

TAXRELAY

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Irish Taxation
Institute

Pressing Tax Issues Addressed



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Notes from the Editor

Welcome to this edition of TaxRelay

Our first article provides an overview of the key features of the new **anti-money laundering regime** that you need to know. As these changes are effective from 15 July 2010 it is important that you are aware of your obligations under the new regime.

Secondly, as there have been some significant changes in approach, we have set out the important points you need to be aware of following the publication on 17 June of Revenue's draft regulations on **Mandatory Reporting** and the core provisions within those regulations.

We have included an update on the high earner's restriction further to our article in June's TaxRelay. This follows a number of queries from members. In this feature we provide an overview of what you need to do now in relation to this issue and we are also asking for your feedback on any practical difficulties you are experiencing.

Finally, this month's free TaxCast is presented by Aidan McLaughlin of Independent Trustee Company Ltd. It is part 2 of the seminar "Pension Update 2010" recorded on 26 January 2010. Part 1, presented by Clive Slattery, was given as a free TaxCast with June's TaxRelay.

TaxRelay is produced by the Irish Taxation Institute's Policy and Technical Team; Cora O'Brien, Director (cobrien@taxireland.ie), Shane Wallace, Director (swallace@taxireland.ie), Mary Healy, Manager (mhealy@taxireland.ie) and Laura McTiernan, Consultant (lmctiernan@taxireland.ie) who monitor all tax-related issues affecting members in practice and industry. The team also provides TaxFax to you every Friday.

Should you have any comments or queries on any of the articles in this issue of TaxRelay, please contact the editor, Laura McTiernan at lmctiernan@taxireland.ie.

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Changes to the Anti-Money Laundering Regime

Background

As members will be aware from our ongoing coverage in TaxFax, changes are now upon us as regards the new anti-money laundering regime. The commencement date for these changes was 15 July 2010. Commencement Orders issued to this effect in Iris Oifigúil last Friday.

These changes emanate from the 3rd EU Anti-Money Laundering Directive which all Member States are required to implement and which is now reflected in Irish law by the [Criminal Justice \(Money Laundering and Terrorist Financing\) Act 2010](#). This Act replaces the previous legislation and Regulations (i.e. The Criminal Justice Act 1994, SI 242 of 2003, SI 416 of 2003 and SI 003 of 2004) and contains further detail on the obligations that exist for designated persons. The term designated persons includes tax advisers.

This also means that the current Anti-Money Laundering (AML) Guidelines prepared by ITI will no longer apply. A new set of guidelines will be issued once these have been approved by the Minister for Justice and Law Reform (the Minister), after consulting with the Minister for Finance.

What has changed in the new regime?

Here are the key features of the new regime that you need to know.

» As before, tax advisers must apply customer due diligence (CDD) procedures to their clients in specific circumstances. However, it is no longer sufficient to carry out initial identification and verification. Advisers must now also carry out ongoing

monitoring of the business relationship with customers. The reason is to identify possible activities which are not consistent with your knowledge of the client and their business on an ongoing basis.

» This monitoring or CDD must be done on a risk based approach to provide for better allocation of resources in combating money laundering and the financing of terrorism. Situations which give rise to a higher risk of money laundering or terrorist financing will require “enhanced” due diligence. Whereas, “simplified” CDD will be sufficient where there is a low risk of money laundering or terrorist financing. This is clearly a subjective measure and a difficult area for members. It is something which we will explore more fully in our Guidance Notes when these are finalised and agreed with the Minister. However, the commentary contained in the OECD Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors (available [here](#)) may be of assistance to members in identifying risk categories, in the meantime. While the role and activities of a tax examiner/auditor may not be on “all fours” with the work of an AITI Registered Tax Consultant, the guidance on risk indicators is of relevance.

» Advisers must also identify and take risk based and adequate measures to verify, where applicable, the beneficial ownership of clients. Again, in cases of complex ownership structures, this may be quite an onerous requirement;

» Designated persons are permitted to rely upon the fact that third parties

have already undertaken due diligence measures in relation to a client that has been introduced by the third party. However, the adviser must still undertake ongoing monitoring of these clients. Ultimate responsibility for ensuring compliance with the full customer due diligence obligation still resides with the designated person. In the Bill as initially drafted, the list of relevant third parties that could be relied upon for AML purposes did not include AITI Registered Tax Consultants. This would have created significant practical issues for our members. After considerable representation by ITI, we succeeded in having the list extended to include tax advisers who are members of ITI ([section 40](#));

» [Section 42](#) of the Act is very clear that:

“A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to the Garda Síochána and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds”.

Therefore, tax advisers remain obliged to promptly report suspicions of money laundering or terrorist financing to the Gardaí and Revenue Commissioners. Under the existing regime there is an exclusion from the requirement to make a Suspicious Transaction Report in cases where a tax adviser advises a client in the course of preparing a Qualifying Disclosure under Section 1077E TCA 1997. Again, after extensive work carried out by ITI on your behalf, we have been able to agree with the Department of Justice and Law Reform, that this exclusion will continue in Qualifying Disclosure cases.

- » Another important change with the new regime, is that compliance with anti-money laundering obligations will now be monitored for all designated persons by a Competent Authority. Section 60 of the Act contains the provisions defining who the competent authorities will be for the various types of designated person;

“(2)(b) In the case of a designated person who is an auditor, external accountant, tax adviser or trust or company service provider –

- (i) if the person is a member of a designated accountancy body, the designated accountancy body, or
- (ii) if the person is not a member of a designated accountancy body and is a body corporate, or a body of unincorporated persons, carrying out its functions under this Part through officers, members or employees of it who are members of a designated accountancy body, the designated accountancy body;
- (c) in the case of a designated person who is a solicitor, the Law Society of Ireland;
- (d) in the case of a designated person who is a barrister, the General Council of the Bar of Ireland;
- (e) in the case of any designated person other than a designated person referred to in (a), (b), (c) or (d), the Minister.

This is a complex provision but we have obtained clarification from the Department of Justice and Law Reform that where a firm of accountants is regulated by a designated accountancy body that accountancy body will be the Competent Authority for all designated

persons in that firm (including tax advisers).

All Competent Authorities must effectively monitor the designated persons they are responsible for and they must take steps that are reasonably necessary to secure AML compliance. For members who are monitored by the Department of Justice and Law Reform, the Act provides details of the powers etc of the Department in this regard, including the right to call for information from the adviser, the right to enter their premises etc. We have raised concerns over the scope of these powers and the attendant safeguards for advisers during the course of our representations to government. We will continue to discuss with the Department, how these powers will be used in practice and what the protocols on site visits will be. Members can obtain further detail on the Department’s powers in Part 4 Chapter 8 of the Act.

An Anti-Money Laundering Compliance Unit (AMLCU) has been established within the Department of Justice and Law Reform to administer the functions of a Competent Authority under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. They have published a number of FAQs on their website (click [here](#) to view), including details of what can be expected during a visit from them. We understand that visits for those affected by the AMLCU will begin before the end of the year.

- » Finally, the new Act provides obligations on tax advisers in relation to recordkeeping, staff training and the maintenance of appropriate procedures and controls pertaining to the obligations imposed by the Act.

- » In terms of training, all relevant employees must take part in ongoing programmes to ensure they understand AML procedures within the firm and it is an offence under the Act if the employer does not provide this training. ITI will be providing a free TaxCast to all members in the coming weeks to assist you with your training requirements under the new regime. In conjunction with training on your own internal procedures, this should be of assistance to you.

ITI have prepared a dedicated web page (click [here](#) to view) which will be continually updated with information as developments unfold with the Guidance Notes, training material etc. All members should monitor this page for developments over the coming weeks and months. At present, it contains the legislation, a link to the website of the Anti-Money Laundering Compliance Unit with further information, a link to the OECD Handbook referred to above and Statutory Instruments that we have obtained directly from the Department of Justice and Law Reform.

At a recent meeting of the Money Laundering Steering Committee, a very clear message was delivered by government officials and the Financial Regulator that they expect all designated persons to be aware of the new legislation and to be implementing it as soon as possible after commencement. Guidance Notes for all sectors (including our own) will be following in the coming months. However the law has primacy and given the detail and clarification that is now included in it, we have been requested to advise our members to familiarise yourself with the legislation directly and begin applying it. Please don’t shoot the messenger!

Any member who has questions in this area can contact Cora O’Brien at 6631719 or cobrien@taxireland.ie.

Mandatory Disclosure of Certain Transactions

This is the second Mandatory Disclosure article published in Tax Relay. The first article can be accessed [here](#).

The Mandatory Disclosure regime was first introduced at Committee Stage of Finance Bill 2010, subject to the introduction of Regulations. On 17 June, the Revenue Commissioners published the draft Mandatory Disclosure of Certain Transactions Regulations 2010 (the "Regulations") together with Guidance Notes and a consultation document. The Regulations and Guidance Notes deal with the core issues of who must report, what must be reported and when it must be reported.

The consultation process is due to run until 15 September 2010. Given the potential impact this regime could have, it is important that all tax practitioners familiarise themselves with the legislation (Chapter 3 of Part 33 of the Taxes Consolidation Act 1997), Guidance and Regulations and, if appropriate, put systems in place to identify reportable transactions.

The consultation material is very detailed and the purpose of this update is simply to highlight the key issues to be aware of.

In what circumstances is disclosure required?

Mandatory disclosure is required where:

There is a tax advantage and the main or one of the main benefits of the transaction is the tax advantage

AND

Any one of the following conditions arise:

- » You might wish to keep the transaction confidential from Revenue or from other promoters; or
- » A premium fee could potentially be charged for the transaction; or
- » Standardised documentation is involved; or
- » The transaction falls within a specified class of transactions e.g. converting income to capital.

At present, the scope of the reporting obligation is very broad. In particular the confidentiality and the premium fee hallmarks involve the adviser asking hypothetical questions as to what any promoter would consider in the circumstances.

However we understand that this very broad scope in application is not intended and that the purpose of the regime is to identify particular types of activity. In fact, the Guidance Notes indicate that the disclosure regime is not intended to apply to ordinary day-to-day tax advices. However, ITI believes that tightly focused Regulations would be a preferable approach to a carve-out such as this within the Guidance Notes.

What will the time limits be for disclosing transactions?

A report on a disclosable transaction must be made within 5 days of the applicable trigger date. The trigger date can be one of three potential dates, depending on the nature of the transaction.

For marketed schemes, the reporting obligation will arise on the earlier of two dates, being:

- (i) the date on which a scheme has been fully formed and has been brought to the market, or
- (ii) where the above date falls before 3 April, the date the scheme is made available to a user for implementation.

It is important to note that promoters will be required to disclose proposals for tax planning, even where the transaction on foot of the proposal is never implemented.

For "bespoke" schemes, or client specific advices, it seems that the intended trigger date is the date of implementation of the scheme.

The definitions in the legislation and Regulations in this regard are complex and may be open to different interpretations. ITI will be seeking clarification on this issue during the consultation process.

When will the first disclosures be required?

The first disclosures will probably not have to be made until late October / early November (31 October has been pencilled in as the first reporting trigger date). However, as currently drafted, the disclosure obligation applies to any reportable transactions entered into since 3 April 2010.

ITI is concerned that this could give rise to impracticalities and additional compliance costs and this is one of the issues that we will be raising as part of the consultation process.

What should I do now?

If you are involved in transactions which you believe could be reportable, it would be advisable to read the consultation

material (click [here](#) to download). Penalties of up to €500 per day can apply if you fail to report a transaction under the terms of this regime.

While the Regulations are still in draft form, the reporting rules are “live” and apply to reportable transactions now. As a result, readers should consider what, if any, internal procedures need to be

established for recording and reporting the types of transactions affected.

Consultation Process

ITI has already given feedback on the disclosure regime to Revenue through the TALC process and met with Revenue before the draft consultation material was published. As part of the consultation process, ITI will be making a formal writ-

ten submission and will be meeting with Revenue on behalf of all of our members.

Any feedback or views would be welcome and would assist in formulating our response to the Revenue Commissioners. We will ensure that members are kept fully apprised of any further developments.

High Earner’s Restriction – Take Note!

We have received a number of queries recently from members on the operation of the high earners’ restriction taking account of Finance Act 2010 changes. Readers of TaxRelay will recall that we featured an article on this subject in the June edition of TaxRelay (available by clicking [here](#)).

The changes will increase the number of individuals affected by the restriction for the tax year 2010 and subsequent years. This is therefore an important

consideration for Preliminary Tax payments due on 31 October 2010 (or 16 November for ROS filers). For some clients the restrictions may apply for the first time in light of the lower thresholds and it is important that they are aware of this in particular where they are looking to base their preliminary tax for 2010 on the option of 90 % of their 2010 tax liability. It is advisable to speak with clients at the earliest opportunity as regards the likely impact of the changes for them in order

to give them time to arrange their cash-flow position.

If you have concerns or are experiencing practical difficulties on the operation of the high earner’s restriction, please contact Laura McTiernan at lmctiernan@taxireland.ie with details of your issue.

Recent Revenue publications on the high earner’s restriction are available from the ITI website, click [here](#) to view.

Free TaxCast – Pension Update 2010 (Part 2)

This edition’s TaxCast is presented by Aidan McLaughlin of Independent Trustee Company Ltd. The presentation was recorded on 26 January 2010 and covers the following:

- » Overview – the Changing Landscape
- » The Policy Threat to Pensions:
 - > Tax free lump sums
- » Options for 2010
- » The Market Threat to Pensions:
 - > Defined Benefits
 - > Revenue & Market Developments:
 - > Tax Briefings 74 & 79
 - > Trustee training
 - > PRSAs

Part 1, presented by Clive Slattery, was given as a free TaxCast with June’s TaxRelay.

CPD Hour(s): 1

The TaxCast together with accompanying slides are available [here](#).





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