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## A. LIST OF ACRONYMS AND DEFINITIONS AND USEFUL LINKS

### *Acronyms*

- CGT: Capital Gains Tax
- DOB: Date of Birth
- EOT: Employee Ownership Trusts
- FCA: Financial Conduct Authority
- HMRC: HM Revenue and Customs
- HMT: HM Treasury
- ID: Identification
- IHT: Inheritance Tax
- IIP: Interest in Possession
- NCA: National Crime Agency
- NINO: National Insurance Number
- PAYE: Pay As You Earn
- SA: Self-Assessment
- SDLT: Stamp Duty Land Tax
- SDRT: Stamp Duty Reserve Tax
- SI: Statutory Instrument
- TRS: Trusts Registration Service
- UK: United Kingdom
- UTR: Unique Tax Reference

### *Definitions*

- **Legislation:** The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI No. 2017/692)
- **Relevant UK Taxes:** the list of UK taxes that trustees of an express trust have to incur in relation to trust income or assets, in a given tax year, to require them to register their trust or update existing trust data on the Trust Register Service. The list is set out in regulation 45(14) of the legislation and is made up of: income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax, land and buildings transaction tax (Scotland).

### *Useful Links*

Trustees Tax Responsibilities: <https://www.gov.uk/trusts-taxes/trustees-tax-responsibilities>

Register your client's Trust: <https://www.gov.uk/guidance/register-your-clients-trust>

Register your client's Estate: <https://www.gov.uk/guidance/register-your-clients-estate>

## **B. SUMMARY**

### **What is the Trusts Registration Service?**

The Trusts Registration Service (TRS) is a new service that will provide a single online route for trusts and complex estates, to comply with their registration obligations and to obtain their Self-Assessment (SA) Unique Taxpayer Reference (UTR).

It replaces the current paper 41G (Trust) form and the ad hoc process for trustees to notify HMRC of changes in their circumstances. Trusts that are required to register with HMRC are now required to do so through the TRS.

### **What are the benefits of the TRS?**

The TRS will provide a single online route for trustees, and personal representatives of complex estates, to comply with their registration obligations. The benefits include:

- no more forms lost or delayed in the post
- you will only see those questions relevant to your particular type of trust or complex estate
- you can print a copy of the summary page and keep this for your records.

As well as implementing the requirements of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI No. 2017/692) (**THE LEGISLATION**), which came into force on 26 June 2017, the register will be in line with HMRC's digital strategy and provide greater tax transparency going forward.

You can access the legislation at: [http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi\\_20170692\\_en.pdf](http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf)

### **Which trusts need to use the TRS?**

- A UK express trust where the trustees have incurred a liability, in a given tax year, to pay any of the UK taxes listed below will need to be registered on the TRS; or,
- A non-UK express trust which receives UK source income or has UK assets on which the trustees have incurred a liability, in a given tax year, to pay any of the UK taxes listed below will need to be registered on the TRS.

The list of UK taxes is: income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax, land and buildings transaction tax (Scotland) (**THE RELEVANT UK TAXES**)

If after claiming a tax relief the trustees have not incurred a liability, in a given tax year, to any of the relevant UK taxes then we would not expect them to register on the TRS.

The trust will need to complete registration by 31 January after the end of the tax year in which the trustees have incurred a liability to any of the relevant UK taxes – see Q&A below about registration deadlines.

### **Which trusts do not need to use the TRS?**

You do not need to register in a given tax year under the following circumstances:

- if the trustees do not need to file a tax return and have not incurred a liability to pay any of the relevant UK taxes; or
- the trustees of a non-UK resident express trust which does not hold any UK assets or have any UK source income; or
- if the trust is deemed to be a non-UK express trust and has no UK source income or UK based assets but for some other reason the trustees have incurred a liability to pay any of the relevant UK taxes;
- the trustees of a non-UK resident trust which does not hold any UK assets or have any UK source income, but where the settlor is UK resident and pays tax on the income and gains; or
- the settlor or a beneficiary of the trust has incurred a liability to pay any of the relevant UK taxes in a tax year but the trustees are not liable to pay any of the relevant UK taxes; or
- the trustees of a **bare trust** as no liability arises at trust level as any tax liability is being incurred by the beneficiary; or
- if a **tax relief** is claimed which results in no liability to pay any of the relevant UK taxes the trustees are not obliged to register or update their existing details on the Trust Register;
- a non-UK resident trust with UK source income that is received directly by the IIP beneficiary and not reported on the trustees' tax return (unless they have incurred an income tax liability on other income, or another relevant UK tax liability, for example Capital Gains Tax);
- a UK resident trust if all income is received directly by the UK resident beneficiary and not reported on the trustees' tax return (unless they have incurred an income tax liability on other income, or another relevant UK tax liability, for example Capital Gains Tax);
- where a trust has no other UK tax liability other than a tax liability of less than £100 on **bank or building society interest income**;
- if the trust has been set up by statute (i.e. a **statutory trust**); or,
- an **authorised unit trust** (but an unauthorised trust will need to register if it incurs a liability to any of the relevant UK taxes); or
- the trustees of a **charitable trust** will not have to register until they incur a liability to pay any of the relevant UK taxes (**see section O for further details**).

#### **When do trustees need to complete and submit the registration?**

This depends on whether the trust is already registered for Self-Assessment (SA) for income tax or capital gains tax.

**Trust already registered for SA:** If the trust is already registered for income tax or capital gains tax and the trustees of the trust have incurred a relevant UK tax liability in a given tax year, then registration must be completed by no later than 31 January after the end of that tax year.

**Trust not registered for SA:** If the trust is not registered under SA and has incurred either an income tax or a capital gains tax liability for the first time in a given tax year then registration must be completed by no later than 5 October after the end of that tax year.

**Trust not registered for SA:** If the trust is not already registered for SA or does not need to register for SA and has incurred either an inheritance tax, stamp duty land tax, stamp duty reserve tax, or a land and buildings transaction tax (Scotland) liability in that tax year, then registration must be completed by no later than 31 January after the end of that tax year.

Examples are set out in the table below:

TAX YEAR	TAX INCURRED	SA REGISTRATION	REGISTRATION DEADLINE
2016-17	Income Tax	Not previously registered	5 October 2017
2016-17	CGT and SDLT	Already registered	31 January 2018
2017-18	IHT	Not previously registered and no need to register	31 January 2019
2017-18	Income Tax and SDRT	Not previously registered	5 October 2018

**What happens if I miss the 5 October registration deadline?**

In this first year of TRS, to allow sufficient time to complete the registration of a trust for self-assessment and provide beneficial ownership information there will be no penalty imposed where registration is completed after 5 October but before 5 January 2018. This only applies to a trust that is not already registered under SA and has incurred either an income tax or a capital gains tax liability for the first time.

See section D for further details.

**What happens if I miss the 31 January registration deadline?**

We will set out in the near future our penalty framework but the legislation requires that any civil penalty imposed must be proportionate to the offence committed.

**Is it true that once the registration process commences trustees and agents have 28 days to complete?**

If the trustee or agent uses the “Save For Later” facility then this only lasts for 28 days before the data is removed from the system. The “Save For Later” facility is an industry standard for this type of form.

**When will agents be able to register online?**

Lead trustees or personal representatives were given access in July 2017 and agents were given access to the TRS in October 2017.

**Can information held on the TRS relating to trusts be updated or amended using the online service?**

HMRC are delivering the project in a number of phases and are planning to develop a service to allow lead trustees and their agents to update their registered information or to declare that there have not been any changes to their registered information in 2018.

**If there are any changes to my trust when do I need to update the Register?**

You will need to update the Trust Register by 31 January after the end of the tax year in which the change occurred if the trustees incurred a liability to pay any of the relevant UK taxes in the previous tax year. However, in practice we would expect trustees to ensure that details of their trust are accurate and up to date at any point in time they make changes on the TRS. Where no relevant changes have taken place since the end of the previous tax year, the update can be limited to confirmation that no such changes have occurred.

If the trustees are not liable (in respect of any given tax year) to pay any of the relevant UK taxes then you are not required to update the Register. You will need to next provide an update by 31 January after the end of tax year in which the trustees are liable to pay any of the relevant UK taxes. However, you can make changes to the information you have provided whenever you want, through TRS, on a voluntary basis, even if the trustees were not liable to pay any of the relevant UK taxes.

You will be able to make changes to the trust's correspondence address, change the lead trustee and add or remove the details of the people who are associated with the trust at any time. For example, you will be able to add a new beneficiary or remove from the Register altogether a trustee or even an existing beneficiary if they are no longer deemed to be either an actual or potential beneficiary. You will also be able to close a trust or estate if it ceases to exist. These changes can be made at any time, and it is possible to update the information held on the Trust Register (in relation to any individual trust) on multiple occasions in the course of any given tax year.

The details of trust assets are only provided once at the first point of registration and if this changes over time you do not need to update information about the trust assets on the TRS.

#### **Who will the new online service affect?**

This will affect lead trustees and agents who need to register a new trust which has incurred a liability to pay any of the relevant UK taxes in the previous tax year, and existing trustees who are also required to register – even if they had registered their trust with HMRC prior to the introduction of the new service. This is because the new legislation expands the scope of information collected in relation to trusts that are required to register through the TRS.

#### **What is meant by a lead trustee?**

When a trust has multiple trustees then the trustees can nominate one of the trustees to act as the lead trustee. They are then responsible for the administrative duties in relation to the tax affairs of the trust and are the main contact point that HMRC will use.

#### **How will customers register online and access the new service?**

Customers will be able to register their trust with HMRC using a secure online service through GOV.UK.

<https://www.gov.uk/government/publications/trusts-and-estates-trust-details-41g-trust>

#### **Will customers still be able to submit a paper 41G to register a new trust?**

No. The 41G form has been withdrawn.

#### **A customer has already registered a trust which has incurred a liability to pay tax, using the 41G Form. Do they still need to use the online TRS?**

Yes. The 41G did not collect sufficient information to meet the requirements of the legislation, so those trusts which registered with HMRC before the launch of the TRS will need to use the service to provide all the information that is now required through this legislation.

## **What information is required by the TRS?**

The TRS will ask for:

- details of the trust assets, including addresses of UK properties, and a market valuation of assets held at the date that the assets were settled (**see section I**); and,
- the identity of the settlor, trustees, any person exercising effective control over the trust and the beneficiaries or class of beneficiaries (where individual beneficiaries have yet to be determined or identified).

The information required will include:

- name
- date of birth
- National Insurance number (NINO) if they are UK resident, unless they are under 16 years old, or a UTR, if any
- an address and passport or ID number for non-UK residents, if they don't have a NINO.

## **What details do we need to provide for each role?**

**Lead Trustee Individual:** Name, date of birth, telephone number, email, NINO or UTR (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

**Lead Trustee Company:** Company name, email, UTR (if available). If no UTR is available a registered address.

**Additional Trustee Individual:** Name, date of birth, NINO or UTR (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and registered address.

**Settlor Individual:** Name, date of birth, NINO or UTR (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

**Settlor Company:** Company name, UTR (if available). If no UTR is available; address.

**Beneficiary Individual:** Name, date of birth, NINO or UTR (if available). If no NINO is available; Passport or ID card details (if available) and address.

**Beneficiary charity/company/another trust:** Name, UTR (if available). Registered address if UTR not available.

**Protector etc. Individual:** Name, date of birth, NINO or UTR (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

**Protector etc. Company:** Name, UTR (if available). Registered address if UTR not available.

**Other Individuals:** Name, date of birth, NINO or UTR (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

**What details should I provide where the transfer into the trust was made during the settlor's lifetime but they have since died?**

In this situation, you can take the following action:

- Name and DOB should be entered as normal. If the DOB is not known then enter **01/01/1900**
- NINO or UTR; if you know or can find the settlor's NINO easily, use it. It makes the process a lot easier. If you don't know or can't find the settlor's NINO easily, then answer '**No**' to the settlor NINO question.
- Passport or ID card country of issue; complete this with the most relevant country – **most likely to be the United Kingdom (this should be written as "United Kingdom" and not as "UK")**.
- Passport or ID card number; complete this with deceased and the year of death, with no spaces. For example, where the settlor died in 1980, you will show – "**31/12/1980**".
- Passport or ID card expiry date; complete this with the date of death. If you don't know the exact date, you use 31 December of the year of death, which in this case would be **31/12/1961**
- Address; complete this with the settlors last known address. If the address is not known, we recommend using either the trustees' or agent's address except their postcode. Instead, the postcode used should be **NK1 1NK**. This will indicate to HMRC that the address either is not known or no longer exists.
- Where the settlor is deceased and the trustees do not know the year of death they can use "**1900**" where appropriate".

**Will you provide a helpline to support those who need help in registering online?**

Yes. For more information on how to contact HMRC please see link below:

<https://www.gov.uk/government/organisations/hm-revenue-customs/contact/trusts>

**What is meant by "any person exercising effective control over the trust"?**

Examples of such persons include the following:

- A person who can compel the trustees to dispose of, advance, lend, invest, pay or apply trust property/assets.
- A person who can compel the trustees to vary or terminate the trust.
- A person who can compel the trustees to add or remove a person as a beneficiary to or from a class of beneficiaries.
- A person who can compel the trustees to appoint or remove trustees.
- A person who has the power directly to appoint trustees, or to add or remove beneficiaries

**Do all estates need to register on the TRS?**

No. It is only complex estates that need to register on the TRS.

A complex estate, is an estate that does not meet the conditions for using the informal payment procedures at the Trust and Estate Settlement Manual ([TSEM7410](#)). In estates where there are underlying trusts, that receive the residue of the estate, the trustees will only be required to register at the end of the period of administration.

**What information is required to be provided in relation to complex estates?**

The following information is required:

- Estate: Name or title of the estate.
- Personal Representative: name; date of birth, telephone number, email address, address, NINO or UTR, and if NINO is not available then passport or ID card number and expiry date.
- Deceased: name, date of birth, date of death, address, NINO or UTR, and if NINO is not available then passport or ID card number and expiry date.

The form only requires details of the Personal Representative and the Deceased.

DRAFT HMRC GUIDANCE

## C. WHO NEEDS TO REGISTER

### Who needs to register?

- When the trustees of a UK express trust incur a liability to pay any of the relevant UK taxes in relation to the trust income or assets; or,
- When the trustees of a non-UK express trust incur a liability to pay any of the relevant UK taxes in relation to UK source income or UK assets held by the trust or if the asset is owned through an underlying company and the ownership of the asset (or receipt of income from the asset) is treated as a “look through” for any relevant tax purposes.

### Who is responsible for completing the registration process?

The responsibility for registration lies with the trustees although trustees can appoint an agent to register the trust on their behalf.

### Who in practice do HMRC want to be responsible for providing the information?

The legal responsibility falls upon the trustees to complete the registration process and, when a trust has multiple trustees, it is a matter for the trustees to decide and appoint a lead trustee to complete the registration process. Alternatively, the trustees may appoint an agent to complete the registration process.

### What is meant by a lead trustee?

When a trust has multiple trustees then the trustees can nominate one of the trustees to act as the lead trustee. They are then responsible for the administrative duties in relation to the tax affairs of the trust and are the main contact point that HMRC will use.

### What is an express trust?

In March 2017, HM Treasury published [its response](#) to its consultation on the implementation of the Fourth EU Money Laundering Directive. That response set out that:

*“The term “express trust” should be taken to mean a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust.”*

### Do I only need to complete the register through TRS if I am a Trust or Company Service Provider (TCSP) acting by way of business?

No. The requirement to provide details of a trust on the TRS is not limited to a TCSP. It applies to anyone acting as a trustee of an express trust that incurs a liability to pay any of the relevant UK taxes.

### Where real estate is owned jointly between two or more persons either as joint tenants or as tenants in common, will the owners have to register?

No, provided they hold the property for themselves absolutely both legally and beneficially.

**Do trusts involving co-owners of land who own the land legally and beneficially for themselves need to register?**

We consider a declaration of trust over land (where two or more people own real estate legally and beneficially for themselves) to be an express trust although trustees should assess this on a case-by-case basis against the definition of an 'express trust'. However, in most circumstances this will be a bare trust. If the declaration of trust creates more complex trusts, whether it requires registration depends on whether the trustees incur a liability to pay any of the relevant UK taxes (in their capacity as trustees).

**Do the trustees of trusts involving co-owners of land who own the land legally and beneficially for themselves need to maintain accurate and up to date written records under regulation 44(1)?**

For trusts involving co-owners of land where the liability to tax incurred by the trustee is in their capacity as a beneficiary we would still expect the trustees to maintain accurate and up to date written records of all the actual and potential beneficial owners of the trust as set out under regulation 44(1) of the legislation.

The written information that should be maintained by the trustees are:

- Full name of the trust
- The date on which the trust was created
- The country where the trust is considered to be resident for tax purposes
- The place where the trust is administered
- A contact address for the trustees
- Full name of advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust
- Details of the settlors and beneficiaries such as name; national insurance number or unique tax reference, if any; date of birth; address, and, if address is not in the UK, Passport or ID card details.

We would expect the trustees of a relevant trust to hold very similar information to that set out under the Q&A above entitled: "What details do we need to provide for each role?"

This information should be held because under the legislation any law enforcement authority can request information about the beneficial owners of the trust including from a trust which does not incur a liability to any of the relevant UK taxes.

**Are bare trusts 'express trusts' for the purposes of the TRS?**

Whether a trust is an express trust should be assessed against the definition set out above. The trustees of a bare trust are not required to register as no tax liability for bare trusts arises at trust level.

However, even if the trustees of a bare trust are not required to register on the TRS, the legislation require that trustees hold accurate and up-to-date written records of all the actual and potential beneficial owners of the trust as set out under regulation 44(1) of the legislation.

**Do trustees of a non-UK resident trust which does not hold any UK assets or have any UK source income, but where the settlor is UK resident and pays tax on the income and gains, need to register?**

No. The trustees have to have incurred a liability to pay one or more of the relevant UK taxes in relation to UK source income or UK assets only directly held by the non-UK resident trust.

**Do I need to register a non-UK resident trust with UK source income, if all of the income is received directly by the IIP beneficiary, and not reported on the trustees' tax return?**

If the income is not received by the trustees, because it is paid directly to the beneficiary, then we have no statutory basis to charge the trustees to income tax. Therefore the trustees have not incurred an income tax liability. They do not need to register in the TRS, unless they have incurred an income tax liability on other income, or another tax liability, for example Capital Gains Tax.

**Do I need to register my UK resident trust, if all of the income is received directly by the UK resident beneficiary, and not reported on the trustees' tax return?**

If the income is not received by the trustees, because it is paid directly to the beneficiary, then we have no statutory basis to charge the trustees to income tax. Therefore the trustees have not incurred an income tax liability. They do not need to register on TRS, unless they have incurred an income tax liability on other income, or they have incurred another tax liability, for example Capital Gains Tax.

**Why do Estates need to register on TRS?**

Estates are not part of the TRS requirements under the legislation. However, the method by which complex estates register with HMRC is through the same online process since the 41G form was withdrawn in April 2017.

**What is a complex estate?**

A complex estate, is an estate that does not meet the conditions for using the informal payment procedures at the Trust and Estate Settlement Manual ([TSEM7410](#)).

**Are Employee Ownership Trusts an express trust and need registration on the TRS?**

Yes. We take the view that an Employee Ownership Trust would be deemed as a relevant trust as defined by the legislation. However, the trustees would only be required to register or update their details on TRS when they are liable to pay any of the relevant UK taxes in a given tax year.

**Do Unit Trusts need to register?**

We do not consider an authorised unit trust to fall within the definition of a relevant (express) trust within the definition set out in the legislation and therefore do not need to register on the TRS.

We do, however, consider an unauthorised unit trust to fall within the definition of a relevant (express) trust and therefore would need to register on the TRS if it incurred a liability to any of the relevant UK taxes in a given tax year.

## D. WHEN IS THE UK TAX LIABILITY TRIGGERED

### **What are the UK taxes that an express trust need to incur in a given tax year on the trust income or assets to trigger a requirement for the trustees to register the trust on the TRS?**

The list of UK taxes that trustees have to incur in a given tax year to require them to register their trust or update existing trust data on the TRS are set out in regulation 45(14) of the legislation. These are:

- income tax
- capital gains tax
- inheritance tax
- stamp duty land tax
- stamp duty reserve tax
- land and buildings transaction tax (Scotland).

A UK express trust is required to register when it pays any of the above UK taxes on trust income or assets directly held by the trust.

A non-UK express trust is required to register when it pays any of the above UK taxes on only UK source income or UK assets held directly by the trust.

### **Which is the first tax year to be counted under the legislation?**

Even though the legislation came into force on 26 June 2017 the registration deadline of 31 January 2018 applies in respect of the tax year 2016-17. This also applies to a non-UK resident trust that incurred a liability to any of the relevant UK taxes in 2016-17.

The registration deadline of 5 October 2017 applies only to trusts that have incurred a liability to either income tax or capital gains tax for the first time in the tax year 2016-17. However, in this first year, the failure to notify penalties will not be imposed on those trusts and complex estates that register after 5 October 2017 but before 5 January 2018.

### **What happens if a trust had incurred a UK tax liability in 2016-17 but was wound up since April 2017?**

If that trust incurred a liability to income tax or CGT in 2016-17 for the first time then it needs to register on TRS by 5 October 2017 (now extended to 5 January 2018) to obtain SA registration to pay the tax owed.

If that trust was already SA registered or does not require SA registration then it would not be required to register on the TRS given it no longer exists.

### **If trustees are liable to tax in 2017-18 when do they register?**

In these circumstances the trustees will need to register by 31 January 2019 unless they have incurred either an income tax or a CGT liability for the first time in 2017-18 which case they need to register by no later than 5 October 2018.

### **For some years my trust incurs a UK tax liability and in other tax years my trust has no UK tax to pay. When do I need to register or update my trust details?**

The trigger point for either first registration or updating details on the Register is when the trustees incur a liability to pay any of the relevant UK taxes. So in the tax years where no tax liability arises then the trustees

are not required to register or update in that tax year. However, you can make changes to the information you have provided whenever you want, through TRS, on a voluntary basis even if the trustees were not liable to pay any of the relevant UK taxes.

**If a trust incurs inheritance tax charges in 2016-17 but had no further UK tax charges until in 2026-27 does that mean it would be required to satisfy the registration obligations by 31 January 2018 but then not be bound to satisfy the registration obligations again until 31 January 2028?**

The trigger point for registration is when the trustees have incurred a liability to pay any of the relevant UK taxes. So if the trustees incurred a relevant UK tax liability in 2016-17 then registration is required by 31 January 2018.

And if no further relevant UK tax is paid until say in 2026-27 then the next deadline is 31 January 2028 by which point the registered information must be updated or, where it remains up to date and accurate, a declaration provided that no changes have occurred. However, if the lead trustee wants to update the registered information before 31 January 2028 they are able to do so through TRS at any time.

**For trusts which become registrable by virtue of liability to pay IHT, SDLT or SDRT is the TRS registration deadline fixed by reference to the chargeable event or the payment deadline?**

It is determined by the chargeable event because the legislation stipulates when the relevant UK tax liability was “first” incurred.

- for IHT, within 6 months of the chargeable event;
- for SDLT, within 30 days of the chargeable event; and
- for SDRT, within 14 days of CREST transactions or by the seventh day of the month following a non-CREST transaction

For example: a trust has no tax liability other than an IHT liability which arises on 16 January 2017 (chargeable event). It has until 16 July 2017 to pay (payment deadline). Should the trustees therefore register by 31 January 2018 (tax liability incurred in 2016-17) or by 31 January 2019 (tax liability incurred in 2017-18)? **The trustees need to register by 31 January 2018.**

For example: a trust has no tax liability other than an SDLT liability incurred on 20 March 2017 (chargeable event). It has until 20 April 2017 to pay (payment deadline). Should the trustees therefore register by 31 January 2018 (tax liability incurred in 2016-17) or by 31 January 2019 (tax liability incurred in 2017-18)? **The trustees need to register by 31 January 2018.**

**Do trustees have to complete a new registration each time or just update their existing registration?**

When a trustee registers a trust on TRS for the first time then that is a new registration process. In subsequent tax years the trustees will be just updating the details of the existing registration or confirming that they details remain up to date and accurate.

**If a trust owns shares in a UK or non-UK company and the company owns assets which trigger UK tax liability, does the trust need to register?**

A trust that **owns shares in a UK or non-UK company** and the company owns UK assets which trigger a UK tax liability does not need to register on the Trust Register. However, if the ownership of the asset (or receipt of income from the asset) is treated as a "look through" for any relevant tax purposes such that any UK tax liability is the tax liability of the trustees and not the company then the trustees will need to register the trust on the Trust Register.

The underlying company may be required to register details of beneficial ownership on the companies register administered by Companies House.

<https://www.gov.uk/government/organisations/companies-house>

**If a trust holds UK property through an offshore nominee company which it owns, are the assets non-UK or UK assets?**

A trust that holds UK property in the name of a nominee we treat as if the trust is holding a UK asset i.e. the **nominee arrangement** is a "look through" for tax purposes and any tax liability in relation to the property is the tax liability of the trustee, not the nominee. Therefore the trust is registrable in a tax year in which a relevant UK tax liability is incurred.

**If CGT holdover claim was made then why is this relevant to the trust register and if trustees don't know, how should they respond?**

If a tax relief is claimed which results in no liability to pay any of the relevant UK taxes the trustees are not obliged to register or update their existing details on the TRS. However, you can make changes to the information you have provided whenever you want, through TRS, on a voluntary basis even if the trustees were not liable to pay any of the relevant UK taxes.

We collect details of whether a CGT holdover relief has been claimed to help assist with our tax compliance activity. If the trustees or agent are not aware of whether the relief was claimed they should ask the settlor in the case of a new trust and in relation to existing trusts they can answer "no" if they are not sure as HMRC would have checked at the time whether a CGT holdover relief had been claimed.

## E. WHAT ARE THE REPORTING DEADLINES

### When do trustees need to complete and submit the registration?

This depends on whether the trust is registered for SA for income tax or capital gains tax.

**Trust already registered for SA:** If the trust is already registered for income tax or capital gains tax and the trustees of the trust have incurred a relevant UK tax liability in a given tax year, then registration must be completed by no later than 31 January after the end of that tax year.

**Trust not registered for SA:** If the trust is not registered under SA and has incurred either an income tax or a capital gains tax liability for the first time in a given tax year then registration must be completed by no later than 5 October after the end of that tax year.

**Trust not registered for SA:** If the trust is not already registered for SA or does not need to register for SA and has incurred either an inheritance tax, stamp duty land tax, stamp duty reserve tax, or a land and buildings transaction tax (Scotland) liability in that tax year, then registration must be completed by no later than 31 January after the end of that tax year.

### What happens if I miss the 5 October registration deadline?

In this first year of TRS, to allow sufficient time to complete the registration of a trust for self-assessment and provide beneficial ownership information there will be no penalty imposed where registration is completed after 5 October but before 5 January 2018. This only applies to a trust that is not already registered under SA and has incurred either an income tax or a capital gains tax for the first time.

### What happens if I miss the 31 January registration deadline?

We will set out in the near future our penalty framework but you can however be assured that HMRC is required under the legislation to ensure that any civil penalty imposed is proportionate to the offence committed and that there is a robust appeals process should a trustee disagree with HMRC's decision.

### Why is 31 January the annual registration deadline?

The Trust Register has been built on the existing tax reporting framework both to minimise administrative costs for trustees and to strike the right balance between minimising burdens on trustees and giving law enforcement the tools they need to combat the misuse of trusts. The 31 January reporting deadline aligns with the timetable for submitting SA returns so this should help streamline the reporting requirements for trustees and make it simpler for trustees to understand and comply with the rules.

Examples of registration deadlines are set out in the table below:

TAX YEAR	TAX INCURRED	SA REGISTRATION	REGISTRATION DEADLINE
2016-17	Income Tax	Not previously registered	5 October 2017
2016-17	CGT and SDLT	Already registered	31 January 2018
2017-18	IHT	Not previously registered and no need to register	31 January 2019
2017-18	Income Tax and SDRT	Not previously registered	5 October 2018

## **F. DETAILS OF THE SETTLORS**

### **What is the maximum number of settlors we can register?**

Currently you can record two settlors on the service.

### **What happens if my trust has more than two settlors?**

If there are more than two settlors you should put the first two on the TRS, then write to us to provide the additional details at: Trusts, HM Revenue and Customs, BX9 1EL.

### **What happens if I do not have all information required to register about a settlor?**

We would expect trustees to take all reasonable effort and steps to obtain the information requested and ensure accurate and up to date written records are maintained of all the beneficial owners. A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain relevant information.

### **After making all reasonable efforts and steps I still don't have 100% of the trust data so should I still register the trust on the TRS?**

Yes. You should register the trust on the TRS even if after taking all reasonable efforts and steps you do not have 100% of the trust data.

## **G. DETAILS OF THE TRUSTEES**

### **What is the maximum number of trustees we can register?**

Currently they can record five trustees on the service, one lead trustee and four additional trustees.

### **What happens if my trust has more than five trustees?**

If there are more than five trustees they should put the first five on the service, then write to HMRC to provide the details of the additional trustees at: Trusts, HM Revenue and Customs, BX9 1EL.

### **What do I do if there is more than one corporate trustee?**

The TRS will include a facility to add more trustees in the future (through the use of third party software) but in the interim we advise trustees and agents to write to us to provide details at the following address: Trusts, HM Revenue and Customs, BX9 1EL.

### **What happens if I do not have all information required to register about a trustee?**

We would expect trustees to take all reasonable effort and steps to obtain the information requested and ensure accurate and up to date written records are maintained of all the beneficial owners. A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain relevant information.

### **After making all reasonable efforts and steps I still don't have 100% of the trust data so should I still register the trust on the TRS?**

Yes. You should register the trust on the TRS even if after taking all reasonable efforts and steps you do not have 100% of the trust data.

## H. DETAILS OF THE BENEFICIARIES

### **What needs to be disclosed in relation to beneficiaries?**

Under the TRS the trustees will need to disclose to HMRC the identities/names of all beneficiaries who are either actual or potential beneficiaries. You can use a description of the class of persons to identify (actual or potential) beneficiaries.

In line with regulations 6(1)(d), 45(2)(d) and 45(8) of the legislation we are allowing trustees to make appropriate use of the description of the "class" in order to describe the trust's beneficiaries, where not all of those beneficiaries have been determined. Where a beneficiary is named on a trust instrument separate from members of a named class then they can clearly be determined and trustees must provide the relevant information. But where a beneficiary is un-named, being only part of a class of beneficiaries, a trustee will only need to disclose the identities of the beneficiary when they receive a financial or non-financial benefit from the trust after 26 June 2017 - the commencement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

We want to get an accurate picture of who can benefit from a trust. Some trusts may list named individuals, who only become potential beneficiaries contingent upon, for example, the death of a named beneficiary or in circumstances where there are no remaining named beneficiaries or beneficiaries in a class. Where this occurs we are content that the individuals are listed as a class of beneficiaries, until such time as the contingent event occurs. At that point the individual potentially stands to benefit and should be named.

The above apply to both:

- regulation 44 (where trustees of a relevant trust are required to maintain accurate and up to date written records of the beneficial owners of the trust); and,
- regulation 45 (where trustees of a taxable relevant trust are required to register the beneficial owners of the trust with HMRC using the TRS)

A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain the relevant information.

### **What is meant by potential beneficiaries?**

Some trusts may list named individuals, who only become potential beneficiaries contingent upon, for example, the death of a named beneficiary or in circumstances where there are no remaining named beneficiaries or beneficiaries in a class. Where this occurs we are content that the individuals are listed as a class of beneficiaries, until such time as the contingent event occurs. At that point the individual potentially stands to benefit and should be named on the TRS.

### **Can you give examples of how a beneficiary should be identified/named on the TRS?**

#### *Example A*

A Trust Deed states that the beneficiaries are the grandchildren (some are alive and some are yet to be born in the future) of the settlor and any other persons added by the trustees as per instructions from the

settlor. The settlor adds his niece, Mary, so that she will benefit at the trustees' discretion. The settlor also adds that, if Mary dies before any of the grandchildren, then a distribution can be made to John (a nephew of the settlor).

*In this case, under the TRS the grandchildren should be listed as a class. However, if the trustees make a financial payment or provide a non-financial benefit to any of the grandchildren then at that point in time the trustees should record the identity details of that particular grandchild that has been in receipt of a benefit.*

*Mary's details should be registered as an individual, as she could receive a benefit at any point in time.*

*John should be identified as a class of beneficiary but if at some point in time in the future John is in receipt of a benefit from the trust assets or income then this means he can be identified by name and as such his details should go on the TRS.*

#### Example B

Deed says - John Smith and Jane Green, their children and grandchildren and a charity chosen by the eldest child of John and Jane. To date only John and Jane have received a financial benefit from the trust assets/income.

*John Smith and Jane Green should be registered as they have been "determined" in light of trustees being able to make a trust distribution and are a named beneficiary.*

*Children and grandchildren are recorded as a class and also the charity should be recorded as a class as the name of the charity has not been determined/identified. When a child or grandchild receives a benefit from the trust assets/income then at that point in time he or she should be named on the TRS.*

*Likewise, when the charity receives a trust benefit at some point in the future, then the details of the charity should be recorded on TRS at that point in time because in order to have received a financial benefit the trustees must have been able to determine/identify the charity.*

**The legislation states that where the individuals (or some of the individuals) benefitting from a trust have not been determined, a description of the class of beneficiaries can be provided. What does determined mean in this context?**

We interpret "determined" to mean when a beneficiary is in receipt of a financial or non-financial benefit from the trust then at that point a trustee will need to disclose the identities of the beneficiary the trustees must have been able to determine/identify the beneficiary in order to make a distribution from the trust asset or income. Turning to an employment related trust, we expect Directors and key employees to be listed on the register, with others being recorded as a class of beneficiaries.

**If there is a class of beneficiaries, can it be confirmed that it is only necessary to give a description of the class, even if a member of that class could be individually identified by name?**

Where the beneficiaries of a trust are not named and being part of a class of beneficiaries, then a description of the class of beneficiaries should be recorded on the TRS. If someone from the class of beneficiary can be identified by name then it is fine to use class as a description. A trustee will only need to disclose the identities of the beneficiary when they receive a financial or non-financial benefit from the trust after 26 June

2017 - the commencement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

For charitable trusts, occupational pension schemes and employee ownership trust see Q&A below.

**In relation to employee ownership trusts, charitable trusts and occupational pension schemes, if they have a class of beneficiaries, can it be confirmed that it is only necessary to give a description of the class, even if a member of that class could be individually identified?**

To help keep administrative burdens to a minimum for business type trusts with particularly large number of beneficiaries (such as occupational pension schemes, charitable trusts and employee benefit trusts) the trustees will only be asked to identify the class of beneficiary if the number of named beneficiaries exceed ten. These types of trusts (with the exception of occupational pension schemes) will, however, be required to provide the identities of key employees and Directors.

**What is meant by “key employees” and Directors?**

We define this as staff who are responsible for the operational running of the business at the top of the organisational chain by making key decisions or that have a financial ownership or stake in the organisation. We would also define this as key members of staff whose skills and expertise are critical to the business for which they enjoy a high level of remuneration: for example – the manager and players in a football club and not the person at the gate checking tickets or in the office carrying out administrative duties.

This information should be limited to current directors and key employees rather than former directors and key employees.

**What happens if I do not have all information required to register about a beneficiary?**

We would expect trustees to take all reasonable effort and steps to obtain the information requested and ensure accurate and up to date written records are maintained of all the beneficial owners. A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain this information.

**After making all reasonable efforts and steps I still don't have 100% of the trust data so should I still register the trust on the TRS?**

Yes. You should register the trust on the TRS even if after taking all reasonable efforts and steps you do not have 100% of the trust data.

**Would details in attendance notes made by a solicitor of a settlor's wishes need to be disclosed?**

No. We do not consider attendance notes made by a solicitor to be a 'document from the settlor'.

## I. DETAILS OF THE ASSETS

### **Do assets have to be valued according to market or book value?**

We consider that the reported value of the trust assets – including shares in a private company - needs to be based on their market value at the date on which the information is first provided.

### **What does the date on “which the information is first provided mean?”**

This means the date on which the asset(s) was placed in the trust by the settlor, when the settlement was first created. **The TRS only collects information on the values at the initial registration.**

Trustees will need to provide details of additions to trust assets as part of their annual tax return i.e. trustees will need to complete Q12 of the SA900 tax return, just as they did before TRS was introduced.

### **How do I value my trust assets?**

To keep administrative burdens on trustees to a minimum we are not expecting any formal valuation but as was done with the previous paper 41G paper form we would expect trustees acting within their professional duties to provide a good estimate of the market value of the assets.

### **What happens if the trust was set up several years or decades ago and we have no way of knowing the value of assets at the time when the trust was set up?**

If you are registering a trust where the value of assets were notified to HMRC previously through either 41G paper or SA900 tax returns then you should just complete “Other Asset” field using the term – “Already notified”, leaving all other asset fields marked as “£1”.

### **Where the trustees own shares in a company which owns 'real property', are the trustees required to provide the address of the property?**

No. The registration process only requires the address of a property directly held and owned by the trust. If the property is held either through a UK or non-UK company, whose shares are in turn held within a trust, we would not then require trustees to disclose the address of the property. Trustees should be aware of any other reporting requirements (e.g. Companies House) which are outside the scope of this guidance.

### **Can trustees register the nominal assets of a pilot trust even where it is expected that the trust will be fully funded at a later date, provided they meet the registration deadline?**

Yes. However, any additions to trust assets will be captured in the trust tax return filing process and registration on TRS is only required when the trustees incur a liability to any of the relevant UK taxes.

## J. DETAILS OF THE ADVISERS

### **Are trustees required to provide details of all advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust?**

To keep administrative burdens on trustees to a minimum the TRS simply requires the details of the agent (if one exists) that is acting on behalf of the trustee in relation to the trustees' registration affairs. No other information of other advisers is required. However, trustees should keep their own written records of any advisers being paid to provide legal, financial or tax advice in relation to the trust. The only details that should be kept are the full name and address of the advisers being paid to provide professional advice.

### **What information will an agent need to provide as part of the registration process?**

We will be requiring agents acting on behalf of trustees to provide information about themselves, largely contact information should we need to contact an agent if there are technical issues with the submission of their registration. The information that will be sought from an agent as part of TRS is as follows:

- Agency/Agent Name
- Agent Address
- Telephone Number
- Customer/Agent Reference

## **K. TRUST DATA RECORD KEEPING**

### **Will the data relating to my trust become public?**

No. The legislation specifies that information held on the TRS can only be shared by HMRC with law enforcement authorities in the UK or in another EEA member state, if requested.

### **Can the information on the TRS be updated without there being a tax liability in that tax year?**

Yes. The TRS has been designed so that trustees can amend the details at any time irrespective of whether the trustees incur a relevant UK tax liability.

### **If there are any changes to my trust when do I need to update the Register?**

You will need to update the Register by 31 January after the end of the tax year in which the change occurred if the trustees were liable to pay any of the relevant UK taxes. Where no relevant changes have taken place since the end of the previous tax year, the update can be limited to confirmation that no such changes have occurred.

If the trustees are not liable (in respect of any given tax year) to pay any of the relevant UK taxes then you are not required to update the Register. You will need to next provide an update by 31 January after the end of tax year in which the trustees are liable to pay of the relevant UK taxes. However, in practice you can make changes to the information you have provided whenever you want, through TRS, on a voluntary basis even if the trustees were not liable to pay any of the relevant UK taxes.

You will be able to make changes to the trust's correspondence address, change the lead trustee and add or remove the details of the people who are associated with the trust at any time. For example, you will be able to add a new beneficiary or remove a trustee. You will also be able to close a trust or estate if it ceases to exist. These changes can be made at any time, and it is possible to update the information held on the TRS (in relation to any individual trust) on multiple occasions in the course of any given tax year.

### **Will HMRC keep historical information on the register after they have been informed that it has changed?**

The register will contain a snapshot of the most up to date information that is held by HMRC as supplied by our customers. The register will not contain historical information about people who had previously been associated with the trust but who are no longer e.g. a beneficiary.

### **Will HMRC keep historical information on the register after they have been informed by trustees or an agent that a trust no longer exist?**

If HMRC is notified that a trust or complex estate has been closed down then that information will no longer form part of the Trust Register.

### **When a trust first registers or updates existing details should trustees provide information about current trustees and (actual and potential) beneficiaries of the trust at that point in time or should the information also include details of trustees and beneficiaries in the past?**

The information should be about the current beneficial owners of the trust and not details about individuals that were previously trustees or beneficiaries and are no longer associated with the trust.

**The legislation states that amendments should be made after the end of the tax year in which the change occurs where the trustees have incurred a liability to a UK tax. So if there is change to trustees in October 2019 when do I amend the details on the TRS – by 31 January 2020 or by 31 January 2021?**

You will need to update the Trust Register by 31 January after the end of the tax year in which the change occurred if the trustees incurred a liability to pay any of the relevant UK taxes in the previous tax year. However, in practice we would expect trustees to ensure that details of their trust are accurate and up to date at any point in time they make changes on the TRS.

You can make changes to the information you have provided whenever you want, through TRS, on a voluntary basis, even if the trustees were not liable to pay any of the relevant UK taxes.

If you are updating the TRS in relation to the tax year 2018-19 in say November 2019 then we would usually expect the trustees to provide an accurate and up to date position as at November 2019 which should include updating the TRS to reflect a change to the trustees made in October 2019. The TRS is designed to help law enforcement authorities tackle the misuse of trusts so we advise trustees that upon entering data on TRS to ensure the details are accurate and up to date at that point in time.

**Where a trust does not incur a liability to pay tax annually and is therefore not required to register or update the register annually will there be a process by which the trustees can apply to remove the trust data from the register?**

No. The data must remain on the register should a law enforcement authority request the information.

**Where a potential beneficiary receives an actual benefit from the trust on a one off basis, can the trustees apply (and if so how) to have that beneficiary's details removed from the register?**

No. The data must remain on the register should a law enforcement authority request the information.

**Do trustees of all UK express trusts irrespective of whether they have incurred a liability to pay any of the relevant UK taxes in a given tax year need to maintain accurate and up to date written records under regulation 44(1)?**

Yes. We would expect the trustees to maintain accurate and up to date written records of all the actual and potential beneficial owners of the trust as set out under regulation 44(1) of the legislation.

The written information that should be maintained are:

- Full name of the trust
- The date on which the trust was created
- The country where the trust is considered to be resident for tax purposes
- The place where the trust is administered
- A contact address for the trustees

- Full name of advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust
- Details of the settlors and beneficiaries such as name; NINO or UTR, if any; date of birth; address; and, if address is not in the UK, Passport or ID card details.

We would expect the trustees of a relevant trust to hold very similar information to that set out in section B under the Q&A entitled: “What details do we need to provide for each role?”

This information should be held because under the legislation any law enforcement authority can request information about the beneficial owners of the trust including from a trust which does not incur a liability to any of the relevant UK taxes.

**Do trustees of all non-UK resident express trusts that have UK assets or UK source income on which the trustees have incurred a liability to pay any of the relevant UK taxes in a given tax year need to maintain accurate and up to date written records under regulation 44(1)?**

Yes. We would expect the trustees to maintain accurate and up to date written records of the beneficial owners of the trust as set out under regulation 44(1) of the legislation.

The written information that should be maintained are:

- Full name of the trust
- The date on which the trust was created
- The country where the trust is considered to be resident for tax purposes
- The place where the trust is administered
- A contact address for the trustees
- Full name of advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust
- Details of the settlors and beneficiaries such as name; NINO or UTR, if any; date of birth; address; and, if address is not in the UK, Passport or ID card details.

We would expect the trustees of a relevant trust to hold very similar information to that set out in section B under the Q&A entitled: “What details do we need to provide for each role?”

In line with regulations 6(1)(d), 45(2)(d) and 45(8) of the legislation we are allowing trustees to make appropriate use of the description of the “class” in order to describe the trust’s beneficiaries, where not all of those beneficiaries have been determined. Where a beneficiary is named on a trust instrument separate from members of a named class then they can clearly be determined and trustees must provide the relevant information. But where a beneficiary is un-named, being only part of a class of beneficiaries, a trustee will only need to disclose the identities of the beneficiary when they receive a financial or non-financial benefit from the trust after 26 June 2017 - the commencement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

We want to get an accurate picture of who can benefit from a trust. Some trusts may list named individuals, who only become potential beneficiaries contingent upon, for example, the death of a named beneficiary or in circumstances where there are no remaining named beneficiaries or beneficiaries in a class. Where this

occurs we are content that the individuals are listed as a class of beneficiaries, until such time as the contingent event occurs. At that point the individual potentially stands to benefit and should be named.

The above apply to both:

- regulation 44 (where trustees of a relevant trust are required to maintain accurate and up to date written records of the beneficial owners of the trust); and,
- regulation 45 (where trustees of a taxable relevant trust are required to register the beneficial owners of the trust with HMRC using the TRS)

A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain the relevant information.

This information should be held because under the legislation any law enforcement authority can request information about the beneficial owners of the trust including from a trust which does not incur a liability to any of the relevant UK taxes.

DRAFT HMRC GUIDANCE

## **L. SHARING TRUST DATA WITH LAW ENFORCEMENT**

### **What information is required to be provided to law enforcement authorities?**

The information supplied would depend on the request made by the law enforcement authority.

### **Would I be informed (whether as a trustee, settlor or beneficiary) that HMRC has passed my trust details to a law enforcement authority?**

No

### **Will I have to provide more information about the trust if requested by law enforcement?**

Yes. The information supplied would depend on the request made by the law enforcement authority.

### **Who are the UK law enforcement authorities under the legislation?**

Under the terms of the legislation the following organisations are deemed as the UK law enforcement authorities who HMRC can share the data contained in the TRS:

- Financial Conduct Authority (FCA)
- National Crime Agency (NCA)
- the police forces maintained under section 2 of the Police Act 1996(a)
- the Police of the Metropolis
- the Police for the City of London
- the Police Service of Scotland
- the Police Service of Northern Ireland
- the Serious Fraud Office (SFO)

## **M. WHAT ARE THE PENALTIES FOR NOT COMPLYING**

### **What powers does HMRC have to penalise trustees that do not comply?**

We will set out in the near future our penalty framework but the legislation requires that any civil penalty imposed must be proportionate to the offence committed.

DRAFT HMRC GUIDANCE

## N. REGISTERING AN OCCUPATIONAL PENSION SCHEME

### Do occupational pension schemes need to register?

The two conditions for registration are:

Condition A: is the trust in question is either a UK express trust or a non-UK express trust with UK source income or UK assets; and,

Condition B: are the trustees liable to pay any of the relevant UK taxes in relation to the income or assets of the trust.

If the answer to both of these questions is 'yes' then the trustees need to register.

Normally, we would expect a pension scheme set up as a trust to be an express trust for these purposes.

Registered pension schemes will **not** need to register if the scheme administrator has to pay UK income tax solely because:

- they are jointly and severally liable with the member for a lifetime allowance charge;
- they pay the member's annual allowance charge (also called 'scheme pays'); or,
- they are liable to
  - special lump sum death benefits charge
  - short service refund lump sum charge
  - authorised surplus payments charge
  - de-registration charge
  - unauthorised payments charge
  - unauthorised payments surcharge
  - scheme sanction charge
  - overseas transfer charge or
  - tax under PAYE on a member's pension or lump sum benefits or on the benefits of the recipient after the member dies.

### Will occupational pension schemes need to follow this process every tax year?

Yes. The trustees will need answer each of these two questions/conditions each tax year as registration is linked to when the trustees incur a liability to pay any of the relevant UK taxes.

### What is an express trust?

In March 2017, HM Treasury published [its response](#) to its consultation on the implementation of the Fourth EU Money Laundering Directive. That response set out that:

*"The term "express trust" should be taken to mean a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust."*

Normally, we would expect a pension scheme set up as a trust to be an express trust for these purposes.

**Is Part 5 a standalone section that applies to all express trusts, regardless of the amendment made to regulation 8 (Application)?**

Part 5 of the legislation relates only to express trusts and should be read alongside paragraphs 5 and 6 of the legislation. Part 5 does apply to an occupational pension scheme to the extent that it is deemed to be a taxable relevant trust within the definition set out in part 5. We expect that most registered pension schemes will be express trusts but will not be taxable relevant trusts.

**Does the UK tax liability have to fall on the trustee or the pension scheme administrator/manager?**

For the purposes of the legislation, in the case of a trust which is a collective investment scheme, a reference to the trustees of a relevant trust includes a reference to the manager or administrator of the collective investment scheme including scheme administrator. Therefore, if the pension scheme operator/manager incurs a liability to any of the relevant UK taxes then registration on TRS will be required.

If the tax liability falls on the scheme administrator and the scheme administrator is not the trustee, the scheme will still have to be registered.

**Do the trustees of all occupational schemes need to maintain accurate and up to date written records of beneficial owners under regulation 44(1) of the legislation?**

Yes. We expect the trustees to maintain accurate and up to date written records of all beneficial owners of the trust as set out under regulation 44(1) of the legislation. This information should be held because under the legislation any law enforcement authority can make a request directly to the trustees for information about the beneficial owners of that trust including from a trust which does not incur a liability to any of the relevant UK taxes. **See section K for further details.**

We expect that this information will be easily available to the trustees as it is a record of who the trustees, members and nominated beneficiaries are.

**Do the detailed record keeping requirements apply in respect of all pension scheme beneficiaries who can be identified (for example, pensioners, active members, deferred members), or does the cross referencing between regulations 44(1), 45(2)(b) and (d) mean that it is only necessary to keep a description of the class of membership for all pension scheme members, whether or not they can be identified?**

In line with regulations 6(1)(d), 45(2)(d) and 45(8) of the legislation we are allowing trustees to make appropriate use of the description of the “class” in order to describe the trust’s beneficiaries, where not all of those beneficiaries have been determined. Where a beneficiary is named on a trust instrument separate from members of a named class then they can clearly be determined and trustees must provide the relevant information. But where a beneficiary is un-named, being only part of a class of beneficiaries, a trustee will only need to disclose the identities of the beneficiary when they receive a financial or non-financial benefit from the trust after 26 June 2017 - the commencement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

We want to get an accurate picture of who can benefit from a trust. Some trusts may list named individuals, who only become potential beneficiaries contingent upon, for example, the death of a named beneficiary or

in circumstances where there are no remaining named beneficiaries or beneficiaries in a class. Where this occurs we are content that the individuals are listed as a class of beneficiaries, until such time as the contingent event occurs. At that point the individual potentially stands to benefit and should be named.

The above apply to both:

- regulation 44 (where trustees of a relevant trust are required to maintain accurate and up to date written records of the beneficial owners of the trust); and,
- regulation 45 (where trustees of a taxable relevant trust are required to register the beneficial owners of the trust with HMRC using the TRS)

A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain the relevant information.

**A scheme with a long history may have been set up by an original principal employer many years ago. Since then it may have had multiple participating employers over the years. Many of the participating employers and, indeed, potentially the original principal employer, may have ceased to participate in the scheme and may even have ceased to exist. Who should the trustees of pension schemes treat as a “settlor” in this scenario?**

The details of the settlor should be the original employer. If this has ceased and there has been a number of different employers, then we would be content with details of just the original and current participating employer only.

**What is the obligation to provide a statement of accounts for the trust – Regulation 45(5) and can I just base asset values set out in latest scheme accounts?**

We will require the value of all the assets held by the trust both UK and non-UK assets and this would be based on the market value of the assets at the point of first registration.

To keep administrative burdens on trustees to a minimum we are not expecting any formal valuation but as was done with the previous paper 41G paper form we would expect trustees acting within their professional duties to provide a good estimate of the market value of the assets.

Information about the valuation of assets is set out within: -

- the [Capital Gains and other taxes manual](#) published by the Valuation Office Agency with section 5 referring directly to the Taxation and Chargeable Gains Act, and
- the Capital Gains manual at CG16200C onwards.

HMRC's Shares and Assets Valuation office can offer advice on specific assets, mainly company shares and I refer you to their [manual](#) for further information.

In relation to details of assets set out in the latest scheme accounts, if these provide a reasonably good estimate of the market value of the assets at the point of first registration, then we would be content for you to use information from your latest scheme accounts for the purposes of the TRS.

**Do I have to update on the TRS the value of trust assets each year?**

No. The details of trust assets are only collected in the first year that a trust registers on the TRS.

## O. REGISTERING A CHARITABLE TRUST

### **Do charitable trusts need to register?**

The two conditions for registration are:

Condition A: is the trust in question either a UK express trust or a non-UK express trust with either UK source income or UK assets; and,

Condition B: have the trustees incurred a liability to pay any of the relevant UK taxes.

If the answer to both of these questions is “yes” then the trustees need to register.

### **Will charitable trustees need to follow this process every tax year?**

Yes. The trustees will need answer each of these two questions/conditions each tax year as registration is linked to when the trustees incur a liability to pay any of the relevant UK taxes.

### **What is an express trust?**

In March 2017, HM Treasury published [its response](#) to its consultation on the implementation of the Fourth EU Money Laundering Directive. That response set out that:

*“The term “express trust” should be taken to mean a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust.”*

### **Which charitable trusts need to register?**

A charitable trust will need to register when the trustees have incurred a liability to any of the relevant UK taxes in a given tax year in relation to the trust income or assets. Therefore, a charitable trust will only need to comply with the legislation if their activities generate a tax liability that falls outside the scope of the charity exemptions, for example, where a charity incurs non-charitable expenditure and/or is in receipt of non-exempt income.

### **How does a charitable trust register?**

The TRS is not currently available for charitable trusts. Those charitable trusts that need to complete the Trusts Register should contact HMRC by telephone on 03000 123 1072 and request a copy of a paper form.

### **What happens if I have a large number of beneficiaries do I need to register the details of each and every beneficiary?**

To help keep administrative burdens to a minimum for trusts with particularly large numbers of beneficiaries (such as occupational pension schemes, charitable trusts and employee benefit trusts) the trustees will only be asked to identify the class of beneficiary if the number of named beneficiaries exceed ten. These type of trusts (except occupational pension schemes) will, however, be required to provide the identities of key employees and Directors.

**Are donors to a charity to be treated as settlors and therefore his or her details need to be registered?**

We do not consider donors to be settlors and therefore the details of a donor does not need to be included on the TRS as long as he or she has no influence or control over the trust nor receives a financial benefit from the trust.

**Do the trustees of all charitable trusts need to maintain accurate and up to date written records of beneficial owners under regulation 44(1) of the legislation?**

Yes. We expect the trustees to maintain accurate and up to date written records of all beneficial owners of the trust as set out under regulation 44(1) of the legislation. This information should be held because under the legislation any law enforcement authority can make a request directly to the trustees for information about the beneficial owners of that trust including from a trust which does not incur a liability to any of the relevant UK taxes. **See section K for further details.**

**If a charitable trust is already registered with HMRC can HMRC just migrate the details it currently holds onto the TRS?**

No. The trustees will need to provide details about the trust on the TRS when a trust meets the condition for registration. This should be a one off exercise and then going forwards it should be just about updating the details to ensure the trust data is accurate and up to date.

The 41G paper form did not collect sufficient information to meet the requirements of the new legislation, so those trusts which registered with HMRC before the launch of the TRS will need to use the service to provide all the information that is now required through the legislation.

**Some of the older charitable trusts will have difficulties in providing all the trust data details such as the telephone number and NINO of the settlor?**

We would expect trustees to take all reasonable effort and steps to obtain the information requested and ensure accurate and up to date written records are maintained of all the beneficial owners. A trustee would not be committing an offence under the legislation if they could show that they had taken all reasonable steps to obtain relevant information.