UBO registers: How to protect confidentiality in an onshore world

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Ultimate Beneficial Owner ("UBO") registers

On 26 June 2017 the EU Fourth Money Laundering Directive came into effect. One of the significant duties introduced by this directive is the obligation for EU countries to implement national central registers of beneficial ownership. This is applicable for corporate and other legal entities incorporated within their national territory but also for Trusts and similar structures governed under the law of the member state.

The Directive foresees that the name, month and year of birth, nationality, country of residence, nature and extend of the interest of the UBO should be mentioned in the central national register. This information should always be accessible to the competent authorities, Financial Intelligence Units, obliged entities within the framework of customer due diligence, and in the case of legal entities to any person or organisation with a legitimate interest. These are the minimum requirements that the EU countries must follow. The member states can allow for a wider access and certain countries will provide for a public access.

With public UBO registers and published annual accounts anyone will be able to ascertain how much someone is worth. This has an impact on privacy and security.

Onshore alternatives for confidentiality

In a world where the level of transparency develops extremely rapidly and where private individuals like to keep some confidentiality regarding their family wealth, it is logical that the introduction of UBO registers in the EU will have a significant impact on certain EU jurisdictions that are often commonly used (e.g. United Kingdom, Malta etc.). Instead, clients may prefer to set up structures in onshore non-EU countries - with strong AML legislation in place - such as Switzerland.

Swiss Company

To protect UBO confidentiality, clients are setting-up Swiss companies for new activities and migrating EU based companies to Switzerland. With a Swiss Société Anonyme (S.A.) only the board of the company knows who the UBO's are. There is no registration of the UBO's with the trade register.

Swiss Trustee

Interests held through a non-EU Trust fall outside the scope of the UBO register. Switzerland does not have its own Trust law. Clients can determine the governing law of the Trust and appoint a Swiss Trustee. By choosing the appropriate proper law and using a Swiss Trustee, the name of the UBO's will remain confidential.

The predominance of private client banking and asset management in Switzerland makes the offering of Trustee services compelling as part of the coordinated wealth management proposition. The development of Trustee services has rapidly grown in Switzerland since the

ratification of The Hague Convention in 2007 and the publication in 2008 of the Circular letter by the Federal Tax authorities providing clarity regarding the taxation of Trust. The country - with more than 1'120 STEP members - is after the UK, Canada and the US currently considered as the fourth largest country with qualified Trust and estate practitioners.

Swiss Trustee with onshore passive investment vehicle

To obtain more transparency the EU also increases the pressure on offshore jurisdiction by creating a common list of non-cooperative tax jurisdictions. Consequently, for reputational reasons, clients tend to avoid these offshore jurisdictions in favour of onshore jurisdictions.

An alternative for onshore structuring is to combine a Trust administered by a Swiss Trustee with a Luxembourg passive investment vehicle, the Luxembourg "Société de gestion de Patrimoine Familial" (SPF). The SPF has the advantage that it is tax exempt in Luxembourg and only has to pay an annual subscription tax at a rate of 0.25% on its paid-up share capital / share premium / proportion of debts in case it exceeds certain limits. Dividend distributions of the SPF are also exempt from dividend withholding tax.

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