Designation of Tax Crimes as Money Laundering Predicate Offences in Singapore


1. Singapore is fully committed to safeguard its financial system from being used to harbour proceeds from tax crimes. In Sep 2011, MAS reminded financial institutions (“FIs”) in Singapore to remain vigilant against suspicious inflows in anticipation of agreements between foreign jurisdictions to resolve outstanding tax issues. In Oct 2011, Singapore made known our policy intent to criminalise the laundering of proceeds from serious tax offences.

2. Following the revision of the Financial Action Task Force (FATF) Recommendations in Feb 2012, Singapore reiterated its commitment to fully align our legal and policy regime with the new FATF requirement to designate tax crimes as money laundering (“ML”) predicate offences, to discourage the entry of tax evasion monies into our financial system and protect Singapore’s reputation as a trusted financial centre.

3. Accordingly, Singapore will designate a sufficiently broad range of serious tax crimes as ML predicate offences which is comparable to the practices of OECD jurisdictions and other key financial hubs that have designated tax offences, such as Australia, Hong Kong, Netherlands and the UK. This designation will be the latest addition to the list of over 400 other ML predicate offences designated by Singapore.

4. To comply with this new requirement, FIs will need to understand a client’s tax-risk profile and apply customer due diligence, transactions monitoring and control measures that are commensurate with the assessed risks, to effectively detect and deter the laundering of proceeds from serious tax offences through the financial system. It includes implementing robust client acceptance policies, rigorous transactions monitoring and performing critical reviews of existing client pools. To this end, the private banking industry has informed MAS that it has, through the Private Banking Industry Group, been working on a set of industry sound practices that provides a conceptual framework for the implementation of this new requirement. MAS welcomes this industry-led effort and other financial institutions may wish to reference the framework when it is released, to consider whether the practices therein can be suitably applied for their respective concerns.

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1 In a keynote speech at the Wealth Management Institution Connection on 27 Oct 2011 by MAS' Managing Director Ravi Menon
5. This consultation paper sets out the scope of tax crimes that Singapore will be designating as ML predicate offences and the underlying considerations; and explains what the new requirement entails. MAS invites interested parties to submit their views and comments on the implementation framework outlined in Section D of this consultation paper and welcomes feedback to facilitate practical and effective implementation. Electronic submissions are encouraged (email: aml_cft@mas.gov.sg). Written comments should be submitted to:

Financial Services Cooperation Division
External Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117

All comments should be submitted to MAS by 9 Dec 2012. Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submission.
A. **INTRODUCTION**

1. FATF has revised its Recommendations to mitigate new and aggravated threats. Consequently, it now requires jurisdictions to designate serious tax crimes as ML predicate offences. Jurisdictions may decide on the definition and range of tax crimes which it considers serious, with a view to including the widest range of predicate offences.

B. **SCOPE OF TAX CRIMES TO BE DESIGNATED**

2. Wilful and fraudulent tax evasion are serious tax crimes involving omissions, falsifications or fraudulent conduct perpetrated with willful intent to evade tax or to assist others in evading tax. In deciding on the scope of designation, we also took into consideration the need for these designated tax offences to be comparable with those designated by other major jurisdictions and financial hubs, for effective deterrence.

3. Singapore will therefore be designating tax offences under s.96 and s.96A of the Income Tax Act and s.62 and s.63 of the Goods and Services Tax Act as ML predicates for direct tax and indirect tax offences respectively (the tax offences covered under each of the relevant sections are contained in the Annex). The Second Schedule of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (“CDSA”) will be updated by Jun 2013 to include the designated offences and the criminalization of the laundering of proceeds from these tax offences will be effective 1 Jul 2013.

4. With this designation, the powers used to investigate and prosecute ML will now be similarly applied to the proceeds of the designated tax crimes. Foreign jurisdictions may also make requests for mutual legal assistance to pursue wilful or fraudulent tax evaders and their criminal proceeds.

C. **BUILDING A ROBUST AND EFFECTIVE REGIME TO COMBAT THE LAUNDERING OF PROCEEDS FROM SERIOUS TAX OFFENCES**

5. The relevant MAS Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism and the Guidelines to these Notices will apply to the designated tax offences from 1 Jul 2013, when the designation of tax offences in the CDSA comes into effect. These requirements will apply to both new and existing accounts.
6. The next section outlines the essential elements that FIs should observe to comply with these new requirements.

**D. IMPLEMENTATION**

7. FIs will need to apply the full suite of AML/CFT measures as contained in the relevant MAS Notices, to serious tax crimes. FIs must therefore develop, implement and enforce internal policies, controls and procedures that effectively detect, and deter the laundering of proceeds from wilful or fraudulent tax evasion through the financial system. These policies, controls and procedures should be approved by senior management.

8. Beyond ensuring that they and their staff do not knowingly aid or abet their clients in committing tax crimes, FIs should also continuously assess and adopt measures to manage and mitigate the tax-related risk exposures arising from the conduct of their business, including any unfavourable reputational fallout.

9. It would not be possible nor practicable for MAS to prescribe a one-size-fits-all approach for all FIs, given that effective risk assessment and mitigation would need to factor in institution-specific variances such as the differences in core business activities; product offerings; clientele; geographical concentration, and internal risk tolerances etc. Rather, MAS expects FIs to implement the following framework of essential elements in internal policies and procedures:

   a) **Identify and assess tax-related risks**

   - Supplement existing due diligence measures with additional client acceptance and surveillance checks to understand and assess a client’s tax-risk profile. This will include
     - Obtaining additional information and, where necessary, verifying the information/representations made by the client
     - Identifying and incorporating tax-specific red-flag indicators and any other additional parameters pertinent for the FI to conduct a risk assessment, to identify high-risk clients
   - Undertake a critical review for all existing accounts to assess the tax legitimacy of assets booked and identify high-risk accounts
   - Conduct enhanced due diligence for clients assessed to present high risk of wilful or fraudulent tax evasion
b) Manage and mitigate tax-related risks

- Apply control measures including escalation/approval policies (senior management approval where appropriate) commensurate with a client’s assessed tax-risks
- Institute ongoing monitoring procedures for the detection of transactions that may be related to tax predicate offences and adopt appropriate risk mitigation for high-risk accounts
- File a suspicious transactions report if the FI suspects or has reasonable grounds to suspect that assets are the proceeds of wilful or fraudulent tax offences
- Maintain proper records of due diligence performed to assess the tax legitimacy of assets accepted, including supporting bases and documentation for account acceptance/retention and other related decisions
- Ensure that staff adhere to all internal control and compliance policies and procedures and are provided adequate training to fulfil the requirements under the new tax crimes regime

E. FEEDBACK

10. MAS invites interested parties to provide views and comments on the implementation framework outlined in Section D.
## ANNEX: TAX CRIMES TO BE DESIGNATED AS MONEY LAUNDERING PREDICATE OFFENCES

### Direct tax offences under s.96 and s.96A Income Tax Act

**s.96 Tax Evasion**

1. Any person who wilfully with intent to evade or to assist any other person to evade tax:
   - (a) omits from a return made under this Act any income which should be included;
   - (b) makes any false statement or entry in any return made under this Act or in any notice made under s.76(8);
   - (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or
   - (d) fails to comply with s.76(8)

**s.96A Serious Fraudulent Tax Evasion**

1. Any person who wilfully with intent to evade or to assist any other person to evade tax:
   - (a) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
   - (b) makes use of any fraud, art or contrivance or authorises the use of any such fraud, art or contrivance

### Indirect tax offences covered by s.62 and s.63 Goods and Services Tax Act

**s.62 Tax Evasion**

1. Any person who wilfully with intent to evade or to assist any other person to evade tax:
   - (a) omits or understates any output tax or overstates any input tax in any return made under this Act;
   - (b) makes any false statement or entry in any return, claim or application made under this Act;
   - (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act;
   - (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
   - (e) makes use of any fraud, art or contrivance whatsoever or authorises the use of any such fraud, art or contrivance

**s.63 Improperly Obtaining Refund**

Any person who knowingly:
   - (a) causes;
   - (b) attempts to cause;
(c) does any act with intent to cause; or
(d) makes default in performance of any duty imposed upon him by this Act with intent to cause,

the refund to that person by the Comptroller of any amount in excess of the amount properly so refundable to him