



Corporate tax alert Belgium

UBO register: information reporting deadline and FAQ publication

The Royal Decree of 30 July 2018 (published on 14 August 2018) defines the implementation modalities for the 'register of ultimate beneficial owners' (the 'UBO register').

The Belgian legislator had already created the legal framework for the UBO register in the Anti-Money Laundering (AML) Law of 18 September 2017, implementing and transposing the Fourth AML Directive. The entities for which information concerning the UBOs must be collected are Belgian incorporated companies (including Belgian civil partnership), entities incorporated in accordance with the Belgian Non-profit Organisations Law (such as non-profit organisations, international non-profit organisations and private foundations), as well as trusts and fiduciaries.

The AML Law also determines who qualifies as a UBO for each entity. The following persons are considered as UBOs of corporations:

1. The natural person(s) who has/have direct or indirect ownership of a sufficient percentage of the voting rights or ownership interest in that entity, including through bearer shareholdings. A shareholding of 25 % plus one share shall be an indication of direct ownership or sufficient percentage of voting rights. In case of indirect ownership, the percentage to be taken into account is the weighted percentage.

2. The natural person(s) who control(s) the corporation by any other means (e.g. shareholders' agreement, veto right);
3. The natural person(s) who hold(s) the position of senior managing official(s), if, after having exhausted all other means of identification, and provided there are no grounds for suspicion, none of the aforementioned persons is identified or if it is not certain that the person(s) identified is/are the beneficial owner(s). Being a residual category, the identification of a beneficial owner must be duly documented and justified.

The responsibility for the necessary information's correct and timely reporting lies with members of the board of directors in corporations, non-profit organisations or foundations. Directors who have not reported in time or who have reported inaccurate information risk serious administrative and even criminal penalties. For trusts and fiduciaries, the trustees have the obligation to report the necessary information.

What information and by when?

The persons responsible for reporting UBO information must provide a complete and accurate identification of UBOs. Additionally and for corporations, a detail of the UBOs' interests in the corporation must be reported, as well as an identification of possible intermediaries (e.g. shares held by another corporation).

The Royal Decree of 30 July 2018 enters into force on 31 October 2018. By way of tolerance, directors of corporations and foundations will have to report UBO information by 31 March 2019 (extended from the initial deadline of 30 November 2018).

Any latter alteration in information regarding the UBO must be reported within one month after the alteration is known. Subsequently, there is a yearly obligation to verify UBO information. A confirmation that the information is still up-to-date is enough.

Access to the UBO register

Access rights to the UBO register differ strongly between corporations and other legal entities.

Regarding the UBO register for corporations, the public can have access to the UBO information, next to the 'competent authorities', which include the tax authorities and reporting entities subject to the preventive framework of the AML Law. However, public access to UBO information will be limited to certain information. The public will have access to the UBO's name, interests, nationality and country of residence. However, there will be no public access to the UBO's date of birth, residence or first name. Citizens who intend to request certain information can only do so on the basis of the corporation's name or the company number registered with the CBE. Furthermore, they will be obliged to pay an administrative fee (which is yet to be determined).

UBO information concerning non-profit organisations, foundations, trusts and fiduciaries is only accessible to competent authorities, entities obliged to report in light of the AML Law's preventive framework and to persons or organisations who demonstrate a legitimate interest. This legitimate interest must relate to the combat against money laundering, financing of terrorism or any related criminal activities.

Based on exceptional circumstances (e.g. risk of fraud, kidnapping, blackmailing, extortion, underage UBO, legally incompetent UBO, etc.), every UBO may request that access to its information is limited.

Belgian tax authorities and the UBO register

During the drafting stage of the new Belgian AML Law, it was an explicit intent for the tax authorities not to have free access to the UBO register. Nevertheless, since March 2018, the possibility to access the UBO register was added to the tax authorities' investigative powers.

In light of a specific investigation vis-à-vis a taxpayer, the tax authorities may consult the UBO register with the goal of ensuring a correct tax assessment. What is important in this regard is that the consultation must relate to a specific taxpayer. Thus, it is not allowed for tax authorities to randomly search the UBO register (fishing expedition). Moreover, only officers exercising the function of 'attaché' or any higher function are authorised to consult the UBO register.

FAQ published

Due to the uncertainty around various elements of the UBO register, the administration [published an FAQ on its website](#) to provide additional clarifications. For example, the FAQ explains two methods to calculate the threshold of more than 25% in case of indirect ownership of shareholdings.

What's next?

UBO information must be provided by every corporation, organisation, trust or fiduciary; doing so in Belgium and across the EU. The required information is to be communicated to the UBO register through the MyMinFin platform by 31 March 2019 at the very latest.

Individuals can already prepare themselves and their entity beforehand by taking certain measures, such as having adequate and detailed information (for instance, accurate percentage of ownership interest or voting rights) on the beneficial owners of their organisation and every legal entity through which beneficial owners control their organisation.

The Belgian tax authorities will have a significant amount of new information at their disposal, added to financial information already exchanged automatically between tax authorities.

Consequently, it is very likely that tax authorities will use this newly acquired information to scrutinise the financial situation

of high net worth individuals owning assets in a foreign country.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Emmanuel Brehmen, ebrehmen@deloitte.com, + 32 2 600 66 79

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

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