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## **FATF EVALUATES CANADA'S ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING REGIME**

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*By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter\**

### **A. INTRODUCTION**

The Financial Action Task Force (“FATF”) released a report on September 15, 2016, entitled “Anti-Money Laundering and Counter-Terrorist Financing Measures: Canada – Mutual Evaluation Report September 2016” (the “2016 Mutual Evaluation”).<sup>1</sup> This report examines Canada’s anti-money laundering and anti-terrorist financing measures for compliance with the FATF Recommendations, following an on-site visit which took place from November 3-20, 2015. This is the fourth mutual evaluation the FATF has performed with Canada. The FATF is an inter-governmental body responsible for setting and monitoring international standards for combating money laundering and financing of terrorism and proliferation. The FATF Recommendations are forty international standards that countries are asked to comply with in order to counter money laundering and terrorist financing.

### **B. GENERAL OVERVIEW**

The FATF evaluates Canada’s policies, which cover aspects of anti-money laundering/anti-terrorist financing for compliance with international standards. Many of the Recommendations apply to financial institutions and to designated non-financial businesses and professions. Charities and not-for-profits are

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<sup>1</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures: Canada Mutual Evaluation Report, September 2016*, online: <[www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf)>.

not included in the list of designated non-financial business and professions. Recommendation 8 applies specifically to non-profits, which include charities. [\*Anti-Terrorism and Charity Law Alert No. 46\*](#) discusses some positive changes that were recently made to Recommendation 8.

Generally, Canada fared well in this most recent mutual evaluation. The 2016 Mutual Evaluation concludes that Canada has a strong framework to combat money laundering and terrorist financing. The threat from domestic and foreign money laundering is larger than the threat from terrorist financing, though it still exists. The 2016 Mutual Evaluation determines that Canada has made significant progress in implementing the international standards since the previous mutual evaluation in 2007. The caveat to this determination is that the anti-money laundering and counter-terrorist financing (“AML/CTF”) measures still have significant room for improvement.

FATF found that there are five Recommendations with which Canada is not compliant. Recommendation 12, which is the standard for dealings with Politically Exposed Persons, is one Recommendation where Canada was found to be non-compliant. However the evaluators mention planned regulatory changes to AML/CTF regime (covered in the [\*Charity & NFP Law Update – July/August 2016\*](#) “Anti-Terrorism & Money-Laundering Update”) may change FATF’s evaluation of this Recommendation. The other four Recommendations for which Canada was evaluated to be non-compliant deal with assessing new technologies for money laundering (“ML”) and terrorist financing (“TF”) risks, certain sectors not having AML/CTF obligations (e.g. law professionals, online gambling, trust services, etc.) and transparency and beneficial ownership in legal arrangements.

### **C. SPECIFIC COMMENTS WITH REGARDS TO CHARITIES**

As part of one of its key findings, FATF includes the facts that Canada places priority on pursuing TF activities and that charities are monitored on a risk basis to mitigate the potential for TF abuse. The evaluators found that inspections of charities over the past few years does not reflect the perceived TF risks. During the national risk assessment the Canadian Government and Canada Revenue Agency (“CRA”) listed the risk for misuse of charities as high, but only a small number of charities were inspected. However, CRA’s Charities Directorate’s enhanced outreach program was found to be in line with the best practices put forward by the FATF.

The FATF noted that CRA assessed the non-profit sector for vulnerability and found that charities are the organizations at highest risk for TF abuse. FATF noted that CRA conducts outreach, advises charities of legislative requirements and advises on how to protect against TF abuse. They further noted that consultations have begun to educate on TF risks and to gain a better understanding of the sector's needs.

## D. CONCLUSION

The federal government's response to the 2016 Mutual Evaluation Report will need to be monitored for any potential impact on the charity and not-for-profit sector and to ensure that the response is proportional to the true risks posed by the sector for money laundering and terrorist financing in Canada and abroad.