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Trust record-keeping and registration - Cutting through red tape

October 2017
Executive Compensation Briefing

Trustees should be aware of requirements under new money laundering regulations to record information and, in some cases, to give information to third parties and to register the information with HMRC, warn Paul Randall and Tamsin Nicholds at Hogan Lovells International LLP.

Trusts are often established in connection with employee shares incentive arrangements either onshore (such as trusts associated with tax-advantaged share incentive plans) or offshore employee benefit trusts such as trusts associated with LTIPs, so-called ESI trusts. Of course, those trusts are on HMRC's radar already. The establishment of an offshore trust by a UK settlor is required to be notified to HMRC and onshore trusts will be notified via form 41(G) and subsequently making tax returns.

In the case of ESI trusts, then, the new requirements are not obviously necessary (other than to comply with the fourth Money Laundering Directive!), yet the detail may generate some work for trustees.

The Regulations

The *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer)* Regulations 2017 came into force on 26 June 2017. The Regulations introduce three new requirements which are relevant to ESI Trusts:

- A requirement to keep records about "beneficial owners" under the trust;
- A requirement to notify third parties about the trustees' status as trustees and about the trust's "beneficial owners", in certain circumstances; and
- A requirement, in some cases, to give information about the trust and its beneficial owners to HMRC.

The new requirements relate to:

- UK trusts. There are rules to determine if a trust is a UK trust, if the trustees are all resident in

the UK then the trust will be a UK trust; and

- Offshore trusts which receive income from a source in UK or have assets in the UK.

Rather confusingly, the Regulations generally relate to those "acting in the course of a business carried on by them in the UK". It is not clear how that is meant to interact with the obligations on trustees of offshore trusts, who, at least in a tax sense, would not normally be thought to be doing so. Individual trustees may need to consider advice.

Failure to comply with the new requirements is a criminal offence. In addition, HMRC may: impose a financial penalty; issue a statement censuring the person who has breached the requirements; and prohibit an officer knowingly concerned in a breach from certain management roles. However, the regulations make clear that a person will not be guilty of an offence if they took all reasonable steps and exercised all due diligence to avoid committing the offence.

Record-Keeping Requirements

Trustees must keep records of "beneficial owners". The beneficial owners are: the trustees; the settlor; any individual who has control over the trust; the beneficiaries or, where some of the beneficiaries have not been determined, the class of persons for whose benefit the trust has been set up or operates.

Trustees will already have much of the required information about scheme participants, although some information - such as the passport numbers of participants without a UK address - goes beyond the detail typically kept. Some trusts may not record the individual's date of birth.

Notification Requirements

Before entering a "relevant transaction" with certain third parties (including financial institutions, auditors, lawyers and trust service providers), trustees must inform the third party that they are acting as a trustee of the trust. Broadly, a transaction will fall within the requirements if the third party has to carry out money-laundering due diligence checks against the trustees before entering the contract.

Trustees must also give the third party information about the beneficial owners of the trust, on request, and must notify the third party if the information changes.

Obligation to Provide Information to HMRC

Trustees must register with HMRC and provide it with information about their trust and the beneficial owners in any tax year in which the trust is a "relevant taxable trust".

A trust will be a relevant taxable trust if taxes such as income tax, capital gains tax or stamp duty reserve tax are payable in the tax year. Note that liability to pay income tax through PAYE on payments does not make an ESI trust a relevant taxable trust. ESI trusts which hold listed shares are likely to have liabilities to SDRT and so may be subject to the registration and notification requirements. Onshore ESI trusts may receive interest and be subject to income tax.

Relevant taxable trusts must provide HMRC with:

- Information about potential beneficiaries.
- Information about other beneficial owners
- Specified information about the trust.

For ESI trusts, HMRC have included specific helpful guidance to cover the case where there are more than 10 beneficiaries per trust type, so where, as in an ESI trust, the beneficiaries are a class including the employees of a company, the directors and key employees must be listed as individual beneficiaries, but in the case of the remaining employees individual details are not required and a total number can be given together with the tax payer reference for the employer.

Timing

The regulations provide that initial information must be provided by 31 January 2018 or, if later, 31 January following the tax year in which the trust first becomes a relevant taxable trust. HMRC are requesting registration of existing trusts which have met the "taxable trusts" criterion following the date the regulations came into force on 26 June 2017, by 5 December 2017. We believe this is to align with current trusts paper filing requirements delayed from 31 October by concession.

This article was previously published in the October 2017 edition of the Executive Compensation Briefing.

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