

## Avoiding Trust Registration Penalties

The issue of trust registration is one which has gradually become relevant to a widening circle of people since the UK Trust Register was introduced in 2017, to the extent that anyone who has purchased shares or investments in their own name but for the benefit of another person is now likely to have to register that arrangement as a trust or risk being hit with a £5,000 fine. There are exceptions to the rules regarding certain types of trusts, and HMRC offer the buffer of a warning before a fine is actually imposed, but the nature of the Trust Register and of the requirements it imposes still need to be understood by anyone who is – or thinks they might be – involved in the creation, operation or variation of a trust.

The creation of the Trust Register dates back to the UK's position as an EU member state, which required it to put the Fourth Anti-Money Laundering Directive into domestic law via the [Money-Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations](#) on 22 June 2017. The regulations as they existed at the time required the trustees of some trusts to register information about those trusts and related individuals with HMRC. The fact that these regulations were based on an EU directive and the UK has since departed the EU doesn't mean that the legal requirements involved are going to change any time soon, particularly now that plans for an indiscriminate mass shredding UK laws based on EU directives have been shelved. Indeed, in the years since being introduced the regulations have, if anything, broadened in scope and tightened in application. Initially, for example, trusts were only required to register if there was a UK tax liability involved, but that changed in October 2020, when new legislation was introduced to ensure that the regulations covered all trusts, irrespective of whether a UK tax liability was involved. In addition, non-UK trusts are now obliged to register in the following circumstances:

- If they have UK tax liabilities
- If one or more of the trustees is a UK resident
- If the trustees enter into a business relationship with a UK service provider, such as an accountant, lawyer or investment manager
- If the trustees acquire an interest in land in the UK

Anyone concerned about the data implications of appearing on a register of this kind should be reassured by the fact that the register is not made publicly available and can only be accessed by UK law enforcement authorities, European Economic Area (EEA) financial intelligence units and agencies with the responsibility for enforcing the [Fourth Anti-Money Laundering Directive](#) in EEA states. The fact that the Trust Register now represents the only means via which trusts can be notified to HMRC for self-assessment tax purposes underlines the need for anyone who is a trustee of a new or existing trust, based in the UK or offshore, to ascertain whether the trust in question falls within the registration requirements and, if it does, take the necessary action.

The various deadlines for registering a trust with HMRC are as follows (assuming taxable trusts covered under the 2017 legislation were already registered):

- Non-taxable trusts which were in existence on 6<sup>th</sup> October 2020 or were created after that date and before 4<sup>th</sup> June 2022 should have been registered with HMRC by 1<sup>st</sup> September 2022
- Non-taxable trusts which were created on or after 4<sup>th</sup> June 2022 should have been registered within 90 days of being created
- Any changes to the details or circumstances of the trust also need to be registered within 90 days of the change taking place

Although the remit of the register has been widened since it was created, there are still those trusts which are excluded on the basis of an understanding that they are limited in nature and purpose to a degree which makes them unlikely to be used for the purposes of terrorism or money laundering (the issues which the Trust Register is intended to help combat). Trusts which do not have to register unless they are liable to pay UK tax include the following:

- Trusts which are imposed by statute rather than from the intention of the settlor, such as a statutory trust arising on intestacy
- Trusts which are created by a court order
- Pension trusts registered in the UK
- Some trusts which are used to hold a healthcare policy, a life insurance policy, an income protection policy or a retirement benefits policy. The complexity of the rules in this area is such that anyone who thinks the trust they are dealing with is excluded on this basis should seek specific expert advice to be certain they are correct.
- Charitable trusts which are regulated in the UK
- Trusts which hold insurance policy benefits, providing those benefits are paid out within 2 years of the death of the person covered
- 'Pilot' trusts which were created before 6<sup>th</sup> October 2020 for a future purpose and hold no more than £100
- Will trusts created on death that only receive assets from the estate in question and those that only receive death benefits from a life insurance policy and are wound up within 2 years of death
- Co-ownership trusts which hold jointly-owned property if the trustees and beneficiaries are the same people
- Financial or commercial trusts which were created as a product of professional services or business transactions for the purpose of holding clients' money or other assets
- Trusts created for bereaved minors or vulnerable beneficiaries
- Personal injury trusts
- Trusts used by the UK government or other public authorities

- Share incentive plans and save-as-you-earn schemes
- Maintenance fund trusts
- Authorised unit trusts
- Bank accounts which are held on trust for those lacking mental capacity or minor children

If you need to register a trust then the process is done electronically via the [TRS portal](#). The details you'll need to provide when registering include the following:

- The full name of the trust
- The date on which the trust was created
- A statement of accounts for the trust, setting out the assets held and the value of each category of trust assets at the date of settlement
- The residence of the trust for tax purposes
- Where the trust is administered
- A contact address for the trustees
- The names of any advisers who act on behalf of the trustees in relation to their tax affairs

You will also need to provide details of any beneficial owners and potential beneficiaries of the trust when registering. These details will include the full name and date of birth as well as a description of the individual's role as far as the trust is concerned, and their National Insurance Number or unique taxpayer reference, if they have one. If the person in question has neither a National Insurance Number nor a unique taxpayer reference you will need to give their principle residential address. If this is outside the UK you must also provide the number, expiry date and country of issue of any passport or identity card they hold, or any equivalent form of identification.

Once the trust has been registered the trustees have a legal duty to inform HMRC of any changes in the information regarding trustees, beneficiaries, the settlor or the nature of the trust itself. Changes of any kind need to be reported to HMRC within 90 days of the trustee becoming aware of them. If the trust becomes liable to tax during any tax year then a declaration needs to be made that the details of the people connected to the trust are correct and up to date, even if no changes have been made since the original registration. This will be an annual obligation for taxable trusts, and in this case tax applies to not only Income Tax and Capital Gains Tax but also things like Building Transaction Tax, Stamp Duty Reserve Tax, Inheritance Tax and Stamp Duty Land Tax.

HMRC have acknowledged the fact that registering a trust is an obligation which will be new and unfamiliar to many trustees. In light of this, there is currently no penalty for a first offence of failing to register a trust, or late registration, unless the failure is shown to be a deliberate act on the part of the trustees. In such cases, a £5,000 penalty may be charged for each offence. In practical terms, HMRC, having become aware of a trust which was not registered

by the relevant deadline, may issue a warning letter to the trustee or agent. If the trust is not yet registered, the trustee should register it at this point. The letter will contain a time period within which the trust needs to be registered, and failure to do so within this period, or to explain why the trust is not liable to registration, may trigger a fine for the lead trustee.

If there is a failure to keep the information held on the trust up to date then the process involves HMRC sending an initial warning letter with no penalty attached, which reminds the trustees of their obligation to do so. If the information has not already been updated, or is not updated within the time period given on the warning letter, then a £5,000 penalty may be charged for each offence, including a first offence.