

TaxZone Newthwire

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Editorial Note

Adoption of The Money Laundering Regulations 2003 has apparently been delayed until December 2003. However, in conjunction with the Proceeds of Crime Act 2002 we are already effectively within the new compliance regime.

The combination of new legislation and regulations with what has happened to Hansard after the Gill case will, in my view, change the whole face of the United Kingdom tax profession for ever. The latest news regarding Hansard is that all Hansard interviews will be tape-recorded after a formal caution has been given under the Police and Criminal Evidence Act.

There is no doubt that the combination of these measures has been politically driven. Some of the results will be:

- A permanent change in relationships between the professions, the Inland Revenue and the Government.
- A permanent change in relationships between accountants and their clients. The new situation will engender mistrust, fear and suspicion.
- Further bureaucracy imposed by government.
- A general uncertainty as to whether business and other transactions should or should not be reported to the National Criminal Intelligence Service.
- We are moving rapidly towards a tax profession that has been emasculated and whose function is merely to do what the Government and Inland Revenue says.



Regards

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Money Laundering & Tax - An Introduction

The basics

A complete review of the legislation and regulations is well beyond the scope of this wire, and I will refer later to sources of information. However, as far as tax professionals are concerned, the following are some of the main provisions.

Tax evasion

Tax evasion is a criminal offence under the legislation and regulations, and any professional must report it (or a definite suspicion of it) to The National Criminal Intelligence Service. It includes foreign tax evasion. What are definitely excluded are innocent errors with no intention to defraud the Revenue.

The definition of a criminal offence in this connection is more difficult to quantify. However, evidence that the local window cleaner or builder is pocketing cash comes within the offence. We can all think of many examples. The regulations extend to third parties, which included friends, neighbours and families.

The National Criminal Intelligence Service is a multi agency agency. It includes individuals from the Inland Revenue, Customs & Excise and the police.

No lower limit

Despite representations by the accountancy profession, there is no de minimis limit. Accordingly, in theory tax evasion of 5 pounds is reportable to the NCIS.

Tipping off

Informing the client, potential client or third party that you have suspicions and have reported the matter to NCIS is classed as 'Tipping off' and is a criminal offence itself.

Role of the Revenue

When a report is made, it is made to NCIS and not to Inland Revenue Special Compliance office. At that point work on the client's affairs ceases until clearance is received from the NCIS. Special Compliance Office wished to take over this role, but NCIS was desperate to retain the major position.

Money Laundering Reporting Officer

Every business, company and professional firm must appoint a Money Laundering Reporting Officer. Staff must be trained to identify suspicious transactions, and internal controls, internal procedures and record keeping must be addressed.

In the case of a sole trader or sole practitioner, the principal of the firm will be the MLRO.

Know your client

In the case of accountants the legislation and regulations will have a draconian effect on the taking on of new clients. We all know how difficult it is to open a new bank account now. Well, that procedure is coming in our direction.

It will be necessary to make checks on any new client. Identification in the form of name, address and date of birth will be necessary. In addition physical identification by examination of a passport, utility bill

or driving licence is necessary. The impact of the situation will extend to current and new engagement letters, and transfer of clients to and from other practitioners.

Has anyone really considered the devastating effect of these requirements on the growth of an accounting practice?

A Criminal Offence

Money laundering in the form of tax evasion is a criminal offence, subject to imprisonment of up to 14 years. What is even more alarming is that failure to report such an offence and 'tipping off' are also criminal offences of a lesser degree.

Alarm bells should have rung out when a solicitor, Jonathan Duff, was jailed for six months last year. He did not even break the law intentionally in not reporting what proved to be a criminal money laundering transaction. His case illustrates the dangers that all accountants face in the future.

Professional Privilege

Lawyers have limited professional privilege in connection with money laundering matters, but accountants have none. It is clear from comments made in Parliament on this issue that some Members of Parliament have a thoroughly vindictive attitude to the accountancy profession.

The view of Parliament is that accountancy is an unregulated profession, and therefore cannot receive privilege. At present, as is well known, anyone, qualified or not, can call themselves an accountant.

The consequence of this is that accountants and solicitors will be forced to work together on enquiry and investigation cases, and there is a danger that tax advisers will lose their 'lead position' in this area of specialisation.

Resources

The subject of money laundering is currently the focus of or part of many conferences, lectures and seminars. Of course, until the final version of the Money Laundering Regulations is issued, probably in December 2003, certainty will not be reached. However, those interested in researching matters in detail can access the following Internet sites.

The accountancy bodies - Interim guidance for accountants was published in May 2003 under the title Anti-Money Laundering (Proceeds of Crime and Terrorism).

www.ccab.org.uk

National Criminal Intelligence Service

www.ncis.co.uk

Her Majesty's Stationery Office

www.hmsso.gov.uk

The Treasury

www.hm-treasury.gov.uk/mediaC87D7/monlaunregs_draftsi03.pdf

Joint Money Laundering Steering Group

www.jmlsg.org.uk

The websites of:

The Faculty of Taxation of the ICAEW

The Chartered Institute of Taxation

The Association of Taxation Technicians
The Chartered Institute of Certified Accountants

The following professional articles etc:

Taxation magazine, 15 May 2003 at pages 175-178. Article by James Bullock and Jason Collins.

Taxation magazine, 4 September 2003 at pages 603-604. Comment article by Denis Parrett CBE.

Tolley's Practical Tax newsletter, 13 September 2002 at pages 149-151. Article by Keith Cox and Monica Bond.

ICAEW Helpsheet hs 03-01 http://www.icaew.co.uk/viewer/index.cfm?AUB=TB2I_51930

TAXline Tax Practice Supplement, September 2003. This contains more than 60 questions and answers by Robert Maas.
http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_56883,MNXI_56883

Tax Adviser, July 2001. Article by David Williams <http://www.tax.org.uk/showarticle.pl?id=376&n=>

Tax Adviser, August 2001. Article by David Williams and Heather Bruhceist
<http://www.tax.org.uk/showarticle.pl?id=415&n=>

Tax Adviser, November 2001. Item by David Williams. <http://www.tax.org.uk/showarticle.pl?id=540&n=>

Tax Adviser, April 2002. Article by David Williams. <http://www.tax.org.uk/showarticle.pl?id=1050&n=>

Tax Adviser, May 2003. Article by David Williams at pages 16-17.
<http://www.tax.org.uk/showarticle.pl?id=1803&n=>

Tax Adviser, July 2003. Article by Sarah Wallace at pages 38-41.
<http://www.tax.org.uk/showarticle.pl?id=1871&n=>

See also the Anti Money LaunderingZone on AccountingWEB:
http://www.accountingweb.co.uk/business_management/amlz.html

In addition, of course, those interested in the law itself can study the Proceeds of Crime Act 2002 and (when issued) The Money Laundering Regulations 2003.

Any Answers

There have been a few Any Answers queries on the subject of money laundering and tax.

Money laundering regulations

Karen Smith posed a question on 14 January 2003. She specifically asked about the records to be kept for identification of new clients. Will it be necessary to provide such evidence for existing clients as well?

A number of respondents drew attention to the forthcoming regulations without really answering the question. Martin Ogden referred to the situation being both 'staggering and frightening'. James Price suggested that one should play safe and obtain photocopies of passports for all clients, as well as some proof of address. Kevin Salter pointed to a detailed money laundering form available as part of the WinningClients software available as a download from AccountingWEB.

I would take a middle line on this one. Surely there is no need to make enquiries in respect of individuals who you have known personally for years, and are aware of their lifestyle and financial circumstances? There is no escape from the documentation and records for new clients, and accountants are now in the same invidious position as the banks - i.e doing their best to dissuade new customers.

<http://www.accountingweb.co.uk/item/100821/786/784/785>

Money Laundering - ID checks?

Another question regarding identification checks was posed by Clare Hunt on 21 August 2003. What ID checks will have to be done for new clients? Will accountants have to report that these checks have been done, or just have evidence of proof if asked?

'I'm not that daft to say what I will be doing' came up with a sensible suggestion. He will ask new clients to stick a copy of the driving licence along with the signed 64-8, while apologising profusely for the inconvenience caused. He will not even undertake ID checks for one-off clients. Robert Mitchell stated that physical checks are required as well as documentary. The mind boggles as to what a 'physical check' is, but sadly this is reality and not a humorous TV show. Presumably he is referring to the passport photograph.

<http://www.accountingweb.co.uk/item/116879/786/784/785>

Money Laundering - what is an accountant?

Raymond Lewin enquired, on 27 April 2003, whether anyone knew the definition of an accountant for money laundering purposes. He welcomed both serious and humorous replies, but received none of the latter. His query reminds me of the time when I was first in practice when an individual mistook the office of a chartered accountant for a turf accountant and came into the office to place a bet!

Phil Rees confirmed that anyone can set up as an accountant in this country, unlike say a solicitor or dentist. There is a very serious sequel to this fact. Because the accountancy profession is divided and unregulated, the Government and Inland Revenue refuse to deal with it as a whole.

One suspects that this has resulted in the legislation incorporating tax evasion of a de minimis amount, 'tipping off' and the lack of professional privilege, placing a ridiculous and enormous burden on accountants.

<http://www.accountingweb.co.uk/item/108802/786/784/785>

General Comments

If one logs on to the website of the National Criminal Intelligence Service, the extent of the money laundering problem becomes evident. I am absolutely opposed to the laundering of enormous amounts of money from organised crime, particularly the drug industry.

Similarly I have no truck with organised tax evasion, which deprives the Government of substantial revenue.

However, framing legislation to include tax evasion of a de minimis amount, requiring accountants to report on clients and others and including the offence of 'tipping off' is another matter altogether.

What the Government is doing in this respect is to encourage us to become a nation of snoopers and informers. The legislation and regulations as currently framed are, in my view, monstrous. They are, as commented on elsewhere, a 'sledgehammer to crack a nut'. It is similar to a school class where the whole class is punished for the behaviour of one unruly and unwelcome pupil. As things stand at the moment, if I suspected that the jobbing gardener who helps me from time to time was not declaring his cash income, then I should report him to NCIS. Or if I knew that my wife had received 100 pounds in cash for a computer job and did not declare it, then I should report her. Fortunately both

these illustrations are theoretical and not fact, but show just how far down the road of totalitarianism we are going.

If the money laundering regulations appear as expected we shall be, in effect, in an atmosphere akin to that of East Germany before the Berlin wall came down, with everyone suspicious of everyone else and some reporting on their friends and neighbours to the NCIS (equivalent to the Stasi). Come back George Orwell; 1984 is well past and we are on to another stage!

I do not normally approve of civil disobedience, but in this instance I would support a mass protest by the accountancy and tax professions. It has been suggested that all accountants and tax professionals should report every possible small tax misdemeanour, down to 5 pounds, and thus bring the work of the NCIS to an effective standstill.

Transfer of Work

There is another aspect to this, and that is that, yet again, the Inland Revenue has managed to transfer the work of its department to the professions. This has been progressive since 1944/45.

In 1944/45 the Revenue transferred the assessment and payment of employment taxes from central Government to employers by the inception of PAYE, with businesses of all sizes then devoting an enormous amount of time and resources to this task. Their commitment to this task has not exactly decreased over the years. It appears now that electronic transfer of information to the Revenue in this respect is now to become mandatory.

The creation of VAT in 1972 was the next major task placed on the business world. VAT is effectively a self-assessed tax, and imposes enormous burdens in terms of record-keeping and staffing (and the financing thereof) on businesses of all sizes, except the very small.

The next really major transfer of responsibility came in 1996/97 et seq with self-assessment. It then became the responsibility of the taxpayer and/or business or company to file a return and perhaps work out the tax payable. Effectively the old assessment procedure was dead, and the function of the Collector of Taxes redundant. Part of the purpose of self-assessment was supposed to be to free Inland Revenue staff to complete compliance work. But now the onus is being passed on to the professions!

The latest initiative in relation to the tax investigations and enquiries is a Revenue masterstroke. The assumption has been that accountants and other professionals have been less than co-operative in the past. Make them responsible for discovering tax evasion and then reporting it to us, on pain of committing a criminal offence if they fail to do so. I am sorry, but I think that the Revenue and the Government have gone too far this time. Let the Inland Revenue do its own dirty work!

The Role of the Professions

If you think that the Government and the Revenue are totally to blame, then you are wrong. I am sorry, but the professions have a lot to answer for. In my view their relationships with and representations to Government have been supine in many respects in recent years.

An example of this is the adoption of the Keith Committee investigation proposals regarding both direct tax and VAT in 1989. I felt at the time that the viewpoint of taxpayers and the professions had not been defended robustly enough.

Then in 1996/97 the self-assessment enquiry regime was established. Some of the difficulties over time limits, random Revenue audits and production of documents could have been avoided if the professions had campaigned hard enough before these systems were introduced.

IR35 is another catastrophe. Sadly it affects the economic life of the nation and individuals, and gives the impression that Government approves of big business but not the small business. That battle is by no means over, but could not much of the heartache, negotiations, appeals and court cases been avoided if proper representation and debate had taken place - beforehand?

And what about Tax Credits? Should not some leading members of the professions have had the guts to say to senior Inland Revenue officials - this is not going to work. You need our help. To be fair the fiasco over Tax Credits was not really the Revenue's fault. The fault lies with Government, who were determined to push through an untried and inefficient system for political reasons. Sadly tax and politics are inextricably linked.

I have mentioned these issues because the Money Laundering Regulations are not new. Their consideration goes back to 1986, and the first Money Laundering Regulations were published in 1993. Suddenly we are in a state of panic. But wait a minute; there has been no debate, no consultation and no representations. Confrontation on this issue should have occurred years ago. The professions bear substantial blame for what is evident now.

Muddying the Waters

Now the waters have been muddied further by a recent case heard before Dame Elizabeth Butler-Sloss in the Family Division of the High Court (see report on TaxZone, 9 October 2003).
<http://www.accountingweb.co.uk/item/118614/786/784/785>

In the case of *P v P* [2003] EWHC 2260, which concerned divorce proceedings, the wife's solicitors suspected that the matrimonial assets of 19 million pounds included the proceeds of crime. Accordingly the solicitors made a report to NCIS. However, the solicitors were not able to inform the husband or his solicitors of the allegations because of the 'tipping off' provisions.

Accordingly they went to the court for advice and the judge stated that the husband's solicitors should be informed. So here we are already with a case where Dame Elizabeth Butler-Sloss has said that she does not agree with NCIS about 'tipping off'. However, the basic duty of lawyers to report suspicions if they suspect that family assets came from tax evasion was underlined in court.

The judge warned that the long-term effect of the Proceeds of Crime Act will be to create 'serious delays' in hearing family cases. Dozens of divorce cases had been put on hold pending the judgment in *P v P*. The legal profession also reacted with alarm, because what the judge said had undermined what they considered to be their professional privilege.

Another possible consequence is that couples will now deal with their own divorces in order to keep secret financial deals that could otherwise lead to litigation. Wives could well use the threat of undisclosed tax as a weapon to force beneficial settlements from wealthy husbands.

If these sort of issues arise from one judgment in a divorce case, one has to speculate about the effect of the law and regulations in many other situations, some involving the legal professions and others involving the accountancy and tax professions. Has the Government created a monster that will destroy everything within its path?

Ask a question

Readers with a current case should post their query in Any Answers.

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