



## 1. Increased global and Belgian transparency

Increased legal and tax transparency is an unstoppable trend. Belgian taxpayers already are familiar with the reporting duties in relation to foreign bank accounts, private wealth structures and life-insurance contracts. Most of them are also aware of the global exchange of information of bank data between tax administrations worldwide.

Recent measures now also address internal privacy of Belgian taxpayers and citizens. The corporate law reform will for instance have far stretching consequences for the so-called 'civil company' (*burgerlijke maatschap/société de droit commun*) in terms of publication in the Crossroads Bank for Enterprises and accountancy obligations. Even more important is the enactment of the so-called UBO-register (register of ultimate beneficial owners) by Law of September, 18, 2017 implementing the 4th EU Anti-Money Laundering Directive of 20 May 2015 (Directive EU 2015/849).

### 2. The Belgian UBO-register: now is the time to act

The law of September, 18, 2017 still needed a Belgian implementation by way of Royal Decree. A Royal Decree of July, 30 2018 on the operating procedures of the UBO register has now been published in the Belgian State Gazette on August, 14 2018 and will enter into force on October, 31, 2018. The required information on beneficial ownership shall have to be communicated for the first time to the UBO register by November, 30, 2018 at the latest. The Royal Decree of July, 31 2018 transposes in part the 4th EU Anti-Money Laundering Directive and, by anticipation, the 5th EU Anti-Money Laundering Directive of May, 30 2018 (directive EU 2018/843) which amends the 4th Directive.

### 2.1 Entities subject to reporting duty

Companies registered in Belgium, (international) non-profit associations, foundations, trusts, fiduciaries and other similar entities are obliged to collect and keep adequate, accurate and up-to-date data relating to their ultimate beneficial owners and to file this information with the UBO register. Trusts and fiduciaries are subject to specific conditions.

The obligation to file the relevant information with the General Treasury Administration in charge of managing the UBO register lies upon the entities, and more specifically upon their directors – and not upon the beneficial owners themselves.

### 2.2. Who is 'beneficial owner'?

The July, 31 Royal Decree refers to the Law of 2017 for the definition of the beneficial owner. The Decree makes a distinction between the direct and indirect beneficial owner (the individual who "owns or controls the 'information provider' through one or several legal entities"). The concept of the indirect beneficial owner aims at identifying the beneficiaries having an effective interest or control through the intermediary of other structures, including foreign legal entities.

The Royal Decree requires companies incorporated in Belgium to communicate to the UBO register the following information on each beneficial owner:

- (i) last name and first name, date of birth (day/month/year), citizenship(s), country of residence, complete address of residence, date on which they became the UBO of the company, national registry number or registration number with the Crossroads Bank for Companies (or similar identifier abroad),
- (ii) the relevant category of UBO they belong to,
- (iii) whether he/she is a direct or indirect UBO,
- (iv) whether he/she is an isolated UBO or jointly with other individuals,
- (v) if he/she is an indirect UBO, the complete identification of each intermediary,
- (vi) the percentage of shares or voting rights owned, and in the case of indirect detention or control, the percentage of shares or weighted voting rights held in the company.

Comparable information needs to be provided by (international) non-profit associations and foundations incorporated in Belgium. The Decree requires trustees and fiduciaries managing trusts, fiduciaries or similar legal entities from Belgium (or maintaining business or ownership relations in Belgium), to collect and preserve similar information on their beneficial owners and to communicate information related to Belgium to the UBO register.

### 2.3 Who has access?

Data contained in the UBO register is accessible to the competent authorities and related entities (including the Ministry of Finance, tax authorities, the CTIF-CFI, the police, the NBB, the FSMA, company auditors, accountants, lawyers, notaries, bailiffs, etc.), as well as – to a large extent - to any member of the public (see 5<sup>th</sup> Anti-Money Laundering Directive). More safeguards have been put in place for other legal entities than companies (i.e. the (international) non-profit associations, foundations, trusts and fiduciaries) where members of the public have to justify a legitimate interest related to the fight against money-laundering or to the financing of terrorist or other similar activities.

The General Treasury Administration may, at the request of a beneficial owner, limit access to the public to all or part of his/her information (i.e. disproportionate risk of fraud, harassment, kidnapping, blackmailing, extortion, violence or intimidations, or if the beneficial owner is minor or incapacitated). Exemptions are

granted on a case by case basis only upon a *detailed analysis of the exceptional nature of the circumstances*.

A criminal or administrative fine may be imposed on any company, (international) non-profit associations, foundations and their directors responsible for a breach of any of their obligations.

### 3. Questions

In case you would have questions regarding the implementation of the UBO-register in a given case or questions regarding safeguarding of privacy, feel free to contact us through [office@sanseninternational.tax](mailto:office@sanseninternational.tax) or your direct contact person.