 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Prohibiting the Issue of Bearer Shares by UK Companies	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Consultation	
IA Number	Not provided	
Origin	International	
Expected date of implementation (and SNR number)	-	
Date submitted to RPC	20/12/2013	
RPC Opinion date and reference	04/02/2014	RPC13-BIS-1987
Overall Assessment	AMBER	
<p>RPC comments</p> <p>The IA is fit for purpose. However, there is insufficient evidence presented in the IA to confirm the Department's view that this proposal is out of scope of One-in, Two-out (OITO). The Department should provide further information relevant to this issue, covering the areas identified below. This additional information will be necessary at final stage for a definitive assessment to be made.</p> <p>The IA generally provides a clear assessment of the costs and benefits of the proposal. However, there are some areas that should be strengthened. These are also presented below.</p> <p>Finally, we note that the IA was submitted to us after the main consultation. We would expect to scrutinise any IA at this stage of the process before the main consultation is undertaken.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>Opacity of the control of corporate structures can firstly facilitate illicit activity, and secondly lead to a deficiency in corporate governance which erodes trust and damages the business environment. Both can ultimately hold back economic growth. Government intervention is necessary to correct the regulatory failure underpinning the first, and the information asymmetry reflected in the second. Bearer shares are a means through which the record of an individual's ownership of a stake in a company can be avoided. Individuals can therefore conceal their control or transfer their control anonymously.</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>The objectives and intended effects of our chosen policy option will be to:</i></p> <ul style="list-style-type: none"> <i>improve our understanding, in conjunction with the wider Transparency and Trust measures, of who really owns and controls UK companies and so prevent the</i> 		

potential for their misuse; and

- *ensure that the UK fully meets Global Forum on Tax Transparency and Financial Action Task Force (FATF) standards on bearer shares activity.*

Three options are considered:

Option 0 - maintaining the current situation;

Option 1 - abolishing bearer shares;

Option 2 - a mandatory custodian arrangement – existing bearer shares being held by a bank and potentially also prohibiting the creation of new bearer shares.

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

The IA is part of a set of four proposals that aim to reduce the opacity around the control of corporate structures, in order to reduce the damage from illicit activity, and improve the trust in corporate governance. This IA specifically focuses upon the prohibition of the issue of bearer shares.

The IA explains how the proposals will have an impact on business from familiarisation costs; bearer shareholders needing to identify themselves to the company; and from the conversion of bearer shares to ordinary ones. This latter cost will also impact upon bearer share issuing companies who would be responsible for the share conversion.

We note that there are some areas that should be strengthened.

Costs to business. The cost estimate on business relies heavily on the assumption of the number of bearer shareholders. The number of UK companies who have issued bearer sharers (1,233) is multiplied by the average number of total shareholders per average UK company (2.3) which gives a total estimated number of bearer shareholders of just under 3,000. The IA would benefit from the use of sensitivity analysis to test the impact of this assumption on costs. We note that option 2 has higher monetised costs than option 1 because of the on-going requirement to maintain the custody of bearer shares. However, the IA acknowledges that option 2 “*has lower un-quantified on-going costs, in terms of the impact on bearer shares of lost anonymity*” (page 1). The IA should present its assessment of the comparative overall costs and benefits of the two options more clearly.

Unconverted shares. The IA explains briefly that measures will be required to deal with any bearer shares that remain unconverted after the conversion period (paragraph 70). The IA should provide more detail on these measures and explain any impact upon business as a result.

Finally, we note that the IA was submitted to us after the main consultation. We would expect to scrutinise any IA at this stage of the process before the main consultation is undertaken. The IA should have been clearer as to what consultation has taken place and, particularly, the further consultation to come. The final stage IA should provide more information on the consultation stages.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposals regulate business and are intended to come into force after 31 March 2014. The IA includes a SaMBA. This explains satisfactorily why small and micro businesses cannot be exempt (as “shell” companies are “*often the vehicle of choice for money-laundering and other crimes*” and “*we believe that the majority of shell companies would be classified as small and micro businesses*” (page 40). The SaMBA is fit for purpose.

We note the difficulties in quantifying potential costs experienced by small businesses due to lack of data on ownership resulting from the ‘anonymous’ nature of bearer shares. However, as far as is possible, the final IA should aim to strengthen the assessment of these potential costs.

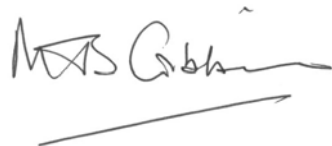
Comments on the robustness of the OITO assessment.

The IA has a section on OITO (page 39). This states that the proposals are out of scope “*on the grounds of implementation being required to meet international obligations*”. However, there is insufficient evidence presented in the IA for this assessment to be confirmed at this stage. The IA should provide additional information relevant to this issue. This information should include:

- further details on the binding nature of the commitments, including information on the legal position of G8 agreements, any enforcement mechanisms and the consequences should the UK not keep them. (We note that the IA states that the [G8] commitments are “*public and binding*”);
- a detailed explanation of the commitments and comparison against each individual element of the policy proposal, to enable confirmation or otherwise that the proposal represents the minimum to which the UK has committed. Even if the minimum commitment is deemed out of scope, any action beyond this would be considered to be in scope;
- As part of addressing the above two bullets the Department should consider providing details of what other G8 countries are doing to meet their G8 commitments.

This additional information will need to be provided at final stage to enable the Committee to assess whether this proposal should be considered to be in or out of scope of OITO.

Signed



Michael Gibbons, Chairman