DEVELOPING A WORKING MODEL TO FIGHT FISCAL CORRUPTION: THE NEXUS AT WHICH TAX CRIMES AND CORRUPTION MEET

PIETRO SORBELLO* & STEPHEN HOLDEN**

I.
INTRODUCTION

Historically, larger societies have frequently required their members to share the burden of paying taxes to meet the needs of the state. Other shared features of such societies, like mandatory military service and religious or political fealty, have waned with the development of modern, representative democracies, especially within the West. However, the societal obligation to pay taxes perseveres.[1]

Taxation is the lifeblood of any economy. Fulfillment of the most basic duties of government would be impossible without tax revenues. Although difficult to quantify accurately, the estimated loss in exchequer revenue worldwide due to non-compliance with tax legislation is significant and is understood to impose a very real cost on society as a whole. Non-payment of taxes has an immediate and self-evident impact on the ability of the state to provide basic services to citizens, such as education, health, and development and maintenance of infrastructure. The failure of the state to levy and collect taxes can represent a significant obstacle to the entrenching, upholding, and enforcing of fundamental human rights, leaving the impoverished to bear the greatest burdens.[2] Rather than

This Article is also available online at http://lcp.law.duke.edu/.

* Pietro Sorbello (Ph.D.) is Colonel of Guardia di Finanza and Adjunct Professor in Criminal Law at Teramo University.

** Stephen Holden is a Ph.D. Candidate at Manchester Metropolitan University and Assistant Editor of the Corporate Crime Observatory (www.corporatecrime.co.uk)

[https://perma.cc/BE69-A66L]. The authors would like to thank Professor Diane Ring and Dr. Costantino Grasso for their invaluable comments, feedback, guidance, and patience in producing this article.

*** This article expresses the common position of the Authors. For all purposes, paragraphs I, II (D), IV are attributable to Stephen HOLDEN and paragraphs II (A, B, C, E) and III to Pietro SORBELLO.

1. Kimberly J. Morgan & Monica Prasad, *The Origins of Tax Systems: A French-American Comparison*, 114 AM. J. SOCIO. 1350 (2009). *See also* Daniel T. Ostas, *Endogenous Tax Law: Regulatory Capture and the Ethics of Political Obligation*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 68 (arguing that closing the tax gap will require reframing the ethical obligations owed by both taxpayers and the government).

2. *See* VIRTEU, *VIRTEU Roundtable "CSR, Business Ethics, and Human Rights in the Area of Taxation"*, CORP. CRIME OBSERVATORY (Feb. 12, 2021), www.corporatecrime.co.uk/virteu-csr-

supporting broader societal goals, tax policy may be weaponized to advance the needs of special interests in ways which reinforce institutional privilege and preserve societal dominance of certain racial or gender groups. Not surprisingly, tax policy can serve as a battleground in the contestation over political authority.[3] Moreover, concerted and orchestrated attempts to undermine the tax system through the operation of fiscal corruption may impede a state's ability to fulfill its duties to provide basic services or ensure certain human rights thresholds.

Not only is the notion of fiscal corruption much overlooked within the contemporary literature addressing tax crimes and corruption, but it simultaneously struggles to find a home within political policy and enforcement mechanisms. Those with appropriate authority frequently fail to address fiscal corruption coherently and instead focus on either tax crimes or corruption as independent functions, failing to consider the nexus at which these phenomena meet.[4] Thus, responses are framed in a manner which attempts to address either aggressive tax avoidance, tax crimes, or corruption as autonomous behaviors without recognition of the inherent interconnections and influences they have upon each other.

To contribute to this discussion, this article, which builds *inter alia* upon the research which the authors have carried out within the VIRTEU project,[5] will first address the notion of fiscal corruption. After providing a grounding in tax avoidance, tax evasion, and corruption as independent concepts, the article will then establish the integrated notion of fiscal corruption, which is explored within the modern Italian tax system through the fiscal corruption rules applicable to the *Guardia di Finanza*.[6] Subsequently, the article will examine the use of the

business-ethics [https://perma.cc/88VC-5354] (exploring potential human rights and ethical implication of tax abuses); Ina Kubbe & Morten Andersen, *Tax Injustice and Corruption? The Adverse Effects that Tax Evasion and Tax Avoidance Exert on Human Rights* (May 2022), www.corporatecrime.co.uk/virteu-reports [https://perma.cc/3PK7-L9KH]; James Alm, Joyce Beebe, Michael Kirsch, Omri Marian & Jay A. Soled, *New Technologies and the Evolution of Tax Compliance*, 39 VA. TAX REV. 287, 287 (2020).

3. *See*, *e.g.*, Petar Tsankov, *VIRTEU National Workshop - Bulgaria, Session 2*, CORP. CRIME OBSERVATORY, at 25:51 (June 29, 2021), www.corporatecrime.co.uk/virteu-workshop-bulgaria [https://perma.cc/J5FN-CU7C] (explaining how the elite may use its power and wealth to let the tax administration focus its investigative efforts on political opponents in order to cause trouble for its business operations).

4. Costantino Grasso & Stephen Holden, *Expert Survey Report: The Interconnections Between Tax Crime and Corruption*, at 1, 11 (Sept. 02, 2022), www.corporatecrime.co.uk/virteu-expert-survey [https://perma.cc/57YE-YX4K].

5. VIRTEU (Vat fraud: Interdisciplinary Research on Tax crimes in the European Union) was a two-year international research project funded by the European Anti-Fraud Office (OLAF) of the European Commission (Grant Agreement no: 878619), which aimed at exploring the interconnections between tax crimes and corruption. All the documents produced as well as all the video recordings of the events organized over the course of the project are available online on the Corporate Crime Observatory, which serves as the long-term repository of the project outcomes: www.corporatecrime.co.uk/virtue [https://perma.cc/YN8Z-T7EW].

6. *See* Brian Nussbaum & Jeffery Ernest Doherty, *Italy's Guardia di Finanza: Policing Financial Crime and Domestic Security in a Changing World*, 28 J. FIN. CRIME, 1078, 1078 (2021) (explaining that the *Guardia di Finanza* may be considered as the Italian enforcement agency specializing in economic crime, and that it also represents a domestic security police body tasked with policing flows of goods and people including illicit trade, contraband and trafficking, intellectual property violations, public

Milan Model which has the potential to serve as a blueprint for other tax enforcement systems seeking to identify and recover revenue lost through fiscal corruption.

II

A COHERENT CONCEPTUALIZATION OF FISCAL CORRUPTION

Many terms used to describe tax crimes and corruption seem ubiquitous, yet they are not as straightforward as they may appear. It is the discrepancy between the apparent straightforwardness and simplicity of the general features of such criminal phenomena and their transposition into complex legal terms which enables and, in some cases, facilitates tax offenses and corruption, while shielding perpetrators from meaningful and effective scrutiny. To provide a more comprehensive understanding of tax crimes and corruption within an international context and contribute to the academic and practical conceptualizations of the nexus at which taxation and corruption meet, it is crucial to have a sufficient appreciation of the terms tax evasion, tax avoidance, corruption, and fiscal corruption.[7]

A. Tax Avoidance

Tax avoidance may be understood as the act of using tax regimes to one's own advantage to reduce a tax burden in a way that is not in direct contravention of the law and that has not been ruled in breach of legal standards by a court.[8] Use of the phrase tax avoidance may elicit mental images of shady conduct by which organizations or individuals contrive to formulate increasingly complex arrangements that enable them to pay as little tax as possible, while staying on the correct side of the law in the strictest sense. However, in reality, tax avoidance exists on a continuum.[9] Some forms of tax avoidance may be understood better as tax planning, deliberately integrated into national tax systems to deliver mutual benefits to both the individual and the public purse, for example securing tax relief through investing in a pension fund. At the extreme other end of the continuum lies illicit and illegal acts such as tax evasion.

As tax avoidance moves through this continuum away from tax planning toward evasion, individuals and organizations may seek to reduce tax liabilities

---

corruption, and organized crime).

7. *See* Lorena Bachmaier Winter & Donato Vozza, *Corruption, Tax Evasion, and the Distortion of Justice: Global Challenges and International Responses*, 85 LAW AND CONTEMP. PROBS., no. 4, 2022, at 77–78 (discussing tax evasion and corruption as global phenomena and exploring the international responses).

8. *See* Eur. Parliamentary Rsch. Serv., *Member States' Capacity to Fight Tax Crimes: Ex-post Impact Assessment* (2017), www.europarl.europa.eu/RegData/etudes/STUD/2017/603257/EPRS_STU(2017)603257_EN.pdf [https://perma.cc/UPR6-88Y6] (referring to a study endorsing this definition).

9. *See* Shuping Chen, Xia Chen, Qiang Cheng & Terry Shevlin, *Are Family Firms More Tax Aggressive than Non-Family Firms?*, 95 J. FIN. ECON. 41, 51-52 (2010), Michelle Hanlon & Shane Heitzman, *A Review of Tax Research*, 50 J. FIN. ECON. 127, 28 (2010).

through the exploitation of systemic vulnerabilities within tax statutes and regulations, often but not necessarily through intricate and complex structures deliberately designed by tax practitioners. At this point, the behaviors may be considered to abide by the letter of the law. They have not fallen beyond the boundaries of strict legality, yet they do not operate within the spirit of the law and attempt to exploit weaknesses or vulnerabilities in the national tax systems,[10] frequently to the detriment of the public good.[11] Adoption of such practices creates a significant risk of a slippery slope characterized by an incremental ethical fading in the decision-making process, eventually leading to increasingly serious forms of abuse.[12] These actions may be better identified as "*aggressive tax planning.*"[13] Dependent on the exploitation of loopholes, this activity usually requires the assistance of expert professionals such as accountants and lawyers who comprehensively understand the rules and structures that can help their clients minimize tax liabilities.[14]

B. Tax Evasion

Typically, the literature on tax evasion addresses national and international aspects of the offense in distinct and separate ways. The national lens provides a focus on illegal employment, the shadow economy, and domestic tax gaps, whereas the international lens considers forms of corporate profit shifting and offshoring of assets to evade detection.[15] From an international perspective, tax evasion is commonly defined by its characteristics of illegality, a failure to meet tax obligations, and intentionality.[16] Most states embrace a similar, contemporary

---

10. *See* Stuart P. Green & Matthew B. Kugler, *Public Perceptions of White Collar Crime Culpability: Bribery, Perjury, and Fraud*, 75 LAW AND CONTEMP. PROBS., no. 2, 2012, at 33, 52 (considering how "[o]ur free market system tends to respect and reward aggressive business practices.").

11. *See Glossary of Tax Terms*, OECD, https://www.oecd.org/ctp/glossaryoftaxterms.htm [https://perma.cc/8XMF-R35Q] (last visited Sept. 28, 2022) (defining avoidance as a tax arrangement intended to reduce liability that "could be strictly legal" but "is usually in contradiction with the intent of the law it purports to follow").

12. Ann E. Tenbrunsel, *VIRTEU Roundtable "CSR, Business Ethics, and Human Rights in the Area of Taxation"*, CORP. CRIME OBSERVATORY, at 14:28 (Feb. 12 2021), https://www.corporatecrime.co.uk/virteu-csr-business-ethics [https://perma.cc/P9R9-VCEL].

13. José Manuel Calderón Carrero & Alberto Quintas Seara, *The Concept of 'Aggressive Tax Planning' Launched by the OECD and the EU Commission in the BEPS Era: Redefining the Border Between Legitimate and Illegitimate Tax Planning*, 44 INTERTAX 206, 208 (2016); OECD, ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING (2013), www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm [https://perma.cc/54DS-CYTQ].

14. *See* VIRTEU*, VIRTEU International Symposium "The Professionals: Dealing with the Enablers of Economic Crime", Session I (The Phenomenon),* CORP. CRIME OBSERVATORY (July 21, 2021), https://www.corporatecrime.co.uk/virteu-symposium-the-professionals [https://perma.cc/2U4U-TM7Y] (for a comprehensive consideration of the contribution of tax experts as facilitators of tax crimes and aggressive tax avoidance).

15. For a greater discussion see David M Kemme, Bhavik Parikhb & Tanja Steignerc, *Tax Morale and International Tax Evasion*, 55 J. WORLD BUS., 2020, at 1.

16. *See Glossary of Tax Terms*, *supra* note 11 (describing evasion as "a term that is difficult to define but which is generally used to mean illegal arrangements where liability to tax is hidden or ignored"); *Member States' Capacity to Fight Tax Crimes: Ex-post Impact Assessment*, supra note 8, at 13 (defining tax evasion as illegal); *Time to Get the Missing Part Back*, EUR. COMM'N, taxation-

understanding of tax evasion. The term tax evasion captures the deliberate and illegal reduction of tax liabilities, whereby a taxpayer undertakes a course of action to cheat tax authorities through fraudulent behavior marked by deception or misrepresentation, for example, by deliberately not declaring taxable income.[17]

A recent Organisation for Economic Co-operation and Development (OECD) study of international tax crimes demonstrated the sophisticated nature of tax fraud schemes, highlighting how fraudsters often devise complex transnational structures to commit and hide serious tax crimes.[18] In doing so, their actions have a significant corrosive effect, impairing the ability of national governments to meet the basic needs of society and to finance collective goods. Instead, states risk an increase in social inequality and the loss of confidence in state institutions and international economic markets. The lost revenue renders tax rate reductions less plausible and can result in higher tax rates for the compliant and in disillusionment with the system.[19]

Evasion is not premised on the exploitation of loopholes or the artificial construction of complex structures to ensure technical compliance with the law. Nor is it based on taking advantage of grey areas which are yet to be adjudicated and thus arguably remain inside the boundaries of legally permissible activity. Nonetheless, those committing tax evasion offenses may seek to shelter themselves from detection and accountability through the exploitation of

customs.ec.europa.eu/time-get-missing-part-back_en [https://perma.cc/YWU2-TRPR] (describing tax evasion as "generally compris[ing] illegal arrangements"); Comm. of Experts on Int'l Coop. in Tax Matters, *Revision of the Manual for the Negotiation of Bilateral Tax Treaties*, at 2, U.N. Doc. E/C.18/2011/CRP.11/Add.1 (Oct. 19, 2011), www.un.org/esa/ffd/wp-content/uploads/2014/10/7STM_CRP11_Add1_Tax-Evasion.pdf [https://perma.cc/5YHJ-FLZA] (associating tax evasion and criminal offenses); Directorate-Gen. for Parliamentary Rsch. Servs., *The Inclusion of Financial Services in EU Free Trade and Association Agreements* 1, 9 (July 8, 2016), https://op.europa.eu/en/publication-detail/-/publication/463b3552-472b-11e6-9c64-01aa75ed71a1/language-en [https://perma.cc/V3F2-WR79] (defining tax evasion as illegal); FISCALIS Tax Gap Project Grp., *The Concept of Tax Gaps Report II: Corporate Income Tax Gap Estimation Methodologies* (2018), https://taxation-customs.ec.europa.eu/system/files/2018-07/tgpg-report-on-cit-gap-methodology_en.pdf [https://perma.cc/Q7KQ-9GA6] (distinguishing evasion and avoidance via illegality); BRIAN ARNOLD, PROTECTING THE TAX BASE OF DEVELOPING COUNTRIES THROUGH THE USE OF GENERAL ANTI-AVOIDANCE RULES 9 (2019), www.un.org/development/desa/financing/document/united-nations-practical-portfolio-protecting-tax-base-developing-countries-through-use [https://perma.cc/E7SN-6PYU] (describing tax evasion as "generally a criminal offense).

17. *See No Safe Havens 2019: Annex A – Glossary,* GOV.UK (2019), www.gov.uk/government/publications/no-safe-havens-2019 [https://perma.cc/Y483-Q2AN]; from the United States, 26 U.S.C. § 7201; from Italy, Decreto Presidente della Repubblica 29 settembre 1973, n.600, G.U. Oct. 16, 1973, n.268.

18. The World Bank & OECD, *Improving Co-Operation Between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption* 1, 13 (2018), www.oecd.org/tax/crime/improving-co-operation-between-tax-authorities-and-anti-corruption-authorities-in-combating-tax-crime-and-corruption.pdf [https://perma.cc/K6WY-7XQ4].

19. Richard Murphy, *The European Tax Gap: A Report for the Socialists and Democrats Group in the European Parliament* 1, 7 (Jan. 2019), www.socialistsanddemocrats.eu/sites/default/files/2019-01/the_european_tax_gap_en_190123.pdf [https://perma.cc/QTJ6-2LK8].

structural inadequacies within both national and international tax and corporate frameworks.[20] Such taxpayers use complex systems of tax haven shell companies to shield, launder, and obscure their ill-gotten gains, or to otherwise argue that any identified transgressions are civil in nature and not criminal.[21] But regardless of the methods used in committing or covering up the act, those engaging in tax evasion receive, and benefit from, funds which by law should have been paid to the appropriate tax authority. It is this binary understanding of legality which most comprehensively separates tax evasion from tax avoidance.

C. Corruption

Although there is no internationally agreed upon definition of corruption, attempts to delineate the phenomena have, over the years, shifted and narrowed.[22] A meta-study of the definitions used in academia from the 1980s onwards highlights the gradual narrowing of the scope of corruption to actions being committed by public officials for private gain.[23] Of note, corrupt conduct is not limited to acts which reach the threshold for criminality. Instead, corruption enjoys a broader definition. Accordingly, "the misuse of public office for private gains" (or some variant of the definition) appears to have become a standard definition of corruption in general corruption studies. Apart from this very general definition, the understanding of corruption is nebulous, with as many different notions of corruption as there are manifestations of the problem itself, varying according to cultural, legal, and other factors.[24]

The practice of corruption has been identified internationally as a grave risk to societies, with widescale and far-reaching consequences. The Council of Europe recognizes that corruption

> threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.[25]

---

20. *See* Diane Ring, *International Tax Relations: Theory and Implications*, 60 TAX L. REV. 83 (2007) (exploring the tensions between the fact that the vast majority of tax rules are "domestic" and the inherent international nature of tax practices).

21. *See* Gerard E. Lynch, *The Role of Criminal Law in Policing Corporate Misconduct*, 60 LAW & CONTEMP. PROBS. no. 3, 1997, at 23 (describing the author's experience with defence counsel attempting to categorize offenses as civil rather than criminal).

22. *See* Costantino Grasso, *The Dark Side of Power: Corruption and Bribery Within the Energy Industry*, *in* RESEARCH HANDBOOK ON EU ENERGY LAW AND POLICY 237, 238 (Rafael Leal-Arcas & Jan Wouters eds., 2017) (illustrating the challenges in adopting a legal definition of corruption that captures all the multifaceted aspects of such a criminal phenomenon).

23. Kilkon Ko & Cuifen Weng, *Critical Review of Conceptual Definitions of Chinese Corruption: A Formal–Legal Perspective*, 20 J. CONTEMP. CHINA 364 (2011).

24. OECD, *Corruption: A Glossary of International Criminal Standards*, at 19 (Mar. 26, 2008), www.oecd.org/investment/anti-bribery/corruptionglossaryofinternationalcriminalstandards.htm [https://perma.cc/GSL2-VM6M].

25. Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, rm.coe.int/168007f3f5. A similar definition can also be found within G.A. Res. 58/422, Convention Against Corruption (Oct. 21, 2003), www.unodc.org/unodc/en/treaties/CAC/ [https://perma.cc/U28S-FXQ9].

Corruption itself may be difficult to adequately pin down, but there has been a focus on behaviors which may be understood as corrupt and a push to criminalize those forms of conduct. The practices may range from grand corruption (the misuse of public power by high-level public officials, such as ministers or senior staff, for personal gain) to petty corruption (the extortion of small payments by low-level public officials in everyday interactions designed to smooth transactions). It can occur as political corruption, police corruption, or judicial corruption. Specific corruption activities include bribery, embezzlement, theft, fraud, extortion, blackmail, collusion, and abuse of discretion.[26] The existential risks posed by corrupt acts such as bribery have been well recognized, with their criminalization dating to ancient times in many legal systems.[27]

The 1997 OECD Anti-Bribery Convention provides for the offense of bribery of foreign public officials,[28] whereas the 1999 Council of Europe Criminal Law Convention on Corruption establishes offenses such as bribing domestic and foreign public officials and trading in influence.[29] In addition, the United Nations Convention Against Corruption (UNCAC) includes embezzlement, misappropriation or other diversions of property by a public official, and obstruction of justice.

Not all corruption is equal. Petty corruption undoubtedly exists and is problematic, but when corruption is allowed to operate on a grand scale, more serious and widespread harms may occur. As the name suggests, grand corruption operates at the level of society's elite. The average individual or organization has not the resources, the personal connections, the methods, nor the opportunities to engage in forms of systemic corruption which may distort incentives of policymakers and civil servants, regardless of their possible willingness or inclination to do so. And it is with this understanding that grand corruption may be placed at the feet of the wealthy and the powerful. Through the exercise of power, wealth, and influence, parties with access to policymakers, politicians, and decision-makers can levy their considerable resources to undermine the quality and effectiveness of state actions.[30]

---

26. Monika Bauhr, Nicholas Charron & Lena Wängnerud, *Exclusion or Interests? Why Females in Elected Office Reduce Petty and Grand Corruption*, 58 EUR. J. POL. RSCH. 1043 (2019); Susan Rose-Ackerman, *Democracy and 'Grand' Corruption*, 48 INT'L SOC. SCI. J. 365 (1996).

27. *See* Green & Kugler, *supra* note 10, at 38 (stating that "[s]ince ancient times, virtually all systems of criminal law have criminalized bribery.").

28. OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, art. I, Nov. 21, 1997, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf [https://perma.cc/LJ8M-GVDA].

29. Criminal Law Convention on Corruption, *supra* note 25, at ch. 2, https://rm.coe.int/168007f3f5 [https://perma.cc/2WR2-4HFC].

30. *See* VIRTEU, *VIRTEU Roundtable on Institutional Corruption and Avoidance of Taxation*, CORP. CRIME OBSERVATORY (Mar. 12, 2021), www.corporatecrime.co.uk/virteu-institutional-corruption [https://perma.cc/HZ2B-LWUF] (exploring different forms of corruption with a specific focus on structural-institutional issues which could affect the tax system). For an examination of corruption broadly conceived and its links to tax crime, as well as how both corrupt practices and tax crimes can be considered as crime of the powerful, see Diane M. Ring & Costantino Grasso, *Beyond Bribery: Exploring the Intimate Interconnections Between Corruption and Tax Crimes,* 85 LAW & CONTEMP. PROBS., no. 4,

D. Fiscal Corruption

Tax crimes and corrupt practices exist independent of each other, distinct in their dimensions and applicability, yet there is a Venn diagram revealing where the two phenomena interact and coexist, with each practice fueling the perpetuation of the other. It is within this overlapping space that we arrive at the notion of *fiscal corruption*. Fiscal corruption has been present in the literature for some years, but it has failed to receive attention proportionate to its value as a framing and defining concept.[31] Although limited, the literature on the subject typically starts with the expectation that a key government function in which corruptive practices lurk is taxation, with the assessment and collection of tax revenue impacted through corruption.[32]

As with the basic term corruption, there is no formal and universally agreed upon definition of fiscal corruption; however, it is commonly understood to refer to corrupt practices to derive an illicit benefit from the tax administration. This may include tax officials who abuse their authority for self-enrichment or otherwise benefit from corrupt behaviors such as bribery in return for reducing tax bills, not testing the legality of aggressive tax practices, or removing the risk of tax assessments and audits. The inverse may also be true, whereby tax crimes become instrumental to acts of corruption: hidden and undeclared income allows for the creation of a secret budget which may be used for bribery of public officials, further perpetuating the cycle.[33]

The OECD and World Bank Report "Improving Cooperation Between Tax Authorities and Anti-corruption Authorities in Combating Tax Crime and Corruption" highlights how these two phenomena are:

> . . . often intrinsically linked, as criminals fail to report income derived from corrupt activities for tax purposes, or over-report in an attempt to launder the proceeds of corruption. A World Bank study of 25,000 firms in 57 countries found that firms that pay more bribes also evade more taxes. . . . [W]here corruption is prevalent in society, this can foster tax evasion. A recent IFC Enterprise Survey found that 13.3% of

2022, at 2–4.

31. *See, e.g.*, Sheetal K Chand & Karl O Moene, *Controlling Fiscal Corruption*, 27 WORLD DEV. 1129 (1999); Jinyan Li, *Counteracting Corruption in Tax Administration in Transitional Economies: A Case Study of China*, 51 BULL. FOR INT'L FISCAL DOCUMENTATION 474 (1997); Shang-Jin Wei, *Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle?*, WBG Doc. WPS2048 (Feb. 28, 1999); Odd-Helge Fjeldstad & Bertil Tungodden, *Fiscal Corruption: A Vice or a Virtue?*, 31 WORLD DEV. 1459 (2003).

32. *See* Fjeldstad & Tungodden, *Fiscal Corruption*, *supra* note 31 (discussing the impact of corruption on taxation); Grant Richardson, *Taxation Determinants of Fiscal Corruption: Evidence Across Countries*, 13 J. FIN. CRIME 323 (2006) (studying the connection between taxation and fiscal corruption in forty-eight countries). *See also* Branislav Hock, *Policing Fiscal Corruption: Tax Crime and Legally Corrupt Institutions in the United Kingdom,* 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 177–78. (employing a collective action frame to better understand and explore the phenomenological manifestations of fiscal corruption).

33. Transparency Int'l, *Approaches to Curbing Corruption in Tax Administration in Africa* (June 25, 2014), www.u4.no/publications/approaches-to-curbing-corruption-in-tax-administration-in-africa.pdf [https://perma.cc/T3UB-3EEK].

> businesses globally report that 'firms are expected to give gifts in meetings with tax officials,' with the frequency of this ranging across countries from nil to 62.6%.[34]

Therefore, within the international context, it is reasonable to understand the links between tax crimes and corruption not as some fringe irregularity, but rather, as a frequent course of conduct which poses a substantive risk to the health of public institutions.

Fiscal corruption is highly detrimental to the economic wellbeing of a state and therefore poses substantial harm to citizens who are deprived of essential services. Fiscal corruption takes the citizens of the state as its victims, giving rise to inequality, entrenching deprivation, and reducing access to, or enforcement of, substantive human rights.[35] Developing and emerging economies appear to have a high vulnerability to fiscal corruption, with some early studies suggesting approximately 50% of taxable revenue may go uncollected as a result of the practice.[36] However, fiscal corruption is not limited to states which lack strong institutions or highly developed frameworks. The interconnections between tax crimes and corruption also plague more developed states.

E. An Existing Application of Fiscal Corruption: The Collusion of The Military of The *Guardia di Finanzas*

Following the development of a general concept of fiscal corruption, this article considers the prospect of responding to this conduct through criminal sanctions. This move becomes especially important given that related acts of aggressive tax avoidance may not be strictly illegal, but the corruption elements may be criminal, thereby highlighting the need to respond to fiscal corruption as an integrated course of conduct and not as two distinct phenomena. Reflecting the serious societal harms from fiscal corruption, available responses must move beyond the civil or administrative to the criminal. Principally, criminal sanctions should apply when other types of sanctions prove unsuitable to protect critical state and societal interests.

When designing and implementing punitive sanctions for fiscal corruption, the shift to a criminal regime requires that the law provide adequate boundaries for the forbidden conducts. Any failure to do so risks indictments that lack legal clarity, are less likely to succeed in court, and are potentially problematic from a criminal justice perspective. In this regard, it is valuable to study the Italian experience and draw upon its existing understanding and application of criminal law to fiscal corruption, which can serve as a model for other national legal systems.

Fiscal corruption, like most other crimes containing a substantive tax element within Italy, falls under the purview of the military personnel of the *Guardia di*

---

34. *Improving Co-Operation*, *supra* note 18.

35. *See Tax Injustice and Corruption?*, *supra* note 2.

36. *See* Fjeldstad & Tungodden, *supra* note 31, at 1459; *see also* Richardson, *supra* note 32 (showing that "studies in many developing countries show that it is common for approximately 50 percent or more of tax revenue to go uncollected because of fiscal corruption (FISC) and TEVA.").

Finanza,[37] the Italian economic and financial police. Accordingly, the approach of the Italian legal system may be instructive as it addresses forms of corruption committed by the tax police, thereby uniting corruption and tax offenses in the same sphere.

Article 3 of the Law 9 December 1941, no. 1383 provides for three crimes which can be committed only by the personnel of the *Guardia di Finanza* and which fall within the jurisdiction of military courts:

> The military of the Guardia di Finanza who commits a violation of the financial laws . . . , constituting a crime, or colluding with strangers to defraud the finance, or appropriates or otherwise distracts, for his own profit or for others, financial gain or goods which he, for reasons of his office or service, has the administration or custody of or over which he exercises supervision is subject to the penalties provided by articles 215 and 219 . . . of the military penal code of peace . . . .[38]

Simply, this law identifies these three crimes as ones in which members of the tax police (1) violate the financial laws themselves, (2) collude with others to violate financial laws, or (3) engage in corrupt practices that unduly enrich themselves or others in return for not fulfilling their duty as a member of the tax police. The existence of specific offenses that may only be committed by members of the *Guardia di Finanza* reflects their unique status within the Italian legal system and demonstrates the loyalty relationship which binds members of the *Guardia di Finanza* to the State's financial interest, and therefore the health of the nation's institutions. The criminal activity of greatest interest for this case study concerns the collusion of the tax police with others to defraud the public finance for illicit gain.

Notably, for a member of the *Guardia di Finanza* to be found guilty of an offense under this law, they do not need to be successful in their attempts to defraud nor must they undertake actions which move beyond the planning stages of the crime. Typically, the Italian criminal system relies on the principle of *cogitationis poenam nemo patitur*,[39] according to which the agreement or incitement to commit a crime is not in itself punishable unless followed by the actual commission of the offense at least in the form of an attempt.[40] However, reflective of the special status of the tax police and the authority wielded, these offenses depart from that principle.[41]

Accordingly, the Italian Supreme Court interprets Article 3 to state that the tax interest is violated when a member of the tax police agrees to attempt to conceal previously committed violations of financial laws,[42] and communicates

37. *See* Nussbaum & Doherty, *supra* note 6.

38. Legge 9 dicembre 1941, n.46.6.6, G.U. Sept. 12, 1941, n.1383. (Quotation translated by the authors).

39. Aaron X. Fellmeth & Maurice Horwitz, GUIDE TO LATIN IN INTERNATIONAL LAW (1st ed. 2011), www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380 [https://perma.cc/XZ3T-SS6K].

40. *See* Cass., Sez. I, March 16, 2017, no. 18545.

41. *Id.*

42. *See* Cass., Sez. VI, September 29, 1988, n. 9556. This circumstance also integrates the crime of omission of official acts pursuant to Article 328 of the Italian criminal code or the crime of failure to

confidential information to a private individual about an imminent investigation or other activity concerning their tax affairs.[43] It is therefore the combination of two elements, the collusion to defraud the finance and the crime of corruption for an act contrary to official duties, which results in fiscal corruption. On this topic, the Italian Supreme Court (*Corte di Cassazione*) affirmed that it is possible to charge an individual with both crimes under a single offense as the conduct harms different legal interests. Although Article 3 of Law 1383/1941 protects tax revenues and the disciplined functioning of the *Guardia di Finanza* by virtue of the specific criminalization and corresponding sanction of tax offences and collusion to commit tax related offences by the tax police,[44] the inclusion of corruption works to protect the public administration by ensuring public officials secure no illicit gains.[45]

Unlike bribery crimes, no acceptance of a promise of benefits nor actual receipt of benefits is required by this law. Given the authority, power (both literal and symbolic), and trust granted to members of the *Guardia di Finanza*, these soldiers face an enhanced level of accountability as compared to civil servants in the Financial Administration.[46] Despite being functionally framed in the financial administration, the *Guardia di Finanza* has a strong military character, which alone can justify the application of a more rigorous discipline. But it also possesses unique faculties of the tax police and the judicial police with complex powers that have no parallel in other Italian police bodies, thus warranting a higher level of accountability.

Law 4/1929 offers an insight into the special powers granted to the *Guardia di Finanza*. Under this law, the soldiers have the authority to conduct house searches not only in the case of evident ongoing criminality, but also where there is a founded suspicion of criminal violations of financial laws; for example, suspicion of breach of customs duties regarding certain products, or evasion of manufacturing taxes on alcoholic spirits, sugars, or gunpowder. This search power constitutes a derogation from the ordinary principle that a well-founded suspicion alone is insufficient to carry out a home search and demonstrates the enhanced level of responsibility, authority, power, and public trust granted the tax police. In recognition of this enhanced public duty, the *Guardia di Finanza* are held to a higher standard which treats violations of this trust as potentially criminal rather than simply administrative or civil.

---

report following Article 361.

43. *See* Cass., Sez. VI, June 6, 2019, no. 3782, https://www.ordineavvocatinapoli.it/wp-content/uploads/2019/09/Cassazione-Penale-n.-37820-del-06.06.2019-Sez.-1-Reato-Tipologia-Reato-istantaneo-ed-esclusione-tentativo.pdf [https://perma.cc/9RR9-8PNR]. This also integrates the crime of disclosure of official secrecy pursuant to article 326 of the Italian criminal code.

44. *See* Cass., Sez. VI, February 19, 2020, no. 14280.

45. *See* Cass., Sez. VI, November 28, 1997, no. 1319.

46. The Constitutional Court ruled on the legitimacy of Article 3 of Law 1383/1941, deeming the difference in treatment for the military of *Guardia di Finanza* with respect to civilian employees of the Financial Administration and other military personnel as legitimate. *See* Corte Cost., 8 aprile 1976, Racc. uff. corte cost. 1976, n. 70, 3.

Although Article 3 provides an effective working example of legal provisions designed to address fiscal corruption, the potential to engage in this kind of conduct is not confined exclusively to members of the *Guardia di Finanza.* Accordingly, these legal provisions, or some appropriately modified version thereof, should be extended to other members of the financial administration, as this would potentially strengthen the fight against important financial crimes.

III

THE MILAN MODEL

A range of responses to tax crimes and corruption exists, but those responses often operate in a vacuum. Frequently, separate regulatory authorities address malfeasance as either tax offenses or corruption, as opposed to the agencies working together with a coherent strategy to recognize the nexus at which these offenses meet as fiscal corruption. Addressing this gap, the third part of this article considers the use and potential impact of regulatory cooperation through an analysis of what is understood as the Milan Model.

Following an introduction to the Milan Model, this article analyzes its impact on the public purse through its successful prosecutions and recovery provisions, demonstrating that tackling fiscal corruption is profitable to the state. Thus, tackling fiscal corruption is not simply a demand grounded in justice, but also an economic imperative. Building on the justice and economic dimensions of the Milan Model, the article finally considers the implications of the model for the future.

A. Understanding the Model

Criminal policy responses are regularly evaluated according to an economic analysis of law, at least in cases of crimes characterized by the pursuit of profit (for example, tax evasion and corruption). Certainly, in order to judge the effectiveness of legislative interventions, the consequences of specific design choices must be reviewed. If possible, crime policy should be oriented toward "measurable consequences" that can be evaluated based on specialized (even non-legal) knowledge and through the acquisition, processing, and analysis of data that can reveal any correlations between crime rates and sanctions.[47] Through this lens, the experience of the Public Prosecutor's Office at the Court of Milan, commonly known as the Milan Model, which resulted in the recovery of €5.6 billion in evaded taxes, can be assessed.

The importance of the Milan Public Prosecutor's Office derives from geographic and socio-economic factors associated with its territorial jurisdiction,

47. Decree of the Ministry of Justice of June 10, 2014, cited in the Ministry of Justice's policy-making act for the year 2015: www.giustizia.it ("defining a methodology for the detection of tax evasion, referring to all the main taxes"), and Decreto ministeriale 11 giugno 2014, G.U. June 17, 2014, n.138 at 2, http://www.gazzettaufficiale.it/eli/gu/2014/06/17/138/sg/pdf [https://perma.cc/29KM-SYLU] (establishing the Observatory for monitoring effects of justice reforms on the economy and evaluating the effectiveness of the reforms).

as well as historical-judicial factors. Milan is Italy's main economic center and sits at the hub of a series of major highway and rail corridors connecting Italy to the rest of Europe. The city is home to Italy's main stock exchange, boasts a high concentration of businesses, has seven public and private universities, including the prestigious private business university Luigi Bocconi, and is one of the areas with the highest GDP per inhabitant in the entire European Union. In 2020, the last year for which data is available, it was equivalent to London in per capita GDP, slightly lower than Paris, and among the top dozen richest areas on the continent.[48] It was in Milan that investigations beginning in 1992 uncovered a widespread system of political corruption (the so-called Tangentopoli).[49] The media impact and resulting public outrage were so significant that the so-called First Republic collapsed, leading to the start of the Second.

At the heart of the Milan Model is the cooperative approach to the management of tax crimes among the departments of the Milan Public Prosecutor's Office, the Economic and Financial Police Nucleus of the *Guardia di Finanza*, the Revenue Agency, and the Customs Agency. This approach offers a major departure from other enforcement models by virtue of its enhanced intra-government cooperation. Instead of each body acting independently and deploying a fractured and piecemeal approach which fails to account for the complex interconnectivity of tax crimes and corruption, they act in concert and are therefore empowered to address forms of fiscal corruption as a unique and distinct violation.

The handling of tax crimes in the Prosecutor's Office has developed along two complementary lines: the acceleration of criminal prosecutions arising from tax audits of small and medium-sized entities and individuals, and an enhanced focus on large Italian and foreign industrial groups. In doing so, and in cooperation with other authorities, this two-pronged approach has supported the identification of related corruption offenses. By 2018, a trial run of the model had seen the strengthening of links with the Internal Revenue Service and a renewed organization of the work of the Public Prosecutor's Office in the prosecution of small and medium-sized entities.

Concerning large industrial groups, a close coordination developed among the *Guardia di Finanza*, the Internal Revenue Service, the Customs Agency, and the Public Prosecutor's Office; in other words, in the fight against tax evasion, the leading players acted in concert, ensuring timeliness, linearity of action, and system coherence. Further enhanced cooperation is anticipated, for example,

48. *See Gross Domestic Product (GDP) at Current Market Prices by Metropolitan Regions*, EUROSTAT, https://ec.europa.eu/eurostat/databrowser/view/met_10r_3gdp/default/table?lang=en [https://perma.cc/T38C-Z7AZ] (last updated Apr. 4, 2022).

49. *See* John A. Marino et al., *Italy at the Turn of the 21st Century*, BRITANNICA, https://www.britannica.com/place/Italy/Italy-at-the-turn-of-the-21st-century#ref319115 [https://perma.cc/7WPB-24WT]; *Looking Back at 1992: Italy's Horrible Year*, THE CONVERSATION (Oct. 8, 2016), https://theconversation.com/looking-back-at-1992-italys-horrible-year-66739 [https://perma.cc/N29R-ECBP] (providing a brief contextualization and overview of the events of the 1992 Tangentopoli).

through automatic information sharing between different countries and through the Common Reporting Standard (CRS). The CRS, developed in response to the G20 request and approved by the OECD Council in July 2014, calls on jurisdictions to obtain relevant information from their financial institutions, including due diligence mechanisms, and automatically exchange that information with other jurisdictions on an annual basis.[50]

In addition to cooperation with other institutional actors, the model also benefits from the cultural action built over time with citizens and businesses. The Milan Public Prosecutor's Office has worked to raise awareness of tax and corruption offenses, both technically and culturally, through constant dialogue with the business world and through the seriousness and consistency with which various stages of the proceedings (for example, plea bargains) have been handled.

B. The Milan Model in Practice

As the model marks a dramatic departure in investigatory and prosecutorial methods, it is essential to undertake an empirical analysis of the new methods' impact to gauge their effectiveness. Doing so may justify proposing the model as a blueprint or foundation for other national regulatory bodies to implement enhanced interdepartmental cooperation.

Since 2010, the Milan Public Prosecutor's Office has published the Social Responsibility Report (SRR),[51] presenting to external stakeholders a picture of both the activity carried out during the judicial year and future objectives. These were consolidated as of 2012 into a single annual document aimed at providing insights, analysis, and results of the operation of the Prosecutor's Office. Accordingly, this article will offer an analysis focused on the reports published from 2012 onward with attention to (1) the consolidation of statutory guidelines governing liability and penalties for legal entities and (2) the impact of criminal tax legislation changes on taxpayer behavior and recovery processes.

The following section of the article will present the findings and actions of the Milan Public Prosecutor's Office, as reported by the SRRs. They are presented chronologically, following the format and order of the reports as issued between 2012 and 2019. Taking the reports collectively, the article will attempt to identify and explore the common trends and comment on the findings. The SRRs present a unique opportunity within the Italian framework to shed light on the effects that high levels of legal complexity, as well as inconsistent legislative approaches marked by frequent changes, may produce on tax recoveries and taxpayers' decisions to observe tax laws. Specifically, the SRRs reveal how frequent and

50. *What is the CRS?,* OECD, www.oecd.org/tax/automatic-exchange/common-reporting-standard [https://perma.cc/T6J5-6GC9].

51. *See* PROCURA DELLA REPUBBLICA, BILANCIO SOCIALE, www.procura.milano.giustizia.it/bilancio-sociale.html [https://perma.cc/A59A-JRW5] (linking to these reports).

discordant amendments to tax legal frameworks—which inevitably generate uncertainty—may weaken tax compliance and thwart anti-tax crime efforts.[52]

2012–2013: The Italian criminal law provides a predetermined financial threshold that tax violations must reach before they are considered criminal in nature. Decree Law 138/2011 lowered the financial threshold for some tax crimes, including unfaithful declaration (from 200,000,000 lire (€103,291.38) to €50,000), and failure to declare taxable revenue in tax declarations (from 150,000,000 lire (€77,468.53) to €30,000). As a result of the reduced thresholds for criminal prosecution, the SRR reports an increase in criminal proceedings of 74% for unfaithful tax declarations, and 59% for failure to declare during the first nine months of 2013.[53]

2013–2014: As of 2013, there was an increase in the submission of new cases for criminal tax offenses, growing from fewer than 3,500 in 2012 to almost 5,000 a year later. This may be the result of an increased number of reports of potential tax offenses communicated to the enforcement authorities.[54] In addition, the 2011 reform introduced a requirement that prosecutors may offer a plea bargain only if both the tax debts and the administrative sanctions for the violation of tax regulations have been paid.[55]

Notwithstanding the increase in criminal reports and the difficulties that alleged tax offenders faced in entering into plea bargains with prosecutors, in Milan the total amount of taxes recovered fell from €780,019,049 in 2013, to €762,809,988 in 2014.[56] This may in part be due to the legislative landscape of the time, under which it was not possible to attribute criminal liability for money laundering to the subjects involved in the perpetration of a predicate offense. Specifically, at that time, if a person was involved in a predicate offense of money laundering—such as tax evasion—they could not also face prosecution for money laundering, because a person could only be charged with such a crime if they had not participated in the predicate offence. As a result, it was not possible to prosecute tax evaders and the professional enablers (such as accountants or lawyers) who assisted them with both the crimes of tax evasion *and* money laundering because the tax evaders were the authors of the predicate offense and the professional enablers were categorized as their co-authors.[57] Thus, only the

52. *See* Pietro Molino, *VIRTEU National Workshop – Italy, Session 1*, CORP. CRIME OBSERVATORY, at 21:39 (Apr. 29, 2021), www.corporatecrime.co.uk/virteu-national-workshop-italy [https://perma.cc/Q47Q-BZFA] (discussing how the discordant legislative choices of the Italian legislature generate barriers to tax compliance through the creation of uncertainty and inconsistency in the approaches to tax enforcement from year to year).

53. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2012–13, at 30 (2013).

54. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2013–14, at 38 (2014).

55. Decreto legge 10 marzo 2000, n.74, G.U. Mar. 31, 2000, n.76.

56. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 54, at 40.

57. *See* Legge 15 dicembre 2014, n.186, G.U. Dec. 17, 2014, n.292 (explaining how the offense of so-called "self-laundering" now punishes "anyone who, having committed or contributed to committing an intentional offense crime," and then carries out a qualified series of "self-laundering" behaviours, thus

prosecution for tax evasion could go forward, resulting in a reduced rate of recovery. As emerged clearly during VIRTEU research activities, the ability to pursue money laundering offenses may represent a valuable instrument to counter illicit financial flows and tax crime at the transnational level. Tax authorities are increasingly relying upon the statutory provisions for investigating and combatting money laundering because they are characterized by increased investigatory powers and longer statutes of limitation.[58]

2014–2015: Following a 2015 legislative reform of the criminal tax penalty systems (hereinafter "the 2015 reform"),[59] the financial thresholds for tax offenses were significantly increased, enabling a greater level of tax to be evaded without the possibility of facing criminal charges.[60] For example, in the case of Article 10-*bis* (failure to pay withholding taxes) the threshold was increased from €50,000 to €150,000,[61] and the threshold for Article 10-*ter* (failure to pay VAT)[62] was increased from €50,000 to €250,000.[63]

Finally, the 2015 reform established mechanisms to significantly mitigate, or eliminate entirely, punishment for tax offenses. Prior to this, the payment of an established tax debt was a mitigating factor in the application of criminal and administrative sanctions.[64] However, the 2015 reform introduced a non-punishment clause for "failure to pay" offenses and for offenses related to failures in tax reporting, assuming three conditions are satisfied. First, the tax debts, including penalties and interest, must be paid voluntarily, second, any omitted or outstanding tax returns must be submitted by the end of the next tax period, and finally, any corrective action must have occurred before the offender had formal knowledge of any investigation related to the tax non-compliance.

Predictably, the increased financial threshold for criminality in the 2015 reform resulted in a decrease in the number of criminal investigations initiated by tax authorities into tax offenses. For example, the failure to pay withholding taxes (Article 10-*bis*) fell from 885 in 2014 to 612 in 2015, a fall of 30.23%, and

obscures the criminal origin of the illicit funds). (Quotations translated by the authors.)

58. *See e.g.*, VIRTEU, *VIRTEU National Workshop - Greece, Session 1*, CORP. CRIME OBSERVATORY, at 19:28 (Jul. 16, 2021), www.corporatecrime.co.uk/virteu-national-workshop-greece [https://perma.cc/3VE6-8UFM] (clarifying that when tax offenses serve as predicate offenses to money laundering, and the statute of limitations for the money laundering offenses is longer than the predicate offense, the money laundering charges can still be prosecuted even if the predicate offense cannot).

59. *See* Decreto legislativo 24 settembre 2015, n.158, G.U. July 10, 2015, n.233 (explaining how the Italian government revised the criminal tax penalty system according to criteria of predetermination and proportionality with respect to the seriousness of the conduct).

60. *See* Molino, *supra* note 52.

61. De.Lgs. n. 158/2015, *supra* note 59.

62. *See What is VAT?*, EUR. COMM'N, https://taxation-customs.ec.europa.eu/what-vat_en [https://perma.cc/JX4W-PLZB] (explaining that, in the European Union, Value Added Tax (VAT) is a general, broadly based consumption tax assessed on the value added to goods and services. It applies more or less to all goods and services which are bought and sold for use or consumption in the Union).

63. D.Lgs. n. 158/2015, *supra* note 59.

64. *See* D.Lgs. n. 74/2000, *supra* note 55.

the failure to pay VAT (Article 10-*ter*) fell from 1395 investigations in 2014 to 962 in 2015, a reduction of 31.04%.[65]

From the SRR published in 2015, the Milan Public Prosecutor's Office expressed concerns related to a potential decline in corporate crime enforcement.[66] Under Legislative Decree 231/2001, quasi-criminal liability (a type of liability that, although formally labelled as administrative, assumes the characteristics of criminal liability) may be attributed to legal persons only if a member of the legal entity[67] has been involved in certain predetermined predicate offenses.[68] However, in practice corporate criminal liability did not keep pace with individual criminal liability. A significant gap of 90% had emerged between the number of criminal charges brought against an individual for committing a predicate offense, and subsequent criminal proceedings initiated against the corresponding corporate entity.[69] The SRR highlights that out of seventy-eight criminal proceedings brought against natural persons for relevant predicate offenses, only eight cases, or approximately 10%, were brought against the corporate entities on whose behalf they acted.[70] This demonstrates a significant reluctance to pursue corporate entities for criminality, despite the establishment of a system to attribute corporate liability under Legislative Decree 231/2001. Although tax crimes were not included in the list of predicate offenses at the time,[71] this disparity demonstrates a deep unwillingness to undertake enforcement actions against corporations. Accordingly, this 2015 enforcement reality is emblematic of an environment which is resistant to holding corporations accountable for wrongdoing and may represent a contributing factor in the legislature's reluctance to include tax crimes as predicate offenses, thereby shielding corporate entities from liability.[72]

The data raised considerable concern, especially given that the Milan Public Prosecutor's Office was historically at the forefront of attributing corporate

65. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2014-15, at 54 (2015), www.procura.milano.giustizia.it/files/BRS-Procura-2015.pdf [https://perma.cc/QNC8-TAYS].

66. *Id.* at 57.

67. *See* OECD Working Grp. on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Italy*, at 16 (Dec. 16, 2011), www.oecd.org/daf/anti-bribery/anti-briberyconvention/Italyphase3reportEN.pdf [https://perma.cc/3KQA-CEUQ] (explaining that natural persons in senior positions [e.g., a director] as well as natural persons subject to their management or supervision can trigger liability for legal persons).

68. Under Articles 24–26 of the Decree, the legislature established an expansive and heterogeneous list of predicate offenses outside of the scope of economic crimes, including, for example, offenses such as terrorism (Art. 25(4)), female genital mutilation (Art. 25(4.1)), and violation against copyright (Art. 25(9)). Decreto legislativo, 8 giugno 2001, n.231, G.U. June 19, 2001, n.140.

69. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 65, at 57.

70. *Id.*

71. A selected list of tax crimes was eventually included as predicate offenses under Legislative Decree 231/2001 only by Legislative Decree 75/2020, which transposed in the Italian legal system the requirements included in the European Union Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the "PIF Directive"). Decreto legislative 15 lugio 2020, n.75, G.U. July 15, 2020, n.177.

72. *See infra* note 80.

liability under Legislative Decree 231/2001. Within the context of bribery over a ten-year period (2001–2010), only two cases were brought against corporations in the entire country under this law (resulting in conviction), both before the Criminal Court of Milan. Unsurprisingly, the OECD Working Group on Bribery recommended "Italy [should] take steps to increase the effectiveness of the liability of legal persons in foreign bribery cases, including through raising awareness among the prosecuting authorities throughout the country."[73] The data from the SRR highlights the risk of a significant decline in corporate enforcement actions, despite the introduction of Legislative Decree 231/2001, which revolutionized the domestic legal framework to ensure appropriate attribution of liability to firms involved in criminal activities, especially in the area of economic crime.

2016: Reflecting concerns raised in the 2015 report, the 2016 SRR focuses on the restructuring of the Milan Public Prosecutor's Office with the creation, among others, of a department that comprises a pool of specialized prosecutors to address both corruption (and related crimes against public administration) and economic crime.[74] The newly established department was tasked with identifying corrupt conduct and connecting it to what the legislature termed "spy crimes," so called due to their secretive nature and the difficulty in detecting them (for example corporate crimes, tax crimes, and market abuse).[75] In setting this mission, the restructuring supported the emerging notion of fiscal corruption.[76] Charged with managing protocols for the National Anti-Corruption Authority, the Court of Auditors, and the Public Authority responsible for regulating the Italian financial markets (CONSOB), this new department was able to rely on the professional and investigative contributions of the *Guardia di Finanza*, the Revenue Agency, the Customs Agency, and the Bank of Italy's Judicial Authority Support Unit.

The SRR records a reduction of new criminal proceedings brought for tax crimes by about 50%,[77] the principal cause of which was the "substantial decriminalization" as identified in the 2015 SRR. Simply put, this was a demonstration of the impact of the significantly increased financial thresholds for criminalization of tax offenses. The new rules enabled a greater level of tax to be evaded by reducing the range of cases in which criminal charges could be filed,

73. OECD Working Grp. on Bribery, *supra* note 67, at 18.

74. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2016, at 9 (2016), www.procura.milano.giustizia.it/files/BRS-Procura-2016.pdf [https://perma.cc/NQ25-KDZ4].

75. *See* Francesco Cingari, *La corruzione pubblica: trasformazioni fenomenologiche ed esigenze di riforma*, 1 DIRITTO PENALE CONTEMPORANEO 79, 94 (2012), https://dpc-rivista-trimestrale.criminaljusticenetwork.eu/pdf/DPC_Trim_1_2012-85-104.pdf [https://perma.cc/6BBN-H44W] (explaining that such offenses are referred to as 'spy crimes,' reflecting the fact that the investigation of one of these offenses can lead to the detection and identification of corrupt practices which are interconnected with them and otherwise very difficult to detect) (Text translated by authors).

76. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 74, at 9.

77. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 74, at 35.

and potentially emboldened and incentivized evasion falling below the level of criminal conduct—all to the detriment of the public purse.

Corporate criminal prosecutions increased slightly in 2016, up 17% from 2015, a result of a heightened sensitivity due to the concerns previously raised. However, the Prosecutor's Office notes that the spread between the legal proceedings for predicate offenses and those for corporate liability was still high (amounting to 85%).[78] The primary reason driving the disparity was that the filing of proceedings against legal entities was still considered a discretionary choice by the prosecutor, even though this should occur by default if top management has been found liable.

Of particular interest is the activity of the so-called "Tax Fugitives" pool, composed of members of the judiciary and the police, which in 2016 had two specific focuses. First, the pool considered the role of Milanese citizens enrolled in the Registry of Italians Resident Abroad (AIRE), whose numbers had risen by 44% between 2012 and 2016. These investigations sought to identify individuals who only formally appeared to be resident abroad, but in practice continued to predominantly reside and conduct business within Italy, and therefore failed to declare their taxable income in Italy. As previously explained, this problem becomes especially pertinent due to the geographical location of Milan, which borders other states—including the historically secretive and low-tax Switzerland. Second, they addressed Suspicious Transaction Reports (STR) related to voluntary disclosure procedures. The in-depth investigation carried out by the *Guardia di Finanza* identified 588 cases which deserved further consideration.[79]

2017: The SRR explores the trend in the number of new criminal charges filed for economic crimes. Importantly, the number of new criminal proceedings during 2017 substantially replicates 2016 and thus remains significantly lower than criminal proceedings brought in 2015. From the Public Prosecutor's perspective, this decrease stemmed from the 2015 reform, which increased the financial thresholds of criminalization.[80] Notwithstanding that, the SRR notes successes in combating corporate tax evasion carried out by big data companies, including recoveries of approximately €724 million from cases against Apple,[81] Google,[82] and Amazon.[83]

78. *Id.* at 37.

79. *Id.* at 38.

80. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2017, at 84 (2017), www.procura.milano.giustizia.it/files/brs-procura-mi-2017.pdf [https://perma.cc/UEJ7-DN9B].

81. Emilio Parodi & Agnieszka Flak, *Apple to Pay Italy 318 Million Euros, Sign Tax Deal – Source*, REUTERS (Dec. 30, 2015), www.reuters.com/article/us-italy-apple-tax-idUSKBN0UD13K20151230 [https://perma.cc/Q2EB-BWQJ].

82. *Google to Pay $334 Million to Settle Italian Tax Dispute*, REUTERS (May 4, 2017), www.reuters.com/article/us-google-italy-tax-idUSKBN1801CP [https://perma.cc/N9MN-BTLK].

83. *Amazon to Pay 100 Million Euros to Settle Italian Tax Dispute*, REUTERS (Dec. 15, 2017), https://www.reuters.com/article/us-amazon-italy-tax-idUSKBN1E91KM [https://perma.cc/SQ2Z-YJJB].

Despite these high-profile recoveries, the SRR notes only twenty-nine new proceedings were brought against corporations in 2017, significantly down from forty-six the preceding year.[84] The SRR explains this decline has several causes, which cumulatively may result in a failure of the corporate liability system. The most relevant cause may be that the legislature reserved to itself the discretionary power to decide which crimes to include in the list of predicate offenses; this effectively excluded corporate liability for firms' involvement in crimes *no*t included in such list.[85] Specifically, the prosecutors of Milan lamented that, although tax crimes are a form of criminal activity in which legal entities may be commonly enmeshed, they had not been included in the list of the predicate offenses provided by Legislative Decree 231/2001. This decision by the legislature continued to make it impossible to investigate and prosecute legal entities for the perpetration of tax crimes.[86]

The Milan prosecutors also urged the legislature to extend the ability for civil parties to be included in the criminal proceedings against legal entities.[87] In the Italian legal system, victims of alleged crimes, who would otherwise be restricted to civil proceedings following lengthy criminal trials, may become a civil party to a criminal proceeding against an individual. In this capacity, civil parties can gain civil remedies (restitution and compensation) as part of the criminal process.[88] Allowing victims to become a civil party in corporate enforcement proceedings would potentially act to incentivize corporate post-crime cooperation in a way commonly seen in criminal proceedings against natural persons. Victims' active participation (through representation by qualified lawyers) in criminal trials provides an important element of support for the prosecution in the Italian judicial system. In an environment characterized by lengthy proceedings, limited public resources, and lack of court personnel, this civil-side participation may make the difference. Where a civil party is present and active, the accused parties have an incentive to cooperate to temper the harmful effects of their criminal activities; for example through restitution, compensation, or repentance. However, at present these positive effects cannot be achieved in criminal proceedings regarding corporate liability.

A further example of *post facto* incentives that may be imported into the area of tax crimes can be found in the rules applicable to bribery. Article 323-*ter* of the Italian Criminal Code provides grounds for non-punishment for those who, before becoming aware an investigation is being carried out against them and, in any case, within four months of the commission of the crime, voluntarily report it and provide useful and concrete evidence to secure proof of the crime and to

84. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 80, at 86.

85. *Id*.

86. *Id.* at 86–87.

87. *Id.* at 86.

88. *See* arts. 74 and 76 Codice di procedura penale, https://www.imolin.org/doc/amlid/Italy/Italy_Codice_di_Procedura_Penale.pdf [https://perma.cc/J7RK-SBJQ].

identify the other perpetrators. The availability of the leniency measure is contingent on disgorgement, or, in the case of a bribe received by a third-party, to the disclosure of sufficient information to establish the identity of the actual recipient of the bribe. In doing so, this creates a race to the regulator by sowing seeds of mistrust amongst the criminal parties and incentivizing cooperation at an earlier point for fear of forfeiting leniency should another party to the crime take advantage of the provision first.

2018: The substantive reorganization of the departments, which began in 2016, and the linkage between the fight against corruption and the so-called "spy crimes" (including tax crimes) had been completed by 2018, enabling fiscal corruption to be investigated for the first time as a coherent unitary concept under a single department.[89]

In this SRR, the importance of the Milan Model is fully understood. The report provides significant insight into the impacts of the reforms achieved through cooperative methods of investigation, resulting in the elements of fiscal corruption being tackled not by separate departments with competing priorities, but through mechanisms of interdepartmental cooperation and the recognition of fiscal corruption as an independent conduct. Working in this reformed manner contributed significantly to the recovery of approximately €4.4 billion from large companies, in addition to enhanced inspection activity undertaken against a large international luxury group[90] leading to a further recovery of €1.25 billion, for a total value of €5.6 billion.[91] The implementation of the Milan Model thus marks an important innovation of inter-institutional governance on tax recovery issues and offers a means to prevent, identify, and prosecute corruption-related to tax matters.

The results achieved were also built on the adoption of a voluntary disclosure program, implemented in 2015, which lasted until October 2, 2017. This provided that capital held abroad could be regularized through voluntary cooperation and declaring it to the tax authorities. This program made it possible to identify assets worth almost €60 billion nationwide with an estimated tax revenue of €3.8 billion, 45% of which came from Lombardy, with estimated recovered taxes of €1.8 billion in Lombardy.[92] Further, this enabled the collection of a massive amount of data on financial activities that previously had been hidden. This success was due in part to the fact that the voluntary cooperation model was combined with the adoption of the Common Reporting Standard (CRS), which "calls on

89. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2018, at 21 (2018), www.procura.milano.giustizia.it/files/brs-procura-milano-2018.pdf [https://perma.cc/T64V-CNBK].

90. *Gucci Owner Kering Agrees to 1.25 Bln Euros Italy Tax Settlement*, REUTERS (May 9, 2019), www.reuters.com/article/kering-tax-italy-idINASP0011CH [https://perma.cc/QHD3-RXP2].

91. It has been reported in the news that after 2018, the Italian tax authorities managed to recover additional unpaid taxes from large corporations as in the Netflix case. *See infra* note 94. *See also Kering to Pay 187 Million Euros to Settle Bottega Veneta Tax Dispute*, REUTERS (Apr. 1, 2022), www.reuters.com/article/kering-tax-italy-idCAKCN2LT402 [https://perma.cc/2ZQB-9WDF].

92. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 89, at 66.

jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis."[93] The tax evader was therefore presented with a choice of either disclosing this information voluntarily or having the information be detected through the CRS, which increased their risk of sanction and provided a significant incentive to cooperate.

The results achieved demonstrate it is necessary to combine punitive enforcement measures with incentives aimed at achieving a cultural change so as to encourage tax compliance behavior.

2019–2020: The SRR recognizes the innovative and novel nature of tackling both economic and tax crimes *and* crimes against the public administration, such as corruption, under the banner of a single prosecutorial department. Operating in this manner—and with a high level of inter-organizational cooperation—allows for a greater ability to meet international tax crime enforcement commitments (including the ones agreed with the European Union, the OECD, and the UN) through enhanced investigatory and prosecutorial approaches.[94] An enforcement approach designed to tackle fiscal corruption enhances the ability to identify, through the accounting profile of companies, corporate and tax crimes, money laundering, and the presence of corrupt practices.

The choice to develop enhanced cooperative and inter-organizational operations was also influenced by the twenty-year direct experience of the Milan Public Prosecutor's Office, dating back to the Mani Pulite investigations. These earlier investigations focused on identifying the so-called "slush funds" of companies (related to the crimes of false accounting, tax fraud, and market abuse) which enabled the economy of corruption to be fed through money laundering and self-laundering activities.[95] Building on this experience, the prosecutors concluded that the complexity of the activities now carried out by the new fiscal corruption department[96] required direct dialogue and engagement with a multiplicity of other institutional actors, including the *Guardia di Finanza*, the Revenue Agency, the Customs Agency, the Bank of Italy, and the Financial Intelligence Unit (with which the Milan Public Prosecutor's Office has entered into various operational protocols).

The Prosecutor's Office maintained two different investigatory strategies. One was based on the acceleration of the criminal trials related to tax audits for small and medium enterprises and natural persons; the second strategy was related to investigations concerning large corporate entities having both a national and transnational nature. For the latter, a process of collaboration with all relevant institutional players was established, contributing to the recovery of

93. *What is the CRS?*, *supra* note 50.

94. PUB. PROSECUTOR AT THE CT. OF MILAN, BILANCIO DI RESPONSABILITÀ SOCIALE 2019/2020, at 30 (2020), www.procura.milano.giustizia.it/files/BRS_Procura_19-20.pdf [https://perma.cc/TT8V-MZ3U].

95. *Id*. at 30–31.

96. *Id*. at 8.

€5.6 billion of unpaid taxes over the preceding three years,[97] with a focus on specific sectors, such as fashion, steel, the digital economy,[98] and finance.

Regarding financial institutions, the Milan Public Prosecutor's Office concentrated on the conduct of large banks with a presence in countries characterized by enhanced secrecy or privileged taxation, allowing the identification of 219 institutions which housed significant amounts of capital on which tax had been evaded.[99] The resulting investigative activity saw numerous banking institutions cooperate with authorities and agree to resolve outstanding tax matters in tax court and take advantage of post-crime cooperation plea bargains in criminal court for offenses related to corruption.[100]

Expanded confiscation penalties added to the prosecutors' power. Article 240 of the Italian Criminal Code provides that in case of conviction, a criminal judge may order the confiscation of the items used for the commission of a criminal offense as well as the goods and assets which represent the product or profit of the criminal activity. However, Law 157/2019 introduced what may be understood as extended confiscation. Originally conceived to fight mafia-style criminal organizations, extended confiscation was later made applicable to an additional selected range of tax offenses.[101] It provides that all belongings that are disproportionate to the income of a person convicted of relevant tax crimes and whose legal origin is not proven can be confiscated.[102] This application of extended confiscation now represents a powerful asset recovery tool.

Finally, the Public Prosecutor's Office highlighted vulnerabilities that arose from the COVID-19 pandemic, including measures intended to increase the speed of procurement of medical and safety equipment but that resulted in less stringent administrative control procedures.[103] These measures allowed for large advance payments even in situations of poor or nonexistent guarantees, leaving

97. *Id.* at 31.

98. Most recently, there was the payment of 55.8 million euros to the Italian tax authorities by Netflix. *See* Milio Parodi & Elvira Pollina, *Netflix to Pay $59 Million to Settle Italian Tax Dispute,* REUTERS (May 20, 2022), https://www.reuters.com/world/europe/netflix-pay-59-million-settle-italian-tax-dispute-2022-05-20/ [https://perma.cc/7N63-9KJM].

99. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 94, at 57–58.

100. Pursuant to Article 63 of Legislative Decree 231/2001; *see also* Brenna Hughes Neghaiwi & Emilio Parodi, *UBS Switches Stance with Plan to Offer $113 Million Tax Settlement in Italy*, REUTERS (June 7, 2019), https://www.reuters.com/article/us-ubs-group-italy-idUSKCN1T81AV [https://perma.cc/K8MP-B5W7].

101. *See* Pietro Maria Sabella, *Sanctions and* ne bis in idem *in the Italian Anti-Tax Evasion Legal Framework: "Extended Confiscation" to Counter Fiscal Corruption*, at 29–31 (Oct. 2022) www.corporatecrime.co.uk/virteu-reports [https://perma.cc/B5W2-FUSB] (considering the evolution of the remits of extended confiscation orders in application of Italian law).

102. *See* Sofia Milone, *On the Borders of Criminal Law. A Tentative Assessment of Italian Non-Conviction Based Extended Confiscation*, 8 NEW J. EUR. CRIM. L. 150 (2017) (exploring the legitimacy of some forms of extended confiscation); Stefano Manacorda & Carlo Vassalli, *Tax Offences: The New Field for Corporate Criminal Liability in Italy*, INT'L BAR ASS'N, https://www.ibanet.org/article/C4B0E91E-3472-409C-97EF-46332DA64A4F [https://perma.cc/4RVK-VKZJ] (noting that extended confiscation now applies to criminal tax offenses under Italian law).

103. PUB. PROSECUTOR AT THE CT. OF MILAN, *supra* note 94, at 72–73.

significant room for illegal initiatives. Collectively, the pandemic, business crisis, labor market crisis, public financing, and alternative forms of financing to companies and individuals have multiplied the risks of infiltration of businesses by organized crime.

From the above SRR analysis, it is possible to identify a series of common trends. Central to the development of a comprehensive approach to fiscal corruption is the implementation of an overlapping framework to address the wide range of tax and corruption offenses. This framework includes enhanced cooperation among various departments with responsibility for fiscal corruption, allowing departments to use complimentary investigatory approaches, draw upon a breadth of experiences, and prevent siloing of information. Additional strategies include the recognition that tax compliance can be encouraged through incentivizing positive behaviors and reframing cultural approaches. One example of this is enabling self-declarations of tax delinquency as a means of avoiding punitive sanctions with the settlement of outstanding debts. Incentivizing positive behaviors was demonstrated to be an effective means to recover tax debts and identify hidden assets.

The reports highlight the importance of forceful investigations accompanied by punitive sanctions and acknowledge the risks associated with excessive leniency or forms of decriminalization. For instance, the increase of the criminalization thresholds has clearly adversely affected tax recovery strategies. Similarly, analysis of the reports reveals that failure to implement effective inter-organizational strategies of information sharing, an unwillingness to account for externalities such as transparency measures in financial flows,[104] and the tendency to underestimate the intimate interrelations between tax crimes and other forms of economic crimes—such as corruption and money laundering—are all elements which may thwart enforcement authorities in their attempt to fight tax crime. Moreover, the reports emphasize how a highly complex legal system[105] subject to frequent and contradictory amendments will suffer, both in its tax compliance and its anti-tax crime strategies.

C. An Analysis of The Milan Model's Impacts

The SRRs provide a unique insight into the effectiveness of the Milan Model. It is possible to trace its success (built on enhanced organizational cooperation, strategic use of post-crime cooperation, and a conceptualization of fiscal corruption as a distinct violation) in combating illicit tax conduct, corruption

104. *See* Costantino Grasso, *The Troubled Path Towards Greater Transparency as a Means to Foster Good Corporate Governance and Fight Against Corruption in the Energy Sector*, *in* HANDBOOK OF ENERGY FINANCE: THEORIES, PRACTICES AND SIMULATIONS 363, 368 (Duc Khuong Nguyen & Stéphane Goutte eds., 2020), for an emblematic example of the challenges that countries face in adopting effective transparency regimes in the area of economic crime.

105. *See* VIRTEU, *VIRTEU National Workshop - Italy, Session 1,* CORP. CRIME OBSERVATORY, at 18:10 (Apr. 29, 2021), www.corporatecrime.co.uk/virteu-national-workshop-italy [https://perma.cc/8NLC-8R5J] (exploring the complexity of the Italian legal system in the area of taxation and tax crimes).

offenses, and the fiscal corruption nexus at which they meet. In just three years, the Milan Model has enabled the recovery of more than €5 billion to the Italian State. Further, it allows for a concrete understanding of the consequences of increasing or decreasing evaded tax thresholds for criminal sanctions. As emerges clearly from the SRRs, when the financial thresholds for criminalization increase, criminal prosecutions for tax crimes decrease with the consequence of a reduced deterrent effect. The reduced levels of enforcement and financial recovery will negatively impact the health of national institutions, but notwithstanding such negative effects, higher thresholds of criminality may make the criminal legal system fairer and in line with the interests of justice. The higher thresholds could avoid the criminalization of conduct that constitutes an innocent mistake, good faith miscalculation, or other action which lack criminal intent. Accordingly, while the existing thresholds appear to be far too high, it is possible to recognize that thresholds of criminalization may play an important role in assuring the general fairness of the system and shielding from potential abuses.

The SRRs, as a feature of the Milan Model, are themselves beneficial in the battle against tax crimes and corruption. Not only do the SRRs provide an objective data set on which to draw in analyzing the model, but they explain to stakeholders, particularly taxpayers, the results achieved and reinforce a cultural understanding that illicit tax conduct and corrupt practices will not be tolerated. The annual reporting reinforces the idea that the system is effective and can serve as a deterrent among citizens.[106]

The model provides an effective demonstration of forms of administrative action, including the inter-institutional collaboration between judicial authorities (the *Guardia di Finanza*, and the Revenue Agency), which can be replicated throughout the national territory and provide a basis for implementation in other states globally. Enhanced inter-institutional cooperation increases the likelihood of identifying wrongdoing, thereby heightening the risk of conviction, sanctions, and deprivation of any advantage gained. Transgressing parties are drawn to the table through post-crime cooperation in exchange for potential leniency and the possibility of avoiding prosecution. This cooperation option aids identification and recovery at an earlier stage and reduces the overall cost of the regulatory burden to the state, further protecting the public interest. Extension of expanded post-crime cooperation to organizational entities and not just to natural persons encourages organizational members to comply with investigations in the hope of

106. *See* Luca Meoli & Pietro Sorbello, *Il rischio della sanzione ed il comportamento del contribuente: riflessioni sull'analisi economica del diritto*, DIRITTO PENALE CONTEMPORANEO, July 10, 2015, https://archiviodpc.dirittopenaleuomo.org/upload/1436457567MEOLI_SORBELLO_2015.pdf [https://perma.cc/B56Z-PXDA] ("A clear deterrence effect can be identified within the context of economic crimes when there exists sufficient sanctions for legal and regulatory non-compliance, alongside opportunities for the wrongdoing to be detected. For these to be effective in their deterrence, however, it is necessary that those subject to the law and regulations are aware of both the threat of sanction and the risks of detection. In this manner, the SRRs play an important role in enhancing awareness of the work of the relevant authorities, and accordingly, foster compliance."). (Text translated by the authors).

leniency.[107] The provisions for post-crime cooperation operate as a carrot and stick approach, seeking to exploit the synergies between criminal and administrative proceedings by making virtuous behavior convenient (payment of tax debt, interest, and administrative penalties) in the pursuit of desired benefits (mitigating factors, access to plea bargaining, elimination of punishment). Finally, the new "cooperative compliance" regime housed in Art. 4 of Legislative Decree 128/2015 offers another layer to cooperation by facilitating enhanced and preventive *ex ante* cooperation between corporations and the Italian Revenue Agency.

Beyond its national impacts, the model has contributed to Italy meeting international commitments on addressing tax crimes and corruption. Given the often international nature of tax crimes and corrupt practices,[108] reduction of malfeasance in one jurisdiction can have secondary impacts in reducing the same conduct in another jurisdiction, as the conduct no longer exists to be able to cross borders.[109] Enhanced cooperation provisions further support the ability to engage in the exchange of financial information for tax purposes, following the OECD common reporting standard and for EU Member States, Council Directive 2014/107/EU of December 9, 2014 (detailing mandatory automatic exchange of information in the field of taxation).[110]

IV

CONCLUSION

Tax crimes and corruption independently represent courses of conduct which undermine governance systems, degrade public trust in government functions, reduce the ability of the state to provide basic necessities for citizens, entrench inequality and poverty, and pose a fundamental threat to the ability of the state to protect and promote basic human rights. Accordingly, the international community has made demands on nation states to devise means to prevent, identify, investigate, and prosecute such forms of conduct. Despite the importance and prominence placed upon the requirement to tackle tax crimes and corruption, the international community and nation states more broadly have persistently and consistently failed to consider the nexus at which these

107. *See* Neghaiwi & Parodi, *supra* note 100.

108. Carousel fraud, a type of MTIC fraud, is the process of buying and reselling the same goods several times via middlemen over intra-EU borders, each time accruing an increased level of VAT. However, the company either disappears or becomes insolvent prior to collection, thereby making tax recovery highly complex and problematic and enabling fraudsters to evade the VAT. Council of the Eur. Union, *Proposal for a Council Directive Amending Directive 2006/112/EC*, at 1, 8, ST 12565 2018 INIT (Sept. 28, 2018), https://www.consilium.europa.eu/media/36519/st12565-en18.pdf [https://perma.cc/DV8Q-H4MV].

109. Examples of corrupt practices with international implications include money laundering, MITC fraud, carousel fraud, smuggling, cartel operations, bribery, the use of tax havens, and related activities.

110. The exchange can take place on the basis of a specific request (Art. 4), automatically for a set of information to be reported compulsorily (Art. 5) or spontaneously (Art. 6). Decreto legislativo 4 marzo 2014, n.29, G.U. Mar. 17, 2014, n.63.

behaviors meet, with each perpetuating the other, through what may be called fiscal corruption.

Such a refusal to consider the behaviors as a conjoined unitary phenomenon has led to a range of measures to address forms of nefarious tax conduct and corruption independent of each other, rather than in concert through a range of criminal and administrative sanctions. However, this article outlines the function and successes of the Milan Model, which presents a departure from this *status quo* whereby a wide range of enforcement and investigatory officials work within a newly developed department to detect and prosecute fiscal corruption as a unique conduct. In doing so, law enforcement, prosecutors, the public administration, tax police, and regulators work in concert, sharing intelligence and strategies to develop novel means of addressing these crimes.

Annual reports published by the Milan Prosecutor's Office since 2012 enable policymakers to track the development of the model, highlighting areas of good practice as well as those reforms detrimental to the fight against fiscal corruption. Analysis of the law and evolving regulation provides critical insights into methods which have been effective in tackling fiscal corruption through prevention strategies, recovery provisions, and post-crime cooperation tools which incentivize early detection and result in timely, appropriate sanctions that protect the public purse. This unique perspective offers fertile ground for policymakers and future academics to draw from the lessons of the Milan Model and to develop related but nationally tailored strategies to fight fiscal corruption.