

NEW OBLIGATION: THE UBO REGISTER

As of 31st March 2019, the Belgian national legislator requires all Ultimate Beneficial Owners (UBOs) to register themselves in a register of final beneficiaries. The aim of this register is to create a centralized database containing information on all the persons who control or own one (or several) legal entity as identified by the Law.

Therefore, the Law provides for the obligation (1) for companies, nonprofit organizations (local and international), foundations and trusts, to collect and hold adequate, accurate and current information on their beneficial owners and (2) for the directors to transmit any new information within a month and by electronic means to the UBO register.

Please find below the main principles of these new obligations, as well as how Tax Consult can assist you in fulfilling them.

1. Definition: Ultimate Beneficial Owner

The Law identifies various categories of beneficial owners depending on the legal entity to which they belong. Three types of legal entities are identified, namely (i) companies, (ii) nonprofit organizations and foundations and (iii) trusts and other similar entities.

The beneficial owner is the person that is the owner of the legal entity or the person having the control over the legal entity. The following persons are considered as being beneficial owners:

- (i) For companies:
 - a. Any natural person who has direct¹ or indirect² ownership of at least 25% of the shares or the voting rights including through bearer shareholdings ;
 - b. Any natural person who controls the company by any other means (e.g. shareholders' agreement, the power to appoint members of the management board, veto right) ;
 - c. Any natural person who holds the position of chief executive, if, after having exhausted all possible means of identification, and provided there are no grounds for suspicion, none of the aforementioned persons is identified or if it is not sure that the identified person(s) is/are the beneficial owner(s).

Please note that an UBO can be considered as “isolated” when he/she fulfills the conditions of the ultimate beneficial owner or as “grouped” when the controls results from its coordination with one or several other persons (i.e. as part of a shareholders’ agreement).

¹ “Direct beneficial owner”: a beneficial owner who directly owns or controls the entity responsible for providing information.

² “Indirect beneficial owner”: a beneficial owner who owns or control the entity responsible for providing information through one or several legal entities.

- (ii) For nonprofit organizations and foundations:
- a. Directors ;
 - b. Founders ;
 - c. Persons entitled to represent the nonprofit organization or the foundation ;
 - d. Persons in charge of the daily management of the nonprofit organization or the foundation ;
 - e. The natural persons or, when those persons have not yet been determined, the class of persons in whose main interest the legal non-profit organization or foundation is set up or operates ;
 - f. Any other natural person exercising ultimate control over the nonprofit organization or the foundation by other means.
- (iii) For trusts and other similar legal arrangements:
- a. The settlor ;
 - b. Trustee(s) ;
 - c. Protector ;
 - d. The beneficiaries, or where the individuals benefiting from the trust have not yet been determined, the class of persons in whose main interest the trust is set up or operates ;
 - e. Any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

Concerning (ii) nonprofit organizations and foundations and (iii) trusts and other similar legal arrangements, all persons mentioned above in categories a to f should be identified and registered as UBO. This obligations is therefore cumulative for all this categories of persons.

Concerning (i) companies, persons mentioned in both categories a and b above, should be identified and registered as UBO (*i.e.* cumulative approach). However, please note that category c is a residual category which only has to be used if category a and b do not lead to the identification of an UBO.

2. Identification UBO

As mentioned above, both direct and indirect UBOs are targeted by the legislator.

An indirect beneficial owner is a beneficial owner who owns or controls the entity responsible for providing information through one or several legal entities (*i.e.*, a chain of ownership). In this case, the companies will have to examine all levels of the ownership structure to ensure that all persons who have indirect control are identified.

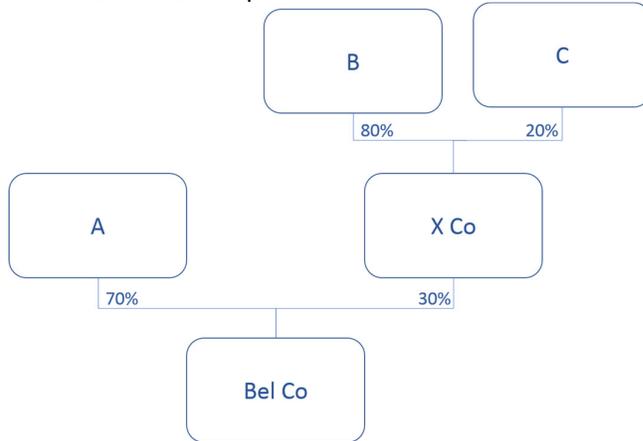
An indirect control could be established as follows:

1. When an intermediate entity owns more than 25% of the shares or voting rights of the company responsible for providing the information and a natural person has a majority interest in this intermediate entity (*i.e.*> 50% of the voting rights and the shares) ;

- Where the weighted value of the participation of a natural person in the shares or rights of the company responsible for providing the information, via intermediary entities in a chain of ownership, exceeds 25%.

A person identified by one of these two approaches must be registered as the UBO of the company responsible for providing the information in the UBO register.

Allow us to illustrate point 1 of the above and to calculate the 25% (see FAQ UBO, 17 October 2018):



- A is the beneficial owner of Bel Co ;
- B indirectly holds 80% of 30% i.e. 24%. However, since X Co has more than 25% of Bel Co and B has control of X Co, B is also the beneficial owner of Bel Co ;
- C is not an effective beneficiary of Bel Co.

3. Required information

Every entity responsible for providing information communicates to the register the following information of each of its beneficial owners. Any change should be reported within a month following the modification of the information :

- Name and first name ;
- Date of birth;
- Nationality/nationalities ;
- Full resident address ;
- The date on which he/she has become a beneficial owner of the entity responsible for providing information ;
- His/her identification number in the National Register of Natural Persons or in the Crossroads Bank for Enterprises and if not available, any similar identification number given by the State in which he/she resides or of which he/she is a citizen ;
- The category/categories of persons to which he/she belongs.

Complementary information is required when the legal entity is a company:

- If it concerns a direct or indirect beneficial owner, isolated or grouped;
- If it concerns an indirect beneficial owner, the number of intermediaries as well as, for each of them, a full identification ;
- The extent of the control or ownership on the entity responsible for providing information, that is to say among others:
 - In the case of a direct beneficial owner and when the control derives from the ownership of shares or voting rights, the percentage of shares or voting rights owned in the entity responsible for providing information ;
 - In the case of an indirect beneficial owner and when the control derives from the indirect ownership of shares or voting rights, the percentage of shares or weighted voting rights owned in the entity responsible for providing information.

Please note that at least 1 document will have to be submitted to finalize the registration.

4. Access to the register

The data of the register regarding companies responsible for providing the abovementioned information are available to:

- The competent authorities (*e.g.* tax authorities) ;
- The obliged entities in the framework of fulfilling their obligations regarding due diligence towards their clients (*e.g.* accountants, notaries, etc.) ;
- Members of the general public.

The register regarding non-profit organizations, international non-profit organizations, foundations, trusts, fiducies and other legal similar entities is available to:

- The competent authorities ;
- The obliged entities within the framework of fulfilling their due diligence obligations towards their clients ;
- Any other person or organization having a legitimate interest ;
- Every person submitting a written request to the Administration of the Treasury for non-profit organizations, international non-profit organizations, foundations, trusts, fiducies and other legal similar structures that control a company.

5. Sanction

In case of a breach the Minister can assess an administrative fine between € 250 and € 50.000. The administrative fine is applied after that the entity responsible for providing information has been heard or at least duly invited to be heard.

6. Entry into force

The Royal decree has entered into force on October 31st 2018, but an official delay has been granted by the Authorities up until March 31st, 2019 to fulfill their obligations with respect to the UBO register.

7. Help from Tax Consult

In principle, the obligation to communicate the above-mentioned information binds the directors. To this end, the administration has developed an electronic application that is accessible through MyminfPro.

Nevertheless, Tax Consult could assist you with your registration once the government has finalized the application for mandataries and set it up online. We could act as your external mandatary, if you would give us the proper authorization and provide us on time with the relevant documents (see point 3 above).

If you have questions and / or remarks related to the foregoing, we kindly ask you **to contact your person of contact at Tax Consult, who will be willing to provide you with additional information and/or assistance.**

Yours sincerely,

Tax Consult