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## Business "Transparency and Trust" Proposals: Government is Losing the Plot

Details

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**"On what principle of human behaviour is it likely that those who evade tax and/or engage in corruption will dutifully commit *felo de se* and file the necessary Returns?" - **Max Hudson of Payne Hicks Beach.****

The Government is persisting with its "transparency and trust" proposals first outlined in July 2013 and which are now the subject of a full Government response issued in April 2014.

It appears to be an exercise in high mindedness, but lacking a sense of reality, under the title "Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business".

The Government hopes that this will encourage business in the UK by emphasising its high standards of conduct.

The core of the proposal is that all companies should have and maintain (on at least an annual basis) publicly at Companies House, names and details of those who own 25% or more of a UK company's shares.

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This will basically apply to all UK incorporated companies and entities.

Residential addresses are to be provided, but not made public.

Since professional advisers have been required to establish who owns such a percentage of any company since the implementation of the third Money Laundering Directive and which has become very much an established part of business activity, it might at first seem surprising that institutions in the City, the Law Society and the CBI have expressed serious reservations. However, there are good reasons.

**First**, on what principle of human behaviour is it likely that those who evade tax and/or engage in corruption will dutifully commit *felo de se* and file the necessary Returns?

**Secondly**, why should those who have good reason not to want their wealth publicly disclosed, facing overseas seizure threats or risks of kidnapping risk running foul of these Regulations? They would be at the mercy of a judicial discretion.

**Thirdly**, an individual may own vast estates, and would be able to operate a business, if it is not incorporated, all through a nominee. Why logically should this discretion not apply to a company?

**Fourthly**, these rules do not apply to overseas companies registered under Part 34 of the Companies Act 2006 nor is there to be a public register of holdings in non-UK companies, by UK residents. It is expressly provided in paragraph 52 of the Government document that they do not apply to non-UK companies which have registered in the United Kingdom. There an expression of hope, but little more, that bilateral agreements may change the situation. However, such altruistic activities are never a dominant factor. Indeed, the rest of the EU, with a prospective transactions tax, seems far from keen to preserve UK business.

The first reason is why the new rules will be evaded by its targets, the last how it can be avoided.

Simultaneously, the Government is taking the opportunity to tighten up on controls over and limitations on directorships, including abolishing the capacity to have a corporate entity as a director of another company (last reformed under the Companies Act 2006) and are abolishing the capacity for any company to have "bearer shares". It is also the Government's intention to give greater scope for review of actions by directors when considering disqualification orders.

The overall effect and effectiveness of these new rules remain open questions.