

Guidance for tax advisers in the scope of the AML regulations

Updated 18 March 2021

The definition of tax adviser when it comes to money laundering changed at the start of the year. This new definition might mean some of you have now been brought into the scope of the regulations and need to be supervised as such.

The definition of a tax adviser under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the regulations') changed to become wider in scope in January, 2020. 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.'

All sole practitioners, freelancers and firms (we will refer to these ways of practising collectively as 'firms' throughout) should use this guidance to determine whether they are a tax adviser as now defined in the regulations. It will also help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

What is a Tax Adviser?

The definition of 'tax adviser' is broad, extends beyond providing advice and includes providing assistance and material aid. Activities known informally by other terms, such as 'estate planning', 'tax planning' and 'tax mitigation' are likely to be in scope of the regulations through this definition.

Definitions used in this guidance

'tax adviser services'	Any activity (or activities) which falls under the definition of a tax adviser in the regulations, including tax advice, assistance or material aid.
'tax advice'	Advice about tax which falls under the definition of a tax adviser in the regulations
'assistance' and 'material aid'	Non-advisory services that are in scope and that will help the client to comply with their tax responsibilities eg filing papers with HMRC on behalf of a client.

The definition of 'tax adviser' is very 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.

With regards the 'advice' component, when contrasting this with providing information, a useful way to think about it is whether information you are providing has been tailored in any way to the tax-relevant circumstances of the client. If the information you are providing is only relevant due to the client's particular circumstances (eg a specific transaction they are involved in or issue you are otherwise advising them on), it will be more likely to fall within the definition.

For example, sending an internet link to something like a HMRC web page about income tax is unlikely to meet this threshold as it is unlikely to contain any tailored advice.

However, sending someone a link to a HMRC website about something very specific (eg a tax credit they may receive for having invested in a venture capital trust), alongside some commentary or explanation as to its relevance for the client, is much more likely to be tax advice in scope of the regulations.

'Assistance' includes non-advisory services, such as drawing up documents on behalf of your clients eg tax covenants between entities.

'Material aid' is likely to include, for example, administering tax filings and payments on behalf of your client.

'Through a third party' is also a very wide definition and may include scenarios such as:

- a tax specialist, such as a sole practitioner, freelancer or an accountant, being instructed by a firm on the client's behalf
- a firm that is in common ownership with a wealth management firm, providing tax advice to the wealth management firm's client.

This means that it does not matter if the contractual relationship is between your firm and the underlying client. When you are providing tax adviser services, the person to whom the tax affairs being advised on relate to is your client for the purposes of the regulations.

Why are tax advisers in scope?

Evasion of tax is a crime and any proceeds from this become by definition the proceeds of crime. Many services, transactions and activities may have tax implications. Criminals might seek to avoid any and all forms of tax, creating proceeds of crime from many different kinds of activity, hence the risks involved in providing tax adviser services.

Some criminals might also seek to pay tax on the proceeds of crime, in an effort to make it seem more legitimate.

So including tax advisers in scope of the regulations addresses a channel criminals might look to exploit.

Am I in scope?

It is down to each individual firm to determine whether or not it is in the scope of the regulations. We cannot make this decision on your behalf. This guidance aims to help you determine this. However, you might need to seek independent advice.

What do I have to do?

If you are providing tax adviser services and have not told us, you must tell us using a [FA10 \[https://higher-rights.sra.org.uk/mysra/\]](https://higher-rights.sra.org.uk/mysra/) (for firms newly in scope of the regulations), a [FA10b \[https://higher-rights.sra.org.uk/mysra/\]](https://higher-rights.sra.org.uk/mysra/) (for firms already supervised for Anti- Money Laundering or 'AML') or a [freelancer form \[https://higher-rights.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/freelancers/\]](https://higher-rights.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/freelancers/). 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 Standards and Regulations.

If the change in definition to tax advisers that came into force on 10 January 2020 brought your firm into scope of the regulations, you must tell us and apply for approval of your beneficial officers owners and managers before 10 January 2021.

You can do this by providing a completed [FA10 \[https://higher-rights.sra.org.uk/mysra/\]](https://higher-rights.sra.org.uk/mysra/) form (for newly in-scope or newly-authorized firms), or [freelancers form \[https://higher-rights.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/freelancers/\]](https://higher-rights.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/freelancers/).

Controls for those providing tax adviser services

Many firms provide some services that are in scope and some that are out of scope of the regulations.

Recognising tax adviser services that are in scope can be challenging because this is so broadly defined in the regulations. Services that are normally out of scope may, with a subtle change, be brought within scope. For example, employment law would generally be

seen as out of scope. But advising on the tax implications of a settlement between the employer and employee could draw the matter into scope.

Being able to determine when this happens, and when you may need to apply the requirements in the regulations is very important so that you are able 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 protect against 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.

If you decide not to treat all work as being in scope, you need to take steps to 'police the boundary' between non-regulated and regulated work. This would require you to create policies, procedures and controls to allow the identification of where these changes might occur and train relevant staff to recognise where they need to begin applying AML-compliant procedures or to seek advice or assistance from others within the organisation.

If you are offering both in-scope and out-of-scope services and do not apply AML-compliant procedures for all clients, you should consider explaining to new clients which services you cannot provide without first completing AML-compliant due diligence. This could be in your terms of engagement and client care letters. See the table below for areas of legal service where this is likely to occur.

Third Parties - understanding who the client is

In providing tax adviser services it can be common to bring in external legal experts to help provide specialist advice. It is extremely important to clearly understand the relationship(s) between the underlying client, any instructing legal firm, and the legal expert who is providing the tax adviser services.

The definition of tax adviser services includes where it is given through a third party. You should consider whether any tax-related advice you provide, even where it might be to another professional, may be in scope. You may therefore have to comply with the regulations including doing customer due diligence on any underlying client (ie the user of the tax advice).

In the case of tax advisers, the question of 'who is the client' when services are provided via a third party is clear, as it is always 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 below.

Reliance

[Regulation 39 \(R39\)](https://www.legislation.gov.uk/ukxi/2017/692/regulation/39/made) [<https://www.legislation.gov.uk/ukxi/2017/692/regulation/39/made>] deals with reliance on customer due diligence undertaken by someone else. Reliance as described in R39 allows you to rely on another party to undertake due diligence on clients, on your behalf, but please note you retain all responsibility for ensuring the due diligence is done correctly and for the other requirements in the regulations.

If you are providing tax adviser services to the client through another firm, you might seek to rely on the due diligence they have done to satisfy your AML duties. You will need to have a written agreement with the firm in question in order to do

this. The firm will also need to have the client's consent to share the relevant information.

Using formal reliance (R39) might help you be in compliance, but you should remember that you must obtain from the firm you are relying on all the information required to identify and verify the client (R39(2)(a)), though not necessarily all the underlying documentation (R39(2)(b)(i)). It should be noted that complying with (R39(2)(a)) will still require collecting a significant amount of information.

This information might be provided in a summarised format or - as the results of the checks done under the relied-upon firm's due diligence, risk assessment and onboarding processes, as long as it meets the above requirements.

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 triggered by the nature of the information held (as per 6.3 in our [Code of Conduct for Firms \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/)).

Areas that might be in scope

The definition of tax adviser services in the regulations is broader than just advice and includes assistance and material aid. In effect this makes it difficult to envisage circumstances in which you are advising on the tax impact of a matter that will 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.

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
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		<p>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. This is ultimately for you to determine.</p> <p>HMRC might engage with, investigate or negotiate with individuals and corporate entities about their tax affairs.</p> <p>Being involved with services in this regard, may fall within the definition, depending on the service provided.</p> <p>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.</p>
Litigation	Litigation involving HMRC, including dispute resolution (might not be ancillary to another service)	<p>You should be encouraging honesty from your client in all dealings with HMRC (1.4 of the Code of Conduct for Solicitors, RELs and RFLs [https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]).</p> <p>The results of commercial and civil litigation might create tax consequences, eg where there has been a proven breach of contract with regards a tax covenant or piece of tax advice.</p>
	Commercial and civil litigation	<p>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.</p>
	Personal injury litigation	<p>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 (eg advice on how to make arrangements to receive an award/set up a trust in a tax efficient way)</p>
	Settlements	<p>Advising or assisting on settlements made as a result of disputes with employees, particularly of an amount above £30,000, where there is usually a tax consequence.</p>
Employment Law	Employee remuneration and benefits	<p>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.</p>
	Pensions	<p>Pension schemes, whether from the perspective of the employee or employer</p>
	Will writing	<p>In structuring a will, advice given with respect to the tax circumstances of the individual</p>
Estate planning	Probate	<p>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, eg filing tax with HMRC.</p>
Wealth Management	Structuring and planning	<p>The general planning and structuring of wealth and assets. This is particularly likely when advising on the implications of gift-giving.</p>
International Planning	Residency status	<p>The residency status of an individual can affect their tax status in a given jurisdiction. This is particularly</p>



		true of non-domiciled individuals in the UK with regards income, capital gains and inheritance taxes.
	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.
Corporate	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 (eg 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.

Some areas in scope of the regulations might also involve tax adviser services, in particular:

- Mergers and acquisitions
- Conveyancing.

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

You should pay attention to any signs that your client might be engaging in tax evasion, or tax avoidance.

Tax avoidance is by definition not illegal, but you should consider our Warning Notice on [Tax Avoidance](https://higher-rights.sra.org.uk/solicitors/guidance/warning-notices/tax-avoidance--your-duties--warning-notice/) [https://higher-rights.sra.org.uk/solicitors/guidance/warning-notices/tax-avoidance--your-duties--warning-notice/]. The involvement of a solicitor or firm in tax avoidance may in certain circumstances violate [our principles](https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/] (particularly principle 2 which requires 'you to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons') and may therefore lead us to take disciplinary action.

Tax evasion and its facilitation is by definition illegal. Committing such an offence might bring severe criminal sanction and disciplinary action. 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](https://www.nationalcrimeagency.gov.uk/who-we-are/publications/633-submitting-a-suspicious-activity-report-sar-within-the-regulated-sector-1/file) [https://www.nationalcrimeagency.gov.uk/who-we-are/publications/633-submitting-a-suspicious-activity-report-sar-within-the-regulated-sector-1/file].

Given the nature of tax adviser services, there is a risk in that you may not know how advice you provide might be applied, including for illicit purposes. This is best addressed by considering how services you provide might be used, including to evade tax, and consider how you might mitigate against such possible uses as a part of your firm wide risk assessment.

Red Flags of possible money laundering for tax advisers

These red flags are particularly important for tax advisers, though should be read alongside the more extensive list of red flags in the [Legal Sector Affinity Group](https://higher-) [https://higher-

rights.sra.org.uk/globalassets/documents/solicitors/code/lsag-anti-money-laundering-guidance.pdf guidance. You should train relevant staff about the importance of these markers, and what they might need to do when they encounter them, eg consider making an internal report to the MLRO, or directly to the NCA if a sole practitioner. This should be recorded in your AML policies, controls and procedures. You might consider these red flags as a part of your firm wide risk assessment, particularly with how you mitigate the risks. You should also consider our warning notice on [money laundering and terrorist financing](https://higher-rights.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing/). [<https://higher-rights.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing/>]

Tax adviser services share many red flags with other areas including where:

- The matter is unusual for the client, for their expected activity profile or for the firm, eg in terms of size, complexity or structure
- The client is acting strangely, particularly where they are pressuring for the service to be provided in a certain way, eg quickly, or with some degree of opacity
- Where there is no clear commercial or financial purpose or rationale for what is happening.

Where the valuation of an asset is unusually high or low, given what might normally be expected, this should be a red flag. You're not expected to be an expert in what all forms of property in all markets should cost, but where a valuation appears unusual for whatever reason, you should make further enquiries to ensure you understand why this is the case.

In matters of wills and probate, you should consider gifts that are unexplained or unusual when drafting the will, and undisclosed assets discovered during administering an estate as red flags.

Where clients ask a firm to re-issue an invoice to another entity within the client's group structure (where the tax treatment might differ), this is a red flag which might indicate that this is an attempt at committing value-added tax fraud.

Where a jurisdiction involved in a matter is regarded as a tax haven, you should consider the matter to be of higher risk. Tools like the [Financial Secrecy Index](https://fsi.taxjustice.net/) [<https://fsi.taxjustice.net/>] or [the Council of Europe's list of non-cooperative jurisdictions](https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/) [<https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>] might help you to decide where a jurisdiction is a tax haven.

Becoming aware that your client has not been honest with HMRC is a red flag. You should consider whether this might have been done on purpose or by accident and any evidence that might clarify this.

Other red flags include clients:

- 'double dipping' on deductions, taking more than one deduction on an item of expense
- winding down companies in order to sidestep the need to pay capital gains tax; and quickly setting up a new company to take the original's place, also known as 'phoenixing'
- providing any other indication that they have been or seek to be dishonest with the authorities with regards their tax affairs.

These red flags may cause you to consider whether to:

- cease acting for the client
- submit a suspicious activity report to the NCA
- report the behaviour to HMRC (subject to legal professional privilege).

Other legislation and requirements to be aware of

[Council Directive \(EU\) 2018/822](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0822) [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0822>] also known as 'DAC6' implemented in the UK by the [International Tax Enforcement \(Disclosable Arrangements\) Regulations 2020](http://www.legislation.gov.uk/ukxi/2020/25/contents/made) [<http://www.legislation.gov.uk/ukxi/2020/25/contents/made>] creates reporting requirements on taxpayers and intermediaries for cross border transactions, that affect at least one EU state.

The types of transactions in scope are broad and extend to transactions undertaken with an underlying commercial purpose. The reporting regime is due to come into effect in the UK from 1 July 2020. The end of the Brexit implementation period may have some effect on the scope of the reporting requirements.

The Criminal Finance Act 2017 introduced an offence of the failure to prevent the facilitation of tax evasion. Compliance with the regulations including assessments of risk and effective due diligence are at least a partial protection against inadvertently committing this offence, according to [HMRC guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672231/Tackling-tax-evasion-corporate-offences.pdf).
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672231/Tackling-tax-evasion-corporate-offences.pdf]

If you have become involved in a tax avoidance scheme, you might need to report this to HMRC. See [the guidance](https://www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes-guidance) [https://www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes-guidance], on whether you need to make a Disclosure of a Tax Avoidance Scheme (DoTAS).

What other help is there if I am newly in scope?

If you are newly in scope of the regulations, other useful resources exist including:

- [Professional Conduct in Relation to Tax \(PCRT\)](https://www.icaew.com/technical/tax/pcrt) [https://www.icaew.com/technical/tax/pcrt] – A piece of guidance set out in collaboration between HMRC and the accountancy sector supervisors of tax advisers
- [General accountancy sector AML guidance](https://www.gov.uk/government/publications/anti-money-laundering-guidance-for-the-accountancy-sector) [https://www.gov.uk/government/publications/anti-money-laundering-guidance-for-the-accountancy-sector]
- [EU list of non-cooperative jurisdictions for tax purposes](https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/) [https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/]
- [OECD global forum on transparency and exchange of information for tax purposes jurisdiction ratings](http://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm) [http://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm]
- [HMRC's list for tax avoidance schemes in the spotlight](http://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight) [http://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight]

If you need help with this or any other aspect of our supervision of Tax Advisers, you can contact the [Professional Ethics Helpline](https://higher-rights.sra.org.uk/contactus/) [https://higher-rights.sra.org.uk/contactus/].