

## The Insider Threat in relation to Tax

Extract from NCA Amber ALERT - January 2022 (Reference 0672 –NECC)

### Overview

This alert provides guidance for mitigating the risk of 'insider' threats where staff within an organisation may be enabling tax evasion.

This alert was written for the banking sector, but the risks and examples will also apply to other sectors.

### Background

Insider risk refers to those members of staff within organisations who may be providing or who can provide a function that enables tax evasion. This may be complicit or non-complicit.

Complicit activity would generally involve instances where staff purposefully know and assist tax evasion, or obfuscate detection of client tax evasion; either by circumventing controls, taking inappropriate advantage of a lack of controls, or by deliberately failing to implement controls. Differentiating between complicit and non-complicit facilitation can in practice be difficult (i.e., how can you establish what somebody did or did not know), however both have potentially severe implications and necessitate controls. As such, both complicit and non-complicit facilitation are in scope of this alert, and it is intended that the explanations and case studies provided shall help outline some of the key risk areas in both.

It can be useful to think of the insider risk in terms of means, motive and opportunity, where typically a perfect storm of means and opportunity is required for enabling to occur (either complicit or non-complicit). Motive is generally more relevant for complicit facilitation.

- **Means.** This relates to how facilitation might occur and would typically be associated with staff working in higher risk roles, activities or processes as detailed in section 1 in the tables below;
- **Motive.** This relates to what might incentivise someone to facilitate tax evasion; examples are covered in section 5 in the tables below;
- **Opportunity.** This relates to situations where facilitation could be executed and generally requires means and motive as a prerequisite. Examples are covered in section 2 in the tables below.

### Measuring risk

The following factors may be useful in identifying an increased risk of tax evasion and the facilitation of tax evasion:

(i) In regard to client data/information:

- Clients registered in tax havens/higher risk jurisdictions;
- Clients registered in non-exchange for information (e.g. CRS/FATCA/AEOI/DAC6) compliant countries;
- Higher risk clients registered in tax havens;
- Changes to clients' tax residency.

(ii) In regard to ongoing client activity:

- Number of unusual activity reports raised due to suspicions of tax evasion;
- Number of Suspicious Activity Reports (SARs) filed to the local FIU/competent authority due to suspicions of tax evasion;
- Number of new clients/activities/transactions posing an increased tax evasion risk.

(iii) Staff where tax evasion/tax transparency training has not been completed.

## Risk Indicators

Higher Facilitation of Tax Evasion Risk Indicator	Examples
<p><b>1. Higher-risk roles, activities and processes.</b></p> <p>Whilst a wide range of staff may present an element of risk for the facilitation of tax evasion, certain roles or activities can be identified as higher risk.</p>	<p>Staff providing tax advice or legal advice on tax and/or tax transparency matters e.g., advice on tax returns, FATCA/CRS submissions, double tax treaties/agreements.</p>
	<p>Staff who receive, process, input and/or provide tax sensitive documentation to or from a client or third party. For example, receiving or processing client tax information and documents such as tax status, tax residency, double tax treaties/agreements, FATCA/CRS documentation, or providing information to a client that could be used in their external tax return.</p>
	<p>Staff with access to systems where tax and tax status information can be set and amended e.g., withholding rates, tax status, tax residency.</p>
	<p>Staff who design and develop potentially higher risk products and/or approve products, services or strategies (for example highly structured arrangements which could be manipulated for avoiding reporting requirements or tax returns). For more information, please refer to section 3.</p>
	<p>Relationship managers or staff with close client contact; particularly with higher-risk clients from a tax evasion perspective eg. clients with a lack of transparency and based in high tax jurisdictions, or payroll business clients. For examples of higher risk client types, please refer to section 6.</p>
	<p>Senior Managers who make key decisions in relation to tax or tax transparency matters, as well as those who have direct oversight of higher-risk roles/activities.</p>
	<p>Staff who are risk or control owners for identified higher-risk roles/activities.</p>
	<p>Staff engaging suppliers or third parties who will provide a service on behalf of the organisation that could facilitate tax evasion. For examples of higher risk third parties, please refer to section 4.</p>
	<p>Transaction monitoring teams, payments processing staff, compliance or financial crime officers, or due diligence employees. An example of complicit facilitation could be someone deliberately omitting or withholding information from an investigation. Examples of non-complicit facilitation could include failure to identify or escalate obvious red flags when receiving client KYC information.</p>
	<p>Collusion between operational or support staff and client facing staff may also present a risk. These teams are usually separated however which may help reduce the risk of collusion to effect facilitation.</p>

Higher Facilitation of Tax Evasion Risk Indicator	Examples
<p><b>2. Opportunities for facilitating tax evasion.</b></p> <p>This relates to situations which may provide increased opportunities for staff to act improperly. Higher-risk roles and activities create an opportunity, especially when this maybe combined with a motive for doing so. However, there are also some stand-alone circumstances which may also present a level of risk.</p>	<p>Remote working where staff activities might be monitored less closely.</p> <p>Ability to communicate through non-standard channels e.g.social media tools or unmonitored messaging systems.</p> <p>Gaps or weaknesses in system and controls, e.g. a lack of segregation of duties, or system access restrictions.</p> <p>Unclear or ineffective legislation which could be circumvented.</p> <p>Emerging or unfamiliar technology e.g. digital assets/cryptocurrency.</p> <p>End of year/tax reporting periods whereby a member of staff may come under pressure to facilitate tax evasion.</p>
<p><b>3. Higher-risk products.</b></p> <p>This relates to specific products or services which may pose higher risks for facilitation of tax evasion. Some products or services can present increased risk for tax evasion even if they are not designed or marketed as such.</p>	<p>Payroll services</p> <p>Services with one of more of the following:</p> <ul style="list-style-type: none"> <li>• A tax component, such as securing relief from or recovering taxes for clients.</li> <li>• Calculations and/or reporting of income or gains/losses, or other data which might be used as a basis for taxation by clients. (For example, income or sales proceeds reports, 1099, 1042-S, Capital Gains Tax calculations etc.).</li> <li>• A product/structure/strategy which may present opportunities for misuse to facilitate tax evasion (for example highly structured arrangements which could be manipulated for avoiding reporting requirements or tax returns.</li> <li>• Deliberately designed to hide income/assets and the beneficial owner from tax reporting e.g., classifying an entity as an active non-financial entity to avoid reporting of the controlling persons.</li> <li>• A level of opacity which could mean clients are not subject to exchange of information reporting (e.g. FATCA or CRS).</li> <li>• Rise of new technologies, for example crypto-products or providing custody services for such products.</li> </ul>

Higher Facilitation of Tax Evasion Risk Indicator	Examples
<p><b>4. Third Parties</b></p> <p>This section is to cover specifics to external (i.e. non-staff) associated persons not already incorporated into another section of this document. Third parties providing services on behalf of an institution can be deemed to be an “associated person” and so their actions could be attributed to the institution itself.</p>	<p>High risk activities: Where the service being provided relates to a potential high risk area e.g. high risk country, product or customer type.</p> <p>Past allegations/negative news/regulatory censure: Due Diligence identifies significant past allegations or incidents of financial crime (e.g. tax evasion, facilitation of tax evasion, fraud or bribery/corruption).</p> <p>Sub-contracting: Sub-contracting work to another party introduces risks posed by the other party.</p> <p>Contract Clause objection: The third party objects to reasonable clauses in the contract regarding compliance with tax evasion or facilitation laws or other applicable laws, and/or is unable to demonstrate it has reasonable controls.</p> <p>Anonymity/Incomplete due diligence: The third party insists on operating anonymously, or through its actions indirectly creates anonymity through the use of a complex corporate structure, which hinders the completion of due diligence.</p> <p>Relationships: Third parties with a direct relationship with the underlying taxpayer may create an opportunity to facilitate tax evasion.</p>
<p><b>5. Possible motives for facilitating tax evasion</b></p> <p>This relates to the reasons that may motivate someone to act outside of the law or policy.</p>	<p>Staff with sales or retention targets.</p> <p>Staff who could be paid a bribe/given something of value to act improperly, which would allow a client/employee to evade tax.</p> <p>Staff looking to “help” clients struggling in the current climate.</p> <p>Front office staff who form close relationships with their clients and therefore could be at risk of conflicts of interest and/or corruption.</p>

Higher Facilitation of Tax Evasion Risk Indicator	Examples
<p><b>6. Higher Risk Client Types</b></p> <p>Some client types could be considered Higher Risk from a Tax Evasion perspective.</p>	<p>High/Ultra High Net Worth Individuals who are moving funds through or to complex structures, or overseas, e.g. to jurisdictions with lower tax rates or high-risk jurisdictions with a lack of transparency.</p> <p>Clients who have taken advantage of a tax amnesty scheme in the preceding “n” (e.g. 5) years</p> <p>Clients who do not conduct any business activities or operate in jurisdictions where they are incorporated or hold accounts.</p> <p>Clients with complex or opaque tax or legal entity structures.</p> <p>Clients with Personal Investment Companies who classify the company as active Non-Financial Institutions for Common Reporting Standard (CRS) purposes.</p> <p>Clients who claim to be resident in tax havens, especially when their business activity suggests links with other jurisdictions.</p> <p>Clients who have conflicting tax residency information e.g. inconsistent documents provided at KYC, or clients that claim to have Residency/Citizenship by Investment status, however documentation suggests otherwise.</p>
<p><b>7. Higher Risk Jurisdictions</b></p> <p>These are jurisdictions that present increased risk for tax evasion, for example lower tax rates, lower transparency/greater opacity and failure to exchange information.</p>	<p>Clients, products, services or transactions which may provide increased risk by way of exposure to higher-risk jurisdictions for tax evasion e.g. a heavy amount of transaction flows to these jurisdictions, UBOs based in these higher risk jurisdictions etc.</p> <p>Useful resources of lists:</p> <ul style="list-style-type: none"> <li>• FATF High-risk and other monitored jurisdictions lists.</li> <li>• EU list of non-cooperative jurisdictions (Black and Grey lists).</li> <li>• Tax Justice Network Financial Secrecy Index/Corporate Tax Haven Index.</li> </ul> <p>Other lists - Some countries maintain their own lists of tax havens/non-transparent countries.</p>

### **Suspicious Activity Reporting [SARs]**

If you know/suspect ML or terrorist financing activity relating to the contents of this Alert you should make a SAR and include the reference **0672 - NECC** within the text *in addition* to the ongoing use of the Glossary of Terms.

Guidance on reporting is available at: [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk)

### **Data Protection Considerations**

Please consider your obligations under the relevant data protection regulations and where necessary remove any related personal data from your systems securely and within a satisfactory timeframe.

### **Disclaimer**

The Accountancy AML Supervisors' Group (AASG) accepts no responsibility for any loss, damage or expense arising in connection with the use of information in this alert. Any use will be taken to signify agreement to these conditions.