

Alert

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Proceeds of Crime (Money Laundering) and Terrorist Financing—Know Your Obligations

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the regulator in charge of Canada's anti-money laundering and anti-terrorist financing (AML & ATF) regime, has indicated to the Chartered Professional Accountants of Canada (CPA Canada) that the accounting sector's AML & ATF compliance efforts require improvement.

CPA Canada's AML & ATF Committee is, therefore, issuing this Alert to remind reporting entities (accountants and accounting firms) of their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and its Regulations when they engage in certain activities. The Committee is providing additional guidance in this Alert based on the results of FINTRAC's past examinations of accountants and accounting firms.

FINTRAC has also issued guidance and policy interpretations to assist the accounting sector in applying the legislation in practice. Responsibilities include client identification, record keeping, reporting and a compliance program.

The AML & ATF regime faces many challenges in its fight against money laundering and the financing of terrorists. The accounting sector plays a very important role in this battle given the nature of its work. The sector's adherence to the legislative requirements to the fullest extent possible will, therefore, contribute to the detection and deterrence of money laundering and terrorist financing.

Consequences of Non-Compliance

FINTRAC has the authority to conduct examinations and issue administrative and criminal penalties against reporting entities when it identifies non-compliance. The severity of the penalties is proportional to the significance of the non-compliance. Administrative penalties for single violations can be imposed up to C\$500,000 in very serious cases. Where there is significant or repetitive non-compliance, the range for criminal penalties can be up to a maximum of C\$2 million and/or five years imprisonment depending on the type of failure.

In light of the significance of the potential sanctions, accountants and accounting firms must understand and comply with their AML & ATF obligations.

Key AML & ATF Obligations

In order to determine whether you have obligations under the AML & ATF legislation, first review the definition of ‘accountant’ and ‘accounting firm.’ If you fall within the definition, then assess whether any of your activities is considered a ‘triggering activity’ (including the receiving, paying or transferring of funds; purchasing or selling real property, business assets or entities; or purchasing, transferring or selling securities). If so, evaluate whether you fall into one of the following exemptions in which case you are under no obligation to comply with the legislative requirements:

- an accountant performing all triggering activities on behalf of an employer
- an accountant or accounting firm performing all triggering activities in respect of an audit, review or compilation engagement
- an accountant or accounting firm acting solely in the capacity of a Trustee in Bankruptcy

If you have obligations because you are an accountant or accounting firm that engages in a triggering activity, the AML & ATF requirements for the accounting sector are summarized below, including amendments to the legislation with an effective date of February 1, 2014 (also see **Further Information** below for more guidance):

1. Maintain the required records and file the appropriate FINTRAC forms and reports when you:
 - receive funds of C\$3,000 or more (maintain a Receipt of Funds Record and perform proper client identification)
 - receive funds of C\$10,000 or more in cash (maintain a Large Cash Transaction Record, perform proper client identification and file a Large Cash Transaction Report)
 - have reasonable grounds to suspect money laundering or terrorist financing – a suspicious activity or transaction (file a Suspicious Transaction Report)
 - have knowledge of terrorist property (file a Terrorist Property Report and inform the RCMP and CSIS immediately)
2. Recognize the establishment of a ‘business relationship’ with any client for which two or more transactions (triggering activities) are performed involving the creation of a Receipt of Funds Record and the filing of a Large Cash Transaction or Suspicious Transaction Report within any rolling five-year period. The purpose and intended nature of the business relationship must be documented. The business relationship must also be monitored on an ongoing basis to keep client identification information current, detect suspicious transactions and reassess client risk levels.

3. Designate an AML & ATF Compliance Officer with the appropriate qualifications, experience and up-to-date knowledge to be accountable for the entity's AML & ATF compliance program.
4. Develop and maintain a money laundering and terrorist financing risk assessment and risk mitigation plan. While the legislation prescribes measures for higher risk activities, FINTRAC does not prescribe, as part of its risk-based approach, a particular form of risk assessment.
5. Develop and keep up-to-date, written AML & ATF compliance policies and procedures. These should be tailored to reflect the risks associated with the reporting entity.
6. Develop and maintain an ongoing AML & ATF training program.
7. Ensure that an effectiveness review/self-assessment is performed and documented every two years to assess the effectiveness of the compliance regime's risk assessment, policies and procedures and training program. The results should be reported to a senior officer within 30 days of the review.

CPA Canada urges the accounting sector to follow the regulatory requirements indicated above. Based on the results of past regulatory examinations conducted by FINTRAC, it is particularly important to focus on and improve performance in the following two key areas to achieve better AML & ATF compliance:

1. mandatory two year effectiveness reviews
2. risk assessment and effective risk mitigation plans

Enhanced emphasis in those two areas is essential for accountants and accounting firms to fulfill their obligations and participate effectively in the struggle against money laundering and terrorist financing.

Further Information

Additional detailed guidance on how accountants and accounting firms can comply with AML & ATF requirements, sample forms for internal record-keeping and questionnaires are available in CPA Canada's 2014 publication *A Guide to Comply with Canada's Anti-Money Laundering (AML) Legislation*.¹ The Guide also contains reproductions of FINTRAC forms in place at the time of publication (please refer to FINTRAC's website at www.fintrac-canafe.gc.ca for the most current versions of the forms).

1 CPA Canada's AML compliance guide is available at: www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/corporate-governance/publications/new-anti-money-laundering-guide-2014

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