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Extraterritorial reach of the UK to international trusts

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In recent years, the reporting obligations on trustees worldwide have been increasing incrementally, with FATCA and the Common Reporting Standards imposing an extra annual obligation on top of the usual menu of tasks which trustees are expected to perform in their day-to-day administration. Unfortunately for trustees, these duties are unlikely to become any less onerous and the EU's ongoing initiatives to increase levels of disclosure in international structures will likely add further layers of compliance for the trusts industry.

As non–UK trustees will know, the obligations of a foreign trustee changed in 2017, following the enactment of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the 2017 Regulations); all trusts which were then currently in existence and incurred a UK tax liability, irrespective of whether they were UK resident or not, were required to be registered on a UK register of trusts. This register is not publicly accessible but, under limited circumstances, may be inspected by any law enforcement authority in the UK and EU members states.

Fast forward to 2019 and the EU Fifth Money Laundering Directive (the 5th Directive) was released, which further extended the trusts registration regime. Under the 5th Directive, there is no longer solely a correlation between a trust having to register and the trigger of a tax liability. However, it imposes an obligation to register trusts which have a business relationship with an "obliged entity" (mainly equating to an entity which is subject to anti-money laundering rules, such as banks, estate agents, accountants and lawyers).

On 10 January 2020, the UK broadly implemented the requirements under the 5th Directive through amendments to the 2017 Regulations and confirmed that certain types of trusts would fall out of scope, including:

- statutory trusts (for example, trusts arising on intestacy);
- trusts of land where a joint ownership trust exists solely for the purposes of owning a home with a partner, relation or friend;
- trusts arising where two or more people co-own an asset and the legal and beneficial owners are the same, with concurrent and not successive interests;
- certain express trusts established to meet legislative conditions (for example, vulnerable beneficiary and personal injury trusts);
- trusts consisting solely of an insurance policy which is a pure protection policy and where payment is not made until the death or terminal illness of the insured; and
- trusts already registered in another EU member state.

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It is not at present clear from these amendments whether "bare trusts" fall out of scope and confirmation on this point is awaited. Further, there remains a large question mark over the circumstances under which a business relationship with an "obliged entity" would trigger compulsory registration of the trust in the UK.

Under the amendments to the 2017 Regulations, "business relationship with an obliged entity" is not clearly defined but there is a concern that for any trust relationship where the services of, for example, a UK lawyer or accountant are required, this might necessitate UK registration of that trust. There are indications that the duration of the business relationship could determine whether such trusts are in scope and further clarification is awaited on this point.

The Law Society of England and Wales has requested a postponement of the reporting rules which are due to come into force on 1 July 2020 and HM Revenue and Customs is "carefully considering" the request for postponement, given the current COVID-19 situation. In any event, this is a point which trustees of trusts outside the UK will need to monitor closely.

In the meantime, should you require clarification on whether a trust might be affected by these rules, please get in touch with us so that we can assist in advising you of your precise obligations.

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