



BANGKO SENTRAL NG PILIPINAS

CIRCULAR LETTER NO. CL-2021-078

OFFICE OF THE DEPUTY GOVERNOR FINANCIAL SUPERVISION SECTOR

To : All BSP-Supervised Financial Institutions (BSFIs)

Subject : Anti-Money Laundering Council's (AMLC) "Analysis of Suspicious Transaction Reports (STR) with Possible Links to Tax Crimes" and "Real Estate Sector: A Money Laundering/Terrorism Financing/Proliferation Financing (ML/TF/PF) Assessment"

This is to remind all BSFIs to consider the reports released by the AMLC on the "Analysis of STRs with Possible Links to Tax Crimes"¹ and the "Real Estate Sector: A ML/TF/PF Assessment"². Salient observations on these reports include the following, among others:

a. Analysis of STRs with Possible Links to Tax Crimes

- Aside from Suspicious Indicator (SI) 3 (*the amount involved is not commensurate with the business or financial capacity of the client*), other suspicious circumstances, such as "*there is no underlying legal or trade obligation, purpose or economic justification*" (SI1) and "*the transaction is similar, analogous, or identical to any of the foregoing*" (SI6) dominate the STRs containing tax-related keywords in the narratives. As to Predicate Crime (PC), corruption-related (*i.e., graft and corrupt practices, plunder, bribery and corruption of public officers*), and fraud-related (*i.e., fraudulent practices and other violations under the Securities Regulations Code [SRC], swindling, Electronic Commerce Act violations*) emerged as top reasons for filing STRs with possible links to tax crimes.
- The study highlights various typologies based on the significance of the amounts involved and/or frequency of reports on the suspicious activity/scheme. These include activities involving unauthorized investment-taking, extensive use of substantial cash, and unsubstantiated transactions based on income source (e.g., salary, business) of various subjects, among others.
- Cash transactions (e.g., cash deposits, withdrawals) dominate the different suspicious transaction types, which is consistent with its inherent risk for its tendency to obscure the audit trail.

¹<http://www.amlc.gov.ph/images/PDFs/2021%20ANALYSIS%20OF%20STRs%20WITH%20POSSIBLE%20LINKS%20TO%20TAX%20CRIMES.pdf>,

²[http://www.amlc.gov.ph/images/PDFs/2021%20REAL%20ESTATE%20SECTOR%20ML%20TF%20PF%20ASSESSMENT%20\(EXECUTIVE%20SUMMARY\).pdf](http://www.amlc.gov.ph/images/PDFs/2021%20REAL%20ESTATE%20SECTOR%20ML%20TF%20PF%20ASSESSMENT%20(EXECUTIVE%20SUMMARY).pdf),

- Considering the conditions³ laid out in the inclusion of tax evasion under the Anti-Money Laundering Act (AMLA), as amended, and its inherent link to other financial crimes, aside from using the PC on tax evasion, the AMLC still encourages covered persons (CPs) to file STRs with possible links to tax crimes with SI3 and other associated financial crimes or PCs (*e.g., corruption, fraud, intellectual property [IP] violations, among others*) as reason/s for filing in combination with tax-related keywords in the narrative. Keywords/phrases which may be incorporated by the CPs in the narrative of their STRs to suggest possible links to tax evasion or tax crimes, include but are not limited to (1) taxable, (2) taxation, (3) tax evasion, (4) tax fraud, (5) possible tax evasion, tax fraud or tax crime, (6) may relate to tax evasion, tax fraud or tax crime, (7) transactions may be unreported for tax purposes, and (8) income tax details deviate from the flow of transactions.

b. Real Estate Sector: A ML/TF/PF Assessment

- The overall ML/TF/PF risk level of the real estate sector is "medium high" as the Anti-Money Laundering/Countering Terrorism and Proliferation Financing (AML/CTPF) compliance of the sector is still developing, in view of its recent inclusion as CPs under the AMLA, as amended. The overall threat of the sector is rated "medium".
- Based on STRs, ML investigations, and cases, the real estate sector is more at risk to illegal drugs, corruption, and fraud, including SRC violations. Criminals potentially facilitate movement and hide illegal proceeds through the purchase of or investment in real properties. Assets are also used as clandestine hideouts for illegal operations.
- In the case of terrorism and TF, properties were allegedly used to train recruits to perform terrorism-related activities based on TF cases handled by the AMLC. TF-related STRs, albeit limited, may suggest financing of terrorism activities through transactions posing as real estate investments.
- Cash transactions expose the sector to ML threat as typologies suggest that the use of cash disguises the true nature of funds.
- There are processes and regulations in place regarding the identification of beneficial owners within the real estate sector. This, however, is challenged by the presence of gatekeepers acting on behalf of the actual owners.

³ (1) Where the deficiency basic tax due in the final assessment is in excess of twenty-five million pesos (P25,000,000.00) per taxable year, for each type covered and there has been a finding of probable cause by the competent authority; (2) That there must be a finding of fraud, willful misrepresentation or malicious intent on the part of the taxpayer; (3) xxxx.

- Based on the published report of the Financial Action Task Force, use of complex loans or credit finance, loan back schemes, back-to-back loan schemes, use of non-financial professionals and corporate vehicles, manipulation of appraisal of valuation of the property, and use of monetary instruments, are among the common methods identified on the use and misuse of the real estate sector to ML/TF.

Accordingly, BSFIs are reminded to:

1. Ensure proper reporting of STRs with possible links to tax crimes under PC35⁴ in accordance with the 2021 AMLC Registration and Reporting Guidelines (ARRG);
2. Include the suggested tax-related keywords/phrases⁵ in the narrative of STRs for transactions with possible links to tax crimes with SI3 and other associated financial crimes or PCs (e.g., corruption, fraud, IP violations, among others) as reason/s for filing, considering the conditions laid out in the inclusion of tax evasion under the Anti-Money Laundering Act of 2001 (AMLA), as amended; and
3. Conduct commensurate measures and consider the results of the above reports in their institutional risk assessment as well as risk profiling of the real estate sector, to improve their overall AML/CTPF framework.

For information and guidance.

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Deputy Governor

15 October 2021

⁴ Violations of Section 254 of Chapter II, Title X of the National Internal Revenue Code of 1997, as amended, where the deficiency basic tax due in the final assessment is in excess of twenty-five million pesos (Php25,000,000.00) per taxable year, for each tax type covered and there has been a finding of probable cause by the competent authority; provided, further, that there must be a finding of fraud, willful misrepresentation or malicious intent on the part of the tax payer: provided, finally, that in no case shall the AMLC institute forfeiture proceedings to recover monetary instruments, property or proceeds representing, involving, or relating to a tax crime, if the same has already been recovered or collected by the BIR in a separate proceeding.

⁵ Such as taxable, taxation, tax evasion, tax fraud, possible tax evasion, tax fraud or tax crime, may relate to tax evasion, tax fraud or tax crime, transactions may be unreported for tax purposes, and income tax details deviate from the flow of transactions,