The Trust Registration Service: looking ahead

Inheritance Tax and trusts | Management of taxes

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Implementation of the Fifth Money Laundering Directive will create further challenges.

By 10 January 2020 many more registrations on the Trust Registration Service are likely to be required following the Fifth Money Laundering Directive (5MLD). 5MLD amends the Fourth Money Laundering Directive (4MLD) which created the current Trust Register.

5MLD is intended to further increase the transparency of trusts and other legal arrangements which have similar structures or functions to trusts. It requires each member state to consider what legal arrangements it has that act like a trust, are comparable to corporate and other legal entities, and thus should be registered. Each member state must notify the Commission of the categories, description, names and legal basis of such trusts or legal arrangements.

Having identified all the possible legal arrangements that will need to go on the register, each member state also needs to decide who has access to the register. At the moment access is only available to various law enforcement agencies. The expanded register must be accessible by anyone with a legitimate interest. Again, it is for each member state to set out what they consider to be a legitimate interest in a way which balances the public interest with respect for private life. Those who want access are likely to have to register online and pay a fee for access.

Under 5MLD, all express trusts will be required to register whether or not they have a tax consequence. This means that a great number of trusts which did not have to register previously, particularly trusts connected with financial products such as life policies, shareholder protection policies, whole of life policies and discounted gift trusts, may now have to. Potentially all jointly owned property (including land and

bank accounts) fall within the scope. It also means that the number of unrepresented trustees who may well be unaware of their status yet need to register is likely to increase exponentially. HMRC is keen to understand how to reach this population.

A consultation on how the UK will implement the Directive is expected shortly. Meanwhile, the ATT and CIOT are continuing to work with HMRC to try and improve the quality of the technical guidance on the current register.

The text of the 5MLD can be found here.