

What's next for the Trust Register? Part 2

In the second article of this two-part series, **Helen Thornley** considers the impact of the new trust register regulations on taxable trusts and who has access to the register.

In my previous article (*Taxation*, 22 April 2021), I outlined some of the changes to the trust register following new regulations introduced last year, setting out the various new types of *non-taxable* trusts which will need to be registered. In this article, I am going to look at the impact these regulations will have both on *taxable* trusts and who has access to the register.

Existing taxable trusts should already be on the trust register but, under the new regulations, must now supply some additional information to add to their record. The exact deadline by which trustees must comply with these new obligations is as yet unknown as it is dependent on when HMRC has finished upgrading the TRS, but is expected to be summer or autumn of 2022.

At the same time, information on the register in relation to both taxable and non-taxable trusts will be available to anyone who can demonstrate that they have a *legitimate interest*.

Changes for existing taxable relevant trusts

Existing taxable trusts should already have recorded a range of information on the register as required by the 2017 regulations, including some background information on the trust (including its name, its date of creation, its country of residence and the assets at registration), and the *beneficial owners* of the trust. (A trust's *beneficial owners* are broadly its settlor(s), trustees and beneficiaries. Details including their

Key points

- Existing taxable trusts must supply additional information on their beneficial owners and controlling holdings for their record.
- Trusts already on the register can start to provide additional information from 4 May 2021.
- In future, trusts acquiring a tax liability will be required to update the register within 30 days.
- Anyone with a 'legitimate interest' may access information held on the register for taxable and non-taxable trusts from a date expected to be in summer or autumn 2022.



name, date of birth and a tax identifier such as a National Insurance number (NINO) are already required.)

Under the updated regulations, trustees of *taxable relevant trusts* must now supply *additional* information in respect of their beneficial owners and controlling holdings.

For each of the trust's beneficial owners who are individuals, the following extra information is needed:

- Country of residence.
- Nationality.
- Nature and extent of the individual's beneficial interest.

This additional information is not, however, required where the beneficiaries have only been identified by class, for example 'all the descendants of the settlor Mrs Smith'.

While nationality should be largely straightforward, and be unlikely to change frequently, for some trusts with highly mobile beneficiaries keeping track of their residency may be more challenging. At the moment there is no guidance on what residency means, but we are expecting HMRC to ask for residency on a UK tax year basis. Since an individual beneficial owner may not have established their tax residency at the point the registration is updated, we hope that a pragmatic approach will be acceptable here.

The second new requirement will affect fewer trusts, as it requires trustees to disclose any *controlling interests* that the trust has in any *third country entity* - ie an entity that is outside the UK and the EEA. While *entity* can include partnerships, a

controlling interest is defined by reference to a company as being:

- over 50% of the company's shares; or
- over 50% of the voting rights; or
- the right to appoint the majority of the board of directors; or
- the right to influence or control the company.

Where the trust has such an interest, it must disclose on the register:

- Corporate or firm name.
- Country or territory whose law governs the entity.
- Registered or principal office of the third country entity.

Both taxable relevant trusts and non-taxable trusts must supply details of their non-UK and non-EEA controlling interests within 30 days of acquiring such an interest. However, excluded trusts who are only on the register as a result of a UK tax liability are out of scope of this requirement. In practice, this will probably only benefit a very small number of taxable trusts and I suspect that in most cases this point is likely to be overlooked.

Deadlines – existing trusts

Under the regulations as they stand, a taxable relevant trust where the liability to UK taxes arose prior to 9 February 2022 must provide this extra information on their beneficial owners, and any controlling interests, by 10 March 2022. However, HMRC have recently advised that they will be extending the March deadline due to delays in upgrading the TRS for 5MLD. The system only opened to accept the additional data needed for taxable trusts on 4 May 2021, and is not yet open to registrations of non-taxable trusts. Given that HMRC is planning to allow trustees 12 months from the point the system is ready to bring the TRS up to date, and assuming the same extension is given to both taxable and non-taxable trusts, trusts already on the register should hopefully have until summer/autumn 2022 to provide this additional information. It is not known if the related February date will also be changed.

Deadlines – new taxable trusts

For trusts which acquire a tax liability in the future, the deadline for registering as a taxable trust is also changing.

Under 4MLD, a taxable trust had to be on the register by 31 January following the tax year in which a tax liability arose. Taxable relevant trusts set up before 6 April 2021 will retain this requirement.

Any taxable relevant trust set up on or after 6 April 2021 which incurs a tax liability before 9 February 2022 must, under current regulations, be on the register by 10 March 2022 although, as noted above, we are expecting a delay in the March deadline to summer or autumn 2022.

Thereafter, to align taxable and non-taxable trusts, a taxable trust must register within 30 days of first incurring a UK liability. This will bring taxable trusts in line with the 30-day deadlines for non-taxable trusts.

The 30-day deadline was widely criticised by the ATT and others during consultation as being challenging to comply with, but HMRC has held firm on this point.

The result is that a UK trust created on (say) 1 January 2020

which does not acquire a tax liability until 31 May 2023 (ie in 2023-24) will initially need to register as a non-taxable, type A trust by some time in autumn 2022. When it acquires a tax liability, because it was set up before 5 April 2021, it will not need to supply all the extra information required of a taxable trust until 31 January 2025.

In contrast, a trust created on 1 September 2022 with a first tax liability arising on 31 May 2023 will probably need to be on the register as a type A trust within 30 days of creation, and have to supply the extra information required of a taxable trust also within 30 days of the tax liability arising – ie by 30 June 2023.

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Updating the register

Under 4MLD, once a taxable trust was on the register, the trustees were only required to update the information held (or confirm it remained correct) by 31 January following the tax year in which a further UK tax liability arose.

This rule will continue to apply to the 'standing data' held about the trust required by 4MLD which includes the date it was set up, details of its advisers and names and tax identifiers for beneficial owners.

From some point in 2022, the extra data needed under 5MLD in respect of country of residence, nationality and the nature and extent of an individual's beneficial interest must be updated within 30 days of the trustee becoming aware of the change. Advisers need to be aware of the shorter deadline for updating this data from next year, although they can continue to review all other data annually.

Given the tight deadlines for updating this new data, guidance will be needed on what 'becoming aware' of a change means and how actively (or passively) HMRC is expecting trustees to keep tabs on beneficiaries. Many trustees may not be particularly keen to take a more active interest in the movements of potential beneficiaries where it is considered that they will be unlikely ever to actually benefit from the trust assets.

Penalties

Where a trust (taxable or non-taxable) is identified as missing from the register, HMRC will write to the trustees of a trust to give them the opportunity to register – in effect a period of grace to comply, which was something the ATT called for during consultation.

No financial penalty will be charged at this stage but if the trustees fail to register following this letter, a penalty of £100 will be charged. Tougher penalties will be charged if any ongoing failure is deliberate.

This pragmatic approach to penalties is welcome and in

part reflects how difficult it will be both to identify and inform all the potentially affected trusts, particularly non-taxable trusts, of their obligations.

Access to the register

The existing register of taxable trusts was already accessible to various law enforcement agencies including HMRC, the Financial Conduct Authority, various police authorities and the Serious Fraud Office.

From potentially March 2022, but more likely autumn 2022 assuming this date will be moved in line with the other deadline changes), access to the details of (both taxable and non-taxable) trusts held will be expanded to those who can demonstrate a *legitimate interest*.

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The idea is that widening access to the register and increasing transparency will help to prevent money-laundering and terrorist financing. At the same time, the use of trusts is frequently driven by personal and private relationships and a trust's beneficial owners need protection

from speculative and inappropriate requests.

To try and achieve a balance between these competing demands, the person making a legitimate interest request must be able to show HMRC that they have 'strong evidence' of suspected money laundering or terrorist financing activity involving that trust.

HMRC will then consider if the request is being made in respect of a specific suspected instance of money-laundering and if it is reasonable to suspect that the trust is being used for money laundering before accepting or declining the request.

There are wider access rights in relation to a (non-taxable) type A or type B trust which has a controlling interest in a third country entity. In these cases, a *third country entity request* can be made purely on the basis of the trust's assets and without the need to demonstrate a legitimate interest. The register is more open in these circumstances as there is a perceived greater risk of fraud where there are layers of ownership.

Earlier drafts of the regulations also suggested that *taxable* trusts with a controlling interest in a third country entity would also be in scope for such unfettered requests. Surprisingly, this has not made it to the final regulations, but current HMRC guidance suggests that third country entity requests will apply to *all* trusts, taxable and non-taxable.

The ATT has raised the discrepancy with HMRC and it may be that regulations are amended in future to bring all trusts within scope of third country entity requests.

What information will be shared?

Regardless of the type of trust, where a request is accepted, the information which will be supplied is limited to the beneficial ownership information required for non-taxable trusts. For an individual beneficial owner this would include:

- Full name.
- Month and year of birth.
- Country of residence.
- Nationality.
- Nature and extent of individual's beneficial interest.

HMRC will not disclose information if the particular beneficial owner is a minor or lacks mental capacity, and trustees will be able to flag this up on the register.

HMRC will also withhold information if disclosing it would put any of the beneficial owners at disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. How HMRC will be able to determine this is still to be established and we hope that HMRC will also provide trustees with the opportunity to signal any such concerns during the registration or update process.

If HMRC decide to withhold some or all of the trust's details, the applicant will be informed and given at least 30 days to appeal. HMRC will either uphold the decision or release further information.

At no point will the trustees be informed that a request has been made nor that information about their trust has been supplied to a third party.

Obligated entity requests

In practice, the most common access application to the register for information will likely be from the trustees themselves. Trustees dealing with any *obliged entity* which is required to comply with the money laundering regulations such as a bank, building society, accountant, tax advisor, legal professional, estate agent, art dealer etc – will need to prove the trust is on the register and provide an extract from it.

In many cases, it may be that a request from a bank or similar third party for proof of registration will trigger trustees to appreciate the need to register in the first place.

Again, we don't yet know what form an *obliged entity request* will take. Ideally, it will be something that can be downloaded from the TRS, but this may provide issues for the digitally excluded who are already struggling to authorise their agents to update the TRS for them. The ATT is hopeful that authorised agents will be able to obtain extracts on behalf of their trust clients.

Practical matters

Putting aside the detail of the regulations, the big question is how trustees are going to supply all this extra information to

Planning point

Advisers need to be aware of the 30-day deadline for updating the data required under 5MLD from autumn 2022. Until the trust registration service is up and running, all trustees can do is start to gather the additional information required. All other data can be reviewed annually.

HMRC. Many agents will have less than fond memories of the initial implementation of the trust register under 4MLD and have not enjoyed battling in recent months to get clients through the digital handshake to update the details which are already held.

At the moment the existing TRS cannot accept registrations of any non-taxable trusts and has only just been updated to allow existing registrations under 4MLD be 'upgraded' to 5MLD standards.

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Once the system is fully ready HMRC will amend the regulations to give agents 12 months to get everything up to date.

One area where we as agents can help HMRC (and ourselves) to get a better service is to take part in the user testing of the next stage of the service. HMRC struggled to attract enough people to take part in previous rounds of development and are actively recruiting volunteers to take part in user testing of the enhanced service now. They are particularly interested in those who are involved with any non-taxable trusts which are coming into scope for the first time. If you want to get involved – or have any trust clients prepared to get involved – please contact: service_team17.digital_ddcn@digital.hmrc.gov.uk.

Guidance

Finally, with trusts coming in all shapes and sizes, this is not a straightforward exercise and good guidance will be essential – especially for the unrepresented trustee. HMRC has published some initial guidance (tinyurl.com/HMRCguidanceTRS) and is currently in the process of drafting a TRS manual which will provide more detailed information to be published later this year.

The ATT is very much involved in commenting on guidance and the practical implementation of the TRS, with a particular focus on the implications for UK trusts. Feedback or concerns from *Taxation* readers that you encounter as you gear up to deal with these new rules would be gratefully received at: atttechnical@att.org.uk.

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- Autumn 2022 changes to trust registration requirements: <https://tinyurl.com/92a47xx7>