Idea details: Beneficial ownership transparency

Submitted by: James McKinney

Beneficial ownership transparency requires that the real people who own/control companies be disclosed. The Panama Papers are the most recent event to draw attention to the need for beneficial ownership transparency to combat tax avoidance, tax evasion, money laundering and corruption; however, it is not a new concern.

The context

Budget 2016 sets out measures to improve tax compliance and tax integrity and to reduce tax evasion and tax avoidance [1] [2]. However, it doesn't set out measures relating to beneficial ownership transparency, even though Canada has made commitments to beneficial ownership transparency at the 2014 G20 Brisbane Summit [3] and the 2013 G8 Summit [4]. Specific measures endorsed by the G20 are described in the Guidance on Transparency and Beneficial Ownership [5] by the Financial Action Task Force, cited in the G20 Anti-Corruption Action Plan [6].

In terms of Canada's progress on its G20 commitments, in its 2014 G20 Anti-Corruption Working Group Accountability Report Questionnaire [7], Canada reports that it doesn't "require that the beneficial ownership and company formation of all legal persons organized for profit be reported." A later evaluation [8] in 2015 by Transparency International (the international secretariat, not the Canadian chapter) found Canada's progress to be lacking.

In 2014, Canada held a consultation on the Canada Business Corporations Act [9], which included a question on beneficial ownership transparency. However, most comments addressed beneficial owners' shareholder rights and communications means and did not engage with beneficial ownership transparency.

Beneficial ownership transparency was among the most popular ideas from Canada's consultation on its 2014-16 action plan [10] and in the comments on its draft 2014-16 action plan [11]. The proposal was supported by Publish What You Pay Canada, Global Organization of Parliamentarians Against Corruption, Partnership Africa Canada, MiningWatch Canada, InterPARES, Canadians for Tax Fairness.

A proposal

In drafting this commitment, Canada should explore which entities should be subject to beneficial ownership transparency and how and to whom this information should be disclosed. Implementing this commitment may require coordination with provincial securities regulations and the amendment of policies and regulations. Its implementation may benefit from a public consultation.

Canada may need to review the category of Objecting Beneficial Owners (OBOs): shareholders who can hide their identity from issuers and other marketplace participants. OBOs are unique to the US and Canada. The relevant policy is the National Instrument 54-101 Communication with Beneficial

Owners of Securities of a Reporting Issuer.

If there are privacy concerns with respect to the collection of personal information for beneficial ownership, Canada can request that an expert, like the Privacy Commissioner, describe the privacy concerns and explore mitigation strategies.

Other resources

OGP members with commitments for beneficial ownership transparency include the UK [12] and US [13]. Other countries have implemented beneficial ownership transparency outside the scope of the OGP, including Australia.

For additional information, the policy paper, "A Beneficial Ownership Register for the World", by OpenCorporates, may be relevant [14]. Many additional resources are available in Canada and internationally.

In brief

Canada should fulfill the commitments it made as a member of the G20 and G7 on beneficial ownership transparency through its 2016-18 action plan.

1. http://www.budget.gc.ca/2016/docs/plan/ch8-en.html
2. http://www.budget.gc.ca/2016/docs/tm-mf/si-rs-en.html
3. http://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf
4. http://www.international.gc.ca/g7/lough_erne-declaration.aspx?lang=eng
5. http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf
6. https://star.worldbank.org/star/sites/star/files/g20_2015-2016_anti-corruption_action_plan_australia_2014.pdf
7. https://star.worldbank.org/star/sites/star/files/accountability_report_questionnaire_2014_canada.pdf
8. http://www.ethicscentre.ca/EN/resources/Final%20Canada%20BO%20Country%20Report%202015.pdf
9. http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00880.html
10. http://open.canada.ca/en/Beneficial_Ownership_Transparency
11. http://open.canada.ca/en/canadas-draft-action-plan-open-government-20
12. http://www.opengovpartnership.org/sites/default/files/20131031_ogp_uknationalactionplan.pdf
13. http://www.opengovpartnership.org/sites/default/files/final_us_open_government_national_action_plan_3_0.pdf
14. https://docs.google.com/document/d/1gjiZuvwjOYcNJd5btljqJC5yVopbc3dcGJre6-zfNes/edit

Idea Tags: Fiscal transparency

59

Comments

Natalie Kurekas - May 25, 2016

reply

I support TI-Canada's submission. This is an issue of great importance in Canada

56

Porter McConnell - May 16, 2016

reply

Anonymous shell companies are the vehicle of choice for corruption, criminal enterprises, and corporate tax evasion and avoidance. Even folks in the private sector agree there's no good reason to have one. It would be a great step to make the rules of the global economy fairer for everyone, fight crime from terrorism to human trafficking, and make it harder for government officials to engage in corruption. Everyone wins!

You can learn more about our views on beneficial ownership transparency here: https://financialtransparency.org/issues/beneficial-ownership/

68

Mike Gifford - May 16, 2016

reply

Hard to see what any legitimate business would have against a Global Beneficial Ownership Register (GBOR) like proposed here - http://bteam.org/press/after-panama-stepping-up-fight-against-anonymous-companies/

61

Jeff Geipel, Engineers Without Borders Canada - May 15, 2016

reply

Canada should aim to lead on beneficial ownership transparency. Not only is it the right thing to do, without transparency being achieved globally, responsible Canadian firms across all sectors will be at a competitive disadvantage to firms based in countries with problematic laws. Canada needs to set a strong example so it can help push all countries in the world to have an level playing field, which will in the long term help Canada's companies.

58

Susan Carter - May 14, 2016

reply

I fully support the proposals for action on beneficial ownership, the creation of a registry and its close monitoring as very important to greater transparency in all transactions.

60

Jean Symes, Inter Pares - May 13, 2016

reply

Canada is currently involved in the Anti Corruption Summit. Conversely, Canada is one of the easiest places in the world to create anonymous shell companies. For the Canadian government to be taken seriously that it is committed to combat tax avoidance, tax evasion, money laundering and corruption, it must end anonymous ownership, and commit to public, centralized registers of beneficial ownership.

56

Jamie Kneen, MiningWatch Canada - May 13, 2016

reply

This is a very important initiative. To look at it another way, how is it that anonymous ownership is even legal in the first place? The risk of abuse is so obvious and apparent.

56

The ONE Campaign - May 13, 2016

reply

Anonymous shell companies play a central role in laundering and channeling funds, concealing behind a veil of secrecy the identity of corrupt individuals and irresponsible businesses involved in criminal activities, including tax evasion, terrorist financing, and the trafficking of drugs and people. This robs governments, in both developed and developing countries, of resources that might otherwise be invested in improving public services and stimulating inclusive economic growth.

The legitimacy afforded to shady shell companies registered in well-respected places like Canada makes it easy for them to open bank accounts that can wire ill-gotten money anywhere in the world. In far too many cases, this tactic has been used to rob developing countries of the resources they need to invest in health, agriculture, and poverty reduction. In addition, they exacerbate governance problems and undermine the prospects for investment and growth. This risks undercutting the billions of dollars the Government of Canada spends each year on overseas development assistance to help developing countries become more prosperous and secure.

We therefore urge the Government of Canada to increase the transparency of anonymous shell companies by committing to implement public, centralized registers of beneficial ownership information.

62

Susan Dimock (PhD) - May 13, 2016

reply

I completely embrace TI's outstanding work in contributing this and the companion issue of whistle blower protections to the federal government for use in its deliberations. I urge the government to follow TI''s recommendations.

56

John Ritchie - May 12, 2016

reply

I support Transparency International Canada's submission on Beneficial Ownership Transparency. As a resident of the Vancouver area, I am particularly concerned about the lack of transparency in recent major real estate transactions. Creating effective public registers of beneficial ownership will be an important first step towards enhancing transparency.

55

James McKinney (bis) - May 12, 2016

reply

At the London 2016 Anti-Corruption Summit:

"France, the Netherlands, Nigeria and Afghanistan will follow the UK's lead and commit to launch their own public registers of true company ownership, while Australia, New Zealand, Jordan, Indonesia, Ireland and Georgia will agree to take the initial steps towards making similar arrangements. The UK will launch its own fully public register next month – the first G20 country to do so."

https://www.gov.uk/government/news/pm-announces-new-global-commitments-to-expose-punish-and-drive-out-corruption

62

Dennis Howlett, Canadians for Tax Fairness - May 12, 2016

reply

We support action on beneficial ownership as part of Canada's Open Government Action Plan.

This is an area where Canada falls behind many other countries and is not compliant with new international standards of transparency.

The ease with which it is possible to register shell companies in Canada and the lack of verification and updating of information by many provincial and territorial governments provides opportunities for tax evaders and money launderers to commit crimes.

Effective international action to fight tax havens requires that all countries adopt high standards of transparency.

It is also very important that there be public registries of corporate registrations. This would benefit businesses in terms of being able to verify beneficial ownership of clients or potential business partnerships as well as boost public accountability.

68

Transparency International Canada - May 12, 2016

reply

The reportedly leaked documents from a Panamanian based law firm, colloquially described as the “Panama Papers”, highlight a broader issue of the global financial system being abused for illicit purposes such as tax evasion and money laundering, and the pressing need for the Government of Canada to take concrete steps to address the ability of some Canadians to shield themselves, and their financial activities, from Canadian authorities. That some can rig the system to hide their wealth, whether amassed legally or not, is not merely unjust; it also masks corruption and harms global development by siphoning off revenues that could be directed to education, health care and infrastructure. Despite repeated promises at the international level to address company secrecy, Transparency International recently evaluated different G20 member states beneficial ownership transparency legal framework and ranked Canada as having a ‘weak framework.’ This is in contrast to the UK, which was given the ranking ‘very strong.’

Offshore banking is not in itself illegal, and those named should not be presumed to have done anything wrong. However, secrecy attracts those with something to hide, making beneficial ownership transparency an issue of global importance. In light of this, and in the run up to the global anti-corruption summit, which will take place in London on May 12th, Transparency International Canada calls upon the Government of Canada to commit to the establishment of a mandatory public registry of all companies and trusts registered in Canada. This registry will shed light on the legal and effective owners of Canadian registered companies.

Public registers of beneficial ownership allow ill-gotten gains to be more easily traced, making it more difficult and less attractive for people to benefit from the proceeds of crime. They also make it easier for financial institutions and law enforcement officials, amongst others, to quickly, and without additional cost, ascertain information about the legal and effective owners of companies and trusts.

The Government of Canada has committed itself to combat the flow of proceeds of foreign corruption into Canada. Creating a public registry system would be a necessary step to uphold such a commitment.

To ensure an effective registration system, TI Canada urges the Government of Canada to work with provinces to ensure similar legislation is passed in all jurisdictions.

76

PWYP-Canada - May 12, 2016

reply

PWYP-Canada support James' focus on improving beneficial ownership transparency, but wishes to add further context and details of the commitment required by the Government of Canada.

Problem to be addressed: Major corruption scandals which have erupted in recent years share one common characteristic, they involve individuals or companies that use a complex web of anonymous companies and trusts to hide 'their illicitly sourced funds.' The Panama Papers leak reveals the extent to which individuals will go to conceal their private wealth and investments from the public tax systems where they reside. Transparency of beneficial ownership information can enable more effective compliance and enforcement measures and can help government tax agencies to increase revenues.

There is mounting global recognition of the critical role that beneficial ownership transparency plays in the fight against corruption and tax evasion. In June 2013, G8 leaders agreed to a set of principles on beneficial ownership transparency. These principles were then reflected in the G20 High Level Principles on Beneficial Ownership Transparency agreed upon in 2014. Despite these commitments, a 2015 risk assessment of money laundering and terrorist financing in Canada, undertaken by the Government of Canada, identifies Canadian 'corporations' as highly vulnerable to money laundering and terrorist financing. The government notes that this "vulnerability relates to the ability of these entities to be used to conceal the beneficial ownership, therefore facilitating the disguise and conversion of illicit proceeds."

Evidence suggests that anonymous entities in Canada are, in fact, at risk of being misused. A 2013 academic study revealed that that Canada was one of the places in the world where it was most likely that a person would not be asked for proper, verifiable documentation of their identify when setting up a shell company. Recent revelations of offshore companies with links to Canada bolster this concern. The Panama Papers revealed that Mossack Fonseca marketed Canada as a good place to incorporate an anonymous shell company. In addition, Canada is one of the few G8 countries that have not taken steps to ban bearer shares (shares owned by the person who holds the physical stock certificate in their possession). Bearer shares are virtually untraceable and therefore subject to misuse. The Financial Action Task Force (FATF) notes that bearer shares present a higher risk of money laundering and terrorist financing, and recommends that countries take measures to prevent their misuse, including by prohibiting them.

With commitments by the UK, Australia, Netherlands, and South Africa to create public registries of beneficial ownership information, there is mounting pressure for Canada to follow suit. Recognizing the need for action, following a G20 Finance Ministers meeting in April 2016, Canada's Minister of Finance indicated that Canada would work with the provinces to improve beneficial ownership transparency. While working with the provinces is a necessary step, a clear commitment to implement a centralized registry of the legal and beneficial ownership of companies is needed to underpin this work and ensure that Canada makes timely progress towards this goal.

Why Anonymous Companies are a Problem:
Anonymous companies play a central role in money laundering and terrorist financing
o The UN office on Drugs and Crime estimates that between US800 billion and US$2 trillion is

laundered each year
Anonymous companies enable corrupt regimes
o In a World Bank study of 213 cases of grand corruption, 70% involved the use of anonymous shell companies
Anonymous companies help companies and individuals evade taxes
o Canadians for Tax Fairness estimates that Canada loses about $8 billion dollars a year to tax havens
o Global Financial Integrity estimates that in 2013 $1 trillion dollars left developing countries in illicit financial outflows.

The Benefits of Beneficial Ownership Transparency in Canada
• Increases public accountability of companies and public officials, helping the media and civil society assess their structures.
• Ensures that law enforcement officials, securities commissions, and tax authorities have access to information critical to effective investigations in Canada and abroad. This would enable Canadian authorities to not only recoup more taxes, but more effectively fight criminal organizations engaged in money laundering.
• Financial institutions and company service providers benefit, as it is easier and less costly to comply with due diligence requirements.
• Investors are better protected, as they have access to improved information about company ownership.
• Simplifies the otherwise costly and complex exchange of information across jurisdictions.
• Canada fulfills its G8 and G20 commitments, supporting global efforts to fight tax evasion and money laundering, thereby ensuring that Canada is not a 'hotspot' for shady companies and the individuals that hide behind them.

Main Objective: Increase the transparency of the beneficial and legal ownership of companies operating, incorporated, and registered in Canada.

OGP Challenge Addressed: 1, 2, 4, 5

Verifiable and measurable milestones to fulfill the commitment:
• Publicly commit to create a centralized registry of the legal and beneficial owners of all Canadian-registered companies, that is free, publicly accessible and made available in open, machine readable format (2016).
• Establish a formal working group with the provinces, alongside relevant government departments to establish and implement a plan to create a centralized registry of the beneficial and legal ownership (2016-2017).
• Establish a centralized registry of the legal and beneficial owners of all Canadian-registered companies, that is searchable, free, publicly accessible and made available in . open, machine readable format (2017-2018).
• Revise the Canadian Business Corporations Act to eliminate bearer shares and require the conversion of all existing bearer shares to registered shares (2016).

Key sources:
http://www.macleans.ca/news/canada/how-easy-is-it-to-buy-a-secret-shell-company-in-canada-very/
http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises
http://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf

http://www.gfintegrity.org/issue/illicit-financial-flows/
https://www.unodc.org/unodc/en/money-laundering/globalization.html
https://star.worldbank.org/star/publication/puppet-masters
http://www.fin.gc.ca/pub/mltf-rpcfat/mltf-rpcfat-eng.pdf

84

Jon MacKay - Apr 19, 2016

reply

I fully agree with James' proposal. I think this information should be open and freely available.

The Inter-corporate Ownership (61-517-X) database contains information about "who owns what" in Canada. The data is quite detailed and reaches back quite some time (I believe the initial version of the product dates from the 80s and perhaps even the 1970s.)

From the Statistics Canada product page:

From:
http://www5.statcan.gc.ca/olc-cel/olc.action?objId=61-517-X&objType=2&lang=en&limit=0

"The Inter-corporate ownership product is the most authoritative and comprehensive source of information available on corporate ownership; a unique directory of "who owns what" in Canada. It provides up-to-date information reflecting recent corporate takeovers and other substantial changes. Ultimate corporate control is determined through a careful study of holdings by corporations, the effects of options, insider holdings, convertible shares and interlocking directorships. The number of corporations that make up the hierarchy of structures totals approximately 45,000. The information that is presented is based on non-confidential returns filed by Canadian corporations under the Corporations Returns Act and on research using public sources such as internet sites. "

56

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Creating the Open Government Action Plan 2016-18

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