



30 Monck Street
London
SW1P 2AP

T: 020 7340 0551
E: info@att.org.uk
W: www.att.org.uk

AMENDMENTS TO THE MONEY LAUNDERING, TERRORIST FINANCING AND TRANSFER OF FUNDS (INFORMATION ON THE PAYER) REGULATIONS 2017 STATUTORY INSTRUMENT 2022

Response by Association of Taxation Technicians

1 Introduction

- 1.1 We provide our comments on the HM Treasury consultation on amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022.
- 1.2 Association of Taxation Technicians (ATT) strongly supports the UK's drive to combat money laundering and terrorist financing and recognises the need to make some time sensitive changes to the Money Laundering Regulations (MLRs) to ensure the UK continues to meet International Standards.
- 1.3 We are also responding separately to the Call for Evidence: Review of the UK's Anti Money Laundering (AML)/Combating the Financing of Terrorism (CFT) regulatory and supervisory regime.
- 1.4 The ATT is an AML supervisor and our response needs to be considered in this context and in the context of the market in which tax advisers operate.
- 1.5 This response does not cover each question of the consultation in detail. Some of the proposed changes do not have any implications for our members and in some areas we have felt that general comments are appropriate to cover the whole section.

2 Executive Summary

- 2.1 There are four areas where we have made comments in relation to this consultation and these relate to suspicious activity reports, proliferation financing risk assessment, reporting of discrepancies and disclosure and sharing.
- 2.2 We consider it may be useful to be able to view SARs made by supervised firms when we visit them. We would require specific legislation covering this and clear guidance in various related areas including: the actions

expected of supervisors, potential reporting requirements for those viewing the Suspicious Activity Reports (SARs) etc. We would also want to ensure that the review of SARs did not act as a disincentive to firms to report.

- 2.3 In relation to Proliferation Financing Risk Assessments we are anxious to ensure there are not additional burdens placed on small firms who are very unlikely to come across this risk with the clients they deal with.
- 2.4 We consider there should be ongoing requirements to report People with significant control (PSC) register discrepancies to Companies House. The details on these requirements should be set out and it is important that Companies House have the resources and the power to deal with reports appropriately.
- 2.5 We would welcome greater sharing of information by law enforcement to supervisors and any legislative changes required to enable that to happen are welcome.

Suspicious Activity Reports

3 Q13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why

- 3.1 We consider it would be useful to have the authority to view SARs submitted by our population to enable us to:
 - Check that any reports submitted are of sufficient quality if we are undertaking an AML visit. These reviews would be on a risk based approach.
 - Determine if the Money Laundering Reporting Officer (MLRO) deals with internal reports promptly.
 - Check whether reports have been made in a timely manner to the National Crime Agency (NCA).
- 3.2 This would then enable us to provide the firm with guidance on these areas.

4 Q14. In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?

- 4.1 No. We would require specific legislative confirmation that viewing SARs is permitted.

5 Q15. In your view, would allowing AML/CTF supervisors access to the content of SARS help support their supervisory functions? If so, which functions and why?

- 5.1 Whilst viewing SARs may enable us to provide further guidance to a firm overall we consider there would be minimal impact on our supervisory function. This is because based on figures provided by our members we would not see significant numbers of SARs during our annual visit programme. We consider there would be greater impact on our supervisory function if we received feedback directly from the NCA in relation to SARs made by our members. This could cover the nature of suspicions reported by tax advisers as well as details of offences which Law enforcement believe should have been reported but which have not.

6 Q16. Do you agree with the proposed approach of introducing an explicit legal power [legal requirement] in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?

6.1 We note that this question differs slightly in the body of the consultation document and the list of questions at the end. We agree that having the power to view SARs would be useful but we would not want a legal requirement that SARs had to be viewed. Supervisors should have discretion on how to incorporate the review of SARs into their supervisory approach.

7 Q17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.

7.1 See our answer to question 15 above. We would expect minimal impact if we are able to view SARs.

8 Q18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.

8.1 We would welcome more feedback on what the NCA concerns are and what we are expected to achieve from viewing SARs.

8.2 We would require training on viewing SARs and the guidance to be provided to members. For example if a SAR was of poor quality but was submitted over six months ago but the member has received no correspondence from the NCA are supervisors expected to guide them to submit the SAR again or provide additional information?

8.3 The legislation will also need to provide specific protection in relation to the requirements on the supervisor to report the matter included in the SAR. Protection would also be required for supervisors in terms of data protection issues.

8.4 There are dangers in relation to tipping off. The more people who see SARs or the more the information is transferred between parties the more opportunities there are for incidents of tipping off and for information to be shared accidentally. MLROs providing feedback to us have been particularly concerned about confidentiality and would want to ensure any reports had details redacted before being seen by a supervisor.

8.5 We consider care needs to be taken in this area to ensure there are no unintended consequences. Making a SAR is a legal requirement but supervisor checks of SARs could act as a disincentive to firms to report particularly in cases which are less clear.

8.6 Overall we consider that policy aims in relation to improving SARs would be better achieved by law enforcement feed back to us on our members. The quality of SAR reporting would also be improved by improvements to the SAR submission system to make it easier for firms to make quality SAR submissions.

Proliferation Financing Risk Assessment

9 General comments relating to questions 25 to 30 are set out below.

- 9.1 Our supervised population are almost exclusively small firms dealing with individuals, Small and mid-size enterprises (SMEs) etc. We consider it is sufficient for these firms to cover any risks of proliferation financing in the current practice wide risk assessment without the need for a separate detailed risk assessment of proliferation financing risks.

Reporting of discrepancies

10 Q41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.

- 10.1 In order to fully assess the position it would be helpful to know the outcome of reporting to date and the extent to which discrepancy reporting has had an impact on money laundering.
- 10.2 However, it seems logical to us that if there is a reporting requirement at the outset of a business relationship there should also be an ongoing requirement to report discrepancies which firms become aware of. We would not however want to see the requirements on members expanded to have to check registers more frequently than they do under the current requirements.
- 10.3 We note the requirement refers to 'any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of?'. It is unclear what circumstances are envisaged of discrepancies which a firm 'should reasonably have become aware of' and further guidance will be required in relation to what is meant by this term.
- 10.4 If reporting requirements are increased we consider it is also important that the Companies House response to discrepancies reports should be reviewed to ensure they have appropriate resources and powers to take action in relation to the discrepancies reported.
- 10.5 If the discrepancy is not resolved the legislation should make clear whether the matter has to be reported again each year or escalated in some way or whether there is only a requirement to report the same discrepancy once.

Disclosure and Sharing

11 General comments on questions 45 to 50 are set out below

- 11.1 We would welcome greater sharing of information with us by law enforcement agencies and are therefore supportive of any changes in legislation which facilitate that.
- 11.2 We consider it would be beneficial to include the Department for Business, Energy and Industrial Strategy (BEIS) for information sharing purposes as they are responsible for Companies House. We consider that the ease with which companies can be set up is an AML risk.

12 About us

- 12.1 The Association is a charity and the leading professional body for those providing UK tax compliance services.
- 12.2 Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.
- 12.3 The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

13 Acknowledgement of submission

- 13.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Association of Taxation Technicians is included in the List of Respondents when any outcome of the consultation is published.

The Association of Taxation Technicians