

Submission to the Department of Finance and the Department of Jobs, Enterprise and Innovation on the establishment of a Public Register of the Beneficial Owners of Companies and Trusts in Ireland and Europe-wide, as part of the current revisions of the Anti-Money Laundering Directive (AMLD).



Christian Aid Ireland and Debt and Development Coalition Ireland
10th December 2014

The need to know the beneficial ownership of companies and trusts is an urgent issue for governments and people around the world. Here in Ireland, we have learned from the ongoing court case involving businessman Sean Quinn that the use of shell companies in Belize and British Virgin Islands by Mr. Quinn was designed to make it difficult for the Irish Authorities to connect Mr. Quinn to the money tied up in these companies - money ultimately owed to the Irish taxpayer. The recent coverage of the secret Ansbacher accounts is another example of such opaque banking practices.¹ National and internationally, the Irish government and people will be the winners if a public register of the beneficial owners of companies and trusts is established without delay.

In this submission Christian Aid Ireland and Debt and Development Coalition Ireland (DDCI) address some of the key challenges that have been raised in relation to the establishment of public registers of beneficial owners of companies and trusts, and present our key arguments on those issues. We ask that the Irish government:

- Support the establishment of public registers of companies and trusts in the current AMLD negotiations;
- Advocate that a relatively small number of peoples' ability to keep their financial affairs secret must be balanced against the need of society to prevent financial crimes, which have a wide impact on society;
- Recommend that the idea of 'legitimate interest' should be replaced by full public access, including the right to transparent and accessible information for civil society and media;
- Ensure that the information made public in a registry be standard across states, and include at a minimum name, full date of birth and business address, in order to ensure adequate identification capacity.

¹ 'Black Briefcase' of Ansbacher accounts may spill its secret by Martin Wall, Irish Times, 4th December 2014.

It is acknowledged that hidden ownership of companies facilitates the shielding of funds for terrorist financing, money laundering and tax dodging.² The Irish government is aware that one trillion euro is lost to tax dodging every year in the EU, and that billions are being lost from developing countries each year for the same reason. Estimates have shown that developing countries lose more resources to transnational corporations dodging taxes than they receive as development aid. These include countries supported through Irish Aid. Irish taxpayers have a legitimate expectation that their money spent in support of Irish Aid programme countries is not undermined by the tax practices of transnational corporations in those countries.

Lack of public registers of the beneficial ownership of companies and trusts is one of the reasons why it is possible to keep these hidden profits out of sight of tax authorities. For many developing countries, this financial secrecy has very real impacts for millions of citizens every day who are losing out on investment in basic public services. In the Democratic Republic of Congo (DRC) for example, five mining contracts were awarded to anonymous companies in the British Virgin Islands (BVI) at a vastly under market rate and then sold on at market rate to major extractives companies; the estimated cost to the DRC was \$1.35bn or twice the health and education budget. The identities of those who owned, and benefitted from the BVI based company remain unknown.³

A strong Irish position in favour of a public register of beneficial owners is important in the ongoing Triologue negotiations

The review of the European Anti-Money Laundering rules (AMLD) is entering a crucial phase, and it is increasingly clear that the achievement of a *truly public* register - essential to preventing tax dodging - demands political leadership from countries like Ireland, which has a record for standing in solidarity with developing countries. The Department of Finance 2014 publication *Ireland's International Tax Strategy* states that the achievement of international development goals must be underpinned by the ability of all countries to raise their own revenue.

An EU-wide approach to a register would have maximum impact if transparency and disclosure around beneficial ownership is to work. If only some countries establish a public register, there is a likelihood that those company owners who wish to remain secret will shift to other countries where access is restricted. Ireland's position on this issue really matters to the EU process as a whole. But it also matters to the kind of companies that the government wants to attract here in Ireland. Knowing the beneficial owner of a company would allow Irish businesses to understand who they are partnering with, supplying to, or buying from. Further, it is important for Ireland's reputation that the government is attracting companies that provide real economic activity as opposed to risking an inflow of the type of companies that wish to avoid their beneficial ownership being public.

² For example, see Eurodad's *Hidden Profits: The EU's role in supporting an unjust tax system*, a recent report to which both DDCI and Christian Aid contributed
<http://www.eurodad.org/files/pdf/54819867f1726.pdf>

³ *Company Ownership: Which places are the most and least transparent?* Christian Aid and Global Witness, 2013

In this submission we address some of the key challenges that have been raised in relation to the establishment of a public registers of beneficial owners of companies and trusts, and present our key arguments on those issues:

1. Financial secrecy should not outweigh addressing financial crimes

The Council has proposed that beneficial owners of companies might be exempted from giving beneficial ownership information in case they can argue that they run a security risk such as ‘identity theft, fraud, kidnapping, blackmail, violence or intimidation’. Minors or ‘people that are otherwise incapable’ may be exempted as well. However, these potential exemptions are open to abuse. For example, anyone holding some large financial interests in or via a corporate entity may claim disclosure creates a risk of kidnapping.

Recommendation: That the government strongly advocates that peoples' ability to keep their financial affairs secret must be balanced against the need of society to prevent financial crimes which have a wide impact on society. Any exemptions for particularly vulnerable individuals should be based on this principal, and should be informed by a clear criteria for exemption.

2. The subjective concept ‘legitimate interest’ should not restrict public access to information

In the current Council proposal, access would be granted only to persons or organizations who can demonstrate a 'legitimate interest with respect to the fight against money laundering or terrorist financing or associated predicate offences'. Additionally, this potential access only relates to anti-money laundering and terrorist financing, not to tax abuse, corruption or fraud. How would the requests for access by investigative journalists (key to the Lux Leaks research, for example) and civil society organisations with a focus on tax justice be dealt with? Further, given that every country could set different standards for these 'legitimate interests', this could lead to a ‘race to the bottom’ if member states were to start competing to attract financial service businesses by setting the most restrictive legitimate interest and exemption standards.

Recommendation: That the idea of ‘legitimate interest’ should be replaced by full public access, including the right to transparent and accessible information for civil society and media.

3. The information required on beneficial owners in the current proposal is not sufficient

In the current Council proposal, the information that would have to be provided to the register is very limited: at least 'name' and 'month and year of birth'. This has been proven to be insufficient to allow identification to the level of an individual, according to research carried out by UK organizations Global Witness and the Open Society Foundation. Sufficient information must be included for the register to be of use.⁴ A full date of birth should be included, along with a business address which would pose no threat to the privacy of the company or trust owner. Information should be standardized for all member states, so that data may be easily matched.

⁴ *Company Ownership: Which places are the most and least transparent?* Christian Aid and Global Witness, 2013

Recommendation: That the Irish government advocates that information made public in a registry be standard across states, and include at a minimum name, full date of birth and business address, in order to ensure adequate identification capacity.

4. The cost of setting up a public register is not a legitimate reason not to

It is true that there is a financial cost to setting up a public register. However, a public register is an investment: Cost benefit analyses carried out by both the European Commission, and the British government, concluded that the introduction of a public register made financial sense.⁵ From a ‘value for tax payers money’ perspective, it is also important that Irish Aid support to developing countries generates the maximum effect, and is not undermined by tax evasion by either individuals or companies.

Recommendation: That the government recognizes the overall, long-term benefit of the establishment of a public register and supports the establishment of public registers in the triologue negotiations.

5. There are many arguments in favour of a public register, in particular that public registers would benefit all of society.

If all EU member states agreed to public registers, it would make it much harder for unscrupulous people to simply relocate in the more opaque parts of Europe. It would make it much easier and quicker for law enforcement – both within and outside the EU – to follow the criminal money trail.

Public registers would improve the quality of information by allowing many eyes to spot any mistakes contained in the registries. In short, a public register would make it more difficult for criminals to hide. The British government has estimated that for the UK alone a public registry would save £30.3 million in police time due to public’s constructive role on supporting investigations. In the UK, this is much needed as only 0.3% of suspicious transactions are currently investigated. Extending these benefits to all Member States would likely result in significant savings in police time, better crime fighting, better corporate accountability, and a system that would be less costly and easier to administer for member states.

Increased transparency and disclosure within the international tax system are a cornerstone of tax justice. The Irish government is actively engaged in these issues through the current negotiations on the Anti-Money Laundering Directive, as well as on other important measures such as country-by-country reporting and automatic exchange of information. These measures to increase transparency and disclosure in the international tax regime are underway. We ask the Irish government to take this opportunity to act for great tax justice, which will have a lasting positive impact on people here in Europe as well as in countries of the Global South.