

November 3<sup>rd</sup>, 2023

## ITALIAN TAX & LEGAL UPDATE

Directorial Decree September 23<sup>rd</sup>, 2023

### **Italian Register of Beneficial Owners – Reporting deadline December 11<sup>th</sup>, 2023**

With Ministerial Decree No. 55 of March 11<sup>th</sup>, 2022 Italy has established the Register of **Beneficial Owners** (hereinafter “*the Register*”) pursuant to the EU Directives 2015/849 and 843/2018, after years of waiting and well behind many EU member states. The Register finally become operational in the month of October 2023 pursuant to the Directorial Decree dated September 23<sup>rd</sup>, 2023, and the mandatory **reporting deadline is December 11<sup>th</sup>, 2023**. In the case of newly established entities, the beneficial ownership information must be reported to the Register within 30 days of their establishment.

The actual functioning of the Register will allow Italy to join the Beneficial Ownership Registers Interconnection System (so-called *BORIS system*), established by EU Regulation 369/2021 for the purpose of providing a central platform for searching beneficial ownership information across the EU.

Companies and private legal entities such as registered foundations or associations, as well as trusts and similar institutions, are subject to the above disclosure requirement. Their representatives, and in particular **directors of companies**, have the obligation to **identify the beneficial owners** and report the relevant information to the Register and to other parties subject to *Know-Your-Client* identification requirements such as banks, accountants, auditors, attorneys, notaries etc. (so called “*obligated persons*”).

The concept of “*beneficial ownership*” is also used for **withholding tax purposes** in the context of the EU *parent-subsidiary* and *interest-royalty* directives, as well as of the international conventions for the avoidance of double taxation. However, the meaning of “*beneficial owner*” in the context of anti-money laundering legislation is different. The identification of the beneficial owner to be reported to the Register is discussed below, while the identification of the beneficial owner for tax purposes will be covered in a future *Italian Tax Update* newsletter.

It should be noted that the report to the Register is made in the form of an **affidavit**. This means that any false declarations may be subject to **criminal penalties**, namely imprisonment from 6 months to 3 years and a fine ranging from €10,000 to €30,000.

Furthermore, the affidavit must be signed by the legal representative of the reporting entity with **Cryptographic Message Syntax Advanced Electronic Signature** (CADES).

Therefore, **directors** of companies or representatives of entities subject to the reporting obligation **must** make sure that:

- a) they have **received** adequate, accurate and up to date **information on the beneficial ownership** of the company or entity, together with appropriate **supporting documentation**;
- b) such information is **consistent** with what has been reported to the Beneficial Ownership Registers in other jurisdictions, if any, and to *obligated persons*;
- c) they have been granted the **legal representation** or **directorship** of the company or entity so that they can sign the affidavit;
- d) they have **obtained a CADES electronic signature** device.

Since the above process may take time, we recommend that the individuals responsible for reporting the beneficial ownership information take the necessary steps **as soon as possible**.

We summarize below the information required to fulfil the above obligations. If you need any further information or assistance in connection with the above, please do not hesitate to contact us.

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