Expansion of the Trust Register: consultation responses

General Features | International Tax

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The ATT and CIOT have both responded to HMRC and HM Treasury's technical consultation on the Fifth Money Laundering Directive and Trust Registration Service.

ATT and CIOT have responded to the long-awaited consultation on the implementation of the provisions of the Fifth Money Laundering Directive (5MLD) as they affect the Trust Registration Service (TRS). The consultation period started at the end of January and we had a rather brief four-week window in which to respond to these complex provisions.

The stated objective of the transposition of 5MLD into UK law is to ensure that the UK's anti-money laundering and counter terrorist financing regime is up to date, effective and proportionate. The practical effect will be a significant expansion of the number of trusts which must register on the UK Trust Register via the TRS.

Under 5MLD, unless specifically excluded, all UK express trusts – and some overseas trusts – will be required to register regardless of whether or not they have incurred a UK tax liability. Currently, only trusts with a UK tax liability must register. A key part of the consultation is therefore precisely which express trusts will be in scope, and the consultation document and accompanying draft legislation propose a number of exclusions.

Both the ATT and CIOT welcomed the exclusion of the trusts arising from the joint ownership of land, but raised concerns about whether the exclusion as drafted would cover the position where joint owners made an express declaration to change their ownership after acquisition – a fairly common piece of tax planning. Clear guidance in this area will be needed.
It is proposed that some trusts containing insurance policies will be out of scope,

based on the nature of the policy. The ATT and CIOT called for more of these trusts to be excluded on the grounds of simplicity and proportionality and suggested ways by which this could be achieved.

The position for the registration of bare trusts is unclear. Currently, these are not required to register and both bodies consider that, ideally, bare trusts should continue to be out of scope as they are low risk, particularly when they arise in family arrangements such as an adult child managing a bank account for an elderly parent.

The CIOT also highlighted concerns over ‘Quistclose’ trusts, which are commonly used in the UK to facilitate commercial transactions where a lender makes a loan for a specific and exclusive purpose. Similar arrangements also operate to safeguard the payments of millions of ordinary consumers: travel arrangements, funeral plans, energy supplies, gambling obligations and provision of certain types of healthcare are typical.

With a range of different exclusions, it is essential that clear guidance sets out what is in and what is out of scope – especially for the unrepresented trustee.

The CIOT raised concerns (endorsed by the ATT) about the proposed approach of requiring any overseas trust which enters into a business relationship with a UK adviser to register on the TRS. Previously, it was understood only that trusts administered in the EU or the UK would be required to register in this way.

The current proposals run counter to effective anti-money laundering measures because they encourage overseas trusts to seek professional services from other, possibly less compliant jurisdictions which will result in a loss of business for UK trust practitioners.

In terms of deadlines, under the Directive, all trusts in existence on 10 March 2020 or created by 9 February 2022 which are in scope should be on the register by 10 March 2022. Trusts already on the register will have to add further detail about the residency and nationality of their beneficial owners by that date. From 9 February 2022, any trusts which come into existence must register within 30 days of ‘set up’. In addition, changes to details of beneficial owners must be reported within 30 days on the TRS.
Both bodies consider that the requirement to register a trust within 30 days of ‘set up’ is impractical in many circumstances and the term ‘set up’ is itself poorly

defined. We proposed that ‘set up’ should be taken to be the point at which assets are transferred into the hands of the trustees. This will be a more appropriate registration trigger for will trusts. We also called for more time for registration and updates. The ATT also raised a number of queries about how the deadlines in the draft legislation are intended to work, as the draft proposals are not clear.

The ATT considers that it would be simpler if the information requirements and deadline for updates for both taxable and non-taxable trusts were the same, and the requirement to gather NI numbers for trustees, settlors and beneficiaries was dropped.
Both bodies were pleased to see a proportionate approach to penalties, with trusts receiving a nudge letter to encourage compliance before penalties will be imposed. The CIOT highlighted concerns over a lack of clarity on the actual penalty process.

Under 5MLD, those with a legitimate interest will be entitled to request certain details about a trust’s beneficial owners. We are pleased to see that those requesting data on the Register will be required to show that requests are being made in relation to specific instances of money laundering or terrorist financing.

The draft legislation also permits HMRC to withhold details of certain individuals for whom disclosure will put them ‘at risk’ of extortion, kidnapping, etc., but we are unclear how HMRC will identify such ‘at risk’ individuals and have called for trustees to be able to flag when they consider an individual is at risk during the registration process.

The ATT also highlighted concerns about how digitally challenged trustees will access the TRS. The current system requires information to be provided online, and trustees who wish their agent to supply updates will need to be able to set up a Government Gateway account to complete a ‘digital handshake’. Our primary concern is ensuring there is a non-digital route for trustees to appoint their agents to act.

There remains a lot more work to be carried out by government and the professional bodies to ensure that 5MLD is implemented in a manner that is workable and comprehensible; comments from members are always welcome.

The ATT response can be found at www.att.org.uk/ref352 and CIOT’s at www.tax.org.uk/ref633.