Trust Registration Service Penalties

Inheritance Tax and trusts

01 May 2018

HMRC have announced further details of the penalty regime for the Trust Registration Service.

The obligations of trustees to maintain accurate and up-to-date records of their *beneficial owners*, and to register and report this information to HMRC via the Trust Registration Service (TRS) are set out in *The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*. These regulations also provide for both civil and criminal sanctions if these obligations are not complied with.

On 5 March 2018, HMRC informed the various professional bodies of the details of the penalty regime for late registration with the TRS. The fixed penalties for an *administrative offence* are:

- Registration made up to three months after the due date: £100 penalty
- Registration made three to six months after the due date: £200 penalty
- Registration more than six months late: either 5% of the total tax liability or £300 penalty, whichever is the greater sum.

The due date for trustees to complete, or update, the trust's details with the TRS will normally be the 31 January following any tax year in which the trust has paid specified UK taxes on income or assets. However, the TRS is also the mechanism for registering a trust for self-assessment. Therefore trustees who need to register a trust for self-assessment and also wish to avoid penalties under TMA1970 must, in practice, register via the TRS by 5 October following the end of the tax year.

In this first year of the TRS, due to various operational issues, HMRC confirmed last year that no penalties would be charged if registration with the TRS for 2016/17 was made after 31 January 2018 but no later than 5 March 2018. Equally, for TMA purposes, the usual 5 October 2018 deadline was extended to 5 January 2018 for

those trusts registering for self-assessment for the first time in 2016/17.

HMRC have said that they will not be issuing penalties automatically for late TRS returns in this first year but ‘will take a pragmatic and risk based approach to charging penalties’ and that ‘a penalty will not be payable if we are satisfied you took reasonable steps to comply with the regulations’.

Where the amount of a penalty is based on a percentage of the tax liability, HMRC have clarified in subsequent correspondence that the total tax liability will be taken to be the total of *all* relevant taxes paid by the trust in the year. This could include not just income tax and CGT under self-assessment, but also SDLT/LBTT, IHT and SDRT. The ATT have made representations to HMRC asking whether a tax geared penalty calculated in this manner is appropriate in the context of TRS which is an anti-money laundering measure.

HMRC have also confirmed that they will be consulting on the more serious penalties for money laundering offences under the same regulations later in the year.

The full statement from HMRC can be found on GOV.UK.