Trust Special Part I - The Trust Registration Service

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With September's trust registration deadline looming, in this fortnight's Private Wealth Planning series briefing, trust manager Edward Evans answers your questions on The Trust Registration Service ("TRS").

What is the background to the TRS?

The TRS was first set up in 2017 following the UK's implementation of the EU 4th Anti-Money Laundering Directive ("4MLD"). Under 4MLD, Trustees were only required to register a trust on the TRS if the trust was liable to pay tax in the UK. There was also an exemption from the requirement to register for a number of other types of trust, including bare trusts, charities and life policy trusts.

Why has this changed?

The EU 5th Anti-Money Laundering Directive ("5MLD") was implemented by the UK on 6 October 2020 and has brought in new reporting requirements which must be met by Trustees.

There are a number of types of trusts which were previously exempt under 4MLD, which have been added to the list of those required to register under 5MLD, although certain trusts do remain exempt under 5MLD.

Which Trusts are now required to register on the TRS under 5LMD?

5MLD has extended the registration requirements to include the following trusts:

- All express trusts regardless of whether the trustees incur a liability to UK tax.
- Any trusts which have a UK tax liability.
- Any trust which acquires land or property in the UK on or after 6 October 2020.
- Non-UK express trusts which have at least one trustee resident in the UK when the trustees enter into a business relationship with an obliged entity in the UK.
- Bare trusts where the assets held on trust consist of an investment portfolio or property (cash held in a bank account is excluded).

What is an 'obliged entity'?

An obliged entity includes, but is not limited to, a financial or credit institution, accountant, tax adviser, legal professional, estate agent, art dealer and other institutions or people dealing in certain goods or providing particular services.

HMRC's manual states that, as a general rule, this will include business relationships that go beyond a one-off short-lived transaction.

Which Trusts remain excluded from the TRS under 5MLD?

- Trusts imposed by statute (e.g. a statutory trust arising on intestacy).
- Bare Trusts for minors where the only asset held is cash in a bank account.
- UK registered pension trusts.
- Charitable Trusts regulated in the UK.
- Pure protection life insurance policies and those paying out on critical illness or disablement, including group polices.
- Trusts used by government and other UK public authorities.
- Trusts for vulnerable beneficiaries or bereaved minors.
- Personal injury trusts.
- Save as you earn schemes and share incentive plans.
- Maintenance fund trusts.
- Authorised unit trusts.
- Co-ownership trusts, where trustees and beneficiaries are the same persons.
- Will Trusts created on death that only receive assets from the estate, and trusts that only receive death benefits from a life insurance policy and are wound up within two years of death.
- Existing trusts holding assets valued at £100 or less unless or until further assets are added (i.e. pilot trusts).

What is the position for JISAs and Child Trust Funds?

Whilst they are not explicitly excluded, HMRC's view is that "Child Trust Funds and Junior ISAs are not trusts and therefore are not required to register on TRS."

What are the deadlines for reporting under 5MLD?

The HMRC online service for registering new trusts under 5MLD opened on 1 September 2021. The original regulations required existing non-taxable express trusts to register by 10 March 2022, but HMRC have extended that deadline to **1 September 2022** (this applies to non-taxable express trusts that were in existence between 6 October 2020 and 3 June 2022).

New trusts that are created on or after 4 June 2022 will need to register **within 90 days of creation**, even if this is later than 1 September 2022.

Will the trustees have to update the register?

Yes, certain changes to a trust will trigger a requirement to update the register, and trustees will have 90 days from the change to do so.

How do trustees access the TRS?

Trustees access the TRS system through HMRC's online portal, which requires the setting up of a Government Gateway account.

Who is able to gain access to the TRS information?

5MLD has introduced a new requirement (with effect from 1 September 2022), which is that the information held on the TRS can be made available for those who have a legitimate interest, which is likely to be organisations involved in fraud investigation and anti-money laundering compliance.

HMRC have emphasised that each case will be reviewed on its merits and that beneficiary information will not be disclosed if it would lead to kidnapping, blackmail, extortion, harassment, violence or intimidation. This also includes minor beneficiaries and legally incapable beneficiaries. HMRC is finalising details about third party access.

If you would like to discuss any of the issues raised, please do not hesitate to contact the author or your usual Payne Hicks Beach contact

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