

# REPORTING OF VOLUNTARY TAX COMPLIANCE SCHEMES



**Asia/Pacific Group  
on Money Laundering**

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Asia/Pacific Group on Money Laundering  
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on Money Laundering

## REPORTING OF VOLUNTARY TAX COMPLIANCE SCHEMES BY APG MEMBERS

### SUMMARY

1. The APG adopted the following reporting policy framework for voluntary tax compliance schemes at its 2014 Annual Meeting.
2. This policy establishes a reporting and analysis framework for APG members who have issued, or intend to issue, a voluntary tax compliance scheme as follows:
  - **Reporting:** APG members should report proposed or existing VTC schemes requiring asset repatriation in a similar way to the current FATF scheme.
  - **Analysis:** After receiving a report by an APG member the Secretariat will undertake a preliminary analysis of the scheme. For complex schemes the paper proposes that experts from APG members may be involved.
  - **Decision-making:** The Steering Group should endorse analysis reports and agree on any membership action if needed (in consultation with members) including authorising the Co-chairs to send a letter to the relevant Minister(s) expressing membership concern and asking that that the scheme be amended. Other more serious measures may be available.
  - **Non-Compliance:** Should a member fail to report a relevant scheme, the Steering Group may decide, after membership consultation, on appropriate membership-related action.
  - **Publication:** VTC analysis reports will not be publicly available.

### BACKGROUND

3. The following definitions apply:
  - *Asset repatriation* refers to returning (repatriating) funds/assets from abroad to the home jurisdiction;
  - *Tax amnesty* refers to a full or partial reprieve from the payment of tax and/or interest and/or penalties that would otherwise be due in relation to previously unreported (or incorrectly reported) taxable income, funds or other assets;
  - *Voluntary tax compliance (VTC) scheme* refers to any scheme designed to facilitate legalization of the taxpayer's situation in relation to funds or other assets that were previously unreported (or incorrectly reported).

## VTC SCHEMES AND AML/CFT RISK

4. VTC schemes have been or continue to be used for a variety of purposes including raising tax revenue, increasing tax compliance; and/or facilitating asset repatriation in response to economic emergencies. These schemes usually involve a time-limited offer by the government to taxpayers to settle previously undisclosed and unpaid tax liabilities in exchange for waiver of civil (including interest), and sometimes criminal, penalties. Successful schemes seek to balance the need for providing sufficient incentives to those engaged in non-compliance to come forward with the risk of being seen to reward or encourage such conduct.
5. The level of potential ML/FT risk of VTC schemes varies, depending on the characteristics of the particular scheme. ML/FT risks tend to be highest where tax amnesty (with criminal immunity) is offered and/or asset repatriation is encouraged/required.
6. The aim of tax amnesty and asset repatriation initiatives is to encourage taxpayers to declare funds or assets that were previously undeclared. This may result in large volumes of funds (previously held outside the formal financial system and/or the country) being deposited into domestic financial institutions during the duration of the VTC scheme. There is a risk with some schemes that criminal proceeds will be deposited to take advantage of the scheme and thereby avoid penalties including criminal prosecution thereby “whitening” criminal proceeds. Unless clear guidance to financial institutions is given by competent authorities prior to the introduction of a scheme, those institutions may incorrectly assume that the legitimacy of funds deposited under a scheme has been endorsed by authorities and thus not report such transactions as suspicious.

## CURRENT VTC REPORTING POLICIES/PRACTICES IN THE AML/CFT CONTEXT

7. In June 2010 the FATF adopted the following four basic principles in relation to the AML/CFT policy implications of VTC schemes:

**Principle 1: Effective Application of AML/CFT Preventative Measures**

The effective application of AML/CFT preventative measures is a prerequisite for addressing and mitigating the ML/FT risks associated with implementing any type of voluntary tax compliance programme.

**Principle 2: Prohibition of Exemptions from AML/CFT Requirements**

The FATF Recommendations do not allow for full or partial exemptions from AML/CFT requirements in the context of implementing a voluntary tax compliance programme. Therefore, when implementing a voluntary tax compliance programme, national authorities should ensure that its terms do not allow, in law or in practice, for full or partial exemptions from AML/CFT requirements as set out in the FATF Recommendations. Voluntary tax compliance programmes which do so are in breach of the FATF Recommendations.

**Principle 3: Domestic Co-ordination and Co-operation**

When implementing a voluntary tax compliance programme, it should be ensured that all relevant domestic competent authorities be able to co-ordinate and co-operate, and exchange information, as appropriate, with a view to detecting, investigating and prosecuting any ML/FT abuse of the programme.

**Principle 4: International Co-operation**

The widest possible range of mutual legal assistance and exchange of information in ML/FT investigations, prosecutions and related proceedings relating to the abuse of voluntary tax compliance programmes, including asset recovery investigations and proceedings, should be provided.

8. FATF's Best Practices Paper, *International Best Practices: Managing the Anti-Money Laundering and Counter-Terrorist Financing Policy Implications of Voluntary Tax Compliance Programmes*, was adopted by the FATF Plenary in October 2010 and re-issued in October 2012. The FATF mechanism outlined in that paper is as follows:

- **Notification:** Implementing jurisdictions should inform the FATF Secretariat upon or prior to the introduction of a VTC scheme that encourages or requires asset repatriation.
- **Initial review:** the FATF Secretariat forms an initial view on whether the VTC scheme is consistent with the four basic principles above including any negative impact criminal immunity may have on the implementation of AML/CFT measures. The Secretariat prepares a preliminary report describing the impact of the scheme on implementation of the FATF Recommendations and presents its findings and make recommendations to the FATF Plenary for consideration.
- **Appropriate action:** The FATF Secretariat informs delegations of its preliminary analysis. Where concerns (about the impact of the scheme on the effective application of the FATF Recommendations) are identified, the FATF President will send a letter to the head of the jurisdiction to express concerns and advise that the issue will be placed on the agenda of the next Plenary meeting. The Plenary will decide whether further action should be taken, including possible referral to the ICRG.

9. From October 2010 to June 2014, FATF has considered a number of VTC programmes including those of three APG members.

10. As far as the APG Secretariat is aware, the only other FSRB that requires VTC reporting by its members as at January 2014 is MONEYVAL, which adopted procedures broadly similar to the FATF's in December 2013.

#### **APG REPORTING MECHANISM**

##### **FACTORS/PRINCIPLES UNDERLYING THE REPORTING MECHANISM**

11. **Risk:** The level of ML/FT risk associated with VTC schemes varies depending on the scheme characteristics. Generally, ML/FT risks tend to be highest where tax amnesty (with criminal immunity) is granted and/or asset repatriation is encouraged or required.
12. **Financial System Protection:** A mandatory scheme of reporting is part of a wider policy of protecting the financial system. VTC schemes should not be structured so as to allow criminal proceeds deliberately, or unwittingly (through poor scheme construction), to enter the domestic or international financial system thereby defeating the policy objectives of the FATF standards.
13. **Burden:** Mandatory VTC reporting has the potential to further increase the reporting burden for APG members. The reporting mechanism (scope, timing, form and frequency) proposed in this paper aims to minimise additional reporting requirements as much as practicable.

14. **Resourcing:** The intersection of tax compliance programmes and AML/CFT issues is an increasingly important topic for the FATF and FSRBs. On the other hand, resource and budgetary constraints increasingly affect APG members as well as the Secretariat. The reporting regime in this paper balances the need to deal with VTC schemes that present a threat to the integrity of members' AML/CFT regimes with the reality of tight resources and budgets.

## **REPORTING OF SCHEMES**

### *Relevant schemes*

15. APG members are required to report only those VTC schemes that encourage or require asset repatriation (FATF policy) because of their inherent ML/FT risk. The APG does not have the resources necessary to examine every VTC scheme many of which do not contain such risk.

### *To whom to report*

16. APG members will report their schemes to the APG Secretariat, except joint APG/FATF members who will continue to report relevant schemes to the FATF with a copy to the APG Secretariat.

### *When to report*

17. Members should report schemes in advance of their intention to implement them in law. However, in practice this is not always feasible as VTC schemes are often introduced at very short notice in response to an economic crisis, and are designed to apply for a short period of time. In those cases, members should provide notification in advance of the coming into force of a VTC scheme. Should any APG members observe any unusual patterns or activity during the duration of the scheme they are encouraged to inform the Secretariat as soon as possible.

### *Reporting format*

18. Reporting should be made in writing and contain at a minimum the following:

- Main features of scheme;
- Reasons for (planned) introduction of scheme;
- Date of commencement and duration of scheme;
- Self-assessment against the four basic FATF principles (as above).

19. All notifications should include a copy of legislation and/or link to the website containing the text (in English).

### *Informal monitoring*

20. The current practice of informal monitoring of members' VTC schemes (planned or already implemented) will continue in order to complement the formal reporting mechanism and lead to a reduction in the incidence of non-reporting of relevant schemes.

## **VTC SCHEME ANALYSIS**

21. Due to the often brief duration of VTC schemes, it is important that the analysis and adoption of analysis reports be conducted in a timely fashion. The Secretariat will therefore conduct

an initial review of the VTC report and documents, and focus on identifying the potential risks of the reported scheme against the FATF's four basic principles. The Secretariat would then prepare a preliminary report for consideration by the Steering Group.

22. In certain circumstances (for example, due to the complex nature of the VTC scheme), the Steering Group may decide that the Secretariat's preliminary report should be referred to one or more experts from member jurisdictions for further consideration. Any comments made by the Steering Group or appointed experts will be taken into account and the draft report amended as appropriate.
23. Where applicable, the final draft of the report will contain a request to the member in question to mitigate the ML/TF risk of the proposed (or already implemented) VTC scheme by bringing it into line with the FATF's four basic principles (for example by removing any asset repatriation component).
24. Where the member under review is subject to the FATF's ICRG process, the APG Secretariat will work in close consultation with the FATF Secretariat in the preparation of the analysis of the scheme.

#### *Consultation*

25. The Secretariat will consult as necessary with the member under review when preparing its preliminary analysis. In addition, following consideration of the Secretariat's preliminary analysis by the Steering Group, the draft analysis report will be sent to the affected member for comment, clarification and correction of any factual errors.
26. Upon receipt of notification of a VTC scheme, the Secretariat will notify all APG members, and all FATF and FSRB members (through their Secretariats), and invite their comments, asking them to provide information on the volume of funds that have been repatriated or regularised in relation to the assessed member's VTC scheme, and inform the Secretariat of any unusual patterns or activity which may relate to the VTC scheme. This information would be taken into account in the analysis process and the making of recommendations to members for further action (if required).

### **DECISION-MAKING**

#### *Consideration of analysis reports*

27. Due to the importance of conducting the analysis of reported VTC schemes in a timely fashion and bearing in mind that the APG, unlike the FATF, only has one plenary meeting per annum, the APG Steering Group will be responsible for consideration and endorsement of VTC analysis reports and proposed membership action. Analysis reports with recommendations will be sent by the Secretariat to all members for comment, asking members to provide any comments to/through their sub-regional Steering Group representative. Steering Group members would be expected to consult the members of their respective sub-regions before deciding on any membership action.

#### *Potential measures imposed*

28. In case of a breach of one or more of the four basic principles, the Steering Group should send a letter from the APG Co-Chairs to the relevant Minister(s) of the member having implemented or proposing to implement the VTC scheme, drawing their attention to the concerns identified and asking them to amend the non-compliant scheme by a specified date.

29. Depending on factors such as the level of ML/TF risk posed by the VTC scheme, the seriousness of the identified breach(es) of the basic principles, and/or whether breaches have been identified in the past it may be prudent to (also) impose more serious measures (see below).
30. VTC issues arising during the year and measures imposed by the Steering Group will be reported to the membership and discussed during Annual Meetings.

### **Publication**

31. As part of the Steering Group's consultation process, members will be asked to comment on the Secretariat's (and/or a review team's) preliminary analysis of the VTC scheme and any measures recommended to be imposed by the Steering Group.
32. The FATF does not make VTC reports publicly available following consideration by the plenary. The APG will follow the same policy.

### **Non-Compliance**

#### *Refusal to amend non-compliant schemes*

33. In case of a member's refusal to amend a non-compliant VTC scheme by a specified date or where additional or more serious measures may be warranted, the APG Steering Group should be authorised to recommend to members the following actions:
- Arrange an APG high level membership mission;
  - Refer the matter to the FATF's ICRG process;
  - In the context of the application of Recommendation 19 by members, issue a formal APG statement to the effect that the member's VTC scheme is in breach of the FATF's basic principles and poses a serious risk to the integrity of the member's AML/CFT regime, recommending appropriate action, and considering whether additional counter-measures are required.
34. These actions are to reflect existing measures under the APG's ME follow-up processes.

#### *Consequences of failure to report reportable VTC schemes*

35. Should a member fail to report a relevant VTC scheme and the operation/planned operation of the scheme is detected through other means (i.e. monitoring of press reports by the Secretariat or VTC scheme brought to Secretariat's attention by FATF or other APG members), the matter will be brought to the attention of the Steering Group in the first instance. The Steering Group will then decide (in consultation with members and the Secretariat) whether any action (including possible membership action) should be taken and if so, which measures should be imposed. This would be in addition to requesting full disclosure of the scheme in accordance with the general reporting mechanism so that an analysis can be conducted.

### **Commencement**

36. The reporting policy takes effect on the date adoption - 16 July 2014.

Issued by: APG members, July 2014