

Trust Registration - Everything you need to know

1. I have heard I need to register my trust?

This is correct. The Fifth Money Laundering Directive (5MLD) came into effect in the UK on 6 October 2020. This directive has vastly extended the reporting obligations of Trusts to HMRC.

It replaces the Fourth Money Laundering Directive (4MLD) and adds reporting obligations to a significant number of trusts.

Below is reminder of the previous obligations under 4MLD and the new obligations under 5MLD.

Since 2017, if a Trust incurs a liability to income tax, capital gains tax, inheritance tax, Stamp Duty Land Tax or Stamp Duty Reserve Tax, trustees are required to register information about their trusts on HMRC's online portal the Trust Registration Service (TRS).

Under 4MLD if a liability to income or capital gains tax arises the trustees must register their trust by 5 October after the end of the tax year in which the tax liability arose. For example, if the trust incurs a tax liability on 3rd March 2020, the trust must be registered by 5th October 2021.

If a Trustee would like to register a Trust they will first need to apply for a Government ID as HMRC's online portal uses a Government gateway account.

Continuing obligations under 4MLD

Registering a Trust is not the end of a Trustee's obligations under 4MLD.

HMRC additionally requires that an annual declaration be made by the Trustees confirming that the details previously provided are still accurate. This must be done by 31 January after the end of each tax year. For example, 5th April 2021 is the end of the current tax year so the annual declaration must be submitted by 31st January 2022.

The Trustees must also declare on the portal if the trust has come to an end.

2. My Trust does not pay tax. Do I need to do anything?

Yes, you do.

5MLD extends the obligation to register, keep details accurate and make an annual declaration to most non-taxpaying trusts, regardless of whether they are liable to pay any tax.

The trusts which do not need to be registered are:

- Legislative trusts (such as a life interest arising on intestacy, Bereaved minor and 18 to 25 trusts)
- Trust imposed by court order
- Pension scheme trusts
- Trust of term assurance policies
- Charitable trusts
- Pilot trusts – which do not have a value greater than £100 and were created before 6 October 2020
- Trusts having effect on death (i.e Will Trusts) within the first 2 years only
- Co-ownership (where legal and beneficial owners are the same)
- Personal Injury trusts
- Certain commercial trusts

THE TRUSTS WHICH NEED TO BE REGISTERED ARE:

- Trusts of Land where the legal owners registered at the Land Registry differ to the owners deriving an interest in the property. For example where parents have contributed to a home for their child or when a couple buy a property together but only one name is on the title deeds.
- Trusts which hold an asset such as a loan or a property for a surviving spouse or other beneficiaries after death.
- Bare Trusts where for example a parent holds an asset for their minor child.
- Trusts holding investments which do not give rise to a tax liability.

3. Where do I register the Trust? Do I need to do it now?

Just as with 4MLD, those trusts caught by 5MLD will need to be registered with HMRC using their online portal.

Although 5MLD came in to force on 6 October 2020, HMRC's online portal is not yet ready so those trusts cannot currently be registered. It has however been planned that the portal will be ready from late summer 2021 and from that point on trustees will have 12 months to register their existing qualifying Trusts. Any trusts created after the portal is available to register will have 30 days from creation to do so.

Although 5MLD came in to force on 6 October 2020, HMRC's online portal has only been ready since 2 September 2021.

All non-taxable trusts in existence on or after 6 October 2020 must be registered by 1 September 2022.

All trusts that become registerable in the 90 days prior to the 1 September 2022 must register within 90 days of creation.

Non-taxable trusts created after 2 September 2022 have 90 days from creation to do so.

4. What information do I need to give to HMRC?

The details needed to be registered under 5MLD will broadly be the same as those required under 4MLD. The information required is:

- Detail of the nature of the Trust (Will Trust, Lifetime Trust).
- Details of the Settlor, the Trustees, the beneficiaries and the assets in the Trust.

The details required for the Settlor and the Trustees are their full names, addresses and National Insurance numbers. The minimum details required for the beneficiaries are their names and the type of interest they have in the trust.

5. I have registered my Trust. Is that all I have to do?

Once the trust has been registered, under 5MLD, the trustees will have an obligation to update the portal within 30 days of them becoming aware of any changes to the information previously reported.

Those changes can be a change in trustees, a beneficiary's address, a change in assets for example. In addition to keeping the portal updated, if the trust incurs a tax liability, the trustees will also have an obligation to make an annual declaration confirming that the details are correct.

If trustees do not comply with the legislation they are liable to receive quite significant financial penalties and sanctions.

6. How can Wards help me with this?

In view of the above change in the legislation, our specialist Trusts team at Wards can advise you:-

- Whether your trust comes under the 5MLD requirements.
- Which details you will need to gather in order to register it.
- We can also register it for you
- We can keep it updated.

Please contact our Trust Solicitors Mary Harty or Klerwi Le Fol-Caraës for further information.

Email **Mary.Harty@wards.uk.com** or **Klerwi@wards.uk.com** or call our Bristol office on **0117 929 2811**.

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