

TRUST ME I'M A PROFESSIONAL



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In this article for financial advisers, Simon Martin, Head of UK Technical Services, discusses the increasingly onerous obligations for trustees regarding trust administration and reporting.

The use of trusts with insurance-based solutions has been commonplace in the UK market for many years, with most UK and overseas insurers offering professional advisers a range of standardised trust deeds to use with their products. These trusts can be used to accommodate UK tax planning following external advice, and can be useful where the planning requirements render the use of a costly bespoke trust draft unnecessary.

The benefit of putting an insurance policy in trust within the UK market is mainly centred on UK inheritance tax mitigation, with the non-income producing aspect of a life insurance policy simplifying both the taxation and administration of UK trust planning - especially in relation to UK discretionary trusts. Certainly anybody reading this article who has attempted to understand the complex workings of the trustee tax-pool when applied to discretionary trust taxation will no doubt welcome the simplicity that a non-income producing asset provides.

INCREASED REGULATION AND REPORTING

Who then acts as trustee is also a matter for the advice process, with many clients historically choosing to act as trustee themselves when using these standardised trust offerings rather than opting for a professional trustee. However, the tax and regulatory landscape is changing at quite a pace nowadays, which can make acting as a trustee increasingly onerous especially for the individual trustee.

For example, let's focus initially on the introduction of the UK Trust Registration Service, which has been publicised extensively in the financial media recently. Whilst insurers such as Utmost have conducted mailings to remind individual trustees of their obligations, I would imagine there's still a good number of trustees who have not taken action in this area despite the UK deadline for existing trusts having passed us by.

TRUST REGISTRATION SERVICE BACKGROUND

The Fourth Money Laundering Directive ("4MLD") introduced the requirement to register, with registration required when the trust is chargeable to UK tax and where this tax rests on the trustees. UK tax charges include income tax, capital gains tax and inheritance tax - such as where a discretionary trust is potentially subject to inheritance tax at the ten year anniversary. This registration requirement was extended by the Fifth Money Laundering Directive ("5MLD") to include most UK express trusts and those trusts which have a 'business relationship' in the UK. When just considering trusts holding life policies, a UK express trust

includes those trusts where all the trustees are UK resident or where the trust has some UK resident trustees but the settlor was both UK resident and domiciled at the time of settlement.

Whilst the UK has now waved goodbye to the EU, the UK still implemented 5MLD as part of their desire to apply some equivalence for certain EU legislation - especially in key areas such as money laundering and terrorist financing.

However, HM Revenue and Customs ("HMRC") did apply some clarity on their interpretation of the UK registration requirements, including those surrounding the business relationship rules and exemptions to the 5MLD. The exemption list provided by HMRC is quite extensive and includes trusts which have little scope for money laundering, such as UK registered pension schemes and charitable trusts. With respect to the UK business relationship rules, again, HMRC have applied a degree of pragmatism, with an overseas trust only being required to register due to a UK business relationship where all of the following apply:

1. The business relationship was established after 6 October 2020;
2. The business relationship is one that is expected, at the time the relationship is entered into, to endure for a period of time of at least 12 months;
3. There is at least one UK resident trustee.

These rules in relation to the UK's interpretation of the 5MLD are quite generous, for example they allow for advice to be given by a UK firm to an overseas trust without this necessarily bringing the trust into scope of UK registration.

FURTHER COMPLEXITY

However, the UK's departure from the EU has meant that aspects of the cross-border rules aren't as straightforward as they might otherwise have been. For example, where a trust is registered in the EU, the trust still needs to be registered in the UK unless it's also 'administered' in the EU state. When this guidance was first released, I did contact HMRC to get some understanding of what 'administered' meant in this context which wasn't defined in legislation. This was clarified as meaning where the trustees are resident or where the trust is being administered. For example, this means that a UK express trust which was registered in, say, Ireland on the Central Register of Beneficial Ownerships of Trust ("CRBOT") due to having a business relationship in Ireland (but was still administered in the UK) would still need to be registered in the UK unless it was otherwise exempt.

Similar rules apply when we consider the Irish position following the UK's departure from the EU. Here the Irish interpretation is more draconian when it comes to the business relationship rules, with no requirement for an Irish trustee nor for the relationship to be 'enduring' in nature for the rules to bite - meaning any UK trust with any existing or historic Irish Business relationship needs registering on CRBOT. Those reading this article will no doubt be aware that this extends to UK trusts holding Irish-issued life policies, albeit CRBOT have recently put the registration process for such trusts on hold due to ongoing problems with the usability of their online service.

WHAT NOW?

So you may ask why I am mentioning all this and where do I see the future of trust planning? In my role as Head of Technical Services for the UK market, the areas in which we receive the most questions are in relation to trust taxation, law and administration.

Trusts can add a layer of complexity for the unfamiliar adviser and I fear this is an area that is only going to get more onerous, with regulators continually focusing on customer advice and outcomes - evidenced by the emergence of the FCA's recent Consumer Duty. Utmost have spent considerable time explaining the registration requirements in both technical literature and webinars so that advisers and trustees can understand their requirements in this area.

Some advisers may well end up specialising in this area and indeed some firms have already advertised their services in relation to specific areas of trust and tax administration, such as providing specialised services in relation to the UK and Irish trust registration process. Conversely, the addition of more and more layers of complexity may get other advisers reaching for a paracetamol tablet at the mere mention of a trust!

Insurers such as Utmost will, where we can, continue to provide ongoing support to advisers in the area of trust planning and related activity which will remain an important part of the UK proposition. However, no matter how much support we provide, ultimately trustees need to fully understand their fiduciary role, including the extent of their trustee powers and whether they need to seek advice in relation to taxation and other filing requirements.

For those clients who want to go it alone, advisers should make sure their clients are fully aware of the important role they are taking on prior to their clients appointing themselves or family members as trustees. Furthermore, the adviser should remain vigilant about ongoing regulatory and tax-related matters surrounding trusts, or seek specialist advice accordingly, so they can ensure they are keeping their clients adequately informed and updated at all times.

A SOLUTION

This is where the use of professional trustees can really help an adviser, as using a professional trustee can significantly assist and ease the ongoing advice process. Utmost is able to offer a professional, cost effective, in-house trustee service for new trusts that utilise our drafting and life products and you may wish to consider this option with your local sales representative the next time you receive an enquiry.

ABOUT THE AUTHOR

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