



THE NEW TRUST REGISTER ACT NOW TO MEET KEY DEADLINES

HMRC's new online Trust Registration Service (TRS) was launched in July 2017. Its creation was part of a wider package of 'anti-money laundering' regulations (Regulations) applicable to most professional firms and financial services providers in the UK and introduced in June 2017.

WHAT ARE THE NEW OBLIGATIONS TRUSTEES MUST COMPLY WITH?

Under the Regulations, trustees are now obliged to maintain a register in writing about the trust, its assets and its beneficiaries and all individuals with control over the trust (the trust's "beneficial owners").

In many situations, the trustees must also register some of these details with a 'trust register' (Register) now being maintained by HMRC through the TRS. This online service replaces the previous registration method, form 41G, which is now obsolete.

DO THE REGULATIONS APPLY TO ALL TRUSTS?

The Regulations will apply to:

- UK express trusts (those intentionally created by the settlor) that incur a "relevant tax liability" during a tax year; and
- Non-UK express trusts, which incur a tax liability in any tax year in relation to UK source income or UK assets held directly by the trust.

If a trust has to pay income tax, capital gain tax, inheritance tax, stamp duty land tax (or the Scottish equivalent) or stamp duty reserve tax during a tax year, it will be caught by the Regulations. It must keep records and register with the TRS. Trusts caught by these Regulations (including a charitable trust) will not have to register until they incur a liability to pay any of these taxes.

Where there are multiple trustees, the trust can appoint a lead trustee. They become HMRC's main point of contact with the trust and are responsible for its registration duties.

Certain trusts will not need to register through the TRS. These include:

- Bare trusts (where assets are held absolutely for an individual), although they may have record keeping obligations;
- Trusts which are not classified as express trusts (such as resulting or constructive trusts); and
- Trusts where the tax liability does not fall directly on the trustees (assets are held through an underlying company for example.) If a trust holds UK assets through a non-UK company it may not be required to register. It is the company which holds the UK assets or property and receives income from it, rather than the trustees.

The position is complex and advice should be obtained to clarify the trust's status under the Regulations and its need to register.

WHO IS A BENEFICIAL OWNER UNDER THE REGULATIONS?

Under the Regulations the trustees must keep information on the following beneficial owners:

- The settlor (even if they are deceased);
- The trustees (a maximum of five can appear on the Register, written details of further trustees must be sent to HMRC);
- The beneficiaries;
- The class of persons in whose main interest the trust is set up or operates;
- Any individual who has control over the trust, (which includes the ability to add or remove persons as beneficiaries and the power to lend or advance trust assets).

With regard to discretionary trusts HMRC have confirmed, in their most recent guidance, that unnamed beneficiaries, who are part of a wider class, do not need to be named on the Register until they receive a wider benefit from the trust (financial or otherwise).



Trustees are responsible for providing details of beneficial owners directly to the Register. If a beneficial owner fails to supply them with information, the trustees are not automatically deemed to have committed an offence under the Regulations if they can show they have taken all reasonable steps to obtain their details. HMRC have not clarified what "reasonable" steps would involve but trustees should actively review how frequently they communicate with their beneficial owners and ensure careful records are kept.

LETTERS OF WISHES

Controversially, information on those named as a beneficiary within a letter of wishes should also be secured and included on the Register. This marks a significant shift in protecting a trust's privacy, as historically such information was confidential to the trustees and not automatically disclosed as part of a trust (for example where it was set up under a will). However, it should be noted that information supplied to the TRS is not publically available.

WHAT INFORMATION ON BENEFICIAL OWNERS MUST BE PROVIDED TO THE REGISTER?

Trustees must maintain accurate and up to date records in writing of the trust's beneficial owners and provide the following details to the Register:

- The individual's full name, national insurance (NI) number or unique taxpayers reference (UTR) (if UK tax resident);
- Address (if there is no NI /UTR). If address is not UK or if no NI can be supplied for any other reason the Passport/ID card number & country of issue;
- Date of birth;
- Nature of individual in relation to trust.

Trustees should have collated some of this information as part of their record keeping in recent years due to ongoing compliance obligations. The information gathering exercise is therefore not as overwhelming as it first appears. Certain additional information may have to be requested, however, particularly with regard to national insurance numbers, tax reference or passport numbers (where applicable).

Written records should be maintained on an ongoing basis. Any law enforcement agency can request

information about the beneficial owners of the trust including from those trusts which do not incur a liability to any of the relevant UK taxes during a tax year. Furthermore, financial institutions justifiably requesting information on individuals must be supplied it within 14 days.

AN EXAMPLE OF BENEFICIAL OWNERSHIP REQUIREMENTS

A UK discretionary trust has been created by Mr Green. Under the new Regulations records must be kept for:

- Mr Green as the settlor of the trust;
- Mr Green's brother and sisters who are all trustees of the trust;
- Mr Green's adult children who are all named individually in the trust deed as beneficiaries of the trust;
- Mr Green's spouse who is not a beneficiary but has the power to veto appointments of additional beneficiaries within the trust - as such they have power of control over the trust;
- Mr Green's grandchildren who are named as a class of beneficiaries in the trust (with guidance given in the letter of wishes that children should benefit following the death of a parent). Initially they can be identified as a class but once an individual receives a benefit (financial or otherwise) from the trust, their details must be placed on the Register;
- Mr Green's illegitimate child who is named separately in the letter of wishes as a beneficiary of the trust, but was not identified in the trust deed. The child may not be aware of the trust and their rights under it, until the trustees contact them for information to be included on the Register.

WHAT INFORMATION ON TRUSTS MUST BE PROVIDED TO THE REGISTER?

The trustees must provide the following information about a trust to the Register:

- The full name of the trust and its date of creation;
- The accounts for the trust, describing the trust assets;
- The value of each category of the trust's assets at the date on which the information is first provided



to HMRC (including the address of any property held by the trust). Trustees may have to acquire new values on assets through professional valuations for the first time as historically this might not have been necessary (it was not planned to trade the asset for example);

- The country where the trust is considered to be resident for tax;
- Details of legal and accountancy providers to the trust.

WHAT ARE THE DEADLINES FOR TRUST REGISTRATION?

New and existing trusts (not previously registered with HMRC for self-assessment purposes)

For new trusts and existing trusts that incur an income or capital gains tax liability for the first time the normal deadline for informing HMRC of the trust is 5 October following the end of the tax year in which the liability arose. Due to technical delays with the online system and for 2017 only, HMRC has extended this deadline for relevant trusts to **5 January 2018** (note: this has been extended twice).

Existing trusts

For existing trusts which have previously registered with HMRC for self-assessment purposes, trustees must provide and update the information on or before 31 January after the tax year in which the trustees were first liable to pay taxes. A trust which incurred an income or capital gains tax liability for the year ended 5 April 2017 will find its registration deadline is **31 January 2018**.

We understand, however, HMRC have suggested that any trust registering after this deadline, for 2016/17 filing periods only, will not be subject to a penalty provided they have registered by 5 March 2018. This concession is again due to technical difficulties but has not yet been confirmed in HMRC's official guidance. HMRC are expected to provide clarification on this point.

For those which fall outside this category and where the trust has an inheritance tax or SDLT liability from 6 April 2017 to 5 April 2018 – the registration deadline is **31 January 2019**.

AN EXAMPLE OF REGISTRATION TIMESCALES

A UK discretionary trust was created in May 2015 and has been registered with HMRC for self-assessment purposes. It generates an income tax liability during the tax year 2016-2017 and its reporting deadline is 31 January 2018. The trustees need to compile their internal register now and file the information required by the January deadline.

Unless there is another income or capital gains tax liability, the trust will be liable for inheritance tax on the first ten year anniversary of its creation in May 2025. The trustees will need to ensure they update the records held by HMRC by 31 January 2027. The trustees can voluntarily update the Register (including removing former beneficiaries) prior to that time but are not obliged to do so. They should ensure their records on beneficial owners are correct in case an external law enforcement agency requests information.

PRIVACY CONCERNS

At the moment, HMRC can only share TRS information with law enforcement authorities in the UK or in another EEA member state where required. Recently published EU legislation suggests access to the Register may be extended to the general public, although Brexit and limited government support make the implementation of these proposals very uncertain.

SANCTIONS

Civil sanctions include penalties and statements of censure published by HMRC. Criminal sanctions including imprisonment for up to two years, a fine or both are also a possibility particularly if along with contravention of a requirement it prejudices investigation or provides false or misleading information.

NEXT STEPS

The Regulations are complex and provide a number of compliance challenges for trustees and settlors. Trustees may wish to consider, for example, appointing a lead trustee and also reviewing the information they hold on their beneficial owners. New valuations of trust assets might also be required.



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Settlors will need to consider, in particular, how they identify the trust's beneficiaries and whether any changes are needed (specifically within the letter of wishes).

It is important to ensure that the correct records are maintained and the trust properly registered. We are happy to advise you on this. Please contact us if you have any questions.

FIND OUT MORE

For further information email:

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