

## **Emerging Digital Assets: Considerations for Trustees**

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# UK Tax Considerations

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- Situs

  - HMRC's view***

    - i. Where the cryptoasset is a digital representation of an underlying asset (i.e. tokenised traditional asset) its situs is where the underlying asset is located (s275 TCGA)
    - ii. For exchange tokens which exist independent of any underlying assets, their situs is determined by the residency of the beneficial owner

      - > pragmatic approach: provides a clear, logical, predictable and objective rule

  - An alternative view***

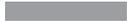
    - Principles for determining the situs of intangible assets => where the assets can be dealt with/enforced
    - Location linked to the location of the private key or of the person who has control of it (who may or may not be the beneficial owner)

- Management and control issues

- Trading versus investing

# Trustee Considerations (1)

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## Trust terms

- Express authority to invest in crypto-assets?
- New trust / separate sub-fund(s)
- Anti-Bartlett clauses
- Settlor-reserved powers
- Exoneration clauses

## Trustee Considerations (2)

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- Duty to preserve and enhance value of the trust fund so far as is reasonable
- Range of risks involved
  - a. Extreme volatility
  - b. Risk of regulatory change
  - c. Lack of liquidity
  - d. External hacks/cyber-attacks
  - e. Risk of loss or theft of the private key -> custody solutions
  - f. Platform risks

*“At a minimum, a trustee must demonstrate, and preferably document, a cogent, prudent thought process that led to the ultimate investment decision. The trustee should be able to explain how the decision to invest in blockchain technology generally was a wise choice, and why the particular crypto or other assets invested in were sensible options.”*

# Trustee Considerations (3)

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- How does an investment in crypto-assets fit in within the circumstances of the trust
  - Size of trust fund
  - Nature of assets – risk profile / need for liquidity
  - Diversification
- Due diligence on take-up and ongoing monitoring
  - Is the investment in response to a request from a beneficiary
  - Do you have the internal expertise to assess
  - Which investment manager or expert to consult -> lack of “familiar faces”
- Gaining exposure to cryptoassets - a larger universe: industries servicing the digital sector, crypto-funds, direct holdings



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Antoaneta is a partner in the Private Client team at Wedlake Bell. She advises on international tax and evaluation of tax risk, cross-border succession, structuring for wealth preservation and family governance. She acts for (ultra) high-net worth individuals and their families (both UK and non-UK domiciled), entrepreneurs, family offices, beneficiaries and trustees, typically with complex and multi-jurisdictional legal needs. Her practice is truly international, with clients coming from backgrounds as diverse as Russia, Israel, Switzerland, South Africa and the Middle East.

Antoaneta is a skilled technician, with a growing focus on tax regularisation work. She is frequently asked to carry out risk reviews of existing structures from a combined tax and asset protection perspective, and assist with remedial work in relation to legacy issues. Antoaneta is also ideally placed to support trustees in developing checklists and protocols for managing institutional risk in connection with UK-related structures.

# Wedlake Bell

QUESTIONS?

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