HM Treasury Consultation on Transposition of the Fifth Money Laundering Directive

Institute for Family Business Response

About the Institute for Family Business

The Institute for Family Business (IFB) is the UK's family business organisation, supporting and promoting the UK family-owned business sector through representation, thought leadership, analysis, events and networking.

We work closely with family firms to support them in growing enterprises for generations to come. A central part of our work is to provide educational resources and knowledge-sharing designed to support business owners and those who work in family business. We champion best practice within the family business community and help others to learn from these examples.

About Family Business

Family business is the backbone of our economy, and the bedrock of our communities. In the UK, family firms generate a quarter of GDP and employ over twelve million people. By their very nature family businesses take a long-term view, building on long-term stewardship of people and resources. Their commitment to passing a healthy business on to the next generation is locked into their corporate DNA.

The family business sector is extremely diverse. Family businesses come in all sizes and are found in all industries and communities across the UK. Whilst the majority of family firms are small or micro businesses, there are around 17,000 medium and large firms. The tax contribution of family businesses now stands at £149 billion – more than the annual NHS budget.

The UK family business sector continues to grow. In the UK there are 1 million more family businesses than in 2010, and family businesses have created an additional 2.3 million jobs. Family firms now turn over £1.4 trillion annually, up 7.2 per cent since 2010 - family business turnover has grown by more than that of non-family businesses since 2010[1].

Trust Registration Service

Transitions within family firms – be they in the management or ownership of the business – are times of significant opportunity but also provide challenges. Ensuring that these successful businesses can plan and continue to thrive after an ownership transition is important not only for the owners, employees and communities which rely on those businesses, but the UK economy as a whole.

Trusts are an important succession and ownership tool for many family firms. They can help in the succession process in family businesses and enable the transfer of management responsibilities to be brought in

[1] State of the Nation: The UK Family Business Sector 2017/18, Oxford Economics for the IFB Research Foundation

gradually, smoothly and selectively in the context of family members' skills, competencies and interest. Trusts allow generational transitions to take place while ensuring the long term stability of ownership and management, for the benefit ultimately of the business and its employees. Trusts also support family businesses in acting flexibly and continuing to innovate, a benefit in a fast paced world.

The consultation refers to the expansion of the Trust Registration Service (TRS) to all UK express trusts (that is, a trust deliberately created by a settlor usually by a written trust deed). That would see a very significant increase in the number of trusts that would be required to register with TRS.

More clarity is needed on the definition of 'express trust' – particularly given the number of non-professional trustees who are likely to be administering trusts that will now come into the scope of the regulations.

We have concerns about the impact of the increase in the number of trusts that would be required to register, the communication with trustees, and the resourcing of the TRS itself.

Family businesses raised issues with us around registering information for the current TRS regime. The regime is not user friendly for older trusts or those with more beneficiaries, and those where they were administered by a family member rather than a professional service firm. Not only was awareness-raising of the need to register in the first instance inadequate outside the professional advisory community, but lay trustees then also had difficulty registering information online if they were not from a professional body.

Increasing the number of trusts that need to register only increased the likelihood of more problems of this kind. Serious consideration needs to be given to how the changes will be communicated with all trustees, and those administering trusts.

We would welcome the opportunity to discuss this in more detail with HMRC as part of their consultation on this issue.

The Government should also be mindful of the knock-on impact of the TRS requirements on the disclosures that banks then expect from family businesses, in relation to owners/beneficiaries of owning trusts. Businesses tell us that banks are asking for the same information as the TRS. This can lead to administrative burdens on business and also means personal information about minors and family members risks being spread more widely.

Data Collection and Sharing

In collecting and sharing data about beneficiaries the Government must prioritise the safety and security of beneficiaries. The definition of 'legitimate interest' must not allow for speculative enquiries. A clear and robust process must be established to ensure that requests are only approved where there is clear evidence underpinning a belief that the trust or individual is involved in money laundering or terrorist financing, in line with the original purpose of the directive.

There have already, over recent years, been significant changes to the transparency of trusts. Trusts are already sufficiently transparent to allow government authorities to ensure that people are meeting their obligations. We do not support any measures which would effectively lead to a public trust register.

We believe that the obvious privacy issues created for families establishing a publicly or easily accessible register – or too broad a definition of legitimate interest - would act as a disincentive to families to utilise trusts and that the amendments would, therefore, be damaging to the long term prospects of the UK's family business sector.

For discretionary trusts there is a 'long tail' of potential beneficiaries. These individuals may never receive any benefit from the trust. A publicly available list of all potential beneficiaries could lead to a risk of coercion or action against those beneficiaries who will never receive any benefit, as well as those who do.

Given that tax authorities already have the full details of settlors, trustees and beneficiaries of trusts, we believe that the opening of this sensitive personal information to a wider public register is not justifiable, and will damage the principle of a right to respect for privacy and family life (Article 8 of the Human Rights Act 1998). Including trusts in a public register would also undermine individuals' rights to privacy. The ruling by France's Supreme Court on 21st October 2016 (Conseil Constitutionnel Décision no.2016-591 QPC du 21 octobre 2016 3/3) supports this position. The decision stated 'A reference in a publicly accessible register of the names of the settlor, beneficiary and administrator of a Trust provides information on how a person intends to dispose of his or her estate. This results in a breach of the right to respect for private life.'

We would welcome the opportunity to discuss this further with HMRC in their consultations on this issue.

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