Sackers

Prevention of Financial Crime - Action points for Trustees

Alert | 26 October 2017

Introduction

This year has seen the introduction of several new measures to prevent financial crime, specifically money laundering and tax evasion. All trustees need to take action to comply with the record-keeping requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Regulations"), but only corporate trustees are affected by the Criminal Finances Act 2017.

Key points

- The Regulations implement the requirements of the EU's Fourth Money Laundering Directive ("4MLD") into UK legislation.
- HMRC has confirmed which beneficial ownership information trustees must record in order to comply with their obligations under the Regulations.
- Certain occupational pension schemes must provide information to HMRC for its register of beneficial ownership by 31 January 2018.
- The new corporate offences of failing to prevent the criminal facilitation of tax evasion by an "associated" person came into force on 30 September 2017. A company will have a defence where it has put in place "reasonable procedures" to prevent the facilitation of tax evasion.

Background - Money laundering

"Money laundering" involves exchanging criminally obtained money and / or other assets for legitimate (or "clean") money or assets that have no obvious link to their criminal origins.

As has been the case since 2007, an individual or company offering professional trustee services to occupational pension schemes falls within the definition of "trust and company service providers". As such they must comply with the anti-money laundering ("AML") requirements, but will not be required to register with HMRC. For example, they must:

- undertake a risk assessment to identify and assess the risks of money laundering and terrorist financing to which its business is subject

- establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in the risk assessment
- in certain circumstances, undertake customer due diligence to verify the identity of the person or the beneficial owner of an entity with whom they are forming a contractual relationship.

For details, please see our Alert.

Beneficial ownership information – trustee records

Broadly, the beneficial owners of an occupational pension scheme are:

- the participating employers
- the trustees
- the members / prospective members, including survivors.

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.)

The information requirements are extensive and unlikely, particularly in relation to overseas members and survivors, to be met by current trustee records.

HMRC's register of beneficial owners

4MLD 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 in any year in which the pension scheme is a "taxable relevant trust". This will be the case where 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.

We recommend trustees check with their accountants at the end of each tax year whether they have incurred any relevant UK tax liabilities so as to put the matter beyond doubt.

Information

HMRC has confirmed that trustees of relevant schemes (those which incurred a relevant UK tax liability in 2016/17) will be required to provide the following information for the register on / before 31 January 2018:

- the full name of the trust, the date on which it was set up, a statement of accounts (describing the trust assets and identifying the value of each category of the trust assets, including the address of any property held by the trust), the country where the trust is resident for tax purposes, the place where it 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

- 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, and the nature of its role in relation to the trust (if applicable)

- 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.

Tackling tax evasion

Tax evasion is the illegal practice of not paying taxes by not reporting income, reporting expenses not legally allowed, or by not paying taxes owed.

The Government believes that relevant bodies (companies and partnerships) should be criminally liable where they fail to prevent those who act for or on their behalf from criminally facilitating tax evasion. The new offences of failing to prevent the criminal facilitation of both domestic and foreign tax evasion ("the Offences") aim to achieve this and apply to corporate trustees.

The new tax evasion offences

There are three stages to the Offences:

- **Stage one** – criminal tax evasion (deliberate and dishonest action) by a taxpayer (either an individual or a legal entity) under existing law

- **Stage two** – criminal facilitation of the tax evasion by an "associated person" of the relevant body. A person is "associated" with a relevant body if that person is an employee, agent, or other person who performs services for or on behalf of the relevant body

- **Stage three** – the relevant body failed to prevent the associated person from criminally facilitating the tax evasion.

Penalties include unlimited fines.

A company will have a defence to the above if it has put in place reasonable procedures to prevent its associated persons from criminally facilitating tax evasion or, where it is unreasonable to expect such procedures.

Action points

Anti-money laundering

- There is still some uncertainty as to the precise record-keeping requirements and the Association of Pension Lawyers continues to explore this with HMRC. Trustees should speak to their usual Sackers contact to clarify what is needed for their scheme.

- Trustees should check whether the scheme has incurred a relevant tax liability in the tax year 2016/17. If it has, the necessary information must be entered into HMRC's register of beneficial owners by 31 January 2018.

Tackling tax evasion

- The directors of a corporate trustee must undertake an assessment of the risks that those who act on its behalf (service providers, such as the scheme administrator, accountants and investment consultants) may criminally facilitate tax evasion, and put in place "reasonable prevention procedures".

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com