



06 March 2017

1) **European Parliament votes to amend the EU Anti-Money Laundering Directive (“AMLD”)**

The European Parliament’s Economic and Monetary Affairs (ECON) and Civil Liberties Committees have voted to amend the EU Anti-Money Laundering Directive (“AMLD”) to allow access of EU citizens to the beneficial ownership registers. The vote today was passed by 89 to 1, with 4 abstentions. Under the present rules, the access to the AML beneficial ownership registers was limited to official authorities. The compromise solution would allow European citizens to access beneficial ownership registers without having to demonstrate a legitimate interest in the information.

AML Directive (EU) 2015/849 amendments shall enter into force when adopted at plenary at the European Parliament (probably at the March plenary session), and then continue with trilateral negotiations with the Council and the Commission.

The scope of the AMLD has also been expanded to cover trusts and other types of legal arrangements having a structure or functions similar to trusts, which were previously excluded from the scope of AMLD on privacy grounds. Trusts would now have to meet full transparency requirements including the need to identify beneficial owners.

Under the amendments, virtual currency platforms would also be within the scope of the AML directive, having the same customer identification obligations as banks. This includes verifying identity details and monitoring their financial transactions, to reduce the risk of virtual currencies being used for money laundering purposes.

2) **ECJ Advocate General's Opinion published in the VAT case *Compass Contract Services* (Case C-38/16)**

On 2 March 2017, Advocate General Campos Sánchez-Bordona gave his Opinion in the case of *Compass Contract Services Limited v. Commissioners for Her Majesty's Revenue & Customs*. The case concerned the adjustment of output and input VAT and the applicable limitation periods. The question was whether it is acceptable under EU law to apply different limitation periods to claims for repayment of VAT *paid but not due* to differ from those applicable to claims for *deduction of VAT, in respect of the date on which they were brought into force?*

The Reference to the ECJ was made by the First-tier Tribunal (Tax Chamber) of the U.K. on 25 January 2016.

The Advocate General proposed that the ECJ answer the questions as follows:

1. It is not contrary to EU law for a national measure, like that at issue in the main proceedings, in laying down a transitional period for the introduction of reduced limitation periods applicable both to claims for repayment of overpaid VAT and to claims for deduction of input VAT, to provide that the new limitation period should start to run, for the latter, from a later date than the date fixed for it to start running for the former
2. In the alternative, were the Court to give an affirmative answer to the first question, the national court would have to draw the appropriate conclusions from infringement of the principle of equal

treatment, in accordance with the rules of national law relating to temporal effects, in such a way that the remedies it grants are not contrary to EU law

The Opinion is available at the following link:

[Opinion of Advocate General Campos Sánchez-Bordona in the case of *Compass Contract Services* \(Case C-38/16\)](#)

3) European Commission launches public consultation on the functioning of the administrative cooperation and fight against fraud in the field of VAT

In addition to the three ongoing VAT consultations, the EU Commission launched this new consultation on 2 March 2017. It will run until 31 May 2017.

The Commission aims to update the rules governing the administrative cooperation and the fight against cross-border VAT fraud with the aim of improving the functioning of the single market and tackling the heavy losses suffered by both the Member States and EU revenue. Council Regulation (EU) No 904/2010 of 7 October 2010 is the current legislation applicable to administrative cooperation assistance in VAT. The aim of the consultation is:

- ? to gather views from stakeholders about their experience of the current rules governing administrative cooperation and fight against cross-border fraud in the field of VAT;
- ? to bring new insights for the on-going evaluation of Regulation (EU) 904/2010;
- ? to provide information about possible improvements including 'VIES on-the-web'; and
- ? to collect quantitative data on possible reduction or increase of regulatory costs/benefits (administrative burden and/or compliance costs) for businesses (in particular SMEs).

The consultation is available at the following link:

[EU public consultation on the functioning of the administrative cooperation and fight against fraud in the field of VAT](#)

4) French Constitutional Court rules on CFC rules for individuals

On 1 March 2017, the French Constitutional Court (Conseil constitutionnel) handed down its decision in relation to the constitutionality of CFC legislation (Article 123 bis of the General Tax Code) w.

The impugned legislation provides that resident individuals will be subject to French tax on the income of the foreign entity regardless of whether it is distributed. Tax is levied in proportion to the percentage participation of the individual in the foreign entity.

The conditions for the imposition of the tax are as follows:

- The individual directly or indirectly owns 10% or more of the share capital (or financial or voting rights) in a foreign entity;
- that foreign entity is established in a low-tax jurisdiction;
- the assets of the foreign entity are mainly financial assets;

If the entity is located in a 'non-cooperative state or territory' (NCST) or in a jurisdiction which did not conclude any administrative assistance treaty with France, resident individuals are taxed on a minimum deemed income.

In order to comply with EU law the relevant piece of legislation provides for a safe harbour under which the controlled foreign company (CFC) rules may not apply with respect to foreign entities that are located in an EU Member State, unless the participation is part of an artificial arrangement aimed at circumventing French legislation.

The Court found that the different treatment between entities located in a Member State and those outside the EU is contrary to the constitutional principle of equality before public expenditures. Therefore, the Court held that the safe harbour provisions must apply to all entities

The Court upheld the aforementioned provision in relation to a minimum deemed income for resident individuals.

The Decision is available in French and other languages at this [LINK](#).

5) CFE Forum 2017: "Do you have a taxable presence in a country? The New Reality Permanent and Fixed (VAT) Establishments in the Post-BEPS World"

The annual CFE Forum will take place on 30 March 2017. Given the huge focus currently on the attribution of profits to PEs in a direct tax context and the interaction between the direct and indirect concepts it proves to be a very interesting day of lively discussion and debate.

For programme and registration details, please follow the links below:

Programme: [Link](#)

Further information: [CFE website](#).

*The selection of the remitted material has been prepared by
Piergiorgio Valente / Aleksandar Ivanovski / Mary Dineen / Filipa Correia*

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