

Trust Registration (TRS)

Introduction

The Trust Registration Service (TRS) was introduced by the Her Majesty's Revenue and Customs (HMRC) as part of the UK's implementation of the Fifth Money Laundering Directive (5MLD) and came into effect on 1st September 2022. This had the following impact:

- Trustees became required to:
 - register their Trust with the TRS when specific criteria are met;
 - take steps to keep their TRS registration details up to date;
 - Extract a copy of their "Proof of Registration" from TRS and provide to regulated firms on request (nb: there is no searchable register for regulated firms to use).

- ML regulated firms became required to:
 - Perform discrepancy reporting between information provided to it and TRS registration prior to onboarding new trust relationships from 1st September 2022;
 - Perform the same for existing relationships and on an ongoing basis from 1st April 2023; and
 - Where material discrepancies are identified, make a report to HMRC.

The HMRC has published a Trust Registration Service Manual (www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual) which contains a lot of information on the subject. This includes a comprehensive description of the different types of trust and whether they are required to register or not, based on the specific circumstances of the Trust AND its UK Tax liability, although some of that information is not typically provided to regulated firms in the course of the normal business relationship.

The HMRC guidance make clear that regulated firms are not expected or required to be Trust experts, so it remains the Trustees' responsibility to determine whether a Trust is in scope or exempt from TRS registration, and to keep their records up to date. However, it is recognised that some Trustees will not be professional persons, so it is anticipated that regulated firms will need to perform a degree of validation on information provided to them, in addition to the actual discrepancy reporting/ is expected to be performed by regulated firms to support overall compliance with the requirements.

This document provides a high-level summary of how regulated firms can ensure compliance with these requirements, with some guidance on supporting trustees through that process.

Firms should take steps to fully document their intended approach to 'remediating' their existing Trust population and the rationale behind those decisions, so that it can be provided to HMRC or FCA if there is a future challenge or audit.

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General Marketing Literature / Guides

Firms should update their literature to explain that regulated firms are now obliged to check that eligible trusts have registered with TRS and that the information on systems remains consistent with information held by TRS at onboarding and on an ongoing basis. This means that certain questions will need to be asked during onboarding and in the future - e.g. trigger/periodic reviews.

Where firms have guides / Q&As that support ongoing maintenance of accounts - e.g. change of trustee or beneficiary - similar changes should be made there.

Firms should also make clear what approach the firm will take in the event of discrepancies until they are resolved - e.g. are instructions/new applications held pending resolution of the issue, or are they accepted/processed as normal, but with some kind of restriction in place that carries a deadline and has specific consequences (e.g. force-closure) if not met.

Application Forms

Firms should also update their application forms and associated guides etc as follows:

- (1) Provide a brief explanation of the obligation on regulated firms (as per above);
- (2) Seek signed declaration from the Trustees whether the Trust is in or out of scope for TRS;
- (3) for in-scope trusts, provide space for Trustees to provide the Trust URN/UTR reference and seek a copy of the "Proof of Registration" to the firm.
- (4) For out-of-scope trusts, for those firms that do not wish to rely solely on the Trustee declaration, provide space for Trustees to provide the exemption reason(s) from a pre-populated list of options (as per HMRC handbook).
- (5) Noting some trustees will not be professionals, Trustees should be prompted to seek professional advice if they are unsure about how to answer these questions.

Systems

Firms may wish to consider whether to create additional attributes within their systems to help support the ongoing monitoring processes, as well as the initial 'remediation' of existing Trust accounts. Potential examples could be:

- An indicator whether in-scope / out-of-scope / TBC
- An Exemption reason (for out-of-scope)
- Date of Last TRS proof (for in-scope)
- Discrepancy identified yes/no (if applicable)
- Date Discrepancy identified (if applicable)
- Date of discrepancy report made to HMRC (if applicable)

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Onboarding Process

Where a Trust has been declared to be in-scope:

- (a) Check that the TRS proof provided to the firm is acceptable - the correct document is the “proof of registration” . (Some Trustees may provide the similar but materially different “declared copy of trust” which cannot be accepted.)
- (b) Compare the information on the TRS proof to the information provided on the application form and within the trust deeds. Any differences should first be addressed to the Trustees in the first instance and corrected via receipt of an updated deed / application form / TRS etc.
- (c) Where the Trustee is unable / unwilling to resolve the discrepancy, a report should be made to the HMRC. (www.gov.uk/guidance/report-a-trust-discrepancy-to-hmrc#how-to-submit-a-report)

Where the Trust has been declared as out-of-scope:

- (a) First, perform a reasonableness check on the exemption reason and whether there is anything in the information held that contradicts that reason. (For example, if the firm has clear reason to believe the Trust cannot be out of scope.)
- (b) If necessary, approach the Trustee in the first instance for clarification, reminding them of the option of seeking professional assistance if required.
- (c) Where the trustee is unable / unwilling to resolve the discrepancy, make a report to the HMRC as per the link on the prior page.

Ongoing Monitoring

Firms should update their Periodic Review and Trigger event review processes so that either a TRS proof or an acceptable exemption declaration is obtained from the trustees at the next event, so that the same discrepancy checking obligations can be performed as per onboarding.

Consideration should be given to how much information is provided to the Trustees at that time, noting that they may be unaware at that point, and existing account holders will be unlikely to have looked at the updated onboarding literature.

Firms may decide to pre-emptively approach Trustees (e.g. one-off mailing) to make them aware of the obligation, prior to the actual exercise commencing in earnest, giving them more time to understand and comply.

Although there is no explicit timeframe that firms have to fully ‘remediate’ their records by, rather than wait for an event to occur, firms may also wish to approach the Trustees at an earlier time to request the TRS proof or Exemption declaration - e.g. for Higher risk trusts or where the next review is considered to be too far in the future to wait.

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