STEP guidance note: Trusts under the Money Laundering Regulations 2017 (UK)

INTRODUCTION

The Money Laundering Regulations 2017 (MLR) implement the UK’s obligations under the EU Fourth Money Laundering Directive 2015/849 (4AMLD) to introduce a UK trust register.

STEP is working closely with HMRC regarding some ongoing practical issues that members have reported in relation to the use of the online Trust Registration Service, and is seeking clarification on several other aspects of the MLR. We hope that HMRC will soon be in a position to issue further guidance in relation to these issues.

1 – WHAT DO THE REGULATIONS MEAN FOR TRUSTS?

The MLR have broad objective of combatting money laundering, terrorist financing, and organised crime. To help achieve this, the MLR has introduced a centralised beneficial ownership register for trusts, which will provide a single point of access for trustees and their agents to register and update their records online, replacing the current paper 41G (trust) form. The MLR also require HMRC to maintain the trust register.

The register will principally apply to trusts with UK resident trustees. However, trusts with non-UK resident trustees are also within the scope of the register if they hold UK situs assets that generate the obligation to report to HMRC with respect to certain taxes, including income and capital gains tax, inheritance tax and Stamp Duty Land Tax.

2 – DO ALL TRUSTS REPORT?

The reporting obligations do not apply to all trusts, only to those that the MLR define as ‘relevant trusts’.

Reg.42 defines a ‘relevant trust’ as:

- a UK trust which is an express trust; or
- a non-UK trust which is an express trust; and
  - receives income from a source in the UK; or
  - has assets in the UK, on which it is liable to pay one or more of:
    - income tax;
    - capital gains tax;
    - inheritance tax;
    - stamp duty land tax (within the meaning of s.42 of the Finance Act 2003);
    - land and buildings transaction tax (within the meaning of s.1 of the Land and Buildings Transaction Tax (Scotland) Act 2013);
    - stamp duty reserve tax.
Under reg.42, a trust is a ‘UK trust’ if:

- all trustees are resident in the UK; or
- at least one trustee is resident in the UK, and the settlor was resident and domiciled in the UK when they set up the trust or added funds to it.

If a trust does not meet this definition, it will not be classified as a UK trust, and will not be reportable under the MLR.

3 – WHAT ARE TRUSTEE’S OBLIGATIONS?

Trustees must ensure and confirm that the trust has been registered and that the information is accurate and up to date. Trusts must be registered online even if they have already been registered with HMRC using the 41G (trust) form.

Reg.44 states that a trustee of a relevant trust is obliged to:

- Maintain accurate and up-to-date written records of the beneficial owners, and certain potential beneficiaries, of the trust;
- inform ‘relevant persons’ of:
  - its status as a trustee;
  - the beneficial owners of the trust; and
  - any change of beneficial owners (within 14 days of the change occurring); and
- respond to any request for information regarding the trust from any law enforcement agency within the reasonable period specified in the notice of request.

4 – WHAT MUST BE REPORTED?

Reg.45 states that the trustees must provide the following:

Trust information

- the name of the trust and its date of creation;
- a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets;
- the place where the trust is administered;
- a contact address for the trustees; and
- the full names of any advisors who are being paid to provide legal, financial or tax advice in relation to the trust.

Individual beneficial owner information

With regard to individuals identified as beneficiaries or NPEECs (natural persons exercising effective control), it is necessary to provide:

- full name and date of birth;
- details of the individual's role(s) in relation to the trust; and
- unique Tax reference number of the individual.

Legal entity beneficial owner information

- corporate or firm name;
- unique taxpayer reference, if any;
- registered or principal office;
• legal form of the legal entity and law by which it is governed; and
• nature of the entity’s role in relation to the trust.

Where a corporate entity is involved in a trust, one must ‘look through’ that entity and identify the individual or individuals who control it; those individuals are subject to disclosure in their own right.

5 – WHO ARE THE BENEFICIAL OWNERS?

Reg.6(1) states that the following individuals are deemed to be ‘beneficial owners’ of trusts:

(a) the settlor;
(b) the trustees;
(c) the beneficiaries
(d) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;
(e) any individual who has control over the trust.

The MLR define ‘control’ here as follows:

... ‘control’ means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to -

(a) dispose of, advance, lend, invest, pay or apply trust property;
(b) vary or terminate the trust;
(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
(d) appoint or remove trustees or give another individual control over the trust;
(e) direct, withhold consent to or veto the exercise of a power mentioned in sub-paragraphs (a) to (d).

The definition of ‘control’ implies that joint powers can be equated with control, as can the withholding of consent or ability to veto the exercise of certain key powers.

6 – HMRC’S OBLIGATIONS

HMRC, as the ‘Commissioners’ of the MLR, is obliged to maintain the register of beneficial owners of taxable relevant trusts required to be reported in an annual submission on or before 31 January 2018. Thereafter, trustees must report to HMRC on an annual basis to update HMRC on any change of information to the trust. The information will be accessible by HMRC, which has the legal authority to exchange it with law enforcement and competent authorities, though not the public.