

Briefing document

Trust registration: 4MLD and 5MLD

Introduction

Trustees of certain trusts must obtain and retain information in order to comply with UK legislation which was introduced to implement the European Union's (EU) Fourth Money Laundering Directive (4MLD). Furthermore, 'relevant taxable trusts' which incur a tax liability to one of a number of UK taxes must register and provide 'beneficial ownership information' to HMRC for inclusion on a non-publicly available online trust beneficial ownership register. This applies to both UK and non-UK trusts that meet the relevant conditions set out in this note.

In addition to disclosing trust beneficial ownership information, the register must also be used by trusts and estates in order to notify HMRC of chargeability to tax and receive a Unique Taxpayer Reference (UTR).

This note refers to the UK Regulations that enacted 4MLD into UK law, which are the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Statutory Instrument 2017/692 - <http://deloi.tt/2tgqYK7>).

An overview is also provided on the changes being made to the trust register in order to comply with the EU's Fifth Money Laundering Directive (5MLD). The aforementioned Statutory Instrument has been amended to incorporate these changes.

Information gathering under 4MLD

Trustees are required to comply with information gathering requirements if they are trustees of 'relevant trusts', which are:

- Express trusts, or similar legal arrangements, subject to the bullet points below. 'Express trust' is not defined in the legislation. In their guidance published on 25 January 2021 HMRC define this term as meaning a trust deliberately created by a settlor, and;
- Either i) a UK trust or ii) a non-UK trust which has UK income and/or UK assets.
- UK trusts are trusts where either all of the trustees are UK resident, or at least one trustee is UK resident and the settlor was both UK resident and UK domiciled when the settlor set up the trust or added funds.
- Non-UK trusts are all other trusts.

Entering into business relationships and 'relevant transactions'

Trustees of relevant trusts that form business relationships or enter into 'relevant transactions' with 'relevant persons' must:

- Inform the relevant person that they are acting as trustee; and
- On request from the relevant person, provide that person with information identifying all the beneficial owners of the trust. Beneficial owners are defined as being the settlor, trustees, beneficiaries and/or class of beneficiaries (as appropriate) and any individual who has control over the trust.

Relevant persons are persons acting in the course of a business carried on by them in the UK in any of the following business roles and areas:

- a) Credit institutions;
- b) Financial institutions;
- c) Auditors, insolvency practitioners, external accountants and tax advisors;
- d) Independent legal professionals;
- e) Trust or company service providers;
- f) Estate agents;
- g) High-value dealers;
- h) Casinos;
- i) Art market participants;
- j) Cryptoasset exchange providers;
- k) Custodian wallet providers.

Exclusions apply, including for persons who only carry on business on an 'occasional or very limited' basis. The Regulations specifically apply to trustees of relevant trusts and do not require that the trustees themselves do business in the UK.

If any of the information provided changes during the course of the business relationship, the trustees must proactively notify the relevant person of the change, and the date of the change, within **14 days** of becoming aware that a change has occurred. If there is more than one trustee the 14 day deadline is based on the date any one of the trustees first becomes aware of the change.

Relevant transactions are certain defined activities that require relevant persons to undertake customer due diligence under Regulation 27 of SI 2017/692. There is an extensive list of occasions on which customer due diligence must be undertaken, the main one being when a business relationship is established.

Law enforcement authorities

- Trustees must also, on request, provide certain law enforcement agencies with details of beneficial owners of trusts, including potential beneficiaries included in a letter of wishes. The law enforcement agency requesting the information can specify a reasonable deadline for provision of the requested information.
- It should however be borne in mind that these are UK Regulations; any overseas legal or other relevant matters should be considered by the trustees, as appropriate.
- The UK law enforcement agencies able to request information under the Regulations are HMRC, the Financial Conduct Authority, the National Crime Agency, the Serious Fraud Office and police forces.

HMRC 4MLD trust register

Trusts that must be registered with HMRC

'Relevant trusts' with a 'UK tax consequence' must register with HMRC and update the HMRC register annually.

A trust has a UK tax consequence when the trustees are required to pay at least one of income tax, capital gains tax, inheritance tax, stamp duty reserve tax, stamp duty land tax (England and Northern Ireland), land and buildings transaction tax (Scotland) or land transaction tax (Wales).

Information that must be provided to HMRC

The information required by HMRC for trusts required to register under 4MLD (and 5MLD) is similar to the records trustees are required to keep, though there are some variations in the information HMRC ask trustees to provide. Notably, HMRC require:

- The full name of the trust and the date it was set up;
- A statement of accounts for the trust, including valuations of trust assets on the date the trust was created, identifying the value of each category and including the addresses of trust properties;
- The trust's residence for taxation purposes and from where the trust is administered. There are slight variations between the definitions of residence for tax purposes and of UK and non-UK trusts for trust register purposes;
- A contact address for the trustees;
- Agent's details;
- Details of 'beneficial owners', as set out in the context of business relationships above;
- Where the beneficial owner is a company, the corporate or firm name, UTR, registered or principal address, legal form of the entity and governing law; if applicable, name of any register of companies with which the entity is registered and registration number, and the entity's role in relation to the trust.
- For charitable beneficiaries, the name of the charity is required.
- HMRC do not require details of all paid advisers to the trust, though do require details of agents acting for tax purposes.
- Separate guidance has been issued for non-family trusts. Pensions, charities and employment related trusts only need to identify beneficiaries by reference to the classes of beneficiaries, but charitable and employment related trusts are required to identify and register key employees and directors.

Timing – existing 4MLD register

Registration was initially required by trustees of relevant trusts that incurred a tax liability in 2016/17. Trusts that registered for 2016/17, or subsequent tax years, do not need to re-register. Where registration is required, it must be done by the 31 January following the end of the first tax year in which the registration requirements are met. The tax year ends on 5 April.

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.

The deadline for updating HMRC or any changes, or confirming that there are no such changes, is 31 January following the end of the tax year (provided the trust is taxable in the relevant tax year). 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.

The Fifth Money Laundering Directive (5MLD)

5MLD requires that various changes be made to the trust register. The UK has signed 5MLD and enacted it into UK law.

Among other changes, under the revised trust HMRC trust register registration will be required by 1) **all UK trusts**, including those that do not have a UK tax liability, 2) **non-UK trusts** that acquire **UK land or property** after 5 October 2020 and 3) **non-UK trusts with at least one UK resident trustee** that, after 5 October 2020, enter into a **new business relationship** with certain defined persons (which includes many UK professional advisors). Non-UK trusts that incur a UK tax liability on UK income or UK assets will continue to need to register with HMRC under 5MLD.

A further change is that, while access to the 4MLD trust register is limited to UK law enforcement authorities and financial intelligence units elsewhere in the European Economic Area (EEA) on request, under 5MLD information must be accessible to persons with a **‘legitimate interest’** in the information held. This term is to be defined by each Member State when introducing 5MLD compliant trust registers. However, 5MLD does not require that a legitimate interest be present in order to access information where a trust or similar legal arrangement holds a **controlling interest in a non-EEA entity**. An exception from this wider access rule applies, in that requesters must always have a legitimate interest in order to access information about non-UK trusts that only have non-UK trustees and which acquire UK land.

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.

Broadly, trusts that are not already registered but meet the 5MLD registration requirements before 9 February 2022 must register with HMRC by 10 March 2022. Trusts must then register within 30 days of meeting the conditions that trigger a registration requirement. Information held on the register must also be updated within 30 days. HMRC have however announced that the registration deadlines for non-taxable trusts will be deferred to approximately 12 months after HMRC’s systems have been updated to enable non-taxable trusts to register.

The information required under 5MLD is in some cases broader than that required under 4MLD.

EU Member States must also maintain their own beneficial ownership registers. 5MLD states that the national registers must be interconnected via a European Central Platform by 10 March 2021. In some cases trusts will not be required to register on the UK register if they are registered on a trust register in the European Economic Area.

What should trustees do next?

- Trustees should consider the extent to which they are required to maintain records, and do so.
- Trustees should determine whether or not the trust(s) for which they act must register on HMRC’s 4MLD trust register.
- Trustees should consider whether the wider registration requirements of 5MLD mean that the trust(s) for which they act must register with HMRC for the first time, and ensure that the registration deadline is met. Trustees should consult with their professional advisors with regards to when and how to register on both the 4MLD and 5MLD trust registers.
- Trustees of non-UK trusts with at least one UK resident trustee should consider what their policy is regarding having UK resident trustees and/or the engagement of UK service providers (or indeed service providers in the EU).
- Trustees of non-UK trusts with land or business engagements in EU Member States should consider whether they should register in the EU Member State or the UK, as there is often no need to register in more than one EU or UK jurisdiction.
- Trustees of registered trusts should consider whether they must update the trust register or confirm that there are no changes. Where HMRC’s systems do not yet allow a change to be reported, the trustees should maintain adequate records so that reporting can be done once HMRC’s systems allow.
- For 5MLD information access purposes, trustees should review whether any of the trust beneficial owners are minors or incapacitated, or might be subject to a disproportionate risk should their information be made available to third parties
- Trustees who need to notify HMRC of a tax liability should continue to do so within the relevant deadlines. Notably, where trustees need to notify HMRC of an income or capital gains tax liability they should do so by the 5 October following the tax year. This deadline is a statutory deadline that applies for income tax and capital gains tax purposes, as opposed to a requirement relating to the trust register. Reference is made here as the notification must be made through the Trust Registration Service used to complete the trust beneficial ownership register. Different deadlines apply for other taxes.

Find out more...

This note reflects the law in force as at 22 March 2021. The deferral to 5MLD registration deadlines for non-taxable trusts has not yet been enacted: changes could be made pre-enactment. 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 James Stevens (jamesstevens@deloitte.co.uk) or Michelle Robinson (michellerobinson@deloitte.co.uk). For further information visit our website at www.deloitte.co.uk.

This publication has been written in general terms and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. Deloitte LLP accepts no liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Deloitte Private is the brand under which professionals in Deloitte LLP provide services to certain privately owned entities and high net worth individuals. Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London, EC4A 3HQ, United Kingdom.

Deloitte LLP is the United Kingdom affiliate of Deloitte NSE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NSE LLP do not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.