

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.

A project of law has been introduced to consider these so called legal constructions transparent for the application of the tax law. This project did not yet become a law. It is possible that this project of law will be voted and ratified in 2014, and as such be applicable on the income of 2014.

Envisaged structures

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

- a. 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.
- b. 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.

Concerning the aforementioned non-resident legal entities, a royal decree has been published on 2 April 2014 with a list of the envisaged entities per envisaged country. Examples of such structures are partnerships, foundations, Anstalten, Stiftungen, offshore companies, The complete list of the non-resident legal entities envisaged is attached.

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

Please note that the term “founder” has to be interpreted broadly. Not only the person who has established the structure is envisaged, but also the person who has contributed goods and/or rights to the structure. Furthermore, direct or indirect heirs of “founders” are themselves considered founders of the aforementioned structures, unless they can prove they and their entitled ones will not benefit at any time or in any way financial or other benefits granted by the structure. 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 the legal constructions, will also 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 at any moment in 2013.

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

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List of the non-resident legal entities subject to the obligation of mention.

- 1° United States Virgin Islands : Exempt Company;
- 2° Anjouan (Comoros) : International Business Company;
- 3° Antigua and Barbuda : International Business Company;
- 4° Anguilla : International Business Company
- 5° Aruba : Stichting Particulier Fonds;
- 6° Bahamas : International Business Company;
- 7° Bahamas : Foundation;
- 8° Barbados : International Business Company;
- 9° Barbados : International Society with Restricted Liability;
- 10° Belize : International Business Company;
- 11° Bermuda : Exempt Company;
- 12° British Virgin Islands : Company;
- 13° Brunei : International Business Company;
- 14° Cayman Islands : Exempt Company;
- 15° Cook Islands : International Company;
- 16° Costa Rica : Company;
- 17° Djibouti : Exempt Company;
- 18° Dominica : International Business Company;
- 19° Isle of Man : Company;
- 20° French Polynesia : Société;
- 21° Grenada : International Business Company;
- 22° Guam : Company;
- 23° Guatemala : Fundación;
- 24° Guernsey : Company;
- 25° Guernsey : Foundation;
- 26° Hong Kong : Private Limited Company;
- 27° Jersey : Company;
- 28° Jersey : Foundation;
- 29° Labuan (Malaysia) : Offshore Company;
- 30° Lebanon : Companies that qualify for the “offshore company regime”;
- 31° Liberia : Non-resident company;
- 32° Liechtenstein : Stiftung;
- 33° Liechtenstein : Anstalt;
- 34° Luxemburg : Société de gestion Patrimoine Familiale;
- 35° Macao : Fundação;
- 36° Maldives : Company;
- 37° Marshall Islands : International Business Company;
- 38° Mauritius : Global Business Company category 1;
- 39° Mauritius : Global Business Company category 2;
- 40° Micronesia : Company;
- 41° Monaco : Foundation;
- 42° Montserrat : International Business Company;
- 43° Nauru : Company;
- 44° Nauru : Other forms of enterprises negotiated with the government;
- 45° Dutch Antilles : Stichting Particulier Fonds;
- 46° New Caledonia : Société;
- 47° Niue : International business company;
- 48° Northern Mariana Islands : Foreign sales corporation;

- 49° Palau : Company;
- 50° Panama : Fundación de interés privado;
- 51° Panama : International Business Company;
- 52° Saint Kitts and Nevis : Foundation;
- 53° Saint Kitts and Nevis : Exempt Company;
- 54° Saint Lucia : International Business Company;
- 55° Saint Vincent and the Grenadines : International Business Company;
- 56° Salomon Islands : Company;
- 57° Samoa : International company;
- 58° San Marino : Fondazione;
- 59° São Tomé and Príncipe : International Business Company;
- 60° Seychelles : International business company;
- 61° United States of America - Delaware : Limited Liability Company;
- 62° United States of America - Wyoming : Limited Liability Company;
- 63° Turks and Caicos Islands : Exempt Company;
- 64° Tuvalu : Provident Fund;
- 65° Uruguay : Sociedad Anónima Financiera de Inversión;
- 66° Vanuatu : Exempt Company;
- 67° Vanuatu : International company;
- 68° United Arab Emirates: Offshore Company;
- 69° Switzerland : Foundation.