



### Trusts affected and definitions

A **'relevant trust'** is a UK express trust, or a non-UK trust that receives income from a UK source or has assets in the UK, including a bare trust.

A **'taxable relevant trust'** is one in which in any year trustees are liable to pay income tax, capital gains tax, inheritance tax, stamp duty land tax, the Scottish land and buildings transaction tax, the Welsh land transaction tax or stamp duty reserve tax in relation to the trust's income, gains or assets. HMRC interpret 'liable to pay' as when the relevant liability accrues, for example the tax year in which income arises, not when the tax is payable.

**'Beneficial owners'** of a trust are the settlor(s), trustees and beneficiaries.

**'Relevant persons'** are persons that are acting in the course of business carried on by them in the UK who are:

- credit institutions
- financial institutions
- auditors, insolvency practitioners external accountants and tax advisers
- independent legal professionals
- trust or company service providers
- estate agents
- high value dealers
- casinos

Trustees have had to provide information on **'taxable relevant trusts'** to HMRC since 2017, under regulations designed to prevent money laundering and terrorist financing.

From 6 October 2020, this extended to many trusts which are not taxable. This update details the latest changes and timetable.

### Trustees' record-keeping obligations

The regulations require trustees of all 'relevant trusts' to maintain the information that has to be filed with HMRC by relevant trusts whether or not taxable. This still includes those trusts now listed as 'excluded' – see the list at the end of this briefing.

### Action required

Even before 6 October 2020, trustees of all 'taxable relevant trusts' had to provide the following information. This continues to be required.

### Trust details to be supplied

- the full name of the trust
- the date on which the trust was set up
- a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets at the date on which the information is first provided to HMRC (including the address of any property held by the trust)
- the country where the trust is considered to be resident for tax purposes
- the place where the trust is administered
- a contact address for the trustees
- the full name of any advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust

### Details of business relationships with individuals

In respect of each of the beneficial owners and relevant individuals with

whom the trustees have entered into a business relationship they also had to provide:

- the individual's full name
- the individual's national insurance number or unique taxpayer reference, if any
- if the individual does not have a national insurance number or unique taxpayer reference, the individual's usual residential address
- if the address provided is not in the United Kingdom the individual's passport number or identification card number, with the country of issue and the expiry date of the passport or identification card; or if the individual does not have a passport or identification card, the number, country of issue and expiry date of any equivalent form of identification
- the individual's date of birth
- the nature of the individual's role in relation to the trust.

### Details of business relationships with legal entities

In respect of each of the beneficial owners or relevant persons with whom the trustees have entered into a business relationship which is a legal entity:

- the legal entity's corporate or firm name
- the legal entity's unique taxpayer reference, if any
- the registered or principal office of the legal entity
- the legal form of the legal entity and the law by which it is governed

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### Details of business relationships with legal entities *continued*

- if applicable, the name of the register of companies in which the legal entity is entered (including details of the EEA state or third country in which it is registered), and its registration number in that register
- the nature of the entity's role in relation to the trust

and a description of the class of persons who are beneficiaries or potential beneficiaries.

The information continues to be required, even for 'excluded' trusts, if they become taxable.

### Additional information required from 6 October 2020

Now additional information is required for a taxable relevant trust which is not an EEA registered trust nor an Excluded trust, and is:

- a UK taxable relevant trust
- a non-UK taxable relevant trust with at least one trustee resident in the UK which enters into a business relationship with a relevant person or acquires an interest in land in the UK
- a non-UK taxable relevant trust with no trustees resident in the UK which acquires an interest in land in the UK

### Beneficial Owners' Details

In relation to each of the 'beneficial owners' [the trustees, settlor(s) and beneficiaries] of the trust who is an individual, and in relation to any individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes, the following information is required:

- the individual's country of residence
- the individual's nationality

- the nature and extent of the individual's beneficial interest

This information does not, however, need to be provided in relation to the beneficiaries of the trust where the beneficial owners include a class of beneficiaries, not all of whom have been determined. In that case, a description of the class of persons who are beneficiaries or potential beneficiaries under the trust is to be provided.

### Details of business relationships with individuals

The following information has to be supplied in respect of any 'relevant person' with whom the trustees have entered into a business relationship —

- the legal entity's corporate or firm name
- the legal entity's unique taxpayer reference, if any
- the registered or principal office of the legal entity
- the legal form of the legal entity and the law by which it is governed
- if applicable, the name of the register of companies in which the legal entity is entered (including details of the EEA state or third country in which it is registered), and its registration number in that register
- the nature of the entity's role in relation to the trust

### Third country entities

If the trustees have a controlling interest in a third country entity, they must provide HMRC with the following information, apart from any already provided:

- the third country entity's corporate or firm name
- the country or territory by whose law the third country entity ;
- the registered or principal office of the third country entity;

### Non-taxable trusts

Also with effect from 6 October 2020, the trustees of those trusts that are not taxable, unless they are excluded or an 'EEA registered trust', that are...

- (type A) UK trusts
- (type B) non-UK trusts with at least one UK resident trustee that enter into a business relationship with a relevant person or acquire an interest in land in the UK, and
- (type C) non-UK trusts that acquire an interest in land in the UK

...must provide the following information:

In relation to each of the 'beneficial owners' of the trust who is an individual, and in relation to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes:

- the individual's full name
- the individual's month and year of birth
- the individual's country of residence
- the individual's nationality;
- the nature and extent of the individual's beneficial interest

This information does not, however, need to be provided in relation to the beneficiaries of the trust where the beneficial owners include a class of beneficiaries, not all of whom have been determined. In that case, a description of the class of persons who are beneficiaries or potential beneficiaries under the trust is to be provided.

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### Business relationships with legal entities for non-taxable trusts

In relation to each of the beneficial owners of the trust which is a legal entity the following information needs to be provided:

- the legal entity's corporate or firm name
- the registered or principal office of the legal entity
- the nature of the entity's role in relation to the trust

The trustees of a type A or type B trust must, if they have a controlling interest in a third country entity, provide HMRC with:

- the third country entity's corporate or firm name
- the country or territory by whose law the third country entity is governed
- the registered or principal office of the third country entity

### Obligations to keep this information current

If a trustee becomes aware that any of the information supplied to HMRC, other than the value of trust assets, has changed, he/she must notify HMRC by the 31 January following the tax year in which the change occurred (unless the trustees have no tax liability in that year, in which case the 31 January after the next tax year in which they have a tax liability).

If the trustees are not aware of any change to any of the information provided, they should confirm that fact to HMRC by 31 January after a tax year in which they have a tax liability.

It would appear that, if the only change is in the value of a trust's assets, no report to HMRC is required under either head.

### Timetable for providing the information

The timetable for the trustees to provide the information is as follows:

**31 January** next following the tax year in which the trustees are first liable for any of the seven taxes listed, in the case of a trust set up before 6 April 2021.

**1 September 2022**, in the case of a trust set up after 5 April 2021, where the trustees become liable to pay any of the seven taxes before 4 June 2022.

**1 September 2022**, in the case of any other relevant trust which exists before 4 June 2022.

Otherwise within 90 days of being set up or becoming liable to pay any of the seven taxes.

### Access to the register (HMRC's obligations)

From 1 September 2022, HMRC must make information available:

- to a person who demonstrates a legitimate interest in the beneficial ownership of a trust
- if required by a trustee where a relevant person proposes to enter into a business relationship with the trust
- to a person making a request about a type A trust or a type B trust where the trustees have a controlling interest in a third country entity

### Excluded trusts

The good news is that, although there are still a large number of trusts which will be required to register for the first time, the scope of the exemptions has been significantly expanded. The excluded trusts are as follows:

**Legislative Trusts** – A trust imposed or required by an enactment.

**Trusts imposed by court order** – A trust created by, or in order to satisfy the terms of, an order of a court or tribunal.

**Pension scheme trusts** – A trust holding sums or assets of a pension scheme which is a registered pension scheme for the purposes of Part 4 of the Finance Act 2004.

### Excluded trusts *continued*

**Trusts of insurance policies** – A trust of a life policy or retirement policy paying out only:

- on the death, terminal or critical illness or permanent disablement of the person assured; or
- to meet the cost of healthcare services provided to the person assured.

A trust of an insurance policy paying out only:

- on the temporary disablement of the person assured, where that policy was applied for at the same time as a life or retirement policy; or
- to meet the cost of healthcare services provided to the person assured.

A trust of the benefits payable on the death of the person assured under a retirement policy.

**Charitable trusts** – A trust for charitable purposes which:

- in Scotland or Northern Ireland, is registered as a charity; or
- in England and Wales, is registered as a charity or not required to register by virtue of section 30(2)(a) to (d) of the Charities Act 2011.

**Pilot trusts** – A trust which:

- holds property with a value not exceeding £100, and
- was created before the date on which regulation 42(2)(iii) of these Regulations comes into force [6 October 2020]

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### Excluded trusts *continued*

**Bank accounts for minors** – A trust which is created as a requirement of opening a relevant account for the sole benefit of a person

- under the age of 18
- who lacks capacity within the meaning of section 2 of the Mental Capacity Act 2005
- who is incapable within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000
- who is incapable of managing and administering the person's property and affairs, by reason of mental disorder within the meaning of Article 3(1) of the Mental Health (Northern Ireland) Order 1986.

Definitions – note A “*relevant account*” means an account, consisting only of a sum of money, held with an authorised Part 4A person carrying on by way of business the activity specified in article 5 (accepting deposits) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

An “*authorised Part 4A person*” means an authorised person who has a Part 4A permission (within the meaning given in section 55A(5) of FSMA), to carry on that specified activity.

This narrow definition is thought not to cover Premium Bonds. Junior ISAs do not have to be registered as they are not express trusts.

### Trusts having effect on death

A trust effected by will where:

- the trust is holding only the property comprised in a person's estate on death, and
- less than two years has passed since that person's death

Note: a person's *estate* means the aggregate of all the property to which that person is beneficially entitled. An appropriation by the executors that results in a bare trust is not regarded as effected by the will, and is not therefore within this paragraph. However, it is understood that in the common

situation where property with a latent gain is appropriated to beneficiaries to utilise their CGT position, this will come within paragraph 14 (Commercial transactions).

A trust where:

- the trust is holding only benefits received on the death of the person assured under a policy within paragraph 4, and
- less than two years has passed since that person's death.

**Co-ownership** – A trust of jointly held property where the trustees and the beneficiaries are the same persons.

**Financial markets infrastructure** – A trust:

- created under, or for the purpose of, the default arrangements of a designated system or of the default rules of a recognised body, or for the purpose of any action or proceedings taken by or for such a system or body under such arrangements or rules
- relating to the creation of a beneficial interest in securities belonging to a person whose name and address are maintained on a register of securities (within the meaning of regulation 3(1) of the Uncertificated Securities Regulations 2001), or
- created by or for a segregating entity:
  - for the purpose of protecting sums or assets belonging to the segregating entity's clients; or
  - for the purpose of complying with a legal obligation to safeguard and segregate sums or assets belonging to the segregating entity's clients or to keep separate client records and accounts.

Definitions – note: “*clearing member*” and “*default rules*” have the meanings given respectively, in sections 190(1) and 188 of the Companies Act 1989.

“*Default arrangements*”, “*designated system*” and “*participant*” have the meanings given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

“*Recognised body*” and “*recognised central counterparty*” have the meanings given in section 313 of FSMA.

“*Segregating entity*” means:

- an authorised person
- a clearing member of a recognised central counterparty
- a participant in a designated system
- a designated system, or
- a recognised body.

**Professional services** – A trust created for the purpose of enabling or facilitating the holding of sums, assets or (in the case of sub-paragraph (c)), documents, belonging to a person other than the trustee, in connection with which sums, assets or documents the trustee is:

- carrying on by way of business the activity specified in article 40 (safeguarding and administering investments) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
- acting by way of business as the trustee of an authorised unit trust scheme (and for this purpose “*trustee*” and “*authorised unit trust scheme*” have the meanings given in section 237 of FSMA), or
- acting by way of business as an agent holding sums, assets or documents in escrow until the performance of a contractual condition agreed between two or more other persons, including the person for whom the sums, assets or documents are being held

**Client money etc** – A trust created by a relevant supervised person for the purpose of holding client money, securities or other assets, where that trust is incidental to the carrying on of business by the relevant supervised person.

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### Excluded trusts *continued*

**Capital markets etc** - A trust created for the purpose of enabling or facilitating an activity listed in points 2, 3, 6, 7 or 8 of Annex 1 to the capital requirements directive as set out in Schedule 2, or for protecting or enforcing rights relating to that activity, where:

- one or more of the participants in that activity is a relevant supervised person, and
- the use of the trust is incidental to the principal purpose of that activity.

**Commercial transactions** - A trust created for the purpose of...

- enabling or facilitating a transaction effected for genuine commercial reasons; or
- protecting or enforcing rights relating to such a transaction,

...where the use of the trust is incidental to the principal purpose of the transaction.

**Registration of assets** - A trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust for the person to whom the transfer or disposal is being made until the time when the procedure required by law to effect the transfer or disposal of legal title is completed.

### Trusts meeting legislative requirements

- A trust holding property to which section 71A or 71D of the Inheritance Tax Act 1984 applies.
- A trust of property in respect of which a direction under paragraph 1 of Schedule 4 to the Inheritance Tax Act 1984 has effect.

- A trust of funds derived from a payment
  - made for the benefit of a person in consequence of a personal injury to that person, and
  - disregarded from capital under regulation 46(2) of, and paragraph 12 of Schedule 10 to, the Income Support (General) Regulations 1987.
- A trust holding tenants' contributions for the purposes of section 42 of the Landlord and Tenant Act 1987.
- The plan trust of a share incentive plan which meets the requirements of Part 9 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003.
- A trust created under a share option scheme that meets the requirements of Parts 2 to 7 of Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003.
- A trust holding property for a beneficiary who is a disabled person within the meaning given by Schedule 1A to the Finance Act 2005.

**Public authorities** - A trust created for the purposes of enabling or assisting:

- a public authority, within the meaning of section 3(1) of the Freedom of Information Act 2000, or a body specified in section 80(2) of that Act
- a Scottish public authority, within the meaning of section 3(1) of the Freedom of Information (Scotland) Act 2002
- the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or the National Crime Agency, or

- the Welsh Assembly Government
- ...to carry out its functions, including any functions as a court or tribunal and, in the case of the Bank of England, any of its functions as a monetary authority within the meaning of section 244(2)(c) of the Banking Act 2009.

### Interpretation

In the excluded trusts schedule "relevant supervised person" means:

- a relevant person or
- a person who is subject to requirements in national legislation having an equivalent effect to those laid down in the fourth money laundering directive on an obliged entity (within the meaning of that directive) and supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive.

### Can we help?

We are currently helping trustees understand and comply with the latest obligations for The Trust Register.

