

# Anti-money laundering and pension trustees: which trusts must register with HMRC by 1 September 2022?

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Pension briefing

## HIGHLIGHTS

Pension scheme (and other) trustees must register certain trusts with HMRC by 1 September 2022, following the implementation in the UK of the Fifth Money Laundering Directive (5MLD) in 2020. The deadline for registration was to be 10 March 2022, but this was extended to 1 September 2022 following delays in establishing the Trust Registration Service. **While the new requirements do not apply to registered pension schemes or life assurance trusts, some other trusts used to provide unregistered pensions or uninsured health or death benefits will need to be registered.**

This note explains the new requirement to register certain trusts by 1 September 2022. It also contains a reminder of the 2017 money laundering requirements applicable to pension schemes and some other trusts.



## REMINDER: EXISTING RECORD KEEPING AND REGISTRATION REQUIREMENTS

The [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) (the "2017 Regulations") came into force on 26 June 2017. The regulations introduced three new requirements which are relevant to occupational pension schemes:

- a requirement to keep records about "beneficial owners" under the scheme (the "**record keeping requirement**");
- a requirement to notify third parties about the trustees' status as trustees and about the scheme's "beneficial owners", in certain circumstances (the "**notification requirement**"); and
- a requirement, in some cases, to register the scheme and provide information about the trust and its beneficial owners to HMRC (the "**registration requirement**").

In practice, the record keeping and notification requirements have not proved onerous (and largely do not exceed what trustees should be doing anyway). In addition, many schemes are not subject to the registration requirement.

For more information about the record keeping, notification and registration requirements, please see the Appendix below.

## WHAT DIFFERENCE HAS THE FIFTH MONEY LAUNDERING DIRECTIVE ("5MLD") MADE?

For the majority of our pension scheme clients, the answer is: none or very little. The 2017 Regulations were amended so that all express trusts would be required to register beneficial ownership information with HMRC. However, registered pension schemes (alongside other types of trust also considered at low risk of use for money laundering) have been carved out of the extended requirements.

As explained below, pension trustees and employers should consider whether other trusts set up to provide benefits to employees (and survivors) may fall within the new requirements (the "**5MLD requirement**").

## WHICH TRUSTS ARE AFFECTED BY 5MLD?

### Unregistered pension schemes

Unregistered pension arrangements are within scope of the 5MLD requirements if they are set up under a trust.

### What about life assurance trusts?

Trusts of a life or retirement insurance policy which pays out only on the death, terminal or critical illness, or disablement (permanent or temporary) of the insured person are also exempt from the extended 5MLD requirements. The government's [consultation response](#) issued in July 2020 confirms the intention that the exemption should include group policies.

Trustees of life assurance trusts will continue to be subject to the record keeping requirements and (if the trust is a “taxable relevant trust”) the existing registration requirement. These are explained below.

**Healthcare trusts**

Trusts of insurance policies to cover healthcare costs are also excluded from the 5MLD requirements. An uninsured healthcare trust will fall within the 5MLD requirements.

**Other death benefit or healthcare trusts**

A trust providing uninsured death benefits (and which is not a registered pension scheme) may fall within the 5MLD requirements.

Some scheme rules provide for a death benefit lump sum to be paid into a trust two years after the member’s death (if not paid out earlier to the member’s survivors). Such a trust is also likely to fall within the 5MLD requirement.

**And trusts for children?**

The implementation of 5MLD has changed the position for children’s trusts set up by trustees of occupational pension schemes – although this may not have been intended.

The government’s July 2020 [response to consultation](#) confirmed that, in general, trusts for bereaved minors would be exempt from 5MLD registration requirements. Unfortunately, the drafting of the exemption in the final regulations covers trusts for children under their parent’s will but does not extend to trusts set up to provide benefits from their parent’s pension scheme. This appears to be an error.

Children’s trusts are therefore likely to require registration under the 5MLD requirements (unless the trust is simply of a bank account held for a child). In many cases, the pension trustees will have appointed different trustees of the child’s trust – but it would be helpful to alert those trustees of the new requirements.

**OVERVIEW OF MONEY LAUNDERING REQUIREMENTS FOR PENSION (AND RELATED) TRUSTS**

	<b>Do the record keeping and notification requirements apply?</b> <i>See the Appendix to this note, Parts I and II</i>	<b>Does the registration requirement apply? (Is the trust a “taxable relevant trust” (TRT)?)</b> <i>See the Appendix to this note, Part III</i>	<b>Does the 5MLD requirement apply?</b> <i>See below</i>
<b>Registered occupational pension schemes</b>	Yes	Yes, if liable for at least one TRT tax	No (excluded)
<b>Life assurance trusts (including insured cover for critical illness, permanent or temporary disablement)</b>	Yes	Yes, if liable for at least one TRT tax	No (excluded)
<b>Insured healthcare trusts</b>	Yes	Yes, if liable for at least one TRT tax	No (excluded)
<b>Trusts of death benefits under a retirement policy</b>	Yes	Yes, if liable for at least one TRT tax	No (excluded)
<b>Unregistered pension schemes set up under trust</b>	Yes	Yes, if liable for at least one TRT tax	Yes
<b>Other death benefit trusts, children’s trusts (unless simply a trust of a bank account holding money for a child), uninsured healthcare trusts</b>	Yes	Yes, if liable for at least one TRT tax	Yes

## WHAT IS THE 5MLD REQUIREMENT?

As explained above, the 5MLD requirements only apply if the trust does not fall within an excluded category (such as registered pension schemes and life assurance trusts).

For trusts within scope of 5MLD, the requirements differ – depending on whether the trust is also a “taxable relevant trust” (for an explanation of “taxable relevant trust” please see the Appendix to this note, Part III).

### 5MLD requirement for taxable relevant trusts

Trustees of taxable relevant trusts within scope of 5MLD must:

- comply with the record keeping and notification requirements;
- register the trust with HMRC and provide information required for taxable relevant trusts; and
- provide HMRC with additional information required under 5MLD about any of the trust’s beneficial owners who are individuals:
  - the individual's country of residence;
  - the individual's nationality; and
  - the nature and extent of the individual's beneficial interest;
  - where the beneficiaries and potential beneficiaries form a class, not all of whom are identified, it will be sufficient to provide a description of the class.

The additional 5MLD information must be provided to HMRC:

- by 1 September 2022, where the trust becomes a taxable relevant trust before 4 June 2022; or
- in other cases, within 90 days of the trust becoming a taxable relevant trust.

### 5MLD requirement for trusts which are not taxable relevant trusts

Trustees of trusts within scope of 5MLD and which are not taxable relevant trusts must:

- comply with the record keeping and notification requirements;
- register the trust with HMRC and provide the following information about any of the trust’s beneficial owners who are individuals:
  - 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;
  - where the beneficiaries and potential beneficiaries form a class, not all of whom are identified, it will be sufficient to provide a description of the class;
- provide HMRC with the following information about any beneficial owners which are legal entities:
  - the legal entity's corporate or firm name;

- the registered or principal office of the legal entity; and
- the nature of the entity's role in relation to the trust.

The deadline for registration of non-taxable relevant trusts has been extended to:

- 1 September 2022, for trusts which first fall within the 5MLD requirements before 4 June 2022;
- otherwise, within 90 days of the establishment of the trust (or, if later, 90 days of first falling within the 5MLD requirements).

### Action for pension trustees

- Check whether you are trustee of any additional trusts which may fall within the 5MLD requirement.
- Consider alerting the trustees of any children’s (or other) trusts you have established of the new requirements.

### UPDATING INFORMATION WITH HMRC

Unhelpfully, the requirements for updating information provided to HMRC are not straightforward and there are inconsistencies between HMRC guidance and the 2017 Regulations.

#### Trust Registration Service: updating information

[HMRC guidance](#) expects changes in trust details or beneficial ownership information to be updated within 90 days of the change.

#### Taxable and non-taxable relevant trusts subject to the 5MLD requirement: updating information

The 2017 Regulations require any changes to the 5MLD information described above to be notified to HMRC within 90 days of the trustees becoming aware of the change.

#### Taxable relevant trusts: updating information

The 2017 Regulations require any changes in the information described in Part III of the Appendix to this note (other than a change in the value of the scheme assets) to be notified to HMRC by:

- 31 January after the tax year in which the change occurred; or
- if the scheme is not a relevant taxable scheme in that tax year, 31 January after the next tax year in which the scheme is a relevant taxable scheme.

If there is no change in the information provided, this must be confirmed to HMRC by 31 January after the tax year in which the trust is a taxable relevant trust.

### COMPLIANCE

Failure to comply with the requirements under the 2017 Regulations is a criminal offence, punishable up to two years' imprisonment. 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.

## APPENDIX

### I. RECORD KEEPING REQUIREMENT

The obligation to keep the records described below has applied since 26 June 2017.

#### Information about individuals

Trustees must keep records of the "beneficial owners" – please see Box A.

Records must also be kept of any individual mentioned as a potential beneficiary in a document from the settlor (this would be unusual in relation to a registered pension scheme but may be used in relation to other trusts set up by the employer).

Generally, the trustees must keep the information set out in box B about each beneficial owner who is an individual (and about any potential beneficiaries referred to in a document from the settlor).

#### A: Who is a "beneficial owner"?

The regulations define "beneficial owner" in relation to a trust as each of:

- the trustees;
- the settlor:

*HMRC has indicated that it considers the settlor to be the original employer. If the original employer has ceased and there have been several other employers, details of the original employer plus the latest employers will be sufficient;*

- 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:  
*for a pension scheme, this is likely to be employees and former employees of the sponsoring employers plus their survivors;*
- any individual who has control over the trust:  
*an employer or other entity which has power (alone or jointly with the trustees or another person) to appoint or remove trustees; to amend or terminate the scheme; or to add or remove a person as a beneficiary will have control for this purpose.*

Pension scheme trustees will already have much of the required information about their members, although some information – such as the passport numbers of members without a UK address – goes beyond the detail typically kept by UK pension schemes.

However, where the beneficiaries of a trust include a class of individuals who cannot be identified, only a description of the class of beneficiaries and potential beneficiaries need be kept. Occupational pension schemes will usually not be able to identify all their beneficiaries (as these will include members' potential survivors). In most cases, occupational scheme trustees can meet the requirements in relation to members by recording that, for example, the beneficiaries under their scheme are employees and former employees of the sponsoring employers, and their survivors.

#### Information about companies and other legal entities

Trustees must record the information set out in box C about any beneficial owner which is not an individual.

#### Reminder of action for occupational pension scheme trustees

- Establish who the beneficial owners are in relation to the scheme (see box A).
- Record a description of the class of beneficiaries (or potential beneficiaries) under the scheme, plus information set out in box B or C about the trustees, principal employer and any other entity which has control over the scheme.

#### B: Information about individual beneficial owners (individual trustees, the principal employer and any individuals with control over the trust).

Information will not be needed about individual members and survivors where it is not possible to determine all the potential beneficiaries under the scheme.

The information below must also be kept about any potential beneficiaries referred to in a document from the settlor.

Where the full record keeping requirements apply, the following information must be kept:

- the individual's full name;
- either:
  - the individual's national insurance number (or unique taxpayer reference); or, if none
  - the individual's usual residential address;
- if the address provided above is not in the UK, details of the individual's passport, identity card, or other form of identification;
- the individual's date of birth; and
- the nature of the individual's role in relation to the trust.

#### C: Information about legal entities (corporate trustees, the principal employer, plus any other company with control over the scheme)

In relation to legal entities which are "beneficial owners", the following information must be kept:

- the corporate or firm name;
- its unique taxpayer reference (if any);
- its registered office;
- the legal form of the entity and its governing law;
- its company registration number and the name of the register where it is entered (if any); and
- the entity's role in relation to the pension scheme.

## II. NOTIFICATION REQUIREMENT

The notification requirement below has applied since 26 June 2017.

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 notification requirement 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.

### Reminder of action for occupational pension scheme trustees

- Ensure that third parties are clearly told that you are contracting as the trustee of your pension scheme.
- If requested, give the third party notice that that the beneficiaries are employees and former employees of the sponsoring employers and their survivors (tailored as appropriate to your scheme), plus information identifying the trustees, principal employer and any other entity which has control over the scheme.

## III. REGISTRATION REQUIREMENT FOR TAXABLE RELEVANT TRUSTS

### When does the obligation apply?

Trustees must register with HMRC and provide it with information about their scheme and the beneficial owners in any tax year in which the scheme is a "taxable relevant trust" (please see the box below). These requirements have applied since 26 June 2017.

#### What is a "taxable relevant trust"?

A trust will be a taxable relevant trust if any of the following taxes is payable in relation to the scheme assets in the tax year:

- income tax;
- capital gains tax (CGT);
- inheritance tax;
- stamp duty land tax (SDLT);
- stamp duty reserve tax (SDRT);
- Welsh land transaction tax;
- Scottish land and buildings transaction tax.

In practice, most occupational pension schemes will not become liable for any of these taxes and so the registration requirement will not apply.

Schemes which invest directly in real property or in shares are likely to have liabilities to SDLT or SDRT, and so will be subject to the registration and notification requirements. Trustees should be aware that SDLT liability can also arise on the surrender of a lease. Investments through a collective investment scheme such as an authorised unit trust or an open-ended investment company (OEIC) will not usually give rise to an SDRT liability.

#### Some income tax does not count

HMRC has confirmed that trustees' liability to pay income tax arising solely from an obligation to pay one or more of the following taxes will NOT make the scheme a taxable relevant trust:

- lifetime allowance charge;
- an annual allowance charge in relation to a member under a "scheme pays" arrangement;
- PAYE in respect of a member's pension or lump sum benefits or on a survivor's benefits;
- short service refund lump sum charge;
- special lump sum death benefits charge;
- unauthorised payments charge;
- unauthorised payments surcharge;
- scheme sanction charge;
- authorised surplus payments charge; or
- de-registration charge.

### What information must taxable relevant trusts provide?

Trustees of a taxable relevant trust must provide HMRC with:

- information about members and beneficiaries (please see Box B above). Occupational pension schemes are only expected to provide information about the classes of beneficiary, since they will not usually be able to identify all potential beneficiaries;
- information about other beneficial owners who are individuals (please see box A);
- information about beneficial owners which are legal entities, not individuals (please see box C above); and
- specified information about the scheme (please see box D below).

#### D: Information to be provided about the pension scheme (or other trust)

Where trustees of a taxable relevant trust have to provide information to HMRC, they must include the following information about the scheme:

- the scheme's full name and the date it was set up;
- scheme accounts with specified information, including the value of each category of the scheme's assets at the date the information is provided to HMRC. HMRC has previously indicated that it will accept the asset values in the scheme's most recent accounts, if these give a reasonably good estimate of the market value of the assets at the date of registration;
- the place the scheme is administered and its country of residence for tax purposes;
- a contact address for the trustees;
- names of the trust's legal, financial or tax advisers (if any).

## How must relevant trusts register with HMRC?

HMRC has set up the Trust Registration Service (TRS) to enable trusts to meet the obligation to register under the 2017 Regulations.

However, trust-based registered pension schemes which are already registered online with HMRC (using the Manage and Register Pension Schemes service or Pension Schemes Online) do not need to register separately with the TRS.

## When must taxable relevant trusts register and provide information to HMRC?

Trustees must provide the above information to HMRC by:

- if the trust becomes liable for income tax or capital gains tax, 5 October after the tax year in which it first becomes liable for either tax;
- 31 January following the tax year in which the trust first becomes a relevant taxable trust, for a trust set up before 6 April 2021;

- 1 September 2022, for a trust set up after 5 April 2021 and which becomes a taxable relevant trust before 9 June 2022; or
- within 90 days of the trust becoming a taxable relevant trust, in any other case.

## Reminder of action for trustees

- Periodically check with your investment adviser whether any of the investments which you are invested in give rise, or could give rise, to any of the taxes listed above.
- Where the answer is yes, register and submit information to HMRC as required (remembering that registered pension schemes do not need to register additionally using the TRS).

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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