

# UK Trust Registration Service guide for non-UK trusts

The Trust Registration Service (TRS) is a register of the beneficial ownership under trust arrangements. The requirement to register trusts started in 2017 and its scope widened on 6 October 2020. These latest changes are likely to bring many more non-UK trusts within the scope of TRS. This guide details the requirements for non-UK trusts only.

## Definition of a non-UK trust

A non-UK trust is any trust which is not a UK trust. A trust is defined as a UK trust if the following apply:

- All trustees are residents in the UK\*; or
- There is a mixture of UK and non-UK resident trustees and the settlor was resident and domiciled in the UK when the trust was set up, or when the settlor added funds to the trust. Deemed domicile status is ignored for this purpose.

\*A trustee is a UK resident if either:

- It is a UK body corporate
- They are an individual who is UK resident for the purposes of one or more of the following taxes:
  - Income Tax
  - Capital gains tax
  - Inheritance tax
  - Stamp duty land tax
  - Land and buildings transaction tax (Scotland)
  - Land transaction tax (Wales)
  - Stamp duty reserve tax

## Types of non-UK trusts that need to be registered

Registration requirements are set out in Regulation 42, 45 and 45ZA of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

### Trusts with a UK tax liability

Trusts that are required to register are referred to as 'relevant trusts'. A non-UK trust is a relevant trust if it is an express trust that receives income from a UK source or holds assets in the UK on which it is liable for any of the UK taxes listed above.

A trust will not be a relevant trust if it is subject to UK tax but does not directly hold a UK asset. An example is the charge to inheritance tax on the value of shares in a non-UK company, which is attributable to UK residential property. Liability to such a charge does not trigger a requirement to register as the charge relates to a non-UK asset (the shares).

A trust is only a relevant trust if the tax liability falls on the trustees. Where assets are owned through a company, the company is liable to UK tax on its UK source income, and not the trustees. The holding of UK assets or receipt of UK income in an underlying company does not, therefore, trigger the requirement to register.

Trusts which have a UK tax liability are required to register as **registrable taxable trusts**.

### Trusts acquiring UK land

A non-UK trust will also be a relevant trust if it acquires UK land on or after 6 October 2020. The requirement to register will only be triggered if they acquire land directly. A change in the registered owners of land due to a change of trustees will not trigger the requirement to register, provided that at least one trustee remains unchanged from the pre-6 October 2020 position.

Trusts that are required to register as a result of acquiring UK land must register as **registrable trusts**.

## Trustees entering into a business relationship in the UK

If a non-UK trust **has at least one UK resident trustee**, a requirement to register will be triggered if the trustees enter into a business relationship with a UK relevant person on, or after, 6 October 2020.

A business relationship is a business, professional or commercial relationship between the trustees and a UK relevant person. It is only a business relationship if, at the commencement of the relationship, it is expected by the relevant person to have an element of duration. A relevant person is one of the following who conducts business in the UK or has their registered or head office in the UK:

- Credit institutions
- Financial institutions
- Auditors
- Insolvency practitioners
- Accountants
- Tax advisors
- Legal professionals
- Trust or company service providers
- Estate agents
- Letting agents
- High value dealers
- Casinos
- Art market participators
- Cryptoasset exchange providers
- Custodian wallet providers

Most relationships will satisfy the requirement for an element of duration unless the service is a one-off short-lived transaction. Business relationships in place before 6 October 2020 do not trigger the requirement to register.

Trusts that are required to register as a result of a business relationship must register as **registrable trusts**.

From later in 2022, 'relevant persons' (see 'Trustees entering into a business relationship in the UK' above) will be required to check the trust register when entering into a business relationship. This will be done by the trustees providing an excerpt of the trust register.

## Exclusions

Trusts which do not have a liability to UK tax do not need to register if they fall within the following exclusions:

- Trusts created on death
- Charitable trusts
- Trusts holding life policies during the lifetime of the person assured
- Certain employee share scheme trusts
- Disabled person's trust
- Pilot trusts established prior to 6 October 2020 with assets with a value of less than £100
- Bank accounts for minors
- Trusts arising in finance markets infrastructure
- Trusts imposed by legislation or court order
- Property ownership trusts, but only where the trustees and the beneficial owners are the same people
- Professional services and commercial arrangements



A non-UK trust does not need to register under TRS if it is registered on a European Economic Area (EEA) register. However, this exemption does not apply to trusts with no UK trustees, where the requirement to register is triggered by acquisition of land in the UK. Furthermore, it does not apply if the trustees have a UK tax liability on UK source income or a UK asset.

### Registrable trusts

Information required for registrable trusts:

- Trust name
- Date created
- Residency of settlor
- Trustee's name, date of birth, contact details, country of nationality, country of residence, passport or ID card number, mental capacity (individuals)
- Trustee's name, contact details and country of residence (corporate trustee)
- Settlor's full name, date of birth, date of death (if relevant), country of nationality, country of residence, mental capacity (individual settlors)
- Settlor's business name and country of residence (corporate settlors)
- Named individual beneficiaries' full names, dates of birth, country of nationality and country of residence
- Description of class of beneficiaries
- Name and country of residence for beneficiaries that are charities, companies or trusts
- Where at least one trustee is UK resident, the details of any controlling interests in an entity outside of the UK and EEA

### Taxable registrable trusts

Additional information required for taxable trusts:

- Country of general administration of the trust
- Details of liability to Income Tax and Capital Gains Tax
- Information of assets held in the trust
- Information on each beneficial owner (trustees, settlors, beneficiaries or person with control): National Insurance number (individuals), Unique Tax Reference (organisations) or address and passport or ID card details

### Deadlines for registrable trusts

Registrable non-taxable trusts in existence on or after 6 October 2020 must be registered by **1 September 2022** or 90 days from creation, whichever is later.

Any changes must be updated within 90 days.

### Deadlines for taxable registrable trusts

Trusts established before 6 April 2021 with a liability to income tax or capital gains tax for the first time must register by 5 October following the end of the tax year in which they become taxable. In all other cases, the deadline is 31 January following the end of the tax year in which the liability arose.

For trusts established after 6 April 2021, the deadline for registration is 1 September 2022 or 90 days since commencement, whichever is later.

For any year in which the trustees have a tax liability, the trustees must confirm that the trust details are up to date by 31 January following the end of the tax year. If the trustees are not liable to tax in any tax year, they are not required to make this confirmation.

Any changes must be updated within 90 days.

### Retention and provision of data: trustees' obligations

Trustees are required to maintain accurate and up to date written records of all the actual and potential beneficial owners of the trust. The beneficial owners include all trustees, settlors, beneficiaries or any person who has control over the trust.

*Contact details for the trust:*

- A contact address for the trustees
- Details of advisors to the trust – the full name of any advisors who receive payment to provide legal, financial or tax advice to the trustees in relation to the trust

*Beneficial owners who are individuals:*

- Full name
- Date of birth
- National Insurance number
- Address (if a National Insurance number cannot be provided)
- If the address is not in the UK, passport or identification card details of the beneficial owner should be recorded, including the number, country of issue and the expiry date
- If the individual does not have a passport or identification card, the number, country of issue and expiry date of any equivalent form of identification should be retained

### *Beneficial owners who are companies:*

- The name of the company or business
- Unique Taxpayer Reference
- The registered or principal office of the company
- The legal form of the entity and the law by which it is governed
- The name of the register of companies and the company's registration number (where applicable)

### *Where there is a class of beneficiaries:*

- Description of the class of beneficiaries

Professional trustees are required to retain the records for five years after the date of the final distribution of assets from the trust. Records should then be deleted unless the trustees are required to retain them by, or under an enactment or for the purposes of, court proceedings (including where trustees have reasonable grounds for believing they will be so required) or where the person to whom the information relates consents to the retention of information.

The information held must be provided to a law enforcement authority if requested from the trustees. The information must be provided within any reasonable period as specified by the authority. Where a disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the trustees. HMRC can also share information directly with law enforcement authorities in the UK.

### **Third party access requests**

From 1 September 2022, limited information on the beneficial ownership of registered trusts can be subject to third party access requests. Requesters must show that they have a legitimate interest which means they must be looking into a specific instance of money laundering or terrorist financing. Only information related to the beneficial owners will be released and no information regarding the trust assets should be disclosed.

Information relating to individuals who are minors, lack mental capacity or are at a disproportionate risk of harm may be exempted.

Further information on third party access requests will be available later in 2022.

Trusts that are registered only because they have a UK tax liability will not be subject to third party access provisions.

### **Penalties**

When the TRS was first introduced, the penalty regime announced was as follows:

- Registration made up to three months after the due date: £100 penalty
- Registration made three to six months after the due date: £200 penalty
- Registration more than six months late: either 5% of the total tax liability or £300 penalty, whichever is the greater sum

Since obligations now extend to non-taxable trusts, we may see changes to tax geared penalties. HMRC have stated that they are not automatically issuing penalties and will take a pragmatic approach. However, we would expect this approach to harden, and trustees should use their best endeavours to meet deadlines.

For further information regarding this, please contact Stephanie Parker, Trust Director, using the contact details on the back page.



## UK TRS for Non-UK Trusts



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