How Developments in Anti-Money Laundering affect your work as a Tax Professional
Slido Questions

Glossary of terms used in the answers below:

AMLGAS – AML Guidance for the Accountancy Sector
MLR - The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as amended
MLTF – Money laundering or terrorist financing
CDD – client due diligence
SAR – suspicious activity report

1. **1/2 Speaking with a new client this afternoon. They said the anti-money-laundering documentation procedures had been reduced during the pandemic.**

2. **2/2 Is this the case? I have asked them for the usual passport and up-to-date utility bill**.

   OPBAS and HMT have made it clear that firms must continue to comply with their obligations during Covid-19 so although procedures may have adapted they have not been reduced -

   "We support the communication HMT made on supervisors reminding firms that they must continue to comply with their obligations under the Money Laundering Regulations, while encouraging them to make use of the flexibility in the regulations and guidance to be pragmatic in their application of the regulations. We would expect firms to have regard to the guidance issued by their professional supervisor, in particular when considering alternatives to face-to-face identification of verification of customer identity. Where customers cannot produce a document required for CDD purposes due to the epidemic, firms should consider whether there are any other ways of being reasonably satisfied as to the customer's identity."

   We have given some guidance on CDD on the websites which is reproduced below

   "Guidance on meeting client due diligence (CDD) requirements in view of COVID-19 restrictions

   CIOT and ATT are aware that members may be minimising physical contact with existing and new clients as part of efforts to reduce exposure to COVID-19. It may therefore be helpful to have a reminder of how to meet CDD requirements where clients are not met face to face.

   As a starting point remember that The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as amended (the Regulations) require a risk based approach and the assessment of risk has an impact on the level of CDD required.

   Members take a variety of approaches to meeting the CDD requirements with a growing number of firms using electronic Identification verification and others sticking to more traditional methods. Guidance is set out below in relation to both and members should

remember that an appropriate record of the steps taken and/or copies of the evidence obtained to identify the client should be kept.

What are my CDD options if I can no longer meet the client face to face?

A number of firms require clients to come into their office with the identification documentation in order to meet CDD requirements. Where face to face contact is not possible members might want to consider the following options:

- Use of Skype video call and similar programmes would enable you to interact with a client in much the same way as a physical meeting. If a client emails you a copy of their identity documentation etc they could show you the originals during a call and of course having sight of the client as part of the Skype video call will enable you to confirm the passport does relate to that individual. Ensure you are particularly mindful of GDPR and data protection requirements in your handling of documents emailed to you.
- This could be the time to explore use of electronic ID verification packages. For further guidance on factors to consider when choosing and using electronic verification packages please see below.
- It is acceptable to have certified copies of client due diligence so if another professional such as a solicitor is involved with the client they may be able to provide certified copies of CDD and if they could email this to you then that would also avoid any physical contact. Clearly it might not be an option for an individual to visit another professional to get documents certified.
- The Post Office also provide an identity document certification service. Again this may not be a practical option where clients need to remain isolated at home but may be useful where clients have the ability to get to local shops.
- If other forms of identity verification are not possible you might want to consider asking the client to email copies of their documents and undertake additional checks such as:
    - Google searches identifying any public information about the client.
    - References or other confirmatory information from trusted professionals who have worked with the client.
    - making telephone contact with the client on a home or business number which has been verified electronically.
    - requiring the client to pay you through an account held in their own name with a UK or EU regulated credit institution or one from an equivalent jurisdiction.
- Ensure you are checking to make sure the client is not on the list of organisations and individuals subject to financial sanctions can be accessed on the Treasury website or the Home Office's Proscribed terrorist groups or organisations

What guidance is there on use of electronic verification?

Electronic verification can be relied on for identity verification provided the electronic process is free from fraud and provides sufficient assurance of the identity of the individual. Therefore, those members using an appropriate electronic ID provider may find it considerably easier to meet CDD requirements in circumstances where they are unable to meet clients. Note that use of electronic ID packages is not mandatory under the Regulations although the CIOT and ATT have been aware that some of the providers have suggested this to be the case in their publicity literature.

Lists of some of the electronic id providers available can be found on the website here. When choosing an electronic verification service provider you should note the guidance included in AML Guidance for the Accountancy Sector (AMLGAS):

"5.3.42 Before using any electronic service, question whether the information is reliable, comprehensive and accurate. Consider the following:

- **Does the system draw on multiple sources?** A single source (e.g., the electoral register) is not usually sufficient. A system that combines negative and positive data sources is generally the more robust.
- **Are the sources checked and reviewed regularly?** Systems that do not update their data regularly are generally more prone to inaccuracy.
- **Are there control mechanisms to ensure data quality and reliability?** Systems should have built-in data integrity checks which, ideally, are sufficiently transparent to prove their effectiveness.
- **Is the information accessible?** It should be possible to either download and store search results in electronic form, or print a hardcopy that contains all the details required (name of provider, original source, date, etc.).
- **Does the system provide adequate evidence that the client is who they claim to be?** Consideration should be given as to whether the evidence provided by the system has been obtained from an official source, e.g., certificate of incorporation from the official company registry."

What about enhanced due diligence requirements?

Members are reminded that enhanced due diligence may be necessary for some clients and in these cases more due diligence is required and the member may need to use more than one of the above methods to ensure they have obtained adequate CDD. Relevant clients include those who are Politically Exposed Persons, where there is a transaction and either of the parties is established in a high risk third country or where clients are high risk of being involved in money laundering or terrorist financing based on the high risk factors set out in the Regulations.

There are a number of risk factors set out in the Regulations which should be considered when deciding if there is a high risk of the client being involved in money laundering or terrorist financing. Following the changes in January 2020 this now includes a new high risk factor which relates to clients not met face to face **and** not subject to electronic identification verification. Enhanced due diligence may be required in these cases although the circumstances would need to be considered alongside other risk factors and the Regulations would not have been drafted taking into account the practical impact of COVID-19. Firms should make sure they are risk assessing individual clients and can explain the assessments reached.

If supervised firms have any other queries relating to CDD or other areas of AML compliance then they should contact the Professional Standards team aml@att.org.uk."

The FCA has also provide some guidance https://www.fca.org.uk/firms/financial-crime/financial-crime-systems-controls-during-coronavirus-situation

3. **Property purchased in a company, due diligence and MLR carried out by the lawyers, do we still need to go through with the process of identifying transactions.**

   If your contract is with the lawyers and they are your client then you need to have client due diligence in relation to the law firm and you check that the lawyer at the firm has authority to deal with things on behalf of the firm. In these circumstances you would not need CDD on the underlying client unless you have significant contact with them or where a business relationship with the underlying client is believed to have been established.

   Client due diligence for the lawyer is not merely about identifying them but includes gathering information on the intended purpose and nature of the business relationship so you would need to be satisfied that you had sufficient information about the transaction being entered into so you could identify potential risks on the work you are dealing with for the lawyer. Where higher risk areas were identified then you may need to undertake more due diligence and ask the lawyer for additional information. A risk based approach would need to be taken and risks factors might include the amount of work you have previously undertaken for the lawyer, whether this transaction fitted with the normal work undertaken, whether the underlying client was involved in a higher risk business etc.

   If your contract is directly with the underlying client, then normal due diligence procedures would apply in relation to that underlying client. Businesses are permitted to rely on other parties to complete all or part of CDD but a suitable written agreement must be in place and AMLGAS states that such agreements "should not be entered into lightly. Liability for inadequate CDD remains with the relying party". Even where a reliance agreement is in place the business must still carry out a risk assessment and perform ongoing monitoring. Further information about reliance is included in sections 5.3.25 to 5.3.31 of AMLGAS.

   Note that even if other parties are involved in a transaction and may be making a suspicious activity report that does not absolve you from making a report if you have knowledge or suspicion or have reasonable grounds for suspecting there are proceeds of crime.

4. **What is the recommended timescales for the Firmwide review of AML Compliance reviews or is this discretionary on each practice subject to their work & clients?**

   Every firm must have a written firm wide risk assessment and written policies and procedures. Whilst there is some discretion on the timing of reviews of these documents it is good practice to make a diary note to review them on an annual basis. The practice may have identified different risks applying since the last assessment necessitating an update of the risk assessment document. The policies and procedure should set out how those new risks will be managed and mitigated. A review may be required before the annual period has expired if there have been legislative changes.

   As regards the monitoring of individual clients' risk assessments and CDD, AMLGAS provides further guidance in sections 5.2.5 to 5.2.8 and refers to event driven reviews and periodic reviews. The guidance indicates the frequency of updating should be risk based but good practice seen whilst undertaking AML inspection visits suggests that an annual check, for

example when dealing with annual compliance work, can be a useful way of ensuring the review is undertaken.

5. Can you please elaborate on the changes that came into effect in 2017 for companies and trusts?

Newsletter 19 issued in 2017 provided a summary of the changes brought in under MLR 2017. It is only possible to provide a brief summary of the changes here and members should refer to the guidance included in AMLGAS and their training provider guidance.

In relation to Companies, from 2017 additional information has been required as part of the CDD process. A summary of the information required is set out in Appendix C and section C.2 of AMLGAS:

C.2 Private companies/LLPs

Client identification

C.2.1 The following information must be obtained and verified:

- full name of company
- registered number
- registered office address and, if different, principal place of business
- any shareholders/members who ultimately own or control more than 25% of the shares or voting rights (directly or indirectly including bearer shares), or any individual who otherwise exercises control over management must be identified (and verified on a risk sensitive basis).
- The identity of any agent or intermediary purporting to act on behalf of the entity and their authorisation to act e.g., where a lawyer engages on behalf of an underlying *client*.

Unless the entity is listed on a regulated market, reasonable steps should be taken to determine and verify:

- the law to which it is subject
- its constitution (for example via governing documents)
- the full names of all directors (or equivalent) and senior persons responsible for
- the operations of the company.

Company registers of beneficial ownership may be used but not solely relied upon.

As regards trusts:

In 2017 tougher rules were brought in on checking the beneficial owners of trusts. The definition of the beneficial owner was expanded and includes the settlor, trustees, beneficiaries and anyone with control of the trust (Regulation 6). Where the individuals (or some beneficiaries) have not been determined the beneficial owner includes the class of persons in whose main interest the trust is set up or operates. It may not be possible to id check this class of people but firms need to be satisfied with the explanations provided here.

Firms must take reasonable measures to verify beneficial ownership. Trustees were required to keep a record of the beneficial owners and they must provide details if requested where a business relationship has been entered into. Where during the course of the business

relationship these details change then trustees must notify the relevant person within 14 days.

A register of trusts is being maintained by HMRC.

Note that further changes were brought in as part of the amended regulations which came into force in January 2020 and further changes for trusts are expected later this year as a result of the implementation of the requirements of the 5th Money Laundering Directive. Our April 2020 newsletter included more information regarding the changes in January 2020.

6. **Under COVID it is difficult for new clients to scan over their AML documentation eg passports, electric bill, driving licence. What would you recommend?**

Please refer to the answers to questions 1 and 2.

7. **Is there a checklist available where we can put on all files to ensure that we have looked at all areas and have on file?**

While we do not have a checklist which covers all aspects our pro forma Policies and Procedures which are aimed at the smaller practice include a new client form which you may find useful. Our Supervisory Risk Assessment which can be found here also provides some useful factors to consider when reviewing your practice clients and risk profiling.

It is possible that commercial training providers may be able to help, see –

https://www.att.org.uk/members/anti-money-laundering/id-verification-training-providers

8. **If it's a cash business and you are only giving tax advice (not the accounts). Do you go to client premises to check till receipts and cash as part of your work?**

PCRT Helpsheet A Submission of tax information and 'tax filings' states at paragraphs 10 -13

" 10. A member who prepares a filing on behalf of a client is responsible to the client for the accuracy of the filing based on the information provided.

11. In dealing with HMRC in relation to a client's tax affairs a member should bear in mind their duty of confidentiality to the client and that they are acting as the agent of their client. They have a duty to act in the best interests of their client.

12. A member should act in good faith in dealings with HMRC in accordance with the fundamental principle of integrity. In particular, the member should take reasonable care and exercise appropriate professional scepticism when making statements or asserting facts on behalf of a client.

13. Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. However,

a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, not to assert tax positions in a tax filing which they consider to have no sustainable basis."

So while you do not have to audit the figures you put on the tax return you are expected to exercise appropriate professional scepticism. If you are uneasy about the information you are provided with you should make further enquiries and take such steps until you feel comfortable with the data you are entering on the return. If the client asks you to enter misleading information on a return you should explain why that is not possible and decline to do so. If the client cannot be persuaded to change their position you should resigns as their tax adviser. See PCRT Helpsheet B Dealing with errors

9. **Is it mandatory for identity check of a parent who is assisting with the deposit on purchase of a residential property by the daughter?**

This answer assumes the parent is not a client but is simply lending or gifting the deposit to their daughter. In such a case you would not need to carry out an identity check on the parent. However, you should satisfy yourself regarding the source of the funds ie how could the parent afford to provide the assistance?

10. **We deal predominantly with overseas property investors who own UK properties in their individual names, not Ltd Co. where we aren't meeting face to face...**

There may be a number of risk factors associated with acting for clients in these circumstances. One particular area of risk identified by the authorities is overseas high net worth individuals investing in high value UK property. Particular care should be taken to establish the source of funds for the purchase and enhanced due diligence may need to be considered in relation to these clients. See the answers to Q1 and Q2 for more information on CDD for clients where not meeting face to face.

11. **Is there an approved list of AML training for small (sole practitioner) firms?**

We do not 'approve' any trainers as such but we have put together a list of training providers which members have mentioned to us. See here

12. **Could you suggest what I might need to do regarding politically exposed clients?**
13. **2/2 what would you consider to be sufficient documentation needed?**

As set out in AMLGAS businesses wanting to enter into, or continue, a business relationship with a PEP must carry out enhanced due diligence, which includes:

- senior management approval of the relationship;
- adequate measures to establish sources of wealth and funds; and
- enhanced monitoring of the ongoing relationship.

Businesses must treat PEPs on a case by case basis and apply EDD on the basis of their assessment of the money laundering and terrorist financing risk associated with any

individual PEPs and therefore sufficient documentation will need to be determined on an individual basis.

For more guidance members should refer to Sections 5.3.7 to 5.3.22 of AMLGAS which provides guidance in relation to enhanced due diligence and in relation to PEPs.

The FCA guidance on PEPs should also be referred to and is available here.

14. **I use an online AML checker for personal clients (Credit Safe). If they pass the test I don't ask for passport or utility bill is that ok?**

The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 make it clear that electronic ID is an acceptable means of carrying out Customer Due Diligence and therefore it may not always be necessary to obtain copies of passports and utility bills. You should note that some of the ID providers ask for passport or other details to be added when doing the checks and some members like to see original identity documents so they can verify that the person they have met is who they say they are. See also the guidance contained in the answer to Question 1 above on what to look out for when choosing a provider. Overall, you need to take a risk based approach and if you have any concerns about the client you should carry out enhanced due diligence to enable you to lay those concerns to rest.

15. **For new client do we still need to obtain a passport and address verification on top on what third party AML providers search?**

Please refer to the answer to question 14 above.

16. **For non UK resident tax payers buying property in the UK in cash, how do we determine their source of funds for AML. Can we rely on property solicitor's check?**

In order to determine the source of funds for a property purchase the starting point is to make enquiries of the client and you could ask the solicitor as well for any information they have if the client authorises you to approach them. In applying the risk based approach you would then need to consider whether the information supplied appeared to "stack up" with what you know about the client and their background. If you have concerns then you may need to do further enquiries and ask for more documentary evidence.

The answer to Q3 provides more guidance in relation to CDD where acting in conjunction with a lawyer and refers to reliance on their CDD.

17. **New clients - checking re financial sanctions. Our process forms we use for the risk assessment do not reference this. Should we?**

Financial Sanctions checks should be undertaken on all new clients which a firm takes on. If your client take on form does not include this, it would be good practice to include it to remind staff to undertake the checks (where they are not already included as part of electronic checks undertaken). The sanctions lists also indicate the countries which might be considered of higher risk and if your client is based in or has connections with one of the

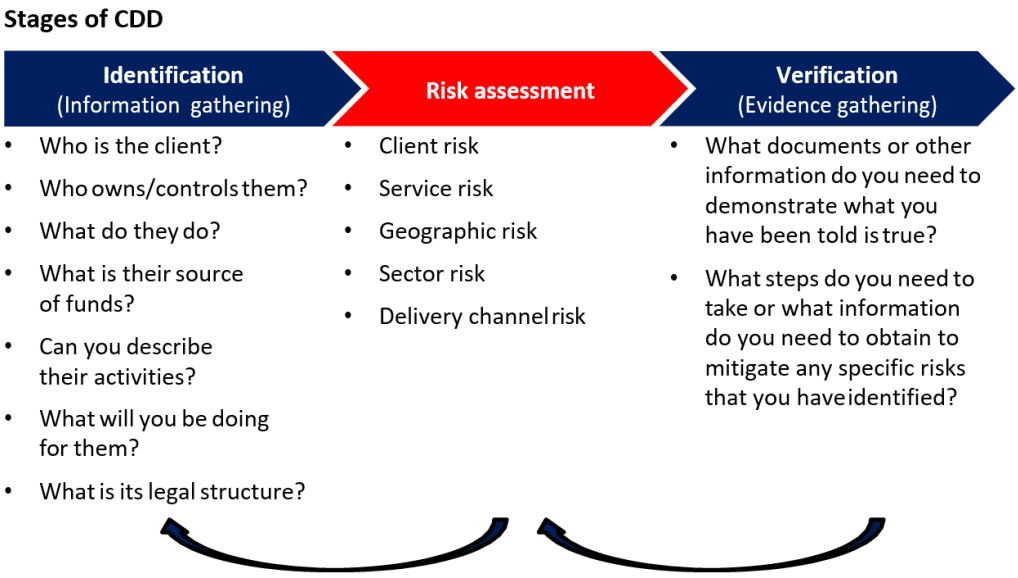
countries referred to then that may inform your risk assessment of the client. Geographical risks in relation to clients should be considered as part of your individual client risk assessment. Financial sanctions breaches are criminal offences, punishable upon conviction by prison sentence or fines. If the sanctions lists are not checked it therefore puts a firm at greater risk of accidentally dealing with someone on the list and subsequent prosecution/penalties.

18. For one off advisory work, apart from passport ID and proof of address, do we need to carry out additional check?

CDD requires a risk based approach and the amount and nature of CDD required depends on the risk associated with the client, service provided etc. In AMLGAS section 5.1.3 it states that CDD has three required components:

- Identifying the client
- Identifying beneficial ownership
- Gathering information on the intended purpose and nature of the business relationship

The diagram set out in section 5.1.8 of AMLGAS also provides useful information on the stages of CDD:



19. Where assisting a client in rectifying their tax position would the SAR be submittable AFTER the rectification to avoid prejudicing the clients position?

A SAR should be made as "soon as is practicable" after receipt of relevant information. To protect your position, you should make the SAR as soon as you know or suspect or have reasonable grounds for suspecting there are proceeds of crime (eg assets or cash arising from tax evasion). You cannot wait until your client's tax position has been rectified. You should also bear in mind that, if other advisers are involved in assisting the client, they make a SAR promptly leaving the NCA to wonder why you have not.

20. We have a consultant who works on our clients, we are his only client, he relies on our AML policies and Registration, should he have his own AML registration/policies?

Assuming the consultant is self-employed, the simple answer is that the individual should be AML registered and comply with the AML legislation. There is an exemption available but this would require you to have a suitable written agreement in place with the consultant. This exemption is as follows:

"If all your customers are accountancy service providers supervised by HMRC or a professional body, or banks supervised by the FCA you do not need to register so long as:

- you do not do business directly with the supervised accountancy service providers' or the banks own customers
- you're included in the supervised accountancy service providers' or banks anti money laundering controls and procedures, suspicious activity reporting, and training programmes
- you have a written contract with each of your customers confirming that every aspect of the relationship between you meets all anti money laundering requirements

You need to meet all these conditions, otherwise you'll need to register."

You should therefore make sure the position is clear with the consultant to ensure you both understand whether they are included under your registration (and exempt from registering for supervision) or whether they should register with their professional body AML supervisor (or HMRC if they are not a member of one of those bodies).

21. I appreciate you are saying that foreign clients are high risk but why can't you rely on the UK solicitors Money laundering check? I am not sure why not?

Please refer to the answer to question 3.

22. Heather you mentioned some of the matter is unfair. What are professional bodies like CIOT/ATT doing to protect members position....

CIOT and ATT play an active part in the AML Supervisor professional bodies' representative fora – the Accountancy AML Supervisors Group (AASG) and the AML Supervisors Forum (AMLSF) where the public body authorities (HMRC, FCA and the Gambling Commission) join the professional body Supervisors along with HM Treasury, the Home Office, OPBAS and the National Crime Agency on a quarterly basis to discuss developments in AML. This gives the profession the opportunity to speak as one voice which is more powerful than lone voices. The CIOT and ATT make representations on consultations and take up every opportunity to speak to government. We also participate in National Crime Agency run information exchange groups.

23. Every high street has a 'nail bar' where modern slavery seems to apply. Why are they not being shut down if everyone has a duty to report them?

There are a number of points to consider here

- It is not the case that every nail bar is involved in modern slavery/human trafficking
- Those who are working in the AML regulated sector have a duty to report knowledge or suspicion or reasonable grounds for suspicion of human trafficking/modern slavery where it comes to them in the course of their business. Others may report voluntarily.
- It takes time to collect the evidence and this is where suspicious activity reports (SARs) help the authorities build the case. There is no doubt that this is an issue which is being taken very seriously and the NCA are encouraging all sectors to play their part by making SARs where applicable.

24. How can we possibly know now whether a client is abusing a COVID-19 Government Support Scheme given that we may not see clients' books/records for some time.

There is no time limit beyond which you are not able or obliged to report COVID related crimes. So long as you report as soon as you become aware of the abuse you have met your obligations under POCA 2002. But there are instances where you might become aware at an earlier stage; for example, if a client has instructed their furloughed workers to continue working for their business or a client claims government support when you know or suspect or have reasonable grounds for suspecting that do meet the required criteria.

25. If clients take the SBFG or SEIS/CJRS payment how do we determine they have abused the scheme?

Please refer to the answer to question 24 above.

26. Where does it say in the 2017 AML regulations destroy records after 5 years?

Record keeping requirements are set out in Regulation 40 of MLR and further guidance is included in chapter 7 of AMLGAS. The regulations do not refer to all client records being destroyed after 5 years. It refers to the deletion of personal data included in CDD 5 years after the end of the business relationship and it is permissible to keep it longer where records need to be retained:

- for legal reasons or for the purposes of court proceedings
- where the data subject has given consent to the retention of the data
- there are reasonable grounds for believing the records need to be retained for the purpose of legal proceedings.

If members have agreed a longer period of retention (for example by way of the engagement letter with the client) they can therefore retain them longer. Members should review their privacy statement, engagement letter and AML policy to ensure the documents agree on the periods of record retention.

27. I have been approached by a firm of solicitors and asked if I would be prepared to complete some of their clients Trusts and Estates tax returns. what CDD should I do?

On the assumption the contract is with the firm of solicitors you should undertake CDD in relation to the firm. As referred to in the answer to Q3 CDD includes gathering information on the intended purpose and nature of the business relationship so you would need to be satisfied that you had sufficient information about the underlying clients and their situation so you could identify potential risks on the work you are dealing with for the lawyer.

You may find it helpful to be aware of the following guidance in AMLGAS:

Subcontracting

5.3.33 Where a relevant *business*, A, is engaged by another *business*, B, to help with work for one of its *clients* or some other underlying party, C, then A should consider whether its *client* is in fact B, not C. For example, where there is no *business relationship* formed, nor is there an engagement letter between A and C, it may be that *CDD* on C is not required but should instead be completed for B.

5.3.34 On the other hand, where there is significant contact with the underlying party, or where a *business relationship* with it is believed to have been established, then C may also be deemed a *client* and *CDD* may be required for both C and B. In this situation, A may wish to take into account information provided by B and the relationship it has with C when determining what *CDD* is required under its risk based approach. It should be noted that the same considerations are relevant in networked arrangements, where work is referred between member firms.

28. You keep mentioning taking a risk based approach in a very vague manner. What do you specifically mean we should be doing?

Chapter 4 of AMLGAS provides further guidance on the risk based approach and in section 4.1.2 it sets out the following summary:

"The risk based approach recognises that the risks posed by *MLTF* financing activity will not be the same in every case and so it allows the *business* to tailor its response in proportion to its perceptions of risk. The risk based approach requires evidence-based decision-making to better target risks. No procedure will ever detect and prevent all *MLTF*, but a realistic analysis of actual risks enables a *business* to concentrate the greatest resources on the greatest threats."

It is essential for every business to be aware of potential money laundering and terrorist financing risks and to have a firm wide risk assessment in place which will identify the areas of risk relevant to your clients and services. Once risks have been identified then appropriate action should be taken to manage and mitigate that risk. It follows that where higher risks are identified additional checks and monitoring might be required where there is lower risk a lower level of checking and monitoring may be suitable.

Our Supervisory Risk Assessment which can be found here also provides some useful factors to consider when reviewing your practice clients and risk profiling.

If members have queries about specific circumstances they are considering and where the reply given does not provide sufficient guidance then they should email standards@att.org.uk and we will be happy to answer their specific query.