



The Trust Registration Service, introduced in 2017, is the UK's central register of the beneficial ownership of trusts. Whilst originally the regulations only captured trusts with UK tax consequences, new rules introduced in 2020 widen the scope of the regulations to considerably more trusts.

Trustees caught by the regulations need to report significant information about the persons behind the trust and the assets held, irrespective of the residence of the trustees, which in most cases will be available to anyone who can demonstrate a 'legitimate interest'.

The changes to the registration requirements, which have an effective deadline of 1 September 2022, mean that non-UK resident trusts may now be in scope even if they have no UK tax consequences. Whilst the Trust Register previously only needed to be updated on an annual basis, from 1 September 2022 automatic penalties will be charged where changes to the information (or any trusts coming in scope for the first time) are not reported within 90 days.

Background

The UK Trust Registration Service was introduced in 2017, to fulfil the UK's obligations under the EU's Fourth Money Laundering Directive (4MLD). As well as being the UK's central register of the beneficial ownership of trusts, the Trust Register is also now the only way to register trusts liable to UK income tax or capital gains tax (CGT) with HMRC.

Despite Brexit, following the implementation of 5MLD in October 2020, significant changes have been introduced which bring many more trusts into scope of the Trust Register, including all UK resident trusts and some non-UK resident trusts with no UK tax consequences. The deadline for registering these trusts was previously 10 March 2022, however this has now been extended to 1 September 2022.

Which trusts were already in scope?

Under 4MLD, only taxable 'relevant trusts' needed to be registered, broadly meaning a trust created deliberately (rather than by operation of law) which receives UK income or directly holds assets in the UK, on which the trustees have a liability of one (or more) of the following UK taxes: income tax, CGT, inheritance tax (IHT) or stamp duty (SDLT, LBTT, LTT or SDRT). Trusts in scope must register regardless of the residence of the trustees.

For each tax year that a trust continues to be in scope, the Trust Register must be updated, by detailing the changes to the information on the register, or by confirming that there have been no changes.

Also as noted above, the Trust Register needs to be completed in order to register a trust for UK Self-Assessment (to obtain a Unique Taxpayer Reference or UTR) or under the UK Property Reporting Service (to report disposals relating to UK real estate).

Which additional trusts are now in scope?

Under 5MLD, certain non-taxable relevant trusts also need to complete the Trust Register, which significantly increases the number of trusts in scope. With limited exceptions, this includes all UK resident trusts as well as some non-UK resident trusts.

The three types of non-taxable relevant trusts now caught are as follows:

Type A trusts	UK resident trusts
Type B trusts	non-UK resident trusts with at least 1 UK resident trustee where the trustees engage a UK adviser or acquire UK real estate
Type C trusts	non-UK resident trusts (no UK resident trustees) which acquire UK real estate from 6 October 2020

In practice, provided there are no UK resident trustees, a non-resident non-taxable trust will only be caught if UK real estate was acquired directly since 6 October 2020, unless via a nominee entity. This could capture 'dry' trusts where UK property is transferred into a trust, as well as de-enveloping UK property previously held via an underlying offshore company. Note that where SDLT is incurred on acquisition, or rental income is received, the trust will be a taxable trust and hence caught in any case.

Whilst the 5MLD regulations were initially drafted to catch offshore non-taxable trusts if they engage a UK adviser (an 'obliged entity' subject to AML rules, where the engagement is expected to last at least 12 months), these were revised to only catch such trusts if they have a UK resident trustee.

What else has changed?

Under the increased 5MLD regulations, additional information must now be supplied, including the residence and nationality of certain individuals associated with the trust. For trusts registering for the first time, details of the current assets in the trust need to be declared, whereas previously it was only necessary to detail the assets originally settled into the trust. Note that subsequent additions to the trust do not need to be declared on the Trust Register, which is primarily intended to collect data on the persons behind the trust.

In addition, details of controlling interests in underlying non-EEA entities now need to be included, unless they are already registered on a EU corporate beneficial ownership register.

The reporting deadline is also significantly more onerous: previously, trusts in scope only needed to register/update changes to the information on the Trust Register on an annual basis, in most cases by 31 January following the 5 April year end. From 1 September 2022, however, it will be necessary to register/update the register within 90 days of becoming registerable/any relevant changes, in order to avoid an automatic £100 penalty, although the first failure should only result in a warning letter. Note that HMRC can issue increased fines for 'deliberate' offences. Accordingly, the Trust Register will no longer only be an annual reporting event, but will need to be considered on an ongoing basis.

Ensuring that UK National Insurance numbers (where applicable) are reported on the Trust Register will avoid needing to report address changes or updated passports for such individuals.

Access to the Trust Register

Whilst the information on the Trust Register has been available to various law enforcement agencies since creation, under 5MLD access will be extended to anyone who can demonstrate a 'legitimate interest'. Persons making such a request must be able to demonstrate strong evidence of suspected money laundering or terrorist financing activity involving the trust.

Access to certain trusts with a controlling interest in a non-EEA entity can be obtained without having to demonstrate a legitimate interest, although HMRC still require that the request has a 'proper purpose'. HMRC will not disclose information for minors, those lacking capacity or where there is a risk that the information will be used for harm.

Note that HMRC will not inform the trustees that a request has been made, nor whether any information about their trust has been supplied to a third party.

Summary

Offshore trustees need to be aware of the expanded scope of the UK Trust Register and the ongoing implications of being caught by the regulations, which are increasingly onerous. If they are not caught by the UK regulations, trustees should consider whether they need to register with another EU member state's beneficial ownership register, if they have sufficient presence in the EU.

There are planning opportunities to avoid becoming registerable/ needing to update the UK Trust Register, although the potential tax implications of any restructuring would need to be considered. It should also be noted that offshore trust structures with UK real estate which are not caught by the Trust Register will likely be caught in future by the proposed UK Register of Overseas Entities, likely to be publicly searchable with increased penalties.



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