

## MONEY LAUNDERING – DO YOU NEED TO REGISTER

The Money Laundering Regulations 2007 came into effect on 15 December 2007. These are partly consolidating regulations. They re-enact and repeal the Money Laundering Regulations 2003 with some modifications. They also introduce in Part 4 a new requirement for compliance with the rules to be monitored by a supervisory body. Together with the Proceeds of Crime Act 2002 these Regulations give effect to the First to Third EU Money Laundering Directives.

### Monitoring

The Institute of Indirect Taxation is not a Supervisory Body under the Regulations although some other professional bodies are. We have discussed, and are continuing to discuss, with the Treasury the possibility of becoming a Supervisory Body but the Treasury have made clear to us that they do not propose to recognise any further bodies for the next couple of years. Even then the Council of the Institute has not decided whether or not to seek such a status as the costs of doing so are likely to be significant.

The Regulations apply, inter alia, to tax advisors, so most IIT members are likely to need to comply with them. If you work as an employee you do not need to register with a supervisory body; that is the responsibility of your employer. If you are a barrister or a partner in a firm of solicitors, accountants or CIOT tax advisors your firm will probably choose to register with the Bar Council, the Law Society, the ICAEW, ICAS, ACCA or CIOT. If you are a sole trader, i.e. you practice as a self-employed person, or you operate through a one-man company, and you are a member of one of the above bodies you will probably again wish to register with them as your monitor.

**Everyone else who is in practice, either in his own name or through his own company, needs to register with the Money Laundering Monitor determined by the Regulations – which is HMRC. You need to do this by 1 July 2008. If you have not done so by that date it will be illegal for you to continue to offer tax advice to clients.** If in the course of your business you form companies for others, act as a director or secretary of other people's companies, provide a registered office or business correspondence or administrative address for other persons or act as a trustee or nominee shareholder (other than in respect of listed shares) you will be a "Trust or Company Service Provider" and will need to register with HMRC before **1 April 2008** rather than 1 July.

To register you need to complete a form MLR 100, which can be downloaded from the HMRC website. If you are only providing tax services you merely need to complete that form. If you are a Trust or Company Service Provider you also need to complete a form MLR101 as you will need to pass a "fit and proper person" test. HMRC are not setting up their register of Accountancy Service Providers, which is the category under which tax practitioners need to be registered, until 1 April, so it is probably sensible not to try to register with them before that date.

The completed form MLR 100 needs to be sent to The MLR Registration Team, 9<sup>th</sup> Floor, Alexander House, 21 Victoria Avenue, Southend-on-Sea, Essex, SS99 1AG together with the registration fee of £95. If you operate from more than one office the fee is £95 for each office that you have (other than any outside the UK). The registration fee is an annual fee. Registration needs to be renewed annually and a further fee paid. HMRC say that the fee will be reviewed annually and that if you apply to register after 31 May 2008 you may find that you have to pay a higher fee. If you are a Trust or Company Service Provider you have to include a further fee of £50 for the fit and proper person test. This is a one-off fee. It will not have to be paid again when you renew your registration. HMRC have power to refuse registration but subject to a right of appeal to the VAT and Duties Tribunal. As registration as an Accountancy Services Provider merely requires the form 100 to be completed correctly, a refusal to register is likely to be rare. This is likely to arise only where a person is required to meet the fit and proper person test and fails it.

### **The Other Main change**

The purpose of this article is to alert members to the need to be registered. Members should already be familiar with the relevant part of the Proceeds of Crime Act 2002 and the 2003 Regulations. HMRC have produced a guide to the new Regulation, MLR8, but they recommend on their website that tax advisors should follow the guidance produced by the Consultative Committee of Accountancy Bodies. This can be found on the CCAB website ([www.ccab.org.uk/documents.php](http://www.ccab.org.uk/documents.php)).

The main changes are to the “know your customer” rules. In future you should adopt a risk-based approach. This means that you should review your money laundering procedures to ensure that the checks you apply are commensurate with your perceived risk. If you perceive that the risk is low you might decide to do less due diligence than you currently do. For example if you have known the client for years and you perceive him to be low risk you may decide that a note of the relationship is sufficient and that you do not need to see his passport. If a client is introduced to you by another professional and you perceive him low risk, you could decide to rely on that other professional’s due diligence checks.

On the other hand if you perceive the client to be high risk you may decide that even seeing his passport and gas bill is not enough but that you should also take further steps such as seeking business references. You must however regard politically exposed persons (ministers, MPs, members of the House of Lords Judicial Committee, managers of state-owned enterprises and other persons listed in Schedule 2 to the Regulations) and close members of their families as high-risk.

Secondly, you must now also do due diligence on existing clients who you were exempted from identifying under the 2003 Regulations – although you are likely to regard most of them as low-risk so the information about them that you already have on your file may well suffice to satisfy you that you know their identity and their address.

Thirdly, identification procedures must be continuously applied. It is no longer sufficient to identify a client only when you take him on. If there is a significant change of circumstances, such as the marriage of an individual or a change of control

of a company you need to consider whether that change might alter your risk assessment so as to require further due diligence.