

26 October 2018

International Criminal Law Team
Crime Prevention and Criminal Justice
Ministry of Justice
The Vogel Centre
19 Aitken Street
Wellington

By email: amlcft.exemptions@justice.govt.nz

Dear Sir or Madam

Application for an AML/CFT Ministerial Exemption

Who is applying?

Give the full name, address and corporate status of the persons seeking the exemption. You must include your NZBN. You must provide an overview of your business, including key office holder and major shareholders. You should also provide information on any associated corporate entities (parent or subsidiary) or unincorporated bodies, such as partnerships and unincorporated joint ventures.

Chartered Accountants Australia and New Zealand (CA ANZ) is seeking the exemption. CA ANZ is a professional body with over 120,000 members globally and approximately 30,000 members in New Zealand. We focus on the education and lifelong learning of our members, and on advocacy and thought leadership in areas of public interest and relevance to business. We have approximately 2,000 Approved Practice Entities in New Zealand (ie accounting / professional services practices through which our members operate), which are now subject to the AML/CFT Act.

Is the exemption for a reporting entity or a transaction?

The application should clearly state whether the proposed exemption relates to a reporting entity or class of entity; a transaction or class of transaction; or a class exemption?

The proposed exemption relates to the activity of tax transfers conducted by all accounting / professional services practices in New Zealand.

What do you want an exemption from?

Give the provisions of the Act and/or regulations you believe you should be exempt from, and any conditions of exemption you consider appropriate.

On Thursday 27 September the Department of Internal Affairs (DIA) issued an [Explanatory Note: Involvement in tax transfers, payments and refunds](#). The position expressed is that tax transfers in the Inland Revenue (IR) system (“myIR”) may be captured activities under the AML/CFT Act as ‘managing client funds’. The Explanatory Note also suggests possible capture under ‘engaging in/giving instructions for a transaction in relation to creating, operating or managing a legal person/arrangement’.

We are seeking a class exemption. In our view tax transfers should not be a captured activity and, as such, should be exempt from all the provisions of the AML/CFT Act and Regulations. We do not consider any conditions of exemption are necessary.

Describe the circumstances in which the exemption would apply

Describe the reporting entity or transaction, and circumstances in which the exemption is sought.

Class of entity: The exemption is sought for all accounting / professional services practices with a tax agency arrangement with IR under all permitted structures in New Zealand. A tax agent can either be an individual or an entity.

Class of transaction: The conduct of tax transfers to another tax type, to another tax year or to another taxpayer, on behalf of a client in New Zealand.

Some tax transfers are effected through tax pooling intermediaries. We understand that the industry group for tax pooling intermediaries is intending to file an exemption application in respect of tax transfers made via tax pooling intermediaries. We note our support for such an exemption application.

Why are you seeking this exemption?

Explain, for each provision of the Act or regulations that you want to be exempt from, why you want it. You must also give full and detailed reasons why it's justified and provide evidence to support your statements.

- A tax transfer is generally made to settle an existing or expected liability to IR. Once the liability is extinguished the funds are no longer accessible to the taxpayer, so there is no money laundering or terrorism financing risk.
- In many cases tax transfers are not outside of the individual / legal person / legal arrangement to which they relate (ie within the same IRD number). Transfers can be made between tax types and tax years, but all for the same taxpayer.

- Legally, to be a tax agent for a client and deal with IR on a client's behalf, an authority must be provided by the client to IR. Included in the IR authority is the ability to request tax transfers on a client's behalf. Even if a tax transfer is requested by a tax agent on behalf of a client, the tax transfer has to be approved by IR.
- When the AML/CFT Act was being developed, we do not believe it was intended that tax transfers would be a captured activity. In our view, the DIA's interpretation of the AML/CFT Act is too far reaching in this regard.
- The obligations and hence compliance costs for accounting / professional services practices would be disproportionate compared to the money laundering or terrorism financing risks.

Describe the existing money laundering and terrorist financing risks related to your business/application

To help businesses understand the risks they face, the supervisors and the Police Financial Intelligence Unit provide sector risk assessments and typology reports (a typology is an example of types of money laundering or terrorism financing). You must demonstrate that you've considered the risks and issues facing your sector, product or service, how they relate to your application and how you'll manage them.

The reason accountants were included in the regime is because *"The professional services provided by accountants are attractive to money launderers because they can give the impression of respectability, legitimacy or normality"* (paragraph 124, [Phase 2 AML/CFT Sector Risk Assessment](#)) and *"Both domestic and international evidence suggests that using gatekeepers, such as accountants, is a way for criminals to create a false perception of legitimately acquired wealth"* (Executive summary, [Guideline: Accountants](#)).

Taxpayers have three options for carrying out tax transfers; they can do it themselves, they can ask their tax agent to do it, or they can ask a tax pooling intermediary to do it. Regardless of which option used, tax transfers are in the name of the taxpayer hence the use of a 'professional gatekeeper' adds nothing to a tax transfer. Therefore the impression of respectability and legitimacy is not gained, neither does it facilitate access to the wider financial system.

Using a tax agent gives the taxpayer an extension of time for filing tax returns and paying tax. We consider there is no additional benefit to a money launderer or terrorism financier in using a tax agent to do a tax transfer. It is actually to the contrary – the use of a tax agent carries more risk because a tax agent will not request a tax transfer if they suspect potential money laundering or terrorism financing, and many are obliged to report such a suspicion.

Whilst tax agents have the authority to request tax transfers, IR has the ultimate authority whether or not the tax transfers are effected, as the funds remain within the tax system. IR has analytical processes in place to assess possible risks with tax returns filed and assessments made. While this process is being undertaken, a tax credit cannot be transferred (or refunded). Furthermore, a taxpayer could be subject to an inspection or audit by IR at any time, and this is highly likely to deter money laundering and terrorism financing through myIR.

Tax credits can be transferred to another tax type, to another tax year or to another taxpayer. If it is to another tax type or to another tax year, those funds are still retained by the client, as it relates to their IRD number. Tax transfers have to be made when a tax payment is incorrectly applied by IR to the wrong tax type or tax year. Such tax transfers are administrative in nature. All parties to a tax transfer must be registered with IR, so there is no anonymity where tax is transferred to another taxpayer. Furthermore, the amount of tax transferred to another taxpayer cannot exceed the amount of tax the transferee owes to IR.

The primary money laundering and terrorism financing risk arising from taxation more broadly is by way of overpayment then asking for a refund. Whilst this is a known money laundering typology for designated non-financial businesses and professions (DNFBPs), this is generally through private trust accounts (which are already regulated under the AML/CFT Act) – not within a tax authority’s system. But under this proposed exemption, accounting / professional services practices that provide other captured activities would continue to be reporting entities and subject to full compliance with the AML/CFT Act.

What effects will the exemption have on your business?

Describe the effects on your business, and the relative costs and benefits, of both having and not having the exemption. If the exemption is granted and you’ll still face some money laundering and terrorist financing risks, describe how you’ll manage them. You’ll need to support your statements with evidence.

The right to request transfers within myIR for a client is automatic for tax agents which means that at any time they could undertake a captured activity (ie do a tax transfer). On this basis, to ensure compliance with the AML/CFT Act, accounting / professional services practices have to conduct customer due diligence (CDD) on all clients for which they are the tax agent. Without the required exemption compliance obligations on accounting / professional services practices increase significantly, and yet the inclusion of tax transfers as a captured activity is highly unlikely to detect or deter money laundering or the financing of terrorism. An exemption would reduce the number of clients that CDD is required to be conducted on, which would lessen the administrative burden.

Furthermore, for many accounting / professional services practices tax transfers would be the only captured activity they provide and the only reason for them to be a reporting entity. Any benefits of requiring full compliance with the AML/CFT Act are not justified given the very low money laundering and terrorism financing risks raised by tax transfers.

As noted above, under this proposed exemption, accounting / professional services practices that provide other captured activities would continue to be AML reporting entities and subject to full compliance with the AML/CFT Act.

What effects will there be on your competitors or other third parties?

Describe how your proposed exemption may affect other firms operating in your industry and describe any competitive effects. If the application is granted, discuss whether any third party's rights may be adversely or favourably affected and, if so, how.

Virtually all accounting / professional services practices have a tax agency arrangement with IR, hence our proposal that this exemption be for all tax agents based in New Zealand. Only recognised tax agents can act as intermediaries for clients with IR and hence request tax transfers through myIR on behalf of clients. This ensures the exemption would not be anti-competitive.

Is the exemption consistent with the intent and purpose of the AML/CFT Act and any regulations?

You should consider the matters that underpin the AML/CFT regime and comment on:

- *whether the proposed exemption is compliant with international obligations relating to anti-money laundering and terrorist financing*
- *whether the exemption can be justified on the basis of a cost, benefit and risk analysis*
- *whether the proposed exemption is compatible with Australian regulatory requirements*
- *whether the proposed exemption is consistent with AML/CFT legislation in other Financial Action Task Force member countries.*

We do not believe the DIA's interpretation of the AML/CFT Act in relation to tax transfers is consistent with the intent and purpose of the legislation. We are not aware of any other Financial Action Task Force (FATF) member countries that have interpreted their local AML/CFT legislation in this way. Neither can we find any international literature that identifies tax transfers within a local tax authority's system as having a money laundering or terrorism financing risk.

Are there any precedents?

Identify if there are any existing exemptions similar to the exemption you're seeking, in New Zealand and other jurisdictions. State how the existing exemption is similar to, and different from, your own circumstances.

PAYE intermediaries have a class exemption from the AML/CFT Act under the [Anti-Money Laundering and Countering Financing of Terrorism \(Class Exemptions\) Notice 2018](#) due to the risk being low because:

- PAYE intermediaries must be registered with IR (so do tax agents who undertake tax transfers).
- PAYE intermediaries are regulated by requirements under the Income Tax Act 2007 and Tax Administration Act 1994 (so are tax agents who do tax transfers).

- PAYE intermediaries must submit information to IR in a format that is acceptable (tax agents also have to do this when requesting tax transfers).

As can be seen from the above, there are many similarities between the requirements placed on PAYE intermediaries and tax agents.

Does your reporting entity undertake prescribed transactions?

The following questions have been added to help the Ministry of Justice understand whether the reporting entity undertakes prescribed transactions as per Subpart 2A of the Act. Please answer these questions by YES or NO. If the answer is NO, please provide a brief reason why these transactions would not be conducted through the reporting entity.

In the course of the reporting entities' business:

- *does the reporting entity order international wire transfers to the value of \$1,000 or more?*
- *does the reporting entity receive international wire transfers to the value of \$1,000 or more?*
- *would a person conduct a domestic cash transaction of \$10,000 or more through the reporting entity?*

It is likely that some tax agents are involved with international wire transfers of \$1,000 or more. It is unlikely that many tax agents are involved in domestic cash transactions of \$10,000 or more. If they are 'managing client funds' then they would be an AML reporting entity and have an obligation to report prescribed transactions. However tax transfers, which are the subject of this exemption application, are made within the IR system and therefore are not international wire transfers or domestic cash transactions.

If you have any questions about this application, please contact Zowie Pateman, Deputy Reporting and Assurance Leader, at Zowie.Pateman@charteredaccountantsanz.com.

Yours sincerely



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