AMLC

Newsletter September 2021

Anti Money Laundering Centre

Dear colleague,

Attached is the September 2021 AMLC newsletter on developments related to money laundering.

This edition contains news about a new FATF report, the obligation for companies to share identifiable customer data when moving cryptocurrency (Travel Rule), the National Risk Assessment (NRA) for the three BES islands, and a working group focusing on the luxury watch sector.

As always, we conclude with case law, this time dealing with the disciplinary culpability of two lawyers, an administrative fine for a civil law notary and the termination of a banking relationship.

If you have gained experience or have run into set-ups that you want to share, please mail AML.Centre_Postbus@belastingdienst.nl. Do you know any colleagues who would also like to receive the newsletter? They can subscribe using this email address. Lastly, if you want to stay up-to-date: follow us on LinkedIn!

Enjoy the read,
The AMLC

ANTI MONEY LAUNDERING CENTRE

News

Travel Rule

This summer, the Financial Action Task Force on money laundering (FATF) pointed out that a majority of countries have not yet implemented the FATF Crypto Guidance (read more here). The FATF Crypto Guidance includes the so-called Travel Rule: the obligation for regulated companies to share identifiable customer data when moving cryptocurrency. The cryptocurrency sector is questioning the usefulness and necessity of the rule, but at the same time they are starting a search for the right technical solution. A group of major US exchanges and custodians, working together in the U.S. Travel Rule Working Group, claims to have found a common technical solution. The white paper was made public earlier and a first version of a proposed solution has now been built.

Tip

Do you want to know which anti-money laundering (AML) rules apply in Germany, Liechtenstein or Japan? The website of iclg.com maintains a comprehensive publicly accessible overview for 29 jurisdictions.

New FATF rapport

The FATF reviewed the opportunities and challenges of new technologies for AML/CFT to raise awareness of relevant progress in innovation and specific digital solutions. The FATF also looked at the persisting challenges and obstacles to their implementation and how to mitigate them. This project included the review and analysis of regulatory technology (RegTech) and supervisory technology (SupTech), both of which can improve the effectiveness of FATF Standards. As an example, natural language processing can support more accurate, flexible and timely analysis of customer information and reduce inaccurate or false information and enabling more efficient matching and search for additional data. Better and more up-to-date customer profiles mean more accurate risk assessments, better decision-making, and fewer instances of unintended financial exclusion. You can read the full report here.

NRA BES

Money laundering through the real estate sector is the main money laundering risk on Bonaire, Sint Eustatius, and Saba. This is evident from the second National Risk Assessment of money laundering and terrorist financing for the three BES islands carried out by the Research and Documentation Centre (Wetenschappelijk Onderzoek en Documentatie Centrum, WODC). Other major money laundering risks common to all three islands are money laundering through licensed banks, through underground banking and unlicensed money remitters, and through the physical movement of cash by sea and/or air. The whole report can read here.

Pressure cooker

In the previous newsletter we told you about the PwC/AMLC game called the Pressure Cooker, in which a company is involuntarily involved in a criminal construction. There are still places available for the digital session on Thursday 14 October in the morning. From November, the game will be played every third Thursday of the month, hopefully live again! More information can be found here.
Interested? Mail to: Fiod.PwC.pressurecooker@belastingdienst.nl

One minute to midnight

By: Menno Ezinga, Driver organized crime, AMLC

There has been a lot of media coverage in the past year about the role of expensive watches in organised crime. The criminal cases refer to exclusive brands of watches (Rolex, Audemars Piguets, Patek Philippe) that appear in various ways in criminal, mostly drug-related, activities. Last but not least, the trade in these watches regularly involves the laundering of criminal assets. In the same media, Thomas Bosch, director of the Dutch Fiscal Information and Investigation Service (Fiscale inlichtingen- en opsporingsdienst, FIOD), argued for more regulation in the jewellery sector where these watches are traded.[1] Because, as it turns out, there is still a lot of improvement to be made here in order to make these exclusive watches less attractive in the criminal business process. In this context, a multidisciplinary working group was recently established.
To explain this working group, this article outlines how expensive watches play a role in the laundering of criminal assets and what the obligations are under the Dutch Money Laundering and Terrorism Financing Prevention Act (Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft).

We know that a lot of money is involved in organised drug crime. And that, to the average criminal, cash poses less of a risk of being detected by regulatory authorities than cashless money. However, nothing is as uncomfortable/risky as walking down the street with large shopping bags full of cash. Moreover, even criminal money must yield a return. Therefore, criminals acquire goods that fit a criminal's lifestyle. In order to make it more difficult for criminals to purchase goods using cash, the government plans to introduce a cash limit of €3,000. This ban on cash payments will apply to professional or business traders, including the jewellery trade. But this does not yet apply to the exclusive trade of watches. The watches are in great demand in organised drug crime. They are very valuable (up to several one hundred thousand euros a piece), stable in value, handy and, not unimportantly, highly sought after. The watches are therefore not only part of the external appearance of the criminal, but also form an important link in the business process of the criminal organisation.

The exclusive watch business is a niche, both in the Netherlands and internationally. The industry has a significant 'like-knows-like' culture. We also see brokers in the industry who work either independently or on behalf of a client. Working with a middleman is more common for exclusive goods. In criminal circles, such an additional link usually serves a different purpose, namely to conceal the identity of the real buyer from the investigating authorities. Working with an intermediary in this context is called a 'straw man'.[2] The straw man receives the criminally obtained money from the actual interested party in cash or by giro transfer into his account to make the purchase. When the purchase is registered, the name of the intermediary is recorded. On the other hand, when the watch is tried on the wrist, the real buyer enters the shop.

The money-laundering structure described above can also be found in other industries. The role of sales outlets is crucial in countering this money laundering modus operandi. A number of instruments are already available for this purpose. For example, a jeweller, just like other natural or legal persons acting in a business capacity as buyer or seller of goods, is a Wwft institution for transactions involving cash payments of €10,000 or more. At that time, customer due diligence must be carried out and any unusual transactions must be

[1] https://nos.nl/artikel/2375589-fiod-juwelier-moet-criminele-horlogekoper-weren
[2] See also the case study presented on the Financial Intelligence Unit (FIU) website.

reported. When selling an exclusive watch in cash, a record must therefore be kept of the buyer. If more than €20,000 is paid in cash, the seller must always report this as an unusual transaction, as this is an *objective indicator*. In addition, during the sales process, the jeweller may at times 'sense' that something is amiss (for example, the watch being tried on the wrist by the real buyer while dealing with a straw man or asking for the note to be split up so that each part remains under €10,000). If the trader has reason to suspect that the transaction may be related to money laundering, a report must be made on the basis of the *subjective indicator*. It is clear that neither instrument is watertight. Registration forms are not always filled out truthfully or accurately or at all. In addition, a middleman who regularly buys watches 'by order' of his customers is not always a suspect for the jeweller.

Exclusive watches are therefore attractive for use in the criminal earnings process. But how can we counteract this? An article in the police magazine, Blauw, on this subject led to the establishment of a multidisciplinary working group. The police, the FIOD, the tax authorities, and the public prosecutor's office work together here, pooling their fragmented knowledge and using their own knowledge to find out how big the problem is and which indicators can be tied to this phenomenon. In other words, what position does the luxury watch sector occupy within crime? The working group is looking in particular at facilitators who contribute to exclusive watches becoming part of the criminal chain. While the working group started recently, it sees the added value of engaging with private sector stakeholders, to learn from them and to share ideas with them in keeping this sector clean.[3]

In addition to contributing to the working group, it is important for the jewellery industry to recognise that they are an attractive target for people who want to launder their illicitly acquired assets. This task cannot be left to individual outlets and trade associations alone. After all, the trade in exclusive watches is by no means always limited to the larger sales outlets. You could, however, think about the accessibility of having such watches bought and sold by dealers. Watch manufacturers therefore also have a responsibility to think along with them to prevent their product from slipping into the criminal circuit. In addition to the analysis coming out of the working group, it would be a nice by-product to also think about the preventive possibilities.

Case law

Amsterdam Board of Discipline (Raad van Discipline Amsterdam), 26 July 2021, Disciplinary case lawyers for violation of the Wwft: ECLI:NL:TADRAMS:2021:173

In this case, the Board of Discipline ruled, among other things, on the question of whether two lawyers had failed to investigate and report unusual transactions in violation of the Wwft. One of the lawyers had taken on, under an Undertaking Agreement, a service that provides for the management of a large sum of money for litigation funding in the Netherlands. The question that arises is whether the Wwft applies to this service, as this is not the case for all forms of service provided by lawyers. The Wwft applies to attorneys and law firms insofar as they independently provide professional or business advice or assistance with the services referred to in Article 1a (4)(c)(1°) of the

[3] This can be done by contacting Florian Krijtenberg, f.krijtenberg@belastingdienst.nl.

Wwft. Managing money is one of the Wwft-governed services mentioned in this article and so, according to the Board of Discipline, the lawyer should have conducted a Wwft investigation. In addition, according to the Board, the lawyer failed to report unusual transactions to the Financial Intelligence Unit (FIU). The Undertaking Agreement involves parties that are incorporated or domiciled abroad, such as the Cayman Islands and the British Virgin Islands. Because it is generally known that the financial systems on these islands have a questionable reputation, the Board felt there was reason to assume that the Undertaking Agreement could be related to money laundering. The other lawyer also acted culpably, according to the Board. He signed the Undertaking Agreement and should therefore have realised that there were Wwft obligations, even though he was not the lawyer handling the case.

Trade and Industry Appeals Tribunal (College van Beroep voor het bedrijfsleven, CBb), 27 July 2021, Difference between WOZ value and purchase price: ECLI:NL:CBB:2021:793

In this case, the Financial Supervision Office (Bureau Financieel Toezicht, BFT) imposed an administrative fine on a civil-law notary for violation of the Wwft. The central issue in the appeal was whether the civil-law notary should have recognised an increased risk of money laundering in view of the fact that the purchase price of the property was lower than the value under the Valuation of Immovable Property Act (Wet waardering onroerende zaken, WOZ), because a mortgage loan for the purchase of the property had been provided by a non-financial institution, because a high interest rate of 10% had been agreed for the loan. and because a special profit-sharing arrangement had been agreed in the mortgage deed. The Board ruled on the difference between the purchase price and the WOZ value that the civil-law notary did not have to recognise a higher risk of money laundering, because the civil-law notary had argued from the start that the port where the property was located had deteriorated, that the property was a company residence intended for the manager of that port, that the property was in a poor and outdated state of repair, and that the port was of interest to criminals, which led to a police raid, while the WOZ value of the property was determined before that raid. However, according to the Board, the civil-law notary should have recognised an increased money-laundering risk in the other factors.

The mere fact that the purchase price is lower than the WOZ value does not by definition lead to an increased risk of money laundering. This case illustrates that the circumstances of the specific case are very decisive in assessing a money laundering risk. The Specific Wwft compliance guideline for civil-law notaries offers support in this respect.

Amsterdam Court of Appeal, 27 July 2021, Interim injunction to terminate a banking relationship: ECLI:NL:GHAMS:2021:2316

Medical group Polikliniek Holding brought summary proceedings against Rabobank, because the bank had terminated the banking relationship due to Polikliniek possibly being involved in money laundering or trading with sanctioned countries. According to the bank, the origin of the assets of the former shareholder and also the largest financier of the Polyclinic could not be determined on the basis of client due diligence. According to the polyclinic, Rabobank should not have terminated the relationship and the bank proceeded to perform client due diligence rashly and carelessly. According to the Court of Appeal, it is not plausible that Rabobank's investigation was rash or careless. Apart from the legal obligation of customer due diligence and transaction monitoring, the bank had justified questions about the large amounts of cash deposits with unusual denominations, including banknotes of €500, made by Polikliniek Holding. One of the risk sensitivities which pursuant to the Wwft must be taken into

account in the client due diligence procedure is the occurrence of a lot of cash transactions within an enterprise. Moreover, the clinic's argument that paying in cash is not alien to the sector has not been further substantiated. In addition, the director of the clinic indicated that a large proportion of clients paid cash for hair transplants and that he was working on increasing payments by PIN/transfer. In addition, Rabobank's questions about the origin of the assets of the former shareholder (and thus indirectly the resources of the Polyclinic) were not adequately answered. There were no bank statements left and the bank only received a description of MCC's activities. For other questions, the Polyclinic referred the bank to the accountant. However, the latter could not explain the origin of the assets. Because no clarity was provided on the origin of the funds, the Polyclinic did not sufficiently enable Rabobank to meet its obligations under the Wwft, and the termination was not unacceptable according to the standards of reasonableness and fairness.

Cash entails an increased risk of money laundering. It is difficult to trace and therefore attractive to conceal the origin of criminal assets. Large denominations are often used to hide the size. Although the European Central Bank ceased producing 500 euro banknotes in 2019, hundreds of millions of them are still in circulation. It is good that in this case the bank has been alert to the deposits of the 500 euro notes. By increasingly restricting cash payments, criminals will eventually have nowhere to go with large notes. Industry associations such as LTO and BOVAG, which advise their members not to accept such notes any more, also play an important role here.

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