into the State Security Agency as per presidential proclamation and is known as the domestic branch. As can be derived from the name, the domestic branch is responsible for the gathering, correlation, evaluation and analysis of domestic intelligence (SSA Domestic Branch, 2016).

The intelligence training of the State Security Agency is done by the former South African National Academy of Intelligence, now known as the Intelligence Agency. Their main responsibility is to provide quality intelligence training to the members of the Intelligence Community (Intelligence Academy, 2016).

The Corporate Services 'branch' of the State Security Agency handles all of its administrative functions, for example human resources, information technology, infrastructure and logistics and finance (Corporate Services, 2016). The National Communications 'branch' of the State Security Agency consists of three components:

1. The Electronic Communications Security,
2. The National Consumer Commission, and
3. The Office for Interception Centre (National Communications Branch, 2016).

The Office for Interception Centre provides a centralised interception service to law enforcement agencies involved in fighting national security threats. The Electronic Communications Security was previously a private company, but was incorporated into the State Security Agency as per presidential proclamation. Their primary purposes, after the proclamation in 2009, are now:

1. To protect and secure electronic communications of the state against security threats;
2. To conduct intermittent analyses of the state on the information communication technology security; and
3. To identify and provide security to serious electronic communications infrastructure of Organs of State. 'Organs of State' can be defined in terms of South African Law as "including any statutory or functioning body" (Mdumbe, 2009) (National Communications Branch, 2016).

6.7.6 The South African Revenue Service (SARS)

The South African Revenue Service can be compared to the Internal Revenue Service of the United States of America, Her Majesty's Revenue and Customs of the United Kingdom and the Australian Tax Office of Australia. All of these organisations represent their country's tax collecting authority.

The responsibilities of the South African Revenue Service are

to advise the Minister of Finance on all revenue matters; to collect and administer all national taxes, duties and levies; to provide a customs service that facilitates trade, maximizes revenue collections and protect our borders from illegal importation and exportation of goods; and to collect revenue that

may be imposed under other legislation as agreed on between South African Revenue Service and a state entity entitled to the revenue.

Their approach to encourage compliance is making sure that taxpayers are aware of their obligations, making it easy to meet them and acting against those who break the law (SARS: About us, 2016).

Investigations done by the South African Revenue Service are mainly regulated by the Tax Administration Act (28 of 2011). The sections dealing with tax fraud and serious tax fraud have already been discussed in Chapter 4.

Basically, while a South African Revenue Service official is conducting an audit and he or she becomes aware of a serious tax offense that may have been committed, it must be referred to a senior South African Revenue Service official responsible for criminal investigations. Should the senior South African Revenue Service official decide that a criminal investigation must be pursued, the investigation is done by the Criminal Investigations Unit by the group executives. Hereafter, the case is referred to the National Prosecuting Authority for further investigation and prosecution. A case can be also referred to the Special Investigations Unit if it falls under their mandate (SARS: About us, 2016; Tax Administration Act; Le Cordeur, 2016).

6.7.7 The Financial Intelligence Centre (FIC)

South Africa's financial intelligence centre was established 23 years after Australia's. The centre was established by the Financial Intelligence Centre Act (38 of 2001) to:

1. Detect unlawful earning activities;
2. Combat money laundering, the finance of terrorism and related activities;
3. Share information with relevant authorities;
4. Supervise and force compliance with the Financial Intelligence Centre Act (38 of 2001);
and
5. Facilitate effective supervision and enforcement by supervisory bodies.

The Financial Intelligence Centre places a responsibility on financial institutions and other accountable institutions vulnerable to money laundering. This responsibility entails reporting suspicious and unusual financial transactions. The Financial Intelligence Centre's core objective is to protect South Africa's financial system from criminal activities and illicit funds by working with the relevant national and international authorities (Financial Intelligence Centre: Who We Are, 2017).

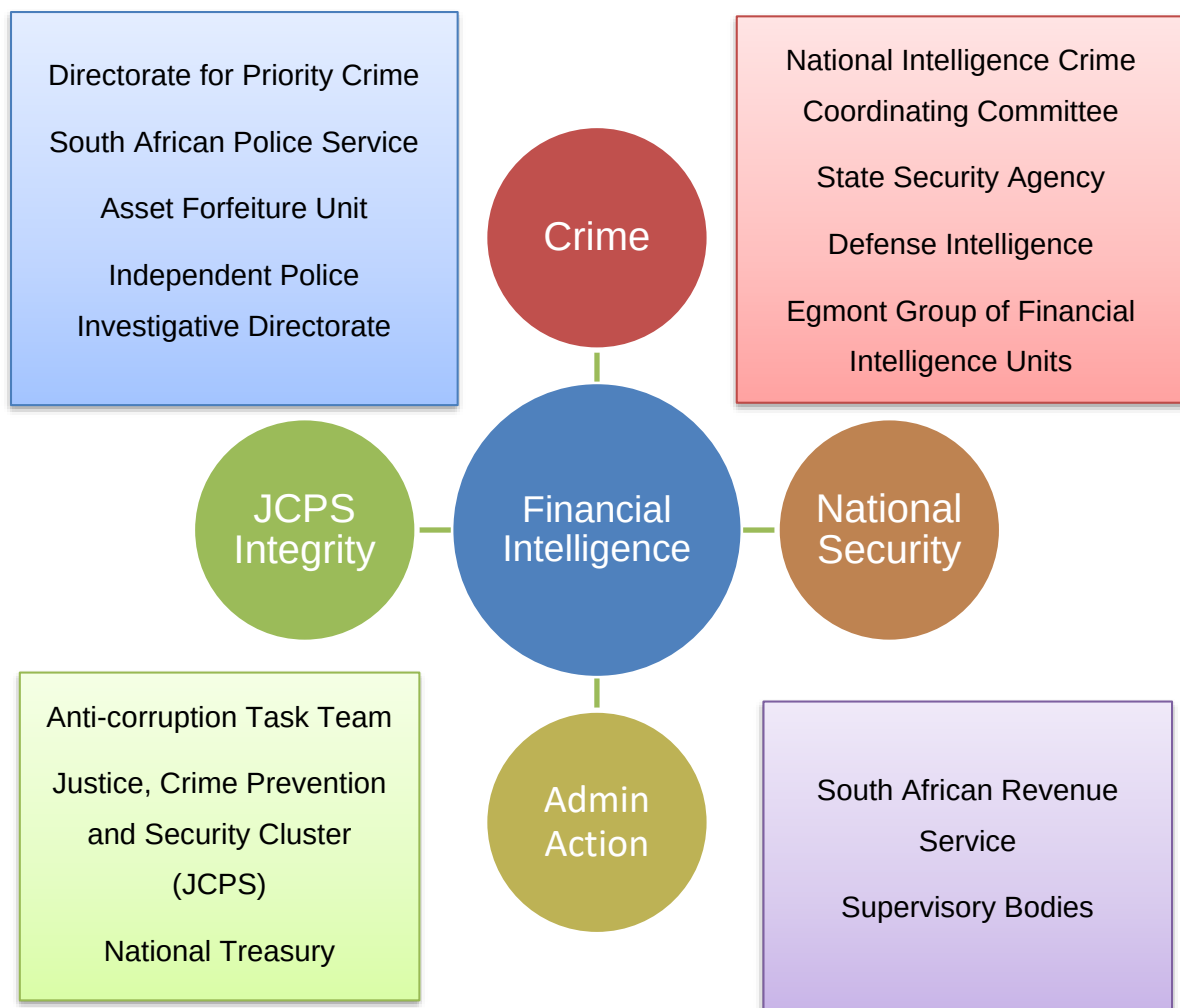
The Financial Intelligence Centre's main activities are:

1. To process, analyse, interpret and preserve information disclosed to and obtained by the Financial Intelligence Centre;
2. To inform, advise, co-operate with and make its financial intelligence available to relevant authorities;
3. To exchange financial intelligence with similar foreign bodies;
4. To monitor and guide financial and other accountable institutions;
5. To supervise the Financial Intelligence Centre Act;
6. To implement a registration system for all affected organisations; and
7. To review the implementation of the Financial Intelligence Centre Act annually and report it to the Minister of Finance.

Figure 6-8 illustrates the partners with whom the Financial Intelligence Centre is working. As can be seen from the structure, the Financial Intelligence Centre is working with almost all of the agencies already discussed in paragraph 6.7. It is also important to note that it is already a member of the Egmont Group, a requirement established by the Financial Action Task Force (Financial Intelligence Centre: Who We Are, 2017).

The Financial Intelligence Centre Act obligates all accountable and reporting institutions to register with the Financial Intelligence Centre. Schedule 1 of the Financial Intelligence Centre Act contains 19 institutions viewed as accountable institutions, while Schedule 3 contains only two reporting institutions. In the United States of America, legislature wants to obligate attorneys and estate agents to report suspicious or unusual financial transactions, but was not yet successful in their endeavour. In Schedule 1 of the Financial Intelligence Centre Act, attorneys are listed as the number one institution and estate agents are listed as the number three institution to report to the Financial Intelligence Centre (Financial Intelligence Centre: Who Must Register, 2017).

Figure 6-8: The Financial Intelligence Centre and its partners



(Source: Financial Intelligence Centre: Who We Are, 2017).

The Financial Intelligence Centre's structure consists of four departments:

1. The legal and policy department;
2. The compliance and prevention department;
3. The monitoring and analysis department; and
4. The corporate services department.

All four departments report to the Office of the Director, who reports to the Minister of Finance and to Parliament (Financial Intelligence Centre: Our Structure, 2017).

6.8 SUMMARY OF AGENCIES

The aim of this summary (Table 6-1) was to categorise the various agencies into groups with similar duties and responsibilities. This will simplify a comparison between countries and identify South Africa's shortcomings.

Table 6-1: Summary of agencies

Duties and responsibilities	United States of America	United Kingdom	Australia	South Africa
- Domestic - Major white collar crime - Public corruption - Protect people - Uphold Constitution	Federal Bureau of Investigation (FBI)	National Crime Agency (NCA) The Security Service (MI5)	Australian Federal Police (AFP) Australian Security Intelligence Organization (ASIO)	There is no agency currently in South Africa that has the same responsibilities and duties
International intelligence gathering	Central Intelligence Agency (CIA)	The Secret Intelligence Agency (MI6)	Australian Secret Intelligence Service (ASIS)	State Security Agency (SSA)
- Report suspicious activities - Record-keeping on clients and transactions - Financial intelligence units - Support law enforcement Know-your-client	Financial Crime Enforcement Network (FinCEN)	United Kingdom Financial Intelligence Unit (UKFIU)	Australian Transactions Report and Analysis Centre (AUSTRAC)	Financial Intelligence Unit (FIU)

Duties and responsibilities	United States of America	United Kingdom	Australia	South Africa
Taxation: Money laundering and tax evasion	Internal Revenue Service (IRS)	Her Majesty's Revenue Centre (HMRC)	Australian Tax Office (ATO)	South African Revenue Service (SARS)
- Protecting government against cyber threats - Support Armed Forces	National Security Agency (NSA)	Government Communications Headquarters (GCHQ)	Australian Signals Directorate (ASD)	There is currently no agency in South Africa that operates on the same level as that of the other countries
Investigate, research and deliver information to law enforcement to improve ability to prevent and detect serious organised crime			Australian Criminal Intelligence Commission (ACIC)	
Investigate and prosecute top level of serious or complex fraud, bribery and corruption		Serious Fraud Office (SFO)		National Prosecution Authority (NPA) for criminal proceedings Not top-level-types of cases

(Source: Author)

To put the above into perspective, each country's corruption perceptions index 2017 has been tabled in Table 6-2 together with the total population as it was in 2017, to illustrate that population size is not directly proportional to the country's corruption perceptions index; more is involved. According to Knack and Azar (2003) numerous authors have stated that

government corruption is less in countries with smaller populations. Therefore, the following is an experimental test.

The information used in the calculations to follow was obtained from Transparency International's Corruption Perceptions Index for 2017. The United Kingdom will be used as the base, because, from the four countries analysed, the United Kingdom fared the best according to the Corruption Perceptions Index information. For 2017, 180 countries were investigated in terms of corruption and listed accordingly with number 1 being the least corrupt to 180 being the most corrupt. "Over two-thirds of the 180 countries and territories in this year's [2017] index fall below the midpoint of our scale of 0 (highly corrupt) to 100 (very clean). The global average score is a paltry 43, indicating endemic corruption in a country's public sector." According to Transparency International, the possible reasons for lower-ranked countries (such as South Africa) are the bad functioning public institutions such as the police and judiciary, and consequently the analysis of the law enforcement agencies of the higher ranked countries (such as the United Kingdom, United States of America and Australia).

The reason that the United Kingdom, United States of America and Australia are high-ranked may be because of their independent judicial systems and the stronger standards of integrity of public officials (Transparency International, 2017a).

Table 6-2: Calculation with regards to proportionality

	United Kingdom	Australia	USA	South Africa
Place out of 180 countries	8	13	16	71
Place ÷ 180	0.044 (calculation 1)	0.072 (calculation 2)	0.089 (calculation 3)	0.394 (calculation 4)
Population: 2017 (Source: Worldometers, 2018)	66 573 504	24 772 247	326 766 748	57 164 909
If population is directly proportional to corruption, then the population will be:	Was used as base because it was rated the highest of the four countries.	108 938 778 (calculation 5)	134 660 042 (calculation 6)	596 135 468 (calculation 7)

	United Kingdom	Australia	USA	South Africa
% increase/(decrease)	-	440 (calculation 8)	(41) (calculation 9)	1 043 (calculation 10)
CPI: 2017	82	77	75	43
Average CPI from 2013 to 2017	79.6 (calculation 11)	79.2 (calculation 12)	74.4 (calculation 13)	43.6 (calculation 14)

(Source: Author from Transparency International, 2017a; Worldometers, 2018)

The explanation and rationale of the calculations in Table 6-2 are as follows:

In order to calculate the proportionality of the population to corruption, the factor per country must be calculated. This was done in calculations 1 to 4 by using the following formula:

$$\text{Factor} = \text{Place} \div \text{Number of countries rated in the CPI(2017)}$$

Therefore, for calculation 1: $\text{Factor} = 8 \div 180 = 0.044$

This was done for each country (calculation 2 to 4).

The next step (calculation 5 to 7) was to determine, with relation to the corruption factors calculated, what the size of the population should have been to justify the corruption rating. This calculation used the United Kingdom as basis because it ranked the highest in the Corruption Perceptions Index (2017) of the four countries chosen for this study.

Utilising a simple matrix method, the calculations were:

$$\begin{array}{r} 66\,573\,704 \quad 0.044 \\ \times \quad \quad 0.072 \end{array}$$

Where 0.044 = calculation 1, and 0.072 = calculation 2.

Therefore, $(66\,573\,704 \times 0.072) \div 0.044 = 108\,938\,788$. This was done for calculations 6 to 8.

The rationale behind these calculations was to determine, with the current corruption perception (with United Kingdom as basis), what the size of the population should be to justify such a score. Based on the factors (calculations 1 to 4) utilised, it was determined (calculations 5 to 7) that to justify the Corruption Perceptions Index (2017), the projected population of the United Kingdom, Australia and South Africa should be much higher than what it currently is.

The United States of America was the only country in which the projected population was lower than the actual population, as depicted on Worldometers (2018).

The derivative from Table 6-2 is:

1. Population is not directly proportional to corruption, and therefore one cannot say that the bigger the population of a country, the more corruption takes place.
2. These calculations (5 to 7) showed that the United States of America is somehow more efficient in enforcing its laws, prosecuting and convicting with regard to corruption.

Calculations 8 to 10 show the increase and decrease of the projected population per country. This was calculated by using the following formula:

$$\% = (\text{projected population} \div \text{population}) \times 100$$

Therefore, for Australia: $\% = (108\,938\,778 \div 24\,772\,247) \times 100\% = 440\%$ (calculation 8). This was done for the United States of America (calculation 9) as well as for South Africa (calculation 10).

The average Corruption Perception (2017) was calculated to illustrate, over a five-year period, where each country lies and whether any improvement could be identified. The following formula was used:

$$\text{Average} = (\sum \text{CPI } 2013, \text{CPI } 2017) \div 5$$

The derivative of these calculations is:

1. The United Kingdom shows an improvement of three points,
2. Australia's position deteriorated by 2.2 points;
3. The United States of America improved by 0.6 point; and
4. South Africa's position deteriorated by 0.6 points.

Although Australia showed the most deterioration over a five-year period, South Africa's position on the Corruption Perceptions Index (2017) remains much lower than that of Australia. From the results of Table 6-2, it is clear that population is not directly proportional to the corruption experienced, according to the Corruption Perceptions Index (2017). It is also clear that when South Africa is compared to the other three countries, it is perceived as much more corrupt (Source: Author).

Various reasons for this may exist, for example:

1. The law may not be enforced efficiently;
2. Inefficient communication between law enforcement agencies and regulators;
3. Prosecutions and convictions are not strict enough to deter criminal activities;

4. Basic morals of individuals; and
5. The citizens' perception of government (Source: Author).

Banoba (2017) stated that elections in 2016 in [South] Africa are a good reflection of corruption trends in the region, meaning that the citizens' frustration with their government's corruption record were reflected in the voting polls. He specifically referred to President Jacob Zuma and his corruption scandals. One of the recommendations made by him is that African leaders must strengthen the institutions that hold their governments accountable (Banoba, 2017).

Comparing Table 6-1 and Table 6-2 to come to a conclusion, the following was noted:

For a comparison between the number of and the responsibility of each of those agencies and organisations to their Corruption Perceptions Index (2017), a link may be drawn between those agencies, the enforcement of their laws and the place on the Corruption Perceptions Index (2017). This link can be strengthened by the following excerpt: "2016 was also notable in that large corruption investigations continued to jump across national borders. ...we see increasing communication and cooperation among regulators and law enforcement..." (Ebrard, 2017).

Comparing the number of agencies of South Africa and their duties to that of the other countries, a number of gaps can be identified, leading to recommendations for improvement. These gaps and improvements will be discussed in the next paragraph.

6.9 GAPS AND IMPROVEMENTS: RECOMMENDATIONS FOR SOUTH AFRICA

Refer to Table 6-1, paragraph 6.8. The first gap that was identified was that South Africa does not have an agency that can be compared to or has the same responsibilities as that of the Federal Bureau of Investigation, the National Crime Agency and the Secret Service, the Australian Security Intelligence Organization and the Australian Federal Police. South Africa had an independent unit, the Directorate of Special Operations (also known as the Scorpions), but it has been disbanded. This Directorate (Scorpions) will be discussed in more detail in Chapter 7.

The unit it has been replaced with is the Directorate of Priority Crime (also known as the Hawks) and is not nearly as successful as their predecessors (paragraph 6.7.1.1). This statement can be substantiated by referring to the decline in the number of convictions and prosecutions. There was a decline of 60 percent and 80 percent, respectively (Anon, 2016, Berger 2008, Roelf, 2008). A probable solution is discussed in paragraph 7.2 (chapter 7).

The second gap that was identified relates to South Africa's tax authority. The individuals investigating possible money laundering and tax evasion cases do not have the adequate skills. While the United States of America's IRS has a Criminal Investigation Unit with special

agents who not only have financial investigative skills but also possess the skill to use specialised forensic technology, the same cannot be said of South Africa's SARS investigation unit. A suggestion to fill this gap was made in paragraph 7.4.4 (chapter 7).

The third gap identified relates to protecting the South African government from cyber threats and supporting its Armed Forces. South Africa does have the Electronic Communications Security with the main responsibility to:

1. Protect and secure electronic communications of the State against security threats;
2. Conduct intermittent analysis of the state of the Information Communication Technology security; and
3. Identify and provide security to serious electronic communication infrastructure of organs of state (National Communications Branch, 2016).

Although no mention of protection against cyber threats is made, protecting the government against cyber-attacks may form part of 'security threats'. No mention of an agency that supports the Republic's Armed Forces was found. The closest identified by the analysis was the Office for Interception Centre, which provides an interception service to law enforcement agencies involved in national security threats. This discussion was done in paragraph 6.7.4.

The fourth gap is that South Africa does not have an organisation that investigates, researches and delivers information to law enforcement in order to improve their ability to prevent and detect serious organised crime (Source: Author). A possible solution to this gap is discussed in paragraph 7.4.5 (chapter 7).

The fifth gap relates to the investigation and prosecution of top-level serious or complex fraud, bribery and corruption cases. Even though South Africa has the National Prosecution Agency (criminal cases), there is no organisation that focuses only on the said top-level cases involving fraud, bribery and corruption (Source: Author). A suggestion to eliminate this gap is discussed in paragraph 7.3.1.6 (chapter 7).

The last gap involves the qualifications of the law enforcement officials and employees of the various organisations. The Federal Bureau of Investigation, for example, requires an individual to possess a minimum of a U.S.-accredited bachelor's degree with at least three years' full-time work experience (FBI Jobs). A solution for this gap is discussed in paragraph 7.3.1.3 (chapter 7).

Although these gaps are a good indicator for recommendations, it is not the only information that should be taken into account. The fact that South Africa ranks 43 out of 100, therefore

falling in the lower part of the Corruption Perceptions Index, is an indication that our law enforcement agencies (and other public organisations) are not functioning as they should.

Recommendations:

1. Based on the admission requirements gathered from the agencies discussed, South Africa needs to increase the admission requirements and qualifications for personnel of public organisations and law enforcement.
2. Establish a new independent, elite law enforcement agency modelled after the Federal Bureau of Investigation, National Crime Agency, the Secret Service and the Australian Special Investigations Organization.
3. Remodel the South African Police Service after the Australian Federal Police and instigate higher admission requirements for its personnel.
4. Due to Australia being one of the first countries to establish a financial intelligence centre, the recommendation is to further model South Africa's Financial Intelligence Centre after their Australian Transactions and Report Analysis Centre. Not only has the structure of the organisation, but also the competency levelled of its employees.
5. In order for the South African Revenue Service to function at it most effective, the Minister of Finance must have the necessary qualifications, experience and understanding of South Africa's economy. A competent and morally disciplined Commissioner should be appointed by Government. The Commissioner, in turn, must ensure that the employees of the South African Revenue Service have the necessary qualifications required to effectively run that specific department.
A separate investigations unit must be established with employees who possess special forensic qualifications and skills to investigate white collar crime before handing over to the National Prosecuting Authority or Special Investigations Unit. Use the Internal Revenue Services' Criminal Investigation Unit, Her Majesty's Revenue and Customs and the Australian Tax Office as a basis and restructure the South African Revenue Service accordingly.
6. The current Electronic Communications Security department can be expanded to include protecting the government against cyber threats as a whole. Currently, it seems that this department is only concerned with issues relating to communications.
7. With South Africa being a third-world country, an organisation should be established that can investigate and do research on serious organised crime in order to improve law enforcement's ability to prevent and detect. This organisation can form part of the South African Police Service with employees who also have an applicable accredited

tertiary qualification. Government can also consider funding a university department to do these types of investigations and research by using top researchers who already have the necessary experience.

8. South Africa should seriously consider establishing an organisation such as the Serious Fraud Office that specialises only in prosecuting top-level serious or complex fraud cases, irrespective whether it is criminal or civil in nature. This organisation must also function independently. Creating such an organisation will enable the National Prosecuting Authority and the Special Investigations Unit to take on and prosecute more cases.

To conclude this paragraph: South Africa still has much to learn from first-world countries in order to improve their ranking with respect to corruption. Not only should organisations and law enforcement agencies be restructured, but qualifications, integrity, admission requirements and general transparency should be improved.

6.10 SUMMARY

The objective of this chapter was to obtain methods used by the various law enforcement agencies, tax authorities and financial intelligence centres. After the methods have been identified, an analysis and comparison was conducted between these various institutions. It was found that all the institutions use two types of methods to gather the necessary information: covert and overt methods. These methods vary slightly depending on the case.

Research also showed that the first-world countries have more law enforcement agencies and public organisations than South Africa does. Those agencies and organisations also maintain a high level of competency as was demonstrated by the Corruption Perceptions Index 2017. With the information obtained from the Corruption Perceptions Index 2017, it was also proved by using the United Kingdom as basis that population is not directly proportional to corruption; therefore, the argument that the higher the population, the higher the corruption is not valid.

After comparisons were done, eight recommendations were listed. These recommendations do not include detailed, structured plans for improvement; although the basic starting points were highlighted. Secondary objective number 1.4.2.5 has been reached and research questions 3 and 4 have been answered. A discussion on establishing an agency to help combat money laundering and tax evasion will be done in Chapter 7.

CHAPTER 7

THE DEVELOPMENT OF A LEGAL FRAMEWORK TO COMBAT MONEY LAUNDERING AND TAX EVASION IN SOUTH AFRICA

The aim of this chapter is to develop a legal framework to assist in the fight against tax evasion, money laundering and corruption. This will not only answer secondary objective 1.4.2.6, but it will also enable the researcher to reach the main objective: developing a legal framework that can be implemented in South Africa to combat economic crimes.

7.1 INTRODUCTION

In Chapter 1, paragraphs 1.1.5 and 1.1.8, the link between tax evasion, money laundering and corruption has been discussed. In the following paragraphs, the rationale will be considered before moving on to the development of the framework. Because the framework that will be developed later in this chapter refers to an anti-corruption agency, it was necessary to illustrate the link (paragraphs 1.1.5 and 1.1.8, Chapter 1) before continuing with a framework that refers to corruption, but will also be able to investigate tax evasion and money laundering.

The main objective (paragraph 1.4.1, Chapter 1) of this study was to develop a legal framework that can be implemented in South Africa to combat economic crimes, and this chapter suggests a framework for an independent anti-corruption agency. In Chapter 4 and Chapter 5, it has been shown that it is not South Africa's legislation that is at fault, but rather the enforcement thereof. Therefore, the independent anti-corruption agency with its administration penalty unit was developed as the framework for said task. As money laundering and tax evasion may form part of corruption (paragraph 1.1.5, Chapter 1), it was decided to refer to 'anti-corruption' to broaden the scope of the framework. It was found that there is a need for such an agency as the Constitutional Court found that the Hawks (Directorate for Priority Crimes) are not sufficiently independent (paragraph 7.2.2).

After the framework (independent anti-corruption agency) were developed, it was tested against consultations with experts, a South African corruption case and Gordhan's (2016) 10-point solution for tax evasion in South Africa. Many of the points Gordhan (2016) listed, further strengthen the case for an independent anti-corruption agency.

7.2 RATIONALE BEHIND AN INDEPENDENT ANTI-CORRUPTION AGENCY

The recommendation to the existing problem is to establish an independent anti-corruption agency where its leadership is 'selected on an impartial basis' together with the resources and space needed to fulfil its mandate (Tamukamoyo, 2015). This is a reiteration of a proposal

made by the Organization for Economic Co-operation and Development (1996); the Southern African Development Community's Protocol against Corruption (2001); and the African Union Convention on Preventing and Combating Corruption during 2003 (De Sousa, 2009).

Molefe (2017) also states that to fight corruption, one has to start at the top. Although a few high-ranking officials have been charged and convicted of fraud and corruption, there were no other consequences such as incarceration. This act of government is undermining the trust of the public in the criminal justice system. However, the rest of this chapter will focus on corruption (in general), tax evasion and money laundering.

Mantzaris (2017) made the statement that "the problem is not that the country's anti-corruption law is wanting". The legislation of the countries selected for this study has already been discussed in Chapter 4 (paragraph 4.5 and paragraph 4.6) and Chapter 5 (paragraph 5.6 and paragraph 5.7). The conclusions derived from both chapters were that despite the difference in legislation, the legislation is not the problem. The issue is the enforcement of these laws.

According to Mantzaris (2017), the problem lies in the fact that "personal financial interests intersect with public interests where personal interests trump that of public interest. South Africa has already revealed that it is too weak to support an active fight against such interests" (Mantzaris, 2017).

Mathekga (2017) made a valid point in the Open Society Initiative of Southern Africa Report in connection to South Africa's numerous credible corruption-fighting institutions: These institutions are undermined to fit political interests. Pauw (2017a) confirmed this statement with his research into former president Zuma, Duduzane Zuma and the Gupta brothers.

Mathekga (2017) also stated that "weak leadership in institutions such as the National Prosecuting Authority undermines the broader criminal justice system in the country". The "weak leadership in the National Prosecuting Authority" can be as a result of "the concentration of powers given to the president to appoint and remove an official". (Moseneke, 2015).

In paragraph 6.9 (Chapter 6), the first gap that was identified was that South Africa does not have an independent unit to combat corruption. Burger (2015) reported on the Constitutional Court's verdict regarding the independence of the Hawks which was that they are not sufficiently independent. Burger (2015) stated that "the study goes on to make an important recommendation: '...[the] establishment [of] independent anti-corruption bodies...by governments, signalling that corruption will not be tolerated and that significant steps will be taken to eradicate it'..." (Office of the Public Service Commission, 2001).

South Africa has the resources to improve its current status in terms of corruption, but the enforcement of the legislation is problematic due to political interference (Andrews, 2017; Burger, 2016; SBP, 2012; Pauw, 2017a). According to Mashaba (2005:111), political instability and conflict are factors that can hinder the development of effective responses to corruption. There has long been a request for an independent body to combat corruption (Tamukamoyo, 2015; De Sousa 2009; Southern African Development Community, 2001).

Langendorf (2015) identified five reasons as to why South Africa is struggling to combat corruption effectively:

1. The anti-corruption laws are not applied;
2. The anti-corruption agencies are not independent;
3. The administration of public entities and funds is not effective;
4. The international co-operation is not utilised; and
5. The access to information is good, but not enough.

“The Government of South Africa faces a growing demand from all sectors of the society to strengthen national anti-corruption efforts. Public trust in the Government is becoming increasingly dependent on its ability to hold the public officials accountable” (United Nations Office on Drugs and Crime; 2016).

According to Mathekga (2017), corruption in South Africa is linked to politics in two ways:

1. To accomplish political interference, and
2. To impact the success and legitimacy of state institutions as well as institutions of democracy (Corruption Watch, 2017a).

De Sousa (2009), Mathekga (2017) and Pauw (2017a) are also of the opinion that as soon as political elites face accusations of corruption, they launch an attack on state institutions tasked with investigating them. These attacks challenge these investigations into corruption (Corruption Watch, 2017a).

This opinion of De Sousa (2009) and Mathekga (2017) was clearly illustrated when the African National Congress decided to disband the Directorate of Special Operations (Scorpions) after investigations into former president Zuma started.

7.2.1 Directorate of Special Operations (DSO)

The Directorate of Special Operations (Scorpions) was disbanded due to their own mistakes and mistakes made by government (Anon, 2008; Hoffman, 2016; Montesh & Berning, 2012).

The Scorpions consisted of investigators, prosecutors and analysts to collect intelligence information (Montesh, 2007).

The Scorpions were authorised by section 7(3) of the National Prosecuting Act (58 of 2008) to conduct intelligence operations, which was in violation with section 199 of the Constitution of the Republic of South Africa (108 of 1996), the National Strategic Intelligence Act (39 of 1994) and the Intelligence Oversight Act (40 of 1994) (Anon, 2008; Hoffman, 2016; Montesh & Berning, 2012). Section 199 of the Constitution of South Africa (108 of 1996) specifies security services as that of “a single defence force, a single police service and any intelligence services established in terms of the Constitution”.

The Khampepe Commission of Inquiry (2006) was appointed by the president of the Republic of South Africa to review, *inter alia*, the mandate, location, accountability, effectiveness, efficiency and oversight with regard to the intelligence operations of the Scorpions. The Khampepe Commission was furthermore required to report on, and make recommendations. The Commission made the following findings:

1. The Scorpions' structure was not unconstitutional;
2. The Scorpions do not have a legal basis to gather intelligence;
3. For the reason mentioned in number 2, the Inspector General for Intelligence and the National Security Council had no oversight authority over the Scorpions;
4. There was a number of Scorpion officials subjected to security screening in terms of section 19B (repealed in 2008) of the National Prosecuting Authority Act (58 of 2008); and
5. There was nothing wrong with where the Scorpions were located, but examination of some of the Scorpions' staff was needed in order to comply with the National Prosecuting Authority Act (58 of 2008) (The Khampepe Commission Report, 2006).

These were only the findings by the Commission; other reasons include:

1. Selective prosecution,
2. Lack of oversight,
3. Violation of privilege between client and legal advisor,
4. Political interference, and
5. Abuse of power (Montesh & Berning, 2012)

The Commission also concluded that the Scorpions were placed within the National Prosecuting Authority for four reasons:

1. *South African Police Service was unable to deal with high-level crime;*

2. *South African Police Service was perceived to be illegitimate in light of its apartheid-era past;*
3. *The need to recruit top-level persons to the anti-corruption unit; and*
4. *The threat of corruption within the SAPS itself* (Langendorf, 2015).

Although the Khampepe Commission was in favour of retaining the Scorpions as part of the National Prosecuting Authority, the African National Congress Conference 2007 resolution approved the termination of the Scorpions and integration into the South African Police (ANC Resolutions, 2007; Langendorf, 2015), thereby removing their independence.

7.2.2 The Directorate of Priority Crime Investigation (DPCI)

The Directorate of Priority Crime Investigation (Hawks) replaced the Directorate of Special Operations, but was incorporated into the South African Police Service (Burger, 2015). During 2011, the Constitutional Court ruled that, according to section 6A of the South African Police Service Act (68 of 1995), as amended, the national legislation that created the Hawks was inconsistent with the Constitution.

Furthermore, it was ruled invalid due to the Hawks' lack of independence (Burger, 2015), two vital findings were made by the Constitutional Court:

1. It imposed an obligation on the state to create and maintain an independent body "to combat corruption and organized crime"; and
 2. The Hawks do not meet "the constitutional requirement of adequate independence".
- The reason behind the second finding: The Hawks were not adequately protected from political interference (Montesh & Berning, 2012).

In the *Glenister v. the President of the Republic of South Africa and Others (2011)* case, the possibility of political interference in the South African Police Service was identified, which can compromise the independence of the Hawks. The Constitutional Court further elaborated on the independence of the Hawks in that its grave disquiet stemming from the fact that the policy guidelines for the Hawks and the selection of national priority offenses would be determined by a Ministerial Committee, which must include at least the Ministers for Police, Finance, Home Affairs, Intelligence and Justice. This Ministerial Committee may also include any other ministers designated by the President (Langendorf, 2015).

7.2.3 The National Prosecuting Authority (NPA)

De Sousa (2009) stated that "political decisions to terminate anti-corruption agencies are often justified in terms of efficacy (or the lack thereof), but without an assessment of concrete

performance indicators”. Mashaba (2005:111) stated that inadequate institutional capacity at local and central level can prevent effective response to corruption.

To prove that the National Prosecuting Authority’s independence has been tainted, a look at various incidents pertaining to this authority will commence:

1. The first head of the National Prosecuting Authority, Bulelani Ngcuka, was forced to resign after announcing that a *prima facie* case existed against Zuma; political pressure was also mentioned (Archibald, 2004).
2. The second head, Vusi Pikoli, was suspended after obtaining search warrants to search and arrest the National Commissioner of Police (then Jackie Selebi) two weeks before the presidential election; the president cited a breakdown in relationship (News24, 2008).
3. The third head, Mokotedi Mpshe, announced that all charges against Zuma will be dropped in a decision plagiarised from a Hong Kong case and a court has found that a cardinal rule of law was breached – *audi alteram partem* (the right to be heard) (Bateman, 2009). Umraw (2017), Rabkin (2017) and Jordaan (2017) reported that the Supreme Court of Appeal has reserved judgement against Zuma after the National Prosecuting Authority and Zuma’s legal teams conceded that the decision to withdraw these corruption charges was irrational.
4. The fourth head, Menzi Simelane, was found unfit to serve as the director of the National Prosecuting Authority due to charges of dishonesty and unprofessional conduct and bringing the National Prosecuting Authority into disrepute. The Constitutional Court also declared his appointment as irrational and invalid (Sole, 2011).
5. The next director of the National Prosecuting Authority, Nomgcobo Jiba, was suspended and struck off the roll of advocates because she protected Mdluli against prosecution by the National Prosecuting Authority (Van Wyk, 2016; Pauw, 2017a).
6. The second to last director to be suspended is Mxolisi Nxasana. He failed security clearance, his fitness to hold office was questioned, and he was charged with trying to defeat the ends of justice (Underhill, 2014; eNCA, 2015).
7. The last director, Shaun Abrahams’ appointment has been declared invalid by the Constitutional Court because “his predecessor, Mxolisi Nxasana, was wrongfully removed by then-president Jacob Zuma” (Pijoos, 2018; Smit, 2018).

The Scorpions were replaced by the Hawks, which were incorporated under the South African Police Service even though the Constitutional Court prohibited this move. All other

commissions, task forces and ministerial committees failed to play a serious role in combating corruption (Langendorf, 2015; McLaughlin).

McLaughlin stated that the failing independence of the National Prosecuting Authority “undermines the Constitution and it threatens the rule of law in South Africa”. He also argued that the wider effects of this tendency by the ruling African National Congress indicates that other areas of the Constitution can also be interfered with and by attacking the National Prosecuting Authority, they are attacking the Constitution (McLaughlin).

Therefore, if the political interference can be stopped, and the incompetent employees as well as those whom lacks integrity removed, the National Prosecuting Authority should be able to successfully prosecute criminals again.

7.3 TOWARDS THE DEVELOPMENT OF A FRAMEWORK

In paragraph 7.2, the reasons for establishing an independent anti-corruption agency (the framework) were discussed. International organisations such as the Organization for Economic Co-operation and Development (1996) (as cited by De Sousa, 2009) suggested the creation of anti-corruption agencies as part of their ‘ethics infrastructure’ to combat corruption. The Southern African Development Community (2001) also suggested the establishment of specialised agencies to fight corruption.

De Sousa (2009) listed eight requisites that need to be in place before an agency can be classified as an anti-corruption agency:

1. Distinctiveness

The agents have the distinctive skills to function in this domain, carrying out their mandate to combat corruption.

2. Durability

An anti-corruption agency cannot have a sporadic existence.

3. Powers to centralise information

The power to collect, store, process and distribute information from a central point.

4. Articulation

This entails articulating initiatives commenced by other control actors.

5. Knowledge production and transfer

The role research plays, and participation in international forums and networks.

6. Rule of law

The agency still needs to be accountable to a higher authority.

7. Existence

The agency must be known by and accessible to the public.

8. Preventative and/or repressive dimensions

The agency must be able to develop controls with regard to preventative and/or repressive dimensions.

There is no standardised model for the development of an anti-corruption agency. Many anti-corruption agencies have been designed from special units in the police or prosecution offices. Few have been established from the outset with its own statutory act (De Sousa, 2009).

Mantzaris (2017) stated that it will require “strategic and comprehensive arrangements and implementable initiatives that are multi-dimensional” to combat corruption.

He suggested the following measures, among others:

1. Supporting plans by thorough research and strong political will, effective law enforcement, an efficient and corrupt free judiciary, free press; and
2. An independent and active civil society (Mantzaris, 2017).

South Africa started to develop a national anti-corruption strategy in 2015, among others, to provide a tool for “monitoring progress towards a less corrupt society, and to support coordination between government, business and civil society efforts to reduce corruption”.

Nine proposed pillars for the national anti-corruption strategy were given:

1. Support citizen empowerment in the fight against corruption, including increased support for whistle-blowers;
2. Develop sustainable partnerships with stakeholders to reduce corruption and improve integrity management;
3. Improve transparency by government, business and civil society sectors;
4. Improve the integrity of the public procurement system to ensure fair, effective and efficient use of public resources;
5. Support the professionalisation of employees;
6. Improve adherence to integrity management (managing ethical standards) and anti-corruption mechanisms and improve consequence management for noncompliance of these across government, business and civil society sectors;
7. Strengthen oversight and governance mechanisms in the government sector;
8. Strengthen the resourcing, cooperation and independence of dedicated anti-corruption agencies; and

9. Build specific programmes to reduce corruption and improve integrity in sectors particularly vulnerable to corruption (vulnerable sector management), with an initial focus on the Justice, Crime Prevention and Security Cluster (Corruption Watch, 2017b).

To narrow the scope, the focus will be on anti-corruption tools and improving the consequence management (managing the consequences of one's act) for noncompliance (as stated in the sixth pillar) because South Africa wants to:

develop an anti-corruption compliance culture in private companies and state-owned entities through the development of a new offence, i.e. failure by a commercial organisation to prevent bribery and possibly other forms of corruption, which requires companies to proactively put measures in place to manage the risk of corruption and to ensure that they have a defence against the offence of failure to prevent bribery and other forms of corruption (South African Government; South Africa).

7.3.1 Development of an independent anti-corruption agency

According to Meagher (2002), the basic functions of an anti-corruption agency are:

1. Receive and respond to complaints;
2. Intelligence, monitoring and investigation;
3. Prosecutions and administrative orders;
4. Preventive research, analysis and technical assistance;
5. Ethics policy guidance, compliance review and scrutiny of asset declarations; and
6. Public information, education and outreach (Meagher, 2002).

De Sousa (2009) identified the following general features and principles found at most anti-corruption agencies:

1. Independence;
2. Inter-institutional cooperation and networking;
3. Recruitment and specialisation;
4. Wide competences and special powers;
5. The role of research; and
6. Durability (De Sousa, 2009).

Independence may be one of the most important issues an anti-corruption agency faces. Within the context of investigations into corruption, independence refers to the capacity to

carry out missions without political interference. The types of political interferences that will minimise the effectiveness of an anti-corruption agency, include, but are not limited to:

1. Reducing the agency's mandate and powers;
2. Limiting the agency's financing;
3. Threat of termination of agency; and
4. Dismissing its most senior officials (De Sousa, 2009).

Inter-institutional co-operation and networking refer to the fact that such an agency cannot exist on its own, meaning that they often share their competences with other public bodies (De Sousa, 2009).

Recruitment and specialisation relate to the fact that specialised knowledge on corruption is vital to the character and performance of an anti-corruption agency because of the increasing complexity of the crime. Therefore, it is important to develop an integrated, multi-disciplinary and informed strategy. Unfortunately, the inadequacy of recruitment and training procedures is one of the main reasons for the non-existence of specialisation (De Sousa, 2009).

Wide competences refer to the agency's competences in that it should not only be limited to legal and criminal provisions, but that unacceptable practices (not against the law) should also be addressed by the agency. The concept of 'special powers' is usually regarded as negative (in democracies), mainly because the use thereof represents a threat to constitutional freedom (Meagher, 2002; De Sousa, 2009).

The role of research refers to addressing corruption in a knowledge-based manner. Therefore, corruption can be dealt with more effectively if a proper understanding of what is being dealt with, exists. This type of research is usually empirical and is about causes, mechanisms, attitudes, contexts, prevention and consequences (De Sousa, 2009).

Currently, the only agency in South Africa with the power to investigate and prosecute is the National Prosecuting Authority. As seen in paragraph 7.2.3, the National Prosecuting Authority's independence has been tainted by several incidents and the fact that the National Director of Prosecution reports to the Minister of Police, who, in turn, reports to the President, can be problematic in the light of political interference.

Based on a report by Transparency International (2017b), the researcher proposes that this new independent anti-corruption agency should report to:

1. A committee specifically set up to oversee and evaluate its performance; or
2. The agency reports directly to Parliament (parliamentary committee consisting of equal members of the political parties holding seats in Parliament); or

3. The agency reports directly to the Constitutional Court.

– whichever one will pose minimum threat of political interference. To minimise the extent of the scope in the options given above, the option of reporting directly to a parliamentary committee will be analysed. This decision of the author was later justified after an article was published by Matjila *et al* in 2017 stating that the New South Wales Independent Commission against Corruption (which is seen as one of the most successful anti-corruption agencies) also reports to parliament and is independent from the executive and judicial branches of state (Matjila et al., 2017:97).

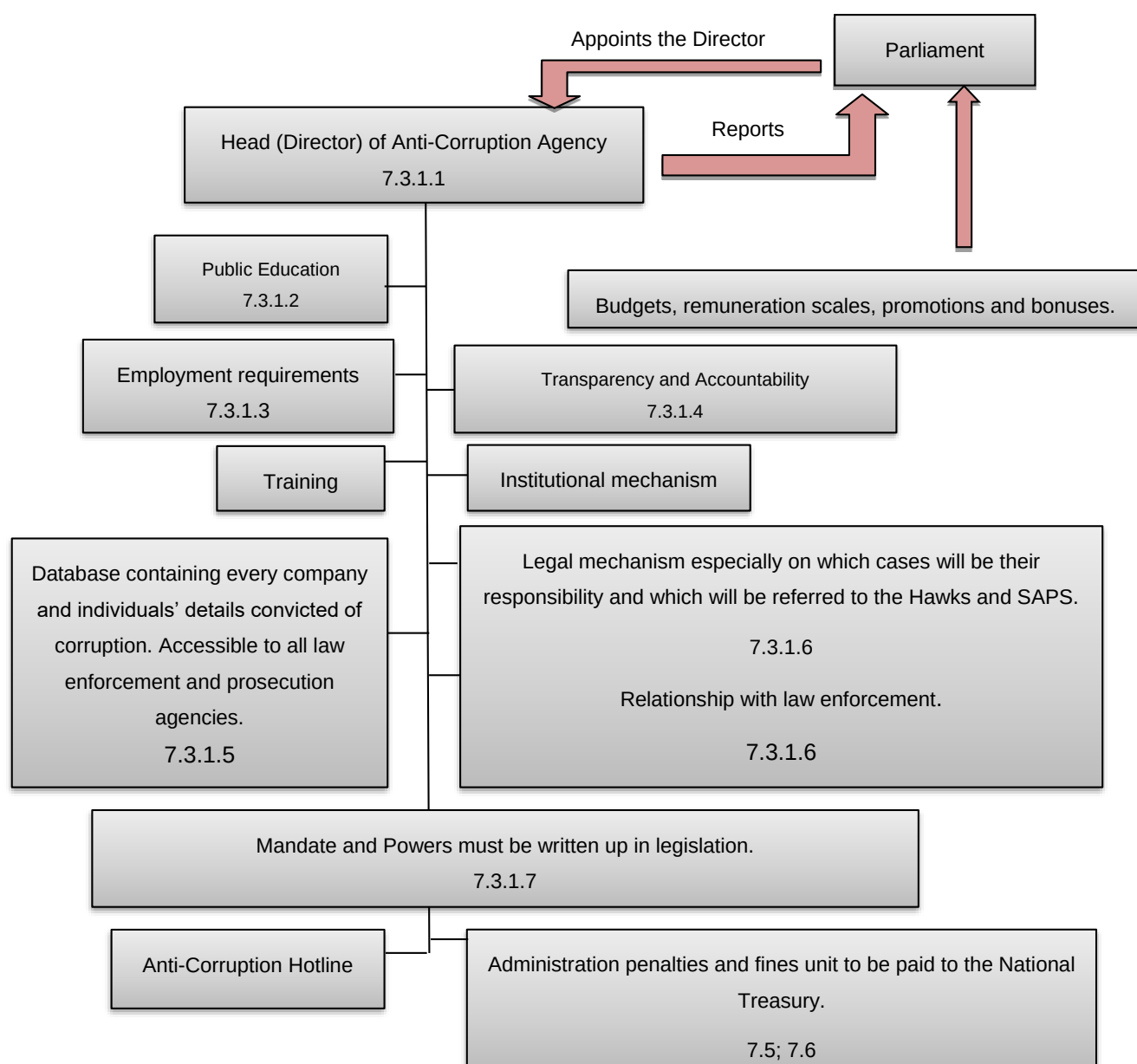
The author's reasons at the time, were:

1. Undue pressure can still be exercised on a committee's members (set up to oversee and evaluate); and
2. Reporting to the Chief Justice (head of Constitutional Court) will add more to the already heavy burden placed on his shoulders (Hoexter & Olivier, 2014).

However, such an anti-corruption agency should still be retained as part of an existing agency (National Prosecuting Authority) that has prosecutorial powers (Transparency International, 2017b). According to section 179 of the Constitution of South Africa (108 of 1996), the National Prosecuting Authority is the only prosecuting authority in the Republic, and therefore this new agency should be established within the National Prosecuting Authority as the Scorpions were. Since the independence of the National Prosecuting Authority has been tainted in the past, the first proposed step will be to amend the National Prosecuting Authority Act (58 of 2008) to ensure that it no longer reports to a minister, but rather to a parliamentary committee directly where said committee will have sufficient power to prevent political interference (Meagher, 2002). The amendment should also contain the new agency's powers, mandate and extent of their investigations and prosecutions as well as its reporting structure.

Based on Transparency International (2017b) and Meagher (2002), Figure 7-1 shows the preliminary matters to be addressed to establish an independent anti-corruption agency as identified by the researcher.

Figure 7-1: Preliminary matters identified to be addressed within the agency



(Source: Author)

7.3.1.1 The head of the independent anti-corruption agency

The head of the independent anti-corruption agency must be appointed and removed by a parliamentary committee as discussed in paragraph 7.3.1. This parliamentary committee must consist of at least two individuals from each representative political party (parties holding seats in parliament), qualified to appoint or remove the head of the independent anti-corruption agency. The head of this independent anti-corruption agency must have an extensive legal background as well as the experience to lead such an agency (Meagher, 2002).

Removing the power to appoint the head of the independent anti-corruption agency or the National Director of Public Prosecutions from the president and giving it to the parliamentary committee may help to strengthen the leadership in the National Prosecuting Authority again and prevent political interference.

7.3.1.2 Public education

Meagher (2002) mentioned education and public awareness as one of the six functions of an anti-corruption agency. It was also mentioned in the first pillar of the national anti-corruption strategy, namely to “develop and implement information campaigns on citizens’ rights” in order to empower citizens in the fight against corruption. Mathekga (2017) stated that there needs to be more public awareness regarding the effect of corruption on society to contravene statements by prominent politicians that ‘corruption is a Western thing’. He made recommendations based on the Open Society Initiative of Southern Africa Report, which can be divided into institutional reform and societal agency.

Mathekga’s (2017) societal agency aims are to make citizens more aware of the impact of corruption on their daily lives. This ‘civilian education’ department will do just that: initiating the demand for anti-corruption initiatives among communities. Therefore, education should also be given at schools to inform learners of corruption, what it entails and how to fight it; especially what the estimated cost to society is. An explanation of the consequences of prosecution on counts of corruption should also be elaborated on.

7.3.1.3 Employment requirements

The last gap identified in paragraph 6.9 (chapter 6) involved the qualifications of the law enforcement officials and employees of the various organisations. The success of the agency lies in the competence (and integrity) of its employees (Meagher, 2002). De Sousa (2009) also listed distinctive skills (paragraph 7.3) as one of the requisites that will distinguish an agency as an anti-corruption agency. In order to determine the basic employment requirements that need to be considered, a list was made of the requirements of the United States of America, United Kingdom and Australia’s agencies listed in paragraph 6.8: first and second row.

The Federal Bureau of Investigation requires that a prospective employee must have a four-year degree from a college or a university accredited by one of the institutional associations recognised by the United States Secretary of Education (FBIAgentedu.org). The Central Intelligence Agency requires a bachelor’s degree with a GPA (grade point average) of 3.0 (83%-86%) (CIAAgentEDU.org). The requirement for prospective employees to be graduates is shared by agencies such as the Security Service (applying for jobs), the Secret Intelligence

Service (explore careers), the Australian Federal Police (minimum requirements), the Australian Secret Intelligence Service (careers), the Australian Secret Intelligence Organization (careers with ASIO) and the Directorate for Priority Crime Investigations (generic requirements). Other agencies, such as the National Security Agency and the National Crime Agency, state that the requirements depend on the vacancy to be filled (job search; careers with NCA). The South African Police Service requires a prospective employee to have a senior certificate (grade 12) or an equivalent qualification (SAPS careers).

Based on the above-mentioned: Depending on the position within the independent anti-corruption agency, the employees should at least have a senior certificate (or equivalent qualification) or a degree (in the relevant fields of study) from an accredited institution for higher education.

7.3.1.4 Transparency and accountability

The lack of transparency and accountability within our government is problematic for South Africa's democracy, because all that will be achieved from having a government without transparency is the loss of public trust (Thlapane, 2014).

Accountability is important for governance because it evaluates the on-going effectiveness of public officials or public bodies to ensure that they are performing to their full potential, that they provide value for money in the provision of public services, that they instil confidence in the government, and that they are responsive to the community they are meant to be serving. Stapenhurst and O'Brien define accountability as a relationship where an individual or body, and the performance of tasks or functions by that individual or body are subject to another's oversight, direction or request that they provide information or justification for their actions. Schmitter (2007) defines accountability as a mutual exchange of responsibilities and potential sanctions between citizens and rulers, which is complicated by a varied and competitive set of representatives between these two groups.

Types of accountability can be classified according to the type of accountability exercised and/or the person, group or institution the public official answers to (Stapenhurst & O'Brien). Different forms of accountability exist, but with regard to this study, only the horizontal versus vertical accountability and the political versus legal accountability aspects will be discussed.

Horizontal accountability can be described as the capacity of state institutions to check abuses by other public agencies and branches of government, or the requirement for agencies to report sideways. Vertical accountability, however, can be defined as the means through which

citizens, mass media and civil society seek to enforce standards of good performance on officials (Stapenhurst & O'Brien; Bovens, 2014).

The obligation or responsibility of government officials to act in the best interest of society is referred to as political accountability, while legal accountability is concerned with the mechanisms by which public officials will be held liable for actions that go against established rules and principles (USLegal).

Parliament and the judiciary act as horizontal constitutional checks on the power of the executive. Parliament holds the executive politically accountable because parliament is a political institution, while the judiciary holds the executive legally accountable, as they can only adjudicate on legal issues. Both the parliament and the judiciary provide on-going oversight in order to keep government accountable throughout its term in office. Political accountability usually manifests itself in the concept of individual ministerial responsibility, which is the cornerstone of the notion of responsible government (Stapenhurst & O'Brien).

As can be derived from the above paragraph, political accountability is extremely important within democracies. "Democracy has many definitions, implications and consequences, but accountability is one of its most important components" (Schmitter, 2007).

The Transparency and Accountability Initiative's argument regarding transparency can be summarised as a principle that public officials have a duty to act visibly, predictably and understandably to promote participation and accountability (The Transparency and Accountability Initiative).

7.3.1.5 Centralised database

The World Bank and the United Nations Office on Drugs and Crimes started the Stolen Asset Recovery Initiative (StAR) to support the international combat of corruption. This initiative generates knowledge on legal and technical tools used to combat corruption, which, in turn, promotes the global sharing of best practices (World Bank Group).

Based on the Stolen Asset Recovery Initiative (StAR), a centralised database containing every company and individual's details convicted of corruption as well as all information with regard to preventing and detecting corrupt acts should be established within this independent anti-corruption agency. This database should contain all the details of every company and every individual convicted of corruption or who was given an administrative penalty. It should also have the function of keeping track of corruption cases: the successful convictions, cases that did not make it to court, cases under investigation; releasing statistical data on an annual basis – adhering to FATF's Recommendation 2. This database should be linked to the Stolen Asset

Recovery Initiative because of the importance that law enforcement and prosecution agencies all over the world must have access to this database.

7.3.1.6 Legal mechanism

The legal mechanism referred to in Figure 7-1 must be developed and implemented in order for the director of the agency to decide which cases to take on and which to refer to the Hawks and the South African Police Service. The idea is that this independent anti-corruption agency should not have the freedom to choose only high-ranking cases or cases that they know will be won. Therefore, this legal mechanism should have very clear guidelines on the types of cases to be taken on.

The fifth gap identified in paragraph 6.9 (chapter 6) refers to South Africa not having an organisation to investigate and prosecute top-level, serious, or complex fraud, bribery and corruption. The following recommendation could be considered: cases of which the monetary value is less than R5 000 000 and no political person or political party or state-owned entity is involved, can be handled by the Hawks and the South African Police Service. The rest of the cases, including companies who self-report after the discovery of corruption, should be handled by this new agency.

The cases referred to in the above-mentioned paragraph will include, among others, corruption, tax evasion and money laundering, of which the link between these offences has been established in paragraph 1.1.7, as corruption might be the predicate offence for money laundering or tax evasion or both.

The justification behind this recommendation is to minimise political interference as far as possible. It will also minimise the caseloads of the Hawks and South African Police Service. The relationship with other law enforcement agencies, national and international, is of the utmost importance for successful convictions.

7.3.1.7 Mandate and powers written into legislation

According to Montesh and Berning (2012), the mandate of an independent anti-corruption agency must have the following five key functions:

1. Investigation;
2. Prosecution;
3. Education and awareness-raising;
4. Prevention; and
5. Co-ordination

As already mentioned in paragraph 7.3.1, the mandate of this agency should be clear with no space for misinterpretations. It must be constitutional to ensure that the agency does not operate outside of its powers. This might entail changes to the National Prosecuting Authority Act (32 of 1998) (among others); the powers of the agency must be written up in legislation.

Summary

The preliminary matters identified to be addressed within this agency have been set out in Figure 7-1. Developing the independent anti-corruption agency further into its proposed position, departments and chains of report (institutional mechanism) are set out in Figure 7-2.

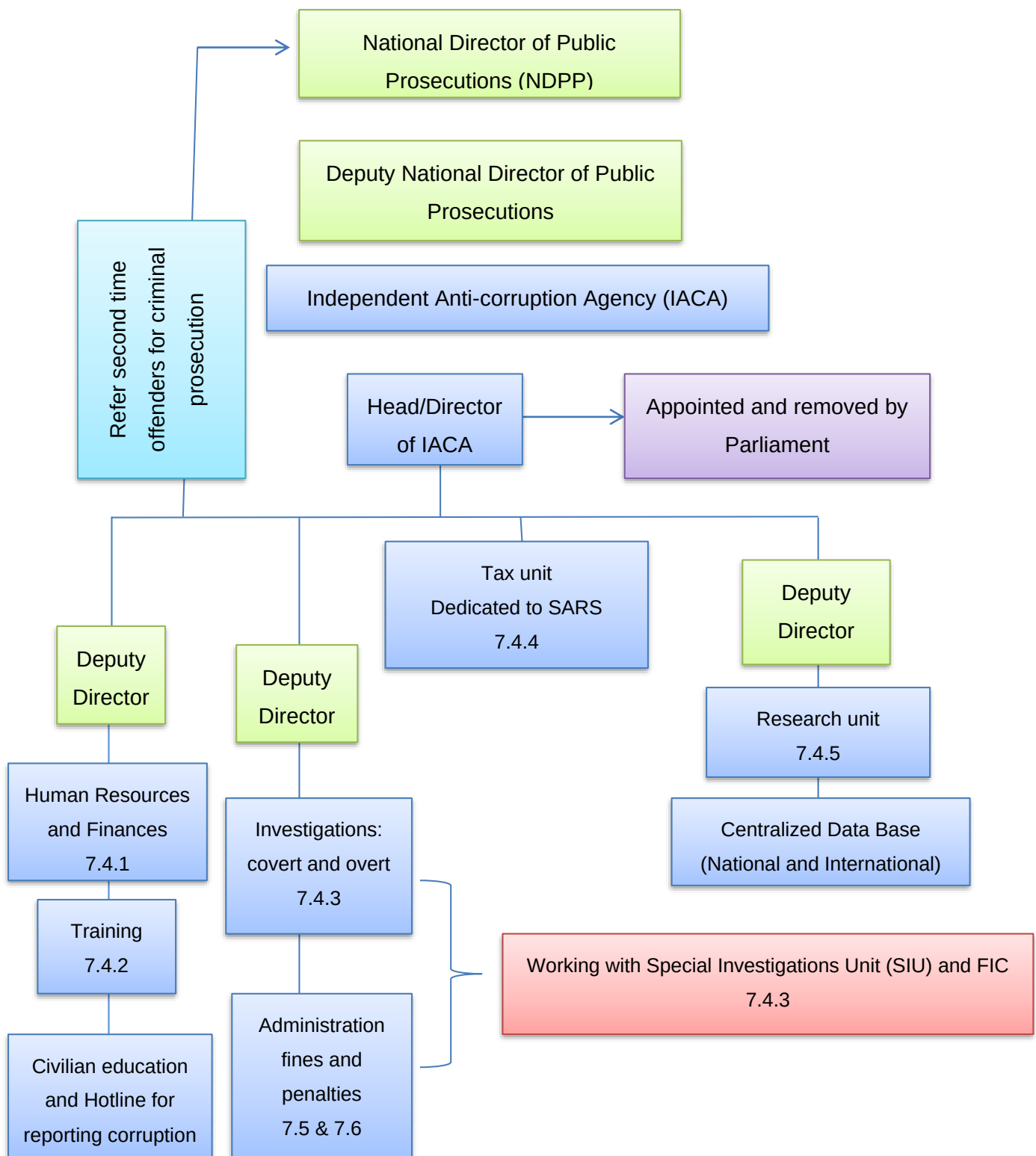
7.4 THE INDEPENDENT ANTI-CORRUPTION AGENCY: PROPOSED STRUCTURE

The following departments were identified based on Meagher's (2002) six functions (paragraph 7.3.1):

1. Human resources and finance,
2. Training,
3. Public education (paragraph 7.3.1.2) and hotline for reporting corruption,
4. Investigations: covert and overt,
5. Administration fines and penalties;
6. Tax unit dedicated to SARS
7. Centralised database (paragraph 7.3.1.5); and
8. Research unit.

Some of these departments have already been discussed in paragraph 7.3.1. Only those departments not yet elaborated on will be discussed in the following paragraphs. Figure 7-2 (on the next page) illustrates the proposed structure on the distribution of the various units envisioned.

Figure 7-2: Proposed structure: Distribution of the various units envisioned (schematic of an extract concept of how the new IACA could look)



(Source: Author)

7.4.1 Human resources and finance

Another factor that Mashaba (2005:111) identified as a hindrance to developing an effective response to corruption is the sufficient budget in light of competing national needs. The financing of the agency at the beginning will fall on the taxpayer. As administration penalties are paid, this burden can be taken away or reduced to a minimum. Currently, the suggestion is that the administration penalties and fines enforced by this new agency should be paid directly to the National Treasury. This will ensure that there can be no independence issues. An elaboration on the administrative fines and penalties unit is done in paragraphs 7.5 and 7.6.

7.4.2 Training

Training provided to law enforcement is inadequate, and this is another factor identified by Mashaba (2005:111) that will prevent the development of effective response to corruption. Meagher (2002) referred to “Agencies in this field [anti-corruption] depend on well-trained personnel – including sufficient numbers with highly specialized skills”.

As part of the training unit of the agency, a trainee programme can be implemented for individuals who want to work within this agency, but who does not necessarily have the qualifications; for example, individuals who cannot afford tertiary education. They can be trained via direct supervision, mentoring or enlisting in a course paid by the agency.

A continuous professional development programme should also be implemented for all employees, irrespective of membership of a professional body. Training can be given by universities or other international law enforcement agencies to ensure that the employees remain up to date and have the necessary knowledge to accomplish the mission of the agency.

7.4.3 Investigations: Working with the Financial Intelligence Centre or Special Investigations Unit

The department of the deputy director overseeing the investigations and administration penalties units will be working with the Financial Intelligence Centre with regard to public and private companies as well as individuals. All investigations regarding the maladministration or malpractice of State institutions should be referred to the Special Investigations Unit. Reporting directors of companies who had previous corruption convictions to the National Prosecuting Authority in order for criminal charges to be filed against those directors will also be the responsibility of the Investigations Unit.

7.4.4 Tax unit dedicated to SARS

In February 2007, a unit was established within the South African Revenue Service with the objective to penetrate and intercept the activities of tax and customs-related crime syndicates. This unit was later referred to as the Special Projects Unit, which became the National Research Group and was later renamed as the High-risk Investigations Unit. Similar to the enforcement capabilities required in any tax and customs administration globally, this unit also formed part of the broader enforcement division of the South African Revenue Service (Van Loggerenberg, 2016:40-53; Minister of Finance responds to the Hawks, 2016).

These units, however, were disbanded over time by the former Commissioner of the South African Revenue Service, Tom Moyane. “From now (2016) on investigations will be done by Internal Auditing in SARS...” Critique against this decision included the fact that Internal Audit neither has the capacity nor do they travel and work on a national basis. A point that is crucial to the development of an independent anti-corruption agency is that Internal Audit will not look at a syndicate. Taxpayers are viewed as individuals, which means that Internal Audit will audit the individual without looking at the legal entities linked to this individual (Marrian, 2015; Thamm, 2016).

After the shutdown of these units, Haysom (2016) summarised the situation as follows:

The NPA is severely compromised, and crime intelligence and the Hawks are consumed with factional battles – battles that are directly linked to criminal interests. With SARS’s capacity decimated, there now exists no part of the State with the independence or skill to pursue serious organized and commercial crime cases. The bill for that damage can only grow... (Haysom, 2016; Van Loggerenberg, 2016).

The mentioned units had “achieved spectacular successes in countless high-profile cases”. The Tax and Customs Enforcement Division assisted the National Prosecuting Authority to develop a “dedicated capacity” for South African Revenue Service cases. Therefore, the Specialised Tax Units were created within the National Prosecuting Authority. However, these units were disbanded in 2013 (Thamm, 2016; Hysom, 2016).

After the above-mentioned were taken into consideration, establishing a new Tax Unit within the National Prosecuting Authority, which will be dedicated to South African Revenue Service’s cases, is recommended. The gap has already been identified in paragraph 6.9 (chapter 6) with reference to South Africa’s tax authority.

The motivation being that a tax unit within the National Prosecuting Authority is based on the proposition that the president's (or any one person or political party) power to appoint the director of the National Prosecuting Authority should be removed (paragraph 7.3.1). This may ensure that no political interference will undermine investigations into high-profile cases.

Accurately stated by Thamm (2016): "If SARS had capacity it would have been all over the Panama Papers leak, Oakbay, Tegeta, Denel and Prasa and it would probably not have bombed out on the Malema case that was messed up good and well" (PoliticsWeb, 2017; Breakfast, 2017).

7.4.5 Research unit

The fourth gap identified in paragraph 6.9 (chapter 6) is that South Africa does not have an organisation that research and deliver information to law enforcement to assist them in detecting and preventing serious organised crime. According to Meagher (2002), a successful anti-corruption agency will have "strong research and prevention capabilities..." The Federal Bureau of Investigation has a Counterterrorism and Forensic Research Unit that provides technical leadership and advancements of forensic sciences to the Federal Bureau of Investigation through applied research and development. This information is also available from federal, state, local and international agencies (Laboratory Services).

The goal of this unit is to develop and

deliver new scientific technology and methods to support the operational requirements of the Federal Bureau of Investigation as well as partner law enforcement and intelligence agencies. Research is conducted on a wide range of topics designed to support advancement in biological, chemical, and physical forensic analyses; operational response; and biometrics (Laboratory Services).

The literature research did not deliver any results on the research units of the other agencies studied in this thesis. The research unit suggested for South Africa will be responsible for conducting preventative research, analysis and technical support.

In the next paragraph, the administration fines and penalties unit will be elaborated on to clarify its intention and its proposed function to combat corruption in South Africa.

7.5 INTRODUCING THE ADMINISTRATION FINES AND PENALTIES UNIT

7.5.1 Background: The Department of Justice and the Securities and Exchange Commission

The working relationship between the United States of America's Department of Justice and the Securities and Exchange Commission, which shares enforcement authority for the Foreign Corrupt Practices Act's (1977) anti-bribery and accounting provisions, is a respectable model to consider for adoption by South Africa. Respectable in the sense of their success rates, as illustrated in Figures 7-3, 7-4 and 7-5. The Department of Justice's Fraud Section is responsible for the criminal Foreign Corrupt Practices Act (1977) enforcement (Department of Justice), while the Securities and Exchange Commission's Division of Enforcement is responsible for the civil Foreign Corrupt Practices Act (1977) enforcement (U.S. Securities and Exchange Commission) (A resource guide to the Foreign Corrupt Practices Act).

The Fraud Section plays a very important role in the Department of Justice's fight against sophisticated economic crime. It also advises the Department's leadership on legislation, crime prevention and public education. Co-ordinating interagency and multi-district investigations and international enforcement efforts occurs frequently. The Fraud Section also assists prosecutors, regulators, law enforcement and the private sector by way of training and advice (among others). The Fraud Section also participates in domestic, national and international working groups, often in a leadership position. In order to fulfil its mission, the Fraud Section provides direct supervision, training and mentoring to its dedicated professionals (Department of Justice).

Because the Fraud Section has the primary responsibility on all Foreign Corrupt Practices Act (1977) matters, these matters are handled primarily by the Foreign Corrupt Practices Act Unit (A resource guide to the Foreign Corrupt Practices Act).

The Securities and Exchange Commission supervises key participants in the securities world, which include security exchanges, security brokers, dealers, investment advisors and mutual funds. Its mission is to protect investors, to facilitate capital formation and to maintain fair, orderly and efficient markets. The Securities and Exchange Commission primarily promotes the disclosure of important market-related information, the maintenance of fair dealing and protection against fraud. Typical violations are insider trading, accounting fraud and providing false or misleading information. The consequence of this type of violation of the securities laws are civil enforcement actions against individuals and companies (U.S. Securities and Exchange Commission).

These enforcement actions are brought against the accused by the Division of Enforcement. The Division recommends the commencement of investigations into violations of securities laws by recommending civil actions in federal court or as administrative proceedings before an administrative law judge, and to prosecute on behalf of the Securities and Exchange Commission (U.S. Securities and Exchange Commission).

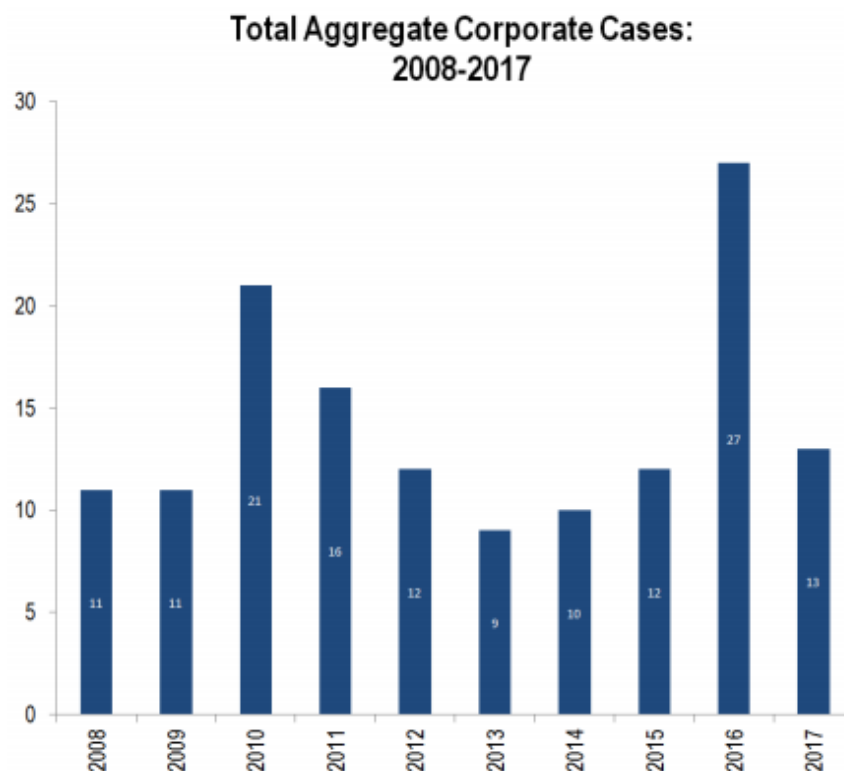
7.5.2 Settlements by companies: Department of Justice and Securities and Exchange Commission

During 2004, the Department of Justice introduced settlements by companies as part of their effort to combat corruption. These settlements entail the payment of fines and penalties by companies that are engaged in corrective actions and whereby the government will not file criminal charges. This settlement introduction “enabled the Enforcement Agencies to resolve Foreign Corrupt Practices Act investigations without the risk and expense associated with proving their allegations at trial” (Mark, 2012; Langendorf, 2015).

According to Langendorf (2015), the deferred prosecution agreements and the non-prosecution agreements have almost replaced prosecution. A deferred prosecution agreement is when the government agrees to suspend criminal charges for a specified period if the company makes an admission, paying the fine and taking every step possible to rectify the corruption practices.

Figures 7-3, 7-4 and 7-5 show the increase in settlements in the United States of America up to 2017.

Figure 7-3: United States of America: Total aggregate corporate cases

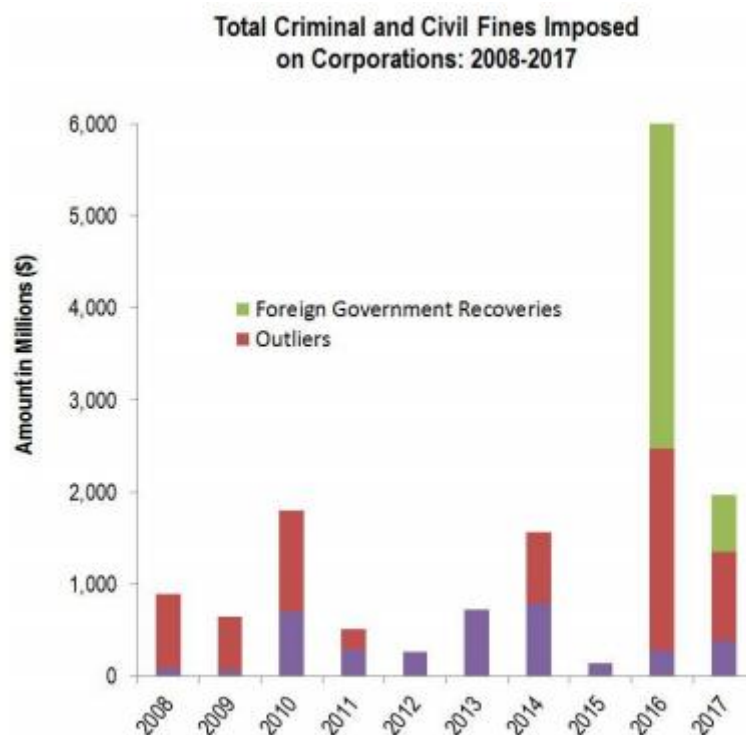


(Source: FCPA Digest, 2018)

According to Figure 7-3, the Department of Justice and the Securities and Exchange Commission resolved 13 corporate enforcement actions during 2017. While the Securities and Exchange Commission relied solely on administrative proceedings, the Department of Justice used a variety of settlement agreements. The choice of agreement was basically connected with the “seriousness of the conduct or the timing and degree of disclosure and cooperation”. (FCPA Digest, 2018).

The total criminal and civil fines imposed for the period 2008 to 2017, are depicted in Figure 7-4.

Figure 7-4: United States of America: Total fines imposed



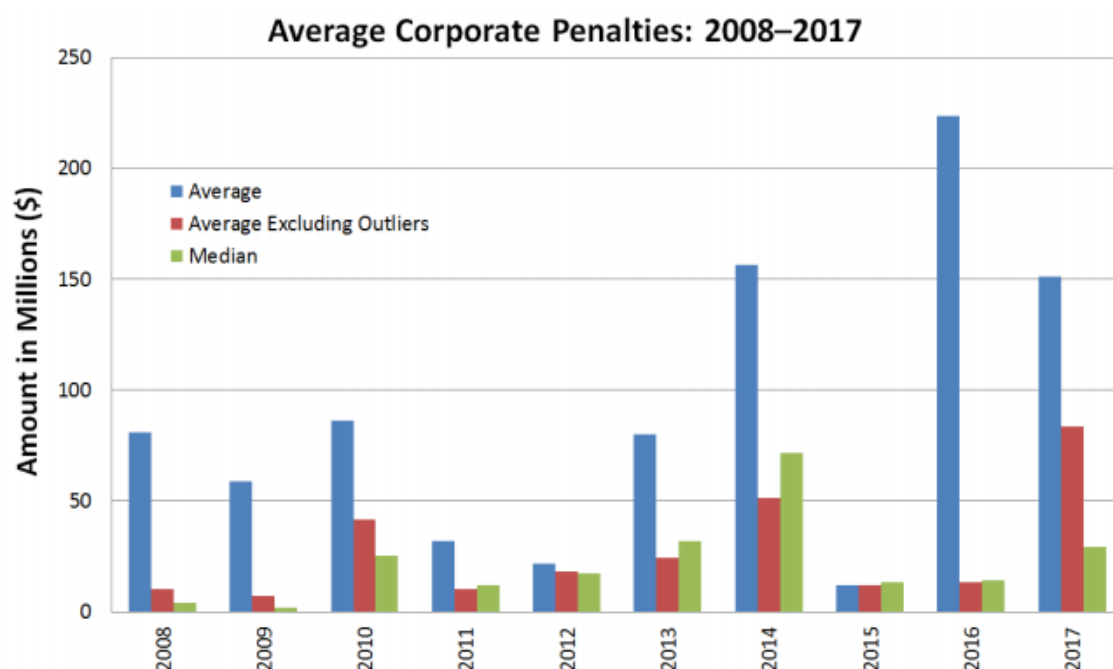
(Source: FCPA Digest, 2018)

For 2015, the total criminal and civil fines dropped to \$143.1 million due to a decision by the Securities and Exchange Commission to bring several low-value Foreign Corrupt Practices Act (1977) enforcement actions. The 2016 and 2017 years showed an increase in the total criminal and civil fines with the highest amount raised in the 2016 year totalling nearly \$6 billion.

During the 2017 year, the FCPA enforcement actions generally alleged the following schemes:

1. Third-party intermediaries where companies made use of local (U.S citizens) consultants or agents as a conduit for bribes to foreign officials.
2. Fake invoices where payments were documented with “invoices for services that were not rendered”.
3. Charitable contributions where donations made to charities that were associated with government officials. (FCPA Digest, 2018).

Figure 7-5: United States of America: Average corporate penalties



(Source: FCPA Digest, 2018)

According to the FCPA Digest (2018), the 2016 FCPA enforcement actions “were much more typical of an FCPA enforcement year, with a pure average penalty of \$223.4 million”. For the 2017 year, the FCPA corporate enforcement actions with netted sanctions that amounted to approximately \$1.96 billion, proved to have been the second-highest total since the FCPA’s enactment in 1977. (FCPA Digest, 2018).

The Organization for Economic Co-operation and Development discussed settlements as part of combating corruption after receiving a letter from Transparency International, Corruption Watch UK and the United Nations Convention against Corruption Coalition and Global Witness urging the Organization for Economic Co-operation and Development to give serious attention to the non-government organisations’ suggested principles (Corruption Watch – UK, 2016; OECD, 2017). These principles were developed over a decade in the use of settlements (Corruption Watch – UK, 2016).

There are 14 principles that can be summarised as follows:

1. It should be a tool in a broader enforcement strategy where prosecution also plays an important role;
2. The conditions should be to only use it in cases where a company has self-reported and co-operated fully;

3. Judicial oversight that includes proper scrutiny of the evidence should be required;
4. Settlements should only be used where a company acknowledges misconduct;
5. These settlements should entail the strengthening and monitoring of compliance programmes as well as forcing full disclosure of these misconducts;
6. These settlements should require companies to cooperate with all parties involved;
7. Companies with previous corruption-related misconducts taken against them are excluded; and
8. Further legal actions should not be precluded in other jurisdictions not party to the settlement subject to the double jeopardy principle.

As already discussed in paragraph 1.1.5 (Chapter 1), corruption has many forms (Turner, 2008:30; Fleming & Zyglidopoulos, 2009:6-7) which includes but is not limited to tax evasion and money laundering. Therefore the above-mentioned principles may apply to tax evasion and money laundering.

The National Prosecuting Authority (paragraph 6.7.4) can adopt the Department of Justice's role because both have the authority to prosecute. The National Prosecuting Authority is also the only agency in South Africa that, according to the Constitution, can investigate and prosecute.

South Africa's Financial Intelligence Centre (paragraph 6.7.7) can adopt the Securities and Exchange Commission's role based on their responsibility for receiving financial information, analysing it and then distributing it to the authorities. However, the Securities and Exchange Commission has a Division of Enforcement handling the civil and administrative proceedings (U.S Securities and Exchange Commission), whereas the Financial Intelligence Centre forwards its findings to the relevant competent authorities (Financial Intelligence Centre: Who We Are, 2017).

As discussed earlier in this paragraph, the United States of America has already introduced such a system in 2004 with the Department of Justice and the Securities and Exchange Commission working together. The model used by the Department of Justice and the Securities and Exchange Commission could be adopted by South Africa with changes according to South Africa's legislation and the infrastructure of the applicable agencies (for example: NPA and FIC), where necessary. The successes of the Department of Justice and the Securities and Exchange Commission have already been discussed and the statistical data (Figure 7-3, 7-4 and 7-5) shown in paragraph 7.5.2. The model used by the Department of Justice and Securities and Exchange Commission will be elaborated on in the next paragraph.

7.5.3 Foreign Corrupt Practices Act: Department of Justice, Securities and Exchange Commission

The Foreign Corrupt Practices Act (1977) influences every United States of America company that does business outside of the United States of America's borders. The Foreign Corrupt Practices Act (1977) has two provisions, namely anti-bribery and accounting, which are of importance to this study, as bribery is also a form of corruption (paragraph 1.1.5).

According to the anti-bribery provision, it is a crime "for US individual business entity or employee of an US business entity to offer or provide directly or through a third party anything of value to a foreign government official with corrupt intent..." According to the accounting provision, it is illegal for a company that reports to the Securities and Exchange Commission to have false or inaccurate records or that fails to maintain a system of internal accounting control (Clayton, 2011).

Enforcement of the Foreign Corrupt Practices Act (1977) is done by the Department of Justice and the Securities and Exchange Commission, even though each agency has different jurisdiction over different types of violations and classes of persons and companies. The cooperation between the Department of Justice and the Securities and Exchange Commission assists in the negotiation of larger settlements. According to the Foreign Corrupt Practices Act (1977), the Department of Justice has authority over "issuers (companies), officers, directors, employees, and agents or stockholders acting on the issuers' behalf". Their authority includes:

1. United States of America citizens,
2. Nationals,
3. Residents,
4. United States of America businesses and certain foreign persons, and
5. Businesses that violate the Foreign Corrupt Practices Act while on United States soil (Foreign Corrupt Practices Act, 1977).

The responsibility of the Department of Justice is the enforcement of criminal and civil prosecutions of the anti-bribery provisions as well as for wilful violations of the accounting provisions. The responsibility of the Securities and Exchange Commission is to bring civil charges for violating the anti-bribery and accounting provisions. The Securities and Exchange Commission's jurisdiction is more limited than the Department of Justice's, and its overall responsibility can be described as ensuring fairness between the publicly-traded companies and its shareholders (Dual Enforcement of the FCPA).

As can be seen from the information above, the jurisdictions of the Department of Justice and the Securities and Exchange Commission can overlap, and therefore the Department of Justice handles criminal and civil penalties related to bribery, while the Securities and Exchange Commission handles civil enforcement of violations of the Foreign Corrupt Practices Act's (1977) accounting provisions (Dual Enforcement of the FCPA).

The Department of Justice and the Securities and Exchange Commission can undertake simultaneous criminal and civil or administrative actions in matters involving the same circumstances (United States v Dresser Indus.). The principle laid down in this court case upheld the lawfulness of parallel proceedings conducted by the Securities and Exchange Commission and the Department of Justice (Richardson, 2016).

To illustrate the administration penalties model, the case of U.S. Securities and Exchange Commission v. Siemens Aktiengesellschaft will be discussed.

7.5.4 U.S. Securities and Exchange Commission v. Siemens Aktiengesellschaft (Case 1:08-cv-02167)

During 2008, Siemens Aktiengesellschaft (hereafter "Siemens") was fined for violating the Foreign Corrupt Practices Act (1977). Siemens' penalties were determined by the violations of the Foreign Corrupt Practices Act (1977) (U.S. Securities and Exchange Commission, 2008).

The Securities and Exchange Commission found Siemens guilty of violating:

1. Section 30A of the Foreign Corrupt Practices Act (1977). The employees of Siemens "corruptly offered", or promised to pay, or authorised bribe payments to persons for either retaining business or obtaining business.
2. Section 13(b)(2)(A) of the Foreign Corrupt Practices Act (1977). The employees failed to "keep books, records, and accounts, which in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets."
3. Section 13(b)(2)(B) of the Foreign Corrupt Practices Act (1977). The employees failed to "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances"

Siemens agreed to pay a fine of \$350 million in disgorgement to settle the charges of the Securities and Exchange Commission. With regard to the U.S. Department of Justice, a fine of \$450 million was paid on a two-count guilty plea entered into. The guilty plea was for violating the internal controls and books and records provision of the Foreign Corrupt Practices Act, Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5) and 78ff(a)

(U.S. Securities and Exchange Commission, 2008; Case information, 2008; United States District Court, 2008).

As civil law is about the redress of wrongs (Geldart, 1984), the Securities and Exchange Commission levied its 'redress' or disgorgement to the amount of \$350 million, whereas the Department of Justice entered into a plea bargain with Siemens, the criminal side of the law, to punish (Geldart, 1984) Siemens for its wrongs with a \$450 million fine, amounting to a total fine of \$800 million.

The next paragraph will explain why the National Prosecuting Authority and the Financial Intelligence Centre were chosen to adopt the model utilised by the Department of Justice and the Securities and Exchange Commission. The researcher focused on South African agencies with approximately the same functions as those of the Department of Justice and the Securities and Exchange Commission, namely the National Prosecuting Authority and the Financial Intelligence Centre.

7.5.5 Prevention and Combating of Corrupt Activities Act: The National Prosecuting Authority and Financial Intelligence Centre

In paragraph 6.7.4 (Chapter 6), the National Prosecuting Authority's role as criminal investigations unit was mentioned and its powers

to institute and conduct criminal proceedings on behalf of the State; to carry out any necessary functions incidental to instituting and conducting such criminal proceedings (this includes investigations) and to discontinue criminal proceedings (Justice and Correctional Services, 2016; About the NPA, 2017)

were discussed. In paragraph 6.7.3 (Chapter 6), the Special Investigations Unit was discussed as a public entity that deals only with maladministration and malpractice by state institutions (SIU: Who We Are, 2016; SIU: FAQ, 2016). The Financial Intelligence Centre's core objective was discussed in paragraph 6.7.7 (Chapter 6), as protecting South Africa's financial system from criminal activities and illicit funds by working with the relevant national and international authorities (Financial Intelligence Centre: Who We Are, 2017). When comparing the National Prosecuting Authority, Special Investigations Unit and Financial Intelligence Centre with the Department of Justice and the Securities and Exchange Commission, the following similarities as depicted in Table 7-1 (on the next page) can be seen.

Table 7-1: Similarities identified

	NPA (SA)	SIU (SA)	FIC (SA)	DOJ (USA)	SEC (USA)
Criminal actions	X			X	
Civil actions (remedial actions)		X (only state institutions)			X
Prosecution power	X			X	
Accounting irregularities			X		X
To combat corruption/bribery	X	X	X	X	X

(Source: Author)

Because the Special Investigations Unit only deals with malpractice and maladministration with regard to State Institutions (SIU: Who We Are, 2016; SIU: FAQ, 2016), the study will proceed by only focusing on parallel proceedings between the National Prosecuting Authority and the Financial Intelligence Centre as the Financial Intelligence Centre already gathers and analyses financial information of institutions across South Africa. Therefore, the changes to the Financial Intelligence Centre to adopt the role of the Securities and Exchange Commission will be minimal.

As mentioned above, the Foreign Corrupt Practices Act (1977) is used by the Department of Justice and the Securities and Exchange Commission to investigate and convict companies for bribery and corruption as well as violating accounting and internal control measures. In South Africa, the Prevention and Combating of Corrupt Activities Act (12 of 2004) is the main piece of legislation for corruption. Another piece of South African legislation that can be used to combat corruption is the Financial Intelligence Center Act (38 of 2001); it was specifically introduced to combat money laundering, tax evasion and terrorist financing. “The Financial Intelligence Centre Act brings South Africa in line with similar legislation in other countries designed to reveal the movement of monies derived from unlawful activities and thereby

curbing money laundering and other criminal activities” (The Banking Association South Africa).

From the previous mentioned quote, it can be interpreted that “...and other criminal activities” include a variety of offences such as corruption. The Monitoring and Analysis Department within the Financial Intelligence Centre is responsible for receiving and analysing data to identify the proceeds of crime. This department works closely with law enforcement and other agencies to provide support during investigations, if requested.

Therefore, establishing another department in the Financial Intelligence Centre that can instigate civil actions against entities that specifically provide false or inaccurate accounting records and fail to maintain a system of internal accounting control can be done. This will mean that an accounting provision, such as contained in the Foreign Corrupt Practices Act (1977), should be added to Financial Intelligence Centre Act (38 of 2001) to give the Centre that jurisdiction.

The Prevention and Combating of Corrupt Activities Act (12 of 2004) will also have to be revised to add provisions such as the anti-bribery and accounting provisions in order to expand law enforcement agencies’ (especially the National Prosecuting Authority and the proposed independent anti-corruption agency) power and jurisdiction.

7.6 ADMINISTRATION PENALTY UNIT

As mentioned in paragraph 7.5, the United States of America has made use of administration penalties and fines successfully since 2004. Incorporating administration penalties into South Africa’s legislation may reduce the caseloads in courts. The following conceptual framework for the proposed practical side of these administration penalties has been developed by the author and correlates with the 14 principles compiled by Corruption Watch-UK, Transparency International, United Nations Convention against Corruption Coalition and Global Witness (paragraph 7.5.3).

The goal of establishing this unit is twofold:

1. To provide a once-off option of self-reporting by an entity with minimum consequences;
and
2. To lessen the caseloads in South African courts.

The whole process can be divided into three phases: the self-reporting-phase, the action-phase and the future-implementation-phase.

1. The self-reporting phase

1. Any entity that detects corrupt practices should be able to declare it immediately to the Administration Penalty Unit in order to avoid criminal prosecution.
2. The following factors should be considered before an investigation is launched:
 - a. Nature and seriousness of the offence;
 - b. The extensiveness of misconduct within the entity;
 - c. The entity's history of similar misconducts;
 - d. The entity's timely and voluntary disclosure of misconduct and its willingness to cooperate;
 - e. The existence and effectiveness of the entity's pre-existing compliance programme;
 - f. The entity's remedial actions;
 - g. The collateral consequences;
 - h. The appropriateness of the prosecution of individuals responsible for the entity's misconduct; and
 - i. The appropriateness of remedies such as civil or regulatory enforcement actions. (FCPA, 2012).

2. The action phase

After declaring the corrupt activities, a team leader and a team will be assigned to the case. During this phase, the following should be done:

1. Investigation procedures should be written up together with the details of the team (auditors and lawyers) investigating the matter;
2. Investigations into all affairs of the company, for example: accounting records, internal control measures;
3. Investigations into the persons involved in the corrupt activities. It will also be advisable to suspend these employees for the duration of the investigation to avoid interference;
4. Investigation into the entity's current disciplinary process with regard to serious matters;
5. Compiling a report together with the evidence to present to the National Prosecuting Authority, Financial Intelligence Centre and the company under investigation;

6. Calculate the administrative penalties to be levied by the Financial Intelligence Centre if any accounting provisions were violated;
7. Enter into a plea bargain with the company under investigation.

Based on the Siemens court case (2008), the plea bargain should at least contain the following terms and conditions:

- a. Charges
 - b. Potential penalties, assessments and restitution
 - c. The sentencing guidelines
 - d. Actual penalties and assessments
 - e. Waiver of rights
 - f. Waiver of appeal rights
 - g. Press release
 - h. Sales, mergers or transfers
 - i. Continuing cooperation
 - j. Remediation
 - k. Corporate monitor
 - l. Department concessions
 - m. Breach of agreement
 - n. Full disclosure or the reservation of rights
8. Calculate the administrative penalties to be levied by the National Prosecuting Authority on the enrichment through the corruption; and
 9. Payment by the company to National Treasury should also be made as soon as possible.

3. *The future implementation phase*

During this phase, the investigation into the entity's corrupt activities has already taken place and the investigators' report has been submitted to the entity, the National Prosecuting Authority (administration penalty unit) and the Financial Intelligence Centre. The plea bargain will determine the terms and conditions this entity needs to adhere to. During this phase, the entity will be monitored by an independent monitor appointed by the administration and penalty unit. This independent monitor should be an auditing firm and the period the company should be monitored for should be determined by the seriousness of the case.

In paragraph 1.1.6 (Chapter 1), the endemic nature of corruption South Africa is currently facing was discussed. The establishment of a new independent anti-corruption agency with

an administration penalty unit was recommended based on previous studies by various researchers (paragraph 7.3.1 & paragraph 7.5).

7.7 APPLICATION OF INDEPENDENT ANTI-CORRUPTION AGENCY ON CARNILINX TOBACCO COMPANY: A SOUTH AFRICAN INCIDENT NOT FOLLOWED UP ON

Before the application can be done, a background on CarniLinx Tobacco Company must be given to put the incident and application into perspective. Although the subject of political interference is a controversial issue at this stage of writing, the factual information of the circumstances surrounding the company will be the main focus. It should also be noted that this particular case did not go to court, and therefore the application will show how it would have been dealt with if the independent anti-corruption agency did exist.

7.7.1 Background

Carnilinx Tobacco Company (hereafter “CarniLinx”) is a specialist contract manufacturer of leading cigarette brands in South Africa. Although based in Johannesburg, they also supply internationally (About CTC, 2011). The known directors of this company are Martin Wingate-Pearse, Gavin Lombard, Mohammed Sayed, Adriano Sauro Mazzotti and Kyle Phillips (Wicks & Khoza, 2014).

During December 2013, CarniLinx was being investigated for allegedly spying on investigators of the South African Revenue Service and they were also accused of intercepting police crime intelligence operations (Wicks & Khoza, 2014). Mazzotti signed an affidavit in May 2014, admitting his complicity as well as that of his company, Carnilinx, “in a host of crimes, including fraud, money laundering, corruption, tax evasion and bribery” (Pauw, 2017a; Pauw, 2017b; LegalBrief Africa, Citizen Report, 2017; Eyewitness News & Motua, 2017; Moosa, 2017; Wilson, 2017; IOL, 2014).

According to Pauw (2017a), Mazzotti admitted in the 2014 affidavit that “in its drive to promote its business, Carnilinx entered into a host of transactions, some of which were lawful and others corrupt and unlawful” (LegalBrief Africa, Citizen Report, 2017; Eyewitness News & Motua, 2017; Moosa, 2017; Wilson, 2017). Mazzotti told how the company smuggled tobacco to avoid paying excise duty, and how the company set up money-laundering facilities to avoid paying taxes. Mazzotti believed that CarniLinx should plead guilty according to several offences under the Criminal Procedures Act. However, during 2017, Mazzotti denied all the criminal admissions made in the 2014 affidavit (Pauw, 2017a; LegalBrief Africa, Citizen Report, 2017; Eyewitness News & Motua, 2017; Moosa, 2017; Wilson, 2017).

During 2014, the South African Revenue Service presented Mazzotti and CarniLinx with a tax assessment of R600 million. The South African Revenue Service has up to 2017 failed to enforce this R600 million bill against Mazzotti and CarniLinx (Pauw, 2017a). According to reports, it is because the investigators responsible for the investigations into tobacco manufacturers' tax affairs were eliminated by acting Commissioner of the South African Revenue Services, Tom Moyane (paragraph 7.4.4). All of them resigned (Lackey, 2015; Pauw, 2017a; Thamm, 2016; Van Loggerenberg, 2017).

7.7.2 Application of framework to incident

The application was done from the assumption that the independent anti-corruption agency (hereafter "IACA") is already part of the National Prosecuting Authority with all of the units in place and operating. The following assumptions were also made:

1. All necessary changes to legislation have been enacted;
2. An unbiased individual is acting as head of the IACA;
3. One of the directors of CarniLinx declared the corruption, tax evasion and money laundering to the IACA when he or she became aware of it;
4. The case falls within the spectrum of investigations of the IACA;
5. Mazzotti represents the directors of Carnilinx;
6. The directors of CarniLinx do not have any prior criminal convictions;
7. The employees of the IACA are ethically sound and competent; and
8. The directors of CarniLinx did not contest the administration penalties handed down.

Referring to the three stages mentioned in paragraph 7.6, it can be applied as follows:

A. The self-reporting phase

1. As soon as the directors became aware of the corrupt practices within CarniLinx, they informed the director of the IACA's office in writing. Mazzotti also had the option of going to the offices and give a written and signed (by the directors) statement taken by one of the IACA's employees in the Investigations Unit.
2. According to the information (paragraph 7.7.1) on CarniLinx, tax evasion, money laundering and corruption were among other offences committed. Therefore, the director declared in his statement that he became aware of these violations as well as what led to this discovery.
3. This report is given to the Investigations Unit and a team is appointed.
4. The investigators consider the following:

- a. The extensiveness of the misconduct within CarniLinx. Although this will only be accurately determined during the investigation, an estimate of the extensiveness will be found in Mazzotti's report.
- b. CarniLinx's history of similar misconducts. It has been assumed that there were no previous misconducts (paragraph 7.7.2 point 6).
- c. Mazzotti declared these misconducts as soon as it came to his attention, and therefore CarniLinx declared it timely and voluntarily.
- d. The existence and effectiveness of CarniLinx's compliance programme; the existence thereof can be verified, but the effectiveness will only be determined during the investigation.
- e. Remedial actions by CarniLinx, set out in the report. Mazzotti indicated that the suspects have been placed on mandatory leave for the duration of the investigation and the compliance programme of CarniLinx is being reviewed to improve the existing programme.
- f. Possibility of collateral consequences: was there or will there be any harm to shareholders or employees.
- g. The appropriateness of the prosecution of the individuals involved or responsible for these misconducts (Based on FCPA, 2012).

B. The action phase

1. A report from the Investigations Unit containing the company's details as well as that of the directors is submitted to the Financial Intelligence Centre. The Financial Intelligence Centre must now submit any records of reports on suspicious transactions of the company and of the directors to the IACA's Investigations Unit.
2. The Financial Intelligence Centre must now investigate if there were any violation of the accounting and internal control provisions.
3. As soon as the investigators have established the magnitude of the enrichment through corruption and the violations of legislation, the administration penalties can be determined.
4. The plea bargain can be drafted and the submission to the directors of CarniLinx made.
5. After the agreement has been signed, the penalties calculated must be paid to the National Treasury for admission of guilt to charges of corruption and/or bribery and for admission of guilt to violation of the accounting and internal control provisions.

The following steps can be followed to detect whether money laundering and tax evasion and possibly corruption (bribery) have taken place:

1. Physical lifestyle audit

A physical lifestyle audit is “a study of a person’s living standards to see if it is consistent with his reported income” (Investor Words). This type of audit can be the starting point for the investigation or it will be done after the capital reconciliation process is finished. “Reconciliation is an accounting process that uses two sets of records to ensure figures are accurate and in agreement. Reconciliation is the key process used to determine whether the money leaving an account matches the amount spent, ensuring the two values are balanced at the end of the recording period” (Investopedia).

Powell states that lifestyle audits are a critical component in identifying fraud, but it is not conclusive. It rather is an indication of illicit activities. The practical implication of this step is that an investigator visits the directors’ homes as well as the company’s premises and does a physical audit to determine whether these individuals are living beyond their known income. This will entail verifying the physical assets to the information submitted via a tax return. In the case of a company, the asset register will be used.

The assets usually verified are property and vehicles. The company registrar information will be obtained from the Companies and Intellectual Properties Commission (CIPC) in order to confirm the status of the company and to ensure all directors are accounted for. Each director’s credit history (TransUnion) will also be obtained to ensure that all assets have been declared. When monthly repayments exceed a reasonable payment with regard to the directors’ declared income, it may be indicative of illicit activities. Another indication of illegal activities is properties registered in the directors’ name with no bond (Powell). This step can serve as a reasonable indication as to whether there is more to investigate.

2. TransUnion reports

TransUnion is a commercial, consumer, insurance and auto-risk information centre offering “solutions across a number of industries, as well as personal credit management solutions in Africa” (About – TransUnion). This centre currently offers eight ‘credit report’ products (TransUnion, 2017) that can assist in the investigation process, as credit reports can be drawn for the directors as well as for the company (if applicable).

3. Companies and Intellectual Properties Commission (CIPC) report

One of the functions of the Companies and Intellectual Properties Commission is to disclose information on business registers (CIPC – About, 2017). Therefore, with the information already obtained, data regarding CarniLinx and its directors can be obtained. This again will indicate any related party transactions that might exist and of which the investigators were not aware. If it is found during the investigation that a trust was established, the trust deed must be obtained to identify the other trustees and beneficiaries. This information may assist in the investigation in, among other, following the money trail of illicit transactions or identifying undisclosed assets obtained through cash transactions.

4. WinDeed report

WinDeed reports provide access to South Africa's major registration offices such as the Deeds Office, Surveyor General Office and various Credit Bureaus (Windeed – About us). The practical implication is when entering the directors' or CarniLinx's information, a report is generated containing all properties registered on the directors or the company's name. These properties can then be used to verify whether it was purchased by using a bond or to determine (or confirm) whether it was a cash transaction. As already mentioned in step a), properties purchased without the use of a bond may be indicative of illicit activities.

5. The information collected during steps a) to d), together with the rest of the information gathered during the investigation, will help determine the monetary value of the alleged tax evasion, money laundering and corruption.

The administration penalty does not include the taxes evaded. The South African Revenue Services will give the company and its directors an assessment of what should be paid. According to the media, the South African Revenue Service did give CarniLinx and Mazzotti a bill of R600 million.

C. The future implementations phase

The Administration Penalty Unit appoints a big audit firm as the corporate monitor with an expert in the Financial Intelligence Centre Act (38 of 2001) and the Prevention and Combating of Corrupt Activities Act (12 of 2004) to assist this audit firm in fulfilling their duties and responsibilities as corporate monitor.

If Mazzotti's affidavit had been submitted to the IACA in May 2014, then CarniLinx and its directors would have been audited and the administration penalty (as with the tax bill) would have been delivered and enforced, adding R600 million (for tax evasion) to the state's coffer. Should CarniLinx and its directors be charged with tax evasion again in the future, and the investigation reveals corruption, they will be handed to the National Director of Public Prosecutions to be prosecuted criminally.

However, according to media reports, allegations were made that this case did not proceed because Mazzotti is a politically connected person (Wa Afrika, 2017; Myburgh, 2017; Qukula, 2017; Williams, 2017; Grootes, 2017).

7.7.3 Summary

A case involving CarniLinx Tobacco Company has been applied to the framework of the independent anti-corruption agency's Administration Penalty Unit. It was illustrated that, if the affidavit was handed over to the IACA or Mazzotti approached the IACA directly, corruption within the company would have been addressed, the collateral damage rectified and the necessary punishment imposed. This, in turn, means that much needed money to improve the lives of the people of South Africa would have been available.

7.8 FEEDBACK FROM FORENSIC EXPERTS

Chapter 2, paragraph 2.3 described the process of receiving feedback from the experts by way of unstructured interviews. The benefits of unstructured interviews are:

1. Questions are open-ended with little control over the interviewee's answer;
2. The interviewee's attention is focused on a specific topic (Cohen & Crabtree, 2006);
and
3. Questions emerge and evolve as the interview progresses (Trochim & Donnelly, 2008).

Seven experts were identified and contacted by e-mail. Due to their international travels for forensic investigations, it was difficult to arrange for another way of conducting the unstructured interviews. Hunt and McHale (2009) listed seven advantages of e-mail interviewing, described in paragraph 2.3, which outweighed the disadvantages.

All seven experts agreed to take part in the interview, but only four responded giving feedback on the development of the independent anti-corruption agency. The request from the researcher to all seven experts was to provide comments on the proposed structure of the said agency. Before and after receiving these comments, changes were already made to the original framework. The feedback received was captured verbatim in Appendices A to D.

The comments received were analysed and structured via a thematic network. A thematic network can be defined as organising a thematic analysis of qualitative data (Attride-Stirling, 2001:387; Smith & Firth, 2011:2; Vaismoradi, Turunen & Bondas, 2013:399; Flick, 1998). Thematic networks arrange the extraction of:

1. Lowest-order principles apparent in the text (also called 'basic themes');
2. Categories of basic themes assembled together to condense more abstract principles (also called 'organising themes'); and
3. Superordinate themes summarising the principal descriptions in the text as a whole (also called 'global themes').

These extractions are then characterised as schematic maps portraying the prominent themes at each of the three levels. It also illustrates the connections between them. The process of thematic networks does not "aim or pretend to discover the beginning of arguments or the end of rationalizations; it simply provides a technique for breaking up text, and finding within it explicit rationalizations and their implicit signification" (Attride-Stirling, 2001:388; Smith & Firth, 2011; Vaismoradi *et al.*, 2013; Flick, 1998).

Basic themes are the lowest order themes derived from the textual data (comments from the experts). In essence it is a statement that backs the belief fixed on a central notion (the independent anti-corruption agency). Together, the basic themes form the organising themes (Attride-Stirling, 2001:388-389).

Organising themes organise basic themes into similar topics. Because they summarise the principal assumptions of a group of basic themes, they are more abstract and more revealing of the contents of the texts. "Organizing Themes simultaneously group the main ideas proposed by several Basic Themes, and dissect the main assumptions underlying a broader theme that is especially significant in the texts as a whole. In this way, a group of Organizing Themes constitute a Global Theme" (Attride-Stirling, 2001:389).

Global themes group sets of organising themes together to present an argument about a given issue or reality, forming the essential part of the thematic network. Global themes express the meaning of the texts within the context of a given analysis. "They are both a summary of the main themes and a revealing interpretation of the texts" (Attride-Stirling, 2001: 389).

Table 2-3, paragraph 2.3.3 outlined the six steps on how to do a thematic network analysis. These six steps can be categorised into three analysis stages:

1. Analysis stage A: reduction or breakdown of data;
2. Analysis stage B: exploration of text; and

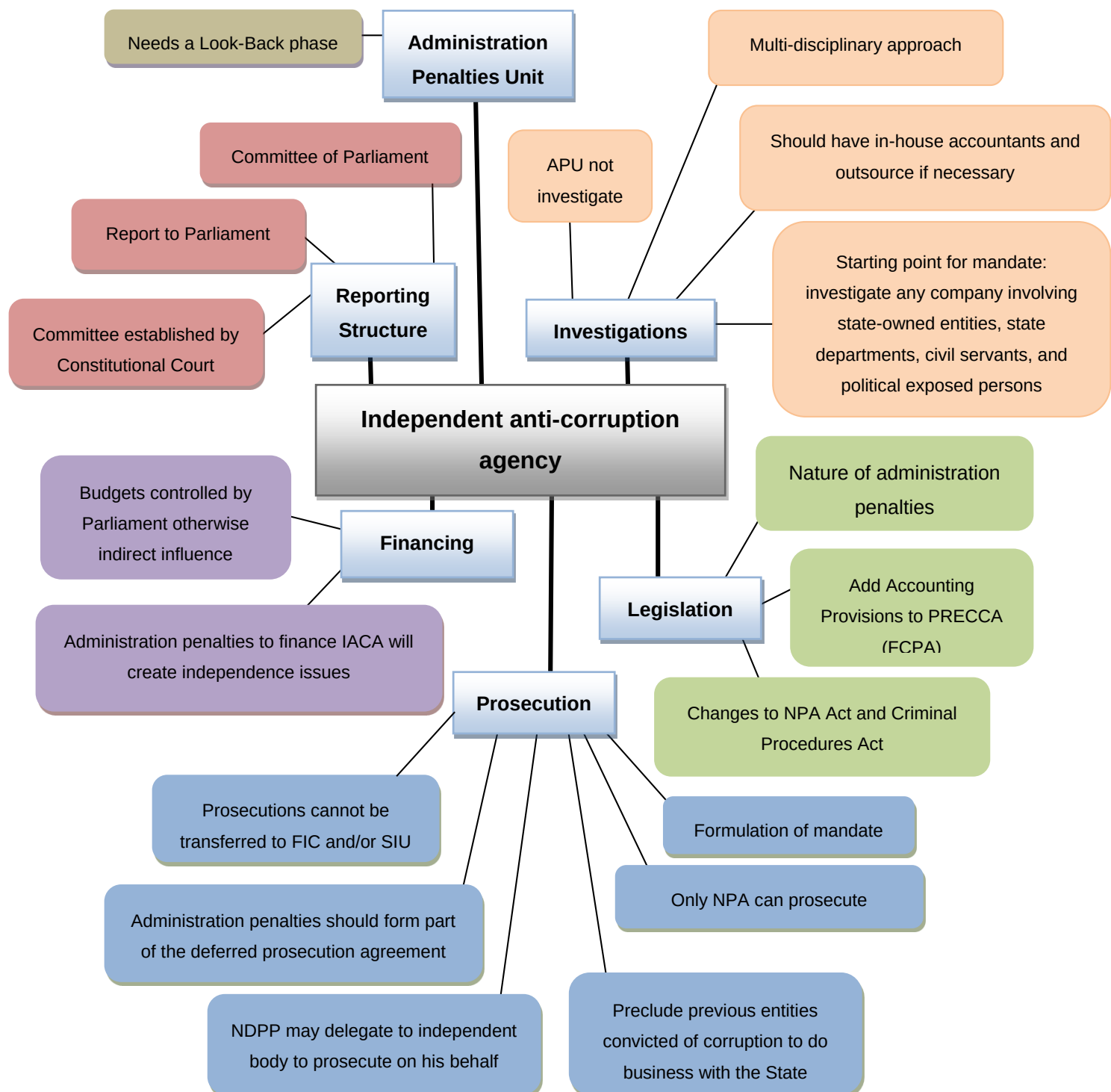
3. Analysis stage C: integration and exploration.

Analysis stage A contains three of the six steps: coding material, identifying themes, and construct thematic networks. After the comments received from the experts were coded, the following themes were identified:

1. Reporting structure;
2. Prosecution;
3. Investigation;
4. Legislation;
5. Administration Penalties Unit (APU);
6. Financing of agency.

Refer to Figure 7-6 (on the next page) for the construct of the thematic network.

Figure 7-6: Thematic network analysis: Experts' comments



(Source: Author)

The above thematic network was developed from Table 7-2 (on the next page), which is a grid design of the themes identified from the coded text. The themes that assisted in answering

the research questions with regard to a legal framework were summarised (Table 7-2) and then analysed (Figure 7-6).

Table 7-2: Summary of themes per expert

	Expert 1	Expert 2	Expert 3	Expert 4
Reporting structure	Head of IACA reports to Parliament or a committee established by Parliament. Committee of Parliament.	No comment.	No comment.	No comment.
Prosecution	NDPP delegation to independent body to prosecute on his behalf. Mandate's formulation problematic. Preclude anyone convicted of corruption to do business with the State.	No comment.	Only NPA can prosecute. Prosecutions cannot be transferred to the FIC/SIU.	No comment.

	Expert 1	Expert 2	Expert 3	Expert 4
Investigation	Starting point for mandate: any company involving an SOE, State department, civil servants or politically-exposed persons. Multi-disciplinary approach. APU not investigate. In-house accountants; outsource if necessary.	No comment.	No comment.	No comment.
Legislation	Changes to NPA Act and Criminal Procedures Act. Adding Accounting Provisions to PRECCA (FCPA).	No comment.	Administration Penalties criminal in nature. Administration penalties to form part of a deferred prosecution agreement.	Area that, with regard to legislation, is too technical. The USA and SA's legal systems really differ a lot.
APU	Self-report: full and comprehensive declaration.	No comment.	Another firm as independent monitor. Needs a look-back phase as well.	No comment.
Financing	No comment.	Administration penalties to finance the agency will create independence issues.	Budgets to be controlled by Parliament otherwise indirect influence.	No comment.

(Source: Author)

Analysis stage B consists of steps four (describe and explore thematic network) and five (summarise thematic network).

The independent anti-corruption agency can be seen as the global theme, which consists of six organising themes, which, in turn, consist of various basic themes as derived from the comments from the experts (text). The primary objective of this study is to develop a legal framework to combat economic crimes in South Africa. It has already been established that this framework will be developed in the form of an independent anti-corruption agency.

The six organising themes were used to make improvements to the framework. Based on these six organising themes, the following were the improvements made as well as the researcher's comments:

1. Reporting structure

As this was the researcher's suggestion from the start, this expert (number 1) agreed on this initiative.

2. Prosecutions

Expert 1 made the comment of the NDPP who can delegate to an independent body to prosecute on its behalf. The researcher agrees that this should be kept open as an option, only if the workload of the independent anti-corruption agency is too heavy, or if the matter at hand requires an expert not employed by the NPA.

The mandate's formulation will be problematic and the researcher agreed. A suggestion was made by the researcher, which included Expert 1's remark on this matter.

3. Investigations

To formulate the mandate of this new independent anti-corruption agency, it will be advisable to start with who this agency will be allowed to investigate. The researcher agreed with Expert 1 on the observation that one should start with any company involved with state-owned enterprises, state departments, civil servants, or politically-exposed persons.

The remark on the multi-disciplinary approach was already taken into account before the experts' comments were received.

The researcher agreed with Expert 1 that the administration penalties unit should not do the investigation – it should be done by the investigations department of the independent anti-corruption agency. This will ensure that there is separation of duties.

4. Legislation

The researcher suggests that there should be amendments made to the NPA Act to incorporate the duties and mandate of this new independent anti-corruption agency. Expert 1 also mentioned that there will probably be amendments needed on the Criminal Procedures Act. The accounting provisions contained in the FCPA should also be adapted to be incorporated in PRECCA, which was also confirmed by Expert 1.

5. Administration Penalties Unit (APU)

Expert 1 emphasised that the self-report disclosure should be full and comprehensive. Expert 3 suggested that another firm should act as the independent monitor. This was taken into account and the necessary changes were made.

6. Financing

Expert 2 and Expert 3 were of the opinion that the finances should not be handled by the agency, otherwise independence issues may arise and indirect influence will be a possibility.

This was taken into account by the researcher and the correction made. It is now suggested that the administration penalties should be paid to the National Treasury. The National Treasury pays the money needed to the Parliament Committee who, in turn, will be responsible for the finances of this independent anti-corruption agency.

The above-mentioned described, explored and summarised the thematic network (Figure 7-6). The last stage, Analysis stage C, which is the integration of exploration, has also been addressed in the above paragraphs as the researcher already explained how the exploration was integrated into the research. Step six (interpret patterns) is difficult in this case as there were no clear patterns that could be identified.

7.7.3 Summary on the comments received

All comments received from the experts were considered before any changes were made to the independent anti-corruption agency. The majority of the comments were very useful in developing a legal framework (independent anti-corruption agency) to combat economic crimes. Although very few of the comments made agreed with one another, the information obtained was still interesting and assisted in achieving the main objective of this study (paragraph 1.4.1, Chapter 1).

7.9 TAX EVASION

As mentioned in paragraph 2.3.3 (Chapter 2) and paragraph 7.1, the aim of this paragraph was to discuss Gordhan's ten-point solution for tax evasion in South Africa in order to support the development of an independent anti-corruption agency with a tax unit dedicated to the South African Revenue Service. It also aims to serve as a confirmation as to why this tax unit should be established.

7.9.1 Gordhan's ten-point solution

This paragraph only summarises the solution suggested by Gordhan. The elaboration will be discussed in paragraph 7.9.2. Gordhan (2016) provided a ten-point solution to South Africa's tax evasion problem. In short, he stated that:

1. Laws need to be put in place that deal with corruption, money laundering and tax evasion. Government should spend "effectively, efficiently and transparently" to rebuild confidence in South Africa's economy as well as confidence in Government itself to "improve tax morality".
2. These laws need to be enforced and educating the public is very important.
3. Action must be taken when standards set by legislation are not met. Gordhan mentioned the \$8.9bn fine BNP Paribas had to pay after United States Authorities found it guilty of breaking United States sanctions (Refer to the proposed administration unit in paragraph 7.6).
4. The necessity of enforcement systems and dedicated staff to achieve higher conviction rates for tax crimes.
5. International and national cooperation between enforcement agencies is essential.
6. Enforcement agencies must be careful not to "fall into the trap of silo approaches and territorial battles".
7. Improvement on business culture and code of tax practices for multi-national companies.
8. "Reporting standards that facilitate global transparency and information exchange for tax purposes are necessary".
9. All countries must adhere to standards in order for the international standards to be effective and successful.
10. "The developed countries must dismantle all tax havens that allow their territories to engage in such practices" (Gordhan, 2016).

7.9.2 Elaboration on Gordhan's ten-point solution

Gordhan is described as a patriot and honourable man with 40 years' experience in government (Munusamy, 2017). Taking his experience into account, this ten-point solution may possibly serve as a confirmation of the researcher's deducements made in this chapter. However, after analysing these ten points, a few arguments can be raised.

7.9.2.1 Laws to be put in place and restoring confidence in SA's economy and Government

This is a valid point when taking the country's current situation regarding state capture (Gules, 2017; Seale, Zungu & Mngadi, 2017; Bezuidenhout, 2017), the down grading to junk status (EyeWittNess News, 2017; Fin24, 2017; BBC News, 2017) and as mentioned, the corruption endemic (paragraph 1.1.6) into consideration. However, it has been established in Chapter 4 (paragraph 4.5) and Chapter 5 (paragraphs 5.7 & 5.8) that South Africa's legislation is not the problem, but rather the enforcement thereof.

Government institutions can rather instigate more severe disciplinary measures when serious crimes are involved, and when found guilty, criminal prosecution with the aim of incarceration. If the punishment is not worth the risk, there may be a decrease in corruption and tax evasion (for example).

Restoring confidence in South Africa's economy and Government to improve tax morality will also have to be broken down into more practical steps before restored confidence can be achieved. In order to 'boost confidence', all the corrupt officials must be removed from their positions and prosecuted for their crimes. People with integrity need to be appointed in the positions they are qualified for. These appointments should also be transparent in a bid to 'boost confidence'. Detailed background checks before appointments must be carried out to verify qualifications and experience as well as ensuring the person has no criminal record whatsoever.

The internal control measures of every government department will have to be reviewed with the aim of improvement. After the appointment of the new staff and the improvement of internal control measures, spending "effectively, efficiently and transparently" will be achieved.

7.9.2.2 Laws must be enforced and public education is key

During 2016, two Deputy National Directors of the National Prosecuting Authority were struck off the role of advocates by Judge Legodi after evidence was presented that these two individuals abused their power to protect various persons from criminal prosecution. The charge against them is "to hinder or prevent the prosecution of prominent persons such as

President Jacob Zuma and 2 Lieutenant General Richard Mdluli". Mdluli was the former head of the South African's Police Service's Criminal Intelligence Division (appointed by the president). He is facing various charges from murder to corruption.

...senior police and National Prosecuting Authority officials have all gone out of their way to prevent Mdluli's investigation and prosecution seems to point to a hidden network of profoundly dishonest individuals within the criminal justice system. They have either been appointed, or are acting, with the primary purpose of protecting certain powerful people from criminal sanction (Burger, 2016; Pauw 2017a).

This enforces the argument made in paragraph 7.2 for an independent anti-corruption agency where the head is appointed by Parliament and not by the President. "It is the citizens who must understand, because it is ultimately the citizens who will defend the public interest together with institutions". Public education (paragraph 7.3.1.2) is important when combating corruption, money laundering and tax evasion. However, this education should start as early in an individual's life as possible. The suggestion is to establish a subject that is compulsory for all students in high school from grade 10.

The reason for starting this type of education from grade 10 relies on research findings that children can tell right from wrong from the ages of seven to 15 (Begley & Kalb, 2000). Osen (2013) stated that "in juvenile delinquency courts, right from wrong is not an exact science". This subject can be "ethics and corporate governance", which includes awareness and guidance on serious crimes. Training on corruption should be given as part of all companies and government departments' appointment of employees.

7.9.2.3 Action to be taken when legislation is not adhered to

The \$8.9bn fine instigated by the United States of America authorities against BNP Paribas is an example of administrative penalties (refer to paragraph 7.5 and paragraph 7.6) and the motivation for adopting the Department of Justice and Securities and Exchange Commission's administrative fines model as given in paragraph 7.5. This point can be reached if the objectives in paragraph 7.9.2.2 have been achieved.

7.9.2.4 The necessity of enforcement systems and dedicated staff to achieve higher conviction rates for tax crimes

This point is also linked to paragraph 7.9.2.2 where Gordhan stated that laws need to be enforced. Although this point refers to tax crimes, the same processes as mentioned in paragraph 7.9.2.2 can be established within the Tax Unit dedicated to the South African Revenue Service in the independent anti-corruption agency.

7.9.2.5 Cooperation between national and international law enforcement agencies

In order for this to succeed, the various jurisdictions need to be recognised; meaning that it should be clear which domestic agencies may put the request for information to international agencies as well as to what extent information can be relayed to that agency without infringing on any rights in terms of the Constitution of the individual under investigation.

7.9.2.6 Enforcement agencies should avoid falling “into the trap of silo approaches and territorial battles”

A silo approach is defined as a mentality where groups in an organisation do not want to share information or knowledge with the rest of the organisation (Investopedia). This type of approach will reduce the efficiency of an overall productive company culture and may even attribute to the liquidation of that company (Gleeson & Roza, 2013).

Applying this definition to law enforcement agencies, it can be understood why Gordhan warned against it. Because agencies are driven to perform, a silo mentality can easily emerge in the face of competition against another department within the agency or another enforcement agency.

7.9.2.7 Improvement in multinational companies’ business culture. Gordhan (2016) called for commitment by multinational companies to a code of good tax practice

The improvement in the multinational companies’ business culture and commitment to a code of good tax practice may be achieved by educating the employees of these companies’ on what an effective business culture entails and how it could be achieved. The code of good tax practice may be more of a challenge than the improvement in business culture.

A code of good tax practice may be achieved if the majority of individuals employed by these companies’ trust in government spending has been restored, which in turn will lead to an improvement in tax morale (paragraph 1.1.5, Chapter 1). The improvement in tax morale and government spending may possibly then serve as a motivation for committing to a code of good tax practice.

7.9.2.8 Reporting standards for global transparency and information exchange are a necessity

Although agencies such as the EGMONT group exist, they only communicate suspicious transactions and their findings are not enforceable by legislation. Accounting and reporting standards for international information exchange need to be addressed and it needs to be

enforced by legislation. As already discussed in Chapter 4, paragraph 4.5.1, the United States of America has implemented the Foreign Account Tax Compliance Act (2010) to combat tax evasion. This act implemented an international standard for the automatic exchange of information, but the main objective was to promote cross-border tax compliance (Thomson Reuters).

7.9.2.9 Adherence to international standards by all countries

This point correlates with paragraph 7.9.2.8 on the matter of international standards. It is only feasible if it is enforced. “Uniformity in the application of the law is crucial. All countries and regulatory regimes must fight financial crime” (Gordhan, 2016). Paragraph 7.9.2.8 and this paragraph are a research area that can be explored for future purposes.

7.9.2.10 Dissolution of all tax havens

The most common place to hide money or to launder money is in an offshore account in a tax haven, for the purpose of evading tax, and therefore the word ‘haven’. A haven can be described as an “autonomous or semi-autonomous jurisdiction offering a combination of lax legislation, low or zero taxation on income and capital of non-residents, secrecy facilities for banking or corporate ownership, and absence of effective information exchange with the authorities of third party countries” (Christensen, 2011).

Offshore accounts are popular destinations because, just like most banks, they still argue or uphold client privacy when confronted with the violation of legislation. Even when faced with the new Foreign Account Tax Compliance Act adopted by the United States of America in March 2010, some of these tax havens do not want to cooperate (Kleutgens *et al*, 2011).

The provision of conditions of secrecy, which is created through banking secrecy laws or *de facto* judicial arrangements and banking practices, is the most defining characteristic of tax havens. This characteristic might be the biggest reason for launderers to use tax havens and it is also an effective barrier to investigators wanting to investigate activities that were booked through the tax haven. These provisions for secrecy also assist in the laundering of proceeds of criminal activity (Christensen & Hampton, 1999b).

An organisation that strongly expresses its dislike in tax havens is the Tax Justice Network. They addressed the issue on what tax havens are and the corruption it entails. It also discussed the magnitude of the problem and nature of these havens. The estimated assets held by tax havens are \$11.5 trillion. This means that tax revenue of \$250 billion is lost each year (Tax Havens Causes Poverty, 2010). The Tax Justice Network also released the following:

Countries that lose tax revenues become more dependent on foreign aid. Recent research has shown, for example, that sub-Saharan Africa is a net creditor to the rest of the world in the sense that external assets, measured by the stock of capital flight, exceed external liabilities, as measured by the stock of external debt. The difference is that while the assets are in private hands, the liabilities are the public debts of African governments and their people, illustrating the (sometimes) ignorance of governments when it comes to fighting crime (Tax Havens Causes Poverty, 2010).

It is well known that corruption is damaging to the viable development of third-world countries, but it is a less known fact how tax havens contribute to the privation of these countries. The section above demonstrated how tax havens assist perpetrators in tax evasion and money laundering. It also described the challenges the world faces in its attempt to eradicate corruption. Therefore, in light of the above-mentioned, Gordhan is justified in calling for the dissolution of tax havens.

Summary

Gordhan's ten-point solution for South Africa's tax evasion problem has been discussed which support the development of an independent anti-corruption agency with a tax unit dedicated to the South African Revenue Service.

7.10 CONCLUSION

The aim of this chapter was to consider the development of a framework to combat money laundering and tax evasion as part of corruption. Therefore, the independent anti-corruption agency with its administration penalty unit was developed as the framework for said task. As money laundering and tax evasion may form part of corruption, it was decided to refer to 'anti-corruption' to broaden the scope of the framework. It was found that there is a need for such an agency as the Constitutional Court found that the Hawks (Directorate for Priority Crimes) are not sufficiently independent (paragraph 7.2). The framework was developed in paragraph 7.3, 7.4 and paragraph 7.6 together with specific reference to the Department of Justice and the Securities and Exchange Commission's partnership (paragraph 7.5) regarding the administration penalty unit.

In paragraph 7.5.5, the agencies (National Prosecuting Authority and the Financial Intelligence Centre) envisioned partaking in a partnership based on that of the Department of Justice and the Securities and Exchange Commission for South Africa was discussed. In paragraph 7.7, the framework for the independent anti-corruption agency was applied to the CarniLinx case to demonstrate what the outcome would have been if such an agency existed. To limit the

scope of the application, assumptions were made (paragraph 7.7.2) and the administration penalty 'route' was illustrated.

Secondary objective number 1.4.2.6 (Chapter 1) was to develop a legal framework for South Africa based on the research conducted in Chapters 1 to 6. This has been achieved in Chapter 7 by developing an independent anti-corruption agency with a specific Administration Penalty Unit. By achieving this objective, research question number five was answered, namely that it is possible to develop a framework to combat economic crimes. The main objective (paragraph 1.4.1, Chapter 1) has therefore been achieved.

The next chapter will conclude on the results of the research done, where after recommendations for future research will follow.

CHAPTER 8

SUMMARY OF STUDY RESULTS, CONCLUSIONS AND RECOMMENDATIONS

The aim of this chapter is to conclude on the results of the research done and to make recommendations for future research (paragraph 1.4.2.7). A summary on the outcomes of each chapter will be given, after which the recommendations for future research will be identified.

8.1 INTRODUCTION

“When honour and the law no longer stand on the same side of the line, how do we choose[?]” (Bishop, 1999).

A legal framework has been developed with financial intelligence and law enforcement to combat money laundering and tax evasion. The development started off as a legal framework focussed on money laundering and tax evasion, but was later built as an independent anti-corruption agency with an administration penalty unit.

Alcott once said that a government, for protecting business only, “is but a carcass and soon falls by its own corruption and decay”. These problems that South Africa is facing, not only with tax evasion and money laundering, but especially with corruption, were set out in paragraph 1.1.7 (Chapter 1). The discussion in paragraph 1.1.7 (Chapter 1) illustrated that corruption in South Africa is not bound to only crime syndicates anymore, but that the corrupt activities of government officials seem to be increasing at an alarming rate; and because of the fact that government officials are in the capacity of serving the residents of the Republic of South Africa, integrity, honesty and transparency are three of the most important characteristics they should have.

According to Kraus, corruption is worse than prostitution. The latter might endanger the morals of the individual; the former invariably endangers the morals of the entire country.

8.2 PROBLEM STATEMENT, RESEARCH QUESTIONS AND RESEARCH OBJECTIVES

The main objective (paragraph 1.4.1, Chapter 1) of this study was to develop a legal framework with financial intelligence and law enforcement to combat tax evasion and money laundering to assist South Africa in its fight against economic crimes. The secondary objectives stated below, differs from the secondary objectives stated in Chapter 1

The secondary objectives (paragraph 1.4.2, Chapter 1) for this study were:

1. To determine the appropriate research methodology to achieve the main objective (section 1.4.2.1), which was achieved in Chapter 2;
2. To establish a link between money laundering and tax evasion (section 1.4.2.2), which was done in Chapter 3;
3. To identify legislation on tax evasion in the United States of America, the United Kingdom, Australia and South Africa with the aim of identifying areas in which South Africa can improve (section 1.4.2.3). This was obtained in Chapter 4;
4. To identify legislation on money laundering in the United States of America, the United Kingdom, Australia and South Africa with the aim of identifying areas in which South Africa can improve (section 1.4.2.4). This was achieved in Chapter 5;
5. To obtain methods used by law enforcement and financial intelligence agencies in order to analyse and compare these agencies with one another (section 1.4.2.5), which was done in Chapter 6; and
6. To develop a legal framework for South Africa based on the research conducted in the previous chapters (section 1.4.2.6), which was done in Chapter 7.

8.3 A REVIEW OF THE RESEARCH RESULTS

The results of developing a legal framework with financial intelligence and law enforcement to combat tax evasion and money laundering have been analysed comprehensively in Chapters 3 to 7. Key points and gaps were identified in South Africa's legislation, financial intelligence and law enforcement, when or if addressed, could make a difference in the fight against these economic crimes.

A review of the research questions (paragraph 1.4.2, Chapter 1) will be done in the following paragraphs to illustrate that all secondary objectives and, ultimately, the main objective, have been reached. The conclusions regarding the research objectives will be discussed in paragraph 8.4.

8.3.1 Chapter 2

The secondary objective for this chapter was to determine the appropriate research methodology to assist in this study (paragraph 1.4.2.1, Chapter 1). It was determined that there are three steps in the research process: basic research (which was the literature review); the applied research (the development of a conceptual framework); and the practical research (consultations with experts; framework has been applied to a corruption case in South Africa).

The 'reality' (ontological view) used in this research was that tax evasion, money laundering and corruption are criminal offences (paragraph 1.1.7, Chapter 1 and paragraph 2.2.5.2). Tax evasion, money laundering and corruption are indirectly responsible for the impoverishment of nations (Chapter 3, paragraph 3.2).

Through the interpretive paradigm in which this research was conducted, the main purpose was to understand. As epistemology tends to vary in the different paradigms; the epistemological source of knowledge that came to the forefront was that of logic (paragraph 2.2.5.3). Due to epistemology being the philosophy of how you come to know, logic was the best option in a deductive approach.

It was determined that the main research paradigm was qualitative, where the legal interpretive method consisting of doctrinal research formed one of the legal interpretive methods. This specific method was chosen due to the already existing documentary data that needed to be investigated.

A deductive approach was followed in order to develop the legal framework by using formal logic. After the practical research was done, a synthesis of the findings was conducted to ascertain whether the research objective has been achieved. This was discussed in detail in paragraphs 2.2 and 2.3.

8.3.2 Chapter 3

The secondary research objective for Chapter 3 was to establish a link between money laundering and tax evasion (paragraph 1.4.2.2, Chapter 1). From the literature review, it was found that the best source that answered this research question was that of the court case judgements. The evidence from the court cases shows that the authorities may already be linking money laundering and tax evasion when drawing up the charge sheet (paragraph 3.7 and paragraph 3.8).

8.3.3 Chapter 4

The secondary research objective for Chapter 4 was to identify legislation on tax evasion in the United States of America, the United Kingdom, Australia and South Africa with the aim to identify areas in which South Africa can improve (paragraph 1.4.2.3, Chapter 1). The literature review focused mostly on sections from the applicable legislation that have a direct impact on tax evasion.

The results from the investigation of these sections were tabled (Table 4-7), where after the recommendations of the areas to improve were identified. Five key points were derived in total (paragraph 4.6). The key points identified can be corroborated by the proof found in this study.

However, when considering the findings as a whole, the legislation of South Africa is not the problem. The enforcement thereof needs urgent attention.

8.3.4 Chapter 5

The secondary research objective for Chapter 5 was to identify legislation on money laundering in the United States of America, the United Kingdom, Australia and South Africa with the aim to identify areas in which South Africa can improve (section 1.4.2.4, Chapter 1).

The comparison done has been tabled (Table 5-3) and resulted in four key points South African legislature can consider (paragraph 5.7). These four key points will again be referred to in paragraph 8.4. Yet again, it should be emphasised that, as a whole, it is not the legislation that is wanting, rather the enforcement thereof.

8.3.5 Chapter 6

The secondary research objective of this chapter was to obtain methods used by the various law enforcement agencies, tax authorities and financial intelligence centres to fight tax evasion, money laundering and corruption (paragraph 1.4.2.5, Chapter 1). After the methods were identified, a comparison was conducted between these various institutions (paragraph 6.8). It was found all the institutions use two types of methods to gather the necessary information: covert and overt methods. These methods vary slightly depending on the case.

The literature reviews also unveiled that the first-world countries have more law enforcement agencies and public organisations than South Africa does. Those agencies and organisations also maintain a high level of competency as was demonstrated by the Corruption Perceptions Index 2017 that was tabled in paragraph 6.8, Table 6-2.

After the comparisons were done, eight recommendations (paragraph 6.9) were listed. The investigation done for this chapter showed that South Africa has a huge gap regarding its law enforcement.

The recommendations do not include detailed, structured plans for improvement; although the basic starting points were highlighted. These basic starting points will be discussed in paragraph 8.4.

8.3.6 Chapter 7

The secondary research objective (paragraph 1.4.2.6, Chapter 1) was to develop a framework to combat money laundering and tax evasion as part of corruption, i.e. presenting a solution. The independent anti-corruption agency with its administration penalty unit was developed as a possible framework. As money laundering and tax evasion may form part of corruption

(paragraph 1.1.5), it was decided to refer to 'anti-corruption' to broaden the scope of the framework.

8.4 RECOMMENDATIONS AND CONCLUSIONS REGARDING THE RESEARCH

OBJECTIVES AND RESEARCH RESULTS

Six secondary research objectives were identified in paragraph 1.4.2 (Chapter 1). These secondary research objectives will now be evaluated with regard to the research results obtained.

8.4.1 Establishing the link between money laundering and tax evasion

The secondary research objective pertaining to establishing the link between money laundering and tax evasion (paragraph 1.4.2.2, Chapter 1) was accomplished in Chapter 3 by studying relevant literature. Mainly legal definitions, court cases, reports published by relevant organisations, and scholarly articles were studied. It was found that the court case judgements illustrated this link between money laundering and tax evasion the best, specifically the judgement made by Judge Wallis in the South African court case of *Abrina 6822 Ltd*. He pronounced that the "ninth paragraph of the preamble to the statute (of Prevention of Organised Crime Act) is designed to reach far beyond organised crime, money laundering and criminal gang activities. The Act also undoubtedly applies to cases of individual wrong-doing". As already mentioned in the last paragraph of the section on court cases, the term 'individual wrong-doing' is a very broad term, but in view of the analysis done on the explanation of tax evasion, the act of evading taxes can be added to the definition of 'individual wrong-doing'.

The contribution of this research is the establishment of the link between money laundering and tax evasion. Although this statement can be substantiated by the evidence found in this research, it should still be taken into account that almost no literature could be found that had already connected money laundering to tax evasion.

It was established that where tax evasion is involved, it does not automatically indicate money laundering, but where money is being laundered, the chances of tax evasion being part of the equation are perceived to be 100%. (paragraph 1.1.3, Chapter 1 and paragraph 3.4, Chapter 3).

8.4.2 Towards improving South African Legislation on tax evasion: A comparison of legislation on tax evasion of the United States of America, the United Kingdom, Australia and South Africa

The secondary research objective to identify legislation on tax evasion in the United States of America, the United Kingdom, Australia and South Africa (paragraph 1.4.2.3, Chapter 1) was attained in Chapter 4. The literature review produced the following:

1. The United States of America has four laws that are used in the fight against tax evasion (section 4.5.1);
2. The United Kingdom has two laws that are used to combat tax evasion (section 4.5.2);
3. Australia also has two laws assisting them in their fight against tax evasion (section 4.5.3); and
4. South Africa has three laws that are used in their struggle against tax evasion (section 4.5.4).

The legislation on tax evasion has been identified and the inference drawn was that there are areas in which South Africa can improve their tax legislation. The recommendations to consider are (paragraph 4.6, Chapter 4):

1. Amending the Tax Administration Act or the Prevention of Organized Crime Act to include “crimes against the state” where tax evasion is involved;
2. Have a more aggressive attitude towards investigating and prosecuting tax evaders. Appointing additional investigators, accountants, auditors and prosecutors in the South African Revenue Service or the National Prosecuting Authority with the necessary knowledge and skills to achieve a successful conviction in general.
3. Flowing from point 2) above, increasing the appointment requirements for new employees. Depending on the department where the appointment will be made, a minimum of a Bachelor’s degree from an accredited tertiary institution applicable to the job description is suggested.
4. An internal specialist programme to keep all employees up to date.
5. For the employees working in the investigation’s department: special training in forensic accountancy and forensic techniques to increase their ability to detect and deter.

Although South Africa’s legislation can be amended towards improvement, the enforcement (paragraph 7.9, Chapter 7) of this legislation is more important than the amendments and need more attention.

8.4.3 Concerning refining South Africa's fight against money laundering: A comparison of legislation on money laundering of the United Kingdom, the United States of America, Australia and South Africa

The secondary research objective to identify legislation on money laundering in the United States of America, the United Kingdom, Australia and South Africa (paragraph 1.4.2.4, Chapter 1) was reached in Chapter 5. The literature review showed that these four countries have more legislation on money laundering than tax evasion. The reason for this might be the increasing correlation between money laundering and terrorist financing, which is more serious than tax evasion. Tax evasion leads to the impoverishment of nations but money laundering and terrorist financing may lead to economic and financial instability, foreign investment discouragement and the distortion of international capital flows (IMF).

The United States of America has a total of nine laws; the United Kingdom has four laws; Australia has four laws; and South Africa has three laws.

It was found that South Africa's legislation on money laundering is on a par with the other three countries, which led to the consideration of the efficacy of the enforcement of these laws. Proof that enforcement is not as effective, can be found in the Corruption Perceptions Index. Nonetheless, a few key points have been identified where South Africa can improve their legislation (paragraph 5.7, Chapter 5).

The key points to be considered:

1. Include accountants in anti-money laundering laws;
2. Implement a more aggressive attitude towards combating money laundering in general;
3. As part of implementing a more aggressive attitude, the requirements and skills to be met by employees within this line of work should also be reviewed and adjusted accordingly;
4. Establish a central database accessible to all law enforcement and financial intelligence agencies to cross-reference individuals and suspicious transactions and/or previous convictions for this offence. This database should also include national and international transactions.

In the researcher's opinion, the employment requirements are one of the most important elements as this might be the ultimate tool against not only money laundering, but tax evasion and corruption as well. If an organisation does not have the right people, it will not achieve its goals nor will it live up to its vision and mission.

8.4.4 A comparison of certain law enforcement agencies across the United States of America, the United Kingdom, Australia and South Africa to determine areas where South Africa can improve

The secondary research objective (paragraph 1.4.2.5, Chapter 1) to obtain methods used by law enforcement and financial intelligence agencies in order to analyse and compare these agencies with one another was attained in Chapter 6. From the literature review, two methods (covert and overt) (paragraph 6.3, Chapter 6), which are used globally, were identified, as well as quite a few agencies assisting each other.

The United States of America has five agencies and/or units within agencies (paragraph 6.4, Chapter 6) that are qualified and equipped to handle these types (money laundering, tax evasion and corruption) of investigations. The United Kingdom has four agencies (section 6.5, Chapter 6), Australia has ten agencies (paragraph 6.6), and while South Africa has five agencies (paragraph 6.7, Chapter 6). The qualifications of the employees of these agencies are very important because their qualifications (and level of experience) will determine the outcome of an investigation.

The gaps (Table 6-1, Chapter 6) identified were:

1. South Africa does not have an agency that can be compared to, nor has the same responsibilities as that of the Federal Bureau of Investigation, the National Crime Agency and the Secret Service, the Australian Security Intelligence Organization and the Australian Federal Police.
2. Regarding South Africa's tax authority: not only does SARS not have a specialised investigations unit anymore, the individuals investigating possible money laundering and tax evasion cases do not have the adequate skills.
3. Protecting the South African government from cyber threats and supporting its Armed Forces. South Africa does have the Electronic Communications Security but no mention of protection against cyber threats (in their main responsibilities) is made. No mention of an agency that supports the Republic's Armed Forces was found. The closest identified by the analysis was the Office for Interception Centre, which provides an interception service to law enforcement agencies involved in national security threats.
4. South Africa does not have an organisation that investigates, researches and delivers information to law enforcement in order to improve their ability to prevent and detect serious organised crime.

5. There is no organisation that focuses only on the investigation and prosecution of top-level serious or complex fraud, bribery and corruption cases. The National Prosecuting Authority was not as successful after the disbandment of the Scorpions.
6. The qualifications of the law enforcement officials and employees of the various organisations. It is imperative that the qualification requirements be adjusted upwards.

Regarding the recommendations, the gaps identified were not the only information taken into account. An indication of the fact that our law enforcement agencies (and other public organisations) are not functioning as they should, is South Africa's place on the Corruption Perceptions Index (43 out of 100).

The researcher's recommendations to improve law enforcement and financial intelligence in South Africa (paragraph 6.9, Chapter 6):

1. South Africa needs to increase the admission requirements and qualifications for personnel of public organisations and law enforcement.
2. Establish a new independent, elite law enforcement agency modelled after the Federal Bureau of Investigation, National Crime Agency, the Secret Service and the Australian Special Investigations Organization.
3. Remodel the South African Police Service after the Australian Federal Police to eradicate the South African Police Service's illegitimate apartheid-era past, and instigate higher admission requirements for its recruits.
4. Further model South Africa's Financial Intelligence Centre after the Australian Transactions and Report Analysis Centre. This remodelling should not only include the structure of the organisation, but also the competency levels of its employees.
5. The Minister of Finance must have the necessary qualifications, experience and understanding of South Africa's economy. A competent and morally disciplined Commissioner is also necessary to ensure the success of the South African Revenue Service. The Commissioner, in turn, must ensure that the employees of the South African Revenue Service have the necessary qualifications required to effectively run that specific department. Establish a separate investigations unit with employees who possess special forensic qualifications and skills to investigate white collar crime.
6. Expand the Electronic Communications Security department to include protecting the government against cyber threats as a whole.
7. Establish an organisation that can investigate and do research on serious organised crime to improve law enforcement's ability to prevent and detect. This organisation can form part of an existing agency but with employees who also have an applicable

accredited tertiary qualification with specific reference to research. Funding a university department with top researchers who already have the necessary experience, is also an option.

8. Establish an independent organisation such as the Serious Fraud Office that specialises only in prosecuting top-level serious or complex fraud cases.

The researcher acknowledges that the effect of the above-mentioned will not be visible immediately. Measuring the effect or success (if the above-mentioned has been implemented) can be done by using the Corruption Perceptions Index as basis over a period of at least five years after instigating the recommendations.

8.4.5 The development of a legal framework with law enforcement and financial intelligence to combat money laundering and tax evasion in South Africa

The secondary research objective (paragraph 1.4.2.6, Chapter 1) of developing a framework for an anti-corruption agency for South Africa was achieved in Chapter 7. The literature review exposed the issue of the non-existence of independent law enforcement agencies. It also revealed the successful partnership between the Department of Justice and the Securities and Exchange Commission, which led to the proposed Administration Penalties Unit envisioned as part of this independent anti-corruption agency (paragraph 7.5, Chapter 7).

The literature reviews also showed previous independent law enforcement agencies (paragraph 7.2.1, Chapter 7), which were shut down and replaced by dependent agencies (paragraph 7.2.2, Chapter 7) to conduct investigations. Independent law enforcement agencies such as the specialist crime-fighting units (paragraph 7.4.4, Chapter 7) in SARS were disbanded without replacements. Therefore, drawing from global reports of the organisations concerned, the possibility and the necessity of developing an independent anti-corruption agency were proven. The feedback from experts on this independent anti-corruption agency assisted in further refining the agency to be a more effective tool.

There is a need for an independent law enforcement agency as the Constitutional Court found that the Hawks (Directorate for Priority Crimes) are not sufficiently independent (paragraph 7.2, Chapter 7).

In paragraph 7.5.5 (Chapter 7), the agencies (National Prosecuting Authority and the Financial Intelligence Centre) envisioned partaking in a partnership based on that of the Department of Justice and the Securities and Exchange Commission for South Africa was discussed. In paragraph 7.7 (Chapter 7), the framework for the independent anti-corruption agency was applied to the CarniLinx case to demonstrate what the outcome would have been if such an

agency existed. To limit the scope of the application, assumptions were made (paragraph 7.7.2, Chapter 7) and the administration penalty 'route' was illustrated.

General findings:

1. It was found that there is a need for an independent anti-corruption agency based on the Constitutional Court's finding that the Hawks (Directorate for Priority Crimes) are not sufficiently independent (paragraph 7.2.3, Chapter 7).
2. It was also established that the independence of agencies involved with fighting crime has been severely compromised.
3. The partnership between the Department of Justice and the Securities and Exchange Commission of the United States was studied to learn the role that each of these agencies have in this partnership and what their success rates were (paragraph 7.5.1, Chapter 7).
4. The Department of Justice of the United States can be compared to the National Prosecuting Authority, which results in, should such the partnership mentioned in point three be adopted, the National Prosecuting Authority 'assuming' the role of the Department of Justice in South Africa (paragraph 7.5.5, Chapter 7).
5. The department within the Securities and Exchange Commission handling the accounting provision violations of the Foreign Corrupt Practices Act is a department that can be established within South Africa's financial intelligence centre (paragraph 7.5.3, Chapter 7).
6. The framework was developed in paragraph 7.5 with specific reference to the Department of Justice and the Securities and Exchange Commission's partnership (paragraphs 7.5.1 and 7.5.2, Chapter 7) regarding the administration penalty unit.
7. Due to the questionable background of the directors appointed (by the president) as the heads of the National Prosecuting Authority, it was ascertained that, in the future, Parliament should appoint the head of the National Prosecuting Authority (paragraph 7.3.1.1, Chapter 7).
8. The possibility of a tax unit dedicated to SARS within this independent anti-corruption agency is tremendous – based on the fact that there is a need for specialist crime-fighting units with regard to taxation, and that the specialist crime-fighting units within SARS have been shut down in 2014 (paragraph 7.4.4, Chapter 7).

8.5 RECOMMENDATIONS FOR FUTURE STRATEGIES TO IMPROVE THE EFFORTS OF LAW ENFORCEMENT IN ENFORCING THE LAW SUCCESSFULLY

Although crimes such as corruption, money laundering and tax evasion will never be eradicated, there is enough that can be done to fight and deter it. A country can have the best written laws in the world, but if the enforcement thereof is lacking, the laws are useless. To ensure the most effective enforcement of these laws, the individuals involved must have the right qualifications (paragraph 7.4.2, Chapter 7), the necessary skills, and the integrity needed to execute their task fast and efficiently. These qualifications will depend on the position in the hierarchy of the agency involved. Standard background checks on the employees are essential to ensure that no conflicting interests exist and that the individual has no criminal record. Appointing people with criminal records will taint the image of the agency.

Training (paragraph 7.4.2, Chapter 7) the employees should be done by international, leading law enforcement agencies such as the Federal Bureau of Investigation. Monthly or bi-monthly workshops should be held to keep these employees up to date with the latest developments in law enforcement.

Another issue is the punishment of perpetrators. Currently, people, who held high positions in government and were found guilty of corruption, were either dismissed or were transferred to another department or portfolio. No incarceration. Unfortunately, the message that this type of behaviour sends to the public can be perceived as irresponsible and potentially damaging to the morals of the country.

8.6 RECOMMENDATIONS FOR FUTURE RESEARCH

A conceptual framework to combat tax evasion, money laundering and corruption has been laid out in Chapter 7. Many proposed areas have been touched on, but no in-depth research into each of the proposed departments or functions of the independent anti-corruption agency was done. The legal mechanisms have also been referred to but not discussed in detail.

Another point is the recommendations that were made in Chapter 4, Chapter 5 and Chapter 6. No further study into how the legislation will look or what the possible consequences will be was explored.

Taking the abovementioned into account, the following recommendations for future research can be made:

1. Regarding the proposed departments or functions of this independent anti-corruption agency, an in-depth study can be done to develop a detailed plan and policy that will ensure the success of the department or function.

2. The legal mechanisms behind such an independent anti-corruption agency should be dealt with in more detail to show exactly how the revised laws will fit into the picture.
3. A detailed insight into how the National Prosecuting Authority and the Financial Intelligence Centre will have to change in order for them to meet the requirements and competency to be able to make a success of the Administration Penalties Unit.
4. Determining how the change in admission requirements for employees will affect potential future employees throughout all law enforcement agencies. This should include research into the effect on unemployment.
5. By determining what the biggest problems currently in South Africa are with regard to the South African Police Service (SAPS), a solution might be identified that will lead to an almost immediate improvement in the conduct of the SAPS. The same can be done with the National Prosecution Authority (NPA).
6. After identifying the biggest problems within the SAPS (and the NPA), a short-term cost analysis can be done to determine what the cost to government will be should the solution (point 5) be implemented, as well as what the long-term savings might add up to, if any.
7. Compiling a list of characteristics, personality traits, and level of qualification needed in South Africa with regard to law enforcement recruits that will ensure the success of investigations.
8. Research into what constitutes a distinguished law enforcement officer and how to retain such an individual.
9. Regarding educating the public on corruption (and the consequences thereof): Determining where to start, how it should be done to ensure efficacy, and what the cost to government will be if this is to be initiated.
10. Regarding the four criteria for judging qualitative research, testing the dependability can only be done after the development of the framework as changes in legislation is a reality. Thus, the dependability should be tested within a specific time frame.

“Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law and without justice” (Aristotle).

“Law and order exist for the purpose of establishing justice, and when they fail in this purpose they become the dangerously structured dams that block the flow of social progress”

(Martin Luther King Jr).

APPENDIX A

Unstructured interview with Expert number 1

The proposed framework was e-mailed to this expert and he was asked for his opinion. The following was his feedback.

1.1 Extract from document:

Allegedly, the Commission ignored evidence contained in affidavits and when receiving evidence, suspicious procedures were applied. In 2015 Judge Seriti found that there had been no evidence of corruption or wrongdoing during the procurement of the arms deal in 1999 (Tham, 2017).

Comment: (Referring to the “suspicious procedures”)

Such as? You need to be more specific if possible to give the statement more clout.

1.2 Extract from document:

Newham (2015) reported on the unstable leadership in the South African Police Service (SAPS) and the National Prosecuting Authority (NPA).

Comment: (Referring to “NPA”)

It would also be insightful to refer to the furore regarding Menzi Simelane, Vusi Pikoli and the idiot as head of the NPA prior to the current one. The lack of integrity in the heads of police and NPA is disgraceful and their respective appointments obviously aimed at protecting Zuma.

1.3 Extract from document:

Or perhaps he believes a compromised justice system will assist him in the future if he ever has to answer to the 782 criminal charges for fraud and corruption...” (Newham, 2015; Corruption Watch, 2015).

Comment: (referring to “782”)

783 or 782? Consistency.

1.4 Extract from document:

Although a few high ranking officials have been charged and convicted of fraud and corruption, there were no other consequences, for example being jailed for these offences.

Comment: (Referring to “other”)

What do you have in mind with other?

- 1.5 Extract from document:

This act of government is undermining the trust of the public in the criminal justice system.

Comment: (Referring to “This act of government”)

To what are you referring to here?

- 1.6 Extract from document:

Mantzaris (2017) made the statement that “the problem is not that the country’s anti-corruption laws are wanting” ...

Comment:

It is rather the implementation thereof that is lacking.

- 1.7 Extract from document:

South Africa has already revealed that it is too weak to support an active fight against such interests (Mantzaris, 2017).

Comment: (Referring to “South Africa”)

Is this a reference to government?

- 1.8 Extract from document:

... referral to the Scorpions or the Directorate of Special Operations which was established in 1999 with a mandate to ...

Comment: (Referral to “Scorpions” and “1999”)

Prior to the DSO we had the Office for Serious Economic Offences, which was created to have more effective investigation of these offences. Because this was seen too limited a mandate the DSO was established.

- 1.9 Extract from document:

... was in violation of section 199 of the Constitution of the Republic of South Africa, the National Strategic Intelligence Act and the Intelligence Oversight Act

Comment:

I think you should refer to the specific relevant sections of the other statutes as well, not to create the impression that it is section 199 of all of them.

1.10 Extract from document:

This was only the findings of the Commission; other reasons include selective prosecution, lack of oversight, violation of privilege between client and legal adviser ...

Comment: (Referral to “political interference”)

To my mind, the most important one!

1.11 Extract from document:

“... SAPS was unable to deal with high-level crime; SAPS was perceived as illegitimate in light of ...”

Comment:

As well as highly complex crime such as serious economic offences, which was the reason for the OSEO office being created in 1991.

1.12 Extract from document:

... the administration of public entities and funds are not effective, the international cooperation is not utilized and the access to information ...

Comment: (Referring to “the international cooperation”)

Is this supposed to refer to the International Co-operation in Criminal Justice Matters Act or do you want to refer to the utilisation of international cooperation or the lack thereof in which case you should remove the word “the”.

1.13 Extract from document:

... the fourth head was found unfit to serve in this capacity ...

Comment:

An irrelevant one?

1.14 Extract from document:

The SIU was removed from a high-profile case, unable to investigate without Presidential proclamation.

Comment:

This sentence seems to be out of context here.

1.15 Extract from document:

Mantzaris (2017) emphasises that South Africa deepens the fight against corruption, stating that ...

Comment:

The going-ons or?

1.16 Extract from document:

... appointing people loyal to the African National Congress; supporting plans by thorough research and strong political will ...

Comment: (Referring to “African National Congress”)

Is this really valid?

1.17 Extract from document:

According to Lopez-Claros (2014), the compensation civil servants receive will affect motivation to supplement their income by means of illegal action.

Comment:

This does not take the phenomenon of greed into account.

1.18 Extract from document:

“... monitoring progress towards a less corrupt society, and to support coordination between government and, business and social society efforts to reduce corruption”

Comment:

What are needed is RAISING AWARENESS of CORRUPTION and the EDUCATION of the public and society in general.

1.19 Extract from document:

Strengthen oversight and governance mechanisms in the government sector;

Comment:

Which one, if any, will include the implementation of the existing laws?

1.20 Extract from document:

... which requires companies to proactively put measures into place to manage the risk of corruption and to ensure that they have a defence against the offence of failure to prevent bribery and other forms of corruption ...

Comment:

See also the UK Bribery Act.

1.21 Extract from document:

Thus the need arises that this new anti-corruption agency should report to a committee (consisting of different members of political parties) specifically set up to oversee and evaluate its performance, the agency reports directly to Parliament or the agency reports directly to the Constitutional Court ...

Comment:

Or a committee established by it [Constitutional Court] given its workload?

1.22 Extract from document:

However, such an agency should still be retained as part of an existing agency due to the section contained in the Constitution of just one agency (NPA) having prosecutorial powers.

Comment:

This can be overcome by the NDPP giving someone attached to such an independent body a delegation to prosecute on his behalf.

1.23 Extract from document:

... the first thing will be to amend the NPA Act to ensure that it [NPA] no longer reports to a Minister but to report to Parliament directly where Parliament will have sufficient power to prevent political interference.

Comment:

Will have to be a committee of parliament otherwise if the simple majority it will be doomed from the start.

1.24 Extract from document:

The amendment should also contain the new agency's powers, mandate and extent of their investigation ...

Comment:

These have already been specified in existing statutes tried and tested in court and do not have to be reinvented. The mandate is more problematic. It cannot be suggested that all corruption should be dealt with by this body and it would be necessary for the ordinary structure to deal with that. Defining which are the serious ones will be a challenge. A starting point could be any corruption involving a state-owned enterprise, a state department, civil servant or politically-exposed person will qualify for investigation.

1.25 Extract from document:

“... to develop proper arrangements for the protection of the identity of whistle-blowers as well as providing legal assistance to them... This matter can be dealt with internally or it can be transferred to the Witness Protection Program already part of the NPA.”

Comment:

See the new suggested amendment of the Protected Disclosures Act. In my view, the victimisation of a whistle-blower should be criminalised in order to have an effective system.

1.26 Extract from document:

Education should also be given at schools to inform learners of corruption, what it entails and how to fight it.

Comment:

And how detrimental it is to a country as a whole.

1.27 Extract from document:

All calls must be recorded for security purposes.

Comment:

What about languages?

1.28 Extract from document:

“The database containing the details of every company and individual convicted of corruption ... it is important that law enforcement and prosecution agencies all over the world must have access to this database.”

Comment:

What about them being precluded from doing business with the state?

1.29 Extract from document:

"... but who do not necessarily have the right qualifications ... "

Comment:

Who to determine this?

1.30 Extract from document:

"The deputy director should also be responsible for reporting companies to the NPA who had previous corruption convictions in order for the NPA to then file criminal charges against the company."

Comment:

In respect of what?

1.31 Extract from document:

The intelligence unit will be responsible for gathering national and international intelligence with regards to corruption which poses a threat to the Republic of South Africa's democracy and economy.

The information is relayed to the investigations unit who will continue with the applicable investigation.

Comment:

Is this not overlapping with the role envisaged above for the research unit?

If there is already an investigation, it would appear that the intelligence unit is behind time.

1.32 Extract from document:

This will entail changes to the NPA Act; the powers of the agency must be written up in legislation.

Comment:

Possibly also the Criminal Procedures Act.

1.33 Extract from the document:

The success of the agency lies in the competence of its employees.

Comment:

And the utilisation of a multi-disciplinary investigative approach. There will have to be lawyers, accountants, investigators and computer experts.

1.34 Extract from the document:

Its authority extends to US citizens, nationals, residents, US businesses and certain foreign persons and businesses that violate the FCPA while on US soil.

Comment:

It has global jurisdiction. Our SA corruption act also has extra territorial jurisdiction as has most new corruption laws of virtually all countries, many African countries has this too and this in itself is an indication that corruption is seen as an evil.

1.35 Extract from document:

The responsibility of the SEC is to bring civil charges for violating the anti-bribery and accounting provisions.

Comment:

Do not forget their role in settlements.

1.36 Extract from document:

This department [Financial Intelligence Centre] works closely with law enforcement and other agencies to provide support during investigations if requested.

Comment:

This unfortunately very rarely happens.

1.37 Extract from document:

PRECCA will also have to be amended to add provisions such as the anti-bribery and accounting provisions...

Comment:

Such as? It is already very detailed in this regard. I agree with the accounting provisions, however.

1.38 Extract from document:

Adding these two provisions to these Acts will bring South Africa's legislation in line with that of the United States of America.

Comment:

Bear in mind the FCPA is not without criticism. It makes facilitation payments acceptable while it is plainly a form of corruption in terms of the laws of many countries, e.g. UK and SA. This has been recognised as an issue and application thereof is already being limited.

1.39 Extract from document:

Any entity which detects corrupt practices must immediately declare it to the Administration Penalty Unit.

Comment:

It should be a full and comprehensive declaration as well.

1.40 Extract from document:

After declaring the corrupt activities, the entity must submit a detailed report on how they will be investigating these corrupt activities.

Comment:

This cannot be the APU as they will not be responsible for the investigation.

1.41 Extract from document:

a) the audit firm they will be using to investigate these activities;

Comment:

They should have in-house accountants, but should be able to outsource where necessary. Or are you suggesting that all such investigations arising from voluntary disclosure should be outsourced? I do not like that as it detracts from your argument that there should be a dedicated unit to do exactly this.

Remember also the audit firms do not have the powers to obtain all information and the corruption unit will have to exercise these.

1.42 Extract from document:

...the Unit must draw up a detailed charge sheet and...

Comment:

NO. A detailed and comprehensive charge sheet/indictment can only be drawn up once the investigation has been completed.

1.43 Extract from document:

...the investigation into entity's corrupt activities has already taken place and...

Comment:

Remember, the entity involved may dispute the findings and a court may even throw it out and acquit the entity.

APPENDIX B

Unstructured interview with Expert number 2

The proposed framework was e-mailed to this expert and asked for his opinion only. The following was his comments received via e-mail. These comments were made on the document that was mailed to him.

The information to which his comments refer will be quoted, where after his comment will be given verbatim.

2.1 Extract from document:

The DOJ can be compared to South Africa's NPA and the SEC can be compared (to some extent) to South Africa's SIU and FIC.

Comment:

I do not agree the SIU performs investigations on public sector and state-owned entities based on mandates from the President. The SIU cannot do investigations outside of public sector, say for instance a transaction between ABC who provides IT services to Eskom has to be investigated, the SIU will then get an instruction to investigate this only due to the fact that Eskom who is a state-owned entity is involved. The legal mandate of the SIU and FIC has to be clearly understood. I am not convinced your comparison is right. The SIU is investigators. The SIU is not responsible for civil prosecutions.

2.2 Extract from document:

With regard to the Administration penalties and fines unit to help finance the agency.

Comment:

Administration penalties to finance the agency will create independence issues.

2.3 Extract from document:

With reference to the Schematic of an Extract Concept of how the new ACA could look.

Comment:

SIU and FIC should not be used in this table. FIC is a regulator and makes sure the FIC and SIU mandates are properly understood; go to the relevant legislation.

2.4 Extract from document:

The DOJ, SEC and FCPA

Comment:

Again, the SEC is used in the wrong context.

2.5 Extract from document:

Their authority includes US citizens, nationals, residents, US businesses and certain foreign persons and businesses that violate the FCPA while on US soil.

Comment:

Not only on US soil, but everywhere in the world.

2.6 Extract from document:

Referring to the table showing the similarities identified between the NPA, SIU, FIC, DOJ and SEC.

Comment:

Rethink this table.

2.7 Extract from document:

Because the SIU only deals with civil actions against State Institutions, the study will proceed by only focusing on parallel proceedings between the NPA and the FIC.

Comment:

Not entirely true [SIU only deals with civil actions].

2.8 Extract from document:

The audit firm they will be using to investigate these activities;

Comment:

Could use their internal resources if they want.

APPENDIX C

Unstructured interview with Expert number 3

The proposed framework was e-mailed to this expert and asked for his opinion only. The following were his comments as received as notes on the document e-mailed to him. An extract will be given of the information to which he referred.

3.1 Extract from document:

... will consider the development of the framework for an anti-corruption agency in South Africa.

Comment:

Is the name "Anti-corruption agency" not limiting? AML and tax evasion are far wider than corruption.

3.2 General comment:

Assume we have defined money laundering and statutory tax evasion crimes in earlier chapters?

3.3 Extract from document:

This definition is very broad in the sense that it may capture the act of organised crime (which includes money laundering and tax evasion) as well.

Comment:

The act of organised crime??? No such specific act/crime.

3.4 Extract from document:

PRECCA defines 'gratification' in ten subsections where the first one ...

Comment:

Give brief discussion of "gratification" as _____ of crime first ...

3.5 General comment:

Suggest a concise summary of what corruption is in own words.

NB: Stats on convictions under PRECCA? Almost none.

*What about the office of the public protector??? Investigate corruption???
Guptas??? Report directly to Parliament? Chapter 9 Independent constitutional
entity?*

3.6 Extract from document:

*With reference to the Preliminary Presentation of matters to be addressed
within the Agency.*

Comment:

Budgets also need to be controlled by Parliament, otherwise indirect influence?

Somewhere you need to address the role of the office of Public Protector.

*Also FIC ... especially with the new act. May be argued that they will do most
of this?*

3.7 Extract from document:

*With reference to the schematic of an extract concept of how the new ACA
could look, specifically Administration Fines and Penalties.*

Comment:

Civil or Criminal?

*Would settlement penalty be “criminal” by nature? If so ... needs to head into
courts as first offender????*

3.8 Extract from document:

*As part of the training unit of the agency, a trainee programme can be
implemented for persons who want to work within this agency, but who do not
necessarily have the right qualifications.*

Comment:

Why??? Only qualified/experienced people required?

3.9 Extract from document:

Misconduct relating to civilian investigations and prosecutions should be transferred to the FIC or the SIU.

Comment:

Prosecutions?

Only NPA can???

3.10 Extract from document:

The intelligence unit will be responsible for gathering ...

Comment:

Can NPA have intelligence unit? I think not ... Confirm? Have to work with National and Police intelligence.

3.11 Extract from document:

... thus DOJ handles criminal and civil penalties related to bribery while the SEC handles civil enforcement of violations of the FCPA's accounting provisions.

Comment:

Confirm DOJ deals with civil penalties? Is deferred prosecution not a criminal fine???

3.12 Extract from document:

With reference to similarities identified.

Comment:

Contradicts what is said earlier? Table is correct.

3.13 Extract from document:

Because the SIU only deals with civil actions against State Institutions ...

Comments:

Can claim from private companies??

3.14 Extract from document:

... the FCPA is used by the DOJ and the SEC to investigate and convict companies for bribery and corruption ...

Comment:

Actually a statutory offence. Not pure bribery, corruption or extortion.

3.15 Extract from document:

Thus, establishing another department in the Financial Intelligence Centre which can instigate civil actions against entities who specifically provide false or inaccurate accounting records and fails to maintain a system of internal accounting control.

Comment:

What do we mean ... thus...?

How would this link to new unit structure?

3.16 General comment:

Does the admin penalty form part of a deferred prosecution agreement??

3.17 Extract from document:

With regard to 'The Action-Phase'.

Comment:

US often make use of another firm to act as independent monitor on their behalf. Works well.

3.18 Extract from document:

With regard to “The Future Implementations Phase”.

Comment:

Need a look-back phase as well. See if not taking place for past 10 years???

Wider than just normal investigation.

3.19 General comment:

Independent monitor appointment is NB!!

Need clearer description of how “admin penalty” links to criminal act/deferred prosecution.

What would role of agency be related to tax?

How does the prosecution of statutory tax crimes link to Anti-Corruption Agency?

Don’t use admin penalties in tax courts?

They are criminal.

Interest and penalties linked???

SARS penalties may be “admin”?

Hawks, NPA, SIU, National Intelligence, FIC, Public Protector

- *All role players*
- *New super anti-corruption agency needs clear space to play in*
- *Need a summary of how it will be different, who would fit under it. How to deal with clashes in jurisdiction.*

APPENDIX D

Unstructured interview with Expert number 4

The proposed framework was e-mailed to this expert and asked for his opinion. The following was his comments.

“Jou studie, kan ek sien, het baie tyd geverg, maar die kort en die lank is jy dwaal op die gebied wat regstegnies BAIE ingewikkeld is. Ek weet te min om enigsins ’n waardevolle bydrae te maak. Wat ek wel weet – is dat die VSA en die RSA se regstelsels VER uitmekaar is en ’n blote tick box-benadering en vergelyk gaan gelag word voor vanuit regs kennis se perspektief.

Jou stuk is ook BAIE polities uitgesproke en die lyn tussen navorsing en publieke persepsie raak baie dun. Jy is inderwaarheid, wat my betref, op baie dun ys.

Wat die definisie van korrupsie aanbetref kan PRECCA tog nie vir ’n akademikus die alfa en omega wees nie – jou idee van korrupsie is nie noodwendig my idee nie ... ens. – sien ontologie ... om ’n paar hoëprofielsake aan te roer kan tog nie werklik die sogenaamde korrupsieprobleem omskryf in geheel nie – daar moet tog BAIE meer studies wees om na te verwys?

Sou jy met die regte mense kon praat hieroor sal daar dalk nuwe lig te voorskyn kom.

Ek is jammer – maar kan jou nie help op hierdie een nie.”

APPENDIX E

Author guidelines: INTERNATIONAL BUSINESS AND ECONOMICS RESEARCH JOURNAL

Please submit your manuscript in Microsoft Word/Apple Pages or a compatible format. Text should be formatted for letter size paper (8.5 x 11 inches) single-spaced at 10 points, Times New Roman, with one inch margins, left justified, and single- column. We follow American Psychological Association (APA) guidelines.

Structure of the manuscript

Title page (containing the title of the manuscript, author contact information, and a short auto-biography for each author)

Title

Abstract

Keywords

Introduction

Body of manuscript

Tables, figures, etc. placed where they belong

Conclusion

Acknowledgments (if applicable)

References (American Psychological Association style)

Appendices (if applicable)

Title Page

The title page should contain the manuscript title and each author name, affiliation, mailing address, and email address with the contact author indicated. The title page should also contain a short auto-biography of no more than 100 words for each author.

Title

The title should be concise, descriptive, and contain the keywords or key phrases. Search engines assume that the title contains all of the important words that describe the topic of the manuscript.

Acronyms

The use of acronyms should be avoided in the title and keywords unless widely recognized and understood.

Abstract

Abstracts should not exceed 250 words. The abstract should contain all the keywords and key phrases at least once and more than once if necessary. Search engines rank manuscripts higher if the keyword or key phrase being searched appears more often in the abstract. However, pointless repetition may result in the page being rejected by a search engine. Since most researchers read an abstract before reading the manuscript, abstracts must be written very well.

Keywords

Select 3 or 4 keywords or key phrases that you would give a search engine if you were searching for your manuscript. Avoid the use of general and plural terms, abbreviations, and non-descript words such as *and*, *of*, *or*, *the*, and so on.

When selecting keywords, please keep in mind how search engines operate. A search on the key phrase “*women’s health*” does not yield the same result as separate searches on the words “*women’s*” and “*health*”. The ordering of keywords within a key phrase is also important if quotation marks are used because you are searching for words in a particular order. For example, a search for “*women’s health*” is not the same as “*health women’s*”.

Clute Institute journal manuscripts are downloaded an average of 120,000 times a month. Approximately 70% of these downloads come from Google searches, so the proper use of keywords and key phrases is important. Many universities use journal article citation analysis to evaluate the importance of faculty research. Hence, being quoted by other authors is important.

Headings

Four levels of headings are allowed. The first level should be **BOLD ALL CAPS**, second level **Bold**, third level *Italics*, and fourth Underlined.

Tables & Figures

Use the Microsoft Word table function to create tables, not spreadsheets. Tables and figures should be located in the text and numbered sequentially using Arabic numerals, i.e., Table 1 and Figure 1. We print our journals in black and white; please take this into consideration when using color.

Abbreviations

Abbreviations should be defined at first mention and used consistently thereafter.

Footnotes

Bottom of the page footnotes are preferred to end of the manuscript endnotes.

References

References should be arranged alphabetically and follow American Psychological Association (APA) style. References should not be inserted as footnotes. References in the text should include name and year. For example: “According to Bangs (2012).”

In print journal article citation:

Bangs, J. (2012). Transforming a business statistics course with just-in-time teaching. *American Journal of Business Education*, 5(1) 87-94.

Online journal article citation:

Salazar, R.J., & Wang, J. (2013). The evolution of strategies: multinational subsidiaries operating in china. *Journal of Applied Business Research*, 29(5), 1261-1280. Retrieved from <https://www.cluteinstitute.com/ojs/index.php/JABR/article/view/8012/8066>

Book citation:

Calfee, R.C., & Valencia, R.R. (1991). *APA guide to preparing manuscripts for journal publication*. Washington, DC: American Psychological Association.

APPENDIX F

Article One as published: INTERNATIONAL BUSINESS AND ECONOMICS RESEARCH JOURNAL

International Business & Economics Research Journal – November 2013

Volume 12, Number 11

Establishing The Link Between Money Laundering And Tax Evasion

Ansia Storm, Northwest University, Potchefstroom, South Africa

ABSTRACT

No clear link has yet been made between tax evasion and money laundering although many (or all) of the professionals in this field may have already assumed the relation. The aim of the research that was conducted for the purposes of this article was to explore whether there is a clear link between tax evasion and money laundering. This was done by studying the relevant literature available on both subjects. The findings, that there is a clear link between these two offences, were confirmed not only by analyzing definitions but also, and most importantly, by an overview of court cases and the judgments made in these court cases. In theory, the results have proven that one cannot look at money laundering without considering tax evasion as well but tax evasion does not necessarily constitute the act of money laundering. This is of value to the individuals and organizations working in the field of taxation and organized crime, because when prosecuting a perpetrator on a count of money laundering, by adding the charge of tax evasion to his or her charge sheet, it can strengthen the case against the accused.

Keywords: Tax Evasion; Money Laundering

INTRODUCTION

Money makes the world go round and this may be the reason why it is widely believed that tax evasion and money laundering will be the demise of all economies. Recently, Greece made headlines in the news because of their failing economy (Dugdale, 2012, p. 1). Following that news break, *The Guardian* reported that “Greece is not alone – tax evasion is a British problem too”. A few months after Greece made headlines, Crumley (2012) reported that Italy, Spain and Portugal were only delaying their banishment in the undesirable zone. Tavares (2013, p. 2) also wrote of the euro crisis where “several countries have been submitted to international bailout programs” in his thematic paper on money laundering.

Money laundering, the name given to the act of filtering ill-gotten gains or ‘dirty’ money, is said to have originated in the time when the Mafia owned laundromats in the United States of America (USA). Laundromats were legal businesses used to legitimize huge sums of cash from extortion, gambling, bootleg liquor and prostitution. This was done by blending the illegal gains with the earnings received by these laundromats. Something that made these laundromats to be of an indubitable advantage was the fact that they were cash businesses. Although Al Capone was convicted for tax evasion, his conviction may have been the trigger for lifting the money laundering business off the ground (Dadoo, 2012; Krishna, 2008; “Al Capone: Biography”, 2012).

It is said that Al Capone did not trust banks – he never had a bank account and conducted all of his financial transactions in cash. The Internal Revenue Service (IRS) could not even find a single transaction where Al Capone purchased securities. Although the authorities knew that Al Capone was behind most of the murders that took place during his reign as mafia boss, no evidence could ever be found or brought against Capone. Thus, the federal government made a two-pronged attack plan: collecting evidence of Prohibition Law violations and collecting evidence of Capone not paying taxes on his income. The IRS found an incriminating ledger and some witnesses who were able to testify against Capone on tax evasion. He was charged with 22 counts of tax evasion and 5 000 violations of the Prohibition Law. Later Capone was found guilty on only five of the tax evasion charges (Krishna, 2008; “Al Capone: Biography”, 2012). After the conviction and incarceration of Capone, Meyer Lansky, who was also called ‘The Mob’s Accountant’, was afraid that the same fate would befall him, thus he started

APPENDIX G:

Formatting guidelines: JOURNAL FOR APPLIED BUSINESS RESEARCH

Please submit your manuscript in Microsoft Word/Apple Pages or a compatible format. Text should be formatted for letter size paper (8.5 x 11 inches) single-spaced at 10 points, Times New Roman, with one inch margins, left justified, and single- column. We follow American Psychological Association (APA) guidelines.

Structure of the manuscript

Title page (containing the title of the manuscript, author contact information, and a short auto-biography for each author)

Title

Abstract

Keywords

Introduction

Body of manuscript

Tables, figures, etc. placed where they belong

Conclusion

Acknowledgments (if applicable)

References (American Psychological Association style)

Appendices (if applicable)

Title Page

The title page should contain the manuscript title and each author name, affiliation, mailing address, and email address with the contact author indicated. The title page should also contain a short auto-biography of no more than 100 words for each author.

Title

The title should be concise, descriptive, and contain the keywords or key phrases. Search engines assume that the title contains all of the important words that describe the topic of the manuscript.

Acronyms

The use of acronyms should be avoided in the title and keywords unless widely recognized and understood.

Abstract

Abstracts should not exceed 250 words. The abstract should contain all the keywords and key phrases at least once and more than once if necessary. Search engines rank manuscripts higher if the keyword or key phrase being searched appears more often in the abstract. However, pointless repetition may result in the page being rejected by a search engine. Since most researchers read an abstract before reading the manuscript, abstracts must be written very well.

Keywords

Select 3 or 4 keywords or key phrases that you would give a search engine if you were searching for your manuscript. Avoid the use of general and plural terms, abbreviations, and non-descript words such as *and*, *of*, *or*, *the*, and so on.

When selecting keywords, please keep in mind how search engines operate. A search on the key phrase "*women's health*" does not yield the same result as separate searches on the words "*women's*" and "*health*". The ordering of keywords within a key phrase is also important if quotation marks are used because you are searching for words in a particular order. For example, a search for "*women's health*" is not the same as "*health women's*".

Clute Institute journal manuscripts are downloaded an average of 120,000 times a month. Approximately 70% of these downloads come from Google searches, so the proper use of keywords and key phrases is important. Many universities use journal article citation analysis to evaluate the importance of faculty research. Hence, being quoted by other authors is important.

Headings

Four levels of headings are allowed. The first level should be **BOLD ALL CAPS**, second level **Bold**, third level *Italics*, and fourth Underlined.

Tables & Figures

Use the Microsoft Word table function to create tables, not spreadsheets. Tables and figures should be located in the text and numbered sequentially using Arabic numerals, i.e., Table 1 and Figure 1. We print our journals in black and white; please take this into consideration when using color.

Abbreviations

Abbreviations should be defined at first mention and used consistently thereafter.

Footnotes

Bottom of the page footnotes are preferred to end of the manuscript endnotes.

References

References should be arranged alphabetically and follow American Psychological Association (APA) style. References should not be inserted as footnotes. References in the text should include name and year. For example: "According to Bangs (2012)..."

In print journal article citation:

Bangs, J. (2012). Transforming a business statistics course with just-in-time teaching. *American Journal of Business Education*, 5(1) 87-94.

Online journal article citation:

Salazar, R.J., & Wang, J. (2013). The evolution of strategies: multinational subsidiaries operating in china. *Journal of Applied Business Research*, 29(5), 1261-1280. Retrieved from <https://www.cluteinstitute.com/ojs/index.php/JABR/article/view/8012/8066>

Book citation:

Calfee, R.C., & Valencia, R.R. (1991). *APA guide to preparing manuscripts for journal publication*. Washington, DC: American Psychological Association.

Towards Improving South Africa's Legislation On Tax Evasion: A Comparison Of Legislation On Tax Evasion Of The USA, UK, Australia And South Africa

Ansia Storm, North-West University, South Africa
Karina Coetzee, North-West University, South Africa

ABSTRACT

The fight against tax evasion in South Africa is an ongoing battle. The tools available to law enforcement boil down to legislation and the enforcement thereof. The purpose of the study that was done for this article was to compare available legislation of the United States of America, United Kingdom, Australia and South Africa to determine if South Africa's legislation can be improved. This was done by studying the relevant literature and legislation of all four countries. The findings, that there is some clauses that can be added to improve South Africa's legislation, were confirmed by analyzing the legislation available. In theory, the results have proven that although South Africa's legislation can compete with that of the United States of America, United Kingdom and Australia, there is some improvement that can be considered. This is of value to the individuals and professionals who deal with the offence of tax evasion on a daily basis, ensuring that the reviewed legislation will deter perpetrators or that the charges brought against them in the court of law will ensure harsher punishment.

Keywords: Tax Evasion; Comparison of Legislation on Tax Evasion; South Africa

INTRODUCTION

"The income tax created more criminals than any other act of government" (Monti).

These criminals do not only refer to tax evaders but also to those resisting taxes. According to an encyclopedia article, tax resistance can be defined as "the refusal to pay tax because of opposition to the government that is imposing the tax or to government policy as opposition to the concept of taxation itself. Tax resistance is a form of direct action and if in violation of the tax regulations, a form of civil disobedience." There are two techniques of tax resistance methods, namely legal and illegal. An example of a legal technique is tax avoidance while tax evasion is an example of one of the illegal techniques. (The Free Dictionary).

Kirchler (2007) stated that "it has been suggested that tax resistance might have played a huge role in the collapse of several empires, including the Egyptian, Roman, Spanish and Aztec" (p.182). The American Revolution, Great Revolt and the French Revolution were some of the historic events where tax uprisings began. Tax resistance can be traced back as far as the first century B.C. (Kirchler, 2007; Burg, 2004).

In the first century B.C in Judea, the Jewish extremists fought the poll tax established by the Roman Empire (Gross; 2008). According to Swartley (1980) in Luke 23:2, Jesus was accused of promoting tax resistance. The period before 1500 B.C includes historic events such as the Great Revolt, the first Jewish-Roman War; the "Norman anti-tax riots (1348 – 1351)" and "Wat Tyler's Rebellion (1381)". Recent tax resistance events in the 21st century include the Tax protest and strike in Romania in 2010; the Nepalese doctor s who planned to engage in tax resistance in 2010 to protest the government and the organized resistance to paying the Mafia in 2006. (Burg, 2004).

APPENDIX I

Formatting guidelines for *Acta Criminologica*

Acta Criminologica: Southern African Journal of Criminology GUIDELINES FOR AUTHORS

REFERENCING GUIDELINES:

Notes: References and citations should be prepared in accordance with the *Acta Criminologica* **adapted APA format** (see below examples of various reference listing types). The ‘in-text’ referencing format is followed by the Journal with full source referencing information listed under the heading:

LIST OF REFERENCES (uppercase), which list to be placed at the end of your article. All sources in the List of References must be listed alphabetically by author(s)’ surname(s), according to the following examples. Please note the indenting of the second and additional lines of a reference listing when longer than one line. Use of full stops in listing: Generally, each separate piece of information is standardly followed by a full stop. A comma only used if part of that one piece of information. Exception being the use of the colon [:] – and not a dash [-] or semi-colon [;] – in a split article or book title and after the place of publication before the name of the publisher.

LIST OF REFERENCES [EXAMPLES]:

- African Commission on Human and Peoples’ Rights, Organisation of African Unity (OAU). 1999. *African Charter on the Rights and Welfare of the Child*. Available at: http://www.childinfo.org/files/fgmc_AfricanCharterontherightsandwelfareofthechild.pdf (accessed on: 14 January 2005).
- Alberts, C. & Meyer, J.C. 1998. The relationship between Marcia’s ego identity status and selected variables in an African context. *International Journal for the Advancement of Counselling*, 20(4): 277-288.
- Ammaniti, M., Van Ijzendoorn, M.H., Speranza, A.M. & Tambelli, R. 2000. Internal working models of attachment during late childhood: An exploration of stability and change. *Attachment and Human Development*, 2(3): 328-346.
- Anon. 2005. Worry over training of police units. *Eastern Province Herald*, 26 August: 3.
- Arndt, H. 1989. *Children and juveniles in prisons of South Africa*. Heidelberg: Sached/Ravan.
- Babbie, E. 1990. *Survey research methods*. (2nd edition). Belmont, CA: Wadsworth.
- Crime Stats SA. [Sa]. *Crime Stats Simplified*. [sl]. Available at: www.crimestatssa.com/toptenbyprovince (accessed on: 15 October 2014).
- Dos Reis, K.M. 2007. *The influence of gangsterism on the morale of educators on the Cape Flats, Western Cape*. Unpublished MEd dissertation, Cape Peninsula University of Technology, Cape Town.
- Gallinetti, J., Muntingh, L. & Skelton, A. 2004. Child justice concepts. (Pp. 24-38). In J. Sloth-Nielsen. (Ed.). *Child justice in Africa: A guide to good practice*. Community Law Centre, University of the Western Cape, Cape Town.
- Leedy, P.D. & Ormrod, J.E. 2005. *Practical research: Planning and design*. (8th edition). Upper Saddle River, NJ: Pearson Prentice Hall.
- Mashaba, S. 2008. State intensifies war against drug abuse. *Sowetan*, 23 June: 5. Available at: <http://www.sowetan.co.za/PrintArticle.aspx?ID=1147429> (accessed on: 25 June 2008).
- Moffett, H. 2006. ‘These women, they force us to rape them’: Rape as narrative of social control in

post-Apartheid South Africa. *Journal of Southern African Studies*, 32(1): 129-135.
 Department of Justice, South Africa. 2008. Criminal Procedure Amendment Act 65 of 2008. *Government Gazette*, 524(31911). 18 February. Pretoria: Government Printers.
 South African Police Service. 2004. *Annual Report 2002/3*. Available at: <http://www.saps.gov.za/areport03/part6.htm> (accessed on: 19 November 2004).
 Strydom, H. & Venter, L. 2002. Sampling and sampling methods. (Pp. 56-67). In A.S. de Vos, H. Strydom, C.B. Fouche & C.S.L. Delport. (Eds). *Research at grass roots: For the social sciences and human service professions*. Pretoria: Van Schaik

Interviews

Byleveld, P. 2003. Superintendent and Commander of the Serious Violent Crime Unit, Johannesburg, South African Police Service, Johannesburg. Personal interview, 26 March.

Case Law

Holomisa v Argus Newspapers Ltd [1996] 1 All SA 478 (W)
S v Makwanyane and another 1995 (6) BCLR 665 (CC)
S v Soci 1986 (2) SA 14 (A)

International Case Law

Inter-American Commission of Human Rights. 1997. *Haitian Center for Human Rights v. United States*, Case 10.675, Report 51/96. Doc. OEA/Ser.L/V/II.95 Doc. 7 rev. 13 March.
 International Court of Justice (ICJ) (1949). *Corfu Channel Case* (United Kingdom v Albania). Judgment 9 April. Available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=1>.
 European Court of Human Rights (ECtHR), 2010. *Medvedyev a.o. v. France*, (Appl. No. 3394/03), Judgment of 10 July 2008, confirmed by the Grand Chamber judgment of 29 March 2010.
 European Court of Human Rights (ECtHR). 2011a. *M.S.S. v. Belgium and Greece*, Application No. 30696/09. Grand Chamber Judgment 21 January. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#>
 European Court of Human Rights (ECtHR), 2012a. *Hirsi Jamaa and Others v. Italy*. Judgment 23 February. Available at: <http://www.refworld.org/docid/4f4507942.html>.
 European Court of Justice (ECJ). 2012. *European Parliament v Council of the European Union*, 5 September. Case C 355/10 (2012).
 US Supreme Court. 1993. *Sale, Acting Commissioner, INS v. Haitian Centers Council*, 113 S. Ct. 2549.
 21 June. Available at: <http://www.law.cornell.edu/supct/html/92-344.ZO.html>

NOTES ON EXAMPLES:

List of References: Sources in general

The sources in the list of references must be listed in alphabetical order according to the surnames of the authors. They are not numbered.

Note that all the details of a source are given in the language of the source itself. If you were to use a German book, for instance, its title would be in German [with the English translation after it in square brackets] and the place of publication might be München, not Munich.

If multiple entries for the same author, (i.e. different publications/articles), then the author must be listed by date (oldest first) of the publication/article. If there are two or more from the same year they are indicated (again first in the year by month). For example: Jones, A. 2004a; Jones, A. 2004b; and Jones, A. 2004c... In the text such additions of a, b, c, ... would then also occur in the text reference accordingly. For example: ... (Jones, 2004c: 12).

If authors surnames are the same then the author listed first is the one with the first alphabetic initial. For example: Brown, B. comes before Brown, D.

Source references in the text:

These are indicated by the surname(s) of the author(s) and the year of publication, as well as the page number from where the reference is cited/sourced. For example, (Nkosi, 2005: 4) or Nkosi (2005: 4). If you are referencing generally some information (ideas, concepts interpretations) drawn from a publication and paraphrased them. In other words, there is no specific page number or numbers, this

can be referenced as: (Parsons, 2011: 34-41). It would not be acceptable merely to list this reference as (Parsons, 2011) with no page numbers. A reader must be able to go to the Parsons' publication and see where you obtained the general information being referred to, even if from a number of consecutive pages. If the information is general information briefly mentioned as a few concepts extracted from a whole publication, then the reference does not need to have page numbers indicated. However, page numbers must be inserted for all other references.

Note: for publications such as online journal or newspaper articles and reports with no page numbers then the appellation: np [for no page(s)] must be inserted to indicate such. For example: Staff Reporter (2016: np), ... This would be listed as follows in the List of references:

Staff Reporter. 2016. Suspect identified in Robyn Pearce murder. *News24*, 14 December. Available at:

<http://www.news24.com/SouthAfrica/Local/Peoples-Post/suspect-arrested-for-robin-pearcemurder-20161214> (accessed on: 14 December 2016).

Comma after author(s) name(s) in bracket:

The journal's preference is for a comma to be placed after an author(s) name(s) and before the year date in the bracketed reference in the body of the text. For example: ...(Moffett, 2006: 129).

Secondary referencing:

For example: Morrison (1998) (as cited in Prinsloo, 2001: 7).... This is generally not acceptable in academic terms. Author(s) should go to the primary source. In other words, in the above example that would be: Morrison (1998), and reference the information used directly from the relevant page numbers in the Morrison publication. However, sometimes in a newspaper or journal article a specific person is quoted. In other words, such person does not have a primary publication from which the information is being quoted but was interviewed by the writer. In such circumstances the person so quoted can be referenced accordingly by name as, for example, ...National Police Commissioner Selebi (as cited in Mashaba, 2008) said that the SAPS must fight drug dealers on the streets...

Three or more authors for one publication: Use of 'et al'

In the text, the first time three or more authors are cited in the text then all authors' names to be indicated in the reference. Thereafter only the first author name and the term 'et al' to be used. For example:

Ammaniti et al, 2000: 12 ('et al' is not used in the List of References). The term 'et al', although a Latin term which means 'and others', is no longer italicised. Also, if there are only two authors both authors surnames are used for every in-text reference to them and not et al in place of the second author's name.

Note: There is no full stop after et al but only a comma before the year date.

No author identified:

If no author is identified the appellation: Anon. must be used. In newspaper articles cited if there is no author listed for the particular article, then the news source should then be put as the author. For example: SAPA, Reuters or AFP. In the List of References, a month date is always added after the newspaper title. For example: 6 July (year date comes after author), followed by the newspaper page number (if available) where the cited article appeared.

Author(s) initials followed by date of publication

All multiple initials are separated by full stops, but without any spaces in-between. Date of publication follows author(s)'s surname (followed by a comma) and initials (with full stops with no space after each initial) and date, which is itself followed by a full stop. The journal's preference is for no bracketing of the date. For example: Smith, A.J. 2015. *The art of murder*. Cape Town: Zebra Books.

Titles of article, chapter or document, place of publication and publisher's name

Titles of article, chapter, document being referenced only has the first letter of the first word (unless a Proper Noun) as a capital (uppercase). This rule also applies to the first word after a colon in the title. However, all words in the title of a journal (except pronouns) have the first letter as a capital. Only

book, journal and newspaper titles (not chapters or article titles) are *italicised*.

Place of publication is followed by a colon and then the publisher's name. Note: Little known places of publication: Sometimes the place of publication is not a well-known city/town, so either the country or state is inserted after it. For example: Cullompton, Devon, UK; Baton Rouge, FL; Seven Oaks, CA; Aberdeen, Scotland. The acronym for the American states is usually given in such cases. FL = Florida; CA = California. Sometimes because a city or town occurs in two or more countries, which country it occurs would also be provided. For example: Albany, NY, USA and Albany, UK. Publishers: You only need to give the publishers name and not for instance 'Pty Ltd', or 'Inc.' or 'Books' or even 'Publishers' (There are a few exceptions to this rule, namely: Oxford University Publishers but 'Publishers' would not be added to a publishing company, since that is their only business. For example, it would only be 'Sage' and not 'Sage Publishers').

Volume and edition numbers

The volume and/or edition numbers are not part of the Journal title, (i.e. are not italicised). Note the volume number is followed by issue/edition number in brackets followed by a colon and the journal page numbers of the specific article. No use is made of the abbreviations: Vol. or No. Journal titles are not abbreviated or given acronyms when referenced in the text for the first time. For example: SAJJCJ is written out as: *South African Journal of Criminal Justice*, the first time it is used as a reference in the text (and in the List of References) with the acronym in brackets after the full title, and thereafter you can use the acronym in the subsequent reference listings to this journal in the text.

Chapter in a publication

Please note the specific listing for a chapter in a publication, as well as the insertion after the chapter title of the page numbers in which it appears in the publication. If only one editor for the publication this is indicated in brackets after the editor's surname (no full stop after surname before the bracket) as:

(Ed.). ...while multiple editors will be the abbreviation: (Eds). Note editor(s) initials come before their surname in the listing of the publication in which a chapter is listed. Note no full stop after the abbreviation 'Eds' (inside the bracket) and the cap 'E' in both usages and a full stop after the closing bracket.

The chapter title is followed by the page numbers of the chapter in the publication. The page numbers must also be indicated in brackets immediately after the chapter title and preceded by the letters 'Pp.' The page numbers bracket is then closed by a full stop, hence the 'In' (in which publication the chapter appears) has a capital letter.

If a publication has a number of editions, the specific edition consulted must be listed. In the example above, note the edition number is not written out as 'eighth' but as 8th. Also, that it is in brackets after the publication title, as well as the closing bracket is followed by a full stop. Note that 'edition' is not abbreviated at all.

No date or place of publication:

If the date of the publication is unknown, the abbreviation of the Latin expression '*sine anno*' (without a year): sa, is used in square brackets. For example:

According to Smith ([sa]: 12) there are... [or]...in that regard (Smith [sa]: 9) reports the following...

If the place of publication is unknown, the abbreviation of the Latin expression '*sine loco*' (without place): sl, is used in square brackets. In the List of References, use of 'sa' and 'sl' would appear as the following:

Smith, A.B. [Sa]. *Criminological approaches for Africa*. [Sl]: Wander Books

Note: In the list of reference sources, the 'S' of both *sine anno* and *sine loco* is capitalised (upper case) because it introduces a new element of the entry. In the in-text reference, however, the 's' is written with a small letter (lower case). As with the abbreviation s.v. (*sub verbo*) both abbreviations: sa and sl; are placed in square brackets in the listings.

The abbreviation cf. and use of 'see' / 'see also'

The abbreviation: cf. is short for the Latin term '*confer*', meaning 'compare', and is sometimes used

when wanting to refer a reader to other material in order to make a comparison with the topic being discussed, as in ‘see, by way of comparison’, i.e. to reference a source that provides contrasting or opposing information.

But when you want to refer a reader to other similar work linked to the topic under discussion the term: ‘see’ or ‘see also’ is placed in brackets before the reference source so as to indicate sources of additional examples or supporting evidence.

Referencing information from the internet:

This is treated exactly the same as if it is a publication. In other words, look for an author. Sometimes this is merely the organisation on whose website such information has been found. Then try and establish a date for when the downloaded document was placed on the website or the report (often if in pdf format) published. If the date of the publication is unknown, then use the abbreviation ‘sa’ and no place of publication indicated then the abbreviation ‘sl’ (as above example in the List of References [examples]). You must indicate a title for the document – this can be the first heading of the document.

Then a publisher, usually the website organisation. For example: Consumer Goods Council of South Africa (CGCSA). No place of publication (sl) needs to be inserted unless indicated in the report/document downloaded.

Then the use of the terms: Available at: ...followed by the URL web address for the downloaded document. This is followed (in brackets) with the terms: (accessed on: ...or alternately the term: retrieved on: ...)(again your choice of which of these two terms to use. Note: colon use after ‘at’ and ‘on’); followed by the date when such internet document was downloaded. The date should be written out as 6 March 2012 (required date format to be: dd-mm-yyyy, i.e. date of month, month name and year) but the format 06/03/2012 or 06-03-2012, can also be used. Please do not use the reverse format where the year appears first. Whichever of the three date formats above chosen and used by author(s), should be applied consistently throughout the submitted article. Note that the bracketed term (accessed on:...) or (retrieved on:...) is followed by a full stop. Also note that the term: ‘Available’, has a cap ‘A’ but ‘accessed’ (in brackets) lower case ‘a’ is used – and that there is no full stop after the URL web address before the bracket (accessed on:...).

*****NOTE: Wikipedia** references are not a primary source for referencing and are not academically acceptable in this journal’s articles.

Referencing videos from the internet:

A video (e.g. on *YouTube*) will be listed similarly to an internet listing (so that a reader can also find where to view it on the internet), namely: An Author(s)/Organisation(s)’ name(s) must be indicated. In other words, the person or organisation that uploaded it on *YouTube*. If none can be discerned, then Anon. (for Anonymous) must be used to indicate an author/producer of the video in question. The year date (if a video indicates such) followed by the title of the video; the month date when it was taken; and the URL where the video can be found.

For example:

Crime Watch. 2014. *Hijacking in Chatsworth*. 5 May. Available at: <https://www.youtube.com/watch?v=7IaaXp92pFY> (accessed on: 20 June 2014).

The in-text reference to the video information used would then simply be: ...(Crime Watch, 2014).

Often the person(s), organisation or even a newspaper that uploaded the video will only appear in first few frames once the video is started. That would then be the identification of the uploader even if it has been uploaded onto the *YouTube* site. In other words, *YouTube* is not the originator of the video but is merely the hosting website. Another example of video referencing is as follows:

Radebe, M. 2015. WATCH: Daylight robbery at Kempton Park petrol station. *Facebook/ENCA*, 20 January. Available at: <http://www.enca.com/south-africa/watch-daylight-robbery-kemptonpark-petrol-station> (accessed on: 22 June 2014).

The above example was posted by a Mr Radebe to his personal *Facebook* page but then found its way to the eNCA news website, hence the joint *Facebook/ENCA* as such in the List of References. All of this information is usually available on or in the actual video – author(s) must simply know for

what they are looking and go looking for it on the viewed video being cited.

Encyclopaedias or dictionaries:

When you refer to encyclopaedias or dictionaries, you follow these in-text examples:

...(EB, 1964: s.v. "optics")... [Here, EB refers to Encyclopaedia Britannica].

Or

...(Collins, 2003: s.v. "marijuana")... [Here Collins refers to the Collins Dictionary].

Note: 's.v.' is an abbreviation of the Latin expression '*sub verbo*', which means 'under the word'.

In the List of References this would then be listed as:

Collins Dictionary. 2003. [S.v.] "marijuana". [SI]: Harper Collins Publishers (GB). Available at: <https://www.collinsdictionary.com/dictionary/english/marijuana> (accessed on: 25 July 2015).

Note: The placement in square brackets of s.v. with the 'S' a cap. ([SI] = *sine loco*.)

Referencing legislative Acts:

Note how legislative Acts are listed with the provision of as much detail as possible. For example: Department of Justice, South Africa. [as the authoring government department and country of origin of this particular Act.] The title of the Act [note insertion of the Act's number in title], *Government Gazette*, [which is italicised – treated as a journal publication]. 524(31911). [the GG volume and issue no]. Pretoria: [place of publication] Government Printers [as the publishers/printers]. 18 February [date of GG and/or date Act assented to by the State President]. All this information is available on the actual published Act document in the *Government Gazette*. If no department is linked to the Act, please use:

Republic of South Africa, or simply: South Africa, as the author.

If necessary, content references in the form of endnotes may be used to provide additional information or explanation but all source referencing follows the 'in-text' referencing style – and not footnote/endnote referencing style. (Note: Endnotes to appear just before the List of References and in TNR font 10).

South African Case Law:

Case law (cases and judgments) are usually reported in various so-called (South African) Law Reports.

For example:

All SA = All South African Law Reports;

BCLR = Butterworths Constitutional Law Reports;

SA = South African Law Reports.

The examples above, if you were referencing information from them, would be listed in your List of References, as exactly as they appear above (under the heading: Case Law in your List of References and listed alphabetically). However, in your in-text referencing they would appear as follows (shortened): (*Holomisa v Argus Newspapers Ltd* [1996]) (If you have a page number from the court records – usually the judgement/decision document as appearing in the specific Law Report, then it can be inserted as part of your reference.)

Note the following: The names of the litigants in the examples of cases are *italicised*. Only first respondents surname is given. Other parties to the case are indicated as 'and another' or 'and others'. The date of the above *Holomisa*... example is in square brackets – only to indicate that 1996 was when the case was first lodged in court and also indicates that [1996] is not the date – which might be a few years after – when the case was finalised and judgement given. Specific **sections** of a case are referred to with reference to either the page(s), for example: 263H, where it is indicated in the reported volume, or a paragraph(s) of the judgment (as has become customary for judges in their judgements nowadays).

The paragraph is identified by way of square brackets, for example: [137]. The letters after the date indicate in which Law Report (e.g. Butterworths Constitutional Law Reports = BCLR) the case was reported, followed by page numbers of that specific Law Report edition followed in brackets by the Court Division in which the case was heard. The reference to the court is in the letter or letters in the last parenthesis of the citation.

International Case Law

With the digitisation of much of international (Europe, UK and USA) case law, the tendency in listing such international cases has been towards more detailed referencing so that researchers can better track and find such international case law. The examples provided are from USA and Europe as preferred referencing examples to be used in this journal for international case law referencing. For example, in text referencing as follows:

....the subsequent decision of the Inter-American Court of Human Rights in the *Haitian Center for Human Rights v. United States* case (Inter-American Commission of Human Rights, 1997)... [or] ...the Refugee Convention and article 33 fall short of applying on the high seas, (US Supreme Court, 1993: 2549) the subsequent decision of...

[see examples above for how to list in the List of References]

TECHNICAL AND FORMATTING REQUIREMENTS:

Articles that are submitted for consideration should adhere to the following minimum standards and technical and formatting requirements before submission:

1. An **electronic copy**: document (article) file to be e-mailed to the Editor-in-Chief in MS Word. The file name of the article manuscript emailed attachment to be labelled as follows: author(s) surname(s)+shortened title of article.
2. **Length**: Contributions must be submitted in English and should preferably not exceed **20** typed A4 pages (electronically minimum word count should not be less than **7 000** words (approx. **15** pages) or exceed **10 000** words of **text** (approx. **20** pages) (excluding endnotes and list of references) (Extra page fees charged if 20-page limit exceeded.)
3. The **title** of the article (in uppercase/CAPS) and the **author(s) full first name and surname(s)**, designation/title, institutional affiliation, address & contact email should appear on the first page.
4. A **summary/abstract** of approximately 150-300 words on the first page of the submitted article must also be included. The abstract to be **italicised**.
5. **Keywords**: Directly below the abstract paragraph insert **Keywords** (maximum of **TEN (10)** – approximately **TWO (2)** lines of keyword terms.
6. If **funding** has been received from your University/Organisation or external funders for the research on which this article is based, such support funding can be acknowledged in the first footnote.
7. **Line spacing**: The document should be typed in A4 format using **SINGLE (1)** line spacing and ‘normal margins’ selected. No double spacing between words or after full stops and commas. Only single spacing throughout text. No line space to be inserted between paragraphs except between an ending paragraph and a following heading/sub-heading.
8. **Paragraph indenting**. All paragraphs first line to be indented except for first paragraph after a heading/sub-heading. Please do not use the automated ‘space after a paragraph’ or ‘space before a paragraph’ function in MSWord.
9. Font size of article text (body): **Times New Roman 12**.
Exceptions: List of References: Times New Roman 11 font, and Endnotes: Times New Roman 10 font.
10. **Page numbers**: are also **TNR 12** font and centred in the **footer** section of each page.
11. **Spelling**: Please make use (choose this as your default option) of the UK/SA spellcheck and NOT the USA one. For example, replace the ‘z’ in organization (US spelling) with an ‘s’ = organisation (UK spelling).
12. **Use of long quotes and italics**:

Long quotes are placed in a separate paragraph and must be indented from both sides. But please note that while making use of an indented paragraph for direct quotes longer than three lines, with the increasing use by this journal of submitting articles before publication to the software programme *Turnitin*, this programme sometimes does not distinguish between a quote without quotation marks and ordinary text, even if a long quote has been indented from both sides. Accordingly, author(s) are advised to continue to make use of quotation marks with a longer than

three lines quote indented paragraph. For indenting such paragraph use the: 'Increase Indent' button in the ribbon icon at the top of the page in your document for the left indent for the whole paragraph and then use the curser in the space ruler to move the right indent in (left) one indent space. For example:

“Quotes that are **45 words** long or longer (three lines and more) should be indented from both sides (of the paragraph) as in this example. If the quote is shorter, then it needs to be imbedded in the text of a paragraph and set in between **double** quotation marks, (i.e. ‘inverted commas’). Quotes from published information are generally **not italicised**. However, actual words of interviewed respondents are recommended to be italicised. Field note comments by the researcher on the respondent’s responses (in the italicised responses) are not italicised but are placed in square brackets [...], note not round brackets (...). For example: *‘I did not commit the crime but the policeman [sic.] they abuse us foreigners because me I was just sitting down with my friends and just talking stories, suddenly police came and arrest us.’* An additional use of italics is for all non-English words. For example: ...Another participant said: *‘Ek sal dit nooit vergeet nie’*. [I will never forget it] (note the provision of an English translation after such use, in square brackets). All indented quotes need to end with the precise source reference placed in brackets and closed with a full stop” (*Acta Criminologica* Editor, 2013: 7).

Note: Even though the above longer-than-three-lines of text has been indented (from both sides) the quotation marks (double inverted commas) usage is retained. This is for technical reasons if the submitted article is run through the Turn-it-in programme so that it can recognise direct quotes. If these are not retained Turn-it-in will not recognise the whole paragraph as a word-for-word direct quote from an original source.

13. **Use of single quotation marks:** Single inverted commas are only used when you want to emphasise a term or a common saying especially when it is not a direct use of words from another author. For example: ‘Zero Tolerance’ or ... a ‘live-and-let-die’ approach. Single quotation marks are also used for a quote within a quote. For example: “It was patently obvious from the research that police officers use of force was not following the regulations. As indicated by one interviewee: *‘they shoot wildly in a crime situation’*. This indicated that they needed to be trained to follow the set rules” (Mistry, 2003: 6).
14. **Text justification:** Text is always full justified (squared), except for article title, author(s) name and the heading: *ABSTRACT* – all of which are centred – on the first page of the article. One further exception being the numerals in a table that are column centred.
15. **Headings and sub-headings:** All headings and sub-headings must be **bold**. There is **no use of numbering or underlining** of headings in this journal. Only three levels of headings’ format to be used, namely:
 1. Main headings which are: **UPPERCASE (CAPS)**;
 2. 2nd level, i.e. sub-heading, only the first letter of the first word in the heading is a CAP unless it is a proper noun. For example: **Crime in Cape Town’s informal settlements**
 3. 3rd level sub-sub-heading is indicated in bold and italicised with the same CAPS convention for 2nd level heading. For example: ***Crime findings from the Crossroads informal settlement.***

Note: All headings do not have a full stop at the end.
Also note: that there is no line spacing between a heading or sub-heading and the immediate following paragraph, a line spacing is inserted only before a heading and the preceding paragraph.
16. Use of **dates** in text – as follows: 11 September 2001 and not September 11, 2001. Also no use of abbreviations as in 1st, 2nd or 3rd just 1, 2, 3... In the text do not use the date format of 11-09-2001 or 11/09/2011, but write out month name as indicated in above example.
17. Use of **tables, figures, graphs, charts** and **diagrams** in text: These render the layout difficult and

should be used **sparingly**. All diagrams and tables must be numbered sequentially and referred to in the text. For example: In Table 2 the falling statistics for the crime of murder can be discerned over the period 2000/01 to 2005/06. The use of such diagrams or tables must have a heading (also to be made bold) before the table or diagram and not after (below) it.

For example:

Table 2: Statistics on violent crimes during 2000-2006

CRIMES 2000/01 2001/02 2002/03 2003/04 2004/05 2005/06

Murder 21 758 21 405 21 553 19 824 18 793 18 545

Attempted Murder 28 128 31 293 35 861 30 076 24 576 20 553

Assault GBH 275 289 264 012 266 321 260 082 249 369 276 942

Robbery Aggravating 113 716 116 736 126 905 133 658 126 789 119 726

TOTAL 438 891 433 446 450 640 443 640 419 527 435 766

(Source: SAPS, 2010: 3).

Note the following technical points in the above table: A colon and a tab space to be inserted in the

heading after the table/graph/figure/chart number before the title of the table/graph/figure/chart.

Also a line space inserted after the heading and before the actual table or diagram/figure/chart.

Numbers/figures in columns of a table are centred, as well as the heading/title of each column in which figures appear. The source reference is also right justified to appear at the end of the line below the table. Please do not insert any shading into any table, keep the table cells clear. Table outlines must also be inserted but as single lines not double.

18. Use of **bulleted lists**: when bullets (list of things or ideas not full sentences) are used, each bullet is closed with a semi-colon, except the second last one and the last one that have respectively a semi-colon followed by an 'and', and a full stop at their end. Format wise with bulleted lists, if each bullet or bullet number is only one or possibly two lines, no spacing, but if all bullets in list are consistently longer than two-three lines put in a space in between each bullet. A line space is also inserted before the whole bulleted list and after at the end to create a space between the paragraphs and the list. In your bulleted list please use the symbol: • and not symbols such as: », √, *, #, Δ, ◇, ■. If your list is numbered, please use the numbering format as follows: 1. and not 1).
19. Use of **footnote/endnote numbers in text**: Footnote/endnote reference numbers must be placed in the text after the full stop and not before it, with no space between the two. The same for after a comma (in the middle of a sentence), (i.e. not before but after the comma). Technically footnote/endnote text is TNR 10 font, single spacing, square justified with no space after the footnote text paragraph.
20. Use of **numbers/figures in text**: At the start of a sentence, any number is also always written out. For example: Thirty-three. (Note: written out double/triple figure numbers from 21 and above, have a hyphen. For example: Sixty-three or One-hundred-and-thirteen). Also percentages at the beginning of a sentence as: Seventy-five percent.... Note the use of percent and not % when a percentage is written out, as well as when used in the text (the percentage symbol % to be used in tables and when placed in brackets in the text). Double figure numbers when written out in the text always have a hyphen. For example: twenty-five or thirty-six or one-hundred-and-six. No comma is used to indicate thousands – only a space. For example: 100 000 or 12 000 or USD\$1 000 000, and not 100,000 or 12,000 or USD\$1,000,000. Commas or full stops are only used to indicate fractions (as in percentages) in numbers of a decimal. For example: 76,25 percent or 76.25 percent.
Spacing: no spacing after currency denominator. For example: USD\$ sign and the figure (amount).
For example: \$5 000 or R1 250. In addition, there is no space between a number and the percentage sign (e.g. 80% and not 80 %, with a space in-between). Other use of spaces: No space

before a colon but a space after it. For example: The title of the chapter is: Analysis of research findings....

and NOT....The title of the chapter is: Analysis of research findings...

- 21. Titles of persons:** if part of a person's name should be abbreviated. For example: Maj-Gen. Smith, and not as Major-General Smith. Note the hyphen and the full stop at the end of the abbreviation.

For abbreviations a full stop is always used unless the abbreviation ends in the same letter as the long version. For example: Dr for Doctor; Mr for Mister... Other examples: Prof. = Professor; Dir = Director; Capt. = Captain; Maj. = Major.

- 22. Surnames**, such as Du Plessis, De Villiers, Du Preez, Van de Merwe, Van Vuuren... if used in text or as a bracketed reference without initials will have the first letter as a cap (e.g. 'd' or 'v' would be as a cap 'D' or 'V'). For example: (Du Preez & Van der Merwe, 2008: 4-6). Or in text as:

According to Du Preez and Van der Merwe (2008: 4-6) the extreme overcrowding in prisons arose when..... Double-barrelled surnames are hyphenated with both names having the first letter a cap.

For example: Baxter-Bruce or Cole-Niven. An exception to this rule is a surname, such as Jansen Van Vuuren.

- 23. Use of abbreviations and acronyms:** When used in the text for the first time they are placed in brackets after the full term. For example: The South African Police Service (SAPS); The South African Revenue Service (SARS); The Private Security Regulatory Authority (PSIRA), Automated Teller Machines (ATMs)... Thereafter the abbreviation or acronym can be used. All abbreviations or acronyms are uppercase. Each letter in the abbreviation or acronym does not have a full stop in between or after each letter. For example: Not P.S.I.R.A. but as PSIRA. Also note the small 's' in the last example which indicates plural. Avoid using acronyms that could refer to different things:

PoP = Public Order Policing or Proof of Payment. SOP = Standard Operating Procedure or Sea Operating Platform. Also acronyms that your reader might not readily recognise, know about or refer to a technical process. For example: Opioid Substitution Therapy (OST); ENECC (Eskom Network Equipment Crime Committee) – neither of these are either well known or likely to be recognised and understood what the acronym stands for. The guiding principle in the use of acronyms and abbreviations is that if they are universally used and well known. For example: UN (United Nations); USA (United States of America), etc.

- 24. Use of the apostrophe 's':** There is much confusion about the use of the apostrophe (single inverted comma) before an 's'. For example: ...it was the company's vehicle that was being used. In this example the apostrophe before the 's' indicates possession. The apostrophe is NOT used when it indicates numbers or plural. For example: ...in the 1980s and 1990s it became common to..., ...many ATMs were robbed... And NOT as: ...in the 1980's and 1990's it became common to..., ...many ATM's were robbed...(1980s or 1990s have no apostrophe since they are not denoting possession but the shortened version of the eighties/nineties which are numbers/plural.) Other examples of apostrophe denoted possession: Peter's car... The Service's obligations.

- 25. The use of a colon and not a hyphen.** The colon should ALWAYS be used in circumstances where you are listing something and not as a hyphen – which indicates a break. For example: Deter: A
deterrent factor is... and not as: Deter – a deterrent factor is... The colon is also used for instance: ...the following issues will be discussed, namely: ...and not:...the following issues will be discussed, namely – ...

- 26. Use of e.g., i.e., etc.** The use of the 'for example' abbreviation always has full stops after each letter = e.g. The same for 'in other words' or 'that is' = i.e. In addition, the abbreviation 'etc.' (for etcetera) always has a full stop after, irrespective of whether it occurs in the middle of a sentence or at the end. All three abbreviations have a comma before them. For example: there

are many factors, such as lighting, weather conditions, sun rays, small rodents, etc. that affect an alarm being activated.... It is preferable, however, that all these abbreviations are ONLY used when placed in brackets but if used in a text full sentence or at the beginning of a sentence then to be preferably written out. For example, the written words (e.g. as used in brackets).

27. Use of abbreviation for percentage. If used in a sentence, then to be written out as percent (note UK spelling and not as per cent) but when used in a table or in brackets then the symbol % is to be used.
For example: Five percent and as (5% in brackets or in a table).
28. In a sentence only the first letter of the first word is uppercase (CAP) unless it is a proper noun.
For example, Cape Town. In other words, when used in a sentence, other than as the first word of the sentence.
29. A legislative **Act** always has a cap 'A' even when used on its own to refer to or describe a specific Act. For example: The Act clearly states that it is illegal to prescribe such activity..... First letter of Act's title also a cap, (e.g. The Criminal Procedure Act).
30. Use of '**and**' and **ampersand (&)**: The ampersand symbol '&' is not used in the text at all. For example: According to Steyn and Jones (2010: 12) these types of crime were.....; whereas & will be used when authors are placed in brackets as an in-text reference. For example: ...An analysis of incidents showed that these types of crime were becoming more prominent over the last two years (Steyn & Jones, 2010: 12). The & is also used when listing multiple authors in your List of References. Also note that in the list of references there is no comma after the initial of an author before the ampersand. For example: Steyn, L. & Jones, P. 2010. *The research methodology for*..... Whereas there is a comma after the full stop after initial(s) (except with the use of the & as in the example above) when more than two authors are listed. For example: De Vries, I.M., Schnetler, J., Steyn, L. & Jones, P. 2010. *The research methodology for*.....

APPENDIX J

Article Three as submitted to ACTA CRIMINOLOGICA

CONCERNING REFINING SOUTH AFRICA'S FIGHT AGAINST MONEY LAUNDERING: A COMPARISON OF LEGISLATION ON MONEY LAUNDERING OF THE UNITED KINGDOM, UNITED STATES OF AMERICA, AUSTRALIA AND SOUTH AFRICA

Mrs. Ansia Storm
Senior Lecturer
North-West University
Hoffman Street
Potchefstroom
2531
E-mail: ansia.storm@nwu.ac.za

Abstract

The global fight against money laundering is an ongoing battle. Legislation and the enforcement thereof is critical to combat money laundering. The purpose of the study was to compare obtainable legislation of the United States of America, United Kingdom, Australia and South Africa to determine if South Africa's legislation can be improved. This was done by studying the relevant literature and legislation of all four countries. The findings, that there is some changes that can be made to assist South Africa's legislation as well as the enforcement thereof, were confirmed by analysing the legislation available. The countries' perception indexes were also studied. In theory, the results have proven that although South Africa's legislation is on par with that of the United States of America, United Kingdom and Australia, there is some enhancement that can be considered. Effective enforcement of the legislation is an important issue that requires urgent attention.

Keywords: money laundering, evaluation of legislation on money laundering, South Africa, enforcement of legislation.

BIBLIOGRAPHY

18 U.S Code § 1956: Laundering of Monetary Instruments **see** United States.

18 U.S Code § 1957: Engaging in monetary transactions in property derived from specified unlawful activity **see** United States.

About AUSTRAC. 2016. Australian Government: Australian Transaction Reports and Analysis Center. <http://www.austrac.gov.au/about-us/austrac> Date of access: 4 April 2017.

About CIA. 2016. Central Intelligence Agency: About CIA – CIA Vision, Mission, Ethos & Challenges. <https://www.cia.gov/about-cia/cia-vision-mission-values> Date of access: 22 March 2017.

About CTC. 2011. About us: Carnilinx Tobacco Company www.carnilixtobacco.com/about.html Date of access: 5 December 2017.

About IRS. <http://www.irs.gov/uac/about-irs> Date of access: 28 March 2013.

About the NPA. 2017. National Prosecuting Authority of South Africa: Home – About the NPA. <https://www.npa.gov.za/node/8> Date of access: 11 April 2017.

About the Office. 2017. The United States Department of Justice: About the Department of Justice. <https://www.justice.gov/dag/about-office> Date of access: 30 October 2017.

About TransUnion. TransUnion: About Us. <https://www.transunion.co.za/about-us/about-transunion> Date of access: 5 December 2017.

ACAMS (Association of Certified Anti-money laundering Specialists). 2017. FBI Deploys Specialized Unit against Professional Money Launderers. <http://na-sj13.marketo.com/rs/582-QUS->

045/images/FBI_Deploys_Specialized_Unit_against_Professional_Money_Launderers.pdf Date of access: 28 February 2017.

Adams, C. 2001. For good and evil: The impact of taxes on the course of civilization. Madison Books.

https://books.google.co.za/books?id=YKMhQYfkJ5UC&pg=PA75&lpg=PA75&dq=history+of+tax+evasion+rome&source=bl&ots=OI2J_5M5cS&sig=6v5rC-4jWrvrQcTqW7TfgRKL9NA&hl=en&sa=X&ved=0ahUKEwj42u2X7rrLAhXGnBoKHVuXD6EQ6AEIQzAI#v=onepage&q=history%20of%20tax%20evasion%20rome&f=false

Date of access: 21 April 2017.

Africa Check. 2015. SONA 2015: More key claims fact-checked.

<https://africacheck.org/reports/sona-2015-more-key-claims-fact-checked/> Date of access: 17 October 2019.

Africa Check. 2017. *SA president Jacob Zuma charged with 18 crimes of fraud & corruption – not 783*. <https://africacheck.org/spot-check/sa-president-jacob-zuma-charged-18-crimes-fraud-corruption-not-783/> Date of access: 22 February 2018.

AG for Hong Kong v Reid. 1994. **see** United Kingdom.

Agyemang, K.O. 2015. The World Bank: Higher salaries can worsen corruption.

<http://blogs.worldbank.org/africacan/higher-salaries-can-worsen-corruption> Date of access: 1 July 2017.

Al Capone. 2012. *The Biography Channel website*. <http://www.biography.com/people/al-capone-9237536>

Al Capone. 2013. *The Spartacus Educational website*.

<http://spartacus.schoolnet.co.uk/USAcapone.htm>

Amaro, S. 2017. Deutsche Bank fined \$204 million by British regulator FCA for serious anti-money laundering control failings. CNBC. <http://www.cnbc.com/2017/01/31/deutsche-bank-fined-204-million-by-british-regulator-for-serious-anti-money-laundering-control-failings.html> Date of access: 9 February 2017.

Alcott, A.B. Amos Bronson Alcott Quotes. http://www.notable-quotes.com/a/alcott_amos_bronson.html Date of access: 16 November 2018.

ANC (African National Congress) Resolutions. 2007. 52nd National Congress: Resolutions. <http://www.anc.org.za/content/52nd-national-conference-resolutions> Date of access: 12 July 2017.

Anderson, C. 2010. Presenting and Evaluating Qualitative Research. *American Journal of Pharmaceutical Education*. 2010; 74 (8) Article 141.

Andrews, P. 2017. TimesLive: South Africa's problems lie in political negligence, not its Constitution. <https://www.timeslive.co.za/politics/2017-07-05-south-africas-problems-lie-in-political-negligence-not-its-constitution/> Date of access: 16 December 2017.

Anon. Research Methods: Understanding epistemology.

http://linguistics.byu.edu/faculty/henrichsenl/researchmethods/RM_1_02.html Date of access: 31 October. 2013.

Anon(a). Research Methods: Understanding epistemology.

http://linguistics.byu.edu/faculty/henrichsen/researchmethods/RM_1_02.html Date of access: 31 October. 2013.

Anon(b). History: Sir Robert Peel's Nine Principles. <http://www.nwpolice.org/inside-new-westminster-police-department/history/> Date of access: 22 February 2017.

Anon(c). Parliament: Living Heritage. The Settler Colonies: Australia.

<http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/the-settler-colonies-australia/> Date of access: 23 June 2017.

Anon(d). Parliament: Living Heritage. The Settler Colonies: South Africa.

<http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/the-settler-colonies-south-africa/> Date of access: 23 June 2017.

Anon(e). Principles of Sociological Inquiry: Qualitative and Quantitative Methods. Inductive or deductive? Two Different Approaches. https://saylordotorg.github.io/text_principles-of-sociological-inquiry-qualitative-and-quantitative-methods/s05-03-inductive-or-deductive-two-dif.html Date of access: 17 June 2019.

ANONa. History: Sir Robert Peel's Nine Principles. <http://www.nwpolice.org/inside-new-westminster-police-department/history/> Date of access: 22 February 2017.

ANONb. Parliament: Living heritage. The Settler colonies: Australia.

<http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/the-settler-colonies-australia/> Date of access: 23 June 2017.

ANONc. Parliament: Living heritage. The Settler colonies: South Africa.

<http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/the-settler-colonies-south-africa/> Date of access: 23 June 2017.

Anon. 2008. IOL News – Politics: ANC defends Scorpions disbandment.

<https://www.iol.co.za/news/politics/anc-defends-scorpions-disbandment-411570> Date of access: 18 July 2018.

Anon. 2012. Sars says Malema owes R16m in tax. *Mail and Guardian: National*.
<http://mg.co.za/article/2012-09-23-sars-says-malema-owes-r16m-in-tax> Date of access:
 15 April 2013.

Anon. 2015a. Jackie Selebi: A spectacular fall from grace.
<http://www.news24.com/SouthAfrica/News/Jackie-Selebi-A-spectacular-fall-from-grace-20150123> Date of access: 12 May 2017.

Anon. 2015b. The history of policing in the West. (*In Encyclopaedia Britannica*).
<https://www.britannica.com/topic/police/The-history-of-policing-in-the-West#toc260917> Date
 of access: 28 February 2017.

Anon. 2016. *R30m fine: Sarb nails 5 banks after money-laundering probe*. Fin24.
<http://www.fin24.com/Economy/r30m-fine-sarb-nails-5-banks-after-money-laundering-probe-20160808> Date of access: 9 February 2017.

Anon. 2016. Who exactly are the South African Police Unit, the Hawks?
<http://www.sapeople.com/2016/05/16/who-exactly-are-the-south-african-police-hawks> Date
 of access: 10 April 2017.

Anon. *Money Laundering: on overview*. https://www.law.cornell.edu/wex/money_laundering
 Date of access: 8 February 2017.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 **see** Australia.

Applying for Jobs. Secret Service: MI5. <https://www.mi5.gov.uk/careers/applying-for-jobs>
 Date of access: 26 December 2017.

Archibald, S. 2004. Mail&Guardian: Ngcuka was not 'robust enough'.
<https://mg.co.za/article/2004-07-26-ngcuka-was-not-robust-enough> Date of access:
 11 August 2017.

As Maine Goes: A history of tax evasion. 2012.
<http://www.asmainegoes.com/content/history-of-tax-evasion> Date of access: 15 April 2017.

ASlstatsæter, A., Johanesen, N. & Zucman, G. 2017. NBER Working Paper Series. *Who owns the wealth in tax havens? Macro evidence and implications for global inequality*.
<http://gabriel-zucman.eu/files/AJZ2017b.pdf> Date of access: 23 February 2018.

Asset Forfeiture Unit. 2017. National Prosecuting Authority of South Africa: NPA Business Units – Asset forfeiture unit. <https://www.npa.gov.za/node/13> Date of access: 10 April 2017.

Attorney General's References No.'s 86 and 87 of 1999 [2001] 1 Cr App R (s) 141.

Attride-Stirling, J. 2001. Thematic networks: an analytical tool for qualitative research. Qualitative Research. Sage Publications. p. 385 – 404.

AUSTRAC (Australian Transactions Reports and Analysis Centre). 2012? The Australian Transactions Reports and Analysis Centre. www.austrac.gov.au Date of access: 4 March 2012.

AUSTRAC (Australian Transactions Reports and Analysis Centre). 2016. The Australian Transactions Reports and Analysis Centre: About AUSTRAC – Australia's Financial Intelligence Unit. <http://www.austrac.gov.au/about-us/austrac> Date of access: 20 August 2016.

AUSTRAC. *About Austrac*. <http://www.austrac.gov.au/about-us/austrac> Date of access: 20 August 2016.

Australia. 1953. Tax Administration Act. Common Wealth Consolidated Acts. http://austlii.edu.au/au/legis/cth/cpnsol_act/taa1953269/

Australia. 2002. Proceeds of Crime Act. <https://www.legislation.gov.au/Details/C2016C00616> Date of access: 20 August 2016.

Australia. 2006. Anti-Money Laundering and Counter-Terrorism Financing Act. Federal Register of Legislation. <https://www.legislation.gov.au/Series/C2006A00169> Date of access: 22 October 2016.

Australia. 1914. Crime Act. http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/ Date of access: 22 October 2016

Australia. 1988. Financial Transaction Reports Act. <https://www.legislation.gov.au/Details/C2016C00783> Date of access: 20 August 2016.

Australia. 1995. Criminal Code Act. http://www.opbw.org/nat_imp/leg_reg/australia/crimcode.pdf Date of access: 22 October 2016.

Australian Criminal Intelligence Commission. 2016. Australian Criminal Intelligence Commission: About us. <https://www.acic.gov.au/about-us> Date of access: 4 April 2017.

Australian Federal Police. AFP: Australian Federal Police: What we do. <https://www.afp.gov.au/what-we-do> Date of access: 4 April 2017.

Australian Federal Police. The Proceeds of Crime Act 2002. <https://www.afp.gov.au/what-we-do/crime-types/proceeds-crime> Date of access: 20 August 2016.

Australian Government. European discovery and the colonization of Australia.
<https://web.archive.org/web/20110216230554/http://www.cultureandrecreation.gov.au/articles/australianhistory/> Date of access: 31 August 2017

Australian Taxation Office. 2015. Australian Government: Australian Taxation Office: About us. <https://www.ato.gov.au/About-ATO/About-us/> Date of access: 4 April 2017.

Babbie, E. & Mouton, J. 2001. The Practice of Social Research. Oxford University Press. Cape Town.

Baker, D. 2014. The Pearce Report: does it still influence Australian legal education?
<http://www.austlii.edu.au/au/journals/JIALawTA/2014/8.pdf> Date of access: 30 August 2017.

Baker, S.E. & Edwards, R. 2012. How many qualitative interviews is enough? Expert voices and early career reflections on sampling and cases in qualitative research.
http://eprints.ncrm.ac.uk/2273/4/how_many_interviews.pdf Date of access: 1 March 2018.

Ballotpedia. Definition of "Government Transparency".
http://ballotpedia.org/Government_Transparency Date of access: 20 December 2013.

Bank of England: Prudential Regulation Authority.
<http://www.bankofengland.co.uk/pr/Pages/default.aspx> Date of access: 20 January 2017.

Banker's Academy. Anti-Money Laundering (AML) in United Kingdom.
<http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials/607-aml-uk-sp-635>

Banoba, P. 2017. Sub Saharan Africa: Corruption is a big issue in 2016 African Elections.
http://www.transparency.org/news/features/africa_corruption_is_a_big_issue_in_2016_african_elections Date of access: 2 May 2017.

Banton, M.P., Whetstone, T., Kelling, G.L., Brodeur, J. & Walsh, W.F. Police: Law enforcement. Encyclopedia Britannica. <https://global.britannica.com/topic/police> Date of access: 14 February 2017.

Barker, D. 2004. The character and recognition of legal research in Australia. The Penn State International Law Review. <http://elibrarylaw.psu.edu/pslr/vol22/iss3/7> Date of access: 17 September 2017.

Barry, H. 2014. MoneyWeb: Banks to pay R125 million in fines.
<https://www.moneyweb.co.za/archive/sarb-fines-top-four-banks-over-antimoney-launderin/>
 Date of access: 21 September 2017.

- Barry, W. 2012. Understanding OFAC – administered sanctions programs. Corporate Secretary. <https://www.corporatesecretary.com/articles/regulation-and-legal/12330/understanding-ofac-administered-sanctions-programs/> Date of access: 1 February 2017.
- Basson, A. 2010. Selebi sentenced to 15 years. <https://mg.co.za/article/2010-08-03-selebi-sentenced-to-15-years> Date of access: 12 May 2017.
- Bateman, B. 2009. Eye Witness News: Spy Tapes: Mokotedi Mpshe breached cardinal legal rule. <http://ewn.co.za/2016/04/30/Spy-Tapes-Mokotedi-Mpshe-breached-cardinal-legal-rule> Date of access: 11 August 2017.
- Bateman, C. 2019. DA softens on corruption body-independence – Paul Hoffman. BizNews. <https://www.biznews.com/thought-leaders/2019/03/04/da-softens-stance-corruption-paul-hoffman> Date of access: 27 June 2019.
- Bauer, M.W & Gaskell, G. 2000. Qualitative researching with text, image and sound. London: SAGE publications Ltd.
- Bauer, N. 2012. Hawks ready 'to arrest and charge' Malema. *The Mail and Guardian*. <http://mg.co.za/article/2012-09-02-hawks-ready-to-charge-malema>
- BBC News. 2017. Business: South Africa's credit rating has been cut to junk status. <http://www.bbc.com/news/business-39476903> Date of access: 13 July 2017.
- BBC News. 2018. Jacob Zuma: Former South African faces corruption trial. <https://www.bbc.com/news/world-africa-43426971> Date of access: 8 August 2018.
- Begley, S. & Kalb, C. 2000. Learning Right from Wrong: The fragile steps toward a child's understanding that lying, stealing, cheating and hurting are out of bounds. http://www.qcc.cuny.edu/socialsciences/ppecorino/medical_ethics_text/Chapter_2_Ethical_Traditions/Learning-Right-From-Wrong.htm Date of access: 11 August 2017.
- Berger, S. 2008. The National: South African Crime-fighting Unit stung by its own success. <http://www.thenational.ae/news/world/africa/south-african-crime-fighting-unit-stung-by-its-own-success> Date of access: 10 April 2017.
- Berning, J.M.S. 2014. An Analysis of South African National Anti-Corruption Agencies. *Just Africa Journal*. Vol.1(1). Pp. 42 – 79.
- Berning, J.M.S & Monetsh, M. 2012. Countering Corruption in South Africa: the rise and fall of the Scorpions and Hawks. *SA Crime Quarterly* No.39. Pp.3-10.

Bester, H., Chamberlain, D., De Koker, L., Hougaard, C., Short, R., Smith, A. & Walker, R. 2008. Implementing FATF standards in developing countries and financial inclusion: Findings and guidelines.

http://www.cenfri.org/documents/AML/AML_CFT%20and%20Financial%20Inclusion.pdf

Date of access: 21 March 2018.

Bezuidenhout, J. 2017. Mail & Guardian: Trillian to respond to damning state capture report.

<https://mg.co.za/article/2017-06-29-trillian-capital-partners-to-respond-to-damning-state-capture-report> Date of access: 13 July 2017.

Bishop, A. 1999. Heir to the Shadows Quotes.

<https://www.goodreads.com/work/quotes/2510727-heir-to-the-shadows> Date of access: 16 November 2018.

Bittner, E. 1970. The functions of the police in modern society. Chevy Chase, MD: U.S. National Institute of Mental Health, Center for Studies of Crime and Delinquency.

BlackRock. 2011. Foreign Account Tax Compliance Act: Challenges for investors.

<http://www.blackrock.com/corporate/en-za/literature/whitepaper/viewpoint-foreign-account-tax-compliance-act-may-2011.pdf>

Blake, M. & Pisa, N. 2012. Berlusconi sentenced to four years for tax fraud but will he EVER go to jail? Judge cuts sentence by three quarters with appeal far from over. Mail Online News. <http://www.dailymail.co.uk/news/article-2223603/Silvio-Berlusconi-jailed-years-tax-fraud.html> Date of access: 16 March 2012.

Bolderston, A. 2008. Writing an Effective Literature Review. Journal of Medical Imaging and Radiation Sciences. Vol. 39. p.86-92.

Boone, R. 2002. Corruption & anti-corruption in Southern Africa. Regional seminar on Anti-Corruption Investigation Strategies with particular regard to Drug Control for the SADC Member States.

Bovens, M. 2014. Public accountability: A framework for the analysis and assessment of accountability arrangements in the public domain. www.qub.ac.uk Date of access: 10 January 2014.

Brief History of IRS. <https://www.irs.gov/uac/brief-history-of-irs>

Broom, G. & Logutenkova, E. 2013. Credit Suisse, Baer seen Facing Delay in U.S Settlement (1). *BloombergBusinessweek*. <http://www.businessweek.com/news/2013-06->

19/credit-suisse-baer-seen-facing-delay-in-u-dot-s-dot-tax-deal-on-vote Date of access: 5 July 2013.

Bryman, A. 2000. Quantity and Quality in Social Research. Routledge Taylor & Francis Group. London.

Bunye, A.I.R. 2012. Laundering history.

<https://pinoyinvestors.wordpress.com/2012/02/27/laundering-history/> Date of access: 9 April 2014.

Burg, D.F. 2004. *A world history of tax rebellions: An encyclopedia of tax rebels, revolts, and riots from antiquity to the present*. Routledge.

Burger, J. 2015. Institute for Security Studies. No-man's-land: the uncertain existence of SAPS specialised investigative units.

<https://issafrica.s3.amazonaws.com/site/uploads/Paper283V2.pdf> Date of access: 30 October 2017.

Burger, J. 2016. Institute for Security Studies: Political interference weakening the rule of law in SA. <https://issafrica.org/iss-today/political-interference-weakening-the-rule-of-law-in-sa> Date of access: 13 July 2017.

Burney, S.M.A. 2008. Inductive and deductive research approach.

<http://www.drburney.net/INDUCTIVE%20&%20DEDUCTIVE%20RESEARCH%20APPROACH%2006032008.pdf> Date of access: 15 September 2013.

Business Dictionary. Definition of "shadow economy".

<http://www.businessdictionary.com/definition/shadow-economy.html>

Business Dictionary. Definition of "shadow economy". Corruption Perceptions Index. 2016.

http://www.transparency.org/news/feature/corruption_perceptions_index_2016/

CAC (California Association of Criminalists). 2019. Criminalistics information.

<https://www.cacnews.org/membership/criminalistics.shtml> Date of access: 24 June 2019.

Cambridge Dictionary. Definition of "law enforcement".

<http://dictionary.cambridge.org/dictionary/english/law-enforcement> Date of access: 14 February 2017.

Camerer, L. 1999. Tackling the Multi-Headed Dragon - Evaluating prospects for a single anti-corruption agency in South Africa. Institute for Security Studies. Occasional Paper No.38.

Careers with ASIO. Australian Security Intelligence Organization.

<https://www.asio.gov.au/selection-criteria-asio-job-applications.html> Date of access: 26 December 2017.

Careers with NCA. National Crime Agency. <http://www.nationalcrimeagency.gov.uk/careers> Date of access: 26 December 2017.

Careers. Australian Secret Intelligence Service. Roles and Vacancies.

<https://www.asis.gov.au/Careers/Roles-and-Vacancies/Graduate-Program/Overview.html> Date of access: 26 December 2017.

Case information. 2008. Stanford Law. Foreign Corrupt Practices Act Clearinghouse.

<http://fcpa.stanford.edu/enforcement-action.html?id=501> Date of access: 14 February 2018.

Central Security Service. 2016. National Security Agency: About us – Central Security Service. <https://www.nsa.gov/about/central-security-service/> Date of access: 21 April 2017.

Chilisa, B. & Kawulich, B. s.an. Chapter 3: Selecting a research approach: paradigm, methodology and methods.

https://www.researchgate.net/profile/Barbara_Kawulich/publication/257944787_Selecting_a_research_approach_Paradigm_methodology_and_methods/links/56166fc308ae37cfe40910fc/Selecting-a-research-approach-Paradigm-methodology-and-methods.pdf Date of access: 21 March 2018.

Christensen, J. & Hampton, M. 1999a. "A legislature for hire: the capture of the state in Jersey's Offshore Finance Centre", in Hampton, M. and Abbott, J. (Eds), *Offshore Finance Centres and Tax Havens: The Rise of Global Capital*, Macmillan, Basingstoke, p. 166-91.

Christensen, J. & Hampton, M. 1999b. A legislature for hire: the capture of the state in Jersey's Offshore Finance Centre. https://link.springer.com/chapter/10.1007/978-1-349-14752-6_7 Date of access: 10 April 2013.

Christensen, J. 2011. The looting continues: tax havens and corruption. *Critical Perspectives on International Business*. Emerald Group Publishing Limited.

<http://www.emeraldinsight.com/1742-2043.htm>

Christensen, J. & Spencer, D. 2008. 'Stop this timidity in ending tax haven abuse', *Financial Times*, Comment, 5/III/2008, p.13.

Chynoweth, P. 2008. *Advanced research methods in the built environment*. Wiley-Blackwell: John Wiley & Sons.

CIA: Our Mission. 2013. Central Intelligence Agency: Kid's Zone – Our Mission.
<https://www.cia.gov/kids-page/6-12th-grade/who-we-are-what-we-do/our-mission.html> Date of access: 22 March 2017.

CIAAgentEDU.org. CIA qualifications and job requirements.
<https://www.ciaagentedu.org/requirements/> Date of access: 26 December 2017.

CIPC – About. 2017. Companies and Intellectual Properties Commission: Functions of the Commission. <http://www.cipc.co.za/index.php/about/our-functions/> Date of access: 12 July 2017.

CIPCE (Centro de Investigación y Prevención la Criminalidad Económica). What is economic crime? <http://www.cipce.org.ar/en/what-is-economic-crime> Date of access: 24 June 2019.

CITCO. IRS regulations – The Foreign Account Tax Compliance Act (FATCA) and its impact on the US foreign withholding tax and reporting system.
<http://www.citco.com/sites/default/files/FATCA%20general%20facts%20-%20October%202011.pdf>

Citizen Report. 2017. *Self-confessed smuggler, fraudster is funding NDZ presidential campaign – report*. <https://citizen.co.za/news/south-africa/1707648/self-confessed-smuggler-fraudster-is-funding-ndz-presidential-campaign-report/> Date of access: 12 December 2017.

Clandestine Services. 2016. Central Intelligence Agency: Offices of CIA.
<https://www.cia.gov/offices-of-cia/clandestine-service/index.html> Date of access: 22 March 2017.

Clark, A. & Burrell, P. 2003. A practitioner's guide to international money laundering law and regulation. England: Sweet & Maxwell.

Clark, J. Why was tax evasion the only thing pinned on Al Capone. How Stuff Works.
<http://history.howstuffworks.com/history-vs-myth/capone-tax-evasion.htm> Date of access: 20 March 2013.

Clayton, S. 2011. Association of Corporate Counsel: Top Ten Basics of Foreign Corrupt Practices Act Compliance for the Small Legal Department.
<http://www.acc.com/legalresources/publications/topten/SLD-FCPA-Compliance.cfm> Date of access: 7 June 2017.

Clift, T. 2018. TRIB Live: Grand jury indictment says Joseph Nocito Sr. hid money from IRS in mansion. <http://triblive.com/local/allegheeny/13303542-74/grand-jury-indictment-says-joseph-nocito-sr-hid-money-from-irs-in> Date of access: 22 February 2018.

Clouser, R.A. 2013. The myth of religious neutrality. University of Notre Dame Press. Notre Dame, Indiana.

Code of Practice 8. 2016. HM Revenue and Customs Fraud Investigation Service – Code of Practice 8.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565421/COP8_09_16.pdf Date of access: 14 March 2017.

Code of Practice 9. 2014. HM Revenue and Customs: Code of Practice 9 – Where we suspect tax fraud.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494808/COP9_06_14.pdf Date of access: 14 March 2017.

Cohen D. & Crabtree, B. 2006. Qualitative research guidelines project.

<http://www.qualres.org/HomeUnst-3630.html> Date of access: 11 August 2017.

Coker, D. Anti-money laundering laws and practices for banks, individuals, and corporations involved with AML litigation. <https://www.hg.org/article.asp?id=18853> Date of access: 2 February 2017.

Collins English Dictionary. Definition of “law enforcement”.

<https://www.collinsdictionary.com/dictionary/english/law-enforcement> Date of access: 14 February 2017.

Collins, B. 2013. Business Insider: Australia - Australia has 6 intelligence agencies: here's what they are and the work they do. <https://www.businessinsider.com.au/australia-6-intelligence-agencies-heres-what-they-are-and-the-work-they-do-2013-11> Date of access: 22 March 2017.

Constitution of the Republic of South Africa **see** South Africa.

Conway-Smith, E. 2012. Jacob Zuma re-elected as head of ANC. The Telegraph.

<https://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/9753579/Jacob-Zuma-re-elected-as-head-of-ANC.html> Date of access: 15 January 2013.

Cornell University Law School: Legal Information Institute.

<https://www.law.cornell.edu/uscode/text/18/1957> Date of access: 1 February 2017.

Corporate Services. 2016. Republic of South Africa: State Security Agency – About us. <http://www.ssa.gov.za/AboutUs/Branches/CorporateServices.aspx> Date of access: 11 April 2017.

Corruption Perceptions Index. 2017. Transparency International. https://www.transparency.org/news/feature/corruption_perceptions_index_2017 Date of access: 26 March 2018.

Corruption Watch – UK. 2016. Global standards for corporate settlements in foreign bribery cases. <http://www.cw-uk.org/wp-content/uploads/2016/03/OECD-Ministerial-letter-final.pdf> Date of access: 12 May 2017.

Corruption Watch. 2015. Can we blame you now, President Zuma? <http://www.corruptionwatch.org.za/can-we-blame-you-now-president-zuma> Date of access: 15 May 2017.

Corruption Watch. 2017a. OSISA Report: Efficacy of SADC's Anti-Corruption Bodies. <http://www.corruptionwatch.org.za/osisa-report-effectiveness-southern-africas-anti-corruption-bodies/> Date of access: 11 August 2017.

Corruption Watch. 2017b. More on the National Anti-Corruption Strategy: NACS Pillars: Short Extract. <http://www.corruptionwatch.org.za/national-anti-corruption-strategy/> Date of access: 11 August 2017.

Corruption Watch. Corruption and the Law in South Africa. <https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-Corruption-and-the-law-in-SA.pdf> Date of access: 20 June 2018.

Corruption. <http://www.fatf-gafi.org/topics/corruption/> Date of asses: 14 April 2013.

Council of Australian Law Deans. 2005. Statement on the nature of research. <http://www.cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005.pdf> Date of access: 30 August 2017.

Couper, D.C. 2013. Why police matter. Improving police. <https://improvingpolice.wordpress.com/2013/03/09/why-police-matter/> Date of access: 14 February 2017.

Cox, D. 2011. An introduction to money laundering deterrence. John Wiley & Sons Ltd.

Creswell, J.W. 2007. Qualitative Inquiry and Research Design: Choosing among five approaches. SAGE. London.

Creswell, J.W. & Miller, D.L. 2000. Determining validity in qualitative inquiry. Theory into practice. http://www.tandfonline.com/doi/pdf/10.1207/s15430421tip3903_2 Date of access: 10 October 2017.

Crime Act (1914) **see** Australia.

Crime and Misconduct Commission. 2005. Background Intelligence Brief: Money Laundering. file:///C:/Users/11933461/Downloads/money-laundering-2005.pdf Date of access: 15 November 2016.

Criminal Code Act of 1995 **see** Australia.

Criminal Division. 2015. Department of Justice: Organized Crime Drug Enforcement Taskforces. <https://www.justice.gov/criminal/organized-crime-drug-enforcement-task-forces> Date of access: 30 October 2017.

Criminal Division. 2017. Department of Justice: About the Criminal Division. <https://www.justice.gov/criminal/about-criminal-division> Date of access: 30 October 2017.

Criminal Investigation at-a-glance. 2016. Internal Revenue Services: Criminal Investigation (CI) At-a-Glance. <https://www.irs.gov/uac/criminal-investigation-ci-at-a-glance> Date of access: 10 March 2017.

Cronkhite, C.L. Chapter 4: Police History and Organization. The Police. http://samples.jbpub.com/9780763756482/56482_ch04_regoli.pdf Date of access: 29 November 2017.

Crowe, E. 2003. What is criminology? Definition, History, and Theories. Criminal Justice 101: Intro to Criminal Justice/Social Science Courses. <https://study.com/academy/lesson/what-is-criminology-definition-history-theories.html> Date of access: 24 June 2019.

Crowe, M.T. 1944. The moral obligation of paying just taxes. The Catholic University of America Studies in Sacred Theology No. 84.

Crumley, B. 2012. It's official: Eurozone enters second recession in three years. *TIME World*. <http://world.time.com/2012/11/15/its-official-eurozone-enters-second-recession-in-three-years.htm>

Crumbley, D.L. 2006. Forensic Accountants Appearing in the Literature. www.forensicaccounting.com Date of access: 24 June 2019.

Dadoo, A. Money Laundering. *The Global Politician website*. <http://www.globalpolitician.com/print.asp?id=4153> Date of access: 19 October 2012.

- Davis, K. 2016. Quora: What is Australia's equivalent of the FBI and CIA?
<https://www.quora.com/What-is-Australias-equivalent-of-the-FBI-and-CIA-How-were-they-established> Date of access: 4 April 2017.
- De Koker, L. 2013. South African Money Laundering and Terrorist Financing Law. LexisNexis. South Africa.
- De Koker, L. 2013. The 2012 revised FATF Recommendations: Assessing and mitigating mobile money integrity risks within the new standards framework. 8 Wash. J.L. Tech. & Arts 165 (2013). <http://dro.deakin.edu.au/eserv/DU:30060694/dekoker-revisedfatf-2013.pdf> Date of access: 18 August 2017.
- De Koker, L. 2003. Money laundering trends in South Africa. Journal of Money Laundering Control, Vol. 6 Iss: 1, p.27 - 41
- De Koker, L. 2012. South African Money Laundering and Terror Financing Law. LexisNexis. South Africa.
- De Lange, J. 2016. News24: Why SARS unit was targeted.
<https://www.news24.com/SouthAfrica/News/why-sars-unit-was-targeted-20160917> Date of access: 15 December 2017.
- De Sousa, L. 2009. Crime Law Society Change: Anti-corruption agencies: between empowerment and irrelevance. <https://link.springer.com/content/pdf/10.1007%2Fs10611-009-9211-3.pdf> Date of access: 14 November 2017.
- De Swardt, C. & Uwimana, C. 2013. South Africa needs to establish an anti-corruption agency. <https://mg.co.za/article/2013-01-18-00-south-africa-needs-to-establish-an-anti-corruption-agency> Date of access: 27 June 2019.
- De Vos, A.S., Strydom, H., Fouche, C.B. & Delport, C.S.L. 2018. Research at Grass Roots. Van Schaik Publishers. Pretoria.
- Definition of "tax evasion".
<http://www.investopedia.com/search/default.aspx?q=Tax%20Evasion>
- Denzin, N.K. & Lincoln, Y.S. 1994. Handbook of Qualitative Research. SAGE. Thousand Oaks, CA.
- Denzin, N.K. & Lincoln, Y.S. 2002. The qualitative inquiry reader. Sage Publications Ltd. United States of America.

Denzin, N.K. & Lincoln, Y.S. 2017. The Discipline and Practice of Qualitative Research. (In Denzin, N.K., ed. & Lincoln, Y.S. ed. The SAGE Handbook of Qualitative Research. London: Sage. p. 1 – 16).

Department of Defence Dictionary. 2017. Department of Defence Dictionary of military and associated terms. Definition of “covert operations” and “clandestine operations”.
http://www.dtic.mil/doctrine/new_pubs/dictionary.pdf Date of access: 6 March 2017.

Department of Deputy Attorney General. 2014. The United States Department of Justice.
<https://www.justice.gov/dag> Date of access: 30 October 2017.

Department of Justice. 2016. Organizational chart: Criminal Division.
<https://www.justice.gov/criminal/sectionsoffices/chart> Date of access: 4 April 2017.

Department of Justice. 2017. Justice News: Former President and CEO of Pennsylvania health services company indicted for conspiring to defraud the IRS and filing false tax returns. <https://www.justice.gov/opa/pr/former-president-and-ceo-pennsylvania-health-services-company-indicted-conspiring-defraud-irs> Date of access: 22 February 2018.

Department of Justice. 2018. Fraud Section. <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act> Date of access: 15 November 2017.

Department of the Treasury. 2005. Organizational chart: The Department of the Treasury.
http://www.arrowsmithweb.com/ref/treasury_org_2005.pdf Date of access: 4 April 2017.

Digital Innovation. 2015. Central Intelligence Agency: Offices of CIA.
<https://www.cia.gov/offices-of-cia/digital-innovation/index.html> Date of access: 22 March 2017.

Dirty Dealing: Money Laundering Country Risk Index.
http://www.dirtydealing.org/IMAGES/money_laundering_risk_index/Country%20Index%205.pdf

Dludla, S. 2019. Corruption Index: Ramaphosa calls for harsh action after SA ranked 9th in Africa. IOL News: Politics. <https://www.iol.co.za/news/politics/corruption-index-ramaphosa-calls-for-harsh-action-after-sa-ranked-9th-in-africa-19038371> Date of access: 27 June 2019.

Donciu, A. Complex methods of investigation of money laundering in the integration process. www.proceedings.univ-danubius.ro/index.php/eirp/article/view/436 Date of Access: 6 March 2017.

Douglas Leff, J.D. 2012. Money laundering and asset forfeiture: Taking the profit out of crime. FBI Law Enforcement Bulletin. <https://leb.fbi.gov/2012/april/money-laundering-and-asset-forfeiture-taking-the-profit-out-of-crime> Date of access: 8 February 2017.

Driscoll, K. 2002. Baltimore police history: Ever on the Watch. American Police History. <http://baltimorecitypolicedept.org/citypolice/american-police-history.html> Date of access: 29 November 2017.

Dual Enforcement of the FCPA. Whistle-blower Justice Network: 844-WJN-4ALL <https://www.whistleblowerjustice.net/dual-enforcement-of-the-fcpa/> Date of access: 12 May 2017.

Dugdale, N.W. 2011 – 2012. Is reform possible at a time of political crisis? An assessment of Greece's efforts to combat tax evasion and shadow economy participation. *CDDRL Stanford*.

Duhaime's Law Dictionary. Definition of "summary offence". <http://www.duhaime.org/LegalDictionary/S/SummaryConvictionOffence.aspx>

Ebrard, J. 2017. Americas: sometimes bad news is good news. http://www.transparency.org/news/feature/americas_sometimes_bad_news_is_good_news Date of access: 2 May 2017.

Economic Crime Command. NCA: National Crime Agency: What We Do. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime> Date of access: 13 March 2017.

Editorial. 2016. Mail & Guardian: *Editorial: Arms deal gets a coat of whitewash*. <https://mg.co.za/article/2016-04-21-editorial-arms-deal-gets-a-coat-of-whitewash> Date of access: 16 December 2017.

Editors of Encyclopaedia Britannica (a). A priori knowledge. (*In Encyclopaedia Britannica: philosophy*) <https://www.britannica.com/topic/a-priori-knowledge> Date of access: 16 September 2017.

Editors of Encyclopaedia Britannica (b). The History of Policing in the West. (*In Encyclopaedia Britannica: the history of policing in the West.*) <https://www.britannica.com/topic/police/The-history-of-policing-in-the-West> Date of access: 4 August 2017.

Egmont Group. <https://www.egmontgroup.org/en/content/about> Date of access: 4 April 2017.

eNCA. 2015. Nxasana quits the NPA. <http://www.enca.com/south-africa/nxasana-quits-npa>
Date of access: 11 August 2017.

Encyclopedia Britannica. Purpose of Taxation.
<http://global.britannica.com/EBchecked/topic/584578/taxation> Date of access: 2 May 2017.

English Oxford Dictionaries. Definition of “abstraction”.
<https://en.oxforddictionaries.com/definition/abstraction> Date of access: 16 September 2017.

Etikan, I. & Bala, K. 2017. Sampling and sampling methods. Biometrics and Biostatistics International Journal. MedCrave. <http://medcraveonline.com/BBIJ/BBIJ-05-00149.pdf> Date of access: 6 October 2017.

Etikan, I., Musa, S.A. & Alkassim, R.S. 2016. Comparison of Convenience Sampling and Purposive Sampling. American Journal of Theoretical and Applied Statistics.
<http://www.sciencepublishinggroup.com/j/ajas> Date of access: 9 October 2017.

Evans, S. 2014. Mail & Guardian. *R147bn lost through money illegally leaving SA*.
<https://mg.co.za/article/2014-12-16-billions-lost-through-illegal-outflows> Date of access: 22 February 2018.

EvaSys. Top 10 Software for Analysing Qualitative Data.
<https://www.achievability.co.uk/evasys/top-10-software-for-analysing-qualitative-data> Date of access: 8 September 2018.

Explore Careers. Secret Intelligence Service: MI6. <https://www.sis.gov.uk/explore-careers.html> Date of access: 26 December 2017.

EyeWittNess News & Motua, K. 2017. *Report: Dlamini Zuma, Mazzotti met more than Once*.
<http://ewn.co.za/2017/11/05/report-dlamini-zuma-mazzotti-met-more-than-once> Date of access: 12 December 2017.

EyeWittNess News. 2017. FITCH Downgrades South Africa to Junk Status.
<http://ewn.co.za/2017/04/07/breaking-fitch-downgrades-south-africa-to-junk-status> Date of access: 13 July 2017.

FATCA (Foreign Account Tax Compliance Act) – Tax Risks for US Investments.
<https://www.mayerbrown.com/publications/fatca--tax-risks-for-us-investments-09-23-2011/>
Date of access: 16 March 2013.

FATF (Financial Action Task Force): About. <http://www.fatf-gafi.org/about/> Date of access: 16 March 2013.

FATF (Financial Action Task Force). 2010. Financial Action Task Force: The FATF 40 Recommendations: FATF Standards. <http://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf> Date of access: 4 April 2017.

FATF (Financial Action Task Force). 2012. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. Updated October 2016. FATF. Paris, France. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf Date of access: 16 April 2017.

FATF President's Speech at the APG Annual Meeting July 2012. <http://www.fatf-gafi.org/documents/fatfpresidentsspeechattheapgannualmeetingjuly2012.html>

FBI Headquarters. Contact us: FBI Headquarters. <https://www.fbi.gov/contact-us/fbi-headquarters> Date of access: 29 November 2017.

FBI Jobs. Eligibility. <https://www.fbijobs.gov/working-at-FBI/eligibility> Date of access: 2 May 2017.

FBI Money Laundering. FBI Retired Signature Directories: Skill sets. <https://fbiretired.com/skillset/fbi-money-laundering/> Date of access: 1 March 2017.

FBI News. 2016. Combating the Growing Money Laundering Threat. <https://www.fbi.gov/news/stories/combating-the-growing-money-laundering-threat> Date of access: 1 March 2017.

FBIAgentedu.org. FBI Requirements: entry requirements. <https://www.fbiagentedu.org/fbi-requirements/> Date of access: 26 December 2017.

FCPA Digest. 2018. Recent Trends and Patterns in the Enforcement of the Foreign Corrupt Practices Act. <https://www.shearman.com/-/media/Files/Perspectives/2018/01/January-2018-FCPA-Digest-Recent-Trends.pdf?la=en&hash=1D8B46F8B2855CD7D3B2E43CD4E9A5AC0DB570BE> Date of access: 27 October 2018.

FCPAS (Forensic CPA Society). What is a forensic accountant? <https://www.fcpas.org/about-us/what-is-a-forensic-accountant/> Date of access: 24 June 2019.

FCPA. 2012. A resource guide to the U.S. Foreign Corrupt Practices Act: By the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S.

Securities and Exchange Commission. <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf> Date of access: 27 December 2017.

Federal Prosecution Services. Money Laundering. <https://www.cdpp.gov.au/crimes-we-prosecute/money-laundering> Date of access: 7 February 2017.

Fedwire Funds Services. 2014. Board of Governors of the Federal Reserve System. https://www.federalreserve.gov/paymentsystems/fedfunds_about.htm Date of access: 1 March 2017.

FFIEC. Federal Financial Institution Examination Council: Suspicious Activity Report System – Overview. https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_015.htm Date of access: 1 March 2017.

Fiamma, S. & Kavaldjieva, S. 2012. Implications of Foreign Account Tax Compliance Act (FATCA). Allen & Overy. <http://www.allenoverly.com/SiteCollectionDocuments/Implications%20FACTA.pdf> Date of access: 9 October 2012.

Fin24. 2016. R30m fine: Sarb nails 5 banks after money-laundering probe. <http://www.fin24.com/Economy/r30m-fine-sarb-nails-5-banks-after-money-laundering-probe-20160808> Date of access: 21 September 2017.

Fin24. 2017. S&P downgrades SA to junk status. <http://www.fin24.com/Economy/breaking-sp-downgrades-sa-to-junk-status-20170403> Date of access: 13 July 2017.

Financial Action Task Force. 2012. International standards on combating money laundering and the financing of terrorism & proliferation: The FATF Recommendations. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf Date of access: 4 April 2014.

Financial Action Task Force. 2014. Improving Global AML/CFT Compliance: Ongoing Process. <http://www.fatf-gafi.org/media/fatf/documents/statements/Compliance-24-October-2014.pdf> Date of access: 5 December 2014.

Financial Action Task Force. About. <http://www.fatf-gafi.org/about/> Date of access: 14 January 2015.

Financial Action Task Force. What is Money Laundering? <http://www.fatf-gafi.org/faq/moneylaundering/> Date of access: 4 April 2014.

Financial Conduct Authority. 2017. <https://www.fca.org.uk/about/the-fca> Date of access: 19 January 2017.

Financial Intelligence Centre Act (2001) **see** South Africa

Financial Intelligence Centre: our structure. 2017. Financial Intelligence Centre.
https://www.fic.gov.za/aboutus/Pages/our_structure.aspx Date of access: 12 April 2017.

Financial Intelligence Centre: who must register? 2017. Financial Intelligence Centre.
<https://www.fic.gov.za/Resources/Pages/WhoMustRegister.aspx>. Date of access:
12 April 2017.

Financial Intelligence Centre: who we are. 2017. FIC: Financial Intelligence Centre.
<https://www.fic.gov.za/aboutus/Pages/WhoWeAre.aspx> Date of access: 12 April 2017.

Financial Services Act (2012) **see** United Kingdom.

Financial Services Authority. 2014.
http://www.fsa.gov.uk/about/what/financial_crime/money_laundering Date of access:
18 January 2017.

Financial Transaction Reports Act 1988 **see** Australia.

FinCEN (Financial Crimes Enforcement Network): What we do. United States Department of
the Treasury: Financial Crimes Enforcement Agency: About: What we do.
<https://www.fincen.gov/what-we-do> Date of access: 4 April 2017.

Finch, G. 2018. Bloomberg Markets: HSBC says Swiss Bank tax probe could cost more than
\$1.5 billion. [https://www.bloomberg.com/news/articles/2018-02-20/hsbc-says-swiss-bank-](https://www.bloomberg.com/news/articles/2018-02-20/hsbc-says-swiss-bank-tax-probe-could-cost-more-than-1-5-billion)
[tax-probe-could-cost-more-than-1-5-billion](https://www.bloomberg.com/news/articles/2018-02-20/hsbc-says-swiss-bank-tax-probe-could-cost-more-than-1-5-billion) Date of access: 22 February 2018.

FindLaw. Definition of “tax evasion”. FindLaw Legal Dictionary.
<https://dictionary.findlaw.com/legal-terms/t.html> Date of access: 6 March 2013.

Fleming, P. & Zyglidopoulos, S.C. 2009. Charting corporate corruption: agency structure and
escalation. Cheltenham, UK: Edward Elgar.

Flick, U. 1998. An introduction to qualitative research. Fourth Edition. SAGE Publications
Ltd. London.

Foreign Account Tax Compliance Act **see** United States.

Foreman, A. 2015. Tax evasion's bite, from the ancient world to modern days. The Wall
Street Journal. [http://www.wsj.com/articles/tax-evasions-bite-from-the-ancient-world-to-](http://www.wsj.com/articles/tax-evasions-bite-from-the-ancient-world-to-modern-days-1443028212)
[modern-days-1443028212](http://www.wsj.com/articles/tax-evasions-bite-from-the-ancient-world-to-modern-days-1443028212) Date of access: 16 April 2017.

Fossey E., Harvey, C., McDermot, F. & Davidson, L. 2002. Understanding and evaluating qualitative research. SAGE Journals. <http://journals.sagepub.com/doi/pdf/10.1046/j.1440-1614.2002.01100.x> Date of access: 15 May 2018.

Foundation Education. 2016. Discover the world of forensic accounting. <https://www.foundationeducation.edu.au/articles/2016/10/what-is-forensic-accounting> Date of access: 24 June 2019.

Fraud prevention and investigations: Australian Taxation Office. 2015. Australian Government: Australian Taxation Office. <https://www.ato.gov.au/about-ato/annual-reports/annual-report-2012-13/part-03-management-and-accountability/external-scrutiny-and-governance/governance/fraud-prevention-and-investigations/#> Date of access: 5 April 2017.

Friedman, E. 2010. Actor Wesley Snipes reports to Pennsylvania Federal prison. *ABC News*. <http://abcnews.go.com/Entertainment/wesley-snipes-report-federal-prison-year-sentence/story?id=12345648>

Friedman, V. 2017. The New York Times. *Gucci falls into Italy's tax crosshairs*. <https://www.nytimes.com/2017/12/04/fashion/gucci-taxes-investigation.html> Date of access: 22 February 2018.

Fundira. 2000. Implications of foreign banking and offshore financial centres for money laundering in the region. <http://www.iss.co.za/pubs/monographs/no90/ExecSum.html/> Date of access: 21 September 2017.

Gabriel, D. 2013. Inductive and deductive approaches to research. <http://deborahgabriel.com/2013/03/17/inductive-and-deductive-approaches-to-research/> Date of access: 15 September 2013.

Gains, C. 2017. Business Insider: Lionel Messi's 21-month prison sentence in tax-fraud case is upheld, but he is not expected to serve any prison time. <http://www.businessinsider.com/lionel-messi-prison-sentence-tax-fraud-case-2017-5> Date of access: 22 February 2018.

Gawas, V.M. 2017. Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development. *International Journal of Law*.

GCHQ: the threat from serious crime. 2015. Government Communications Headquarters. <https://www.gchq.gov.uk/features/threat-serious-crime> Date of access: 14 March 2017.

GCHQ: what we do. Government Communications Headquarters.

<https://www.gchq.gov.uk/what-we-do> Date of access: 14 March 2017.

Geldart, W. 1984. Course Hero. Introduction to English Law.

<https://www.coursehero.com/file/p2shep/According-to-William-Geldart-Introduction-to-English-Law-146-DCM-Yardley-ed-9th/> Date of access: 14 February 2018.

Generic Requirements. Directorate for Priority Crime Investigations.

<http://www.careers24.com/pdf/completed/X1RA6QT1.pdf> Date of access: 26 December 2017.

Georgiopoulos, G. 2012. Greece economy continues to crumble. *The Globe and Mail*.

<http://www.theglobeandmail.com/report-on-business/economy/euro-crisis/greek-economy-continues-to-crumble/article4241188/> Date of access: 31 October 2013.

Gibson, S. 2014. The Proceeds of Crime Act (CTH): A brief overview of it and literary proceeds orders. <http://www.gibsonssolicitors.com.au/news/hello-world/> Date of access: 20 August 2016.

Gilbert Tax. 2017. Fraud Investigation Service. <http://www.gilberttax.co.uk/fraud-investigation-service> Date of access: 14 March 2017.

Gill, J. & Johnson, P. 2002. Research Methods for Managers. SAGE Publications. London.

Gleeson, B. & Roza, M. 2013. Forbes. The silo mentality: How to break down the barriers. <https://www.forbes.com/sites/brentgleeson/2013/10/02/the-silo-mentality-how-to-break-down-the-barriers/#672a21108c7e> Date of access: 14 July 2017.

Glenister v. the President of the Republic of South Africa and Others (2011) **see** South Africa.

Global Financial Intelligence. Illicit financial flows December 2014 Report. 2017. *Illicit financial flows to and from developing countries: 2005 – 2014*. http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017_final.png Date of access: 15 December 2017.

Global Intelligence. Secret Intelligence Service (MI6). Global intelligence to protect the UK. <https://www.sis.gov.uk/> Date of access: 17 March 2017.

Gong, T. & Wu, A.M. 2012. Review of Public Personnel Administration Vol.32, No.2: Does Increased Civil Service Pay Deter Corruption? Evidence from China. https://mpr.a.ub.uni-muenchen.de/41815/1/Gong_and_Wu_2012_salary_and_corruption_final_own_version_.pdf Date of access: 1 July 2017.

- Gordhan, P. 2016. Fin24: Pravin Gordhan's 10-point solution to tax evasion. <http://www.fin24.com/Economy/pravin-gordhans-10-point-solution-to-tax-evasion-20160714> Date of access: 12 July 2017.
- Gray, D. 2008. Forensic Accounting and Auditing: Compared and Contrasted to Traditional Accounting and Auditing. *American Journal of Business Education*. Vol. 1(2). p.115 – 126.
- Gray, D.E. 2017. Research in the Real World. SAGE Publications. United Kingdom.
- Grootes, S. 2017. Daily Maverick: Analysis: ANC Leadership Race – still not about hearts and minds, but political alignments and vested interests. <https://www.msn.com/en-za/news/indepth/analysis-anc-leadership-race-still-not-about-hearts-and-minds-but-political-alignments-and-vested-interests/ar-AAuclz8> Date of access: 16 December 2017.
- Gross, D.M. 2008. *We won't pay: a tax resistance reader*. CreateSpace Independent Publishing Platform.
- Gules, N. 2017. News24, SA has experienced a silent coup – state capture report. <http://citypress.news24.com/News/sa-has-experienced-a-silent-coup-state-capture-report-20170526> Date of access: 13 July 2017.
- Gumede, W. 2017. Policy Brief 14: Combating Corruption in South Africa. Democracy Works Foundation. <https://democracyworks.org.za/policy-brief-12-combating-corruption-in-south-africa/> Date of access: 27 June 2019.
- Hammer, H., Jagers, S.C. *et al.* 2009. Perceived tax evasion and the importance of trust. *Journal of Socio-Economics*, 38, 355-363.
- Hart. 1998. Doing a literature review: Releasing the social science research imagination. <https://www.slideshare.net/Amoytotsso/hart-1998-doing-a-literature-review> Date of access: 31 October 2013.
- Hatchard, J. 2014. Combating corruption: Legal approaches to supporting good governance and integrity in Africa. Edward Elgar Publishing Limited. Cheltenham, UK.
- Hawks. 2014. Hawks: Directorate for Priority Crime Investigation. <https://www.saps.gov.za/dpci/index.php> Date of access: 10 April 2017.
- Haysom, S. 2016. amaBhungane Centre for Investigative Journalism: SARS, Krejcir and the destruction of state capacity. <http://amabhungane.co.za/article/2016-04-01-00-sars-krejcir-and-the-destruction-of-state-capacity> Date of access: 5 December 2017.

Hesse-Biber, S.N & Leavy, P. 2011. The practice of qualitative research. United States of America: SAGE Publications Inc, p.3-57.

Hintikka, J.J. Encyclopaedia Britannica: Logic.

<https://www.britannica.com/topic/logic#ref535919> Date of access: 16 September 2017.

History of IRS Criminal Investigation. 2016. Internal Revenue Service: the history of IRS Criminal Investigation. <https://www.irs.gov/uac/the-history-of-irs-criminal-investigation-ci> Date of access: 10 March 2017.

History. 2010. July 26, 1908: FBI Founded. A + E Networks. <http://www.history.com/this-day-in-history/fbi-founded> Date of access: 27 February 2017.

Hlongwane, P. 2018. The Anti-Corruption Institutions in South Africa: A Panacea to Governance Ills? Southern African Public Law Journal. Vol 33(2).

HM Revenue & Customs: Taxation. A tax to beat Napoleon.

www.hmrc.gov.uk/history/taxhis1.html

HM Revenue & Customs: Taxation.

<http://webarchive.nationalarchives.gov.uk/+http://www.hmrc.gov.uk/history/taxhis6.html>

HM Revenue and Customs. 2014. HMRC *fast facts: Record revenues for the UK*. May 2014 Bulletin.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326579/HMRC-fast-facts.pdf/

HMIC. 2013. *Her Majesty's revenue and customs disclosure compliance with criminal investigations*. <https://www.justiceinspectorates.gov.uk/hmic/media/hmrccs-disclosure-compliance-with-criminal-investigations-20130610.pdf/>

HMRC (Her Majesty's Revenue and Customs) policy. 2015. Her Majesty's Revenue and Customs: Guidance HMRC policy. <https://www.gov.uk/government/publications/criminal-investigation/hmrc-criminal-investigation-policy> Date of access: 14 March 2017.

HMRC: What we Do (Her Majesty's Revenue and Customs). Her Majesty's Revenue and Customs – What We Do. <https://www.gov.uk/government/organisations/hm-revenue-customs> Date of access: 14 March 2017.

Hoexter, C. & Olivier, M. 2014. The judiciary of South Africa. Juta & Co. Ltd. Cape Town.

Hoffman, P. 2016. BusinessDay: Scorpions scrapping comes back to sting a looted nation. <https://www.businesslive.co.za/bd/opinion/2016-10-06-scorpions-scrapping-comes-back-to-sting-a-looted-nation/> Date of access: 18 July 2018.

Hofstatter, S., Afrika, P.W., Rampedi, P. & Jurgens, A. 2014. Exposed: How armsdealer bank rolled Zuma. PressReader. <https://www.pressreader.com/south-africa/sunday-times/20140928/281479274638551> Date of access: 14 March 2017.

Hollingshead, A. 2012. Comment: Illicit financial flows from developing countries 2001-2010. <http://www.financialtransparency.org/2012/12/19/comment-illicit-financial-flows-from-developing-countries-2001-2010/>

Holloway, I. & Wheeler, S. 2010. Qualitative research in nursing and healthcare. West Sussex, Wiley-Blackwell.

Hopkin, M.R. 2012. Lead on purpose: *Leadership and Integrity*. <https://leadonpurposeblog.com/2012/01/21/leadership-and-integrity/> Date of access: 12 December 2017.

Hosken, G. & Quintal, G. 2017. BusinessDay. *Gupta e-mails reveal suspected multibillion-rand tax avoidance scheme*. <https://www.businesslive.co.za/bd/national/2017-07-21-gupta-e-mails-reveal-suspected-multibillion-rand-tax-avoidance-scheme/> Date of access: 22 February 2018.

How criminal investigations are initiated. 2017. Internal Revenue Service: How criminal investigations are initiated. <https://www.irs.gov/uac/how-criminal-investigations-are-initiated> Date of access: 10 March 2017.

Hughes, G.E. & Schagin, M.L. 2017. Encyclopaedia Britannica: Formal Logic. <https://www.britannica.com/topic/formal-logic> Date of access: 16 September 2017.

Hunt, N. & McHale, S. 2007. A practical guide to the e-mail interview. Qualitative Health Research. Sage Publications. <http://www.qhr.sagepub.com/cgi/content/abstract/17/10/1415> Date of access: 9 October 2017.

Hutchinson, T. 2008. Developing legal research skills: expanding the paradigm. Melbourne University Law Review. Vol. 32. p. 1065-1095.

Hutchinson, T. & Duncan, N. 2012. Defining and describing what we do: doctrinal legal research. http://heinonline.org/HOL/Page?handle=hein.journals/deakin17&div=8&g_sent=1&collection=journals Date of access: 30 August 2017.

IBA: Anti-Money Laundering Forum – Europe. <http://www.anti-moneylaundering.org/Europe.aspx> Date of access: 16 January 2017.

Income Tax Act 52 of 1968 **see** South Africa.

Info Security. 2013. InfoSecurity Magazine Home – News: UK Launches its own FBI: The NCA. <https://www.infosecurity-magazine.com/news/uk-launches-its-own-fbi-the-nca/> Date of access: 13 March 2017.

Inland Revenue Division of Dominica. *Taxation – It's nature and purpose*. http://ird.gov.dm/index.php?option=com_content&view=article&id=60:taxation-its-nature-and-purpose-&catid=25:present&Itemid=27/

Inspector-General of Intelligence and Security. The Australian Intelligence Community. <https://www.igis.gov.au/australian-intelligence-community> Date of access: 22 March 2017.

Intelligence & Analysis. 2015. Central Intelligence Agency: Offices of CIA. <https://www.cia.gov/offices-of-cia/intelligence-analysis/index.html> Date of access: 22 March 2017.

Intelligence Academy. 2016. Republic of South Africa: State Security Agency – About us. <http://www.ssa.gov.za/AboutUs/Branches/IntelligenceAcademy.aspx> Date of access: 11 April 2017.

Intelligence Services Oversight Act **see** South Africa.

Internal audits: Australian Taxation Office. 2015. Australian Government: Australian Taxation Office. <https://www.ato.gov.au/About-ATO/Annual-Reports/Annual-Report-2012-13/Part-03-Management-and-accountability/External-scrutiny-and-governance/Governance/Internal-audit/#> Date of access: 5 April 2017.

International Corruption Unit. NCA: National Crime Agency: Economic Crime Command – International Corruption Unit. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/international-corruption-unit-icu> Date of access: 13 March 2017.

International Monetary Fund. 2016. The IMF and the fight against money laundering and the financing of terrorism. <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism> Date of access: 22 October 2016.

International Monetary Fund. 2017. Report for selected countries and subjects. <http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?pr.x=72&pr.y=11&sy=2017&ey=2022&ssd=1&sort=country&ds=.&br=1&c> Date of access: 23 February 2018.

International Money Laundering Information Bureau. History of money laundering.
http://www.imlib.org/page1_hist.html Date of access: 7 February 2017.

Introduction to suspicious activity reports. 2015. NCA: National Crime Agency.
<http://www.octf.gov.uk/OCTF/media/OCTF/images/publications/NCA-Introduction-to-SARs.pdf?ext=.pdf> Date of access: 14 March 2017.

Investopedia. Definition of “advanced economies”.
<https://www.investopedia.com/terms/a/advanced-economies.asp> Date of access: 13 June 2018.

Investopedia. Definition of “reconciliation”.
https://www.google.co.za/?gfe_rd=cr&ei=xh08V4WZLoOp8weSnLioCg&gws_rd=ssl#q=capital+reconciliation Date of access: 12 July 2017.

Investopedia. Definition of “silo mentality”. <http://www.investopedia.com/terms/s/silo-mentality.asp> Date of access: 14 July 2017.

Investor Words. Definition of “life-style audit”.
http://www.investorwords.com/10191/lifestyle_audit.html Date of access: 12 July 2017.

IOL. 2014. IOL News: Crime & Courts. *Malema’s Tax Case Resumes*.
https://www.iol.co.za/news/crime-courts/malemas-tax-case-resumes-1740127#.U_qmxPm1bCo Date of access: 12 December 2017.

IRBA: a guide for registered auditors. 2011. Combating Money Laundering and Financing of Terrorism. [https://www.irba.co.za/upload/irba-guide-for-ras-combating-money-laundering\(1\).pdf](https://www.irba.co.za/upload/irba-guide-for-ras-combating-money-laundering(1).pdf) Date of access: 3 February 2017.

IRS. Federal Statutes. <https://www.irs.gov/uac/federal-statutes-money-laundering> Date of access: 1 February 2017.

IRS. Foreign Account Tax Compliance Act 2010.
<https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca> Date of access: 7 February 2017.

IRS: *Criminal investigation at-a-glance*. <https://www.irs.gov/uac/criminal-investigation-ci-at-a-glance/>

IRS: Bank Secrecy Act. <https://www.irs.gov/businesses/small-businesses-self-employed/bank-secrecy-act> Date of access: 1 February 2017.

Jackson, J.K. 2012. The Financial Action Task Force: An Overview. Congressional Research Service. <https://fas.org/sgp/crs/misc/RS21904.pdf> Date of access: 4 April 2014.

Jacobellis v Ohio (1964) **see** United States. 378 U.S 184 (1964).

Job Search. National Security Agency.

<https://www.intelligencecareers.gov/icjobsearchapply.html> Date of access: 26 December 2017.

Joffe, J. 2010. Judgement on sentence: in the matter of the State and Jacob Sello Selebi. <http://www.saflii.org/za/cases/ZAGPJHC/2010/58.html> Date of access: 27 Oktober 2017.

Joint Money Laundering Taskforce. National Crime Agency: Economic Crime Command – Joint Money Laundering Taskforce. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/joint-money-laundering-intelligence-taskforce-jmlit> Date of access: 13 March 2017.

Jonassen, D.H., Tessmer, M. & Hannum, W.H. 1998. Task analysis methods for instructional design. Routledge.

Jordaan, N. 2017. Times Live: Conference, timing bad reasons for NPA to drop Zuma's 783 charges: SCA. <https://www.timeslive.co.za/politics/2017-10-13-polokwane-conference-timing-bad-reasons-for-npa-to-drop-zumas-783-charges-sca/> Date of access: 13 November 2017.

Justice and Correctional Services. 2016. South Africa Yearbook 2015/16. <http://www.gcis.gov.za/sites/www.gcis.gov.za/files/docs/resourcecentre/yearbook/Justice-SAYB1516n.pdf> Date of access: 10 April 2017.

Kar, D. & De Freitas, S. 2012. Illicit financial flows from developing countries: 2001-2010. A December 2012 Report from Global Financial Integrity. <http://www.gfintegrity.org/report/illicit-financial-flows-from-developing-countries-2001-2010/> Date of access: 16 March 2013.

Kelling, G.L., Brodeur, J. & Walsh, W.F. Police: Law enforcement: Ancient policing. Encyclopedia Britannica. <https://global.britannica.com/topic/police> Date of access: 15 February 2017.

Kenny, A.J.P. & Amadio, A.H. 2017. Encyclopaedia Britannica: Aristotle Greek Philosopher. <https://www.britannica.com/biography/Aristotle> Date of access: 16 September 2017.

Keohane, D. & Arnold, M. 2017. Financial Times: HSBC agrees to pay €300m to settle probe into tax evasion. <https://www.ft.com/content/7d228060-c959-11e7-ab18-7a9fb7d6163e> Date of access: 22 February 2018.

Khampepe Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations ("The DSO").

http://www.justice.gov.za/commissions/2008_khampempe.pdf Date of access:

9 September 2017.

Kini, S.M., Lee, P.L. & Micarelli, C. 2013. Regulation of foreign banks and affiliates in the United States. Thomas Reuters.

http://www.debevoise.com/~media/files/capabilities/banking/regulation_banks_pdf.pdf Date of access: 2 February 2017.

Kirchgassner, G. 2009. *Tax Morale, tax evasion and the shadow economy*. Department of Economics, University of St. Gallen.

Kirchler, E. 2007. *The economic psychology of tax behaviour*. Cambridge: Cambridge University Press.

Kleutgens, I., Sambur, J.A., Grieser, S.G. & Gunther, S. 2011. *FATCA – Tax Risks for US Investments*. Mayer Brown. <http://www.mayerbrown.com/publications/fatca--tax-risks-for-us-investments-09-23-2011/>

Knack, S & Azar, O. 2003. Trade intensity, country size and corruption. *Economics of Governance*. Volume 4, Issue 1, p. 1–18.

Kokemuller, N. 2017. Role of a police officer. *Chron*. <http://work.chron.com/role-police-officer-8056.html> Date of access: 14 February 2017.

Kolhalmi, L. & Mezei, K. 2015. The concept and typical forms of economic crimes. *Journal of Eastern-European Criminal Law*, Vol. 2015, Issue 2, p. 33-42.

Kraus, K. Karl Kraus Quotes. <https://citatis.com/a3645/29d3/> Date of access: 16 November 2018.

Krishna, V. 2008. The legacy of Al Capone in tax law. *The Lawyers Weekly*. <http://www.lawyersweekley.ca>

Kumarasingham, S. 2010. Tax avoidance and tax evasion explained and exemplified. <http://www.ezinearticles.com/?Tax-ASviodance-and-Tax-Evasion-Explained-and-Exemplified&id=3590555>

Laboratory Services. Scientific analysis. The Federal Bureau of Investigation: Services. <https://www.fbi.gov/services/laboratory/scientific-analysis/counterterrorism-forensic-science-research> Date of access: 26 December 2017.

Lackey, A. 2015. PoliticsWeb: News & Analysis. *SARS: this is the inside story*.
<http://www.politicsweb.co.za/news-and-analysis/sars-this-is-the-inside-story-adrian-lackey>
 Date of access: 6 December 2017.

Laerd. Purposive sampling: Laerd Dissertation. <http://www.dissertation.laerd.com/purposive-sampling.php#expert> Date of access: 9 October 2017.

Langendorf, G. 2015. The map is not the territory: How South Africa followed the anti-corruption roadmap and got lost along the way. *Journal of International Law*.
<http://scholarworks.law.ubalt.edu/ubjil/vol3/iss2/3/> Date of access: 12 May 2017.

Larabee, R. s.a. The Literature Review. USC Libraries: research guides.
<https://libguides.usc.edu/c.php?g=234974&p=1559473> Date of access: 10 October 2018.

Laurence, P. 2008. The Helen Suzman Foundation Journal: The Sting of the Scorpions' tale. Focus issue 49, 1st Quarter 2008. <http://www.politicsweb.co.za/news-and-analysis/the-sting-in-the-scorpions-tale> Date of access: 11 April 2017.

Law Teacher. *The classification of criminal offences*. <http://www.lawteacher.net/law-help/lpc/criminal-litigation/classification-criminal-offences.php/>

LawTeacher. The Early History of Money Laundering. The Law Essay Professionals.
<https://www.lawteacher.net/free-law-essays/commercial-law/the-early-history-of-money-laundering-commercial-law-essay.php> Date of access: 22 October 2016.

Le Cordeur, M. 2016. S&P: Undermining key institutions could see South Africa downgraded to junk status. *Mail & Guardian*. <https://mg.co.za/article/2016-10-13-sp-undermining-key-institutions-could-see-south-africa-downgraded-to-junk-status> Date of access: 19 March 2017.

Leedy, P.D. 1997. *Practical research: Planning and design*. New York: Macmillan.

Leff, D.A. 2013. Money laundering and asset forfeiture: Taking the profit out of crime.
http://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/af_cle_materials.pdf Date of access: 9 March 2017.

Legal definition of "illegal activity". <http://legal-dictionary.thefreedictionary.com/illegal+activity>

Legal Dictionary. Definition of "predicate offense". <https://legaldictionary.net/predicate/> Date of access: 6 March 2017.

LegalBrief Africa. International Bar Association: *Startling claims link Zuma family to 'dark world'*. <http://legalbrief.co.za/diary/legalbrief-africa-new/story/startling-claims-link-zuma-family-to-dark-world-2/print/> Date of access: 12 December 2017.

Levi, M & Reuter, P. 1997. Money Laundering. *Crime and Justice* 34(1).

Lie, K. Writing the literature review.

<http://www.ais.up.ac.za/med/tnm800/tnmwritingliteraturereviewlie.htm> Date of access: 31 October 2013.

Lilley, P. 2012. *Dirty dealing: The untold truth about global money laundering, international crime and terrorism*. Kogan Page Limited. London.

Lincoln, Y.S. & Guba, E.G. 1985. *Naturalistic Inquiry*. Newbury Park, CA: Sage Publications. <http://www.qualres.org/HomeLinc-3684.html> Date of access: 26 June 2017.

Lopez-Claros, A. 2014. The World Bank: Six strategies to fight corruption. <http://blogs.worldbank.org/futuredevelopment/six-strategies-fight-corruption> Date of access: 12 May 2017.

Loxton, D. Werksmans Attorneys: South Africa. <http://www.werksmans.com/wp-content/uploads/2013/07/South-African-Chapter-of-Global-Legal-Insights-Bribery-and-Corruption-First-Edition.pdf> Date of access: 13 November 2017.

Lynch, N. 2016. Australia to extend money laundering laws. Reuters. <http://www.reuters.com/article/australia-moneylaundrying-regulations-idUSL3N1BP2A7> Date of access: 9 February 2017.

Madinger, J. 2012. *Money laundering: A guide for criminal investigators*. CRC Press. Taylor & Francis Group. United States of America. p.79-84.

Madonsela, T. 2016. *State of Capture*. Public Protector South Africa. https://www.scribd.com/document/329757088/State-of-Capture-Public-Protector-Report#download&from_embed Date of access: 13 February 2017.

Majila, T., Taylor, J.D. & Raga, K. 2017. Normative Model to Alleviate Corruption: a synoptic case study of South Africa. *Africa Journal of Public Affairs*. Vol.9(6). Pp.88-102.

Manning, G.A. 2005. *Financial investigation and forensic accounting*. Boca Raton: Taylor & Francis Group. p.309 – 369.

Mantzaris, E. 2017. The Sowetan Live: Why growing corruption is a threat to South Africa's national security. <http://www.sowentannlive.co.za/news/2017/03/15/why-growing-corruption-is-a-threat-to-south-africas-national-security> Date of access: 12 May 2017.

Mark, G. 2012. Private FCPA Enforcement. American Business Law Journal. <http://eds.a.ebscohost.com.nwulib.nwu.ac.za/eds/pdfviewer/pdfviewer?vid=10&sid=f7e4d284-0a66-4ce4-9b7b-18db153b61f7%40sessionmgr4010> Date of access: 11 August 2017.

Marquit, M. 2012. What is tax evasion and how it could affect you? <http://freefrombroke.com>

Marrian, N. 2015. The South African Institute for Tax Practitioners. News & Press: Opinion. SARS cases at risk as top official resigns. <http://www.thesait.org.za/news/214767/SARS-cases-at-risk-as-top-official-resigns.htm> Date of access: 5 December 2017.

Marsden, S. 2017. ESPN FC: Barcelona's Lionel Messi to pay fine, avoid prison sentence for tax fraud. <http://kwese.espn.com/football/barcelona/story/3147554/barcelonas-lionel-messi-to-pay-fine-to-avoid-21-month-prison-sentence-for-tax-fraud> Date of access: 22 February 2018.

Masego, A. 2018. News24: Zuma to face 18 charges. <https://www.news24.com/SouthAfrica/News/zuma-to-face-18-charges-20180224> Date of access: 27 February 2018.

Mashaba, M. 2005. Organised Crime and Corruption: fighting the problem with the Nepad Framework. African Security Review, 14(4):109-112.

Mathekga, R. 2017. Corruption News: Corruption and Politics. <http://www.corruptionwatch.org.za/osisa-report-effectiveness-southern-africas-anti-corruption-bodies/> Date of access: 11 August 2017.

Matheza, T. 2008. Tax fraud and money laundering today: Lessons from Germany? <http://www.icpat.org/.../36-tax-fraud-and-money-laundering-today-lessons.../>

Maudsley, R.H. & Davies, J.W. 1964. The Justice of the Peace in England. University of Miami Law Review, Vol.18, Issue 3. p.517-560. http://heinonline.org.nwulib.nwu.ac.za/HOL/Page?handle=hein.journals/umialr18&div=42&start_page=517&collection=journals&set_as_cursor=5&men_tab=srchresults Date of access: 16 February 2017.

Mazars. Who are the HMRC Fraud Investigations Service Unit and what do they do? <http://www.mazars.co.uk/Home/Our-Services/Tax/Tax-investigations/Who-are-the-HMRC-Fraud-Investigations-Service-Unit> Date of access: 16 February 2017.

Mbeki, T. 2015. What do you expect from the natives? A subliminal thesis behind the noise on the arms procurement commission. https://www.scribd.com/doc/310346385/What-Do-You-Expect-From-the-Natives#download&from_embed Date of access: 15 December 2017.

McGee, R.W. 2006. Three views on the ethics of taxation. *Journal of Business Ethics*, 67, 15-35.

McKerchar, M. 2008. Philosophical paradigms, inquiry strategies and knowledge claims: Applying the principles of research design and conduct to taxation. 6(1) *eJournal of Tax Research* 5. <http://www.austlii.edu.au/au/journals/eJITaxR/2008/1.html> Date of access: 31 October 2013.

McLaughlin, D. Erosion of Independence: The National Prosecuting Authority of South Africa: 1996-2013. The FW de Klerk Foundation. <http://www.fwdeklerk.org/index.php/en/document-library/interns?download=77:erosion-of-independence-the-national-prosecuting-authority-of-south-africa-1996-2013> Date of access: 16 September 2017.

MDD. 2019. MDD Forensic Accountants. What is Forensic Accounting? <https://mdd.com/what-is-forensic-accounting/> Date of access: 24 June 2019.

Mdumbe, M.F. 2009. The meaning of 'organ of state` in South African law. University of South Africa, Pretoria. <http://hdl.handle.net/10500/1171> Date of access: 11 April 2017.

Meagher, P. 2002. IRIS Centre, University of Maryland. Anti-Corruption Agencies.

Merriam-Webster. Definition of "abstraction". <https://www.merriam-webster.com/dictionary/abstraction> Date of access: 17 September 2017.

Merriam-Webster. Definition of "corruption". <https://www.merriam-webster.com/dictionary/corruption> Date of access: 17 September 2017.

Messere K.C. & Owens, J.P. 2017. International comparisons of tax Levels: Pitfalls and insights. <https://www.oecd.org/eco/outlook/35589632.pdf> Date of access: 2 May 2017.

Meyers, J. 2017. World Economic Forum. *Which countries are worst affected by tax avoidance?* <https://www.weforum.org/agenda/2017/04/which-countries-are-worst-affected-by-tax-avoidance/> Date of access: 23 February 2018.

MI5: What we do. The Security Service: MI5. <https://www.mi5.gov.uk/what-we-do> Date of access: 17 March 2017.

MI6: Our Mission. Secret Intelligence Service (MI6): Our Mission – our operations.

<https://www.sis.gov.uk/our-mission.html> Date of access: 17 March 2017.

Minimum requirements. Australian Federal Police.

<https://www.afp.gov.au/careers/vacancies/how-apply/minimum-requirements> Date of access: 26 December 2017.

Minister of Finance Responds to the Hawks. 2016. Ministry of Finance: Media Statement.

http://www.treasury.gov.za/comm_media/press/2016/2016033001%20-%20Hawks%20Response%20Statement.pdf Date of access: 5 December 2017.

Ministry of Justice. 2015. Unlimited fines for serious offences.

<https://www.gov.uk/government/news/unlimited-fines-for-serious-offences/>

Minow, M. 2013. Archetypal Legal Scholarship: a field guide.

<http://jle.aals.org/home/vol63/iss1/4/> Date of access: 30 August 2017.

Mission & Strategy. 2016. National Security Agency: About us.

<https://www.nsa.gov/about/mission-strategy/> Date of access: 21 April 2017.

Mission and Priorities. FBI: About. <https://www.fbi.gov/about/mission> Date of access:

28 February 2017.

Molefe, O. 2017. Daily Maverick: Fixing the criminal justice system starts by rooting out corruption at the top. <https://www.dailymaverick.co.za/opinionista/2012-06-26-fixing-the-criminal-justice-system-starts-by-rooting-out-corruption-at-the-top/#.WRWaWuuGO00> Date of access: 12 May 2017.

Money Laundering and Asset Recovery Section. Department of Justice.

<https://www.justice.gov/criminal-mlars> Date of access: 9 March 2017.

Money Laundering and Forfeiture Unit. Department of Justice: Money Laundering and Asset Recovery Section. <https://www.justice.gov/criminal-mlars> Date of access: 9 March 2017.

Money Laundering Control Act **see** United States of America.

Money Laundering Policy Implementation Guide. 2010. Federal Bureau of Investigation: Criminal Investigative Division.

<https://www.aclu.org/files/fbimappingfoia/20111110/ACLURM006370.pdf> Date of access: 2 March 2017.

Money Laundering Regulations 2003.

http://ec.europa.eu/internal_market/finances/docs/actionplan/transposition/uk/d4.1-ml-uk.pdf

Date of access: 16 January 2017.

Money Laundering Regulations 2007.

http://www.legislation.gov.uk/ukxi/2007/2157/pdfs/ukxi_20072157_en.pdf Date of access:

16 January 2017.

Money Laundering.

http://www.austrac.gov.au/elearning/pdf/intro_amlctf_money_laundering.pdf

Money Laundering. National Crime Agency: Crime Threats - Money Laundering.

<http://www.nationalcrimeagency.gov.uk/crime-threats/money-laundering> Date of access:

13 March 2017.

Money Laundering: A Banker's Guide to Avoiding Problems. 2002. Office of the Comptroller of the Currency. Washington DC. <https://www.occ.gov/topics/bank-operations/financial-crime/money-laundering/money-laundering-2002.pdf> Date of access: 2 February 2017.

Money-Laundering and Globalisation. 2012. The United Nations Office on Drugs and Crime.

<http://www.unodc.org/unodc/en/money-laundering/globalization.html>

MoneyVal. 2015. Council of Europe. *Typologies report on laundering the proceeds of organised crime*. <https://rm.coe.int/typologies-report-on-laundering-the-proceeds-of-organised-crime/168071509d> Date of access: 22 February 2018.

Montesh, M. & Berning, J. 2012. A need for a single anti-corruption agency in South Africa: A comparative study. *Acta Criminologica: Southern African Journal of Criminology*.

<https://journals-co-za.nwulib.nwu.ac.za/content/crim/2012/sed-1/EJC138450> Date of access: 16 November 2017.

Montesh, M. 2007. A critical analysis of crime investigative system within the South African criminal justice system: A comparative study. Submitted in accordance with the requirements for the degree of DOCTOR OF LITERATURE AND PHILOSOPHY in the subject POLICE SCIENCE. <http://uir.unisa.ac.za/bitstream/handle/10500/1272/?sequence=1> Date of access: 31 August 2017.

Monti, M. Government quotes. http://www.doublequotes.net/government_quotes/from-mario-monti

Moor, K. 2012. Businessman Michael Issakidis charged as police seize \$40m of luxury assets in raids. *Herald Sun*. <https://www.heraldsun.com.au/ipad/businessman-michael->

issakidis-charged-as-police-seize-40m-of-luxury-assets-in-raid/news-story/ba3eb887b604628ca9ebc443c0d2644f?sv=def3d298bc3832b8c8f910353739061d

Date of access: 15 March 2013.

Moosa, F. 2017. The Daily Vox. *Nkosazana Dlamini-Zuma denies cigarette smuggler allegations*. <https://www.thedailyvox.co.za/nkosazana-dlamini-zuma-denies-cigarette-smuggler-allegations-fatima-moosa/> Date of access: 12 December 2017.

More about our cases and how we work. 2017. Serious Fraud Office: About Us – More about our cases and how we work. <https://www.sfo.gov.uk/about-us/> Date of access: 14 March 2017.

Morehart, M. 2006. The Federal Bureau of Investigation: Testimony. <https://archives.fbi.gov/archives/news/testimony/dismantling-global-money-laundering-operations> Date of access: 28 February 2017.

Moscow, J.W. 2007. Anti-money laundering: International law and practice. England: John Wiley & Sons. p 111 – 123.

Moseneke, D. 2015. Corruption Watch: Corruption and Politics. <http://www.corruptionwatch.org.za/osisa-report-effectiveness-southern-africas-anti-corruption-bodies/> Date of access: 11 August 2017.

Mouton, J. 2015. How to succeed in your master's and doctoral studies: A South African guide and resource book. Van Schaik Publishers. Hatfield, Pretoria.

Muller, W.H., Kalin, C.H. & Goldsworth, J.G. 2007. Anti-money laundering: International law and practice. England: John Wiley & Sons Ltd. p 3 - 9.

Munusamy, R. 2017. Daily Maverick – Pravin Gordhan: From freedom fighter to finance minister to 'accidental hero'. <https://www.dailymaverick.co.za/article/2017-05-02-pravin-gordhan-from-freedom-fighter-to-finance-minister-to-accidental-hero/#.WWcsVISGO00> Date of access: 13 July 2017.

Murphy, R. 2011. Tax evasion costs the world \$3.1 trillion a year – more than 5% of world GDP. Tax Research UK. <http://www.taxresearch.org.uk/Blog/2011/11/25/tax-evasion-costs-the-world-3-1-trillion-a-year-more-than-5-of-world-gdp/>

Murphy, R. 2012. The tax payer's alliance: Supporting tax havens to undermine democracy. Tax Research UK. <http://www.taxresearch.org.uk/Blog/author/admin/page/232/> Date of access: 18 October 2013.

Musila, J.W. 2019. Anti-corruption Strategies in Sub-Saharan Africa: Lessons from Experience and Ingredients of a Successful Strategy. *Journal of African Business*. Vol. 20(2). p.180 – 194.

Myburgh, P. 2017. News24: Zuma was paid a 'salary' by tender tycoon, claims book. <https://m.news24.com/SouthAfrica/News/breaking-zuma-was-paid-a-salary-by-tender-tycoon-claims-book-20171029> Date of access: 16 December 2017.

National Communications Branch. 2016. Republic of South Africa: State Security Agency – About us. <http://www.ssa.gov.za/AboutUs/Branches/NationalCommunications.aspx> Date of access: 11 April 2017.

National Crime Agency. 2013. BBC News: Q&A: National Crime Agency. <http://www.bbc.com/news/uk-24384152> Date of access: 13 March 2017.

National Director of Public Prosecutions (NDPP) v Abrina 6822 Ltd and Others. 2011. **see** South Africa.

National Law Enforcement Museum. 2012. The early days of American law enforcement. <http://www.nleomf.org/museum/news/newsletters/online-insider/2012/April-2012/early-days-american-law-enforcement-april-2012.html> Date of access: 22 February 2017.

National Prosecuting Authority Act **see** South Africa.

National Strategic Intelligence Act **see** South Africa.

National White Collar Crime Center. 2013. Money Laundering. <https://www.nw3c.org/docs/research/money-laundering.pdf?sfvrsn=6> Date of access: 8 November 2013.

NCA (National Security Agency). 2016a. National Security Agency: What we do. <https://www.nsa.gov/what-we-do/> Date of access: 21 April 2017.

NCA (National Security Agency): How we are run. 2016b. National Crime Agency: Our structure – How we run. <http://www.nationalcrimeagency.gov.uk/about-us/how-we-are-run> Date of access: 13 March 2017.

NDPP v Van Staden & others (2011) **see** South Africa.

NDPP v Zuma (2009) **see** South Africa.

NDPP v King (2010) **see** South Africa.

Nedelcu, C. 2010. Crime investigation methodology of money laundering offences. *Lex ET Scientia. Juridical Series*, Nr XVII, Vol.1/2010.

https://www.lexetscientia.univnt.ro/.../345_lesij_js_XVII_1_2010_art_008.pdf Date of access: 2 March 2017.

Nedu. 2015. BuzzSouthAfrica: *The Top 10 Corruption Scandals in South Africa*.
<https://buzzsouthafrica.com/here-are-the-top-10-corruption-scandals-in-south-africa/> Date of access: 16 December 2017.

Neild, R. 2002. Public corruption: The dark side of social evolution. Anthem Press, Wimbledon Publishing Company. London.

Neuman, W.L. 2000. Social research methods: Qualitative and quantitative approaches. Fourth Edition. Allyn and Bacon. Boston.

Neuman, W.L. 2003. Social research methods: Qualitative and quantitative approaches. Fifth Edition. Allyn and Bacon. Boston.

Newham, G. 2012. Why a South African Anti-Corruption Agency Must Be Independent of the Police to be Effective. NGO Pulse. <http://www.ngopulse.org/article/why-south-african-anti-corruption-agency-must-be-independent-police-be-effective> Date of access: 17 November 2018.

Newham, G. 2015. Sowetan. Zuma undermines National Development Plan: Why President Allows Chaos. <https://issafrica.s3.amazonaws.com/site/uploads/31-03-2015-Gareth-Newham-Sowetan.pdf> Date of access: 15 May 2017.

News24. 2008. News24 Archives: Pikoli: Why I was Suspended.
<http://www.news24.com/SouthAfrica/News/Pikoli-Why-I-was-suspended-20080217> Date of access: 11 August 2017.

News24. 2014. The A – Z of SA's fraud & corruption scandals.
<https://www.news24.com/MyNews24/The-A-Z-of-SAs-Fraud-Corruption-Scandals-20140403> Date of access: 15 December 2017.

News24Wire. 2015. BusinessTech: *10 corruption scandals that rocked South Africa*.
<https://businesstech.co.za/news/general/99074/10-corruption-scandals-that-rocked-south-africa/> Date of access: 15 December 2017.

Nicholson, R., Fraser, K. & Farnsworth, B. 2014. International Business Review: Focus: Anti-Money Laundering Laws Review Announced. Ison
<http://www.allens.com.au/pubs/ibo/foibo8jan14.htm> Date of access: 23 July 2016.

Nieuwenhuis, J. 2017. Introducing qualitative research. (*In Maree, K. ed. First Steps in Research. Pretoria: Van Schaik Publishers. p.50-70.*)

O'Brien, P.K. 2007. *Atlas of World History*. Oxford University Press.
https://books.google.co.za/books?id=ffZy5tDjaUkC&pg=PA139&lpg=PA139&dq=china+qing+dynasty+war+against+tax+evasion&source=bl&ots=pb45Ap-e5f&sig=2NNra7ecdD275qHPH3LKtoXBhgU&hl=en&sa=X&ved=0ahUKEwjn7rvM_LrLAhUFWBoKHSyfAsMQ6AEILDAE#v=onepage&q=china%20qing%20dynasty%20war%20against%20tax%20evasion&f=false Date of access: 21 April 2017.

O'Leary, N. 2013. Berlusconi trial hearing postponed due to Italian president vote. Reuters. <http://www.reuters.com/article/2013/04/18/us-italy-berlusconi-idUSBRE93H0HZ20130418>

O'Toole, J. 2012. Swiss bankers charged in \$1.2 billion tax fraud. *CNNMoney.com*. http://money.cnn.com/2012/01/03/news/swiss_bankers_charged/index.htm

Odom, W. 2015. Anatomy of a criminal tax case. <https://www.wendellodom.com/anatomy-of-a-criminal-tax-case-part-one/>

OECD (Organisation for Economic Co-operation and Development). 2007. *Corruption: A Glossary of International Criminal Standards*. <http://www.oecd.org/corruption/anti-bribery/39532693.pdf> Date of access: 16 November 2017.

OECD (Organisation for Economic Co-operation and Development). 2008. *South Africa: Phase 1. Review of Implementation of the Convention and 1997 Revised Recommendation*. <http://www.oecd.org/southafrica/40883135.pdf> Date of access: 13 November 2017.

OECD (Organisation for Economic Co-operation and Development). 2017. *On Combating Corruption and Fostering Integrity: executive summary, recommendations and full report to the OECD secretary-general*. <https://www.oecd.org/corruption/HLAG-Corruption-Integrity-SG-Report-March-2017.pdf> Date of access: 12 May 2017.

OECD (Organisation for Economic Co-operation and Development). *Money Laundering*. <https://www.oecd.org/cleangovbiz/toolkit/moneylaundering.htm> Date of access: 16 April 2013.

OECD. *About*. <http://www.oecd.org/about/> Date of access: 5 December 2014.

OECD. *History*. <http://www.oecd.org/general/historyoftheoecd.htm> Date of access: 5 December 2014.

OECD. *Money Laundering*. <https://www.oecd.org/cleangovbiz/toolkit/moneylaundering.htm> Date of access: 14 January 2015.

Offence to Money Laundering. *International Legal Practitioner*. <http://heinonlinebackup.com>

Office of Foreign Assets Control. University of Central Florida: Office of export compliance. <http://www.research.ucf.edu/ExportControl/ofac.html> Date of access: 1 February 2017.

Office of the Comptroller of the Currency. 2002. Money laundering: A banker's guide to avoiding problems. <https://www.occ.gov/topics/bank-operations/financial-crime/money-laundering/money-laundering-2002.pdf> Date of access: 2 February 2017.

Office of the Law of Revision Council. United States Code. <http://uscode.house.gov/> Date of access: 31 January 2017.

Office of the Public Service Commission. 2001. A review of South Africa's national anti-corruption agencies. <http://www.psc.gov.za/documents/reports/corruption/01.pdf> Date of access: 7 November 2017.

OHSC (Oxford Home Study Center). Forensic Accounting. <https://www.oxfordhomestudy.com/forensic-accounting> Date of access: 24 June 2019.

Oldenburg, A. 2013. Wesley Snipes finishes prison time for tax evasion. USA Today. <https://www.usatoday.com/story/life/people/2013/04/05/wesley-snipes-finishes-jail-time-for-tax-evasion/2057455/> Date of access: 5 December 2012.

Oliver, K.E. 2002. International taxation: Tax evasion as a predicate offence to money laundering. *International Legal Practitioner*.

Organization for Economic Co-operation and Development. 2014. *Major new steps to boost international cooperation against tax evasion: Governments commit to implement automatic exchange of information beginning 2017*. <http://www.oecd.org/newsroom/major-new-steps-to-boost-international-cooperation-against-tax-evasion-governments-commit-to-implement-automatic-exchange-of-information-beginning-2017.html>

Organized Crime Drug Enforcement Task Forces. 2015. <https://www.justice.gov/criminal/organized-crimne-drug-enforcement-task-forces> Date of access: 9 March 2017.

Osen, L. 2013. Crime & Justice. In juvenile delinquency courts, right from wrong not an exact science. <https://www.scpr.org/news/2013/01/22/35691/experts-conflicted-about-when-we-learn-right-wrong/> Date of access: 20 August 2017.

OSISA (Open Society Initiative for Southern Africa). 2017. A review by Open Society Initiative for Southern Africa: Effectiveness of Anti-Corruption Agencies in Southern Africa. http://www.osisa.org/sites/default/files/publications/osisa_acc_text_29mar1130_web.pdf Date of access: 5 October 2017.

Our Mission. NCA: National Crime Agency. About Us.

<http://www.nationalcrimeagency.gov.uk/about-us> Date of access: 13 March 2017.

Our Work. The Monetary Fund: About IMF. <http://www.imf.org/en/About> Date of access: 18 August 2017.

Owens, J.P. 2007. Offshore Tax Evasion. *The Globalist*.

<http://www.theglobalist.com/printStoryId.aspx?StoryId=6212>

Owojori, A. A. & Asaolu, T.O. The Role of Forensic Accounting in Solving the Vexed Problem of Corporate World. *European Journal of Scientific Research*. Vol 29. p 183-187, 2009.

Oxford Dictionaries. Definition of “shadow economy”.

https://en.oxforddictionaries.com/definition/shadow_economy
https://en.oxforddictionaries.com/definition/shadow_economy/

Parker, L. & Northcott, D. 2016. *Qualitative generalising in accounting research: concepts and strategies*. *Accounting, Auditing & Accountability Journal*, Vol. 29 Iss 6 p.1100-1131

Pauw, J. 2017a. The President's Keepers: those keeping Zuma in power and out of prison. nb Publishers. Cape Town.

Pauw, J. 2017b. TimesLIVE: News. *Gangster Republic: dirty cigarette money is funding NDZ's bid for president*. <https://www.timeslive.co.za/sunday-times/news/2017-10-29-gangster-republic-dirty-cigarette-money-is-funding-ndzs-bid-for-president/> Date of access: 12 December 2017.

Pearce, D., Campbell, E. & Harding, D. 1987. A discipline assessment for the Commonwealth Tertiary Education Commission (AGPS, 1987) ('Pearce Report')

Pijoos, I. 2018. News24: Abrahams is packing and ready to vacate his office – NPA.

<https://www.news24.com/SouthAfrica/News/abrahams-is-packing-and-is-ready-to-vacate-his-office-npa-20180815> Date of access: 30 August 2018.

Pincus, W. 2010. Washington Post: Britain's MI6 operates a bit differently than CIA.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/02/AR2010110200467.html>
Date of access: 18 March 2017.

Ping, H. 2010. A typological study on money laundering. *Journal of Money Laundering Control*. Emerald Group Publishing Limited.

Pinsent Masons. 2016. Out-Law.com: UK government “committed” to changing the suspicious activity reporting regime. <https://www.out-law.com/en/articles/2016/april/uk-government-committed-to-changing-suspicious-activity-reporting-regime/> Date of access: 14 March 2017.

Pityana, S. 2017. Daily Maverick: A horror show, brought to you by one man: Jacob Zuma. <https://www.dailymaverick.co.za/opinionista/2017-04-05-a-horror-show-brought-to-you-by-one-man-jacob-zuma/#.WRmSA-t9600> Date of access: 15 May 2017.

Pope, J. 2002. Forensic Accountants Thriving. Deseret News: Business. <https://www.deseretnews.com/article/923752/Forensic-accountants-thriving.html> Date of access: 24 June 2019.

Potter, G. 2013. The history of policing in the United States. <http://plsonline.eku.edu/insidelook/history-policing-united-states-part-1> Date of access: 22 February 2017.

Potter, S. 2006. Doing postgraduate research. Great Britain: Cromwell Press Ltd.

Powell, S. Edward Nathan Sonnenbergs: Life-style Audits. <https://www.ensafrica.com/Uploads/Images/news/Lifestyle%20audits.pdf> Date of access: 12 July 2017.

Prevention and Combating of Corruption Activities Act No 12 of 2004 **see** South Africa.

Prevention of Organized Crime Act No 121 of 1998 **see** South Africa.

Proceeds of Crime Act (2002) **see** Australia.

Proceeds of Crime Act (2002) **see** United Kingdom.

Proceeds of Crime Center. NCA: National Crime Agency – Proceeds of Crime Center. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/proceeds-of-crime-centre> Date of access: 14 March 2017.

Prosecuting Tax Evasion. 2013. The Crown Prosecution Service. http://www.cps.gov.uk/news/articles/prosecuting_tax_evasion/

Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 **see** South Africa

Protiviti: Risk & Business Consulting. 2014. https://www.protiviti.com/sites/default/files/united_states/insights/guide-to-us-aml-requirements-6thedition-protiviti_0.pdf Date of access: 1 February 2017.

Public Service Commission. 2001. A review of South Africa's national anti-corruption agencies. Pretoria: Government Printers.

Public Service Anti-Corruption Strategy. 2002. Department of Public Service and Administration.

Purkey, H. 2010. The art of money laundering. *Florida Journal of International Law*, Vol22, Issue 1, p111.

Quick, J. & Hall, S. 2015. Spotlight on research: Part one: An introduction to the research process. *Journal of Perioperative Practice*, Vol25 Issue4.

Quinthal, G. 2016. News24: *No evidence of fraud, corruption in arms deal – Zuma*. <https://www.news24.com/SouthAfrica/News/no-evidence-of-fraud-and-corruption-in-arms-deal-zuma-20160421> Date of access: 16 December 2017.

Qukula, Q. 2017. Cape Talk 567AM. [LISTEN] Ndlozi: Mazzotti donated R200 000 to EFF registration in 2014 election. <http://www.capetalk.co.za/articles/279791/listen-ndlozi-mazzotti-donated-r200-000-to-eff-registration-in-2014-election> Date of access: 16 December 2017.

Rabkin, F. 2017. Mail & Guardian: SCA extracts two crippling concessions from NPA and Zuma. <https://mg.co.za/article/2017-09-14-zuma-concedes-decision-to-drop-corruption-charges-was-irrational> Date of access: 13 November 2017.

Ramamoorti, S., Morrison, D.E., Koletar, J.W. & Pope, K.R. 2013. *ABC of Behavioural Forensics*. New Jersey, Hoboken. John Wiley & Sons Incorporated.

Renner, P. 2012. What are illicit financial flows? KYCMap. <http://kycmap.com/illicit-financial-flows-what-are-illicit-financial-flows-iffs/>

Report Fraud, Tax Evasion and Tax Planning Scheme. 2017. Australian Government: Australian Taxation Office. <https://www.ato.gov.au/about-ato/about-us/contact-us/report-fraud,-scams,-tax-evasion-or-a-tax-planning-scheme/> Date of access: 5 April 2017.

Reuters staff. 2018. Reuters. *Kering says Gucci boss tax compliant in Italy after report*. <https://www.reuters.com/article/us-kering-gucci-tax/kering-says-gucci-boss-tax-compliant-in-italy-after-report-idUSKBN1FF2SN> Date of access: 22 February 2018.

Reviso. Definition of "auditor". <https://www.reviso.com/accountingsoftware/accounting-words/auditor> Date of access: 17 July 2018.

Richards, J.R. 1998. Transnational criminal organizations, cybercrime, and money laundering: A handbook for law enforcement officers, auditors, and financial investigators. CRC Press.

Richardson, E.J. 2016. Patterns in the parallel proceedings: SEC actions, DOJ tools. <https://www.law360.com/articles/298489/patterns-in-parallel-proceedings-sec-actions-doj-tools> Date of access: 12 May 2017.

Robertiello, G. 2017. The use and abuse of police power in America: Historical Milestones and Current Controversies. ABC-CLIO: Santa Barbara, California and Denver, Colorado.

Robertson, D. & Reed, V. 1998. The A – Z of social research jargon. Ashgate Publishing Limited.

Roelf, W. 2008. Reuters: South Africa's Scorpion crime fighters to be disbanded. <http://www.reuters.com/article/us-safrica-scorpions-idUSL1223114320080212> Date of access: 10 April 2017.

Roufa, T. 2016. Early history of policing: The roots of the modern police system in America. <https://www.thebalance.com/early-history-of-policing-974580> Date of access: 17 February 2017.

Ryan, F., Coughlin, M. & Cronin, P. 2007. Step-by-step guide to critiquing research Part two: Qualitative research. British Journal of Nursing 16(12). https://www.researchgate.net/publication/5989970_Step-by-step_guide_to_critiquing_research_Part_2_Qualitative_research Date of access: 23 June 2017.

SAGE Publications. 2015. The history of policing. https://us.sagepub.com/sites/default/files/upm-binaries/66074_Renninson_Chapter_4.pdf Date of access: 28 February 2017.

SAHO (South African History Online). 2012. South African History Online: South African Police Services. <http://www.sahistory.org.za/organisations/south-african-police-sap> Date of access: 10 April 2017.

Samuel, H. 2012. French budget minister resigns after tax fraud allegations. *The Telegraph*. [http:// www.telegraph.co.uk › Finance › Economics](http://www.telegraph.co.uk › Finance › Economics) Date of access: 12 April 2013.

Sanghoo, S. 2015. Why we should respect law enforcement. Huffington Post. http://www.huffingtonpost.com/sanjay-sanghoo/why-we-should-respect-law_b_6367102.html Date of access: 14 February 2017.

Sansone v, US. 1965. *United States Supreme Court: Sansone v. United States, (1965), No. 365.* <http://caselaw.findlaw.com/us-supreme-court/380/343.html/>

SAPS (South African Police Service) careers. South Africa Police Service. https://www.saps.gov.za/careers/downloads/saps_career_booklet_part3.pdf Date of access: 26 December 2017.

SAPS (South African Police Service): Code of Conduct. 2014. South African Police Service: About us – Code of Conduct. <https://www.saps.gov.za/about/about.php> Date of access: 10 April 2017.

SAPS (South African Police Service): History. 2014. South African Police Service: About us – History. <https://www.saps.gov.za/about/about.php> Date of access: 10 April 2017.

SAPS (South African Police Service): Organizational Structure. South African Police Service: About us – Organizational Structure. https://www.saps.gov.za/about/org_structure.php Date of access: 10 April 2017.

SAR (Suspicious Activity Reports) Regime. NCA: National Crime Agency – The SAR Regime. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu/the-sars-regime> Date of access: 14 March 2017.

SARS (South African Revenue Service) 2016. South African Revenue Service: SARS and the Criminal Justice System. <http://www.sars.gov.za/TargTaxCrime/WhatTaxCrime/Pages/SARS-and-the-Criminal-Justice-System.aspx> Date of access: 12 April 2017.

SARS (South African Revenue Service). About us. 2016. South African Revenue Service: Home – about us. <http://www.sars.gov.za/About/Pages/default.aspx> Date of access: 11 April 2017.

SARS and the Criminal Justice System. The South African Revenue Service. <http://www.sars.gov.za/TargTaxCrime/WhatTaxCrime/Pages/SARS-and-the-Criminal-Justice-System.aspx/>

SARS. 2015. *Huge successes in criminal convictions for tax crimes in 2014/15.* <http://www.sars.gov.za/Media/MediaReleases/Pages/25%20May%202015%20-%20Huge%20successes%20in%20criminal%20convictions%20for%20tax%20crimes%20in%202014%20and%202015.aspx/>

Sathye, M. & Patel, C. 2007. Developing Financial Intelligence: an assessment of the FIUs in Australia and India. *Journal of Money Laundering Control*, Vol. 10 No. 4: 391-405. Emerald Group Publishing Limited.

Sayare, S. 2013. French minister steps down in Swiss Bank investigation. *The New York Times: Europe*. http://www.nytimes.com/2013/03/20/world/europe/french-minister-steps-down-in-swiss-bank-investigation.html?_r=0 Date of access: 12 April 2013.

SBP. 2012. Alert: Current state of legislation in South Africa. http://www.sbp.org.za/uploads/media/SBP_Alert_-_Current_state_of_Legislation_in_South_Africa.pdf Date of access: 16 December 2017.

Schectman, J. & Wolff, B. 2016. Reuters. The United States received failing scores for its efforts to prevent money laundering by shell companies. <http://www.businessinsider.com/r-us-failing-to-curb-money-laundering-by-shell-companies-task-force-report-2016-12> Date of access: 9 February 2017.

Schmitter, P.C. 2007. Political accountability in 'real-existing' democracies: Meaning and mechanisms. Istituto Universitario Europeo, Firenze, Italia, gennaio 2007. <http://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Schmitter/PCSPoliticalAccountabilityJan07.pdf> Date of access: 10 January 2014.

Schneider, F. 2013. Size and development of the shadow economies of Portugal and 35 other OECD Countries from 2003 to 2013: Some New Facts. http://www.nipe.eeg.uminho.pt/Uploads/Seminarios%202013/2013-03-31_Schneider35otherOECD.pdf

Schwandt, T.A. 2001. *Dictionary of qualitative inquiry* (2nd ed.). Thousand Oaks: Sage.

Science & Technology. 2015. Central Intelligence Agency: Offices of CIA. <https://www.cia.gov/offices-of-cia/science-technology/index.html> Date of access: 22 March 2017.

Scotland, J. 2012. *Exploring the Philosophical Underpinnings of Research: Relating Ontology and Epistemology to the Methodology and Methods of the Scientific, Interpretive, and Critical Research Paradigms*. Canadian Center of Science and Education.

Seale, L., Zungu, L. & Mngadi S. 2017. IOL: The Zuma Era - #GuptaMails: Latest state capture revelations rattle ANC. <http://www.iol.co.za/news/special-features/zuma/guptamails-latest-state-capture-revelations-rattle-anc-9535403> Date of access: 13 July 2017.

Sekaran, U. 2007. *Research Methods for Business: A skill building approach*. John Wiley & Sons Inc. United States of America.

Serious Organized Crime Agency. GOV.UK: Serious Organized Crime Agency closed in October 2013. <https://www.gov.uk/government/organisations/serious-organized-crime-agency> Date of access: 13 March 2017.

Serrao, A. & Myburgh, P. 2017. News24. *Dubai: the Guptas' city of shells*. <https://www.news24.com/SouthAfrica/News/dubai-the-guptas-city-of-shells-20171027> Date of access: 22 February 2018.

Shanks, G. 2002. Guidelines for conducting positivist case study research in information systems. *Australasian Journal of Information Systems*. <http://journal.acs.org.au/index.php/ajis/article/view/448> Date of access: 17 September 2017.

Siemens court case (2008) see United States.

SIU (Special Investigations Unit): FAQ. 2016. Special Investigating Unit: FAQ. <https://www.siu.org.za/faq.html> Date of access: 11 April 2017.

SIU (Special Investigations Unit): Our mandate. 2016. Special Investigating Unit: About us – our mandate. <https://www.siu.org.za/www.html> Date of access: 11 April 2017.

SIU (Special Investigations Unit): Who we are. 2016. Special Investigating Unit: About us – who we are. <https://www.siu.org.za/www.html> Date of access: 11 April 2017.

Smit, P. 2007. *Anti-money laundering: International law and practice*. England: John Wiley & Sons. p781 – 794.

Smit, S. 2018. Mail & Guardian: Concourt: Abrahams out, Nxasana to pay back the money. <https://mg.co.za/article/2018-08-13-concourt-abrahams-out-nxasana-to-pay-back-the-money> Date of access: 30 August 2018.

Smith, A. 1759. *Theory of moral sentiments*. London: Millar

Smith, J. & Firth, J. 2011. Qualitative data analysis: application of the framework approach. *Nurse Researcher*, 18 (2): 52-62.

Snyman, C.R. 2012. *Strafreg*. South Africa: LexisNexis Butterworths.

SOI – Tax Stats. Internal Revenue Services. <https://www.irs.gov/uac/SOI-Tax-Stats-Criminal-Investigation-Program-by-Status-or-Disposition-IRS-Data-Book-Table-18/>

Soiferman, L.K. 2010. Compare and Contrast Inductive and Deductive Research Approaches. Institute of Educational Sciences. <https://files.eric.ed.gov/fulltext/ED542066.pdf> Date of access: 9 October 2018.

Sole, S. 2011. Mail&Guardian: Zuma new dodgy NPA choice. <https://mg.co.za/article/2011-01-14-zumas-dodgy-new-npa-choice> Date of access: 11 August 2017.

South Africa. 1962. Income Tax Act No 58 of 1962.

South Africa. 1994. Intelligence Services Oversight Act No 40 of 1994.

South Africa. 1994. National Strategic Intelligence Act No 39 of 1994.

South Africa. 1996. Constitution of the Republic of South Africa No. 108 of 1996.

South Africa. 1998. National Prosecuting Authority Act No 32 of 1998.

South Africa. 1998. Prevention of Organized Crime Act No 122 of 1998.

South Africa. 2001. Financial Intelligence Act No. 38 of 2001.

South Africa. 2004. Prevention and Combating of Corruption Activities Act No 12 of 2004.

South Africa. 2004. Protection of Constitutional Democracy against Terrorist and Related Activities Act. No 33 of 2004.

South Africa. 2009. NDPP v Zuma 2009 (1) SACR 361 (SCA).

South Africa. 2010. National Director of Public Prosecutions v King (86/09) [2010] ZASCA 8.

South Africa. 2011. National Director of Public Prosecutions (NDPP) v Abrina 6822 Ltd and Others 2011(1) SACR 419 (KZP).

South Africa. 2011. NDPP v Van Staden & others (730/2011) [2012] ZASCA 171.

South Africa. 2011. Tax Administration Act No 28 of 2011.

South Africa. Extract: Proposed pillars of the national anti-corruption strategy. http://www.gov.za/sites/www.gov.za/files/speech_docs/NACS%20-%20Pillars%20-%20Detailed%20Extract.pdf Date of access: 5 July 2017.

South Africa. Glenister v. the President of the Republic of South Africa and Others (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (17 March 2011)

South Africa. Khampepe Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations. (The DSO"). 2006. Final Report.

http://www.justice.gov.za/commissions/2008_khampempe.pdf Date of access: 9 September 2017.

South African Government: National Anti-Corruption Strategy.
<http://www.gov.za/AntiCorruption> Date of access: 15 May 2017.

South African History Online. 2012. South African History Online: towards a people's history – Jacob Sello (Jackie) Selebi. <http://www.sahistory.org.za/people/jacob-sello-jackie-selebi>
Date of access: 12 May 2017.

Southern African Development Community. 2001. Protocol against corruption.
http://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf Date of access: 14 November 2017.

Special Financial Investigations Unit. Department of Justice: Money Laundering and Asset Recovery Section. <https://www.justice.gov/criminal-mlars> Date of access: 10 March 2017.

Spies v U.S 317 U.S 492 (1943) **see** United States.

Spreutels, J. & Grijseels, C. 2000. Interaction between money laundering and tax evasion. Belgian and international measures in the fight against money laundering. http://www.ctif-cfi.be/website/images/EN/pub_art/s9T10088.pdf Date of access: 10 June 2013.

SSA Domestic Branch. 2016. Republic of South Africa: State Security Agency – About us. <http://www.ssa.gov.za/AboutUs/Branches/DomesticBranch.aspx> Date of access: 11 April 2017.

Stack, E.M. Writing a Research Proposal. Rhodes University: Department of Accounting. [http://www.ru.ac.za/media/rhodesuniversity/content/facultyofcommerce/documents/Lilla%20Stack%20Research%20Proposal%20Module%20-%20Rhodes%20\(2012\).pdf](http://www.ru.ac.za/media/rhodesuniversity/content/facultyofcommerce/documents/Lilla%20Stack%20Research%20Proposal%20Module%20-%20Rhodes%20(2012).pdf) Date of access: 31 October 2013.

Stages of a Case. 2017. Serious Fraud Office: About Us – Stages of a case. <https://www.sfo.gov.uk/about-us/#Stagesofacase> Date of access: 14 March 2017.

Stamatis, H. Greece: History of the City's Police as cited by Tsolakidou, 2013.

Stapenhurst, R. & O'Brien, M. Accountability in governance. <http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf> Date of access: 10 January 2014.

Steele, B. Money laundering: A brief history. <http://www.sid.in-berlin.de/nedkelly-world/moneylaunderingbriefhistory.html> Date of access: 9 April 2014.

Steward, B. 2004. Writing a Literature Review. *British Journal of Occupational Therapy*. Vol. 67(11). p. 495–500.

Stinglingh, M., Koekemoer, A., Van Heerden, L., Wilcocks, J.S., De Swardt, R. & Van der Zwan, P. 2018. *Silke: South African Income Tax*. South Africa: LexisNexis.

Storm, A. 2013. Establishing the link between money laundering and tax evasion. *International Business and Economics Research Journal*. The Clute Institute. Volume 12, Number 11.

Structure of the State Security Agency. 2016. Republic of South Africa: State Security Agency – About us. <http://www.ssa.gov.za/AboutUs/Branches.aspx> Date of access: 10 April 2017.

Struwig, F.W. & Stead, G.B. 2001. Planning, designing and reporting research. Masker Miller Longman (Pty) Ltd. Cape Town.

Summerson, H. 1992. The Enforcement of the Statute of Winchester, 1285-1327. *Journal of Legal History*, Vol. 13, Issue 3. p.232-250.

Support to Mission. 2016. Central Intelligence Agency: Offices of CIA. <https://www.cia.gov/offices-of-cia/mission-support/index.html> Date of access: 22 March 2017.

Surbhi, S. 2015. Key differences: Difference between developed countries and developing countries. <https://keydifferences.com/difference-between-developed-countries-and-developing-countries.html> Date of access: 14 December 2017.

Swartley, W.M. 1980. *The Christian and the Payment of Taxes Used for War*. <http://peace.mennolink.org/articles/wartaxes.html> Date of access: 17 April 2017.

Tamukamoyo, H. 2015. SABC News: SA can't afford to have unstable anti-corruption agencies. <http://www.sabc.co.za/news/a/3abe268047193249a55ba5686e648436/SA-can%E2%80%99t-afford-to-have-unstable-anti-corruption-agencies-20152801> Date of access: 12 May 2017.

Tavares, R. 2013. Relationship between money laundering, tax evasion and tax havens. *Special Committee on Organized Crime, Corruption and Money Laundering (CRIM) 2012-2013*.

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/crim/dv/tavares_ml_/tavares_ml_en.pdf

Tax Administration Act No 28 of 2011 **see** South Africa.

Tax Administration Act, 1953. Common Wealth Consolidated Acts **see** Australia.

Tax Crime Prosecution Results. The Australian tax office.

<https://www.ato.gov.au/General/the-fight-against-tax-crime/news-and-results/tax-crime-prosecution-results/>

Tax Crimes Explained. The Australian tax office. <https://www.ato.gov.au/general/the-fight-against-tax-crime/tax-crime-explained/>

Tax Division. 2016. Department of Justice: Tax Division. <https://www.justice.gov/tax/about-division> Date of access: 10 March 2017.

Tax Evasion Offences. Lexis PSL corporate crime.

<https://www.lexisnexis.com/uk/lexispsl/corporatecrime/document/391421/55KB-9471-F188-N1BB-00000-00/Tax%20evasion%20offences%E2%80%9494overview/>

Tax Fraud. Commonwealth Director of Public Prosecutions. <http://www.cdpp.gov.au/crimes-we-prosecute/fraud/tax-fraud/>

Tax Havens Causes Poverty. 2010. Tax Justice Network: why tax havens cause poverty. <http://taxjustice.blogspot.co.za/2010/02/tax-havens-cause-poverty-imf-endorses.html> Date of access: 30 June 2012.

Taxation in South Africa 2014/2015. <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-Gen-G01%20-%20Taxation%20in%20South%20Africa%20-%20External%20Guide.pdf/>

Thackeray, F.W. & Finding, J.E. 2012. Events that formed the Modern World. ABC CLIO, LLC. https://books.google.co.za/books?id=O2MhulpUa_cC&pg=RA1-PA195&lpg=RA1-PA195&dq=china+qing+dynasty+war+against+tax+evasion&source=bl&ots=oQCCtbV9qu&sig=jMGIAUJt84VSpURxxGVv6bPQ9RE&hl=en&sa=X&ved=0ahUKEwjn7rvM_LrLAhUFWBoKHSyfAsMQ6AEIMjAG#v=onepage&q=china%20qing%20dynasty%20war%20against%20tax%20evasion&f=false Date of access: 22 April 2017.

Thamm, M. 2016. Daily Maverick. SARS wars: Massive data leak alleges British American Tobacco SA's role in bribery and corruption. <http://www.dailymaverick.co.za/article/2016-08-16-sars-wars-massive-data-leak-alleges-british-american-tobacco-sas-role-in-bribery-and-corruption> Date of access: 6 December 2017.

Thamm, M. 2017a. Daily Maverick: SARS Wars: Purge has left SARS criminal investigative capacity vulnerable. <https://www.dailymaverick.co.za/article/2016-09-07-sars-wars-purge-has-left-sars-criminal-investigative-capacity-vulnerable/#.WiaZY1WWa00> Date of access: 5 December 2017.

Thamm, M. 2017b. Daily Maverick: Zuma, corruption and the arms deal: The gift that just keeps on giving. <https://www.dailymaverick.co.za/article/2017-05-03-zuma-corruption-and-the-arms-deal-the-gift-that-just-keeps-on-giving/#.WRmTKut9600> Date of access: 15 May 2017.

Thamm, M. 2017c. The Daily Maverick: Analysis: State President, Accused No 1, 18 charges, 783 watertight counts. <https://www.dailymaverick.co.za/article/2017-10-13-analysis-state-president-accused-no-1-18-counts-783-watertight-charges/#.WpArjINua00> Date of access: 22 February 2018.

The Australian Tax Office. <https://www.ato.gov.au/>

The Banking Association South Africa. Financial Intelligence Center Act. <http://www.banking.org.za/consumer-information/legislation/financial-intelligence-centre-act> Date of access: 7 July 2017.

The Clearing House. 2016. Payments Services: CHIPS. <https://www.theclearinghouse.org/payments/chips> Date of access: 1 March 2017.

The Cost of Tax Abuse: A briefing paper on the cost of tax evasion worldwide. 2011. *The Tax Justice Network*. <http://www.taxresearch.org.uk/Blog/2011/11/25/tax-evasion-costs-the-world-3-1-trillion-a-year-more-than-5-of-world-gdp/>

The Egmont Group. 2017. About Egmont. <https://www.egmontgroup.org/en/content/about> Date of access: 1 March 2017.

The Free Dictionary. Definition of “illegal activity”. The Free Dictionary: Legal Dictionary. <http://legal-dictionary.thefreedictionary.com/illegal+activity> Date of access: 12 October 2012.

The Free Dictionary: Tax Resistance. <http://encyclopedia.thefreedictionary.com/Tax+resistance/>

The IMF at a glance. International Monetary Fund: About the IMF. <http://www.imf.org/en/About> Date of access: 18 August 2017.

The IMFs role in the AML/CFT efforts. 2017. The Monetary Fund: The IMF and the fight against money laundering and the financing of terrorism. <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism> Date of access: 18 August 2017.

The Internal Revenue Code: Title 26 **see** United States of America.

The Khampepe Commission Report. 2006 **see** South Africa. Khampepe Commission of Inquiry into the mandate and location of the directorate of Special Operations (“The DSO”).

The Nation Calls, 1908-1923. FBI: A brief history. <https://www.fbi.gov/history/brief-history>
Date of access: 28 February 2017.

The Organization for Economic and Co-operation Development. *Major new steps to boost international cooperation against tax evasion: Governments commit to implement automatic exchange of information beginning 2017*. <http://www.oecd.org/newsroom/major-new-steps-to-boost-international-cooperation-a.../>

The Organization for Economic and Co-operation Development. *What we do and how*. <http://www.oecd.org/about/whatwedoandhow/>

The Tax Justice Network. <http://www.taxjustice.net/about/who-we-are/goals/>

The Taxes Management Act 1970 **see** United Kingdom.

The Transparency and Accountability Initiative. 2011. Donor aid: new frontiers in transparency and accountability. http://www.transparency-initiative.org/archive/wp-content/uploads/2011/05/donor_aid_final1.pdf Date of access: 15 January 2014.

The United States Code: Title 18 **see** United States of America.

The World Factbook. Central Intelligence Agency.
<https://www.cia.gov/library/publications/the-world-factbook/fields/2221.html>

Theoharis, M. Money laundering. <http://www.criminaldefenselawyer.com/crime-penalties/federal/money-laundering.htm#> Date of access: 8 February 2017.

Thesaurus. Definition of “superannuation”. <http://www.freethesaurus.com/superannuation/>

Thomson Reuters. Tax & accounting: What is CRS? What is FATCA?
<https://tax.thomsonreuters.com/fatca-crs/what-is-crs-fatca/> Date of access:
20 September 2017.

Thomson Reuters. FATCA and CRS. <https://tax.thomsonreuters.com/fatca-crs/what-is-crs-fatca/> Date of access: 7 February 2017.

Timetric. 2012. 2012 Private Banker International Yearbook. *Reportlinker*.
<http://www.reportlinker.com/p0874133/Private-Banker-International-Yearbook.html> Date of access: 8 October 2012.

Tinkoff v. United States, 86 F.2d 868 (1936) **see** United States.

Tlhapane, T. 2014. How transparent is our government? <http://livemag.co.za/transparent-government-2/> Date of access: 22 December 2013.

Today's CIA. 2015. Central Intelligence Agency: About CIA – Today's CIA. <https://www.cia.gov/about-cia/todays-cia> Date of access: 17 March 2017.

Touryalai, H. 2013. Tale of two Swiss banks: Why Wegelin failed and UBS survived tax evasion charges. *Forbes*. <http://www.forbes.com/sites/halahtouryalai/2013/01/04/tale-of-two-swiss-banks-why-wegelin-failed-and-ubs-survived-tax-evasion-charges/> Date of access: 10 May 2013.

Trade Analysis Information System. United Nations Conference on Trade and Development. <http://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures/NTMs-trains.aspx> Date of access: 13 June 2018.

Tran, M. 2009. Prosecutors drop Jacob Zuma corruption charges. *The Guardian*. <http://www.theguardian.com/world/2009/apr/06/zuma-corruption-charges-dropped> Date of access: 18 October 2012.

Transparency International. 2011. What is the Corruption Perceptions Index? https://www.transparency.org/cpi2011/in_detail Date of access: 16 November 2017.

Transparency International. 2016. Corruption. Corruption Perceptions Index 2016. http://www.transparency.org/news/feature/corruption_perceptions_index_2016 Date of access: 12 May 2017.

Transparency International. 2017a. Corruption Perceptions Index 2017. https://www.transparency.org/news/feature/corruption_perceptions_index_2017 Date of access: 26 February 2018.

Transparency International. 2017b. How to make anti-corruption agencies accountable and independent. https://www.transparency.org/news/feature/how_to_make_anti_corruption_agencies_accountable_and_independent Date of access: 30 October 2017.

TransUnion. 2017. Credit report products: Personal. <https://www.transunion.co.za/#> Date of access: 12 July 2017.

Trochim, M.K. 2006. Deduction and Induction. WEB Center for Social Research Methods. <https://socialresearchmethods.net/kb/dedind.php> Date of access: 17 June 2019.

Trochim, M.K, & Donnely, J.P. 2008. The research methods knowledge base. Cengage Learning. United States of America.

Tsolakidou, S. 2013. The police in Ancient Greece. The Greek Reporter.
<https://greece.greekreporter.com/2013/05/30/the-police-in-ancient-greece/> Date of access: 30 October 2017.

Turner, C. 2008. Fraud risk management. A practical guide for accountants. Oxford, UK: CIMA.

Turner, J.E. 2011. Money laundering prevention: Deterring, detecting, and resolving financial fraud. John Wiley & Sons.

U.S. Code. Title 18, Part II, Chapter 206, section 3127. Definition of “pen registers”.
<https://www.law.cornell.edu/uscode/text/18/3127> Date of access: 6 March 2017.

U.S. Department of Justice. 2012. Fruitland bar owner sentenced for income tax evasion, illegal gambling, and money laundering.
https://www.justice.gov/sites/default/files/tax/legacy/2012/12/06/Overstreet_ID_GWB_WCC_PR3%20wpd.pdf Date of access: 15 March 2013.

U.S. Department of Justice. 2016. Fact Sheet: U.S. Marshals Service.
<https://www.usmarshals.gov/duties/factsheets/overview.pdf> Date of access: 9 March 2017.

U.S. Securities and Exchange Commission. 2008. SEC Charges Siemens AG for engaging in Worldwide Bribery. <https://www.sec.gov/news/press/2008/2008-294.htm> Date of access: 8 May 2017.

U.S. Securities and Exchange Commission. 2012. A resource guide to the FCPA.
<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf> Date of access: 20 December 2017.

U.S. Securities and Exchange Commission. What we do.
<https://www.sec.gov/Article/whatwedo.html> Date of access: 14 November 2017.

UK (United Kingdom) FIU (Financial Intelligence Unit) **see** United Kingdom.

UK Financial Intelligence Unit. NCA: National Crime Agency: Economic Crime Command – UK Financial Intelligence Unit. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu> Date of access: 13 March 2017.

UK Financial Intelligence Unit. The Egmont Group.
<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu> Date of access: 13 March 2017.

Umraw, A. 2017. The Huffington Post: Zuma, NPA now agree: Dropping corruption charges was 'irrational'. http://www.huffingtonpost.co.za/2017/09/14/zuma-npa-now-agree-dropping-corruption-charges-was-irrational_a_23208834/ Date of access: 13 November 2017.

UN Trade Statistics. United Nations International Trade Statistics Knowledge Base. <https://unstats.un.org/unsd/tradekb/Knowledgebase/50075/What-is-UN-Comtrade> Date of access: 13 June 2018.

UNCAC. Article 14. Thematic compilation of relevant information submitted by the United States of America: Prevention of money laundering. https://www.unodc.org/documents/corruption/WG-Prevention/Art_14_Prevention_of_money-laundering/USA.pdf Date of accessed on: 2 February 2017.

Underhill, G. 2014. Mail&Guardian: NPA Boss Nxasana wins battle against suspension – for now. <https://mg.co.za/article/2014-08-15-npa-boss-nxasana-wins-battle-against-suspension-for-now> Date of access: 11 August 2017.

Unger, B. 2009. The gravity model for measuring money laundering and tax evasion. Paper prepared for the Workshop on Macroeconomic and Policy Implication of Underground Economy and Tax Evasion, February 5-6, 2009 at Bocconi University, Milan Italy. <http://www2.econ.uu.nl/.../unger/.../Unger%20for%20BUSATOconference.doc>

United Kingdom. 1994. AG for Hong Kong v Reid [1994] 1 All ER 1. <https://www.aac.moj.gov.tw/HitCounter.asp?xlItem=476150&ixCuAttach=165608> Date of access: 16 March 2013.

United Kingdom. Financial Intelligence Unit. <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu> Date of access: 27 March 2017.

United Kingdom. 1970. *The Taxes Management Act*.

United Kingdom. 2000. Financial Services and Markets Act.

United Kingdom. 2000. Terrorism Act.

United Kingdom. 2002. Proceeds of Crime Act.

United Kingdom. 2012. Financial Services Act.

United Nations Convention against Transnational Organized Crime. 2000. United Nations Convention Against Transnational Organised Crime and the Protocols Thereto. <https://www.unodc.org/documents/middleeastandnorthafrica/organised->

crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf Date of access: 12 May 2017.

United Nations Office on Drugs and Crime. 2016. The country we would like to live in: A call for stronger anti-corruption actions in South Africa.

https://www.unodc.org/southernafrica/en/stories/the-country-we-would-like-to-live-in_-a-call-for-stronger-anti-corruption-actions-in-south-africa.html Date of access: 12 May 2017.

United States Department of Justice. 2015. Home: Agencies Chart.

<https://www.justice.gov/agencies/chart> Date of access: 27 February 2017.

United States Marshals Service. 2012. Department of Justice: United States Marshals Service. <https://www.justice.gov/archive/jmd/mps/2012/manual/usms.htm> Date of access: 9 March 2017.

United States of America. *The Internal Revenue Code: Title 26.*

United States of America. *The United States Code: Title 18.*

United States v. Dresser Indus., 628 F.2d 1368 (D.C. Cir. 1980).

United States v. Smith 424 F.3d 992 (9th Cir. 2005).

United States. 1936. Tinkoff v. United States, 86 F.2d 868 (7th Cir. 1936).

United States. 1943. Spies v. United States, 317 U.S. 492 (1943).

United States. 1964. Jacobellis v Ohio, 378 U.S 184 (1964).

United States. 2008. United States District Court. 2008. For the District of Columbia. U.S Securities and Exchange Commission v. Siemens Aktiengesellschaft.

United States. Foreign Account Tax Compliance Act 2009.

United States. 18 U.S Code § 1956: Laundering of Monetary Instruments.

United States. 18 U.S Code § 1957: Engaging in monetary transactions in property.

United States. 1986. Money Laundering Control Act.

United States. 2001. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act).

Uribe, R. 2003. Changing paradigms on money laundering.

<http://webcache.googleusercontent.com/search?q=cache:d9UnqvlSQukJ:www.anti-moneylaundering.org/Document/Default.aspx%3FDocumentUid%3D81F17D8F-5C74-415F-BD58-01EEB164AA44+&cd=3&hl=en&ct=clnk&gl=za> Date of access: 23 July 2016.

US Customs Service. Money Laundering. Official website of Homeland Security.

<https://www.ice.gov/money-laundering> Date of access: 22 October 2016.

US Department of the Treasury. Updated 2017. Resource centre: Sanctions programs and country information. [https://www.treasury.gov/resource-](https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)

[center/sanctions/Programs/Pages/Programs.aspx](https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx) Date of access: 1 February 2017.

US PATRIOT Act 2001 **see** United States of America.

US v Pomponio. 1976. *United States Supreme Court: UNITED STATES v. POMPONIO, (1976), No. 75-1667.*

US v Williams. 2001. *Taxcrime! Obstructing the Due Administration of the Tax Code: The Orwellian Implications of 26 U.S.C. § 7212(a).*

USLegal. Definition of “accountability”. <http://definitions.uslegal.com/p/political-accountability>
Date of access: 15 January 2014.

USLegal. Definition of “economic crimes”. <https://definitions.uslegal.com/e/economic-crime/>
Date of access: 24 June 2019.

Vaismoradi, M., Turunen, H. & Bondas, T. 2013. Content analysis and thematic analysis: Implications for conducting a qualitative descriptive study. *Nursing and Health Sciences*, 15. p.398-405.

Valdez, B. 2018. Spotlight on Discipline: Forensics. *International Social Science Review*. Vol 94 (2), article 18.

Van Loggerenberg, J. 2016. *Rogue: the inside story of SARS's elite crime-busting unit.* Johan Ball Publishers. Johannesburg & Cape Town.

Van Vuuren, H. 2004. Small bribes, big challenges: Extent and nature of petty corruption in South Africa. *SA Crime Quarterly* (9), September: 11-16.

Van Wyk, P. 2016. Mail&Guardian: NPA's Nomgcobo Jiba and Lawrence Mrwebi struck off the roll of advocates. <https://mg.co.za/article/2016-09-15-npas-nomgcobo-jiba-and-lawrence-mrwebi-struck-from-the-roll-for-advocates> Date of access: 11 August 2017.

Venter, J.M.P, Stiglingh, M., Koekemoer, A.D., Oosthuizen, A. & Cass, S.C. 2015. Student approach to business activities. South Africa: LexisNexis. pp. 517-537.

Vosloo, J.J. s.a. Chapter 5: Research design and Methodology.

http://dspace.nwu.ac.za/bitstream/handle/10394/12269/Vosloo_JJ_Chapter_5.pdf?sequence=6 Date of access: 9 October 2018

Wa Afrika, M. 2017. Sunday Times: TimesLive - Smoked out! Dlamini-Zuma's secret backers. <https://www.timeslive.co.za/politics/2017-11-05-smoked-out-dlamini-zumas-secret-backers/> Date of access: 16 December 2017.

Weck-Hannemann, H. & Pommerehne, W.W. 1989. Einkommensteuerhinterziehung in der Schweiz: Eine empirische Analyse. *Schweizerische Zeitschrift für Volkswirtschaft und Statistik*, 125:515-556.

Weimer, M. & Vines, A. 2011. Chatham House. UK–South Africa Relations and the Bilateral Forum. https://www.chathamhouse.org/sites/files/chathamhouse/19481_sa-uk_links.pdf Date of access: 18 August 2017.

Welch, J., Del Guayo, J.M., Ragnolini, L., Averginos, Y., Butkiewicz, E., Wojdylo, K., Stasevicius, G. & Balciunaite, S. 2006. Comparative implementation of EU Directives (II) – Money Laundering. The British Institute of International and Comparative Law. https://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/2007-2000/Comparative%20Implementation%20of%20EU%20Directives%20II_Money%20Launde ring.pdf Date of access: 16 January 2017.

What is ATLAS.ti? ATLAS.ti: Qualitative Data Analysis. <https://atlasti.com/product/what-is-atlas-ti/> Date of access: 8 September 2018.

What is tax crime? <http://www.sars.gov.za/TargTaxCrime/WhatTaxCrime/Pages/default.aspx>

What we do. 2017. Serious Fraud Office: About Us – What we do. <https://www.sfo.gov.uk/about-us/> Date of access: 14 March 2017.

White, A. 2007. Anti-money laundering: International Law and Practice. England: John Wiley & Sons. p.739 - 762.

White-Collar-Crime. FBI: What we investigate. <https://www.fbi.gov/investigate/white-collar-crime> Date of access: 28 February 2017.

Wicks, J. & Khoza, A. 2014. Profits up in smoke. BusinessReport. <https://www.iol.co.za/business-report/economy/profits-up-in-smoke-1651361> Date of access: 7 December 2017.

Williams, M. 2017. The Citizen: How Zuma gangsters ruin SA. <https://citizen.co.za/opinion/opinion-columns/1710980/how-zuma-gangsters-ruin-sa/> Date of access: 16 December 2017.

Wills, J.W. 2007. Foundations of qualitative research: Interpretive and critical approaches. United States of America: SAGE Publications.

Wilson, G. 2017. The Herald Live. House, cars of 'smuggler' confiscated. <http://www.heraldlive.co.za/news/2017/12/05/house-cars-smuggler-confiscated/> Date of access: 12 December 2017.

Wilson. 2016. Federal Bureau of Investigation: From the Archives – Historic Guardians of Our Nation's Capital. <http://leb.fbi.gov/2016/may/from-the-archives-historic-guardians-of-our-nations-capital> Date of access: 27 February 2017.

Winchester, C.L. & Salji, M. 2016. Writing a Literature Review. Journal of Clinical Urology. Vol. 9(5). p.308–312.

Windeed – About us. 2017. Windeed: Information is our business. <http://www.windeed.co.za/about-us/> Date of access: 12 July 2017.

Woodall, J. 2016. Qualitative Data Analysis - Coding & Developing Themes. <https://www.youtube.com/watch?v=eT-EDgwRvRU> Date of access: 9 October 2018.

Woods, B.F. 1998. The art and science of money laundering. Colorado: Paladin Press.

World Bank Group. Module 4. Planning Investigations: Investigation into Corruption and Money Laundering. <http://pubdocs.worldbank.org/en/220301427730119930/AML-Module-4.pdf> Date of access: 17 July 2015.

World Bank Group. Planning investigations: Investigation of corruption and money laundering (adopted from the Handbook for Practitioners on Asset Recovery under StAR Initiative). <http://pubdocs.worldbank.org/en/220301427730119930/AML-Module-4.pdf> Date of access: 27 February 2017.

World Bank Group. Stolen asset recovery initiative. <https://star.worldbank.org/star/about-us/our-vision> Date of access: 26 December 2017.

World Bank. 2004. Financial intelligence units: an overview. <https://www.imf.org/external/pubs/ft/FIU/fiu.pdf> Date of access: 3 April 2017.

World Bank. <http://data.worldbank.org>

World Integrated Trade Solution Trade Stats. The World Bank: Data Catalogue. <https://datacatalog.worldbank.org/dataset/world-integrated-trade-solution-trade-stats> Date of access: 13 June 2018.

Worldometers. 2018. <http://www.worldometers.info> Date of access: 26 February 2018.

Year Book Australia. 2010. Australian Bureau of Statistics: Law Enforcement Agencies.
<https://www.afp.gov.au/what-we-do> Date of access: 4 April 2017.

Your Dictionary. Definition of “felony”. <http://www.yourdictionary.com/felony/>

Zoppei, V. 2012. The University of the Western Cape: Faculty of Law. Tax evasion as a predicate offence for money laundering.
https://etd.uwc.ac.za/bitstream/handle/11394/4448/Zoppei_LLM_2012.pdf?sequence=1&isAllowed=y Date of access: 23 February 2018.

Zysman, A. 2006. World Investigators Networks Standard Practice for Investigative and Forensic Accounting Engagement, Canadian Institute of Chartered Accountant Journal.

Zysman, A. Forensic Accounting Demystified <http://www.forensicaccounting.com> Date of access: 24 June 2019.