ACTA SCIENTIAE

ISSN: 2178-7727

The veil of simulation: Illicit operations in Mexico

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ABSTRACT

The objective of this paper is a systematic review of operations with illicit proceeds that have yielded millions in profits for organized crime and affect the Mexican state's revenue collection due to the commission of the crime of tax evasion, activities classified as tax crimes which are stipulated in article 400 bis of the Federal Penal Code, as well as the relative 115-bis of the Federal Tax Code. A documentary, inductive, deductive, synthetic and analytical study was carried out on a sample of articles of the penal code and the fiscal code: Federal Law for the Prevention and Identification of Operations with Illicit Proceeds (LFPIORPI), the Federal Law against Organized Crime (LFDO), the Federal Law on the Forfeiture of Domain, Regulatory of Article 22 of the Political Constitution of the United Mexican States (LFED), the Federal Law for the Protection of Personal Data Held by Private Parties (LFPDPPP) and the Federal Anti-Corruption Law in Public Contracts (LFACP) in order to address the issue of simulated operations by referring to the procedure established in article 69-B of the Federal Fiscal Code. In relation to the state of the art, the impact of illicit operations on tax collection is discussed and it is recommended to extend the review to the collateral effects of the crimes in question in the Anti-Money Laundering Law.

KEYWORDS: Federal Tax Code, Federal Penal Code, Organized Crime, Mexican State, Illicit Operations.

INTRODUCTION

Certainly in the federal tax code in a particular way establishes the classification of special crimes in tax matters, however, money laundering is classified within the federal penal code, so the present work represents the analysis of the social, economic and legal impact that arises from money laundering in Mexico, both in its general and specific aspect, to make a detailed analysis of the criminal types that are found in the Federal Penal Code and their close relationship to various procedures established within the Federal Fiscal Code, as well as the instances that are in charge of the investigation and prosecution of them at national and international level.

Operations with resources of illicit origin are unlawful conduct that deserves a scientific study, given that at present it represents a subject of great relevance, since it is linked to the phenomenon of organized crime which has been gaining considerable strength in Mexico and in the world, which is why the present investigation is presented under a structure of systematization of doctrines and regulations on money

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laundering, whose objective is to study said criminal phenomenon, to conclude if the new Law on the matter commonly called "Anti-money laundering Law" fulfills its purpose of detention, punishment and prevention that allow to reduce operations with resources of illicit origin in Mexico.

“Money Laundering” or “Capital Laundering” dates back to the time of the prohibition of alcohol sales in the 1920s, when the famous mobsters “Al Capone” and “Meyer Lanski” created a whole chain of “laundries” in Chicago and New York respectively, which served to “launder” funds from the operation of illegal bars and casinos. In Mexico, although it is a considerably new issue, it is beginning to take on greater importance because drug trafficking and major drug lords are beginning to use this crime to launder their profits.

Before the LFPIORPI was enacted [1]and the crime of ORPI was classified [2], our national legal system, in 1990, classified money laundering in the Federal Tax Code (CFF) as a special federal and fiscal crime, without expressly referring to its motives and the origin of the same is unclear.

Thus, with the "Law establishing, reforming, adding and repealing various tax provisions and adding to the General Law on Commercial Companies", published in the DOF on December 28, 1989, article 115-Bis was added to the CFF to punish with up to nine years in prison anyone who, knowing that a sum of money or property of any nature comes from or represents the product of an illicit activity constituted the crime of money laundering without expressly stating so, under the display of various acts or omissions; On December 3, 1993, the addition of two paragraphs to the aforementioned article 115-Bis of the CFF was published in the DOF to incorporate employees and officials of the financial system.

In this context, with the acts of action or omission described in this type of tax crime, the protection of the legal asset to be protected began: the national economy, without expressly referring to it, and in some cases the economy of individuals. Later, on September 17, 1999, this section of the CFF was repealed and article 400-bis was added to the Federal Penal Code (CPF) to impose a penalty of up to 15 years in prison on anyone who, personally or through an intermediary, carries out various acts with knowledge of converting or transforming money or goods that come from profits or represent the product of an illicit activity, preventing the knowledge of the origin of the resources, rights or goods that come from said activity.

Thus, since 1995, with the classification of the crime of ORPI, among others provided for in the CPF, a series of reforms to various financial laws were initially initiated to prevent and combat money laundering, as well as the issuance of various and multiple provisions of a general nature regarding the prevention, detection and reporting of operations possibly linked to said crime.

In a second phase and after two years in the federal Congress, the LFPIORPI was issued with a vacatio legis of nine months to begin its application, its Regulations were issued and various general rules were issued to register certain subjects and submit various reports and notices of Vulnerable Activities. Additionally, greater powers were granted to the FIU of the SHCP for such purposes, as well as administrative units were created within the Tax Administration Service (SAT) so that it would operate the administrative procedures for collecting data, reports and documents through the submission of notices, on the one hand, and monitor compliance with the corresponding provisions, as well as impose the corresponding sanctions.

Thus, in order to combat and toughen penalties for the crime of money laundering, on March 14, 2014, the DOF published the “Decree amending and adding various provisions of the Federal Penal Code; the Federal Code of Criminal Procedure; the Federal Law against Organized Crime; the Federal Tax Code and the Federal Law on Asset Forfeiture, Regulatory of Article 22 of the Political Constitution of the United Mexican States” to punish this crime with five to fifteen years in prison, thus bringing Mexico into line with the international

[1]Federal Law for the Prevention and Identification of Operations with Illicit Proceeds
[2]Operations of Resources with Illicit Origin

ISSN: 2178-7727

standards applicable to the prevention and combat of money laundering.
Finally, it should be mentioned that within the Federal Penal Code, the definition of what is known as a crime is established, which is referred to within article 7 as any "act or omission that is sanctioned by penal laws", a definition of which a limitation is seen in order to determine the sensitivity of what is established by article 400 bis of the aforementioned ordinance.

Operations with resources of illicit origin are unlawful conduct that deserves a scientific study, given that at present it represents a subject of great relevance, since it is linked to the phenomenon of organized crime, which has been gaining considerable strength in our country and throughout the world, which is why the normative evolution that governs us is of an international nature, and the politicization of the subject makes it impossible for the justice organs to exercise a heavy hand against the intellectual actors who commit these illicit acts, which is why even though the applicable laws have evolved, they do not seem to be adequate to stop the growth of criminal conduct, considerably affecting the economy of our country.

For the above reasons, it is necessary to carry out substantial reforms in order to not leave legal loopholes and to determine that the elements of the type regarding the issue of money laundering are not affected by the way in which action is taken in terms of substance and, above all, to establish a prevention structure through mass information on the consequences of commission and participation.

This research aims to study the problem of money laundering in Mexico, in order to establish how this problem has affected the economy and finances of the Mexican State and thereby acquire the necessary bases to prevent and detect acts or operations that involve resources of illicit origin. In addition, to identify the theoretical framework of money laundering , to know the background and the amount of resources that are potentially subject to money laundering and to propose recommendations to improve policies regarding money laundering or operations with resources of illicit origin.

The importance of investigating the effect of the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds lies in the fact that it is a law that has recently come into force and its application is to all sectors of the economy in our country.

There are several mechanisms for laundering money, but not all of them come from drug trafficking, but from extortion, kidnapping, human trafficking or tax evasion, among others, because money laundering is an activity that originates from the need for cash from the profits of crimes or illicit acts to enter the formal economy, thus becoming legal profits.

What are the most relevant antecedents of money laundering in Mexico? What are the vulnerable activities due to the impact of illicit operations on tax collection? What obligations does the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds establish?

This study is based on the assumption that illegal operations, when classified as crimes, have established a series of criteria from which it is possible to discuss their impact on tax collection and crime prevention. In this sense, in order to establish the vulnerabilities of the Anti-Money Laundering Law, it is necessary to establish the obligations imposed by the law in its tracking and controversy over the origin of the capital in question.

METHOD

Within the development of the research, a series of research methods are invariably used with which the hypothetical bases raised are verified , such as legal dogmatics, a method that is considered a legal science; in fact, within *legal positivism* , we find authors who affirm that it is the only science that deals with law.[3]

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[3] Berumen Campos, Arturo, *Notes on the Philosophy of Law,* Latest edition, Cárdenas Editores, Mexico,

DOI: 10.2030/ASCI.25.4.AS.38

ISSN: 2178-7727

Legal dogmatics consists of establishing which rules must be obeyed and is therefore considered by some jurists as the task of stating the law or jurisprudence. Among the theoretical methods of research we find the historical method, which will be in charge of studying the coercive fiscal procedure, through the evolution and historical development within the Mexican legal framework.
The study is carried out based on a documentary, inductive, deductive, synthetic and analytical method.

This work, first of all, carries out a documentary research, since it is necessary to refer to the background of the creation of the law applicable to the case being analyzed, in order to establish the legal bases of comparative law, since it arises from a regulation of an international nature (see Table 1).

The scope is determined to establish the fact that although in this administration of the Mexican State from 2018 to 2024 the fight against money laundering has been centralized in the work of the Financial Intelligence Unit (UIF) of the Ministry of Finance, attacking this problem goes beyond what this agency does, which is why significant and complex reforms are required for its implementation that systemically attack the crime, according to a study by the think tank American Enterprise Institute (AEI).

The limitations will be the critical analysis regarding the application and results that have been implemented based on the regulatory instruments that we have in force: the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds (LFPIORPI), the Federal Law against Organized Crime (LFDO); the Federal Law on the Forfeiture of Domain, Regulatory of Article 22 of the Political Constitution of the United Mexican States (LFED); the Federal Law on the Protection of Personal Data Held by Private Parties (LFPDPPP); and the Federal Anti-Corruption Law in Public Contracts (LFACP); and, the CFF.

Table 1. Matrix of operationalization of variables

DEPENDENT VARIABLE	INDEPENDENT VARIABLE	DIMENSIONS	INDICATORS
Illegal Tax Operations	Federal Tax Code	Article 69-B Article 115-BIS Tax Crimes Federal Law for the Prevention and Identification of Operations with Illicit Proceeds (LFPIORPI), Federal Law on Domain Forfeiture, Regulatory of Article 22 of the Political Constitution of the United Mexican States (LFED);	(FATF). Financial Action Task Force Egmont Group. Exchange of Information between Financial

2003, p. 24.

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Money laundering	Federal Penal Code	Article 400 Bis Article 400 Bis 1 Federal Law against Organized Crime (LFDO); Federal Law on the Protection of Personal Data Held by Private Parties (LFPDPPP); and the Federal Law on Anti-Corruption in Public Procurement (LFACP);	Intelligence Units

RESULTS

Operations with resources of illicit origin are unlawful conduct that deserves a scientific study, given that at present it represents a topic of great relevance, since it is linked to the phenomenon of organized crime, which has been gaining considerable strength in Mexico and in the world, mainly due to the globalization of economies and the development of new technologies in communication.

This research work is a systematization of doctrinal and normative criteria regarding money laundering. The objective is to study this criminal phenomenon, its normative development both at the international level and of course in national regulations, to conclude whether the new Law on the subject commonly called "Anti-money laundering Law" with the reports on vulnerable activities and the restriction on the use of cash will be able to provide elements that allow reducing operations with resources of illicit origin in Mexico.

In its fight against operations with illicit proceeds, Mexico has made use of the best international practices. Currently, in order to prevent this crime, we have the Financial Intelligence Unit, whose operation is proposed by international organizations and whose main function is to receive and analyze suspicious operations and then report them to the authorities in charge of criminal prosecution when there are indications that money is being laundered.

Mexico has also adopted the FATF recommendations and has entrusted private sectors with collaborative tasks in the area of prevention, a measure that forces them to invest resources to achieve these goals and, to a certain extent, this causes them to deviate from their central objectives. In this concurrence of efforts, the private sector is assigned the task of preventing and detecting, and the public sector is assigned the task of detecting and sanctioning.

By improving controls on prevention, sanctions and of course international cooperation, we aim to discourage organized crime from carrying out money laundering, since if they carry out such actions, they are more likely to be detected, prosecuted and punished.

It is addressed in article 115-bis of the Federal Tax Code, which was the first regulation in the country that sought to punish the crime commonly known as money laundering. The change that this crime had in 400-Bis of the Federal Penal Code is also addressed and said article is analyzed in depth.

It is important to note that the regulations against the crime of operations with illicit proceeds should not only involve the criminal sphere, since by their nature there are sectors that are conducive to the entry of dirty money. For this reason, various articles of the Customs Law, the General Law of Auxiliary Credit Organizations and Activities, and the Law of Credit Institutions are analyzed. The result of the analysis lets us know if they are in accordance with the best anti-money laundering practices.

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The Federal Law for the Prevention and Identification of Operations with Illicit Proceeds, which is a regulation that obliges sectors considered vulnerable to issue reports to the Ministry of Finance and Public Credit, also introduces a limit on the use of cash, a measure commonly used to seek to control tax evasion.

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Current regulatory instruments.

1. LFPIORPI in the DOF on September 1, 2013 began its application together with various administrative provisions and operating formally and regularly from January 2014,
2. The Federal Law against Organized Crime (LFDO);

[4]Federal Law for the Prevention and Identification of Operations with Illicit Proceeds

DOI: 10.2030/ASCI.25.4.AS.38

ISSN: 2178-7727

3. The Federal Law on Domain Forfeiture, Regulatory of Article 22 of the Political Constitution of the United Mexican States (LFED);
4. The Federal Law on the Protection of Personal Data Held by Private Parties (LFPDPPP);
5. Federal Anti-Corruption Law in Public Procurement (LFACP); and, the CFF.

DISCUSSION

In Mexico, various legislative actions have been undertaken to comply with the recommendations and obligations acquired by being part of international treaties and cross-border organizations. This demonstrates the significant influence that international treaties have had on Mexican regulations that regulate and seek to combat operations with resources of illicit origin, from the Basel Declaration of 1988 to Mexico's integration into the Financial Action Task Force.

Eulogio Monreal comments: The regulatory evolution that governs Mexico to create a sanctioning regime that acts as a preventive support to avoid money laundering, follows the pace and tone set by international agreements and conventions. This regulatory framework has gone from classifying money laundering behavior to linking it to organized crime and terrorism; they are like three axes that define the scheme that is transposed in each country to follow this international pace.[5]

In this sense, the LFPIORPI defined and qualified certain acts or operations that it called Vulnerable Activities, which are defined in a vague and ambiguous manner in its legal provisions. However, the law in question considered that the Vulnerable Activities for which there is an obligation to identify and/or give notice are the following:

1. gambling games,
2. contests and raffles held by the National Lottery,
3. Sports Forecasts and any other decentralized organization, as well as those carried out under the protection of permits legally granted by the Ministry of the Interior;
4. in routine or professional transactions involving loans or credits, with or without guarantee, including persons other than financial institutions; in foreign trade operations linked to vehicles;
5. in real estate leases;
6. in the acquisition of real estate, including construction services thereof;
7. in the acquisition of land, air and sea vehicles, whether new or used;
8. in the constitution of trusts, legal entities of a commercial nature and appraisals before public brokers, as well as the constitution of legal entities, purchase and sale of real estate, mergers and demergers before notaries;
9. in securities transfer services, except for the Bank of Mexico (Banxico) and securities depository institutions; in operations carried out with credit cards; the marketing of traveler's checks;
10. in the acquisition, marketing and intermediation of precious metals, unless Banxico intervenes; and,
11. in the acquisition of works of art.

Federal Law for the Prevention and Identification of Operations with Illicit Proceeds. This law seeks to provide Mexican authorities with more information and tools to combat the crime in question, by means of notifications from obligated subjects to the authorities when vulnerable activities established in the law are carried out. Also, a limit is established on the use of cash, so that important transactions cannot be carried out in cash, that is, it seeks to ensure that movements of large amounts of capital are carried out through bank transactions, where it is easier to trace the money.

In addition, a section indicates the coordination that authorities must have when suspecting that money laundering operations are being carried out. The Federal Law for the Prevention and Identification of

[5] Monreal Ávila, Eulogio, *The power to sanction in the prevention of money laundering* , Madrid Spain, Complutense University of Madrid, 2017, p. 175.

ISSN: 2178-7727

Operations with Illicit Proceeds was published in the Official Journal of the Federation on October 17, 2012 and the text has been in force since July 17, 2013. It establishes 65 articles and 7 transitional provisions.

The Federal Law for the Prevention and Identification of Operations with Illicit Proceeds seeks to provide Mexican authorities with more information and tools to combat the aforementioned crime, by notifying obligated subjects when they carry out the vulnerable activities established in the law. There is also a limit on the use of cash, so that important transactions cannot be made in cash, that is, the movement of large amounts of capital is intended to be carried out through bank transactions, where it is easier to trace the money. In addition, a section indicates the coordination that the authorities must have when suspecting that money laundering operations are being carried out.

Blanco Cordero mentions that money laundering is the process by which assets of criminal origin are integrated into the legal economic system with the appearance of having been obtained legally.[6] The goal is to simulate legality in the resources; the capital laundered by more sophisticated processes to try to hide its criminal origin will never be legitimate.

Castañeda Jiménez [7]states that money laundering activity should be considered as an antisocial phenomenon of a patrimonial nature that involves the concealment of the documentary route that connects the income of money or assets of a person or group with the purpose of evading the payment of taxes, avoiding being prosecuted for a crime or evading any confiscation of money or assets of illegal origin.

The Spanish jurist, Diego J. Gómez Iniesta, defines money laundering as:"that operation through which money of always illicit origin is invested, hidden, replaced or transformed and returned to legal financial economic circuits, being incorporated into any type of business as if it had been obtained legally."[8]

In all the concepts addressed the authors highlight: Pedro Zamora mentions that: “It is the process by which any act or operation is carried out with foreign currency or assets that come from an activity classified as a crime by the legislation of the country in which said acts or operations are carried out, with the fundamental purpose of hiding the illicit origin of such foreign currency and assets, using a series of acts permitted by law, to reach an end prohibited by it.[9]

The Federal Law for the Prevention and Identification of Operations with Illicit Proceeds has two main guiding principles: the first is the restriction on the use of cash in certain commercial operations and the second is to notify the Ministry of Finance and Public Credit when a private individual carries out an activity specifically indicated in said law.

That said, I believe that the Mexican tax authority is greatly strengthened by the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds, given that, thanks to the obligations established for individuals and businesses, it has access to a significant flow of information that allows it to know which people are moving considerable amounts of cash in the economic system.

This law therefore represents a two-pronged strategy: it not only seeks to prevent or identify issues relating to money laundering, but also - something it does not address - those relating to tax evasion.

Raquel Villaécija and Graziella Ascenzi point out that:The restriction on the use of cash in the world has been

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[6]Blanco Cordero, Isidoro, *The crime of money laundering* , Aranzadi, Pamplona, Spain, Aranzadi, 1997, p. 101.
[7]Castañeda Jiménez, Héctor, *Socioeconomic Aspects of Money Laundering* , Mexico City, National Institute of Criminal Sciences of the Attorney General's Office (INACIPE), 1991, p. 61.
[8] Gómez Iniesta, Diego, *The crime of money laundering in Spanish law* , Spain, Cedecs Editorial, 1996, p. 21.
[9]Zamora Sanchez, Pedro, Legal Framework for Money Laundering, Mexico City, Oxford, 1999, p. 6.

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more a fiscal measure than a prevention or combat against the crime of money laundering per se. In fact, countries such as France, Italy and more recently Spain, have sought to restrict the use of cash in commercial operations as a measure to try to avoid tax evasion and therefore improve their levels of collection.[10]

Operations with resources of illicit origin and tax evasion are closely linked crimes, the study of these two illegal phenomena is of enormous importance, given that, in Mexico they are a big problem, they represent behaviors that affect national development, the Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin, is presented as a regulation that seeks to attack mainly the crime of money laundering, it does not speak of the fight against tax evasion, being that, by analyzing said regulations, one can predict the enormous flow of information that the Ministry of Finance and Public Credit will obtain, information that it can use against tax evaders, the possible argument, you are spending money in the economic system, if it is legal it must be declared and if it is not declared you are carrying out operations with resources of illicit origin.

Alejandro Ponce points out that:The new Federal Law for the Prevention and Identification of Operations with Illicit Proceeds aims to identify people who spend large amounts of money, accurately quantifying the amounts spent, precisely through their suppliers (subjects who carry out vulnerable activities), who must identify and report them by filing notices with the Ministry of Finance and Public Credit, without alerting us at all, since there is a legal obligation to keep matters confidential, so that people who spend money never find out about this personal monitoring by the SHCP permanently carries out on the expenses they make, all aimed at detecting when said people are committing the crime of money laundering, by using money from tax evasion when making these expenses, which is evident when the expenses made amount to a total amount that exceeds the total income declared fiscally as taxed or exempt .[11]

Thus, the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds puts us all on the radar of the Ministry of Finance and Public Credit, since it will have more elements to investigate, report and prosecute. It is not only a regulation against money laundering, it is a law that also seeks to control tax evasion, which represents the previous crime and source of a large number of operations with illicit proceeds.

Obligation of the tax authority to report facts related to the crime of Operations with Illicit Proceeds. Connection in the tax field In 2014, the Income Tax Law (LISR) redesigned for individuals an administrative procedure called "tax discrepancy" whose purpose is merely contributory, that is, to pay income tax (ISR) and perhaps other contributions linked to omitted income that did not pay taxes.

The purpose of this procedure is simple, since it consists of making a comparison between the amount of expenditures made by the taxpayer versus the income declared or to be declared, in which if the tax authority verifies that the expenditures are greater than the income declared or to be declared by the individual, it will be presumed to be taxed income and the corresponding contribution must be paid, for which the tax authority may use any information in its possession, whether it is in its files, documents, databases or has been provided by a third party or another authority.

Proposals to improve the fight against money laundering: States must ensure that legal persons are subject to criminal, civil or administrative liability, determining effective, proportionate and dissuasive sanctions.

States must ensure that financial institutions' confidentiality laws do not allow or maintain anonymous accounts or accounts under obviously fictitious names, but rather carry out due diligence measures that

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[10]Villaécija, Raquel and Graziella, Ascenzi, *How have limits on the use of cash worked in other countries?, Spain,* Expansion, consultation date 03/25/2016 http://www.expansion.com/2012/02/10/economia/1328874396.html?cid=GNWS

[11]Ponce, Rivera, Alejandro, *Money Laundering* , Mexico City, ISEF publishing house, 2014.

ISSN: 2178-7727

include, among others, customer identification and data verification; identification of the final beneficiary; information on the purpose and nature of the commercial operation.

Proper training and rules of responsibility should be implemented for financial company officials to detect and report suspicious transactions and to criminalize complicity in money laundering, as well as for authorities in charge of prosecuting crimes related to money laundering.

States must implement measures to freeze without delay the funds or other assets of terrorists, their organizations or their financiers.

CONCLUSION

This institution called money laundering is a very complex figure, and it is very difficult to capture and prevent, especially due to its global character, which causes its complexity in terms of its investigation at the judicial level. Each phase that reflects the process of establishing money laundering takes another step of hiding its apparently legitimate purpose, which entails the large chain of subjects that can be produced due to this very supranational character that can occur. In my opinion, this institution is configured as a crime that generates very harmful effects against the patrimony, the market and the economy, leading in many cases to true economic imbalances. Therefore, one of the best strategies of the Mexican Government to fight against organized crime must be to provide efficient conditions based on transparency, trust and legality in the use of public resources.

In Mexico, asset controls must be improved in order to detect people who are carrying out operations with illicit proceeds. Although we have restrictions on the use of cash, the reporting system of financial institutions and vulnerable subjects to the Financial Intelligence Unit (UIF), it is also required that the federal entities have controls that effectively stop such operations within the State Finance and Treasury Departments, in order to generate, consolidate and analyze fiscal, asset and financial information that supports investigations related to possible illegal acts and unjustified increases in assets, in order to file the respective complaints with the Public Prosecutor's Office.

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