

The Belgian implementation of the EU mandated UBO-register

The fourth anti-money laundering Directive (2015/849) of May 20, 2015 mandated the EU member states to set up a register for the ultimate beneficial owners of companies and other structures. The deadline for the implementation of this UBO-register was June 26, 2017. The Belgian legal framework for the UBO-register was created with the law of 18 September 2017, published in the Belgian Official Gazette. This law created the obligation for companies, non-profit organizations and foundations to provide the government with the identities of their ultimate beneficial owners. However, no administrative framework was created at the time.

The Royal Decree of 30 July 2018 on operating procedures of the UBO-register, published in the Belgian Official Gazette on 14 August 2018, finally created the necessary administrative framework for the UBO-register. The Royal Decree entered into force on October 31, 2018.

For companies, a UBO is defined as a stakeholder of at least 25%, or anyone who has a significant say in the company based upon a stakeholders agreement. For other entities, the founders and the directors are both considered UBOs.

The Directors of Belgian companies, non-profit organizations, foundations and trusts (or other similar structures) will be required to file the following data regarding their UBOs:

- Full name
- Date of birth
- Nationality
- Country of residence
- Full address
- The date on which the person became UBO
- Taxpayer identification number

An entity (company or otherwise) is subject to this obligation if it has its registered office in Belgium. Foreign companies with a Belgian branch are not subject to this obligation. Trusts are subject to this obligation if the trustee lives or has its registered office in Belgium, or, in the case the trustee is not an EU resident, if the trusts holds real estate in Belgium or the trust has business relations in Belgium.

The register is publicly accessible, but the information that is accessible is limited in order to comply with privacy regulations. For entities other than companies, the request must be properly motivated. In certain cases, the UBO may request for anonymity concerning the publicly available information. In this request, the UBO must demonstrate a high risk of fraud, kidnapping, extortion or intimidation, in order to obtain the requested anonymity.

The UBO-register is not a tax measure per se, but it can have tax consequences, parallel with FATCA and CRS.

The deadline for filing this information is September 30th, 2019. We can assist with the filing for the UBO-register.

Vandendijk & Partners, September 2019