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Reporting
Obligations

Recorded online

July 2017

08/08/2017 ACCA Ireland

Reporting Obligations in the Republic of Ireland

Reporting Obligations


Auditor only

- S392, Companies Act 2014
- Section 393, Companies Act 2014
- S1079 Taxes Consolidation Act 1997

All accountants in practice

- Section 59 Criminal Justice Act 2001,
- Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013
- Section 19, Criminal Justice Act 2011

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Reporting Obligations

Auditor only

- Accounting records and H4 procedure reporting to Company Registration Office S392, Companies Act 2014
- Category 1 and 2 offences (indictable offences) reporting to ODCE S393, Companies Act 2014
- Tax evasion, 6 month letter procedure reporting to Revenue S1079 of the TCA

All accountants in practice

- Any financial Crime to Garda, Section 59, Criminal Justice Act 2001
- Anti Money Laundering reported to Garda and Revenue Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013
- All financial crime to Garda Section 19, Criminal Justice Act 2011


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Anti-Money Laundering

The Requirements in Ireland

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Anti-Money Laundering

- Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013
- NOT
 - Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010; or
 - Criminal Justice Act 1994

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Website resources

www.accaglobal.com/technicalireland

ANTI-MONEY LAUNDERING GUIDANCE 2010


RELATED DOCUMENTS



Anti-money laundering guidance 2010

PDF 410KB

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Anti-Money Laundering

- Was there a crime?
- Were there proceeds?

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Anti-Money Laundering

Do we just report

Drug dealers?
Terrorists?
Bank robbers?



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Anti-Money Laundering – serious crimes covered by legislation

- **Drugs**
- **Terrorism**
- **Theft**
- **Fraud**
- **Tax evasion**
- **Carousel fraud**

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Anti-Money Laundering – some less serious crimes also covered

Bribery & Corruption

Price fixing

Incorrect tax returns?

Illegal directors loans?


Tax evasion

Income tax fraud

VAT frauds



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Our practice does not have a Anti-Money Laundering problem because all our clients:

- Have a licence for all their software
- Have planning permission for all of their buildings and developments
- Have disclosed all of their income for tax purposes
- Include all Christmas bonuses in the PAYE records
- Never watch pirated films and other content on the internet
- Never copy music without a licence


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Our practice does not have a Anti-Money Laundering problem because all our clients:

- always paid occasional staff through the PAYE system
- Never pay for small building jobs in cash and VAT is always included
- all non national staff will have the correct work visas
- Pay staff at least minimum wage

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What does proceeds include?

- Tax evasion
- Include “saved costs” arising from illegal acts
- There are no “de minimis” concessions


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Some real examples

- A new client deposits cash into your client account to allow you bid on a property/business at auction. No information on the source of the cash
- Client deposits cash into your client account to pay the premium on a life policy – policy later surrendered early
- You do bookkeeping for a client and notice an underpayment error in the VAT return. The client refuses to remedy the error

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Some more examples

- Client in the news for drug dealing
- Settlement made at revenue audit for unrecorded sales
- You spot a “milk” truck delivering diesel to the clients petrol station
- The client operates a “cash only, no receipts” diesel pump at the back of this garage
- A loan is obtained from a third party to finance the business


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Some more examples

- Client in a cash business is accepting cash from another business and issuing cheques in exchange
- The clients bank account is being used to lodge other peoples money
- “Business angel” from foreign countries investing in local firm
- The use and acceptance of the “Bin Laden” bank note (€500)

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Traditional money laundering model

| | | |
|--|--|---|
| <u>Placement</u> Money paid into cash business | <u>Layering</u> Mixed with business proceeds, tax and VAT paid etc. | <u>Integration</u> Drawn as salaries, etc. from legitimate business |
|--|--|---|

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Solicitor 'failed to voice suspicions'

A Belfast solicitor has been jailed for six months for failing to tell police about his suspicions that a client was laundering drug money.



Gavin David McCartan, 46, from Ardenlee Avenue, received a £70,250 deposit on a bungalow worth £105,000 in his capacity as a conveyancing solicitor, Belfast Crown Court heard on Monday.

Prosecuting barrister Gordon Kerr said that in July 2002, a mortgage broker working for the buyer, Cecil Walsh, "became concerned" that his client could pay such a large deposit and contacted the PSNI's Economic Crime Bureau.

He said the police obtained documents in relation to the sale where Mr Walsh had "falsely represented himself to be a self-employed car salesman" and had failed to declare his "substantial criminal record".

In a search of McCartan's office in September 2000, police officers seized documents including a bank lodgement book and later obtained a bank slip showing that £70,200 had been

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Anti-Money Laundering



- "I was stunned, shocked, surprised and incredulous. You get taken to prison in the white van. I've had lots of clients sent to jail. Never did I think I would sit in the seat they sat in. I kept thinking Jeremy Beadle was going to pop out, but it was real. I was being taken to a prison".
- Jonathan Duff, former member of the Law Society in England

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News Business

UBS fined for anti-money laundering breaches

Updated: 10:54, Thursday, 21 June 2012

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The Central Bank has reprimanded and fined UBS International Life Limited €65,000.



UBS fined €65,000 for failing to comply with certain requirements of Criminal Justice Act

UBS fined €65,000 for failing to comply with certain requirements of Criminal Justice Act

The fine is for failing to comply with legislation aimed at protecting the financial system from the risk of exposure to money laundering and terrorist financing.

The Central Bank said it had entered into a settlement agreement with the bank in relation to various breaches of the Criminal Justice Act (2010).

The breaches relate to a failure by the.....

Settlement Agreement between the Central bank of Ireland and Community Credit Union Limited

17 December 2012

The Central Bank of Ireland (the 'Central Bank') has entered into a Settlement Agreement with effect from 13 December 2012 with Community Credit Union Limited, a regulated financial service provider, (the 'Firm') in relation to various breaches of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the 'CJA 2010').

Reprimand and fine

The Central Bank reprimanded the Firm and required it to pay a monetary penalty of €21,000 for its failure to comply with certain requirements of the CJA 2010, which is aimed at protecting the financial system from the risk of exposure to money laundering and terrorist financing.

Breaches

The breaches of the CJA 2010 identified are:

- The Firm failed, for a period from 15 July 2010 (the date that the CJA 2010 came into force) until 29 November 2011, to adopt policies and procedures:
 - to prevent and detect the commission of money laundering and terrorist financing;
 - to specify to persons involved in the conduct of the Firm's business the Firm's relevant obligations under the CJA 2010, including in relation to (a) the assessment and management of risks of money laundering or terrorist financing and (b) internal controls, including internal reporting procedures;
 - to monitor and manage compliance with, and the internal communication of, policies and procedures.

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And recently in Ireland

Embarrassment for AIB as bank fined
€2.3m for breach of money laundering
rules



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Money Laundering & Fraud

2 main distinguishing characteristics

- Unlike fraud, money laundering may have no net adverse effect on the financial statements
- Fraud usually leads to losses or disappearance of assets - money laundering can be the opposite

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The requirements for accountants in summary

1. Customer Due Diligence
2. monitor clients
3. report to Gardai and Revenue
4. adopt policies & procedures
5. conduct on-going training
6. keep records

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Anti-Money Laundering – risk base approach

Gather information about new clients

- who the client is
- who owns it (including ultimate beneficial owners)
- who controls it
- the purpose and intended nature of the business relationship
- the nature of the client
- the client's source of funds
- the client's business and economic purpose

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Anti-Money Laundering – risk base approach

Gather information about new clients

- Internet and press searches concerning the client, its key counterparties, its sector and jurisdiction
- Subscription databases which provide a quick way of accessing public domain information and in many cases provide links to persons or companies known to be associated with the client
- Check the names of clients against lists of known terrorists

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Anti-Money Laundering

Customer DD Summary

Long association clients

- Risk working paper
- address document
- Renew annually

New risky clients

- Risk working paper
- address document X2
- Photo ID X2
- Raison d'etre
- Renew annually

New low risk clients

- Risk working paper
- address document
- photo ID document
- Renew annually

Designated clients

- Risk working paper
- Proof designated

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Anti-Money Laundering


Name verification

- Passport or driving licence

If not available consider:

- ID form with photo signed by Garda
- Documentation/card issued by a Government Department
- Letter from a person of responsibility (verify the person of responsibility)

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Anti-Money Laundering

Address verification – max 3 months old

- Utility bill
- Bank statement
- Revenue balancing statement
- Tax credit certificate
- C2 cert
- Social insurance documents

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Anti-Money Laundering

Address verification (continued)

- Motor insurance documents
- Motor insurance certs
- Mobile phone bills
- Electoral register
- Credit reference agency search
- Checking phone book etc...

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Anti-Money Laundering

Customer Due Diligence

- ongoing basis
- Keep updated
- scrutiny of transactions
- source of funds
- changes in ownership

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Anti-Money Laundering

Customer Due Diligence

- Simplified due diligence
- Enhanced due diligence
- Normal due diligence

- Need to assess risk then decide on CDD

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Anti-Money Laundering

Customer DD - Simplified due diligence

- credit or financial institutions
- listed companies
- public bodies

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Anti-Money Laundering

Customer Due Diligence – existing clients

- Document the existing knowledge of client
 - Document information on tax file
 - Document own knowledge of identity
 - Copy 1 address document

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Customer DD - Enhanced due diligence

- not been physically present for ID purposes
- Politically Exposed Person

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Quick Definition

Politically exposed person :

“who is or has, at any time in the preceding year been entrusted with a prominent public function’, including either a “specified official” or a member of the administrative, management or supervisory body of a state-owned enterprise, residing in a place outside Ireland or an immediate family member or known close associate of such a person”

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Quick Definition

specified official :

“head of state, head of government, government minister or deputy or assistant government minister;

a member of parliament;

a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;

a member of a court of auditors or of the board of a central bank;

an ambassador, charge d'affairs or high ranking officer in the armed forces”

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Anti-Money Laundering

Customer DD - Normal due diligence

- Keep up to date
- All clients
- Commencement of next engagement

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Customer DD - Reliance on third parties

- Third party can complete where arrangement in place
- Practice still responsible
- “Consider” getting copies of CDD

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Anti-Money Laundering

CDD: Corporate Clients

- Existence and status – cert of incorporation
- Exists for a legitimate trading or economic purpose
- Not a “shell” company
- Identity of the beneficial owners
- List of directors etc as well as checking identity of directors
- Clubs, societies included
- Verify a minimum of 2 directors identities and addresses (recommended you do all)

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Anti-Money Laundering

Customer DD Summary

Long association clients

- Risk working paper
- address document
- Renew annually

New risky clients

- Risk working paper
- address document X2
- Photo ID X2
- Raison d'etre
- Renew annually

New low risk clients

- Risk working paper
- address document
- photo ID document
- Renew annually

Designated clients

- Risk working paper
- Proof designated

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Customer Due Diligence – risk assessment work paper

Name of client *Dublin Pottery Limited*
Address *Glasneven Road*

Year end *12/15* (when CDD first performed) performed by *A. Auditor*
Updated and by

Name of Directors/Principals
Jack Pottery
Mary Pottery
Beneficial owners (if different)
Same

Matters to consider

- Long established client, well known to the practice
- New client in low or medium risk business
- New client is cash or other high risk business
- Irish residents
- Non Irish residents
- Client with foreign language identification documents
- Non cash business or low risk business
- Mainly cash business or medium risk business
- High value cash business or with transactions over 15k
- Politically exposed persons
- Import and export business with lack of controls

Designated entity itself (bank, quoted company, solicitor etc...)
(H = High risk indicator, M = Medium, and L = low risk indicator)

Assess the overall risk of the client based on the above. Generally one H or one M will render the client high or medium risk respectively, but professional judgement should be applied in all cases.

Standard CDD Simplified CDD Enhanced CDD


Have known the clients for 10+ years, know where they live

CDD to be obtained - choose one

- Proof of address only
- Address and photo identification – 1 of each
- Address and photo identification – 2 of each and if not photocopied by the firm, certified true copies

Plus

- Short note as to business history and profile
- Detailed note as to business history and profile
- For designated entity – proof they are designated

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Customer Due Diligence – risk assessment work paper

Name of client *Dublin Pottery Limited*
Address *Glasneven Road*

Year end *12/15* (when CDD first performed) performed by *A. Auditor*
Updated and by

Name of Directors/Principals
Jack Pottery
Mary Pottery
Beneficial owners (if different)
Same

Matters to consider

- Long established client, well known to the practice
- New client in low or medium risk business
- New client is cash or other high risk business
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- Non cash business or low risk business
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Designated entity itself (bank, quoted company, solicitor etc...)
(H = High risk indicator, M = Medium, and L = low risk indicator)

Assess the overall risk of the client based on the above. Generally one H or one M will render the client high or medium risk respectively, but professional judgement should be applied in all cases.

Standard CDD Simplified CDD Enhanced CDD


New clients, but known in the area, no special risk.

CDD to be obtained - choose one

- Proof of address only
- Address and photo identification – 1 of each
- Address and photo identification – 2 of each and if not photocopied by the firm, certified true copies

Plus

- Short note as to business history and profile
- Detailed note as to business history and profile
- For designated entity – proof they are designated

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Customer Due Diligence – risk assessment work paper

Name of client *Credit union limited*
Address *Dublin Airport*

Year and *12/15* (when CDD first performed) performed by *A. Auditor*
Updated and by

Name of Directors/Principals
Board changes annually, manager is Mr C U Lator

Beneficial owners (if different)
The members of the CB

Matters to consider

- L Long established client, well known to the practice
- M New client in low or medium risk business
- H New client is cash or other high risk business
- Irish residents
- Non Irish residents
- Client with foreign language identification documents

- L Non cash business or low risk business
- M Mainly cash business or medium risk business
- H High value cash business or with transactions over 15k

- H Politically exposed person
- H Import and export business with lack of controls

- Designated entity itself (bank, quoted company, solicitor etc.,)
(H = high risk indicator, M = Medium, and L = low risk indicator)

Assess the overall risk of the client based on the above. Generally one H or one M will render the client high or medium risk respectively, but professional judgement should be applied in all cases.
Standard CDD simplified CDD Enhanced CDD

CDD to be obtained - choose one

- Proof of address only
- Address and photo identification – 1 of each
- Address and photo identification – 2 of each and if not photocopied by the firm, certified true copies

Plus

- Short note as to business history and profile
- Detailed note as to business history and profile
- For designated entity – proof they are designated

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Customer Due Diligence – risk assessment work paper

Name of client *Al-Zaeda Limited*
Address *Syria*

Year and *12/15* (when CDD first performed) performed by *A. Auditor*
Updated and by

Name of Directors/Principals
Ayman al-Zawakiri
Khaled al-Habis

Beneficial owners (if different)
The estate of Osama Bin Laden

Matters to consider

- L Long established client, well known to the practice
- M New client in low or medium risk business
- H New client is cash or other high risk business
- Irish residents
- Non Irish residents
- Client with foreign language identification documents

- L Non cash business or low risk business
- M Mainly cash business or medium risk business
- H High value cash business or with transactions over 15k

- Politically exposed person
- Import and export business with lack of controls

- Designated entity itself (bank, quoted company, solicitor etc.,)
(H = high risk indicator, M = Medium, and L = low risk indicator)

Assess the overall risk of the client based on the above. Generally one H or one M will render the client high or medium risk respectively, but professional judgement should be applied in all cases.
Standard CDD simplified CDD Enhanced CDD

CDD to be obtained - choose one

- Proof of address only
- Address and photo identification – 1 of each
- Address and photo identification – 2 of each and if not photocopied by the firm, certified true copies

Plus

- Short note as to business history and profile
- Detailed note as to business history and profile
- For designated entity – proof they are designated

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Anti-Money Laundering – CDD refused

If non-cooperating with CDD – don't act.

Take advise

May need to make a report to Garda and Revenue

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The requirements for accountants in summary

1. Customer Due Diligence
2. monitor clients
3. report to Gardai and Revenue
4. adopt policies & procedures
5. conduct on-going training
6. keep records


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Anti Money Laundering Reporting Officer

- Status-principal?
- Backup person
- Ability to see all firm's records
- Power to make things happen
- Point of contact with authorities
- Represents the firm
- Needs enhanced training

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Anti-Money Laundering

The Offences

- Offence of Failing to Report
- Prejudicing an Investigation
“Tipping-Off”

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Tipping Off

It is OK to say:

- “...you need to correct the VAT underpayment now...”
- “... Revenue will charge you interest and penalties when they catch you...”
- “... we need to go to Revenue and make a voluntary disclosure before you are caught...”
- “...Revenue will find out...”
- “...fix it or I resign as your accountant...”

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Tipping Off

It is not OK to say:

- “...I have an obligation under AML to report you ...”
- “...tax fraud has to be report to Revenue...”

- You may discuss your obligations to report to ODCE
- You may discuss your obligations to report under the 2001 and the 2011 Acts – but I recommend you don’t

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Anti-Money Laundering

Knowledge and Suspicion

- knowledge, suspicion or reasonable grounds for suspecting
- no definition of knowledge or suspicion in Act

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Anti-Money Laundering

Knowledge and Suspicion

- Actual knowledge
- Shutting one's mind to the obvious
- Deliberately not asking questions when you think you may not like the answers
- Knowledge of circumstances which would indicate the facts to an honest and reasonable person
- Circumstances that would make an honest and reasonable person make enquiries

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Anti-Money Laundering

Knowledge and Suspicion

- Do not read something sinister into every little action
- Must have some grounds for believing wrong doing
- Never conclude “He’s fromso...”
- Never conclude “Everyone in that line of business is at it”
- Suspicion is not professional scepticism

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Anti-Money Laundering

Knowledge and Suspicion – examples

- the value of the property concerned is out of proportion to the income
- Sale at overvaluation or an undervaluation
- The use of false names
- Unidentified third party involved
- concealed or disguised the true nature of transaction

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Anti-Money Laundering

Reporting

- Gardai & Revenue
- Report as soon as is practicable after
 - gaining the knowledge
 - forming the suspicion, or
 - acquiring the reasonable grounds for suspicion
- Consider other reporting requirements as well

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Reporting

Financial Intelligence Unit (FIU)
Garda Bureau of Fraud
Investigation
Harcourt Square
Dublin 2

Revenue Commissioners,
Underlying Tax Projects Office,
5th Floor, Hammam Buildings,
11-13 Upper O'Connell St.,
Dublin 1


New Online reporting



Print out and send to
Revenue

08/08/2017

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Number of suspicious transaction reports

| | |
|------|--------|
| 2002 | 4398 |
| 2003 | 4254 |
| 2004 | 5491 |
| 2005 | 10,735 |
| 2006 | 10,402 |
| 2007 | 11,145 |
| 2008 | 14,505 |
| 2009 | 14,400 |
| 2010 | 13,416 |
| 2011 | 11,168 |
| 2012 | 12,390 |
| 2013 | 15,242 |
| 2014 | 18,302 |
| 2015 | 21,685 |
| 2016 | 23,308 |

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Anti-Money Laundering

“I wish to make a report under Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013.”

- Stick to facts
- “....this led me to form a suspicion that...”

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Quick Definition

Professional Privilege Reporting Exemption

“If a relevant professional adviser considers that the information or other matter on which his knowledge or suspicion is based came to him in privileged circumstances, he is obliged to apply the privilege reporting exemption in Section 46(2) (unless the criminal purpose exception applies) and so has no discretion to make a money laundering or terrorist financing report”


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Professional Privilege Reporting Exemption Rules

1. relevant professional advisers
2. privileged circumstances?
3. criminal purpose

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Professional Privilege – simple tax evasion

Professional Privilege may be available if:

- Issue has been fixed
- All outstanding tax has been paid

Professional Privilege is not available if:

- You have a suspicion that some tax has not been paid

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Professional Privilege

Text of the Act

“Nothing in this Chapter requires a relevant professional adviser to disclose information that he or she has received from or obtained in relation to a client in the course of ascertaining the legal position of the client”

...Get legal opinion

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Anti-Money Laundering

Post Reporting

- Stop acting until report made
- Don't necessarily volunteer additional information
- Don't tell the client you reported them


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The requirements for accountants in summary

1. Customer Due Diligence
2. monitor clients
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Anti-Money Laundering

- It is recommended that a procedure is put in place such that all details of internal reports are held other than in client files


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Ceasing to act

- Don't tip off and incoming advisor
- An incoming advisor is required to carry out their own ML procedures

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6. keep records

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Anti-Money Laundering

Training

- Train
- Don't forget new staff
- Don't forget the client account dangers
- Keep records of all training
- Face-to-face, study, e-learning, video etc
- Get staff acknowledgment of training

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Anti-Money Laundering

Record Keeping,

- customer due diligence
- supporting evidence
- kept for five years after the end of a relationship,
- records of transactions, kept for five years

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Anti-Money Laundering

Client money transactions:

- Verify source of cash
- Ensure that the account is not used for laundering


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What about NI based clients?

- Reporting requirements are the same
- Location of the report based on your location
- You may need to report twice


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Audit and Accounting Issues

- Audit Reports
- Professional clearance letters
- Reports to CRO / IAASA associated with auditors resignation
- Consider legal advice
- Talk to Gardai & Revenue

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Supervisory Authority

All designated persons under the 2010 Act will be subject to supervision and monitoring by a “competent authority”. The competent authority for members of CCAB-I bodies, who are in business as external accountants, auditors and tax advisers, is the relevant CCAB-I body

It is possible that there may be more than one competent authority (such as the Central Bank of Ireland)

These authorities shall effectively monitor the designated persons and ensure they are compliant

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Anti-Money Laundering

Who else is prescribed under the Regulations?

- Auctioneers
- Estate Agents
- Solicitors-some transactions
- Persons providing money remittance services...

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Anti-Money Laundering

Who else is prescribed under the 2003 Regulations?

- A dealer in high value goods, including precious stones, precious metals and works of art, where payment is made in cash for a sum of €15,000 or more
- Casinos (monitory threshold = €2,000)
- CDD on €1k or more wire transfer

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More information

www.accaglobal.com/technicalireland

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