CHARTER TAX

Helpsheet
Trust Registration Service and 5MLD

What has changed?

The Trust Registration Service (TRS) was first set up by HMRC in 2017 in order to comply with the EU Fourth Money Laundering Directive (4MLD). Trusts with a UK tax liability ("taxable trusts") needed to register with the TRS and provide various information about the settlor(s), beneficiaries, trustees and trust assets.

The Fifth Money Laundering Directive (5MLD) took effect from 6 October 2020, and this widened the scope for reporting trusts under the TRS. There were initial delays in implementing the reporting, but we outline the main deadlines and reporting requirements below.

Just because a trust is already registered, doesn't mean the trustees (or their representatives) can rest easy – additional information is required under the new rules for trusts that are already registered.

Which trusts are required to report?

Previously, it was a case of waiting until there was a taxable event for the trust and then reporting under the TRS. Under 5MLD, <u>all</u> UK express trusts [1] and some overseas express trusts need to register, unless they meet one of the specific exclusions.

A trust is defined as a UK trust if either all the trustees are resident in the UK, or if there are a mixture of UK and non-UK resident trustees and the settlor was resident and domiciled in the UK at the time when the trust was set up or when funds were added to the trust.

Non-UK non-taxable trusts may find themselves caught inadvertently. Such trusts must register under any of the cases below:

1. The trust acquires land in the UK on or after 6 October 2020, or
2. The trust held UK land prior to 6 October 2020, and there is a subsequent change in trustee such that no trustee remains unchanged, or
3. The trust has at least one UK resident trustee and the trustees enter into a new business relationship on or after 6 October 2020 with a relevant person in the UK (e.g. solicitor or tax adviser).

Offshore trustees will not therefore need to worry about engaging UK professionals such as lawyers and tax advisers provided all the trustees are not UK resident.

[1] An express trust is one which is "expressly" (i.e. deliberately) created by the settlor. These can be created during their lifetime or in a Will on death, and can include bare trusts (see definition below). It also includes different types of trust such as life interest and discretionary trusts.

There are various exclusions for non-taxable trusts, but we anticipate the most used will be:

- Charitable trusts
- UK registered pension schemes held in trust and employee share scheme trusts
- Co-ownership trusts (e.g. property held by two or more people)
- Trusts on intestacy or under a will (for the first two years after death)
- Life insurance policies
- Bank accounts held for minor children
- Trusts registered on a European Economic Area (EEA) register

No exclusions are available for taxable trusts.

Bare trusts[2] are not on the list of excluded trusts and could cause widespread inadvertent non-compliance. One common example might be when a declaration of trust is made where the registered owner on the Land Registry differs from the beneficiary owner of a property, for example if the legal title is held by a nominee company. In this instance the nominee company is the trustee, and the above rules with respect to non-taxable trusts apply. This means that where a non-UK nominee company acquired the property prior to 6 October 2020 reporting is only required if there is a change in the nominee.

What information is needed to register with the TRS?

Taxable trusts will need to provide:

- the name and date of the trust
- information about the trust assets, including their value
- the place where the trust is resident/administered
- identity information (including full name, date of birth and National Insurance number) in respect of each of the beneficial owners of the trust together with details of the nature and extent of their beneficial ownership.

Non-taxable trusts will only have to provide details of the beneficial owners of the trust and do not in general have to provide information about the trust assets.

However, if a registerable trust (taxable or non-taxable) holds a controlling interest in a non-EU company, this fact, together with the name, place of incorporation and registered office of the company must be included on the TRS.

Who can see information on the TRS?

This is another area that changed under 5MLD. Previously, access to TRS information was permitted only for certain law enforcement agencies. Under the current rules, those who can request to see the information has been extended.

In general, only third parties who can demonstrate a legitimate interest in the trust can access information, in an attempt to balance the need to combat money laundering and terrorism with the privacy of individuals who have beneficial interests in trusts. To demonstrate legitimate interest, a third party must demonstrate that they are looking into a specific instance of money laundering or

[2] A bare trust is a type of express trust but where the trustee (sometimes called nominee) holds property on behalf of the beneficial owner and is required to act solely in accordance with the beneficiary's wishes

terrorist financing, and that it is reasonable to have that suspicion.

Where the trust has a controlling interest in a non-EU entity, wider access is permitted and so it is not necessary to demonstrate a legitimate interest. That said, the third party will still be required to identify the specific non-EU company and the trust which holds a controlling interest and demonstrate that the request relates to combatting money laundering/terrorism.

Not all the information on TRS will be shared where an information request is accepted, but it is important to note that the trustees are not informed when such an access request has been made or granted.

What are the deadlines?

For trusts that did not previously need to register on the TRS, trustees should have registered the trust by 1 September 2022. The same date applied to supplying additional information for existing taxable trusts already on the TRS.

For new trusts created after 1 September 2022, trustees have 90 days to register the trust with HMRC.

In addition, any changes to the trust details or circumstances must be reported within 90 days of the change.

Taxable trusts must make an annual declaration to confirm the details on the trust register are accurate and up to date. No annual declaration is required for non-taxable trusts.

There are penalties for not meeting the deadlines for TRS registration – though with the slow roll-out we would hope that HMRC will be understanding of those who missed the deadline.

What next?

The key thing for trustees to do is review their trusteeships to see if there are trusts already registered where additional information is required, or if there are trusts not previously registered but which will now be caught.

Non-UK trustees also need to review their trusts carefully to consider whether non-UK trusts are caught (for example, if the trust has acquired UK land on or after 6 October 2020).

Where trusts were created to maintain the privacy of the owner, careful thought will need to be given to the structure since potentially details will now be available to third parties. This is particularly of concern for the owners of controlling interests in non-EU companies, where the barriers to obtaining information are lower.

Charter Tax can provide additional assistance with TRS, including registering trusts with HMRC. We also provide in-depth UK tax advisory services for trustees and beneficiaries. For more information please contact Emma Cheeseman, emma.cheeseman@charter-tax.com

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