

It has been seven months since the new anti-money laundering (AML) regulations came into force, but we are finding that there is still some confusion around the extent to which trustees of UK pension plans are caught by the two new requirements: record keeping and reporting. In the case of the former, all plans are likely to have some compliance steps to complete. As regards the latter, the HMRC deadlines are nearly upon us.

In this communication, we recap on the record-keeping duties and provide some additional guidance in relation to the reporting duties.

Record-keeping Duties

All trustees of occupational pension plans, which were established by a trust deed and rules, must comply with the new record-keeping duties.

The trustees must identify all “beneficial owners” of their plan (a term that is defined more widely than you would naturally think) and must maintain certain information about those “beneficial owners”. If you have not seen it previously, our [How2 Do Pensions Quick Guide](#) summarises the information that must be collated and retained.

We also summarise in our How2 Do Pensions Quick Guide the categories of people who would constitute a “beneficial owner” (including members, employers and trustees). By far the trickiest category, with which advisers in the pensions industry are grappling, is that of “any individuals who could be said to exercise control” over the plan. Having control would include having the power (whether or not exercisable jointly with another person) to:

- Dispose of or invest the assets of a pension plan
- Appoint or remove trustees or beneficiaries
- Amend a pension plan
- Exercise a right of veto over any such powers

This definition is wide and captures some unlikely candidates. In **exceptional circumstances**, for example, it might include a pension plan actuary. We recommend trustees take legal advice if they have any doubts as to who would constitute a beneficial owner for the purposes of the AML regulations. We have a handy checklist that can be used to help gather the necessary information.

Reporting Duties

By “reporting duties”, we mean the requirement to register on HMRC’s new online Trust Registration Service, which arises in respect of any pension plan constituting a “taxable relevant trust”. Trustees will initially be caught by the reporting duty if they incurred a liability to any of the following taxes during tax year 2016-17:

- Income tax
- Capital gains tax
- Inheritance tax
- Stamp duty reserve tax
- Stamp duty land and buildings tax (in Scotland)
- Stamp duty land tax (SDLT)

We are finding that whilst most trustees will be comfortable that they did not incur a liability to income tax or capital gains tax (because they are generally exempt as trustees of registered pension plans), a more difficult question to answer is proving to be whether the trustees have incurred any liability to SDLT during the last tax year. This is because certain types of investment vehicles, in particular those using a partnership structure, are treated by HMRC as being “look through” arrangements. Any tax liability arising in relation to the partnership vehicle would fall on the pension trustees as partners of that investment vehicle. Where the partnership-based investment vehicle (whether it be an asset backed contribution structure using a Scottish limited partnership or a pooled property investment fund) has been used to purchase land or property, a liability to stamp duty land tax will have arisen. This will be a liability of the trustees, bringing them within the reporting regime on HMRC’s new Trust Registration Service.

Deadlines

The deadline for registration by trustees who incurred a liability to income tax or capital gains tax for the first time during 2016-17 has now passed (5 January 2018). However, if trustees incurred a liability to one or more of the other taxes listed above (or incurred a liability to income tax or capital gains tax but are already registered for self-assessment) during 2016-17, there is still time to register without penalty. The strict deadline for registration is 31 January 2018, but HMRC has confirmed that it will not penalise anyone who completes full registration before 5 March 2018.

Practical Tips

Trustees should liaise with their investment consultant, fund managers or auditors to assess whether any of their investments might trigger the reporting requirements.

Where trustees need more time to identify whether their plans contain any investments that might have resulted in a tax liability triggering the reporting requirement, they might like to consider registering on the Trust Registration Service as a pre-emptive measure until they have fully ascertained the position.

If trustees need to register on the Trust Registration Service, they should leave plenty of time for doing this. Before registration, it will be necessary to first set up a new government gateway account.

Trustees should diarise on an annual basis to assess whether a liability to one of the taxes listed above has arisen in any given tax year and to take appropriate measures to ensure that the reporting duties are met.

If you have any queries, or would like us to help co-ordinate the compliance process, your usual contact would be happy to assist, or please contact one of the partners listed in this communication.

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