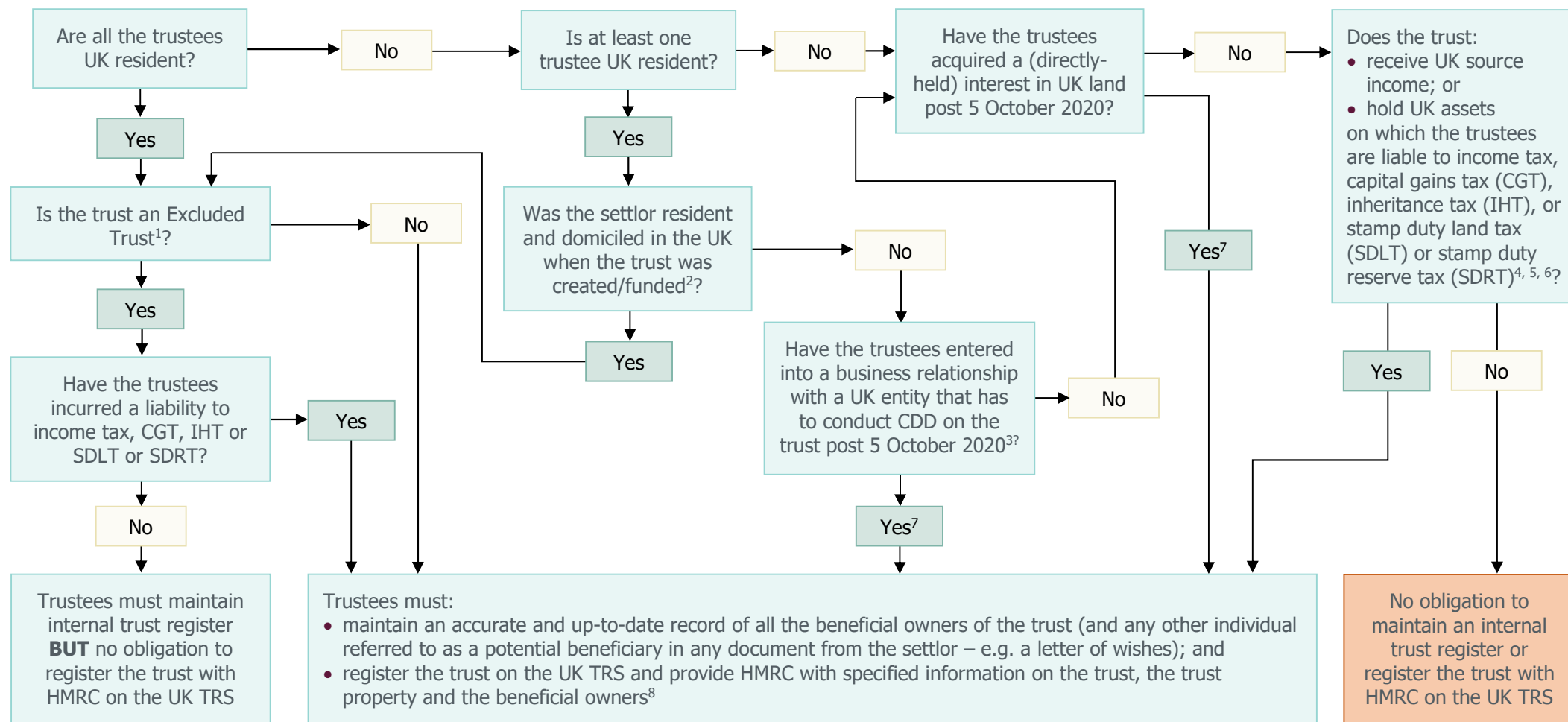


UK register of trusts: which trusts must register on HMRC's Trust Registration Service (TRS)?

Bryan Cave Leighton Paisner LLP

19 October 2020



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NOTES:

1. Excluded Trusts - certain trusts are excluded from the obligation to register with HMRC on the UK TRS – these include:
 - UK charitable trusts
 - co-ownership trusts where the legal and beneficial owners are the same people
 - trusts set up before 6 October 2020 that hold less than £100
 - will trusts – unless they remain in existence more than 2 years after the deceased's death
 - trusts holding the benefit of life insurance policies that only pay out on death, terminal illness or disability
 - trusts incidental to commercial transactions (e.g. normal custodian arrangements for portfolio investments)
 - trusts created pursuant to a court order (e.g. on divorce or the dissolution of a civil partnership).

However, if the trustees of any trust that is an Excluded Trust become liable to UK income tax, CGT, IHT, SDLT or SDRT the trust will have to be registered with HMRC on the UK TRS.

Note: there is no general exemption for bare trusts/nominee arrangements.

2. The trust is UK resident for tax purposes and so is treated in the same way as a trust with all UK resident trustees.
3. This would include opening an account with a UK bank or engaging the services of a UK accountant, lawyer, investment manager or estate agent.
4. UK source income is 'received' by the trustees if it is paid directly to the trustees or to a nominee company for the trustees. Income received by a company which is wholly owned by the trustees is received by that wholly owned company; it is not received by the trustees.

Examples of UK source income include:

- interest arising on a UK bank account or UK bond
- rental income from UK real estate
- dividends from UK companies
- interest paid on a loan to a UK resident beneficiary may be treated as UK source income (advice should be sought on the specific facts).

5. Examples of UK situated assets include:

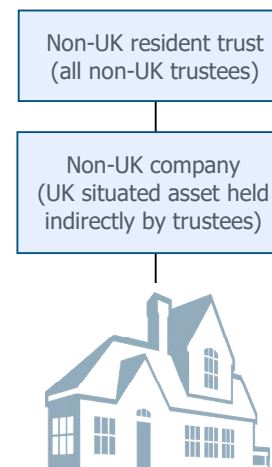
- UK real estate
- UK registered shares
- chattels/works of art physically located in the UK

Advice should be sought on the situs of debts.

6. Position where the trust holds UK assets indirectly through a non-UK company

A non-UK resident trust (with all non-UK resident trustees) which only holds UK assets through a non-UK company does not have to maintain a register of beneficial owners or register the trust with HMRC on the UK TRS. Although the company holds UK assets and may receive UK income on which it is subject to UK tax the *trustees* do not receive UK source income or hold any UK assets on which they are liable to UK tax. This will be the case whether the settlor was non-UK domiciled (and not UK deemed domiciled) when the trust was established/funded or UK domiciled/UK deemed domiciled.

What is the position if the UK asset held indirectly is a UK residential property?



Trustees of a non-UK resident trust that hold shares in a non-UK company that holds UK residential property are subject to UK IHT on those shares. The IHT liability is on non-UK assets not on assets in the UK.

The trust will not receive income from a UK source (even if the property is let, as the rental income would be received by the non-UK company), and the trust will not be liable to CGT, IHT or SDLT on UK assets. The company (not the trust) is liable to UK corporation tax on any gain on the sale of the UK residential property (and SDLT when it buys it).

HMRC has confirmation that it agrees that the trustees of a non-UK resident trust that incur an IHT liability on shares in a non-UK company which holds UK residential property do not incur a liability to UK tax on UK assets which would result in an obligation to register on the UK TRS.

7. If the non-UK resident trust falls within one of the categories of Excluded Trusts (see note 1 above) then the trustees will not be subject to the obligation to maintain an 'internal' trust register or register the trust with HMRC on the UK TRS.
8. The information that must be provided to HMRC and kept on the UK TRS and the deadline for providing that information will depend on (i) what event has 'triggered' the obligation to register on the UK TRS and (ii) the date of that event.