



# THE TRUST REGISTER

## WHAT IS THE TRUST REGISTRATION SERVICE?

HMRC's Trust Registration Service (TRS) was initially launched in July 2017. Its creation was part of a wider package of 'anti-money laundering' regulations introduced in June 2017 that applied to most professional firms and financial services providers in the UK. These regulations were substantially expanded in October 2020 to include UK non-taxpaying express trusts and new requirements for some non-UK trusts.

## WHAT ARE THE OBLIGATIONS THAT TRUSTEES MUST COMPLY WITH?

Under the regulations, trustees are now obliged to maintain a register in writing about the trust, its assets and the persons connected to the trust. This would usually include the settlor, trustees and beneficiaries (the trust's 'reportable persons').

The trustees are obliged to register some of these details on a 'trust register' with HMRC through the TRS.

## DO THE REGULATIONS APPLY TO ALL TRUSTS?

The regulations will apply to:

- UK express trusts (those intentionally created by the settlor) which are not specifically excluded or registered elsewhere in the European Economic Area (EEA).
- A non-UK trust which has at least one UK resident trustee, has not been registered in the EEA, is not specifically excluded and:
  - enters into a business relationship within the UK on or after 6 October 2020; or
  - acquires an interest in land in the UK on or after 6 October 2020.

'Business relationship' means any business, professional or commercial relationship between the trustees and a UK service provider.

- A non-UK trust which has no UK resident trustees is not specifically excluded if the trustees acquire an interest in land within the UK on or after 6 October 2020.

'Interest in land' means where a trustee is registered on the title at the Land Registry.

A significant number of trust arrangements will be captured by these rules. Examples of these include:

- trusts holding investment bonds which previously had no tax events at a trust level;
- dormant trusts which hold assets such as a property or a loan for a surviving spouse or other beneficiaries after death;
- nominee and bare trust arrangements where a person (or persons) holds an asset only as a legal owner for another person. This may include scenarios such as

parents holding assets for their minor children, although it is hoped that such hugely common arrangements will be excluded in subsequent HMRC guidance; and

- property trusts where the legal and beneficial ownership differs. For example, when a property is purchased by a parent for a child.

## WHAT TRUSTS ARE EXCLUDED?

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

- legislative trusts and those imposed by court order;
- pension scheme trusts which are registered pension schemes;
- insurance policy trusts which only pay out on death, terminal/serious illness, disablement or to meet the costs of healthcare for the person assured;
- charitable trusts which are registered as a charity or are excluded from doing so;
- trusts created on death which only hold an interest in an un-administered estate or the death benefits of the deceased and less than two years has passed since death;
- co-ownership where the trustees and beneficiaries of jointly held property are the same person;
- personal injury trusts; and
- certain commercial trusts.

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

## WHO IS A REPORTABLE PERSON UNDER THE REGULATIONS?

Trustees must maintain records and register the details in relation to the following:

- the settlor (even if they are deceased);
- the trustees;
- the beneficiaries;
- the class of beneficiaries; and
- any individual who has control over the trust.

## WHAT INFORMATION MUST TRUSTEES PROVIDE ON REPORTABLE PERSONS?

Trustees must maintain records and the information required will be dependent on their tax status. Information they may need to provide includes the following:

- the individual's full name;
- national insurance (NI) number (if UK tax resident);
- date of birth;



- address (if there is no NI);
- passport/ID card number, expiry date and country of issue (if there is no NI number);
- the nationality and tax residency of the individual; and
- whether the individual has mental capacity.

Where there are multiple trustees, a 'lead trustee' will need to be nominated. This person will become HMRC's main point of contact with the trust and is responsible for its registration duties.

### WHAT INFORMATION MUST BE PROVIDED ABOUT THE TRUST?

The information that the trustees must provide about the trust consists of:

- the full name of the trust;
- the date and method of creation;
- the trust assets;
- the value of each category of the trust assets at registration; and
- the country in which the trust is considered to be resident for income and capital gains tax purposes.

### WHAT ARE THE DEADLINES FOR TRUST REGISTRATION?

Any trust in existence as at 6 October 2020 which is not specifically excluded will be required to comply with the updated registration requirements.

Following HMRC's extension of the registration deadline, these trusts, along with those created subsequently, will be required to register by 1 September 2022.

Trusts created after this date will need to register under the TRS within 90 days of creation. It is therefore prudent to ensure that trustees are aware of their requirements and collate the required information before the trust is created. Trustees will also need to report any changes or discrepancies to the information previously registered within 90 days.

### PRIVACY CONCERNS

The information held by HMRC can be accessed by those who demonstrate a legitimate interest in the beneficial ownership of a trust. In a recent consultation, HMRC stated that the 'legitimate interest' application process will aim to ensure that each request will be reviewed on its own merits. Access will only be given where there is evidence that it furthers work to counter money laundering or terrorist-financing activity. The Government believes that this approach strikes the right balance between the conflicting demands of transparency and privacy.

This 'legitimate interest' principle will not apply to trusts which have a controlling interest in a non-EEA entity, although it is probable that HMRC will still require evidence to support any such requests.

The above will not apply in situations in which the beneficial owner is under 18, the beneficial owner has a lack of mental capacity; or HMRC considers the release of information will expose someone to a disproportionate risk such as fraud, kidnapping, blackmail, extortion etc.

### SANCTIONS

Civil and criminal sanctions including imprisonment, a fine or both are a possibility particularly if, along with contravention of a requirement, it prejudices investigation or provides false or misleading information.

It is important to ensure that the correct records are maintained and the trust is properly registered.

### PRICING

Our trust administration team can assist trustees with their record keeping and reporting obligations. The table below shows our fixed price schedule for the initial registration of the trust:

Reportable person(s)	Single trust	Each additional trust (with identical reportable persons)
1-2	£425	£200
3	£455	£215
4	£485	£230
5	£525	£245
6-8	£585	£280
9-12	£645	£335
13 or more	Contact us for fixed price	Contact us for fixed price

NB: All fees quoted are exclusive of VAT. Supplementary charges may apply for additional services.