Review of the UK’s Anti-Money Laundering and Combatting the Financing of Terrorism regulatory and supervisory regime

General Features

30 November 2021

The consultations on the UK’s Anti-Money Laundering and Combatting the Financing of Terrorism regulatory and supervisory regime and on the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 were an opportunity to send the message that any changes should simplify matters and reduce rather than increase the burden on businesses.

The CIOT and ATT responded to the call for evidence and the consultation on the UK’s Anti-Money Laundering (AML) and Combatting the Financing of Terrorism (CFT) regulatory and supervisory regime and on the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017). There was considerable overlap in the questions and responses in both documents and as a result this article does not distinguish between them.

In particular, along with many other AML professional body supervisors, we called for more real time granular information from law enforcement about money laundering in the tax sector. For example, what sort of offences are tax professionals reporting, what are they not reporting when they should and what difference would it have made if they had been reported? The Office for Professional Body AML Supervision (OPBAS) could build on and enhance the role they play in facilitating this.

Supervisors are being encouraged to look at firms’ Suspicious Activity Reports (SARs) with the possibility that this may become mandatory. While it might be useful as a means to help some firms improve the quality of reports, certain safeguards

would need to be in place; for example, the redaction of names and some details. We also made the point that improvements to the SAR reporting system would improve SAR quality.

We called for clearer legislation. The lack of clarity leaves the MLR 2017 open to interpretation, which makes it difficult for those in the regulated sector to be certain about what is required of them. This can lead to businesses undertaking more checks than required and adopting an overly cautious risk-based approach for fear of falling foul of the legislation. It also creates the need for detailed and HM Treasury approved guidance, such as the anti-money laundering guidance for the accountancy sector. Our response highlighted concerns about the delays in obtaining HMT approval when guidance is updated.

Under the reliance provisions in the MLR 2017, a firm may rely upon another's client due diligence (CDD) subject to certain conditions being met. We reported that in our experience very few firms use these provisions because they remain open to sanction should the relied upon CDD be defective. We suggested that it would be helpful if sufficient checks were undertaken by agencies such as Companies House so that firms, unlike at present, could rely on the information included on their registers for CDD purposes.

In response to a question about activities which we consider have a low impact in the fight against money laundering, we referred to the need to confirm that none of the firm's business owners, officers or managers has committed an offence as defined in MLR 2017 Sch 3 (mostly financial crimes). The fact that we, again in common with many of the professional body supervisors, have not identified any Sch 3 offenders brings into question the value of this requirement. Likewise, there would seem to be limited value in the obligation for sole practitioners without employees to have written policies and procedures.

OPBAS assesses and reports on the effectiveness of the professional body supervisors. We have called for OPBAS to be clearer on how their different levels of effectiveness are defined and to set out the specific actions a supervisor should take to move from, say, being rated as largely effective to effective.

The full response to Review of the UK's AML/CFT regulatory and supervisory regime can be found on the CIOT website at www.tax.org.uk/ref863 and the ATT website at www.att.org.uk/ref389.

The full response consultation on Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022 can be found on the CIOT website at www.tax.org.uk/ref864 and the ATT website at www.att.org.uk/ref390.