



ICAEW REPRESENTATION 127/17

TAX REPRESENTATION

TRUST REGISTRATION SERVICE

Letter dated 2 November 2017 from ICAEW Tax Faculty to Financial Secretary to the Treasury

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LETTER DATED 2 NOVEMBER 2017 FROM ICAEW TAX FACULTY TO FINANCIAL SECRETARY TO THE TREASURY

TEXT OF LETTER

I am writing to set out some concerns about the trust registration service (TRS) together with some suggestions about how they can be resolved. As you know the TRS has been created as the government's response to implementing the EU Fourth Money Laundering Directive. We fully support implementation of the Directive and the appendix to this letter gives a potted history of the TRS to date.

Our particular concerns, which are set out further below, are that:

- the service only became available to agents with effect from 17 October 2017;
- the new information requirements are more extensive than the previous requirements;
- as with any new system our members have encountered a number of problems in using it;

with the result that the current registration deadlines are now too short to be met and need to be deferred.

In practice, many agents have not been able to access the new service as they are unable to create a new "Agent Services" account, a pre requisite for the TRS. The agent services account is a new gateway which will be used in the future for agents to access all HMRC services including Making Tax Digital (MTD): it is still in its infancy and has not yet been rolled out for general use. Many members have experienced problems creating an account. One of the issues is confidentiality: for example, many firms have separate agent codes for each of their offices and a separate code for sensitive clients where access is restricted to specific authorised individuals within the firm. The new agent services account envisages one account for the entire firm enabling any member of the firm to have access to the details of all the registered clients. Although it may be possible in the future to create separate sub accounts within the main agent account when all clients are transferred, at this first stage it is not possible to have separate sub accounts to register trusts.

Those agents who have created an agent services account have expressed concern that they will not be able to register all of their new trusts and complex estates before the revised deadline of 5 December 2017 for new trusts and 31 January 2018 for existing trusts. The extra volume of information to be submitted under the new requirements will not normally be held by the agent and so will have to be requested from trustees. Once the information is available, it cannot always be entered on the electronic form as several of the fields are restricted eg only space for 2 settlors, 5 trustees, 10 beneficiaries. If more entries are needed the additional information has to be provided by writing to HMRC – which rather negates the point of moving to a fully digital system.

As noted above, the register is in response to the EU Fourth Money Laundering Directive. We support the effective implementation of the Directive but are concerned that the UK has adopted a 'gold plated' response to registering trusts which is likely to cause initial compliance difficulties but where the associated risk of non-compliance in the transition to the new system is actually low. This is borne out by the findings of the "[National risk assessment of money laundering and terrorist financing 2017](#)" published on 26 October 2017 by HM Treasury and the Home Office, which states:

"Law enforcement agencies have identified very little evidence of UK trusts (those governed by UK law and/or administered in the UK) being abused for money laundering purposes. The risk of criminals exploiting UK trusts to launder money is therefore assessed to be low.

The precise extent of abuse of UK trusts remains an intelligence gap. However, there are significantly higher risks associated with overseas trusts. There are no known cases of UK trusts being abused for terrorist financing, and the risk for terrorist financing is also assessed to be low.”

This statement reinforces the concern that the details being requested on the register are out of proportion to the underlying risk. In the circumstances, therefore, extending the deadline to allow time for proper completion of the register should not give rise to additional risk to money laundering and terrorist financing.

As a professional body, we wish to ensure the successful roll-out of the TRS and that trustees and their agents comply with the new requirements. We are also concerned that the roll-out of the TRS is being seen as a precursor to the forthcoming roll-out of MTD for VAT, so any implementation problems with it need to be managed lest they detract from the implementation of MTD.

In order to allow for an orderly and successful implementation of TRS, we believe that the government should announce an extension of the filing deadlines and also for a soft landing for penalties for a transitional period. We propose that:

- the deadline for registering new trusts and complex estates should be extended to 5 January 2018;
- the deadline for existing trusts should be extended until at least 5 April 2018; and
- HMRC should apply a ‘light touch’ on penalties for the following year, with no penalties for missing either of the registration deadlines and no penalties for a late filed self-assessment return for a new trust or complex estate.

We would be happy to discuss further.

Trust Registration Service

The Trust Registration Service (TRS) has been introduced as the government's response to comply with Article 31 of the [EU Fourth Money Laundering Directive](#) which had to be implemented by 26 June 2017. The [regulations](#) were published on 22 June and reg 45 specifies the requirements for the TRS.

There was a consultation which ICAEW responded to with an overall conclusion that the TRS was a gold plated response to the directive. ICAEW met with HMRC on 30 March 2017 along with other professional bodies and practitioners. It was clear from this meeting that there was very little if any practical experience in the HMRC team. For example the draft regulations required a report "within the tax year" for tax events in the year; reporting a tax event occurring on 5 April within the tax year was not possible. In addition the work load for agents and trustees would be more than doubled if information had to be requested/supplied within the tax year for the register and after 5 April for the self-assessment. The revised regulations use the more realistic 31 January after the end of the tax year. However the extent of the information required is still in excess of the information required by the directive and in many cases will not be available to the agent, or indeed the trustees.

The TRS should have been available from the date the regulations came into force but it was in fact delayed until 10 July and even then it was access for trustees only and not agents. The form 41G(Trusts) which in the past has been used to notify HMRC of new trusts was withdrawn in April 2017 so in the meantime agents have been stockpiling details of new trusts and complex estates with a tax event in the 2016/17 tax year. As specified by TMA 1970 s7 notice of liability to tax has to be given within six months of the end of the tax year, ie 5 October hence the deadline for new trusts to be registered. When it became apparent that agent access to the register would not be until September 2017 the 5 October deadline was extended to 5 December 2017 for new 2016/17 trusts.

The register only became available to agents on 17 October 2017 giving a theoretical window for registering new trusts and complex estates of just seven weeks and for some agents meeting this deadline will be problematic as they have so many trusts to register. The knock on effect is the UTR will not be issued until the trust is registered and the self-assessment cannot be submitted electronically without a UTR.

Not all agents will have new trusts and many that do will not have a significant number to register. However, agents are likely to have several older trusts and the timescale is causing concern. Initially we were told that information held by HMRC for existing trusts would be migrated across and so only needed the extra information as required by the regulations added. We are now told that this is not the case and all trusts will need to be entered on the register from scratch. The time this will take should not be underestimated and the registration has to be completed by 31 January 2018. From now until 31 January is the busiest time for agents and to have to register all their trusts as well in such a short time frame is asking too much.

From HMRC FAQ

What details do we need to provide for each role?

Lead Trustee Individual: Name, date of birth, telephone number, email, NINO (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

Lead Trustee Company: Company name, email, UTR (if available). If no UTR is available a registered address.

Additional Trustee Individual: Name, date of birth, NINO (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and registered address.

Settlor Individual: Name, date of birth, NINO (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

Settlor Company: Company name, UTR (if available). If no UTR is available; address.

Beneficiary Individual: Name, date of birth, NINO (if available). If no NINO is available; Passport or ID card details (if available) and address.

Beneficiary charity/company/another trust: Name, UTR (if available). Registered address if UTR not available.

Protector etc. Individual: Name, date of birth, NINO (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.

Protector etc. Company: Name, UTR (if available). Registered address if UTR not available.

Other Individuals: Name, date of birth, NINO (if available). If no NINO is available; Passport or ID card country of issue, Passport or ID card number, Passport or ID card expiry date and address.