



PRIMETAX GUIDE:

THE ULTIMATE BENEFICIAL OWNER (UBO) CONCEPT IN TÜRKİYE

The “ultimate beneficial owner” concept, a cornerstone of international standards in the fight against money laundering and terrorism financing, is not unique to Türkiye. Instead, it is a global standard implemented internationally, making us part of a larger regulatory community. In all cases, the ultimate beneficial owner must be a natural person.

As part of the Action Plans developed by the Global Forum and the OECD, Türkiye has been actively collaborating with other countries to ensure tax security. This collaborative effort led to the publication of the General Communiqué on Tax Procedure Law No. 529 on 13 July 2021, a significant step towards tax transparency and the legal foundation for the ultimate beneficial owner concept.

It's crucial to remember that the ultimate beneficial owner concept is not just a local regulation but an international standard. The relevant communiqué has been prepared based on the Convention on Mutual Administrative Assistance in Tax Matters, double taxation avoidance agreements in force, and the Tax Procedure Law (TPL) provisions on providing and exchanging information by international agreements, reinforcing our connection to a global regulatory network.

It is essential to distinguish between the two categories of obligated parties:

1. Those institutions and individuals must periodically or regularly notify the Revenue Administration (RA) of real beneficial information.
2. Obligated parties must notify the RA of the ultimate beneficial owner information concerning transactions carried out by their clients when requested by the Presidency.

Additionally, if an obligated party establishes a new taxpayer or changes previously submitted information, the updated information must be notified within one month following the event date.

It should be noted that the ultimate beneficial owner must be a natural person in all circumstances. The following criteria are taken into account when determining the real beneficiary:

- *For legal entities:*

1. Natural person shareholders holding more than 25% of the shares of the legal entity;
2. If there is a suspicion that a natural person shareholder holding more than 25% is not the actual beneficial owner, or if no such shareholder exists, the natural person(s) who ultimately control the legal entity;

3. If the ultimate beneficial owner cannot be determined under subparagraphs (1) or (2), the natural person(s) with the highest level of executive authority.

- *For unincorporated entities, such as joint ventures (as specified in the second paragraph of Article 12 of the Regulation on Measures):*

1. The natural person(s) who ultimately control the entity;
2. If the ultimate beneficial owner cannot be identified under subparagraph (a), the person(s) with the highest executive authority will be deemed the real beneficial owner.

- *For trusts and similar organisations:*

Founders, trustees, managers, auditors, beneficiaries, or persons exerting influence over these organisations are considered the ultimate beneficial owners and are subject to notification.

As can be seen, the determination of the ultimate beneficial owner in legal entities is based on three main criteria: shareholding (ownership), ultimate control, and highest-level executive authority. For entities without legal personality, the determination is based on two criteria: ultimate control and executive authority.

When completing the Ultimate Beneficial Owner Notification Form, for legal entities, the natural person shareholders who directly or indirectly hold more than 25% of the shares, including bearer shares, must first be identified and listed. The explanations related to the form indicate that this shareholding may be either direct or indirect and that the identified real beneficial owner may be a full or limited taxpayer. The criterion to be fulfilled is based solely on ownership of more than 25% of the shares; voting rights or partnership interests are not considered.

For instance, this could include individuals with significant voting rights, privileged management shares, or other substantial ownership interests. If there is suspicion that the natural person shareholder holding more than 25% of the shares is not the actual beneficial owner, or if there is no such shareholder, the person(s) who ultimately control the legal entity will be identified and reported. The phrase “suspected not to be the ultimate beneficial” should be clarified, and objective criteria for making this assessment should be defined. Similarly, it would be helpful to specify the criteria used to determine the person(s) who “ultimately control” the entity. This could include voting rights, privileged management shares, or other ownership interests.

Suppose the ultimate beneficial owner cannot be determined based on the above two criteria. In that case, the person(s) with the highest level of executive authority within the legal entity will be identified and reported. The explanation suggests that the real person(s) with the highest executive authority within the entity on whose behalf the form is being completed should be reported.
