

4 AMLD Consultation  
C/o Financial Services Division  
Department of Finance  
Government Buildings  
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Dublin 2  
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4 March 2016

Dear Sirs

**STEP Ireland Response to Public Consultation on transposition of Directive (EU) 2015/849 (“the Directive”)**

We welcome the opportunity to comment under the Public Consultation on Member State discretions on the transposition of the Directive into Irish law.

**Response to Questions 3 and 4 – Beneficial Ownership Register**

The purpose of this submission is to set out the views of the Irish branch of the Society of Trust and Estate Practitioners (STEP Ireland) with regard to certain questions raised in the Public Consultation paper on member state discretion with regard to the transposition of the Directive.

STEP Ireland is supportive of any measure which reduces the risk of money laundering in this area. We therefore welcome the Directive. We now seek that the transposition of the Directive will not impose disproportionate administrative burdens on trusts and ensures the protection of vulnerable persons and the privacy of families. Our submission principally relates to Question Box 4 of the consultation paper but we have set out some comments in relation to the transposition of Article 30.9 at the end of this submission which comes under Question 3.

**Types of trust structures within the scope of Directive**

It is noted that the Article 31.1 sets out that Member States shall require that trustees of any express trust to hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. The term “express trust” is extremely wide. We welcome the opportunity of the transposition of the Directive into Irish law to clarify what is meant by an express trust.

Trust structures are used by charities and the pensions and the financial services industry (e.g. UCITS, unit trusts) which have their own reporting and regulatory regimes. There is therefore already a check on the placement of funds into these trusts from a money laundering perspective. Moreover many of these regulated trusts are exempt from tax (e.g. pension schemes, unit trusts etc.) and therefore do not generate tax consequences which are discussed further below.

The current mandatory reporting of the details of many trust structures means that pertinent information is already available to competent authorities. This framework mitigates against the risk of money laundering in a balanced and practical way. Where there is a pre-existing regulatory regime

which complies with the principles of the Directive, it is suggested that such trust structures are excluded from the ambit of express trust within the meaning of Article 31. In our view, to include such trusts would create an unnecessary further obligation which will not yield additional benefits for AML purposes.

It is also suggested that recognition should be made that certain trusts such as charities, Revenue approved pension schemes and unit trusts which are tax exempt do not generate tax consequences and should therefore not come within the scope of the Directive and the transposition of the Directive should specifically exempt these trusts accordingly.

Article 31 (8) states that “Member States shall ensure that the measures provided for in this Article apply to other types of legal arrangements having a structure or functions similar to trusts”. The transposition of the Directive into Irish law is an opportunity to clarify the meaning of ‘other types of legal arrangements’, as it insufficiently precise.

It is submitted that the transposition of the Directive should recognise that bare trusts or nominee arrangements do not generate tax consequences. For tax purposes the beneficial owner rather than the nominee or bare trustee is taxed in respect of the income or gains accruing to the trust. Furthermore the nominee or bare trustee has ongoing obligations to report details of income and chargeable gains to the Revenue.

#### **Tax residence as the connecting factor**

The current wording in Article 31.1 refers to trusts governed by Irish law.

We welcome the opportunity of the transposition of the Directive into Irish law to extend the duties of trustees to the extent a trust is Irish tax resident as this will provide greater clarity to Irish trustees in relation to their reporting requirements. Significantly this will also reduce the opportunities for those with bad intent seeking to circumvent the tenor of the Directive by applying non Irish governing law to a trust which otherwise has many connections with Ireland and so should be regulated in Ireland.

The concept of tax residence provides a precise test for imposing the obligations under the Directive and would therefore suggest that this should be adopted. In this regard it is suggested that the test for residence set out in Section 574(1)(a) Taxes Consolidation Act 1997 (TCA) should be adopted so that a trust shall be considered within the scope of the Directive unless the general administration of the trusts is ordinarily carried on outside Ireland and the trustees or a majority of them for the time being are not resident or not ordinarily resident in Ireland.

#### **Obligations under Article 31(4) of the Directive**

Under Article 31(4) Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences.

The suggestion in the Consultation Paper that the Revenue Commissioners have indicated an openness to be the body that will maintain the register is welcomed as this will allow the privacy of families and vulnerable persons to be maintained and allow a reduced administrative burden of reporting because of the existing tax reporting obligations already on trusts.

As the transposition of the Directive into Irish law is to deal with the Irish effect of the Directive, the legislation should confirm that “tax consequences” for Irish legislative purposes means Irish tax consequences only. This will provide certainty to Irish trustees in relation to their Irish reporting requirements.

A comprehensive system of reporting obligations already exists when a trust generates tax consequences. In particular information on Irish trusts will already be available via other reporting obligations to the Revenue Commissioners including the following:

- the registration of the trust if it holds assets under form TR1;
- ongoing filing of trust income and chargeable gains in accordance with their tax compliance obligations under Form 1, including chargeable gains arising on distributions from trusts under s579 and s579A TCA, exit charges under s579B, 579E and 579F TCA, ,
- the registration of discretionary trusts (Form DT1) under section 46(15) Capital Acquisitions Tax Consolidation Act 2003 (CATCA);
- the obligations of practitioners to report under section 896A TCA;
- the information provided under from CA24 (Inland Revenue Affidavit) at Part 6 Question 10 in the case of Will trusts;
- On distributions from trusts where income has been earned, there is an obligation on a trustee under Section 246 of the Taxes Consolidation Act to apply withholding tax at the standard rate of income tax and to disclose details to the Revenue by filing a Form R185;
- The mandatory reporting regime for inter vivos trusts under Section 817D TCA;
- the regulation of charitable trusts with Revenue in seeking charitable tax status.

In order to minimise unnecessary administrative duplication it is suggested that the existing framework should be used as much as possible to satisfy the reporting obligations under Article 31 (4). These can be modified as necessary, for example, the form DT1 would need to include a reference to Protectors (if applicable) to satisfy Article 31 (1).

However it is recognised that there is no longer any specific obligation on a trustee to report in respect of capital distributions from trusts which generate tax consequences. A previous obligation on trustees under CATCA to file details of distributions applied where the distribution aggregated with previous gifts/inheritances exceeded 80% of the relevant Group Threshold as defined in the CATCA. That obligation was abolished in Finance Act 2010. It is submitted that a comparable provision could be introduced in this context, so that a tax consequence would only be considered to arise where a capital distribution when aggregated with other gifts or inheritances exceed 80% of the relevant Group Threshold. As a consequence, there would be a reporting obligation on the trustees in these circumstances but the level of reporting would apply the de minimis reflecting that the tax consequences are only significant when the benefit received comes close to the value of the group threshold.

We do not believe that a general provision in relation to 'movement of funds' is appropriate as the movement of funds that do not generate tax consequences are not under the ambit of the Directive.

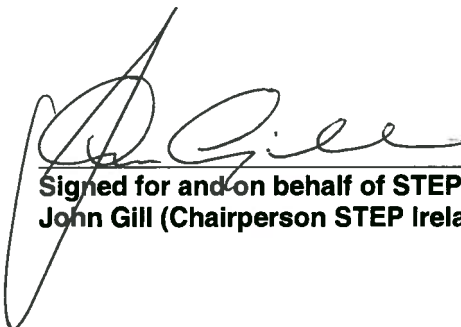
**Access to the register**

The suggestion in Article 31.4 that access to the register may be available to obliged entities, within the framework of customer due diligence in accordance with Chapter II is a matter of concern. As the information on the register will concern families and vulnerable individuals confidentiality is a critical issue and must be maintained in the domestic transposition of the Directive. If the Irish competent authority exchanges information with another competent authority, measures should be put in place under the Irish legislation to require the Irish competent authority to ensure that third parties cannot access this information through the competent authority of the other member state.

**Exemption from obligations to register details of certain beneficial owners of shares under Article 30(9).**

It is submitted that there should be an exemption from the obligation to maintain details of beneficial owners of companies in respect of individuals who because of age or improvidence, or of physical, mental or legal incapacity, are incapable of managing their affairs.

We welcome the opportunity to comment further on this submission as required.



Signed for and on behalf of STEP Ireland  
John Gill (Chairperson STEP Ireland)