Funding the Future

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David Cameron is announcing today that the UK is to have a public register on the beneficial ownership of companies. That's the good news. And don't get me wrong: this is a massive step forward and one I have argued in favour of for a long, long time. So today marks a campaigning win for Tax Research UK and many organisations - especially Global Witness - who have worked on this issue.

But - and that preface demanded a but - the devil will be in the detail and I remain worried. If we have a public registry but with companies being required to provide the data without any corroborating evidence and with Companies House with its current incredibly limited resources and almost total inability to prosecute being the sole enforcement agency for this register this will be a PR exercise and nothing more.

Sure, 90% of companies will publish their beneficial owners - but they will be the ones where legal and beneficial ownership is the same. It is the other 10% who are the problem and many of those will actively seek loopholes in an arrangement if there is no way of proving if what they declare is right or wrong and the agency responsible for doing so is denied the resources it needs to enforce the law.

What we really need are the powers in the UK Corporate and Individual Tax and Financial Transparency Bill - which is being debated by parliament on Friday and which I wrote for Michael Meacher MP. This has real powers to ensure that beneficial ownership data is on public record which I explain with reference to the sections in the Bill as follows:

Section 4 — disclosure of the beneficial ownership of companies

The disclosure of who really enjoys the benefit of limited liability is vital if it is not to be abused. This aims to achieve this goal.

First it requires that a company properly identify anyone who owns more than 10% of its shares by amending the UK’s money laundering regulations.

Then by amending the rules for submitting annual return forms for companies in the UK to Companies House (which differ for large and other companies, meaning two changes are needed to achieve this goal) it requires any company to disclose if its legal owners

differ from its beneficial owners — that is the people who really enjoy the income and gains resulting from owning shares in it.

The aim is to make sure that the secrecy that is currently available to UK companies, who can hide their true ownership behind the names of nominee shareholders, is ended.

Section 5 — the duty of UK financial institutions to report

The risk within section 4 of the Act is that companies will not do what is demanded of them. There is ample evidence to suggest that hundreds of thousands of companies a year do not provide the annual returns to Companies House that company law demands that they submit and as such the information on beneficial ownership that section 4 demands might not be available unless steps are taken to enforce the law. Section 5 provides an alternative mechanism to ensure that the beneficial ownership of UK companies really is disclosed on public record.

What section 5 demand is that UK financial institutions — the vast majority of which will be banks — must tell both Companies House and HM Revenue & Customs about the bank accounts that they open for UK based companies (including foreign companies registered in the UK and LLPs). They must also disclose the real trading address of the companies in question — which can at present be hidden behind a nominee registered office address — and the names addresses of those people that they have identified as required by existing money laundering regulations as the directors and beneficial owners of the company.

Banks must also give details of the actual bank account numbers they maintain — although to prevent fraud this information will not be published.

In addition, if this information changes then the banks and other financial institutions will have to tell both Companies House and H M Revenue & Customs that this has happened — providing a near real time updating service on this information.

The result will be that for every company that has a bank account (and if they have no bank account they are not likely to be significant for tax and other purposes) there will be independent information provided to our regulatory authorities on who controls a company.

The importance of this cannot be overstated: for the first time an independent check on the data at Companies House will be available provided by organisations that will not take the risk of getting this information wrong. We will, therefore, for the first time know just who really is running UK companies — and will be able to see if company and third party data agrees, which may be important.

Importantly, since banks are required to hold this data already under money laundering

regulations and people are familiar with the need to prove their identity to banks now there is no significant additional cost to securing this data, which provides a massive benefit to society as a result at almost no cost to it.

Section 6 — the duty of Companies House to publish information on beneficial ownership

Section 6 of the UK Corporate and Individual Tax and Financial Transparency Bill requires that Companies House publish all the information that banks supply to it except for that on bank account numbers. This ensures that any person dealing with a company can check this data.

More importantly, the section gives Companies House the right to demand information due by the company from any person names by the advising bank as a director or beneficial owner and then provides a sanction against those people if they fail to deliver that information. The sanction is powerful and likely to be persuasive because they will become personally liable for the debts of the company as a result of their failure to supply information as required by law.

The logic is obvious: the right to limited liability is clearly dependent upon making information available to ensure that creditors of the company are protected. If that information is not made available then the right to limited liability should be foregone. The consequence flows from the failure to fulfill an obligation.

Section 7 — the duty of Companies House not to dissolve a company

Companies House has had the right to dissolve companies and strike them off the register of companies if they appear not to be trading for many years.

Unfortunately this right has been widely interpreted by Companies House and the failure to submit information to it, and most especially the failure to submit an annual return form, has been taken by Companies House to be evidence that a company is not trading. As a result hundreds of thousands of companies are dissolved in this way each year although the evidence that they are not trading is very flimsy indeed. There can be little doubt that this has provided fraudsters and common cheats with an easy way to get rid of the companies they have used to hide their activities.

This section changes the obligations on Companies House and says that no company can be dissolved if it has a bank account and none can be dissolved if it has not accounted for the use of that bank account.

Combined with sections 6 and 8 this provision denies the fraudster an easy way out of their obligation to pay tax and, one hopes, their other creditors. As such it restores the requirement for governance and good business practice to UK company law by putting creditor protection at the heart of the obligations arising as a result of adopting limited

liability.

Section 8 — the duty of HM Revenue & Customs to request tax returns

Research has shown that up to one third of all UK companies are not sent a request for a tax return by H M Revenue & Customs each year, and of those companies that are sent requests hundreds of thousands do not comply. In addition, it is also clear that the current penalty regimes that seek to redress this failure on companies' part are not enforced. As a result UK corporation tax is only paid by about one in three of all companies in existence and has become akin to an 'honesty box' tax.

This section of the UK Corporate and Individual Tax and Financial Transparency Bill is designed to change these patterns of behaviour. It requires that H M Revenue & Customs must send a tax return request to any company that has been notified to have a bank account because that fact must provide prima facie evidence that taxable activity may be taking place. By default the provision also means that those companies without a bank account are likely to be saved the requirement to submit a return and HM Revenue & Customs are saved the obligation of investigating them — saving massive amounts of resource in the process.

As with the obligations placed by this Act on Companies House, this obligation on HMRC comes with penalties attached. In this case the penalty is in the first instance that the directors and shareholders of the company become liable to supply the information due by the company if it does not submit them itself and then, more significantly, they become personally liable for any tax the company owes.

Those directors and beneficial owners cannot hope to avoid liability for that tax by not making declaration either, because if no declaration is made the Act provides that HMRC may go to the bank holding an account for the company and request all information it holds on the company, including bank statements for any period HMRC specifies. HMRC is then given the right to use this information to raise estimated tax assessments that will then be the personal liability of the directors and shareholders of the company.

For too long HMRC have not had the power to investigate missing companies and have resorted to having them struck off instead of taking action to recover tax that might be owing. This has meant limited companies have become the trading medium of choice for those seeking to avoid their obligations to pay tax. After the enactment of the UK Corporate and Individual Tax and Financial Transparency Bill that will no longer be the case.

It is expected that this provision could, by itself, raise billions in tax revenue that was previously lost to the Treasury and so could become a key component in tackling fraud. It would at the same time support all honest businesses and underpin the integrity of British business life, from which the whole country would gain by the increase in trust

that would result.

There will, of course, be a cost to pursuing these missing billions, but that cost is bound to be outweighed by the significant increase in tax collected and the social benefits resulting from doing so. This power has been long overdue in the fight to tackle crime.

With these powers we could transform the demand for information into action to deliver real reform to beat crime, tax abuse and to provide a level playing field for British business.

I welcome what David Cameron has done but it is a damp squib of a reform which will nit be enforced and is a mere token gesture as a result. What we need is real reform. I think I have shown that is possible.