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DECLARATION OF NON-USE OF REMUNERATION TRUSTS AS TAX AVOIDANCE VEHICLES

Please note that it is essential that you carefully review and understand this document before we can assist you in any matter pertaining to a Remuneration Trust.

As you may be aware, Remuneration Trusts have been under close investigation by HM Revenue & Customs (“HMRC”) for several years.

It is perfectly permissible under the law for a person (a “**settlor**” or “**contributor**”) to set aside money in a trust for the benefit of customers, suppliers and others. So long as those sums are set aside “*wholly and exclusively*” for the purposes of trade, they are legitimately deductible for the purposes of calculating the settlor’s or contributor’s profit for corporation tax.

Over the years, HMRC has become concerned (and in many cases the courts have found with good justification) that contributions have been made to Remuneration Trusts, not for the purposes of trade, but with a significant purpose being to avoid tax. Indeed, Remuneration Trusts have on occasion been marketed as being for the principal purpose of avoiding taxation.

The primary question when determining whether a contribution was made wholly and exclusively for the purposes of trade, or to some extent to avoid tax, is the intention of the settlor when making the settlement. As Lord Brightman said in *Mallalieu v Drummond*,¹ the court needs to, “*look into the taxpayer’s mind at the moment the expenditure was made.*”

Therefore, if it was your intention when establishing or making contributions to a Remuneration Trust to avoid tax, the Remuneration Trust will constitute improper tax avoidance and will not confer tax advantages. In such circumstances, the only proper course we could recommend is that you contact HMRC (or instruct us to do so on your behalf) in order to broker the best possible settlement. We could not assist you if you did not follow this advice, and we would not take any steps to assist you in managing or administering your Remuneration Trust. In particular, we would not give you any advice or in any way assist you to “*protect*” your Remuneration Trust from HMRC’s proper

¹ [1983] AC 861 at 870 D-E.

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investigations, nor would we assist you in opposing any charge to tax raised by HMRC in respect of a Remuneration Trust that has been improperly used to avoid tax.

We are prepared to assist you, however, insofar as contributions have been properly made to Remuneration Trusts wholly and exclusively for the purposes of trade. If it is apparent to us, or becomes apparent to us during the course of our working relationship, that one or more contributions to Remunerations Trusts have *not* been made wholly and exclusively for the purposes of trade, we will refuse to assist you save to the limited extent set out in the paragraph above.

In practical terms, except in clear cases, the only way in which we can ascertain your intentions when making contributions to a Remuneration Trust is to rely on what you tell us was and/or is the case. Therefore, please sign below to confirm (if it is indeed the case) that all contributions made to Remuneration Trusts were made wholly and exclusively for the purposes of your trade or business, and that no contribution was made with the purpose of avoiding tax. If any or all contributions to a Remuneration Trust were made with the purpose of avoiding tax, please do not sign the below but rather contact us to discuss what limited further assistance (consistent with what is said above) we may be able to offer you.

Please note that by signing the declaration below, you are also agreeing to indemnify us, and our officers, employees, contractors and agents, against any financial or other loss, harm or damage (howsoever arising) caused by your declaration being untrue.

Notice: The Money Laundering, Terrorist Financing & Transfer of Funds (Information on the Payer) Regulations 2017 (“the Money Laundering Regulations”)

Regulation 43(4) of the Money Laundering Regulations requires corporate customers, during the course of a business relationship with us, to inform us – within only 14 days – of (i) any changes to the name, registered number, registered office, principal place of business, board of directors, senior persons responsible for its operations, the law to which it is subject, its legal owners, its beneficial owners and/or its articles of association or other governing documents, and (ii) the date on which any such changes occurred.

Regulation 86(1) of the Money Laundering Regulations provides that, on summary conviction, any person who breaches Regulation 43(4) of the Regulations is liable to up to 3 months imprisonment, a fine or both. On indictment, this increases to up to 2 years imprisonment, a fine or both.

In signing below, you acknowledge that you will abide by your duties accordingly under the Money Laundering Regulations.



Notice: The DAC 6 Regulations

In accordance with Regulation 7 of the International Tax Enforcement (Disclosable Arrangement) Regulations 2020 (“**the DAC 6 Regulations**”),² your attention is drawn to Regulations 3 and 4 of the DAC 6 Regulations. Insofar as the DAC 6 Regulations may apply to your adherence and/or contributions made to any Remuneration Trust, upon which we are unable to advise, you must make a return within 30 days setting out any reportable information (defined in Regulation 6 of the DAC 6 Regulations) in relation to any reportable cross-border arrangement (defined by Article 3(19) of Council Directive 2011/16/EU (“**the DAC**”) (as amended by Council Directive 2018/822/EU)). Failure to do so may attract penalties as provided for in Regulation 14 of the DAC 6 Regulations.

In signing below, you acknowledge that any duty to notify is a matter for you and not for us.

Notice: The Finance Act 2004

Insofar as Part 7 of the Finance Act 2004³ applies to your adherence and/or contributions made to any Remuneration Trust (upon which we are unable to advise), prescribed information regarding notifiable arrangements must be provided to HMRC within 30 days.

In signing below, you acknowledge that any duty to notify is a matter for you and not for us.⁴

Signed:

Print name:

Name of Business:

Date:

² <http://www.legislation.gov.uk/ukxi/2020/25/contents/made>
³ <http://www.legislation.gov.uk/ukpga/2004/12/part/7>
⁴ Further information can be found at <https://www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes-guidance>.