

## TRUST REGISTRATION SERVICE

# Trust registration service expanded to include non-taxable trusts and increased disclosure requirements

### Summary

All Trusts with UK tax liabilities are required to register under the Trust Registration Service ('TRS') and notify any changes or file annual confirmations. As provided in the original 2017 regulations, the scope of the TRS has now been expanded following the UK's adoption of the EU's 5<sup>th</sup> Money Laundering Directive ('5MLD').

As a result, non-taxable "express trusts" (UK and certain non-UK trusts) are now required to register under the TRS unless they fall within the list of excluded trusts. The disclosure requirements for trusts already registered are also being expanded. The next deadline for these trusts is **1 September 2022**.

An **express trust** is a trust created deliberately by the settlor rather than arising under the law (so this excludes a settlement ordered by the court or under the intestacy laws).

The purpose of 5MLD is to counteract the risk of money laundering within UK and non-UK trusts (where there is a UK factor such as a UK tax liability, business relationship or real estate). In some cases, such as certain bare trust arrangements, this may appear overly bureaucratic, but the regulations reflect HMRC's perceived view of the money laundering risk (particularly relating to tax evasion) within such trusts.

For the first time as well as HMRC and law enforcement agencies, certain 'interested third parties' will be able to access parts of the TRS.

### Types of trusts caught by the extended regulations

Prima facie, all UK trusts that are not included in the list of excluded trusts are now required to be registered by 1 September 2022.

This means that individuals connected with certain trusts including bare trust/nominee arrangements and certain financial products (such as trusts which hold investment bonds which can be partially surrendered – e.g. gift trusts/discounted gift trusts/loan trusts) now need to take action.

Care will also need to be taken regarding Will Trusts, where the two-year anniversary from death is approaching. This factsheet further details below:

- Scenarios that are excluded from the need to register
- The new requirements for non-taxable trusts
- Extensions to existing requirements for taxable trusts
- Provisions that allow access to certain aspects of the register to interested third parties

## Excluded trusts

There are various scenarios falling with the definition of excluded trusts, which are therefore not required to register under the TRS. The main ones relevant to private clients are as follows:-

- **Estates and trusts created on death** - provided all of the assets are paid out within two years of death. If the trust is still in existence two years from death, or if at any time beforehand the trust accepts an addition of property from outside the estate, the trust will need to register from that respective date.
- **Trusts for bereaved minors and disabled persons trusts.**
- **Bank accounts for minors** – where individuals (typically parents or guardians) open bank or building society accounts for children under 18. This exclusion is only applicable where cash deposits are held. Therefore, there is no exclusion where other assets (e.g. investments) are held on behalf of the minor.
- **Insurance policies and compensation pay-out trusts** – where such policies only pay out such payments on death, illness or disability. Any trust holding a policy (e.g. single premium life bond) that can be surrendered at any time is not exempt.
- **Property ownership trusts** – where property (e.g. land or bank accounts) is held jointly and the trustees and beneficiaries are the same persons.
- **Charitable trusts.**
- **Historic pilot trusts** – where created before 6 October 2020 and holding property less than £100. Pilot trusts created on or after 6 October 2020 are not excluded even if they hold less than £100.

## Non-taxable trusts

Non-taxable trusts are trusts which have not been subject to any UK tax liability in the relevant tax year, such taxes including Income tax, Capital Gains tax (CGT), Inheritance tax (IHT) or Stamp Duty Land Tax (SDLT).

The non-taxable trusts that will now be subject to the TRS regulations (unless excluded) will be as follows:-

1. UK resident trusts - **Type A trusts**
2. Non-UK resident trusts (with at least one UK resident trustee) that either enter into a business relationship with a UK advisor or hold a direct interest in UK land – **Type B trusts**; and
3. Non-UK resident trusts (who do not have any UK resident trustees) who hold a direct interest in UK land – **Type C trusts**

### Disclosures required for non-taxable trusts

- i) The name and date of the trust
- ii) The place where the trust is resident/administered
- iii) Information in respect of each of the beneficial owners of the trust (**settlor, trustees, and beneficiaries, including any person named as a potential beneficiary in any document** relating to the trust, such as a letter of wishes) including:
  - their tax residence and nationality,
  - details of the nature and extent of their beneficial interest/ownership
- iv) Where a Type A or B trust holds a controlling interest (more than 50%) in a non-UK and non-EEA company, the name, place of incorporation and registered office of the company is required to be provided.

### Deadline for registering Type A, B and C trusts

- Any such trust that was in existence on 6 October 2020 needs to register by **1 September 2022**.
- Any new non-taxable trust set up on or after 4 June 2022 will have 90 days from creation to register.

## Existing taxable trusts

The disclosure requirements for existing taxable trusts are also being extended. Such trusts are required to add the following additional details to the register by 1 September 2022: -

- i) The residency and nationality of their beneficial owners (settlor, trustees and beneficiaries including any person named as a potential beneficiary in a document relating to the trust such as a letter of wishes) together with
- ii) details of any controlling interests in non-UK, non-EEA companies

## Access to information on the TRS

In general, a third party will only be able to access the beneficial ownership information in respect of a **Type A or Type B** trust if they have a legitimate interest in doing so. This means that they will have to:

- ⇒ identify a specific trust,
- ⇒ explain why they think that the trust has been used for money laundering or terrorist financing,
- ⇒ identify the specific instance of suspected money laundering or terrorist financing, and
- ⇒ explain how the information will assist in the detection or prevention of money laundering or terrorist financing.

There is, however, no requirement that the trustees or beneficial owners are notified of any request for disclosure, and they will have no right to appeal against any decision that disclosure should be given.

In practice, the only circumstances in which information about a non-UK non-taxable trust will be available to the public is where the trust has at least one UK resident trustee and has either engaged a UK service provider or holds UK real estate after the regulations come into force. No such requests can be made for Type C Trusts.

Where a Type A or Type B trust has a controlling interest in a non-EEA company, the ability of a third party to access information is wider as there is no requirement for the third party to show that they have a legitimate interest in obtaining the information. The person seeking the information will have to identify the specific non-EEA company in question and its relationship with the trust which holds the controlling interest. In addition, the person will have to demonstrate that the request is connected with money laundering or terrorist financing.

## How can we help?

At Lubbock Fine, we have tax specialists who can advise on the various complex issues in relation to trust registration, specifically in relation to the requirements for non-taxable trusts and for the existing already registered trusts.

We have, to date, registered many trusts and our tax team can deal with all the compliance aspects of the registration from the initial obtaining of the Government Gateway ID for the trust to the submitting of the registration of the trust or the updating of the register for an already registered trust.

If you're looking for further guidance or would like to discuss any of the matters above, please get in touch with Tax Director Aidan Meade ([aidanmeade@lubbockfine.co.uk](mailto:aidanmeade@lubbockfine.co.uk)), Tax Partner Phil Moss ([philmoss@lubbockfine.co.uk](mailto:philmoss@lubbockfine.co.uk)), or your usual Lubbock Fine contact.



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Paternoster House  
65 St Paul's Churchyard  
London EC4M 8AB  
T: +44 (0)20 7490 7766  
E: [enquiries@lubbockfine.co.uk](mailto:enquiries@lubbockfine.co.uk)

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[lubbockfine.co.uk](http://lubbockfine.co.uk)

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