

Register of Beneficial Ownership of Trusts

14 November 2017

INTRODUCTION

As part of a global effort to enhance tax transparency and combat tax evasion, we have seen the introduction of a number of regimes in recent years including the Foreign Account Tax Compliance Act and the Common Reporting Standard.

This effort shows no signs of abating with the European Union's Fourth Anti-Money Laundering Directive (4AMLD) being the latest piece of regulation to require attention.

The 4AMLD came into force on 26 June 2015 with the aim of bolstering the EU's defences against money laundering and terrorist financing. The new regulations were transposed into UK law on 26 June 2017.

Under these regulations, trustees of certain trusts must maintain accurate and up-to-date records in writing of all the beneficial owners of the trust as well as any potential beneficiaries.

In addition to this, member states are required to establish a central register containing information around the beneficial ownership of trusts. In the UK, this register will be maintained by HM Revenue & Customs.

WHICH TRUSTEES ARE REQUIRED TO MAINTAIN RECORDS?

Trustees of the following trusts must comply with this requirement:

- All UK resident trusts;
- Certain non-UK resident trusts that receive income from a source in the UK or have assets in the UK and have a UK tax consequence.

Non-UK resident trusts only holding UK assets indirectly through an underlying company may not be subject to these rules.

WHICH DETAILS ARE THE TRUSTEES REQUIRED TO HOLD ON BENEFICIAL OWNERS?

For the purposes of these regulations, beneficial owner includes:

- The settlor;
- The trustees;
- The beneficiaries;
- Any individual who has control over the trust (e.g. a protector or another person who has the power to appoint, remove or instruct trustees).

Trustees of relevant trusts must hold the following details in relation to each beneficial owner and any other individual who is referred to as a potential beneficiary in a document from the settlor, such as a letter of wishes:

- Name;
- Date of birth;
- National Insurance number (NINO);
- If the individual does not have a NINO, the individual's usual residential address. If this is outside the UK, their passport or ID card number, expiry date and country of issue should also be held on file;
- The nature of the individual's role in relation to the trust (e.g. settlor, beneficiary, etc.).

The trustees must provide information on request to any law enforcement authority about the beneficial owners of the trust and any other individual referred to as a potential beneficiary.

We can assist trustees in compiling and maintaining the records that they are required to keep.

WHAT IS THE CENTRAL REGISTER?

HMRC have now launched their new online Trust Registration Service (TRS). This is part of their digital strategy as well as serving as the UK's central register as required under the EU directive.

Any trust with a UK tax consequence will need to register and provide HMRC with various details in relation to the trust. A UK tax consequence will arise where a trust incurs a liability for UK income tax, capital gains tax, inheritance tax, stamp duty land tax, land and buildings transaction tax or stamp duty reserve tax.

Consequently, both UK and non-UK resident trusts with UK tax liabilities will be required to register.

The online service will provide a means of obtaining a UTR for newly created trusts. This replaces the previous process of completing a form 41G (Trust), which has now been withdrawn from use. New trusts are required to register with HMRC by 5 October next-following the end of the tax year of settlement.

WHAT INFORMATION WILL NEED TO BE REPORTED TO HMRC?

The information which trustees will be required to report to HMRC may include:

- The name of the trust and its creation date;
- A statement of account for the trust, describing the trust assets and identifying the settlement value of each category of the trust assets at the date on which the information is first provided to HMRC (including the address of any property held by the trust);
- The country where the trust is considered to be resident for tax purposes and if it has ever been non-resident;
- The place where the trust is administered;
- The full name of any advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust;
- In relation to each beneficial owner and any individual referred to as a potential beneficiary, the information that the trustees are required to maintain a record of as set out above. For trusts that have a class of beneficiaries, not all of whom have been determined, the trustees will need to provide a description of the class of persons who are entitled to benefit from the trust;
- Whether any beneficiary is entitled to a fixed share of the trust income and, if so, what percentage.

Trustees will be required to provide this information to HMRC on or before 31 January 2018 or, for trusts not yet subject to UK taxes, on or before 5 October next-following the first tax year in which a charge to UK tax arises (or an extended

deadline of 5 January 2018 if the first tax year in which a UK tax consequence arises is 2016/17).

There will be an annual requirement to update the register for any changes to this information on or before 31 January after the tax year in which the change occurs.

If the trustees are not aware of a change to any of the information held on the Trust Register, they must confirm this to HMRC on or before 31 January after the relevant tax year.

COMPLEX ESTATES

In addition to trusts, complex estates in the period of administration will also need to be registered. An estate is considered complex if:

- The total tax liability (income tax plus capital gains tax) for the whole of the administration period is in excess of £10,000;
- The estate has a value at the date of death in excess of £2.5m;
- The proceeds of assets sold by the executors in any one tax year exceeds £250,000 for deaths before 6 April 2016; or
- The proceeds of assets sold by the executors in any one tax year exceeds £500,000 for deaths on or after 6 April 2016.

Executors of new complex estates will need to register with HMRC through the online registration service in order to obtain a unique taxpayer reference for the estate. The register will ask for basic information, including the identification of the deceased and the executors.

WILL THE TRUST REGISTER BE PUBLICLY AVAILABLE?

In its current form, the 4AMLD leaves it up to each member state to decide on whether the central register is made available to the public. The UK has confirmed that access to its register will be restricted to law enforcement agencies and the UK Financial Intelligence Unit.

However, following the 'Panama Papers' scandal and terrorist attacks across Europe, the European Commission has published proposals to amend the directive including making public access to the trust register mandatory.

The UK government has consistently resisted having public registers of trusts but if the directive is amended before the UK leaves the EU, the UK would have to amend its regulations. Clearly, this will give rise to concerns about data protection rights and rights to privacy. It is worth noting that in France last year, a register of trusts initially made available to the public was declared unconstitutional by the French Supreme Court and subsequently withdrawn from the public domain.

CONCLUSION

Ahead of HMRC's trust registration service going live, it would be sensible to start checking trust records to make sure that details in relation to the trust assets, settlor, trustees and beneficiaries are up to date in readiness for the filing deadline of 31 January 2018.

The negotiations taking place at the European Parliament around the proposed amendments to the directive remain ongoing, and it is uncertain whether the Trust Register Conclusion will be made public or not. In addition, the impact of Brexit on this and other anti-money laundering directives is currently unclear. We will therefore provide further guidance as and when a final decision has been made.

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