

5AMLD and the Origins of the TRS

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Update



- HMRC have now published a dedicated manual for the TRS.
- Trust Registration Service (TRS) is now open for non-taxable trust registrations with effect from 1 September 2021.
- The registration deadline will be extended to 1 September 2022 and the relevant provisions of MLR 2017 will be amended accordingly.
- The 30-day deadline to register a new trust will be extended to 90 days.

History of the TRS



- Established under 4AMLD
- Was rushed in by HMRC with little time to perfect the process
- Has two primary functions:
 1. To provide a system under which trusts can apply for a UTR
 2. To provide an anti-money laundering protection mechanism in accordance with the requirements of 4AMLD and which were extended by 5AMLD

Captured by the TRS



- Inheritance Tax
- Stamp Duty Land Tax
- Stamp Duty Reserve Tax
- Land and Buildings Transaction Tax (in Scotland)
- Land Transaction Tax (in Wales)

Which Trusts are required to register



Rather than limiting registration to taxable relevant trusts, MLD5 extends the obligation to all trusts but then carves out various excluded categories.

Excluded express trusts:

- Will Trusts
- Intestacy trusts
- Trusts for bereaved minors
- Trusts holding insurance policies
- Trusts set up for the benefit of receiving PI claims
- Employee share scheme trusts
- Charitable trusts
- Pensions schemes
- Disabled beneficiary trusts
- Historic pilot trusts
- Co-ownership**

Which Trusts are required to register



All UK express trusts and some non-UK express trusts are required to register.

Registrable taxable trusts

- UK and non-UK trusts with a liability to UK taxation

Registrable express trusts

- The trustees, in their capacity as trustees, acquire UK land or the trustees, in their capacity as trustees, enter into a business relationship with a UK relevant person
- Non-UK express trusts may be required to register if they have links to the UK, such as having UK-based trustees, acquiring land in the UK, or entering into a business relationship with a UK business.

Property Ownership and Bare Trusts



- Co-ownership trusts where the trustees and the beneficiaries are the same persons are exempt from registration with the TRS.
- However, trusts where the trustees and the beneficiaries are not the same must be registered. This might arise, for example, if parents hold property on trust for their children.

Estates



- Estates are not part of the TRS requirements
- Method by which "complex" estates register with HMRC is through the same online process.
- Personal representatives may have to register the estate in some circumstances:
 - The total tax liability (income tax plus capital gains) for the entire administration period exceeds £10,000.
 - The probate value exceeds £2.5 million.
 - The value of the assets sold by the PRs in any one tax year exceeds £500,000 (for deaths on or after 6 April 2016).

Information required for registration



- | Trust | Trustees | Settlors/Beneficiaries |
|--|--|--|
| <ul style="list-style-type: none">• Trust name• Date of creation?• Trustees UK resident?• Settlers based in the UK?• Acquired UK land or property since 6 October 2020?• Listed on a European Economic Area (EEA) register?• Have a business relationship in the UK? | <ul style="list-style-type: none">• Name• Date of birth• Contact Details• Nationality• Country of Residence• National Insurance Number• Mental capacity• Company name/UTR/Residence | <ul style="list-style-type: none">• Name• Date of birth• Nationality• Country of Residence• Mental capacity• Description of class
Taxable Trusts with UK tax liability <ul style="list-style-type: none">• Information on assets• Information on each beneficial owner |

Register a Trust as an Agent



- HMRC page dedicated to this
- Enables the trustees to obtain a Unique Taxpayer Reference (UTR)

Deadlines and on-going responsibility of trustees



- Registrable taxable trusts - 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 liability to UK taxation.
- Registrable express trusts - should register by 10 March 2022 but extended to 1 September.
- From 2022 onwards, any changes to the beneficial ownership information of a trust registered on TRS must be kept updated to TRS.

Who can access the information?



- MLD5 broadens who can access the data.
 - Third parties: those with a "legitimate interest".
 - Obligated entities: those entering into a business relationship with the trust.
 - Law enforcement agencies: the existing arrangements for law enforcement agencies under MLD4.
- HMRC can withhold information in any of the following circumstances:
 - The beneficial owner is under 18.
 - The beneficial owner lacks capacity.
 - Expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.

Penalties



Proposal:

- Failure to register (first offence) - no financial penalty, but a “nudge letter” notification is sent to the trustees setting out their responsibilities.
- Failure to update details within the time limit (first offence) - no financial penalty, a nudge letter to trustees.
- £100 per offence for subsequent offences.
- Any trustee found to have failed to register or failed to register on time or update their details deliberately may be subject to a separate regime and a financial penalty in the first instance rather than a notification.

Further disclosure obligations in the UK



- Property ownership register
 - Overseas Entities Bill - This may mean that a non-UK/EU trust with a corporate trustee which acquires UK real estate may have to register both on Companies House and on the TRS.
 - Companies House will require information about the beneficial ownership of the trust company and TRS will require information about the beneficial ownership of the trust.

Any questions?



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