The UK Register of Trusts

If you are a trustee of a UK resident trust or of a non-resident trust which has UK assets or UK source income you may need to take action before 5 January 2018.

Background

As part of the fight against money-laundering, organised crime and terrorist financing, the EU's Fourth Anti-Money Laundering Directive ('4MLD') was sanctioned in 2015. It includes provisions designed to increase the transparency of companies, trusts and other structures with a requirement for each EU Member State to keep a register of trusts.

UK regulations (the 'Regulations') to implement the UK register of trusts were published in draft earlier in 2017 and came into force on 26 June 2017. On 9 October 2017 HMRC published guidance which addressed a number of issues, but left a number of points in need of clarification. On 22 November 2017 HMRC published revised guidance (the 'Guidance') which addressed some uncertainties. HMRC have also updated certain deadlines for registration.

With penalties for non-compliance to include civil and criminal penalties as well as a fine and up to two years in prison, it is important you understand what is required and by when.

Function of the Register

The Register, which will be operated by HMRC, is to perform two functions, namely providing:

(1) a register of the beneficial ownership of relevant trusts as envisaged by 4MLD; and

(2) the means for trustees to register trusts with HMRC for the purposes of obtaining a Unique Tax Reference Number ('UTR') and delivering tax returns.

As a consequence, in May 2017, HMRC withdrew Form 41G, the paper form which trusts previously had to use in order to register themselves with HMRC for tax reporting purposes. HMRC has now launched a new online portal to replace Form 41G, which allows trustees to register their trusts for both of the purposes listed above. The service became available for agents on 17 October 2017, but there were still a number of glitches holding up registration online and, as a result, the earliest registration deadline was extended again (for the first year of operation of the Trusts Registration Service only) to 5 January 2018. In addition (and again only for the first year of operation only), HMRC have announced that they will not impose a penalty on trustees or their agents who fail to register by 31 January 2018 (if that is their relevant registration date (see below)), but who do so no later than 5 March 2018.

Who can access the Register?

At this stage the Register will be private. The Register may, however, be inspected by any 'law enforcement authority', which includes HMRC, the Financial Conduct Authority, the National Crime Agency, the various UK police services and the Serious Fraud Office.
The EU's Fifth Anti-Money Laundering Directive, which requires trust registers to be made public, is still being considered in the EU legislative process.

**Who has to register and when?**

All UK resident trusts with UK tax consequences in a given tax year will be required to register with HMRC or update their details on the register. A UK tax consequence will arise if the trust incurs UK liabilities for income tax ('IT'), capital gains tax ('CGT'), non-resident CGT, inheritance tax ('IHT'), stamp duty land tax ('SDLT') or stamp duty reserve tax ('SDRT').

Trustees of a non-UK resident trust will only need to register or update their details on the register in respect of a given tax year if the trust receives UK source income or has UK assets on which the trustees have incurred a liability to pay any of the above-mentioned taxes in that tax year.

Generally, trustees of trusts with UK tax liabilities in 2016/17 will be required to provide the necessary information on or before 31 January 2018, but see below for exceptions. **Note that registration is required even though the trustees have already submitted a Form 41G to HMRC and/or are already paying UK tax.** It is not clear whether HMRC intend to notify trustees of this requirement.

While trustees have continuing UK tax liabilities they will be required to notify HMRC of changes to the information contained in the Register (but not changes to asset values) by 31 January after the relevant tax year, or, if there are no changes, to confirm this. There is no need to notify changes in a year in which trustees have no relevant tax liabilities, but changes may be made voluntarily.

**More detail as to registration deadlines**

The date by which a trust must register depends on that trust's particular circumstances and, in the case of trusts which become registrable in future, the deadline depends on the taxable event by virtue of which the obligation to register arises.

The table below sets out the potential scenarios and the applicable deadlines for registration in each case as confirmed in the Guidance:

<table>
<thead>
<tr>
<th>Taxable event</th>
<th>Scenario</th>
<th>Deadline for registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT, CGT</td>
<td>Trusts which:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) only became liable for IT or CGT for the first time during the 2016/17 UK tax year; and</td>
<td>5 January 2018</td>
</tr>
<tr>
<td></td>
<td>(b) have not previously registered with HMRC using Form 41G</td>
<td></td>
</tr>
<tr>
<td>IT, CGT, IHT, SDLT, and SDRT</td>
<td>Trusts which:</td>
<td>31 January 2018 (unless the trust was wound up before 31 January 2018, in which case it does not need to be registered on the Trust Registration Service). However, penalties will not be charged on trustees or their agents who fail to register by 31 January 2018 but who do so by 5 March 2018</td>
</tr>
<tr>
<td><strong>IT, CGT Trusts which become registrable for reasons of UK income tax or CGT during 2017/18 (or subsequent tax years)</strong></td>
<td><strong>5 October 2018 (or 5 October in the relevant tax year)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>IT, CGT, IHT, SDLT and SDRT Trusts which:</strong></td>
<td><strong>31 January 2019 or 31 January after the end of the tax year in which the chargeable event occurs (rather than the payment deadline)</strong></td>
<td></td>
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<tr>
<td>(a) were liable for relevant UK taxes in the 2017/18 tax year (or subsequent tax years); and</td>
<td></td>
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<tr>
<td>(b) have already registered for self-assessment with HMRC or which have not been required to do so</td>
<td></td>
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</tbody>
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**What information must be provided?**

- The trustees will need to provide information on the identities of the following individuals/entities:
  - settlor(s) even if dead;
  - trustees;
  - beneficiaries;
  - all other natural or legal persons exercising effective control over the trust, (for example, a protector who can appoint trustees or add or remove beneficiaries) and the nature of their control; and
  - all other persons identified as potential beneficiaries in a document or instrument relating to the trust, including a letter or memorandum of wishes from the settlor.

The information must include the person's name, date of birth, National Insurance Number or UTR (or, if none, residential address) and, if they are non-UK resident, their passport or ID number, country of issue and expiry date.

- If the trust has more than one settlor the registration service currently permits only two settlors to be recorded and any others have to be notified to HMRC by post. The Guidance contains details of information which should be provided in relation to dead settlers.

- The registration service also currently allows details of up to five trustees to be recorded and, again, details of others must be sent by post.

- The Regulations provide that full details must be given about beneficial owners of the trust and any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust, such as a letter of wishes. However, the Regulations also provide that if the beneficial owners include a class of beneficiaries not all of whom have been determined, it is sufficient to provide a description of the class of persons who are the beneficiaries or potential beneficiaries under the trust. Although the HMRC guidance of 9 October 2017 suggested that even in the case of a discretionary trust, full details would be required for any identifiable living member of the class, the Guidance of 22 November 2017 confirmed that trustees can use the description of the 'class' to describe the trust's beneficiaries, even if someone from the class can be identified by name. Furthermore, HMRC now say that they interpret 'determined' to mean being in receipt of a financial or non-financial benefit from the trust. Although the Guidance does not deal with persons who are referred to as a class in a letter of wishes from a settlor, we assume that the same analysis applies.

- The effect is that where a potential beneficiary is not named in the trust or in the settlor's letter of wishes but is part of a class of beneficiaries, his identity need only be disclosed when he receives a financial or non-financial benefit from the trust after 26 June 2017.
• If a beneficiary is named in the trust deed or in the settlor's letter of wishes, HMRC consider that he can be determined and the trustees must provide the relevant information about him even if he is not in receipt of a financial or non-financial benefit from the trust.

• Helpfully, HMRC have also said that where a trust lists named individuals who only become beneficiaries contingent upon another event occurring (for example, on the death of a named beneficiary or in circumstances where there are no remaining named beneficiaries or beneficiaries in a class), the individuals can be listed as a class of beneficiaries until such time as the contingent event occurs. HMRC consider that at that point, the individuals should be named as they potentially stand to benefit.

• Trustees will also be required to provide general information on the nature of the trust, namely:
  - its name;
  - the date on which it was established;
  - a statement of accounts describing the assets (including the addresses of any UK properties) and the market value of the assets as at the date they were settled into trust (previously reported on Form 41G);
  - the country in which it is tax resident;
  - the place where it is administered;
  - a contact address; and
  - the full name of any agent who is acting on behalf of the trustee in relation to the trustees' registration affairs.

For what purpose will the information be used?

According to the UK Government, the information will be used to give 'law enforcement and compliance officers the tools they need to combat the misuse of trusts'. HMRC will also be able to compare the National Insurance Numbers or UTRs of the parties to a trust and factor these into its wide understanding of those persons' tax liabilities.

What are the penalties for non-compliance?

These are not finalised but will include civil and criminal penalties, including a fine and up to two years in prison. The Guidance indicates any civil penalty will be 'proportionate to the offence committed'. HMRC have announced that they will not impose a penalty on trustees or their agents who fail to register by the registration date of 31 January 2018 (if that was their relevant registration date) but who do so no later than 5 March 2018.

Record keeping

Trustees who are not required to register on the Trust Registration Service may nevertheless be obliged to keep up to date written records of the information described above and to disclose it when entering into any transaction on behalf of the trust or when requested to do so by any law enforcement authority. HMRC have confirmed that the above-mentioned clarification about the use, where appropriate, of the description 'class', also applies to the trustees' obligation to keep up to date written records of the beneficial owners and potential beneficiaries.

Some FAQs

☐ Does the requirement to register apply to a trustee of a UK resident trust which holds a life insurance policy or a property or other assets which does not generate income or gains?

There is no requirement to register such a trust unless and until a UK tax liability arises, for example when the property is rented out or sold and generates income or capital gain; in the case of a life policy the paying out of the policy proceeds will not usually trigger a tax event, but investment of the proceeds may give rise to a tax event in the future.
We are trustees of a non-resident trust which does not hold any UK assets or have any UK source income, but the settlor or life interest beneficiary is UK resident and pays tax on the income and gains; do we need to register?

The requirement is for the trustees to have a tax liability so you do not need to register in this circumstance even though a settlor may be able to reclaim the tax from the trustees.

We are trustees of a non-resident trust which holds UK assets through a wholly-owned non-UK resident company

This will not in itself result in the trust being registrable as non-resident trusts are only relevant trusts if they have assets in the UK (or UK source income) on which the trustees are liable to pay UK tax. The guidance of 9 October 2017 had suggested that the same would apply if the company were not the beneficial owner of the assets but were holding as nominee for the trustees. That was clearly not a correct analysis and HMRC confirmed in the 22 November 2017 Guidance that where a trust holds UK property through an offshore nominee company which it owns, the nominee arrangement is a 'look through' for tax purposes and any tax liability in relation to the property is the tax liability of the trustee, not the nominee. This means that the trust would be registrable in a tax year in which a relevant UK tax liability occurs.

We are the trustees of a non-resident trust which does not hold any UK assets or have any UK source income but the settlor was UK domiciled or UK deemed domiciled when the trust was settled; do we need to register?

No. Even though the trust is a relevant property trust and is liable to IHT periodic and exit charges, the trust does not need to register as the trust is non-resident and the trustees do not have assets in the UK or receive UK source income.

I am a trustee of a charity which is registered with the English Charity Commission? Do I need to register?

The Regulations do not contain any specific exemption for charitable trusts, but the Guidance confirms that provided the charitable trust does not incur a liability to one of the relevant taxes, there will be no need to register. A charitable trust would be required to register if the trustees incur non-charitable expenditure or are in receipt of non-exempt income. The trustees of all charitable trusts will need to comply with the record-keeping requirements referred to above.

Do trustees of bare trusts need to register or keep records?

The Guidance confirms that trustees of bare trusts do not need to register as any tax liability will fall on the beneficiary. This will also include most trusts established as a result of co-ownership of land. However, the Guidance requires that trustees of bare trusts still maintain accurate and up to date written records, as referred to above.

Do personal representatives need to register?

The Guidance makes it clear that only 'complex estates' need to register, although once the estate is administered and trustees take over in relation to any trust of residue or other trust under the terms of a Will, registration will be required at that time. A 'complex estate' is one the value of which exceeds £2.5m, or the tax due for the whole of the administration period exceeds £10,000 or the value of assets sold in any tax year from the date of death up to April 2016 exceeds £250,000, or £500,000 for deaths after April 2016.

If you have any questions, please contact Janette Cattell, Robert McLean or your usual Withers contact. Alternatively email enquiries.uk@withersworldwide.com

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