

Euro Tax Flash
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Euro Tax Flash from KPMG's EU Tax Centre



European Parliament adopts proposals for EU company ownership registers to combat tax evasion and terrorist financing

European Parliament - Anti-Money Laundering Directive - Ultimate Beneficial Owners - Terrorist financing - Tax evasion

On May 20, 2015 the European Parliament formally approved proposals to require EU Member States to maintain public registers of ultimate ownership of EU companies and similar entities. The proposals form part of a new anti-money laundering directive ('Directive') aimed at combating tax crimes and terrorist financing. The Council of the EU, whose approval was also required for the adoption of the proposals, formally approved the Directive last month. The new rules generally must be introduced in all EU Member States within the coming two years.

Background

The new directive (the 4th Anti-Money Laundering Directive, AMLD) is intended to align the EU anti-money laundering rules with the 2012 recommendations of the Financial Action Task Force as well as take into account the outcome of a review of the 3rd AMLD carried out by the European Commission. The original proposals contained only limited provisions regarding information on beneficial ownership and its

accessibility. The final provisions having a wider scope and allowing limited public accessibility were proposed at a later stage by the European Parliament. Political approval of the proposals between the European Parliament and the Council of the EU was reached in December 2014.

Scope

Under the new provisions companies and other legal entities incorporated in an EU Member State will be required to hold and transfer to a central register in that Member State information about their beneficial owners and the interests they hold. Similar rules will apply to trusts and comparable arrangements.

Beneficial ownership is extensively defined and essentially covers the individuals who ultimately (directly or indirectly) control the entity in question. In general the notion of control is based on a 25%+ ownership criterion although Member States may adopt lower percentages. Special provisions apply for trusts and similar entities.

Access

The information on beneficial ownership will be accessible by competent authorities and financial intelligence units (that each Member State will have to set up in order to help combat money laundering and terrorist financing) and, in the framework of the conduct of customer due diligence, to 'obliged entities' such as banks, insurance companies, lawyers, trust service providers, etc. Persons or organizations that can demonstrate a legitimate interest would also be able to access at least the following information on the beneficial owner: its name, month and year of birth, nationality and country of residence, as well as the nature and extent of the beneficial interest held. Information on trusts would however only be accessible to competent authorities and obliged entities. The Commission has pointed out that the notion of 'legitimate interest' must have regard to the international rules on protection of personal data and the right to privacy.

Next steps

Member State have two years from the adoption of the Directive to implement its main provisions into their domestic legislation.

EU Tax Centre Comment

The new rules should be seen in the context of the increased call from the public and media for increased transparency, in particular in the tax context. The Commission has also indicated that this development is in line with its broader policies. The notion of 'legitimate interest' is not defined and may therefore in practice lead to differences of interpretation.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor.

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