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Money Laundering - High Value Dealers

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (the Regulations) apply to a number of different businesses which include (amongst others) accountants and auditors, tax advisers and dealers in high value goods. The Regulations contain detailed procedural anti-money laundering requirements for those affected.

HMRC have been given the responsibility for supervising High Value Dealers. We outline below the main requirements of the Regulations and the registration process.

Which businesses are affected?

Businesses that meet the definition of a High Value Dealer (HVD) are affected by the Regulations.

A business is defined as a HVD where it deals in goods and accepts or makes cash payments equivalent to €10,000 or more in any currency, including where a customer deposits cash directly into the HVD's bank account or when they pay cash to a third party for the benefit of the HVD. This applies whether the transaction is executed as a single transaction or in several instalments which are linked.

Businesses that only occasionally accept or make such transactions are included. Businesses that do not accept large amounts of cash or deal in services are not affected.

Generally the businesses most affected will be those that deal in high value or luxury goods, works of art, cars, jewellery and yachts.

However, the regime applies to everyone who accepts sufficiently large amounts of cash for goods and any business could potentially be registrable.

If a HVD does not intend to accept high value payments it should have a written policy to this effect and ensure that employees and customers are aware of this policy.

Art market participants

An art market participant is a person who by way of business trades in, or acts as an intermediary in the purchase or sale of art with a value exceeding €10,000. An art market participant is required to register with HMRC regardless of how such payments are made or accepted; that is, the requirement to register is not restricted to those who make or accept cash payments. Registration as an art market participant is also with HMRC.

How is my business affected?

If your business does deal in goods and does accept or make large cash payments then you are required to:

- put anti money laundering systems in place so that you can identify and prevent money laundering and report any suspicious transactions (see below)
- register with HMRC
- pay an annual fee based on the number of premises through which you trade. There is also an application charge for new registrations
- report any changes through the registration year.

If you are unsure whether you will sell goods for this amount and do not register, you will be obliged to refuse any payments or refunds in cash equivalent to €10,000 (or more) or insist upon payment by another means, such as cheque, credit or debit card.

Background to the requirements

Why was this regime introduced?

The aim of the regime is to help protect society and to combat money laundering and the criminal activity which underlies it, including terrorism.

As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation and regulation aimed at catching those involved became necessary.

The primary legislation is predominantly contained within the Proceeds of Crime Act 2002 and the Terrorism Act 2000 as amended by the Terrorism Act 2006 and subsequently the Counter-Terrorism Act 2008.

The 2017 Regulations (as amended) implement the EU Fourth and Fifth Money Laundering Directives which aim to further improve and tighten the regime to tackle money laundering and terrorist financing. Brexit has not affected the application of these regulations.

What is money laundering?

Money laundering is the process by which criminally obtained money or other assets (criminal property) are exchanged for 'clean' money or other assets with no obvious link to their criminal origins.

Criminal property

Criminal property represents the proceeds of criminal conduct. This includes any conduct wherever it takes place, which would constitute a criminal offence if committed in the UK. It not only includes, for example, drug trafficking, tax evasion, fraud, forgery and theft but also any other criminal offence committed for profit.

It is important therefore to remember that money laundering includes the proceeds of any crime and not simply the more traditionally associated crimes such as drug trafficking and prostitution.

Under the legislation there are three principal money laundering offences covering criminal activity and two related money laundering offences:

- concealing, disguising, converting, transferring or removing (from the United Kingdom) criminal property
- making arrangements which facilitate the acquisition, retention, use or control of criminal property by or on behalf of another person
- acquiring, using or possessing criminal property
- failure to disclose knowing or suspecting or having reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist funding
- revealing that a disclosure of suspicion of money laundering has been made or that an investigation into money laundering offences is being carried out, or considered, where this is likely to prejudice an investigation. This is known as 'tipping off'.

HVDs must be aware of how these actions could affect their business, for example, as the proceeds of crime are spent (or laundered) within their business.

The importance of the regime

The law imposes very severe penalties on anyone involved in money laundering. The Regulations require HVDs to adopt anti money laundering procedures to protect themselves against abuse by money launderers and the risk of prosecution.

The registration process

HVDs register with HMRC using their online service. If you already have a Government Gateway account you will use this User ID and password to sign in, but otherwise you can register for an account as part of this process.

HMRC will review your application, but this can take up to 45 days. Remember that you cannot accept or make any cash payments over €10,000 until you are registered. You will receive an email when a decision has been made on your application, but you will need to sign into your account to see that decision.

Registration is required where a business:

- accepts or makes payments equivalent of €10,000 or more in cash for a single transaction or in instalments which are linked or
- takes a policy decision to carry out such transactions.

Every legal entity through which a HVD business is run must be registered. An initial fee of £300 is payable for registration for each of the premises listed on the application. Annual renewals of £300 per premise apply. The 2017 Regulations require approval tests of 'key personnel' to check for relevant criminal convictions. This is a non-refundable charge of £40 per person.

Businesses that fail to register could be liable to a civil penalty if they carry out a HVD transaction.

What anti money laundering policies and procedures are required?

Your business should establish, review and maintain policies and procedures relating to:

- customer due diligence
- risk assessment and management
- the monitoring and management of compliance
- reporting
- record keeping
- internal control
- the internal communication of these policies and procedures.

Customer due diligence (CDD)

HVDs must establish the identity of any customer who makes or is refunded a total cash payment equivalent to €10,000 or more for a single transaction or linked transactions.

Establishing identity requires you to be satisfied that your customer is who they claim to be by obtaining evidence of their name, address and date of birth. For further information on CDD procedures please refer to the Money Laundering and Proceeds of Crime factsheet.

Risk assessment

The HVD must carry out a risk assessment to identify and assess the risks of money laundering and terrorist financing to which the business is subject. You must write this down, together with any underlying information that you used to make that assessment (for instance the countries in which you operate, the goods you sell, the nature of your customers etc).

Appoint an individual as the officer responsible for compliance

The Regulations require, where it is appropriate to the size and nature of your business, a member of the board (or equivalent), or senior management, to be the officer responsible for compliance with the Regulations. HMRC, as your supervisory body, must be informed of the identity of this individual when first appointed and any subsequent changes.

Appoint a Money Laundering Nominated Officer (MLNO)

This is a very important role within a HVD business and should be performed by a suitably senior person. This person can also be the person who is the officer responsible for compliance with the Regulations and again HMRC must be informed of their identity.

The main roles of the MLNO should be to:

- establish the necessary procedures to implement the requirements of the Regulations
- receive and review reports of possible money laundering from others involved in the business
- decide whether to report to the National Crime Agency (NCA).

Establish an independent audit function to assess compliance

HVDs should ensure they check that their policies are appropriate and are being properly implemented. Where necessary changes should be made to ensure everything is working properly. Larger organisations will be expected to achieve this by establishing an independent audit function, but smaller businesses might do this with perhaps an annual internal or external check of their procedures.

Screen relevant employees

When hiring new staff who will be involved in any aspect of compliance with the Regulations (eg taking large cash payments) the HVD must screen them to ensure they have the appropriate knowledge and skills for the job and to assess their conduct and integrity.

NCA

The NCA is the government body to which all suspicions of money laundering should be reported via the NCA website.

There will be times when an internal report of suspected money laundering is received by the MLNO, where the transaction is not yet complete. Under these circumstances there are specific NCA procedures to follow and you must wait until the NCA gives consent for the transaction to go ahead.

Training your staff

All customer facing staff in the business must be trained to be aware of:

- the law regarding money laundering offences and terrorist financing
- how to recognise and deal with suspicious transactions.

Staff should be trained regularly on this subject and training should be repeated to ensure that staff knowledge is maintained and they are competent to apply CDD procedures. The ongoing training should ensure that staff are aware of changing money laundering practices.

Managing the risk

HVDs should:

- have a system in place to record all transactions of €10,000 or more on their accounting system and make them identifiable
- have policies and procedures in place concerning the acceptance of these large transactions.

Record keeping

The records that must be kept are:

- a copy of, or the references to, the evidence of the customer's identity obtained under the CDD procedures
- the supporting evidence and records in respect of the business relationships and occasional transactions which are the subject of CDD measures or ongoing monitoring.

In relation to the evidence of a customer's identity, businesses must keep the following records:

- a copy of the identification documents accepted and verification evidence obtained, or
- references to the evidence of a customer's identity.

How long must the records be retained for?

- Evidence of a customer's identity must be kept for 5 years beginning on the date on which the occasional transaction is completed or the business relationship ends.
- Records of transactions must be kept for 5 years beginning on the date on which the transaction is completed.
- All other records must be kept for 5 years beginning on the date on which the business relationship ends.

You must be able to rapidly respond to a query from the police or other appropriate investigator regarding a customer or past customer.

Failure to comply

Businesses may be liable to a civil penalty for failing to comply with a registration requirement. There is no upper limit on the amount of the penalty. Penalties will be for an amount that is considered appropriate for the purposes of being effective, proportionate and dissuasive.

Failing to comply with responsibilities under the Regulations could lead to either prosecution or a civil penalty. Conviction under the Regulations can incur up to two years imprisonment and / or an unlimited fine.

How we can help

If you would like to discuss any of the issues raised above please do contact us. We are able to provide comprehensive assistance with regulation and HMRC matters such as:

- HVD registration
- design and implementation of anti money laundering policies and procedures
- VAT registration and deregistration
- completion of VAT returns.

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