TAX JUSTICE NETWORK

20 April 2022

To: Alaska State Legislature

To whom it may concern,

Officially launched in 2003, the Tax Justice Network is an independent expert network, dedicated to promoting policy positions on topics related to tax abuse, tax havenry and wider issues of international financial regulation, through rigorous research. We are committed to "changing the weather" in those areas and seek to do so through the implementation of what we call the "ABCs" of financial transparency: automatic exchange of information, beneficial ownership transparency and country by country reporting[1].

Trust law represents one of the key areas where urgent changes are needed. As explained in our paper "Trusts: Weapons of Mass Injustice?", although trusts can indeed be used to protect beneficiaries who are sick and vulnerable, nothing in the law actually requires this. Instead of helping those in need, US case law has allowed trusts to benefit a person convicted of sexual abuse against a minor or a person convicted of murder.

Trusts are especially problematic for two reasons. First, their secrecy. Second, their capability to shield assets from the rest of society (tax authorities, victims of sexual abuse, murder or fraud, etc). Unlike companies and other legal persons which usually need to incorporate and register with the commercial registry in order to exist and enjoy limited liability, trusts tend not to require such registration. For this reason, there is noway of knowing how many trusts exist in the world, let alone how many assets they hold, or the people that are behind them.

Trusts are often used to integrate more complexity into the ownership structure of a company or asset (eg a house) in order to create more secrecy around its real owners. Institutions like the World Bank, the Financial Action Task Force (FATF) and the Egmont Group suggest that the involvement of trusts in major corruption or money laundering scandals may be underestimated because trusts are so complex that authorities do not bother to take action against them (assuming they even know about them).

After major leaks such as the Panama Papers, major advances have been achieved in the area of financial transparency, especially regarding beneficial ownership registration. In 2018, the EU approved the 5th Anti-Money Laundering Directive which required beneficial ownership registration for trusts that are administered in the EU, or which acquire real estate or establish business relations with banks or other obliged entities. Trust registration takes place beyond the EU too. According to the Financial Secrecy Index, there are more than 50 jurisdictions which require trusts to register

[1] 'What Are the ABCs of Tax Justice?', *Tax Justice Network* <https://taxjustice.net/faq/what-are-the-abcs-of-tax-justice/> [accessed 13 April 2022].

with government authorities and in most cases disclose information on all their parties (settlors, trustees, protectors, beneficiaries and any other person with effective control over the trust). Some jurisdictions including Puerto Rico, France and the Czech Republic make trust registration necessary for the trust to have legal validity.

The US, and specific US states such as Alaska, Nevada and South Dakota, have been promoting their secrecy and protective rules which could easily be exploited by criminals who want to stay above the law. According to our research, Alaska is among the US states engaging in a race to bottom to attract trust business. As Prof. Adam Hirsch described[2], Alaska was the first state to allow self-settled spendthrift trusts, where a trust may contain spendthrift clauses[3] even if the settlor is one of the beneficiaries of the trust. Spendthrift trusts are increasingly available in the United States, even though they have been described as anti-democratic and anti-American, for over a century. To this point, John Gray remarked back in 1895: *"It is hard to see the Americanism of spendthrift trusts. That grown men could be kept all their lives in pupilage, that men not paying their debts should live in luxury on inherited wealth, are doctrines as undemocratic as can well be conceived. . . [T]he general introduction of spendthrift trusts would be to form a privileged class, who could indulge in every speculation, could practice every fraud, and yet, provided they kept on the safe side of the criminal law, could roll in wealth. They would be an aristocracy, though certainly the most contemptible aristocracy with which a country was ever cursed."*[4]

Based on the above, any attempt to reduce the secrecy and abuses of Alaska trusts would be most welcome and a clear sign for other US states to follow Alaskan leadership in cleaning up its trust regulations.

[2] Hirsch, Adam J., "Fear not the Asset Protection Trust", Cardozo Law Review, Vol. 27:6, 2006.

[3] This provision thwarts the voluntary or involuntary alienation (a disposal, such as a sale) of a beneficiary's interest in a trust. While the trustee would still be able to sell trust assets if it were in the interest of the trust, spendthrift provisions allow trusts to act like an impregnable legal fortress keeping the assets 'safe' from outsiders, including beneficiaries and their creditors.

[4] John c. Gray, Restraints on the Alienation of Property § 211, at 246- 47 (2d ed. 1895) quoted in Alexander, Gregory S., "The Dead Hand and the Law of Trusts in the Nineteenth Century", Stanford Law Review, Vol. 37, No. 5 (May, 1985)