



5th Anti-Money Laundering Directive ("5AMLD"):

A STEP FORWARD TO
TAX TRANSPARENCY
AND ACCOUNTABILITY

January 2019

kpmg.com.mt

Contemporary global finance is increasingly focused on the need for transparency, accountability in relation to business transactions, tax requirements and ownership matters. Such requirements mean that governments are responsible more than ever to ensure that an effective and comprehensive money laundering and terrorist financing framework is in place to mitigate the risks related to the pressing issues expounded in this alert.

The introduction of the Beneficial Ownership Register (BOR) by the 4th Anti Money Laundering Directive ("4AMLD") was a key example of the Unions' commitment towards said goal. The 5AMLD which entered into force on 9 July 2018 and which is due for implementation by the Member States by 10 January 2020, aims to turn the BOR step into forward strides, by increasing intergovernmental cooperation, widening the scope of the Directive and enhancing harmonisation among Member States in the anti- money laundering domain.

Virtual Currencies and Custodian Wallet Providers

5AMLD brings fiat-to-crypto exchanges as well as custodian wallet providers expressly within the scope of the EU anti-money laundering regime by introducing a definition of virtual currencies and custodian wallet providers. An emphasis is being placed on the ability of Governmental authorities to safeguard technical advances and a high degree of transparency in this field which is considered to be an alternative financial area. Taking into account the FATF's recently issued recommendation to include "virtual asset service providers" within the scope of the international anti-money laundering rules, it was only a matter of time for seeing such amendments reflected in the 5AMLD, and indeed such were introduced by the 6th ALMD adopted in October 2018 (see latest alert on the 6th ALMD).

Public access to BORs

The 4AMLD introduced a system of central registers within Member States in order to store information on the ultimate beneficial owners of legal entities within the Union. This information is stored on what are referred to as central registers on a national level. With the aim of allowing greater scrutiny of information by civil society in order to preserve trust in the integrity of financial system within the Union, the 5AMLD introduced a scheme whereby public access to the ultimate beneficial ownership information with respect to legal entities such as companies will be publicly accessible.

With regards to BOR information in relation to trusts and other similar legal arrangements, Article 31 of the 5AMLD provides that any natural or legal person who can demonstrate a legitimate interest is to be given access to the information held by the central register.

The information will be accessible through a pan- European interconnected system of national registers, and individual States may make the information on their BOR available subject to the condition of an online registration and administrative fee.

Increasing cooperation between EU financial intelligence units (FIUs)

The 5AMLD strengthens the interconnection of the BOR through the European Central Platform in order to enhance cooperation between Member States. It also aims to clearly outline the characteristics of trusts and other similar legal arrangements in each Member State, albeit some elements may vary, as one of the steps towards building cooperation in the area of regulation of trusts and similar legal arrangements. Another step towards this is the identification of which Member State should oversee the compliance of Anti-Money Laundering and Combating the Financing of Terrorism ("AML/CFT") operations in relation to such trusts or similar legal arrangements.

Harmonised Treatment of High-Risk Third Countries

Traditionally, Member States each determined the type of due diligence measures to be adopted when high risk third countries are dealt with in financial transactions. The 5AMLD aims to harmonise the manner in which risks imposed by high-risk third countries are addressed, primarily by focusing on enhancing customer due diligence measures and alignment of national continuous customer due diligence with recordkeeping and reporting (EDD) measures with FATF regulatory requirements. Additional measures will complement customer due diligence measures when such risks are detected, through the implementation of adequate countermeasures and other mitigating measures. Following an effective assessment of national AML/CTF regimes, the Union will take an integrated approach to business relationships and transactions with high-risk third countries in order to eliminate weak spots in the national administration of protective measures.



Addressing the threat posed by Anonymous Prepaid Cards

While general prepaid cards may have legitimate and practical uses, anonymous prepaid cards could be used to conceal criminal activity such as terrorist financing. The Union will therefore be lowering the existing thresholds for general purpose anonymous prepaid cards and identifying customers in cases of remote payment transactions exceeding €50. Additionally, mitigating risk measures must be taken into account when dealing with customers who have an electronically stored amount of €150, a change from the previous threshold of €250 set by the 4AMLD.

The 5AMLD also sheds light on the issue of anonymous prepaid cards originating from third States, whose standards may not be in line with international trade rules. More emphasis will be placed on ensuring that anonymous prepaid cards used within the Union comply with the requirements set out by Union law.

The measures to be implemented will allow the Union to keep up with the evolving pace of trends related to the way criminal organisations operate within financial structures. Measures will also be taken in a proportionate way that guarantees that the fundamental freedoms guaranteed to individuals within the Union are maintained.

How Can We Help?

KPMG is fully committed to overseeing the effective compliance of our clients with the new requirements set forth by the 5AMLD in order to ensure adherence in all the stages of the new framework. A dedicated team of professionals can help you with overall implementation and understanding of the new structures by:

- **Guiding you in understanding what obligations are imposed and how to implement changes, if any, in a practical manner within a variety of legal entities, and with officers working within the corporate and financial sphere**
- **Identifying any deficiencies within current structures and providing professional and tailored advice**
- **Providing committed correspondents to assist with multidisciplinary approaches to corporate and tax compliance services.**

Do not hesitate to contact our team for any queries or assistance you may need. You can rest assured that we will do everything within our means to provide a professional service adapted to your needs.

Contact Us:

Juanita Brockdorff

Partner

Tax Services

+356 2563 1029

juanitabrockdorff@kpmg.com.mt

Stephanie Gatt

Assistant Manager

Tax Services

+356 2563 1115

stephaniegatt@kpmg.com.mt

Aiste Gerybaite

Advisor

Tax Services

+356 2563 1210

aistegerybaite@kpmg.com.mt

Follow KPMG Malta:

