



## Tax Transfers Class Exemption

Guidance September 2022

### Background

Accounting practices<sup>1</sup> (including accountants, bookkeepers, tax agents, and insolvency practitioners) carrying out relevant tax transfers under the Tax Administration Act 1994 on behalf of their customers are now covered by a class exemption. This exempts accounting practices from most (but not all) obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act).<sup>2</sup> This class exemption is valid until 14 July 2027. This guidance explains the exemption, including the meaning of 'relevant tax transfers,' and how this exemption may affect accounting practices.

### Reason for the exemption

It is recognised both in New Zealand and internationally that accounting practices are at risk of being used by criminals to facilitate money laundering and the financing of terrorism.

However, some types of activities carried out by accounting practices on behalf of their customers present a low money laundering/terrorism financing (ML/TF) risk. This includes the relevant types of tax transfer that are subject to this exemption. Without an exemption, the compliance burden that accounting practices would face in relation to these tax transfers would be disproportionate to the risk involved.

### Captured activities

The AML/CFT Act is activities-based. Conducting tax transfers in the Inland Revenue system on behalf of a customer is a captured activity in the following context:

- managing client funds, accounts, securities or other assets; and

- engaging in or giving instructions for a transaction on behalf of a customer in relation to creating, operating, and managing a legal person or other legal arrangement.

For many accounting practices, tax transfers may be the only activity undertaken that is captured under the Act. Accounting practices that only conduct relevant tax transfers will still be reporting entities and subject to a limited set of obligations as set out below.

### Relevant tax transfers

The class exemption applies to reporting entities that are accounting practices when they are conducting 'relevant tax transfers'<sup>3</sup> in the Inland Revenue system on behalf of their customers. These relevant tax transfers are outlined in the tables below.

### Obligations that apply to relevant tax transfers

For a relevant tax transfer, an accounting practice is only required to comply with the following requirements of the AML/CFT Act:

- report a suspicious activity involving a relevant tax transfer;<sup>4</sup>
- keep reports of suspicious activities;<sup>5</sup>
- conduct enhanced customer due diligence after becoming aware that they must report suspicious activity,<sup>6</sup> and conduct enhanced customer due diligence if a customer seeks to conduct a complex, unusually large tax transfer or unusual pattern of tax transfers that have no apparent economic or lawful purpose, or when a reporting entity considers that the level of risk involved is such that enhanced due diligence should apply to a particular situation.<sup>7</sup>

<sup>1</sup> Accounting practice is defined in section 5(1) of the AML/CFT Act. To help determine if you are captured under the AML/CFT Act, see the Department of Internal Affairs' Accountants Guideline, available [here](#).

<sup>2</sup> For full details of the exemption, refer to the Amendment Notice, available [here](#).

<sup>3</sup> A relevant tax transfer is a transfer made by the Commissioner of Inland Revenue under Part 10B (transfers of excess tax) provided

for in sections 173L and 173M, except for some transfers within section 173M(2)(g) of the Tax Administration Act 1994 (TAA).

<sup>4</sup> Sections 40-48, AML/CFT Act.

<sup>5</sup> Section 49A, AML/CFT Act.

<sup>6</sup> Section 22A, AML/CFT Act.

<sup>7</sup> Section 22(1)(c)-(d), AML/CFT Act.

If an accounting practice is unable to conduct enhanced customer due diligence in the circumstances described above, they must comply with section 37 of the AML/CFT Act, including terminating any business relationship, and must not carry out a tax transfer that is an occasional transaction for the customer.<sup>8</sup>

To be able to submit a suspicious activity report, accounting practices must be registered with goAML, the New Zealand Police Financial Intelligence Unit [SAR reporting platform](#). Full details of what is exempted can be found in the Class Exemption Amendment Notice, located [here](#).

### **Other types of tax transfer or captured activity**

A tax transfer in the Inland Revenue system in any other circumstances (other than those listed in the tables below) is not a relevant tax transfer and is not covered by the exemption.

Accounting practices that are captured under the AML/CFT Act for activities other than relevant tax transfers (such as other types of tax transfer, forming a legal person, arranging or acting as a nominee or trustee, providing an address, and transactions involving buying, selling, or transferring property, a business, or legal arrangement)<sup>9</sup> are required to comply with the AML/CFT Act in full for those activities. This includes conducting a risk assessment, having an AML/CFT programme and conducting standard and ongoing customer due diligence.

Further guidance to help accounting practices meet their obligations under the AML/CFT Act is available [here](#).

### **Disclaimer**

This guidance has been produced by the Department of Internal Affairs for accounting practices under s132(2)(c) of the AML/CFT Act. It is intended to assist accounting practices understand their obligations under the AML/CFT Act relating to tax transfers and the Class Exemption issued on 15 July 2022. This guidance does not constitute legal advice

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<sup>8</sup> Section 37, AML/CFT Act.

<sup>9</sup> For more detail on when accounting activities are captured under the AML/CFT Act, see the Department of Internal Affairs' Accountants Guideline, available [here](#).

The following tables outline relevant transfers:

### *Single tax payer*

Transfers of excess tax within a taxpayer's accounts – to another tax period or another tax type of the taxpayer.<sup>10</sup>

### *Transfers between different taxpayers*

Transfers of excess tax between a taxpayer and:

- A company in the same group of companies.
- A shareholder employee of the taxpayer.
- A company in which the taxpayer is a shareholder employee.
- A partner in the same partnership.
- A relative.<sup>11</sup>
- A trustee of a family trust of which the taxpayer is a beneficiary.
- A tax pooling intermediary's tax pooling account.<sup>12</sup>

Transfers of excess tax from a trustee of a family trust to a beneficiary of the trust.<sup>13</sup>

### *Transfers to another taxpayer*

Transfers of excess tax, only when the transfer is:

- From a company to another company where the two companies are associated persons.<sup>14</sup>
- From a company to a person (or from a person to a company), other than in the person's capacity as a trustee, where the person holds at least 25% of the shares in the company and does not hold those shares as a trustee.
- From a company to a person (or from a person to a company), in the person's capacity as a trustee of a trust, where the person holds all of the shares in the company as a trustee of the trust; or the person holds more than 50%, but not all, of the shares in the company as a trustee of the trust and the remaining shares are held by a shareholder-employee.<sup>15</sup>
- From a person in their capacity as a trustee of a trust to the same person in their capacity as a beneficiary of the trust.
- Between two persons in their capacities as settlors of two different family trusts where the settlors are relatives.<sup>16</sup>
- From a person in any of the following capacities relating to a registered scheme<sup>17</sup> to another person in any of those capacities relating to the scheme:
  - The manager of the scheme;
  - A custodian of the scheme;
  - To the extent that scheme property is held directly by the scheme participants, a scheme participant;
  - A person who is otherwise a taxpayer in connection with all or part of the scheme.
- From an agent of a non-resident insurer to the non-resident insurer.

<sup>10</sup> Section 173L, TAA.

<sup>11</sup> Within the meaning of section 173M(5), TAA: in relation to a person, another person connected with the person by blood relationship, marriage, civil union or de facto relationship, or adoption.

<sup>12</sup> Sections 173M(2)(a)-(fb), TAA.

<sup>13</sup> Sections 173M(3), TAA.

<sup>14</sup> Within the meaning of section YB 2 of the Income Tax Act 2007(ITA).

<sup>15</sup> Shareholder-employee is defined in section YA 1 of the ITA

<sup>16</sup> Relative is defined in section 173M(5) and (6) of the TAA.

<sup>17</sup> A managed investment scheme that is registered on the register of managed investment schemes (section 6(1) of the Financial Markets Conduct Act 2013).