



# SUPPORT TO THE ANTI-CORRUPTION STRATEGY OF GEORGIA

Tblisi, 6-7 October 2010

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**Training on**  
**“Enhancing the ability of revenue  
service officers to detect  
corruption offences”**

# OECD

## *What is it?*

The OECD is a unique **forum** where the governments of **33 democracies** work together to address the economic, social and environmental challenges of globalisation.

## *What does it do?*

The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD produces **internationally agreed instruments, decisions and recommendations** to promote rules of the game in many areas such as combating bribery in international business transactions, information and communications policy, taxation, and the environment.



Non-members are invited to subscribe to these agreements and treaties.

The Organisation maintains active relationships with business, labour, civil society and parliamentarians.

It also shares expertise and exchanges views with more than 100 other economies.

# COMMITTEE ON FISCAL AFFAIRS

The Committee's work covers a wide range of **domestic and international tax issues**, resulting in **standards, guidelines and best practices** that are implemented throughout the world.

# *WHAT IS A BRIBE?*

There are as many different definitions of corruption as there are diverse forms of corruption.

**Bribery** is a **specific form of corruption** that can be defined as the **voluntary giving of something of value to influence performance of official duty** either *by doing* something improper or *failing to do* something they should do within the authority of their position.

The payment of bribes in international business transactions raises **serious moral and political concerns** and exacts a **heavy economic cost**, hindering the development of international trade and investment by **increasing transaction costs and distorting competitive conditions**. The tax treatment of bribes may add to this distortion.

# OVERVIEW OF INTERNATIONAL LEGAL INITIATIVES

- 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials (*now replaced*)
- 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- 2009 Recommendation on Tax Measures for Further Combating Bribery of FPO in International Business Transactions

# INDICATORS OF FRAUD OR BRIBERY

Indicators of fraud: one or more acts of intentional wrongdoing on the part of the taxpayer with the specific purpose of evading tax.

Two categories:

a) affirmative **indications**

b) affirmative **acts**

*No fraud can be found in any case unless affirmative acts are present*

# 1- METHODS OF PAYMENT

- a. Exchange of funds through a legitimate business
- b. Transfer of funds through a spurious business
- c. Payment of campaign expense
- d. Indirect payments to public officials

- e. Invoicing the client for an inflated amount as compared to the actual market price
- f. Professional service
- g. Travel and entertainment



## 2- FICTITIOUS EMPLOYEES

Purpose: to get funds out of a business in the form of a deduction without the recipient paying income tax on the income.

*Commonly used where the paying enterprise is in the type of business which does not deal in cash and where money can only be taken out by check.*

## 3- BOOKS AND RECORDS

- a. Keeping two sets of books or no books
- b. False entries or alterations made on the books and records, back-dated or post-dated documents, false invoices, false applications, statements , other false documents or applications
- c. Failure to keep adequate records, concealment of records, or refusal to make certain records available

## 4- CONDUCT OF TAXPAYER

- a. Attempts to hinder the examination; for example, failure to answer pertinent questions repeated cancellations of appointments, or refusal to provide records;
- b. Testimony of employees concerning irregular business practices by the taxpayer;
- c. Destruction of books and records, especially if just after examination was started;
- d. Payment of improper expenses by or for officials or trustees;

- e. Back-dating of applications and related documents;
- f. Attempts to bribe the tax examiner

# 5- METHODS OF CONCEALMENT

- a. Transactions not in the usual course of business;
- b. Transactions surrounded by secrecy;
- c. False entries in books of transferor or transferee;
- d. Use of secret bank accounts for income, etc..

## 6- MANDATORY REPORTING OF COMMISSIONS PAID AND SIMILAR PAYMENTS IN SOME COUNTRIES

A few countries require reporting of payments of commissions, fees, and similar payments to residents and non-residents.

The tax administration is therefore given a tool that enables them to analyse information provided on commissions and this can be a potential criteria to undertake a tax audit as they may reveal leads of corruption.

Traditionally there is a particular surveillance of the:

- Occurrence of beneficiaries located in tax havens;
- Occurrence of high amounts paid to beneficiaries who to date received small amounts;
- Increase of payments and beneficiaries;
- Important amounts paid to lawyers abroad;
- Occurrence of beneficiaries located in geographic zones where the enterprise has no activity.

# OECD BRIBERY AWARENESS HANDBOOK FOR TAX EXAMINERS

**Aim of this handbook:** assist countries in making their tax examiners aware of various bribery techniques used, as well as giving them the tools to detect and identify bribes of foreign public officials and bribes to public officials in the domestic context.



The **obligation for tax examiners to report bribes** they have identified to their domestic criminal law enforcement authorities will depend on the legal system of their respective countries.

# EXAMINATION PLAN AND COMPLIANCE CHECKS

During the **planning phase** and **conduct of examinations of tax returns**, the supervisor of the tax examiners and the tax examiners themselves should be alert to situations that lend themselves to the creation of illegal or improper payments, such as bribes.

When deemed appropriate and necessary, the examination plans should include consideration of the following compliance checks:

- Examine internal audit reports and related working papers to determine if any reference is made to the creation of any secret or hidden corporate fund;
- Review taxpayer's copy of reports filed with other governmental regulatory agencies;
- Give appropriate consideration to foreign entities, operations, contractual or pricing arrangements, fund transfers, and use of tax haven locations.

# INFORMATIONS

Available from other government agencies

Available from tax treaty partners

- Exchange on request
- Spontaneous exchange
- Automatic exchange

# EXAMINATION TECHNIQUES

**Methods** for accumulating evidence particularly relevant to identifying bribes:

1- **Analytical tests**, such as analysis of Balance Sheet items to identify large, unusual, or questionable accounts.

2- **Documentation**, such as examining the taxpayer's books and records to determine the content, accuracy, and to substantiate items claimed on the tax return.

3- **Inquiry**, such as interviewing the taxpayer or (when legally possible) third parties. Information from independent third parties can confirm or verify the accuracy of information presented by the taxpayer.

4- **Testing**, such as tracing transactions to determine if they are correctly recorded and summarised in the taxpayer's books and records.

# INTERVIEWS

***Purpose:*** To the extent they are permitted by law during tax examinations, interviews **provide information about the taxpayer's financial history, business operations, and books and records.**

Interviews are used to obtain information needed to **reach informed judgements about the scope/depth of an examination and the resolution of issues.**

Interviews are also used to **obtain leads, develop information, and establish evidence.**

## ***Who to interview:***

persons having the **most knowledge** concerning the total financial picture and history of the person or entity being examined.

## ***Examples:***

chief executive officer, chief financial officer, officer in charge of international operations, officer in charge of governmental activities..



## ***Documenting interviews***

After the interview, tax examiners may prepare a memorandum of the interview.

The memorandum should be included in the case file. This may be useful for the tax examination and if the tax examiner has a legal obligation to inform the relevant prosecuting authorities of cases of bribery.

## ***Interview techniques:***

It is important that the tax examiner(s) always maintain control of the interview and even more so when they suspect bribes.

Examiners should establish the pace and direction of the interview. It is also important to continually assess whether the taxpayer is leading to pertinent information or merely rambling.

## ***Question construction:***

- a. open-ended questions
- b. close-ended questions
- c. probing questions
- d. leading questions

# EVALUATING THE TAXPAYER'S INTERNAL CONTROL

***Internal Controls*** are defined as the “taxpayer’s policies and procedures to identify, measure and safeguard business operations and avoid material misstatements of financial information”.

*It is essential to evaluate internal controls to determine the appropriate audit techniques to be used during the examination.*

## ***Key steps for evaluating internal controls:***

### **1- Control environment**

The control environment is made up of many factors such as management philosophy, management operating style, organisational structure, personnel policies and external influences affecting the business all may indicate potential bribery.

## 2- Accounting system:

Examiners must acquire knowledge of how the business operates on a daily basis with respect to customers, suppliers, management, sales, work performed, pricing, location, employees, assets used, production and record keeping.

### 3- Control procedures

The control procedures are the methods established to assure that the business operates as intended. Separation of duties is the primary control procedure that should concern tax examiners.

# SPECIAL EXAMINATION PROCEDURES

The examination could be focused on detection of special aspects of corruption, as, for instance the identification of payments to public officials.

Bribes can be found in any business sector. Bribes have often been discovered in industries where technical know-how is a key element.



## Examples:

- infrastructure investments in telecommunications and construction of power stations.
- industries for oil exploration, construction and manufacturing.

## ***Slush funds***

Definition: Corporate slush funds are accounts or groups of accounts generally created through intricate schemes outside of normal corporate internal controls for the purpose of making political contributions, bribes, kickbacks, personal expenditures by corporate officials and other illegal activities.

*Example 1: Corporation using a foreign subsidiary subject*

A corporation uses a foreign subsidiary, a foreign consultant, or a foreign bank account to “launder” funds. That cash could be repatriated back to the Corporation to provide a slush fund for payments to domestic public officials.

The funds would not be repatriated if the payment were made to a foreign public official.

*Example 2: Slush fund generated by rebates from a foreign legal consultant*

The foreign legal consultant, who also performed legitimate consulting services for the domestic corporation, over bills the company and then transfers the money back to the treasurer in cash.

### Example 3: Payments to key employees

Officers and/or key employees are paid additional compensation based on their promise that they will contribute either a percent of the bonus or the net amount (net of income taxes) as a political payment or bribe payment.

### Example 4: Corporate over-capitalisation

Real or personal property is acquired by the business entity for more than fair market value. The excess is rebated or “kicked back” and used by the promoter of the scheme to make the contribution to the political organisation or the payment to the public official.

### Example 5: Contributions to law firms

Contributions are paid to law firms which act as conduits by depositing the funds in trustee accounts from which they are disbursed to the political campaign committee designated by officers of the contributing corporation or to a public official.

***Procedures for identifying improper payments to corporate officials***

Additional direct questions as indicated in the exhibit 1, relating to the detection of bribes, beneficiaries, rebates, services obtained, destination etc.



# MONITORING BRIBES

Tax administrations may wish to set up a *monitoring system of bribes* identified during tax examinations in their Central Audit Department, in order to build a data base that could be used for statistics purposes as well as for identifying trends and to assist in the audit plan.

*Thank you for your attention*

**Questions?**

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