

LEGAL AND TAX ALERT

EU takes further measures against money laundering and terrorist financing

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On July 25, 2018 the Bill (the “**Bill**”) for the implementation of the 4th Anti-Money Laundering Directive (EU Anti-Money Laundering Directive ((EU)2015/849) (“**AMLD4**”) entered into force. The Bill amends the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*, “**Wwft**”) and some other laws related to the (partial) implementation of AMLD4. Also, it implements the new regulation on information to accompany transfers of funds ((EU) 2015/847).

One of the proposed amendments under AMLD4 is the obligation for Member States of the European Union to establish a central ultimate beneficial owner (“**UBO**”) register, which will include certain details of the UBO of companies (the “**UBO register**”). Remarkable, since the establishment of an UBO register is not included in the Bill. At present, it remains uncertain when the implementation act regarding the UBO register will be adopted. We refer to our [Alert dated April 21st, 2018](#) for more information with regard to the UBO register.

Under AMLD4, a key role is accorded to the principle of risk analysis and the corresponding adequate safeguards. AMLD4, among other things, (i) imposes rules on due diligence (varying according to whether there is a high or low risk), (ii) focuses on an increase of transparency in identifying the UBO, (iii) broadens the scope of customer due diligence requirements, and (iv) has increased vigilance measures with regard to domestic, but also foreign, politically prominent people (PEPs). Banks and certain other companies (such as law firms) involved in the finance sector, are obligated to establish group-wide compliance systems, including due diligence requirements relating to money laundering.

Under AMLD4, the UBO is the natural person(s) who ultimately owns or controls a ‘customer’ and/or the natural person(s) on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. This includes with respect to a corporate entity:

- a natural person(s) who ultimately owns or controls such entity through direct or indirect ownership of more than 25 percent of the shares or voting rights or ownership interest, or through “control via other means”; or
- if no one is identified (having exhausted all possible means and provided there are no grounds for suspicion) or if there is any doubt that the person identified is the beneficial owner, then the natural person(s) who hold(s) the position of “senior managing official” will be deemed to be the UBO.

5th Anti-Money Laundering Directive

In the meantime The Netherlands is working on implementation of AMLD4, on July 9, 2018, the 5th Anti-Money Laundering Directive ((EU) 2018/843) (“**AMLD5**”) has been adopted and entered into force. Member States of the European Union will have to implement these new rules into their national legislation by January 10, 2020. The AMLD5 aims to:

- increase transparency about who really owns companies and trusts to prevent money laundering and terrorist financing via opaque structures;
- improve the work of Financial Intelligence Units with better access to information through centralised bank account registers;
- tackle terrorist financing risks linked to anonymous use of virtual currencies and of pre-paid instruments;
- improve the cooperation and exchange of information between anti-money laundering supervisors and with the European Central Bank;
- broaden the criteria for assessing high-risk third countries and ensure a common high level of safeguards for financial flows from such countries.

With AMLD4 and AMLD5, the EU is, among other things, intensifying its efforts to effectively combat money laundering and terrorism financing.

We will update you as soon as the Dutch Counsel of Ministers has taken further steps with regard to the implementation of the AMLD5.

QUESTIONS OR FURTHER INFORMATION

If you have any questions or appreciate receiving more information on this alert, please contact your regular contact at WLP-Law or any of the undersigned:

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