

Briefing document

HMRC trust beneficial ownership register and relevant trust record keeping requirements

Introduction

Trustees of certain trusts are required to obtain and retain information in order to comply with UK legislation which was introduced in order to comply with the European Union's Fourth Money Laundering Directive (4MLD). Furthermore, 'relevant taxable trusts' with a 'UK tax consequence' 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).

As noted, the current system originates from the European Union's 4MLD, which the UK Government signed as a Member State of the European Union. 4MLD was enacted into UK law by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Statutory Instrument 2017/692 - <http://deloi.tt/2tqgYK7>).

The Fifth Money Laundering Directive (5MLD)

The UK has now signed 5MLD, which, among other changes, requires trusts that do not have a UK tax consequence to disclose beneficial ownership information to a UK authority. This will significantly increase the number of trusts required to disclose beneficial ownership information.

A further change is that, while access to 4MLD is limited to UK law enforcement authorities and financial intelligence units elsewhere in the European Economic Area 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 enacting 5MLD into national law.

When enacting this point into national law, a balance must be struck between preventing money laundering and individuals' right to privacy and protection of personal data. Exemptions should be made available where disclosure of information would endanger the beneficial owners, and/or where the beneficial owner is a minor or otherwise legally incapable.

As noted, in order for 5MLD to take effect, it must be enacted into UK law. A consultation will be held in early 2019 on how the UK should do so. The deadline for enactment into UK law is 10 January 2020. The updated trust register which complies with 5MLD must be operational by 10 March 2020.

Other European Member States must also maintain their own beneficial ownership registers. These national registers must be interconnected via a European Central Platform by 10 March 2021.

Scope of this note

The remainder of this note addresses the extent to which trustees of 'relevant trusts' are required to maintain records of beneficial ownership information and provide that information to other parties, under the Regulations that were introduced in order to comply with 4MLD. The UK signed 4MLD (and 5MLD) as a Member State of the European Union. This note is written on the basis that the UK will comply with the terms of the European Directives in full. Depending on the terms of the UK's exit from the European Union, this point may change.

This note does not comment on broader anti-money laundering or data protection matters with which trustees may be obliged to comply. The Regulations can apply to trustees of both UK and non-UK trusts.

Information gathering and record keeping under 4MLD

Affected trustees

Trustees are required to comply with information gathering and record keeping requirements if they are trustees of 'relevant trusts'. These are defined as being:

- Express trusts, or similar legal arrangements, subject to the bullet points below. The term 'express trust' is not defined further in the Regulations, though HM Treasury have stated that they take this to mean "a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust".
- 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.

For record keeping purposes, it does not matter whether or not the trustees have a UK tax liability in any particular year. However, being required to pay one of a number of specified taxes may mean that the trustees must register the trust with HMRC, as set out below.

Information to be collected and retained

Trustees of relevant trusts must collect and retain the following information:

- In relation to all of the 'beneficial owners' that are individuals, the individual's full name, date of birth and role in relation to the trust. In addition, a national insurance number or UTR must be obtained, if available. If not, the individual's usual residential address should be obtained and, if that address is not in the UK, the individual's passport or identification card number, with country of issue and expiration date.

'Beneficial owners' is a broad term which applies to settlors, trustees and trust protectors, in addition to beneficiaries. Trustees must gather and retain information in relation to beneficiaries who have been determined (including those named in a letter of wishes) and retain details of any class of beneficiaries (e.g. grandchildren of the settlor) where not all of them have been determined.

- A contact address for the trustees.
- The full name of any advisors who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust.

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 (as defined above). Where the beneficial owners comprise a class, the trustees can describe the class.

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.

Exclusions apply, including for persons who only carry on business on an 'occasional or very limited' basis. As set out above, 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 became aware of the change.

Relevant transactions are certain defined activities that require relevant persons to undertake customer due diligence under the 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.

Record keeping requirements for paid trustees

- There are specific provisions relating to maintenance of records by paid trustees. Such trustees must retain records for five years after the date on which the final distribution is made from the trust.
- Records must be deleted at the end of the five year period, unless the trustees are required to retain them due to court proceedings or have reasonable grounds for believing that records containing the personal data will be required for legal proceedings, or where the subject of the data consents to the retention of that information.

HMRC trust registration

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 land tax, stamp duty reserve tax and, for Scotland, land and buildings transaction tax.

When the Trust Register was first introduced, HMRC published Frequently Asked Questions stating that they considered non-UK trusts to have a registration requirement if trustees were liable to pay tax on indirectly owned UK assets due to 'look-through' provisions, even if the trustees did not directly own UK assets or receive UK source income. HMRC considered that this would include trustees that incurred an inheritance tax liability due to (say) owning foreign shares in a company which owns UK residential property.

HMRC later reversed this position, to acknowledge that, in order to be required to register, non-UK trusts must own UK assets and/or receive UK source income, in addition to incurring a tax liability.

Information that must be provided to HMRC

The information required by HMRC is similar to the records trustees are required to keep, though there are some variants 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 residency for tax purposes and place from which the trust is administered. Note, the definition of tax residence for trust purposes slightly varies from the definition of UK and non-UK relevant trusts for the purposes of the money laundering regulations.
- A contact address for the trustees.
- Agent's details.
- Details of 'beneficial owners' – the definition and information required aligns with that set out in relation to record keeping requirements as set out 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

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.

Trustees are technically required to update any information on an annual basis (assuming they incur a tax liability and either the trust is a UK trust or a non-UK trust that receives UK income and/or holds UK assets), or confirm that no changes are required, as applicable. However, the online system to enable trustees to do so is not yet available. HMRC have therefore asked that trustees write to HMRC to notify them of changes to the lead trustee and/or change of trustee address, but ongoing updates of beneficial ownership information are not required while the system to do so is unavailable.

The registration deadline is the 31 January following the end of the first tax year in which a trust first meets the registration requirements. The tax year ends on 5 April.

What does this mean for executors?

Estates are not subject to the money laundering regulations in SI 2017/692, but complex estates do need to use HMRC's Trust Registration Service to register with HMRC. The usual self-assessment deadlines apply to estates, including the income and/or capital gains tax liability deadline, which is 5 October following the end of the tax year.

In order to register an estate with HMRC, the personal representatives (or administrators of the estate) must provide HMRC with details of the:

- Estate;
- Personal representatives;
- Deceased person;
- Tax years for which the estate needs to declare liability to income and capital gains tax; and
- Period end date if the administration period has ended.

The money laundering regulations and HMRC registration requirement may apply to any trust created under the terms of the will.

What should trustees do next?

- Trustees should determine whether or not the trust for which they act is a relevant trust. If so, the trustees should gather and retain the required information.
- Trustees of relevant trusts which have not yet registered should bear the trust registration requirements in mind, and ensure that the aforementioned trust registration deadline is met. Trustees should consult with their professional advisors with regards to when and how to register.
- Trustees of trusts that have already registered with HMRC should notify HMRC of any change to the lead trustee, including a change of address for the lead trustee. Other changes to beneficial ownership information will need to be submitted once the system to amend information held on the register becomes available. In the interim, any records relating to changes in beneficial ownership information should be retained, so that a submission can be made in due course.
- Trustees and personal representatives who need to notify HMRC of an income or capital gains tax liability should do so by the 5 October deadline, outlined above. 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 beneficial ownership register. Reference is made here as the notification must be made through the Trust Registration Service used to complete the beneficial ownership register.

Find out more...

This note reflects the law in force as at 18 February 2019. Please be aware that it 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 Karen Griffin (kagriffin@deloitte.co.uk).

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