

HMRC's Register of Trusts Goes Live! Here is our practical guidance for trustees

July 2017

On 26 June 2017, as part of the UK's implementation of the 4th Anti-Money Laundering Directive (4AMLD), the Beneficial Ownership Register for trusts went live.

Although our trustee clients agree with the rationale for the register (ie combatting money laundering and terrorist financing) as with CRS reporting obligations there are some grey areas in respect of protectors and appointors and the interplay with data protection legislation which are making an already burdensome task even more time consuming.

An area of particular tension with CRS, which will undoubtedly arise with 4AMLD, has been the requirement to report on protectors/appointors of historic, dormant trusts where the protector/appointor only has very limited powers. These individuals have been *extremely* unhappy about the prospect of their personal data being shared internationally where the wealth isn't even theirs and they have exercised no control over it since the trust was established.

That said, the requirement to report is there and trustees need to err on the side of caution until further clarification is provided in respect of these peripheral controllers and other wrinkles.

Below is a practical summary for trustees which we hope will prove useful in compliance with 4AMLD.

1. Which trusts are caught?

- UK resident trusts
- Non-UK resident trusts which are liable to UK tax (for example, a Guernsey law trust with a Guernsey trustee which holds UK property)

2. What information needs to be kept and what needs to be reported?

- Trustees need to keep their own *internal record* of:
 - All of the beneficial owners of the trust (e.g. settlor, trustees, named beneficiaries and protectors/appointors)
 - Any potential beneficiaries named in letters of wishes
- In any tax years when the trust generates a UK tax liability, the trustees must *report externally* the following information to HMRC:
 - In relation to the trust
 - The name of the trust and the date it was established

- A description of the trust assets and the value of each category of assets (if the trust holds any property the address of that property must be given)
- Where the trust is treated as tax resident and where it is administered
- The name of any advisers being paid to provide legal, financial, or tax advice to the trustees
- In relation to each beneficial owner (and any individual referred to as a potential beneficiary in a letter of wishes or similar document) name, DOB, relationship to the trust, NI number or UTI number and possibly passport or ID card number

Who needs to update the HMRC register?

The trustee.

3. How to register...

- The old paper registration system has been replaced with an online service for registration, which is being introduced in two tranches this year. The June online service has replaced Form 41G for registering new trusts
- The second online service will be introduced in September, which will allow trustees to make amendments to existing trusts online, further replacing the paper system

4. When to report...

Trustees will need to report on the trust on an annual basis, but only if it generates tax in that tax year.

5. Immediate next steps for trustees...

- Obtain information on all beneficial owners to ensure that the trustee's internal records are accurate and ask all beneficial owners to notify the trustee of any changes going forward
- Identify all structures with UK tax liabilities in the current tax year and register those trusts with HMRC using the online portal
- Put in place an internal procedure in the trust company's handbook for adding any other trusts to HMRC's register as soon as a UK tax liability arises
- Roll out a training session for all trust administration teams to ensure that all staff are aware of the obligation to keep accurate internal records and to report externally for trusts when they are subject to UK tax

6. What happens if you get it wrong?

- The penalties are serious
- At the very least, HMRC can issue a public statement naming and shaming the trustee
- At worst – the trustee will be fined and can face up to 2 years in prison

7. Industry shift

We anticipate that, as a result of these obligations, trustees will look for efficiencies and look to streamline their structuring solutions and families will also reorganise their affairs so that wider information about the family only comes to light on death.

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It is likely that retaining control via the protector/appointor route will decline sharply in popularity now with a corresponding rise in reserved powers trusts and private trust companies.

It is also likely that letters of wishes will become narrower and may not be provided during lifetime at all. We may, instead, see letters of wishes in respect of family trusts being stored privately with the settlor's Will – only to be revealed on death.

8. How can we help?

We can provide various tools to upskill trustee administration teams in complying with this new regulation as follows:

- Template letters to send to beneficial owners informing them of the new register and requesting the relevant information from them
- Checklists to help your administration teams identify structures with UK tax liabilities
- Work with your operations teams to update trust company handbooks/policies and procedures manuals to incorporate the new requirements
- In-house training in order to explain the new policies and procedures and the seriousness of failing to comply

Please do not hesitate to contact us if you would like us to assist you with compliance with the new regime or if you have any questions.

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