

M+A

## Partners

# Trust register expansion

Have you registered your trust?



Previously, trusts were only required to register if they were liable to pay tax. Under the new rules all UK trusts are required to register unless they come under specific exemptions.

The deadline for new registrations of non-taxable trusts under the Fifth Money Laundering Directive (5MLD) is the later of 90 days from creation and 1 September 2022.

## Trusts that need to be registered

Trusts that need to register under 5MLD fall in to three broad categories:

+ **All UK express trusts unless specifically excluded.**

An express trust is one that is created deliberately by the settlor in express terms and usually in writing, as distinguished from one that comes in to being through the operation of the law, such as trusts set up under intestacy laws or personal injury trusts receiving funds under court order.

+ **Trusts that have a UK tax liability**, irrespective of whether they are express or specifically excluded. In other words, any trust with a UK tax liability needs to register.

+ **Non-UK express trusts that:**

- + Acquire land or property in the UK; or
- + Have at least one UK resident trustee and have a business relationship within the UK (such as having a UK accountant or adviser).

## Common arrangements that will now need to be registered

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- + **Declarations of trust over land** (unless the trustees are holding exclusively for themselves);
  - + **Investment bonds written in trust** (as part of Inheritance Tax Planning for example);
  - + **Bare trusts;** and
  - + **Non-complex estates under administration for more than two years.**
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## Registration deadlines

The deadline for new registrations of non-taxable trusts under 5MLD is the later of 90 days from creation and **1 September 2022**.

Trusts that need to register under the existing rules because they have a UK income tax or Capital Gains Tax liability for the first time, must do so by 5 October following the end of the tax year in which the liability arose. This is to allow time for a Unique Taxpayer Reference (UTR) to be issued under which to file the self assessment tax return.

Trusts that already have a UTR need to register by 31 January following the tax year in which the liability to income tax or Capital Gains Tax arose (the same deadline as for the corresponding tax return).

Trusts that have other tax liabilities that are not income tax or Capital Gains Tax, that is; Inheritance Tax, Stamp Duty Land Tax (and the Scottish and Welsh equivalents) and Stamp Duty Reserve Tax, must also register by 31 January in the tax year following that in which the liability arose.

## Updates to registered trusts

Trustees are required to update their registration for any changes within 90 days of the date of change.

## Trustee requirement to maintain a written record

Irrespective of whether a trust is required to register on the Trust Registration Service (TRS) all express trusts are required by law to maintain accurate and up to date written records of all the actual and potential beneficial owners of the trust. The beneficial owners include all trustees, settlors, beneficiaries or any person who has control over the trust. This is required because law enforcement authorities are able to request this information from a trust. Please let us know if you have any questions in this regard.

## Trusts that are specifically excluded (unless they have a UK tax liability)

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- + Child bank accounts.
  - + Co-ownership trusts set up to hold shares of property or other assets which are jointly owned by 2 or more people only for themselves as 'tenants in common'.
  - + Trusts imposed by S34 (2) of the Land and Property Act 1925 because there are more than four beneficial owners.
  - + Trusts imposed by sch 1 (2) of the Trusts of Land and Appointment of Trustees Act 1996 because one or more of the beneficial owners is aged under 18.
  - + Trusts used to hold a life or retirement policy paying out only on death, terminal or critical illness or permanent disablement, or a policy paying out to meet the cost of healthcare services.
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+ 'Pilot' trusts which were set up before 6 October 2020 for a future use and which hold no more than £100. That might be a by-pass type trust for example. Pilot trusts set up after 6 October 2020 will need to register.

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+ Will trusts which are created by a person's Will and come into effect on their death providing the trustees only hold the estate assets for up to 2 years after the person's death. If the trust is still in existence after 2 years it will need to register from that date.

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+ Trusts holding insurance policy benefits received after the death of the person assured, providing the benefits are paid out from the trust within 2 years of the death.

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+ Trusts for bereaved children under 18, and 18-25 trusts where a parent has died (s71A & s71D IHTA1984).

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+ Trusts where a disabled person is the only beneficiary.

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+ Trusts imposed by legislation (e.g. trust in bankruptcy) or court order (e.g. matrimonial proceedings).

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+ Charitable trusts registered with Charities Commission or those not required to register under the Charities Act.

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+ Employee share scheme trusts.

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+ UK registered pension schemes.

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+ Financial or commercial trusts created in the course of professional services or business transactions for holding client monies or other assets.

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+ Approved maintenance funds for historic buildings.

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+ Trusts registered on a European Economic Area (EEA) register (but non-UK trust acquiring UK land must still register).

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An excluded express trust will have to register if it becomes subject to UK tax.

## How can M+A Partners help?

Here at **M+A Partners** we have an experienced trust and estates team who will be pleased to answer any questions that you may have and support you in the registration process.

**This is a brief summary, for further information and advice please contact our experts (details shown right).**



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