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NEWSLETTER

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# ASSURANCE INSIGHTS

## COMPANIES, NON-PROFIT ORGANISATIONS, INTERNATIONAL NON-PROFIT ORGANISATIONS, TRUSTS AND FIDUCIES, NEW OBLIGATIONS OF TRANSPARENCY: UBO REGISTER

In the context of anti-money laundering legislation, the Belgian Act of 18 September 2017 implementing the fourth anti-money laundering directive (Directive 2015/849 of the European Parliament and the Council of 20 Mei 2015) planned the constitution of the “ultimate beneficial owners” Register (so-called “UBO Register”).

The Royal Decree of 30 July 2018 (published on 14 August 2018 in Belgian Official Gazette) details the operating procedure and precises what information must be provided.

### 1. WHAT IS UBO REGISTER ?

UBO register is set up to collect, to keep and to manage information regarding to the identity of beneficial owners of companies and other legal entities concerned.

The register is managed by the General Administration of Treasury of FPS Finance. Information is also accessible to third parties.

### 2. WHICH ENTITIES ARE TARGETED ?

Companies, non-profit organisations, international non-profit organisations, foundations, trusts and fiducies are concerned by these new obligations. They should communicate, by means of their management organs, information regarding to the beneficial owners.

### 3. WHO ARE CONSIDERED AS BENEFICIAL OWNERS?

Persons who ultimately own or control the entity are considered as beneficial owners.

The identification of the beneficial owners depends of the type of entities concerned (companies, non-profit organisations, international non-profit organisations, foundation, trusts, or similar entities to trusts and fiducies).

#### 3.1. COMPANIES

With respect to companies, beneficial owners are the person(s) who have, directly or indirectly, a sufficient percentage of voting rights or ownership interest in that entity.

A participation of more than 25% in voting rights or in the share capital is a sufficient indication.

The person who controls the company by any other means can also be considered as beneficial owner.

Finally, if it's not possible to identify a person based on the previous conditions, beneficial owners will be the natural person which acting as principal manager.

Please note that it concerns all Belgian companies; large companies as well as SME's, whether or not they have legal capacity.

#### 3.2. (I)NPO'S AND FOUNDATIONS

Regarding (international) non-profit organisations and foundations, the beneficial owners are the following persons: directors, persons entitled to represent the entity, persons in charge of daily management, natural persons or, if they haven't been identified, the category of natural persons in whose interest the legal entity was set up, or any

other natural persons who ultimately control by any other means, the NPO or the foundation.

With regards to foundations, the beneficial owner can also be the founders.

### 3.3. TRUSTS AND FIDUCIES

For these kind of entities, the following persons are considered as beneficial owners: the settlor, the trustee, the protector, the beneficiaries or if they haven't been identified, any other person whose interest the trust was set-up, and finally, any other persons who ultimately control by any other means, in last resort, the trust or the fiducie because of their direct or indirect ownership. Each and every aboved-mentioned persons are considered as beneficial owners.

### 4. WHAT INFORMATION?

Information that must to be provided regarding the beneficial owners depends of the type of entity providers. In any case, the following information must be provided: name, surname, nationality, date of birth, country of residence, full adress, date on which the person became beneficial owner, National Register number and category of UBO to which the person concerned belongs.

Some additionnal information must be provided regarding companies (for example, companies must precise if it is a direct or indirect beneficial owner or the extent of the control or ownership of the entity, etc.).

### 5. DUE DATE

Despite de fact that the Royal Decree will entry into force on 31 October 2018, tax authorities gave a delay until **31 March 2019** to register the ultimate beneficial owners for the first time in the UBO Register.

Please note that any changes about information provided must be adapted in the UBO Register within a one-month period.

### 6. SANCTIONS & REVIEW

In case of non-compliance with the information obligation, administrative and/or criminal sanctions could be applied.

Fines can range from a minimum of EUR 250,00 to a maximum of EUR 50.000,00. These fines could be imposed on directors, members of legal organs, managers and other persons who are responsible of managing the company, ...

Besides, the (statutory) auditor is in charge of checking the information added in the UBO register and in particular that it is in line with the information that has already been gathered by the auditor. In case of differences, the treasury administration will have to be notified.

### 7. IN PRACTICE

You can access the UBO Register and register your beneficial owners by connecting to the online application "MyMinfin" on the website of the Administration. Information could be filed by the legal respresentative or an authorised external party.

The Belgian administration announced that the registration by an external party would be possible at the end of October.

### RSM BELGIUM INFORMS YOU

If you would like to receive additional information on this matter, do not hesitate to contact your audit team.

RSM INTERAUDIT –  
RSM RÉVISEURS D'ENTREPRISES  
BEDRIJFSREVISOREN.

#### **ZAVENTEM**

Lozenberg 22 b 2 - B 1932 Zaventem  
T +32 (0)2 725 50 04 - F +32 (0)2 725 53 41

#### **ANTWERP**

Posthofbrug 10 b 4 - B 2600 Antwerp  
T +32 (0)3 449 57 51 - F +32 (0)3 440 68 27

#### **BRUSSELS**

chaussée de Waterloo 1151 - B 1180 Brussels  
T +32 (0)2 379 34 70 - F +32 (0)2 379 34 79

#### **CHARLEROI**

rue Antoine de Saint-Exupéry 14 - B 6041 Gosselies  
T +32 (0)71 37 03 13 - F +32 (0)71 37 01 39

#### **MONS**

boulevard Saintelette 97 b - B 7000 Mons  
T +32 (0)65 31 12 63 - F +32 (0)65 36 37 07

#### **AALST**

Korte Keppestraat 7 bus 52 - B 9320 Erembodegem  
T +32 (0)53 75 12 20

[interaudit@rsmbelgium.be](mailto:interaudit@rsmbelgium.be)  
[interfiduciaire@rsmbelgium.be](mailto:interfiduciaire@rsmbelgium.be)  
[intertax@rsmbelgium.be](mailto:intertax@rsmbelgium.be)  
[interpay@rsmbelgium.be](mailto:interpay@rsmbelgium.be)  
[itadvisory@rsmbelgium.be](mailto:itadvisory@rsmbelgium.be)

[WWW.RSMBELGIUM.BE](http://WWW.RSMBELGIUM.BE)

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