



TRUST REGISTRATION SERVICE PENALTIES

Issued 10 July 2018

The trust registration service (TRS) is the government's response to the Fourth EU Money Laundering Directive and has to be completed/updated for all UK express trusts that have had a tax event in the tax year and for overseas trusts that have had a UK tax consequence. It is the place to register new trusts, the 41G(Trusts) was discontinued in April 2017. The TRS was introduced in 2017 and the first registrations were for trusts with a tax consequence in 2017/18 tax year and as a result of teething problems the deadline for registering without a penalty was extended to 5 March 2018. The penalty system for late registration was announced on the same day; it is a tax geared penalty. In our view the penalty should not be tax geared as the registration is not a tax reporting system it is simply a register of trusts, their settlors, trustees and beneficiaries and so the penalty should be a fixed penalty similar to the Companies House late accounts filing penalty system.

The tax faculty wrote to HMRC to express this view and that letter together with the HMRC response form this representation.

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FRANK HASKEW LETTER TO MR JIM HARRA 20 JUNE 2018

20 June 2018

Mr Jim Harra

Second Permanent Secretary and Deputy Chief Executive

HMRC

Dear Jim,

PENALTIES UNDER THE TRUST REGISTRATION SERVICE

As you will know we fully support the fight against money laundering, including tax evasion. However, we have some concerns about the new penalty structure for late filing under the trust registration service (TRS) and we think it needs to be amended.

Background

The TRS was rolled out as part of the government's response to the implementation of the EU Fourth Money Laundering Directive. The TRS is governed by regulations, [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) which came into force on 26 June 2017. In addition to specifying what information has to be recorded on the register the regulations give the power to charge penalties for non-compliance; separate penalties can be charged for money laundering offences.

The penalties

Under para 76(2) of the regulations, HMRC Commissioners as the designated supervisory authority can "impose a penalty of such amount as it considers appropriate" if the trustees fail to comply with the requirements of the regulations by completion of the TRS. Appropriate is defined in para 76(8)(a) as "effective, proportionate and dissuasive".

The structure of these administrative/non-compliance penalties were published on 5 March 2018, coincidentally the final date for registering a trust with a tax consequence in 2016/17 without incurring a penalty.

The penalties that have been announced are:

- Registration made up to three months from the due date – £100 penalty
- Registration made three to six months after the due date – £200 penalty
- Registration more than six months late – either 5% of the tax liability or £300 penalty, whichever is the greater sum.

This penalty scale appears to be based upon ones already found in the tax legislation, for example those found in Sch 55, FA 2009. While the penalty scale in Sch 55 is clearly an appropriate one for tax collection systems, our concern is that such a penalty model is not appropriate for what is essentially a reporting system.

If a tax event is not reported and as a result the tax is not paid then the tax geared penalty is appropriate; it is a true deterrent for non-compliance and non-payment. In comparison, if the TRS is not completed, no tax has been lost (assuming the appropriate tax return has been made and if not the penalty for that is tax geared as noted above) so to charge a percentage of tax already paid does not appear appropriate or proportionate. It will lead to distorted penalties for the same offence based solely on what the tax charge might be. For example if the TRS is not completed after a trust has incurred a stamp duty land tax charge of, say, £500,000, the tax geared penalty would be £25,000 whereas if instead the tax event was a stamp duty tax on shares of £10, the 5% penalty would be £0.50 so the penalty would be only £300.

Summary

HMRC was given responsibility for the TRS rather than Companies House, the norm in other European countries, because of the sensitive nature of the data to be held and the need for confidentiality. The trust register is not a tax compliance measure and we believe it is not right for the penalty to be related to any tax liability of the trust. In our view, the application of tax based penalties does not meet the “appropriate” test and is we believe vulnerable to challenge. We ask that this aspect of the penalty structure is reviewed and amended. The forthcoming need to adopt the 5th Money Laundering Directive provides a suitable opportunity for this penalty to be reviewed. Our recommendation is that the penalty should be instead be a fixed one as found in the regime for late filing of company accounts.

We would be happy to discuss it further with your officials.

Yours sincerely

Frank Haskew

Head of Tax Faculty

ICAEW

HMRC RESPONSE 29 JUNE 2018

29 June 2018
Mr Frank Haskew
Head of Tax Faculty
ICAEW

Dear Frank,

PENALTIES UNDER THE TRUST REGISTRATION SERVICE

Thank you for your letter of 20 June 2018 to Jim Harra about the above.

You set out two interlinking concerns with the existing penalties regime for the Trust Registration Service (TRS): first, you feel that a penalty model which includes a tax geared penalty is not an appropriate sanction for late filing under the TRS; and second, you feel that the 5% penalty could lead to distorted results for the same offence.

On your first point, the penalty model was chosen because the registration requirement is linked to whether the trustees have incurred a tax liability. However, I appreciate the concerns you raise; and, as you suggest, we intend to review the approach as part of our work on the introduction of the 5th Money Laundering Directive. We will be in contact with you and other stakeholder bodies in due course to seek views on the approach we should take to the implementation of 5MLD, and as part of that we will seek views on a suitable penalty regime.

On your second point, I can assure you that we will not issue penalties for late registration automatically, and instead will review them on a case by case basis. We will take a pragmatic and proportionate approach in determining whether to issue a penalty in each case, and will seek to avoid distorted and excessive results.

I am content for you to share this reply with your members, and I hope you find it helpful.

Yours sincerely,
David Richardson
Director General, Customer-strategy and Tax Design
HMRC