

# Automatic Exchange of Information

## HANSUKE

### Client Alert



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#### Background

Under the Common Reporting Standard ("CRS"), trusts will usually either be regarded as an investment entity (and hence a financial institution ("FI")) or a passive Non-Financial Entity ("NFE"). Whilst being a FI places reporting obligations on the trust itself, in the event that the trust is a passive NFE, it will be obliged to furnish identification of itself and its "controlling persons" to other FIs (for example, banks), with which it maintains financial accounts.

The definition of controlling person of a passive NFE is widely drawn and can even encompass individuals who may not even be aware that they may potentially be beneficiaries of discretionary trusts. This will inevitably cause issues where trustees of passive NFE trusts need to provide details of tax residence and tax identification numbers of beneficiaries to banks with whom the trust maintains an account.

In order to help mitigate the impact on passive NFE trusts, CRS contains an option for the alignment of the controlling persons of such trusts with those that would be regarded as "reportable persons" of an investment entity. If this option is taken up, then a beneficiary of a discretionary trust would only be reportable in the event that they actually received a distribution.

## Guernsey position

Paragraph 4.2.3 in the [Guernsey CRS guidance notes](#) have confirmed that “Financial Institutions may align the scope of the beneficiaries of a trust treated as Controlling Persons with the scope of the beneficiaries of a trust treated as Reportable Persons of a trust that is an FI.” Leaving this decision to each FI may cause issues where a professional trustee company (which will usually be an FI) opens an account with a bank on behalf of the trust.

Given the practical problems, it is unlikely that a trust company would elect to obtain self-certifications from persons who did not know that they were beneficiaries of a discretionary trust. Instead, the trust companies will wait until an actual distribution is made to such beneficiaries to obtain the requisite beneficiary information. However, the bank with whom an account is opened would have no reason to appreciate the practical issues that would arise for trustees when adopting an approach that requires the identification of unknown beneficiaries. Accordingly, two different FIs providing a “financial account” within the meaning of CRS to a trust can be requesting different information.

In addition, banks can rely on the self-certification provided by the trustees in relation to the controlling persons of passive NFE trusts. There is no requirement for a separate self-certification to be provided by the actual beneficiary of a passive NFE trust in their role as a controlling person.

However, for a trustee to be able to do this with certainty, they need to know the details themselves which they may not in the case of, for example, a discretionary beneficiary who has yet to receive a distribution.

## Issue

A number of banks have been asking for details of all controlling persons, including discretionary beneficiaries who have not received distributions. This means that trustees are having to reach out to beneficiaries who may not even be aware of the existence of the trust. This is then causing considerable practical issues for trustees in actually obtaining these self-certifications.

## Workable solution

To avoid the mismatch between FIs, the most pragmatic solution is for the Guernsey financial industry to adopt the Paragraph 4.2.3. election as the default option. This should provide for a uniform and consistent approach. Accordingly, FIs will still meet their CRS obligations under Guernsey law by taking the following as controlling persons of passive NFE trusts:

- Settlor;
- Trustees;
- Protector;
- Beneficiaries with a mandatory entitlement to a distribution from a trust; and
- Discretionary beneficiaries who receive an actual distribution in the year.

This would mean that the trustees would not be obliged to reach out to discretionary beneficiaries who had not received an actual distribution.

## Next steps

It is evident that a common approach will need to be taken across FIs in Guernsey to provide a consistent basis for trustees. In order to achieve this, it will be necessary to engage with the banks with whom deposits are being maintained in order to ensure that this is applied consistently across the industry.

## How Hansuke can help

The expert team at Hansuke incorporates a deep knowledge of the issues that affect the trust industry in Guernsey, together with former legal firm and regulators who were instrumental in developing the CRS rules. Accordingly, we would be ideally placed to negotiate with banking representatives on behalf of trustees in order to agree a consistent approach that would enable all sides to meet their obligations in a manner that is consistent with the letter and spirit of CRS.

We would be pleased to discuss the options in more detail with you – for an initial no-obligation discussion, please contact Rob Smith on 020 3865 0625 or [rs@hansuke.co.uk](mailto:rs@hansuke.co.uk).

## About Hansuke

Hansuke is an independent specialist financial services consultancy, providing truly independent advice. We are fully committed to delivering the right advice and solutions. This means that you get the optimal fit for your needs. We have assembled the right blend of expertise: spanning tax technical, tax authority, information systems and commercial financial expertise.

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