Pensions Quick Guide

Anti-Money Laundering for Pension Trustees

Anti-money Laundering – What Is the Issue?

In June 2017, money laundering regulations came into effect in the UK implementing the Fourth EU Money Laundering Directive and replacing their 2007 predecessor. The regulations apply widely and, for the first time, imposed duties on trustees of occupational pension schemes set up under trust. These duties can be found in regulations 44 and 45 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations). The Regulations were updated in 2020 to take account of the requirements of the Fifth EU Money Laundering Directive.

What Are the Duties?

Trustees are subject to two main duties: (1) the record-keeping duty (which applies universally) and (2) the reporting duty (which only applies in specific circumstances).

The Regulations also require trustees to provide, on request, information about "beneficial owners" of their scheme to those providers who are required to carry out anti-money laundering checks on new clients and to UK law enforcement agencies.

What Is the Record-keeping Duty?

Regulation 44 of the Regulations requires trustees to identify all beneficial owners of the scheme and to maintain certain information about those beneficial owners and other persons.

Beneficial owners will include:

- All trustees
- The original principal employer, current principal employer and all current participating employers
- All identifiable beneficiaries, e.g. active members, deferred members, persons in receipt of pension and pension credit members
- Any other beneficiaries under the scheme
- Any other individuals who could be said to exercise "control" over the scheme

Trustees must keep the following information in writing about individual beneficial owners:

- Full name
- Date of birth
- Nature of role in relation to the scheme
- National insurance number or unique taxpayer reference
- If the individual does not have a national insurance number or unique taxpayer reference, the individual's usual residential address
- If there is no national insurance number or unique taxpayer reference and the address is outside of the UK, passport number/identification card number with the country of issue and expiry date

There is no need to keep detailed records of those beneficiaries who have not yet been determined – the trustees should instead keep a note of the class of beneficial ownership of such persons.

Trustees must keep the following information in writing about corporate beneficial owners:

- Corporate/firm name
- Unique taxpayer reference
- Registered principal office
- Legal form of the entity and the law by which it is governed
- Registration information (where applicable)
- Nature of role in relation to the scheme

Trustees must also keep a written record of a contact address for all trustees and the full names of any professional advisers.

What Is the Reporting Duty?

Regulations 45 and 45ZA of the Regulations require trustees of an express trust to make a report on HMRC's Trust Registration Service (TRS).

Trustees of registered pension schemes and life assurance only schemes are exempt from the reporting requirement.

For those trustees of unregistered pension schemes that are required to make a report to HMRC, the deadline for making a report will vary depending upon whether the trust incurs a tax liability before 9 February 2022. For express trusts set up before 6 April 2021 that incur a liability to income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax and/or land and buildings transaction tax (in Scotland and Wales), the report must be made on the TRS on or before 31 January following the tax year in which the liability first arises.

For all other express trusts that are set up on or after 6 April 2021 and incur a tax liability before 9 February 2022, along with any other express trusts that have never incurred a liability to one of the taxes mentioned, a report must be made on the TRS on or before 10 March 2022 (or within 30 days of the trust first being established, if later). It is possible that HMRC will extend the 10 March 2022 deadline owing to the length of time it has taken to adapt the TRS to accept registration of non-taxable trusts.

Where applicable, the first report will be detailed, while reports in respect of subsequent years will take the form of an update.

If you are in any doubt as to whether the reporting requirement applies, please get in touch with us.

It is worth stressing that the record-keeping duties described on the previous page will apply even when the reporting duty does not.

Some Practical Points

Do	Don't
Do take time to identify all individuals who exercise control over the scheme, as they will constitute "beneficial owners". This might include, for example, the trustee directors of a corporate trustee, or a scheme actuary whose consent is required to amend the scheme.	**Don't** put off ensuring compliance with the Regulations – trustees' new duties came into force in June 2017 with further duties applicable to unregistered trusts before 10 March 2022.
Do request missing beneficial ownership information because failure to take reasonable steps to obtain missing information and keep adequate written records can result in criminal sanctions.	**Don't** forget to update the trustees' risk register.
Do agree with the scheme's administrator who will bear the responsibility for, and cost of ensuring compliance with, the record-keeping requirements and (if applicable) HMRC reporting requirements. **Do** put in place a system for monitoring continued compliance with the record-keeping duties for all schemes, whether registered or not.	**Don't** include any of the following taxes when assessing whether the trustees of an unregistered pension scheme have incurred a liability to income tax: • Joint and several liability for lifetime allowance charge • "Scheme pays" annual allowance charge • Special lump sum death benefits charge • Authorised surplus payments charge • Short service refund lump sum charge • De-registration charge • Unauthorised payments charge • Unauthorised payments surcharge • Scheme sanction charge • Overseas transfer charge • Tax under PAYE on a member's pension or lump sum benefits or on the benefits of the recipient after a member dies

What Are the Consequences of Failing to Comply?

Failure to comply with Regulations 44, 45 and 45ZA of the New Regulations without reasonable excuse is a criminal offence, which can result in a fine and/or up to two years in prison for individual trustees.

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