Executive summary

The United Kingdom (UK) has recently introduced new registration and reporting requirements which may impact both UK and non-UK trusts and which should be considered by all affected parties. Under the new requirements, impacted UK and non-UK trustees have until 5 March 2018 to register all qualifying trusts on the new UK Trust Reporting Service (the Register), in order to avoid incurring penalties.

The scope of the rules is broad. All "express trusts," established anywhere in the world, which have incurred a "relevant UK tax liability" and meet certain other conditions must register and report certain specified information on the trustees, settlor(s), beneficiaries (including persons named on a letter of wishes) and assets of the trust. This information will be held on a UK government register and will be available to law enforcement and taxation authorities.

This new requirement was introduced in response to the European Union (EU) “4th Anti-Money Laundering Directive,” and is similar to reporting requirements both within the EU (notably France and Italy) and outside (for example Israel and South Africa) that have either recently been enacted or are in the process of being developed. The UK developments should therefore be seen within the wider context of registration and reporting requirements being imposed on certain trusts and trustees by a variety of jurisdictions.
Detailed discussion

Scope of the Register
The Register applies to "express trusts" (established anywhere in the world) of which the trustees have incurred a "relevant UK tax liability" in a UK tax year. A UK tax year runs from 6 April to 5 April.

The UK Tax Authority (HMRC) has published draft guidance stating that "express trust" for these purposes means a trust that was deliberately created by a settlor expressly transferring property to a trustee for a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 has separately indicated that unit trusts (and similar vehicles), wherever domiciled, are not "express trusts" and as such should not be within the scope of the rules, and HMRC guidance should be updated shortly to reflect this position.

This is a wide definition which can be interpreted broadly and applies to trusts used for a wide range of purposes. Trusts and trustees should familiarize themselves with the rules and seek advice to determine whether they have a reporting obligation.

The trustee of a trust may incur a relevant UK tax liability if the trust generates UK income or gains, acquires UK land or transacts in UK shares or securities. This requirement is discussed further below.

Non-UK trusts only have a registration obligation if the trust received UK source income or incurred a relevant UK liability through acquiring or holding UK-situs assets directly (rather than, for example, via a holding company or an entity that is a "blocker" or opaque entity for UK tax purposes). There is an exception to this in the case of indirect holdings of UK residential property, in which case an obligation to register may arise on incurring a relevant UK liability as a result of both direct and indirect holdings. A trust will qualify as a non-UK trust if, broadly, none of the trustees are UK resident or, where the trust has both UK and non-UK resident trustees, if the settlor was neither a UK resident nor UK domiciled when they contributed assets to the trust.

Incurring a "relevant UK tax liability"
A "relevant UK tax liability" includes the following UK taxes for the purposes of these rules:
- Income Tax
- Capital Gains Tax
- Inheritance Tax
- Stamp Duty Land Tax
- Land and Building Transactions Tax
- Stamp Duty Reserve Tax (SDRT)

Trustees may incur a liability to pay one or more of the above taxes if the trust acquired or held certain types of UK assets - including, but not limited to, UK shares (listed or unlisted), other UK securities, UK debt instruments, or UK real estate or land.

The acquisition or holding of UK shares or debt is also likely to bring a trust within the scope of the rules. If the assets of the trust are managed by an external portfolio manager, then the external manager would typically pay SDRT on behalf of account holders when transacting in UK securities; trustees therefore need to review portfolio holdings to determine whether securities in UK incorporated companies are held.

It is important to note that transfers of existing depositary receipts (such as American Depositary Receipts – ADRs) that represent interests in a UK company, are outside the scope of the principle charge to SDRT. Where trustees hold ADRs representing interests in UK securities, trustees should review the terms of the ADRs to ensure they are not in scope of any other UK taxes (such as UK inheritance tax).

Information to be reported
The information to be reported is relatively extensive. For settlors and beneficiaries, trustees must provide detailed identification information, some of which may not currently be held. This includes, full name, date of birth, National Insurance or Unique Taxpayer Reference number or their usual residential address. If any reportable persons are legal entities then similar information needs to be given regarding incorporation, tax residence and registered office address.

For business trusts with a large number of beneficiaries (such as occupational pension schemes, charitable trusts and employee benefit trusts), the trustees will only be asked to identify the class of beneficiary if the number of named beneficiaries exceed 10.

As noted above, a UK tax year runs from 6 April to 5 April. In respect of the tax year to 5 April 2017, the above information must be provided by 5 March 2018 in order to avoid a penalty being charged. The penalty framework has not yet been published by HMRC but the legislation requires that any civil penalty imposed must be proportionate to the offense committed.
For all future UK tax years, this information is required by 5 October (in the case of trusts which are not registered for UK self-assessment) or 31 January (for trusts which are registered for UK self-assessment), following the end of the tax year in which a liability to a relevant UK tax was incurred.

**Action required**

Trustees should identify the trusts that fall within the scope of the new reporting rules. This requires a consideration of whether each trust incurred a UK tax liability in the tax year to 5 April 2017 and whether the additional rule for non-UK trusts which do not directly hold UK-situs assets or directly receive UK source income may exempt a reporting obligation.

If a particular trust is within the scope of the rules, the trustee must evaluate the nature and extent of the corresponding reporting obligations, and whether the information to be reported is available and would require any specific action in order to be disclosed (for example in light of applicable privacy rules).

Trustees which are responsible for a large number of trusts should review their systems and processes to ensure compliance for 2017 and future periods. When doing so, they should consider other countries similar reporting requirements that may also affect them.

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