The Trust Registration Service: where are we now?

General Features | Inheritance Tax and trusts

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Following a number of issues with the Trust Registration Service (TRS) in 2016-17, where are we for 2017-18 registrations?

Those involved in the first round of trust registrations for 2016-17 will be aware that there were a number of what might, rather generously, be called ‘teething problems’ with the implementation of the Trust Registration Service (TRS). Both the ATT and CIOT, other professional bodies, and many individual firms made strong representations about the implementation of the TRS throughout the process. While many agents may well still feel dissatisfied, it is only fair to say that these representations have been acknowledged at the very highest levels within HMRC, who say that lessons will be learned.

In the meantime, TRS registrations for 2017-18 need to be considered. These include:

- the first registrations for any new trusts created in 2017-18.
- the first registration of any trust where 2017-18 is the first year that the trust has had a tax consequence.
- the review of existing data for trusts with a tax consequence in 2017-18.

Trust Tax Returns for 2017-18

At the time of writing (early July), it is not yet possible to update existing registrations on the TRS. This has a knock-on effect on the submission of the SA900 trust return, as question 20 of the return requires the trustees to confirm that the TRS has been updated for the year. HMRC have confirmed that until the facility to update is available this question should be left blank. We are assured that trustees will not be penalised for not answering question 20.

In the meantime, if the name or address of the lead trustee changes then HMRC needs to be notified so that they have the correct details to correspond with the trust. Trustees can write to HMRC, Trusts, BX9 1EL.

Changes to guidance

Guidance remains an issue, with the main FAQ document only available on a number of professional body websites, including those of ATT and CIOT. HMRC are still working on updating GOV.UK. Some content has now been transposed onto GOV.UK and we are hoping for further developments over the summer.

Non-UK resident trusts

HMRC has changed its guidance on the position for some non-UK resident trusts. Where a non-UK resident trust incurs an IHT liability as a result of Schedule A1 of the Inheritance Tax Act 1984 (inserted by Schedule 10 of Finance (No 2) Act 2017), but no other UK tax is due by the trustees in relation to trust assets or income, then this will not be a trigger for the trust to be registered on the TRS. This may be relevant where, for example, a non-UK trust holds shares in a non-UK company which, in turn, holds UK residential property. Following the changes to the definition of excluded property it is possible for an IHT charge to arise on the trust, but if no other UK tax charge arises in the tax year, it should not be required to register on the TRS in that year. We are expecting GOV.UK to be updated to reflect this change in due course.

Pension schemes

Revised guidance for pension schemes has been issued in HMRC's Pension Scheme newsletter 98, published 3 May 2018.

Penalties

At a meeting in June with HMRC, it was confirmed that HMRC are still operating a 'light touch' policy with penalties for late 2016-17 returns. Penalties for late filing for this year are being considered on a case-by-case basis. We cannot assume that a light touch will continue into future years.

The ATT and CIOT have expressed concerns that the tax geared element of the penalty for failure to register is not proportionate to the TRS requirements.

Access to the TRS

The digitally excluded

There were problems for some agents, particularly legal firms, who found themselves ‘digitally excluded’ and unable to set up an Agent Services Account (ASA) for their firm. These firms had to file on paper for 2016-17. We are informed that this issue is now fixed. If you are still struggling to obtain an ASA for your firm please let us know.

Overseas agents

Currently, overseas agents without a UK presence are not able to access the TRS as they are also unable to set up an ASA. We understand that HMRC are planning to give overseas agents access by December 2018. Assuming that this date is met, it will give those agents very limited time to file online by the 31 January 2019 deadline for any 2017-18 updates, or registrations of trusts which are not in self-assessment. It is also after the 5 October 2018 deadline for trusts registering for self-assessment for the first time in 2017-18.

Unnecessary returns

It was reported to us that registration of a trust which had not previously had a tax liability (and had not therefore previously required a tax return) often triggered the issue of unnecessary SA900 tax returns for earlier years. HMRC are aware of this problem and the recommendation is to contact the Trust helpline to get any unnecessary SA900s cancelled.

An estate which was originally intending to use informal procedures, but find after one or more tax years that an estate return is needed, must register for self-assessment via the TRS. This will trigger the issue of returns for the required year and previous years, even if the income or gains were small in those years. HMRC inform us that an estate is either eligible for the informal process or it is not. If it is not, HMRC require a return for each tax year in the administration period.

Future Changes – more registrations needed?

The final text of the 5th Money Laundering Directive was published in June 2018, and the UK government has until January 2020 to transpose this into national law.

This Directive will extend the registration requirements to any trust, regardless of tax liability, and also to any non-EU trust which holds UK property. A consultation on this is expected to be held in 2019. These new rules have the potential to significantly increase the number of registrations and both ATT and CIOT will be contributing to the consultation.