



Quoted Companies Alliance

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The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

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To whom it may concern,

Fifth Money Laundering Directive and Trust Registration Service

We welcome the opportunity to respond to your consultation on the Fifth Money Laundering Directive and Trust Registration Service.

The Quoted Companies Alliance *Share Schemes Expert Group* has examined the proposals and advised on this response from the viewpoint of small and mid-size quoted companies. A list of Expert Group members can be found in Appendix A. We have formed a view primarily based on trusts used for employee share schemes and wider ownership.

Overall, we believe that there should be additional clarity on the trusts that will not be required to register. It is our view that the proposed examples relating to share schemes mention obsolete types of trusts and therefore create uncertainty regarding the proposed excluded trusts.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Tim Ward".

Tim Ward
Chief Executive

Q1 Are there other express trusts that should be out of scope? Please provide examples and evidence of why they meet the criteria of being low risk for money laundering and terrorist financing purposes or supervised elsewhere.

Please see answer to Q2 below.

Q2 Do the proposed definitions and descriptions give enough clarity on those trusts not required to register? What additional areas would you expect to see covered in guidance?

We do not believe that the proposed examples and descriptions give enough clarity on the trusts relating to employee share schemes that will not be required to register, most notably regarding “approved share option and profit-sharing schemes”.

We recommend clarity by specifying Employee Ownership Trusts (EOTs) (Taxation of Capital Gains Act 1992 Part VII, sections 236H-236U), Share Incentive Plans (SIPs) (Income Tax (Earnings and Pensions) Act 2003 schedule 2) and Employee Benefit Trusts (EBTs) primarily linked to the provision of shares for employees’ share schemes (as defined in section 1166 Companies Act 2006 (CA)) and/or satisfying the conditions in section 86 Inheritance Tax Act 1984 (IHTA). It might be that SIPs and certain EOTs will fall within the proposed regulation 45ZA(2)(a) but many non-tax paying low risk employee trusts are not obviously covered.

More specifically, “approved share option” is now an obsolete term following the end of the approval process in 2014 when they were renamed “qualifying share option plans”. Furthermore, whilst there are many EBTs established to supply shares to qualifying or other share option plans, there are no linked statutory requirements. However, generally, such plans established under a UK jurisdiction will limit EBTs by reference to section 1166 CA and section 86 IHTA.

Under EOTs and SIPs, there are strict qualifying conditions whereby nearly all employees must participate. The finance for these trusts generally derives from the trading income of corporates. SIPs are required to be registered with HMRC and EOTs may be unlikely to generate any income or make any gains, although SIPs may create capital gains or receive dividend income on unallocated shares. EBTs do not need to comply with strict qualifying conditions, but generally, will be limited by the conditions of section 86 IHTA to prevent regular inheritance tax liabilities. EBTs are usually for the benefit of all employees of a group of companies.

SIPs and EBTs might operate for many years without creating a tax liability, but it is recognised that should there be a liability, then registration would be appropriate. The trustees of SIPs will be UK residents, but the trustees of EOTs and EBTs may be resident in any jurisdiction.

We therefore propose greater clarity in respect of the employee type trusts, perhaps if the terms of the trust satisfy the requirements of section 86 IHTA (or would do even if subject to a non-UK legal jurisdiction) and more specifically referring to the EOT and SIP legislation (with reference to any residual profit-sharing or qualifying share trusts).

Specifically, we suggest that the amended regulations exclude from the definition of a “type A trusts”:

- Trusts of a profit-sharing scheme approved under ICTA 1988, schedule 9;
- Qualifying employee share ownership trusts within the meaning of FA 1989, Schedule 5;
- Trusts that meet the requirements of ITEPA 2003, Schedule 2, Part 9;
- Trusts that meet the requirements of TCGA 1992, Section 236J; and

- Other trusts to which IHTA 1984, Section 86 applies.

We also believe that removing Stamp Duty Reserve Tax (SDRT) from the list of relevant taxes in regulation 45(14) would be appropriate given that, other than in relation to off-market transactions in dematerialised shares, SDRT is accounted for by the securities dealer, and not self-assessed by the trust.

Q3 Do the proposed registration deadlines and penalty regime have any unintended consequences that would lead to unfair outcomes for specific groups?

We have no comments.

Q4 Do you consider that the revised definitions and application process for legitimate interest and third country entity requests set the right boundaries for access to the register? If not, please provide specific examples of where you would consider this not to be the case.

We have no comments.

Q5 Does the proposed handling of exemptions for legitimate interest and third country entity requests provide the right access to the beneficial ownership data whilst protecting beneficial owners from potential risk of harm?

We have no comments.

Q6 Are there any instances where the above proposals would not give investigators access to the information they require to follow a specific lead in suspected money laundering or terrorist financing? Please be specific and provide examples.

We have no comments.

Appendix A

The Quoted Companies Alliance Share Schemes Expert Group

Fiona Bell (Chair)	RSM
Tristan Adams	Link Asset Services
Barbara Allen	Stephenson Harwood
Emma Bailey	Fox Williams LLP
Dave Bareham	Smith & Williamson LLP
Danny Blum	Eversheds Sutherland
Michael Carter	Osborne Clarke
Sara Cohen	Lewis Silkin
Stephen Diosi	Mishcon De Reya
Suzy Giele	Lexis Nexis
Andy Goodman	BDO LLP
Ellisavet Grout	Travers Smith LLP
Juliet Halfhead	Deloitte LLP
Caroline Harwood	Crowe UK LLP
Lea Helman	Lexis Nexis
Stuart James	MM&K Limited
Liz Hunter	KPMG
Tom Leatherby	Stephenson Harwood
Graham Muir	CMS
Isabel Pooley	Grant Thornton UK LLP
Robert Postlethwaite	Postlethwaite Solicitors
Jennifer Rudman	Prism Cossec
Richard Sharman	FIT Remuneration Consultants