# Suggested Best Practices for Banks' Controls over Tax-related Money Laundering Risks

Acknowledged by the 18th Joint Meeting of the 12th Boards of Directors and Supervisors of BAROC dated July 26, 2018
Acknowledged by Financial Supervisory Commission, with Letter Jin-Guan-Yin-Wai-Tze 10701141880 dated September 3, 2018
Notified to all member by BAROC, with Letter Cyuan-Guo-Tze 1070005595 dated September 12, 2018

## 1. Preface

Given that the National Risk Assessment Report has identified tax-related crimes as a highly threatening type of money laundering, that the trend of adopting anti-tax avoidance measures such as strengthening international exchange of information for tax purposes and cross-border tax cooperation prevails, and that the tax evasion crimes provided in Articles 41 and 42, and Paragraphs 1 and 2 of Article 43 of the Tax Collection Act are considered as predicate offenses for money laundering in accordance with Subparagraph 7 of Article 3 of the amended Money Laundering Control Act implemented on June 28, 2017, the Financial Supervisory Commission has requested, by Letter Jin-Guan-Yin-Wai-Tze 10702712390 dated April 26, 2018, the Bankers Association of the Republic of China ("BAROC") to provide relevant operating practices for industry's reference with a view of enhancing the recognition of controls over tax-related money laundering risks based on the existing control mechanism over money laundering risks.

Tax-related money laundering is part of money laundering risks. Hence, while banks have implemented a risk-based approach to relevant money laundering controls in accordance with, they should still pay attention to the tax-related money laundering risks and simultaneously adopt relevant controls based the risks identified. However, it should be noted that whether a customer actually engages in tax evasion is not determined by banks.

This document is used as a suggested best practices to assist banks in identifying, assessing, implementing and controlling tax-related money laundering risks. This document is not self-regulatory rules established by BAROC and has no binding effect in substance.

## 2. The Control Mechanism over Tax-Related Money Laundering Risks

Bank are advised to understand the situation of customers' tax-related money laundering risks and incorporate the evaluation of tax-related money laundering risks into related procedures of money laundering controls.

The AML/CFT program established in accordance with Item 2, Subparagraph 1 of Section 7 of "Directions Governing Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers" and referring to Section 2 of "Guidelines for Banks Regarding Assessment of Money Laundering and Terrorism Financing Risks and Adoption of Prevention Programs" or the written policies and procedures prescribed based on such program, should incorporate the mechanism in implementing controls over tax-related money laundering risks based on the risk-based approach. For example, when verifying the identity of a customer or during the ongoing due diligence review, banks may request for relevant information so as to evaluate the tax-related money laundering risks; while there is any doubt on the existence of tax-related money laundering risks during the transaction monitoring, banks may take proper control measures to mitigate the risks depending on the level of the risk; or while identifying any suspicious transaction patterns or unusual cash flows through the overall process of money laundering controls, banks may report such event in accordance with internal procedures.

## 3. Identifying and Assessing Relevant Tax-Related Money Laundering Risks

In the process of establishing business relationships and corresponding with banks, if any behavior identified in conformity with the red flags for tax-related money laundering risks or other related red flags for suspicious money laundering transactions, banks should further investigate so as to determine if there are sufficient reasons to rule out concerns on the existence of tax-related money laundering risks and to consider whether to take the enhanced control measures provided in Article 4.

When identifying tax-related money laundering risks, banks may refer to the red flags for tax-related money laundering risks specified in Appendix attached hereto and to consider “Annex: Red Flags for Transactions Suspected to Involve Money Laundering or Terrorism Financing” of the “Model Guidelines for Banks' Anti-Money Laundering and Counter Terrorism Financing Policies and Procedures.” Individual red flag does not necessarily imply tax-related money laundering, but banks should remain vigilant, especially when multiple red flags appear on the same customer.

**4. Enhancing Control Measures and Ongoing Monitoring**

For customers who may be involved with a higher tax-related money laundering risk, banks may take enhanced controls or mitigation measures depending on such customer’s level of tax-related risk on a case by case basis. Examples are as follows:

(1) Banks may obtain additional customer identity information for review in order to conduct a more comprehensive evaluation on the customer's tax-related money laundering risks. For example, when finding that the location (country) of the primary business activity of an individual customer is different from his/her residence place (country), it is advised to understand the jurisdiction of tax residency of the individual customer to evaluate the rationality.

(2) Banks may request information from customers to confirm that their tax matters are properly handled. For example, banks may obtain a declaration from a customer who has been evaluated with a higher tax-related money laundering risk in order to confirm that the customer has complied with the reporting and payment obligations under applicable tax

laws.

(3) Banks may obtain concurrence from banks' senior management and record the reasons, and consider whether to take further control measures over the customer account based upon the risk-based approach. For example, if a bank suspects the authenticity or reliability of the information obtained, it may enhance its ongoing monitoring and take corresponding measures to mitigate the risks.

(4) Banks may evaluate carefully whether to take measures to suspend or terminate business relationships with the customers.

The abovementioned measures are not mandatory, but only for banks' reference. Banks may decide whether to adopt based on the actual situation and the risk-based approach.

**5. Reporting on Suspicious Tax-Related Money Laundering Transactions**

Any suspicious tax-related money laundering transaction should be reported in accordance with Article 15 of "Regulations Governing Anti-Money Laundering of Financial Institutions."

**6. Trainings**

Banks may deliver trainings related to controls over tax-related money laundering risks to its employees, including red flags for suspicious tax-related money laundering transactions or warning indicators, and typology of tax-related money laundering, so employees are aware of their obligations and the handling procedures. The trainings can be conducted independently on the controls over tax-related money laundering risks, or conducted as part of the overall anti-money laundering trainings and be counted in as the statutory training hours.

**7. Code of Conduct for Business Personnel**

Bank may specify in their code of ethics or relevant policies and procedures that employees should not knowingly assist the customer in arrangement for intentional tax-related money laundering.

## Appendix: Red Flags for Tax-Related Money Laundering Risks

1. Types of Customer's Account
   (1) There is an unusual or overly complex corporate/trust structure without plausibility.
   (2) There are no legitimate business purposes for setting up companies under the same name in different countries or regions.
   (3) Corporate customers have issued bearer shares without plausibility.
   (4) Using nominee shareholders in the structure of a corporate customer (such as an actual asset contributor or a beneficial owner who is not registered on the register of shareholders) without plausibility.
   (5) The purpose or intention for establishing a business relationship is not convincing, or there are doubts on the source of funds, especially for OBU accounts.
   (6) The location (country) of the primary business activity of an individual customer is different from his/her residence place (country) without plausibility.

2. Types of Transaction
   (1) Using a non-personal account to pay personal insurance policy fees without plausibility.
   (2) Conducting commercial transactions through personal or private investment company accounts without plausibility.

3. Types of Customer's Conduct
   (1) Customer reviews reveal adverse news regarding violations of tax laws or circumvention of tax liabilities, such as tax evasion or tax-related crimes.
   (2) Customer requests to suspend the mailing service of the relevant bank documents, or the interval between picking up mails in person is too long without plausibility.
   (3) The customer refuses any contact or communication with the bank without plausibility.

(4) The customer’s proactively requests to close the account are due to the stringency of tax laws or the bank's request to provide relevant tax information.

(5) In tax-related evaluation, the bank finds that the customer is suspicious of evading the tax liability. For example, a customer refuses to provide documents or information requested by the bank under international tax standards.

(6) The customer has stated that the use of the bank's products and services is for the purpose of concealing ownership of income and assets from the tax authorities.