

Restricted access

David Stevens explains the important role that accountants have to play in restricting the access of criminals to the legitimate financial system.

TEN SECOND SUMMARY

- 1 Preventing criminals laundering the proceeds of crime or legitimising their activities.
- 2 Risk indicators include complicated activities and unexplained connections with others.
- 3 Data from accountants can identify trends.

Accountants operate as gatekeepers to the legitimate financial system. They have a legal and professional responsibility to ensure that they are not used by criminals to launder their ill-gotten gains or provide a veneer of legitimacy to their operations.

Stephen Briars, a specialist economic crime detective in the City of London Police, says: "We know from the 2017 national risk assessment (NRA) that some accountancy services are attractive to criminals because they may use them to gain legitimacy, create corporate structures and transfer value."

In an ideal world, our client due diligence (CDD) procedures would stop all criminals at the gate, but the reality is that the risk-based approach we are required to adopt is not a guarantee. Many criminals are adept at appearing to be above board – for example, by providing cleverly forged documentation – and there may be situations when, after having been engaged, an accountant becomes suspicious of their client.

If, during the course of their business, a UK accountant has knowledge of, or forms a suspicion of, a crime with proceeds, they are required to file a suspicious activity report (SAR) with the National Crime Agency (NCA).

What is suspicion?

There is little guidance on what constitutes "suspicion" so the concept remains subjective. Some pointers can be found in case law, such as feelings of mistrust or opinions without sufficient evidence. It is more than mere speculation or vague unease, but will often fall short of evidence-based knowledge.

The *Anti-Money Laundering Guidance for the Accountancy Sector* includes the following examples.

- If a suspicion is formed that someone has failed to declare all their income for the

past tax year, to assume that they had done the same thing in previous years would be speculation in the absence of specific supporting information.

- Similarly, the purchase of a brand-new Ferrari motor car by a client's financial controller is not suspicious activity. However, inconsistencies in accounts for which the financial controller is responsible could raise speculation to the level of suspicion.

Further, many of Briars' investigations have raised "red flags" that he believes provide useful risk indicators. These include:

- unusually complicated activity;
- business models that are too good to be true; and
- unexplained connections with other entities and individuals.

Crimes and criminal proceeds

Criminal conduct is behaviour that constitutes a criminal offence in the UK or, if it happened overseas, would have been an offence had it taken place in any part of the UK (subject to specific exceptions).

In some cases, the nature of the criminal conduct may be more obvious, but this is not always the case. Some transactions or activities are so lacking in commercial rationale that they give rise to a suspicion.

Individuals are not required to become experts in the wide range of criminal offences that lead to money laundering; any criminal conduct that results in criminal property is classified as money laundering. Professional scepticism and judgement should therefore be exercised at all times.

Criminal proceeds can take many forms. Cost savings (as a result of tax evasion or ignoring legal requirements) and other less obvious benefits can be proceeds of crime. If criminal property has been used to acquire more assets, these too become criminal property.

Offences associated with SARs regime

Individuals should make sure that any information in their possession that is part of the required disclosure is passed to their money laundering reporting officer or directly to the NCA as soon as practicably possible.

If knowledge or suspicion of money laundering is not reported, the individual may commit the



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criminal offence of failure to report. Further, a tipping-off offence may be committed if:

- an accountant discloses that a SAR has been made and this disclosure is likely to prejudice any subsequent investigation; or
- an investigation into allegations of money laundering is underway (or being contemplated) and the disclosure is likely to prejudice that investigation.

Considerable care must be taken when communicating with clients or third parties after any form of SAR has been made. That said, an innocent error or mistake would not normally give rise to criminal proceeds. If it is believed that a client has acted in error, they should have the situation explained to them. They must then promptly bring their conduct within the law to avoid committing a money laundering offence. No disclosure offence is committed if an accountant attempts to dissuade their client from criminal conduct. Nor is an offence committed when enquiries are made of a client regarding something that properly falls within the normal scope of the engagement or business relationship. For example, if a business discovers an invoice that has not been included on a client's tax return, the client should

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be asked about it. Enquiries should be confined to what is required by the ordinary course of business. No attempt should be made to investigate matters unless to do so is within the scope of the professional work commissioned. It is important to avoid making accusations or suggesting that anyone is guilty of an offence.

The exploitation of SAR information

Many accountants report concerns that they are simply firing SARs into a "black hole", in many cases driven by the lack of feedback upon submitting such a report. While the reality may be different, law enforcement authorities do recognise that better communication is essential.

Once submitted, a SAR is available to be filtered against a range of different databases and can be mined by different law enforcement agencies for a considerable time. Although one key aim of the AML regime is asset recovery, some SARs are helpful in other criminal investigations. An accountant may provide a vital piece of the puzzle that another may have missed.

SARs are the starting point for many police investigations. Widely diverse investigations have been developed from single SARs (such as those into green energy fraud, investment fraud, and virtual currency fraud). The experience of responsible reporting parties in spotting the activity and recording their suspicions is vital to detecting crime and recovering the proceeds of fraud.

SARs are also a great supporting mechanism for crimes reported in more traditional ways. Often a pattern will emerge amongst the SARs records, demonstrating linked accounts and third-party suspects deriving from the main lines of enquiries. SARs can help to identify the distribution of funds from a main offence into numerous transfers across several financial institutions. And even if no criminal investigation ensues, SARs data may still be used to identify trends and patterns, and to develop crime prevention strategies.

Submitting SARs not only protects the reporter, but they can be a critical part of the bigger picture.

FURTHER INFORMATION

2017 National Risk Assessment:
tinyurl.com/ybxzkszo
IFA anti-money laundering and fraud page:
tinyurl.com/y9x32djh
AMLCC:
tinyurl.com/y8vg2bla
Suspicious activity reports:
tinyurl.com/yb89uqs3
Anti-Money Laundering Guidance for the Accountancy Sector:
tinyurl.com/yafvzwub

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