SQUIRE PATTON BOGGS

Pensions Quick Guide

Anti-Money Laundering

Anti-money Laundering – What Is the Issue?

In June 2017, new money laundering regulations came into effect in the UK implementing the Fourth EU Money Laundering Directive and replacing their 2007 predecessor. The new regulations apply widely and, for the first time, impose duties on trustees of occupational pension plans 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 "New Regulations").

What Are the New Duties?

Trustees are now 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 New Regulations also require trustees to provide, on request, information about "beneficial owners" of their plan 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 New Regulations requires trustees to identify all "beneficial owners" of the plan 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 plan
- Any other individuals, who could be said to exercise "control" over the plan

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

- Full name
- Date of birth
- Nature of role in relation to the plan
- 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 plan

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?

Regulation 45 of the New Regulations requires trustees to make a report to HMRC if the trustees of the plan have incurred a liability to one or more specified taxes during the preceding tax year.

While the reporting requirement originally applied to pension trustees of all plans set up under trust, HMRC has now relaxed this requirement. Trustees of **registered** pension plans will be exempt from the reporting requirement going forward and HMRC has confirmed that it will not penalise trustees of registered pension plans who do not make a report where one would otherwise be required under regulation 45.

Our expectation is that only a small minority of pension plans will now be subject to the reporting duty.

For those trustees of unregistered pension plans that are required to make a report to HMRC, this is done via HMRC's Trust Registration Service. Where those trustees incur a liability to **income tax and/or capital gains tax** for the first time in a tax year, the report must be made by 5 October following the tax year in which the liability first arises. Where trustees incur a liability to **income tax and/or capital gains tax** (not incurred for the first time) and/or liability to **inheritance tax, stamp duty land tax, stamp duty reserve tax and/or land and buildings transaction tax (in Scotland)** (whether or not it was the first that time that it was incurred) in a tax year, a report must be made by 31 January following the tax year in which the liability arises.

Where applicable, the first report will be detailed, while reports in respect of subsequent tax years, when a liability is incurred, 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

<table>
<tr><th>Do</th><th>Don’t</th></tr>
<tr><td>Do take time to identify all individuals who exercise control over the plan, 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 plan.</td><td>Don’t put off ensuring compliance with the New Regulations – trustees’ new duties came into force in June 2017.</td></tr>
<tr><td>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.</td><td>Don’t forget to update the trustees’ risk register.</td></tr>
<tr><td>Do agree with the plan’s administrator who will bear the responsibility for, and cost of ensuring compliance with, the record keeping requirements and (if applicable) HMRC reporting requirements.</td><td rowspan="2">Don’t include any of the following taxes when assessing whether the trustees of an unregistered pension plan 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</td></tr>
<tr><td>Do put in place a system for monitoring continued compliance with the record keeping duties, and for checking at the end of each tax year whether taxes have been incurred by an unregistered pension plan which would require a first report or updated report to be made on the Trust Registration Service. We have a checklist that can assist with this process.</td></tr>
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What Are the Consequences of Failing to Comply?

Failure to comply with Regulations 44 and 45 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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