

Technical Briefing Note for Non-UK Trustees

Technical Briefing Note for non-UK trustees following the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Regulations”) implementing the EU Fourth Money Laundering Directive

The Regulations were laid before Parliament on the 22nd June 2017 and came into force on the 26th June 2017.

The Regulations place some onerous duties on certain non-UK trustees of relevant non-UK trusts which require reports to be made to HMRC. This Technical Briefing Note is intended to make it easier for relevant trustees to understand what the Regulations say and to provide a checklist of the information to be maintained and disclosed to HMRC in the appropriate circumstances.

These Regulations have extraterritorial effect because they impose obligations on trustees who are outside of the UK jurisdiction.

What is a Relevant Non-UK Trust and a Taxable Relevant Trust?

You have to decide if you are trustees of a relevant non-UK trust and whether the trust is a taxable relevant trust.

A relevant non-UK trust is described helpfully as a trust which is not an UK trust.

A trust is an UK trust if:

- (a) all the trustees are established in the UK; or
- (b) (i) if at least one trustee is established in the UK; and
(ii) the settlor was established in the UK when the trust was set up, or when funds were added to the trust.

See Regulation 42 2(c).

A relevant trust for the purposes of the Regulations is:

- (a) an UK trust which is an express trust; or
- (b) a non-UK trust which is an express trust and receives income from a source in the UK, or has assets in the UK on which the trust is liable to pay UK taxes.

For the purpose of the Regulations the taxes concerned are:

- (i) Income Tax;
- (ii) Capital Gains Tax;
- (iii) Inheritance Tax;
- (iv) Stamp Duty Land Tax; or
- (v) Stamp Duty Reserve Tax.

A non-UK trust which is liable to pay UK taxes is a “taxable relevant trust”.

See Regulation 42(2) and 45(14).

What records must trustees maintain?

Regulation 44(1)

The trustees must maintain accurate and up-to-date records of all the beneficial owners of the trust, containing the information referred to in Regulation 45(2)(b) to (d).

These are in relation to the trust:

- (a) the full name of the trust;
- (b) the date on which the trust was established;
- (c) a statement of account for the trust, describing the trust assets and identifying the value of each category of the trust assets (including the address of any property held by the trust);
- (d) the country where the trust is considered to be resident for tax purposes;
- (e) the place where the trust is administered;
- (f) a contact address for the trust;
- (g) the name of any advisers who are being paid to provide legal, financial, tax or other advice to the trustees.

In relation to each of the individuals who are beneficial owners of the trust and any other individual mentioned in any document such as a letter of wishes:

- (a) the individual's full name;
- (b) the individual's usual residential address and if that address is in the UK, the individual's passport number or identification card number, with the country of issue and the expiry date;
- (c) the individual's date of birth;
- (d) the individual's national insurance number and unique taxpayer reference, if any;
- (e) the nature of the individual's role in relation to the trust.

In relation to each of the entities (i.e. other than individuals) that are beneficial owners of the trust:

- (a) the legal entity's corporate or firm name;
- (b) the legal entity's unique taxpayer reference, if any;
- (c) the registered or principal office of the legal entity;
- (d) the legal form of the legal entity and the law by which it is governed;
- (e) if applicable, the register of companies in which the legal entity is entered (including details of the EEA state or third country in which it is registered and its registration number in that register);
- (f) the nature of the entity's role in relation to the trust.

Where the beneficial owners are in a class of beneficiaries, not all of whom have been determined, the trustee must provide a description of the class of persons who are entitled to benefit from the trust.

Information to be given to a Relevant Person when entering into a Relevant Transaction

Regulation 44(2)

When a trustee of a relevant trust, acting as trustee enters into a relevant transaction with a relevant person, or forms a business relationship with a relevant person, the trustee must:

- (a) inform the relevant person that it is acting as trustee; and
- (b) must on request from the relevant person (and at least within two working days), provide the relevant person with information identifying:
 - (i) all beneficial owners of the trust; and
 - (ii) any other individual referred to in any document such as a letter of wishes relating to the trust.

A "relevant person" is defined in Regulation 8 and includes all the persons that you are aware of in earlier versions of the Regulations.

Regulation 44(3)

If during the course of a business relationship there is any change in the identity of individuals falling within Regulation 44(2)(b) (see above), the trustees must notify the relevant person of the change and the date on which it occurred within two working days.

Regulation 44(4)

For the purposes of the Regulations a "relevant transaction" means a transaction in relation to which the relevant person is required to apply customer due diligence measures under Regulation 27. These are all the standard forms of transactions that you would normally come across.

Disclosure of information to law enforcement agencies

Regulation 44(5)

The trustees of a relevant trust must on request provide information about beneficial owners of a trust to any law enforcement agency (see Regulation 44(10) for details of the Agencies).

Retention of Records

Regulation 44(9)

If the trustees of a relevant trust are persons who are being paid to act as trustees of that trust they must:

- (a) retain the records for a period of five years after the date on which the final distribution is made under the trust;
- (b) make an arrangement for those records to be deleted at the end of that period, unless:
- (c)
 - (i) the trustees are required to retain them by or under any enactment or for the purposes of Court proceedings; or
 - (ii) any person to whom the information in a record relates consents to the retention of that information.

Information to be given to HMRC by the trustees of a Taxable Relevant Trust

HMRC are obligated to maintain a register of beneficial owners of taxable relevant trusts.

Regulation 45(2)

The trustees of a taxable relevant trust must, before the 31st January 2018 or the 31st January after the tax year in which the trustees are first liable to pay any UK taxes, provide HMRC with the information referred to above under "*What records must trustees maintain?*".

- (a) the trust;
- (b) each individual referred to;
- (c) each of the legal entities referred to;
- (d) where the beneficial owners include a class of beneficiaries most of whom have been determined, a description of the persons entitled to benefit from the trust.

The trustee of a taxable relevant trust must inform HMRC of any changes in the information and the date of such change on or before the 31st January after the tax year in which the change occurred or if the trustees are not liable to pay any UK taxes in that year, on or before the 31st January after the tax year in which the trustees are liable to pay any UK taxes.

If the trustees are not aware of any change to any of the information they must confirm that fact to HMRC on or before the 31st January after the tax year in which the trustees are liable to pay any UK taxes.

Who are Beneficial Owners?

Regulations 5 and 6 define the term "Beneficial Owners"

"Beneficial Owners" in respect of corporate entities, partnerships and trusts are basically the same as in the Money Laundering Regulations 2007 and are what you are used to. There are a couple of additional items but these are really by way of clarification.

"Beneficial Owner" in relation to trusts are:

- (a) the settlors;
- (b) the trustees;
- (c) the beneficiaries, or where the individuals benefitting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;
- (d) any person who has control over the trust.

Control for these purposes means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to:

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) approve proposed distributions;
- (c) vary or terminate the trust;
- (d) add or remove a person as a beneficiary or to or from a class of beneficiaries;
- (e) approve the appointment of an agent or advisers;
- (f) appoint or remove trustees or give another individual control over the trust;
- (g) resolve disputes amongst trustees;
- (h) direct, withhold, consent to, or veto.

Certain statutory powers are excluded from the definition of control.

Where the "beneficial owner" does not fall within the above or under the definition of corporate entities under Regulation 5 an individual will be a beneficial owner if:

- (a) he benefits from the property of the entity or arrangement;
- (b) where there is an undetermined class of beneficiaries it will be the class of persons in whose main interest the entity or arrangement is set up or operates;
- (c) any individual who exercises control over the property of the entity or arrangement.

Where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property or entity or arrangement that individual is to be regarded as benefitting from or exercising control over the property of the entity or arrangement.

There are beneficial owner provisions relating to the estate of a deceased person. In addition, there is a fail safe in that in any other case than referred to above beneficial owner means the individual who ultimately owns or controls the entity on whose behalf a transaction is being conducted.

“Beneficial Owners” in relation to a foundation or other legal arrangement similar to a trust, means those individuals who hold equivalent or similar positions to those that are beneficial owners of trusts.

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