

ANTI-MONEY LAUNDERING: THE BASICS

Installment 5: Tax Advice



Tax advice is one of the most common services that accountants provide, so they must be aware of and alert to the multiple ways in which tax services may be vulnerable to money laundering. Tax structuring could be used to hide criminal proceeds, or to evade tax on legitimate income. Accountants providing tax compliance services may become aware of clients seeking to misrepresent their true earnings or assets.

How do criminals use tax advice?

Structures that are set up for legal tax mitigation purposes can also enable the movement of assets or cash, which could include proceeds of crime.

Criminals may pose as individuals seeking tax advice to place assets out of reach in order to avoid future liabilities.

Legal tax minimisation work can also stray into illegal tax evasion. The proceeds of tax evasion are criminal and therefore a professional accountant's involvement with these funds could be a money laundering offence.

The tax system itself could be used to legitimize the proceeds of crime through the payment of tax on criminal profits, as if they were genuine trading income.

What does a Risk Based Approach look like?

In any provision of tax advice services, a professional accountant should consider:

- What is the commercial, family or personal rationale for the tax planning?
- Who will benefit?
- Does the client have a history of non-compliance with their tax affairs or have they been investigated by the tax authorities for fraud?
- Does the likely success of the planning rely on an unrealistic interpretation of the tax law such that it risks being seen as tax evasion?
- Will the tax services involve jurisdictions that are considered high risk for money laundering – FATF publishes a list of such countries.
- Will the tax services involve the creation of complex structures which may make it difficult to identify the ultimate beneficial owners.

Voluntary Tax Compliance Programs (sometimes called “tax amnesties”) raise unique money laundering concerns. Accountants engaged in providing services related to these should consider the FATF's [Managing the Anti-Money Laundering and Counter-Terrorist Financing Policy Implications of Voluntary Tax Compliance Programs Best Practices Paper](#).

Case Study on Tax Evasion

An accountant is engaged in tax compliance work for a long-standing client who is a wealthy individual. The accountant asks the client for more detail on some income that arose in the year from a new investment. He puts the accountant in touch with his investment adviser.

When contacting the adviser, she says “I’ve got a breakdown of that I can send you, did you also want the details of the Swiss bank accounts?” This is the first time the accountant has heard of these accounts, and the income from them has never been featured on the tax returns the accountant has prepared for the client. The accountant asks the adviser if these are new accounts – she replies “oh no he’s had these for ages, he opened the accounts when his father died about 10 years ago and he received the proceeds of the Italian estate.”

The accountant raises the existence of the Swiss accounts with the client, who says they didn’t think they needed to include any of the income from those. And anyway, they had thought it best to keep the money out of sight of the tax authorities so they wouldn’t come asking for death duties.

The accountant explains to the client that they need to correct the position – both for the underdeclared income and the death duties. The client says they will get around to it, but several months later nothing has been done despite the request, and the tax return the accountant drafted is missing the Swiss income.

The accountant determines that they can no longer serve the client, as the accountant would then knowingly be helping the client commit tax evasion. The accountant filed a Suspicious Activities Report (SAR) with their local Financial Intelligence Unit.

Key Red Flags

- A suggestion from the client or their other advisers that some of the pertinent facts are hidden from the tax authorities, or a suggestion that inaccurate or misleading information is provided.
- Undue secrecy of the arrangements, beyond a normal level of confidentiality or unusual contractual arrangements.
- The key beneficial owners of the assets or entities involved is unclear.
- Links to politically exposed persons.
- Adverse media on the client or their associates.



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Case Study on Tax Structuring

A new client is introduced to an accountant by a lawyer whom the accountant has met a few times. The lawyer says Mr Xavier is a successful businessman from South America who wants advice on structuring his assets before he becomes tax resident in the accountant’s jurisdiction.

The accountant has an introductory meeting with Mr Xavier and asks about his background and financial success. Mr Xavier is very vague and says most of the money is from some successful deals to which his brother introduced him that involved commodity brokering.

Mr Xavier says it is very important that the structure set up is private and that nobody could trace that he is the owner of the assets, especially in his current home country, where a former business associate of his brother is trying to cause trouble by alleging he is involved in some nonsense about forced labour in mines. Mr Xavier also says the work is very urgent as he has a visa application in progress.

Considering the lack of details that Mr Xavier was willing to provide regarding the source of wealth, his insistence on secrecy, and his pressure to rush the service, the accountant decided that there was an unacceptable money laundering risk in serving the client.

The accountant filed a Suspicious Activities Report (SAR) with their local Financial Intelligence Unit.

*Note: names and jurisdictions have been changed to preserve confidentiality.

When to Walk Away

- If it is clear that the client intends to evade tax, or to lie to or mislead the tax authorities. Professional Accountants must comply with all relevant laws and regulations, and not be associated with misleading information.
- If you are concerned that the client is using a facade of tax mitigation as cover for their true intention of passing criminal proceeds through a corporate or other structure.

Filing a Suspicious Activity Report (“SAR”)

If you become suspicious that the client has evaded tax, or may hold proceeds of crime, then you may wish to report your suspicions to the local Financial Intelligence Unit. In some jurisdictions this is a legal obligation for professional accountants.

ADDITIONAL ASSISTANCE



For general guidance, see the FATF’s *Guidance for a Risk-Based Approach for the Accountancy Profession*. For detailed local information, including applicable regulatory requirements, contact your Professional Accountancy Organization.



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