

Client briefing

Guide to HMRC Trust Registration requirements

Regulations implementing the Fifth Anti-Money Laundering Directive came into force on 6 October 2020.

The new Regulations brings in two major changes:

1. Access to the trust register – this will not be open to the public, but rather those with a legitimate interest such as organisations fighting money laundering and terrorist financing. This is very important because of the big expansion to the Trust Register brought about by 2 below:-
2. Trustees of all UK non-taxable trusts, known as ‘registerable express trusts’ (and some non-UK trusts) must now register irrespective of whether they have a tax liability, unless they are excluded.

The new obligations catch a lot of trusts which have not previously had to register. When considering whether your trust needs to register, we would recommend that your starting point should be that your trust is caught unless it falls into one of the exceptions set out below.

1 Which trusts do not have to register?

- 1.1 Legislative Trusts e.g. a trust set up under the intestacy rules or jointly owned assets such as the family home or a joint bank account.
- 1.2 Trusts imposed by court order e.g. a trust set up under a court order to hold a compensation payment.
- 1.3 Pension scheme trusts e.g. registered for the purposes of Part 4 Finance Act 2004.
- 1.4 Trusts of insurance policies and death benefits - Trusts of life or retirement policies are, subject to certain conditions, excluded from registration as express trusts during the lifetime of the person assured. The trust continues to be excluded from registration if, following the death of the person assured, the trust receives the pay-out from the policy. The exclusion applies for two years following the date of death. This gives the trustees two years from the death of the person assured to distribute the funds to the beneficiaries of the deceased's estate before registration on TRS is required.

HMRC has confirmed that 'the exclusion in Sch3A(4) can be properly interpreted as including trusts holding policies which have surrender values, and that those trusts would remain excluded until such time as the policy is actually surrendered. It follows from this that pay-outs received from such policies on death would continue to benefit from the exclusion at Sch3A(8).'

- 1.5 **Charitable trusts** e.g. a trust for charitable purposes which is a registered charity or not required to register in England & Wales

- 1.6 **Pilot trusts** if holding less than £100, and created before the 6 October 2020 when the Regulations came into force.
- 1.7 **Will trusts** holding only the property comprised in the death estate, where less than 2 years has passed since death. If the trust is still in existence after that date it will then need to register from that date. However, these trusts may have to register from the date of death for taxable purposes, if they have a UK tax liability.
- 1.8 **Trusts of jointly held property** but only where the trustees and the beneficiaries are the same persons. This category is designed to exclude trusts which arise when joint owners hold property for themselves as tenants in common.
- 1.9 **Financial and commercial trusts** e.g. those created in the course of professional services or business transactions for holding client money or other assets, such as an escrow arrangement.
- 1.10 **Commercial transactions where a trust is created for the purpose of:**
- 1.10.1 enabling or facilitating a transaction effected for genuine commercial reasons; or
- 1.10.2 protecting or enforcing rights relating to such a transaction
- where the use of the trust is incidental to the principal purpose of the transaction.
- 1.11 **Registration of assets**
- A trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust for the person to whom the transfer or disposal is being made until the time when the procedure required by law to effect the transfer or disposal of legal title is completed.

Trusts meeting Legislative requirements

- 1.12 Trusts for bereaved minors or bereaved young persons (IHTA 1984, s71A or 71D).
- 1.13 Heritage Funds e.g. property in respect of which a direction under paragraph 1 of Schedule 4 to the Inheritance Tax Act 1984 has effect.
- 1.14 Personal injury trusts e.g. those established to receive compensation payments.
- 1.15 Trusts for tenants' service charges e.g. holding tenants' contributions for the purposes of s.42 Landlord & Tenant Act 1987.
- 1.16 The plan trust of a share incentive plan which meets the requirements of Part 9 Schedule 2 to the Income Tax (Earnings & Pensions) Act 2003.
- 1.17 A trust created under a share option scheme that meets the requirements of Parts 2-7 of Schedule 3 to the Income Tax (Earnings & Pensions) Act 2003
- 1.18 Trusts for a disabled beneficiary who is a disabled person within the meaning given by Schedule 1A to the Finance Act 2005. Note that whilst they may not have to register on TRS as registrable express trusts, they may have to register for taxable purposes if they have a UK tax liability.

2 Are pilot trusts affected?

- 2.1 Yes. All pilot trusts:-
- holding more than £100 and created before the 6 October 2020; and

- pilot trusts created from 6 October 2020 containing any amount. This even includes a pilot trust set up with a nominal amount such as £5/£10.

3 **Are bare trust affected?**

3.1 There is no specific exclusion from registration for bare trusts. In general, if a bare trust is an express trust (i.e. a written trust) it should register on TRS. However, there are several exclusions (see above) that may apply to common bare trust arrangements.

4 **Non-UK Trusts**

4.1 Broadly, non-UK express trusts which:-

- acquire UK land or have at least one UK trustee; and
- enter into a business relationship with a UK “obliged entity”.
- must register by 10 March 2022 or 30 days from the date the relationship commences or the acquisition is recorded in the Land Registry

4.2 A non-UK trust which is an express trust has to receive income from a source in the UK or have assets in the UK.

4.3 An “obliged entity” is a financial or credit institution, accountant, tax advisor, legal professional, estate agent, art dealer or other person dealing in goods or providing particular services

5 **What information will need to be collected about registerable express trusts for the Register?**

5.1 The trustees or agents will have to give some basic information about the trustees, settlors and beneficiaries (the ‘beneficial owners’).

5.2 **For individuals this is their:**

- full name
- date of birth
- date of death (if settlor has died)
- National Insurance Number (if not a UK citizen, address or passport details and address will be required instead)
- country of residence
- nationality
- role in the trust
- mental capacity at the time of registration and if for example, a settlor has died since the trust was created but before registration, if they had mental capacity at the time of their death

5.3 **For companies and other legal entities this is their:**

- corporate or firm name
- registered or principal office address

- role in the trust

5.4 For lead trustees, who will be the main point of contact, trustees or agents will have to give more details such as their National Insurance number, Unique Taxpayer Reference (UTR) and telephone number (or address and passport or ID card details if they do not know the National Insurance number).

5.5 If the trust controls a company or other legal entity, the trustees or agents have to give the entity's corporate or firm name, the country by whose law the entity is governed, its registered or main office address and the start date from which the trust controls the company.

5.6 Trustees or agents will also have to give some other details to check that they should be registering the trust, and determine whether the information on the register can be made available in certain situations (see Requesting information from the register). This includes:

- whether the trust has started receiving financial services, or professional or legal advice from a UK based business
- if the trust has acquired land and property in the UK
- whether any of the people associated with the trust lack mental capacity

6 **Is there a deadline for registering registerable express trusts with HMRC?**

6.1 **You must register:**

- registerable express trusts in existence on or after 6 October 2020 by 1 September 2022
- registerable express trusts created after 1 September 2022 within 90 days
- changes to the trust details or circumstances, within 90 days of the change.

6.2 Don't forget, you must register on TRS for registerable taxable trusts. Generally, this must be done by 31 January of the tax year following the one in which the tax liability arose, unless trusts are liable for Income Tax or Capital Gains Tax for the first time and then the trust should be registered by 5 October in the tax year after the one in which the trust starts to receive any income or has capital gains, and becomes liable for Income Tax and Capital Gains Tax.

7 **When can we begin registering registerable express trusts?**

7.1 The Trust Registration Service is now open for registerable express trusts to register.

8 **What penalties could Trustees face for non-compliance?**

8.1 Trustees and personal representatives who fail to comply with the requirements risk fines and criminal convictions.

8.2 That said, HMRC recognise that there will be a lot of lay trustees who are completely unaware of the new registration requirement. The Revenue have said that their penalty system (at least in the first instance) will be light touch in that if they become aware of a trust which should have registered they will simply write a 'nudge' letter to the trustees.

8.3 In the event that penalties are levied, they will be as follows:

- Registration made up to three months from the due date — £100 penalty

- Registration made three to six months after the due date — £200 penalty
- Registration more than six months late — either 5% of the tax liability or £300 penalty, whichever is the greater sum

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