

Briefing document

Fifth Money Laundering Directive (5MLD) – Trust registration

Introduction

The EU's 5MLD is now in force and the UK has enacted it into UK law. As a result, registration will be required by a significantly greater number of trusts than under the existing 4MLD trust register and information will be more widely publicly available. This note summarises the key points with regards to the 5MLD trust register and the dates from which trusts will either need to register for the first time under 5MLD or add additional information to the register if already registered under 4MLD.

Trusts required to register under 5MLD

Scope of the registration requirements

5MLD requires the following express trusts to register:

- 1) All UK trusts, including non-taxable trusts, subject to exemptions. UK trusts are trusts where all the trustees are UK resident or where at least one trustee is UK resident and the settlor was both UK resident and UK domiciled when the trust was set-up and/or when the settlor added funds to the trust.
- 2) Non-UK trusts that incur a UK tax liability on UK income or UK assets, as under 4MLD.
- 3) Non-UK trusts that acquire an interest in UK land after 5 October 2020.
- 4) Non-UK trusts with at least one UK resident trustee that, after 5 October 2020, enter into a business relationship with a UK relevant person (such as tax advisers and financial institutions) which is expected to be of at least 12 months' duration.

UK tax liability

Trusts are taxable for 5MLD purposes if the trustees are liable to pay income tax, capital gains tax, inheritance tax, Stamp Duty Land Tax (SDLT), land and buildings transaction tax (Scotland), land transaction tax (Wales) or stamp duty reserve tax.

Non-UK trusts are only required to register due to incurring a UK tax liability if the tax liability arises on UK income or assets. This means that registration is not required for taxation reasons if the trustees' only liability to UK taxation is inheritance tax on indirectly owned UK residential property (e.g. where UK residential property is owned by an underlying offshore trust company).

Residence

Trustees who are individuals are resident for 5MLD purposes if they are resident for the purposes of any of the taxes set out above. This means residence under the statutory residence test for income tax and capital gains tax purposes and/or, from 1 April 2021, under the SDLT residence test that the government have announced will apply from that date. Corporate trustees are UK resident if they are incorporated in the UK.

Excluded trusts

Some non-taxable trusts do not need to register with HMRC under 5MLD, either because they are otherwise required to register with HMRC or because they present a low risk of being used for money laundering or terrorist financing. These include:

- Trusts for bereaved minors and vulnerable beneficiaries.
- Will trusts created on death that only receive assets from the estate and which are wound up within two years of death.
- Trusts that hold life insurance or retirement policies that only pay out on the death, terminal or critical illness or permanent disablement of the person assured, or to pay the healthcare costs of the person assured.
- Charitable trusts regulated in the UK.
- Co-ownership trusts where the trustees and the beneficiaries are the same persons.
- UK registered pension schemes.
- Share incentive plans.

- Trusts in existence before 6 October 2020 that hold assets worth less than £100. Registration will be required if value is added to such trusts.

There are some notable exceptions from the exclusions. Registration is required by trusts that are:

- Taxable, due to incurring a liability to one of a number of specified UK taxes (as set out in the 'UK tax liability' section above).
- 'New' trusts created after 5 October 2020 of any value, unless the trust is not taxable and is within an excluded category.
- Pre-6 October 2020 trusts with assets worth more than £100. This will include many long-standing trusts that do not require active management or ongoing engagement with HMRC, such as trusts created on death entitling a surviving spouse to occupy the family home for life with the property passing to the children thereafter.
- A bare trust or co-ownership trust which has different trustees and beneficiaries.

Trusts registered in the European Economic Area (EEA)

5MLD is an EU-wide directive and all EU Member States and the UK must maintain their own 5MLD compliant trust beneficial ownership registers. 5MLD states that the national registers must be interconnected via a European Central Platform by 10 March 2021.

UK trusts and non-UK trusts with at least one UK resident trustee will not need to register on the UK register if they are registered on an EEA trust register, provided the trust is not taxable.

Non-UK trusts that do not have any UK resident trustees will need to register if the trustees acquire UK land even if no UK tax is payable. Information about such trusts will be less broadly available than for other types of trust (see below).

Access to information

HMRC will continue to administer the trust register. At present, information held on the 4MLD register is only accessible to law enforcement agencies and financial intelligence units.

Under 5MLD, information held by trusts will, subject to the exceptions below, be available on request to those with a 'legitimate interest' in the information held. HMRC published guidance on 25 January 2021 which states that *"HMRC will give information to an outside party only if there is strong evidence to show that the trust could be linked to money laundering or terrorist financing."*

There is no legitimate interest requirement in order to access information held where a trust holds a controlling interest in a non-EEA legal entity. The consultation document published on 24 January 2020 noted that 5MLD allows such information access requests to be refused where they are not made in line with the objectives of 5MLD, though the January 2021 guidance did not repeat this point in the context of trusts that control non-EEA legal entities.

This broader access rule does not apply to non-UK trusts that only have non-UK resident trustees that acquire UK land. In such cases, HMRC will only share information about the trust with persons who have a legitimate interest in the information held.

Information will not be shared with persons other than law enforcement agencies and financial intelligence units where HMRC consider that the information should be exempt because it relates to minors or persons who lack mental capacity, as defined in the Statutory Instrument, or if HMRC consider that releasing the information would result in the trust's 'beneficial owner' facing a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

Existing 4MLD trust registration requirements

The UK's existing 4MLD trust register remains in force for now, and trustees must continue to register where the trust registration requirements are met. These are that:

- The trust is an express trust, and;
- The trust is either a UK trust (as set out for 5MLD above) or a non-UK trust, and;
- The trustees incur a liability to UK taxation, on UK income or UK assets where the trust is a non-UK trust, as set out for 5MLD above.

Under 4MLD registration is due by the 31 January following the first tax year in which the above requirements are met, though in practice earlier registration may be required in order to comply with other statutory deadlines (e.g. notifying an income tax or capital gains tax liability by the 5 October following the tax year).

Trustees are required to update the register annually if any of the information provided at registration changes, provided the trustees incur a liability to one of the aforementioned taxes and the trust is either a UK trust or a non-UK trust that receives UK income and/or holds UK assets. If there are no changes, annual confirmation of this must be made.

The online system to enable trustees to submit updates for most reportable changes became available during 2020. HMRC state that this includes reporting changes to the lead trustee, other trustees, beneficiaries and/or settlor. Some matters cannot yet be updated on the online trust register (such as reporting that a trust has closed or that a trust protector or other individual has changed), though HMRC state that *“this will change soon”*. Where a change cannot be reported, the trustees should maintain adequate records so that reporting can be done once HMRC’s systems allow.

Registration deadlines

The table below summarises the deadlines by which trusts must register with HMRC and/or update information held by HMRC. HMRC are in the process of updating their systems to enable non-taxable trusts to register. HMRC have announced that the deadlines for non-taxable trusts to register will be amended to be approximately 12 months after their systems have been updated to enable non-taxable trusts to do so.

Deadline	Affected trusts
31 January 2022	<ul style="list-style-type: none"> Trusts that incur a UK tax liability in 2020/21 and are within the 4MLD registration requirements.
10 March 2022	<ul style="list-style-type: none"> Trusts set up after 5 April 2021 where the trustees first become liable to pay UK taxes before 9 February 2022. Non-taxable trusts that first meet the conditions requiring them to register by 9 February 2022. This includes registerable non-taxable UK trusts and non-UK trusts that either acquire UK land or enter into a UK business relationship (to be deferred).
30 day deadlines (following 10 March 2022)	<ul style="list-style-type: none"> Unregistered trusts must register within 30 days of first triggering a registration requirement. Certain trusts must provide information to HMRC within 30 days of acquiring a controlling interest in a non-EEA entity. Certain trusts must update HMRC of reportable changes within 30 days of the trustees becoming aware that the change has occurred. Due to the registration deadline deferral for non-taxable trusts, it is expected that the 30 day deadline will begin to apply from c.12 months from when HMRC’s systems first allow non-taxable trusts to register.
Every 31 January	<ul style="list-style-type: none"> Registrable taxable trusts must update HMRC of any previously unreported reportable changes to the trust, or confirm that there are no such changes, as applicable.

In practice trusts may need to register earlier than is required for trust registration purposes. For example, by 5 October following the tax year in which an income or capital gains tax liability arises, if the trustees need to notify HMRC of chargeability.

Find out more...

This note reflects the law in force and information available with regards to the 5MLD trust register as at 22 March 2021. The SDLT residence test referred to above is yet to be enacted and changes could be made before enactment. The deferral to registration deadlines for non-taxable trusts has also not yet been enacted.

Please be aware that this note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk). For further information visit our website at www.deloitte.co.uk.

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