

Trust Registration Service changes announced in new anti-money laundering consultation

Synopsis: HM Treasury's consultation on improving the effectiveness of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs), which place requirements onto a range of businesses to identify and prevent money laundering and terrorist financing. Here we focus on the Trust Registration Service changes.

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HM Treasury is consulting on changes to the MLRs as part of a wider programme of work aimed at reducing money laundering, which was set out in the Economic Crime Plan 2023-26. This consultation principally covers issues with the MLRs already identified by HM Treasury, for example in the 2022 Review of the UK's anti-money laundering and counter-terrorist financing regulatory and supervisory regime.

This review found that, while the core requirements of the regulations were mostly fit for purpose, there were potentially a number of technical changes that could be made to increase effectiveness and ensure proportionality for both regulated firms and customers.

The consultation also includes issues put forward by key stakeholders, such as the anti-money laundering/counter terrorist financing supervisors, the regulated industries and their representative bodies, which could reduce burdens and make the regulations more effective at tackling economic crime.

The consultation covers four core themes...

1. Making customer due diligence more proportionate and effective;
2. Strengthening system coordination;
3. Providing clarity on scope of the MLRs; and
4. Reforming registration requirements for the Trust Registration Service (TRS).

The Treasury says that it is keen to hear from a wide range of stakeholders in response to the consultation, including regulated businesses and their customers, supervisory bodies, law enforcement agencies, civil society organisations and members of the public. The consultation document sets out a number of ways to respond to the consultation. This includes answering the questions via the online 'Improving the Effectiveness of the Money Laundering Regulations' form.

What TRS changes are being consulted on?

The TRS was introduced in 2017 to increase the transparency of trust ownership by providing a central register of the beneficial ownership of taxable trusts. Changes to the MLRs since then mean that the TRS now is a register of most types of UK express trusts and some non-UK express trusts.

Please HMRC's guidance [Register a trust as a trustee](#).

The purpose of the TRS is to document information about trusts and to make it available to law enforcement agencies to assist with their investigations. Since 1 September 2022, individuals and organisations can also access TRS information in certain limited circumstances. All individuals and organisations can access trust data where a trust has a controlling interest in an 'offshore company'.

Access to all other trust data requires the requester to have a "legitimate interest" in that trust information. A legitimate interest is demonstrated through evidence including an individual or organisation being involved in an investigation into money laundering and terrorist financing.

HMRC has overall responsibility for the TRS.

Trustees have a responsibility to register their trusts, if they fall within the registration rules, and to keep the trust information up to date. Trustees of registrable trusts must also provide proof of registration to certain 'relevant persons', as set out in the MLRs.

Relevant persons are advised not to do business with registerable trusts that fail to show proof of registration and must report to HMRC any material discrepancies between the information they hold on the trust and the information held on the TRS.

The Government is reviewing the operation and scope of the TRS: the role of the TRS in the investigation of money laundering and terrorist financing; the registration responsibility on trustees; and the changing international and national objectives to increase transparency of trusts.

The purpose of the review is to identify areas where the TRS could be improved to continue meeting key policy objectives and to provide consistency and simplicity.

The Government says that it wants a targeted approach to trust registration requirements, to focus the requirements on the highest risk trusts. The Government proposes to make changes to the TRS to include...

- requiring the registration of all non-UK express trusts with no UK trustees, that own UK land;
- sharing trust information of non-UK express trusts with no UK trustees that own UK land by making these trusts subject to the current Trust Data Sharing [process](#);
- aligning the registration requirements of some trusts required to register following the death of a settlor
- clarifying that Scottish survivorship destination trusts are not required to register;
- introducing a de minimis level for trust registration.

Registration of non-UK express trusts with no UK trustees, that own UK land

The Government recognises that there is currently a reporting gap of direct UK land ownership by wholly non-UK trusts. The Government therefore proposes to extend the requirement to register on the TRS to include trusts that acquired UK land before 6 October 2020.

Currently a Trust Data Request cannot be made to access information held on non-UK express trusts, with no UK trustees, that have acquired UK land. In other words, this information cannot be shared with persons outside of law enforcement agencies. The Government is proposing to extend the TRS trust data sharing rules to include these trusts.

The National Risk Assessment (NRA) for Money Laundering and Terrorist Financing 2020 observed that the property sector faces a high risk from money laundering, due to the large amounts of cash that can be moved / invested in the sector and that non-UK trusts “...are likely to be more attractive for illicit purposes as they can offer better levels of secrecy and tax advantages compared to UK-based trusts”.

The Government says that it is against this backdrop that it seeks to improve the transparency of UK land ownership by non-UK trusts through increasing the scope of trusts that are required to be registered on the TRS.

Trusts required to register following a death

Currently will trusts are excluded from registering on the TRS for a period of two years from the date of death. However, there are other types of trust that become registrable on the death of an individual with different deadlines for registration on the TRS.

Some of these are existing trusts which were not required to register on the TRS when the person was alive and some are trusts created as part of the estate administration process, namely...

- co-ownership property trusts currently must be registered on the TRS within 90 days of a person’s death;
- trusts created by deed of variation currently must be registered on the TRS within 90 days of being created.

The Government believes that a common registration deadline for those trusts associated with the estate of a deceased person will enable better compliance with the registration requirements.

The Government is also proposing to exclude co-ownership property trusts that would become registrable upon death from registration for two years from the date of death. This will align the timing of registration with will trusts that become registrable on death. Co-ownership trusts are trusts of jointly held property where the trustees and beneficiaries are the same persons and are excluded from registration. These trusts often arise in the purchasing of land and property in England and Wales.

Co-ownership property trusts are currently excluded from registration. However, upon the death of one of the parties, as the trustees are no longer the same as the beneficiaries, the trust becomes registrable.

And the Government is proposing to exclude all trusts created by deed of variation that would become registrable upon death from registration, for two years from the date of death. This will align the timing of registration with will trusts that become registrable on death. Trusts created by deeds of variation are express trusts and, therefore, are currently registrable within 90 days of being created.

Scottish survivorship destination trusts

In Scotland it is possible for property to be owned jointly by property owners where the title to the property contains a special destination, known as a survivorship clause or survivorship destination. This clause directs that the property is held equally for the owners and the survivor.

To revoke the survivorship destination after the property has been registered in the Land Register of Scotland, the property owners may either register a new deed in the land register where they will incur registration fees or create a trust that records that the survivorship destination has been revoked and sets out the new beneficiary of the property. Where a trust is created to revoke a special destination, this is an express trust, and it is therefore currently registrable on the TRS.

Under English and Welsh Law, achieving this outcome would not result in a registrable trust. The Government is proposing to exclude Scottish survivorship destination trusts from the TRS registration.

De minimis exemption for registration

The government proposes to introduce a de minimis exemption for trusts required to register on the TRS. The de minimis exemption seeks to differentiate between small low value trusts and the higher risk trusts that hold property. Responsibility to determine whether a trust qualifies as being de minimis would fall to the trustees.

The Government is proposing to exclude from registration a trust that meets all of the following tests...

- the trust is not liable for relevant UK taxes;
- the trust does not own or have an interest, in whole or in part, in UK land/real property;
- the trust does not hold more than £5,000 in assets;
- the trust does not distribute more than £2,000 in assets and expenses (combined) in any 12-month period.

Once a trust exceeds any of the threshold amounts, the trust would become registerable and remain registerable. For instance, were the value of a trust's assets

to be above £5,000 and then fall below this amount, then the trust would remain registerable.

From tax year 2024/25 a new tax rule will take trusts out of income tax where their income is less than £500, allowing more trusts to meet the first test. The Government similarly recognises that some settlors may attempt to create multiple trusts in order to meet the proposed de minimis criteria for registration above. To this end the Government proposes to put restrictions in place to prevent this from happening.

(The rule for income tax is set to be that where a settlor has created a number of trusts, the £500 limit will be proportionately reduced for accumulation & maintenance trusts and discretionary trusts by the total number of the current trusts to a minimum of £100. Interest in possession trusts, settlor-interested trusts, vulnerable beneficiary trusts, heritage maintenance trusts and certain pension schemes will not be taken into account.)

This consultation closes at 11:59pm on 9 June 2024.

In parallel with this consultation, HM Treasury is running a survey on the cost of compliance with the MLRs. The Treasury says that this will help it to understand better how regulated businesses comply with the regulations and to assess the impact of future changes to the MLRs.

The Treasury is keen to receive responses from a wide range of regulated businesses, including large firms, SMEs and sole traders. You can see and respond to the survey at the [Cost of compliance with the Money Laundering Regulations - survey for regulated businesses.](#)

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