

You ask, we answer! Tax authority's interpretation of persons subject to AML/CTPF Act 2/11/21

Acting on requests from customers and readers to identify and interpret persons that are subject to the Anti Money Laundering and Counter Terrorism and Proliferation Financing Act, we approached the State Revenue Service for some practical insights into non-standard and complex corporate structures and their business activities in order to gain a broader understanding of how the Act should be applied. We have now summarised the information and reached conclusions, so here are the answers!

When is a trader that provides management services subject to the Act?

Trust and company service providers are considered to be subject to the Act under section 3(1)(5), while persons advising customers on financial matters are regarded as subject to the Act under section 45(2)(6)(c). Since management services can include trust and company services as well as financial advice, a management service provider can be treated as subject to the Act and should therefore assess each service he provides to establish whether this matches any activity carried out by persons subject to the Act.

Is a clerical service provider classified as subject to the Act? Would a company be treated as subject to the Act if it provided clerical services externally or intragroup?

Under section 3 of the Act persons that carry out professional or business activities in any of the areas specified by section 3(1) are subject to the Act. The exhaustive list in the Act does not include clerical service providers.

Is a trader that sells goods on hire purchase subject to the Act?

According to the SRS a hire purchase payment service in general is not consistent with an activity carried out by persons subject to the Act. However, if a hire purchase payment comes with extra interest charges and surcharges, then it can even be considered a crediting service consistent with an activity carried out by persons subject to the Act.

Under section 3(1)(9) of the Act persons subject to it include other entities or individuals dealing in vehicles, cultural monuments, precious metals, precious stones and their products or other goods, as well as intermediation or other services in such transactions if payment is made in cash or if cash is paid for the transaction into the seller's bank account to the value of EUR 10,000 or more regardless of whether the transaction is performed as a single operation or as multiple interlinked operations.

Are there any exclusions for group companies providing section 3 services?

The Act offers no exclusions for related (group) companies so a company is subject to the Act if it provides any of the section 3 services.

Could a representative office be subject to the Act?

Whatever its form of business a company should evaluate its activities to establish whether they match an activity carried out by persons subject to the Act. A match makes the company liable to register as a person subject to the Act and file a report on its activity and on the appointment of officers in charge under sections 45(3) and 10(1).