Institute of Financial Accountants

Corporate

Consultation on the Money Laundering Regulations 2017

Response to Consultation

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Introduction

1. The Institute of Financial Accountants (IFA) welcomes the opportunity to comment on HM Treasury's consultation on the Money Laundering Regulations 2017 issued on 15 March 2017.

2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

3. Information about the IFA is given below.

Who we are

4. Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small- to medium-sized enterprises or in micro and small- to medium-sized accounting practices advising micro and SME clients.

5. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.

6. The IFA is part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with 35,000 members and students in 80 countries.

7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.

8. We offer a programme of professional qualifications and education as well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.

9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession and is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications. It is also authorised by HM Treasury and the Financial Services Authority in the Isle of Man as a supervisor to monitor its members for compliance with the Anti-Money Laundering regulations in the UK and the Isle of Man. General Comments

General comments

10. We acknowledge that the Money Laundering Regulations 2017 are clearly in the public interest and on this basis, wish that the proposed amendments proceed but note however, that there are matters worthy of further reflection prior to its passage into law.

11. We acknowledge that the accounting profession along with other professional bodies have an important role to play in safeguarding what some call the 'legitimate economy'[1] and it is in this spirit that we respond to this proposed regulation. It is important to further note that while the government seeks to ensure it implements new regulation to bring the law into alignment with the European Union's directive, there are initiatives already taken by accounting professionals that can be readily used as a

[1] Consultative Committee of Accountancy Bodies (2016) Fighting Economic Crime: A manifesto, CCAB Ltd, London, United Kingdom

part of the regulatory framework. The guidance statement issued by the Consultative Committee of Accountancy Bodies in 2008 on *Anti-Money laundering Guidance for the Accountancy Sector* provides a useful starting point for any necessary changes for the development of guidance for small to medium practices that are required to comply with the regulations currently being developed.

12. Our comments on the draft regulations that HM Treasury has prepared for introducing into law, are limited to issues of concern to the accounting profession and the membership of the IFA. We note however that the following areas will not be discussed in our current submission:

    a. Gambling providers

    b. Electronic money

    c. Estate agency business

    d. Correspondent banking

13. Our remarks on a range of matters not specifically covered in the consultation questions follows.

Consultation process

14. The consultation period for the Money Laundering Regulations 2017 was unacceptably short, especially in the light of the other requests being made at the same time including the initial evidence for the National Risk Assessment, supporting and promoting the Home Office Flag it Campaign, Supervisory Regime consultation and the Supervisory Returns.

15. Not only is the timing of the consultation less than ideal in light of the other demands from supervisors on AML/CTF, HM Treasury does not appear to have adhered to the government's consultation principles , in particular regarding the amount of time for the consultation and the fact that the supervisory bodies being consulted may require additional time given all the other demands being placed on them in addition to other day to day commitments.

16. As a result of the above, the IFA reserves the right to submit additional comments to HM Treasury regarding the Money Laundering Regulations 2017 which we hope will be taken into account.

Gold Plating

17. The Accountancy Affinity Group (AAG), of which the IFA is a member, has identified a number of areas which exceed the requirements of the EU Fourth Money Laundering Directive or are HM Treasury's interpretation of particular requirements. These areas relate to criminality testing, body corporate information, trust register, TSCP register, PEP definition, privilege and supervision. Given that these areas are "gold plating" the EU requirements, we would strongly urge HM Treasury to re-consider these areas in the interests of reducing the burden on business. Therefore, HM Treasury is asked to consult further on these areas which are not part of specific questions in the consultation document.

Thresholds

18. A further matter worthy of attention is for the HM Treasury to consider building into the regulation a *sunset clause* that requires a periodic review of the relevant thresholds and which therefore institutionalises a process for regular review of thresholds. For example, the government's proposed adoption to increase the turnover threshold to £100,000 may be considered appropriate for the purposes of the current regulation today but it may not be appropriate in the future. The basis of the increase may be using the rate of inflation at that point in time or by using a percentage or fractional movement in a marketplace index such as the consumer price index.

19. Changes in any laws or regulations that relate to turnover thresholds need to be handled with a degree of caution. Frequent changes to thresholds that appear to be too frequent, may be regarded as

increasing the level of uncertainty amongst those required to administer compliance with the regulation. To minimise uncertainty to those individuals and entities required to comply with this legislation, this increase in the turnover threshold level to £100,000 GBP should remain constant over a reasonable period of time (e.g. 3 years 5 years) before any further increases are considered to the turnover level.

Guidance

20. The CCAB Anti-Money Laundering guidance for the accountancy sector, which has been approved by HM Treasury will need to be updated when the Money Laundering Regulations 2017 are issued. While the IFA is aware that work has been undertaken to update the CCAB guidance, the final guidance has not been finalised which will have an impact on all of the accountancy sector. This guidance will be essential for firms to develop and update their risk assessments, policies, procedures, internal controls, systems and so on.

21. Furthermore, it is our understanding that the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) will be approving sector guidance going forward. OPBAS will not be fully operational until the start of 2018. Therefore, the IFA would like clarification on how the approval process will work for sector guidance, given that there will be a need for the guidance to be finalised and approved prior to OPBAS being fully operational.

Implementation

22. Time is now running short for the implementation of the Money Laundering Regulations 2017. All businesses covered by the new regulations which will be effective on 26 June 2017, will have to make changes to their policies, procedures, controls and systems as will supervisory authorities such as the IFA. However, at the time of writing, not only have the draft regulations not been finalised nor has the CCAB guidance which interprets law and the regulations for the accountancy sector been finalised, approved by HM Treasury (or OPBAS not yet legally created) and published.

23. In light of the above, the IFA would like to ask for a transition period for businesses and supervisors of at least 3 months to implement the necessary changes required to be fully compliant with the Money Laundering Regulations 2017. It does not seem right that delays by HM Treasury in issuing and finalising the Money Laundering Regulations should have an undue impact on businesses, especially since the government's recent press release stating that it wanted to "remove unnecessary burdens without having a material impact on the fight against money laundering."

Comments on specific questions

24. In addition to our general comments, our comments on specific questions set out in the consultation document are set out below.

Question 1: The government is interested in views on its approach to one-off company formation, including under which circumstances it might be appropriate, as part of the risk-based approach, for trust or company service provider to apply simplified due diligence where it concerns the formation of a single company.

25. As referred to in our previous response to a consultation in this area, we support the government's view that when a trust or company service provider is asked to form a company, this is to be treated as a business relationship whether or not the formation is the only transaction being carried out for that customer

26. As part of a risk-based approach to AML/CTF, we support the availability of being able to use simplified due diligence (SDD) where appropriate for one-off company formation. Nothing has come to our attention that would cause us to change this view in this review of the draft regulations.

27. However, as mentioned in our previous response, setting up one-off companies is likely to be an ancillary activity to the work being undertaken by our members. Therefore, we do not anticipate that many of our members would take advantage of SDD since this type of activity would be part of other types of accountancy services being provided and therefore included as part of an overall risk assessment for the client. Therefore, client due diligence measures would be expected to be undertaken.

28. HM Treasury should note that this requirement in the draft MLR 2017 does not address the issue that any individual can set up a company directly through Companies House with no client due diligence or questions asked.

Question 2: **The welcomes views on its approach to allow SDD only when firms providing pooled client accounts are low risk.**

29. We are disappointed that HM Treasury appears not to have taken into account our previous submission on this matter. As drafted, the draft MLR 2017 specifies factors to be taken into consideration where SDD should still be available, but only applies them where the account is held by an independent legal professional.

30. As referred to in our previous response, our members and other professional accountants also operate client accounts (which are pooled). Client monies are held in a separate client bank account in a financial institution. For example, such a client account may be used for collecting tax refunds from HMRC which are then paid to the client.

31. Therefore the accountancy profession may also provide pooled client accounts. To restrict the draft regulations to the independent legal professionals would not be inappropriate.

32. If our interpretation of pooled client accounts is not correct, we would be grateful if this could be clarified either in the draft regulations or in sector guidance.

33. We support the government's decision to adopt a risk based approach to CDD rather than SDD for pooled client accounts since there was no consensus in this area as a result of the previous consultation on the matter.

Question 3: The government would welcome views on whether the reference to 'at the latest within two workings days' should be included and if not, how long third parties should be given to provide this information.

34. The IFA has in a previous submission highlighted that our members rarely place reliance on another party's CDD, since there are serious consequences in terms of liability should things go wrong. The purpose of CDD is to know and understand a client's identity and their business activities and therefore minimise the risk of AML/terrorist financing. If professional accountants want to rely on CDD measures by another party, a consider level of trust would be needed between parties to ensure that the risk of getting CDD wrong is mitigated. When clients change accountants, the existing accountant of the client may not have any prior knowledge of the new accountant (who may not be a member of a professional body). Therefore, it seems a big ask to trust an accountant who you have never met or had any dealings with, especially when the possible repercussions of getting it wrong could be so great.

35. In spite of the above comment, the government has asked whether a time limit of two days is sufficient for a third party to provide information as part of a due diligence process. The requirement to respond within two workings days is not practical or realistically achievable for the third parties. In addition, we do not think that setting time limits in the draft regulations is appropriate. The length of time given to provide the information should be decided between the parties relying on/being relied on and should be outside of the scope of the draft regulations.

36. If the government is persistent in having a time limit in the draft regulations, perhaps something along the lines of as soon as is "reasonably practicable" which appears in elsewhere in the draft regulations would be more appropriate.

Question 4: The government would welcome views form the sector on the requirement for policies, controls and procedures to be documented.

37. We support the government's view that policies, controls and procedures should be documented, either written or in electronic form.

38. We note that this is an area that was not consulted on by HM Treasury in the previous consultation relating to the transposition of the EU Fourth Money Laundering Directive and perhaps with the benefit of hindsight, it should have been.

39. As drafted, the MLR 20 (1) makes no reference to policies, controls and procedures being proportionate to the nature and size of the entities concerned. This is a requirement of the Article 8 (3) of the EU Fourth Money Laundering Directive.

40. We would urge HM Treasury to incorporate this requirement in the draft regulations. It is essential that the draft regulations are not prescriptive and cater for the different sizes of organisations concerned. Furthermore, the MLR 2017 should not go beyond the requirements of the Fourth Money Laundering Directive in this area since this would create an unnecessary burden on our supervised firms.

41. It is good governance practice to ensure that appropriate guidance to policies, controls and procedures followed by each entity in relation to due diligence processes are outlined in the proposed law. Such documentation however, needs to be accompanied by an appropriate level of staff training and quality control measures for firms obliged to comply with the anti-money laundering regulation.

42. The application by members of the CCAB *Anti-Money laundering Guidance for the Accountancy Sector (*which will have to be updated) on risk management may also be a convenient way of satisfying the government's minimum standard of assessing and managing risk.