

HIGH VALUE DEALERS

New regulations aimed at preventing money laundering became effective early in 2004. Known as the Money Laundering Regulations 2003 (the Regulations), these place new onerous registration and procedural requirements on businesses that deal in goods and accept large cash payments.

HM Revenue & Customs (HMRC) have been given the responsibility for controlling High Value Dealers. We outline below the main requirements of the Regulations and the registration process.

Which Businesses are Affected?

Businesses that meet the definition of a High Value Dealer (HVD) are affected by the Regulations with effect from 1 March 2004. The requirement to register became effective from 1 April 2004.

A business is defined as a HVD where it deals in goods and accepts cash equivalent to €5,000 (around £10,000¹) or more in any currency for any single transaction. Such transactions are known as High Value Payments (HVPs).

Businesses that only occasionally accept such transactions are included. Businesses that do not accept large amounts of cash or deal in services are not affected.

It is anticipated that the businesses most affected will be those that deal in high value or luxury goods, works of art, cars, jewellery and yachts.

However, the regime applies to everyone who accepts sufficiently large amounts of cash for goods and any business could potentially be registerable.

How Will My Business be Affected?

If your business does deal in goods and does accept large cash payments then you are required to:

- register with HMRC and pay an annual registration fee
- implement policies and procedures to protect yourself from being used by money launderers.

If you are unsure whether you will sell goods for this amount and do not register, you will be obliged to refuse any HVPs or insist upon payment by another means.

¹ For practical purposes the latest exchange rate published in the daily press can be used. The precise legal requirement is the rate in force when the cash is received.

Alternatively, you may delay a HVP and register with HMRC.

Background to the Requirements

Why was this regime introduced?

The aim of the new regime is to help protect society and to combat money laundering and the criminal activity which underlies it, including terrorism.

As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation and regulation aimed at catching those involved became necessary.

The primary legislation is predominantly contained within the Proceeds of Crime Act 2002 and the Terrorism Act 2000.

What is money laundering?

Money laundering is the process by which criminally obtained money or other assets (criminal property) are exchanged for 'clean' money or other assets with no obvious link to their criminal origins.

Criminal property

Criminal property represents the proceeds of criminal conduct. This includes any conduct wherever it takes place, which would constitute a criminal offence if committed in the UK. It not only includes, for example, drug trafficking, tax evasion, fraud, forgery and theft but also any other criminal offence committed for profit.

It is important therefore to remember that money laundering now includes the proceeds of any crime and not simply the more traditionally associated crimes such as drug trafficking and prostitution.

Under the legislation there are three principal money laundering offences covering criminal activity and two related money laundering offences:

- concealing, disguising, converting, transferring or removing (from the United Kingdom) criminal property
- making arrangements which facilitate the acquisition, retention, use or control of criminal property by or on behalf of another person
- acquiring, using or possessing criminal property
- failure to disclose knowing or suspecting or having reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist funding
- tipping off any person that a disclosure has been made, knowing or suspecting that doing so is likely to prejudice an enquiry.

HVDs must be aware of how these actions could affect their business, for example, as the proceeds of crime are spent (or laundered) within their business.

The importance of the regime

The law imposes very severe penalties on anyone involved in money laundering. The Regulations require HVDs to adopt anti money laundering procedures to protect themselves against abuse by money launderers and the risk of prosecution.

The Registration Process

HMRC form MLR100 must be completed. HMRC will then send a certificate showing an MLR number within 45 days.

Registration is required where a business:

- accepts the equivalent of €15,000 or more in cash for a single transaction or
- takes a policy decision to carry out such transactions.

Every legal entity through which a HVD business is run must be registered. An annual fee of £60 is payable for each HVD trading premises that is required to be registered.

Businesses that fail to register could be liable to a civil penalty if they carry out a HVD transaction.

What Anti Money Laundering Policies and Procedures are Required?

These can be summarised into the acronym CATCH:

- Confirm the identity of your customers
- Appoint a Money Laundering Nominated Officer (MLNO)
- Train your staff
- Control your business by having anti money laundering systems in place
- Hold all records for at least five years.

Confirm the identity of your customers

HVDs must establish the identity of any customer who makes a total cash payment equivalent to €15,000 or more for a single transaction.

Establishing identity requires you to be satisfied that your customer is who they claim to be by obtaining evidence of their name and address.

Appoint a Money Laundering Nominated Officer (MLNO)

This is a very important role within a HVD business and should be performed by a suitably senior person. The main roles of the MLNO should be to:

- establish the necessary procedures to implement the requirements of the Regulations

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- receive and review reports of possible money laundering from others involved in the business
- decide whether to report to the Serious Organised Crime Agency (SOCA).

SOCA

SOCA is the government body to which all suspicions of money laundering should be reported. Currently, there are two reporting templates available on their website (www.soca.gov.uk) upon which SOCA prefers reports to be made. It is also possible to report suspicious activity online through the SOCA Suspicious Activity Reports Online system. A link to this can be found on the Financial Intelligence page of the SOCA web site.

There will be times when an internal report of suspected money laundering is received by the MLNO, where the transaction is not yet complete. Under these circumstances there are specific SOCA procedures to follow and you must wait until SOCA gives consent for the transaction to go ahead.

Train your staff

All managers and anyone involved in the business who deals with customers must be trained to be aware of:

- the law regarding money laundering offences
- business policies and procedures relating to the prevention of money laundering
- identification and know your customer procedures
- recognition and handling of transactions which may be related to money laundering
- internal reporting
- record keeping.

Staff should be trained regularly on this subject and training should be repeated at least every two years.

Control your business by having anti money laundering systems in place

HVDs must:

- put in place clear written policies and procedures relating to the prevention of money laundering and make employees aware of them
- ensure that any suspicious activity or transactions are properly identified and reported.

Hold all records for at least five years

Only records relating to HVPs need to be kept. There are, however, several different types of records to maintain.

Customer ID

Legible copies of the forms of identification presented by customers should be retained.

Customer ID records should be kept for at least five years from the date that the relationship with the customer finishes.

Business records

Records of HVPs must be kept and should include the name and address of the customer. The transaction details should also be kept but in many cases where invoices are retained, a cross-reference to this will be sufficient. These records should be kept for five years.

Records of reports and other correspondence with SOCA should also be retained for at least five years.

Failure to Comply

Businesses may be liable to a civil penalty up to £5,000 for failing to comply with a registration requirement.

Failing to comply with responsibilities under the Regulations could lead to either prosecution or a civil penalty.

How We Can Help

The new regime brought about significant change for those businesses that deal in goods and are prepared to accept large cash payments.

If you would like to discuss any of the issues raised above please do contact us. We are able to provide comprehensive assistance with regulation and HMRC matters such as:

- HVD registration
- design and implementation of anti money laundering policies and procedures
- VAT registration and deregistration
- completion of VAT returns.

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