Irish Tax Institute

January 2020

Anti-Money Laundering and Counter Terrorist Financing

Guidelines for Members

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Chapter 1: Introduction

1 Introduction

1.1 On 26 November 2018, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 (the **2018 Act**) was commenced and transposed the Fourth Money Laundering Directive (Directive (EU) 2015/849 (**4AMLD**) into Irish law. The 2018 Act made a range of amendments to prior anti-money laundering (**AML**) and counter terrorist financing (**CTF**) legislation.

1.2 Legislative changes have continued in 2019 with European Union regulations published on 25 November 2019 which have amended the 4AMLD and have been given further effect in Ireland by the European Union (Money Laundering and Terrorist Financing) Regulations 2019 (the 2019 Regulations).

1.3 Currently, the Irish AML/CFT framework is largely set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the 2010 Act) as amended (including by the 2018 Act). For the purposes of these Guidance Notes we will refer to the 2010 Act and amending legislation collectively as the "Acts".

1.4 As the 2010 Act has been amended on numerous occasion by subsequent legislation, Tax Advisers need to be mindful of the amendments in order to ensure that that the most up-to-date legislation is being consulted.

1.5 Tax advisers acting in the State in the course of business carried on by them in the State are Designated Persons for the purposes of the Acts. As a Designated Person, tax advisers have certain legal obligations under the Acts.

1.6 It is important to note that this area continues to evolve, the Fifth Anti-Money Laundering Directive (5AMLD) must be transposed into Irish law by 10 January 2020 and the Sixth Anti-Money Laundering Directive (6AMLD) must be transposed into Irish law by 3 December 2020. These further directives will have an impact on Irish law in the near future.

2 Key features of the Acts

2.1 Recent updates to AML legislation do not represent a sea-change in AML/ CTF compliance; the key principles remain unchanged. Rather the introduction of 4AMLD and the 2018 Act re-enforces a tax advisers' obligation to really get to know their client and their client's business both at the beginning of the relationship and on an ongoing basis. Knowing your client is not a ‘tick the box’ exercise which is only carried out when a business relationship commences.

2.2 The key features of the Acts are that:

2.2.1 an obligation is placed on Designated Persons to more comprehensively monitor business relationships - this not only requires the initial identification and verification of identity, but also ongoing monitoring;

2.2.2 Designated Persons are required to carry out Business Risk Assessments and Customer Risk Assessments as part of customer due diligence processes to identify and assess the risks of money laundering and terrorist financing;

2.2.3 it distinguishes between when simplified, standard and enhanced Customer Due Diligence procedures should be applied to specified customer types;

2.2.4 an obligation is placed on Designated Persons to also identify and take adequate measures to verify, where applicable, the beneficial owners of customers;

2.2.5 Designated Persons are under obligations in relation to recordkeeping, staff training and the maintenance of appropriate procedures and controls pertaining to the requirements imposed by the Acts;

2.2.6 Designated Persons are required to have "appropriate procedures" in place for their employees, or persons in a comparable position, to report a contravention of the Acts internally through a specific, independent and anonymous channel;

2.2.7 monitoring obligations are placed on Competent Authorities in respect of Designated Persons' compliance with the obligations imposed on them under the Acts (see **chapter 10** for information on who is your Competent Authority); and

2.2.8 the Gardaí are equipped with a range of investigative tools, including powers of search and seizure and the ability to issue directions (such as not to provide a service / complete a transaction).

3 Guidance Notes

3.1 The purpose of these Guidance Notes is to provide guidance to tax advisers on their obligations under the Acts and other related legislation. However, these Guidance Notes are not intended to be exhaustive nor set the limits for the steps to be taken by tax advisers in working to prevent money laundering or terrorist financing. These Guidance Notes should not be construed as legal advice or legal interpretation. The Acts should always be consulted on any queries and in the event of any inconsistency between these Guidance Notes and the Acts, the Acts will prevail.

3.2 These Guidance Notes are for the benefit of tax advisers only. Other Designated Persons (such as solicitors or accountants) should have regard to guidance approved by their respective Competent Authorities.

4 How to use these Guidance Notes

There are a number of definitions in the legislation which are relevant for these Guidance Notes and are set out in Appendix 1.

Chapter 2: Money Laundering Overview

1 **Money Laundering Overview**

The Acts seek to prevent the use of the financial system for the purpose of money laundering and terrorist financing. Below are the basic key principals of AML. The definitions of the key terms may be found at Appendix 1.

2 **What does money laundering mean?**

2.1 When most of us think of money laundering we think of serious criminals, such as drug dealers, trying to 'clean' the proceeds of their crime by channelling their money through some legitimate source. However, money laundering is very widely defined under Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the **2010 Act**). It is not confined to just money but applies to any property derived from crime. Furthermore, it is not only related to laundering situations; for example, the mere handling by a criminal of the proceeds of his or her crime constitutes a money laundering offence. However, a money laundering offence can only arise where the property concerned is the proceeds of criminal conduct. Without criminal conduct, there can be no money laundering offence and, thus, no obligation to report.

2.2 A money laundering crime will occur where there has been intentional tax evasion. Applying the language of the Taxes Consolidation Act, this means any proceeds arising out of the commission of a tax offence where there was a criminal intent to defraud, and any income or gains arising there from.

2.3 Most tax offences are provided for under s1078 of the Taxes Consolidation Act 1997 (the TCA) - see Appendix 2.

2.4 The types of offences that are most likely to give rise to a money laundering offence if criminal intent is involved include knowingly and wilfully:

2.4.1 failing to file tax returns;

2.4.2 filing an incorrect tax return;

2.4.3 claiming a relief the taxpayer is not entitled to;

2.4.4 producing or assisting to produce a false invoice;

2.4.5 failing to deduct dividend withholding tax; and

2.4.6 failing to pay the appropriate tax.

2.5 Section 7 (1) of the 2010 Act provides that money laundering occurs when:

2.5.1 A person engages in any of the following acts in relation to **property** that is the **proceeds of criminal conduct**:

(a) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;

(b) converting, transferring, handling, acquiring, possessing or using the property; and

(c) removing the property from, or bringing the property into, the State; and

a person **knows or believes** (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

2.6 Money Laundering has three distinct stages which are placement, layering and integration.

2.6.1 **Placement**. The first stage, is the introduction of illegally gained monies into the financial system or retail economy. The aim of this stage is to remove the cash from the location of acquisition so as to avoid detection and then to transform it into other asset forms.

2.6.2 **Layering.** The purpose of the second stage, layering, is to disassociate the illegal monies from the source of the crime by creating one or more financial transactions aimed at concealing any audit trail as well as the source and ownership of funds.

2.6.3 **Integration.** The purpose of the final stage, integration, is the introduction of the "cleaned" money into the economy. This is achieved by making it appear to be legally earned.

2.7 Tax Advisors are likely to be targeted in the layering and integration stages.

2.8 Tax advisers should proceed with caution and should consider obtaining legal advice if there is any doubt as to whether the conduct in question is in fact a criminal offence.

3 What does terrorist financing mean?

3.1 The term "**terrorist financing**" is easier to understand than money laundering. However, this does not make it any easier to identify. Funds that are used to finance terrorist activities do not necessarily derive from criminal activity and, therefore, activities related to terrorist financing may not exhibit the same traits as conventional money laundering or fraud.

3.2 There can be considerable similarities between the movement of terrorist property and the laundering of criminal property; some terrorist groups are known to have well established links with organised criminal activity. However, there are two major differences between terrorist property and criminal property more generally:

3.2.1 often only small amounts are required to commit individual terrorist acts, thus increasing the difficulty of tracking the terrorist property; and

3.2.2 terrorists can be funded from legitimately obtained income, including charitable donations, and it is extremely difficult to identify the stage at which legitimate funds become terrorist property.

3.3 Terrorist organisations can, however, require quite significant funding and property to resource their infrastructure. They often control property and funds from a variety of sources and employ modern techniques to manage these funds, and to move them between jurisdictions. In combating terrorist financing, the obligation on Designated Persons is to report any suspicious activity of your clients to the authorities.

3.4 Terrorist financing is an offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005, and is summarised as follows:

A person is guilty of an offence if, in or outside the State, the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part, in order to carry out:

3.4.1 an act that constitutes an offence under the law of the State and within the scope of, and as defined in, any treaty that it is listed in the annex to the Terrorist Financing Convention; or

3.4.2 an act (other than one referred to in paragraph 3.4.1):

(a) that is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict; and

(b) the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do, or abstain from doing, any act.

4 When might a tax adviser encounter money laundering or terrorist financing?

4.1 The money laundering risks that a tax adviser may encounter include situations:

4.1.1 where a customer's actions in respect of his tax affairs may be dishonest and create proceeds of crime, for example:

(a) failure to correct an error in his tax return that you have already been pointed out to him; or

(b) claiming or continuing to claim a relief when the client has previously been advised that he is not entitled to that relief; or

(c) under declaring profits/income/gain or overstating expenses/losses.

If a client has engaged in any of these activities, then you need to give careful consideration as to whether the act or the failure is intentional and dishonest. If you suspect that the act/failure to act is dishonest and made with an intention to defraud, then this is a money laundering offence and you must report your suspicion.

4.1.2 where during the course of dealing with a client's tax affairs, it becomes apparent that the client is holding proceeds of crime derived from criminal activity which may or may not be tax related.

4.2 Practical example of 4.1.1

4.2.1 Mary is a tax adviser with Platinum Tax Advisers and is a member of the Irish Tax Institute. She has a client, Bob, who is a developer with a number of ongoing developments in Dublin. Bob's business is going through a difficult period at the moment and when Bob meets Mary to prepare his corporation tax returns, she notices that he is being very cagey about the expenses incurred by the business. Mary is surprised by this as Bob usually has a comprehensive set of receipts. She is also surprised that Bob's company has such a healthy profit. Mary informs Bob that she will need evidence of each item of expenditure incurred. When Mary finally receives the receipts from Bob, it is clear to her that there is approximately €20,000 worth of expenses for which Bob does not have receipts. Mary advises Bob that there is an error in his calculations but Bob has refused to amend his return to reflect this, stating that he is at the pin of his collar and simply can't afford to pay any tax this year. He says that he is submitting his return as is and if she doesn't assist him, he will find someone else who can.

4.2.2 Mary meets Bob a few months later at the firm's Christmas drinks. Bob is enjoying himself and boasts to Mary when he meets her that he filed the Company's tax returns himself in the way he wanted and that he didn't need her help.

4.2.3 In this instance, Bob appears to have fraudulently or negligently filed an incorrect tax return, an offence under s.1072 of the TCA. Bob has engaged in criminal conduct and the proceeds of his crime are the costs saved by Bob.

4.3 Another practical example of 4.1.1

4.3.1 Peter is tax adviser to a large Irish company. Peter discovers that an incorrect VAT return has been filed because the wrong rate of VAT was applied to sales of a particular product. He tells the client about the error and advises the client on how to correct the error. Peter has no reason to suspect dishonesty by the client at this point and no money laundering offence arises.

4.3.2 However, it later emerges that the correction was not subsequently made by the client. In this scenario Peter needs to give careful thought as to whether the failure to correct the return indicates dishonesty and if he suspects it does, then he must make a money laundering report.

4.4 Practical example of 4.1.2

Mary's colleague John is also a tax adviser with Platinum Tax Advisers and is a member of the Irish Tax Institute. John has recently received instructions via email from a new client, Black Industries Ltd. While establishing the ownership of this company, John learns that Barry Black is the sole shareholder in Black Industries Ltd. Barry Black is a well-known criminal operating in the drug trade in Dublin. Black Industries Ltd informs John that the company has made a profit of €1 million this year but that it wants to minimise its tax liability. When pressed on the source of its profit and the type of business it engages in, Black Industries Ltd is vague in the extreme. After some research, John can find no information whatsoever about the nature of Black Industries Ltd's business. John is very concerned as to the source of Black Industries Ltd's healthy profits and can see no other reason for these profits except that they are the proceeds of crime.

5 The Main Anti-Money Laundering Obligations

5.1 The main AML and CTF obligations imposed on tax advisers by the legislation include the obligation to:

5.1.1 carry out a **Business Risk Assessment** to identify and assess the risks of money laundering and terrorist financing (**chapter 3**);

5.1.2 carry out a **Customer Risk Assessment** and risk based **Customer Due Diligence** (**CDD**) including to monitor clients on an ongoing basis (**chapter 6**) and to keep appropriate records (**chapter 7**);

5.1.3 identify the beneficial owner of a customer;

5.1.4 identify if any customer or beneficial owner is a politically exposed person (a **PEP)**. Close family members and associates connected to PEPs are also required to be identified;

5.1.5 make a **Suspicious Transaction Report** (**STR**) to the State Financial Intelligence Unit (**FIU Ireland**) (**chapter 8**) and ensure that no "tipping off" offences occur;

5.1.6 adopt **policies and procedures** to prevent money laundering and terrorist financing including ensuring there is an independent reporting channel for employees (chapter 3 and chapter 4);

5.1.7 provide ongoing **training** for all personnel (**chapter 10**);

5.1.8 comply with **directions** from the Competent Authority (**chapter 10**); and

5.1.9 comply with **directions** from the Gardaí (**chapter 10**).

These obligations are all discussed in more detail in the chapters noted above.

Chapter 3: Business Risk Assessment

1 Business Risk Assessment

1.1 A new stand-alone statutory requirement to carry out Business Risk Assessments is introduced by section 10 of the 2018 Act which inserted a new section 30A into the 2010 Act. This requirement is independent from the requirement to have AML policies. This embeds the risk-based approach; tax advisers are now required to conduct a specific assessment of the money laundering / terrorist financing risks involved in carrying out their business.

1.2 In addition, section 54(3)(a) of the 2010 Act as amended requires a tax adviser's AML policies to include the identification and assessment of money laundering and terrorist financing risk factors.

2 How to assess your risk profile?

2.1 Customer Demographic

Client demographic can affect the risk of money laundering or terrorist financing. Factors which may vary the risk level include whether a tax adviser:

2.1.1 has a high turnover of clients or a stable existing client base;

2.1.2 acts for PEPs;

2.1.3 acts for clients without meeting them;

2.1.4 practices in locations with high levels of acquisitive crime or for clients who have convictions for acquisitive crimes, which increases the likelihood the client may possess criminal property;

2.1.5 act for clients affiliated to countries with high level of corruption or where terrorist organisations operate;

2.1.6 acts for entities that have a complex ownership structure; and/or

2.1.7 can easily obtain details of beneficial owners of their clients or not.

2.2 Services

Some services could provide opportunities to facilitate money laundering or terrorist financing for example:

2.2.1 complicated financial transactions;

2.2.2 providing assistance in setting up trusts or structures, which could be used to obscure ownership of property;

2.2.3 payments that are made to or received from third parties;

2.2.4 payments made by cash; and/or

2.2.5 transactions with a cross-border element.

3 Role of the Irish Tax Institute

3.1 Section 30A(3) of the 2010 Act (as inserted by the 2018 Act) requires tax advisers to document their Business Risk Assessment for all AML regulated services.

3.2 In addition, section 30A(6) requires that all tax advisers shall, on request, make available a copy of the Business Risk Assessment to their Competent Authority. Tax advisers should therefore ensure that Business Risk Assessments and related documents are available to any authorised person of their Competent Authority on request. Tax advisers should refer to **chapter 10** of these Guidance Notes to determine which Competent Authority will be dealing with their anti-money laundering compliance.

Chapter 4: Customer Risk Assessment

1 **What is a Customer Risk Assessment?**

Section 30B of the 2010 Act (as inserted by the 2018 Act) requires tax advisers to carry out stand-alone risk assessments to identify and assess the risks of money laundering and terrorist financing involved in carrying out an AML regulated service and determining the type of CDD to be applied depending on the type of customer, business relationship or transaction. These will differ from case to case (**Customer Risk Assessment**).

2 **What factors should be considered in a Customer Risk Assessment?**

2.1 Section 30B helpfully sets out what factors should be considered by tax advisers in carrying out a Customer Risk Assessment. Section 30B provides that a Designated Person shall identify and assess the risk of money laundering and terrorist financing in relation to the customer or transaction concerned, having regard to—

2.1.1 the relevant Business Risk Assessment,

2.1.2 the matters specified in section 30A(2)[1],

2.1.3 any relevant risk variables, including at least the following:

(a) the purpose of an account or relationship;

(b) the level of assets to be deposited by a customer or the size of transactions undertaken;

(c) the regularity of transactions or duration of the business relationship;

(d) any additional prescribed risk variable,

2.1.4 the presence of any factor specified in Schedule 3 or prescribed under section 34A suggesting potentially lower risk,

2.1.5 the presence of any factor specified in Schedule 4, and

2.1.6 any additional prescribed factor suggesting potentially higher risk.

3 **Failure to maintain a Customer Risk Assessment**

3.1 Failure of a tax adviser to carry out a Customer Risk Assessment is an offence and for those liable carries:

3.1.1 On summary conviction a class A fine (€5,000) or imprisonment for a term not exceeding 12 months (or both), or

3.1.2 On conviction on indictment to a fine or imprisonment not exceeding 5 years (or both).

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[1] *Section 30A(2) A designated person carrying out a business risk assessment shall have regard to the following:*

(a) Any information in the national risk assessment which is of relevance to all designated persons or a particular class of designated persons of which the designated person is a member;

(b) Any guidance on risk issued by the competent authority for the designated person;

(c) Where the designated person is a credit institution or financial institution, any guidelines addressed to credit institutions and financial institutions issued by the European Banking Authority, the European Securities and Markets Authority or the European Insurance and Occupational Pensions Authority in accordance with the Fourth Money Laundering Directive.

4 How do you assess your client's risk profile?

4.1 Money laundering risks may be measured using various categories. Application of risk categories provides a strategy for managing potential risks by enabling tax advisers to subject customers to proportionate controls and oversight. The most commonly used risk criteria are:

4.1.1 country/geographic risk;

4.1.2 customer risk; and

4.1.3 product/services risk.

4.2 The weight given to these risk criteria (individually or in combination) in assessing the overall risk of potential money laundering will depend on the work of each tax adviser, with the understanding, however, that parameters set by law may limit a tax adviser's discretion.

5 Country/geographic risk

5.1 Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering risks. Also a customer may not be from a particular country but they may have business interests in or relations with a country that may place the customer in a higher risk category. Factors that may result in a determination that customers from a particular country pose a higher risk include:

5.1.1 countries subject to sanctions, embargoes or similar measures issued by, for example, the united nations;

5.1.2 countries identified by credible sources e.g. FATF (Financial Action Task Force) and EU Commission as lacking appropriate money laundering laws and regulations;

5.1.3 countries identified by credible sources as providing funding or support for terrorist activities; and

5.1.4 countries identified by credible sources as having significant levels of corruption, or other criminal activity.

6 Customer risk

6.1 Determining the potential money laundering risks posed by a customer, or category of customers, is critical to the development of an overall risk framework. Based on his own criteria, a tax adviser will determine whether a particular customer poses a higher risk of money laundering and whether mitigating factors may lead to a determination that customers engaged in such activities do not pose a higher risk of money laundering. Application of risk variables should mitigate or exacerbate the risk assessment. The following characteristics of customers may indicate a higher risk of money laundering:

6.1.1 significant and unexplained geographic distance between the tax adviser and the location of the customer;

6.1.2 frequent and unexplained movement of accounts or engagements to different Designated Persons;

6.1.3 where there is no commercial rationale for the customer buying the service he seeks;

6.1.4 requests to associate undue levels of secrecy with a business relationship;

6.1.5 situations where the origin of wealth and/or source of funds cannot be easily verified, or where the audit trail has been deliberately broken and/or unnecessarily layered;

6.1.6 the unwillingness of non-personal customers to give the names of their real owners and controllers;

6.1.7 customers where the structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interests;

6.1.8 cash (and cash equivalent) intensive businesses for example: money services businesses (e.g. remittance houses, currency exchange houses, casas de cambio, bureaux de change, money transfer agents and bank note traders or other businesses offering money transfer facilities);

6.1.9 casino like activities, betting and other gambling related activities;

6.1.10 businesses that while not normally cash intensive, generate substantial amounts of cash for certain transactions;

6.1.11 unregulated charities and other unregulated not for profit organisations (especially those operating on a cross-border basis);

6.1.12 dealers in high value or precious goods (e.g. jewel, gem and precious metals dealers, art and antique dealers and auction houses, estate agents and real estate brokers);

6.1.13 use of intermediaries within the relationship who are not subject to adequate anti-money laundering regulation and who are not adequately supervised; and

6.1.14 customers that are politically exposed persons (for further information on politically exposed persons (see **chapter 6**).

6.2 Many customers, by their nature or through what is already known about them by a tax adviser, carry a lower money laundering or terrorist financing risk. For example:

6.2.1 customers who are employment-based or with a regular source of income from a known source which supports the activity being undertaken (this applies equally to pensioners or benefit recipients, or to those whose income originates from their partners' employment);

6.2.2 customers with a long-term and active business relationship with the tax adviser; and

6.2.3 customers represented by those whose appointment is subject to court approval or ratification (such as executors).

7 Service Risk

7.1 An overall risk assessment should also include determining the potential money laundering risks presented by products and/or services offered by a Tax Adviser. For example:

7.1.1 new or innovative products or services not specifically being offered by a tax adviser, but that make use of the tax adviser's services to deliver the product;

7.1.2 products or transactions that might favour anonymity;

7.1.3 non-face-to-face business relationships or transactions; or

7.1.4 payment received from unknown or associated third parties.

8 Variables that may impact risk

8.1 A tax adviser's may take into account variables specific to a particular business relationship. These variables may increase or decrease the perceived risk posed by a particular customer and may include the:

8.1.1 level of assets to be deposited by a particular customer or the size of transactions undertaken. Unusually high levels of assets, or unusually large transactions, compared to what might reasonably be expected of customers with a similar profile may indicate that a customer not otherwise seen as higher risk may need to be treated as such;

8.1.2 regularity or duration of the relationship. Long standing relationships involving frequent customer contact throughout the relationship may present less risk from a money laundering perspective;

8.1.3 familiarity with a country, including knowledge of local laws, regulations and rules, as well as the structure and extent of regulatory oversight, as the result of a tax adviser‘s own operations within the country; or

8.1.4 use of intermediate corporate vehicles or other structures that have no apparent commercial or other rationale or that unnecessarily increase the complexity or otherwise result in a lack of transparency the use of such vehicles or structures, without an acceptable explanation, increases the risk.

Chapter 5: Customer Identification and Standard Customer Due Diligence

1 **What are the general requirements?**

1.1 The 2018 Act sets out the Customer Due Diligence (CDD) measures that must be taken by Designated Persons in order to comply with their obligations in respect of identifying and verifying customers, persons purporting to act on behalf of customers and beneficial owners.

1.2 A Tax Adviser is required to carry out CDD appropriate to the level of risk of Money Laundering or Terrorist Financing, including a situation where, for example, the relevant circumstances of a customer have changed.

2 **What is CDD?**

2.1 Under sections 33-35 of the 2010 Act, as amended, CDD is defined as comprising the following five obligations, which must be applied in accordance with the Consumer Risk Assessment:

2.1.1 identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

2.1.2 verifying any person purporting to act on behalf of the customer is so authorized and identifying and verifying that individual;

2.1.3 identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the tax adviser is satisfied that he knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;

2.1.4 obtaining information on the purpose and intended nature of the business relationship; and

2.1.5 conducting ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the tax adviser's knowledge of the customer, the customer's business/pattern of transactions and the customers risk profile as determined by the Business Risk Assessment.

2.2 The level of CDD measures a Tax Advisor is required to apply depends on the nature of the relationship between the Tax Advisor and the customer, the type of business conducted and the perceived money laundering / terrorist financing risks arising.

2.3 Tax advisers are also required to pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

3 **When must a tax adviser carry out a Customer Due Diligence?**

3.1 Section 33(1) of the 2010 Act as amended by the 2018 Act provides that a tax adviser must carry out Customer Due Diligence:

3.1.1 prior to establishing a **business relationship** with the customer;

3.1.2 prior to carrying out for or with the customer, a **single transaction**;

The meaning of '**transaction**' is discussed at **chapter 4.**

3.1.3 prior to carrying out any service for the customer, if the Designated Person has reasonable grounds to believe that there is a real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing;

3.1.4 prior to carrying out any service for the customer if the Designated Person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) and no other documents have been obtained that the Designated Person reasonably believes can confirm the identity of the customer; or

3.1.5 at any time, including where the relevant circumstances of the customer have changed, where the risk of money laundering or terrorist financing warrants their application.

3.2 Section 33(1)(c), substituted by the Criminal Justice Act 2013, requires that identification and verification take place prior to carrying out any service for a customer if there are reasonable grounds to suspect money laundering / terrorist financing with regard to specific statutory factors. In such circumstances, tax advisers must be mindful of the risk of committing money laundering / terrorist financing and consider whether they are in a position to proceed with the AML-regulated services and any potential requirement to make a report (see **chapter 8**).

3.3 Some limited flexibility in terms of the timing of the verification of a customer's identity is contained in Section 33(5), which provides that it may be completed during the establishment of a business relationship if:

3.3.1 this is necessary not to interrupt the normal conduct of business; and

3.3.2 there is no real risk of money laundering or terrorist financing occurring,

provided that the verification is completed as soon as practicable after the initial contact.

3.4 The verification of a customer's identity during the establishment of a business relationship is a matter for each individual tax adviser and will vary according to the circumstances presented. However, when entering into a business relationship in advance of verification of identity, a tax adviser should be extremely careful in accepting any funds from the customer prior to the completion of the verification. Best practice is to complete CDD in full prior to handling customer funds.

3.5 Section 33(1)(e) as inserted by the 2018 Act, requires that verification of identity take place "at any time including a situation where the relevant circumstances of a customer have changed, where the risk of money laundering and terrorist financing warrants their application." Best practice dictates that a Customer Risk Assessment(s) is carried out for every new AML regulated service and ensures AML / CTF CDD is in compliance with the Acts.

4 When does a business relationship commence?

4.1 A **business relationship**, in relation to a tax adviser and a customer of the tax adviser, means a business, professional or commercial relationship between the tax adviser and the customer that the tax adviser expects to be ongoing. The Acts do not specify the features of a business relationship but arrangements that would suggest a business relationship include:

4.1.1 the signing of a contract of engagement to provide services;

4.1.2 activities including giving advice, preparing accounts, preparing tax returns, undertaking an audit or other due diligence assignments;

4.1.3 where it is expected that services will be provided to the customer for a period of time whether that period is determined or not at the outset of the arrangement;

4.1.4 where the total amount of any payments to be made by any person to any other in the course of the arrangement is not known or capable of being ascertained at the outset;

4.1.5 where it is expected when any transaction is undertaken that it will be followed by further transactions;

4.1.6 where the customer seeks the provision of services on a frequent or regular basis; and

4.1.7 where the establishment of the relationship involves a formal account opening process.

5 What is a transaction?

5.1 In the case of a tax adviser, a transaction means any transaction that is carried out in connection with a customer of the tax adviser and that is the subject of a service carried out by the tax adviser for the customer.

5.2 For example, if a tax adviser is advising a client on the stamp duty payable on the purchase of a residential property worth €100,000, the value of the subject of the advice is €100,000. The value of the stamp duty payable is €1,000 and is the result of the advice and not the subject of it. If you charged your client €200 for this advice, that is the value of the service you provided and again not the value of the subject of the service.

6 How do you identify and verify a customer's identity?

6.1 Identification is simply the process whereby the tax adviser obtains from a customer the information it considers necessary, according to the customer's risk categorisation, to know who the customer is. The identity of an individual has a number of aspects: e.g. name (which of course may change), date of birth etc. Other facts about an individual accumulate over time e.g. family circumstances and addresses, employment and business career, contacts with the authorities or with other financial sector designated persons, physical appearance. The identity of a non-personal customer is a combination of its constitution, its business, and its legal and ownership structure.

6.2 Verification is the process through which the tax adviser establishes that the information obtained in relation to the customer's identity is correct on the basis of satisfactory evidence provided by the customer or obtained by the tax adviser himself.

7 What sources can be used to verify a customer's identity?

7.1 Evidence of identity can take a number of forms and can be obtained in documented or electronic format. A tax adviser can accept faxed or scanned copies of documentation. In respect of individuals, "identity documents", such as passports and driving licences, are often the best way of being reasonably satisfied as to someone's identity. If the tax adviser meets the customer on a face to face basis, the tax adviser should have sight of the original documents and should record the appropriate details of the identity documents. For non-face to face contact see **chapter 4**.

7.2 Examples of photographic ID include:

7.2.1 current passport;

7.2.2 current photo driving licence;

7.2.3 current National Identity Card;

7.2.4 current identification form with photo signed by a member of the Gardaí;

7.2.5 social welfare card with photo ID;

7.2.6 Irish Resident Permit (IRP) card accompanied by letter from Office of Minister for Integration (signed and stamped); and

7.2.7 National Age card (free of charge for social welfare recipients).

7.3 It is also possible to be reasonably satisfied as to a customer's identity based on other forms of confirmation, including, in appropriate circumstances, written or otherwise documented assurances from persons or organisations that have dealt with the customer for some time. The quantity of evidence required to verify a customer's identity is dependent upon the risk category to which the customer has been allocated by the tax adviser.

7.4 Examples of non-photographic ID include:

7.4.1 current bank statements, or credit/debit card statements, issued by a regulated financial sector designated person in the Ireland, EU or comparable jurisdiction (including those printed from the internet);

7.4.2 current utility bills (including those printed from the internet);

7.4.3 current household/motor insurance certificate and renewal notice;

7.4.4 current local authority document e.g. refuse collection bill, water charge bill (including those printed from the internet);

7.4.5 current documentation/cards issued by the Revenue Commissioners showing the name of the person and their PPSN;

7.4.6 current documentation/cards issued by the Department of Social Protection showing the name of the person and their PPSN;

7.4.7 instrument of a court appointment (such as liquidator, or grant of probate); and

7.4.8 medical card for over 18s with intellectual disability.

7.5 If it is not possible to obtain any of the above, the following may suffice:

7.5.1 examination of the electoral register (including online version);

7.5.2 examination of a local telephone directory or available street directory;

7.5.3 confirmation of identity by employer; and

7.5.4 Garda Síochána community age card.

7.6 Where a customer produces non-standard identification documents at the outset of the business relationship, the Tax Advisor may apply enhanced monitoring arrangements over the customer's activities in accordance with a risk-based approach.

7.7 A number of commercial agencies which access many data sources are accessible online by tax advisers, and may provide tax advisers with a composite and comprehensive level of electronic verification through a single interface. Before using a commercial agency for electronic verification, tax

advisers ought to be satisfied that information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate and they should document the outcome of this assessment, as there is a higher risk of exposure to impersonation when using electronic verification.

7.8 If a customer is unable to provide the tax adviser with the documents required under the CDD a tax adviser must:

7.8.1 not provide the service sought by that customer for so long as the failure remains unrectified; and

7.8.2 discontinue the business relationship (if any) with the customer.

8 Non-face to face contact

8.1 Very often, a tax adviser may by approached by a customer by post, email, telephone or over the internet, which inevitably poses challenges for the identification of clients. Schedule 4 of the 2010 Act (as inserted by 2018 Act) now lists non-face to face business relationships or transactions as potentially higher risk. In circumstances where the tax adviser has not had face to face contact with the customer but is satisfied that there is no risk of money laundering / terrorist financing, one or more of the following measures should be undertaken:

8.1.1 ensuring that the customer's identity is established by additional documents, data or information. For example:

(a) the use of robust anti-fraud checks that are employed as part of existing procedures;

(b) telephone contact with the customer prior to the commencement of the business relationship on a verified home or business number;

(c) communicating with the customer at a verified address;

(d) electronic verification via a commercial agency where electronic verification was not used to originally verify the customer; and

(e) verify information on documents received, e.g. in relation to a utility bill.

8.1.2 supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by the act;

8.1.3 verification of the customer‘s identity on the basis of confirmation received from an **acceptable institution** that the customer is, or has been, a customer of that institution; or

8.1.4 ensuring that the first payment made by the customer to the tax adviser for the provision of a service is carried out through an account in the customer‘s name with an acceptable institution that is a credit institution.

8.2 Should a tax adviser decide to provide services to non-face to face clients the extent of the CDD required will depend on the assessed money laundering risk presented by the client and documented in the tax adviser's customer risk assessment. In such a scenario, enhanced CDD may be advisable.

9 An ongoing requirement

9.1 The Acts require tax advisers, as Designated Persons, to carry out **ongoing monitoring**.

9.2 The Acts require tax advisers carry out CDD on existing customers prior to carrying out any services, where there are doubts concerning previously obtained customer identification data. Tax advisers will no doubt be sensitive to carrying out CDD on existing customers and so, the need to apply CDD to existing customers should arise from a tax adviser's ongoing monitoring process where particular circumstances arise on a risk-based approach in accordance with the Acts.

9.3 For example, the following circumstances should give rise to concerns about previously obtained customer identification data:

9.3.1 a tax adviser has a suspicion that the customer may be involved in money laundering or terrorist financing;

9.3.2 the customer had previously only entered into an **occasional transaction** with the tax adviser, so CDD information had not been collected and the customer now commences a business relationship;

9.3.3 a customer requests the tax adviser to provide a new professional service which is considered to present a higher risk to the tax adviser;

9.3.4 a tax adviser's risk-based assessment of its business indicates that the customer in question falls into a higher than standard risk category; and

9.3.5 a customer invests in a new type of investment product which the tax adviser considers to be higher risk.

9.4 Ongoing monitoring involves staying alert to suspicious activity and conducting periodic reviews based on the trigger events outlined above. Tax Advisors should keep their Business Risk Assessment and assessments of the money laundering / terrorist financing risk associated with individual business relationships and occasional transactions as well as the underlying factors under review to ensure their assessment of the money laundering / terrorist financing risk remains up to date and relevant. Where the Tax Advisor becomes aware that a new risk has emerged, or an existing one has increased, this should be reflected in the Business Risk Assessment as soon as possible. Tax Advisors should put in place systems and controls to ensure that their individual and Business Risk Assessments remain up to date.

10 New requirement to identify persons acting on behalf of the customer

10.1 The 2018 Act introduced a new standard CDD requirement to verify that any person purporting to act on behalf of the customer is so authorised, together with the need to identify and verify the identity of that person along the normal lines (Section 33(21)).

10.2 Persons to act on behalf of the customer may include someone acting under a power of attorney, an executor / administrator, a ward of court or a vulnerable customer who has a third party acting on his/her behalf via a formal authorisation.

10.3 Accordingly, Tax Advisors should take the following steps in respect of persons purporting to act on behalf of your customers:

10.3.1 verify that the representative is authorized to act on the customer's behalf;

10.3.2 verify the representative; and

10.3.3 verify the identity of the representative on the basis of documents and information from a reliable source.

11 **Establishing the beneficial owner and taking steps to verify their identity where warranted by the risk assessment.**

11.1 The Acts requires a tax adviser to trace through the ownership of his/her client in order to determine the actual beneficial ownership in connection with the service in question and to take measures reasonably warranted by the risk of money laundering and/or terrorist financing to:

11.1.1 verify their identity to ascertain who the beneficial owner is; and

11.1.2 in the case of a legal entity or legal arrangement defined by sections 26-30 of the 2010 Act understand the ownership and control structure or the customer.

12 **Who is a beneficial owner**

The definition of a beneficial owner depends on the nature of the entity concerned. Please refer to Appendix 1- Definitions for more information.

13 **Identifying and verifying the beneficial owner**

13.1 A tax adviser should:

13.1.1 request from the customer documentary evidence from an independent source detailing the beneficial owners (e.g. a certified copy of the company's share register);

13.1.2 search the relevant company registry;

13.1.3 search the Register of Beneficial Ownership of Companies and Industrial and Provident Societies; and

13.1.4 carry out electronic searches either direct or via a commercial agency for electronic verification.

13.2 The identity of the individuals provided by the customer as beneficial owner must also be verified in accordance with the procedures outlined herein.

13.3 In the case of customers that are individuals, a tax adviser can assume that the individual is acting for himself, unless in the course of the business relationship or in undertaking any activities for the customer, it becomes apparent the customer is acting for another person. In this case, a tax adviser should undertake the identity and verification checks as outlined above according to the nature of the beneficiary.

13.4 Tax advisers must bear in mind that the beneficial ownership of an entity can change and when this occurs, new identification and verification procedures will have to be carried out.

14 **What to do if you cannot establish the beneficial owner**

If a tax adviser is unable to satisfy himself concerning the identity of the beneficial owner of any customer, on the basis of the verification methods that it considers appropriate given the nature of the customer, then it should not enter into a transaction or commence or maintain a business relationship for that customer and it should consider whether it should make a report to the Gardaí and the Revenue Commissioners.

15 **Failure to identify and verify customers and beneficial owners**

Failure to identify and verify customers and beneficial owners is an offence which is punishable on summary conviction by a maximum fine of €5,000 and/or up to 12 months in prison or on indictment, an unlimited fine and up to 5 years in prison.

16 **Obligation to Notify the Registrar**

16.1 4AMLD requires corporates to obtain and hold "adequate, accurate and current information on their beneficial ownership…". This information must be held internally on a Beneficial Ownership Register and certain information on the beneficial owner(s) must also delivered to the Registrar also for publication on the central register of the beneficial ownership of corporates (the **Central Register**).

16.2 If a Tax Advisor dealing with a corporate or other legal entity incorporated in the State forms an opinion that there is a discrepancy between the information on the relevant entity's Beneficial Ownership Register, and the information on the Central Register, it must notify the Registrar in a timely manner, and the Registrar may seek clarification from the relevant entity.

16.3 Failure to do so is a criminal offence which is punishable on conviction by a fine not exceeding €5,000.

Identification procedures for private customers

17 **What are the general considerations for customers who are individuals?**

17.1 In accordance with best practice, it is recommended that a tax adviser obtain and verify the following information in relation to individual customers:

17.1.1 name and date of birth; or

17.1.2 name and current address.

17.2 Where this information is to be verified using documentary evidence, then it is recommended that this is based upon one or more of the documents listed below, depending on risk assessment of the customer. There is a broad hierarchy of documents:

17.2.1 certain documents issued by government departments and agencies, or by a court with a photograph;

17.2.2 certain documents issued by other public sector bodies or local authorities;

17.2.3 those issued by third parties; and

17.2.4 those issued by other sources e.g. internet printouts.

17.3 Tax advisers should ensure that passports, national identity cards and travel documents are current, i.e. unexpired. Letters or statements should be of a recent date, i.e. within 12 months. In certain cases you may consider it appropriate to verify the authenticity of the document with its issuer (i.e. the relevant government department).

17.4 Tax advisers should take reasonable care to check that documents offered are genuine (not obviously forged), and where these incorporate photographs, that these correspond to the presenter.

17.5 Where a tax adviser proposes to enter into a business relationship with a customer and the tax advisers assessment of the risk associated with the customer or the nature of the transaction or services to be

provided to the client indicate a higher than standard risk of money laundering or terrorist financing, then the tax adviser should obtain the following during the establishment of the business relationship:

17.5.1 the nature and details of the business/occupation/employment of the customer;

17.5.2 the expected source and origin of the funds to be used in the transaction;

17.5.3 the various relationships between signatories and with underlying beneficial owners; and

17.5.4 the anticipated level and nature of the activity that is to be undertaken through the relationship.

Identification procedures for other entities

18 **Identification procedures for incorporated bodies**

18.1 A tax adviser should obtain the following information in relation to incorporated entities:

18.1.1 full name;

18.1.2 registered number;

18.1.3 registered office address in country of incorporation; and

18.1.4 principal business address.

18.2 And in addition for private companies and unlisted companies:

18.2.1 a list of names of the directors; and

18.2.2 the names of beneficial owners with greater than 25% of the shares or voting rights or who otherwise exercise control.

18.3 A tax adviser should verify the identity of the corporate from either a search of the relevant company registry (equivalent country registries should be addressed) or a copy of the company‘s Certificate of Incorporation.

18.4 A tax adviser should also undertake procedures to satisfy himself that any person representing the incorporated entity is legally entitled to do so. Receipt of a properly authorised mandate or equivalent from the directors, empowering the individual to establish the business relationship would suffice.

18.5 For private companies that a tax adviser has categorised as higher risk the following measures should be undertaken:

18.5.1 verify the beneficial owners on a risk-based approach; or

18.5.2 verify the identity of two directors in accordance with the requirements for individual customers.

19 **Identification procedures for pension schemes**

19.1 Pension schemes are likely to be low risk primarily due to the long-term nature of the product. The following is a list (although not exhaustive) of suitable identification evidence for pension schemes:

19.1.1 A letter of registration issued by the Pensions Board and the accompanying Scheme Trace Report may also suffice as it will detail the names and addresses of the trustees involved. Such reports are available at short notice via email from the Pensions Board;

19.1.2 For Irish pension schemes, a copy of the original approval from the Revenue Commissioners is considered a satisfactory verification of identity; and

19.1.3 For non-Irish pension schemes it is recommended that verification of identity be undertaken in accordance with the recommendations in these guidance notes, applicable to the scheme's legal form.

20 Identification procedures for trusts

20.1 There is a wide diversity in terms of size, purpose, transparency, accountability and geographical scope in relation to trusts. A tax adviser's due diligence in relation to trusts will vary upon the outcome of the Customer Risk Assessment. For trusts where the risk is determined as standard, the following information should be obtained:

20.1.1 full name of the trust;

20.1.2 nature and purpose of the trust (e.g., discretionary, testamentary, bare);

20.1.3 country of establishment;

20.1.4 names of all trustees;

20.1.5 name and address of any protector or controller or settler;

20.1.6 names of the trust beneficiaries of 25% or more; and

20.1.7 a copy of Trust Deed.

20.2 A tax adviser should verify the identity of one trustee and one signatory who is empowered to give instructions to the tax adviser in accordance with the procedures outlined for individuals above. Tax advisers should undertake procedures to satisfy themselves that any person representing the trust is legally entitled to do so.

20.3 Where a trustee is itself a regulated entity (or a nominee company owned and controlled by a regulated entity), or a company listed on a regulated market, or other type of entity, the identification and verification procedures that should be carried out should reflect the standard approach for such an entity.

20.4 Trusts with less transparent and more complex structures, with numerous layers, may pose a higher money laundering or terrorist financing risk. Also, some trusts established in jurisdictions with favourable tax regimes have, in the past, been associated with tax evasion and money laundering. In respect of trusts in the latter category, the designated body's risk assessment may lead it to require additional information on the purpose, funding and beneficiaries of the trust.

20.5 Tax advisers should make appropriate distinction between those trusts that serve a limited purpose (such as inheritance tax planning), or have a limited range of activities and those where the activities and connections are more sophisticated, or are geographically based and/or with financial links to other countries.

21 **Identification procedures for partnerships and other unincorporated bodies**

21.1 In accordance with his own risk assessment, a tax adviser should consider verifying the identities of at least one partner and at least one of those authorised to issue instructions in accordance with the standard requirements for individuals above.

21.2 The following should be obtained:

21.2.1 name of partnership;

21.2.2 address of partnership;

21.2.3 nature of business/activity;

21.2.4 location of business/activity (operating address);

21.2.5 names of partners; and

21.2.6 names of beneficiaries.

Reliance on third parties

22 **When can a tax adviser rely on third parties?**

22.1 Tax advisers can in certain circumstances rely on a **relevant third party** to complete part of their Customer Due Diligence requirements. A "relevant third party" includes:

"…a person carrying on business as a designated person in the State –

…

22.1.1 who is an external accountant or auditor and who is also a member of a designated accountancy body,

22.1.2 who is a tax adviser, and who is also a solicitor or a member of a designated accountancy body or of the Irish Tax Institute,

22.1.3 who is a relevant independent legal professional",

as well as a number of other categories including financial institutions, credit institutions etc.

22.2 A tax adviser will always retain the ultimate responsibility for ensuring that its own CDD obligations have been met and should be alert to the fact that a third party may cease to have a business relationship with a customer. As a result, tax advisers should be cautious in relying on third parties as they will remain liable for any failure to comply, notwithstanding their reliance on the third party.

22.3 A tax adviser must undertake ongoing monitoring of all customers including where it has relied upon a third party to meet its other CDD obligations.

22.4 Examples of circumstances where a tax adviser might rely on the fact that a third party has already undertaken CDD measures in relation to a customer include:

22.4.1 where a tax adviser enters into a business relationship with a customer through an intermediary who is acting as agent for the customer;

22.4.2 where two tax advisers are party to the same transaction with a customer; and

22.4.3 where one member of a group introduces customer to another member company of the same group.

22.5 Tax advisers should also note that AML and CTF obligations will not be satisfied on receipt of a confirmation from another designated persons that all Customer Due Diligence obligations have been discharged.

23 Obtaining information on the purpose and nature of the business relationship

The obligation to obtain information from a customer on the purpose and nature of the business relationship is one that must be applied to all customers with whom a tax adviser is entering into a business relationship. However, in most cases, this will be self evident given the nature of the service that the customer is seeking or may be easily clarified by discussing with the customer what they are seeking from the relationship. The obligation to monitor customers also applies to those customers with whom the tax adviser has established a business relationship.

Chapter 6: Other Categories of Customer Due Diligence

Customer Due Diligence

1 **There are three categories of Customer Due Diligence specified in the Acts which must be applied to customers to whom you provide AML-regulated legal services as follows:**

1.1 **Simplified Customer Due Diligence**. Certain types of customer and certain types of products that fall into the Simplified CDD category on the basis that they are very low risk;

1.2 **Enhanced Customer Due Diligence.** Certain situations (for example, complex/unusual transactions, customers established in a high-risk third country, politically exposed persons) which place customers in the Enhanced CDD category but it also requires tax advisers to include other situations based on their assessment of risk which by their nature can present a higher risk of money laundering or terrorist financing; and

1.3 **Standard Customer Due Diligence.** All other customers fall within this category. See **chapter 5**.

2 **Simplified Customer Due Diligence**

2.1 Designated Persons can no longer avail of the exemptions previously contained in Section 34 and 36 of the 2010 Act, as these sections have been repealed. A new Section 34A(1) of the 2010 Act has been introduced which provides that a Tax Advisor may apply simplified CDD measures to such extent and at such times as is reasonably warranted by the lower money laundering / terrorist financing risk in relation to the business relationship or transaction where the Tax Advisor:

2.1.1 identifies in the relevant business risk assessment an area of lower risk into which the relationship or transaction falls; and

2.1.2 considers that the relationship or transaction presents a lower degree of risk.

2.2 Prior to applying simplified CDD measures a Tax Advisor is required to obtain sufficient information about the customer in order to satisfy him/herself that the customer or business qualifies for the simplified treatment.

2.3 For the purpose of identifying an area of lower risk, a Designated Person shall have regard to:

2.3.1 the matters specified in 30A(2) of the 2010 Act, which include and relevant information in the national risk assessment and guidance on risk issued by the relevant Competent Authority);

2.3.2 the presence of any factor specified in the non-exhaustive list of factors suggesting potentially lower risk in Schedule 3 of the 2010 Act; and

2.3.3 any additional prescribed factor suggesting potentially lower risk.

2.4 The following categories of customers ***may*** qualify for the application of Simplified CDD:

2.4.1 a credit or financial institution that carries on business in the State as a designated body, or another member state, or a designated person supervised or monitored for compliance with the Third Money Laundering Directive;

2.4.2 a company listed on a Regulated Market e.g. Irish Stock Exchange Official List;

2.4.3 Irish public authorities;

2.4.4 a solicitor's client account (pooled account);

2.4.5 certain insurance policies, pensions or electronic money products; and

2.4.6 a non-Irish public authority such as an EU Body.

2.5 Where a Tax Advisor applies Simplified CDD measures, he/she is required to:

2.5.1 retain a record of the reasons for such determination and the evidence upon which it was based; and

2.5.2 carry out sufficient monitoring of the transactions and business relationships to enable the Tax Advisor to detect unusual or suspicious transactions.

3 Enhanced Customer Due Diligence

3.1 A tax adviser is required to carry out Enhanced CDD in the following circumstances, where the:

3.1.1 transaction is complex and/or unusually large (section 36A (as inserted by the 2018 Act));

3.1.2 customer, of the customer's beneficial owner, is a Politically Exposed Person (section 37 of the 2010 Act, as amended);

3.1.3 customer is established and/or resides in a high risk third country (section 38A (as inserted by the 2018 Act)); and/or

3.1.4 business relationship is high risk for money laundering and/or terrorist financing (section 39 of 2010 Act, as amended).

3.2 Enhanced CDD requires the Tax Adviser to conduct enhanced scrutiny and monitoring of the business relationship to manage and mitigate the risk of money laundering and/or terrorist financing. If the information obtained by a Tax Advisor is not adequate regarding the customer and the customer's business in the context of the service they are providing to the customer, additional information should be sought which may include, for example, details of a customer's wealth/ source of funds.

3.3 Enhanced CDD measures must be applied in addition to CDD measures rather than as a substitute for them.

4 A Complex and/or Unusually Large Transaction

4.1 A tax adviser must in accordance with his own internal policies, controls and procedures examine the background and purpose of all complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose.

4.2 In such circumstances a tax adviser must increase the degree and nature of monitoring of a business relationship in order to determine whether the transaction appears suspicious. The Enhanced CDD measures should include, at least include:

4.2.1 taking adequate steps to understand the background and purpose of the transaction, for example, by establishing the source and destination of funds or looking into the customer's business in more detail; and

4.2.2 monitoring the business relationship with increased scrutiny and frequency.

5 Politically Exposed Person

5.1 Where a tax adviser has a business relationship with a **Politically Exposed Person (PEP)**, he/she is obliged to take steps which are reasonably warranted by the risk that the customer or beneficial owner (as the case may be) is involved in money laundering or terrorist financing. This requirement also applies to an **immediate family member**, or a **close associate** of, a PEP. The 2018 Act extended this definition to include PEP's who are resident in the State (prior to the introduction of the 2018 Act, only non-resident PEPs were referred to). As such, tax advisers will need to review customer files to establish if some customers need to be reclassified and if Enhanced CDD is now required in respect of existing customers who now come under the definition of PEP's.

5.1.1 The definition of a PEP, provides that a person ceases to be considered a PEP after he/she has left office for one year.

5.1.2 The fact that someone falls within the definition of a PEP does not incriminate individuals or entities. However, it does place them into a higher risk category as their high profile / position can makes them vulnerable to corruption.

5.2 Tax advisers are required to take the following steps prior to establishing a business relationship with a PEP:

5.2.1 have appropriate policies and procedures in place determine whether a customer or beneficial owner is a PEP at boarding, or if a customer becomes a PEP during the course of the business relationship

5.2.2 obtain appropriate senior management approval prior to establishing a business relationship with such a customer; and

5.2.3 take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction.

5.3 The Tax Advisor is also required to apply enhanced on-going monitoring measures to PEPs.

5.4 If a customer is unable to provide the tax adviser with this information, a tax adviser must:

5.4.1 not provide the service sought by that customer for so long as the failure remains unrectified; and

5.4.2 discontinue the business relationship (if any) with the customer.

6 Customer Established or Resides in a High Risk Third Country

6.1 The EU Commission is empowered under (EU) 2015/849 (4AMLD) with compiling and maintaining a list of high risk third countries. This list may change from time to time, and the most up to date list can be accessed on the EU Commission website. There are presently 23 jurisdictions that have been identified as 'high risk third countries' and they are listed at Appendix 3. Where a customer is established or resides in one of the jurisdictions listed at Appendix 3, Enhanced Customer Due Diligence must be applied. Even where a client is not based in one of these listed countries, it may be appropriate to apply Enhanced CDD based on geographic risk factors, such as whether the country where the client or the transaction is based:

6.1.1 has deficient anti money laundering legislation,

6.1.2 sanctions are imposed on that country;

6.1.3 it is known to be a tax heaven or offshore financial centre; and

6.1.4 has high levels of crime or corruption.

6.2 Tax Advisors should take an informed decision on the application of Enhanced CDD measures as are appropriate for each high-risk situation in order to mitigate the money laundering / terrorist financing risk.

6.3 The 5AMLD has further broadened the criteria for the European Commission in assessing high risk third countries. As a result, the list of high risk countries is expected to extend to more jurisdictions in the near future.

7 Business Relationships

7.1 Tax advisers are required to apply measures to manage and mitigate the risk of money laundering or terrorist financing in respect of a business relationship or transaction that presents a higher degree of risk, including those listed in Schedule 4 of the 2010 Act (as inserted by the 2018 Act) and any other factors as may be prescribed by the Minister.

7.2 In establishing whether a business relationship poses such a risk, a tax adviser must consider if the relationship or transaction presents a higher degree of risk if, a reasonable person, having regard to the Customer Risk Assessment, would determine that a high risk exists.

7.3 When a high risk relationship and/or transaction is determined by a tax adviser, Enhanced Customer Due Diligence must be applied.

Chapter 7: Keeping Records

Keeping Records

1 **What records should a tax adviser retain?**

1.1 Tax advisers must retain documentation in accordance with the Acts and their Policies, Controls and Procedures, as discussed at **chapter 10**.

1.2 Tax advisers are obliged to have both an internal and external reporting process (including an appropriate procedure for employees to report a contravention of the Acts through a specific, independent and anonymous channel proportionate to the nature and size of the organization concerned), which is discussed further at **chapter 8**.

1.3 A Tax Advisor is obliged to retain records in relation to the following:

1.3.1 Business Risk Assessments (Section 30A of the 2010 Act)

1.3.2 Customer Information (Section 55(1) of the 2010 Act)

1.3.3 Transactions (Section 55(3) of the 2010 Act)

1.4 It is recommended that a tax adviser also retains records of actions taken under internal and external reporting requirements as follows:

1.4.1 when information or other material concerning possible money laundering has been considered but a report has not been made to the Gardaí or Revenue Commissioners, a record of the other material that was considered should be retained for five years;

1.4.2 in addition, copies of any reports made to the Gardaí and Revenue Commissioners should be retained for five years; and

1.4.3 records of all internal and external reports should be retained for five years from the date the report was made.

1.5 As evidence of a tax adviser's general compliance with the Acts, he/she should also retain the following:

1.5.1 internal and external suspicion reports;

1.5.2 annual (and other) reports on the tax adviser's anti money laundering and terrorist financing systems and controls;

1.5.3 circumstances when it is appropriate to rely on another regulated person to undertake CDD;

1.5.4 information reported as part of the internal reporting process that is not reported to the Gardaí and Revenue Commissioners;

1.5.5 minutes of senior management meetings relating to compliance with the Act; and

1.5.6 evidence of training and compliance monitoring.

2 **How long should a tax adviser keep records?**

2.1 Tax advisers are obliged to:

2.1.1 in the case of the CDD, keep records evidencing the procedures applied, and information obtained; and

2.1.2 in the case of business transactions or relationships, the records evidencing the history of services and transactions carried out in relation to each customer;

for a period of at least five years following the date on which the Tax Advisor ceased to provide any service to the customer or the date of the last transactions with the customer (if any), whichever is later.

2.2 Tax advisers are obliged to maintain these records even where the tax adviser has ceased to carry on the business of a tax adviser.

3 **In what format should records be kept?**

3.1 All of the documentation which a tax adviser is required to keep must be kept in legible form.

3.2 Possible formats in which records can be retained therefore include one or more of the following, although the list is not exhaustive:

3.2.1 by way of original documents;

3.2.2 by way of photocopies of original documents;

3.2.3 on microfiche;

3.2.4 in scanned form; or

3.2.5 in computerised or electronic form.

3.3 A tax adviser may keep such records wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form. All of the records must be capable of being reproduced in the State without undue delay.

Chapter 8: Reporting Suspicious Transactions

1 Reporting suspicious transactions

1.1 A tax adviser who knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being, or has been committed or attempted by another person, must report that suspicion to the Financial Intelligence Unit Ireland (**FIU Ireland**) and the Revenue Commissioners.

1.2 A tax adviser should remain vigilant for any additional activities undertaken by, or instructions from, any customer in respect of which a disclosure has been made, and should submit further reports, to FIU Ireland and/or the Revenue Commissioners, as appropriate.

1.3 The obligation to report a suspicious transaction is not just limited to situations where the person involved is your own client. The obligation arises if you know, suspect or have reasonable grounds to suspect that a money laundering offence has been committed by anyone, where that information has come to you as a result of your work in the regulated sector.

1.4 The Act does not define knowledge, suspicion or reasonable grounds for suspicion. In considering the meaning of each term, the following may be of assistance:

1.4.1 Knowledge

Having knowledge means actually knowing something to be true or false. In a criminal court, it must be proven that the individual in fact knew that a person was engaged in money laundering.

1.4.2 Suspicion

(a) Suspicion is more subjective. The suspicion should be based on some evidence or foundation even if that evidence is tentative i.e. simple speculation that a client may be money laundering is not grounds for suspicion.

(b) The tax adviser is not obliged to make enquiries or seek additional information to either confirm or remove this suspicion. He is not required to seek proof of the suspicion. UK and Australian case law suggests that suspicion is a state of mind more definite than speculation, but falls short of knowledge based on evidence. Suspicion has been defined by the courts as being beyond mere speculation and based on some foundation, for example:

"It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice."

(c) An example of such a suspicion could include circumstances where a tax adviser is not able to identify and verify a customer's identity or identify and verify a beneficial owner's identity or obtain sufficient information about the nature and purpose of a business relationship with a customer. In such circumstances, a tax adviser should consider making a report to the Gardaí and the Revenue Commissioners.

(d) In terms of a transaction that might arouse suspicion, it could occur where a long standing client of yours comes into your office with a large amount of cash that she wants to invest in a tax efficient scheme she has recently heard of. This client has always been very straightforward in her dealings with you and you have never seen her deal in cash before. When you ask her where she received the funds, she informs you that she inherited it but

this doesn't explain why the funds are in cash. When you put this to her, she completely overreacts and says she can take her business elsewhere if you don't want it.

1.4.3 Reasonable grounds for suspicion

The requirement to report where a person has "reasonable grounds to suspect" imports an objective standard into the reporting threshold. Tax advisers will not be able to rely on an assertion of ignorance or naivety where this would not be reasonable to expect of a person with their training and position. The test would likely be met when there are demonstrated to be facts or circumstances, known to the member of staff, from which a reasonable person engaged in a business subject to the Acts, would have inferred knowledge, or formed the suspicion, that another person was engaged in money laundering or terrorist financing.

1.5 As soon as practicable

1.5.1 Tax Advisors are required to make the report as soon as practicable after acquiring knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in Money Laundering or Terrorist Financing. A Tax Advisor may need to make additional enquiries or assessment in order to make its determination, in which case, they should be completed without delay.

1.5.2 Failure to report a suspicious transaction is a criminal offence and is punishable by a maximum of 5 years imprisonment or a fine or both.

2 **What kind of suspicious behaviour would give rise to the making of a report?**

2.1 There are many indicators which might alert a tax adviser's attention to the fact that a suspicious transaction is taking place. The following is not an exhaustive list but is intended to provide some guidance on the type of behaviour which might indicate that a client is engaged in a suspicious transaction:

2.1.1 client is obstructive or secretive. Indicators of this kind of behaviour might include:

(a) client does not want correspondence sent to home address;

(b) client appears to have dealings with several tax advisers in one area for no apparent reason;

(c) client presents confusing details about the transaction;

(d) client over-justifies or explains the transaction;

(e) client is reluctant to meet in person;

(f) client insists that a transaction be done inordinately quickly;

(g) client attempts to develop close rapport with staff;

(h) client uses a PO box or general delivery address, instead of a street address when this is not the norm;

(i) client offers you money, gratuities or unusual favours for the provision of services that may appear unusual or suspicious; or

(j) client seeks to pay legal fees in cash.

2.1.2 client is reluctant to provide identity documents. Indicators of this kind of behaviour might include:

(a) client produces apparently false identification or identification that appears to be counterfeited, altered or inaccurate;

(b) client submits only copies of personal identification documents;

(c) client's area of residence is not consistent with other profile details, such as employment;

(d) client provides an address that is unusual, for example an accommodation agency or a trading address;

(e) all identification presented is foreign or cannot be checked for some reason;

(f) all identification documents presented appear new or have recent issue dates; and

(g) identification documents are out of date.

2.1.3 purpose of transaction is unclear;

2.1.4 the transaction or a series of transactions seem unnecessarily complex;

2.1.5 transaction is out of the ordinary for this particular client;

2.1.6 transaction involves unusual level of funds;

2.1.7 client seeks to conduct large transactions with cash;

2.1.8 transaction involves 'high-risk' jurisdictions; or

2.1.9 client conducts a transaction which crosses many international lines which is not usual for the client.

2.2 It is important to remember that there is no monetary minimum threshold above which it becomes necessary to report and therefore no amount is too low to trigger a suspicion. This is of particular importance in the context of terrorist financing transaction which can often involve very small amounts of money.

2.3 The 2018 Act removed the requirement on Designated Persons to automatically report any service or transaction involving a 'high-risk' jurisdiction to the Gardaí and the Revenue Commissioners.

3 The internal reporting process

3.1 Tax advisers should ensure that they have a structured internal reporting process in place. All relevant personnel must make a report via the internal reporting process where they have grounds for knowledge or suspicion or reasonable grounds for suspicion of money laundering or terrorist financing.

3.2 All suspicions reported via the internal reporting process should be recorded. The report should include appropriate details of the customer who is the subject of concern and as full a statement as possible of the information giving rise to the knowledge or suspicion. All internal enquiries made in relation to the report should also be documented or recorded electronically. This information may be required to supplement the initial report or as evidence of good practice and best endeavours if, at some future date, there is an investigation and the suspicions are confirmed or disproved.

3.3 If a tax adviser decides not to make a report to FIU Ireland and Revenue Commissioners, the reasons for not doing so should be recorded and retained.

4 The external reporting process

4.1 A tax adviser must report to the FIU Ireland and Revenue Commissioners any transaction or activity that, after his evaluation, he knows or suspects, or has reasonable grounds to know or suspect, may be linked to money laundering or terrorist financing. Such reports must be made promptly.

4.2 The following information is required to be disclosed in the report:

4.2.1 the information on which the tax adviser's knowledge, suspicion or reasonable grounds are based;

4.2.2 the identity, if the tax adviser knows it, of the person who the tax adviser knows, suspects or has reasonable grounds to suspect has been or is engaged in an offence of money laundering or terrorist financing;

4.2.3 the whereabouts, if the tax adviser knows them, of the property the subject of the money laundering, or the funds the subject of the terrorist financing, as the case may be; and

4.2.4 any other relevant information.

4.3 A tax adviser must not proceed with any suspicious transaction or service, prior to the sending of the report to FIU Ireland and the Revenue Commissioners unless:

4.3.1 it is not practicable to delay or stop the transaction or service from proceeding; or

4.3.2 the Tax Advisor is of the reasonable opinion that failure to proceed with the transaction or service may result in tipping off the other person (see **chapter 9** for further information on tipping off).

4.4 Reports in relation to money laundering/terrorist financing suspicions are to be made to:

FIU Ireland

https://fiu-ireland.ie/Home

Office of the Revenue Commissioners

Suspicious Transactions Reports Office

Block D

Ashtowngate

Dublin 15

4.5 Following the making of an external report, FIU Ireland or Revenue Commissioners may request additional information from a tax adviser. In such circumstances, the tax adviser must furnish all necessary information as soon as possible.

4.6 In responding to such information requests, tax advisers should:

4.6.1 be satisfied that the request is from an appropriate and bona-fide member of FIU Ireland or the Revenue Commissioners; and

4.6.2 consider whether the request requires simply a clarification of the content of the original report or whether responding would involve the production of documents or provision of information additional to the information provided in the report.

4.7 Where the request involves the production of additional documentation or the provision of additional information, the tax adviser, before responding, will need to understand:

4.7.1 the authority under which the request is made;

4.7.2 the extent of the information requested;

4.7.3 the required timing and manner of production of the information; and

4.7.4 whether information or documents requested are subject to privilege and therefore cannot be provided.

4.8 Legal advice may be required in making this assessment.

5 Are there any circumstances in which a tax adviser is not obliged to report suspicions?

5.1 Section 46 of the 2010 Act permits non-disclosure of suspicions in certain limited circumstances:

5.1.1 No disclosure is required of information that is subject to **legal privilege**; and

5.1.2 A relevant professional adviser, (which includes tax advisers), is not obliged to report suspicions with regard to information he or she receives from or obtains from one of their clients in the course of **ascertaining the legal position** of the client.

5.2 Notably for tax advisers, these provisions have been interpreted by the Department of Justice and Equality to mean that a tax adviser is not obliged to report a suspicion where the information was received or obtained in the course of advising a client in the course of preparing a **Qualifying Disclosure under section 1077E of the TCA 1997**. However, the Qualifying Disclosure must actually be made to Revenue for the tax adviser to be released from his obligation to make a suspicious transaction report.

5.3 Where a Qualifying Disclosure is not involved, the notes below provide guidance on the other circumstances where a money laundering report is not required under the 2010 Act i.e. where the tax adviser is ascertaining the legal position of a client or where information obtained by the tax adviser is subject to legal privilege.

6 Ascertaining the legal position of a client

6.1 A relevant professional adviser is not obliged to report his suspicion where the information received or obtained was in the course of ascertaining the legal position of the customer. However, this does not apply to information received from or obtained in relation to a client with the intention of furthering a criminal purpose.

7 Legal privilege

7.1 If a tax adviser considers that the information or other matter on which his knowledge or suspicion is based came to him in privileged circumstances, he is exempt from making a money laundering report and must not disclose it. This means that a tax adviser could find himself in a situation where he might wish to make a report but is prevented from doing so. In such circumstances, he should consider whether he should continue to act.

7.2 The two most relevant forms of legal professional privilege are litigation privilege and legal advice privilege.

7.3 Under Irish law, advice on tax law provided by professionals who are not practicing lawyers (e.g. in-house or external accountants and tax advisers) will not attract legal professional privilege.

8 Litigation privilege

8.1 For the reporting exemption in relation to litigation privilege to apply, the following conditions need to exist:

8.1.1 there must be a confidential communication (written or oral) between a practicing lawyer (who may also be a tax adviser) and the customer or third party; and

8.1.2 the confidential communication must be made for the dominant purpose (i.e. the overriding purpose) of being used in connection with actual, pending or **contemplated litigation**.

8.2 Defining **contemplated litigation** is difficult. Litigation must be "reasonably apprehended" before a claim of privilege can be sustained, although lawyers do not have to be instructed in order to prove contemplation of litigation. Generally speaking, it is necessary to be able to identify some act that gives rise to a cause of action in relation to which some threat of legal action has either been clearly intimated or is more than reasonably likely to follow. The party seeking to claim the benefit of litigation privilege must show that he was aware of circumstances that rendered litigation between himself and a particular person or class of persons a real likelihood rather than a mere possibility.

8.3 Examples of where a tax adviser may come across information subject to litigation privilege include where he is:

8.3.1 assisting a customer by taking witness statements from him or from third parties in respect of litigation;

8.3.2 representing a customer, as permitted, before the Appeal Commissioners; and

8.3.3 instructed as an expert witness by a solicitor on behalf of a customer in respect of a litigation matter.

9 Legal advice privilege

9.1 For the reporting exemption in relation to legal advice privilege to apply, the following conditions need to exist:

9.1.1 there needs to be a confidential communication (written or oral) between a lawyer and his client, in which the client seeks or the lawyer provides legal advice;

9.1.2 that communication must take place within the confines of a lawyer client relationship, including an initial meeting which does not progress to a business relationship; and

9.1.3 the communication must relate to legal advice (i.e. advice concerning the rights, liabilities and obligations or remedies of the customer under the law).

9.2 There is a distinction between communications seeking or providing legal advice, to which legal advice privilege will apply, and those seeking or providing legal assistance to which legal advice privilege will not apply. The hallmarks of communications in the nature of legal assistance are that they will contain no information or remarks on possible legal proceedings or civil or criminal consequences but merely refer to statements of facts or factual instructions.

9.3 Examples where tax advisers might come across information subject to legal advice privilege would include where the tax adviser is a practicing lawyer and is giving advice on the interpretation or application of any element of tax law and or where assisting a customer to understand his tax position.

Chapter 9: Tipping Off

Tipping off

1 **What is tipping off?**

It is an offence for tax advisers to disclose to the customer concerned or other third persons, that a report has been made to the Gardaí in relation to suspicions of money laundering or terrorist financing or that any investigation is being, or may be, carried out in relation to those suspicions if it is likely to prejudice the investigation. The offence of "tipping off" may be penalised by a maximum of 5 years imprisonment or a fine or both.

2 **In what circumstances is tipping off permitted?**

2.1 A disclosure in accordance with internal reporting policy

2.2 Under section 51(1) of the 2010 Act, a tax adviser may make a disclosure to a third party where, at the time of the disclosure:

2.2.1 he or she was an agent, employee, partner, director or other officer of, or was engaged under a contract for services by, an undertaking; and

2.2.2 he or she made the disclosure to an agent, employee, partner, director or other officer of, or a person engaged under a contract for services by, the same undertaking.

3 **A disclosure to a legal adviser or relevant professional adviser**

3.1 Section 51 of the 2010 Act (as amended by the 2018 Act) provides a tax adviser may also make a disclosure to a third party where, at the time of the disclosure:

3.1.1 the person was a legal adviser or relevant professional adviser;

3.1.2 both the person making the disclosure and the person to whom it was made carried on business in a member state or in a country other than a high risk country (current list of the high risk countries are set out in Appendix 3); and

3.1.3 those persons performed their professional activities within different undertakings that shared common ownership, management or control.

4 **A disclosure to a relevant professional adviser of the same kind**

4.1 Under section 52 of the 2010 Act (as amended by the 2018 Act) a relevant professional adviser of a particular kind (e.g. a tax adviser who is a member of the Irish Tax Institute) can make a disclosure to another relevant professional adviser of the same kind provided the disclosure relates to:

4.1.1 a customer or former customer of the person and the adviser to which or whom it was made;

4.1.2 a transaction, or the provision of a service, involving both the person and the institution or adviser to which or whom it was made;

4.1.3 the disclosure was only for the purpose of preventing money laundering or terrorist financing;

4.1.4 the institution or adviser to which or whom the disclosure was made was situated in a member state or in a county other than a high-risk third county;

4.1.5 the institution or adviser making the disclosure, or on whose behalf the disclosure was made, and the institution or adviser to which or whom it was made were subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of the Data Protection Acts 1988-2018).

5 Limited disclosure to customer when terminating relationship with customer

5.1 A tax adviser who is a member of the Irish Tax Institute can make a disclosure under section 53(2) of the 2010 Act where:

5.1.1 the disclosure was to the tax adviser's customer and solely to the effect that the tax adviser would no longer provide the particular service concerned to the customer;

5.1.2 the tax adviser no longer provided the particular service after so informing the customer; and

5.1.3 the tax adviser made any report required in relation to the customer in accordance with the Act.

5.2 Disclosure to the customer should entail the actual intention on behalf of the tax adviser to inform the customer that a report has been made or confirming to them that a report has been made where so questioned. The refusal by a tax adviser to provide services should not be considered to be tipping off. Whether to terminate a relationship is essentially a commercial decision, and tax advisers should be free to make such judgements where they have money laundering or terrorist financing suspicions about a customer.

6 Other permitted disclosures

6.1 A disclosure may also be made in the following circumstances:

6.1.1 the disclosure was to the Competent Authority (for more information on the role of the Competent Authority see **chapter 10**);

6.1.2 the tax adviser was directed to make the disclosure to his customer by a member of an Garda Síochána or ordered by a judge of the District Court;

6.1.3 the disclosure was for the purpose of the detection, investigation or prosecution of an offence (whether or not in the state); or

6.1.4 the person did not know or suspect, at the time of the disclosure, that the disclosure was likely to have the effect of prejudicing an investigation into whether an offence of money laundering or terrorist financing had been committed.

7 Other considerations for tax advisers

7.1 Tax advisers may wish to obtain legal advice where they have concerns about making a prohibited disclosure. This may have particular relevance where a document referring to the subject matter of a report is to be released to a third party. Typical examples of documents released to third parties which might give rise to concerns over prohibited disclosure include:

7.1.1 public audit or other attest reports;

7.1.2 public record reports to regulators;

7.1.3 confidential reports to regulators;

7.1.4 communications to customers of the intention to withdraw services/resign; and

7.1.5 requests for information arising from a change of professional adviser.

Chapter 10: General Tax Practice Management Obligations

General tax practice management obligations

1 **Procedures**

1.1 Tax advisers must adopt internal policies and procedures to prevent money laundering and terrorist financing in accordance with section 54 of the 2010 Act as amended by the 2018 Act which must include the following:

1.1.1 the identification, assessment, mitigation and management of risk factors relating to money laundering or terrorist financing;

1.1.2 Customer Due Diligence measures;

1.1.3 monitoring transactions and business relationships;

1.1.4 the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature to be related to money laundering or terrorist financing;

1.1.5 measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity;

1.1.6 measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered;

1.1.7 reporting (including the reporting of suspicious transactions);

1.1.8 record keeping;

1.1.9 measures to be taken to keep documents and information relating to the customers of that designated person up to date;

1.1.10 measures to be taken to keep documents and information relating to risk assessments by that designated person up to date;

1.1.11 internal systems and controls to identify emerging risks and keep business-wide risk assessments up to date; and

1.1.12 monitoring and managing compliance with, and the internal communication of, these policies, controls and procedures.

1.2 Tax advisers should establish systems that create an internal environment or culture in which people are aware of their responsibilities under the Acts and where they understand that they are expected to fulfil those responsibilities with appropriate diligence.

1.3 A tax adviser may wish to consider the following guiding principles in drafting his policies and procedures:

1.3.1 a statement of the culture and values to be adopted and promulgated throughout the tax adviser's business towards the prevention of money laundering and the financing of terrorism;

1.3.2 a commitment to ensuring that customers' identities will be satisfactorily verified before a tax adviser accepts them;

1.3.3 a commitment to the tax adviser "knowing its customers" appropriately - both at acceptance and throughout the business relationship - through taking appropriate steps to verify the customer's identity and business, and its reasons for seeking the particular business relationship with the designated person;

1.3.4 a commitment to ensuring that staff are trained and made aware of the law and their obligations under it, and to establishing procedures to implement these requirements; and

1.3.5 recognition of the importance of staff promptly reporting their suspicions internally and the obligation to have appropriate reporting procedures in place.

1.4 Tax advisers should also consider addressing the following in his policies and procedures:

1.4.1 a summary of the tax adviser's approach to assessing and managing its money laundering and terrorist financing risk;

1.4.2 allocation of responsibilities to specific persons and functions;

1.4.3 a summary of the tax adviser's procedures for carrying out appropriate identification and monitoring checks on the basis of their risk-based approach; and

1.4.4 a summary of the appropriate monitoring arrangements in place to ensure that the tax adviser's policies and procedures are being carried out.

1.5 Section 54(6A) of the 2010 Act (as inserted by the 2019 Regulations) requires Tax Advisors (as Designated Persons) to have in place appropriate procedures for their employees, or persons in a comparable position, to report a contravention of the Acts internally through a specific, independent anonymous channel, proportionate to the nature and size of the Designated Person concerned.

1.6 Policies and procedures should be approved by senior management and kept under review, in particular, when there are changes to the business profile or risk profile of the Tax Advisor.

2 Staff training

2.1 Tax advisers are required to ensure that all persons involved in the conduct of the tax adviser's business are aware of the law regarding anti-money laundering and terrorist financing and combating terrorist financing.

2.2 The Act does not provide any further guidance on the extent to which a person must be involved in the conduct of the tax adviser's business but in considering which staff may be relevant, tax advisers should consider not only those who are involved in working with customers directly but those who deal with the tax adviser's finances (where appropriate) and those who deal with procuring business on behalf of the tax adviser.

2.3 The Act requires that relevant personnel partake in ongoing programmes to help them follow internal CDD and other anti-money laundering procedures, in addition to the ability to recognise operations that may be related to money laundering or the financing of terrorism, and to instruct them on the actions to take in such circumstances. Most tax advisers will have a compliance officer to monitor compliance with and internal communication of policies. This is a requirement under section 54(7) of the 2010 Act (as inserted by the 2018 Act) and in accordance with section 54(8) the Compliance Officer shall be a member of senior management with primary responsibility for the implementation and management of AML measures.

2.4 To assist tax advisers in meeting this obligation, the State must provide them with access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions. The State is also obliged to provide timely feedback on the effectiveness of and follow up to reports on suspected money laundering or terrorist financing.

2.5 Training should include reference to the Data Protection requirements where applicable.

Complying with the Competent Authority

3 **What is a Competent Authority?**[2]

3.1 Competent authorities monitor a designated persons' compliance with the obligations imposed on them under the Act.

3.2 To this end, a Competent Authority may:

3.2.1 take reasonable measures necessary for the purpose of securing compliance;

3.2.2 make a direction to furnish information or documents required to assist it in carrying out its functions;

3.2.3 make a direction for explanations of documents so furnished;

3.2.4 make a direction to comply with obligations (under law/guidance notes);

3.2.5 appoint authorised officers who will carry out onsite inspections;

3.2.6 authorised officer may enter premises (other than a dwelling) without a warrant;

3.2.7 authorised officer may remove/retain documents (not just copies);

3.2.8 secure the premises;

3.2.9 seek warrant (District Court) where the premises is a dwelling refused access or obstructed;

3.2.10 have an authorised officer accompanied by Gardaí;

3.2.11 obstruction/ refusal to comply with requests is a summary offence of €5,000 or up to 12 months in prison; and

3.2.12 apply administrative sanctions as a result of non-compliance.

3.3 A tax adviser is not obliged to answer questions where to do so might tend to incriminate him/her or furnish any documentation that is subject to legal privilege.

4 **Who is your Competent Authority?**

4.1 The Competent Authority that applies to a particular tax adviser depends on:

4.1.1 the professional qualifications which they hold; and

4.1.2 where they work.

[2] *Section 60 of the 2010 Act*

4.2 It is important that tax advisers are fully aware of which Competent Authority will be dealing with their AML and CTF compliance. It is also important to realise that the Competent Authority may change if they change their place of employment/working status changes and it is the individual's responsibility to inform the Competent Authority of any change in status.

4.3 The table below summarises the monitoring regime for tax advisers. If an adviser does **not** "by way of business provide advice about the tax affairs of other persons"[3], the guidelines for tax advisers will **not** apply to him/her, for example, he/she:

4.3.1 is working in a non-tax role;

4.3.2 is retired or unemployed; or

4.3.3 works internally in the tax department of a company.

4.4 However, the adviser may need to check the Acts, to determine whether they have AML and CTF obligations if they are providing other professional services such as legal or accounting services.

Members providing tax advice	**Competent Authority**
Working in practice in a firm regulated by one of the designated accountancy bodies	The designated accountancy body
Working in practice in a firm regulated by the Law Society of Ireland	The Law Society of Ireland
Working as a sole practitioner and a member of a designated accountancy body	The designated accountancy body[4]
Working as a sole practitioner and a member of the Law Society of Ireland	The Law Society of Ireland
Working as a barrister	The General Council of the Bar of Ireland
Working as a sole practitioner and a member of the Irish Tax Institute only	The Minister for Justice and Equality
Working in a firm not regulated by a designated accountancy body or the Law Society of Ireland	The Minister for Justice and Equality

4.5 Under section 66 of the 2010 Act, professional bodies such as the Irish Tax Institute have a statutory obligation to inform the Department of Justice and Equality of any of members who fall to be regulated by the Department for AML and CTF compliance purposes.

[3] *Section 24 of the 2010 Act*

[4] *ACCA - Association of Chartered Certified Accountants;*

- *AIA - Association of International Accountants;*
- *CIMA - Chartered Institute of Management Accountants;*
- *CIPFA - Chartered Institute of Public Finance & Accountancy;*
- *ICAEW - Institute of Chartered Accountants in England & Wales;*
- *ICAI - Institute of Chartered Accountants in Ireland;*
- *ICAS - Institute of Chartered Accountants of Scotland;*
- *ICPAI - Institute of Certified Public Accountants in Ireland; and*
- *IIPA - Institute of Incorporated Public Accountants*

5 What powers does your Competent Authority have?[5]

5.1 If you are a tax adviser who is a member of the Irish Tax Institute (and you are not a member of another professional body), the Minister for Justice and Equality is your Competent Authority. The Department of Justice and Equality has a dedicated and helpful website at www.antimoneylaundering.gov.ie

5.2 The Minister for Justice and Equality is obliged to monitor tax advisers and take measures that are reasonably necessary for the purpose of securing compliance by a tax adviser with the requirements under the Acts. The measures may include reporting to the Garda Síochána and Revenue Commissioners a knowledge or suspicion that a tax adviser has been or is engaged in money laundering or terrorist financing.

6 Informing your Competent Authority

A Designated Person must inform a Competent Authority where any of its management function holders or beneficial owners are convicted of offences under the Acts, or of other offences relating to banking, investment of funds and other financial activities. Failure to make such a report is a criminal offence.

7 Complying with Gardaí - Directions and Orders

7.1 The Acts empower the Gardaí with significant investigative tools and authorisations to assist them in conducting criminal investigations into money laundering and terrorist financing and these may take you by surprise if directed at you. A common example of the use of such powers is where Gardaí might direct a financial institutions not to carry out a service in order to prevent the illegal transfer of funds, however, they may also be applied to tax advisers in the course of a particular transaction. The Acts provide the following powers:

7.1.1 a member of the Gardaí not below the rank of superintendent may, by notice in writing, direct a person not to carry out a specified service or transaction during the period specified in the direction, not exceeding 7 days where that member has information to satisfy him/her that it is necessary to enable to Gardaí to carry out preliminary investigations into money laundering or terrorist financing;

7.1.2 a judge in the District Court may order a person not to carry out any specified service or transaction during the period specified in the order, not exceeding 28 days, in relation to a particular service or transaction, on more than one occasion where he/she is satisfied from evidence given on oath that there are reasonable grounds for believing that the service or transaction would comprise or assist in money laundering or terrorist financing and an investigation into that is taking place;

7.1.3 the Gardaí must give notice in writing of the direction to any person who is affected by the direction, unless:

(a) it is not reasonably practicable to ascertain the whereabouts of the person; or

(b) there are reasonable grounds for believing that disclosure to the person would prejudice the investigation in respect of which the direction or order is given.

[5] *Sections 66-68 of the 2010 Act*

The notice shall include the reasons for the direction and advise the person to whom the notice is given of the person‘s right to make an application for the revocation of the direction or an order in relation to the subject property of the direction or order;

7.1.4 at any time, a judge of the District Court may revoke the direction on application of a person affected by the direction. Such an application may be made only if notice has been given to the Gardaí in accordance with any applicable rules of the court; and

7.1.5 a District Court may on application by any person affected by the direction or order concerned, make any order in relation to the property concerned for the purposes of enabling the person access of funds for:

(a) reasonable living and other necessary expenses; and

(b) to carry on a business, trade, profession or other occupations to which any of the property relates.

such an application may be made only if notice has been given to the Gardaí in accordance with any applicable rules of the court.

Chapter 11: Sanctions for Non-Compliance

Sanctions for Non-Compliance

The Act imposes the following key criminal sanctions on tax advisers:

Offence	Sanction
Money laundering	On summary conviction, a fine not exceeding €5000 or imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 14 years or to both
Terrorist Financing (This offence is provided for in the Criminal Justice (Terrorist Offence) Act 2005)	On summary conviction, a fine not exceeding €5000 or imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 20 years or to both
Failure to comply with Customer Due Diligence requirements	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with the requirements where a tax adviser is unable to comply with the Customer Due Diligence measures	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Application of Simplified Customer Due Diligence knowing that Customer Due Diligence or Enhanced Customer Due Diligence should apply	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine not exceeding or to imprisonment for a term not exceeding 5 years or to both
Failure to apply Enhanced Customer Due Diligence	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with the reporting obligations	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both

Failure to comply with the obligation to report transactions with designated states	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with the prohibition of disclosure to a customer or to third persons that a report has been made to the Gardaí and Revenue Commissioners or that an investigation is being or has been carried out	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with the record keeping requirements	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to implement internal procedures and training measures as specified in the scheme	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Tipping Off	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with order or direction not to carry out a service or transaction	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to carry out business risk assessment by Designated Persons	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to identify and verify customers and beneficial owners	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with obligations in relation to the background and purpose of certain unusually large and complex transactions	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both

	On conviction on indictment, a fine or to imprisonment for a term not exceeding 5 years or to both
Failure to comply with the investigative powers of the Financial Intelligence Unit (FIU) to obtain information	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both On conviction on indictment, a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both
Failure to comply with direction to furnish information or provide an explanation of documents provided	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 12 months or to both
Failure to inform the relevant competent authority, of an offence when performing a management function or being the beneficial owners of the designated persons	On summary conviction, a fine not exceeding €5000 or to imprisonment for a term not exceeding 6 months or to both On conviction on indictment, a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years or to both
Failure to inform the Registrar of Beneficial Ownership of a discrepancy between the Central Register and information provided by a customer	On conviction, a fine not exceeding €5000

Appendix 1 – Definitions

1 **Barrister** means a practising barrister.

2 **Beneficial owner** in relation to a body corporate – section 26

2.1 in the case of corporate entities:

2.1.1 the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with [European] Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (3);

2.1.2 if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point.

2.2 Beneficial owner, in relation to an estate of a deceased person in the course of administration

means the executor or administrator of the estate concerned.

In all other cases, beneficial owner in relation to a legal entity or legal arrangement means:

2.2.1 if the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from the property of the entity or arrangement,

2.2.2 if the individuals who benefit from the entity or arrangement have yet to be determined, the class of such individuals in whose main interest the entity or arrangement is set up or operates, and

2.2.3 any individual who exercises control over the property of the entity or arrangement,

2.2.4 any person holding a position, in relation to the legal entity or legal arrangement that is similar or equivalent to the position specified in paragraphs (d) to (f) of section 28(2) in relation to a trust.

For the purposes of and without prejudice to the generality of subsection (1), any individual who is the beneficial owner of a body corporate that benefits from or exercises control over the property of the entity or arrangement is taken to benefit from or exercise control over the property of the entity or arrangement.

In this Part, "beneficial owner", in relation to a case other than a case to which section 26, 27, 28 or 29, or subsection (1) of this section, applies, means any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted of the entity or arrangement. Arrangement or entity means an arrangement or entity that administers and distribute funds.

2.3 Beneficial owner in relation to a partnership, means any individual who:

2.3.1 ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the partnership or more than 25 per cent of the voting rights in the partnership; or

2.3.2 otherwise exercises control over the management of the partnership.

2.4 Beneficial owner in relation to a trust – Section 28 means any of the following:

2.4.1

(a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the trust property;

(b) in the case of a trust other than one that is set up or operates entirely for the benefit of individuals referred to in paragraph (a), the class of individuals in whose main interest the trust is set up or operates;

(c) any individual who has control over the trust;

(d) the settlor;

(e) the trustee;

(f) the protector.

2.4.2 For the purposes of and without prejudice to the generality of subsection (2), an individual who is the beneficial owner of a body corporate that:

(a) is entitled to a vested interest of the kind referred to in subsection (2)(a), or

(b) has control over the trust, is taken to be entitled to the vested interest or to have control over the trust (as the case may be).

2.4.3 Except as provided by subsection (5), in this section “control”, in relation to a trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

(a) dispose of, advance, lend, invest, pay or apply trust property;

(b) vary the trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of any power referred to in paragraphs (a) to (d).

2.4.4 For the purposes of the definition of “control” in subsection (4), an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

2.5 Other persons who are beneficial owners – Section 30 means the following:

2.5.1 In this Part, “beneficial owner”, in relation to a legal entity or legal arrangement, other than where section 26, 27 or 28, applies, means:

(a) if the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from the property of the entity or arrangement,

(b) if the individuals who benefit from the entity or arrangement have yet to be determined, the class of such individuals in whose main interest the entity or arrangement is set up or operates, and

(c) any individual who exercises control over the property of the entity or arrangement

(d) any person holding a position, in relation to the legal entity or legal arrangement that is similar or equivalent to the position specified in paragraphs (d) to (f) of section 28(2) in relation to a trust.

2.5.2 For the purposes of and without prejudice to the generality of subsection (1), any individual who is the beneficial owner of a body corporate that benefits from or exercises control over the property of the entity or arrangement is taken to benefit from or exercise control over the property of the entity or arrangement.

2.5.3 In this Part, “beneficial owner”, in relation to a case other than a case to which section 26, 27, 28 or 29, or subsection (1) of this section, applies, means any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted.”

3 **Business relationship** in relation to a designated person and a customer of the person means a business, professional or commercial relationship between the person and the customer that the person expects to be ongoing.

4 **Business Risk Assessment** has the meaning given to it by section 30A.

4.1 Persons known to be close associates include:

4.1.1 any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person who is a politically exposed person; and

4.1.2 any individual who has sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a person de facto who is a politically exposed person.

5 **Control**, in relation to a trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law, to do any of the following:

5.1

5.1.1 dispose of, advance, lend, invest, pay or apply trust property;

5.1.2 vary the trust;

5.1.3 add or remove a person as a beneficiary or to or from a class of beneficiaries;

5.1.4 appoint or remove trustees; or

5.1.5 direct, withhold consent to or veto the exercise of any power referred to in (a) to (d) above.

5.2 An individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

6 **Criminal conduct** means:

6.1.1 conduct that constitutes an offence; or

6.1.2 conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State.

6.1.3 conduct occurring in a place outside the State that would constitute an offence under section5 (1) or 6(1) of the Criminal Justice (Corruption Offences) Act 2018 if it were to occur in the State and the person or official, as the case may be, concerned doing the act, or making the omission, concerned in relation to his or her office, employment, position or business is a foreign official within the meaning of that Act.

7 The **date the relationship with the customer ends** is not defined in the Act but should be taken to mean the date the business relationship ended, i.e. the completion of a professional services engagement.

8 A **designated accountancy body** means a prescribed accountancy body, within the meaning of Part 15 of the Companies Act 2014.

9 **High-risk Third County** means a jurisdiction identified by the European Commission in accordance with Article 9 of the Fourth Money Laundering Directive.

10 **Immediate family members** means:

10.1 parents;

10.2 spouse;

10.3 equivalent spouse;

10.4 child;

10.5 spouse of a child;

10.6 equivalent spouse of a child; and

10.7 any other family member of a politically exposed person.

11 **Knows or believes** is not defined in the Act but is likely to include:

11.1 actual knowledge;

11.2 shutting one‘s mind to the obvious;

11.3 deliberately refraining from making inquiries, the results of which one might not care to have;

11.4 deliberately deterring a person from making a report, the content of which one might not care to have;

11.5 knowledge of circumstances which would indicate the facts to an honest and reasonable person; and

11.6 knowledge of circumstances which would put an honest and reasonable person on inquiry and failing to make the reasonable inquiries which such a person would have made.

12 **Legal adviser** means a barrister or solicitor.

13 **Money Laundering** means an act by a person who:

13.1 engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

13.1.1 concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;

13.1.2 converting, transferring, handling, acquiring, possessing or using the property;

13.1.3 removing the property from, or bringing the property into, the State,

and

13.2 the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

14 **Monitoring** in relation to a business relationship between a designated person and a customer, means the designated person, on an ongoing basis:

14.1 scrutinising transactions, and the source of wealth or of funds for those transactions, undertaken during the relationship in order to determine if the transactions are consistent with the designated person’s knowledge of:

14.1.1 the customer,

14.1.2 the customer’s business and pattern of transactions, and

14.1.3 the customer’s risk profile (as determined under section 30B), and

14.2 ensuring that documents, data and information on customers are kept up to date in accordance with its internal Policies, Controls and Procedures adopted in accordance with section 54;

15 **Occasional transaction** means, in relation to a customer of a tax adviser, where the tax adviser does not have a business relationship with the customer, a single transaction, or a series of transactions that are or appear to be linked to each other, where:

15.1 in a case where the designated person concerned is a person referred to in section 25(1)(h), that the amount of money or the monetary value concerned –

15.1.1 paid to the designated person by the customer, or

15.1.2 paid to the customer by the designated person, is in aggregate not less than €2,000,

15.2 in a case where the transaction concerned consists of a transfer of funds (within the meaning of Regulation (EU) No. 2015/847 of the European Parliament and of the Council of 20 May 2015) that the amount of money to be transferred is in aggregate not less than €1,000,

15.3 in a case where the designated person concerned is a person referred to in section 25(1)(i),that the amount concerned –

15.3.1 paid to the designated person by the customer, or

15.3.2 paid to the customer by the designated person, is in aggregate not less than €10,000, and

15.4 in a case other than one referred to in paragraphs (15.1), (15.2) or 15.3), that the amount or aggregate of amounts concerned is not less than €15,000;

16 A **politically exposed person** means an individual who is, or has at any time in the preceding 18 months been, entrusted with a prominent public function, including either of the following individuals (but not including any middle ranking or more junior official):

16.1 a specified official;

16.2 a member of the administrative, management or supervisory body of a state-owned enterprise;

17 **Proceeds of criminal conduct** means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part.

18 **Property** means all real or personal property, whether or not heritable or moveable, and includes money and choses in action and any other intangible or incorporeal property.

19 A **public body** means an FOI body within the meaning of the Freedom of Information Act 2014.

19.1 has been entrusted with public functions under a provision of a treaties of the European Communities or under an Act adopted by an institution of the European Communities;

19.2 in the reasonable opinion of the tax adviser concerned, the identity of the body is publicly available, transparent and certain;

19.3 in the reasonable opinion of the tax adviser concerned, the activities of the body and its accounting practices are transparent; and

19.4 the body is either accountable to an institution of the European Communities or to a public authority of a Member State. Examples of institutions falling into this category include the European Central Bank, The European Investment Bank, the European Environment Agency etc.

20 A **relevant professional adviser** includes an accountant, auditor or tax adviser who is a member of a designated accountancy body or of the Irish Tax Institute.

21 Relevant third party means:

21.1 A person, carrying on business as a designated person in the State:

21.1.1 that is a credit institution;

21.1.2 that is a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides foreign exchange, or money transmission, services);

21.1.3 who is an external accountant or auditor and who is also a member of a designated accountancy body;

21.1.4 who is a tax adviser *and* who is also a member of a designated accountancy body, the Irish Tax Institute or the Law Society of Ireland;

21.1.5 who is a relevant independent legal professional; or

21.1.6 who is a trust or company service provider, and who is also a member of a designated accountancy body or of the Law Society of Ireland or authorised to carry on business by the Central Bank of Ireland; or

21.2 A person carrying on business in another Member State who is supervised or monitored for compliance with the requirements specified in the Fourth Money Laundering Directive in accordance with section 2 of Chapter VI of that Directive, and is:

21.2.1 a credit institution authorised to operate as a credit institution under the laws of the Member State;

21.2.2 a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides foreign exchange, or money transmission, services) and authorised to operate as a financial institution under the laws of the Member State; or

21.2.3 an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the other Member State;

21.3 A person who carries on business in a place a place (other than a Member State) which is not a high-risk third country, is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Fourth Money Laundering Directive, and is:

21.3.1 a credit institution authorised to operate as a credit institution under the laws of the place;

21.3.2 a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides foreign exchange, or money transmission, services) authorised to operate as a financial institution under the laws of the place;

21.3.3 an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place.

21.4 a person who carries on business in a high-risk third country, is a branch or majority-owned subsidiary of an obliged entity established in the Union, and fully complies with group-wide policies and procedures in accordance with Article 45 of the Fourth Money Laundering Directive and is:

21.4.1 a credit institution authorised to operate as a credit institution under the laws of the place,

21.4.2 a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) authorised to operate as a financial institution under the laws of the place, or

21.4.3 an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place.

22 **Senior Management** means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure and need not in all cases be a member of the board of directors.

23 **Solicitor** means a practising solicitor.

24 A **specified official** means any of the following officials (including any such officials in an institution of the European Communities or an international body):

24.1 a head of state, head of government, government minister or deputy or assistant government minister;

24.2 a member of a parliament or of a similar legislative body;

24.3 a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;

24.4 a member of a court of auditors or of the board of a central bank;

24.5 an ambassador, chargé d'affairs or high-ranking officer in the armed forces;

24.6 a director, deputy director or member of the board of, or person performing the equivalent function in relation to an international organisation.

25 A **tax adviser** is a person who by way of business provides advice about the tax affairs of other persons.

26 **Terrorist Financing** means a person who in or outside the State, by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part in order to carry out—

26.1 an act that constitutes an offence under the law of the State and within the scope of, and as defined in, any treaty that is listed in the annex to the Terrorist Financing Convention, or

26.2 an act:

26.2.1 that is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and

26.2.2 the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act.

27 In the case of a tax adviser, **transaction** means the subject of a service carried out by the tax adviser for the customer.

Appendix 2 – Section 1078 TCA, 1997 (as amended)[6]

1078.-(1) In this Part:

"the Acts" means:

(i) the Customs Acts,

(ii) the statutes relating to the duties of excise and to the management of those duties,

(iii) the Tax Acts,

[(ca) Parts 18A, 18B, 18C and 18D,]

(iv) the Capital Gains Tax Acts,

(v) the Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act,

(vi) the [Capital Acquisitions Tax Consolidation Act 2003], and the enactments amending or extending that Act,

(vii) the statutes relating to stamp duty and to the management of that duty, and

(viii) Part VI of the Finance Act, 1983,

[(i) the Finance (Local Property Tax) Act 2012,]

and any instruments made thereunder and any instruments made under any other enactment and relating to tax;

"authorised officer" means an officer of the Revenue Commissioners authorised by them in writing to exercise any of the powers conferred by the Acts;

"tax" means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

[(1A)

(a) In this subsection-

'facilitating' means aiding, abetting, assisting, inciting or inducing;

'fraudulent evasion of tax by a person' means the person-

(a) evading or attempting to evade any payment or deduction of tax required under the Acts to be paid by the person or, as the case may be, required under the Acts to be deducted from amounts due to the person, or

[6] *Square brackets refer to amendments made to s.1078 subsequent to the original enactment of the Tax Consolidation Act, 1997*

(b) claiming or obtaining, or attempting to claim or obtain, relief or exemption from, or payment or repayment of, any tax, being relief, exemption, payment or repayment, to which the person is not entitled under the Acts,

where, for those purposes, the person deceives, omits, conceals or uses any other dishonest means including:

(i) providing false, incomplete or misleading information, or

(ii) failing to furnish information,

to the Revenue Commissioners or to any other person.

(b) For the purposes of this subsection and subsection (5) a person (in this paragraph referred to as the 'first-mentioned person') is reckless as to whether or not he or she is concerned in facilitating:

(i) the fraudulent evasion of tax by a person, being another person, or

(ii) the commission of an offence under subsection (2) by a person, being another person,

if the first-mentioned person disregards a substantial risk that he or she is so concerned, and for those purposes 'substantial risk' means a risk of such a nature and degree that, having regard to all the circumstances and the extent of the information available to the first-mentioned person, its disregard by that person involves culpability of a high degree.

(c) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person:

(i) is knowingly concerned in the fraudulent evasion of tax by the person or any other person,

(ii) is knowingly concerned in, or is reckless as to whether or not the person is concerned in, facilitating

A. the fraudulent evasion of tax, or

B. the commission of an offence under subsection (2) (other than an offence under paragraph (b) of that subsection),

by any other person, or

(iii) is knowingly concerned in the fraudulent evasion or attempted fraudulent evasion of any prohibition or restriction on importation for the time being in force, or the removal of any goods from the State, in contravention of any provision of the Acts.]

[(1B) A person is guilty of an offence under this section if he or she, with the intention to deceive-

(a) purports to be, or

(b) makes any statement, or otherwise acts in a manner, that would lead another person to believe that he or she is,

an officer of the Revenue Commissioners.]

1. A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person-

(a) knowingly or wilfully delivers any incorrect return, statement or accounts or knowingly or wilfully furnishes any incorrect information in connection with any tax,

(b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return, statement or accounts in connection with any tax,

[(ba) knowingly or wilfully possesses or uses, for the purpose of evading tax, a computer programme or electronic component which modifies, corrects, deletes, cancels, conceals or otherwise alters any record stored or preserved by means of any electronic device without preserving the original data and its subsequent modification, correction, cancellation, concealment or alteration,

[(bb) provides or makes available, for the purpose of evading tax, a computer programme or electronic component which modifies, corrects, deletes, cancels, conceals or otherwise alters any record stored or preserved by means of any electronic device without preserving the original data and its subsequent modification, correction, cancellation, concealment or alteration,

(c) claims or obtains relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which, to the person's knowledge, the person is not entitled,

(d) knowingly or wilfully issues or produces any incorrect invoice, receipt, instrument or other document in connection with any tax or in connection with the importation into the State or exportation from the State of any goods in contravention of any prohibition or restriction on their importation or exportation for the time being in force,

[(dd)

(i) fails to make any deduction of dividend withholding tax (within the meaning of Chapter 8A of Part 6) required to be made by the person under section 172B(1),

(ii) fails, having made that deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in section 172K(2),

(iii) fails to make any reduction required to be made by the person under section 172B(2),

(iv) fails, having made that reduction, to pay to the Collector-General the amount referred to in section 172B(2)(d), which amount is treated under that section as if it were a deduction of dividend withholding tax (within the meaning of Chapter 8A of Part 6), within the time specified in that behalf in section 172K(2), or

(v) fails to pay to the Collector-General, within the time specified in that behalf in section 172K(2), an amount referred to in section 172B(3)(a) which is required to be paid by the person to the Collector-General and which is treated under that section as if it were a deduction of dividend withholding tax (within the meaning of Chapter 8A of Part 6),]

(e)

(i) fails to make any deduction required to be made by the person under section 257(1),

(ii) fails, having made the deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in section 258(3), or

(iii) fails to pay to the Collector-General an amount on account of appropriate tax (within the meaning of Chapter 4 of Part 8) within the time specified in that behalf in section 258(4),

(f) [fails to pay to the Collector-General appropriate tax (within the meaning of section 739E) within the time specified in that behalf in section 739F,]

[(fa)

fails to comply with the requirement in section 960S(4),]

(g) [fails without reasonable excuse] to comply with any provision of the Acts requiring:

(i) the furnishing of a return of income, profits or gains, or of sources of income, profits or gains, for the purposes of any tax,

(ii) the furnishing of any other return, certificate, notification, particulars, or any statement or evidence, for the purposes of any tax,

(iii) the keeping or retention of books, records, accounts or other documents for the purposes of any tax, or

(iv) the production of books, records, accounts or other documents, when so requested, for the purposes of any tax,

(h) knowingly or wilfully, and within the time limits specified for their retention, destroys, defaces or conceals from an authorised officer:

(i) any documents, or

(ii) any other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form, which a person is obliged by any provision of the Acts to keep, to issue or to produce for inspection,

[(hh) knowingly or wilfully falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, any books, records or other documents:

(i) which the person has been given the opportunity to deliver, or as the case may be, to make available in accordance with section 900(3), or

(ii) which the person has been required to deliver or, as the case may be, to make available in accordance with a notice served under section 900, 902, 906A or 907, or an order made under section 901, 902A or 908,]

(i) fails to remit any income tax payable pursuant to Chapter 4 of Part 42, and the regulations under that Chapter, or value-added tax within the time specified in that behalf in relation to income tax or value-added tax, as the case may be, [by the Acts,]

[(ii)

(i) fails to deduct tax required to be deducted by the person under Chapter 2 of Part 18, or

(ii) fails, having made that deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in Chapter 2 of Part 18,]

[(iii)

(i) fails to deduct local property tax required to be deducted by the person under Part 10 of the Finance (Local Property Tax) Act 2012, or

(ii) fails, having made that deduction, to remit the sum deducted to the Collector-General within the time specified in Chapters 1, 2 or 3, as the case may be, of Part 10 of the Finance (Local Property Tax) Act 2012,]

or

(j)

[(i) obstructs, impedes, assaults or interferes with any officer of the Revenue Commissioners, or any other person, in the exercise or performance of powers or duties under the Acts for the purpose of any tax or in connection with the importation into the State or exportation from the State of any goods in contravention of any prohibition or restriction on their importation or exportation for the time being in force, or

(ii) attempts in any way to coerce or intimidate any officer of the Revenue Commissioners, or any other person, in connection with the performance of powers or duties under the Acts.]

2. A person convicted of an offence under this section shall be liable:

(a) on summary conviction to a fine of [€5,000] which may be mitigated to not less than one fourth part of such fine or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding [€126,970] or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

[(3A) Where a person has been convicted of an offence referred to in subparagraph (i), (ii) or (iv) of subsection (2)(g), then, if an application is made, or caused to be made to the court in that regard, the court may make an order requiring the person concerned to comply with any provision of the Acts relating to the requirements specified in the said subparagraph (i), (ii) or (iv), as the case may be.]

[(3B) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person fails or refuses to comply with an order referred to in subsection (3A) [within a period of 30 days commencing on the day the order is made].]

3. Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (3)(a), and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act, 1967, to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

4. Where an offence under this section is committed by a body corporate and the offence is shown [to have been committed with the consent or connivance of or to be attributable to any recklessness (as provided for by subsection (1A)(b)) on the part of] any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

5. In any proceedings under this section, a return or statement delivered to an inspector or other officer of the Revenue Commissioners under any provision of the Acts and purporting to be signed by any person shall be deemed until the contrary is proved to have been so delivered and to have been signed by that person.

6. Notwithstanding any other enactment, proceedings in respect of an offence under this section may be instituted within 10 years from the date of the commission of the offence or incurring of the penalty, as the case may be.

7. Section 1 of the Probation of Offenders Act, 1907, shall not apply in relation to offences under this section.

8. Sections [530U,] 987(4) and 1052(4), subsections (3) and (7) of section 1053, [subsections (9) and (17) of section 1077E,] and sections 1068 and 1069[, and] [sections 115(9) and 116(16) of the Value-Added Tax Consolidation Act 2010] shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of those sections, including, in the case of such of those sections as are applied by the Capital Gains Tax Acts, the Corporation Tax Acts, or Part VI of the Finance Act, 1983, the purposes of those sections as so applied.

9. Any summons, notice, order or other document relating to proceedings under this section, or relating to any appeal against a judgement pursuant to such proceedings, may be served by an officer of the Revenue Commissioners.]

Appendix 3 – High Risk Third Countries

Afghanistan

American Samoa

The Bahamas

Botswana

Democratic People's Republic of Korea

Ethiopia

Ghana

Guam

Iran

Iraq

Libya

Nigeria

Pakistan

Panama

Puerto Rico

Samoa

Saudi Arabia

Sri Lanka

Syria

Trinidad and Tobago

Tunisia

US Virgin Islands

Yemen