Community Amateur Sports Clubs

Since April 2002, many local amateur sports clubs have been able to register with HMRC as Community Amateur Sports Clubs (CASCs) and benefit from a range of tax reliefs including Gift Aid. In 2014, the tax benefits will be increased to encourage more clubs to register and some of the registration requirements will be amended in order to clarify the conditions that clubs will have to satisfy.

What kind of club can register?

Broadly a club seeking to register must:

- be open to the whole community
- be organised on an amateur basis
- have as its main purpose providing facilities for, and promoting participation in, one or more eligible sports.

Open to the whole community

A club is open to the whole community if:

- membership of the club is open without discrimination
- the club's facilities are open to members without discrimination, and
- any fees are set at a level that does not pose a significant obstacle to membership or use of the club's facilities.

Discrimination

Discrimination includes:

- discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs
- discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport.

Costs associated with membership and participation

It is anticipated that new regulations will specify:

- clubs where membership and participation costs total £520 or less a year will be considered to be open to the whole community
- clubs where membership costs (excluding participation costs) are above £1,612 a year will not be eligible
- clubs where membership and participation costs total more than £520 a year must make special provisions for members on a low or modest income to participate for £520 or less.

Organised on an amateur basis

A club is organised on an amateur basis if:

- it is non-profit making
- it provides for members and their guests only the 'ordinary benefits' of an amateur sports club
- it does not exceed the limit on paid players
- its governing document requires any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes.

Non-profit making

A club is non-profit making if its governing document requires any surplus income or gains to be reinvested in the club. Surpluses or assets cannot be distributed to members or third parties. This does not prevent donations to other clubs that are registered as Community Amateur Sports Clubs.

'Ordinary benefits' of an amateur sports club

Some of the rules as to what constitutes an 'ordinary benefit' will be amended in 2014.

The ordinary benefits of an amateur sports club include:

- provision of sporting facilities
- reasonable provision and maintenance of club-owned sports equipment
- provision of suitably qualified coaches
- provision, or reimbursement of the costs, of coaching courses
- reimbursement of certain travel expenses incurred by players and officials travelling to away matches
- sale or supply of food or drink as a social adjunct to the sporting purposes of the club.

Continued >>>

Payments to members

A club is allowed to:

- enter into agreements with members for the supply to the club of goods or services or
- employ and pay remuneration to staff who are club members.

So a CASC could pay members for services such as coaching or grounds maintenance but would not, for example, normally pay members to play. However under new regulations clubs will be allowed to pay a maximum of £10,000 a year in total to players to play for the club.

Eligible sports

Eligible sports are defined in the legislation by reference to the Sports Council's list of recognised activities. The list is set out in an appendix to this factsheet.

Forthcoming change – a new income condition

All CASCs must meet a new income condition which aims to ensure that CASCs are mainly sports clubs rather than mainly commercial clubs with sports activities. The income condition will apply to the turnover received from broadly commercial transactions with non-members, where the club is offering a commercial service or supply, for example sales of food and drink. The maximum amount of turnover that a club may receive under the income condition will be £100,000 a year, excluding VAT.

Clubs will be able to generate unlimited income from transactions with their members. Investment income and donations received will also be excluded from the income condition.

Tax reliefs for registered CASCs

CASCs can reclaim basic rate tax on Gift Aid donations made to them by individuals but CASC subscriptions are not eligible as Gift Aid payments.

CASCs are treated as companies for tax purposes. Therefore their profits may be chargeable to corporation tax.

CASCs can claim the following tax reliefs:

- exemption from Corporation Tax on profits from trading where the turnover of the trade is less than £30,000 (this will be increased to £50,000)
- exemption from Corporation Tax under Schedule A on income from property where the gross income is less than £20,000 (this will be increased to £30,000)
- exemption from Corporation Tax on interest received
- exemption from Corporation Tax on chargeable gains.

It should be noted that if trading turnover exceeds £30,000 (£50,000), all the trading profit is assessable to corporation tax.

Example

A CASC runs a trade with turnover of £40,000 and profit of £6,000. Because the turnover exceeds the £30,000 limit the profit is taxable. The CASC also has gross rental income of £12,000. The gross rental income is below the exemption limit and is not taxable.

Claiming the tax reliefs

Where a CASC receives a tax return, relief can be claimed in the return. However most clubs do not receive a tax return each year. If the club has had tax deducted from its income or if it has received Gift Aid payments, it can claim a repayment from HMRC.

Non-domestic rates relief

CASCs in England and Wales get the same relief that would be available to a charity (80% mandatory relief) where the CASC property is wholly or mainly used for the purposes of that club. For CASCs in Scotland, the Scottish Executive has agreed voluntary relief with local authorities for the same amount.

Relief for donors

- Individuals can make gifts to CASCs using the Gift Aid scheme. We have a separate factsheet giving further details of the Gift Aid scheme.
- Businesses giving goods or equipment that they make, sell or use get relief for their gifts.
- Gifts of chargeable assets to CASCs are treated as giving rise to neither a gain nor a loss for capital gains purposes.

How we can help

Please contact us if you have any queries relating to the rules on CASCs. We would be delighted to help.

APPENDIX – list of activities recognised by the Sports Council

Aikido	Gliding	Quoits
American Football	Goalball	Racketball
Angling	Golf	Rackets
Aquathlon	Gymnastics	Rafting
Archery	Handball	Rambling
Arm Wrestling	Hang gliding/Paragliding	Real Tennis
Artistic Skating (roller)	Harness Racing	Roller Sports
Association Football	Health and Beauty Exercise	Rounders
Athletics	Highland Games	Rowing
Australian Rules Football	Hockey	Rugby League
Badminton	Horse Racing	Rugby Union
Ballooning	Horse Riding	Sailing and Yachting
Ballroom Dancing	Hovering	Sand and Land Yachting
Baseball/Softball	Hurling	Shinty
Basketball	Ice Hockey	Shooting
Baton Twirling	Ice Skating	Show jumping
Biathlon	Jet Skiing	Skateboarding
Bicycle Polo	Ju Jitsu	Skater hockey (roller)
Billiards	Judo	Skiing
BMX	Kabaddi	Skipping
Bobsleigh	Karate	Snooker
Boccia	Keep Fit	Snowboarding
Bowls	Kendo	Softball
Boxing	Kite Suring	Sombo
Camogie	Knee Boarding	Speedway
Canoeing	Korfball	Speed Skating (roller)
Caving	Lacrosse	Squash
Chinese Martial Arts	Land-sailing/yachting	Stoolball
Clay Pigeon Shooting	Lawn Tennis	Sub-Aqua
Cricket	Life Saving	Surf Life Saving
Croquet	Luge	Surfing
Curling	Model Aircraft Flying	Swimming and Diving
Cycling	Modern Pentathlon	Table Tennis
Dance Sport	Motor Cruising	Taekwondo
Darts	Motor Cycling	Tang Soo Do
Disability Sport	Motor Sports	Tenpin Bowling
Diving	Mountain Biking	Trampolining
Dodgeball	Mountaineering	Triathlon
Dragon Boat Racing	Movement and Dance	Tug of War
Duathlon	Netball	Ultimate (Frisbee)
Equestrian	Octopush	Volleyball
Exercise and Fitness	Orienteering	Wakeboarding
Fencing	Parachuting	Water Polo
Fives	Petanque	Water Skiing
Floorball	Polo	Weightlifting
Flying	Polocrosse	Wind Surfing
Folk Dancing	Pool	Wrestling
Football	Power Boating	Yoga
Futsal	Powerlifting	
Gaelic Football	Puck Hockey (roller)	

Limited Liability Partnerships

Most important features of LLPs

The key advantage of a LLP compared with a traditional partnership is that the members of the LLP (it is very important that they should not be called partners but members) are able to limit their personal liability if something goes wrong with the business, in much the same way as shareholders in a company have always been able to do. Of course anyone lending money to the LLP such as a bank may still require personal guarantees from the members, as they frequently do with directors/shareholders in a company.

Where business owners have wanted to limit their personal liability in the past, they have normally set up companies and any profits made by those companies are subject to corporation tax. Dividends paid by the companies can then be taken as income of the shareholders. LLPs are taxed quite differently in that the profits are treated as the personal income of the members as if they had run their business as a partnership. The taxation of companies and partnerships is very different but taxation should not be the main consideration in choosing a business vehicle. The Government has announced that it intends to introduce new rules which will change the tax status of some LLP members (see Changes ahead for some LLP members). We would be very pleased to discuss the impact of this in any particular case.

LLPs must produce and publish financial accounts with a similar level of detail to a similar sized limited company and must submit accounts and an annual return to the Registrar of Companies each year. This publication requirement is far more demanding than the position for non-incorporated partnerships and specific accounting rules may lead to different profits from those of a normal partnership. The filing deadline is nine months after the period end.

Setting up LLPs or converting an existing partnership

A LLP is set up by a legal incorporation process which involves sending certain documents to the Registrar of Companies (more details from Companies House at www.companieshouse.gov.uk) along with the relevant fee. Although it is not legally necessary, every LLP should have a thorough and comprehensive members' agreement in place and needs to have taken legal or professional advice about the issues that should be covered by this agreement.

Existing partnerships can convert to a LLP by exactly the same process of incorporation and providing there are no changes in membership or in the way in which the partnership operates, there may well be no impact on the partnership's tax position. Again care and advice needs to be taken before any decisions are made.

It is not possible for a limited company to convert into a LLP and there will be a significant legal and taxation impact where a LLP takes over the business of a company.

Which businesses might want to use a LLP?

The types of business that LLPs were originally designed for were professional partnerships such as lawyers, surveyors and accountants. In many of these cases, though not all, they have not been able to operate through limited companies because of restrictions from their professional associations and the option of using a LLP offers some advantages.

However other businesses may also benefit from using LLPs, particularly new start-ups who might otherwise have formed limited companies.

What liability might members of a LLP have if something goes wrong?

Because LLPs are relatively new compared to other forms of businesses, there are no decisions yet by the courts where something has gone wrong. This is therefore a hard question to answer but it looks as if the following describes the position as most people understand it at present:

- if, for example, a member of a LLP were to give bad advice to a client and the client suffered a loss as a result, the client may be able to take the LLP to court and be awarded appropriate compensation
- in certain circumstances it could be possible that the member who actually gave the advice may also be required by a court to pay compensation to the client
- it is however probable that any other members who were not directly involved in the advice will not have any personal liability. In a normal partnership it is quite possible that they would have had a personal liability.

It will still be essential for LLPs (and individual members) who might find themselves in this position to have suitable insurance cover.

The other area that needs to be considered is to do with what the law calls unlawful or insolvent trading. In just the same way as company directors can be prosecuted for these offences, members of a LLP can also be prosecuted (and can be disqualified from being a member of a LLP in the future).

Continued >>>

A decision to use a LLP?

Increasing numbers of LLPs are being created, despite take up being relatively slow to begin with. Initially many LLPs were start ups but an increasing number of conversions are being made. Any decision to convert an existing partnership or to set up a new business using a LLP is a complex one, involving legal, accounting and tax issues.

Changes ahead for some LLP members

The LLP is a unique entity as it combines limited liability for its members with the tax treatment of a traditional partnership. Individual members are deemed to be self-employed and are taxed as such on their respective profit shares.

The Government now considers that deemed self-employed status is not appropriate in some cases. For example, individuals who would normally be regarded as employees in high-salaried professional areas such as the legal and financial services sectors are benefitting from self-employed status for tax purposes which leads to a loss of employment taxes payable.

The new rules will apply when an individual is a member of an LLP and three conditions are met. The conditions are:

- There are arrangements in place under which the individual is to perform services for the LLP, in their capacity as a member, and it would be reasonable to expect that the amounts payable by the LLP in respect of their performance of those services will be wholly, or substantially wholly, disguised salary. An amount is disguised salary if it is fixed or, if is variable, it is varied without reference to the overall profits of the LLP.
- The mutual rights and duties of the members and the LLP and its members do not give the individual significant influence over the affairs of the LLP.
- The individual's contribution to the LLP is less than 25% of the disguised salary. The individual's contribution is defined (broadly) as the amount of capital which they contributed to the LLP.

The new rules will have effect from 6 April 2014.

How we can help

We would be delighted to discuss these issues with you and demonstrate what the impact on your business would be. Please contact us for further information.

Money Laundering and the Proceeds of Crime

There are tough rules to crack down on money laundering and the proceeds of crime. These rules affect a wide range of people and we consider how your organisation may be affected.

Money laundering - a definition

Most of us imagine money launderers to be criminals involved in drug trafficking or terrorism or to be someone like Al Capone. However legislation, in the last decade, has expanded significantly the definition of what we might have traditionally considered as money laundering. While the general principles remain; money laundering involves turning the proceeds of crime into apparently 'innocent' funds with no obvious link to their criminal origins, what has changed is that the definition now includes the proceeds of any criminal offence, regardless of the amount involved.

The rules

The key pieces of legislation are:

- the Proceeds of Crime Act 2002 (The Act) as amended by the Serious Organised Crime and Police Act 2005, and
- the Money Laundering Regulations 2007 (The 2007 Regulations).

The Act

The Act re-defines money laundering and the money laundering offences, and creates new mechanisms for investigating and recovering the proceeds of crime. The Act also revises and consolidates the requirement for those affected to report knowledge, suspicion or reasonable grounds to suspect money laundering. See the panel below for some of the more technical terms of the Act.

The 2007 Regulations

The 2007 Regulations contain the detailed procedural requirements for those affected by the legislation. The 2007 Regulations came into force on 15 December 2007.

Proceeds of Crime Act - technical terms

Under the Act, someone is engaged in money laundering if they:

- conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property
- enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person or
- acquire, use or have possession of criminal property.

Property is criminal property if it:

- constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct or
- represents such a benefit directly or indirectly, in whole or in part and
- the alleged offender knows or suspects that it constitutes or represents such a benefit.

Who is caught by the legislation?

Certain businesses have been affected by anti-money laundering rules for some time, for example, banks and other financial institutions. These businesses have been required to put in place specific arrangements to prevent and detect money laundering.

The new regime requires many more businesses to introduce procedures to combat money laundering and the criminal activity that underlies it. As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation aimed at catching those involved has become necessary.

The regulated sector

The legislation relates to anyone in what is termed as the 'regulated sector', which includes but is not limited to:

- accountants and auditors
- tax advisers
- financial institutions
- credit institutions

Continued >>>

- dealers in high value goods (including auctioneers dealing in goods) whenever a transaction involves accepting a total cash payment equivalent to €15,000 or more, whether in a single operation or in several operations that are linked
- casinos
- estate agents
- some management consultancy services
- company formation agents
- insolvency practitioners
- legal professionals

The implications of being in the regulated sector

Those businesses that fall within the definition are required to establish procedures to:

- apply customer due diligence procedures (see below)
- appoint a Money Laundering Nominated Officer (MLNO) to whom money laundering reports must be made
- establish systems and procedures to forestall and prevent money laundering and
- provide relevant individuals with training on money laundering and awareness of their procedures in relation to money laundering.

If your business is caught by the definition you may have received guidance from your professional or trade body on how the requirements affect you and your business. Those of you who are classified as High Value Dealers may be interested in our factsheet of the same name, which considers how the 2007 Regulations affect those with high value cash sales.

The implications for customers of those in the regulated sector

As you can see from the list above, quite a wide range of professionals and other businesses are affected by the legislation. Those affected must comply with the new laws or face the prospect of criminal liability (both fines and possible imprisonment) where they do not.

Procedural changes - customer due diligence (CDD)

Under The Regulations, if you operate in the regulated sector, you are required to undertake CDD procedures on your customers. These CDD procedures need to be undertaken for both new and existing customers.

CDD procedures involve:

- identifying your customer and verifying their identity. This is based on documents or information obtained from reliable and independent sources
- identifying where there is a beneficial owner who is not the customer. It is necessary for you to take adequate measures on a risk sensitive basis, to verify the beneficial owner's identity, so that you are satisfied that you know who the beneficial owner is. The beneficial owners of the business are those individuals who ultimately own or control the business
- obtaining information on the purpose and intended nature of the business relationship

You must apply CDD when you:

- establish a business relationship
- carry out an occasional transaction (one off transaction valued at €15,000 or more)
- suspect money laundering or terrorist financing
- doubt the reliability or adequacy of documents or information previously obtained for identification.

CDD measures must also be applied on a risk sensitive basis at other times to existing customers. This could include when a customer requires a different service. Businesses must consider why the customer requires the service, the identities of any other parties involved and any potential for money laundering.

The purpose of the CDD is to confirm the identity of the customer. For the customer's identity to be confirmed, independent and reliable information is required. Documents which give the strongest evidence are those issued by a Government department or agency or a Court including documents filed at Companies House. For individuals, documents from highly rated sources that contain photo identification, eg passports and photo driving licenses, as well as written details are a particularly strong source of verification.

The law requires the records obtained during the CDD to be maintained for five years after a customer relationship has ended.

Enhanced due diligence

Enhanced CDD and ongoing monitoring must be applied where:

- the client has not been met face to face
- the client is a politically exposed person
- there is a higher risk of money laundering or terrorist financing.

Additional procedures are required over and above those applied for normal due diligence in these circumstances.

Procedural changes - reporting

As mentioned above, the definition of money laundering includes the proceeds of any crime. Those in the regulated sector are required to report knowledge or suspicion (or where they have reasonable grounds for knowing or suspecting) that a person is engaged in money laundering, ie has committed a criminal offence and has benefited from the proceeds of that crime. These reports should be made in accordance with agreed internal procedures, firstly to the MLNO, who must decide whether or not to pass the report on to the National Crime Agency (NCA).

The defences for the MLNO are:

- reasonable excuse (reasons such as duress and threats to safety might be accepted although there is little case law in this area as yet)
- they followed Treasury approved guidance.

The Courts must take such guidance into account.

Continued >>>

National Crime Agency (NCA)

The NCA is the UK new crime-fighting agency with national and international reach and the mandate and powers to work in partnership with other law enforcement organisations to bring the full weight of the law to bear in cutting serious and organised crime. Part of the role of the NCA is to analyse the suspicious activity reports (SARs) received from those in the regulated sector and to then disseminate this information to the relevant law enforcement agency.

The Regulations require those in the regulated sector to report all suspicions of money laundering to the NCA. By acting as a coordinating body, the NCA collates information from a number of different sources. This could potentially build up a picture of the criminal activities of a particular individual, which only become apparent when looked at as a whole. This information can then be passed on to the relevant authorities to take action.

Is your business vulnerable?

Criminals are constantly searching for new contacts to help them with their money laundering. Certain types of business are more vulnerable than others. For example, any business that uses or receives significant amounts of cash can be particularly attractive. To counter this, the Regulations require businesses that deal in goods and accept cash equivalent to €15,000 to register with HMRC and implement anti-money laundering procedures.

You can imagine that if a drug dealer went along to a bank on Monday morning and tried to pay in the weekend's takings, the bank would notice it and report it unless the sum was relatively small. If criminals can find a legitimate business to help them by taking the cash and pretending that it is the business's money being paid in (in exchange for a proportion!), then that business can put the cash into the bank without any questions being asked.

Take for example the mobile telephone business that has had a fairly steady turnover of £10,000 per week for the last couple of years but suddenly begins to bank £100,000 in cash each week. Without a clear, rational and plausible explanation, this type of suspicious activity would clearly be reported to the NCA.

Perhaps a less obvious example of possible money laundering could be where an individual comes into an antiques shop and offers to buy a piece of furniture for £12,000 in cash. Not too many sellers would have insisted upon a cheque in the past! This person may be a money launderer who then goes to another shop and sells the antique for say £8,000, being quite prepared to suffer the apparent loss. This time the criminal asks for a cheque that can then be paid innocently into a bank account, making the money look legitimate.

The legislation aims to put a stop to this type of activity. Those in the regulated sector are required to report any transactions that they have suspicions about. Also, it is not simply the more obvious examples of suspicious activities that have to be reported. For the majority of those regulated, the government has insisted upon there being no de minimis limits within the legislation. This means that very small proceeds of crime have to be reported to the NCA.

Tipping off

There is also an offence known as 'tipping off' under the Act. This is what would happen if a person in the regulated sector were to reveal that a suspicious activity report had been made, say for example about a customer, to that customer. Where this disclosure would be likely to prejudice any investigation by the authorities, an offence may be committed. A tipping off offence may also be committed where a person in the regulated sector discloses that an investigation into allegations that a money laundering offence has been committed is being contemplated or carried out and again that this disclosure would be likely to prejudice that investigation. As you can imagine therefore, if you were to ask an accountant or estate agent whether they had made any reports about you, they would not be able to discuss this with you at all. If they did, they could break the law and could face a fine or imprisonment or both.

How we can help

The legislation brings a number of professions and businesses into the regulated sector. Complying with the requirements of both the Act and the 2007 Regulations requires those affected to introduce a number of procedures to ensure that they meet their legal responsibilities. If you would like to discuss how the legislation could affect you and your organisation please do contact us.

Money Laundering - High Value Dealers

The Money Laundering Regulations 2007 (the Regulations) apply to a number of different businesses which include (amongst others) accountants and auditors, tax advisers and dealers in high value goods. The Regulations contain detailed procedural anti-money laundering requirements for those affected.

HMRC have been given the responsibility for supervising 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.

A business is defined as a HVD where it deals in goods and accepts cash equivalent to €15,000 or more in any currency. This applies whether the transaction is executed as a single transaction or in several instalments which are linked.

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.

If a HVD does not intend to accept high value payments it should have a written policy to this effect and ensure that employees and customers are aware of this policy.

How will my business be affected?

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

- put anti money laundering systems in place so that you can identify and prevent money laundering and report any suspicious transactions (see below)
- register with HMRC
- pay an annual registration fee based on the number of premises through which you trade
- report any changes through the registration year

If you are unsure whether you will sell goods for this amount and do not register, you will be obliged to refuse any payments in cash equivalent to €15,000 (or more) or insist upon payment by another means.

Background to the requirements

Why was this regime introduced?

The aim of the 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
- revealing that a disclosure of suspicion of money laundering has been made or that an investigation into money laundering offences is being carried out, or considered, where this is likely to prejudice an investigation. This is known as 'tipping off'.

Continued >>>

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.

Registration is required where a business:

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

Every legal entity through which a HVD business is run must be registered. An initial fee of £110 is payable for each HVD trading premises that is required to be registered. Annual renewal fees are also payable.

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?

Your business should establish and maintain policies and procedures relating to:

- customer due diligence
- reporting
- record keeping
- internal control
- risk assessment and management
- the monitoring and management of compliance
- the internal communication of these policies and procedures

Customer due diligence (CDD)

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

Establishing identity requires you to be satisfied that your customer is who they claim to be by obtaining evidence of their name, address and date of birth. For further information on CDD procedures please refer to the Money Laundering and Proceeds of Crime factsheet.

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

NCA

The NCA is the government body to which all suspicions of money laundering should be reported via the NCA website (www.nationalcrimeagency.gov.uk)

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 NCA procedures to follow and you must wait until NCA gives consent for the transaction to go ahead.

Training your staff

All customer facing staff in the business must be trained to be aware of:

- the law regarding money laundering offences and terrorist financing
- how to recognise and deal with suspicious transactions

Staff should be trained regularly on this subject and training should be repeated to ensure that staff knowledge is maintained and they are competent to apply CDD procedures. The ongoing training should ensure that staff are aware of changing money laundering practices.

Managing the risk

HVDs should:

- have a system in place to record all transactions of €15,000 or more on their accounting system and make them identifiable
- have policies and procedures in place concerning the acceptance of these large transactions.

Record keeping

The records that must be kept are:

- a copy of, or the references to, the evidence of the customer's identity obtained under the CDD procedures
- the supporting evidence and records in respect of the business relationships and occasional transactions which are the subject of CDD measures or ongoing monitoring.

In relation to the evidence of a customer's identity, businesses must keep the following records:

- a copy of the identification documents accepted and verification evidence obtained, or
- references to the evidence of a customer's identity.

Continued >>>

How long must the records be retained for?

- Evidence of customer's identity must be kept for 5 years beginning on the date on which the occasional transaction is completed or the business relationship ends.
- Records of transactions must be kept for 5 years beginning on the date on which the transaction is completed.
- All other records must be kept for 5 years beginning on the date on which the business relationship ends.

Failure to comply

Businesses may be liable to a civil penalty for failing to comply with a registration requirement. There is no upper limit on the amount of penalty. Penalties will be for an amount that is considered appropriate for the purposes of being effective, proportionate and dissuasive.

Failing to comply with responsibilities under the Regulations could lead to either prosecution or a civil penalty. Conviction under the Regulations can incur up to two years imprisonment and / or an unlimited fine.

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

Social Enterprise Entity Structures

A social enterprise entity is a business with primarily social objectives. Any surpluses made are reinvested into the main principle of that entity (or into the community) rather than maximising profit for shareholders. Examples of types of objectives are regeneration of the local environmental area, promoting climate change awareness and training for disadvantaged people. There are various legal forms that should be considered when setting up this type of entity. Which one you choose will depend upon what the social enterprise actually does and the style of management of those running it.

The possible options available are as follows:

- Limited company
- Trust
- Unincorporated association
- Community interest company (CIC)
- Charitable incorporated organisation (CIO)
- Industrial and provident society (IPS)

Limited company

A limited company is a separate legal entity from its members and gives them limited liability. A limited company set up with a social purpose needs to set out its objectives which can also include commercial objectives. There are two choices of limited companies for social enterprise entities, a company limited by shares and a company limited by guarantee. In the case of a company limited by shares, dividends can be paid to the shareholders.

Limited company accounts need to be filed at Companies House and consideration needs to be given as to whether an audit is required.

If the limited company's objectives are exclusively charitable and for the public benefit it may also be set up as a charity. Where this is the case the company will need to consider whether it needs to register with the Charity Commission. If it is a charity then it will need to follow Charities Act 2011 and the Charity Commission will require the submission of Annual Returns. In return, however it will have the benefits of being a charity such as potentially qualifying for a number of tax exemptions and reliefs on income and gains, and on profits for some activities.

Trust

Trusts are unincorporated bodies which do not distribute profits. The trust is set up as a legal entity which governs how its assets are to be used and as such can hold property and other assets for the community. Trustees act on behalf of the community in looking after the assets but it is important to note that the trust does not have its own legal identity The trustees are therefore liable for the trust's liabilities.

Trust deeds are set up to protect the trust's objectives. The trust is able to write an asset lock into its rules in order to secure assets for its intended community.

Like limited companies trusts can also be charities. The same points which are noted above for charitable limited companies should be considered for charitable trusts.

Unincorporated association

The simplest form for a social enterprise entity is an unincorporated association and it should be used when a number of individuals come together for a common 'social' purpose. There are very few formalities to setting up this way which is the key advantage. The members can set their own rules and a management committee is elected to run the entity on behalf of any members it may have. Associations are also able to carry out commercial activities.

The problem with the unincorporated association is that it has no separate legal identity. If there are any debts, the members are legally liable to pay those debts down to their last worldly possession. This type of entity is not likely to be suitable if you wish to employ staff, raise finance, take on leases or purchase property, apply for grants or enter into contractual arrangements.

Like limited companies and trusts, unincorporated associations can also be charities. The same points which are noted above for charitable limited companies should be considered for charitable unincorporated associations.

Community interest company (CIC)

These are specific limited companies that provide benefits to the community and the legal form has only been available since 2005. The reason behind the development of CICs was the lack of legal structures for non-charitable social enterprises. They can be set up as either companies limited by shares or companies limited by guarantee and thus have the benefits of limited liability. CICs need to be registered and comply with the CIC Regulations. They need to pass the 'community interest test' before they can register as CICs. Thus the main difference compared to other companies is that they are operating for the benefit of the community and not for the benefit of shareholders. An existing company can be converted to a CIC although a CIC cannot hold charitable status.

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Like trusts, they have an asset lock which stops profits from being distributed and ensures that the assets are used for the community purpose. On winding up a CIC, all of the assets must be transferred to another similar asset-locked body.

A key advantage of a CIC (rather than a charity) is that the directors of a CIC can be remunerated (charity trustees generally are not remunerated). They are also not as heavily regulated (although are still regulated under a 'light touch' regime). They obviously do not have the taxation advantages that charities are entitled to and they have to file a community interest report annually with the CIC regulator (which is made available publicly).

Charitable incorporated organisation (CIO)

Since early 2013, the Charity Commission (the charity regulator for England and Wales) has started to register CIOs. CIOs have benefits similar to a limited company charity. This means that the members and trustees are usually personally safeguarded from the financial liabilities of the charity and that the charity has its own legal personality which means trustees do not have to take out contracts in their own names. CIOs do not have to register with Companies House but they do need to register with the Charity Commission.

In Scotland, SCIOs (Scottish Charitable Incorporated Organisations) have been available for a number of years now.

Industrial and Provident Society (IPS)

Community benefit societies (BenComs) are incorporated industrial and provident societies (IPS) where profits are returned to the community for its benefit. They must be able to demonstrate their social objectives and why they wish to register as a society instead of a company. Registration is with the FCA for an applicable fee which will depend upon its rules.

BenComs are not the same as co-operatives as these operate for the benefit of members. Depending on how they distribute profits and what activities they undertake, co-operatives can also be social enterprise entities.

How we can help

All of the above structures require specialist advice so please contact us to find out more. We will be happy to discuss your plans and the most appropriate structure with you. The most appropriate structure will depend on a number of factors including consideration of taxation implications, the legal entity, regulation and management style.