



# DAMLs and tipping off

## ENGAGEMENT WEBINAR - Q&A

### Professional clearance and tipping off

1. I submitted a SAR on one of my clients and the new accountant has written asking for professional clearance. Do I have to notify the new accountant about the SAR in the handover letter?

- If you have made one or more suspicious activity reports, you must not disclose that fact to the prospective accountant. You should therefore avoid answering queries that relate specifically to suspicions of money laundering. In responding to the professional enquiry, you should nevertheless include relevant statements of fact (not opinions) that allow the incoming practitioner to form their own conclusion, or that may prompt them to make their own enquiries.

Examples include:

- We disagreed over the tax liability or VAT position.
- The relationship of trust and confidence has broken down.
- We were unhappy submitting the accounts as instructed.

### Do I submit a SAR or DAML?

2. Should I submit a DAML with every SAR where a client's tax might be underpaid?

- You should only submit a DAML if you think you risk handling the proceeds of crime and want a defence against doing so. Therefore, you would only possibly submit a DAML if you were handling the tax refund itself, for example the refund was paid into your client account.
- Note that an innocent error does not constitute a money laundering offence. As such if an innocent error is identified, highlighted to the client and the client agrees to correct it, there is no obligation to make a SAR.
- In this scenario you might submit a SAR if you have a suspicion that the client has deliberately sought to underpay tax but you are not handling the proceeds of that crime.
- **CCAB guidance** has a useful flowchart to determine when to make a SAR. (9.4).
- Please refer to **Professional Conduct in Relation to Tax**.
- The Criminal Finances Act 2017 introduced a corporate offence of failure to prevent facilitation of tax evasion. The offence is committed by a relevant body (a partnership or body corporate) that fails to prevent an associated person (an employee, agent or person

providing such services) criminally facilitating the evasion of tax (whether UK or foreign). The government guidance provides information on steps that might be required to ensure a defence against the offence. If in doubt, contact your professional body supervisor for guidance. (Contact ICAEW on +44(0)1908 248 250.)

3. What is the firm's exposure if for example we facilitate the sale of a company and only later become suspicious that ML is taking place? Presumably a DAML can't be requested retrospectively?
  - In these circumstances, a DAML would not be appropriate. You can't seek a defence if the transaction is completed. You should consider whether you need to make a SAR as you now have a suspicion that ML has taken place.
4. Can you obtain guidance on specific circumstances and whether SAR reports are required?
  - There is guidance:
    - On the [NCA Website](#)
    - Via the ICAEW helpline +44(0)1908 248 250
    - On the ICAEW website – [Guidance with examples](#)
5. What are the common situations in which a DAML may be required?
  - Acting as an insolvency officeholder when there is knowledge or a suspicion that either:
    - all or some assets in the insolvency are criminal property; or
    - the insolvent entity may enter, or become concerned in, an arrangement under Section 328 of POCA.
  - Designing and implementing trust or company structures (including acting as trustee or company officer) when a suspicion arises that the client is, or will be, using them to launder money.
  - Acting on behalf of a client in the negotiation or implementation of a transaction (such as a corporate acquisition) in which there is an element of criminal property being bought or sold by the client.
  - Handling money through client accounts that is suspected of being criminal in origin.

### **When should I make a SAR?**

6. If I am approached to act by a potential new client but I am suspicious of money laundering and turn down the client, is there still a responsibility to report?
  - If, while performing CDD on a potential client, you become suspicious then you should make a SAR.
7. If we have a suspicion in relation to a client that is now disengaged, do we still need to report?
  - Yes, if that information came to you during your business as an accountant. If you have information about an ex-client, that you didn't obtain as part of your ongoing business

relationship, then no you don't. If you are uncertain, you should consider taking legal advice.

### **What will the NCA confirm?**

8. If I submit a DAML will the NCA tell me whether to continue with the business relationship?

- No, the NCA will only tell you if they can provide a defence against money laundering if you were to proceed with the activity. For example, if you are asking to make payments from a liquidated estate where you consider there may be proceeds of crime. It is up to your firm to decide on whether you consider it appropriate to proceed with an activity or to continue the business relationship with that client.