

## The UK Trust Register - January 2018

### **Briefing Note - UK Trusts**

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 were passed on 22 June 2017 and took effect on 26 June. The Regulations require a register of beneficial owners (who are very widely defined) of certain trusts to be created and maintained by HM Revenue and Customs. The information in the Trust Register must be supplied and kept up-to-date by affected trustees.

The registration will take place through an online process run by HMRC that was launched for agents in October 2017. The register will not be in the public domain but will be accessible to certain UK and non-UK agencies.

Both UK and non-UK trustees will be affected and must consider whether they will be caught by the requirements of the Regulations.

## **What is the Trust Register?**

The Trust Register is an online register of trusts held by Her Majesty's Revenue and Customs (HMRC).

The register will contain details of certain trusts and their 'beneficial owners', as defined in UK law.

It is the sole means by which trusts can now be notified to HMRC for the purpose of any tax liabilities that arise. Registration is therefore essential for any new UK trusts as well as old trusts that have any form of continuing tax liability including a tax liability that arises after a dormant period or e.g. a 10 yearly charge to IHT.

## **Why has the UK introduced a Trust Register?**

The register derives from the EU Fourth Anti-Money Laundering Directive. As an EU member state, the UK was required to implement the Directive in its domestic law. It did so by introducing the Money-Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations. The final version of the Regulations was published on 22 June 2017.

The Regulations introduced a legal requirement for trustees of certain trusts to register information about the trusts and individuals connected with them with HMRC.

The Regulations also set out other obligations, such as legal requirements to disclose information to third parties where trustees enter into transactions with other regulated people. This note focuses on the trusts register only and does not cover all the other requirements in the Regulations.

In the absence of any other steps by the UK government, following the departure of the UK from the EU, the Regulations will continue to be law.

It is important to note that at present, there is only limited guidance as to how the Regulations apply in practice and there remains some real uncertainty as to the reporting position in relation to certain structures and individuals connected with them. We hope that HMRC will provide further clarification this year.

## **Who is responsible for registration?**

The trustees.

## **Deadlines**

The Regulations that introduced the Trust Register came into effect in June 2017.

There are various possible deadlines (all now extended):

- If a trust is already registered with HMRC for self-assessment, then the first deadline for registering the trust with the new service and providing the required details will be 5 March 2018
- If the trust is not registered with HMRC for self-assessment and has to register due to an income tax or capital gains tax liability in 2016/2017, the deadline will be 5 January 2018
- If the trust is not registered with HMRC for self-assessment and has to register due to an inheritance tax, SDLT or stamp duty reserve tax liability in 2016/2017, the deadline will be 5 March 2018.

## Which trusts must be registered?

There are two parts to the test for registration.

First, the trust must fall within one or more of the following categories:

1. Trusts whose individual trustees are all UK tax resident;
2. Trusts that have a corporate trustee that is incorporated in the UK;
3. Trusts that have a mixture of UK and non-UK trustees and have been funded by a person who was UK resident or domiciled at the time of the funding;
4. Other trusts (i.e. non-UK trusts) that have assets in the UK; and
5. Other trusts (i.e. non-UK trusts) that have income from a UK source;

Second, the trust must be UK taxable. This means that the trust (or rather its trustees) is liable to pay any of the following UK taxes:

- Income tax;
- Capital gains tax;
- Inheritance tax;
- Stamp duty land tax;
- Land and buildings transaction tax (in Scotland); or
- Stamp duty reserve tax.

The test for tax liability is applied on a yearly basis, so a trust may be UK taxable in one tax year but not in the next.

The Regulations specifically state that the trustees of a trust must be liable to pay one of the UK taxes listed above. This means the existence of an actual sum in tax to pay, rather than an occasion for a tax charge (where no tax may in fact be due).

## Who are the 'beneficial owners' of a trust?

This class is very widely defined and consists of:

- The settlor of the trust (their details must be reported even if they have died);
- The trustees of the trust;
- The named/ascertained beneficiaries of the trust;
- If the individual beneficiaries of the trust have not been ascertained, the class of people in whose main interest the trust is set up or operates;
- Anybody else who has a power to:
  - > dispose of, advance, lend, invest, pay or apply trust property;
  - > vary or terminate the trust;
  - > add or remove a person as a beneficiary or to or from a class of beneficiaries;
  - > appoint or remove trustees or give another individual control over the trust;
- Anybody else who has a power to direct, withhold consent to or veto the exercise of the four powers mentioned immediately above.

The last two categories will essentially cover protectors, enforcers, guardians and appointers of trusts.

## What information must be registered?

The information required covers the trust itself, its beneficial owners and potential beneficiaries and there is a lot of it:

### *Details of the trust itself:*

1. The full name of the trust;
2. The date on which the trust was set up;
3. A statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets at the date of settlement;
4. The country where the trust is considered to be resident for tax purposes;
5. The place where the trust is administered;
6. A contact address for the trustees;
7. "the full name of any advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust". This is the wording of the Regulations but HMRC have said that they would only require the details of the agent who is acting on behalf of the trustees in relation to the trustees tax affairs.

### *Details of the beneficial owners of the trust and any other individual named as a potential beneficiary in a document from the settlor such as a letter of wishes:*

1. The individual's full name;
2. The individual's national insurance number or unique taxpayer reference, if any;
3. If the individual does not have a national insurance number or unique taxpayer reference:
  - a. the individual's usual residential address; but
  - b. if the address provided under point 3a is not in the UK, the individual's passport number or identification card number, with the country of issue and the expiry date of the passport or identification card; or, if the individual does not have a passport or identification card, the number, country of issue and expiry date of any equivalent form of identification;
4. The individual's date of birth;
5. The nature of the individual's role in relation to the trust.

### *Details required where the beneficiaries of the trust include a class of beneficiaries, not all of whom have been determined:*

A description of the class of persons who are beneficiaries or potential beneficiaries under the trust. HMRC guidance states that if members of a class can be identified their details do not need to be disclosed until they have been "determined" - which is now interpreted to mean when a beneficiary is in receipt of a financial or non-financial benefit. This interpretation was changed in late November 2017. For example if the class of beneficiaries is the current or future grandchildren of the settlor, the class must be described (to cover unborn grandchildren) but living grandchildren do not need to be named until they actually benefit.

## Ongoing duties

Trustees must maintain accurate and up-to-date written records of the beneficial owners of the trust and of its potential beneficiaries.

Trustees of registered trusts must notify HMRC if details they have supplied (apart from asset values) change. However, this obligation only applies in a year when the trust is taxable. Therefore, there may not be a duty to keep the register updated in a year where the trust does not have a UK tax liability.

### **Who will have access to the Trust Register?**

The register will not be accessible to the public. It can however be accessed by:

1. Any UK law enforcement authority; and
2. Through a request to the UK National Crime Agency, by any EEA financial intelligence unit and by any other agency responsible for enforcing the 4th Anti-Money Laundering Directive in an EEA state that is looking into the affairs of a beneficial owner or potential beneficiary..

### **How to register**

Registration is made online by the trustees or (from October 2017) by their agents using the UK 'Government Gateway' facility. The trustees must set up a Government Gateway account online.

### **What about data protection and confidentiality laws?**

In respect of trustees governed by UK law, complying with the requirements relating to the trust register should not conflict with data protection duties.

### **Planning**

For costs and other reasons, trustees and settlors may prefer not to have to register and/or provide the level of detailed information above about individuals. For example:

1. Protectors may wish to step down if they do not wish to be identified as the beneficial owners of assets from which they can never benefit; and
2. Settlor may review letters of wishes and amend them to remove references to individuals who are not current beneficiaries unless absolutely necessary and/or describe such individuals by class as opposed to by individual name.

### **Some example situations**

*I am the UK-resident sole trustee of a trust that holds a share portfolio.*

You must register details of the trust and its beneficial owners as the trust is a UK trust and is liable to tax in the UK.

*The trust has non-income producing assets and the trustees are excused from completing a tax return on an annual basis.*

The trust register does not need to be updated unless there is a taxable event during the year or a periodic tax return has been issued.

*An old family friend of mine, Mrs Z, died a year ago, leaving three small children. Under her will, her estate was left on trust for her children until they are 21 years old. The two trustees live in the UK. As a protection, if the trustees want to add a new beneficiary of the trust they have to have my consent. Neither I nor my family can ever benefit from the trust.*

Congratulations. According to the Regulations, you are a beneficial owner of the trust. Your details must appear on the register of trusts.

*My late husband settled a share of our family home into trust to the value of the nil rate band. I still live in our home and no income is generated.*

The details of the trust will only need to be updated on the trust register in a year in which a taxable event takes place. For example, if you move out from the property and the property is subsequently let.

*I have created a trust to ensure my assets are protected from my feuding family. The deed details my family members as a class of beneficiaries and I have written a letter of wishes to provide guidance to my trustees. The letter of wishes named the beneficiaries whom I would like to have preferential treatment.*

The details of all the named beneficiaries -whether named in a deed or letter of wishes- and all those who have received a benefit, will need to be included in the trust register together with your details as settlor and the trustees' details.

*I am a trustee of a discretionary trust which consists of non-income producing assets with a ten year anniversary in the current tax year. The assets are valued over the current nil rate band.*

You will need to complete the trust register for the year in which the ten year anniversary falls.

*I am holding assets on behalf of my children as a bare trustee, am I required to complete the trust register.*

Trustee of a bare trust are not required to complete the trust register as no tax liability has arisen in the hands of the trustees. The regulations do, however, require that trustees keep written up to date information of all actual and potential beneficiaries.

***This note is an overview and does not constitute legal advice. If you would like further advice as to the impact of the new register on you or your clients, please contact us.***

Irwin Mitchell Private Wealth are solicitors who provide specialist UK tax law and planning advice to international individuals and the professionals and providers who work with and for them.

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