

ATT Technical Briefing Note - The Trust Registration Service

Last updated 26 January 2018

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Disclaimer

The following document has been prepared on the basis of our understanding of the relevant legislation, combined with information, HMRC draft guidance revised on the 22 November and clarifications received from HMRC. The intention is to bring the information of which we are aware together in one place in order to provide guidance to members. For the very latest updates please see the 'News' section of the ATT website [here](#).

This note is not a substitute for detailed professional advice. If in doubt, members should consult the underlying legislation and/or seek professional advice.

No responsibility can be accepted for the consequences of any action taken or refrained from based on this note.

This note was last updated on the 26 January 2018.

Amendments and updates:

Amendment from 11 January 2018 version

- Correction to question 9 to confirm that a trust whose sole source of income is savings income and which has a tax liability of under £100 will not be required to register with the TRS.
- Further information for *digitally excluded* agents who have been unable to access the TRS in question 12

Amendments from 29 November version

- Soft-landing for penalties – no penalties will be charged for trusts who did not require to register for self-assessment in 2016/17 provided registration is completed by **5 March 2018**.
- Additional workaround details included at question 11 where the form will not submit without an entry in all fields but information is not available.
- An update to question 12 regarding 'digitally excluded' firms who have not been able to obtain an *Agent Services* account.
- Additional details have been added to question 17 regarding confidentiality.
- Question 36 has been updated to reflect that details of the penalty regime are not expected until some point in 2018.
- Addition to information required that were a passport number is supplied, the passport expiry date is also required.

Summary

- Following new UK Money Laundering regulations, and as part of increasing demands globally for transparency, most UK trusts and some foreign trusts are required to maintain details of their *beneficial owners*. Beneficial owners include settlors, trustees, beneficiaries, classes of beneficiaries, protectors and any individuals with control/influence.
- Trusts which are in self-assessment, or have a liability to certain other taxes in the year, must report details of their *beneficial owners*, together with additional information on trust assets, to HMRC. HMRC will retain this data on a Trust Register.
- Reporting trusts must supply information to HMRC via the new Trust Registration Service (TRS) and review it annually. The TRS also handles self-assessment registration for trusts and complex estates¹.
- Form 41G (trusts), the previous route for self-assessment registration for trusts and complex estates, was withdrawn in April 2017. Trustees have had access to the TRS since July 2017 but agents only obtained access on the 17 October.
- In view of the delayed access for agents, trusts who first required a UTR for 2016/17 were given an extension on the usual 5 October 2017 self-assessment registration deadline. Following representations, trusts in this position were given until **5 January 2018** to register for a UTR. This extension applied to all trusts regardless of whether or not the trust is represented by an agent. Where agents were unable to get access to the TRS for technical reasons, HMRC issued data capture sheets.
- All other trusts with a tax liability in 2016/17 have until 31 January 2018 to register with the TRS. However, following representations from ATT, CIOT and other professional bodies, HMRC confirmed on 8 December that there will be no penalties charged provided that registration is completed no later than **5 March 2018**.
- There is a significant increase in information required by HMRC over the 41G. Trustees must consider how to identify persons with control/influence who are not trustees, look through corporate structures and provide details of the assets when the trust was created.
- The responsibility for registration lies with the trustees although they can appoint an agent to act on their behalf. Agents may wish to alert trusts for whom they act about the need to register. Agents may wish to clarify with trustees who is undertaking this work – the trustees themselves, the tax agent or any of the trust’s other advisers such as a solicitor. Where an agent is appointed, it is recommended that the additional service is captured in an updated letter of engagement. Agents should only undertake this extra work if they have a clear understanding of what is required under the new regime.

¹ A complex estate is one where (i) the estate is valued at over £2.5m, (ii) the tax due for the whole period of administration will exceed £10,000 or (iii) there will be sales of assets over £500,000 in any tax year (£250,000 for deaths prior to 6 April 2016).

Other matters covered by same regulations

- Trustees must disclose in their investment transactions and business relationships that they are acting as a trustee.
- Trustees can be asked by any financial institutions, investment providers and advisors which the trust does business with to supply details of their *beneficial owners* and must update the details supplied within 14 days of the trustees becoming aware that information has changed.
- Trustees must, on request by any law enforcement agency, supply details of their beneficial owners and potential beneficiaries (including those indicated in a letter of wishes). This means that even those trusts who are not required to register on the Trust Register must still keep written details of beneficial owners in case this information is requested by law enforcement agencies.

Key Dates

- **April 2017**- paper 41G trust was withdrawn
- **26 June 2017** – new legislation requiring creation of the TRS was enacted requiring HMRC to create a trust register and trustees to provide specified information
- **July 2017** – register was opened for unrepresented trustees to register their trusts
- **5 October 2017**– the usual deadline for a trust to register for self-assessment if it needs a return for 2016/17. The TRS was not available at this date for agents to register any trusts first liable to self-assessment in 2016/17 so this deadline was extended.
- **17 October 2017** – agents were given access to the TRS via the new *Agent Services* account.
- **5 January 2018** – The final extended deadline for self-assessment registration for 2016/17. This was the second extension following [representations from ATT, CIOT](#) and other professional bodies. The HMRC response can be found [here](#).
- **31 January 2018** – The deadline in the legislation for registering all other existing *relevant trusts* which have a tax liability to pay for 2016/17. (See below for definitions).
- **5 March 2018** – HMRC have provided a '[soft-landing](#)' in the first year of the TRS. Any relevant trusts who either have a UTR, or do not need one for 2016/17, will not be subject to a penalty provided registration is completed no later than 5 March.
- **31 January 2019 (and subsequent years)**
 - Deadline to notify HMRC of any changes during the preceding tax year to any of the information previously reported. A change only needs to be reported if there was also a tax liability for the trust in the tax year of change. For example, if a new trustee is appointed but there was no tax liability in the same tax year, the deadline to report the new trustee is 31 January after the next tax year with a tax liability.
 - This will be the registration deadline for any trust not already registered where a tax liability arises in the previous tax year – although where a trust is also required for register for self-assessment for the first time for that tax year, the requirements to register for self-assessment by 5 October using the TRS will mean that the trust will need to register with the TRS by the earlier, self-assessment deadline of 5 October. Only one registration is required to satisfy both SA and TRS requirements.
 - Where there is no change to information previously supplied to the TRS, and the trust has a tax liability, the trustees should notify HMRC that the data remains correct. Trusts in self-assessment will be able to do this via the trust tax return. Where a trust is taxable because of other taxes (eg Inheritance tax) and is not in self-assessment, it is not yet known how they will confirm that details are correct as required.
 - Where the trust does not have a tax liability in the tax year but details have changed, the trustees can update the register voluntarily.

1. Background

As part of the UK's compliance with the EU Money Laundering Directive, and similar to provisions for companies, trusts are required to maintain records of their *beneficial ownership*. This is all part of the global drive towards increased transparency and reduction in tax evasion.

In April 2017, the usual route to notify HMRC of a new trust (form 41G) was withdrawn. Now both recently created and existing trusts, together with complex estates, will need to supply information to HMRC via the Trust Registration Service (TRS). The information required is set out in the appendix to this note.

New trusts, and complex estates, will need to use the TRS to obtain a UTR to enable them to file self-assessment returns.

2. What are the benefits to trustees?

According to HMRC, the new centralised system will bring the following benefits:

- Centralising all trust services including notification and also updates
- Digitalising information – no more paper forms getting lost in post or delays to processing
- More tailored questions – only those relevant to that trust will be asked during registration
- Ability to print and retain details from the system which should help trustees to meet their obligation to keep written records

3. Which trusts must comply with these regulations?

All *taxable relevant trusts* must register with the TRS. All *relevant trusts* need to keep accurate, up-to-date written records of their *beneficial owners*.

4. What is a relevant trust?

A *relevant trust* is defined at regulation 42(2)(b) as either:

- (i) A UK express trust, or
- (ii) A non-UK express trust which has
 - a. UK income; or
 - b. assets in the UKon which it is liable to pay one or more of the taxes noted below

An *express trust* for these purposes is, per [HMRC 22 November guidance](#) “a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust”.

HMRC have provided further details on the position for trusts involving co-owners of land in their guidance.

As for self-assessment, a trust is a UK trust if:

- (i) All the trustees are resident in the UK, or
- (ii) There is one UK resident trustee and the settlor was resident and domiciled in the UK when the trust was created or funds were added to the trust

5. What is a taxable relevant trust?

If the **trustees** of a *relevant trust* are **liable to pay** one or more of the following taxes in a tax year, then the trust is a *taxable relevant trust* per regulation 45(14) and is required to register. The taxes are:

- Income Tax
- Capital Gains Tax (CGT)
- Inheritance Tax (IHT)
- Stamp Duty Land Tax (SDLT)
- Land and Buildings Transaction Tax (LBTT)
- Stamp Duty Reserve Tax.

For IHT, SDLT, LBTT and SDRT the relevant date which triggers registration is **the date that the chargeable event occurs**. This is confirmed in [HMRC 22 November guidance](#), and in the November *Talking Points*. HMRC are interpreting the words ‘first liable to pay’ in reg 45(3)(b) as the date of the chargeable event.

For example, where a trust has an IHT liability on the 16 January 2017 (ie in 2016/17) the tax is due on the 31 July 2017 (ie in 2017/18). The trigger point for the trust register is the 16 January 2017 when the tax liability arose.

According to HMRC’s November *Talking Points*, HMRC are interpreting the requirements for a ‘liability to pay’ to mean there must be an actual tax bill to pay. HMRC have indicated that some 30% of trusts registered for self-assessment do not have tax to pay and HMRC have stated they are not expecting these trusts to register.

If the trust has, for example, a 10 year anniversary for IHT purposes, (and no other liabilities to pay), but no actual IHT bill arises due to a relief, there is no tax to pay and registration requirements are not triggered. However, if the trust makes a chargeable gain covered by a relief, and needs to submit a self-assessment return to claim the relief, while no tax is due, the trust still has to use the TRS to acquire a UTR. In this case, it is not using the TRS for the purposes of complying with the new regulations, but purely for self-assessment purposes. The relevant deadlines with which that trust must comply are therefore those for self-assessment.

6. What is the position for non-UK trusts?

As stated above in question 4, a relevant trust can include a non-UK express trust which has:

- UK income or,
- assets in the UK on which it is liable to pay one or more of the taxes listed in question 5.

HMRC have confirmed at pages 10 and 15 of the [HMRC 22 November guidance](#) that where a non-UK trust holds UK assets indirectly (eg via a non-UK company) then if, for the purposes of UK tax, *look-through* procedures apply so that the **trustees** are liable for UK taxes, then the trust will have to register in the UK.

The earlier guidance in October had implied this was not the case – and indeed the statement that ‘a non-UK express trust is required to register when it pays any of the above UK taxes on only UK source income or UK assets **held directly** by the trust (our emphasis) has been retained on page 13 of the [HMRC 22 November guidance](#). A request for clarification and further examples of which non-UK trusts need to be reported has been made to HMRC.

7. What is the position for charitable trusts?

Charitable trusts have to consider the legislation just as trusts without charitable objects are required to do. If the charitable trust is a *taxable relevant trust*, the trustees will need to register it. However, if all the trust's activities are covered by the charitable exemption in a tax year then it should not have to register for that year.

Charitable trusts that do need to register should be aware of the following:

- The TRS is not available for charitable trusts and trustees will need to request a paper form from HMRC by calling the Trusts and Estates helpline on 0300 123 1072.
- As charitable trusts may have many beneficiaries, HMRC will allow more than 10 beneficiaries to be defined as a class which contrasts with the stricter position for non-charitable trusts (see question below addressing when beneficiaries can be defined by class).
- Donors to the charity will not be considered to be settlors.

More detail can be found on the [HMRC 22 November guidance](#) at pages 33-34.

8. Who are the beneficial owners of a trust?

The beneficial owners of a trust defined in paragraph 6 of the regulations include:

- The settlor(s)
- The trustees
- The beneficiaries – whether determined individually, or defined as a class
- Any individual who has *control* over the trust, which could include a *protector*.

A *protector* is someone with the power to formally restrain the trustees. Most UK based trusts do not have a *protector*. They are more common where the trust is based outside the UK, where they are appointed to oversee the trustees and ensure that the trust is operated in accordance with the deed.

An individual who has *control* is defined in the legislation as someone who has the power, exercisable alone or jointly, under the trust instrument or by law to:

- (i) dispose, advance, lend, pay or apply trust property
- (ii) vary or terminate the trust
- (iii) add or remove beneficiaries
- (iv) appoint or remove trustees or give control over the trust to someone else
- (v) direct, withhold or veto any of the powers in (i) to (iv).

Where the beneficial owner is a company, trustees should look through the company to the underlying ownership.

9. Are there any trusts which are not required to register?

Trusts without a tax liability to pay, as defined above, are not required to register with the TRS.

HMRC have confirmed in their November *Talking Points* that trusts which are benefiting from the arrangement [originally announced for 2016-17](#) (and [extended to 2017-18](#)) which permit trusts where:

- the only source of income for the trust is savings income *and*

- the trust's tax liability is under £100

not to report for self-assessment, do not need to register with the TRS unless they have a liability to another tax.

Trusts who need to submit a tax return to claim a tax relief, or confirm no liability to pay exists, also do not need to report unless the requirement is triggered by another tax.

Bare trusts are not required to register as generally any tax liability is the beneficiary's. However where SDLT/LBTT or SDRT are due, then potentially the liability could arise on the bare trustee/nominee and care should be taken in these cases.

If there is no income, or the income is mandated to the beneficiaries and no tax return is prepared by the trust, there is no need to register. For example, a trust with a valuable painting enjoyed by the life tenant and income from investments mandated to them would not be required to register unless a *tax liability* arose in another way. Such a trust might trigger registration if it incurred SDLT/LBTT on the purchase of a property. If the trust was created after March 2006 and was subject to the Relevant Property regime, then trustees would also need to watch for IHT 10 year charges or exit charges triggering registration.

Trusts which are closed (and per HMRC the trustees have a letter from HMRC acknowledging closure) do not have to register.

Trustees of charitable trusts do not need to register unless they incur a liability to pay any of the taxes listed above – see question 6.

Trusts involving co-owners of land which are bare trusts are not required to register. However such trusts may meet the definition of an *express trust*. If so registration will depend on whether or not the trustees incur a liability to UK tax in their capacity as trustees. Further discussion of the position for trusts with co-owners of land can be found in the [HMRC 22 November guidance](#).

HMRC highlighted in their August *Talking Points* that there are proposals in the Fifth EU Money Laundering Directive to remove the need to wait for a tax liability before registration is required. In future, it is possible that all trusts may need to be registered, whether or not they have a tax liability.

Even if the trustees are not liable to pay taxes in the year, if it is a *relevant trust* the trustees still need to keep records of its *beneficial owners*. The trustees can opt to update the register voluntarily if they wish.

A full list of trusts who do not need to use the TRS can be found in the [HMRC 22 November guidance](#) on pages 3 and 4.

10. What information is required?

The level of detail which must be reported to TRS is much greater than was previously supplied on form 41G. A full schedule of information is included as an appendix to this note. Practical details about the trust such as full name, date of creation, assets held when the trust was first created, and tax residency are required, as well as details on all the beneficial owners.

The regulations include the requirement for HMRC to maintain a list of potential beneficiaries listed in any letter of wishes or document from the settlor. (Potential beneficiaries named in solicitors' attendance notes will not be considered a document from the settlor and do not need to be

included). They also make provision for unknown or undetermined beneficiaries – for example unborn children in a family trust – to be included by reporting a class of beneficiaries, using the wording in the trust deed to define the class.

In the [HMRC 22 November guidance](#), HMRC confirmed a simplification for asset disclosure. Where assets settled into the trust on its creation have previously been reported via a 41G, or via the trust tax return, HMRC will allow trustees to complete asset section by completing the “Other Asset” field with the term “Already notified” and using a value of “£1”.

11. What about missing information?

HMRC expect trustees to make reasonable endeavours to obtain the necessary information on their beneficial owners. But there will be cases where, despite making reasonable endeavours, trustees cannot obtain all the details needed. For example, a beneficiary may be missing, or uncontactable.

The ATT and other professional bodies requested work-arounds to deal with the position where, despite the trustees’ best efforts, information is incomplete and a data entry needs to be made before the form can be submitted. .

HMRC advised professional bodies at a meeting on 8 December that they are, as a matter of urgency, working on lifting some of the restrictions on the form so it can be submitted with blank fields. In the meantime, the following workarounds can be used:

- **Date of Birth** - if the DOB is not known then enter **01/01/1900**. (This is also the earliest date the system can accept and should be used if an earlier date applies to one of the beneficial owners).
- **Address** - if the address is not known, we recommend using either the trustees’ or agent’s address except their postcode. Instead, the postcode used should be **NK1 1NK**. This will indicate to HMRC that the address either is not known or no longer exists.
- **National Insurance number** – if this is unknown enter **AB123456A**.

HMRC do note that they do not expect workarounds to be used in the case of the lead trustee or personal representatives, when full details should be known.

Additional workarounds for deceased settlors can be found at question 26. This provides an additional solution where the NI number is not known.

12. How is registration carried out?

The TRS is an online service, consistent with HMRC’s move to digital interactions with taxpayers. Registration can be carried out by an agent or by the trustees themselves.

1. Completion by an Agent:

1.1 The Agent Services account

The TRS is available to agents via the new *Agent Services* account, which has been created as part of HMRC’s *Making Tax Digital (MTD)* programme. *Agent Services* is the new way that professional agents will interact with HMRC. The TRS is not accessible via existing Government Gateway accounts. (Existing Government Gateway accounts must be retained for self-assessment purposes.)

In order to set up an *Agent Services* account, and then access the TRS, from 17 November the agency should follow the following steps:

1. Log in with any of the agency's existing Government Gateway credentials (see the 'digitally excluded agents' section below if you do not have such credentials) by following the link under 'Register your trust' [here](#).
2. HMRC systems should recognise that agent credentials are being used, and that an *Agent Services* account is required to continue.
3. The agent will be directed to set up an *Agent Services* account. They will need the UTR of the agency and their postcode, which HMRC will use to identify their agency.
4. Agent sets up the *Agent Services* account for their firm online and receives their new credentials – storing them safely as this account will be used for all other MTD functions in the future.
5. Agent returns to the log-in at step 1 and enters the new credentials to gain access.

Prior to 17 November it was necessary to email HMRC to request a link to set up an *Agent Services* account. HMRC informed agents on 17 November that from that date an agent should be able to set up their *Agent Services* account without needing to email HMRC. HMRC produced a *Talking Points* webinar on 30 November about *Agent Services* accounts which can be found [here](#).

The *Agent Services* account has some differences to existing Government Gateway logins:

- Each firm can have only one *Agent Services* account, whereas firms may have multiple Government Gateway accounts.
- In future, it will be possible to increase the security of an *Agent Service* account with 2 Step Verification (2SV). With 2SV, in addition to a username and password, a mobile, landline or HMRC app is associated with the account which can receive security codes. The codes must be entered before access is granted. 2SV is not mandatory at this stage and agents may choose not to set it up at this time.
- At a future date (probably in 2018) it should be possible to set up delegate access for individual staff to access the firm's *Agent Services* account. This should allow client confidentiality to be managed internally by restricting staff access to certain trusts. **In the meantime, HMRC advise it is possible to set up administrators and assistants on the new *Agent Services* credentials.** There is limited guidance on how to do this [here](#) under the sub-heading 'Online administrators and assistants'. Further guidance has been requested as we have also been informed separately that *associate* accounts should be used. See question 17 for further comments on this.

Given that the *Agent Services* account set up under this process will, in future, be the sole point of access for the agency to HMRC services, agents should consider setting this up centrally in their firm. It is unlikely that the trust department is the best place to set up this account as it will be required on an ongoing basis by the wider firm for MTD services.

Digitally Excluded Agents

Some solicitors' firms may not have existing Government Gateway credentials as an agent. This is because it is common for solicitors' practices with a small number of self-assessment returns to complete these on paper by 31 October and not interact with HMRC online. In these cases, the firm will first need to acquire Government Gateway credentials as an agent before tackling the steps above.

These firms are then likely to find that their new credentials do not have a 'digital footprint' within HMRC. HMRC's systems will therefore not recognise the agency and will not permit the creation of an *Agent Services* account as set out above. **We are also aware that some sole traders have struggled with a lack of digital footprint, despite being registered agents with HMRC for many years.**

HMRC are aware of the problem and the system was updated in early January 2018 so that registration was possible if the agency could provide an agent code. See [here](#) for details.

Any agents still unable to obtain an Agent Services account should contact the Trusts and Estates helpline.

(A previous update from 4 January on the issue of digitally excluded agents can be found [here](#).)

1.2 Trustee approval

Agents should be able to handle the initial registration without involving the trustees. However, for subsequent amendments, we understand that the lead trustee will be required to approve any amendments or updates to the trust record. We do not yet know how this will work in practice. The ability to amend the record is not being introduced until phase three of the TRS development.

For the initial registration of an existing trust, HMRC will ask for some known facts so they can confirm that an authorised person is supplying the information. After that point, since the data held by HMRC from previously submitted 41G forms is limited, the agent/trustee should effectively consider it a new trust registration and assume all information detailed in the appendix is required.

2. Completion by the trustees themselves

For an unrepresented trust, the service can be accessed by the trustees [here](#). The trustees will need to obtain a new Government Gateway log-in in order to access the service. If the trust has an existing Government Gateway for submitting tax returns, a separate Government Gateway account is needed for TRS purposes.

Where a trustee is not an agent but acts for, and will be registering, a number of trusts, the trustee will need a new Government Gateway for each trust. As discussed in November's *Talking Points*, this could affect, for example, corporate trustees who may not necessarily be the appointed tax agent for the trust. Such a trustee may not have Government Gateway credentials for an agent, which are needed to access the TRS via the *Agent Services* route.

3. Represented and unrepresented trusts

It is possible to pause the registration process and save data for up to 28 days if the agent/trustee needs time to find further information with the 'Save for Later' facility.

For trusts which are registering after 31 January following the tax year in which they were created, there will be the opportunity to advise whether tax liabilities in earlier years need to be reported. For example, a trust created in May 2007, registering now, will have the opportunity to say whether or not any tax returns are required for prior years in addition to 2016/17.

The normal time limit for assessments is four years from the end of the tax year. Where there has been careless behaviour this extends to six years, and for deliberate behaviour (i.e. fraud) HMRC can raise assessments for the previous 20 years.

At the end of the registration process, the lead trustee/agent will:

- Be presented with a summary page to review/edit
- Have the opportunity to print the information submitted (recommended)
- Make a declaration that the information supplied is correct and complete
- Be able to supply to HMRC with an email address for future correspondence.

13. What about agents based outside the UK?

Currently agents based outside the UK who need to register a trust in the UK cannot sign up to access the TRS as they cannot obtain an *Agent Services* account. There are various options recommended by HMRC:

- Is there a UK office/branch of the firm who could register the trust?
- Is the agent also a trustee who can register in their capacity as trustee?
- Can one of the other trustees register in their capacity as trustee?

Failing that, HMRC recommend the non-UK agent phones the Trusts and Estates helpline (0300 123 1072) who will supply a data capture sheet through the post.

Access to the TRS digitally for overseas/non-UK agents is not expected until late Summer 2018.

14. What about trusts with sub-funds

Where a trust has a number of sub-funds treated as separate trusts for tax purposes we asked whether the HMRC are expecting the registration of individual sub-funds, or the overarching trust. HMRC advised in correspondence:

“As the sub-funds are treated as separate trusts with their own UTR’s, then they will need to be registered separately. This is subject to the trustees having to pay any of the relevant UK taxes. As such there might be situations where not all the sub-funds have to register in a given tax year but where a sub-fund has incurred a liability to pay any of the relevant UK taxes then it should register on the TRS.”

15. Can an agent see a return submitted by a trustee?

No. At present, we understand it is not possible for the trust agent to see a TRS return which has been submitted to HMRC by the trustees.

16. Can an agent complete a registration started by a trustee?

No. If the trustees have attempted to complete registration but, for whatever reason, decided that they want their agent to complete it, the system does not allow for the agent to log in and complete the registration for them. The trustees will need to complete the registration.

17. How is client confidentiality managed internally by the agent?

At present, any staff member with the access details to the main *Agent Services* Account will be able to see details of registrations which are in progress. Screenshots of the process from November’s HMRC *Talking Points* webinar show a warning message is displayed to alert users to this.

Question 12 gives some details of how to set up *administrator* and *assistant* access for staff to the main account by giving individual staff their own separate credentials to access the account.

We had heard reports that registrations in progress for the whole firm were still visible to staff logged in in this way, which was creating confidentiality issues. We were advised by HMRC at a meeting on 8 December that this is because firms have set up staff with *delegate* accounts, and in fact staff should be set up with *associate* accounts should only be able to see registrations they are working on, and not all those for the wider firm.

Clarification of the terminology has been requested. If members find that *administrator*, *assistant* or *associate* accounts are still allowing staff wider access than they should have please let us know so we can feed this back.

For highly confidential registrations, an alternative approach – which may not be practical - is to complete and submit the registration in one sitting.

18. Why is the TRS not recognising an existing trust?

It was queried in the November *Talking Points* how to deal with cases where existing trusts are not recognised. In this case it is recommended to try again leaving any punctuation out of the name of the trust. Failing that, contact HMRC's Trusts and Estates Helpline on 0300 123 1072 for advice.

19. At what point in time does the information need to be correct?

In general, apart from this first year, trustees have until the 31 January following the tax year to notify changes to the *beneficial owners* in that tax year. Where there are further changes between the end of the tax year and the date of reporting, HMRC expect the report to include all the changes up to the reporting date.

For example, there is a change in 2018-19 and the trust has a tax liability so is liable to report that change by 31 January 2020. There is then a further change in October 2019. If the trustees choose to update the register for 2018-19 in November 2019 they will also know about the October change, and HMRC would expect the information supplied to reflect the latest position.

20. When can beneficiaries be defined by class?

Regulation 6(1)(d) allows for a class of *beneficial owners* to be described. This simplifies reporting matters, as otherwise *all* possible beneficiaries would need to be reported. For some family trusts this could involve trustees in obtaining personal data from a very large number of people, many of whom may not be intended to ever benefit. Furthermore, beneficiaries such as future unborn children will be always be unknown.

Regulation 6(1)(d) says “where the individuals (or some of the individuals) benefiting from the trust have not been determined, the **class of person** in whose main interest the trust is set up or operates” **[our emphasis]** is a *beneficial owner*.

Following regulation 45(2)(d), the information that must be provided in respect of a class of beneficial owners is “a description of the class of persons who are beneficiaries or potential beneficiaries”.

Where an individual is named in the trust deed as a beneficiary, HMRC are generally expecting details of this person to be included on the register. (The exception to this is where the named individuals are potential beneficiaries contingent on an event, such as the death of another

beneficiary. HMRC says that, in this case, they are content that such contingent beneficiaries are listed as a class, until the contingent event occurs).

If the beneficiaries are not named on the deed, they can be described as a class- eg 'children and grandchildren'. HMRC will consider individuals within such a class to be *determined* when they receive a financial, or non-financial, benefit from the trust after 26 June 2017. At that point, disclosure within a class is not sufficient and the individual's details will have to be reported in full. This is because, per HMRC, a beneficiary must have been *determined* for the trust to be able to provide them with a benefit.

This was a change to our previous understanding set out an earlier version of this Briefing Note prepared in October 2017, when it was understood that HMRC expected that **all** known beneficiaries would need to be identified in full. This meant that the register would potentially have to be updated every time a new beneficiary was born. This was an onerous obligation for trustees to comply with, and not consistent with the regulations.

HMRC have now provided the following examples to illustrate when a class description can be used:

Example A

A Trust Deed states that the beneficiaries are the grandchildren (some are alive and some are yet to be born in the future) of the settlor and any other persons added by the trustees as per instructions from the settlor. The settlor adds his niece, Mary, so that she will benefit at the trustees' discretion. The settlor also adds that, if Mary dies before any of the grandchildren, then a distribution can be made to John (a nephew of the settlor).

In this case, under the TRS the grandchildren should be listed as a class. However, if the trustees make a financial payment or provide a non-financial benefit to any of the grandchildren then at that point in time the trustees should record the identity details of that particular grandchild that has been in receipt of a benefit.

Mary's details should be registered as an individual, as she could receive a benefit at any point in time.

John should be identified as a class of beneficiary but if at some point in time in the future John is in receipt of a benefit from the trust assets or income then this means he can be identified by name and as such his details should go on the TRS.

Following correspondence with HMRC John is disclosed as a class (and not as a named individual) as his ability to benefit is contingent on Mary's death.

Example B

Deed says - John Smith and Jane Green, their children and grandchildren and a charity chosen by the eldest child of John and Jane. To date only John and Jane have received a financial benefit from the trust assets/income.

John Smith and Jane Green should be registered as they have been "determined" in light of trustees being able to make a trust distribution and are a named beneficiary.

Children and grandchildren are recorded as a class and also the charity should be recorded as a class as the name of the charity has not been determined/identified. When a child or grandchild receives a benefit from the trust assets/income then at that point in time he or she should be named on the TRS.

Likewise, when the charity receives a trust benefit at some point in the future, then the details of the charity should be recorded on TRS at that point in time because in order to have received a financial benefit the trustees must have been able to determine/identify the charity.

21. What should I do when there are more than 10 beneficiaries?

If there are more than 10 beneficiaries who are named or identifiable then trustees will need to make separate disclosure by post to **Trusts, HMRC, BX9 1EL**.

Where this would prove impracticable for certain trusts including:

- occupational pension schemes
- charitable trusts and,
- employee benefit trusts,

HMRC have indicated that disclosing the class of beneficiaries will be sufficient and individual beneficiaries will not need to be named.

22. Can data be supplied in bulk?

At present there is no facility to bulk upload data into the system. Data for each trust must be manually entered through the TRS.

HMRC are working on an API (Application Programme Interface) to allow those using trust software to complete registrations via their software in the future.

23. Will HMRC pre-populate the register with existing data?

HMRC will not be pre-populating the return with any existing data held in respect of the trust. The trustees must start from scratch.

24. What information needs to be supplied by letter?

There are limits to the number of settlors, trustees and beneficiaries which can be reported through the TRS. If the trust has more than two settlors, five trustees or 10 beneficiaries, their details must be supplied by post to HMRC to

Trusts, HMRC, BX9 1EL

There is no facility to submit attachments through the TRS.

Concerns have been expressed during *Talking Points* sessions that in some situations, for example flat management companies, there will be a large number of settlors to disclose. HMRC addressed the point for flat management companies by stating they would not expect many of these to have a liability to tax which would trigger registration.

25. When does this data need to be supplied by?

For all existing trusts with a tax liability in 2016/17, data should be supplied to the TRS by **31 January 2018**. However, as a concession in the first year, following the problems for agents in accessing the

service, there will be no penalties charged provided the registration is completed no later than **5 March 2018**.

For trusts created in 2016/17 which require a UTR, the usual 5 October 2017 self-assessment registration deadline has been extended to **5 January 2018** (previously 5 December 2018) to compensate for the delayed agent access to the service. All trusts (represented or otherwise) can benefit from the extension.

In future, for any trust which does not yet have a tax liability, registration is due by 31 January following the first tax year in which a tax liability does arise - unless the trust also needs to register for self-assessment. In this case, the earlier 5 October deadline for self-assessment overrides 31 January as the date for trust registration. A single registration by the earlier date then satisfies both requirements.

26. How to report a deceased settlor

HMRC have provided an update to the work-around for deceased settlors where trustees do not have all the required information.

For deceased settlors, their name and date of birth should be entered.

Where date of birth is unknown, the date of birth field can be completed with '01/01/1900'. (Since this is the earliest date the system will accept use '01/01/1900' for any settlors born prior to this date.)

Where the NINO or UTR is unknown, then answer 'no' to the question about the settlor's NINO/UTR. This brings up a series of further questions which should be tackled as follows:

- **Country of issue of passport or ID card** – complete with most relevant country to deceased. This is most likely to be the United Kingdom which should be written as 'United Kingdom' and not as 'UK'.
- **Passport or ID card number** – complete with 'deceased' followed by year of death, so 'deceased1980' if settlor died in 1980. There should not be any spaces between *deceased* and the year. If year of death is unknown use '1900'.
- **Passport or ID card expiry date** – complete with the date of death. If only the year is known, complete with the 31 December in the year of death eg '31/12/1962' for a settlor that died in 1962.
- **Address**: Settlor's last known address. If this is not known use either the trustees' or agent's address but substituting **NK1 1NK** for their post code to indicate to HMRC that the address is either not known, or no longer exists.

27. Updating the register

Trustees are obliged to update the details on the Trust Register via the TRS if there is any change to information previously supplied. Updates should be made by 31 January following the tax year of change, assuming there is a tax liability in that tax year.

If there is no tax liability in the tax year of change, then the update should be made following the next year where a tax liability arises. This means that the information held by the TRS will be out of date for those trusts which only have tax to pay infrequently, for example where triggered by property purchases or IHT.

As yet, it is not possible to update the register online. The facility to do that is expected in early 2018 when phase three of the TRS is completed.

For trusts completing self-assessment tax returns there will be a tick-box on the tax return to confirm that the TRS data is correct or has been updated. It is not yet clear how trusts which are reporting because of a liability to IHT or SDLT will confirm that information has been updated.

28. What happens if incorrect data is submitted at initial registration?

If the data to be corrected has not yet been submitted, but has only been saved as part of the 28 day drafting window, it can be corrected prior to submission as part of the initial process.

If the data has been formally submitted, trustees will need to wait to correct any submissions until the update facility is introduced in phase three in 2018.

29. Question 20 on the 2016/17 Tax Return

The following question was included on the 2016/17 trust tax return, on the presumption that the TRS would be available to agents:

“You have a responsibility to ensure the information you have supplied on the Trust Register is accurate and up to date to the best of your knowledge and belief.

If there have been any changes or additions to the people associated with the trust, have you provided the updated details on the Trust Register? [Box to tick yes]

[Explanatory text]

These people include trustees, personal representatives, beneficiaries, members of the class of beneficiaries, settlors, protectors, agents or any other natural person exercising effective control over the trust.”

Where tax returns have been completed prior to agents being able to access the TRS, HMRC advised that tax returns should be submitted with this question left blank. HMRC have confirmed in correspondence that agents will not need to amend 2016/17 returns to complete question 20 where it has been left blank and the return was submitted before the TRS was made available.

Not only would amendment be additional work for agents but, importantly, it would also extend the enquiry window. For these trusts, the first time this question will be completed will be in the 2017/18 return. In 2017/18 HMRC will be cross-checking answers to question 20 (or its equivalent) with the Trust Register.

30. What about Holdover Relief?

For lifetime trusts, during the TRS process agents/trustees will be asked if hold-over has ever been claimed. If the answer is unknown, HMRC say that trustees should answer ‘no’. The question is not part of the information required under the new legislation.

Trustees and their advisers dealing with a trust where they are unfamiliar with the trust’s history need to be aware they can’t rely on the answer to this question when determining whether or not hold-over has been claimed.

31. What are the additional record keeping obligations for trustees?

In addition to supplying data to TRS, the new regulations impose a requirement for trustees of *relevant trusts* to maintain accurate, up to date and written records of beneficial owners and potential beneficiaries themselves. This applies whether or not the trust has a tax liability to pay in the year.

The information trustees must retain is essentially the same as that supplied to HMRC, excluding a few elements such as details of the date of trust formation and trust residency which trustees are likely to want to know anyway.

For relevant trusts who have reported, it will be possible to print out the information supplied to TRS. **Trustees may wish to print and retain a copy of the TRS information which we understand should satisfy their record keeping obligation.**

Where a trustee is being paid to be a trustee – e.g. a corporate trustee or professional adviser – they should take particular care over data retention. The legislation requires paid trustees to retain data on beneficial owners for five years after the date on which the final distribution from the trust is made. After that, the data should be destroyed unless the trustees are required to retain it for court proceedings, consent has been given to retain it for longer, or the trustees have reasonable grounds to believe that the data needs to be retained for legal reasons.

32. What about residency of beneficiaries?

The TRS does not ask about the tax residency of any of the connected individuals. However trustees will need to know the residency of their beneficiaries for AEOI (Automatic Exchange of Information) purposes including FATCA (Foreign Account Tax Compliance Act) and CRS (Common Reporting Standard). This information should be obtained from beneficiaries if not already held.

The introduction of the TRS process provides an opportunity for trustees to ensure that all necessary information is held and to ask beneficiaries to inform them of changes in residency.

33. The position for executors of estates

Executors of complex estates who need to submit annual tax returns for the administration period must use the TRS to tell HMRC about the estate and to obtain an estate UTR. Estates are not subject to the regulations but the TRS is being used as the same route for registration following withdrawal of form 41G.

A complex estate is one which does not meet the conditions for informal procedures and will generally satisfy one of the following criteria:

- The estate is valued at over £2.5m at the date of death, or
- The tax liability for the whole period of administration exceeds £10,000 or
- The proceeds of assets sold by the estate in any tax year exceed £500,000 (£250,000 for deaths prior to 6 April 2016)

The form will take the executor through a series of questions to determine if the estate is complex.

We are informed that executors must use the TRS to obtain a UTR for any years for which a UTR is now found to be required.

Estates will need to supply the following information:

- Estate name/title
- Personal representative details – name, date of birth, telephone and email, address, NINO or UTR. Where no NINO/UTR is available then a passport or ID card number, and expiry date, are required.
- Details of the deceased – name, date of birth, date of death, address and NINO or UTR. Where no NINO/UTR is available then passport or ID card number and expiry date as above.

HMRC say that where there are underlying trusts in an estate receiving the residue of the estate, the trustees will only be required to register such trusts at the end of the period of administration.

34. How do we report a Corporate or Charity Executor?

HMRC have provided the following workaround to complete the questions where the executor is a company or charity and does not have an NI number or date of birth.

- First name/last name –the Corporate/Charity executor should split its name over the two fields so ‘Quality Estates Services’ might complete ‘First name’ with ‘Quality’ and ‘Last name’ with ‘Estates Services’.
- Date of birth – complete with 01/01/1900
- NINO – answer ‘no’
- Passport country of issue – complete with the most relevant country. Where this is the UK, this needs to be written in full as ‘United Kingdom’
- Passport number – complete with ‘Corporation’ or ‘Charity’ as appropriate
- Address/phone number/email – the corporate/charity executor’s usual contact details

35. Who has access to the TRS?

At present, HMRC is required to give access to law enforcement agencies but there is no right of public access. In the September *Talking Points* session, HMRC confirmed that other EEA countries will have access to the data via the National Crime Agency.

For interest, members may be aware that a similar register has been created in France already. It was announced in June 2016 that it would be made accessible to the French public. That position was then challenged and subsequently public access was held to be incompatible with other rights in French law.

36. Are there penalties for failure to register or incorrect registration?

Full details of the penalty regime are expected at some point in 2018.

HMRC say that any civil penalty imposed must be proportionate to the offence committed. They say that they expect trustees to make reasonable efforts to obtain the information requested. Even if not all the information is available, the trust should still be registered.

Trustees’ obligations in respect of maintaining accurate and up-to-date records in respect of beneficial ownership and registration with and reporting to the TRS are contained within Regulations 44 and 45 of *Statutory Instrument 2017 No. 692 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*. Sanctions for breach of the trustees’ obligations are accordingly common with those (both civil and criminal) for contravening the numerous relevant requirements set out in the Regulations.

Civil sanctions available to HMRC for a breach of the trustees' obligations comprise the imposition of a penalty of such amount as HMRC considers *appropriate* and/or (less fittingly in the trust context) the publications of a statement of censure. The Regulations stipulate that 'appropriate' means "effective, proportionate and dissuasive" and require that all relevant circumstances must be taken into account when determining the type and level of sanction. Procedures in respect of statutory review and appeal to the tribunal follow those for VAT (demonstrating the European pedigree of the Regulations).

As an alternative to civil sanctions, someone who contravenes a relevant requirement under the Regulations may be prosecuted. Upon *summary* conviction, they are liable:

(i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both;

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both.

Upon conviction on *indictment*, they are liable to imprisonment for a term not exceeding two years, to a fine, or to both.

Whilst a civil sanction would generally appear to be much more appropriate than a criminal one in the context of the record keeping and TRS obligations, the potential for prosecution reinforces the message that the trustee obligations form part of the wider Anti-Money Laundering code and will be enforced with due rigour.

37. [How do I contact the Trusts and Estates Helpline?](#)

Their number is 0300 123 1072.

38. [Contact](#)

We would be pleased to hear from any members who have any difficulties or issues with the TRS system, or have come across areas of uncertainty which they feel should be brought to the attention of HMRC.

Please email the technical team on atttechnical@att.org.uk with the subject heading *Trust Registration Service*.

Appendix 1: Information required for new and existing trusts

HMRC say that trustees should make all reasonable efforts to supply the information below. Even if not all information can be obtained, the trust should still be registered.

Data Required	Notes	Comments
Full name of trust		
Date of creation		
Country of tax residency		
Correspondence address	Where the trust is administered from	
Advisers' details	Per the regulations the full name of any paid advisers providing legal, financial or tax advice is required	<p>HMRC have advised they are in practice only looking for details of the agent (if one has been appointed) who looks after the trustees' tax affairs. Trustees should keep their own written records of other advisers.</p> <p>Where an agent is carrying out the registration on behalf of the trustees they will need to supply:</p> <ul style="list-style-type: none"> • Agency/agent name • Address • Telephone number • Customer/agent reference
Type of trust	Form has a list to choose from	<ul style="list-style-type: none"> • Subsequent questions will be tailored based on the answer to this question
<p>Assets – NB Please note simplification advised in HMRC 22 November guidance and November Talking Points – see question 10</p>	<p>Asset must be split into the following six categories:</p> <ol style="list-style-type: none"> 1. Cash 2. Property/land 3. Shares 4. Business 5. Partnership 6. Other <p>Up to 10 assets can be reported in each category – any additional assets must be reported separately by letter</p>	<p>The register should be completed with details of the assets placed into the trust when the trust was first created.</p> <ul style="list-style-type: none"> • Address information is required for property assets • For property, trustees should indicate where they hold a fractional share • For shareholdings, the form currently asks for the company's UTR information – this will be amended on a later release to ask whether or not the UTR is known. It is more likely to be known for private company shares than publicly listed companies. • For more than 10 shareholdings, HMRC recommend disclosing the top 8-9 holdings by value and then in box 9 or 10 combine the balance as a portfolio. <p>To disclose a portfolio of shares: enter for company name 'Portfolio of shares', enter for number of shares the total</p>

		number of shares held in the portfolio when trust created, enter 'no' to question about whether a UTR is available, complete the class of shares section as 'other', complete type of share with 'quoted' or 'unquoted' as applicable and enter full value of the shareholdings so combined
	Assets should be valued at market value at the date the trust commenced	<p>HMRC are aware that some trustees will have difficulty finding that information and advise that trustees should make reasonable efforts to do the best they can. HMRC say for trusts established some years or decades ago they will have reviewed the asset values at the time, and as it is unlikely the trust will still hold the same asset, HMRC are unlikely to question the values supplied. HMRC are not expecting formal valuations to be produced purely for trust registration purposes.</p> <p>HMRC 22 November guidance indicates that if a trust was set up some time ago, and the trustees do not know the value of the assets at that time, if the value of assets would have previously been notified via a 41G or SA900 tax return, the trustees can complete the 'other asset' field with the description 'already notified' and complete all other fields with '£1'. See question 10 above.</p>
	Additions to the trust after creation	Subsequent additions to the trust should be reported via the tax return in the usual manner
Lead Trustee	<p>Individual or company</p> <p>Contact email address can be added in all cases for future digital contact</p>	<p>For individuals, the information required per HMRC is</p> <ul style="list-style-type: none"> • Name • Date of birth • UK NINO or UTR (if available) • If no NINO/UTR then <ul style="list-style-type: none"> ○ residential address ○ passport or ID card number, together with country of issue of the passport/ID card, and passport expiry date • Telephone number • Email <p>The actual regulations differ slightly from the HMRC requirements and the differences have been highlighted to HMRC. The regulations do</p>

		<p>not require email or telephone address although both are practical from HMRC perspective.</p> <p>Passport details are only required under the regulations for addresses outside the UK.</p>
		<p>For a corporate trustee, information required is:</p> <ul style="list-style-type: none"> • Name of company • Company UTR (or if no UK UTR, address of company) • Email (HMRC requirement only)
Other Trustees	<p>There is the option to add up to four more trustees in addition to lead trustee</p> <p>Where more than five trustees in total write to HMRC with details of the additional trustees</p>	<ul style="list-style-type: none"> • Details as for lead trustee
Settlor	<p>Up to two settlors can be reported online, additional settlors' details must be supplied by letter to : Trusts, HMRC, BX9 1EL</p> <p>Must report settlor whether living or dead</p>	<ul style="list-style-type: none"> • Additional settlors must be reported in writing • Information as for lead trustee • For dead settlors, name and DoB are required, but if the NINO/UTR are unknown then answer 'no' and in the next screen complete the questions about passport as follows: <ul style="list-style-type: none"> ○ Country of origin of passport – put the most relevant country ○ Passport reference – put the word 'DECEASED' followed by the year they died with no spaces eg DECEASED1980 for a settlor who died in 1980 ○ Passport expiry date - put the actual date of death ○ Address – settlor's last known address
Protector (If applicable)	<p>Up to two protectors can be reported online</p>	<ul style="list-style-type: none"> • This is new data to HMRC so they are looking to see how common it is for trusts to have a protector. • Details as per lead trustee
All other persons with effective control	<p>Maximum of two people with informal influence over trust</p>	<ul style="list-style-type: none"> • Also new data to HMRC so they are looking to learn from information received • HMRC examples include: <ul style="list-style-type: none"> • <i>Parents of beneficiary who can insist either on payments or no payments to children.</i>

		<ul style="list-style-type: none"> • Any beneficiaries who, if they all acted together would have the power to wind up the trust (the rule in <i>Saunders v Vautier</i>) • Anyone that can force trustees to dispose assets, lend, invest or apply trust assets, add/remove beneficiaries
Individual Beneficiaries	<p>Named beneficiaries must be reported whether or not benefiting.</p> <p>See the question ‘When can beneficiaries be defined by class?’ on page 10 of this note.</p> <p>Max of 10 individual, company or charity beneficiaries can be reported online. Advise HMRC by letter of additional beneficiaries</p>	<ul style="list-style-type: none"> • Details required for individual beneficiaries: <ul style="list-style-type: none"> ○ Name ○ Date of birth ○ NINO/UTR (or address and passport/ID details (number and expiry date) if beneficiary doesn’t have a NINO or UTR). ○ Where the beneficiary has a life interest, the percentage of income not subject to trustees’ discretion ○ Notification vulnerable beneficiaries (NB the usual election must still be supplied separately.) ○ For minor beneficiaries with no NI number or passport the address must be supplied ○ HMRC will look closely at trusts that do not provide NI numbers when HMRC think they should have done • Again there is small difference between regulations and HMRC requirements
Classes of beneficiaries	<p>Two main cases – contingent or unidentifiable beneficiaries (including unborn children) and Employee Benefit Trusts (EBTs)</p>	<ul style="list-style-type: none"> • Children not yet born, or otherwise unidentifiable beneficiaries, must be included as a class based on the description used in the trust deed. • For Employee Benefit Trusts or Pension funds set up to benefit multiple employees, a general class of employees and spouses or widows/widowers and family can be described but any key figures such as (current) directors and key employees must be listed separately and not included in the class. Key members of staff are, per HMRC, those whose skill and expertise are critical to the business and for which they enjoy a high level of remuneration • Describe beneficiary class as per the trust deed – there is a 56 character limit on the form

<p>Any other beneficiary types</p>		<ul style="list-style-type: none"> • This question is designed to pick up the (rare) situations of the trust being set up to benefit pets or non-living entities such as properties or memorials etc.
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References

The above has been prepared on the basis of the relevant legislation: *Money Laundering, Terrorist Financing and Transfer of Funds Regulations (2017 No 692)* which took effect on the 26 June 2017 (link below) and HMRC's *Talking Points* webinars of 10 August 2017 and 8 September 2017, and amended for the HMRC *Talking Points* of 17 November. **HMRC noted during November's session that their interpretation of some areas, particularly in respect of beneficiary disclosure, has changed so earlier webinars should be viewed with some caution.**

Link to legislation: http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf

The recording of HMRC's *Talking Points* webinar from September can be found here: <https://attendee.gotowebinar.com/recording/158901805757306371>

The recording of HMRC's *Talking Point* webinar from November can be found here: <https://attendee.gotowebinar.com/recording/1546864813013076481>

Guidance was produced by HMRC in October and updated on 22 November. The updated guidance can be found [here](#).

Help sheets supplied during November's *Talking Point* can be found [here](#).

HMRC have no plans to publish the [HMRC 22 November guidance](#) on the GOV.UK site and it is only available on the sites of various professional bodies.

Association of Taxation Technicians

26 January 2018