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Anti Money Laundering (AML) for Accountants

Emer Kelly, CPA Institute, updates you on the recent changes to Anti Money Laundering (AML) legislation and defines the various obligations for "designated persons".

The Criminal Justice Act 2010 (the Act) became effective on 15th July 2010. It places a number of obligations on "designated persons". The term "designated persons" includes amongst others, auditors, external accountants (including book-keepers), tax advisers, and trust or company service providers.

Obligations and Internal Procedures

"Designated Persons"

"Designated persons" who are CPA members should at this point have well established internal procedures to manage the requirements of the Act. The procedures should be documented and communicated to all appropriate staff. The nature and extent of the procedures for a firm will depend on the size and complexity of the firm.

The following are the obligations for all "designated persons";

- To apply the customer due diligence provisions of the 2010 Act. Designated persons are required to take reasonable measures to identify and verify clients and the beneficial owners of these entities.
- To apply appropriate enhanced due diligence measures with regard to clients who do not present in person for verification of identity purposes and to clients who meet the definition of politically exposed persons (PEPs) under the 2010 Act.
- To obtain information on the purpose and intended nature of a business relationship with a client, prior to establishing the relationship.
- To monitor dealings with the clients, including scrutinising their transactions with the client to consider whether they are consistent with their knowledge of the client's business and pattern of transactions.
- To report, to the Garda Síochána and the Revenue Commissioners, knowledge, suspicion or reasonable grounds for that knowledge or suspicion, on the basis of information obtained in the course of carrying on business as a designated person, of money laundering or terrorist financing offences.
- To report, to the Garda Síochána and the Revenue Commissioners, any service or transaction provided by the designated person in the course of business connected to a "designated place" under the 2010 Act.
- To adopt policies and procedures, in relation to their businesses, to prevent and detect the commission of money laundering and terrorist financing offences, including:
 - The assessment and management of risks of money laundering and terrorist financing;
 - Internal controls, including internal reporting procedures where established;
 - The monitoring and managing compliance with, and internal communication of, policies and procedures;
 - The on-going training of principals, directors and staff in the law relating to money laundering and terrorist financing, in identifying services or other activities that may be related to money laundering or terrorist financing and in the policies and procedures established to deal with knowledge or suspicions of money laundering or terrorist financing activities.
- To keep records evidencing the procedures applied and information obtained in applying the customer due diligence and monitoring requirements of the 2010 Act with regard to client relationships and services provided, for a period of five years from:



- in the case of business relationships, the date the relationship ceased; and
- in the case of services provided, the date the service was completed.

Money Laundering Officer

Many firms appoint a money laundering officer. Whilst this is not a legal requirement, it can be useful to have one senior member of staff with adequate authority and knowledge who is responsible for these internal controls and who receives all reports of knowledge or suspicions of money laundering or terrorist financing. This person may also be tasked with making external reports to the Garda Síochána and the Revenue Commissioners where deemed appropriate.

Customer Due Diligence

The customer due diligence measures are key to ensuring that designated persons know who their clients are, and understand their business pattern to enable them to form a money laundering suspicion where appropriate. The Act allows for a risk based approach to allow effort to be concentrated on higher risk areas.

Customer due diligence measures requires designated persons to identify their clients and to verify this identity by obtaining appropriate documents and information.

The Act also requires the identification and verification of the identity of the beneficial owners of a business.

These identification procedures should be performed prior to establishing a relationship.

Chapter 5 of Miscellaneous Technical Statement 42, (Revised) Anti Money Laundering Guidance (M42) contains some suggested prompts and examples of risk-based verification that firms can build into their own tailored checklists and procedures.

What is Money Laundering?

The 2010 Act widened the definition of money laundering. It includes all forms of handling or possessing proceeds, where the person knows or believes such proceeds is or represents the proceeds of criminal conduct, including possessing the proceeds of one's own crime, and facilitating any handling or possession of such proceeds. There are no de minimus provisions.

Criminal conduct is defined in Section 6 of the Act and captures not only criminal offences but all other offences which result in proceeds. Therefore any offence which results in proceeds may represent money laundering and may fall to be reported. For example cost savings achieved from breaches of mandatory health and safety regulations and savings as a result of tax evasion may fail to be reported as money laundering.

External Reporting

S.42 (6) of the Act prescribes the information to be provided when an external report is considered necessary as follows;

- Information or other matter on which the knowledge or suspicion of money laundering or terrorist financing (or reasonable grounds for such) is based;
- The identity of the suspect (if known);
- The whereabouts of the laundered property (if known); and
- Any other relevant information.

Reports in relation to money laundering and terrorist financing suspicions are to be made to both the Garda Síochána and the Revenue Commissioners. Specific reporting addresses are outlined in M42.

The Professional Privilege Reporting Exemption

The Act states that the disclosure of information which is subject to legal privilege is not required. The Act also establishes that an external report is not required where the knowledge or suspicion comes to the relevant professional adviser (an accountant, auditor or tax adviser who is a member of a designated accountancy body or of the Irish Taxation Institute) in privileged circumstances, i.e. through activities that are associated with ascertaining the legal position of the client.

Examples of situations where this may arise are the provision of advice on taxation matters where the tax adviser is giving advice on the interpretation or application of any element of tax law and in the process is assisting the client to understand his tax position.

Prejudicing an Investigation (tipping off)

It is essential that if making or considering an external report that a "designated person" does not make any disclosure that is likely to prejudice an investigation in any way.

Guidance on the provision of services to a client after a money laundering suspicion has been formed is outlined in M42 and should be considered carefully.

Pre 2003 Clients

The 2010 Act requires that appropriate customer due diligence measures be applied to all clients. This includes clients who were obtained prior to the commencement of the original 2003 legislation, the Criminal Justice Act 1994 (S.32) Regulations 2003. CCAB-I recommends that accounting firms consider at their next client evaluation, whether the documentation and information that they hold on the client is sufficient to meet their obligations under the Act, based on their risk assessment. Firms should document this consideration.

Supervision by Competent Authorities

"Designated persons" coming under the supervision of the Institute of Certified Public Accountants in Ireland for the purposes of compliance with the Act include those members who are auditors, external accountants, tax advisers or trust or company service providers.

Those members currently holding CPA practising certificates will continue to be supervised under the Institute's Quality Assurance programme.

Non practising certificate holders currently providing services such as book-keeping services or trust and company services for which a practising certificate may not be required must also register with the CPA Institute.

For details please contact the Professional Standards Department at 01-4251040.

Guidance

M42, (Revised) Anti Money Laundering Guidance, has been developed by a CCAB-I working party. It is available from the CPA website at www.cpaireland.ie and is effective as of 23rd September 2010.