

Making beneficial ownership transparent

Background

International initiatives to prevent tax evasion have hitherto concentrated mainly on the exchange of information as regards to taxable income. So, for example, beginning from dates in 2017 or 2018 the Common Reporting Standard will see more than 100 countries automatically exchanging information on taxpayers' bank and other financial accounts, with some 30 further countries exchanging information on request.

Meanwhile, the recent leak of records held by the Panama-based legal firm Mossack Fonseca (the 'Panama Papers') has concentrated public and media attention on the extent to which the beneficial owners of assets may be hidden behind company and trust structures, either in the UK or overseas. However, this lack of transparency is not a new issue but one that the UK Government has been addressing by means of a number of initiatives over recent years.

International commitments

In June 2013, G8 leaders at a summit meeting chaired by David Cameron agreed the 'Lough Erne Declaration', which included a commitment that 'Companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily'.

In November 2014 G20 leaders built on this initiative by adopting a statement of principles committing member countries to take various steps to secure beneficial ownership transparency for companies and trusts. This statement suggested the introduction of central registers of beneficial ownership as one possible means of achieving the desired transparency for companies, but as regards trusts it required only that trustees should maintain adequate information and make it available to the authorities. The statement also included a commitment for exchange of information between the relevant tax and regulatory authorities in different countries.

The UK's PSC Register

By the time that the G20 statement was produced legislation was already before Parliament in the UK to introduce a requirement for UK companies to maintain details of their beneficial ownership, and to provide this to Companies House, by means of a 'PSC Register' (a register of 'persons with significant control'). Under this legislation information must be maintained from April 2016 and provided to Companies House from June 2016. A central register will be maintained by Companies House, and will be available to the public without charge. Similar registers are expected to be introduced in other EU member states under the EU's fourth Money Laundering Directive (4MLD).

A proposed register of trusts

In November 2015 the Government issued a statement indicating how it intended to implement the G20 principles in the UK. For companies, it gave details of the measures already in place as regards the PSC register. As regards to trusts, it indicated that trustees would be required to obtain and hold current beneficial ownership information, including details of the settlor(s), trustees and beneficiaries, and that the Government would introduce a central register of beneficial ownership information for those trusts that generate tax consequences in the UK. The statement indicated that domestic competent authorities would be able to access this information. This implied, without making the point specifically, that the register would not be open to the public. The statement also committed the Government to the exchange of beneficial ownership information with authorities in other states.

A PSC Register for foreign companies

In March 2016 the Government published a discussion paper setting out proposals to increase transparency to the ownership of foreign companies that purchase property in England or Wales or participate in public contracting in England.

Currently the Land Register of England and Wales records the legal owner of land and property, whether held by an individual or a company. In the case of overseas companies the entry shows the company's name and its territory of incorporation. Once the PSC Register is established it will be possible, by using the Land Register and the PSC Register in combination, to determine the beneficial ownership of UK property held by UK companies. The Government now wishes to ensure that a similar facility is available for property owned by overseas companies.

The proposals will require overseas companies to provide information on their beneficial ownership before they are able to buy land or property in England and Wales. The intention is that this would be done by establishing a new register for foreign companies, alongside the UK PSC Register. Once a foreign company has provided the necessary information it will be issued with a unique identifier number which it will be required to provide before it can purchase UK property.

The paper considers the possibility of an exemption for companies incorporated in jurisdictions that already have an accessible central register of beneficial ownership information. In such cases the Land Register would record the unique identifier number from the relevant overseas register. Subsequent developments referred to below mean that in practice this exemption may apply to large numbers of overseas companies.

At the May 2016 Anti-Corruption Summit in London the Government announced that the register would extend to cases where overseas companies already own properties before the register is introduced, and that it would be made available to the public. Both of these points had been left undecided in the consultation document.

As yet, the date of implementation of these measures is not known.

A new international agreement

In mid-April 2016 the UK reached an agreement with Germany, France, Italy and Spain for automatic exchange of information on the beneficial ownership of companies and trusts. The Finance Ministers of the five countries concerned also wrote to the Finance Ministers of the remaining G20 countries urging progress towards a global system for exchanging such information, to be developed by the OECD.

The aim is to move from initial exchange of information to a system of interlinked registers in each country, providing Government agencies in other countries with real-time access to the information concerned. A significant element of the new proposals is that they are to extend to trusts as well as companies ('companies, trusts, foundations, shell companies and other relevant entities and arrangements'). As indicated above, the UK has previously made a commitment to introducing a register of trusts that generate tax consequences in the UK, but no detailed proposals have yet been published.

By the middle of May 40 countries (some of them outside the G20) had committed to join this initiative.

The Crown dependencies and the UK's overseas territories

As a separate matter, the UK has reached agreement with all its overseas territories, and with the Crown dependencies other than Guernsey, that they will provide UK law enforcement and tax agencies with full access to information on the beneficial ownership of companies. An agreement with Guernsey is expected to be put in place shortly. (Some of these territories have since signed up to the April 2016 international agreement, with the result that they are committed to exchange information on trusts as well as companies.)

Conclusion

The vast majority of companies and trusts are not involved in tax evasion or any criminal activity. Nevertheless, they may be reluctant to disclose details of their beneficial ownership because of considerations of security, commercial confidentiality or personal privacy. It appears that the tide has now turned decisively in favour of transparency and individuals may have to accept that wealth held through companies and trusts will increasingly be a matter of public knowledge.

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