



GUIDANCE NOTE ON SUBMITTING TAX RELATED SUSPICIOUS REPORTS

A GUIDANCE NOTE ISSUED BY THE FIAU TO ASSIST SUBJECT PERSONS IN REPORTING MORE
ACCURATELY, TAX-RELATED SUSPICIOUS REPORTS VIA goAML

31 December 2021

Introduction

Tax Evasion is known to constitute a high ML threat in Malta, both in relation to laundering of domestic as well as foreign proceeds of tax evasion. The FIAU has been taking a number of guidance and outreach initiatives to increase the number as well as the quality of suspicious reports that have tax evasion as an underlying crime (i.e., tax-related suspicious reports), in a drive to identify more serious and complex tax-related suspicious reports. To better gauge the quality of incoming tax-related suspicions the FIAU in 2021 introduced a set of criteria (based on goAML report indicators) and began classifying tax-related suspicious reports and identifying those considered to constitute serious and complex cases.

These FIAU initiatives are yielding the desired results as in 2020/2021 the FIAU has seen a significant increase in both the overall volume of suspicious reports as well as those that are tax related.

Table 1: Number of STRs received by the FIAU with tax crime as suspected predicate offence (2018 – 2021)

Year	Total No. of STRs received	No. of Tax Related STRs	% of Tax Related STRs out of Total No. of STRs
2018	1,679	340	20%
2019	2,778	375	13%
2020	5,175	1,337	26%
2021 (27/12/2021)	7,188	919	13%

In terms of quality of tax-related cases being reported the FIAU estimates that **around 10%** relate to more serious and complex type of cases that would involve; the misuse of complex corporate structures, significant undeclared or falsely declared income, foreign proceeds of crime and/or links to organised crime amongst other. The other 90% constitute more basic and less serious type of cases. The FIAU intends to improve the number and quality (seriousness and complexity of reported cases) of incoming suspicious reports and in particular to tax-related suspicious reports. The FIAU still expects to keep receiving a sizeable portion of tax-related suspicious reports that relate to basic and less significant cases of tax crimes because undeclared income and tax evasion on a small scale is quite widespread domestically. Nonetheless the FIAU is doing its utmost both through outreach with subject persons as well as through enhanced intelligence analytical efforts to identify more serious and complex tax-related ML cases.

This guidance is intended to further raise awareness about the importance of identifying and reporting tax-related ML, and to provide information on those tax-related red flags and criteria that are indicative of more serious and complex type of tax-related ML cases. Moreover, this guidance note aims to facilitate the more accurate reporting of such serious and complex cases using goAML indicators which will assist the FIAU in the swift identification of these type of cases, as it continues improving its prioritization and statistical capabilities.

Types of indicators

The FIAU has carried out an analysis on those tax-related ML cases that were deemed to be serious and complex to identify common trends and typologies. Whilst the mere presence of indicators cannot be used to classify a case, they provide valuable insight and enable to the FIAU to classify cases

accordingly. To facilitate the process of report classification, the FIAU has grouped various goAML report indicators in five main categories, each having associated goAML indicators.

To assist subject persons, a file has been attached with those goAML indicators that have, in the past, been closely associated with tax-related reports that have resulted in a dissemination. Examples and cases have been provided to give further context to the indicators provided. Naturally these are non-exhaustive and should only be interpreted as guidance (and an easier way to navigate indicators).

Important Considerations for Subject Persons

Note 1 - The FIAU understands that there are scenarios where subject persons establish a money laundering suspicion, however from the information available they would be unable to underpin the underlying crime. The reporting of such cases is commended by the FIAU and denotes a level of maturity in detecting ML suspicions, nonetheless the FIAU urges subject persons (when they have the necessary information available) to indicate (using the respective predicate offences goAML indicators) the crime/s which they suspect to be underlying the money laundering suspicions. When the predicate offence is unknown, subject persons are to report suspicious activities and select the unknown predicate offence indicator.

Note 2 - When a subject person is reporting tax-related suspicions that emanate from transactions, subject persons should ensure that they **use the report type 'STR' (suspicious transaction report) and not 'SAR' (suspicious activity report)**. The STR report type ensures that transactions are included and readable through goAML. Subject persons should also include information on the suspicious transactions in the appropriate STR field. The transaction values indicated **should only** include those that are linked to the particular services being provided by the same subject person. By way of example – a subject person discovers adverse media about an individual who has been accused of money laundering, the amount reported is €1,000,000. An internal review is carried out and the subject person discovers that there was a transaction of €100,000 that did not fit the profile of the individual. The indicator should indicate €100,000 and not €1,000,000.

When subject persons detect tax-related ML suspicions that can be categorised under any of the hereunder five scenarios, that are indicative of more serious and complex type of tax-related ML cases, subject persons should ensure that they use the corresponding goAML indicators that are listed in the attached file.

The upcoming part aims to provide information and guidance on when to classify suspicions under any of the following five scenarios.

1. Overly complex multi-jurisdictional structures with no purpose for such structure (including companies, trusts/other arrangements and accounts)

Subject persons dealing with legal entities should have a sound understanding of their clients' corporate structure. Naturally, such structures vary in complexity and size and subject persons must be able to identify those instances whereby the company's complex structure is not justified by sufficient commercial reason. Providing a conclusive definition on what constitutes a complex and unnecessary structure is not possible, due to the fact that complexity depends entirely on the company's requirements. While it is understandable that large international entities may have complex and multi-jurisdictional set ups, a similar structure should be cause for concern and further scrutiny if owned by an individual for purely personal matters.

Subject persons are also expected to question certain structures that in the past, have been associated with the concealment of beneficial ownership. When a Maltese Company has trusts (especially discretionary) and bank accounts held in various jurisdictions, subject persons are to consider this as a red flag and ask the appropriate questions to ascertain the validity of such an arrangement.

2. Transactional activity with seemingly no purpose, economic sense (indicative of layering)

One of the most common reasons for suspicion that was identified when analysing cases related to tax evasion was that indicating “suspicious transactions that are not in line with the customer profile”. The definition of a suspicious transaction not in line with the known customer profile is not static and as such should be interpreted by the subject persons’ MLRO and competent individuals and on having a good understanding of the client’s profile and expect volume and type of transactions.

Hereunder are some examples of transactional activities with no justifiable purpose or economic sense.

Locally owned companies having no domestic financial footprint - Maltese Companies owned by Maltese residents would be expected to have a commercial or other activity going on in Malta, which would in most cases necessitate the opening up of bank accounts to facilitate such an activity. Whilst a local company may have legitimate reasons for not having a local financial footprint, this is not typical and should be further scrutinised.

Use of Maltese Companies as money conduits - From intelligence gathered by the FIAU from subject persons, in relation to foreign natural persons being present in tax related cases, it was established that Maltese Companies featuring in such reports were at times being used to move funds from one point to another, making it more difficult to trace and detect funds moving through various companies set up in multiple jurisdictions. Many a times such transactions would not have any commercial rationale and would not be fitting with the company’s activity profile.

Companies set up primarily to provide consultation/marketing/research services - A number of cases were reported by subject persons whereby transfer of funds originated from the provision of consultancy, marketing or research services. From the analysis carried out it resulted that whilst the amounts were significant, the supporting documentation was either missing or not sufficient to clearly establish that such funds originated from the provision of such services. At times movement of significant amounts of funds were backed up by simple invoices and no Letter of Engagements or Contracts expected in connection with such payments were obtained. The FIAU notes that use of such services is attractive to mask the movement of illicit funds since these services do not require significant capital and at time expertise or experience by the service provider. It is thus important that when faced with such instances, subject persons (depending on the risk of the particular transaction and relationship) obtain and scrutinize sufficient supporting documentation such as Contractual Agreements.

A company that provides services such as those mentioned above and has substantial turnover is expected to have various streams of income. When a subject person notes that such companies are receiving income from a small, limited number of entities, this should be treated as a red flag for further enquiries.

On a general note, subject persons must ensure that transactions being carried out are in a manner that fits the known profile. Subject persons are also expected to be able to identify instances whereby a series of transactions are made and do not fit the account holder's profile.

How a subject person is to identify such transactions.

- i. Have internal alerts that would flag accounts that have a high turnover and low average balance.
- ii. Identify accounts that receive funds from multiple different jurisdictions and ensure that this arrangement fits the known profile.
- iii. Ensure that when foreign beneficial owners are present, they can justify the presence of a Maltese product.
- iv. Companies set up to provide marketing/consultancy/research services pose a higher risk than others due to the nature of their business. Subject persons should be able to understand how the company is transacting.
- v. Companies having demonstrated a long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities.

3. Purchase of high value assets held under a company structure which assets are not commensurate with the main trading activity of the company.

The FIAU has noted a number of suspicions related to foreign owned Maltese companies which were purchasing high end properties/vessels in their own name or through the use of a Maltese company. Again, it is important to understand the profile of the persons making said purchases to understand whether these transactions are in line with the profile of the individual. Whilst the M&A does not always clearly disclose the main activities of the company, it is the subject persons' responsibility to understand the nature of the business.

4. Customer behaviour – Particularly suspected concealment of BO information

Subject persons should be able to identify company structures that are seemingly set up to circumvent Maltese beneficial owner disclosure legislation. Examples of this include having discretionary trusts in the structure without proper justification.

The FIAU has also received reports from subject persons indicating that the same subject persons were attempting to set up a structure in a manner that would circumvent current disclosure legislation and senior managing officials would be listed instead of the true beneficial owners. Subject persons are to be aware of both structures – as well as customer behaviour that is indicative of identity concealment.

Another notable concerning customer behaviour identified in reported tax-related suspicious reports involves situations where customers refuse to provide source of wealth or funds information. Subject persons should ensure that they gather SOW/SOFs information when this is necessary to verify the origin and source of funding and ensure that such information is backed by appropriate supporting documentation. It is only through such information and supporting documentation that the origin and source of funds being processed by the subject person may be ascertained. Such checks may also assist to identify cases involving corporate entities, where the funding is derived from a third party that is not formally linked/associated with the company, which in the absence of a justifiable explanation is indicative of potential beneficial ownership concealment.

5. Adverse information indicating subject being investigated/prosecuted or convicted

One of the most common, and perhaps straight forward reasons for suspicion is the discovery of adverse information. The sources for such information could vary across different sectors, ranging from primary search engines to other official records or social media. Subject persons are expected to ensure that searches are carried out, especially since this method is non-intrusive and readily available.