

New Registration and Record-Keeping Requirements for Express Trust Arrangements Arising in Corporate Transactions

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The scope of the HM Revenue and Customs (the “Revenue”) Trust Registration Service has been extended,¹ meaning that more trusts will now be caught by, and required to comply with, registration and record keeping requirements. These new obligations on trustees come into force on 1 September 2022 and apply to pre-existing trusts as well as those formed on or after that date.

The extension brings into scope non-taxable trusts that are either a UK express trust, or a non-UK express trust that owns land or property in the UK or has a connection to the UK by virtue of either a business relationship or a resident trustee. Express trusts arise regularly under UK law in various business contexts. There are some helpful exclusions from the registration requirements that will apply to many of the trusts encountered in corporate structures and transactions, but these will need to be looked at on a case by case basis, and even where no registration is required, the record keeping requirements will still apply.

We set out below in more detail the types of trusts that may be caught by the new regime, and we outline the registration and record-keeping requirements which will apply if a trust is in scope.

Trusts in Scope. The existing Trusts Registration Service only applies to trusts that are subject to UK tax. The extension of the Trust Registration Service brings into scope non-taxable trusts which are:

- UK express trusts, unless specifically excluded, that were in existence on 6 October 2020 or came into existence after that date; and
- Non-UK express trusts, unless specifically excluded, which:
 - Acquire land or property in the UK on or after 6 October 2020; or

¹ Pursuant to the Fifth Money Laundering Directive (EU) 2018/843

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- Have at least one trustee resident in the UK and enter into a “business relationship” within the UK on or after 6 October 2020.

For the remainder of this note we are just looking at “UK express trusts”.

UK Express Trusts. The Revenue guidance on what is meant by an “express trust” defines one as a trust created deliberately by a settlor, usually in the format of a document such as a written deed or declaration of trust. These can be contrasted with trusts that come into being through the operation of the law and that do not result from the clear intention or decision of a settlor to create a trust (for example, implied or constructive trusts).

There are many common examples of express trusts arising in corporate transactions both as a short-term measure and on an ongoing basis—for example where shares are held on trust by a seller pending registration of the transfer being finalised, or where shares are held by a nominee on behalf of individuals or other entities on an ongoing basis.

Wherever such an express trust arrangement exists, from 1 September 2022, the trustees will be required to keep detailed records as set out below and to share these with the Revenue if requested to do so. Whether or not there will also be an obligation to register will depend on whether the trust benefits from one of the exclusions set out below.

Exclusions from the Registration Requirements. A list of exclusions to the trust registration requirements is set out in Schedule 3A to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) [Regulations](#) 2017 (as amended).²

The most useful exclusion in the context of corporate transactions is paragraph 14, “Commercial transactions”, which excludes:

“A trust created for the purpose of:
(a) enabling or facilitating a transaction effected for general commercial reasons; or
(b) protecting or enforcing rights relating to such a transaction,
where the use of the trust is incidental to the principal purpose of the transaction.”

This will have the effect of excluding any express trusts that arise in the course of a corporate transaction as a means of facilitating the overarching aim of the transaction (for example, the sale of a company) from the registration requirements.

² <https://www.legislation.gov.uk/uksi/2017/692/contents/made>

There are also exclusions which cover:

- Co-ownership—a trust of jointly held property where the trustees and beneficiaries are the same persons.
- Financial markets infrastructure—a trust relating to the creation of a beneficial interest in securities belonging to a person whose name and address are maintained on a register of securities.
- Registration of assets—a trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust until the procedure to effect legal transfer of title is completed.
- Acting as custodian or escrow agent.

The Law Society has published [guidance](#)³ on the application of these exclusions which helpfully identifies many of the most common occurrences of express trusts in a corporate context as falling within an exclusion from the registration requirements.

These include:

- Shares held on trust by a seller pending registration of transfer;
- Sums held in an escrow account or retention amounts held by buyers under SPAs;
- Declarations of trust over shares to facilitate same-day transfers;
- Trust arrangements on business sales ;
- Trusts arising on rights issues or open offers by a company; and
- Money held on trust as part of a reduction of capital.

However, there are certain express trusts which arise and which do not automatically fall within any of the exclusions. These will need to be looked at on a case-by-case basis to determine whether registration of the trust will be required.

One key area is where shares are held by a nominee entity on behalf of individuals or other entities on an ongoing basis. Funds sometimes use nominees in their investment

³ <https://www.lawsociety.org.uk/topics/anti-money-laundering/trust-registration-service-trs-and-aml-compliance#read-our-guidance>

holding structures to hold all or specific types of assets for the fund, and they are often used in employee benefit or management equity plans, where it is helpful to split the legal and beneficial ownership of an asset for the purpose of running the plan. A nominee arrangement will usually amount to the type of “express trust” in scope of the Trust Registration Service. In the context of the “commercial transactions” exclusion, it will be important to consider whether the trust is put in place to “enable or facilitate the transaction effected for general commercial reasons” and where the use of the trust is “incidental to the principal purpose of the transaction”. This will primarily depend on whether the trust is simply an incidental part of the structure or confers additional benefits beyond the principal purpose of the transaction. Where nominee arrangements are put in place by regulated custodians, the resulting trusts will be out of scope by virtue of the “Professional services” exclusion in the list of exclusions set out in Schedule 3A, referred to above. There are also specific exclusions in the list for some types of share incentive plans and share option schemes.

The registration requirement also applies to any trust that was in existence on 6 October 2020, with no “backstop” date on a look-back period, so historic nominee arrangements will also need to be reviewed to determine whether there is a requirement to register.

Record Keeping. Trustees of all in scope trusts will be required to maintain accurate and up-to-date written records of all beneficial owners of the trust and to provide such records to any law enforcement agency upon request.

The records must include the following details:

- For individual beneficiaries: name; date of birth; national insurance number or UTR (or usual residential address if these are not available); passport or ID number if residential address is not in the UK and the nature of the individual’s role in relation to the trust.
- For corporate beneficiaries: corporate or firm name; UTR; registered office address; legal form; governing law; any register of companies on which the entity is registered and the registration number; the nature of the entity’s role in relation to the trust; and, in some cases, details of ultimate beneficial owners.

Registration. Trusts that fall within the new regime and were in existence on 4 June 2022 must be registered by 1 September 2022. Trusts created after that date which fall in scope must be registered within the later of 90 days of the date of creation or the date on which they became “in scope”.

The responsibility for registration is with the trustees. The registration is an online process.

The register is not public—but the information can be shared by the Revenue with law enforcement authorities in the UK or another EEA member state if requested.

Action to Be Taken. In conclusion, many corporate transactions will include express trust arrangements in some form, so the identification of these trusts and compliance with the record-keeping requirements will need to become part of such deals going forward. In certain circumstances, such as the use of nominee arrangements on an ongoing basis, thought will also need to be given as to whether registration of the resultant express trust is also required. A review of pre-existing trust arrangements should also be undertaken to ensure that, where needed, appropriate record-keeping systems are in place and registrations are made.

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