



Time to act: the UK Trust Register and the Fifth Money Laundering Directive

COMMENTARY BY [MICHAEL ASHDOWN](#), 19TH JANUARY 2021

HMRC's registration requirements for trusts may not have been the focus of many practitioners' attention during 2020, but the 31 January deadline for Trusts Registration Service notifications is likely to focus minds not just on annual compliance requirements, but also on the myriad of changes that have taken place over the past year.

This change has been driven by the EU's Fifth Money Laundering Directive, the effect of which has (despite Brexit) been brought into English law by the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020, most of which came into force on 6 October 2020 ("**2020 Regulations**"). The regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) ("**2017 Regulations**") and significantly expand the scope of HMRC's Trust Registration Service.

Four features of the new regime are particularly important to note.

First, the scope of the obligation to register has been made much wider. Under the 2017 Regulations, only "taxable relevant trusts" had to register – in the case of UK trusts, this meant express trusts which were liable to pay UK taxes (including income tax, CGT, IHT, and SDLT). Under the 2020 Regulations, all UK express trusts will have to be registered, unless explicitly exempted (regulation 45ZA of the 2017 Regulations as amended). However, trustees will have until at least 10 March 2022 to register such trusts (regulation 45AZ(5)).

Second, the exemptions in schedule 3A to the 2017 Regulations (as amended) are narrow and potentially complex. Some are obvious and straightforward enough, such as for registered pension schemes, and most UK charitable trusts. Some are more problematic, such as the exemption for will trusts, but only as long as the trusts do not continue for more than two years after the testator's death (although the statutory intestacy trusts are wholly exempt). Some will be more complicated to apply. For example, death benefit trusts for minors are not exempt as a class, though some historic death benefit trusts arising by will or intestacy may fall within the exemption in clause 16 for trusts for bereaved minors (see further Emily Campbell's September 2020 [note on death benefit trusts](#)). Bare trusts and nominee arrangements are not exempted at all, so assets held for a minor by his or her parent would (unless falling within another exemption) require registration.

Third, the obligation to provide information to HMRC has been made more onerous. UK trusts (and some non-UK trusts too – see regulations 45(10B) and (10C) of the 2017 Regulations as amended) are now required to provide more information about beneficial owners, and potential beneficiaries mentioned in letters of wishes. The information required under the 2017 Regulations already included a beneficiary's name, NI number or address, date of birth, and role in relation to the trust. Trustees remain obliged to provide this information about beneficiaries, together with information about the trust itself, by 31 January after the tax year in which they first became liable to UK taxes, and to notify HMRC of any changes (or to confirm that there are none) by the same deadline each year. However, the information requirement is to be extended (from March 2022) to encompass each beneficiary's countries of residence and nationality and, perhaps most importantly, the "nature and extent" of their beneficial interest.

Fourth, the deadlines for providing information will in future be much shorter. At present trustees generally have until at least 5 October following the end of the tax year (where the trust has a new liability to CGT or income tax liability) and 31 January (in all other cases). From 9 February 2022, information will have to be provided within

30 days of creation of the trust, or of a change to the registered information requiring notification.

As the UK moves towards increasingly comprehensive registration of trusts, there will be much for trusts and tax practitioners to digest and act upon to ensure compliance with the extended regulatory regime. With just over a year until almost all trusts become registrable and more extensive information has to be provided, it is certainly time to get started.

For more information on our Tax practice, [please click here](#).

If you are viewing this document on LinkedIn, you can download it by clicking on the



icon in the top-right-hand corner when in full screen view.