

Trust Registration Service (TRS) - Action required

On 1 September 2021, HMRC confirmed that the Trust Registration Service (TRS) is now able to accept the registration of non-taxable, express UK trusts. All UK express trusts must register unless it falls within one of the exclusions (see list of exclusions below).

An express trust is a trust created deliberately by a settlor, usually (but not always) in the form of a document such as a written deed or declaration of trust. Most trusts are express trusts. The registration consequences will depend on what type of trust it is.

The Fifth Money Laundering Directive (5MLD) came into effect in the UK on 6 October 2020. This directive has vastly extended the reporting obligations of Trusts to HMRC.

It replaces the Fourth Money Laundering Directive (4MLD) and now adds reporting obligations to a significant number of trusts.

Since late 2017, if a Trust incurs a liability to:

- Income tax,
- Capital gains tax,
- Inheritance tax,
- Stamp Duty Land Tax or,
- Stamp Duty Reserve Tax,

Trustees are required to register information about their trusts on HMRC's online TRS portal.

The TRS is now compulsory for all UK Non-Taxable trusts created or in existence on or after 6th October 2020.

Please note if the trust has ceased since 6th October 2020, the trustees are still required to register the trust and then are able to immediately close the trust record to record the fact that the trust has ceased.

How does this affect you?

The TRS legislation may or may not affect you. Trustees have a legal duty to comply with HMRC reporting requirements, if required.

The trusts which now need to be registered include the following, but this is not an exhaustive list and we would be happy to discuss with you if you require clarification if registration is required.

Trusts of Land where the legal owners registered at the Land Registry differ to the owners deriving an interest in the property. For example:

- Where property is held on trust for a partnership - General partnerships cannot hold property for themselves, and in such cases a partner may hold property on trust for the partnership such as land or buildings, which may be used in the partnership's business. e.g. Mother and Father own the land (noted on land registry), which is farmed by the partnership, and held on trust for the partnership, which might include them and their two children as partners. A declaration of trust may have been prepared or it may be recorded in schedules to the partnership agreement, but occasionally it is simply recorded on the balance sheet of the partnership accounts. This trust is now registrable - unless the situation falls within the limited exceptions, such as where the legal owners and the beneficial owners are the same (Co-ownership).
- Where parents have contributed to a home for their child of a property by putting up some of the capital but is not to be named on the property's title. The parent can register their beneficial interest on a trust deed and protect their interests.
- Married couple or a civil partnership owns a house and they wish to give half (or a third etc.) of the property to the other of the couple. The gift itself should fall within the exemption for Capital Gains Tax and typically there will be no need to update the title at Land Registry. Gifts are completed by a Declaration of Trust, whereby the person making the gift declares that he or she holds the property on trust for him or herself and for the other of them 50:50 (or in whatever proportions they decide).

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Trusts which hold an asset such as a loan or a property for a surviving spouse or other beneficiaries after death.

Bare Trusts where for example a parent holds an asset (for example stock and shares) for their minor child, except for child bank accounts created with deposits of cash. (Child Trust Funds & Junior ISAs are not trusts and therefore are not required to register.)

Policies with surrender values - Some policies (such as investment bonds) are designed to provide regular or periodic payments to the policy holder in the form of surrenders or part-surrenders during the term of the policy, with a small life assurance element payable on death which is incidental to the benefits provided through the surrenders. In those cases, HMRC's view is that the withdrawals of cash in the event of a part or full surrender does constitute a pay out from the policy, because those withdrawals are intended from the outset as expected payments of funds from the policy. The exclusion from registration on TRS does not apply.

Pilot trusts – created after 6 October 2020.

Any Will Trust continuing after 2 years from death.

Non-UK resident trusts created on or after 6th October 2020:

- That acquire an interest in land in the UK; or
- Has at least one trustee resident in UK & Enters a Business relationship.

There are however several exclusions from registration, as follows:

- Legislative trusts (such as a life interest arising on intestacy), Bereaved minor (unless taxable), 18 to 25 trusts (unless taxable) and a disabled person trust).
- Trust imposed by court order (such as Court of Protection orders).
- Pension scheme trusts.
- Trust of insurance policies (whole of life or term policies so long as conditions met). A trust where the trust is holding only benefits received on the death of the person assured and less than two years has passed since that person's death.
- Charitable trusts.
- Pilot trusts – which do not have a value greater than £100 and were created before 6 October 2020.
- Cash deposit bank accounts for minors.
- Trusts having effect on death (i.e. Will Trusts) within the first 2 years only.
- Co-ownership (where legal and beneficial owners are the same).
- Personal Injury trusts.

Action required if your trust needs to be registered:

The TRS requires the trustees to register the trust online and to provide information such as:

1. Details of trust assets and values
2. The identity of the settlor, trustees, protector (if any), persons exercising control and beneficiaries.

For any non-taxable trusts, you must register:

- Non-taxable trusts in existence on or after 6 October 2020 by the 1 September 2022.
- Non-taxable trusts created after 1 September 2022 within 90 days.
- Changes to the trust details and/or circumstances, within 90 days of the change.

Failure to register the Trust will attract penalties but HMRC have not yet set out what form these will take.

5MLD extends the obligation to register, keep details accurate and make an annual declaration to most non-taxpaying trusts.

If no ongoing Self-Assessment tax returns are required, you do not need to comply with the annual declaration. But, any changes to the trust details and/or circumstances, must be notified within 90 days of the change.

How to register a trust using TRS:

If you wish to register the trust yourself, you will need to set up a new Government Gateway Account in respect of the trust as an organisation. We would recommend looking at HMRC guidance online at <https://www.gov.uk/guidance/register-a-trust-as-a-trustee>

Please note that if you already have an existing personal Gateway Account, this cannot be used to register the trust. Once the trust Gateway Account has been obtained the trust can then be registered using the TRS.

Our specialist Trust team at Monahans can deal with this registration process for you.

If you would like Monahans to undertake the registration on behalf of the trustees, please advise our team by the 30th June and provide details of the trust.

We will then provide the following:

- Information checklist for completion,
- Engagement letter, and
- Fee quote – This additional work will give rise to professional costs, which depending on the complexities of the trust we estimate these to be £450 - £650 plus VAT. If there are a significant number of trustees and beneficiaries to register, then the cost may increase but we shall contact you to discuss and agree. We will endeavour to keep these costs to a minimum, and it will help us do this if all the information is provided to us in the first instance and on time.

If you require any further assistance or have any queries regarding the TRS process, please do not hesitate to email or phone your usual Monahans contact.