

Tax Adviser guidance

Who is this guidance for?

All firms that are subject to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the money laundering regulations) (as amended).

How is a tax adviser defined?

Since 10 January 2020, the definition of a tax adviser under the money laundering regulations has changed and become wider in scope. The definition is now:

'a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services.'

The evasion of tax is a crime and any proceeds from this are the proceeds of crime. The regulations seek to be clearer on the risks involved in providing tax adviser services, as criminals will seek either to avoid tax or might also seek to pay tax on the proceeds of crime, to make it seem more legitimate.

What is a Tax Adviser?

The definition is extremely broad, and any firm providing a service that addresses or might impact the tax affairs of a client should carefully consider whether their services fall within it. Activities such as 'estate planning', 'tax planning' and 'tax mitigation' are likely to be in scope of the regulations through this definition.

Looking at the individual parts of the definition can give some assistance in considering whether activities would come within scope.

'Material aid' would include, say, administering tax filings and payments on behalf of your client.

'Assistance' would include drawing up documents on behalf of your clients.

'Advice' – has the information you are providing been tailored in any way to the tax-relevant circumstances of the client? A link to the HMRC website is unlikely to be considered thus, however if it is specifically sent alongside some commentary relevant to the client then it is more likely to be seen as tax advice.

'Through a third party' again is a broad definition but could include:

- a tax specialist being instructed by a firm on the client's behalf.
- a firm providing tax advice to another linked firm's client.

You need to remember that when you are providing tax adviser services, your client for the purposes of the regulations is that person whose tax affairs you are advising on.



How can I manage risk in providing tax adviser services?

Because of the broad nature of tax adviser services, it is likely that many firms will provide some services that are in scope and some that are out of scope of the regulations.

You then need to consider and set out clearly in your policies and procedures how you are going to ensure that all necessary checks are carried out to ensure that you meet your AML obligations to appropriately risk assess the client and undertake fully compliant customer due diligence.

Failure to do so might mean you are risking facilitating money laundering and might be opening yourself to criminal sanctions and disciplinary action. This can also help mitigate against the risk of committing an offence under the Proceeds of Crime Act (2002) or Terrorism Act (2000).

You might choose to manage this risk by applying AML-compliant onboarding procedures (client and matter risk assessments, customer due diligence etc) for all clients, whether the service you are asked to provide is in scope or not. This can help mitigate the risk of, subsequently providing your client with a service where the regulations apply (also known as 'passporting'), without maintaining AML compliance.

At the outset of authorisation, we encourage all firms to understand the risks that they face and to have in place appropriate measures to manage any risk.

Involvement of Third Parties and knowing who the client is.

It can be common to bring in external legal experts to help provide specialist tax advice, so understanding the relationship(s) between the underlying client, any instructing legal firm, and the legal expert is vitally important.

The definition of tax adviser services includes where it is given through a third party, so that extends to advice given through another professional. Remember that you must do customer due diligence on the user of the tax advice, the person whose tax affairs are the subject of the advice, assistance or material aid.

If the tax adviser services are being provided to the underlying client via an instructing firm, then both your firm and the instructing firm will need to comply with the regulations. The regulations do permit you to rely on due diligence carried out by a third party (in this case the instructing firm) in specified circumstances as set out in [Regulation 39](#) (Section 6.23 of the AML Guidance).

However, reliance arrangements can still take a significant amount of effort to execute in a compliant way and you might prefer to undertake your own due diligence, particularly given you will always be ultimately responsible for it being compliant.

If you are unsure of who the underlying client is, you should make enquiries with the instructing firm (where there is a reliance relationship), directly to the client or complete your own due diligence until you are satisfied.

Where you are sharing information about the client, you must ensure you have their consent and that you are adhering to any confidentiality requirements.

Areas that might be in scope

Because of the broad definition of tax adviser services, it is difficult to think of circumstances where any advice on the tax impact of a matter would not fall under the definition.

The table below features a non-exhaustive list of areas of legal services, that are generally seen to be out of scope of AML requirements, which could be drawn into scope by the definition of tax adviser in some circumstances. This is adopted from guidance that the SRA have provided.

Examples of activities where tax adviser services may be provided as an ancillary service		
Work Area	Activity	Examples of matters (advised upon or assisted with) likely to fall under definition
Litigation	Litigation involving HMRC, including dispute resolution (might not be ancillary to another service)	Litigation and dispute resolution services are not generally in scope, but you should consider carefully whether the services you provide stray into the definition of tax advice services. HMRC might engage with, investigate, or negotiate with individuals and corporate entities about their tax affairs. Being involved with services in this regard, may fall within the definition, depending on the service provided. Advice and services provided in relation to a criminal investigation or prosecution by HMRC in our view is a litigation service and is likely to be out of scope.
	Commercial and civil litigation	The results of commercial and civil litigation might create tax consequences, - where there has been a proven breach of contract with regards a tax covenant or piece of tax advice. From both the claimant and defendant's perspectives, any payments of damages or a settlement sum may have tax consequences upon which advice, assistance or material aid may be given.
	Personal injury litigation	Awards made as a part of personal injury claims might lead to a tax consequence, and services in this context would likely be in scope (say, advice on how to make arrangements to receive an award/set up a trust in a tax efficient way)
Employment Law	Settlements	Advising or assisting on settlements made because of disputes with employees, particularly of an amount above £30,000, where there is usually a tax consequence.
	Employee remuneration and benefits	Employee share schemes, end-of-contract delivery of benefits, pay as you earn issues and salary sacrifice schemes might all have a tax element. Also, cross-border staff transfers and secondments.

	Pensions	Pension schemes, whether from the perspective of the employee or employer
Estate Planning	Will writing	In structuring a will, advice given with respect to the tax circumstances of the individual
	Probate	The probate process is likely to create a tax consequence (inheritance tax) for those inheriting assets - tailoring of the arrangement to the beneficiaries' tax situation or material aid, e.g filing tax with HMRC.
Wealth Management	Structuring and planning	The general planning and structuring of wealth and assets. This is particularly likely when advising on the implications of gift-giving.
International Planning	Residency status	The residency status of an individual can affect their tax status in each jurisdiction. This is particularly true of non-domiciled individuals in the UK with regards income, capital gains and inheritance taxes.
Corporate	Setting up branches and/or subsidiaries	Advising a business entity on structural, constitutional, or jurisdictional options they might have to influence the tax status and exposure of their activities including applicable tax relief.
	Transfer pricing	Advising a business about how they might transfer assets within a group structure, which might bring tax consequences, and might require running comparisons as to how similar transactions might happen between unrelated commercial entities to calculate tax liability.
	Contractual	The creation of tax warranties or covenants, or disagreements around them
Family Law	Divorce or separation	Managing changes in the legal aspects of family units (say, divorces) might create tax implications, particularly income tax and capital gains where the ownership of assets is being split or transferred. Creation of trusts to manage asset transfers to children will likely have a tax advice service element.

If there is a tax element to a matter, you should consider how this might change the money laundering risks present.

Risks to be aware of when providing tax adviser services.

Clearly you should be aware of any signs that your client might be engaging in tax evasion, or tax avoidance.

Whilst tax avoidance is not illegal, but you should consider your obligations under Principle 2 of our Code of Conduct, which requires you to 'Maintain high standards of professional and personal conduct and justify public trust in you, your profession, and the provision of legal services'.



Tax evasion and its facilitation is illegal. Money or assets that you suspect of being the proceeds of tax evasion, will invoke the Proceeds of Crime Act, requiring you to make a disclosure to the National Crime Agency.

How you might mitigate against either of these should be a part of your firm wide risk assessment.

Understanding red flags is particularly important and you should read the extensive list of red flags in the Legal Sector Affinity Group guidance. All relevant staff should be trained, and this training recorded in your AML training log.

What do I have to do if I believe I am providing tax adviser services?

It is down to each individual firm to determine whether it is in the scope of the regulations. CILEx Regulation cannot make this decision on your behalf but this guidance aims to help you determine this.

If you are providing tax adviser services and have not told us, you must tell us.

Your beneficial owners, officers and managers must be approved by us if they are not already. If they have not been approved by us or by another supervisor (for example HMRC or an accountancy professional body) this will be a breach of the regulations and a criminal offence. Failure to notify us that you are carrying out tax adviser services, when requested, will be a breach of our Code of Conduct.