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# TRANSPARENCY OF LAND OWNERSHIP INVOLVING TRUSTS

## 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 Department for Levelling Up, Housing and Communities, Department for Business & Trade, HMRC and HM Treasury consultation document ('the Consultation') on 'Transparency of land ownership involving trusts' published on 27 December 2023<sup>1</sup>. This response is intended to formalise our comments made at the roundtable on 25 January 2024.
- 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 Rather than reply to the individual questions posed by the Consultation, we would like to make two specific points about the implications of increased transparency for the kinds of trusts that our members advise on. Our concerns are the extent to which making details of all beneficiaries available would be meaningful to the public, and about the additional cost and administration burdens these measures will impose.
- 1.4 Our members primarily advise on UK trusts, created for reasons including asset protection and tax planning purposes. Such trusts might be created as part of lifetime gifting for Inheritance tax planning, to ensure assets are protected for minor children following the loss of a parent, to protect assets for vulnerable adults or to ensure that assets are protected for children from previous relationships. We appreciate the Government's concerns about the abuse of trusts, but we are only commenting on the impact of the measures on legitimate trusts such as those above as part of informing the Government's desire to strike the right balance between transparency and privacy. Our comments are most relevant to Chapter 3 of the consultation. We have not commented on the Register of Overseas Entities in this response.
- 1.5 The consultation states that "the government believes that there is a strong case for changing the current transparency arrangements of trust, specifically where land ownership is involved" and that "transparency about land ownership is therefore essential to make our society work effectively." We have no objections in principle to greater transparency for law enforcement authorities. It is reasonable for Government to

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<sup>1</sup> <https://www.gov.uk/government/consultations/transparency-of-land-ownership-involving-trusts-consultation/transparency-of-land-ownership-involving-trusts>

want to know who owns and controls UK land and property. Our concern is that any public disclosure needs to be proportionate and that the administrative burden placed on trustees in providing this information is reasonable.

## 2 Points of concern

### 2.1 Details of beneficiaries

2.2 The Government's ambition as stated in paragraph 1 of the Consultation is to enable anyone with an interest in land to establish "who can control or derive economic benefit from it".

2.3 In general, beneficiaries will not have control over the trust assets. Very broadly, the trustees will have control over its assets, and the settlor may have some influence in the form of letter of wishes or via their shaping of the trust deed at the outset of the trust. Some beneficiaries may be able to *influence* the trustees' decisions, but this is not a clear test, and it may be difficult in practice to identify these situations and determine to what extent any influence is meaningful or significant enough to report. Only a beneficiary who is also a trustee has formal control of the trust. An individual in this position would already be disclosed on the Trust Registration Service (TRS) as both a trustee and a beneficiary.

2.4 When a trust is created, beneficiaries do not necessarily know that they have been added as beneficiaries. There are various reasons for this, usually related to private family matters, but also because it is common practice to include additional 'long stop' beneficiaries in the trust deed. These individuals will only benefit if something catastrophic happens to the intended beneficiaries. Making data available therefore on *all* potential beneficiaries will not only be unhelpful for disappointed beneficiaries but potentially actively misleading to the public, who may presume individuals who are never intended to benefit, do have some beneficial ownership of the trust's assets. Inferences may be drawn which are incorrect. Disclosing all possible beneficiaries would therefore result in a wider disclosure than the Government's desire to identify the people who derive economic benefit.

2.5 For example, a trust might be set up with the intention to benefit a specific individual and their descendants, but other members of the family could be added as beneficiaries in case that individual dies without leaving descendants. If all goes as planned, these extra individuals will never receive anything from the trust - but provision has to be made for the unexpected.

2.6 We have no concerns with law enforcement authorities having access to data on both actual and potential beneficiaries. But, if more information on beneficiaries is made public, we think it important that *potential* beneficiaries are distinguished from *actual* beneficiaries. This could be on the basis, for example, that only beneficiaries who have physically benefited from the land (either occupied it or received rent) are included. For example, trustees could indicate if the beneficiary has benefited in the previous one, two or three tax years. The disadvantage of this approach is that such information would need to be updated and there would need to be a decision over whether it was reasonable to update this annually, or within a given period of a beneficiary starting to benefit. Consideration would also be needed to whether or not beneficiaries that have not benefited for some time should be removed. This increases the administration burden but means that information held is more meaningful if exposed to public view.

2.7 A clear test is needed to assist trustees in complying. Such a test would need to look backwards, because trustees cannot always reliably say who is likely to benefit in the future.

- 2.8 There are also occasions where individuals could be placed at risk, if it was possible to identify them via public registers – for example victims of domestic abuse or other crimes, vulnerable beneficiaries, those lacking mental capacity and minors. Provisions for exemption from disclosure are already made in the existing TRS<sup>2</sup> and we think it vital that the same protections be extended to beneficiaries connected to trusts with land. It might be worth considering if protections should apply automatically to trusts which qualify as Disabled Persons Trusts or Bereaved Minors Trusts.
- 2.9 **Administration**
- 2.10 As part of enhancing transparency, more data will need to be collected. We are unclear from the consultation whether the intention is to enhance the TRS so that it can hold details of land, enhance details held on the Land Registry or to create a separate register for land owning trusts. The consultation notes at paragraph 83 that ‘there is not a single register that holds both land and trust information’ and at paragraph 87 that the Government may need ‘to consider other means to record and make available information on trusts’.
- 2.11 The introduction of the TRS has been a significant administrative burden for trustees, not least because English law is complex, and identifying when a trust is reportable can be challenging. Not all trusts are formally established with a deed of trust at the outset – trusts can arise through operation of law and the actions of the parties involved, and in ways not always apparent to those who are not legally qualified. HMRC has had to produce significant guidance to assist trustees with TRS compliance. Compliance with the TRS increases costs to the trustees and can be disproportionate for very small trusts. Once registered, trustees also have obligations to update data relating to their beneficial owners within 90 days of becoming aware of a change. Taxable trusts also have an annual obligation to review their TRS record.
- 2.12 We are concerned that additional disclosures will further increase the administrative cost and burden of running a trust. While new trusts can be set up with such burdens in mind, old trusts are not necessarily set up for the trustees to have access to the necessary funds to pay for advice. For example, a house left in trust for life for a surviving spouse may not have funds or generate income able to pay advisory fees.
- 2.13 Given the existing obligations to keep the TRS up to date, we would prefer that any additional disclosures were made via existing TRS processes, rather than asking trustees of land-owning trusts to maintain a separate register which would result in duplication of effort.
- 2.14 From a practical perspective, the implementation of the TRS system itself was not well managed and the system was not always ready for use when obligations commenced. The TRS was not ready to receive registration of non-taxable trusts until a year after the obligations were imposed on trustees, and guidance was not ready at the start of reporting. As a ‘digital only’ service, it can also be challenging for trustees who are not digitally capable, and our members have reported difficulties with the process of trustees authorising them to update the TRS on their behalf. If and when reporting obligations are extended for land transparency, it is crucial these problems are not repeated. Systems and guidance should be ready *in advance* of the date that obligations commence and with alternative access routes for those who cannot report online.
- 2.15 Finally, for the purposes of simplicity and in direct answer to question 11, which asks whether any reporting requirements should apply to *all* classes of land, we see no reason to differentiate between residential, non-residential and other interests. It would be much simpler for advisers/trustees to

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<sup>2</sup> <https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm60040>

remember if any new reporting requirements that came out of this applied to all UK land & property, rather than distinguishing by type or use.

### **3 Contact details**

- 3.1 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 [atttechnical@att.org.uk](mailto:atttechnical@att.org.uk).

## **The Association of Taxation Technicians**

**20 February 2024**

### **4 Note**

- 4.1 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 9,800 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.