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From: AML/CFT Internal Affairs <amlcft@dia.govt.nz>
Sent: Monday, 6 December 2021 12:56 pm
To: aml
Subject: FW: ATAINZ Submission on the AML/CFT Act Review
Attachments: AML_CFT Submission_ATAINZ-Amie-HP.pdf

Importance: High

Hi team,

Please see below a late submission for the statutory review.

Ngā mihi,

)
Graduate AML Regulator | Kaiwhakarite Taurira
AML Group | Regulatory Services
Department of Internal Affairs | Te Tari Taiwhenua | www.dia.govt.nz




Te Tari Taiwhenua
Internal Affairs

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From: @figuration.co.nz>
Sent: Saturday, 4 December 2021 11:56 AM
To: AML/CFT Internal Affairs <amlcft@dia.govt.nz>
Subject: ATAINZ Submission on the AML/CFT Act Review
Importance: High

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Good Morning

Please find attached our submission for the AML/CFT Act Review.

Apologies for this being late, I had internet issues yesterday and have turned on my computer today to find that the email I sent yesterday had not gone through

Thank you for your understanding, please confirm acceptance of this submission.

Regards

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from **18th Dec – 9th Jan**. Please contact
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3rd December 2021

AML/CFT Act Consultation Team
Ministry of Justice
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New Zealand

Tēnā koutou

AML/CFT Act Review

The Accountants & Tax Agents Institute of New Zealand (ATAINZ) is an incorporated society established in 1976. It is one of only three organisations granted 'approved advisor group' status by Inland Revenue. Membership is restricted to people with suitable qualifications and/or work experience relating to accounting and/or tax matters.

ATAINZ's objects include:

- to represent ATAINZ members;
- to advance and foster tax knowledge amongst members;
- to further and develop good business practice amongst members;
- to maintain the highest standards among ATAINZ members by restricting membership to suitably qualified people; and
- to consider, initiate, debate and make submissions on New Zealand tax laws.

At present ATAINZ has more than 450 members acting for approximately 150,000 taxpayers. These include business owners, self-employed, partnerships, companies, investors, salary and wage earners, super annuitants, rental income investors, farmers, estates and trusts.

This submission has been prepared after feedback from members and our involvement with External Working Groups.

A. Summary of key points of submission

The compliance cost for AML/CFT on accountants working with small business is large (in terms of time and money). It is also counterproductive to the purpose of the act as tax agents are opting not to provide 'captured activities' to avoid the burden of AML/CFT compliance. When acting for small businesses, the fees charged to clients for accounting work do not allow tax agents to recoup the time and therefore cost of AML/CFT compliance.

While ATAINZ members understand and support the purpose of the AML/CFT act, we would like to see a risk-based approach taken for our industry. If a tax agent only deals with SME's or low risk entities (including trusts which may only hold a family home or long-term rental property/s) then a suggestion for AML requirements could be:

- Standard CDD (which would be best practice for any tax agent)
- Reporting requirement for any suspicious activity
- CPD hours for training on what AML/CFT looks like and how to identify AML/CFT activity (possibly 2 hours per year).

This client-based risk approach would lead to higher buy in from agents and the training requirement, will possibly lead to a higher level of reporting for AML/CFT activity from our industry.

B. General comments

Institutional arrangements and stewardship

Risk-based approach to regulation

Balancing prescription with risk-based obligations:

1.11. Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to?

A risk-based approach rather than a prescriptive regulation approach would lower compliance costs for accountants, which in turn would support more accountants to enter the regime. A great option for these small, low risk businesses, would be a reporting obligation only.

Accountants with a small number of small clients with small risk of AML/CFT activity should not have the same requirements as larger corporations servicing larger clients with higher risk of offending.

Capacity of smaller and larger reporting entities

1.12. Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime?

No

Why or why not?

There are small accounting practices that service small clients that pose a very small risk (if any) to AML/CFT activity. Furthermore, these small accounting entities generally know their clients well. Large corporations deal with a larger number of entities, many will be larger in size and have complex structures with larger volumes of financial activity. These entities have higher AML/CFT risks.

Due to the nature of these larger accounting practices in terms of the number of clients and staff, they generally do not know their clients as well as smaller organisations, therefore should have high regulations regarding AML/CFT detection.

1.13. Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to and the size of the business? If so, what?

Yes, a risk approach to our industry should be taken to ensure compliance is in line with the risk associated with the work each agency is completing and the clients we are servicing.

Scope of the AML/CFT Act

Challenges with existing terminology

“In the ordinary course of business”

2.2. If “ordinary course of business” was amended to provide greater clarity, particularly for DFNBPs, how should it be articulated?

To ensure there was relief for businesses providing one-off activates the words ‘ordinary course of business’ should not be removed, however ‘ordinary course of business’ could be described within the act to provide clarity.

Potential new activities

Preparing or processing invoices

2.33. Is the Act sufficiently clear that preparing or processing invoices can be captured in certain circumstances?

No.

2.34. If we clarified the activity, should we also clarify what obligations businesses should have? Yes. If so, what obligations would be appropriate?

Reporting obligations only.

When preparing invoices an accountant and/or bookkeeper would not necessarily be able to detect money laundering due to deflated/inflated costs/sales as the discussion document proposes. The duties of the accountants and/or bookkeepers are generally performed off site and the goods are not generally viewed by the person processing the invoices – this is a data entry role only; therefore, we are processing, not verifying or ‘signing’ off on the legitimacy of the transaction.

Accountants and/or Bookkeepers are not law enforcement and are not trained in that area, we are accountants processing documentation in alignment with IRD requirements. Regardless of AML we have ethical standards to uphold, if we were to see any activity that we believe to be suspicious then we can report it through the correct reporting channels.

Preparing annual accounts and tax statements

2.35. Should preparing accounts and tax statements attract AML/CFT obligations?

No

Why or why not?

Accountants primarily prepare Annual financial Accounts and Tax Returns for clients as part of the requirement to meet Inland Revenue Department obligations only. With modern accounting practices and systems, accountants do not manually view or process client transactions and generally are not provided with source documents, or invoices to verify each transaction that occurs during the year.

Accountants are not trained as auditors and to suggest that this is undertaken would at least triple the compliance cost to the taxpayers and will impact all SME's that ATAINZ members look after.

Many accountants do not have the resources, funds, or the ability to carry out extra compliance work, unlike large entities that facilitate the transactions (such as banks). Suspicious transactions should be monitored by those who carry out the transactions and at the time of the transaction occurring rather than anywhere from 6 – 12 months after the fact (which is when annual accounts and tax statements are prepared).

It would also be unreasonable to expect that the same transactions go through multiple checks by various parties each time that they occur (banks, lawyers, and accountants) - at considerable cost to business owners and the economy in general.

2.36. If so, what would be the appropriate obligations for businesses which provide these services?

As above, we do not believe that this should be introduced into the act, however, if it was then we would STRONGLY recommend a reporting obligation only.

Potential new regulatory exemptions

2.48. Should we issue any new regulatory exemptions? Are there any areas where Ministerial exemptions have been granted where a regulatory exemption should be issued instead?

An exemption for accountants with a small client base supporting SME's with little risk of AML/CFT activity should be explored.

Supervision, regulation, and enforcement

Sanctions for employees, directors, and senior management

3.25. Would broadening the scope of civil sanctions to include directors and senior management support compliance outcomes? Should this include other employees? 3.26. If penalties could apply to senior managers and directors, what is the appropriate penalty amount? 3.27. Should compliance officers also be subject to sanctions or provided protection from sanctions when acting in good faith? Yes, absolutely. The act is complicated, any directors, senior management, employees, and compliance officers who are acting in good faith and doing their best to support the AML/CFT regime should be protected from sanctions.

Preventative measures

Source of wealth versus source of funds

4.26. Are there any instances where businesses should not be required to obtain this information? Are there any circumstances when source of funds and source of wealth should be obtained and verified? Yes, when the entity is either not trading or has basic trading activity (i.e. a long term rental property), has a low turnover of assets and/or the entity owners are deemed low risk (i.e., family trust, settlors are mum and dad, beneficiaries are children and the trust owns the family home and possibly a rental property). A risk-based approach to source of wealth/funds should be taken as these types of entities have extremely low risks associated to AML/CFT activity.

4.27. Would there be any additional costs resulting from prescribing further requirements for source of wealth and source of funds?

There are large compliance costs involved in sourcing this information. The cost of sourcing this information for low-risk entities is not in proportion to the risk of AML/CFT activity for them.

Considering whether and when customer due diligence was last conducted

4.57. As part of ongoing CDD and account monitoring, do you consider whether and when CDD was last conducted and the adequacy of the information previously obtained? 4.58. Should we issue regulations to require businesses to consider these factors when conducting ongoing CDD and account monitoring? Why? 4.59. What would be the impact on your compliance costs if we issued regulations to make this change? Would ongoing CDD be triggered more often? 4.60. Should we mandate any other requirements for ongoing CDD, e.g. frequently it needs to be conducted?

If there is reporting obligations, then there is no need for ongoing CDD for low-risk customers.

AML/CFT Act Consultation Team
3rd December 2021



Please contact either of ourselves, or [REDACTED] ([REDACTED]@figuration.co.nz), our Submissions Co-ordinator, if you have any queries regarding this submission.

Yours sincerely



[REDACTED]
Chief Executive Officer
ATAINZ



[REDACTED]
Chair
ATAINZ