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# Private Wealth

## THE UK'S TRUST REGISTER – IN BRIEF APRIL 2022

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## Background – increasing international transparency

In highly public recent developments, the UK is bringing into force a public register of the beneficial owners of companies that hold residential property – a proposal that had been planned for some time and which has been accelerated.

Against that background, it is important to be aware of extensive updates that are scheduled for the UK's existing **trust registration service (TRS)**. In some cases, there may be an obligation to register under the beneficial ownership register and the TRS. In other cases, there may be an obligation to file under only one register.

The TRS is not limited to trusts of land. Unlike the public beneficial ownership register, it is essentially private – but it is possible for third parties to request disclosures (as described below).

It is particularly important to note that the register is being expanded in a way that catches **bare trusts and nominee trusts**. Many existing trusts that have not previously needed to register (including, for example, adults holding property on behalf of minor children) will now need to register.

Many trusts will already need to be registered under the existing rules. *Non-taxable trusts in existence on or after 6 October 2020 must register by 1 September 2022.*

## Which trusts are required to register on the TRS?

Both UK tax resident and non-UK tax resident trusts may need to be registered – albeit that the category of registrable non-UK resident trusts is more limited. The registration requirement applies to:

- all **UK tax resident express trusts**, whether or not they have a UK tax liability (unless they are “excluded trusts” - see below).
- **non-UK tax resident express trusts** (which are not “excluded trusts”), if:
  - they have a UK tax liability; or
  - on or after 6 October 2020:
    - (i) they enter into a business relationship with a UK relevant person (i.e. a person that is subject to UK anti-money laundering regulations) and have at least one UK resident trustee; or
    - (ii) they acquire an interest in UK land, even if they have no UK resident trustees.

## Express trusts which are excluded

The following trusts are excluded. It is important to note that, despite representations during the consultation process, there is no general carve-out for bare trusts for minors or commercial trusts (although, depending on their nature, many trusts in a commercial context may be exempt in their own right).

Trusts which come into existence by **operation of law** – for example, trusts arising on intestacy; resulting or constructive trusts; and trusts created under a court order such as on divorce

Trusts relating to **joint ownership** of property (for example, land or bank accounts) where the legal and beneficial owners are the same

#### **Charitable** trusts

Trusts holding the assets of a registered **pension scheme**

Trusts holding **life policies** which only pay out on death, terminal or critical illness or permanent disability

Trusts which are required to meet statutory conditions in order to benefit from some beneficial status – for example trusts for **vulnerable beneficiaries** or **employee trusts**

Certain **commercial trusts** – for example relating to bond issues or syndicated loans

**Will trusts** provided they do not remain in existence for more than two years after the death of the individual

Existing trusts which hold assets with a **value of less than £100**. Note that trusts established after 6 October 2020 with assets worth less than £100 will have to be registered

## Particular points of interest

- In general, nominee or bare trust arrangements will need to be registered.
- In practice, many categories of commercial trust will be excluded, but it will be important to analyse any given commercial trust with care.
- Registration is required when non-UK resident express trusts receive UK source income or hold UK situs assets (directly – or, indirectly where the holding entity is tax transparent) or they have a direct UK tax liability.<sup>1</sup>
- When assessing whether there is a UK tax liability for these purposes, that UK tax liability *must fall directly on the trustees*. This can have unexpected results. There is no requirement to register:
  - where tax is attributed to the settlor or beneficiary instead of the trustees;
  - where the only tax liability is UK VAT, corporation tax or ATED (annual tax on enveloped dwellings);
  - where UK assets are held beneficially through a wholly owned non-UK holding company. In such a case, the liability is that of the company rather than the trustees.
- Where a company is holding the assets as a nominee for trustees, the tax liability remains with the trustees (and an obligation to register in a tax year in which a relevant UK tax liability is incurred). HMRC treats the nominee arrangement as a “look through” for tax purposes.

<sup>1</sup>

That is to say, a liability to pay any one or more of income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax or land and buildings transaction tax (Scotland) or land transaction tax (Wales).

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- There is no requirement to register where there is a tax charge on UK residential property held through a non-UK company whose shares are wholly owned by a trust, where that UK tax liability arises because:
    - even though the UK tax liability (inheritance tax) falls directly on the trustees, that liability does not relate to UK situs assets. The charge is on the value of the shares held by the trustees and not the underlying assets.
    - UK source income (from rentals) will be received by the non-UK company.
    - Corporation tax on any gain on a sale will be a liability of the non-UK company.
    - SDLT on a purchase will be a liability of the non-UK company.
  - Trustees will need to provide a trust's beneficial ownership information from the TRS to any service provider with which they enter into a business relationship.
  - If a tax relief is claimed such that there is no liability to pay any of the potentially relevant UK taxes (e.g. capital gains tax hold-over relief), then the trust is not a taxable relevant trust.
  - Service providers also have an obligation to report discrepancies if the information they are provided with differs from what they find through their own client due diligence process.

## When does the information have to be provided?

- **Registrable taxable trusts** are required to register by 31 January (or 5 October in some cases) following the end of the tax year in which the trust had a UK tax liability.
- **Non-taxable trusts** in existence on or after 6 October 2020 must register by 1 September 2022.
- **Changes** to the trust details or circumstances must be made within 90 days of the change.

Once registered, information will remain on the register for six to ten years after the trust is terminated or the information becomes obsolete (because, say, a trustee has been replaced). The information which must be registered is likely to be the information which is current at the time registration takes place.

Non-taxable trusts which would have been registerable on 6 October 2020 had the register been open, must still be registered, *even if the trust is no longer in existence at the registration deadline*.

## Penalties

The regulations contain a penalty regime. HMRC has confirmed that it will take a pragmatic and risk-based approach, to the imposition of penalties, particularly where it is satisfied that trustees or their agents have taken all reasonable steps to comply with the Regulations.

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## Access to information

With limited exceptions any third party with a “legitimate interest” can access the information on the TRS about any registered trust.

Such a person will need to make a request about a specific trust. There are various factors that HMRC must take into account when considering whether a person has a legitimate interest. These include the following:

- whether the requested information will further an investigation (in which the person requesting the information is involved) into a specific suspected instance of money laundering or terrorist financing;
- whether it is reasonable for the person requesting the information to suspect that the trust is being used for money laundering or terrorist financing, taking into account the information produced by the person making the request.

There is no requirement for HMRC to notify the trustees of a trust subject to the request of the request and they will not be notified that the information has been supplied if the request is granted.

HMRC may charge a fee, may require the request to take a particular form and may ask for any information they specify to support the request.

Where the request for information is granted, regardless of the type of trust, the following information on an **individual beneficial owner** will be supplied: full name; month and year of birth; country of residence; nationality; and the nature and extent of the individual’s beneficial interest.

In the case of a **legal entity**, the following information will be supplied: the entity’s corporate or firm name; the entity’s registered or principal office; and the nature of the entity’s role in the trust.

Information will not be provided to a person with a legitimate interest or in the case of a third country entity request if, in relation to a given beneficial owner (or potential beneficial owner of the trust):

- HMRC considers that making the information available would expose them to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation (it is not yet clear how this will be assessed by HMRC);
- they are under the age of 18; or
- they lack capacity.

## Action points for trustees

- Trustees with any UK connections should seek professional advice to clarify their obligations or determine whether any of the exclusions may apply.
- Trustees should seek all the (additional) information that will be required to register or update information on the TRS.
- Trustees should consider whether any beneficial owners are minors or incapacitated or would be subject to disproportionate risk of harm if third parties were able to access their information.

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- Any new registration should take place before 1 September 2022, and trustees may want to start the process now to ensure they are fully compliant ahead of time.
  - Trustees should consider all relevant data protection obligations.



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## April 2022

These notes do not contain or constitute legal advice, and no reliance should be placed on them. If you have any questions, please do not hesitate to speak to your usual contact at Maurice Turnor Gardner LLP.