

Trust registration (Lecture P1322 – 14.02 minutes)

Since the EU's Fourth Money Laundering Directive (4MLD) came into force in 2017 there has been a requirement to register all UK trusts which have a liability to any relevant taxes (being CGT, income tax, IHT, LBTT, SDLT, SD).

However, this has now been superseded by 5MLD, the fifth directive. This changed the type of trusts which need to be registered and took effect from 6 October 2020 but without having a deadline for when the trust had to be registered. This has now been confirmed as being 1 September 2022.

The guidance is in the Trust Registration Service Manual which has recently been updated by HMRC.

It is important to understand the type of trusts which have to register to ensure that there is compliance with these rules.

Two types of trusts must register:

1. All UK express trusts and some non-UK express trusts unless they are explicitly excluded from registration; and
2. Any UK or non-UK trust with a liability to UK taxation even if it is not required to register under the first heading.

The trustees of registrable taxable and express trusts are then also required to keep the information held on TRS up to date. The conditions for registration and the information required are different for the two options.

Personal representatives of estates may also need to register the estate in some circumstances.

For the avoidance of doubt, the following terms are defined as indicated:

- A UK trust is a trust where all the trustees are resident in the UK or there is a mixture of UK resident and non-UK resident trust but the settlor of the trust was resident and domiciled in the UK at the time the trust was set up (or when the settlor has added funds to the trust).
- A trustee or settlor is treated as resident in the UK if they are a UK body corporate or in the case of an individual, they are UK resident for the purposes of one or more relevant tax (income tax, capital gains tax, inheritance tax, SDLT, LBTT, LTT or SDRT).
- The question of whether a settlor is domiciled in the UK does not take account of deemed domicile.
- An express trust is a trust which is created deliberately by a settlor either during their lifetime or by a will to take effect on their death. It does not include express trusts which come into being through the operation of law.
- Non-UK express trusts are liable to be registered if they are not excluded trusts but where they acquire an interest in UK land or enter into a business relationship with a UK relevant person assuming at least one of the trustees is resident in the UK and the trust is not an EEA registered trust. A relevant person includes auditors, insolvency practitioners, accountants,

tax advisors, legal professionals, estate agents, cryptocurrency exchange providers and other similar business (see list in TRSM24020).

- If there are no UK resident trustees, the trust is only liable to be registered if they acquire UK land, assuming they are not an excluded trust.

The following trusts do not have to be registered as they fall to be treated as 'excluded trusts' as long as they do not have a liability to UK taxation:

- A trust created by will that holds only property from the estate of the deceased person is excluded from registration for a period of two years from the date of death. If a trust created by a will commences at a later date, either during or before the end of the administration period, the trust is not required to register until assets have been transferred from the estate but only from two years following the date of death.
- Trusts for bereaved minors and age 18-to-25 trusts as long as they meet the conditions in s71A or s71D IHTA 1984 respectively. It should be noted that trusts created on intestacy for minors are not express trusts and would not be registrable express trusts.
- Trusts holding life insurance policies which will only pay out on the death, terminal or critical illness or permanent or temporary disablement of the person assured or to meet the costs of healthcare provided to the person assured are not registrable during the lifetime of the person assured. This could apply to a whole of life or term policy. This extends to policies which have a surrender value until such time as the policy is surrendered (on the assumption that the cash sum is retained in the trust after this date such that it would become registrable). If the policy is effectively an investment bond with a small life assurance element payable on death which is largely incidental to the benefits to be provided through partial or full surrenders, then it is HMRC's view that the exclusion will not apply.
- A trust holding a healthcare insurance policy where the policy only pays out to meet the cost of healthcare services provided to the person assured.
- A trust holding prospective death benefits payable under a retirement policy.
- Any trust holding a policy excluded from registration during the life of the person assured continues to be excluded from registration if, following the death of the person assured, the trust continues following receipt of the pay-out from the policy. This exclusion applies for two years following the date of death.
- Trusts arising from personal injury payments made to a person as a result of a personal injury to them is excluded from registration as long as it is from capital under the Income Support Regulations which will apply for two years or a longer period if it is considered to be reasonable in the circumstances. The time limit runs from the date of payment if the claimant is already in receipt of income related benefits or from the date on which such income related benefits become payable.
- Trusts arising from employee share schemes which is either part of a share incentive plan or any share option scheme.
- Co-ownership trusts where the trustees and beneficiaries are the same persons. This only applies where property is held as tenants in common.

- Property held on behalf of minor children or property owned by more than four persons.
- Trusts that are registered as a charity in the UK or any charitable trust which is not required to register (broadly exempt charities, excepted charities or those with income of less than £5,000 a year). Charities which are waiting for registration confirmation do not need to register on TRS so long as the trustees have a genuine expectation that the trust will be accepted for registration as a charity.
- UK registered pension schemes.
- Trusts where a disabled person is the beneficiary are excluded during the lifetime of the disabled person.
- Pilot trusts set up before 6 October 2020 which hold assets with a total value of £100 or less so that registration is delayed until the added funds mean the value is above this figure.
- Trusts created in the course of provision of professional services created for the purpose of enabling or facilitating the holding of sums, assets or documents or for the purposes of holding client money or to support commercial transactions or for the purposes of the registration of assets.
- Trusts holding tenants' contributions for the purposes of s42 Landlord and Tenant Act 1987 to hold service charges.
- Approved maintenance funds for historic buildings.
- Certain trusts relating to the financial and capital markets are excluded if they meet certain conditions. Details can be found in TRSM23100.
- Trusts created for the purposes of enabling or assisting named public bodies to carry out their functions.
- Legislative trusts such as those created on bankruptcy or intestacy.
- Trusts imposed by court orders for example consent orders in matrimonial disputes.
- Trusts which are established in an EEA member state which is required to be registered in that member state.
- Bare trusts to hold bank accounts or similar organisations who hold cash deposits (for example credit unions) for minors or person lacking mental capacity.

Examples

The following are all examples from the TRS Manual and give a clear view of the type of cases where HMRC accept (or do not accept) that registration is needed.

Example 1

John dies in England on 1 June 2022. He leaves his estate to his executors and trustees to hold on trust to pay his debts and funeral expenses and to divide the remainder between his wife and brother in equal shares absolutely. Under English law this creates a trust. As a trust created by will, the trustees are not required to register the trust immediately on John's death.

The estate is fully administered and all property in the residuary estate is distributed to his wife and brother by December 2023. As this is within two years of John's death, there is no need for the trust to be registered on the Trust Registration Service (TRS).

Example 2

Sunita sets up a trust on 1 May 2012 with a nominal £10. The trust lists her sister and her child as beneficiaries. Sunita also amends her will so that her share portfolio will transfer to the trust on her death.

Sunita dies on 1 February 2023 and the shares are transferred into the trust. The exclusion from registration does not apply as the trust was not created by the will. During Sunita's lifetime the trust was excluded from registration as a historic pilot trust, but the trust is required to register from the point the assets are transferred into the trust following her death.

Example 3

Alice and Bob own a property with a declaration of trust confirming they own as tenants in common. This trust is excluded from registration during Alice's lifetime as an exempt co-ownership trust.

Alice dies and by the terms of her will leaves her share of the property on trust to Bob to occupy for the remainder of his life; and thereafter to her daughter Clara. Alice's son David is appointed as executor and trustee of the will and also appointed as a second trustee of the property with Bob.

There are two trusts: 1) the new trust created by Alice's will; and 2) the ongoing trust of the property.

1. The trust created by Alice's will is excluded from the requirement to register for two years following Alice's death. If the trust is still in existence two years after Alice's death, the trust is required to register from that point.
2. The ongoing trust of the property is no longer an exempt co-ownership trust as the trustees and beneficiaries are not the same persons. Registration is required 90 days after Alice's death.

If Clara was appointed as the second trustee of the property instead of David, then this would still be an exempt co-ownership trust as the trustees and beneficiaries would be the same persons, and therefore registration would not be required.

Example 4

Charles and Debra live together in a property owned outright by Charles. Charles dies and by the terms of his will creates a trust which gives Debra a life interest in the property, with the trustees having the power to sell and purchase a replacement property on the same terms. As a trust created by will, the trustees are not required to register the trust immediately on Charles' death.

12 months following Charles' death, the trustees sell the property and use the proceeds to purchase another property of similar value on the same terms, with Debra retaining her life interest.

As the trust fund still consists only of property from Charles' estate (there has been a substitution but no additions), the trust is still excluded from registration. If the trust is still in existence two years after Charles' death, the trust will be required to register from that point.

Example 5

Karl takes out a 40-year term life insurance policy, which is written into trust at commencement. The policy will only pay out on the event of Karl's death within the 40-year term, and the policy is not able to be surrendered during that term. As this meets the conditions set out above, the trust holding the policy is excluded from registration on the Trust Registration Service (TRS). [In fact, this would be exempt even if the policy could be surrendered although it would need to be registered as soon as the policy was surrendered and the trust then held just cash. If it paid out on death, there would be a two year window for the trust to be wound up before registration was necessary.]

Example 6

Margaret takes out an investment bond which she places in trust. Under the terms of the policy, Margaret is able to withdraw up to 5% of the funds invested per year in the form of a part-surrender of the policy. As these withdrawals are anticipated as an integral part of the design of the policy, they do constitute pay outs from that policy. As these pay outs are on occasions other than those listed, the exclusion from registration on TRS does not apply.

Example 7

Alice and Bob wish to purchase a property together. They elect to hold the property as tenants in common, allowing them to declare that Alice owns 70% of the property and Bob owns 30%. To achieve this, they create a trust for ownership as tenants in common. As Alice and Bob are both the only trustees and the only beneficiaries of the trust, the trust is not required to register on TRS.

Example 8

Martha and Mary set up a trust in order to buy a property to rent, with family members as the beneficiaries of the income of the trust. One family member manages the day-to-day running of the property and is the trustee of the trust. As the beneficiaries and trustees of the trust are not the same, the exclusion from registration does not apply.

Example 9

Francisco transfers the legal and beneficial interest in a property to his three children Antonia, Sofia and Dolores to hold equally as joint tenants. Dolores is under the age of 18 and is unable to hold the legal title to the land. Antonia and Sofia therefore are treated by the Trusts of Land and Appointment of Trustees Act 1996 as holding the property on bare trust for the benefit of themselves and Dolores, until such time as Dolores reaches the age of 18. As a trust imposed by legislation, this trust is not required to register on TRS.

Example 10

A charitable trust is set up in Wales to provide new household items for those struggling financially in the local area. For the first two years the income of the charity remains below £5,000. The charity is therefore not required to register with the Charities Commission in England and Wales. It is not required to register on TRS either.

In its third year the work of the charity expands considerably and its gross income is £50,000. The charity therefore applies for registration with the Charities Commission in England and Wales which the trustees have a genuine expectation will be accepted.

The application takes several months to be processed and accepted. The trust is not required to register on TRS, neither during the period when waiting for the request to be processed nor going forward.

Example 11

Nikita enters into a commercial transaction to sell business assets to Christine. The contract identifies some assets as excluded from the sale and has a 'wrong pocket' clause which confirms that, if an excluded asset ends up in the hands of the buyers, it would be held on trust by the buyer for the seller and must be transferred back. Such a trust would be excluded from registration.

Example 12

Rubina and Stefan enter into a commercial transaction in relation to property development, with a conditional funding agreement and provision for Rubina's funds to be held on trust by an escrow agent whilst certain pre-conditions are satisfied. Once the conditions are satisfied, the escrow agent will release the money to Stefan. If on the other hand the conditions are not satisfied, the money returns to Rubina. This creates a trust arrangement which is excluded from registration.

Practicalities of registration

There has been a different time limit for registration for taxable and non-taxable trusts but this is aligned going forward.

For non-taxable trusts, the normal time-limit for registration of trusts is going to be 90 days from the establishment of the trust. However, any trust created on or before 6 October 2020 has until 1 September 2022 to register.

For taxable trusts, the time limit for those created on or after 6 April 2021 will also be 90 days from commencement or 1 September 2022, whichever is later. For those created before that date, the registration date was 31 January after the end of the tax year if already registered for SA or 5 October following the end of the tax year if incurring an income tax or CGT liability for the first time (or 31 January following the end of the tax year if the liability is for any other tax).

Once registered, updates will be necessary every time there is a change in beneficial ownership information, including changes in trustees or beneficiaries. Where there is a trust tax liability, trustees must confirm that the information held on the TRS is up to date and this is done on the SA900 return form, although there is no requirement to update information about the trust assets following initial reporting.

There is an initial penalty of £100 for failing to register a trust with additional penalties becoming payable if the non-compliance continues.

For trust to register, there is an extensive list of information to be provided about the settlor, the trustees and the beneficiaries as well as any individual who has control over the trust although this will be rare.

One important point to note about the current transitional regime is that this registration requirement applies to any trusts that was in existence on or after 6 October 2020. This is a register of beneficial ownership of trusts and it needs to include details of anyone who has been a beneficial owner since that date even if they are no longer so. If they have ceased to be a beneficial owner, they will be immediately removed from the record but they do have to be included in historical data. Historical data is to be retained for 10 years.

The following is a (brief) list of the type of information which needs to be included.

For the trust:

- Name of trust
- Date it was created
- Whether trustees and/or settlors are based in the UK
- Whether the trust has acquired UK land since 6 October 2020
- Whether the trust is listed on an EEA register
- Whether the trust has a business relationship in the UK

For the trustees:

- Full name, DOB of all trustees and contact details for lead trustee
- Country of nationality of trustees and country of residence
- NINo for lead trustees
- For trustees who are not individuals, need business name, UTR, contract details for the lead trustee and country of residence.

For the settlor:

- Full name, DOB and DOD if relevant
- Country of nationality and residence
- Mental capacity

For the beneficiaries:

This information varies depending on whether the beneficiary is an individual, a class of beneficiaries, a charity or other trust, company or employment related trust, or other.

- Individual beneficiary
 - Full name
 - DOB
 - Country of nationality and country of residence
 - Mental capacity
- Class of beneficiaries
 - Description of class with details of members of that class if they can be reasonably identified

- Charities or trusts
 - Name
 - Country of residence
- Companies or employment related
 - Name of company or business
 - Country of residence
 - Description of beneficiaries
- Other
 - Description of beneficiary
 - Country of residence

Additional information is also required for trusts with a UK tax liability including:

- Details of liability to income tax and CGT
- Information on assets held by the trust.

Who can access the information?

Information on the Trust Register can be subject to a third-party access request unless the trust is registered only because there is a liability to UK taxation in which case the information is only available to relevant law enforcement agencies.

A third party can only access the information if they can demonstrate they have a legitimate interest which means they must be looking for information relating to money laundering or terrorist financing.

Other countries may be able to access the information if the trust has a controlling interest (50% or greater) in a third country entity.

Trustees may be provided with a copy of their entry on the TRS if it is needed for confirmation for business purposes.

Contributed by Ros Martin