BRIEFING

ENGLAND AND WALES

The Trust Registration Service

BACKGROUND

In tandem with many other countries, the UK has, in recent years, been introducing more measures aimed at combatting money laundering, crime and terrorist financing. These efforts are focused on increasing transparency of ownership of assets.

One component of the UK's framework is the Trust Registration Service ('TRS'), an HMRC-run database holding trustee, beneficiary and other information about UK trusts and some non-UK trusts. Introduced in 2017 as part of the UK's implementation of the Fourth EU Money Laundering Directive, the obligation to register and maintain up-to-date information with the TRS was limited to trusts with a UK tax liability.

Implementation of the Fifth EU Money Laundering Directive in the UK sees a significant expansion of the TRS's scope, encompassing many more types of trust. Broadly, with some exceptions, all UK express trusts are registrable (regardless of whether they have any UK tax liabilities), and some trusts that are not expressly made, are also, in principle, registrable. This can include any separation of legal and beneficial ownership, making the TRS applicable to arrangements that might not immediately be recognisable as trusts. In this bulletin, therefore, 'trust' refers to any ownership structure where the legal and beneficial interests are different.

SCOPE OF THE TRS

The expanded TRS rules encompass all UK express trusts, namely those which are established intentionally by one or more settlors, usually by deed or other written document, as well as certain non-UK express trusts. Some trusts are not expressly created, such as a deceased person's estate if that person died without a will, resulting in the estate assets passing under the intestacy rules. These trusts will not usually have to register with the TRS, unless they become liable to pay UK tax or have to submit a UK tax return.

Within the categories of trusts that are required to register, there are some exclusions. However, these only apply to trusts without a UK tax liability; a trust will always have to register on the TRS if it incurs a liability to UK tax.

There are detailed rules governing which trusts must register and trustees should take professional advice if they are unclear as to their own status and obligations. Broadly, a trust will be caught by the TRS if:

- the trustees, regardless of whether they are UK or non-UK trustees, incur any UK tax liability or if they have an obligation to submit a tax return, which may include scenarios where there is no actual tax to pay

and if there is no UK tax liability or obligation to submit a tax return, then if:

- it is a UK express trust
- it is a non-UK trust that directly acquired land in the UK on or after 6 October 2020

THE TRUST REGISTRATION SERVICE

- it is a non-UK trust with at least one UK resident trustee and there is a "business relationship" with UK professionals and organisations (such as lawyers, tax advisors, auditors, accountants, estate agents, trust or company service providers and credit and financial institutions) in place on or after 6 October 2020 or
- it is a non-UK trust with a UK tax liability arising on UK-source income or as a result of holding assets in the UK.

Where there are no tax or tax reporting obligations, there are some exclusions to the requirement to register on the TRS. Examples include (but are not limited to):

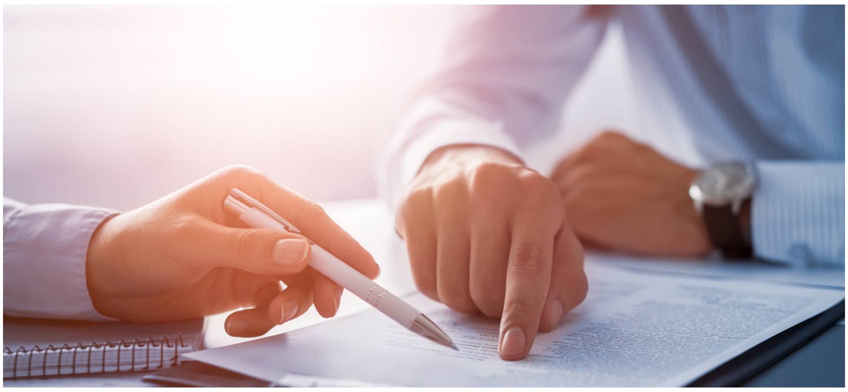
- joint ownership of property, where two or more people hold property for themselves in separate shares, as 'tenants in common'
- property held by adults on behalf of themselves and minor children
- trusts holding certain types of life policies and
- a trust created under a person's will that comes into effect on death, provided the assets are administered and distributed to the beneficiaries within two years.

It is important to bear in mind that there are many scenarios which might at first appear to be covered by an exclusion, but in practice will require registration. Below are some examples of why the exclusions should be treated with caution.

- David has a 30% stake in the home he shares with Laura, who owns the remaining 70%. They are both on the property title for the house at the Land Registry. This arrangement falls within an exclusion and so there is no need to register with the TRS.

  However, if David and Laura co-owned their home in these shares, but only Laura was on the title at the Land Registry, the arrangement would not be excluded and so it would have to be recorded on the TRS.
- If Laura and David buy an investment property in their names for themselves and their daughter, Emily, who is 14, then an exclusion applies, avoiding the need to register.

  However, the relevant exclusion only applies so long as Emily is a child and so when she turns 18, unless the property is transferred into her and her parents' names within 90 days, the arrangement will need to be registered with the TRS.



- On her advisor's recommendation, Laura took out a life insurance policy, which is held on trust for the benefit of her sister, Jane. The policy will only pay out on Laura's death. This falls under one of the specified exclusions that means TRS registration is not necessary.

  However, if Laura took out and placed in trust an investment bond from which she was entitled to withdraw up to 5% annually, the withdrawal payments would be treated as partial surrenders, rather than life assurance. As such, the payments would take the trust outside the exclusion for life policies and it would have to be registered on the TRS.
- David is an executor of his late father's estate, which comprises a small cottage with a few personal belongings and a bank account with a small amount of cash. There is no tax to pay and within a year of David's father's death, all of the assets are transferred to David's brother, John, the sole beneficiary. This would not require registration on the TRS.

  However, if it took more than two years from the date of death for the estate assets to pass to John, the exclusion would no longer apply and the estate would have to be registered on the TRS. Alternatively, if the house was sold by David during the administration so he could instead pay the proceeds to John, registration would also be required if the sale resulted in a tax liability for the estate.

THE TRUST REGISTRATION SERVICE

REGISTERING A TRUST WITH THE TRS

It is important to note that, while HMRC administers the TRS, the registration obligation of taxable trusts is not met by filing a trust tax return; TRS registration is a separate requirement.

The TRS is managed through the "Government Gateway", the system used by the UK Government for its online services. For trusts not already using the Government Gateway, the "lead trustee" (the trustee nominated to be the contact for HMRC) must go to the website referred to below and scroll down to find the link to "Register now" and follow the prompts thereafter.

Taxable trusts access the TRS with the "Unique Taxpayer Reference" (UTR) number used on their tax returns, whereas "Unique Reference Numbers" (URN) are given to non-taxable trusts that need to register. This is how the trustees provide the information needed on registration, as well as record any reportable changes during the trust's existence. It is also how proof of TRS registration can be obtained, which may be required by some institutions and advisors providing trust services.

WHAT INFORMATION IS NEEDED?

On initial registration, the applicant will be taken through various stages asking for information about the trust and relevant parties to it. The particular details required will depend upon the type of arrangement being registered, but will broadly include personal information about who the trustees and beneficiaries are (including an appropriate description where there is a class of potential beneficiaries), the assets held in the trust, as well as specifics about the trust itself. This will cover information like the name of the trust, the date it was created and its status, such as whether it is a UK express trust or whether it is a non-UK trust and the basis upon which it is required to register on the TRS.

WHEN TO REGISTER

Trusts not liable to UK tax:

Trusts which now fall within the expanded scope of the TRS and were in existence on or after 6 October 2020 must register by 1 September 2022 or, if later, within 90 days of creation or satisfying the conditions for registration. Thereafter, qualifying non-taxable trusts must register within 90 days of when they first meet the conditions for registration. Note that, even if a trust satisfying the conditions for registration is brought to an end before 1 September 2022, the lead trustee must still register the trust and record that it has been wound up.

Trusts liable to UK tax:

For trusts created before 6 April 2021, where registration is triggered because of an initial liability to UK income tax or capital gains tax, the deadline for registration is 5 October following the tax year in which the tax liability first arose. Where registration is triggered because of a liability to any other UK taxes, the relevant date for those trusts to register on the TRS is 31 January following the tax year in which the liability first arose.

For taxable trusts created on or after 6 April 2021, registration is required within 90 days or by 1 September 2022, whichever is later.

Ongoing reporting obligations:

When any trust information recorded on the TRS changes, the trustees are responsible for updating the TRS within 90 days of the change. For example, where the TRS information about a trust includes a description of a class of potential beneficiaries, such as "the children of the settlor", a distribution to one of those children will trigger an obligation to update the TRS with the name of the beneficiary. Other examples include a change of trustees or if the trust is brought to an end.

THE TRUST REGISTRATION SERVICE

USEFUL RESOURSES

- Registration is by way of the Government guidance website, which can be started using the "Register now" link in the "How to register" section.

  www.gov.uk/guidance/register-a-trust-as-a-trustee
- The relevant law comes from Part 5 of the "Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017". Schedule 3A of the same sets out the exclusions from registration.
- HMRC Trust Registration Service Manual sets out HMRC"s latest interpretation of the TRS rules.

  www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual

Forsters LLP 31 Hill Street London W1J 5LS **DX:** 82988 Mayfair **T:** +44(0)20 7863 8333 **F:** +44(0)20 7863 8444

WWW.FORSTERS.CO.UK