

## **Does your business qualify as a provider of payment services under the (Money Laundering) and Terrorist Financing Act (PCMLTFA)?**

In a [notice](#) published by the Financial Transactions and Reporting Analysis Centre of Canada (FINTRAC) on July 21<sup>st</sup>, 2022, FINTRAC provided guidance about what services now qualify as “payment services” under the PCMLTFA and its regulations. The notice describes two categories as follows:

### **1) Invoice payment services:**

A person or entity is considered to provide invoice payment services when acting as an intermediary between a payer and a payee to make payments to invoices. FINTRAC calls attention within the notice to invoices related to utilities, payroll and commission, mortgage and rent, or tuition. The notice also stipulates an exception to the rule that if a person or entity only receives the payment on behalf of the payee to settle a debt and they do not transfer the payment instructions to the original payee, they would not qualify as a provider of invoice payment services.

During an information session provided by FINTRAC on November 2<sup>nd</sup>, 2022, FINTRAC explained that the payor in this category of services is the person or entity providing the payment, and the payee is the person or entity receiving the payment. FINTRAC also explained that if a person or entity does not directly accept instructions for the transfer of funds, they are excluded from this category of payment services. FINTRAC explained that the intention of invoice payment services is to capture the persons or entities that are on the front-end and have the interaction with clients who want to purchase something or send funds somewhere. The intention is not to capture persons or entities that are on the back-end processing data. FINTRAC further explained that a person or entity who receives payments on behalf of a payee to settle a debt and are not transferring the instructions back to the original payee, would also be exempt from this category. An example of this exception is a person or entity that provides trust services, where the transaction is settled on a ledger and completed, and instructions are not passed along further.

During the question-and-answer period, FINTRAC confirmed that providing invoice payment services is not limited to only invoices related to utilities, payroll and commission, mortgage and rent, or tuition. They explained that payment of any invoice would be covered by the PCMLTFA and its regulations, as long as it did not qualify for the exception. The reason they specifically mentioned these four subcategories of invoices is to ensure that reporting entities understood there are no longer any exemptions related to these subcategories (previously under policy interpretation [#7670](#)).

### **2) Payment services for goods and services:**

A person or entity could find themselves defined under the second category of services called payment services for goods and services. There are three criteria that need to be met in order to qualify a person or entity under this category:

- The person or entity must receive payment instructions and act as an intermediary between a payer purchasing goods or services and a payee supplying goods or services;

- the payer must consent to make the payment for the goods or services through service provider; and
- the payee must have an agreement with the service provider to have access to the transfers carried out as payment for the goods or services.

As with invoice services, this category of payment services also has exceptions. If a person or entity accepts payments for goods and services that they themselves provided to their client, they are exempt from this category of payment services. Additionally, if a person or entity solely provides hardware like a payment terminal, and does not provide any other associated payment services, they too are exempt.

During their information on November 2<sup>nd</sup>, 2022, FINTRAC provided some clarity as to the criteria of providing payment services for goods and services. They explained that the consent needed from a payer can be as simple as the payer providing payment information through a credit card at a point-of-sale machine or through an e-commerce payment gateway. FINTRAC further explained that the agreement between the payee and the service provider has to stipulate that the purpose of the agreement is to facilitate payments. In a retail setting, the agreement would be between the merchant selling goods and services and the person or entity providing payment services.

FINTRAC explained that, as with invoice payment services, the exception related to the direct acceptance of instructions for the transfer of funds **also** applies to payment services for goods and services, again citing that the intention is to focus on those that have the relationship with the customer rather than those in the bank end processing data. They further clarified that if a merchant had the ability to accept and process their own payments, they would also be exempt since they do not have a relationship with a service provider. Businesses that only provide physical payment terminals like a point-of-sale machine, and do not provide payment processing, would also fall under exception.

Finally, FINTRAC confirmed that payments made via virtual currency are NOT exempted. The amendments made to the PCMLTFA and its regulations also apply to virtual currency transfers for the purpose of making payments.

For more information about this or any other aspect related to payment services, please reach out to Marcelle Dadoun ([marcelle@theamlshop.ca](mailto:marcelle@theamlshop.ca)). Stay tuned for next week's article that will cover the registration process for persons or entities providing payment services.