Trust registration service update

13 July 2022

1

Presenters

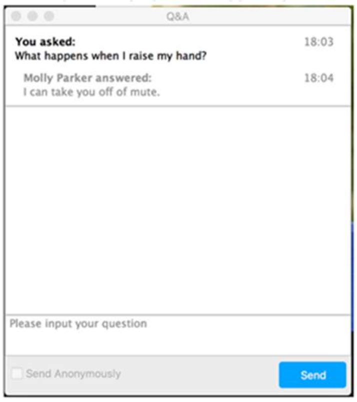
Caroline Miskin
Senior Technical Manager,
Digital tax
ICAEW Tax Faculty

Naomi Wells
Tax Partner, London
Azets
E: naomi.wells@azets.co.uk
T: 020 7403 1877

Vanessa Clark
Tax Director, South West
E: vanessa.clark@azets.co.uk
T: 01242 252555

2

Ask a question



To ask a question

Click on the **Q&A** button in the bottom toolbar to open the submit question prompt.

Type in your question and click **send**.

You can also upvote other attendees questions.

3

AZETS

Trust Registration Service Update

13 July 2022, ICAEW Tax Faculty Webinar

Naomi Wells and Vanessa Clark
Azets

4

Overview

1) Introduction and background
2) The new Trust Registration requirements.
3) Which trusts need to register?
4) Which trusts don't need to register?
5) Questions

5

5

What is the Trust Registration Service?

Central register

Maintained by HMRC with details of all registrable trusts.

Dual purpose

Implements AML Regulations and is used by HMRC as a mechanism for registering trusts for self-assessment and CGT reporting.

Governed by AML Regulations

Derives from EU Directives and has come into effect in the UK via Regulations.

Not in the public domain

But is accessible to persons who can demonstrate a legitimate interest.

6

6

How did we get here?

Directive (EU) 2015/849 (4th Anti-Money Laundering Directive, 4AMLD)

- EU Directive
- Aimed at preventing the use of the financial system for the purposes of money laundering or terrorist financing
- Modified and modernised 3rd Anti-Money Laundering Directive

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

- Implemented 4AMLD into UK law
- Register of beneficial ownership of taxable relevant trusts
- Applies to UK express trusts and non-UK express trusts which have UK source income and/or UK assets on which UK taxes are payable

Directive (EU) 2018/843 (5th Anti-Money Laundering Directive, 5AMLD)

- EU directive
- One of the aims of 5AMLD was to increase transparency on the beneficial owners of trusts, including non-taxable trusts

The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020

- Implemented aspects of 5AMLD into UK law, including the registration of trusts
- Amended the 2017 Regulations

The Money Laundering and Terrorist Financing (Amendment) Regulations 2022

- Amended the 2017 Regulations
- Extended the deadline for registering trusts
- Amended some of the exceptions from registration

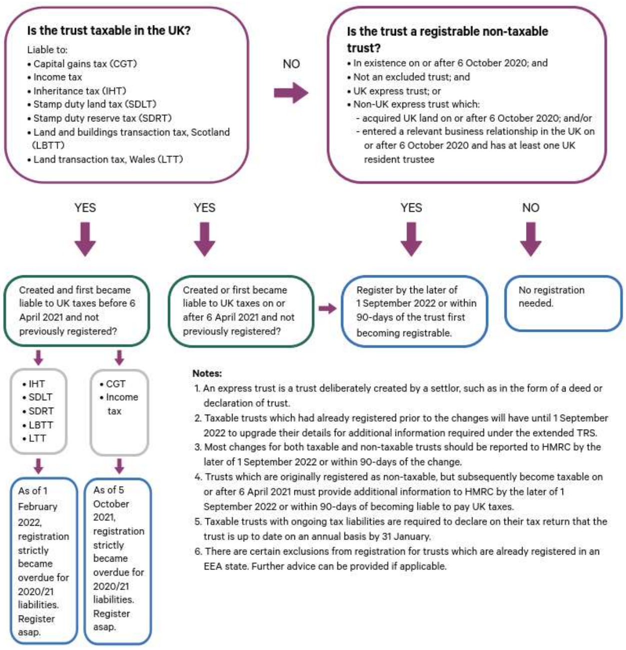
7

7

Which trusts need to register?

5AMLD introduced registration obligations for:

- All UK express trusts which were:
    - In existence on or after 6 October 2020; and
    - Not excluded trusts.
- Non-UK express trusts which were in existence on or after 6 October 2020 and not excluded and which:
    - Acquired UK land on or after 6 October 2020; and/or
    - Entered a relevant business relationship in the UK on or after 6 October 2020 **and** have at least one UK resident trustee.



Flowchart available for download from:
https://discover.azets.co.uk/download-request-and-insight-tax-private-client-trust-registration-service-do-you-need-to-register

8

8

Definition of an express trust

TRSM21030 - Types of trust that need to be registered: contents: introduction and definitions: contents: what is an express trust

An express trust is a trust created deliberately by a settlor, usually in the form of a document such as a written deed or declaration of trust. Express trusts can be created:

- *to take effect during the settlor's lifetime, or*
- *by will, to take effect on death.*

Express trusts can be contrasted with trusts that come into being through the operation of the law and that do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangement (for example, implied or constructive trusts).

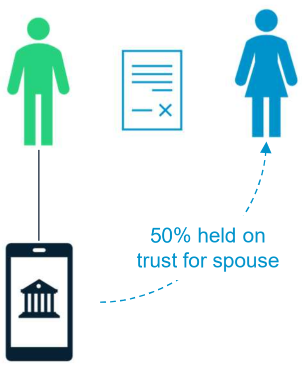
See TSEM9500 for further guidance on express trusts.

Available at: https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm21030

9

9

Example 1) – Declaration of Trust

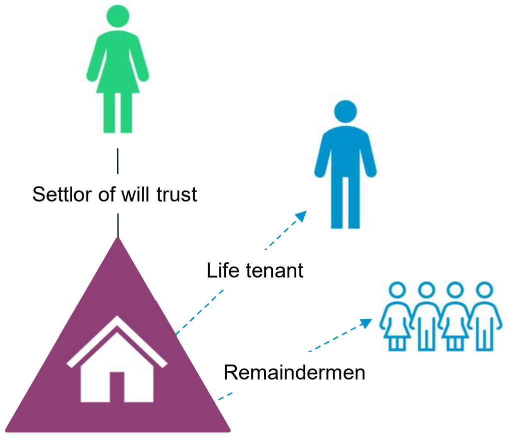


- Mr Smith holds an investment portfolio in his sole name.
- He makes a Declaration of Trust which says that he holds 50% of the portfolio on trust for his wife.

10

10

Example 2) – Life interest trust for surviving spouse



- Mrs Patel passed away five years ago and left her share of the family home in trust.
- Her husband has a life interest in the trust and her four children are the remaindermen.
- The husband and children currently live in the property and the trust has never incurred any UK tax charges.

11

11

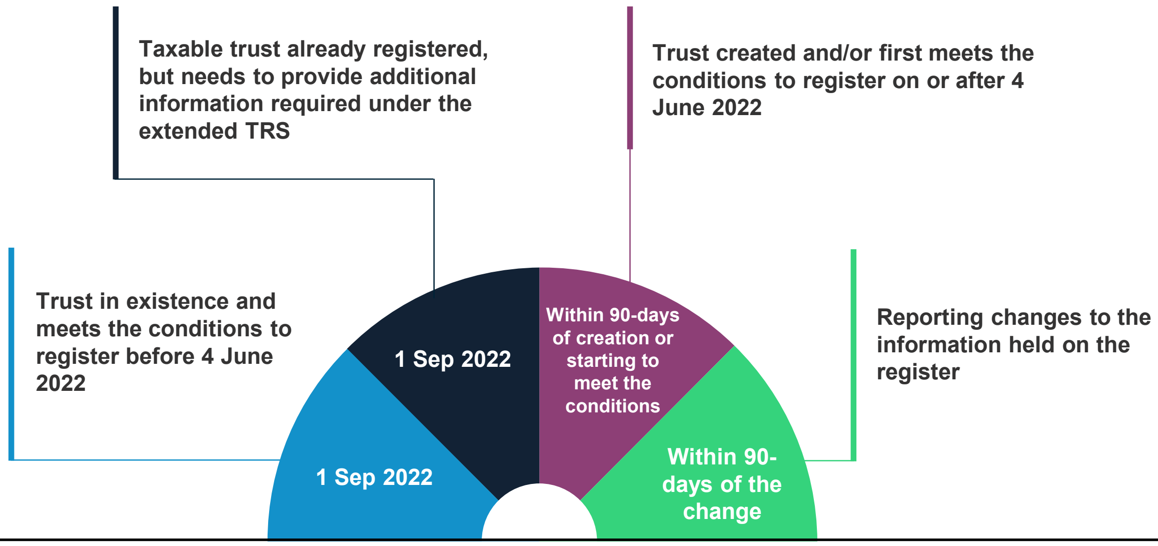
Example 3) – Shares held via a nominee

- Family Trading Co Ltd is owned by various members of the Wang family.
- As some of the grandchildren of the founders are minors, their shares are held via a nominee until they reach age 18.

12

12

Deadlines



13

13

Excluded Trusts

- Trusts imposed by statute.
- Trusts created by court order.
- UK registered pension trusts.
- Certain trusts used to hold a life insurance policy, income protection policy, retirement benefits policy or healthcare policy.
- Charitable trusts regulated in the UK.
- Trusts holding insurance policy benefits providing the benefits are paid out within 2 years of the death of the person assured.
- Pilot trusts which were set up before 6 October 2020 for a future use and which hold no more than £100.
- Will trusts created on death that only receive assets from the estate and trusts that only receive death benefits from a life insurance policy and are wound up within 2 years of death.
- Co-ownership trusts, holding jointly-owned property, where the trustees and beneficiaries are the same persons

14

14

Excluded Trusts Continued

- Financial or commercial trusts created in the course of professional services or business transactions for holding client money or other assets.
- Trusts for vulnerable beneficiaries or bereaved minors.
- Personal injury trusts.
- Trusts used by government and other UK public authorities.
- Save-as-you-earn schemes and share incentive plans.
- Maintenance fund trusts.
- Authorised unit trusts.
- Bank accounts held on trust for minor children or those lacking mental capacity.

15

15

Will Trusts

- Trust created by a will which only holds property from the estate of the deceased person will be excluded from registration for a period of two years.
- If the will provides for a specific legacy to be left to the trust the two year period starts from the date of death of the deceased person.
- If trust commences at a later date, either during or before the end of administration period they are not required to be registered until assets have been transferred to trust and only from two years following the date of death.
- Once the two year period has elapsed it will need to be registered.
- It will also need to register if at any point the trust accepts an addition of property from outside the estate.

Example 1
Mary dies on 1 June 2022. She leaves her estate on trust to pay her debts and the remainder to be split between her husband and brother in equal shares and absolutely.

The estate is fully administered and all assets distributed to her husband and brother by December 2023.

As the trust was created by will and as it is wound up within two years there is no need to register.

If the estate had not been fully administered until after 1 June 2024 registration would be required.

Example 2
If Mary had set up a trust during her lifetime with £10 and amended her will so certain assets were put into this trust on her death. This trust would be required to register from the point the assets were transferred into the trust as it was not created by will.

16

16

Life Insurance Policy in Trust

Common for insurance policies to be written into trust. Such trusts may be excluded from registration if the policy only pays out:

- On death, terminal or critical illness or permanent or temporary disablement of the person assured, or
- To meet the cost of healthcare service provided to the person assured.

The above exclusion can apply to trusts holding multiple policies provided all the policies meet the conditions above.

HMRC have confirmed that a policy with a surrender value can benefit from the exclusion up until the point it is surrendered.

However, policies designed to provide regular or periodic payment to the policyholder will not be a qualifying policy so will need to register.

Example 1

Sarah takes out a whole of life insurance policy which is written into trust. The policy will only pay out on the event of Sarah's death but is able to be surrendered for a cash value during Sarah's life time. Does this need to register?

NO as policy meets the conditions.

Example 2

Margaret takes out an investment bond and places it in trust. Margaret is able to withdraw 5% per year. Does this need to register?

YES as the withdrawals are anticipated as an integral part of the policy they do not meet the conditions so would need to be registered.

17

17

Co-Ownership Trusts

The following types of co-ownership trust can be excluded from registration:

- Where the trustees and beneficiaries are the same person.
- Property owned by more than four persons – land registry will only permit 4 people to listed as the legal owners. Where land is owned by more than 4 people Section 34(2) Law and Property Act 1935 provides that the land is held in trust for all owners.
- Property held on behalf of minors – Where property owned by two or more persons and one is under the age of 18 Schedule 1(2) of Trusts and Land and Appointment of Trustees Act 1996 provides that the land is held in trust by the person over the age of 18 for benefit for themselves and the person under age of 18.

Example 1
Husband and wife acquired property 50/50. After a year a declaration of trust is put in place so beneficial interest is held 1% to husband and 99% to wife. Does this need to be registered?

NO - as the trustees and beneficiaries are the same regardless of the split of legal and beneficial ownership.

Example 2
If father owns 100% of a property and by declaration of trust transfers 50% of beneficial interest to son. Does this need to be registered?

YES - as the trustee (father) is not the same as beneficiaries (father and son).

18

18

Co-Ownership Trusts

- Partnership holding land and property = Co-ownership trust
- So do all partnerships holding land and property need to register?
- HMRC have suggested that property held by one partner on behalf of all of the partners only constitutes a trust if it explicitly stated to be held on trust (via a trust deed etc). If no explicit intention to hold on trust, no trust is created and therefore no TRS registration required. HMRC are due to update TRS manual accordingly.
- So is HMRC correct?
- Exclusion mentioned above could still apply.

19

19

Bank accounts for minors

- Where an individual opens a bank or building society account for a child under 16 this typically creates a bare trust.
- No general exclusion for bare trusts however cash deposit held on bare trust for minor children are now excluded from registering under Sch 3A 5MLD.
- The exclusion extends to cover accounts held on bare trust for those over 16 who lack mental capacity.
- Exclusion only cover cash deposits therefore investment such as stocks and shares would not be covered.
- Child Trust Funds and Junior ISA's are not trusts so no not need to register.

Example
John opens a cash account with X Bank for his granddaughter Poppy and opens an investment account with Y Bank which holding stocks and shares for his grandson, Max. He contributes £100 per month into both accounts. What need to be registered?

Bare trust effectively created for Poppy will not need to be registered as cash deposit.

Bare trust for Max would need to be registered as holding investments.

20

20

Any questions?

Naomi Wells

Tax Partner, London

E: naomi.wells@azets.co.uk

T: 020 7403 1877

Vanessa Clark

Tax Director, South West

E: vanessa.clark@azets.co.uk

T: 01242 252555

21

21

AZETS

22

Thank you for attending

Please take the time to fill out our short survey

Contact the Tax Faculty

Phone: +44 (0)20 7920 8646

Email: taxfac@icaew.com

Web: icaew.com/taxfac

23

ICAEW

icaew.com

24