

New Rules for registration of trusts.

As part of the 5th Money Laundering Directive, the Government has introduced a new procedure for the registration of Trusts and Settlements with the Trust Registration Service (“TRS”).

The recent changes – which came into effect on from 6 October 2020 - means that all express trusts which were in existence, on the 6th October 2020, whether taxable or not must be registered by the 1st September 2022 and all trusts, which are created after that date, must also be registered within 90 days of it's creation.

Do I need to register?

Trustees are the persons whom hold the property in the trust for the benefit of the beneficiaries and are responsible for the administration of the trust, this includes the registration of the Trust with the TRS .

When a trust has multiple trustees, whilst all trustees are legally responsible for the trust, the trustees must nominate one of the trustees to act as the lead trustee. That trustee is then responsible for the administrative duties in relation to the tax affairs of the trust and is the main contact point that HMRC will use.

Each trust needs to be registered with details of a lead trustee. If the trust only has one trustee, then that trustee must be registered as the lead trustee.

Under the current guidance you must register if the trust becomes, or is liable for any of the following taxes:

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

The following types of trusts must register even if they have no tax liability:

- all UK express trusts — unless they are specifically excluded
- non-UK express trusts, like trusts that:
 - acquire land or property in the UK
 - have at least one trustee resident in the UK and enter into a ‘business relationship’ within the UK

If the trust is not resident in the UK ('non resident trusts'), you must register the trust if it becomes liable for tax on income coming from the UK or on UK assets.

If the trust has a tax liability but this is covered by a relief, you'll need to register the trust to claim the relief through Self Assessment.

Which Trusts do not need to be registered?

Under the current guidance (and as Trustee you are responsible for ensuring that you are up to date with any changes to the guidance) all taxable trusts must be registered however some examples of non-taxable trusts that would currently not need to be registered are:

- the trust is used to hold money or assets of a UK registered pension scheme — like an occupational pension scheme
- the trust is used to hold life or retirement policies providing that the policy only pays out on death, terminal or critical illness or permanent disablement, or to meet the healthcare costs of the person assured
- the trust is holding insurance policy benefits received after the death of the person assured — as long as the benefits are paid out from the trust within 2 years of the death
- charitable trust that is registered as a charity in the UK or which is not required to register as a charity
- it's a 'pilot' trust set up before 6 October 2020 and holds no more than £100 — pilot trusts set up on or after 6 October 2020 will need to register
- it's a co-ownership trust set up to hold shares of property or other assets which are jointly owned by 2 or more people for themselves as 'tenants in common'
- it's a will trust created by a person's will and comes into effect on their death providing they only hold the estate assets for up to 2 years after the person's death
- it's a trust for bereaved children under 18, or adults aged 18 to 25, set up under the will (or intestacy) of a deceased parent or the Criminal Injuries Compensation Scheme
- it's a 'financial' or 'commercial' trust created in the course of professional services or business transactions for holding client money or other assets

What information will I need to register ?

1. Details about the trust - the name of the trust, the date it was created, whether or not it is an express trust and details about land purchased.
2. Trustees – name, telephone number, date of birth, national insurance number of lead trustee (if available), nationality, passport details for lead trustee (if not a UK citizen) and country of residence.
3. Settlor - name, date of birth, date of death (if the trust was created upon death), nationality and country of residence (or last residence).
4. Beneficiaries – details of named beneficiaries and classes of beneficiary.
5. Details of assets held.
6. Details about any protectors or others associated with the trust.

What happens if I do not register?

If you do not register a trust that requires registration before the deadlines given by the HMRC then you may be issued a payment penalty from HMRC.

How do I register?

Before the lead trustee is able to register the trust as a trustee you will need to have an Organisational Government Gateway User ID and password. If you are registering multiple trusts you will need an Organisational Government Gateway User ID and password for each of the trusts. You are able to register for this user ID on the government [website](#). The initial registration can be done by Lever & Co on your behalf and we would be happy to assist you with this process. It is important to note that regardless of whether Lever & Co set up the initial trust for you the lead trustee will still need to register for the Organisational Government Gateway User ID and password. However this can be done at a later date to ensure that the deadline to register is not missed. We would be happy to assist you with this also. For further information please do not hesitate to contact the office or email our paralegal Joanne Tredgett on property@leverandco.com

Updating the trust

Once the trust is registered the lead trustee is responsible for ensuring that all details are kept up to date and that any changes are updated within 90 days of the change.

For taxable trusts the lead trustee must declare yearly that the trust details associated with the trust on the register are up to date. This is regardless as to whether any changes have been made on the trust.

If you are closing a trust or a trust has been changed from non-taxable to taxable this must all be recorded online.

Once the trust is registered, Lever & Co are able to be appointed as agents to act on the trust on your behalf. For more information on this please contact the office.

Closed trusts

Please note that all trusts created after 6 October 2020 regardless of whether they have since been closed (unless trust created on death and closed within the 2 years of the date of death as mentioned above) still required to be registered and then closed with the TRS.

For more information please contact the office on 01279 758 760.

Please note that this newsletter does not constitute legal advice.

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