

# Are external accountants always treated as subject to AML/CTPF Act? 1/8/24



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What are an external accountant's obligations under the Anti Money Laundering and Counter Terrorism and Proliferation Financing (AML/CTPF) Act if accounting services are provided to related companies only? The Administrative Division of the Latvian Supreme Court referred this question to the Court of Justice of the European Union (CJEU) on 4 January 2024.

Section 3(1)(3) of the AML/CTPF Act states that external accountants are governed by this Act, which means they face a number of requirements and obligations. Section 34(2)(2) of the Accounting Act defines an external accountant as a person that undertakes to provide or provides accounting services to a company under a written agreement other than a contract of employment and meets specified education requirements, and – since 1 July 2023 – is licensed.

In the case being heard by the Supreme Court, the State Revenue Service (SRS) charged a penalty on the claimant, an external accounting service provider that rendered services to related companies only. The claimant explained that accounting services were never his core business activity and were rendered only to save cost. The SRS and the lower courts did not challenge this position, yet the SRS charged a penalty for failure to meet obligations applicable to external accountants under the AML/CTPF Act, i.e. for failure to determine procedures for destroying documents obtained in the course of customer identification, due diligence and transaction monitoring. Since accounting services in this case are provided to related companies only, the external accountant would have been required to identify his related persons and his ultimate beneficial owner. Thus, meeting the AML/CTPF Act's requirements would amount to a very formal exercise that would not achieve the Act's true objective.

This situation arose because the SRS applied the AML/CTPF Act, which implements the requirements of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. So the Supreme Court decided to ask the CJEU whether the directive aims to extend such formal requirements to intragroup services.

The circumstances of this case are known to a number of companies that have chosen to make intragroup changes in order to save on certain services. Answers to the questions asked by the Supreme Court are crucial to achieve a fair, uniform solution to this case and further cases, and to help persons avoid having to carry out formal exercises that are not consistent with the original purpose of the law.

Below are the Supreme Court's questions referred to the CJEU:

- Should the term 'external accountant' in article 2(1)(3)(a) of the directive be interpreted so that it extends to cases where accounting services are provided to related parties only?
- If the answer to the first question is affirmative, then should article 58(1) of the directive be interpreted so that in the context of a penalty being proportional it is relevant that:

- the accounting services are provided to related parties only?
- the choice to outsource the bookkeeping depends on intragroup utility considerations, rather than being determined by criteria arising from the law or based on economic reality?

The CJEU's answers to these preliminary questions are to clarify the term 'external accountant' within the scope of the directive, as well as shedding light on other questions about accountant obligations arising from the directive. Assuming the CJEU's opinion is similar to the Supreme Court's, we expect to gain a better understanding of external accountants and a determination of cases where the AML/CTPF Act's requirements do not apply.

We look forward to the CJEU's interpretation and a solution to this case. The Supreme Court's ruling is available [here](#).