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TRANSPOSITION OF THE FIFTH MONEY LAUNDERING DIRECTIVE

Response by Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HM Treasury consultation document 'Transposition of the Fifth Money Laundering Directive'[1] ('the Consultation') issued on 15 April 2019.

1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.

1.3 In this response, we have only considered the questions in Chapter 9 of the Consultation. We have focused our comments on the impact for UK-resident trusts.

1.4 We have had sight of the response of Chartered Institute of Taxation (CIOT) which includes responses to questions in a number of other chapters in the Consultation. We fully endorse the CIOT's comments on the remaining chapters of the Consultation and their comments on the rest of the Consultation (i.e excluding Chapter 9) can effectively be considered to be part of our response.

1.5 The Fifth Money Laundering Directive (5MLD or 'the Directive') expands the scope of the existing register by requiring the trustees of all UK (and some non-EU) resident trusts to register their trusts on the UK Trust Register, whether or not there is a UK tax consequence. The sheer scale of this task cannot be underestimated. We anticipate that a huge number of trusts which are effectively dormant will be brought within scope. Given the low level of understanding of trusts by the general public, we think that it will be extremely hard to identify and register all the express trusts in existence which are affected by the new rules.

1.6 A particular concern is that trustees who have not appointed professional advisers may be completely unaware of their obligations. Penalties need to be proportionate where it is clear that there has been no deliberate failure to register. We expand on this concern in sections 4.12-4.17 below.

1.7 Our response is set out as follows:

[1] https://www.gov.uk/government/consultations/transposition-of-the-fifth-money-laundering-directive

Section 2 – Definition of express trust

Section 3 – Data collection

Section 4 – Registration deadlines

Section 5 - Data sharing with obliged entities

Section 6: Legitimate interest

Section 7: Data sharing on trusts owning non-EEA companies

1.8 We would be pleased to discuss any aspect of this response further. Relevant contact details can be found in Section 8.

1.9 We look forward to contributing to the future consultation on the technical detail of the measure which we note from section 9.4 of the Consultation will be published later this year.

2 Definition of express trust

2.1 ***Q64. Do respondents have views on the UK's proposed approach to the definition of express trusts? If so, please explain your view, with reference to specific trust type. Please illustrate your answer with evidence, named examples and propose your preferred alternative approach if relevant.***

2.2 We have had sight of the response from the Chartered Institute of Taxation (CIOT) and endorse their detailed comments on the legal definition of a trust in their response to Q64.

2.3 The Consultation sets out at 9.12 that the Government does not expect to specify a full list of types of express trust but that the onus will be on trustees and agents to determine if the definition is met.

2.4 While we appreciate that there is a huge range of trusts and that it will be difficult (or impossible) to list all situations where an express trust subject to these rules might arise, we do think that, for the unrepresented trustee, robust guidance which covers a significant proportion of possible situations is essential. A clear list of both what is, and what is not, intended to be registered is required. This will be essential for the types of trusts that individuals come across in their day-to-day lives, where they have not perhaps appreciated that what they have is a trust arrangement.

2.5 The proposed expansion of registration requirements will bring into scope a great number of trusts that, as they do not have tax consequences, may have laid dormant for many years. It is difficult to put a figure on the number of additional trusts that may need to be registered under 5MLD but, considering the number of investment based-trusts in existence, it could be hundreds of thousands, or even potentially millions. We have previously discussed with HMRC the potential for the regulations to increase registrations from around 170,000 to two million. The trustees connected with these trusts – assuming that they even know that they hold a trusteeship in the first place - will not always be in the position to seek professional legal advice on these issues. Many trusts do not have liquid cash assets or assets that could be easily sold to raise funds, leaving trustees having to self-fund professional advice. In all but the most complex cases (where the guidance could identify the need to seek professional advice), an unrepresented trustee needs to be able to establish their obligations from clearly drafted guidance.

2.6 It would also be helpful if the guidance emphasised that there are no carve-outs, exemptions or de minimis thresholds. That would reinforce the blanket approach of the Directive.

2.7 Trustees who inadvertently breach the regulations by failing to register run the risk of both civil and criminal sanctions. This reinforces the requirement for clear guidance, including lists of what is in and what is out of scope. The current list provided in the Consultation at 9.12 is too vague, and the definition of 'many types of bare trust' in particular needs to be expanded.

2.8 Ideally, we would like to see HMRC provide additional helpline support to assist trustees in complying with their obligations. However, given the significant number of additional trusts requiring registration and the current pressures on HMRC resources, we presume that HMRC will struggle to provide this. This reinforces the requirement for clear, comprehensive guidance to enable trustees to comply. We would be happy to contribute to the production of such guidance.

2.9 Areas where specific concerns may arise might include:

- Bank accounts held on behalf of children
- Joint ownership of land – especially residential property
- Joint bank accounts.

We understand from the discussions at the consultation meeting on 29 April that it is intended that all of the above will be out of scope of the TRS as they are covered either by banking regulations or existing Land Registry requirements. However, guidance on these areas to explicitly confirm the position would be very helpful.

2.10 Bodies such as unincorporated associations (for example Community Amateur Sports Clubs) which may hold property or assets on trust will also need access to clear guidance on their obligations.

2.11 We presume that any guidance can build on the list which the UK is obliged to supply to the EU under regulation 29 of the Directive, which requires member states to notify to the Commission the categories, description of the characteristics, names and where applicable legal basis of those trusts and similar legal arrangements which will need to be registered. We think that it would be very helpful for all relevant trustees (and their advisers) for the identification required by regulation 29 to be published in full on GOV.UK.

2.12 ***Q65. Is the UK's proposed approach proportionate across the constituent parts of the UK? If not, please explain your view, with reference to specific trust types and their function in particular countries.***

2.13 Given the differing legal system in Scotland, and the ongoing consultation on land transparency[2] we presume that a uniform approach is not necessarily appropriate and suggest that the Government seeks advice on this point from appropriate Scottish bodies.

2.14 For Northern Ireland, the legislation which applies to trusts and the administrations of estates settled in lifetime, by Will, or on intestacy in is broadly similar to the equivalent legislation applicable in England & Wales, though does not mirror it in all respects. There are, for example, a few significant differences in relation to perpetuity periods and to the rights of infants on intestacy. Some differences in land law can affect the treatment of capital gains tax and the law following simultaneous deaths differs too. We suggest that the Government seeks requisite legal advice in this area.

[2] https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/

2.15 ***Q66. Do you have any comments on the government's proposed view that any obligation to register an acquisition of UK land or property should mirror existing registration criteria set by each of the UK's constituent parts?***

Q67. Do you have views on the government's suggested definition of what constitutes a business relationship between a non-EU trust and a UK obliged entity?

Q68. Do you have any comments on the government's proposed view of an 'element of duration' within the definition of 'business relationship'?

2.16 We have no comments at this stage.

3 Data collection

3.1 ***Q69. Is there any other information that you consider the government should collect above the minimum required by 5MLD? If so, please detail that information and give your rationale.***

3.2 Our main concern is ensuring that the information collected is proportionate and relevant and avoids duplication as far as possible. We welcome the recognition in the consultation that collection of some of the information already required has been found to be onerous. We have previously commented on the level of detail of assets required in our response to HMRC's consultation *The Taxation of Trusts: A Review*[3] and highlighted our concerns about the details of advisers held on the register in that response (paragraph 4.10) and details of assets held (paragraph 4.11). We look forward to contributing to future consultations on this issue.

3.3 Since the Trust Register is largely concerned with ownership data for the purposes of anti-money laundering, we consider that, as far as possible, information required for a trust for 5MLD purposes should be the same whether or not the trust pays tax. Regulation 34 of the Directive states that information made accessible to the public should not significantly differ from the data currently collected. On this basis we suggest that it is not appropriate to collect significantly more data than that required by 5MLD on the Trust Register. This will help to ensure consistency and, since some trusts will pay tax in some years but not in others, avoid confusion over the level of data required for TRS purposes in any one period.

3.4 Any additional information that HMRC requires for the purposes of tax collection should not be collected as part of the Trust Register but should continue to be collected via HMRC's existing processes for tax.

3.5 ***Q70. What is the impact of this requirement for trusts newly required to register? Will there be additional costs, for example paying agents to assist in the registration process, or will trustees experience other types of burdens? If so, please describe what these are and how the burden might affect you.***

3.6 Trusts newly required to register will incur additional burdens in time and costs. We also have concerns that the exposure to civil/criminal sanctions could discourage individuals from accepting trusteeships and encourage existing trustees to retire.

3.7 Where the trust appoints an agent, we consider it likely that additional costs will be incurred complying with registration requirements. Where the trust does not appoint an agent, then there will be additional time costs for the trustees in familiarising themselves with the rules, understanding what information is required, obtaining that information from relevant parties, and then reporting it via the Trust Registration Service (TRS).

[3] https://www.att.org.uk/technical/submissions/taxation-trusts-review-att-response

This exercise then has to be repeated annually. The absence of any carve-outs, exemptions or de minimis thresholds necessarily mean that these burdens in time and cost will in the vast majority of cases produce no benefit at all in terms of the objectives of the Directive. A worrying consequence of that is that there will be no incentive for the Trust Registration Service to be adequately resourced in order to provide the assistance that all the trusts which are brought into scope will need.

3.8 We consider that whether or not the trustees will wish to appoint an agent will depend on a number of factors including:

- The ability of the trustees to pay an agent's fees – this will depend on whether the trust has any liquid assets or assets which can easily be liquidated to realise cash.
- The quality of guidance available from HMRC and whether it is sufficiently clear and unambiguous.
- How digitally capable the trustees are and whether they are able to use the TRS themselves.
- How straightforward the TRS is to use and whether trustees feel that they can answer the questions it asks and supply the correct information.

3.9 We assume that trustees who cannot access reimbursement from the trust for costs will be less willing to appoint an agent to assist in the registration process and will therefore be dependent on HMRC guidance.

3.10 Trusts are often created as part of investment planning, for example when setting up life insurance policies. To date, many of these trusts have not been impacted by the Fourth Money-Laundering Directive (4MLD). We suggest that it would be worthwhile, if discussions have not already taken place, discussing with investment providers what, if any, additional costs the requirements of 5MLD will impose and whether or not this will affect the costs for individuals who wish to take out common insurance products such as life insurance and/or other investment products involving trusts.

3.11 We are also concerned that the increased compliance burden, combined with the exposure to civil/criminal sanctions, may discourage individuals from taking up trusteeships. Existing trustees (particularly of inactive trusts where their responsibilities to date have not been onerous) may wish to retire as a result of the new obligations. This could leave many trusts struggling to find suitable trustees. We wonder whether family or friends (who can often provide a deeper understanding of beneficiaries needs with a more detailed knowledge of the individuals involved) will be particularly discouraged from taking up trusteeships in future. The loss of such individuals could force trusts to appoint professionals at a cost in order to maintain the minimum number of trustees required.

3.12 ***Q71. What are the implications of requiring registration of additional information to confirm the legal identity of individuals, such as National Insurance or passport numbers?***

3.13 Collection of additional data, particularly personal reference details such as National Insurance (NI) numbers and passport numbers has proved onerous and members have reported finding it challenging in some cases. Trustees, settlors and beneficiaries are unclear why their personal information is required when the trust is tax compliant and there are no personal tax consequences for them, and potential beneficiaries are not always aware of their beneficiary status. There are also cases where the NI number is not available - for example children under 16 who have not yet been issued with their NI number, and deceased individuals. In the early stages of the TRS, it was necessary to provide a workaround for deceased individuals. Furthermore, not everyone has a passport.

3.14 The requirement to provide NI or passport numbers is not consistent with the information which a director or shareholder must supply to Companies House and therefore seems unduly burdensome in the trust context, where the risk of money-laundering has been assessed as low.

3.15 We do appreciate that since data could potentially be provided to third parties under a legitimate interest provision, it is even more important that the correct individual is identified. Having an NI or passport number in addition to name and date of birth might, arguably, assist HMRC in cross-referencing requests, as well as assisting in the collection of tax. (We presume that such personal details would not be available to the general public.) However, we note at 9.23 of the Consultation that, in relation to an individual, further information will be required under 5MLD which has not previously been requested under 4MLD. We presume this will assist with cross-referencing if necessary. The additional information is:

(i) The individual's nationality
(ii) The individual's country of residence.

Given this additional information requirement under 5MLD, we consider that NI/passport numbers should not be required.

3.16 As an aside, since the requirements above are part of 5MLD and cannot be changed, while an individual's nationality will generally be unchanged from year to year, the country of residence could change frequently. In some cases, due to day-counting and depending on the time period for which residency is being declared, it may not even be known by the time the trust wishes to report. Establishing the residency of all beneficiaries could be exceedingly onerous for some trusts and may well require additional work by the trustees for little/no benefit where internationally mobile beneficiaries are not receiving a benefit from the trust and so there are no tax issues for the trust to consider.

3.17 We also note that the additional requirements of 5MLD will result in additional work for trusts which have already been registered.

4 Registration deadlines

4.1 ***Q72. Does the proposed deadline for existing unregistered trusts of 31 March 2021 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.***

4.2 Given both that the number of trusts which will need to be registered is unknown (and could potentially run into millions as noted above) and that (as we understand it) there are only around 170,000 trusts on the existing register, we think that the period of one year to identify and register all the remaining UK express trusts could be seriously insufficient. Without a reasonable estimate of the scale of the problem, it is hard to know what is a reasonable period but we would suggest that this should be extended to two years. We have also commented on the need for a light touch for penalties below.

4.3 ***Q73. Does the proposed 30-day deadline for trusts created on or after 1 April 2020 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.***

4.4 We are concerned that the 30-day requirement will not be workable in all cases and that additional time will be needed in specific circumstances.

4.5 Where a trust is created in life by a settlor we agree that, in line with 9.30 of the Consultation, it is sensible to register the trust at the same time that it is created. This would form part of the general set-up of trust and it makes sense to do it at an early stage to ensure that this is not overlooked and that it is done while all the relevant information is to hand.

4.6 However, we think that some additional time may be needed in the event of the formation of a bare trust, where the individuals concerned may not appreciate that a registrable trust arrangement has been created.

4.7 Where the trust is created on death via a Will, then 30 days is definitely insufficient time in which to register a trust. In accordance with s83 of IHTA 1984 for any relevant property trust, the trust commences on death. Thirty days is too short a period for a grieving family to deal with funeral issues and a substantial amount of urgent administrative matters such as advising banks, insurance companies, securing property and so forth, as well as having to comply with the registration of any trusts at that difficult and stressful time.

4.8 It can be some months following a death before it is even established what assets will go into trust and whether or not the family intend to retain the trust or make appointments with the benefit of s144 IHTA 1984. (s144 allows, in certain circumstances, appointments to be 'read back' for Inheritance tax (IHT) purposes such that the Will is effectively read as containing the subsequent appointments.)

4.9 We suggest that trustees should be given a period of a year following the death of the settlor in which to register the creation of a trust. This is in line with the deadline to submit a full IHT400 return and means that a report can be made when there is a much clearer idea of the position of the estate and more of the relevant facts will be known.

4.10 Since there is a two-year window in which to vary the estate and for the variation to have effect from IHT, there will be some estates where the decision over retaining the trust or appointing out with the benefit of the reading back provisions under s144 may not have been taken at this point. Perhaps the solution here is to allow for a 'placeholder' registration by the end of the first year which can be updated and removed if the trust created in the Will does not ultimately take effect.

4.11 ***Q74. Given the link with tax-based penalties is broken, do you agree a bespoke penalty regime is more appropriate? Do you have views on what a replacement penalty regime should look like?***

4.12 We agree that a tax-based penalty system is no longer appropriate where registration is not linked to tax consequences. We note that there will be further consultation on the details of the penalty regime in due course and that initial views only are sought at this stage.

4.13 Under the existing scheme, penalties have not been automatically applied (partly we presume due to the issues in establishing the functional operation of the Trust Register itself) and HMRC risk assess any penalties where late registration occurs. We understand that it is not HMRC's policy to charge penalties where the trustees have made reasonable efforts to meet their obligations under the regulations and we welcome this approach.

4.14 Where penalties apply, they are levied as follows:

- Registration made up to three months from the due date – £100 penalty
- Registration made three to six months after the due date – £200 penalty
- Registration more than six months late – either 5% of the tax liability or £300 penalty, whichever is the greater sum.

The tax liability for the 5% penalty is calculated based on the total of any tax paid by the trust in the relevant year, which may include IHT, SDLT, LBTT and SDRT as well as income tax and capital gains tax. This is not a very practical measure and could require a lot of work to establish. We would be pleased to see the 5% requirement removed.

4.15 For most trusts - where there are no tax consequences or money-laundering concerns - failure to comply with registration is essentially an administrative failure. A series of modest fixed penalties increasing with the period of the delay, together with an appeals process, would seem reasonable and proportionate in these circumstances.

4.16 Given the vastly increased scope of trusts brought into the new rules, and the significant challenge in making unrepresented trustees aware of the new requirements, we would like to see HMRC continue its risk-based approach to the application of penalties. We wonder also whether a further option might be to allow trustees not previously aware of the regulations a *period of grace* in which to register once they have become aware of the requirements. It is quite possible that trustees who are not seeking to hide anything and where there has been no loss of tax as there are no tax consequences, could be in breach of the regulations entirely unintentionally. The objective should be to educate and encourage trustees to comply and not to levy penalties.

4.17 One example of where a period of grace might be appropriate is when establishing the existence of a trust. A member reported to us that it is not uncommon for a family to realise that a trust exists only on the death of the surviving partner to a marriage. Until that point, if IHT was not relevant on the first death, consideration may not have been given to whether or not the partner that died first had created a trust on death, commonly to the value of the nil rate band at the time (and known as a nil rate band or NRB trust). Such trusts were very common prior to the introduction of the transferrable NRB. On death of the survivor, work will be carried out to establish if a NRB trust exists and families will often be surprised to discover a NRB trust is in existence. Given that the death of the former spouse could have been years (or even decades) previously, finding past records and establishing the position from current and previous solicitors and what, if any, paperwork the family hold is very time consuming. At the point when it is identified that a trust exists, a period of grace to register its existence on the Trust Register would be very helpful. To impose penalties at this point, when there has been no loss of tax and the family are making a genuine effort to establish the position, would seem unfair and wholly inappropriate.

4.18 On the other hand, where trustees deliberately or intentionally seek to evade their obligations under the regulations then, as a last resort, a penalty could be levied based on a percentage of the total trust assets. We suggest this with some degree of trepidation – we would not want to see such a draconian charge levied on unintentional cases of oversight – for example a dormant trust of land with no cash assets or tax issues that has been accidentally overlooked (perhaps because trustees have died and no one has appreciated that they were trustees), or the case where no one has realised that a nil-rate band trust was created on the death of a spouse/civil partner as noted above – but we appreciate that as a transparency measure, there may need to be the potential for serious penalties where the trustees flagrantly and knowingly fail to comply with the rules.

5 Data sharing with obliged entities

5.1 ***Q75 Do you have any views on the best way for trustees to share the information with obliged entities? If you consider there are alternative options, please state what these are and the reasoning behind it.***

5.2 The current proposal is that the trustees themselves will provide proof that the trust is registered by printing off a copy of their registration from the Trust Register via the TRS. The trustees would then provide this print out to the obliged entity (such as a new adviser) which needs to verify the trust is included on the Trust Register.

5.3 This approach contrasts with the approach to obtaining information on a company where an obliged entity seeking confirmation of details of a company can search the publically accessible records at Companies House themselves. The contrast is necessary, as it is not appropriate for the Trust Register to be publically searchable, but it is obviously preferable for an obliged entity to confirm registration direct with the registering body, as opposed to via the trust itself. Paragraph 9.37 of the Consultation proposes one solution to this problem – where the obliged entity requests details from the Trust Register direct and the Trust Register then has to decide if they are entitled to the information. This produces extra work for the Trust Register and would no doubt introduce delays and costs to the process of establishing registration.

5.4 We consider that the solution to the problem is for *the trustees* to make the decision over whether or not the obliged entity should have access to its registration details, and then for the trustees to ask the Trusts Register, via the TRS, to supply that information to the obliged entity directly.

5.5 Rather than print out and provide a paper copy of the trust's registration to an obliged entity, it should be possible for a trustee to log into the Trust Register via the TRS and request that confirmation of registration is sent direct to the obliged entity via email. In that way, the obliged entity can still receive the information direct from the Trust Register, but the Trust Register is not required to first establish if the obliged entity is entitled to request it. Trustees could also use this service supply details of their registration details to any other party that they would like to have the information (such as other trustees, the settlor or even a beneficiary if so required).

6 Legitimate interest

6.1 ***Q76. Do you have any comments on the proposed definition of legitimate interest? Are there any further tests that should be applied to determine whether information can be shared?***

6.2 Under regulation 28 of 5MLD, access should constitute a necessary and proportionate measure with the legitimate aim of preventing the use of the financial system for the purposes of money laundering or terrorist financing. The requirement is that an individual should demonstrate a legitimate interest in access to the data.

6.3 We agree with the Government's proposal to stick closely to the 5MLD goals to ensure that the many trusts used by ordinary families are protected from speculative queries and inappropriate requests and we look forward to making further detailed comments in subsequent consultation.

6.4 We note that there is an increased fraud risk for those on public registers. New regulations were introduced in 2018 to address the fact that company directors (whose details are publically available at Companies House) are twice as likely to be victims of fraud. The risks are magnified in a trust context since trusts can often have vulnerable or minor beneficiaries. One of the major uses of trusts is to manage assets on behalf of those who cannot manage them themselves. While the existence of the trust should help to protect beneficiaries in many instances, those such as minors who may receive assets outright in the future could be targeted in anticipation of assets being transferred to them at a later date.

6.5 We have concerns that if legitimate interest is not both well-defined and well enforced, that the risk of loss of privacy could deter those for whom a trust is an appropriate solution from using a trust. Reticence to disclose the nature and amount of family wealth should not be taken to indicate that an individual is engaged in tax evasion or money-laundering, but simply a natural reluctance to share details of their financial affairs with the world at large. Unlike companies, which exist in large part to facilitate trade with third parties and where therefore, transparency of data with counter parties is often necessary, the use of trusts is frequently driven by personal and private relationships in which transparency with third parties other than HMRC/law enforcement is not appropriate.

6.6 We think that, to aid transparency, the number of requests made in a calendar year, the number of requests accepted and the number of requests rejected (perhaps broken down into broad categories of reasons) should be published each year. This may help to reassure private family trusts about the levels of such enquiries and the risk of challenge to their legitimate rights to privacy.

6.7 We welcome the statement at 9.45 that speculative enquiries into all or multiple trusts on TRS will not be deemed legitimate.

6.8 We wonder whether, as part of evidencing legitimate interest, the individual seeking information on the trust should disclose whether or not they have family connections to the trust on which they are seeking information to establish whether they may have a vested interest in the information being disclosed.

6.9 We are unclear what the requirement at 9.45 for the individual to have an active involvement in anti-money laundering or counter-terrorist financing activity will look like in practice. How is it intended that the Government would be able to assess this?

6.10 Given this concern, we can see that a right of appeal against provision of information may be appropriate in the context of a legitimate interest request. We considered if this might be prejudicial to an ongoing enquiry but presume in such cases a request will come directly from a law enforcement agency and the question of legitimate interest is then irrelevant. We agree with the CIOT's suggestion in their response to this question that there should be an independent arbiter or ombudsman to determine if legitimate interest applies and that the trustee should have the right to be heard.

6.11 If an appeal process is not implemented then, we consider that there should be some element of transparency in both directions in respect of legitimate interest requests. For example, the Register could alert trustees when a transparency request has been made, unless received from a relevant Government agency., state whether or not the request was accepted or rejected and, as a bare minimum, provide some outline information based on the category of individual or organisation which has made the request.

7 Data sharing on trusts owning non-EEA companies

7.1 Questions 77 to 81 in the Consultation look at specific aspects of data sharing for trusts owning non-EEA companies. Rather than address the individual questions, we have some general observations.

7.2 5MLD allows an individual to make a request for details of a trust which holds a 'controlling interest' (defined as more than 25% of the shares or significant influence or control) in a non-EEA company. The individual does not need to meet the legitimate interest requirement to be entitled to information on the trust. The proposal is that trusts should self-identify if they have any such holdings.

7.3 For example, if a UK trust owns a 50% shareholding in a company in New Zealand, it would self-declare this fact on the TRS. As a consequence of this holding, any individual can make a written request for details of the trust without being required to demonstrate a legitimate interest. This opens up the potential for beneficiaries to make enquiries about the trust as well as unrelated third parties.

7.4 Our concern is how this process is operated in order to prevent fishing exercises. How is it intended that individuals who want to make a request will do so? Will trusts that are effectively 'open access' be identified as such, or will the individual be required to identify the company in which the trust has a controlling interest as part of their written request?

8 Contact details

8.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley on 07773 087125 or hthornley@att.org.uk.

The Association of Taxation Technicians

9 Note

9.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.