



## Annex II

# Proving illicit enrichment using financial investigation and Source and Application of Funds analysis

TECHNICAL GUIDANCE FOR INVESTIGATORS  
AND PROSECUTORS

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*Annex II for Illicit Enrichment:  
A Guide to Laws Targeting Unexplained Wealth*





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## Purpose of this addition:

This annex complements the book *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth* by Andrew Dornbierer, published by the Basel Institute on Governance in May 2021. It provides guidance to investigators and prosecutors on how to collect and analyse financial information and evidence to establish that a person has illicitly enriched themselves. It focuses on the Source and Application method of evidential analysis and explains how this method can be used to assist investigators and prosecutors to clearly and fairly demonstrate that a person has acquired and/or used funds that cannot be explained by reference to their legal income. This technical guidance addition also provides an outline of the common types of financial evidence that should be sought when conducting an investigation into illicit enrichment.

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# 1

## An introduction to Source and Application analysis



## 1.1 What is a ‘Source and Application of Funds analysis’?

A Source and Application of Funds analysis (herein ‘Source and Application analysis’) is an evaluation of all the financial incomings and outgoings of a particular person over a defined period of time.

While commonly used in a commercial context,<sup>1</sup> this method of analysis is an excellent tool in the context of illicit enrichment as it can be used to accurately and fairly prove that:

1. **A person has enjoyed a certain amount of wealth;**<sup>2</sup> and
2. **The lawful origin of this wealth cannot be explained by reference to the same person’s lawful income.**

In other words, a Source and Application analysis can be used by investigators and prosecutors to **establish the two common elements in all illicit enrichment laws**, the Wealth Element and the Inadequate Income Element (see Part 3 of *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth* for a further discussion of these elements).

### The need for a financial investigation to establish ‘Known Lawful Sources of Income’ and ‘Applications’

When conducting a Source and Application analysis, it is first necessary to conduct a thorough financial investigation to establish two key monetary figures required by courts to determine if the two common elements of an illicit enrichment law have been established. These two figures are:

1. **The total amount of wealth that the person has enjoyed**, as defined by the amount of funds that were applied towards the acquisition or enjoyment of this wealth during a set period of time (and including the total amount of funds that were ‘saved’ by a person during this set period of time).
2. The total amount of the **known lawful sources of income** received by, or available to, the person over the same period of time, that could possibly have been applied towards the acquisition or enjoyment of this wealth (or towards the accumulation of savings).

The instances where someone uses, expends or saves funds that count towards the first figure above are referred to as **APPLICATIONS**. The instances where someone has received funds

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<sup>1</sup> Referred to in this context as a ‘cash flow’ analysis or a ‘sources and uses of funds’ analysis.

<sup>2</sup> The meaning of ‘wealth’ in this context will depend on the law of a particular jurisdiction – but in most cases it will include the acquisition and enjoyment of traditional tangible assets as well as the enjoyment of lifestyle-related amenities and services, or even the ability to give gifts to other people.

from a known lawful source are referred to as **KNOWN LAWFUL SOURCES OF INCOME**.

Common 'Applications' will include such things as expenditures made by the person to buy tangible assets (such as houses, cars or company shares) or to make repayments towards a loan. Common 'Known Lawful Sources of Income' will include such things as salaries earned by the person through employment, inheritances they may have received and any loan amounts granted to them under a legitimate agreement. Income received prior to the period of analysis are also taken into account in the form of savings held on bank balances at the start of this time period. Conversely, the accumulation of funds on bank accounts during the period of analysis are considered as an application of funds and are represented through the amount of funds held on the relevant bank accounts on the final day of this time period.

### The Source and Application formula

Once a total figure of Applications and a total figure of Known Lawful Sources of Income have been identified by a financial investigation, the final step of a Source and Application analysis compares these two figures using a simple formula to determine whether the person used / expended or saved an amount of funds over a certain period of time **that could not possibly have been derived from a known lawful source of income**. This formula is represented as follows:

<div style="border: 1px solid black; border-radius: 15px; padding: 10px; background-color: #e0e0e0;"> <p style="margin: 0;"><b>Applications</b></p> <p style="margin: 0;">Total amount of funds the person <b>applied</b> towards the acquisition or enjoyment of wealth or <b>saved</b> over a certain period of time</p> </div>
<p style="margin: 0;">—</p> <p style="margin: 0;"><i>(minus)</i></p>
<div style="border: 1px solid black; border-radius: 15px; padding: 10px; background-color: #e0e0e0;"> <p style="margin: 0;"><b>Known lawful sources of income</b></p> <p style="margin: 0;">Total amount of funds from known lawful sources received by or available to the person over the same period of time that could be <b>applied</b> towards the acquisition or enjoyment of wealth or <b>or accumulated in savings</b></p> </div>
<p style="margin: 0;">=</p> <p style="margin: 0;"><i>(equals)</i></p>
<div style="border: 1px solid black; border-radius: 15px; padding: 10px; background-color: #0056b3; color: white;"> <p style="margin: 0;"><b>Total illicit enrichment</b></p> <p style="margin: 0;">Total amount of funds the person <b>applied</b> towards the acquisition or enjoyment of wealth <b>or accumulated as savings that have not come from known lawful sources</b></p> </div>

If all the lawful income and all the outgoing applications of a person have been established by a financial investigation and the person **has not** received funds from unlawful sources... then the formula will always result in **zero**.

If the person **has** received and used/applied funds from unknown/unlawful sources... then the resulting figure will be a **positive number** – which will equal the total amount of funds that the person must have received from unknown/unlawful sources.

Alternatively, if the figure is negative, this means that the financial investigation has simply not identified all the instances in which a person has used or saved their money.<sup>3</sup>

For example, if it can be proven that a person with no initial savings to speak of:

- Lawfully earned a total of 20,000 dollars over a 12-month period;
- Spent 10,000 dollars over the same period towards maintaining their lifestyle; and
- Finished the period with 10,000 dollars on their bank account...

...then a calculation using the formula above will result in zero, as the person has only used and saved the money that they received through lawful sources:

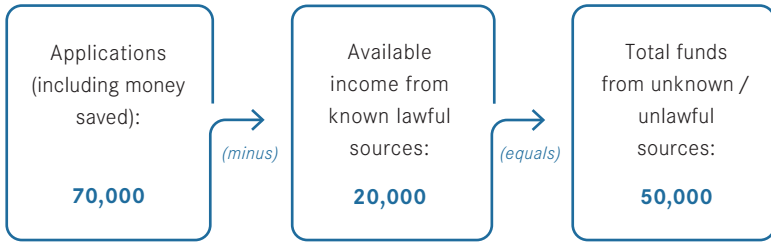


If, however, the same person instead:

- Earned a total of 20,000 dollars over a 12-month period from lawful sources, and
- Somehow spent 30,000 dollars during this year maintaining their lifestyle; and
- Finished the period with 40,000 dollars on their bank account...

.....then a calculation using the formula above will result in a positive number, demonstrating that the person must have received money during this time from an unknown/illegal source:

3 As the 'Total amount of funds the person used towards the acquisition or enjoyment of wealth over a certain period of time' should include any instance a person 'used' funds they received **AND** the amount of funds 'saved' by the person in the form of electronic funds or cash, if the resulting figure from the calculation is a negative number, then this represents an impossible outcome: a person received more income than they used or saved. If after an investigation, the calculation results in a negative number, it simply means that the investigation has not identified all the ways in which a person 'used' or 'saved' their money. This can certainly happen, particular if the person often uses cash transactions, as these types of transactions are sometimes difficult to prove.



A Source and Application analysis will usually be presented as a Source and Application table which sets out a person’s Known Lawful Sources of Income as well as a person’s Applications and includes a comparison of the two figures.

For example, a very simplistic Source and Application table may take the following appearance:

Source and Application analysis (1 Jan 2020 – 30 June 2020)			
Known sources of funds (income)		Applications of funds (wealth)	
Bank account balance (1 Jan 2020)	10,000	Bank account balance (30 June 2020)	70,000
Salary (6 months)	30,000	Purchase of house	120,000
Personal loan amount received from Bank X	40,000	Repayments of personal loan to Bank X	5,000
Inheritance received	5,000	Purchase of car	50,000
<b>Total known sources of funds</b>	<b>85,000</b>	<b>Total applications</b>	<b>245,000</b>
		<i>(minus)</i>	
		<b>Total known sources of funds</b>	<b>85,000</b>
		<i>(equals)</i>	
		<b>Total unknown sources of funds (Illicit Enrichment)</b>	<b>160,000</b>

A more comprehensive examination of the different items that can be considered under a Source and Application analysis is contained in Section 2 of this Annex. A case example further demonstrating how to create a Source and Application table such as the one above is contained under Section 3 of this Annex.

## 1.2 Jurisprudence that addresses / uses Source and Application analysis

While no major illicit enrichment court cases specifically define or refer to a ‘Source and Application’ analysis, the fundamental principles behind this method of analysis have been used or referred to in key illicit enrichment cases throughout the world. For instance, in the landmark decisions of *Ernest Percival Max Hunt v the Queen*<sup>4</sup> (Hong Kong) and *Krishnanand v The State of Madhya Pradesh*<sup>5</sup> (India) the courts conducted thorough calculation exercises comparing incomes over a certain period with parallel expenditures and made a determination of illicit enrichment based on a disproportionality between the two figures. The Source and Application method of analysis draws upon the principles of calculation discussed in these cases and others and provides a clear and defined methodology that can be adopted by investigators and prosecutors to prove the existence of illicit enrichment.

It should be noted that a Source and Application is not the only method of analysis that can be adopted to formulate a financial profile of a person. For instance, the Net Worth Analysis method is commonly used in the United States to conduct investigations into potential tax offences.<sup>6</sup>

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4 Ernest Percival Max Hunt v the Queen [1974] HKCA 111

5 Krishnanand v The State of Madhya Pradesh MANU/SC/0134/1976

6 An in-depth explanation and guide to the Net Worth Analysis method is contained in Chapter 31 of the U.S. Department of Justice’s *Criminal Tax Manual* (see: US. Department of Justice Tax Division, *Criminal Tax Manual*, U.S. Department of Justice, Washington, 2020, available at <https://www.justice.gov/tax/page/file/1312166/download>)

### 1.3 Why is a Source and Application analysis useful in illicit enrichment proceedings?

A Source and Application analysis can give investigators and prosecutors a clear picture of whether or not illicit enrichment has taken place. Therefore this type of analysis should be considered in all illicit enrichment investigations as it can give investigators and prosecutors **a good assessment of the chance of success** in pursuing court proceedings.<sup>7</sup> Additionally, if a Source and Application analysis has been conducted thoroughly, and has covered all potential sources of lawful income that a person may have received, then this analysis **will provide prosecutors with sufficient evidence to rebut any potential false defences** a person may put to the court to counter or explain allegations of illicit enrichment.

A Source and Application analysis should even be considered and conducted in illicit enrichment investigations in jurisdictions where there is no burden placed on the state to establish and provide evidence of some or all of a person's lawful sources of income (e.g. the laws outlined in Section 3.2.3 of the main publication). While there is no obligation in these jurisdictions on the state to collect and present evidence of a person's income, a thorough Source and Application analysis that compares a person's total wealth against their total income over a defined period of time will still be enormously useful in practice as it will ensure that resources are not wasted in the pursuit of frivolous and poorly evidenced cases.

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<sup>7</sup> In practice, following a Source and Application analysis, prosecutors should only pursue proceedings under illicit enrichment laws if the disproportion between the person's incomes and applications is somewhat significant. If the disproportion is only minimal, this strongly reduces the chance of a successful legal action.

## 1.4 Is a Source and Application analysis suitable in all illicit enrichment cases?

While a Source and Application analysis is very useful in most cases, it is important to remember that all illicit enrichment cases are unique. Consequently, there may be some cases where a Source and Application analysis will be less effective. One instance is if a person has deposited large amounts of cash in a bank account, raising a suspicion of illicit enrichment, but has then also withdrawn these amounts of cash and used them for untraceable purposes. A Source and Application analysis may not be appropriate in such scenarios as it does not consider cash withdrawals as an application, and only counts provable instances where funds have been used in a specific manner or instance, so as to guard against the potential double counting of funds and unfairly prejudicing an accused person. In such cases, it may be more prudent for investigators to focus on proving how the individual cash deposits could not have come from a lawful source, on a case-by-case basis.

# 2

Conducting  
a financial  
investigation to  
inform a Source  
and Application  
analysis



*“Building a solid prima facie case requires the prosecution to construct a financial profile of the accused ....” Uganda v B.D Wandera HCT-00-AC-SC-0012/2014*

A Source and Application analysis requires the collection of evidence through a thorough financial investigation, in which an investigator should seek to create a detailed financial profile of a person over a defined period time, often referred to as the ‘period of interest’. When commencing a financial investigation, however, it is not necessary to define the period of interest from the outset. This is a set period in which the person has been illicitly enriching themselves and it will only be possible to determine the timespan of this period once a significant amount of financial evidence has been collected. The method for setting a period of interest is discussed in Section 3 of this Annex.

When conducting a financial investigation into a person, an investigator should seek to create a detailed list of all the instances in which:

- Funds were received by the person from a known lawful source (known lawful sources of income); and
- Funds were used/spent/given away by the person for any purpose (applications).

This may seem like a challenging task, but there are many common sources for this information – and these should be scoured by an investigator in every investigation if possible. This is the case regardless of whether the person is located in a predominantly digitised economy or in an economy that is heavily cash and paper based.

Of course, there will be time and legal implications that dictate how much financial information can be collected by an investigator – for instance, many banks may only keep records of accounts for a statutory period of time. Nonetheless, an investigator should seek to collect as much financial information as is legally and feasibly possible so as to thoroughly inform their Source and Application analysis and allow them to accurately determine whether or not a person has illicitly enriched themselves during a specific period of time.

This section will first explain:

- The common types of lawful incomes that an investigator should consider in their financial investigation;
- The common types of applications that an investigator should consider in their financial investigation; and
- The common sources for both the above categories of evidence.

## 2.1 Common examples of ‘known lawful sources of income’

A ‘known lawful source of income’ is any provable instance where pecuniary **funds have come under the control and ownership of the person through lawful means**. In other words, this includes any amount of pecuniary funds that were available to the person to use for any purpose during the period of interest (e.g. for the purchase of tangible and intangible items). Lawful sources of income may include such things as:

- Salaries, allowances and bonuses paid to the person for their work as a public official under a legal employment contract during the offence period;
- Income earned by the person during the offence period as salaries, profits or dividends from a registered limited company or a publicly traded company in which the person is employed or has a shareholding;
- Money due to the person from the sale of an asset (such as livestock, cars or houses) completed during the period of interest;
- Inheritances acquired by the person during the period of interest;
- Any rental incomes received from renting a property/asset (such as a house or a vehicle);<sup>8</sup>
- Loan monies disbursed to the person during the period of interest under a documented loan agreement;
- Any other receipt of money during the period of interest that can be traced to a legal source (such as gifts, lottery wins, insurance or compensation awards, etc.); and
- Any money that was held in a bank account or mobile money account owned by the person on the date that is the start of the defined period of interest (this is explained further in Section 2.3 of this Annex).

If the person is married or is in a relationship where assets are jointly shared, the legal income of the person’s spouse should also be established by the investigator and included as the legal income of the person, as it can be assumed that the income of the spouse was available to the suspect to spend on tangible and intangible properties during the period of interest (unless there is evidence to the contrary).

It is important for an investigator to try to establish all the legal incomes that a person may have earned over the defined period of interest. This is because ***if the investigator can establish each and every legal source of income received and available to the person over the period of interest, then it will be mathematically impossible for the person to provide any explanations for the fact that they acquired or used an amount of money that***

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<sup>8</sup> It is important to note that this may not apply to properties acquired by the person during the period of interest, as the rental income from these properties may be interpreted by courts as the proceeds of crime if the initial funds used to purchase the property cannot definitively be traced to lawful sources.

***was over and above the total amount of these incomes.***

For example, if a person's only excuse for an excessive amount of spending was that they derived the relevant funds from a private business that they wholly own (a commonly used excuse) then:

- If an investigator has already established the exact figure that the person earned through this business during the period of interest, and...
- If the investigator has already included this income figure when calculating the person's total legal income during this period, and...
- If the investigator's overall Source and Application analysis shows that the suspect still used a higher amount of funds during the period of interest than this total combined income figure, then...
- ***The suspect will not be able to use their business earnings as an explanation for the excessive funds that were used during this period.***

## 2.2 Common examples of ‘applications’

‘Applications’ refer to any instances where the person **used funds for any purpose**. In other words, applications include any instance where a person has spent funds or relinquished control over certain funds (e.g. through giving the funds away) for the benefit of themselves, or for other people.

It is important to note that applications are not the assets or services that a person has acquired, but the amount of funds that were used by the person to acquire the assets or services. So for example, if during a period of interest a person has acquired three houses for a purchase price of 500,000 dollars each, the money used to purchase these houses is considered the ‘application’ for the purposes of the analysis. Even if the houses themselves increase or decrease in value over time, the figure that is necessary for a Source and Application analysis is still only the total amount the person paid to acquire these assets. This is consistent with valuation methodologies in illicit enrichment cases throughout the world.<sup>9</sup>

Essentially, if the person has purchased anything, or given away any amount of money, or transferred the ownership of any money held by them, then it will be considered an application so long as the investigator can prove that such a purchase, gift or transfer took place.

Furthermore, any funds that remain on the person’s bank accounts on the final day of the period of interest are also considered as an application, as the amount on these bank balances represents the total amount of income that the person used to put towards their savings during the period of interest and still has available to spend after the period of interest. This is explained in more detail in Section 2.3 of this Annex.

Similar to when calculating income, if the person is married or is in a relationship where assets are jointly shared, then any money that the person’s spouse/partner used should also be counted as money that was used by the primarily targeted person. Moreover, if the person used funds for the benefit of other people – for instance by purchasing a house in the name of a brother or by donating a large amount to an organisation – then these transactions should still be counted as applications attributable to the person in question.

Common items that fall under the category of applications are any provable instances where pecuniary funds were:

- Spent to purchase a tangible asset such as real estate property or a car;
- Used to pay a rent;
- Used to repay money under a loan agreement;

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<sup>9</sup> In unusual circumstances where there is no record of the purchase amount of a certain asset acquired by a suspect, the market value of the asset at the time of its acquisition can be used as the application figure for the purpose of the analysis. During proceedings however, this figure will need to be justified, potentially through the use of expert witnesses, and it will be up to the court to determine whether or not it is a fair and accurate estimation.

- Used to pay utility bills (such as electricity, water and phone bills);
- Used to pay school fees;
- Used to finance credit cards;
- Used to pay taxes;
- Used to make an electronic transfer from a bank account or a mobile money account to an account not controlled by the person or the person's spouse/partner;<sup>10</sup>
- Used to make charitable donations or other gifts;
- Used to pay privately employed staff (such as domestic workers);
- Used to purchase jewellery;
- Used to pay for holiday expenses;
- Seized from the suspect in the form of cash during physical searches;
- Held in a bank account or mobile money account owned by the suspect on the date that is the end of the defined offence period.

It is important to note, however, that if a suspect has withdrawn physical cash from a bank account during the period of interest, then such a withdrawal cannot be counted as an application, as the person still maintains control of any cash that has been withdrawn. Of course, if there is proof that the suspect subsequently spent or gave away the cash that was withdrawn, then this subsequent transaction can be counted as an application. The topic of cash is explained further in Section 2.4 of this Annex.

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10 If funds have been transferred from one account held by the person (or their spouse) to another account held by the person (or their spouse) then technically these funds are still under the control of the person (or their spouse) and should not be counted as an application. Of course, if the funds remain on the bank account on the final day of the period of interest, then these funds can then be counted as an application.

## 2.3 Special categories of sources and applications: funds ‘saved’ or ‘accumulated’ before and during the period of interest

A special category of income/application that requires further explanation is funds contained on a person’s bank account.

As discussed at the beginning of this section, in order to determine whether a person has used more funds than an amount that was lawfully available to them to use, a Source and Application analysis effectively compares a person’s known legal incomes over a certain period of time with their expenditures and savings accumulations over the same period of time. This requires an investigator to set a time period for the offence – a ‘period of interest’ – with a defined start date and a defined end date. In addition to this, a Source and Application analysis requires the investigator to assume (correctly or incorrectly) that all incomes that the suspect earned before this start date were earned legally, and that any savings that the suspect accumulated before this start date from these incomes were done so legally as well. It is very likely that a person earned an income before the period of interest and it is fair and accurate to consider these incomes when conducting a Source and Application analysis. It is not accurate however to consider the entirety of these incomes, as the person would also have spent a large proportion of these incomes on normal lifestyle expenditures before the period of interest. Consequently it is accurate to only consider the total amount of **savings** that a person accumulated from incomes earned before the period of interest as this would amount to the total amount of funds from these previous incomes that were available to the person to use during the period of interest.

A person’s monetary savings can take two forms – either as electronic funds on a bank account or mobile money account, or as cash (see Section 2.4 below for an explanation on how to address accumulations of cash). Therefore it is crucial that an investigator acquires a statement of any accounts that the person owns which shows the balance of that particular account on the start date of the period of interest, as this will represent the total amount of savings that the person accumulated from the incomes they earned before the period of interest.

Conversely, putting money towards savings is a way a person may choose to apply their income and consequently, the amount of funds held on a person’s bank account at the end of the period of interest should be considered as an application. This figure essentially represents the total amount of electronically held money that the person was able to accumulate during the period of interest.

For example, if an investigator conducts an analysis of a person from 1 January to 31 December of a particular year, and the person has a bank account with the following balances...

- 1 January (at 12:00am) – 100,000 dollars
- 31 December (at 11:59pm) – 500,000 dollars

...then in accordance with the Source and Application analysis, the 100,000 dollars should be considered as lawful income (as this amount of money represents the total amount of funds that was saved from previously acquired incomes and was available to the person to use during the period of interest) while the 500,000 dollars should be considered as an application (as this represents the total amount of money that the person applied towards their savings during the period of interest).

The same approach would apply to any funds held on a mobile money account.

## 2.4 Special categories of sources and applications: incoming cash from unknown sources and outgoing cash to unknown destinations

Like bank and mobile money account balances covered in the previous section, if the person can prove that they had a certain amount of cash on hand on the start day of the period of interest, then this should also be considered as savings that were available to the person for use during the period of interest and should be counted as legitimate income. Conversely, if investigators seize an amount of cash from the person during a physical search, then this 'asset' should be considered as an application in the same way that money on a bank balance is also counted as an application. While technically cash on hand is not an expenditure of funds, it is an amount of liquid money that the person has accumulated, like money in a bank account, and it should be treated similarly to any other asset the person may have acquired during the period of interest – namely, the cost of acquiring the asset (which obviously is the same amount as the cash itself) should be counted as a way in which the person 'applied' their money.

Importantly, if a suspect has withdrawn amounts of cash from a bank account during the period of interest, then these amounts **should not** be considered an application. This is because the person has not relinquished control of the funds by withdrawing them from a bank account – they have simply converted electronic money to physical money. This strict interpretation is to ensure the integrity of the Source and Application calculation and to ensure that funds are not double counted. Only applications that have been actually proven by an investigator can be counted towards a person's total applications. If cash is withdrawn and an investigator cannot prove where the cash has gone, then these withdrawals cannot be counted as applications.

Similarly, if a person deposits an amount of cash into a bank account from an unknown source, then this should not be counted as an income, as the source of these funds is not known – all that is known in this situation is that the person has simply converted existing money under their control from cash into electronic funds.

Of course, if an investigator can prove how a certain amount of withdrawn cash was spent by the person, or can prove the lawful source from which deposited cash has been derived, then these amounts should be considered as applications and lawful sources of income respectively.



**Box 1: What if an illicit enrichment law only refers to the acquisition of ‘assets or property’?**

As covered in Section 2.2.2.2 of the main publication, some illicit enrichment laws do not refer to a wider description of expenditure such as the maintenance of a standard of living or lifestyle. Instead, they only consider that illicit enrichment has taken place if a person has acquired an amount of ‘assets’ or ‘property’ that is disproportionate to their lawful sources of income. Consequently an investigator might question whether a full Source and Application analysis that evidences all expenditures – even those not related to asset purchases – is necessary in these cases.

A full Source and Application analysis (even covering non-asset related purchases and uses of funds) should still be conducted during an investigation under these laws. Even if only the total amount paid to acquire ‘assets’ can be counted towards the total value of illicit enrichment under these laws, evidence showing that the person used a certain proportion of their lawfully acquired income on non-asset related expenditure will still be useful to a prosecutor’s case, as it will demonstrate that the total amount of income available to the suspect to use on the relevant asset purchases was smaller than their total lawful income during the period.

For example, if a person had a total lawful income over 10 years of 500,000 dollars, and purchased two houses during this period for 250,000 dollars, then it is likely that the person will argue that they received enough income over this period to cover the cost of the two houses. However, if investigators can prove that 400,000 dollars of this total income was not in fact used on the purchase of these houses, but was instead used on non-tangible services such as holidays, donations or expensive dinners, then the person can no longer claim that they had enough income available during this period to cover the purchase of these two houses. Therefore, in this instance, a full Source and Application analysis will still be incredibly useful to a prosecutor as it will clearly evidence that a person had less lawful income available to use on the acquisition of assets than what they may try to claim based on the total lawful income they received during this period.

## 2.5 Common sources of financial evidence that will demonstrate a person's income and applications

While every case is unique, there are a number of common sources of evidence that investigators should consider when seeking information on a person's total income and applications. These are discussed in the following sections.

### 2.5.1 Asset declarations

Public officials in many countries are required by law to submit asset declaration forms. These are legal documents in which a public official is required to list all the assets that they own and all the incomes that they have earned during a specific period of time. Consequently, if an illicit enrichment investigation relates to a public official, then an excellent starting point for an investigation will be to acquire any asset declaration forms that the person submitted, as these forms will often list:

- Their identification details, as well as that of their spouse/partner and any dependent children;
- Any immovable assets that they own (real estate, etc.);
- Any valuable movable assets that they own (vehicles, machinery, jewellery or art);
- Any shares or stocks that they hold;
- Any bank accounts that they control;
- Any businesses that they own or in which they have an interest; and
- Any liabilities or loans that they currently have.

While an asset declaration form is an excellent starting point for an investigation, it is important to remember that it is probable that a potentially corrupt public official has intentionally or unintentionally failed to list all of their properties and interests on the form. Therefore it is important that an investigator simply uses an asset declaration as a guide for where they should start searching for incomes, assets and expenditures.

For instance, if a person lists a bank account at a certain institution, an investigator should seek to acquire the bank statement from the institution itself. Furthermore, an investigator should also seek to determine if the person has used the bank for other financial activities – such as opening accounts not mentioned on the asset declaration form, or opening additional accounts for spouses or children, or acquiring loans.

Furthermore, asset declarations may also indicate a time period in which the person acquired significant amounts of assets disproportionate to their income. If a person has made several declarations over a number of years, an investigator should compare each declaration to

identify time periods in which the person acquired a large amount of assets, as this may provide guidance in setting a period of interest that reflects when the person was illicitly enriching themselves.

## 2.5.2 Tax return forms

A person's tax return forms will often hold an abundance of financial information that will assist an investigation. Such forms will usually include vital details surrounding:

- The total declared income that the person received during the relevant tax year from employment, investments, vehicles or any other taxable source;
- Bank accounts that a person holds and their balances;
- Any real estate properties or other significant assets held by the person.

As with asset declarations, a tax return form is an excellent launching point for an investigation. However, an investigator should also not presume that a person has listed all the relevant incomes and assets in their tax return form and should seek to confirm a person's total assets and financial accounts through additional avenues.

## 2.5.3 Places of employment

A person's place of work – be it a government institution or a private company – will have records pertaining to the total amount of income that was paid to the person during the course of their employment.<sup>11</sup> This information can be confirmed through tax return forms and is a crucial part of performing an accurate Source and Application analysis.

## 2.5.4 Banks and other financial service institutions (mobile money accounts, etc.)

A person's bank accounts are incredibly valuable sources of financial information. In the context of conducting a Source and Application analysis, the information contained in a person's bank accounts will be critical to determining and confirming:

→ **Legitimate incomes, such as:**

- The total amount of funds that the person had saved and accumulated from incomes before the period of interest, as represented by the total amount of funds on the person's bank balance(s) on the first day of the period of interest;
- Any amounts of funds that may have been received from legitimate sources (such as salaries from employment or dividends/interest payments from investments);
- Any loan amounts the person may have received.

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<sup>11</sup> If the illicit enrichment law requires proof that the person is a public official, this information will also assist in establishing this element of the law.

→ **Applications attributable to the person, such as:**

- The total amount of funds that the person has saved and accumulated during the period of interest, as represented by the total amount of funds on the person's bank balance(s) on the final day of the period of interest;
- Any amounts that the person transferred to other parties for the purposes of purchasing assets, services or other items;
- Any amounts a person may have transferred to other parties as gifts;
- Any amounts that the person may have contributed towards the repayment of a loan.

Furthermore, a bank account statement from one account may include transfers of funds to or from other accounts controlled by the person that require further investigation, including credit card accounts tied to traditional bank accounts.

Mobile money accounts tied to a person's mobile phone SIM card are rising in popularity around the world and should be treated in the same way as traditional bank accounts. These accounts often have transfer limits, but when examined over a large period of time, they may still reveal a significant amount of total expenditure that a person has made during this time.

In general, bank accounts and mobile money accounts are also incredibly useful sources of financial information as they may:

- Provide a good overview of money flows relating to a suspect, and a record of incoming payments and spending habits;
- Be used to directly or indirectly identify other assets such as linked mobile money accounts, businesses, houses, cars, etc.;
- Allow an investigator to identify suspicious transactions that may require further investigation (such as potential bribes).

Account transaction information may also indicate periods of time where a person was receiving or depositing unusually large amounts of funds – which may provide guidance to an investigator as to the appropriate period of interest in which a person was likely to have been illicitly enriching themselves. Additionally, account information may also provide dates on which a person withdrew a large amount of cash. This is evidence that may corroborate claims that the person purchased a certain asset in cash on or around that day in an attempt to disguise the fact that they were purchasing the asset.

## **2.5.5 Government asset registries**

Government registries regarding the ownership of assets may also provide useful evidence regarding the purchase and ownership of significant assets such as real estate properties and vehicles. Of course, in many countries the ownership of a significant proportion of real estate properties is not recorded in a government database and this will make it more difficult for investigators to track the

entire portfolio of properties that a person may own. Nonetheless, ownership of such properties can still be determined through other traditional means, such as surveillance or the identification of property-related payments from a bank or mobile money account.

### **2.5.6 Corporate registries**

The ownership details of companies within a jurisdiction are usually recorded in a central database. Like with real estate or vehicle registries mentioned above, these databases may also provide information relevant to a Source and Application analysis such as the number of private companies that a person fully or partially owns. If a search does reveal that a person has full or partial ownership of certain private companies, a financial profile of these companies (also focused on the source and destination of the flow of capital to and from the company) should also be conducted by the investigator as corporate entities are commonly used by criminals to disguise the receipt and use of unlawfully sourced funds.

### **2.5.7 Stock exchange registries**

Stock exchange registries may also provide information to an investigator surrounding any purchases of shares or other securities. Often information from such stock exchanges will indicate whether the person used a professional broker to purchase shares. If so, the broker should also be considered as a source of evidence, not only to provide information on the amount of funds the person paid them to engage their services, but also for any information regarding other investments made on behalf of the person.

### **2.5.8 Physical searches of relevant premises**

Physical searches of premises relating to a person under investigation can produce any number of important items of intelligence and evidence to assist a financial investigation. Searches may also assist investigators in uncovering and seizing significant assets that have been acquired by a person – including significant amounts of cash. Providing there is no longer a need to keep an investigation covert, and providing enough intelligence and evidence have already been collected to allow an investigator to acquire lawful authority to conduct a search, such searches should form a part of all investigations into illicit enrichment.

Besides noting and seizing relevant assets of value during a search, investigators should also focus on finding and collecting any item that refers to, or demonstrates, an ‘interest’ of the person or another relevant person (such as their spouse) in an asset of any kind. For example, if during a search an investigator discovers an insurance policy document in the name of the targeted person for an unknown vehicle, this document is important evidence as it not only indicates which insurance company the person is a customer of, but also that the person owns and maintains an unknown vehicle.

Items that should be collected by an investigator during a search may include:

- Bank deposit slips;
- Bank statements;
- Cheques;
- Loan documents or agreements;
- Debit and credit cards;
- Credit card statements;
- Property title documents or other documents referencing real estate properties (for instance architectural plans, correspondence with addresses on it, etc.);
- Electricity, water or cable television bills;
- Other bills or receipts for any purchase including –
  - Insurance;
  - Plane tickets;
  - Hotel stays;
  - School fees;
  - Charity donations; and
  - Any other day-to-day purchase;
- Contracts for the purchase or selling of assets (for instance contracts of sale for houses or cars);
- Rental contracts;
- Employment contracts;
- Pension-related documents;
- Divorce-related documents;
- Tax return submissions or receipts for tax payments;
- Business registration documents or other documents relating to the ownership, maintenance or income of a business connected to the person or their family;
- Ownership documents relating to vehicles;
- Correspondence, handwritten notes or diaries relating to the ownership of assets or payments;
- Passports;
- Club membership cards (such as social club membership cards or cards relating to a frequent flyer programme);

- Documents that may relate to a cryptocurrency account;
- Any item containing digital information (see Box 2); and
- Any other item that shows an interest in an asset of any kind.

### Box 2: Digital information collected during a search

It is likely that investigators will encounter items during a search that contain digital information, including but not limited to:

- Computers or laptops
- Tablet devices
- Mobile telephones
- External hard drives
- USB drives
- CDs

It is important that these items are also collected during a search and analysed by specialist forensic analysts. These items may contain valuable information that can be enormously useful to an investigation, including emails, text documents, spreadsheets and PDFs that may specifically demonstrate evidence of a crime or the person's interest in an asset. For example, emails in a person's inbox may mention payments that were made or received by the person, or may reference bank accounts or businesses that the person operates, or may even contain information relating to overseas interests. Moreover, applications or browser history data may indicate the financial institutions a person uses for banking services, or may even include additional sources of financial evidence such as websites used for purchases (e.g. Amazon or Booking.com) or any online payment/remittance services used (e.g. PayPal or Wise).

All of this information will be very useful in establishing an offence, determining what assets the person owns and identifying criminal proceeds.

If such an item is seized, it is important that the investigator does not interfere with the item unless it is absolutely required (e.g. to prevent the device from locking). Any interaction with the device should be left to trained computer forensic examiners.

## 2.5.9 Statutory asset disclosure provisions

Many illicit enrichment laws empower a law enforcement authority to formally request a person under investigation to provide information relating to the assets that they own and the income that they have received. If a law does include a power such as this, investigators

should consider making such a request as the person may be able to provide information that informs the investigatory process. While there is every chance that the person will not cooperate, even despite a statutory obligation to do so, some potential suspects may also use such requests as an opportunity to declare any previously undeclared assets that they own as well as items of legitimate income that they may have neglected to declare on tax returns or other asset disclosure forms.

### 2.5.10 Suspect interviews

Investigators can use traditional interviews as a means to acquire information relating to a person's income, assets and expenditures. While many being investigated may choose not to cooperate in such interviews, others may use these interviews as an opportunity to explain any disproportionate applications that are put to them by investigators. From an investigation standpoint, investigators should certainly use interviews as a means to confirm that they have established all possible lawful incomes that the person may have received during the period of interest as this will ensure that there are no unexpected 'explanations' that a person will be able to raise during court proceedings that may impact the success of the case. For instance, interviews are a good opportunity to ask the suspect if they ever held large amounts of cash at any point (and can prove it) as this is a possible explanation that may otherwise arise in court.<sup>12</sup>

Investigators should also consider interviewing people close to the person under investigation to get a more detailed picture of the type of lifestyle that a person enjoys, as this may lead to the discovery of additional application items that were previously unknown to an investigator.

The timing of all interviews should be carefully considered, particularly if the investigation is still in a covert stage. An investigator should also consider performing follow-up interviews if a suspect has provided an explanation in an initial interview that has subsequently been disproven.

### 2.5.11 Surveillance

Traditional investigation techniques such as surveillance are also incredibly useful in financial investigations regarding illicit enrichment. For example, surveillance may reveal real estate

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12 A common 'explanation' that is often utilised by people to explain their disproportionate spending is that they made purchases using cash that they had saved from incomes received outside of the period of interest, or from incomes received during the period of interest – even if this cash was not previously declared. Interviews before a trial are very important in reducing the chance that a person will successfully 'explain' their illicit enrichment through falsely claiming that they had large amounts of cash on hand that a prosecutor did not account for when conducting their Source and Application analysis. Questions during an interview such as 'what is the amount of physical cash you possessed on [insert date]' or 'what is the largest amount of physical cash you have held in the last 5 years' will make it much more difficult for a person to later claim that they had a larger amount of cash on hand than the answer that they gave during an interview, as this would require them to directly contradict their own evidence.



properties or cars controlled by the person but registered under the name of different people or entities, the financial institution that they use to conduct financial activities or even the types of shops or restaurants in which they spend money on a day-to-day basis.

### **2.5.12 International sources of evidence**

Evidence relating to a person's income and assets may also be located in foreign jurisdictions. For instance, a person being investigated may have purchased significant properties in foreign countries in which they enjoy spending time, or whose legal systems may assist them to conceal ownership details from the authorities in their home country.

Investigators should seek to obtain this information where possible, however consideration should be given as to whether the law enforcement agencies in other countries are likely to offer cooperation based on whether or not they have illicit enrichment laws of their own.

# 3

Conducting the  
Source and  
Application analysis  
to determine if  
illicit enrichment  
has taken place

### 3.1 Conducting a Source and Application analysis (using a case example)

This section will provide an example of how a Source and Application analysis may work in practice, using a simplified case example:

In September 2020, the corruption police received an anonymous tip that Mr. Smith, an import tax assessment officer, has been involved in corruption and is maintaining a standard of living that does not seem proportionate to the salary of an entry-level public servant.

Following a preliminary investigation, the investigator is unable to find evidence of corruption but is able to establish that in the eight months since becoming a public servant, Mr. Smith has acquired assets that are seemingly disproportionate to his salary. The investigator is instructed to conduct an illicit enrichment investigation.

As explained in the previous sections, to conduct an illicit enrichment investigation and perform a Source and Application analysis, the investigator must conduct a thorough financial investigation to collect evidence regarding all of Mr. Smith's incomes and applications. The investigator would do this in the case example by examining all the common sources of financial evidence listed in the previous section, and by pursuing any other avenues of investigation that may be unique to this particular case.

When conducting the financial investigation, the investigator establishes the following facts:

- Mr. Smith started his job as a public official on 1 January 2020, earning a salary of 3000 dollars per month;
- Before 2020, Mr. Smith was studying at university, was not employed and lived at his family home;
- Mr. Smith has only ever owned one bank account, which he opened on 1 January 2020 at Bank XYZ (Ac. No. 1234-4321). He received his employment salary into this account on a monthly basis;
- In addition to his bank account, Mr. Smith also has a mobile money account with Mobile Money Limited (Ac. No. 98-765-6789) which he opened on 3 January 2020. He uses this mobile account to make the vast majority of his day-to-day purchases (groceries, meals, paying bills, etc.);

- During 2020, in addition to his day-to-day spending, Mr Smith was able to purchase a car (8,000 dollars) and a plot of land (30,000 dollars) and to make informal payments to a contractor (3,000 dollars) to start construction on a house on this land – all in cash;
- Mr Smith currently also holds 27,000 dollars on his bank account.

During an interview, Mr Smith claimed his mother gave him 1,000 dollars at the start of the year in cash to cover his January expenses (and this is corroborated). He does not claim to have received any other amounts from any other sources.

To make the Source and Application analysis easier to perform, the investigator should enter his findings into a computer program such as Excel to create a **Source and Application table**. Ideally, this table should have been created during the investigation itself, and should be an ongoing document that is continually added to during the course of an investigation as each new item of income or application is established with evidence.

Essentially, the Source and Application table should chronologically list:

- Every instance in which the targeted person (and any other relevant person such as a spouse) **received** incoming funds from known lawful sources;
- Every instance in which the targeted person (and any other relevant person such as a spouse) **used** funds for any purpose;
- The **balances** of any bank or mobile money accounts held by the person (and any other relevant person such as a spouse) at the **start** of the selected period of interest;
- The **balances** on any bank or mobile money account held by the person (and any other relevant person such as a spouse) at the **end** of the selected period of interest.

Investigations will often uncover evidence relating to hundreds or even thousands of individual transactions. In such cases it is possible to group certain transactions together under a single item for clarity. For instance, if a person makes dozens of small transactions on day-to-day purchases using a mobile money account or a debit card, an investigator may choose to bunch these transactions together in weekly or monthly summed totals to make the overall table easier to read. The actual list of each and every one of these day-to-day transactions can then be put in a separate Excel sheet for additional reference as required.

When first creating a Source and Application table, the period of interest may not yet be clear. In such cases, an investigator should initially include all incomes and applications relating to any time period, providing they can be proven with evidence. Once a period of interest is selected, the table can then be refined to only include the information relevant to the selected period (see Section 3.2 below). If a table is refined to only include transactions

within a smaller period of interest, the investigator should be careful to include the total amount of provable savings that the person was able to accumulate from incomes earned before the first day of the period of interest. This is represented by the total amount of funds that the person held on their bank or mobile money accounts as of 12:00am on the first day of the period of interest, and any provable cash that the person controlled at this time as well.

Regarding the case example, a finalised Source and Application table will take the following form (for simplicity, the period of interest that was selected has been the entire time period that Mr. Smith was a public official):

Source and application table: Mr. John Smith					
Period of interest: 01.01.2020 – 31.08.2020					
INCOMES			APPLICATIONS		
Description of item	Date	Amount	Description of item	Date	Amount
Bank XYZ Account balance start of 1 January 2019 (savings from any previous incomes)	1 Jan. 2020	0	Total monthly outgoing transfers from Mobile Money Account January 2020	31 Jan. 2020	900
Mobile Money Account balance start of 1 January 2019 (savings from any previous incomes)	1 Jan. 2020	0	Total monthly outgoing transfers from Mobile Money Account February 2020	29 Feb. 2020	1600
Gift from mother (cash)	5 Jan. 2020	1000	Total monthly outgoing transfers from Mobile Money Account March 2020	31 Mar. 2020	1100
Government Salary January 2020	20 Jan. 2020	3000	Total monthly outgoing transfers from Mobile Money Account April 2020	30 Apr. 2020	1600
Government Salary February 2020	20 Feb. 2020	3000	Purchase of Car (Cash Payment)	4 May 2020	8000
Government Salary March 2020	20 Mar. 2020	3000	Total monthly outgoing transfers from Mobile Money Account May 2020	31 May 2020	1200
Government Salary April 2020	20 Apr. 2020	3000	Payment for Plot of Land	2 Jun. 2020	30000
Government Salary May 2020	20 May 2020	3000	Total monthly outgoing transfers from Mobile Money Account June 2020	30 Jun. 2020	600
Government Salary June 2020	20 Jun. 2020	3000	Total monthly outgoing transfers from Mobile Money Account July 2020	31 Jul. 2020	700
Government Salary July 2020	20 Jul. 2020	3000	Cash payments to contractor for preliminary house construction work	31 Aug. 2020	3000
Government Salary August 2020	20 Aug. 2020	3000	Total monthly outgoing transfers from Mobile Money Account August 2020	31 Aug. 2020	1100
<b>Total incomes from known/lawful sources</b>		<b>25000</b>	Bank XYZ Account balance end of 31 August 2020	31 Aug. 2020	27000
			Mobile Money Account balance end of 31 August 2020	31 Aug. 2020	200
			<b>Total applications 01.01.2020 – 31.08.2020</b>		<b>77000</b>
			<b>Total incomes from known lawful sources 01.01.2020 – 31.08.2020</b>		<b>-25000</b>
			<b>Funds from unknown/unlawful sources</b>		<b>52000</b>

As can be seen in the above table, the investigator in this case has separately totalled the exact sum of payments made from Mr. Smith's mobile money account each month and has entered this as a single monthly entry. This is not necessary in all cases, but it makes the Source and Application table more succinct and easier to read.

It is important to stress that the case example and the resulting Source and Application table is a simplistic version of a real-life case. In practice, a thorough financial investigation may reveal that a person holds multiple bank accounts and has made thousands of transactions. Furthermore, a person may often receive more complicated types of incomes, such as loans or incomes from investments or side businesses. In such cases it is important to remember that the accuracy of a Source and Application table very much depends on the amount of evidence that a financial investigation can uncover. Essentially, the more evidence that can be collected and put into a Source and Application table, the stronger the case will be.

## 3.2 Selecting a period of interest

A fundamental aspect of a Source and Application analysis is that the analysis itself must relate to incomes and applications of funds that were received and used over a **defined period of time**, often referred to as a ‘period of interest’ or a ‘period of check’.

Using a defined period of interest is common in the determination of illicit enrichment cases by courts around the world. In order to determine whether a person has used illicit wealth during a certain period to maintain a standard of living or acquire property, courts have often defined a set time span in which they can assess whether illicit enrichment has taken place. A Source and Application analysis reflects this judicial approach.

The following paragraphs present issues that should be considered when setting a period of interest for a Source and Application analysis. It should be borne in mind that the period of interest chosen by an investigator/prosecutor may potentially be challenged by the defence and therefore the decision taken to determine a period of interest should be able to be justified and explained during court proceedings.

### 3.2.1 Are there any legislative limitations on when a period of interest can be set?

As explained in Section 3.3.2 of the main publication, several judicial decisions have clearly outlined that the period of interest used by a court to assess potential illicit enrichment does not necessarily need to match the whole time span in which someone could be targeted by an illicit enrichment law. For example, it does not need to match the total period of time someone was a public official for laws that only target public officials or the time period that falls within a legislation’s limitation period. Instead, a period of interest refers to the time period in which the claimed illicit enrichment occurred (for example, one year in which a public official inexplicably acquired a significant amount of wealth).

Nonetheless, before setting a period of interest, an investigator should check whether any specific legislative provisions or judicial interpretations outline how a period of interest should be established in their particular jurisdiction and specifically whether a period of interest needs to fit within a certain time frame.

### 3.2.2 What type of illicit wealth is being targeted by the proceedings?

The type of illicit enrichment being investigated, and the type of ‘wealth’ upon which a calculation will be based, may affect the period of interest that an investigator should focus on. If the investigation relates to illicit enrichment through the maintenance of a disproportionately expensive lifestyle or standard of living, then a wider period of interest may be required to incorporate all the applications that a person made towards this lifestyle



or standard of living over a long period of time. If, however, an investigator is seeking to establish that a person illicitly enriched themselves through the acquisition of a specific disproportionate asset (e.g. a house) then the end date of a period of interest will obviously be when the person acquired the asset in question. Or if the single asset in question is a large amount cash found during a search, then the end date of the period of interest will be when the cash was discovered by the investigator.

### **3.2.3 Are there any red flags that suggest a person was illicitly enriching themselves during a certain time period?**

When an investigator seeks to define a period of interest, they will need to analyse the evidence available to them and identify a time period when the person clearly acquired more wealth or used more funds than was commensurate with their legal income.

There are several red flags that an investigator should look out for, including time periods in which a person:

- Engages in generally increased levels of transaction activity;
- Deposits or withdraws significant amounts of cash;
- Makes a major purchase;
- Takes out an unusually large loan;
- Engages in unusual travel activity; or
- (In the case of public officials) takes on a role with increased opportunities for corruption.

Such red flags could potentially indicate that a person was illicitly enriching themselves at this time, and investigators should certainly focus their analysis around these periods.

### **3.2.4 Are there periods of time when a person's financial activity has/has not been evidenced thoroughly?**

The ability to identify a precise time period in which illicit enrichment occurs depends largely on the level of detail contained in collected evidence regarding incoming and outgoing transactions.

If an investigator has managed to collect evidence that specifically outlines the date and time of every incoming and outgoing transaction relating to a person, it will be technically possible to enter each of these transactions into a digital matrix on a program such as Excel, alongside a running total of a person's bank and mobile account balances, to conduct a completely accurate calculation of the exact day-by-day period in which a person illicitly enriched themselves.

In practice, however, it is usually not possible to collect evidence relating to the exact time and date every item of income or application occurred, particularly in cash-heavy economies or in cases where a person is not overly cooperative. In such cases it will only be possible to prove that a certain value of transactions was made over an imprecise period of time, and thus, an investigator will only be able to compare the incoming and outgoing transactions over larger blocks of time when seeking to determine a period of interest.

### 3.2.5 Has the person withdrawn significant amounts of cash that have subsequently become untraceable?

Similarly, if there are periods of time when a person withdraws large sums from a bank account, and it is not possible to evidence how they subsequently used these funds, then these periods of time will skew the accuracy of a Source and Application analysis as it is only possible to count actual provable expenditures in a Source and Application analysis and not cash withdrawals. Consequently, if an investigator cannot prove what the person did with the withdrawn funds, these funds are essentially treated as if they disappeared, and cannot be counted as an application. Therefore, in such an example, it is better to set a period of interest to end at a time when the funds were still provably under the control of the person if possible (e.g. visible on their bank balances) so that they are still reflected under the total applications attributed to the person as their final bank balance figure.

For example, if over a year Mr. John Doe (with no previous savings):

- Earned 5,000 dollars per month over a 12-month period from January to December (total 60,000 dollars); but
- Spent 70,000 dollars throughout the same 12-month period; and
- Also accumulated a bank balance of 30,000 dollars...

...then a Source and Application analysis covering this entire period will show that Mr. Doe illicitly enriched himself by 40,000 dollars:

**[70,000 expenditure + 30,000 final bank balance] minus [60,000 in income] equals [40,000 illicit enrichment]**

However, if Mr. Doe had instead withdrawn all the funds from his bank balance in November and December, and it wasn't possible to prove what he did with these funds, then the same Source and Application analysis would show a very different (and inaccurate) illicit enrichment total.

**[70,000 expenditure + 0 final bank balance] minus [60,000 in income] equals [10,000 illicit enrichment].**

Even though it was known that Mr. Doe had amassed a significant amount of funds by

October, if a Source and Application analysis calculation is made with a period of interest covering the whole year, the resulting figure does not accurately cover the entire amount of illicit enrichment that took place.

Consequently, when selecting a period of interest, time periods containing significant cash withdrawals should be avoided when possible, unless an investigator can evidence how these funds were subsequently used. For instance, in the simplified case of Mr. Doe above, it would be more accurate to set a period of interest covering only January to October rather than the whole year.

In cases where significant untraceable cash withdrawals have taken place over a large period, it may be wise to use a strategy for proof that does not involve a Source and Application analysis.

### **3.2.6 Can savings up until a certain point in time be clearly established?**

A common argument put forward by defendants facing illicit enrichment charges is that the prosecutor's evidence does not take into account incomes earned by the person before the period of interest being examined. For instance, in cases where the prosecutor's evidence covers the entire period that a person was a public official, many public officials facing proceedings argue that the prosecutor's evidence is flawed in that it doesn't take into account salaries earned by the person before they became a public official.

Consequently, when selecting a period of interest, it is important to begin the period of interest on a day when the total savings held by a person is clearly established by the evidence. For example, a good moment in time will be when a person has clearly not yet accumulated any provable savings, or alternatively, when a person's total savings are clearly visible in electronic form (e.g. on their bank balance).



For more information relating to the conduct of a Source and Application analysis, please see the Basel Institute on Governance's LEARN database and online training course titled 'Source and Application'. [learn.baselgovernance.org](https://learn.baselgovernance.org)

**Illicit Enrichment** by **Andrew Dornbierer** provides a comprehensive guide to illicit enrichment laws and their application to target unexplained wealth and recover proceeds of corruption and other crimes. The book covers both criminal and civil-based laws from around the world.

Investigators, prosecutors, legislators and academics alike will benefit from the clear descriptions and practical guidance on different approaches to targeting unexplainable increases in wealth, how to establish cases in court, and common legal challenges to illicit enrichment laws.

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