



LEWIS BROWNLEE

**EXPRESS TRUSTS AND
THE TRUST
REGISTRATION SERVICE**

BACKGROUND

In 2015, new law was introduced by the EU (4th Money Laundering Directive) which required Member States to establish a central register containing information regarding certain trusts. In order to comply with these requirements, HMRC set up a Trust Registration Service (TRS).

Initially this only affected trusts that had a form of tax liability to declare and pay. The purpose of the legislation was to tackle money-laundering by preventing criminals from hiding ownership of proceeds of crime. The draw back was additional compliance requirements were imposed on thousands of perfectly legitimate trusts. Trusts with a tax liability were required to register on the TRS, and in so doing supply the authorities with information in respect of who the trustees are, who the beneficiaries are and what assets are held in trust.

WHAT HAS CHANGED?

The EU have now released a 5th Money Laundering Directive (known as 5MLD) that extends the reporting requirement to express trusts. Despite the fact the UK are no longer a Member State of the EU, 5MLD has now been transposed into UK law. Affected trusts have until 1st September 2022 to comply with the requirements of this law and to register with HMRC. The law also extends to certain non-UK express trusts that hold an interest in UK land or enter into a business relationship with an appropriate person in the UK.

WHAT IS AN EXPRESS TRUST?

One that is deliberately created by a settlor, usually by way of a written deed, as opposed to through a court order or by statute.



ARE ANY TRUSTS EXEMPT FROM THIS?

Yes, as well as those imposed by statute, the following types of trust are exempt from registration;

- Trusts for Bereaved Minors
- Trusts created temporarily by Wills – (These trusts are not required to register on the TRS for a period of 2 years from the date of death provided there is no liability to tax. Whether the trust is required to be registered after the 2 year period ends will depend on the type of trust).
- Age 18-25 Trusts
- Trusts holding insurance policies
- Employee share schemes
- Charitable Trusts
- Pension schemes
- Trusts solely for the benefit of disabled persons
- Trusts set up prior to 6 October 2020 that hold assets worth less than £100



WHAT ABOUT INTERESTS IN LAND?

Whilst land held as Tenants-in-Common is owned via an express trust, there is also an exemption for co-ownership trusts when the trustees and the beneficiaries are the same persons.

An exemption also applies when a trust is required because property is owned by more than 4 persons. This is because such trusts are required by statute.

WHAT ABOUT BANK ACCOUNTS HELD FOR MINOR CHILDREN?

Whilst in theory these trust arrangements could have been affected, fortunately a recently issued Statutory Instrument confirmed certain low risk trust arrangements such as these are excluded.

DO CHILD TRUST FUNDS HAVE TO BE REGISTERED?

No, because these are not considered to be express trusts.



WHAT TYPE OF TRUSTS WILL BE AFFECTED BY THIS?

Some examples include;

- Bare Trusts that have different trustees and beneficiaries.
- Investment bonds held in trust, for example estate planning bonds.
- Trusts that are used to add a beneficial owner.

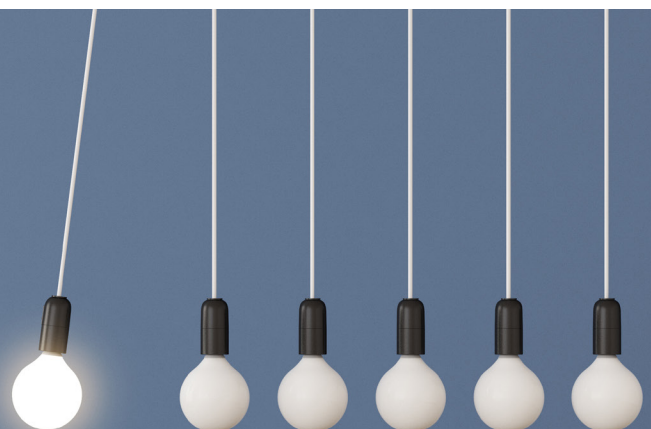
WHAT WILL HAPPEN TO NON-COMPLIANT TRUSTS?

HMRC have powers to issue fines to trustees. In all probability, warning letters are likely to be issued first, but penalties for non-compliance could be issued in the future.

DOES ANYTHING HAVE TO BE DONE FOLLOWING REGISTRATION?

There is also an obligation to report changes to the nature of the trust (such as trustees and classes of beneficiary) within 90 days of such changes being made.

Trusts that have to submit tax returns are also required to submit an annual declaration on the trust register to confirm the details held on the register are correct.



WHAT ABOUT NEWLY CREATED TRUSTS?

New trusts that are not excluded from registration have to register on TRS within 90 days of creation.

HOW DO YOU REGISTER A TRUST ON TRS?

A lead trustee will need to create an Organisation Government Gateway user ID and password. They can then register a trust by visiting this web page; <https://www.gov.uk/guidance/register-a-trust-as-a-trustee>

CAN LEWIS BROWNLEE HELP WITH THIS?

Yes. We have access to an agent's portal which enables us to register trusts and estates. We have already been doing this since the 2015 law came into effect so are quite familiar with the process. We can specifically ask for the information that has to be disclosed on the TRS, and then complete the process on your behalf. Our fees for assisting with the process will typically be in the region of £200 to £300 plus VAT depending on the amount of information that has to be obtained and disclosed.



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