

New reporting requirement in the Belgian income tax return: Private wealth structures.

New reporting requirement

Belgian tax payers have to report already their foreign bank accounts (as of income year 1996) as well as their foreign life insurance contracts (as of income year 2012). A law of 17 July 2013 imposes a new reporting requirement for private estate and off-shore structures in which Belgian tax payers are, directly or indirectly, involved. The new obligation shall be applicable as of income year 2013.

Purpose of the reporting requirement

The purpose of this new obligation is not to prohibit that type of private wealth structures, but to inform the tax administration of the existence of such structures and the identity of those involved, in their capacities as founders or (potential) beneficiaries.

Envisaged structures

The envisaged structures are the so-called “legal constructions”, a new notion in the Belgian tax law by which private estate structures and off-shore entities are envisaged (e.g. partnerships, trusts, foundations, offshore companies, etc.).

Two distinct categories of “legal constructions” are defined in the law:

- 1) A legal relationship whereby goods or rights are put with an administrator who will manage them for the benefit of a beneficiary or a specific goal.
- 2) A non-resident legal entity that is not subject to any income tax in the country in which it is established or located or is, regarding the income from capital and movable property, subject to a substantially more beneficial tax regime than the one applicable to such income in Belgium and whose shares or parts are entirely or partially held by a Belgian tax resident or of which the beneficial owner of the goods and capital is a Belgian tax resident.

The legislator will publish a list of the ‘legal entities’ qualifying for this second category of legal constructions.

Envisaged persons

The notification measure does not only apply to the Belgian individual tax residents having established a legal construction, but also to those who are, at their knowledge, beneficiary or even potential beneficiary in any way or at any time of such legal construction.

The definition of the notion “founder” of a legal construction is very large. Not only the person that established the legal construction outside his professional activities is envisaged, also the person who contributed goods and rights to the legal construction qualifies as ‘founder’. Also the persons that are direct or indirect heirs of the aforementioned persons will qualify as ‘founder’, unless those heirs deliver proof that they and their entitled ones will not benefit at any time or in any way financial or other benefits granted by the construction. Finally, the persons holding legal rights to the shares or parts or holding economic rights to the goods and capital belonging to the second category of legal constructions, will qualify as ‘founder’.

Income tax return

From assessment year 2014 (2013 income), Belgian resident tax payers have to indicate in their income tax return the existence of a legal construction of which the taxpayer himself, his spouse or his minor children are either a founder, or are, at this knowledge, in any way or at any time beneficiary or potential beneficiary. Although the law is not specific on this, we assume that the reporting requirement will be applicable for the legal constructions existing on any moment in 2013. This involves that the dissolution of the legal construction before the end of 2013 will not prohibit the reporting obligation.

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Please do not hesitate to contact us should you need further information.

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