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EU Commission Publishes Anti-Money Laundering Legislative Package

The European Commission has now published its [Anti-Money Laundering legislative package](#), which will upgrade the existing EU anti-money laundering legislative (AML) framework.

The package consists of four proposals, namely:

- A [Regulation establishing a new EU AML/CFT Authority](#);
- A [Regulation on AML/CFT, containing directly-applicable rules, including in the areas of Customer Due Diligence and Beneficial Ownership](#);

- A sixth [Directive on AML/CFT \(“AMLD6”\), replacing the existing Directive 2015/849/EU \(the fourth AML directive as amended by the fifth AML directive\)](#), containing provisions that will be transposed into national law, such as rules on national supervisors and Financial Intelligence Units in Member States;
- A [revision of the 2015 Regulation on Transfers of Funds to trace transfers of crypto-assets](#) (Regulation 2015/847/EU).

Significantly, the package will establish an EU Anti-Money Laundering supervisory body, the Anti-Money Laundering Authority, or AMLA, which would commence operating in 2024 and is envisaged to employ around 350 people. The AMLA will establish a single integrated system of supervision across the EU, be given direct supervisory powers at EU level to monitor and coordinate national supervisory bodies, as well as be given the ability to give fines and directly supervise cross-border financial companies. The AMLA will also coordinate with national Financial Intelligence Units (FIUs) and facilitate joint analyses to detect illicit financial flows.

The package will also create a single EU Rulebook for AML across the EU, including rules on Customer Due Diligence, Beneficial Ownership and the powers and task of supervisors and Financial Intelligence Units (FIUs). Existing national registers of bank accounts will be linked to the system, providing access to FIUs on bank accounts and deposit boxes. It is also proposed that law enforcement will be provided access to the system.

Other notable elements of the package include plans to extend the full application of the AML framework to the crypto sector, impose an EU-wide cash payment limit of EUR 10,000 and create a "black-list" and "grey-list" based on the recommendations made by the global money laundering and terrorist financing watchdog, Financial Action Task Force (FATF). Any

country listed in recommendations by FATF will be listed by the EU in either the “black-list” and a “grey-list”, and measures will be applied by the EU on the basis of the risk level. The EU will also be able to list additional countries not subject to a FATF recommendation, based on its own assessment of risk level to the EU.

Executive Vice-President Valdis Dombrovskis said of the package: *“Every fresh money laundering scandal is one scandal too many – and a wake-up call that our work to close the gaps in our financial system is not yet done. We have made huge strides in recent years and our EU AML rules are now among the toughest in the world. But they now need to be applied consistently and closely supervised to make sure they really bite. This is why we are today taking these bold steps to close the door on money laundering and stop criminals from lining their pockets with ill-gotten gains.”*

The package will now be considered by Parliament and Council. The proposals set out that the EU AML Authority would commence its duties from 2024 onwards, with the direct supervision role to commence later, after the Directive is transposed and the regulatory framework starts to apply.

EU Commission Appeals General Court Amazon State Aid Ruling

The European Commission has [lodged an appeal against](#) the EU General Court's ruling in its dispute with Amazon concerning profit allocation and application of TNMM as transfer-pricing method, in [Case T-816/17 Luxembourg and Amazon v Commission](#).

The General Court in its ruling found that the Commission did not prove the existence of State aid to the requisite legal standard and annulled the Commission decision. From a transfer-pricing perspective, the Court found that even if the 'arm's length' royalty should have been calculated using the Commission's designated group company as the 'tested party' in the application of the TNMM, the Commission still did not establish the existence of an advantage since the Commission did not take into account the evolution of the intangible assets and the cost sharing agreement, ie. the subsequent increase in value of said intangible assets.

The Commission will argue before the European Court of Justice that the General Court made a number of errors of law in its judgment, notably that the Court should have based its ruling on the profits recorded in Luxembourg by Amazon rather than looking at the US where it holds its intellectual property.

CFE Opinion Statement on Issues With the Supply of Goods with Transport Under e-Commerce Rules

CFE Tax Advisers Europe has now published an [Opinion Statement](#) on issues with supply of goods with transport under e-commerce rules. Determining the nature of a transaction is one of the most important steps when determining the VAT treatment of supplies, including how the place of supply rules operate. It is only after the nature of a supply has been determined, including determining whether a supply should be considered a supply of goods or services, that the different rules regarding determination of the place of taxation can be applied. The situation becomes particularly complicated in cases where the supplier provides to its buyer both supplies of goods and services at the same time. In such cases it must be established whether, for the purposes of VAT, the supply

should be treated as two distinct taxable transactions or as a single composite supply for VAT purposes. This question often arises when the supplier supplies goods and provides transport of the goods at the same time. Such a situation is even more common with e-commerce activities, when businesses are selling goods online to final consumers located in other Member States (distance sales of goods).

In the statement, CFE identifies that different rules apply when determining the place of supply of goods and the transport of goods, which often cause administrative problems in practice. Since there are different rules regarding determination of place of taxation for transportation services and supply of goods, CFE identifies through highlighting these issues in practice that it would be helpful if there could be some Commission guidance issued clarifying what the position is or, alternatively, if consideration could be given to making changes to the VAT Directive so that transport services are dealt with more consistently with the underlying supply.

We invite you to read the [statement](#), and remain available for any queries.

EU Commission July Infringement Package

The European Commission has published its [infringement package](#) for July 2021 setting out the legal action being pursued against various Member States by the Commission for noncompliance with obligations under EU law.

Lithuania was issued with a letter of formal notice by the the European Commission for failing to properly apply rules under the VAT scheme for small and medium enterprises (SMEs), by requiring businesses with turnovers under EUR 45,000 to register for VAT when their ultimate owner's annual income

exceeds the EUR 45,000 threshold as a whole, even when that person's other businesses are legally independent and do not use purely artificial structures. Lithuania has two months to respond to the issues raised by the Commission before a reasoned opinion is issued.

The Commission also issued a letter of formal notice to Cyprus for failing to properly apply the VAT Directive, by allowing a reduced VAT rate of 5% on the first 200m² of dwellings used as the principal and permanent residence by the beneficiary, without any other limitations. The VAT Directive allows the application of a reduced rate of VAT on housing as part of a social policy, which would require some limiting criteria, and as such the Commission is of the view Cyprus has failed to comply with EU VAT rules.

Finally, Romania was issued with a letter of formal notice for failing to allow otherwise eligible companies with access to the One-Stop-Shop, instead only allowing companies already registered for VAT in Romania for domestic deductible transactions and certain intra-Community transactions with access to the OSS. Additionally, Romania under its domestic legislation also excludes SMEs selling telecommunications, broadcasting or electronic services to consumers in other Member States.

Romania and Cyprus also have two months to respond to the Commission, following which a reasoned opinion may be issued by the Commission.

EU Council Adopts "Buy & Donate" VAT Exemption

The EU Council has [adopted](#) a so-called "Buy & Donate" temporary VAT exemption on importations and on certain supplies, in order to respond to the COVID-19 crisis, and facilitate the purchase and distribution of goods and

services by the Commission to Member States.

The temporary addition of the exemption to the VAT Directive will relieve administrative and budgetary issues that can impact on efforts by the EU to make donations to Member States. The Directive will apply retroactively from 1 January 2021.

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