

# AN ANTI-MONEY LAUNDERING STRATEGY FOR THE INLAND REVENUE

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## **1. Background**

### **1.1 What is money laundering ?**

Traditionally, money laundering has been viewed as the ‘processing’ of all illegal or ‘dirty’ money derived from the proceeds of any illegal activity (e.g. the proceeds of drug-dealing, smuggling, fraud, theft, tax evasion or handling of stolen goods). This takes place through a succession of transfers and deals until the source of illegally acquired funds is obscured and the money takes on the appearance of legitimate or ‘clean’ funds or assets.

Money laundering can be used as a means to disguise the nature of profits generated from many types of criminality. This criminality can be tax evasion and thereby of direct interest to the Inland Revenue. Or it can be other serious forms of criminality, such as dealings in drugs, alcohol, tobacco or people trafficking. These crimes are of interest to others such as Customs and the police, and the Inland Revenue will work with these bodies to ensure that effective and co-ordinated action is taken against those engaged in such activities. In some cases money laundering is used to disguise both tax evasion and other criminality, in which case the Revenue will work with others to investigate and prosecute, sharing information as necessary.

However, the Proceeds of Crime Act 2002 updates, expands and unifies the money laundering offences. The predicate offences, which trigger other money laundering offences, include all criminal acts, irrespective of where in the world they occur.

It is also a money laundering offence to make arrangements to facilitate the use, acquisition or retention of criminal property on behalf of another person. And the definition is extended so that in certain circumstances no process is needed at all to trigger a money laundering offence. All that is needed is the acquisition, use or even possession of criminal property for money laundering offences to apply. So the mere possession of the proceeds of tax evasion in someone’s wallet is sufficient for money laundering to have taken place. The definition has clearly been extended some way beyond traditional views of what money laundering is like.

A recent government estimate suggested that annually around £25 billion of criminal money might be available for money laundering in the UK.

### **1.2 The Inland Revenue’s role within the Government’s Anti-Money Laundering Strategy:**

The Inland Revenue has agreed its core role within the Government’s wider anti-money laundering strategy to be:

an investigatory and prosecuting body in the laundering of the proceeds of tax, national insurance contributions or tax credit fraud

further, we have agreed within the detail of that strategy that:

Inland Revenue has a role in the detection and investigation of money laundering. Investigation and prosecution by the Revenue is directed at combating the laundering of the proceeds of tax, national insurance contributions or tax credit fraud, with particular emphasis on professionals who facilitate tax evasion. Where money laundering offences

relate to wider criminality beyond tax evasion, the Revenue discloses this information to the appropriate law enforcing authority.

So our agreed role is partly one of investigation and prosecution and partly one of enabling others in law enforcement to achieve their objectives in countering money laundering. We will disclose information to them if it is legally possible to do so and we seek to find ways to disclose rather than reasons not to.

The legislative gateway to allow for this is in the Anti-Terrorism (Crime and Security) Act 2001, section 19. It is Revenue policy to make such disclosures. It will do so in accordance with the Memoranda of Understanding agreed with other law enforcing organisations and with its published Code of Practice governing such disclosures.

Further, we will take a positive approach to sharing our particular expertise in financial investigation, which is a valuable resource, potentially of significant use to others countering money laundering. As a part of this commitment to sharing our expertise, we will consider the scope for seconding our staff to other organisations.

## **2. Roles and Responsibilities within Government**

The lead organisations within Government and their core responsibilities are:

- a) HM Treasury leads for the UK in international bodies (e.g. FATF), issues the Money Laundering Regulations, and is responsible under the Proceeds of Crime Act for approving guidance notes produced by industry.
- b) Home Office is responsible for the UK primary legislation setting out the criminal law on money laundering and terrorist financing.
- c) The Financial Services Authority devises and enforces the Rules. It also has powers to bring criminal prosecutions for breaches of the Money Laundering Regulations (but not the primary money laundering law).
- d) The Financial Intelligence Division of the National Criminal Intelligence Services (NCIS) is the Financial Intelligence Unit (FIU) for the United Kingdom. It is the central, national unit responsible for receiving, analysing and disseminating Suspicious Activity Reports (SARs) in the UK.
- e) Police forces are responsible for investigating money laundering and terrorist financing cases. HM Customs and Excise is both an investigatory and prosecuting body for money laundering, drug trafficking, indirect tax fraud and a number of other assigned matters. Customs operates the supervision of MSBs and will supervise dealers in high value goods under the Money Laundering Regulations 2003.
- f) CPS, SFO and Customs are all prosecuting authorities. SFO prosecute money laundering cases where the underlying predicate offence involves serious or complex fraud. Customs have prosecution powers in relation to drug trafficking and indirect tax fraud with the CPS dealing with other cases (and fraud/drug cases investigated by the police).

g) The Foreign and Commonwealth Office is responsible for providing technical assistance to priority countries, and helping to implement international anti-money laundering standards through FATF-style regional bodies.

h) The Money Laundering Advisory Committee (MLAC) provides a forum for key stakeholders to co-ordinate the AML regime and review its efficiency and effectiveness. It examines industry produced guidance notes and makes recommendations prior to submission for government approval.

i) Joint Money Laundering Steering Group (JMLSG) prepares, publishes and promotes industry guidance on the prevention of money laundering for the financial services industry. It provides a forum for the sharing of information and represents the financial services industry in discussion with government and regulatory bodies.

### **3. The Inland Revenue's prosecution policy**

As described above, the Inland Revenue's involvement in tackling money laundering is limited to those cases in which tax evasion is a feature. The Proceeds of Crime Act 2002 creates a new mirror offence of money laundering when someone commits tax evasion, even in the absence of any transfer of movement of these funds.

So the Inland Revenue is interested in money laundering because of the underlying tax evasion which may exist. There are also instances whereby funds are moved or transferred and complex financial structures are created. The intention may be to disguise the true nature and source of money, which is in reality the proceeds of tax evasion. The Revenue has an important role to play in detecting and investigating any such arrangements.

The new offences of money laundering create further options under which to charge a tax evader. The commonly used charges for tax evasion are False Accounting or the common law offence of cheat. A new offence of being knowingly concerned in the fraudulent evasion of income tax was created in the Finance Act 2000.

Where these cases fit the Board's prosecutions policy, a criminal investigation may be carried out by the Special Compliance Office (SCO). Prosecutions are carried out in serious cases across the range of offences and in all the areas of law for which the Board are responsible. The Board operate a policy of selective prosecution intended to bolster their overall enforcement strategy. The focus is on cases where prosecution will do most to promote compliance with the law by deterring tax, contribution and tax credit fraud. So criminal sanctions are used in those cases which counter identified risks to the compliance base. This is an important theme of the emerging departmental compliance strategy.

An exemplary approach is adopted, with publicity given to successful cases, providing a message that no tax evader should feel immune from criminal prosecution. The exception is only in those cases in which taxpayers come forward, voluntarily and unprompted, and make a full disclose of their evasion.

The Board's criminal prosecution policy for money laundering offences will follow these same principles.

### **3.1 *The Revenue's role as a prosecutor***

Where there are mixed cases of tax evasion and other money laundering offences, the Revenue will investigate the matter to the extent that there is tax evasion and it will disclose the other matters to other organisation to investigate further.

The Revenue will support other parts of U.K. Government in their efforts to tackle crime. The Revenue is a law enforcing organisation and a prosecuting body in its own right in England and Wales. It will investigate and prosecute in cases of money laundering which involve tax evasion and will offer co-operation and assistance to others investigating and prosecuting other money laundering offences where the law, its Memoranda of Understanding and Codes of Practice enable it to do so.

The Revenue is a signatory to the Convention between prosecuting authorities agreed on 11th February 1998 and published through a response by the Attorney General to a Parliamentary Question on 8th April 1998. Within this Convention are principles agreed between prosecuting authorities about co-ordination and co-operation in the circumstances of two or more prosecuting authorities considering action against the same individual for related offences.

The Attorney General confirmed in his response that proceedings brought by the Crown Prosecution Service will ordinarily encompass charges relating to tax evasion only in circumstances where that is incidental to allegations of non-fiscal criminal conduct.

We have agreed with other prosecuting bodies about how we will treat cases of serious tax evasion and associated money laundering. In particular, we have reached agreement, in principle, with the Crown Prosecution Service, the Serious Fraud Office and the Financial Services Authority that in cases in which the only predicate offence is tax evasion, then the Inland Revenue and its Special Compliance Office will be the investigating body. The Board of Inland Revenue will be the prosecuting body and its published prosecution policy will remain unaffected.

But for those cases in which there is both tax evasion and some other criminality, these other prosecuting authorities can give no undertaking that they will not prosecute for the money laundering offences, irrespective of the approach taken by the Inland Revenue to the predicate tax evasion offences.

### **3.2 *Roles and responsibilities within the Inland Revenue***

CCP will be responsible for overall co-ordination of the Revenue policy and strategy on countering money laundering. It will work with others on the departmental Working Group to monitor developments, the management of risks and progress made.

SCO is the only part of the Inland Revenue which conducts criminal investigations and its staff are trained in the conduct of such investigations accordingly. So criminal investigations into acts of money laundering which are predicated by tax evasion are to be carried out by SCO. SCO's Anti-Money Laundering Unit is the focal point for such investigations and the delivery of other aspects of the Inland Revenue's anti-money laundering strategy, including the sharing of information and expertise.

SCO will work with the Inland Revenue Solicitor's Office, who prosecute offenders on behalf of the Board of Inland Revenue, which is a prosecuting body in its own right in

England and Wales. Cases in Scotland and Northern Ireland are prepared for criminal prosecution and referred to the Procurator Fiscal and the Director of Public Prosecutions respectively, so that these bodies may consider whether they wish to proceed with a criminal prosecution.

SCO and the Solicitor's Office will work with policy administrators in Cross-Cutting Policy (CCP), who own the prosecution policy and maintain it on a delegated basis, on behalf of the Board of Inland Revenue. CCP has the role of signing Board's Orders to proceed with a criminal prosecution, having regard to investigation reports from SCO and legal advice from the Solicitor's Office. CCP applies a public interest test, as set out in the Code for Crown Prosecutors. Once this test is satisfied, CCP will issue a Board's Order. So each case involves three parts of the Inland Revenue. This tri-partite working has a proven track record, in ensuring a high standard of cases being put before the criminal courts.

### **3.3 Professional Advisers**

The Inland Revenue will seek to prosecute accountants, tax advisers and other professionals who assist their clients, or who act in their own capacity, to evade tax through means of money laundering activities. Professionals are an important stakeholder in the process of ensuring that taxpayers pay the right tax at the right time and the Inland Revenue places great reliance on the integrity of these professionals who act on behalf of their clients.

The Financial Action Task Force on Money Laundering noted in its 2000/01 report that "Lawyers, notaries, accountants and other professionals offering financial advice have become the common elements to complex money laundering schemes. The trend is mentioned by almost all FATF members". The report goes on to note that one consequence of the continuing efforts of governments to combat money laundering is an increasing complexity of schemes being operated, increasing the need for the involvement of a professional adviser.

So advisers who enable tax evasion offences are key to the success of these crimes. It is appropriate for the revenue authorities to target them as "centres of infection".

The Proceeds of Crime Act 2002 requires certain reports from those in the regulated sector, which will include accountants, tax advisers and other professionals from March 2004. These reports are of their suspicions or knowledge of money laundering of their clients, which may include tax evasion offences. Reports should be sent to the National Criminal Intelligence Service as soon as is practicable after the suspicion or knowledge arises. Making a report is a defence against certain money laundering offences outlined earlier.

When these professionals fail to make a report they commit an offence and may be the subject of a criminal investigation and a subsequent criminal prosecution. The Inland Revenue will take the lead in the investigation and prosecution if the predicate offence of the client is tax evasion and the adviser has failed to report this.

A further offence provided for in the Proceeds of Crime Act 2002 is one of tipping off. A professional adviser is not only obliged to report his or her knowledge or suspicions, but they must not inform the subject of the report that they have done so. Any action which prejudices a related criminal investigation is an offence of tipping off under this part of the Act.

For each of the offences outlined in this part of the strategy and in earlier sections, where the predicate offence is tax evasion, the Inland Revenue will take the lead in countering such offences. It will have regard to this strategy document and to its published prosecution policy in deciding which cases to pursue criminally. SCO's dedicated anti-money laundering unit will take the lead within the Inland Revenue in conducting a criminal investigation.

### **3.4 International dimension**

The UK has taken a leading role in promoting the strengthening of links between tax and anti-money laundering authorities. In May 1998, following a UK initiative, G7 Finance Ministers urged OECD to give particular attention to improving the availability of information to tax authorities in order to curb international tax evasion and avoidance. OECD proposed a two prong initiative:

- first, to ensure that financial institutions report all suspicious transactions to the money laundering authorities, including transactions which are (or believed to be) related to tax crimes. Work on this proposal was pursued by the Financial Action Task Force
- second, to increase the flow of information from money laundering authorities to tax authorities, nationally and internationally, without undermining the effectiveness of anti-money laundering systems. Work on this continues to be pursued by OECD's Committee of Fiscal affairs.

The UK, including the Inland Revenue, has actively participated in initiatives to take these two themes forward and will continue to do so. The aims have included sharing experiences, to enable representatives to share information on some of the mechanisms used for both money laundering and tax evasion.

## **4. Strategic Themes**

### **4.1 Identification and countering of risks**

In line with its broader strategic approach to achieving compliance, the Inland Revenue will identify the risks posed through money laundering. It will identify ways to counter these and it will allocate resources accordingly.

### **4.2 Maximising effective use of information provided to the Inland Revenue**

The revised definition of money laundering to include all acts of tax evasion which generate a financial gain, means that all information gained by the Inland Revenue for the purposes of tackling tax evasion also has usefulness in tackling money laundering offences. So the strategic use of information to tackle tax evasion is effectively mirrored by its use for counter-money laundering purposes. All information powers which are used to tackle tax evasion are relevant here.

A considerable volume of information about tax evasion is expected to be provided by accountants, auditors and tax advisers. This information will be directly relevant to the Revenue in its efforts to tackle tax evasion as it will necessarily concern the professional's knowledge or suspicions or their clients tax evasion.

The offence has been provided for in order for Government bodies to counter money laundering. But the commonality of the money laundering and tax evasion offences means that the Revenue will be able to receive and make use of reports which are purely to do with tax evasion offences.

The reports will be submitted to the National Criminal Intelligence Service (NCIS) in the first instance. NCIS will carry out checks using their other information sources and analytical techniques to identify links to any other wider criminality. NCIS have advised that these reports will carry valuable information about what those suspected of serious crimes are doing with their finances.

If NCIS are satisfied that no wider criminality is evident and that the suspected offences are limited to tax evasion, they will pass the information onto the Inland Revenue and Customs and Excise as appropriate. The revenue departments will work together to share this information and add value to each other's information wherever possible.

Special Compliance Office Intelligence Group will be the receiving point within the Inland Revenue for all information provided by NCIS. SCO will analyse the information and route appropriate cases to other parts of SCO. They will also sanitise the information before passing it onto others, so as not to readily identify the source of the report to NCIS. Failure to do so may result in some awkward circumstances between the Revenue, the adviser and the client. In some cases it may even involve personal safety risks. Similarly, the Service Delivery Support Financial Investigation Unit will receive un-sanitised information from SCO, but will sanitise it before sending it onto staff in the Revenue network.

Only trained and qualified staff will handle this information.

### ***4.3 Effective management of provision of information to other organisations tackling money laundering***

Disclosures about money laundering offences to other investigating organisations will be via the gateway in the Anti-Terrorism (Crime and Security) Act 2001. Such disclosures are subject to agreed Memoranda of Understanding with other organisations and the published Code of Practice about how we will manage and operate these. All disclosures will be routed via a single point of contact within SCO.

### ***4.4 Use of expertise***

The Revenue has considerable expertise in specialist financial investigations, including the countering of money laundering and tax evasion, especially where complex and contrived structures have been used, including cases involving trusts, often located offshore.

The Revenue has seconded staff to several other organisations involved in countering fraud, including money laundering. We have staff working on these types of duties at the Home Office, Customs and Excise, the National Crime Squad, the National Criminal Intelligence Service, the Assets Recovery Agency and the Serious Fraud Office. It is our policy to make use of secondments, interchange and loans to provide the expertise of our staff to others, to open up lines of communications inter-departmentally and to benefit from the knowledge our staff bring back to the Revenue when they return.

#### **4.5 Working with the private sector - consultation with practitioners**

We recognise the value of working with the private sector in tackling money laundering and the value of the contribution this sector can make. There is clear commonality of objectives with the private sector in seeking to eliminate money laundering offences.

We will also consult with the private sector about how we will counter money laundering and seek their views about the impact our actions will have on legitimate trade.

#### **4.6 Ensuring that the Inland Revenue is not being used as a means to launder money**

A further dimension to tackling money laundering is to have robust internal controls to ensure that the Inland Revenue itself is not being used as a means to launder money. A cheque or bank transfer from the Inland Revenue provides the launderer with a very high level of legitimacy for the funds which generated these.

Some of those laundering criminal money may take the view that the payment of 40% tax is a reasonable price to pay for legitimacy of funds. Revenue staff will need to be aware of this when dealing with sham “front” companies or when receiving cash or cheques in settlement of tax debts.

Staff awareness at all relevant levels will be vital in countering these types of activity. SCO’s anti-money laundering unit will have a leading role to play in developing such awareness.

# APPENDIX A Information Management - Process Map

