

The UK trusts register – what does it mean for Jersey trustees?

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The UK Trusts Register (**Register**) was introduced in June but its scope extends beyond the borders of the United Kingdom. For instance a Jersey resident trustee of a Jersey proper law trust may still have an obligation to register and maintain records on the Register where there is a UK connection. Jersey trustees therefore need to understand what is required of them under the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**Regulations**).

Many trusts in Jersey will be obliged to register by virtue of being a non-UK express trust which receives UK source income or has assets in the UK or which is liable to pay any one or more of the following UK taxes: income tax, capital gains tax, non-resident CGT, inheritance tax, stamp duty land tax or stamp duty reserve tax. Of course a Jersey trustee could also be a trustee of a UK express trust which may bring it within the first category of relevant trusts under the Regulations. In any event specific UK tax advice should be sought as to whether any trust with a UK connection is a "relevant trust" for the purposes of the Regulations.

If there is an obligation to register, the scope of information to be filed is materially wider than existing FATCA and CRS requirements. Breaches of the regulations could result in civil and criminal penalties (up to two years in prison) as well as a fine, together with the likely reputational damage.

Plainly this is a relevant issue for Jersey's private wealth management industry and other financial services sectors which commonly use trusts in structuring (e.g. funds and capital markets).

Why has the Register come in?

The introduction of the Register is the UK Government's response to the EU's Fourth Anti-Money Laundering Directive (**4MLD**). One of 4MLD's key drivers is to increase transparency in terms of owners and controllers of all legal entities and trusts and specifically to combat what certain EU

countries perceive to be the misuse of trusts.

The Regulations came into force on 26 June 2017 albeit HMRC has yet to clarify how certain important aspects of the Regulations will apply.

What purpose will the Register serve?

The Register will be administered by HM Revenue & Customs (**HMRC**) in the UK as:

1. a register of relevant trusts as detailed in 4MLD; and
2. a new portal by which HMRC will deal with the delivery and filing of tax returns by those trusts.

Upon registration each trustee registering a trust will be issued with a **Unique Tax Reference Number** and this new portal will replace the filing of paper returns (notably Form 41G).

Not only will the Register hold data on trusts and beneficiaries but it will also hold information on those advising in relation to the trust (e.g. lawyers and accountants) or transacting with it.

Who can access the Register?

The Register is not public but can be inspected by any of the defined law enforcement agencies to include HMRC.

It remains to be seen whether the register will ultimately be available for inspection by a wider group noting that the trusts register is meant to be implemented in other EU Member States.

When will a Jersey trustee have to register?

Trustees with any one or more of the UK tax liabilities specified above will likely be required to register and file the relevant information with HMRC on or before 31 January 2018, subject to a number of exceptions. We understand that there is a requirement to register even if trustees may have already submitted paper returns to HMRC. Where a trustee has ongoing UK tax liabilities the trustee will be required to notify HMRC of changes to the data on the Register by 31 January after the relevant tax year or if there are no changes simply to confirm this.

Each trust will have its own particular circumstances and specific UK tax advice will likely be needed. The relevant UK tax event will likely determine the date upon which the trustee must register.

What information will have to be filed with HMRC?

This is of particular interest to Jersey trustees as the information requested is wide and goes beyond existing FATCA and CRS requirements. A trustee required to register will need to provide

details on: settlor(s); trustees; identified beneficiaries; any other natural or legal persons exercising effective control of the trust and the nature of their control; and all other persons identified as potential beneficiaries in a document or instrument relating to the trust including a letter or memorandum of wishes.

The detail on an individual will include the person's name, date of birth, national insurance number or Unique Tax Reference Number and if non-UK resident their passport ID number or identification card number or equivalent.

Any potential beneficiary has to be registered, including potential beneficiaries named in a trust instrument and/or a letter of wishes. This definition is materially wider than anything we have seen before noting that a letter of wishes is fundamentally a private and confidential document between settlor and trustee.

For beneficiaries who are not named in a trust instrument but are referred to by reference to a class the trustee will only need to provide a description of the class who are entitled to benefit. The same applies to persons who are referred to as a class in a letter of wishes.

The trustee will also be required to provide details on the trust itself including its name, date of establishment, a statement of account describing the assets and the value of each category of asset, country of tax residence, place of administration, contact address for the trustee and the full name of any advisers who are paid to provide legal and financial advice.

HMRC guidance is also awaited on whether UK assets or UK-source income of a company held by a non-UK trust is sufficient to trigger registration of the trust if a relevant UK tax liability arises at company level. On the basis of the information provided to date it would appear not. In other words the UK tax liability must be at trust level.

Conclusion

The Regulations are not straight forward in terms of the scope of information to be provided and when. Further guidance may be issued by HMRC. Jersey trustees of trusts with a UK connection are advised to consider and seek UK tax advice on their reporting requirements well ahead of the reporting deadlines. From the perspective of Jersey's trusts industry, this is another level of regulation for trustees to comply with.

James Campbell is a partner in Ogier's Jersey Private Client and Trusts team, specialising in all aspects of international private client to include the establishment and restructuring of trusts and all supplemental deeds. Ogier does not advise on matters of UK law and this article should not be relied upon as determining the position under UK law.

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Meet the Author



[James Campbell](#)

Partner

[Jersey](#)

E: james.campbell@ogier.com

T: [+44 1534 514230](tel:+441534514230)

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