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Improving the effectiveness of the Money Laundering Regulations

Response by the Chartered Institute of Taxation

1. Introduction

1.1. We are pleased to provide comments on the HM Treasury Consultation: Improving the effectiveness of the Money Laundering Regulations

1.2. The Chartered Institute of Taxation (CIOT) strongly supports the UK's drive to combat money laundering and terrorist financing and recognises the need to ensure that the Money Laundering Regulations (MLRs) do not create regulatory burden and that the requirements under the MLRs are proportionate to the identified risk.

1.3. This response does not cover each question of the consultation in detail. Some of the proposed changes do not have any implications for our members and in some areas we have felt that general comments are appropriate to cover the whole section.

2. About us

2.1. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation.

2.2. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

2.3. The CIOT is an AML supervisory body.

2.4. The objects of the CIOT include the requirements:

(i) to prevent crime and
(ii) to promote the sound administration of the law for the public benefit

by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation.

3. Executive Summary

3.1. The CIOT broadly agrees with the suggested measures and areas for change that have been identified in the consultation document where relevant to the tax advice and accountancy sector.

3.2. However, in collaboration with the Accountancy AML Supervisors' Group (AASG) we have agreed that there are a number of areas that the consultation has not considered, that we had hoped would be addressed. We believe these would have a high impact in increasing the effectiveness of the UK's AML regime:

3.3. **Requirement to be supervised** - The MLRs don't explicitly require relevant persons to be supervised. The MLRs set out which businesses are in scope, and which organisation is the supervisory authority for each category of relevant person but there is no express requirement for those relevant persons to apply / register with a supervisory authority. Such explicit wording would help the professional body supervisors (PBSs) stop members who look for loopholes because they don't want to be supervised

3.4. **Fines and sanctions** - For tax and accountancy professional bodies, our most serious sanction is to exclude a member but because 'accountancy', 'tax adviser', 'tax agent' or 'tax accountant' are not reserved terms, these individuals may continue to offer tax and accountancy services. There seems to be a disconnect with the professional bodies' desire to remove such practitioners from professional body membership and HMRC's obligations as default supervisor – HMRC sees that they have only a limited number of circumstances where they can refuse supervision – and we believe that the MLRs could be amended to allow HMRC to consider professional body exclusion, or AML misconduct, as a relevant factor to refuse supervision.

3.5. **Director verification** - The MLRs require the relevant person to take reasonable measures to determine and verify the full name of the board of directors for a body corporate. In the accountancy sector guidance ('AMLGAS'), it explains that this means the relevant person must confirm the director is who they say they are (ie, normal identity checks on the individual such as a obtaining a passport) but this may be done on a risk-basis. Although HM Treasury has approved this guidance, and therefore requirement, the equivalent wording is not included in Joint Money Laundering Steering Group (JMLSG) or the legal sector guidance. We therefore ask that government re-considers the wording of Regulation 28 (3) (b) (ii) to make it clear whether the verification checks on a director should be the equivalent to the verification checks on a beneficial owner. It is important that we have consistent approaches on director verification across all regulated sectors.

Chapter 1: Making customer due diligence more proportionate and effective

Customer Due Diligence

4. Q1. Are the customer due diligence triggers in regulation 27 sufficiently clear?

4.1. We note that this section of the consultation relates to due diligence triggers for non-financial firms. Financial and non-financial firms are not defined but we assume the term non-financial includes tax advisers and accountants.

4.2. We believe the customer due diligence triggers in regulation 27 are sufficiently clear. We find that tax advisers and accountants are clear on when a business relationship begins, and supervisor guidance asserts that Customer Due Diligence (CDD) must be completed before entering into a business relationship. We believe that the Consultative Committee of Accountancy Bodies (CCAB) AML guidance for the accountancy sector (AMLGAS) and other sector guidance could be amended to address points such as the element of duration, when to carry out source of funds checks and complex or unusually large transactions. We also believe that regulation 27 could be split into two parts to create a clear distinction between 'onboarding CDD' and 'ongoing CDD/monitoring'. Separating these out could highlight the importance of ongoing monitoring.

5. Q2. In your view, is additional guidance or detail needed to help firms understand when to carry out 'source of funds' checks under regulation 28(11)(a)? If so, in what form would this guidance be most helpful?

5.1. See our answer to question 1 above. We believe that AMLGAS could be updated to provide further guidance. Guidance should recognise the fact that where the work being undertaken is of limited scope (for example, where a firm provides a piece of VAT advice) then the firm will only be collecting information of a limited scope to enable them to do that work and it is not proportionate for them to do extensive source of funds checks in relation to all areas in which the firms operate. On the basis of our discussions with members during AML supervisory visits they are able to articulate for example how a firm could afford a new building where they are providing VAT advice in relation to that transaction but the scope of their work means that they are unlikely to know the full source of funds history for a business as a whole. We consider this approach proportionate in relation to the engagement.

6. Q3. Do you think the wording in regulation 28(10) on necessary due diligence on persons acting on behalf of a customer is sufficiently clear? If not, what could help provide further clarity?

6.1. We believe that it would be beneficial if the wording in regulation 28(10) is improved to provide clarity on the definition of a person purporting to act on behalf of the customer.

7. Q4. What information would you like to see included in published digital identity guidance, focused on the use of digital identities in meeting MLR requirements? Please include reference to the level of detail, sources or types of information to support your answer.

7.1. We welcome digital identity guidance. Particularly, we find that our members have concerns as to whether the digital identify verification software is delivering the required level of verification (particularly in relation to overseas based clients) and note that the quality of providers is not always consistent. There are also concerns around the abuse of artificial intelligence to produce deepfakes, synthetic identities etc to manipulate digital identity systems. We believe it would be useful for the government to provide guidance to firms on the standard required for digital identity, alongside the potential risks, to provide firms with greater confidence when choosing a provider and using this software.

7.2. We have been informed that some digital identity software providers are falsely claiming that digital identity verification is a mandatory requirement of the MLRs. While we can issue our own communications to inform our members that this is not compulsory clarification of this from the government would also be helpful. Our supervised population is made up mainly of small firms dealing with local clients who they know well. In some

cases electronic verification provides limited additional benefits from the more manual approach they are taking and we would see it as a backwards step if electronic verification became mandatory for the accountancy sector.

Enhanced Due Diligence (EDD)

8. Q9. (If relevant to you) Have you ever identified suspicious activity through enhanced due diligence checks, as a result of the risk factors listed above? (Regulations 33(6)(a)(vii), 33(6)(a)(viii) and 33(6)(b)(vii)). Can you share any anonymised examples of this?

8.1. We are not aware of any instances of our members identifying suspicious activity in these areas.

9. Q11. Are there any risk factors for enhanced due diligence, set out in regulation 33 of the MLRs, which you consider to be not useful at identifying suspicious behaviour?

Q12. In your view, are there any additional risk factors that could usefully be added to, for example, regulation 33, which might help firms identify suspicious activity?

9.1. We do not believe there is a need for additional risk factors in regulation 33 and would recommend caution in doing so. There is a risk that firms may consider this a complete list of all risks to be considered, unless it is clearly outlined that the list is non-exhaustive, and risks should be considered on a case-by-case basis.

9.2. We believe our supervised firms are sufficiently clear on the risk factors to consider and we regularly communicate emerging threats and trends through alerts, website guidance, newsletters and AMLGAS. These can be communicated much more quickly than updates to legislation.

9.3. As an AML supervisor, we would welcome more guidance on the acceptable level of EDD measures to be applied to domestic and non-domestic PEPs following the updates to regulation 35(3A)(b).

10. Q13. In your view, are there occasions where the requirement to apply enhanced due diligence to 'complex or usually large' transactions results in enhanced due diligence being applied to a transaction which the relevant person is confident to be low-risk before carrying out the enhanced checks? Please provide any anonymised examples of this and indicate whether this is a common occurrence.
Q15. If regulation 33(1)(f) was amended from 'complex' to 'unusually complex' (e.g. a relevant person must apply enhanced due diligence where... 'a transaction is unusually complex or unusually large'):

- **in your view, would this provide clarity of intent and reduce concern about this provision? Please explain your response.**
- **in your view, would this create any problems or negative impacts?**

10.1. We would recommend caution in amending the wording from 'complex' to 'unusually complex'. We believe that there is an understanding of the current term and do not believe that an update is required. As noted in question 1, our view is that AMLGAS could be amended to provide further guidance to the approach to complex or unusually large transactions rather than amending the regulations.

11. Q16. Would removing the list of checks at regulation 33(3A), or making the list non-mandatory, reduce the current burdens (cost and time etc.) currently placed on regulated firms by the HRTC rules? How?

Q17. Can you see any issues or problems arising from the removal of regulation 33(3A) or making this list non-mandatory?

11.1. We agree with the proposal to remove the list of checks at regulation 33 (3A) and believe that this will reduce burdens on firms. we note that the mandatory list of checks seems to be based on the assumption of the client being high-risk due to being based in a High Risk Third Country (HRTC) and this may not always be the case. The challenge is that navigating and mitigating jurisdictional risk in HRTCs can be difficult – many verification procedures won't reduce the risk associated with that HRTC. The mandatory checks in regulation 33(3A) are not all required by the FATF; therefore, a risk-based approach to the additional EDD checks would be preferable. Members would also find a risk based approach helpful because of the increased burdens which there currently are when a country is added to the list of HRTC for a brief period of time. At present they need to meet the mandatory requirements when the country is added to the list and may find after a brief period that they are no longer required.

Chapter 2: Strengthening system coordination

12. Q27. Should we consider extending the information-sharing gateway in regulation 52(1A) to other public bodies in order to support system coordination? If so, which public bodies? Please explain your reasons.

12.1. We would welcome extending the information-sharing gateways and are therefore supportive of extending regulation 52(1A) to facilitate that.

12.2. We also recommend that NATIS be included in the scope of regulation 52 to allow the effective sharing of information on bounce back loan fraud (for example).

12.3. The current methods of data sharing such as SIS, FIN-NET, CJSM and email encryption are not always reliable and can cause inconsistencies and difficulties when sharing information. We would appreciate a consistent system to ensure successful sharing of information, especially if information-sharing gateways are extended.

13. Q28. Should we consider any further changes to the information- sharing gateways in the MLRs in order to support system coordination? Are there any remaining barriers to the effective operationalisation of regulation 52?

13.1. Whilst CIOT have a public register of our supervised population, other supervisory authorities may have to obtain consent to publish details of a firm in the public domain. We would welcome a requirement in the MLRs for supervisory authorities to publish a list/register of their supervised population. A provision in the MLRs would overcome data protection issues and support system coordination by ensuring that other public bodies can easily access information on which the supervisor of firms.

14. Q29. Do you agree that regulation 50 should be amended to include the Registrar for Companies House and the Secretary of State in so far as responsible for Companies House?

14.1. We welcome the amendment to regulation 50, although we believe that the accountancy sector professional body supervisors do already cooperate with Companies House on relevant matters, inclusion in the legislation would help facilitate further information sharing.

14.2. We also believe that the introduction of identity verification through Authorised Corporate Service Providers (ACSPs) may expose firms to risks similar to that of the verification of overseas entities. We believe that the MLRs and Economic Crime and Corporate Transparency Act should be aligned. Information sharing between Companies House and the PBSs will be required for the success of the introduction of ACSP.

15. Q31. In your view, what impact would this amendment have on supervisors, both in terms of costs and wider impacts? Please provide evidence where possible.

15.1. We believe that increased information sharing powers will have a positive impact, provided it complies with GDPR and privacy declarations.

16. Q32. Do you think the MLRs are sufficiently clear on how MLR- regulated firms should complete and use their own risk assessment? If not, what more could we do?

Q33. Do you think the MLRs are sufficiently clear on the sources of information MLR-regulated firms should use to inform their risk assessment (including the NRA)? If not, what more can we do?

16.1. We agree that the MLRs are sufficiently clear on how firms should complete and use their risk assessments and the sources of information that should be considered. It is a requirement for firms to prepare a risk assessment informed by their supervisory authority's risk assessment, which reflects the NRA and other emerging threats and trends. The CIOT provide pro forma templates[1] on how to perform the firm-wide risk assessment under regulation 18.

17. Q34. One possible policy option is to redraft the MLRs to require regulated firms to have a direct regard for the NRA. How do you think this will impact the activity of: a) firms b) supervisors? Is there anything this obligation should or should not do?

17.1. It could be beneficial to include a specific requirement for regulated firms to use the NRA to inform their firm-wide risk assessment. As noted in question 33, it is a requirement for our supervised firms to refer to our supervisory risk assessment which is informed by the NRA as required in regulation 47. Including the requirement would ensure that firms read the NRA, however this could be burdensome as the document is very lengthy and not all of it is relevant to the vast majority of smaller, sole practitioners.

18. Q35. What role do you think the NRA versus system prioritisation should play in the allocation of regulated firms' resources and design of their AML/ CTF programmes?

18.1. We appreciate timely information that relates to the risks within our sector, this enables us to adjust risking and communicate risk trends and alerts to our supervised populations.

Chapter 3: Providing clarity on scope and registration issues

19. Q36. In your view, are there any reasons why the government should retain references to euros in the MLRs?

19.1. We do not assess that there are any reasons why references to euros should be retained.

20. Q41. Do you agree that regulation 12(2) (a) and (b) should be extended to include formation of firms without an express request, sale to a customer or a person acting on the customer's behalf and acquisition of firms to sell to a customer or a person acting on the customer's behalf?

20.1. We agree it would be beneficial to extend regulation 12(2) (a) and (b) to include the formation of firms without an express request, sale to a customer or a person acting on the customer's behalf and acquisition of firms to sell to a customer or a person acting on the customer's behalf. Under legislation as it currently stands, we see a risk that could be exploited and believe these should be included as TCSP services and in scope of the MLRs.

[1] Practice risk assessment and policies and procedures (tax.org.uk)

Chapter 4: Reforming registration requirements for the Trust Registration Service

Introductory comments

We are pleased to note that 'the government wants a targeted approach to trust registration, to focus the requirements on the highest risk trusts'.

The proposed simplification measures for the 2-year period following a death and the introduction of a de minimis will reduce the compliance burden for some low-risk cases. As no estimates have been provided, we are unable to judge how great a saving these reforms will provide.

Since the Trust Registration Manual (TRSM) is supposed to represent the authoritative source of information on the working of the TRS it is essential that a full description of the new rules, with examples, appears there.

The narrow terms of the consultation miss the opportunity for a wider consideration of technical issues that have arisen under the TRS. However, we understand that separate comments on such matters are being accepted and we will make representations accordingly.

Further issues requiring clarification in the TRSM have been outlined in the appendix below

21. Q49. Does the proposal to make these trusts that acquired UK land before 6 October 2020 register on TRS cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

21.1. We have not identified any unintended consequences. The challenge for HMRC will be how to communicate to overseas trustees the need to register pre-6 October 2020 acquisitions.

22. Q50. Does the proposal to change the TRS data sharing rules to include these trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

22.1. To ensure comparability of treatment with UK trusts the extension of trust data requests to non-UK trusts holding UK land the legitimate interest test should be applied, so that the person making the request must show their involvement in an investigation of money laundering or terrorist financing and are requesting access to further that investigation.

22.2. We note that currently regulation 45ZB(3) of the 2017 Regulations does not require members of the public/journalists to show a legitimate interest when seeking access to personal financial information where the trustees have an interest in a third country entity. As a matter of principle this does not seem to be appropriate. We think that this anomaly should be abolished, and the legitimate interest protection should instead apply in all cases.

23. Q51. Do the proposals to exclude these trusts for two years from the date of death cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

23.1. We agree that aligning the time limit for co-ownership trusts that become registrable following a death and for new trusts created by a Deed of Variation to the two years applicable to an estate administration will make compliance simpler for those involved in the administration of a deceased's estate. A common limit of two years from the date of death for both the administration and its associated events will be more easily understood and will reduce administration costs.

23.2. There is no mention in the consultation document of a trust appointment under IHTA 1984 s.144, for example where a will contains a discretionary trust and an appointment is made so that the property in that trust is held as an interest in possession. As the trust was created by will and it is only its terms that have been changed, the normal two-year rule should in principle apply, but we would appreciate confirmation of this.

23.3. For complete clarity over the 'two year' rule, the government should consider extending it to the circumstance of the death of a trustee of a pre-existing trust. For example, Albert, Bertha, Catherine, Debbie and Eleanor buy a property as joint tenants. Eleanor is not a trustee on the legal title (as a maximum of four may be legal owners the Sch3A paragraph 1 exclusion for legislative trusts applies). Debbie dies. If Eleanor is added as a trustee, the Sch 3A paragraph 9 exclusion where trustees and beneficiaries are the same persons will apply. But if Eleanor is not appointed as trustee, TRS registration will be required - currently within 90 days, or perhaps two years, if our suggestion is accepted, effectively extending the new two-year rule to cover para 1 (Sch 3A) situations as well. This situation deserves to be highlighted in the TRSM, regardless of our suggestion being accepted.

23.4. Looking at the interaction of different forms of trust, we suggest it would help to clarify the scope of the two year rule, perhaps by an extension of the example of Marianne in TRSM32040. Say Annemiek had left Marianne a life interest, instead of an outright gift, with a reversion to the same Discretionary Trust in the example, if Marianne had surrendered her life interest by a Deed of Variation (DoV), please confirm if this would be covered by the present para 7 or by the proposed new extended para 7 two-year rule.

23.5. Following that example, say Annemiek had left the whole estate to Marianne on a life interest, and she wanted to give to the children outright, say the trustees appointed to her so that she was absolutely entitled and she left to the children by DoV on bare trusts, are they covered by the present para 7 or the new extended para 7?

24. Q52. Does the proposal to exclude Scottish survivorship destination trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

24.1. We have not identified any unintended consequences and welcome the simplification that this reform would make to the relatively few cases likely to be impacted by it.

25. Q53. Does the proposal to create a de minimis level for registration cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

25.1. We welcome the recognition that small, low value UK trusts pose little risk in terms of money laundering and terrorist financing. We have not identified any unintended consequences.

26. Q54. Do you have any views on the proposed de minimis criteria?

26.1. Whilst we welcome any diminution in the compliance burden that the TRS imposes, we wonder whether raising the limits to, say, £10,000 assets and £4,000 distributions of assets and expenses would significantly raise the risk profile. Such an increase would cover more everyday trusts such a grandparent's small legacy to a grandchild with an age contingency. Whatever the cap, clarity is required where the asset value may fluctuate, for example, a shareholding that has been worth less than the cap but then increases to exceed it. The trustees surely cannot be expected to monitor the values daily – would annually be regarded sufficient?

26.2. We seek clarification that, in the case of a will trust, the de minimis exemption would apply from the two-year point. For example, where a will establishes a £1m discretionary trust to which property is appropriated, and

all except £5,000 worth is distributed before two years after the death, no registration of the initial trust, nor the small continuing trust is required.

26.3. Where a deceased's estate has mainly been wound up within two years of death, but £5,000 (which could be £10,000, if our suggestion is accepted) has been retained to meet the estimated income tax liability that HMRC have been slow in agreeing informally, we would not see any need for the 4th test (the amount distributed). As the MLR risks are far less with estates, could there be a separate de-minimis exclusion for estates up to £10,000, without any reference to the 4th condition? If the expenditure test is still required, you could exclude any payments to HMRC in respect of tax liabilities on the estate/trust, as clearly that is not a money laundering issue.

26.4. We acknowledge that breach of any of the de minimis criteria would trigger the need to register the trust within 90 days. However, to measure the distribution requirement on a rolling 12-month basis is counter-intuitive. Even though the intention behind this criterion is to reduce the scope for channelling funds through the trust that would still be achieved, and it would be much simpler for trustees if distributions were to be judged on a tax year basis. In any event, this criterion should be modified so that, for example, the payment of a £5,000 legacy held for a grandchild until their 18th birthday would not require a trust that was previously exempt under these de minimis provisions to register its existence, and then immediately de-register.

27. Q55. Do you have any proposals regarding what controls could be put in place to ensure that there is no opportunity to use the de minimis exemption to evade registration on TRS?

27.1. The experience of our members would suggest that, realistically, a settlor is not going to set up a large number of low-value trusts simply to avoid the TRS; the administration costs would not justifiable. We can only assume that HMRC have evidence to the contrary.

27.2. That being so, we suggest that a proportionate approach would be to have the TRS rule formulated like that for the trust annual exempt amount in Taxation of Chargeable Gains Act, Schedule 1C, paragraph (3), in other words dividing the £5,000 asset cap by the number of trusts established by the settlor, with one-fifth of the asset cap (£1,000) being the minimum applicable asset cap figure.

28. Acknowledgement of submission

28.1. We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

7 June 2024

Appendix to Chapter 4 response on TRS: Current TRS issues requiring clarification in the Trust Registration Service Manual (TRSM)

Since the TRSM is supposed to represent the authoritative source of information on the working of the TRS explanations of all areas of uncertainty, with examples, should appear there. The Manual should include matters which do (or do not) require registration. This will assist taxpayers and will reduce the number of non-compliant cases that HMRC would otherwise have to address.

We set out below issues that have been identified.

1 New lease granted to co-owners

A trust of jointly held property, where the trustees and the beneficiaries are the same persons, that is not liable to a pay a relevant tax (including SDLT), is not required to be registered on the TRS as an express trust (see Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Schedule 3A paragraph 9. TRSM23050 also states *Co-ownership trusts are often bare trusts and if so are not required to register for taxable purposes either, <u>because any UK tax liability is incurred by the beneficiaries</u> rather than the trustees* (our underlining).

When joint purchasers acquire a new lease (the purchasers are both the legal and beneficial owners), paying SDLT on the premium, HMRC's approach as to whether the trust needs to be registered is not clear from the TRSM guidance. The uncertainty arises because for SDLT purposes, FA 2003 Schedule 16 para 3 states that where a new lease is granted to a person as bare trustee, the bare trustee is treated as the purchaser not the beneficiaries. The question is therefore whether the trust should be registered as a taxable relevant trust despite the fact that the trustees and the beneficiaries are the same people.

We understand that HMRC's view is that tenants in common who are the joint purchasers of a lease would be chargeable to SDLT in their capacity as trustees, and it follows that TRS registration of the resultant taxable trust would be required. That view is currently not explicit in the TRS manual. Practically it seems very unlikely that HMRC's view (assuming it remains their view) is widely understood or recognised by joint purchasers of leasehold apartment or their advisers/conveyancers given that it is so counter-intuitive.

From a technical perspective, it is not clear that FA 2003 Schedule 16 paragraph 3(2) and (3) is intended to apply to a bare trust where the legal and beneficial owners are the same persons. The deeming provision was introduced by Finance (No.2) Act 2005 to counter a specific SDLT avoidance practice whereby rental leases could be granted to (or by) a bare trustee or nominee without SDLT arising on the rents and the leases then sold to the actual (third party) intended lessee for a nominal amount as the leases were at full market rent. There is therefore an argument that FA 2003 sections 103 and 105 treat the co-owners as liable to SDLT as purchasers not as trustees, unless overridden by Schedule 16 paragraph 3 in circumstances where the beneficial interest is held by someone other than the trustee in the situations envisaged when the provision was introduced. We also note the case of *Marshall v Kerr [1994] STC 638* that provides authority for restricting the application of a deeming provision to its intended purpose.

2 Partnership assets

Example: A owns UK land purchased with his own monies and his name alone appears on the title. He decides to introduce this land into a partnership of which he is a partner. The value of the land then appears on the partnership balance sheet, but is reflected solely in A's land capital account, with all gains and losses attributable to that land being allocated to A's land capital account under the deed. The registered title is not changed and so remains in A's name alone.

Assuming that either the partnership deed or a separate deed is used to introduce the land to the partnership we believe that it is the case that the position is registerable as A holding the land on trust for the partnership – even though many of the underlying economic benefits of that land remain with A alone (whose name remains the only one on the title).

The examples dealing with partnerships at TRSM23050 - Types of trust that need to be registered: contents: excluded express trusts: contents: property ownership - HMRC internal manual - GOV.UK (www.gov.uk) deal only with (non-land) assets purchased with partnership monies and do not address this common issue where land is contributed as capital having been purchased as a non-partnership asset. We believe it would be helpful if the position was explicitly stated as there appears to be uncertainty amongst advisors in this respect.

3 Deeds of Variation

When is there an express trust for Variations? Following the exchange of correspondence between John Bunker (one of the CIOT representatives on the TRS sub-group) and James Shuttleworth (HMRC) in June/August 2023, can the conclusion of this be picked up in the TRSM? James indicated that the MLR Con-doc review was coming and thus not appropriate to put into TRSM at that stage. With the delay with the con-doc (9 months after James' Email of 10 August) it would be helpful now to make clear the key point:-

- words such as "on trust" are not needed to make an "express trust"; so any new bare trust, including a simple outright gift, under a DOV is an express trust.

this is different, for technical legal reasons, from the wording of wills needed with reference to estates continuing more than 2 years from death.

4 Appropriations

Appropriation to beneficiaries –following an appropriation, PRs hold on bare trust for a beneficiary;

And thus a bare trust is not "effected by will".
HMRC said in an answer on the Agents Forum that **para 14 Commercial transactions exclusion applies:** "Where PRs appropriate property on bare trust for the benefit of beneficiaries **to facilitate a sale of that property".** This suggests, e.g. if done for CGT planning reasons, or to protect IHT loss relief, there is no need to register at all – para 14 exclusion is not limited to the 2-year period.

In earlier Email correspondence between CIOT representatives and HMRC, we had suggested that this be included in the TRSM to clarify the position, especially as the Agents Forum is only open to Forum members and not publicly accessible. The response at that time was that HMRC was not able to put this into the TRSM. We hope this decision might now be reviewed so that the TRSM can give authoritative guidance on the extent to which para 14 provides an exclusion in cases of appropriation.