

New Reporting Duties on Beneficial Ownership

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1. Foreword

With the issuance of the decree of the Italian Ministry of Enterprises and Made in Italy (MIMIT) occurred on 29 September 2023, the new Italian register of beneficial owners of enterprise having legal personality and private legal persons (Autonomous section), as well as of trusts producing legal effects relevant for tax purposes and legal arrangements similar to trusts (Special section), is operational.

The first deadline for reporting data and information on beneficial ownership falls on 8 December 2023; however, as it is a public holiday, followed by a Saturday and a Sunday, the deadline is postponed to Monday 11 December 2023. Nonetheless, some recent legislative proposals are aimed at further postponing this deadline to 6 February 2024.

In order to facilitate the procedure, Unioncamere has prepared, with the assistance of the Italian Chamber of Commerce, an "Operating Manual for the telematic transmission of beneficial owner communications to the offices of the Companies Registry" (hereinafter "Manual").

2. Reporting persons

The data and information on the relevant beneficial owners must be sent to the Companies Registry Office by the following persons:

- directors of enterprises with legal personality;
- founders, if alive, or the persons entrusted with the representation and administration of private legal persons.

In addition, a special section is established for the disclosure of the names of beneficial owners of trusts and similar legal arrangements; in similar cases, the disclosure must be made by the trustee.

As mentioned in the Manual, there is no obligation to report beneficial owners of partnerships and non-recognised associations.

On the contrary, it is still unclear whether the reporting obligation also concerns Italian **permanent establishments** of non-resident companies.

3. Beneficial Owners

The definition of beneficial owner which is relevant for the purpose of the register is set out under Art. 1(2)(pp) of the Legislative Decree no. 231/2007. According to the above-mentioned rules, the beneficial owner is "*the natural person or persons, other than customers, in whose interest the business relationship is ultimately established, the professional service is rendered or the transaction is ultimately carried out*".

3.1 Enterprises having legal personality

For persons other than individuals, the beneficial owner is the individual(s) having the legal ownership (either direct or indirect) of the enterprise or having control over such enterprise.

Where the enterprise is a corporation:

- the individual directly owning 25% or more of its capital is considered to be the (or one of the) beneficial owner(s) of such corporation;
- the individual indirectly (*i.e.* through other corporations, trust companies, intermediaries, interposed persons or nominees) owning 25% or more than its capital is considered to be the (or one of the) beneficial owner(s) of such corporation.

If the ownership structure renders impossible to unequivocally identify the individual(s) having direct or indirect ownership of the corporation, the beneficial owner shall be identified with individual(s) having control over such corporation by virtue of:

- control over the majority of the votes exercisable in the ordinary shareholders' meeting;
- control of enough votes to exercise a dominant influence in the ordinary shareholders' meeting;
- the existence of contractual relationship that allow such person to exercise of a dominant influence over the corporation.

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As a last resort, where the application of all the above criteria does not allow to identify the beneficial owner(s), the beneficial owner(s) is considered to be the individual(s) granted with the power to represent and manage the corporation, in accordance with their respective applicable laws and by-laws.

3.2 Private legal persons

With regard to private legal persons, Art. 20(4) of Legislative Decree no. 231/2007 provides that all the persons below mentioned have to be identified as their beneficial owners:

- the founders, if alive;
- the beneficiaries, when identified or easily identifiable;
- persons granted with the power of representing, manage and administer the relevant private legal person.

3.3 Trusts and similar legal arrangements

The beneficial owners of trusts and similar legal arrangements has to be identified with the **settlor(s)**, the **trustee(s)**, the **protector(s)**, the beneficiary(ies) or class of beneficiaries and other individuals exercising control over a **trust** (or similar legal arrangements) as well as any other individual who ultimately exercise control over the property(ies) contributed into the trust or (or similar legal arrangements).

BENEFICIAL OWNERS	
Enterprises having legal personality	<ul style="list-style-type: none"> • Individuals directly owning 25% or more of the capital; • individuals indirectly (<i>i.e.</i> through other corporations, trust companies, intermediaries, interposed persons or nominees) owning 25% or more than the capital.
Private legal persons	<ul style="list-style-type: none"> • The founders, if alive; • the beneficiaries, when identified or easily identifiable; • persons granted with the power of representing, manage and administer the person.
Trust and similar	<ul style="list-style-type: none"> • Settlor; • trustee; • protector; • beneficiary; • other individuals exercising control over a trust.

4.1 First communication

The first communication shall be digitally submitted within 11 December 2023.

4.2 Notification of changes

Any change in the beneficial ownership structure occurring after the first communication has to be notified within thirty days from the event that have caused the change in the structure. Pursuant to Art. 11(2) of the Ministerial Decree no. 55/2022, the register also contains all the information related to the changes occurred in the beneficial owners submission and may certify changes occurred within a ten-year timespan.

The Manual clarifies that the changes to be reported may concern either the change in the beneficial ownership structure itself (e.g. the entry of a new shareholder that acquired a participation higher than 25% in the share capital, the appointment of a new trustee of a trust, the change of the trust beneficiaries or of the persons exercising control over the trust) or only the information related to existing (and screened) beneficial owners (such as their address, their digital domicile etc).

4.3 Annual communication

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4. Communication of the relevant data

Regardless of whether there are any changes in beneficial ownership structure Art. 3(3) of the **Ministerial Decree** no. 55/2022 provides for an annual communication to be submitted. According to the above-mentioned article, even where no changes have occurred after the first communication, the entities required to report their beneficial owners are bound to confirm that no relevant changes have occurred within twelve months from the date of the first communication (or twelve months after the communication of amendments occurred, see § 4.2 above).

Enterprises having legal personality may confirm that no amendments has occurred when publishing their balance sheets.

4.4 Signatories and third-party communication

As already mentioned, the beneficial ownership communication must be digitally signed:

- for enterprises with legal personality, by their legal representative or one of the directors, their liquidator(s), their judicial commissioner (or an auditor, in the case of inaction by the directors/liquidators);
- for private legal entities, by their founder or one of the legal representatives or administrators, or by the liquidator;
- by the trustee in the case of trusts or similar legal arrangements.

In practice, the above-mentioned persons have to file and digitally sign the so-called TE digital form. After that, the form shall be submitted to the Italian Chamber of Commerce.

The Manual also stresses out the it is not possible to delegate the signing and submission of the form: only the above-mentioned persons can digitally sign and submit the communication.

The omitted communication on the beneficial ownership structure triggers an administrative sanction ranging from EUR 103.00 to EUR 1.032.00.

Where the communication is submitted no later than 30 days after the relevant deadline, the above-mentioned penalty is reduced to one third.

DEADLINE FOR THE SUBMISSION	
First submission	<ul style="list-style-type: none"> • 11 December 2023
Changes in the data	<ul style="list-style-type: none"> • 30 days from the change
Annual communication	<ul style="list-style-type: none"> • Within 1 year from the first submission or • within 1 year from the submission of the amendments

5. Glossary

Ministerial Decree

Decree issued by the competent Ministry which regulates certain aspects or details of primary laws. It is a secondary piece of legislation aimed at implementing rules introduced by primary piece of legislation (such as laws, law decrees, and legislative decrees).

Permanent establishment

In international tax law, it defines the threshold for a presence of foreign enterprise to be taxable in another State. The domestic definition is provided under Art. 162 of the TUIR. This definition is substantially consistent with Art. 5 of the OECD Model Tax Convention.

Protector

It is a person appointed with respect to a trust or similar arrangements. It is its duty to direct or restrain the trustee(s) in relation to the administration of the assets, rights, etc. contributed into trust by the settlor.

Settlor

It indicates the person which actually confers assets, rights etc. into a trust. This person transfers its own assets, rights etc. to the trust and loses control over them in favor of the trustee but for the benefit of the beneficiary of the trust.

Trust

Legal arrangement that could take different legal forms. In a trust, a party known as a settlor gives another party, the trustee, the right to hold title to and manage property or assets for the benefit of a third party, the beneficiary.

Trustee

A trustee is a person, either one (or more) individual or entity, that holds or administers the assets, rights, etc. contributed into a trust by the settlor. It administers such goods for the benefit of the beneficiary(ies) of the trust.