

Analysis

HMRC's trust registration service: changes for employee trusts

Speed read

The requirements for registering trusts with HMRC via the TRS have changed; as a consequence, trusts which have not previously had to undertake such compliance reporting may now need to do so. In particular, non-taxable trusts in existence on or after 6 October 2020 must be registered by 1 September 2022, and non-taxable trusts created after September 2022 must be registered within 90 days (previously 30 days). There is therefore a new registration requirement for non-taxable employee benefit trusts and employee ownership trusts. Whilst the obligation to register sits with the trustee, the trustee may now need to seek further information from the sponsoring company, in the case of EBT or EOT, in order to determine the extent of any reporting need.



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Employee benefit trusts (EBTs) and employee ownership trusts (EOTs) with certain UK tax liabilities (i.e. taxable trusts) have been required to register with HMRC's trust registration service (TRS) since June 2017, under the Fourth Money Laundering Directive (4MLD) (the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, SI 2017/692). The TRS is the digital registration service for trusts which replaced the paper form 41G(Trust) notification process.

On 1 September 2021, HMRC confirmed that the TRS was able to accept the registration of non-taxable express UK trusts. This represents a significant extension to the TRS regime and means that all UK non-taxable trusts must now be registered. This was due to the changes introduced by the Fifth Money Laundering Directive (5MLD) which mean that, subject to limited exceptions (those covered by the exclusions in Sch 3A of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations, SI 2020/991), employee trusts without a relevant UK tax liability (i.e. non-taxable trusts) may now be required to register by 1 September 2022.

More trusts will now need to be registered and trustees will have new obligations to provide proof of registration. Penalties can arise for late registration. This article summarises the key considerations to assist trustees – and

the sponsoring employer that settled the trust – in assessing whether an EBT or EOT should be registered with HMRC.

Whilst HMRC has published guidance for trustees (see 'Register a trust as a trustee' on gov.uk via bit.ly/3GQpeJD and the *Trust Registration Service Manual*), there are some matters where further clarification is desirable, as discussed below.

What's changed?

Changes to the TRS as a result of 5MLD extended remit are as follows:

- Trusts already registered under 4MLD need to provide additional information regarding beneficial owners. If the trust has a UK tax liability the information required is more extensive.
- All UK trusts with and without a tax liability need to register (subject to very limited exemptions). This extension to now also capture non-taxable trusts is what will trigger a TRS obligation for more EBT and EOT trusts than has hitherto been the case under 4MLD.
- Any non-UK trusts that acquires UK land or property will be required to register.
- Non-UK trusts entering a UK business relationship if the trust has at least one UK resident trustee need to register.
- When entering into a new business relationship with a trust, 'obliged entities' must collect either proof of registration on the trust register, or an excerpt of the register. HMRC's guidance states that trustees can download a PDF from the TRS to support these due diligence checks, and the onus will be on the trustee to provide this information.

The reporting deadlines are as follows:

- Non-taxable trusts in existence on or after 6 October 2020 must be registered by 1 September 2022.
- Non-taxable trusts created after September 2022 must be registered within 90 days (originally just 30 days).
- Changes to the trust details or circumstances must be registered within 90 days of the change (originally just 30 days).
- Taxable trusts should comply with the existing timescales. For example, if the trust becomes liable to income tax or CGT in 2021/22 for the first time then it must register by 5 October 2022.

Consequently, in particular for non-professional trustees of settlements which do not give rise to a tax liability, there is now a much higher burden of reporting than was previously the case, and those trustees may need additional support this year to ensure compliance.

Registering taxable EBTs and EOTs

Trustees are required to register an EBT or EOT if it has a liability to UK income tax, CGT, IHT, SDLT (or an equivalent devolved tax) or SDRT.

EBTs and EOTs are unlikely to have a liability to income tax if they are funded solely by non-taxable contributions from the sponsoring employer. It is therefore important to check whether an EBT or EOT has any UK source interest (e.g. from a trust bank account) and review the trust deed to confirm whether it waives dividends on any sponsoring group shares held. Similarly, CGT or IHT charges are unlikely if the trust is set up and run in a way that qualifies for specific employee trust exemptions from IHT and CGT (or is non-UK resident and so outside the scope of CGT). In our experience, it is share acquisitions that trigger SDRT liabilities (and create TRS obligations) that are sometimes overlooked.

This is a particular risk where an EBT or EOT without other relevant tax liabilities acquires shares in a UK company (for example, for an employee share plan or as part of ownership succession planning) and the trustee pays stamp duty, which is not a relevant tax for these purposes, on the transaction. This is because an unconditional agreement to purchase shares in a UK registered company gives rise to an immediate SDRT liability which triggers the TRS registration obligation, even where that liability is subsequently cancelled by the payment of stamp duty on the instrument of transfer. However, no SDRT arises on a subscription for a new issue of shares, or on the purchase of shares traded only on AIM (or another recognised growth market) or shares held in treasury.

The new registration requirement for non-taxable EBTs and EOTs

An EBT or EOT without a relevant UK tax liability may be required to register by 1 September 2022 if all its trustees are UK resident, or at least one of its trustees is UK resident and its settlor was either UK resident or domiciled when the trust was established, or when further funds were settled.

Other non-taxable EBTs or EOTs may also be required to register if they:

- acquire an interest in UK land; or
- have at least one UK resident trustee and establish a business relationship with a 'relevant person' in the UK, which includes financial institutions, accountants, tax advisers, legal advisers and estate agents.

However, some non-taxable trusts could be excluded from registration. These include trusts that hold certain life insurance or retirement policies, and statutory trusts established under a tax-advantaged all-employee share incentive plan, or set up solely for the purposes of an all-employee SAYE option scheme ('mixed use' EBTs would not benefit from this exclusion). Other exclusions can potentially apply, but there is no specific exemption for EOTs.

In practice, the exclusions for tax-advantaged all-employee share plan trusts are likely to be of limited application, as many will incur SDRT liabilities and be required to register as taxable trusts (see above).

Trustees will also be required to register a non-taxable trust where they hold assets on bare trust (for example, where senior executives' shares are held under nominee arrangements for commercial confidentiality).

The time limits for registering an EBT or EOT

The deadline for registering a *taxable* EBT or EOT depends on when the trust was established and when the first relevant tax liability arises. See the table below.

Trust established	When the first relevant tax liability arises	Registration deadline
Before 6 April 2021	At any time	5 October following the end of the tax year in which the first relevant tax liability arises if it is income tax or CGT 1 January following the end of the tax year in which the first relevant tax liability arises in other cases
After 5 April 2021	Before 4 June 2022	1 September 2022
After 5 April 2021	After 3 June 2022	Within 90 days of the first relevant tax liability arising

Non-taxable EBTs or EOTs that meet the conditions for registration must be registered on or before 1 September 2022 if they were in existence on 6 October 2020.

Relevant non-taxable trusts created after 6 October 2020 must register within 90 days of being created or otherwise becoming registrable or, if later, by 1 September 2022.

What information must be provided to HMRC?

On registration, trustees must provide HMRC with prescribed information relating to the EBT or EOT and its settlor, trustees, beneficiaries and assets.

Given the potentially large number of individuals who might benefit from an EBT or EOT, HMRC accepts that in some circumstances the prescribed information is not required for all potential beneficiaries.

We understand that if the number of named beneficiaries does not exceed ten individuals, HMRC will require the prescribed information for each individual (plus current directors and 'key' employees who are not excluded beneficiaries under the trust deed).

However, if the number of named beneficiaries exceeds ten individuals, on registration HMRC requires the prescribed information only for current directors and 'key' employees (other than excluded beneficiaries). Other potential beneficiaries may be identified solely by a description of their class (for example, 'current and former employees of XYZ Ltd and their dependants'), but full details should be provided if those individuals actually receive distributed benefits from the trust.

HMRC's guidance describes 'key' employees as those with:

- overall operational and key decision-making responsibility for the sponsoring employer's business;
- business critical skills and expertise that result in them receiving a high level of remuneration; and
- financial ownership or a stake in the sponsoring employer.

It is not yet entirely clear how this guidance should be applied. For example, should individuals with a 'high level of remuneration' be identified in absolute or relative terms (for instance, those earning over £150,000 or the top 10% of earners in the organisation)? In an employee-owned business, should all employees who hold shares be regarded as 'key', or only those with, say, at least 5% of the issued shares? It is hoped that HMRC will further clarify the above guidance; however, in the meantime, EBT and EOT trustees and sponsoring employers should consider what, in the context of the relevant business, is a supportable basis on which to identify 'key' employees and disclose that filing position to HMRC when registering the trust.

Trustees of taxable EBTs and EOTs are also required to keep the information on the TRS up to date or confirm annually there have been no changes.

What should EBT/EOT trustees and sponsoring employers do?

The obligation to register an EBT or EOT under the TRS falls on the trustee. However, sponsoring employers have an ongoing reputational interest and governance role in ensuring that employee trusts are registered where required, and that the information provided to HMRC is complete and correct.

Trustees and sponsoring employers should therefore

review their EBT or EOT circumstances and confirm whether they should register. Any EBTs or EOTs which should have been registered under the TRS in a prior year should now be registered without delay.

Trustees and sponsoring employers should put appropriate systems in place to ensure that trusts which need not currently be registered are monitored, so that registration can be made on a timely basis if they incur a relevant UK tax liability or meet the conditions for TRS registration as a non-taxable EBT or EOT.

Regardless of whether or not a TRS obligation arises,

trustees of non-resident EBTs or EOTs may wish to check whether the trust has been notified to HMRC under separate reporting obligations (per IHTA 1984 s 218) within three months of its establishment. ■

 For related reading visit www.taxjournal.com

- ▶ News: Trust registration service opens for non-taxable trusts (8.9.21)
- ▶ 5MLD: major changes to the UK trust register (J Smithson, S Epstein & E Yu, 5.11.20)
- ▶ The trust registration service one year on (J Shankland & P Malone, 6.9.18)