



## **HM Treasury and HMRC Consultation on the Fifth Money Laundering Directive and Trust Registration Service Institute for Family Business Response**

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### **About the Institute for Family Business**

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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.

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### **About Family Business**

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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<sup>1</sup>.

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### **Trust Registration Service**

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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

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<sup>1</sup> 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) and the kinds of trusts that will be required to register. There will likely be a significant increase in the number of trusts that would be required to register with TRS.

Previously family businesses have 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 increases 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 – not only those who are part of the professional community.

In collecting and sharing data about beneficiaries the Government must prioritise the safety and security of beneficiaries. The Government is right to highlight the purpose of the 5MLD, which is to prevent and detect money laundering and terrorist financing, particularly in relation to legitimate interest requests.

We have previously raised concerns about the obvious privacy issues created for families establishing a publicly or easily accessible register – or too broad a definition of legitimate interest – which 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 also 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.

Regarding the specific requirements of the requests for information, we believe it is essential that the definition of 'legitimate interest' does not allow for speculative enquiries. The consultation says requests will have to include information on previous enquiries. We believe this should include all previous enquiries, not just previous enquiries related to that particular trust, in order to prevent or more easily identify speculative requests.

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. Given that this is a new process, and it is not yet clear what kinds of requests will be made or how many, we believe it is important for the Government to establish a timeframe to review the process, and to engage with stakeholders for feedback on it.