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## Implementing the new 2007 Money Laundering Regulations

New anti-money laundering regulations took effect in the UK on 15<sup>th</sup> December 2007.

### **Why do we have anti-money laundering Regulations in the UK?**

The UK faces serious and ever changing threats from crime and terrorism, and finance is the lifeblood of both. Our strategy is to detect, disrupt and deter crime and terrorism through a range of strategies, including measures to restrict criminal access to the financial system.

The UK is part of a wider international effort to meet these challenges, and participates in international talks to make sure the rules remain effective. New international recommendations were issued in 2003, and in turn the European Union adopted the Third Money Laundering Directive. The Government has implemented new Regulations in the UK to give effect to the European Directive, in the Money Laundering Regulations 2007 (SI 2007 No. 2157).

### **What are the rules?**

The Money Laundering Regulations require firms to put preventative measures in place. They require firms to ensure that they know their customers (including conducting customer identification and verification and undertake ongoing monitoring where applicable), to keep records of identity and to train their staff on the requirements of the Regulations. The Proceeds of Crime Act 2002 and the Terrorism Act 2000 provide the criminal offences of money laundering and terrorist financing and impose obligations on firms and individuals to report suspicions of money laundering or terrorist financing.



INVESTOR IN PEOPLE

### **What has changed?**

In summary the new Regulations:

- provide more detailed obligations regarding customer due diligence, for example, explicit requirements for firms to undertake ongoing monitoring of business relationships and for firms to identify not just the customer but the beneficial owner of the customer;
- require firms to vary customer due diligence and monitoring according to the risk of money laundering or terrorist financing;
- require firms to take enhanced customer due diligence measures in higher risk situations, while allowing firms to take reduced identification measures for specific situations with a lower risk of money laundering;
- allow firms to rely on certain other firms for undertaking customer identification; and
- clarify the arrangements for the supervision of firms, including those that will be supervised for the first time.

### **Which businesses are covered?**

Most UK financial firms (banks, building societies, money transmitters, bureaux de change, cheque cashers, savings, investment, and pension firms) are covered.

In addition the Regulations cover legal professionals (when undertaking some activities), accountants, tax advisers, auditors, insolvency practitioners, estate agents, casinos, high value dealers when dealing in goods worth over 15,000 Euro and trust or company service providers.

### **Why are we writing to customs agents and related professionals?**

The UK Money Laundering Regulations list the businesses that need to be regulated in Regulation 3 of the Money Laundering Regulations 2007. As noted above these include accountants - businesses involved in the recording, review, analysis, calculation or reporting of financial information and tax advisers – that is to say businesses who by way of business provide advice about the tax affairs of other persons.

We are concerned at the possibility that customs agents and related professionals may offer accountancy services or tax advice to their clients – specific advice, for example, on their tax affairs, including on their clients' liabilities to Value Added Tax, Excise and Customs Duties, environmental taxes, tax management and mitigation.

Our preliminary view is that advice that is merely explanatory (advice generally on how import processes operate), or the mere transmission of data to Customs, probably does not constitute the provision of tax advice for these purposes.

The possibility that some firms may be engaged either in the provision of tax advice, or of accountancy services, and that they may accordingly be required to be regulated under the Money Laundering Regulations may not be properly appreciated.

In discussing these issues our understanding is that;

- tariff classification advice is generally provided to the trade by HMRC.
- Export/import agents generally provide tax advice in relation to process only and complete documentation in relation to duty declarations on behalf of their clients. This second activity, we think, falls within the activities of external accountant because it is "reporting of financial information"
- The activities of freight forwarders can be many and varied but if HMRC generally provides the tariff classification advice and advice on tax or duties processes (ie advice on how the system operates rather than advice on the quantum of tax) is not treated as tax advice in this context, we think they may also only fall into the regulated sector by virtue of their "external accountant" activities. We originally thought that these would include calculating tax and completing forms, but it now appears that the CHIEF (Customs Handling of Import and Export Freight) IT system does the calculations, so it would only be by virtue of completing forms.
- Accountancy industry guidance in relation to accountancy services includes "anything which pertains to the recording, review, analysis, calculation or reporting of financial information".
- Customs consultants are different again, in that they provide help where there is a dispute about tax liability including the amount and our preliminary view is that they would be included in the regulated community (ie as relevant persons for the purposes of the Money Laundering Regulations by virtue of these tax advisor activities.

### **Next steps**

The purpose of this note is to alert recipients to this issue.

Working with HM Revenue and Customs we suggest a round table meeting of firms might be an appropriate opportunity to help us better understand the role of customs agents and related professionals.

Accordingly we would welcome (a) any written response you wish to make and (b) your attendance at a meeting [to be hosted at HM Treasury], later this year

### **Link to regulations**

You can access the 2007 Money Laundering Regulations via the HM Treasury website, at

[http://www.hm-treasury.gov.uk/media/F/1/money\\_laundering\\_regulations2007.pdf](http://www.hm-treasury.gov.uk/media/F/1/money_laundering_regulations2007.pdf)

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