



**Australian Government**

**AUSTRAC**

# AUSTRAC Guideline No. 1

Financial Transaction Reports Act 1988

## Suspect Transaction Reporting

### Preamble

The *Financial Transaction Reports Act 1988* (FTR Act) is an initiative to assist in the detection of major tax evasion and other serious criminal activity, including offences against Australia's corporate laws and money laundering from drug trafficking and organised crime. To achieve these aims the FTR Act places certain obligations on cash dealers, including the requirement to report Suspect Transactions. This guideline is issued by the Australian Transaction Reports and Analysis Centre (AUSTRAC) to assist cash dealers and their staff in identifying and reporting such transactions. This guideline has been developed with the input and advice of the AUSTRAC Privacy Committee.

### Preliminary

1. This guideline replaces the Cash Transaction Reports Act (CTRA) Guideline No. 1 that was issued in October 1989. The legal principles that underpinned that guideline, which were enumerated in CTRA Information Circular No. 1, apply equally to this replacement, AUSTRAC Guideline No. 1. This guideline is intended for general application to financial institutions and other cash dealers. However, from time to time, AUSTRAC provides particular guidance for specialist cash dealers such as casinos (see AUSTRAC Guideline No. 5) as well as merchant bankers and stockbrokers (see AUSTRAC Guideline No. 4 (Formerly CTRA Guideline No. 4)).
2. In preparing this guideline AUSTRAC has been cognisant of a number of matters:
  - The original FTR Act was introduced to counter the underground cash economy, tax evasion and money laundering (Second Reading Speech 1987)
  - Since then, the FTR Act has been amended in two significant ways:

- first, to include (from 1989) Corporation Act offences under the scheme administered by the Australian Securities and Investments Commission
  - second, to enhance the FTR Act's focus on international transfers of funds (from late 1992)
- Australia is following the recommendations of the G7 nations via the Financial Action Task Force that the G7 established. Those recommendations are directed against illicit money laundering and include both reporting requirements and customer identification requirements. Australia assumed a lead role in this Task Force in 1992.
  - The House of Representatives Standing Committee on Finance and Public Administration, in March 1991, recommended that certain international movements of funds comprising tax evasion be included in the reporting of suspect transactions. Added to that has been the impetus to focus on suspected corporate offences following matters of considerable notoriety where assets stripped from companies have been moved offshore contrary to Australia's public interest and international reputation. Hence, there has been an increasing focus on the reporting of international transactions to facilitate future monitoring in this area.
  - A Report of the National Crime Authority (dated December 1991) on Money Laundering in Australia which, inter alia, recommended that there be better efforts to bring to light 'structuring' of cash transactions (explained later).
3. The above matters have served to sharpen the positive focus of this guideline. Other matters have been deleted.
  4. In particular, AUSTRAC has reacted to criticism from both Parliament and from privacy interests, that minor issues - such as social security fraud and minor tax evasion - had become the focus of reporting. Some senior bank representatives have also expressed this view. These issues have never been a significant part of AUSTRAC work although the number of reports involved has been large. The reports were referred to the Australian Taxation Office and/or the Australian Federal Police. These matters are not included in this revised guideline.

## Reporting Procedures

### When must a Suspect Transaction Report be given?

5. The report is completed by a 'cash dealer' where the cash dealer is party to a transaction or a negotiation to a transaction and the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction may be:
  - relevant to the investigation of an evasion, or attempted evasion, of a taxation law;

- relevant to the investigation of, or prosecution of a person, for an offence against the law of the Commonwealth or of a Territory;
- of assistance in the enforcement of the Proceeds of Crime Act 1987 or the regulations made under that Act;
- relevant to the investigation of, or prosecution of a person, for an offence against the Corporations Act 2001.

(See also the reference to ‘Offences against State Laws’ later in this guideline).

6. The report is to be completed after the transaction and not in the presence of the customer. The customer should not be advised of the reporting by the cash dealer (see Section 16(5A) of the FTR Act). Customers can be advised about the general requirement on all cash dealers to report suspect transactions.

### What is a transaction?

7. A transaction can be constituted by any business dealing between a cash dealer and a customer. It includes negotiations or discussions that may not result in an actual dealing but does not include mere inquiries. The transaction must be something that can be reported in terms of the reportable details set out in the Suspect Transaction Report (AUSTRAC Form 16), but it is not essential that all such detail be available to the cash dealer before there is a reporting obligation. The cash dealer should complete the Suspect Transaction Report under as many headings as possible from the information ordinarily available to the cash dealer.

### What is a suspect transaction?

8. The suspicion relates to a transaction considering all the circumstances of the transaction. As a general principle, any transaction that causes a cash dealer to have a feeling of apprehension or mistrust about the transaction considering:
  - its unusual nature or circumstances or,
  - the person or group of persons with whom they are dealing,and based on the bringing together of all relevant factors including knowledge of the person’s or persons’ business or background (as well as behavioral factors) should be reported as a suspect transaction.

## How to identify a suspect transaction

9. Suspect transactions are likely to involve a number of factors which together raise a suspicion in the mind of the cash dealer that the transaction may be connected with tax evasion, activities prohibited under the Corporations Act 2001, under other Commonwealth or Territorial laws or the proceeds of crime. Reporting under certain State laws is referred to later. The factors that should be considered in assessing whether or not a transaction is suspicious include:
- the nature of, or unusual circumstances surrounding, the transaction;
  - the known business background of the person conducting the transaction;
  - the production of seemingly false identification in connection with any transaction, the use of aliases and a variety of similar but different addresses and, in particular, the opening or operating of a false name account (which is an offence under the FTR Act);
  - admissions or statements of involvement in tax evasion or other criminal activities made to a cash dealer or its employees or agents concerning a transaction;
  - regular or unusual transactions involving known narcotic source or transit countries;
  - the behaviour of the person or persons conducting the transaction (e.g., unusual nervousness);

These matters are expanded upon later in this guideline.

## Not only cash transactions are affected

10. It is important to note that the requirement to report a suspect transaction under the FTR Act applies to all transactions (such as telegraphic transfers, purchase of bank drafts or traveller's cheques etc) and is not subject to the monetary threshold limit which applies to significant cash transaction reports. It should be noted that a suspect transaction can also be submitted on a transaction that was negotiated, but did not eventuate.
11. Where a cash transaction is of \$10,000 or more, institutions must file a Significant Cash Transaction Report (SCT Report); most major institutions do that automatically from their computer systems. However, it is AUSTRAC's experience that Suspect Transaction Reports are not always filed where a SCT Report is required to be filed even though suspicious circumstances might warrant it. A Suspect Transaction Report should be filed in addition to a SCT Report in respect of a transaction that is \$10,000 or more and which is considered to be suspicious.

## Where to report?

12. Cash dealers must submit a complete Suspect Transaction Report (SUSTR). Paper reports can be submitted to AUSTRAC:

Post to:       The Director (AUSTRAC)  
                  PO Box 5516  
                  West Chatswood NSW 1515

Cash dealers can also provide SUSTRs to AUSTRAC electronically through the EDDS Web system (for further information contact the AUSTRAC Help Desk).

13. Receipts of reports will be promptly acknowledged by AUSTRAC. A cash dealer making subsequent inquiries regarding a Suspect Transaction Report should quote the relevant reference number shown on the acknowledgement letter.
14. The FTR Act requires reporting of suspect transactions as soon as practicable after forming the suspicion and it is expected that cash dealers will report within a day or so of the suspect activity. Cash dealers should ensure that internal systems do not lead to unnecessary delays in filing reports.

## Urgent reporting - 'Suspect Hotline'

15. In circumstances where urgent reporting of a suspect transaction is appropriate the cash dealer should call the Suspect Hotline on (02) 9413 3705. This number can be called from anywhere in Australia for the cost of a local call.
16. Urgent reporting may be appropriate where the cash dealer suspects that the person or persons subject of the report may be leaving the country or where the amount of the transaction is very substantial, or where other circumstances warrant urgent reporting.

## Co-ordinated or central reporting

17. Some of the larger cash dealers (eg. banks, building societies, TABs) may elect to give Suspect Transaction Reports to AUSTRAC through a regional or central authorised liaison officer. Where a cash dealer has such an arrangement in place, employees of the cash dealer should follow the dealer's internal suspect transaction reporting procedures.

## Onus to report

18. Section 16 of the FTR Act puts the onus to report on the cash dealer, i.e., the financial institution or other cash dealer involved.
19. Whilst the staff of those institutions comprise the actual links between the market place and what is ultimately reported, the responsibility to ensure there is prompt and accurate reporting rests with the cash dealer concerned.

20. There needs to be sufficient knowledge, training and internal controls and checks within each cash dealer organisation to meet that responsibility. Liaison officers involved in reporting need to become familiar with relevant guidelines and forms. In particular, AUSTRAC Information Circular No. 1 relating to requests for further information is available.
21. It is felt that the effectiveness of AUSTRAC guidelines depends largely on the extent to which cash dealer staff appreciate the serious nature of money laundering, tax evasion, corporate crime, etc. The G7 Financial Action Task Force has recommended ongoing training programmes. The timing and content of training packages for cash dealer staff is to be adapted by individual cash dealers to their own needs and limitations, the following are thought to be appropriate:
- a general appreciation of the background to money laundering, tax evasion and corporate crime;
  - an appreciation of the importance placed on the reporting of suspicions, given that:
    - cash dealers are under a legal obligation to report; and
    - members of staff dealing directly with the public are the first point of contact with potential criminals and their efforts are vital to the fight against money laundering, major tax evasion and corporate crime;
  - feedback to staff members on the results of suspect transaction reporting; and
  - refresher training at regular intervals to ensure that staff do not forget their obligations and the objectives as stated above.

### Protection of the cash dealer and its officers

22. The FTR Act contains two important protections in relation to reports of suspect transactions made pursuant to Section 16 of the FTR Act or Section 243D of the ASC Act 2001.
23. The first protects a cash dealer, or an officer, employee or agent of a cash dealer, against any action, suit or proceeding in relation to the reporting process.
24. Whereas in the past a duty of confidentiality would operate in many cases to preclude reporting of a suspected illegality, there is now an overriding obligation to report under the FTR Act and the Corporations Act. The protection removes the possibility of a damages claim for breach of client confidentiality in complying with the reporting obligation.
25. Senior Counsel's advice is that Section 16(5) as amended protects a cash dealer from the consequence of compliance, even in circumstances where the dealer is mistaken in its belief that there was an obligation to lodge a Suspect Transaction Report.

26. The second protection (Section 17 of the FTR Act which is repeated in Section 243D of the ASC Law) arises from the money laundering provisions of the Proceeds of Crime Act, 1987. It is a criminal offence to receive, possess, conceal, or dispose of the proceeds of crime, where reasonable grounds exist to suspect that the property was tainted by crime.
27. A cash dealer, or an officer, employee or agent, who reports a suspect transaction is deemed not to have been in possession of the information contained in the report for the purposes of the money laundering offences in that Act. This means that where any one of those persons did have grounds to suspect and the cash dealer subsequently lodged a Suspect Transaction Report, a defence is provided against the money laundering provisions of the Proceeds of Crime Act, 1987.

## Identifying Suspect Transactions

28. The following are areas identified as potentially important when considering the obligation to report suspect transactions:
  - false name accounts;
  - structuring of transactions - attempts on the part of an individual or group to avoid the filing of a SCT Report for cash amounts of \$10,000 or more by breaking up or structuring a transaction; this may be a sign of money laundering and other illegal activity;
  - transactions with certain countries where the transaction is suspected of facilitating laundering of the proceeds of crime or tax evasion;
  - unusual business dealings, particularly where significant amounts of cash are involved in circumstances that are difficult to explain. The cash dealer may in these circumstances suspect money laundering;
  - tax evasion related to crime and corruption and other significant tax evasion;
  - international profit shifting and funds transfer to evade Australian taxation and/or to launder money;
  - corporate crime against the interests of shareholders and of the public at large.

### False name accounts

29. False name accounts have been shown to be a vehicle by which persons hide money to evade tax, launder illicit funds and for other illegal purposes. The opening or operation of a false name account is an offence under Section 24 of the FTR Act and should be reported as a suspect transaction. False name accounts may be discovered when opening new accounts in accordance with the verification procedures required by the FTR Act.

## Structuring of transactions

30. Structuring or breaking up of transactions and avoiding the reporting of a significant cash transaction has been reported by financial institutions as occurring in a number of ways. They include the following:
  - several persons jointly structuring the transactions;
  - breaking up transactions by depositing cash amounts just below \$10,000 at different times on the same day or on different days;
  - reluctance or failure to proceed with a transaction after being informed of the requirement to complete a SCT Report; and
  - attempting to persuade officers of cash dealers not to file a SCT Report.
31. The National Crime Authority (NCA) report on Money Laundering (December 1991) emphasis's the importance of this activity and other similar structuring activity being reported as suspect transactions. This is regarded as an essential area of reporting by AUSTRAC.
32. Whilst structuring of cash transactions in the ways noted above is likely to be seen at the front counters of institutions, the onus does not stop at front line staff.
33. AUSTRAC would like financial institutions to try to ensure that branch managers, where possible, keep aware of high cash volume accounts. In cases where cash amounts are regularly deposited just below \$10,000, to consider whether there is a reason to file Suspect Transaction Reports. Refer to paragraphs 39 and 40 on "Knowledge of customers".
34. AUSTRAC provides educational presentations and other educational materials to assist cash dealers with the reporting requirements in respect of structuring of transactions.

## Transactions with certain countries

35. Since December 1992, AUSTRAC has been monitoring all international telegraphic transfers of funds to and from Australia for detection of money laundering and tax evasion.
36. Cash dealers should nevertheless report suspect transactions where there are unusual amounts of cash paid for telegraphic transfer or other unusual transactions involving:
  - narcotic source countries or transit points, in particular, parts of the Middle East and Eastern Europe e.g., Lebanon, and parts of Central and South America e.g., Columbia, Panama;

- tax haven countries whose secrecy laws have been known to facilitate the laundering of the proceeds of crime and tax evasion, in particular, the Caribbean area, some parts of Europe e.g., the Isle of Man and the Channel Islands and some South Pacific countries e.g., Cook Islands, Vanuatu.

## Unusual dealings

38. Unusual business dealings and unusual movements of cash might also be indicative of money laundering. Examples submitted by banks, other financial institutions and by law enforcement agencies have included the following:

- exchange of small denomination bills (\$5, \$10 and \$20) for large denomination bills (\$100);
- regular large cash transactions by a non-customer;
- movements of very large amounts of cash by a customer with no apparent legitimate source;
- accounts receiving frequent deposits of bearer instruments (e.g., bank cheques, money orders, bearer bonds) in amounts just below \$10,000;
- use of unusually large amounts in traveller's cheques;
- unusual account holdings, for example:
  - a customer with an inordinately large number of accounts for the type of business he/she is purportedly conducting;
  - accounts under one or more names with regular inter account transfers of aggregated funds not related to any legitimate business or commercial purpose; or
  - an account in which many different persons, perhaps in different places, are depositing cash.
- unusual or irregular transfers of funds overseas, for example:
  - telegraphic transfers involving payment in unusually large sums of cash;
  - accounts used as a temporary depository for funds regularly transferred offshore;
  - telegraphic transfers involving payment in cash by non-customers who fail to produce identification;
  - loans and securities dealings that appear to be a device to disguise the transfer of funds.

- unusual use of night deposit boxes or safe deposit boxes especially where cash is involved in large quantities without an obvious legitimate purpose;
- a customer who transacts large amounts of cash which is inconsistent with the type of occupation or business that the customer is involved in, signaling that money is being laundered by co-mingling cash with other business income or by passing what may be illicit cash through the accounts of an apparently legal business.

## Knowledge of customers

39. A significant part of international efforts (organised by the G7 group of nations) to curb money laundering focuses on financial institutions being aware of their customers' business activities. To a degree this coincides with an institution's own prudential requirements. Thus, branches of financial institutions are encouraged to 'know their customers' and where possible to be able to judge whether the amount of cash or other monies going through accounts are consistent with the line of business or occupation being undertaken by the customer. The FTR Act also requires the identification of new signatories to accounts and where customers try to avoid that requirement it might give rise to a suspicion of tax evasion or other illegal conduct.
40. Knowledge of your customers is important. There could be numerous circumstances where you suspect that monies moving into and out of accounts may be the proceeds of crime. Under the Proceeds of Crime Act 1987, a person is guilty of money laundering if she/he receives, possesses, conceals, disposes of or brings into Australia any property or money that are the proceeds of crime where she/he knows or ought reasonably to know that the money or other property is derived from unlawful activity. Reporting of the relevant transactions to the authorities constitutes a defence against a charge of money laundering and satisfies AUSTRAC reporting obligations.

## Tax evasion

41. Non payment of tax is central to most areas of crime such as drug trafficking and illegal gambling.
42. Apart from tax evasion associated with crime, there will also be circumstances where you suspect that there is tax evasion being undertaken by a customer involved in otherwise legitimate business or occupational activity.

43. These transactions might typically be noticed when you review your client's business. Employees of banks and other institutions are expected to know customers' financial and business affairs to the point where they are able to serve the duties of the bank or other financial institution(s). Banks and other institutions also need to consider their overriding legal duty to report suspect transactions. Suspicions may arise when they review the accounts following the submission by the customer of the annual profit and loss and balance sheet. Similarly, at other points such as the time when a new loan is applied for by the customer. The duty to report applies to financial institutions in their dealings with corporate clients as well as other clients.
44. Transactions suspected of being connected with tax evasion are required to be reported under the FTR Act and it is an offence not to do so.

### International profit shifting or funds transfer to avoid Australian taxation or to launder money

45. The House of Representatives Standing Committee on Finance and Public Administration in its March 1991 Report drew attention to international profit shifting or funds manipulation that may result in suspicious transactions involving tax evasion or money laundering:
  - any transaction under schemes whereby Australian residents use incentive tax rates (for non resident investors) to evade a resident's Australian income tax obligations.
46. For example, this may involve opening or operating an account in the name of a non resident where the account is in fact exclusively or predominantly used by a resident;
  - change of address of an existing account holder to an overseas address where the account continues to be operated predominantly within Australia;
  - payment of management fees to related companies in a way that appears designed to transfer profit offshore to evade tax;
  - changes of ownership of a foreign company in a corporate group, 'balance day adjustments' and other actions at year end which appear designed to shift profit offshore to evade Australian tax obligations.
47. AUSTRAC will continue to provide further advice to cash dealers, by way of Information Circulars, that focus on alerts in this area.

### Commercial crime

48. Officers of financial institutions, particularly in the corporate area, might become aware of activity they suspect breaches Australia's corporation laws. This might for example, arise when a customer's account is subject to an annual (or other) review.
49. Relevant activity might include the following elements:

- the use of the resources of a public company to further the private interests of the company's officers;
  - the payment of secret commissions;
  - skimming of profits to executive directors;
  - payment of large management fees to entities associated with directors or management; and
  - directors or management fraudulently acting against the interests of their company.
50. There might be other circumstances where you suspect that office holders or directors are operating in a way that is contrary to the interests of creditors and shareholders and in breach of Australia's corporation laws.

### Offences against State laws

51. All Australian States require that suspect transactions be reported to AUSTRAC (for referral to relevant State law enforcement agencies) in respect of certain serious offences under State laws. Reports under these State laws are to be made to AUSTRAC in the same way as reporting under Federal and Territory laws as reflected in this guideline.

Please note that AUSTRAC does not provide legal advice and that this guideline should be read accordingly.

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