

Summary

This research focuses on the nature and extent of the misuse of foreign corporate vehicles in the Netherlands. Enforcement activities in the field of controlling legal entities will shift from a preventive control towards monitoring the entities during their life course. This monitoring will be based on a risk measurement instrument. The Dutch Ministry of Justice's research centre (WODC) commissioned the study in order to explore the following questions;

What is the nature of misuse of foreign corporate vehicles in the Netherlands?

To what extent are corporate vehicles in the Netherlands used for illicit purposes?

What are the possibilities for developing a risk measurement instrument?

In order to answer these questions, various methods were deployed. First, the most important literature on this topic was analysed. Second, we gathered statistical information on the extent of foreign corporate vehicles in the Netherlands from several institutions, as for example the Dutch Chamber of Commerce (KvK). Third, semi-structural interviews were conducted among various parties involved with the control of corporate vehicles. Furthermore, a survey was conducted among the employees from the fiscal investigations and research centre (FIOD-ECD). Finally, we explored 40 large criminal court cases to search for examples of the misuse of foreign corporate vehicles. The results of this study can be summarized as follows.

Nature and extent of foreign corporate vehicles in the Netherlands

The Dutch Chamber of Commerce reported 6.051 foreign corporate vehicles in 2006. This is an increase of 20% compared to 2003. Most registered corporate vehicles were domiciled in a European Union country. The English private limited company seemed to be very popular as well as the German 'Gesellschaft mit beschränkter Haftung', the Belgian entities and entities from Delaware in the United States. The Tax and Customs Administration (Belastingdienst), reported 347.211 foreign corporate vehicles and the Dutch Land Registry office (Kadaster) reported 1.702 foreign corporate vehicles in 2006. Differences in the extent of corporate vehicles are mainly caused by different registration measures.

Misuse of foreign corporate vehicles

Almost all of the 40 large criminal cases we analysed had some international dimension. In 13 of the 40 cases we found the specific misuse of foreign corporate vehicles. The difference between the legal use of foreign corporate vehicles and misuse of corporate vehicles is diffuse. We defined misuse of corporate vehicles as the use of the foreign corporate vehicle to commit crimes or to obstruct law enforcement and crime control. Following from case examples we distinguished five types of misuse of foreign corporate vehicles. First, the corporate vehicle can be used to invest illegal money in the legal economy (money laundering). The second type of misuse governs the use of the foreign corporate vehicle to create income. The corporate vehicle is used as a screen to attract investors, consumers and governments to invest money in a 'legally' operating firm. Third, the corporate vehicle can be used to 'avoid responsibilities'. The corporate vehicle is used to hold assets for the beneficiary and therefore avoid any claims from consumers, the state et cetera. A fourth type of misuse is the opposite of money laundering. Money is extracted from the legal economy and is converted into illegal money. This illegal money can be used to pay bribes, buy gifts

for a mistress et cetera. Finally a fifth type of misuse can be distinguished, in which the legal entity is not primarily used for financial gain but it is used to place the beneficiary in the picture, as a cover up for illegal activities.

Key problems in controlling the misuse of foreign corporate vehicles.

An important finding concerns the fact that almost all respondents had minor problems with the structures of legal persons as such. Most respondents were able to figure out how structures with legal persons were built up. Problems were caused by timely and costly international formal relationships, low priority for and interest in doing financial research, (sometimes) lack of knowledge on complex structures with legal persons and problems with the exchange of information.

Risk indicators

Several risk factors associated with the misuse of foreign corporate vehicles are identified. The risk measurement instrument could be based on three assumptions following from the various risk factors of misuse of foreign corporate vehicles we found. The first assumption derives from classical *opportunity theory*. Opportunity theory tells us that crimes will occur when there are opportunities to commit crimes and when control is absent. For example, foreign legal entities differ in the possibilities they have to ensure the anonymity of the beneficiary. Legal entities that have more possibilities to ensure that anonymity will be more likely to be misused. The second assumption entails that we should take *history* into account. People who committed a crime in the past, are considered to be more likely to commit a crime in the future. The same applies to the individuals behind legal persons and can also be explained on the level of branches. A third and final assumption is that *everything that deviates* from normal (business) behavior is a possible indication of illicit use of the corporate vehicle. We have to consider, though that normalities differ from situation to situation. Thus, regulators and law enforcers should always take the concrete context into account.