

Reminder! Action needed on anti-money laundering

Alert | 9 January 2018



Introduction

The [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) ("the Regulations") came into force on 26 June 2017. Here we recap on the key action points for trustees.

Key points

Trustees of occupational pension schemes must:

- keep certain records of the beneficial owners of the trust, broadly, the settlor, the participating employer(s), the trustees and the scheme members, including survivors.
- if the scheme was liable for certain taxes in the most recent tax year, input prescribed information on HMRC's register of beneficial ownership. The official deadline for providing the first set of information is 31 January 2018 but, in [December 2017](#), HMRC announced that it will not impose a penalty on trustees who register before 5 March 2018.
- before entering into certain transactions with third parties who are subject to the requirements of the Regulations (for example, credit institutions, financial institutions and lawyers), inform that party that they are acting in the capacity of trustee. In addition, should the third party request, the trustees must provide them with information on the scheme's beneficial ownership, and notify them if this information changes.

As in the 2007 Regulations, an individual or company offering professional trustee services to occupational pension schemes, fall within the definition of "trust and company service providers" (TCSPs). As such they must comply with the anti-money laundering ("AML") requirements. See our [Alert](#) for details.

Beneficial ownership information – trustee records

According to HMRC, the Regulations require trustees to maintain accurate and up-to-date written records of certain specified information about all the beneficial owners of the trust.

For example:

- in respect of an individual, their name, NI number or unique taxpayer reference (if any) (or, if the

individual does not have an NI number or unique taxpayer reference, their usual residential address), their date of birth, and the nature of their role in relation to the trust. If the address provided is not in the UK, the individual's passport number or identification card number are also required

- in respect of a legal entity, its corporate or firm name, its unique taxpayer reference (if any), its registered or principal office, its legal form and the law by which it is governed, if applicable, the register of companies in which it is entered and its registration number, and the nature of its role in relation to the trust.

The information requirements are extensive and, particularly in relation to overseas members and survivors, may not be met by current trustee records. However, provided the trustees take reasonable steps to obtain the information they should not be liable under the legislation.

There was some confusion as to the extent of the requirement to hold information on active and deferred members, as well as potential beneficiaries of death benefits. Helpfully, HMRC has confirmed that it only requires trustees to keep records of members / survivors who have received benefits.

HMRC's register of beneficial owners

The EU's Fourth Money Laundering Directive requires EU Member States to establish central registers of beneficial ownership information for express trusts with tax consequences. Despite the low risk presented by occupational pension schemes, they are caught by this requirement.

However, trustees need only provide HMRC with information on the scheme's beneficial owners (or an update to that information) by the 31 January after the end of any tax year in which the pension scheme was a "taxable relevant trust". A scheme will be a "taxable relevant trust" in any tax year in which the trustees are liable to pay any of the following taxes: income tax, capital gains tax, inheritance tax, stamp duty land tax ("SDLT"), land and buildings transaction tax, or stamp duty reserve tax ("SDRT").

Trustees will be liable for SDLT and SDRT when buying or selling property or shares. This means that schemes which hold direct property and / or equity portfolios are likely to need to register. In contrast, schemes which invest in pooled funds are unlikely to incur such taxes.

Tax charges which do not trigger registration

HMRC has confirmed that any liability for the trustees to pay income tax which arises solely from an obligation to pay one or more of the following will not make the scheme a taxable relevant trust:

- joint and several liability for a lifetime allowance charge
- an annual allowance charge in relation to a member under a "scheme pays" arrangement
- PAYE in respect of a member's pension or lump sum benefits or on a survivor's benefits
- a short service refund lump sum charge
- a special lump sum death benefits charge;
- an unauthorised payments charge
- an unauthorised payments surcharge
- a scheme sanction charge

- an authorised surplus payments charge or
- a de-registration charge.

Information

HMRC has confirmed that trustees of relevant schemes will be required to provide the following information for the register:

- the full name of the trust, the date on which it was set up, a statement of accounts for the trust (HMRC expects a good estimate of the market value of the assets at the point of registration), where the trust is resident for tax purposes, the place where the trust is administered, a contact address for the trustees and the name of any advisers who are being paid to provide legal, financial, tax or other advice to the trustees (HMRC only requires the details of the agent, if any, acting on behalf of the trustees in relation to registration)
- in respect of the sponsoring employer(s) – its / their corporate or firm name, its unique taxpayer reference (if any), its registered or principal office, its legal form and the law by which it is governed, the register of companies in which it is entered and its registration number (if applicable), and the nature of its role in relation to the trust
- if the number of named beneficiaries exceeds ten, a description of the class of persons who are entitled to benefit from the trust, ie employees and former employees of the companies disclosed and their survivors.

HMRC has circulated draft guidance on completing the register but this has not yet been finalised. The [draft](#) is available online.

Action

We recommend trustees check with their accountants at the end of each tax year whether the scheme has incurred any relevant UK tax liabilities. As noted above, for the tax year 2016/17, trustees of a “taxable relevant trust” effectively have until 5 March 2018 to register.

Subsequently, trustees must update the register (or confirm there have been no changes) by the 31 January following a tax year in which the scheme was a “taxable relevant trust”. They may also decide to update the register voluntarily.

Even if trustees do not have to register with HMRC, they should check with their administrator if action is needed to meet the requirement relating to beneficial ownership records for members, and keep a record of the information on trustees, the sponsor and any other beneficial owner.

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