



UN Independent Expert on Foreign Debt and Human Rights

Call for Contributions: Taxation, illicit financial flows, and human rights

Observations on Question 6

Submitted by

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Question 6: In recent months, there has been a stronger call for a Global Beneficial Ownership Registry. What should be the process and mechanisms to achieve this goal? What measures or considerations are needed to ensure that such a registry is framed along human rights principles? What practices, legislation or policies at the national or regional level might serve as good references?

Registers of beneficial ownership will prevent people from being able to hide assets and income data will gotten or on which they owe tax. If law enforcement officers could check the register of beneficial ownership for a country, they would know who owns the company, and therefore who owns the property. If no such registers were available, there would be no way of telling who is behind the company that bought the property for example. The register does not have to be public for tax authorities and law enforcement to benefit from it. A non-public register can protect privacy. But a non-public register prevents other interested organisations like NGOs and journalists from accessing the data. Making the register public, therefore, is more useful.

Several countries have launched registers of companies' beneficial ownership, with some making those registers openly accessible to the public. Elsewhere, companies are being actively encouraged to disclose beneficial ownership data that they collect as part of due diligence investigations into their supply chain, or as part of Know Your Customer initiatives to comply with anti-money laundering and terrorism financing regulations. The [OpenOwnership](#) initiative seeks to make all this information more useful by collating existing publicly available and voluntarily disclosed ownership data, with the ultimate objective of creating a global standard for publicly available ownership data and an information source on ultimate beneficial ownership of corporations across the globe. In this sense, the call for a global beneficial ownership registry will present governments, civil societies and people with accurate and complete disclosures targeted towards reducing corruption and tax evasion, building

societal trust and identifying untaxed revenue that can support debt service and financing SDGs.

One of the main concerns regarding exchange of information for tax matters, is the **right to privacy and data protection** of the information exchanged, including beneficial ownership. The huge amount of information that is being collected by tax authorities following international developments triggered by tax scandals raises the risk of having such an amount of sensitive information concentrated in just a few databases.

From a practical point of view, some hackings of large international financial databases have raised the question of whether it is safe to concentrate the personal information of taxpayers and financial information into a single global database as contemplated under **Article 6 on Sharing of Beneficial Information, Article 7 on Public Country by Country Reporting and Article 17 on the UN Public Registry for Corporate Transparency** under the draft civil society proposal for a UN Convention on Tax.

From a legal perspective, the first concern is whether amassing such information is **proportionate** regarding its effect on the right to privacy. In this regard we ask that the **report of the Independent Expert to the General Assembly, 77th session require Member States to evaluate whether Articles 6 and 7 are compatible with data protection regulations.**

The principles of **proportionality and subsidiarity** challenge the burden of disclosure charged on entities and taxpayers under Articles 6 and 7 of the draft UN tax convention, especially within the European Union, and also question the exchange of information obligations between Member States. There is also a significant risk of what has been called **risk of false information exchange**. If the wrong information is submitted by a country, the second country could assess on the basis of such information and challenging the information in the administrative processes of the two countries is not an easy task.

Moreover, because subjects are not party to exchange of information, they cannot discuss the information, except in the assessment procedure. Where this happens within a country, authorities or the taxpayer can easily request the person submitting the information, such as a bank, to confirm it. However, where this happens in a cross-border case, expenses, administrative burdens and so on, make it impossible, or at least highly complex, to challenge and as such impact the principles of natural justice and right to fair administrative action.

What measures or considerations are, therefore, needed to ensure that such a registry is framed along human rights principles?

- In the interest of striking a fair balance between transparency and privacy, governments and companies should not collect and disclose data beyond the minimum that is necessary to achieve their aim or data that poses a significant risk of harm. Conducting a thorough privacy impact assessment can help to identify potential harms and aid decision-making. What is disclosed to the public can be a subset of the data that is collected and available to public authorities, provided that enough information is made publicly available to allow for meaningful oversight and transparency. A carefully designed and narrowly defined exemption process is important to allow

individuals with legitimate security or privacy concerns to request that their details are not published on the open register. The definition and operation of these exemptions may prove to be the crucial element to achieving proportionality.

- No information should be published publicly than is necessary to achieve the aims of beneficial ownership transparency. The global beneficial ownership register should share enough data with the public to allow them to participate in oversight such as red flagging suspicious patterns that law enforcement officials can take forward, but no more.
- A careful distinction must be made between data that is essential and data that, while helpful or interesting, is not strictly necessary. For example, data on beneficial ownership is best suited for use in analysis when each individual is linked to a unique identifier. However, some jurisdictions have reportedly considered publicly linking beneficial ownership data registers to existing public identification systems to accomplish this. Doing so could increase interference with privacy beyond the level necessary to fulfil the aims of beneficial ownership registers thereby impacting the right to privacy. Governments and companies should therefore consider carefully whether they require the disclosure of information that, while low risk in one country, would be more sensitive in another.

References

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The Committee of Fiscal Studies (CFS) is University of Nairobi's premier research think tank. Its objective is to influence a fair, sustainable and equitable social and economic future supported by a responsive fiscal system. CFS backs a people first political vision related to informing fiscal law and policy. In 2022, OSIEA funded CFS to set up the African Debt and Human Rights (ADHR) research cluster to support research, clarity and participation in fiscal policy making on debt and human rights. These observations are shared as part of ADHR's broader aims.