



7 February 2017

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Attorney-General's Department
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Dear Sir/ Madam

Subject: Accountants: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime

CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. Against this background and in the public interest, we provide this submission in response to the consultation paper on the model for the regulation of accountants under the anti-money laundering and counter-terrorism financing (AML/CTF) regime.

CPA Australia has long supported governments taking appropriate action to improve their ability to detect, deter and disrupt money laundering and terrorist financing. Not only is such action an essential part in tackling organised crime and other illegal activity, it also improves the integrity of a nation's financial system and reduces the risk of it being misused.

A. General comments on extending all AML/CTF obligations to accountants

We are broadly supportive of the proposed extension of the application of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (*the Act*) to other businesses and professionals, including accountants, and other providers of accounting services.

Specifically, we are supportive of imposing the obligation to undertake customer due diligence on all providers of accounting services. Such an obligation should not only reduce the risk of money laundering and terrorist financing, but it is also good practice for firms to verify their customer's identity.

We also support extending the obligation to report suspicious matters to AUSTRAC to all providers of accounting services. Such reporting is important to identifying possible money laundering and terrorist financing.

To improve the probability of AUSTRAC and law enforcement agencies receiving actionable suspicious matter reports, and to ensure that accounting firms don't waste time making suspicious matter reports that will not be used, we recommend that AUSTRAC develop guidance material, including examples of the suspicious matters they would like reported.

However, we do not support the extension of all of the existing obligations under the Act *holus-bolus* to all accountants. There is a compelling case for distinguishing the application of the rules between members of the accounting profession and those who practise in the field of accounting and may indeed call themselves accountants, but are not members of a professional accounting body.

This is because some of the AML/CTF obligations significantly overlap with, or emulate pre-existing professional requirements imposed on members of the accounting profession by their respective professional bodies. For example in the case of CPA Australia members, these requirements include but are not limited to the following:

- Compliance with a detailed Code of Ethics for professional accountants, including undertaking client due diligence.
- Complying with extensive quality control and risk management policies and procedures for firms, including procedures for client due diligence and having that compliance verified through periodic independent quality assurance reviews.
- Undertaking at least 120 hours of continuous professional development over a three year period.
- Holding appropriate professional indemnity insurance.

CPA Australia is of the view that the ongoing compliance costs associated with extending all existing AML/ CTF obligations on all members of the accounting profession significantly outweigh the benefits. Further, the current obligations under the Act are primarily designed to counter risks in large financial institutions. These obligations are expensive and difficult to comply with, especially for smaller businesses.

We believe the objectives of the Act can still be achieved and at less cost even if a number of obligations are either not imposed on members of the accounting profession, or are applied in an extensively modified way.

In this regard we recommend removing or modifying the following AML/ CTF obligations for members of the accounting profession:

- the requirement to develop and maintain an AML/ CTF program and subjecting that program to audit, and
- the requirement to make an annual report to AUSTRAC.

Instead of imposing these obligations on members of the accounting profession, an alternative and more appropriate approach would be to include these elements as part of the penalty regime in the Act. As such they would only apply to accountants found to have breached the Act (such as repeated failure to undertake appropriate customer due diligence or report a suspect matter) or be found to be involved in facilitating or enabling money laundering or terrorism financing.

Specifically, we recommend that AUSTRAC and the courts be given the authority to compel a specific accounting firm to develop and maintain a AML/ CTF program and subject that program to regular audits as part of a penalty for breaches of the Act. The penalty could also require such a firm to provide annual or more regular reports to AUSTRAC. These obligations could be imposed in addition to other penalties or as standalone penalties.

In relation to the obligation to develop and maintain an AML/ CTF program, we believe that our current quality control and risk management policies and procedures imposed on members in practice more than covers what would be required in such a program, and hence extending this obligation to members of the accounting profession would impose an unnecessary additional burden. Our policies and procedures may also be modified if required.

Further, we are of the view the risk of money laundering and terrorist financing would also be mitigated if non-binding guidance and education was provided by AUSTRAC to accountants and others (with input from the professional accounting bodies) on the risks of money laundering and terrorist financing and how to mitigate and act on those risks.

In addition, requiring that the AML/ CTF program of all accounting firms be regularly audited is excessive, particularly when few if any would be facilitating, unwittingly or willfully, money laundering. It should be noted that such firms are already subject to periodic independent quality assurance reviews of their compliance with our quality control and risk management policies and procedures - this review process is a core requirement of holding a public practice certificate with CPA Australia. To further reduce the compliance burden, we see little or no value requiring members of the accounting profession to annually report to AUSTRAC.

In relation to the reporting of suspicious matters, it should be noted that it is proposed that the responsibilities of members of the professional accounting bodies when dealing with actual or suspected non-compliance with laws and regulations (NOCLAR) be strengthened from July this year.¹

¹ See http://apesb.org.au/uploads/home/30012017164006_APESB_ED_2_16_APES_110.pdf

It is important to also note that APES 110 also imposes a duty on professional accountants to determine whether accepting a client or engagement creates a threat to their compliance with the fundamental principles of the profession, including 'client involvement in illegal activities (such as money laundering)'.

Again, is important to contrast these obligations on members of the accounting profession with those who are not members of the major accounting bodies but still provide the 'accounting services' as listed in the consultation paper. We are supportive of all the obligations under the Act being extended to those providers of 'accounting services' which may actually include non-accountants.

B. Specific comments

Enrolling with AUSTRAC

We are not certain what benefits there are to the system in requiring accountants to enrol or register with AUSTRAC. Further, while it will be relatively easy to identify accountants who are already subject to strict regulation and controls such as members of the accounting professional bodies, it will be difficult for the regulator to identify and enrol the non-accountants that provide the 'accounting services' listed in the consultation paper. We are unable to provide any details on how many people could fit into this latter category.

Simplified customer due diligence (CDD)

We recommend that simplified CDD should be the default requirement rather than applying only in certain circumstances.

What lessons can be learned from other jurisdictions and tranche 1 of the Act?

- Compliance obligations must be tailored. In other words, compliance obligations for major financial institutions should not be imposed on small accounting firms.
- The regulator must work with the relevant professional bodies to develop guidance and education material to assist implementation, especially around suspect transaction reporting. While the consultation paper notes that no suspect matter reports were filed by accountants in Canada, it fails to mention the many thousands of suspect reports that we understand were lodged by accountants in the UK. We understand that many of these reports were of no or little value to authorities.
- Good policy outcomes that impose appropriate compliance obligations should drive policy discussions rather than compliance with the FATF requirements.
- It is important that accountants are able to rely on the CDD performed by other businesses involved in the same transaction to reduce cost and duplication, not only for the accountant but also for the client.

An appropriate period of transition

We recommend a three year transition period. This would give providers of accounting services the time they need to implement new procedures and processes to comply with any new obligations. Further, such a long transition period takes into account other regulatory changes accountants are facing.

Compliance costs

The cost to accounting firms of complying with the AML/ CTF regime will largely depend on whether the government decides to impose all the existing obligations under the Act on accountants or remove and/or modify those obligations as recommended above.

Other issues and next steps

We also take the opportunity to provide the following comments:

- Many accountants will be servicing clients they have had for decades. It is therefore important that guidance be developed on when accountants will be required to verify the identity of existing clients.
- We suggest that the anti-money laundering regimes of Australia and New Zealand be harmonised when Australia implements the second tranche of its AML/ CTF legislation.
- We suggest that as a next step, the Attorney-General's Department develops a preferred model for including accountants into the Act and subject that model to a cost-benefit analysis and further consultation.

Conclusion

The accounting profession is already highly regulated, and is also a low risk profession in the context of the issues canvassed in this review.

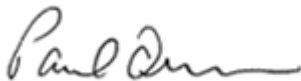
In the deliberations on whether and how to extend the AML/ CTF regime to accountants and in particular members of the accounting profession, the review needs to understand and appreciate the significant increase in the regulation of accountants in other areas of law over the past few years. This includes the replacement of the accountants' exemption under the Corporations Act with a requirement to hold a limited Australian Financial Services Licence, the relatively new standards for tax agents and BAS preparers, and the requirement to meet the new registration requirements to be a SMSF auditor.

We strongly recommend that should the government decide to include accountants within the AML/ CTF regime, that the regime be significantly altered along the lines suggested in this submission to reduce the compliance impact on members of the accounting profession. We believe that the key objects of the Act can still be achieved with this modified approach.

We are happy to explore other questions raised in the consultation paper in future consultations.

If you have any questions regarding this submission, please do not hesitate to contact Gavan Ord, Manager – Business and Investment Policy of CPA Australia on (03) 9606 9695 or gavan.ord@cpaaustralia.com.au.

Yours faithfully



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