

18 March 2024

Mr Brendan Thomas
Chief Executive Officer
AUSTRAC
4 National Circuit
Barton ACT 2600

By email: Guidance_Consultation@austrac.gov.au

Dear Mr Thomas

Consultation on draft Outsourcing Guidance

As the representatives of over 350,000 professional accountants, Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA) seek greater clarity in the Outsourcing Guidance (the draft Guidance).

Some of our members are, and on the implementation of Tranche 2, many more will become reporting entities under Australia's anti-money laundering and counter-terrorism (AML/CTF) regime. Further, the majority that will become a direct reporting entity on the implementation of Tranche 2 are either sole practitioners or micro/small accounting practices of one or two partners that may choose to use outsourcing arrangements to help meet their obligations under the AML/CTF regime.

While generally supportive of the intent of the draft Guidance, we referred to the Department of Finance guide *Reducing red tape by improving clarity and usefulness of regulation and guidance materials, 2015*, to inform our feedback. We note that *'The word 'should' is best to be avoided, ...it has been interpreted to imply mandatory requirements, particularly by smaller entities with limited capacity to devote resources to compliance activities.* Further, *'Guidance material supports differing approaches depending on the size and complexity of the entity...'*. Accordingly, we seek for the draft Guidance to provide clarity on what is mandatory and what is good practice.

Further, having undertaken some simple due diligence on three or four software offerings for the Australian market we found that the information available publicly means that many of the checks the draft Guidance suggests should be undertaken are not possible.

Of particular concern in the draft Guidance is the expectation that a software provider should be able to tailor its offering to *'your business's unique ML/TF risks.'* We believe our members will understand this to mean software that can be customised with their business's details, as they currently do in their accounting software, such as Xero.

If, in fact, the expectation is to tailor to specific AML/CTF risks, the draft Guidance would have more value if it provided an example or a case study to demonstrate the degree of tailoring expected.

Equally, we are not aware that it is possible to obtain AML/CTF qualifications from a recognised educational facility or receive a form of accreditation which would indicate that an outsourced service provided was suitably qualified. Yet the draft Guidance suggests considering, and verifying, ‘*a providers qualifications in Australia’s AML/CTF regime and your industry*’.

We seek for the draft Guidance to identify the specific qualifications AUSTRAC considers providers should hold.

Also, the draft Guidance outlines the role ‘*your board or senior management*’ should have. We consider this language will be confusing for sole practitioners and micro/small accounting practices, who do not have boards or define senior managers.

We seek the addition of ‘Where the reporting entity does not have a board, its chief executive officer or equivalent.’ Additionally, for clarity, the additional wording to be added to each and every instance of, “senior management” and “board and senior management” in the “Good practice” and “Bad practices and possible consequences” respective columns (page 10 of the draft Guidance).

Finally, we further refer to our joint submission to the Modernisation of the AML/CTF regime, submitted to the Attorney General’s Department in June 2023, and our recommendations regarding software providers:

We also recommend AUSTRAC host a list of software suppliers that meet some basic criteria such as a monthly cost of not more than \$10 to provide a solution for small reporting entities. We refer AUSTRAC to the Australian Taxation Office (ATO) and its Software for Single Touch Payroll page (which includes a link to its product register).

While we acknowledge the potential risks for AUSTRAC if a listed provider causes harm, we consider the risks would be similar for the ATO, who must have a means to address this risk. We therefore recommend AUSTRAC liaise with the ATO to understand how they have addressed their risk, given they have a significantly higher number of potential users (approximately 700,000 small businesses employers).’

We seek for AUSTRAC, who is best resourced to identify providers of tools that meet AML/CTF obligations under the Australian regime, to provide a comparison table of such providers as part of Outsourcing Guidance.

Accordingly, we seek for Outsourcing Guidance to clarify actions that are mandatory, be in plain language, provide a link to a table that compares product offerings that comply with the Australian regime, and outlines best practice that is scalable and can be reasonably undertaken by reporting entities of different sizes and complexity.

We are interested in discussing this guidance in greater detail and request that you contact Jill Muir at Jill.Muir@charteredaccountantsanz.com in the first instance to arrange a suitable time.

Sincerely,

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