

ATT Technical Briefing Note - The Trusts Registration Service

Last updated 18 October 2017

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Disclaimer

The following document has been prepared on the basis of our understanding of the relevant legislation, combined with information, [guidance](#) and clarifications received from HMRC. The intention is to bring the information of which we are aware together in one place in order to provide guidance to members. The note is not a substitute for detailed professional advice. If in doubt, members should consult the underlying legislation and/or seek professional advice.

No responsibility can be accepted for the consequences of any action taken or refrained from based on this note.

This note was last updated on the 18 October 2017.

Amendments since 28 September:

The primary amendments to this document since the original version issued on the 28 September are:

- Inclusion of links to [HMRC guidance](#).
- An amendment to the example on page 10 given in the question 'When can beneficiaries be defined by class?' following correspondence with HMRC. It appears that the class description cannot be used as widely as previously indicated.
- Reminder that the responsibility for compliance with the new rules sits with the trustees and agents should agree additional services with the trustee and document this in their letters of engagement on page 3.
- Inclusion of HMRC's definition of express trust on page 6.
- New questions addressed in this note
 - What is the position for charitable trusts?
 - At what point in time does the information need to be correct?
- Confirmation of the information to be supplied by executors of complex estates

Summary

- Following new UK Money Laundering regulations, and as part of increasing demands globally for transparency, most UK trusts and some foreign trusts are required to maintain details of their *beneficial owners*. Beneficial owners include settlors, trustees, beneficiaries, protectors and any individuals with control/influence.
- Trusts which are in self-assessment, or have a liability to certain other taxes in the year, must report details of their *beneficial owners*, together with additional information on trust assets, to HMRC. HMRC will retain this data on a Trust Register.
- Reporting trusts must supply information to HMRC via the new Trusts Registration Service (TRS) and review it annually. The TRS also handles self-assessment registration for trusts and complex estates¹.

Form 41G (trusts), the previous route for self-assessment registration for trusts and complex estates, was withdrawn in April 2017. Trustees have had access to the TRS since July 2017 but agents only obtained access on the 18 October.

- In view of the delayed access for agents, trusts who first require a UTR for 2016/17 have been given an extension on the usual 5 October 2017 self-assessment registration deadline. Trusts now have until 5 December 2017 to register for a UTR. This extension applies to all trusts regardless of whether or not the trust is represented by an agent.
- All other trusts with 2016/17 tax consequence have until 31 January 2018 to register with the TRS. As agent access to TRS was only obtained in mid-October, and trusts and their agents are being asked to comply with these new rules during peak self-assessment filing season, [the ATT](#) and CIOT are lobbying for an extension to this deadline.
- There is a significant increase in information required by HMRC over the 41G. Trustees must consider how to identify persons with control/influence who are not trustees, look through corporate structures and provide details of the assets when the trust was created.
- The responsibility for registration lies with the trustees although they can appoint an agent to act on their behalf. Agents may wish to alert trusts for whom they act about the need to register. Agents may wish to clarify with trustees who is undertaking this work – the trustees themselves, the tax agent or any of the trust’s other advisers such as a solicitor. Where an agent is appointed, it is recommended that the additional service is captured in an updated letter of engagement. Agents should only undertake this extra work if they have a clear understanding of what is required under the new regime.

¹ A complex estate is one where (i) the estate is valued at over £2.5m, (ii) the tax due for the whole period of administration will exceed £10,000 or (iii) there will be sales of assets over £500,000 (£250,000 for deaths prior to April 2016).

Other matters covered by same regulations

- Trustees must disclose in their investment transactions and business relationships that they are acting as a trustee.
- Trustees can be asked by any financial institutions, investment providers and advisors which the trust does business with to supply details of their *beneficial owners* and must update the details supplied within 14 days of the trustees becoming aware that information has changed.
- Trustees must, on request by any law enforcement agency, supply details of their beneficial owners and potential beneficiaries (including those indicated in a letter of wishes). This means that even those trusts who are not required to register on the Trust Register must still keep written details of beneficial owners in case this information is requested by law enforcement agencies.

Timeline

- **April 2017**- paper 41G trust was withdrawn
- **26 June 2017** – new legislation requiring creation of the TRS was enacted requiring HMRC to create a trust register and trustees to provide specified information
- **July 2017** – register was opened for unrepresented trustees to register their trusts here: <https://www.gov.uk/government/publications/trusts-and-estates-trust-details-41g-trust>
- **5 October 2017**– the usual deadline for a trust to register for self-assessment if it needs a return for 2016/17. The TRS was not available at this date for agents to register any trusts first liable to self-assessment in 2016/17.
- **17 October 2017** – agents were given access to the TRS
- **5 December 2017** – The extended deadline for self-assessment registration for 2016/17. Given the delays, HMRC announced on 30 August that the usual 5 October deadline will be extended by two months, so trusts registered between 5 October and 5 December 2017 will not be penalised.
- **31 January 2018** – The deadline for registering all other existing *relevant trusts* with a *tax consequence* in 2016/17. (See below for definitions)
- **31 January 2019 (and later years)**
 - Deadline to notify HMRC of any changes during the preceding tax year to any of the information previously reported. A change only needs to be reported if there was also a tax consequence for the trust in the tax year of change. For example, if a new trustee is appointed but there was no tax consequence in the same tax year, the deadline to report the new trustee is 31 January after the next tax year with a tax consequence.
 - This will be the deadline for any trust not already registered where a tax consequence arises in the previous tax year to be registered – although effectively the requirement to register for self-assessment by 5 October will overrule that date.
 - Where there is no change to information previously supplied to the TRS, and the trust has a tax consequence, the trustees should notify HMRC that data is correct. Trusts in self-assessment will be able to do this via the trust tax return. Where a trust is taxable because of other taxes (eg Inheritance tax) and is not in self-assessment, it is not yet known how they will confirm details are correct as required.
 - Where the trust does not have a taxable consequence but details have changed, the trustees can update the register voluntarily.

1. Background

As part of the UK's compliance with the EU Money Laundering Directive, and similar to provisions for companies, trusts are required to maintain records of their *beneficial ownership*. This is all part of the global drive towards increased transparency and reduction in tax evasion.

In April 2017, the usual route to notify HMRC of a new trust (form 41G) was withdrawn. Now both recently created and existing trusts, together with complex estates, will need to supply information to HMRC via the Trusts Registration Service (TRS). The information required is set out in the appendix to this note.

New trusts and complex estates will need to use the TRS to obtain a UTR to enable them to file self-assessment returns.

2. What are the benefits to trustees?

According to HMRC, the new centralised system will bring the following benefits:

- Centralising all trust services including notification and also updates
- Digitalising information – no more paper forms getting lost in post or delays to processing
- More tailored questions – only those relevant to that trust will be asked during registration
- Ability to print and retain details from the system which should help trustees to meet their obligation to keep written records

3. Which trusts must comply with these regulations?

All *taxable, relevant trusts* must register with the TRS. All *relevant trusts* need to keep accurate, up-to-date written records of their *beneficial owners*.

4. What is a relevant trust?

A *relevant trust* is either:

- (i) A UK express trust, or
- (ii) A non UK express trust which has
 - a. UK income; or
 - b. assets in the UKon which it is liable to pay one or more of the taxes noted below

An express trust for these purposes is, per HMRC guidance, “a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust”.

HMRC have provided further details on the position for trusts involving co-owners of land in their [guidance](#).

As for self-assessment, a trust is a UK trust if:

- (i) All the trustees are resident in the UK, or
- (ii) There is one UK resident trustee and the settlor was resident and domiciled in the UK when the trust was created or funds were added to the trust

5. What is a taxable consequence/taxable trust?

If trustees are liable to one or more of the following taxes in a tax year, then the trust has a *taxable consequence* and it is *taxable*.

- Income Tax
- Capital Gains Tax (CGT)
- Inheritance Tax (IHT)
- Stamp Duty Land Tax (SDLT)
- Land and Buildings Transaction Tax (LBTT)
- Stamp Duty Reserve Tax.

For IHT, SDLT, LBTT and SDRT the relevant date which triggers registration is the date that the chargeable event occurs. Where a trust has an IHT liability on the 16 January 2017 (ie in 2016/17) the tax is due on the 31 July 2017 (ie in 2017/18). The trigger point for the trust register is the 16 January 2017 when the tax liability arose.

6. What is the position for charitable trusts?

Charitable trusts have to consider the legislation just as trusts without charitable objects are required to do. If the trust is a *relevant trust* with a *tax consequence*, the trustees will need to register it. However if all the trust's activities are covered by the charitable exemption in a tax year then it shouldn't have to register for that year.

Charitable trusts that do need to register should be aware of the following:

- The TRS is not available for charitable trusts and trustees will need to request a paper form from HMRC by calling 03000 123 1072.
- As charitable trusts may have many beneficiaries, HMRC will allow more than 10 beneficiaries to be defined as a class which contrasts with the stricter position for non-charitable trusts (see question below addressing when beneficiaries can be defined by class).
- Donors to the charity will not be considered to be settlors.

More detail can be found on the [HMRC guidance](#) at pages 32-33.

7. Who are the beneficial owners of a trust?

The beneficial owners of a trust defined in paragraph 6 of the regulations include:

- The settlor(s)
- The trustees
- The beneficiaries – whether determined individually, or defined as a class
- Any individual who has *control* over the trust, which could include a *protector*.

A *protector* is someone with the power to formally restrain the trustees. Most UK based trusts do not have a *protector*. They are more common where the trust is based outside the UK, where they are appointed to oversee the trustees and ensure that the trust is operated in accordance with the deed.

An individual who has *control* is defined in the legislation as someone who has the power, exercisable alone or jointly, under the trust instrument or by law to:

- (i) dispose, advance, lend, pay or apply trust property
- (ii) vary or terminate the trust
- (iii) add or remove beneficiaries
- (iv) appoint or remove trustees or give control over the trust to someone else
- (v) direct, withhold or veto any of the powers in (i) to (iv).

Where the beneficial owner is a company, trustees should look through the company to the underlying ownership.

8. Are there any trusts which are not required to register?

Trusts without a tax consequence, as defined above, are not required to register with the TRS.

Bare trusts are not required to register as any tax liability is the beneficiary's. For many trusts, the fact that it completes a tax return will be sufficient to indicate that it should consider registration.

Where there is no income, or the income is mandated to the beneficiaries and no tax return is prepared by the trust, there is no need to register. For example, a trust with a valuable painting enjoyed by the life tenant and income from investments mandated to them would not be required to register unless a *tax consequence* arose in another way. Such a trust might trigger registration if it incurred SDLT/LBTT on the purchase of a property. If the trust was created after March 2006 and was subject to the Relevant Property regime, then trustees would also need to watch for IHT 10 year charges or exit charges triggering registration.

Trusts which are closed (and per HMRC the trustees have a letter from HMRC acknowledging closure) do not have to register.

Trustees of charitable trusts do not need to register unless they incur a liability to pay any of the taxes listed above – see question 6.

HMRC highlighted in their August *Talking Points* that there are proposals in the Fifth EU Money Laundering Directive to remove the need to wait for a tax consequence before registration is required. In future it is possible that all trusts may need to be registered, whether or not they have any tax consequences.

Even if the trust does not have a tax consequence, if it is a *relevant trust* the trustees still need to keep records of its *beneficial owners*. The trustees can opt to update the register voluntarily if they wish.

9. What information is required?

The level of detail which must be reported to TRS is much greater than was previously supplied on form 41G. A full schedule of information is included as an appendix to this note. Practical details about the trust such as full name, date of creation, assets held and tax residency are required, as well as details on all the beneficial owners.

The regulations include the requirement for HMRC to maintain a list of potential beneficiaries listed in any letter of wishes or document from the settlor. (Potential beneficiaries named in solicitors' attendance notes will not be considered a document from the settlor and do not need to be included). They also make provision for unknown or undetermined beneficiaries – for example unborn children in a family trust – to be included by reporting a class of beneficiaries, using the

wording in the trust deed to define the class.

10. What about missing information?

There may be cases where, despite their reasonable endeavours, trustees cannot obtain all the details needed to complete the TRS information requirements. For example a beneficiary may be missing, or uncontactable. In this case HMRC expect trustees to make reasonable endeavours. The ATT and other professional bodies have requested a work-around to deal with the position where information is complete but a data entry needs to be made in order for the form to submit.

11. How is registration carried out?

The TRS is an online service, consistent with HMRC's move to digital interactions with taxpayers.

Agents

The TRS is available to agents via the new *Agent Services* account which has been created as part of *Making Tax Digital* (MTD). It will not be available via existing Government Gateway accounts. (Existing Government Gateway accounts will need to be retained for self-assessment purposes).

HMRC advise that agents should follow the link www.gov.uk/trusts-taxes/trustees-tax-responsibilities for further details on how to gain access to the TRS.

A new Agent Services account will need to be set up as part of the process, and the ATT are seeking further guidance on this aspect. The Agent Services account has some differences to existing Government Gateway logins. For example, a firm can have only one Agent Services account. The account will also have 2 Step Verification. This means that, in addition to a username and password, agents will need to associate a mobile, landline or HMRC app to their account to receive security codes. Agents can also set up delegate access for individual staff members to access the main Agent Services account.

Given that the Agent Services account set up under this process will be, in future, the sole point of access for the agency to HMRC services, agents should consider setting this up centrally. It is unlikely that the trust department is the best place to set up this account as it will be required on an ongoing basis by the wider firm.

We are currently seeking further guidance and clarification on the operation of the Agent Services account so that firms can set up appropriate processes and systems. For example, once the main account is set up, we understand that it is possible to set up delegate access for individual staff. This should in theory be the way in which client confidentiality can be managed by restricting staff access to certain trusts but we haven't seen that operating in practice and would be grateful for feedback/comments (see contacts section).

Trustee approval

Agents should be able to handle the initial registration without involving the trustees. However for subsequent amendments, we understand that the lead trustee will be required to approve any amendments or updates to the trust record. We do not yet know how this will work in practice.

For the initial registration of an existing trust, HMRC will ask for some known facts so they can confirm that an authorised person is supplying the information. After that point, since the data held

by HMRC from previously submitted 41G forms is limited, the agent/trustee should effectively consider it a new trust registration and assume all information detailed in the appendix is required.

Unrepresented trusts

For an unrepresented trust, the service can be accessed by the trustees [here](#). The trustees will need to obtain a Government Gateway log-in in order to access the service. If the trust has an existing Government Gateway for submitting tax returns, a separate Government Gateway account is needed for TRS purposes.

Represented and unrepresented trusts

It is possible to pause the registration process and save data for up to 28 days if the agent/trustee needs time to find further information with the 'Save for Later' facility.

For trusts which are registering after 31 January following the tax year in which they were created, there will be the opportunity to advise if tax consequences in earlier years need to be reported. For example, a trust created in May 2007, registering now, will have the opportunity to say whether or not any tax returns are required for prior years in addition to 2016/17.

The normal time limit for assessments is four years from the end of the tax year. Where there has been careless behaviour this extends to six years, and for deliberate behaviour (i.e. fraud) HMRC can raise assessments for the previous 20 years.

At the end of the registration process, the lead trustee/agent will:

- Be presented with a summary page to review/edit
- Have the opportunity to print the information submitted (recommended)
- Make a declaration that the information supplied is correct and complete
- Be able to supply to HMRC with an email address for future correspondence.

12. At what point in time does the information need to be correct?

In general, trustees have until the 31 January following the tax year to notify changes to the *beneficial owners* in that tax year. Where there are further changes between the end of the tax year and the date of reporting HMRC expect the report to include all the changes up to the reporting date.

For example, there is a change in 2018-19 and the trust has a *taxable consequence* so is liable to report that change by 31 January 2020. There is then a further change in October 2019. If the trustees choose to update the register for 2018-19 in November 2019 they will also know about the October change, and HMRC would expect the information supplied to reflect the latest position.

13. When can beneficiaries be defined by class?

The regulations require beneficiaries who have been *determined* to be identified. Beneficiaries include both actual and potential beneficiaries. HMRC are interpreting *determined* to mean individuals who are named in the deed and other trust papers, or who can be identified from the deed.

Originally HMRC were then allowing the further beneficiaries not named, but reflected in descriptions such as 'all my grandchildren', to be identified by class. Only once an individual within a class received a benefit were trustees required to be report them by name on the trust register.

However, in correspondence HMRC have confirmed that where a beneficiary within a class **can** be named, they should be named on the register - whether or not they have received a benefit. It means that where a deed benefits a class of 'all my grandchildren', those who are alive need to be named and only those yet to be born fall in the class description. When a grandchild is born, the register should be updated accordingly (subject to there also being a *taxable consequence* in the tax year of birth).

This is a change to our previous understanding set out in the Briefing Note prepared on 28 September which was based on HMRC's September *Talking Points*. In this webinar HMRC gave the example of a deed which says the beneficiaries are John Smith, Jane Green, their children and grandchildren. At that point in time HMRC indicated they would expect John and Jane to be identified individually and their full details supplied with the rest of the family beneficiaries disclosed as a class. Individual children or grandchildren only needed to be registered in their own right when they received a benefit from the trust.

In HMRC's [latest guidance from 9 October](#), the above example has been included on page 20 with the additional information that children and grandchildren are not yet born. It confirms that as children/grandchildren are born they should be added to the list of potential beneficiaries.

There appears to be a conflict between the examples on page 19 and 20 of the HMRC guidance about when beneficiaries can be disclosed as a class. **However HMRC have confirmed in correspondence that, where an individual is born and alive, he or she should be named on the TRS.**

If there are more than 10 beneficiaries who are named or identifiable then trustees will need to make separate disclosure by post to Trusts, HMRC, BX9 1EL.

Where this would prove impracticable for certain trusts including:

- occupational pension schemes
- charitable trusts and,
- employee benefit trusts

HMRC have indicated that disclosing the class of beneficiaries will be sufficient and individual beneficiaries will not need to be named.

14. [Can data be supplied in bulk?](#)

At present there is no facility to bulk upload data into the system. Data for each trust must be manually entered through the TRS.

HMRC are working on an API (Application Programme Interface) to allow those using trust software to complete registrations via their software in the future.

15. [What information needs to be supplied by letter?](#)

There are limits to the number of settlors, trustees and beneficiaries which can be reported through the TRS. If the trust has more than two settlors, five trustees or 10 beneficiaries, their details must be supplied by post to HMRC to

Trusts, HMRC, BX9 1EL

There is no facility to submit attachments through the TRS.

Concerns have been expressed during *Talking Points* sessions that in some situations, for example flat management companies, there will be a large number of settlors to disclose. HMRC addressed the point for flat management companies by stating they would not expect many of these to have a taxable consequence to trigger registration.

16. When does this data need to be supplied by?

For all existing trusts with a taxable consequence in 2016/17, data should be supplied to the TRS by **31 January 2018**.

Where the tax consequence occurred prior to the legislation being enacted on the 26 June 2017 (eg the trust has incurred an SDLT charge prior to the 26 June 2017 but has no other taxable consequence in the year, or there was a consequence in 2015/16 but the trust had none in 2016/17), then HMRC say no report is required until the next taxable consequence.

For trusts created in 2016/17 which require a UTR, the usual 5 October 2017 self-assessment registration deadline has been extended to 5 December 2017 to compensate for the delayed agent access to the service. All trusts (represented or otherwise) can benefit from the extension.

For any trust which has yet to have any taxable consequence, registration is due by 31 January following the first tax year in which a tax consequence does arise unless the trust also needs to register for self-assessment. In this case, the earlier 5 October deadline for self-assessment overrides 31 January as the date for trust registration.

HMRC said in their September *Talking Points* webinar that trusts which have already submitted their 2016/17 return are not expected to register until their next tax consequence, so would have an extra year until 31 January 2019 to file. It is not clear that this has legislative basis – indeed the presenter noted in an example that “strictly the 31 January 2018 date still applied” - and subsequent HMRC guidance does not include this relaxation. We assume it is not valid. .

17. What happens if full information cannot be obtained?

Many of the data fields in the TRS are mandatory, which means that the submission cannot be completed until those fields have been completed. Full data may not be available for the following situations:

- Deceased settlor
- Unknown or uncontactable beneficiary

HMRC expect trustees to make best efforts to obtain information. There is a work-around for deceased settlors (see below). As yet there is no work-around for other mandatory fields where, despite their best endeavours, trustees cannot obtain required information from beneficiaries who are lost, travelling or otherwise uncontactable. A work-around has been requested by professional bodies including the ATT.

18. How to report a deceased settlor

HMRC have provided a work-around for deceased settlors where the National Insurance (NI) number is unknown.

For deceased settlors, their name and date of birth should be entered. Where the NI number is unknown, then answer 'no' to the question about the settlor's NI number. This brings up a series of further questions which should be tackled as follows:

- **Country of issue of passport or ID card** – complete with most relevant country to deceased
- **Passport or ID card number** – complete with 'deceased' followed by year of death, so 'deceased1980' if settlor died in 1980. There should not be any spaces between *deceased* and the year
- **Passport or ID card expiry date** – complete with the date of death
- **Address**: Settlor's last known address

19. Updating the register

Trustees are obliged to update the details on the Trust Register via the TRS if there is any change to information previously supplied. Updates should be made by 31 January following the tax year of change, assuming there is a tax consequence in that tax year.

If there is no tax consequence in the tax year of change, then the update should be made following the next year with a taxable consequence. This means that the information held by the TRS will be out of date for those trusts with infrequent tax consequences triggered by property purchases or IHT.

As yet, it is not possible to update the register online. The facility to do that is expected in early 2018.

For trusts completing self-assessment tax returns there will be a tick-box on the tax return to confirm that the TRS data is correct or has been updated. It is not yet clear how trusts which are reporting because of other taxable consequences will confirm that information has been updated.

20. What happens if incorrect data is submitted at initial registration?

If the data to be corrected has not yet been submitted but has only been saved as part of the 28 day drafting window, it can be corrected prior to submission as part of the initial process.

If the data has been formally submitted, trustees will need to wait to correct any submissions until the update facility is introduced later this year.

21. Question 20 on the 2016/17 Tax Return

The following question was included on the 2016/17 trust tax return, on the presumption that the TRS would be available to agents:

"You have a responsibility to ensure the information you have supplied on the Trust Register is accurate and up to date to the best of your knowledge and belief.

If there have been any changes or additions to the people associated with the trust, have you provided the updated details on the Trust Register? [Box to tick yes]

[Explanatory text]

These people include trustees, personal representatives, beneficiaries, members of the class of beneficiaries, settlors, protectors, agents or any other natural person exercising effective control over the trust."

Where tax returns have been completed prior to agents being able to access the TRS, HMRC advised that tax returns should be submitted with this question left blank. HMRC have recently confirmed in correspondence that agents will not need to amend 2016/17 returns to complete question 20 where it had been left blank and the return was submitted before the TRS was made available.

Not only would amendment be additional work for agents but, importantly, it would also extend the enquiry window. For these trusts, the first time this question will be completed will be in the 2017/18 return.

(Please note this statement supercedes the remarks in the August *Talking Points* webinar which implied that amendment would be required).

22. What about Holdover Relief?

For lifetime trusts, during the TRS process agents/trustees will be asked if hold-over has ever been claimed. If the answer is unknown, HMRC say that trustees should answer 'no'. The question is not part of the information required under the new legislation.

Trustees and their advisers dealing with a trust where they are unfamiliar with the trust's history need to be aware they can't rely on the answer to this question when determining whether or not hold-over has been claimed.

23. What are the additional record keeping obligations for trustees?

In addition to supplying data to TRS, the new regulations impose a requirement for trustees of *relevant trusts* to maintain accurate, up to date and written records of beneficial owners and potential beneficiaries themselves. This applies whether or not the trust has a taxable consequence.

The information trustees must retain is essentially the same as that supplied to HMRC, excluding a few elements such as details of the date of trust formation and trust residency which trustees are likely to want to know anyway.

For relevant trusts who have reported, it will be possible to print out the information supplied to TRS. Trustees may wish to print and retain a copy of the TRS information which we understand should satisfy their record keeping obligation.

Where a trustee is being paid to be a trustee – e.g. a corporate trustee or professional adviser – they should take particular care over data retention. The legislation requires paid trustees to retain data on beneficial owners for five years after the date on which the final distribution from the trust is made. After that, the data should be destroyed unless the trustees are required to retain it for court proceedings, consent has been given to retain it for longer, or the trustees have reasonable grounds to believe that the data needs to be retained for legal reasons.

24. What about residency of beneficiaries?

The TRS does not ask about the tax residency of any of the connected individuals. However trustees will need to know the residency of their beneficiaries for AEOI (Automatic Exchange of Information)

purposes under FATCA (Foreign Account Tax Compliance Act) and CRS (Common Reporting Standard). This information should be obtained from beneficiaries if not already held.

The introduction of the TRS process provides an opportunity for trustees to ensure that all necessary information is held and to ask beneficiaries to inform them of changes in residency.

25. The position for executors of estates

Executors of complex estates who need to submit annual tax returns for the administration period must use the TRS to tell HMRC about the estate and to obtain an estate UTR. Estates are not subject to the regulations but the TRS is being used as the same route for registration following withdrawal of form 41G.

A complex estate satisfies one of the following criteria:

- The estate is valued at over £2.5m, or
- The tax due for the whole period of administration will exceed £10,000 or
- The estate will make sales of assets of over £500,000 (£250,000 for deaths prior to April 2016)

Estates will need to supply the following information:

- Estate name/title
- Personal representative details – name, date of birth, telephone and email, address, NINO. Where no NINO is available then a passport or ID card number, and expiry date, are required.
- Details of the deceased – name, date of birth, date of death, address and NINO. Where no NINO is available then passport or ID card number and expiry date as above.

HMRC say that where there are underlying trusts in an estate receiving the residue of the estate, the trustees will only be required to register such trusts at the end of the period of administration.

26. Who has access to the TRS?

At present HMRC is required to give access to law enforcement agencies but there is no right of public access. In the September *Talking Points* session, HMRC confirmed that other EEA countries will have access to the data via the National Crime Agency.

For information, members may be aware that a similar register has been created in France already. It was announced in June 2016 that it would be made accessible to the French public. That position was then challenged and subsequently public access was held to be incompatible with other rights in French law.

27. Are there penalties for failure to register or incorrect registration?

Full details of the penalty regime are expected later in 2017. HMRC say that any civil penalty imposed must be proportionate to the offence committed. They say that they expect trustees to make reasonable efforts to obtain the information requested. Even if not all the information is available, the trust should still be registered.

Trustees' obligations in respect of maintaining accurate and up-to-date records in respect of beneficial ownership and registration with and reporting to the TRS are contained within Regulations

44 and 45 of *Statutory Instrument 2017 No. 692 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*. Sanctions for breach of the trustees' obligations are accordingly common with those (both civil and criminal) for contravening the numerous relevant requirements set out in the Regulations.

Civil sanctions available to HMRC for a breach of the trustees' obligations comprise the imposition of a penalty of such amount as HMRC considers *appropriate* and/or (less fittingly in the trust context) the publications of a statement of censure. The Regulations stipulate that 'appropriate' means "effective, proportionate and dissuasive" and require that all relevant circumstances must be taken into account when determining the type and level of sanction. Procedures in respect of statutory review and appeal to the tribunal follow those for VAT (demonstrating the European pedigree of the Regulations).

As an alternative to civil sanctions, someone who contravenes a relevant requirement under the Regulations may be prosecuted. Upon *summary* conviction, they are liable:

(i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both;

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both.

Upon conviction on *indictment*, they are liable to imprisonment for a term not exceeding two years, to a fine, or to both.

Whilst a civil sanction would generally appear to be much more appropriate than a criminal one in the context of the record keeping and TRS obligations, the potential for prosecution reinforces the message that the trustee obligations form part of the wider Anti-Money Laundering code and will be enforced with due rigour.

28. Contact

We would be pleased to hear from any members who have any difficulties or issues with the TRS system, or have come across areas of uncertainty which they feel should be brought to the attention of HMRC.

Please contact the technical team on atttechnical@att.org.uk with the subject heading *Trusts Registration Service*.

Appendix 1: Information required for new and existing trusts

HMRC say that trustees should make all reasonable efforts to supply the information below. Even if not all information can be obtained, the trust should still be registered.

Data Required	Notes	Comments
Full name of trust		
Date of creation		
Country of tax residency		
Correspondence address	Where the trust is administered from	
Advisers' details	Per the regulations the full name of any paid advisers providing legal, financial or tax advice is required	<p>HMRC have advised they are in practice only looking for details of the agent (if one has been appointed) who looks after the trustees' tax affairs. Trustees should keep their own written records of other advisers.</p> <p>Where an agent is carrying out the registration on behalf of the trustees they will need to supply:</p> <ul style="list-style-type: none"> • Agency/agent name • Address • Telephone number • Customer/agent reference
Type of trust	Form has a list to choose from	<ul style="list-style-type: none"> • Subsequent questions will be tailored based on the answer to this question
Assets	<p>Asset must be split into the following six categories:</p> <ol style="list-style-type: none"> 1. Cash 2. Property/land 3. Shares 4. Business 5. Partnership 6. Other <p>Up to 10 assets can be reported in each category – any additional assets must be reported separately by letter</p> <p>HMRC indicate in their guidance on page 22 that if a trust was set up some time ago, and the</p>	<ul style="list-style-type: none"> • Address information is required for property assets • For property, trustees should indicate where they hold a fractional share • For shareholdings, the form currently asks for the company's UTR information – this will be amended on a later release to ask whether or not the UTR is known. It is more likely to be known for private company shares than publicly listed companies. • For more than 10 shareholdings, HMRC recommend disclosing the top 8-9 holdings by value and then in box 9 or 10 combine the balance as a portfolio. To disclose a portfolio enter for company name 'Portfolio of shares', enter for number of shares the total number of shares held in the portfolio when trust created, enter 'no' to question about whether a UTR is available, complete the class of shares section as 'other', complete

	trustees do not know the value of the assets at that time, if the value of assets would have previously been notified via a 41G or SA900 tax return, the trustees can complete the 'other asset' field with the description 'already notified' and complete all other fields with '£1'.	type of share with 'quoted' or 'unquoted' as applicable and enter full value of the shareholdings so combined
	Assets should be valued at market value at the date the trust commenced	HMRC are aware that some trustees will have difficulty finding that information and advise that trustees should make reasonable efforts to do the best they can. HMRC say for trusts established some years or decades ago they will have reviewed the asset values at the time, and as it is unlikely the trust will still hold the same asset, HMRC are unlikely to question the values supplied. HMRC are not expecting formal valuations to be produced purely for trust registration purposes.
	Additions to the trust after creation	Subsequent additions to the trust should be reported via the tax return in the usual manner
Lead Trustee	Individual or company Contact email address can be added in all cases for future digital contact	For individuals, the information required per HMRC is <ul style="list-style-type: none"> • Name • Date of birth • UK NINO • If no NINO then <ul style="list-style-type: none"> ○ residential address ○ passport or ID card number, together with country of issue of the passport/ID card, and expiry date • Telephone number • Email <p>The actual regulations differ slightly from the HMRC requirements and the differences have been highlighted to HMRC. The regulations do not require email or telephone address although both are practical from HMRC perspective.</p> <p>The regulations also allow for a UTR to be supplied if there is no NINO. If There is no NINO or UTR then an address is required. Passport</p>

		details are only required under the regulations for addresses outside the UK.
		For a corporate trustee, information required is: <ul style="list-style-type: none"> • Name of company • Company UTR (or if no UK UTR, address of company) • Email (HMRC requirement only)
Other Trustees	There is the option to add up to four more trustees in addition to lead trustee Where more than five trustees in total write to HMRC with details of the additional trustees	<ul style="list-style-type: none"> • Details as for lead trustee
Settlor	Up to two settlors can be reported online, additional settlors' details must be supplied by letter to : Trusts, HMRC, BX9 1EL Must report settlor whether living or dead	<ul style="list-style-type: none"> • Additional settlors must be reported in writing • Information as for lead trustee • For dead settlors, name and DoB are required, but if the NINO is unknown then answer 'no' and in the next screen complete the questions about passport as follows: <ul style="list-style-type: none"> ○ Country of origin of passport – put the most relevant country ○ Passport reference – put the word 'DECEASED' followed by the year they died with no spaces eg DECEASED1980 for a settlor who died in 1980 ○ For expiry date of passport put the actual date of death ○ Address – settlor's last known address
Protector (If applicable)	Up to two protectors can be reported online	<ul style="list-style-type: none"> • This is new data to HMRC so they are looking to see how common it is for trusts to have a protector. • Details as per lead trustee
All other persons with effective control	Maximum of two people with informal influence over trust	<ul style="list-style-type: none"> • Also new data to HMRC so they are looking to learn from information received • HMRC examples include: <ul style="list-style-type: none"> • <i>Parents of beneficiary who can insist either on payments or no payments to children.</i> • <i>Any beneficiaries who, if they all acted together would have the power to wind up the trust (the rule in Saunders v Vautier)</i>

		<ul style="list-style-type: none"> • <i>Anyone that can force trustees to dispose assets, lend, invest or apply trust assets, add/remove beneficiaries</i>
Individual Beneficiaries	<p>Named beneficiaries must be reported whether or not benefiting.</p> <p>See the question ‘When can beneficiaries be defined by class?’ on page 10 of this note.</p> <p>Max of 10 individual, company or charity beneficiaries can be reported online. Advise HMRC by letter of additional beneficiaries</p>	<ul style="list-style-type: none"> • Details required for individual beneficiaries: <ul style="list-style-type: none"> ○ Name ○ Date of birth ○ NINO (or address and passport/ID details if beneficiary doesn’t have a NINO.) ○ Where the beneficiary has a life interest, the percentage of income not subject to trustees’ discretion ○ Notification vulnerable beneficiaries (NB the usual election must still supplied separately.) ○ For minor beneficiaries with no NI number or passport the address must be supplied ○ HMRC will look closely at trusts that do not provide NI numbers when HMRC think they should have done • Again there is small difference between regulations and HMRC requirements
Classes of beneficiaries	Two main cases – unborn children and Employee Benefit Trusts (EBTs)	<ul style="list-style-type: none"> • Children not yet born, or otherwise unidentifiable beneficiaries, must be included as a class based on the description used in the trust deed. When children are born they need to be added to the register as known individuals • For Employee Benefit Trusts or Pension funds set up to benefit multiple employees, a general class of employees and spouses or widows/widowers and family can be described but any key figures such as (current) directors and key employees must be listed separately and not included in the class. Key members of staff are, per HMRC, those whose skill and expertise are critical to the business and for which they enjoy a high level of remuneration • Describe beneficiary class as per the trust deed – there is a 56 character limit on the form
Any other beneficiary types		<ul style="list-style-type: none"> • This question is designed to pick up the (rare) situations of the trust being set up to benefit pets or non-living entities such as properties or memorials etc.

References

The above has been prepared on the basis of the relevant legislation: *Money Laundering, Terrorist Financing and Transfer of Funds Regulations (2017 No 692)* which took effect on the 26 June 2017 (link below) and HMRC's *Talking Points* webinars of 10 August 2017 and 8 September 2017.

Link to legislation: http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf

Links to the recordings of the *Talking Points* webinar from August and September can be found here: <https://www.gov.uk/government/news/webinars-e-learning-and-videos-if-youre-a-tax-agent-or-adviser>

A further HMRC webinar is planned for November.

Full technical guidance has been produced by HMRC and can be found [here](#). HMRC have no plans to publish the guidance on the GOV.UK site and it is only available on the sites of various professional bodies.

Association of Taxation Technicians

18 October 2017