



## Money Laundering Regulations 2007

Having decided in April 2008 that interim managers would no longer be required to register under the MLR legislation, HM Revenue and Customs has been forced by the Treasury to bring some interims within the scope of the rules.

New deadlines for registering as a TCSP have been set. If you were in this type of business before 15 December 2007, you must apply to register before 30<sup>th</sup> September 2008. If you are setting up as a new TCSP you will need to apply to register before carrying on that business.

There are two groups of interims who may potentially be involved.

- 1) The first group affects any interim acting at director level (whether formally appointed or acting as a shadow director) or as company secretary who will have to register as a Trust and Company Service Provider (TCSP) but only if working within the *high risk sector*.

### What is meant by director?

'Director' is defined in the Companies Act 2006. If you are formally appointed a director, your name should be contained in the company's register available for inspection at the registered office and registered at Companies House.

If you are not formally appointed but are called a director, you would not be a director within the Companies Act definition, but you may fall within the scope of the regulations as a shadow director. A shadow director is a person who is not a named director but who does direct or control the business.

### What is a high risk sector?

- A firm carrying out frequent cash transactions of €15,000 or more
- A company operating within the UK but incorporated outside the UK in a non-equivalent jurisdiction (see appendix 1)
- A company with a holding interest in their capital held in the form of unregistered bearer shares

I have asked the MLR Policy Unit how an interim manager is expected to know these matters about new clients, and they have replied "ask the client" (it may seem to some people that if a client is involved in money laundering he/she may not tell the truth when questioned).

- 2) The second group is far more wide ranging with implications for any interim coming under the heading of Accountancy Service Provider (ASPs). As shown below, anyone providing accountancy services at any level in the private sector regardless of whether qualified or not, will fall under the regulations. The public sector is excluded from the regulations.

### **What is an Accountancy Service Provider?**

Accountancy Service Providers (ASPs) is the term used by HMRC for auditors, external accountants and tax advisers

- An auditor is any person who is a statutory auditor within the meaning of Part 42 of the Companies Act 2006, when carrying out statutory audit work.
- An external accountant is any firm or sole practitioner who by way of business provides accountancy services to other persons.
- A tax adviser is any firm or sole practitioner who by way of business provides advice about the tax affairs of another person.

### **What are Accountancy Services?**

Accountancy services include the recording, review, analysis, calculation or reporting of financial information and covers professional book-keeping services, preparing or signing accounts or certificates of financial information concerning a person's or organisation's financial affairs, and advising on tax.

### **What is tax advice?**

Advice is widely interpreted and includes tax compliance services such as assisting in the completion and submission of tax or duty returns. Businesses assisting in the completion and submission of tax returns in relation to any tax will fall within the scope of the Regulations. Businesses providing advice relating to the liability of a particular commodity to a tax or duty or the amount of tax or duty due will also fall within the scope.

### **What is the difference between tax advice and tax information**

When you give a client information about tax and it is the same for everyone – so their particular situation is not looked at, this is tax information. For example: the rate of customs duty is x% or the rate of inheritance tax is y%,

When you give tax advice you will have studied a client's particular circumstances, and assessed and recommended a particular course of action or product that is suitable for them. For example: If you do this, your tax or duty liability will be X. If you do that, your tax liability will be Y.

## **What types of businesses will be covered?**

Businesses covered include;

- Accountants
- Auditors
- Tax Advisers
- Book-keepers
- Payroll Agents
- Tax consultants
- Customs Practitioners
- Interim managers undertaking any of the activities of the businesses listed above

And you will be required to register unless for the purposes of the MLRs 2007, you are already supervised by a professional body listed in Appendix 2.

The full guidelines are available on the HMRC website including how to register at:

<http://www.hmrc.gov.uk/mlr/mlr9.pdf>

When asked how HMRC intended to police this system, the reply was "... HMRC will actively enforce the MLRs 2007 by means of a risk based intelligence led strategy, issuing proportionate penalties to those who do not comply to encourage full compliance with the regulations. This strategy will use various means to police the perimeter and identify un-registered businesses, including carrying out searches of the internet and other external media"

## Appendix 1

### **What is an equivalent jurisdiction?**

This is a country with anti money laundering/countering terrorist finance regimes of similar quality to the EU including the following:

- Argentina
- Australia
- Brazil
- Canada
- Hong Kong
- Japan
- Mexico
- New Zealand
- The Russian Federation
- Singapore
- Switzerland
- South Africa
- The United States

The list also includes the French overseas territories (Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon and Wallis and Futuna) and the Dutch overseas territories (Netherlands Antilles and Aruba). Those overseas territories are not member of the EU/EEA but are part of the membership of France and the Kingdom of the Netherlands of the FATF. The UK Crown Dependencies (Jersey, Guernsey, Isle of Man) may also be considered as equivalent by Member States. Gibraltar is also directly subject to the requirements of the Directive, which it has implemented. It is therefore considered to be equivalent for these purposes

The following countries have been identified by HM Treasury to be high risk:

- Uzbekistan
- Iran
- Pakistan
- Turkmenistan
- São Tomé and Príncipe
- the northern part of Cyprus.

## Appendix 2

### List of Supervisory Authorities including Professional Bodies named in the Money Laundering Regulations 2007

- The Financial Services Authority (FSA);
- The Office of Fair Trading (OFT);
- The Commissioners of Her Majesty's Revenue & Customs (HMRC);
- The Gambling Commission of Great Britain;
- The Department of Enterprise, Trade and Investment in Northern Ireland (DETI); and
- The Department for Business, Enterprise and Regulatory Reform (BERR).

### **The Professional Bodies are:**

- Association of Chartered Certified Accountants
- General Council of the Bar
- General Council of the Bar of Northern Ireland
- Council for Licensed Conveyors
- Faculty of Advocates
- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Accountants in Ireland
- Institute of Chartered Accountants of Scotland
- Law Society
- Law Society of Scotland
- Law Society of Northern Ireland
- Association of Accounting Technicians
- Association of International Accountants
- Association of Taxation Technicians
- Chartered Institute of Management Accountants
- Chartered Institute of Public Finance and Accountancy
- Chartered Institute of Taxation
- Faculty Office of the Archbishop of Canterbury
- Insolvency Practitioners Association
- The International Association of Book Keepers
- Institute of Financial Accountants
- Institute of Certified Book Keepers

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