

July 2008

Welcome to this newsletter which aims to provide you with interesting news and useful information on money laundering and related topics.

### **UPDATED GUIDANCE FOR ACCOUNTANTS TO BE ISSUED SHORTLY**

The existing anti money laundering guidance from the CCAB accountancy bodies is shortly to be updated and re-issued. The present version was issued late last year when the 2007 Money Laundering Regulations came into force. The new version will be only a slight modification, but will carry the formal approval of HM Treasury. There is a legal point here.

Where a person is charged with failing to make a suspicious activity report required under section 330 Proceeds of Crime Act 2002 the court must consider whether he followed any relevant guidance approved by HM Treasury. Previously the CCAB guidance has not formally been approved by HM Treasury so courts have not been required to consider the point.

Once formal Treasury approval has been given it will become even more important to follow the CCAB guidance.

At the same time the guidance issued by HM Revenue and Customs to accountants and book-keepers it supervises is also expected to receive formal Treasury approval.

One useful development will be that accountants who act only as sub-contractors to other accountants will be able to avoid registering with HMR&C if they have appropriate reporting and training arrangements and agreements in place with the firm(s) for whom they act as sub-contractors so that, in effect, they act as part of the contracting firm for money laundering compliance purposes.

### **TIMETABLE FOR REGISTRATION WITH HMR&C**

For those accountants who need to register with HMR&C the timetable is being revised. It is now expected that completed application forms and fees will be required to be submitted by 30 September 2008 and the register will become effective on 1 January 2009.

## **THIS IS JUST NOT CRICKET!**

With my mind full of test match cricket a Court of Appeal decision this month in the case of R v Panesar [2008] EWCA Crim 1526 caught my eye. This case, not involving the English spin bowler of the same name, concerned a taxi driver in Leeds convicted in 2005 of conspiracy to supply class A drugs. Subsequently he was made subject to a confiscation order of £30,687 under the 'criminal lifestyle' provisions of the Proceeds of Crime Act 2002, although it was his first offence.

Mr Panesar had pleaded guilty to conspiracy on the basis that he had driven one of his co-accused from Leeds to Bradford on a few occasions in order for his co-accused to deal in class A drugs. He also accepted that he had stored about 1 kilogram of heroin in his home on behalf of his co-accused for which he was paid. He was also engaged in driving his co-accused to a meeting with a third person where drugs were supplied to his co-accused. He then assisted in bagging up the drugs.

Unfortunately for Mr Panesar PoCA 2002 contains provisions allowing the prosecution to appeal against confiscation orders considered to be too low, and allowing the Court of Appeal to increase the amount of the order where appropriate.

The Crown pointed to monies banked by Mr Panesar in earlier years and to his limited income declared to HM Revenue and Customs as a taxi driver. But in the Crown Court the judge accepted that Mr Panesar's true legitimate income from taxi driving, including cash takings, exceeded the sums he had declared for tax. Notwithstanding Mr Panesar's reprehensible failure to declare his full income, this income was not proceeds of crime. The Court of Appeal, while describing that decision as generous to Mr Panesar, agreed that the judge in the Crown Court had been entitled to reach that conclusion.

The Crown Court judge however had found that two specific deposits by Mr Panesar, of £3,500 on 27 January 2000 and £5,100 on 31 May 2000, which had been partial repayments of his domestic mortgage, could not be satisfactorily explained. Accordingly these monies were assumed to be proceeds of unspecified criminal conduct, although occurring several years prior to the drugs offences.

In 2002 Mr Panesar purchased a new house costing £100,000 and, as usually happens, he used the equity in his existing house, £60,000, to fund the purchase of the new one with the help of a new mortgage, of £40,000. The equity in the old house of course reflected the repayments off the mortgage in 2000, totalling £8,600, which had now been held to be proceeds of unspecified crime. What would be the effect of this on the equity in the new house?

The Crown Court judge held that the equity in the new house was not significantly tainted by criminal conduct. When looked at in context it would be unjust and disproportionate to agree to the prosecutor's request to regard the whole of the equity in the new house, which by September 2007 amounted to £150,000, as a benefit of criminal conduct, he said. Counsel for Mr Panesar had contended that, in any event, he could have paid off the old mortgage without using tainted funds. The confiscation order made in the Crown Court for £30,687 included the £8,600 paid off in 2000, but nothing further in relation to the equity in the new house.

Here the Court of Appeal thought the Crown Court judge had got his wires crossed. It was not open to him to disregard the use of tainted funds to make what in 2000 had been substantial payments off the earlier mortgage. It was not relevant to consider whether Mr Panesar might have arranged his financial affairs differently so as to pay off the old mortgage with untainted funds. The fact was that substantial payments had been made with tainted funds with the result that the whole of the equity in the new house represented a benefit of criminal conduct. It would not be unjust or disproportionate to proceed on that basis; the legislation was intentionally draconian as the Court of Appeal had determined in earlier cases.

Accordingly the Court of Appeal increased the original confiscation order by £150,000 to £180,687 to include the whole of the equity in the new house.

This decision once more underlines the severe impact of the confiscation legislation. The sum ordered to be paid dwarfs the direct benefit retained by Mr Panesar from the offences of which he was convicted.

## **WHERE EVERYONE IS A DOLLAR BILLIONAIRE**

You might think a country with vast numbers of dollar billionaires would be one of the richest countries in the world. Think again!

This week the Reserve Bank of Zimbabwe has introduced the \$100 billion note. But the new note will hardly buy you breakfast. Indeed such is the rate of inflation in Zimbabwe, officially estimated at 2,200,000% per annum, that by lunch time the new note might buy you rather less. Only six months ago the country's central bank introduced a \$10 million note, the new note is worth 10,000 of those.

Inflation that fast must present some interesting problems, such as how do you prepare meaningful annual accounts, and opportunities, such as a market for calculators with rather more than 8 digits!

A pity we in the UK cannot call in to our local Post Office and change a few pounds for Zimbabwe Dollars. Just imagine the chat-up line you could use, "I have a hundred billion dollars in my pocket, would you like to help me spend it?". Then you could whisk your new conquest to the nearest M&S Food Store to share an egg and cress sandwich!

## **SUMMER BREAK**

As usual this year, we will be taking a summer break so our next issue will be emailed in September. Enjoy the holidays!

If you require any assistance or have any queries concerning issues related to forensic accountancy, proceeds of crime or money laundering contact [d.winch@AccountingEvidence.com](mailto:d.winch@AccountingEvidence.com) or visit our website [www.AccountingEvidence.com](http://www.AccountingEvidence.com).

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