

Client Alert

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Singapore to criminalise the laundering of proceeds of tax evasion by 1 July 2013

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In October 2011, the Monetary Authority of Singapore ("**MAS**") announced its intention to include tax offences as a predicate offence for money laundering in Singapore. This policy intention was reiterated by the MAS in February 2012 when the Financial Action Task Force ("**FATF**") made recommendations to include laundering the benefits of tax crimes as a money laundering offence. The FATF is the international body that develops policies to combat money laundering and terrorist financing.

On 9 October 2012, the MAS confirmed that the new legislation to implement this change will take effect on 1 July 2013. The MAS also released a consultation paper titled "Designation of Tax Crimes as Money Laundering Predicate Offences in Singapore". The consultation paper includes a proposed definition of serious tax crimes to be included as money laundering predicate offences.

Tax evasion is currently not a predicate offence under Singapore's main anti-money laundering ("**AML**") legislation - the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act ("**CDSA**"). The CDSA makes it a crime to engage in the money laundering of benefits from a total of 417 predicate offences, ranging from criminal breach of trust to dealing with the property of terrorists. A predicate offence is a crime that is a part of another offence.

The MAS proposes to apply the definition of tax evasion and serious fraudulent tax evasion under sections 96 and 96A of the Income Tax Act (Cap. 134) as predicate offences. The corresponding definitions of tax evasion and serious fraudulent tax evasion in the Goods and Services Tax Act (Cap. 117A) will also be included as predicate offences. The tax evasion offence under the Income Tax Act applies when a person makes an omission in a return or makes false statements "wilfully with intent to evade". The serious fraudulent tax evasion offence applies when a person falsifies books of accounts and makes use of any "fraud, art or contrivance" wilfully with intent to evade.

With this change, the suspicious transactions reporting ("**STR**") requirements in the existing AML rules will, from 1 July 2013, apply when financial institutions become aware or have reasonable grounds to suspect that they are dealing with the proceeds of tax evasion. This means that financial institutions will need to review their existing internal AML policies, controls and procedures to:

- incorporate and identify tax specific red flag indicators;
- undertake a critical review for all existing accounts to assess the tax legitimacy and identify high risk accounts; and
- conduct enhanced due diligence of high-risk clients.

Interestingly, the consultation paper highlights that there is no one-size-fits-all approach and the financial institutions will need to factor in institution specific variances such as differences in core business activities, product offerings, clientele, geographical concentration and internal risk tolerances in reviewing its internal risk management policies.

The closing date for comments to the consultation paper is 9 December 2012.

Commentary

The swift response by MAS to adopt the FATF's recommendations sends a clear message that Singapore does not want and will not tolerate inflows of illicit funds and will be proactive in safeguarding the integrity and reputation of Singapore as a clean financial centre. Financial institutions should embrace this change as we believe that this will be crucial for Singapore in maintaining its growth as a global financial centre. It will discourage would be tax evaders from sending their funds to Singapore and further encourage inflows of legitimate funds to Singapore (particularly from offshore jurisdictions that have acquired the unsavory reputation of harbouring illicit funds).

Next steps

As there are less than 9 months before the effective date of the legislation, we recommend that financial institutions start reviewing their existing AML procedures to incorporate control measures to deal with indicators of tax evasion. As other key financial hubs such as Australia, Hong Kong, the Netherlands and the UK already have tax evasion as a predicate offence, financial institutions can leverage off the existing compliance policies in these other markets as a base for reviewing the Singapore compliance policies. In the meantime, the Private Banking Industry Group is working on defining industry best practices for the new AML requirements. These best practices should help guide financial institutions operating in Singapore on the implementation of these requirements.

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