



Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2022

This notice is made by the Associate Minister of Justice under section 157(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 after—

- (a) having had regard to the matters specified in section 157(3) of that Act; and
- (b) having consulted in accordance with section 158 of that Act.

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Notice

1 Title

This notice is the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Amendment Notice 2022.

2 Commencement

This notice comes into force on 15 July 2022.

3 Principal notice

This notice amends the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2018.

4 Schedule amended

In the Schedule, after Part 15, insert the Part 16 set out in the Schedule of this notice.

Schedule

New Part 16 inserted into Schedule

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Part 16

Transfers of excess tax

1 As the Associate Minister of Justice, and under section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), I exempt a reporting entity that is an accounting practice from requirements of the Act as set out in this Part.

2 A reporting entity that is an accounting practice is exempt from any requirement of the Act specified in column 1 of the following table, but only to the extent that the circumstances specified opposite in column 2 apply:

Column 1 Requirement	Column 2 Circumstances
<i>Standard customer due diligence: new business relationship or occasional activity</i>	
1 The requirement under section 11 to conduct at least standard customer due diligence in the circumstances described in section 14(1)(a) or (b)	The following (as applicable): <ul style="list-style-type: none"> (a) the business relationship is in respect of relevant transfer requests to be made on the customer's behalf by the reporting entity; (b) the occasional activity that the customer seeks to conduct through the reporting entity is a relevant transfer request.
<i>Standard customer due diligence: change to business relationship</i>	
2 The requirement under section 11 to conduct at least standard customer due diligence in the circumstances described in section 14(1)(c)	The material change in the nature or purpose of the business relationship is that the reporting entity— <ul style="list-style-type: none"> (a) is to commence making relevant transfer requests on the customer's behalf; or (b) is to make relevant transfer requests that differ in their nature from relevant transfer requests previously made by the reporting entity on the customer's behalf (for example, because of their frequency, the amount of money proposed to be transferred, or the persons to whom the transfers are to be made).
<i>Simplified customer due diligence: new business relationship or occasional activity</i>	
3 The requirement under section 11 to conduct at least simplified customer due diligence in the circumstances described in section 18(1)(a) or (b)	The following (as applicable): <ul style="list-style-type: none"> (a) the business relationship is in respect of relevant transfer requests

Column 1	Column 2
Requirement	Circumstances
<p>4 The requirement under section 11 to conduct at least simplified customer due diligence on a person purporting to act on behalf of a customer as referred to in section 18(3)</p>	<p>to be made on the customer's behalf by the reporting entity:</p> <p>(b) the occasional activity that the customer conducts through the reporting entity is a relevant transfer request.</p> <p><i>Simplified customer due diligence: person purporting to act on behalf of customer</i></p> <p>Both of the following apply:</p> <p>(a) the business relationship that the reporting entity already has with the customer is in respect of relevant transfer requests made, or to be made, on behalf of the customer by the reporting entity:</p> <p>(b) the person purporting to act on behalf of the customer seeks to conduct a relevant transfer request through the reporting entity.</p>
<p>5 The requirement under section 11 to conduct enhanced customer due diligence,—</p> <p>(a) in accordance with sections 23 to 25, in the circumstances described in section 22(1)(a); or</p> <p>(b) in accordance with sections 23 and 24, in the circumstances specified in regulation 12 of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 (<i>see</i> section 22(1)(e)); or</p> <p>(c) in accordance with sections 25 and 26, in the circumstances described in section 22(2)(a)</p>	<p>The business relationship is in respect of relevant transfer requests to be made on the customer's behalf by the reporting entity.</p>
<p>6 The requirement under section 11 to conduct enhanced customer due diligence,—</p> <p>(a) in accordance with sections 23 and 24, in the circumstances described in section 22(1)(b); or</p> <p>(b) in accordance with section 26, in the circumstances described in section 22(2)(b)</p>	<p>The customer seeks to conduct a relevant transfer request through the reporting entity.</p>
<p>7 The requirement under section 12 for a reporting entity to rely on its AML/CFT programme and its risk assessment when</p>	<p><i>Enhanced customer due diligence: occasional activity</i></p> <p>Both of the following apply:</p> <p>(a) the situation referred to in section 22(1)(d) relates to a relevant</p>
<p><i>Reliance on AML/CFT programme and risk assessment</i></p>	

Column 1	Column 2
Requirement	Circumstances
establishing the level of risk for the purposes of section 22(1)(d)	<p>transfer request made, or to be made, on the customer's behalf by the reporting entity:</p> <p>(b) this Part exempts the reporting entity from the requirement to have an AML/CFT programme or a risk assessment in relation to those requests (<i>see</i> item 14 of this table).</p>
<i>Ongoing customer due diligence and account monitoring</i>	
8 The requirement under section 31 to conduct ongoing customer due diligence and account monitoring	The business relationship is in respect of relevant transfer requests made on the customer's behalf by the reporting entity.
<i>Prohibitions, etc, if customer due diligence unable to be conducted</i>	
9 The requirements under section 37(1)(a) to (d) for a reporting entity that is unable to conduct customer due diligence—	This Part exempts the reporting entity from the requirement to carry out the customer due diligence (<i>see</i> items 1 to 6 and 8 of this table).
<p>(a) not to establish a business relationship with the customer; and</p> <p>(b) to terminate any existing business relationship with the customer; and</p> <p>(c) not to carry out an occasional transaction or activity with or for the customer; and</p> <p>(d) to consider whether to make a suspicious activity report</p>	
<i>Records of transactions</i>	
10 The requirements in section 49 to keep records relating to transactions conducted through a reporting entity	The transactions are relevant tax transfers that are made at the request of the reporting entity acting on behalf of customers.
<i>Records: identity and verification</i>	
11 The requirement under section 50 to keep records in respect of evidence used for the purposes of identifying, and verifying the identity of, a person	This Part exempts the reporting entity from the requirement to identify and verify the identity of the person concerned.
<i>Other records</i>	
12 The requirement under section 51 to keep the following records:	The business relationship is in respect of relevant transfer requests made, or to be made, on the customer's behalf by the reporting entity.
<p>(a) any records that are relevant to the establishment of a business relationship:</p> <p>(b) any other records relating to, and obtained during the course of, a business relationship that are reasonably necessary to establish the nature and purpose of, and activities relating to, the business relationship</p>	

Column 1	Column 2
Requirement	Circumstances
<p><i>How records to be kept</i></p> <p>13 The requirement under section 52 relating to the keeping of records under section 49, 50, or 51</p>	<p>This Part exempts the reporting entity from the requirement to keep the records (<i>see</i> items 10 to 12 of this table).</p>
<p><i>AML/CFT programme, AML/CFT compliance officer, and risk assessment</i></p> <p>14 The following requirements:</p> <p>(a) the requirements under sections 56, 57, 59, and 60 relating to a reporting entity's AML/CFT compliance programme and AML/CFT compliance officer (to the extent that the programme would relate to the reporting entity's business of making relevant transfer requests):</p> <p>(b) the requirements under sections 58, 59, and 60 relating to a reporting entity's risk assessment (to the extent that the assessment would relate to the reporting entity's business of making relevant transfer requests)</p>	<p>The reporting entity makes relevant transfer requests on behalf of its customers.</p>
<p><i>Application by foreign branches and subsidiaries of measures equivalent to customer due diligence, etc</i></p> <p>15 The requirements applying under section 61 to a reporting entity in relation to its foreign branches and subsidiaries</p>	<p>Both of the following apply:</p> <p>(a) the reporting entity makes relevant transfer requests on behalf of its customers:</p> <p>(b) the foreign branches and subsidiaries make requests on behalf of their customers that are equivalent to relevant transfer requests.</p>
<p><i>Definitions</i></p>	
<p>3 In this exemption,—</p>	<p>agent has the meaning given by section YA 1 of the Income Tax Act 2007</p> <p>custodian has the meaning given by section 6(1) of the Financial Markets Conduct Act 2013</p> <p>manager has the meaning given by section 6(1) of the Financial Markets Conduct Act 2013</p> <p>non-resident insurer means an insurer, within the meaning of section YA 1 of the Income Tax Act 2007, that is not a New Zealand resident within the meaning of that section</p> <p>relevant tax transfer means a transfer made by the Commissioner of Inland Revenue under Part 10B (transfers of excess tax) of the Tax Administration Act</p>

1994, but excludes a transfer referred to in section 173M(2)(g) of that Act unless it is—

- (a) a transfer from a company to another company and the 2 companies are associated persons (within the meaning of section YB 2 of the Income Tax Act 2007); or
- (b) a transfer 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—
 - (i) holds at least 25% of the shares in the company; and
 - (ii) does not hold those shares as a trustee; or
- (c) a transfer 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—
 - (i) the person holds all of the shares in the company as a trustee of the trust; or
 - (ii) 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 (within the meaning of section YA 1 of the Income Tax Act 2007); or
- (d) a transfer 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; or
- (e) a transfer between 2 persons in their capacities as settlors of 2 different family trusts where the settlors are relatives (within the meaning of section 173M(5) and (6) of the Tax Administration Act 1994); or
- (f) a transfer from a person in any of the following capacities in connection with a registered scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) to another person in any of those capacities in connection with the scheme:
 - (i) the manager of the scheme;
 - (ii) a custodian of the scheme;
 - (iii) to the extent that scheme property is held directly by the scheme participants, a scheme participant;
 - (iv) a person who is otherwise a taxpayer in connection with all or part of the scheme; or
- (g) a transfer from an agent of a non-resident insurer to the non-resident insurer

relevant transfer request means a request to action a relevant tax transfer that is made to the Commissioner of Inland Revenue by an accounting practice that is a reporting entity on behalf of a customer who is a taxpayer (within the meaning of section 3(1) of the Tax Administration Act 1994)

scheme participant and **scheme property** have the meanings given by section 6(1) of the Financial Markets Conduct Act 2013

4 A term or an expression that is defined in the Act (including for the purpose of subpart 1 of Part 2 of the Act) and used in this Part has the same meaning as in the Act.

Reasons

5 This exemption has been granted for the following reasons:

- (a) experts both in New Zealand and internationally, including police and supervisory authorities, recognise that accounting practices are at risk of being used to facilitate money laundering and the financing of terrorism:
- (b) in the absence of this exemption, reporting entities that are accounting practices would generally be required to conduct customer due diligence, or to comply with other requirements of the Act, in connection with any requests that they make on behalf of their customers for the Commissioner of Inland Revenue to action tax transfers under Part 10B of the Tax Administration Act 1994:
- (c) a number of those tax transfers (defined in this Part as relevant tax transfers) have little risk of facilitating money laundering or the financing of terrorism:
- (d) in the absence of this exemption, the regulatory burden on the reporting entities that is connected with requests for relevant tax transfers (defined in this Part as relevant transfer requests) would be disproportionate to that risk:
- (e) this exemption reduces that regulatory burden, but does not exempt the reporting entities from requirements—
 - (i) to report any suspicious activity involving a relevant transfer request (*see* subpart 2 of Part 2 of the Act); or
 - (ii) to conduct enhanced customer due diligence after becoming aware that they must report the activity (*see* section 22A of the Act):
- (f) the continued application of those requirements to the reporting entities will adequately address the risk that they may be used to facilitate money laundering or the financing of terrorism through relevant transfer requests.

Commencement and expiry

6 This exemption comes into force on 15 July 2022.

7 This exemption expires at the close of 14 July 2027.

Dated at Wellington this 8th day of July 2022.

Hon Aupito William Sio,
Associate Minister of Justice.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on 15 July 2022, amends the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2018 (the **principal notice**).

This notice inserts *new Part 16* into the Schedule of the principal notice. *New Part 16* exempts reporting entities that are accounting practices from certain requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 in circumstances involving requests, made by those reporting entities to the Commissioner of Inland Revenue on behalf of their customers, to action tax transfers under Part 10B (transfers of excess tax) of the Tax Administration Act 1994.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 14 July 2022.

This notice is administered by the Ministry of Justice.