



Staying safe within the money laundering regulations

With the latest budget heralding a clampdown on tax evasion, accountants in practice would do well to consider the first-aider's rule when acting for clients.

Ask any first aider about helping others and the first rule is: don't put yourself in danger when trying to assist others. Think and check before jumping in the water to save the drowning man.

An accounting service provider (practitioner) is subject to the money laundering regulations, which impose obligations of diligence and reporting on the member – where failure to comply can lead to criminal proceedings against the practitioner.

Test the water before entering

The first-aider would look at the water and assess his competency as a swimmer given the turbulent nature of the water. Are these choppy waters too great a risk? For the practitioner, this means that he has to consider his competence in the first instance by assessing the skills and experience he needs to deliver the service the client wants.

Know who you are dealing with

Although this may sound odd, the second thing the first-aider does is communicate and fact-find in order to assess the situation. This may have a bearing on how, or even if, the first-aider can assist.

In money laundering terms this means knowing your potential client, and if it is an entity, then finding out who is behind it and who is taking the benefit from it. Making sure you have a record of that evidence is very important – and your only proof you have complied with the regulations.

Watching for rocks and sharks

The first-aider is ever alert to their surroundings and the changing circumstances to ensure they can react and adapt the rescue plan in order to manage the danger to them or the person they are trying to help.

For the practitioner this means being alert for unusual events and transactions or results that implicate the client as perpetrator, facilitator or victim of a crime. The practitioner needs to ensure and evidence that all staff are trained in money laundering and that all suspicions are reported to the money laundering reporting officer (MLRO) who will make the decision whether to report to the National Crime Agency. Does the MLRO who receives no reports have poorly trained staff, rather than really safe clients?

In addition, the initial client due diligence has to be refreshed each assignment and any changes to the evidence that is relied upon should be recorded. Where is the documentary support that this is still the most appropriate ongoing due diligence? A note confirming consistency with current file data each year should be made.

Consultative Committee of Accountancy Bodies

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Dialling 999

The first-aider should dial 999 before entering the water but may not – and would assess the condition of the person in the water to see whether it was warranted.

The reporting obligation imposed on the practitioner on the other hand is a bit more complex and onerous since it is a crime to fail to report. So when should the practitioner report? The regulations provide that the practitioner must report if, during the course of his business as an accounting services provider he becomes suspicious of there being a crime with proceeds.

Professional scepticism should prevail. While he is not obliged to do anything extra as part of the money laundering regulations, he is required to be aware of the potential for money laundering or terrorist financing. That involves keeping an eye on the transactions during the course of the work and ensuring that they appear consistent with what he would expect to see, given the knowledge of the client.

These transactions might, for example, involve the client's staff stealing from the client, or some sort of tax evasion.

Reports to the MLRO should be monitored and the decision whether to report documented. Where no report is made, this situation is monitored going forward in order to react, should further evidence come to light.

A cry for help with a nasty twist

Where the client comes to the practitioner to say "I've done wrong" (perhaps they have not declared income which is in an undeclared overseas account), and "what do I do?" (seeking advice as to what to do under the law in order to regularise their affairs): does the practitioner help the client and still report them or does he apply the privilege reporting exemption?

This is not the legal privilege we generally think of but a special privilege under the money laundering regulations. It is important to get legal advice confirming the position before taking the decision to report or not.

If in doubt, seek advice from your professional body.

In summary: you should:

- know your client and their business;
- appoint a MLRO and train your staff as to their obligations;
- record and monitor evidence of the client's identity;
- monitor money laundering identity evidence and reporting to MLRO; and
- record evidence of the MLRO decisions to report or not.

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To discuss your money laundering obligations, contact your professional body.
You may also consider investing in a package of AML technical resources and/or attending further CPD on the subject.

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