New anti-money laundering regulations: action for pension scheme trustees

Updated December 2017

Pension briefing

HIGHLIGHTS

Pension scheme trustees should be aware of requirements under new money laundering regulations to record information and, in some cases, to give the information to third parties and to register the information with HMRC.

Some details of how the new regime will apply to occupational pension schemes are not yet clear. Further guidance is expected from HMRC in the autumn.

This note sets out current understanding of the new requirements and recommends action to be taken by occupational pension scheme trustees.

INTRODUCTION

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

- a requirement to keep records about" beneficial owners" under the scheme;
- a requirement to notify third parties about the trustees' status as trustees and about the scheme's "beneficial owners", in certain circumstances; and
- a requirement, in some cases, to give information about the scheme and its beneficial owners to HMRC.

There is some doubt as to whether the beneficial ownership requirements apply at all to an occupational pension scheme which doesn't have trustees acting in the course of business. However, HMRC is taking the line that the requirements apply to all occupational schemes, and this note proceeds on this basis.

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

Failure to comply with the new requirements 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.

RECORD KEEPING REQUIREMENTS

Information about individuals

Trustees must keep records of the "beneficial owners" – please see Box A. Generally, the trustees must keep the information set out in box B about each beneficial owner who is an individual.

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). It therefore seems that 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.

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 , members, survivors and any individuals with control over the trust)

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 (in relation to a pension scheme, this would be member or (potential) beneficiary).

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.

NOTIFICATION REQUIREMENTS

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 requirements 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.

Action for occupational pension scheme trustees

- Ensure that third parties are clearly told that you are contracting as the trustee of your pension scheme (you are likely to be doing this anyway).
- 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.

OBLIGATION TO PROVIDE INFORMATION TO HMRC

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 "relevant taxable trust". A scheme will be a relevant taxable 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);
- Scottish land and buildings transaction tax.

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

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 be provided and when?

Trustees whose schemes incur a liability to one or more of the above taxes must provide HMRC with:

- information about members and beneficiaries (see Box B). HMRC has indicated that occupational pension schemes will only need 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 B);
- information about beneficial owners which are legal entities, not individuals (please see box C); and
- specified information about the scheme (please see box D below).

The information must be provided by 5 March 2018 (extended from 31 January 2018 in response to industry concerns) or, if later, 31 January following the tax year in which the scheme first becomes a relevant taxable scheme (but please see below for information on special requirements where income tax or CGT is payable).

Any changes in the information (other than a change in the value of the scheme assets) must 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.

Where there have been no changes, trustees must confirm this to HMRC by 31 January after the tax year in which the scheme is a relevant taxable scheme.

Registration must be carried out using HMRC's new Trusts Registration Service (TRS). The TRS was launched in July 2017 for unrepresented trustees and is expected to be available for use by agents from October this year.

Please note that additional requirements apply to trustees who become liable to income tax or CGT in relation to their scheme (see box E). However, income tax and CGT liabilities are rare in registered occupational pension schemes, so these requirements are unlikely to apply.

D: Information to be provided about the pension scheme

Where trustees 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 the scheme's assets at the date the information is provided to HMRC. HMRC has 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 scheme's legal, financial or tax advisers (if any).

Action for occupational pension scheme trustees

- 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.

E: Liability for income tax or CGT

Trustees who become liable for income tax or CGT are already required to register their trust for self-assessment by 5 October following the end of the tax year in which the liability first arises. From 2017, this registration must be done via the Trusts Registration Service (TRS).

Where a trust first needs to be registered for self-assessment by 5 October, the trustees must also provide information about the scheme and its beneficial owners at the same time, not by the following 31 January. To enable trustees to comply with the new requirements, the 5 October deadline has been extended to 5 January 2018 in respect of liabilities arising in 2016/17 (the extension was originally to 5 December 2017 but this has been further extended).

A summary of the requirements is set out below:

- **Trust is already registered for self-assessment:** complete registration of scheme and beneficial ownership information by 31 January (extended to 5 March for 2018 only) if the scheme incurs a relevant UK tax liability (for income tax, CGT, inheritance tax, SDRT, SDLT or Scottish land and buildings transactions tax).
- **Trust is not registered for self-assessment and incurs its first income tax/CGT liability:** complete registration for self-assessment and of scheme and beneficial ownership information by 5 October (5 January 2018 in respect of liabilities arising in 2016/17).
- **Trust is not registered for self-assessment and has not incurred an income tax/CGT liability:** register the scheme and beneficial ownership information by 31 January (extended to 5 March for 2018 only) if liability is incurred for one or more of the other relevant taxes above (that is, liability for inheritance tax, stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), or Scottish land and buildings transaction tax.

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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