



Laga Newsflash

UBO register: information to be reported by 30 November 2018 at the latest

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'). Among other things, the Royal Decree stipulates which information must be communicated about the UBOs of companies, associations, foundations and trusts. The Royal Decree will enter into force on 31 October 2018 and, as a general rule, UBO information must be communicated by 30 November 2018 at the latest.

Setting the practical modalities concerning the UBO-register

Belgian legislators had already created the legal framework for the UBO-register in the Anti-Money Laundering Law of 18 September 2017, implementing and transposing the Fourth Directive on Anti-Money Laundering. The new Belgian Anti-Money Laundering Law determines the entities for which information concerning the UBOs must be collected. The entities in scope are Belgian incorporated corporations (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 Anti-Money Laundering Law also determines who qualifies as a UBO for each entity. Legislators place the responsibility for the necessary information's correct and

timely reporting 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.

Legislators delegated the further implementation of certain important aspects, such as the entry into force date or the right to access the register, to the Royal Decree of 30 July 2018.

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).

Since the Royal Decree enters into force on 31 October 2018 and the directors of corporations and foundations only have one month to report UBO-information. The deadline for the first reporting is set at 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 UBO-information concerning corporations and UBO-information concerning 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 Anti-Money Laundering 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. Civilians 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, civilians 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 Anti-Money Laundering 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.

On the basis of 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.

In light of the Fifth Anti-Money laundering Directive, the importance of the UBO-register will only increase. Consequently, aspects such as access to the UBO-register will be extended, and a European central platform that compiles information from UBO-registers in different member states will be established. The Fifth Anti-Money Laundering Directive must be implemented before 10 January 2020.

Belgian tax authorities and the UBO-register

During the drafting stage of the new Belgian Anti-Money Laundering 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, 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.

What's next?

UBO-information must be provided by every corporation, organisation, trust or fiduciary; doing so in Belgium and across the EU.

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.

Tax controversy

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