



## **Laga Newsflash**

### **Belgium implements the fourth anti-money laundering Directive - including UBO-register**

On 6 October 2017, a new law on anti-money laundering, counter terrorism financing and the use of cash was published in the Official Journal. The law transposes the fourth Directive on anti-money laundering ('AML 4') and the updated recommendations of the Financial Action Group into national law, while replacing the previous law of 1993 on anti-money laundering.

The most important change is the creation of a national Ultimate Beneficial Owner register ('UBO-register'). Belgian companies and other legal entities must collect the necessary information on their beneficial owner(s), which is recorded in the UBO-register.

#### **Definition of UBO**

The Belgian UBO-register will be installed and administered by the Treasury Administration of the Federal Public Service Finances and will contain all information on the ultimate beneficial owners of companies and other legal entities. Who can be considered as ultimate beneficial owner (UBO) depends on the type of legal entity.

For all Belgian companies, the ultimate beneficial owner is any natural person directly or indirectly holding a sufficient percentage of voting rights or shares, or is able to control the company through other means. Holding more than 25% of voting rights, shares or capital, directly or indirectly, through other companies is an indication that there is a sufficient percentage. If a company is unable to identify an UBO after

exhausting all means, the natural person(s) who are senior managing officials within the company will qualify as UBO. Ongoing negotiations on a fifth anti-money laundering directive ('AML 5'), expected by the end of 2017, indicate that the 25% threshold may be lowered in the future. It is currently unclear what the impact is on companies without legal personality (such as a Belgian civil partnership – *burgerlijke maatschap/société de droit commun*). It is expected that the anticipated Royal Decree will clarify exactly which legal entities are in scope.

For Belgian non-profit organisations, foreign non-profit organisations with a Belgian centre of activities, international non-profit organisations and foundations, the law identifies different categories of UBOs: members of the board of directors, representatives of the organisation, people in charge of daily management, the founder(s) of a foundation and the (categories) of beneficiaries of the organisation. All persons qualifying under one of these categories should be reported as UBO.

## Trusts and fiduciaries

The reporting duties for trusts, fiduciaries and other similar legal entities are also transposed. Belgian law does not provide such legal forms, even though the existence of such foreign entities is recognised under Belgian International Private Law, as is confirmed by the explanatory memorandum.

Therefore, as AML 4 only requires the registration of trusts in the jurisdiction in which the structure has "tax effects", the registration duty is currently without practical relevance for Belgium. The explanatory memorandum to the law underlines the current legal uncertainty and refers to the AML 5-negotiations that would require trusts (and other structures) to provide information to the UBO-register of the jurisdiction in which it "is controlled", instead of the jurisdiction in which it has "tax effects". Belgian legislators have announced that any final decision on AML 5 will be reflected in Belgian law as soon as possible.

## New reporting obligations for directors

According to this law (amending the Belgian Companies Code), the new reporting duties will be the responsibility of the directors of companies and non-profit organisations based in Belgium. The directors will need to provide the information on the UBO within one month after the UBO "is known or changes".

In order to comply with these new obligations, a Royal Decree will further clarify the content of the information which directors must provide and the way in which this information is to be reported. Before the publication of such a Royal Decree, the reporting duty can in fact not be executed.

Directors of companies and non-profit organisations who do not report the information on the UBO(s) of the company or other legal entity on time, risk a fine between EUR 50 and EUR 5,000.

## Access to the UBO-register

It is clear that the UBO-register will obtain information that will be considered sensitive in many cases. The anticipated Royal Decree will clarify who can access the UBO-register and under what circumstances. The explanatory memorandum states that authorised instances can only access the UBO-register in light of the objectives of the law, this is preventing money laundering and counter terrorism financing.

As of this moment, it is certain that the Belgian register will be accessible to:

- Financial institutions and other institutions requiring the information for KYC/AML purposes
- Judicial authorities combatting money laundering
- Foreign Tax authorities requesting access for tax assessment purposes, following an EU Directive. Belgium must implement this Directive by 1 January 2018

Readers should also be aware that some proposals on the new AML 5 directive currently circulating (namely those of the European Parliament) provide for the UBO-register to become public in the near future (taking into account certain considerations such as privacy, safety, etc.).

## The Belgian tax authorities and the UBO-register

While earlier in the process one could be unsure whether the Belgian tax authorities would be granted access to the Belgian UBO-register, such uncertainty will likely not last for much longer. Last week (of 2 October 2017), the Belgian government approved a pre-draft bill allowing access by the Belgian tax authorities to the UBO-register for tax assessment purposes. While the specifics would still need to be reflected in a Royal Decree, it is a foregone conclusion that the Belgian tax authorities will gain access to this information.

It should be expected that the Belgian tax administration will make use of this envisioned access to the UBO-register, especially for tax audits of high net worth individuals/families. The tax authorities will undoubtedly use this information for wealth audits, focusing on the (movements of the) assets and holdings of Belgian taxpayers, rather than the income. The (inter)national information in these registers across the EU might also be considered relevant for Cayman tax purposes.

This information will be part of a broader view which the tax authorities will have on wealth structures, following the automatic exchange of international financial account information (CRS, FATCA), which only just became available to the authorities. Furthermore, recent legislative initiatives have increased the investigation and taxation periods in cross border situations. Finally, a political agreement was recently announced on the future full-scale abolishment of internal Belgian banking secrecy.

For the above reasons, high net worth Belgian taxpayers should expect increased scrutiny by the Belgian tax authorities on tax aspects of their assets and holdings.

## How can Laga help?

Laga will monitor these developments and provide updates as they happen.

As a full service practice within an international network, Laga can assist companies in implementing the UBO-register requirements, especially in cross border situations.

Laga can also assist with all tax related questions or tax audits triggered by this new obligation.

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