Tax evasion as a money-laundering predicate

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Since 1 July 2013 serious tax offences have been predicate offences for money laundering under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992. The offences designated are wilful evasion and serious fraudulent evasion under sections 96 and 96A of the Income Tax Act and sections 62 and 63 of the GST Act, together with the equivalent foreign tax offences through the dual-criminality approach.[1] The consequence is that the proceeds of tax evasion are criminal property and that dealing with them is money laundering under sections 50 to 54 of the CDSA. A financial institution or DPT service provider that suspects a customer's funds derive from tax evasion must file a suspicious transaction report (see Part L, Chapter IV).

For a digital-asset client the predicate rule has two effects. The first is that the client's own undeclared trading profit, if it rose to wilful evasion, is criminal property in his hands and his transfer of it to a new wallet or a new exchange is a laundering act. The voluntary disclosure programme resolves the tax offence by composition and, in practice, removes the laundering exposure, because IRAS does not refer composed cases to the Commercial Affairs Department. The second effect is on the service providers. A Singapore exchange that onboards a customer whose

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source of wealth is crypto trading abroad must consider whether that trading was taxed. The foreign tax position of a Swiss or German customer is therefore part of the Singapore exchange's AML file. The Swiss side has the same rule through the qualified tax offence of Art. 305bis para. 1bis of the Swiss Criminal Code (see Part G, Chapter VIII and Part F, Chapter V). A client who evaded tax in either hub is therefore exposed to the AML systems of both.

Cross-border perspective

A German client who traded crypto without declaring it in Germany and now wants to open an account with a Singapore exchange presents the exchange with a potential foreign tax offence predicate. The exchange's compliance officer will ask for evidence that the gains were declared or that German law did not tax them. A German voluntary disclosure under § 371 of the Abgabenordnung is often the precondition for the account. The same client approaching a Zug exchange meets the Swiss qualified tax offence test, which requires evaded tax of at least CHF 300,000 per tax period before the predicate applies. The thresholds differ but the question is the same. The answer is to regularise before onboarding.

Notes

1. Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev. Ed.), Second Schedule, items relating to ss. 96 and 96A Income Tax Act and ss. 62 and 63 Goods and Services Tax Act, designated as serious offences with effect from 1 July 2013. ↩

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