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Money Laundering Regulations

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations) came into force on 26 June 2017 and impose new requirements on trustees, including occupational pension scheme trustees, in the fight to combat money laundering activity.

Background

The Regulations implement the requirements of the European Union's Fourth Money Laundering Directive (4MLD) into UK law and replace previous regulations implemented ten years ago. According to the Explanatory Memorandum to the Regulations, "the UK government's objective, through transposing 4MLD, is to make the financial system a hostile environment for illicit finance while minimising the burden on legitimate businesses".

As such, the Regulations apply to financial institutions and those sectors that are seen as 'gatekeepers' to the financial system. Trust providers are one of these, alongside auditors, legal advisers and tax advisers among others.

Registration

HMRC has introduced a new Trusts Registration Service that provides a single online route for trusts to register with them and obtain their self-assessment Unique Taxpayer Reference. In recognition that occupational pension schemes are low risk from a money laundering point of view HMRC only requires them to register if the following two conditions are both met:

- The scheme is a UK express trust (which HMRC expects an occupational pension scheme to be); and
- The trustees are liable to pay one of a number of specified UK taxes in relation to the income or assets of the scheme.

The relevant taxes are: income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax, land and building transactions tax (Scotland).

Occupational pension schemes can for registration purposes ignore any UK income tax paid by the trustees because:

- They are jointly and severally liable with the member for a lifetime allowance charge;
- They pay the member's annual allowance charge (scheme pays); or

- They are liable to:
    - Special lump sum death benefits charge
    - Short service refund lump sum charge
    - Authorised surplus payments charge
    - De-registration charge
    - Unauthorised payments charge
    - Unauthorised payments surcharge
    - Scheme sanction charge
    - Overseas transfer charge; or
    - Tax under PAYE on a member's pension or lump sum benefits or on the benefits of the recipient after a member dies.

Thus, the vast majority of occupational pension schemes, provided they invest the scheme assets in pooled investments, will not need to register. It will only be schemes who invest in segregated funds, whose trustees are directly responsible for the payment of any relevant UK taxes, which will need to register. Trustees who are not sure if their scheme funds are all held in pooled arrangements, should check with their investment consultant for confirmation that they do not need to register.

Any occupational pension schemes which do need to register now have until 5 January 2018 to do so. Where a relevant tax becomes payable by the trustees of an occupational pension scheme for the first time, the trustees will need to register by 31 January after the end of the tax year in which the trustees incurred the liability to pay the tax.

Record Keeping

The Regulations require trustees of all occupational pension schemes to maintain accurate and up to date written records of all the beneficial owners (e.g. the sponsoring employer as the settlor, the trustees and the beneficiaries) and where individuals benefiting from the trust have not been determined, the class of persons for whom the trust is set up) as well as any individual who has control over the trust (e.g. the scheme actuary if their consent is required to an amendment to the scheme). This information is required under the Regulations so that any law enforcement authority can make a direct request to the trustees for information. It must be kept until five years after an occupational pension scheme winds up.

HMRC has stated that they expect this information to be easily available to trustees as it is a record of who the sponsoring employer, trustees, members and nominated beneficiaries are.

HMRC has also confirmed that the details of the settlor (including name, unique taxpayer reference, registered office, legal form and governing law, and company registration number) should be the original sponsoring employer. Where the original employer has ceased to exist, details of the original and all current participating employers can be kept. Where there is a corporate trustee, similar details will need to be kept.

Trustees will be expected to keep the following information (including the nature of their role) in respect of beneficial owners who are individuals (i.e. members, nominated beneficiaries and trustees):

- Name
- Date of birth
- National Insurance number (NINO) if they are UK resident, unless they are under 16 years old, or a Unique Tax reference, if any
- An address and passport or ID number for non-UK residents, if they don't have a NINO.

In a concession to occupational pension schemes HMRC are allowing trustees of schemes who have to register with the Trusts Recognition Service, or who have to maintain accurate and up to date records of beneficial owners, to make use of the description of “class” in order to describe the trust’s beneficiaries, where they are not receiving a financial or non-financial benefit from the scheme (e.g. if they are active or deferred members). The information listed in the bullet points above will, therefore, only have to be held in respect of an individual once a financial or non-financial benefit is taken from the scheme, such as when a member receives a pension, when a member transfers out, or when a beneficiary becomes entitled to a benefit on the death of a member.

Business Relationships and Due Diligence

On entering into a business relationship or transaction with a financial institution, auditor, tax adviser or lawyer (for example) where those entities are required to carry out due diligence checks in relation to money laundering, trustees have certain obligations. Essentially, they must provide information about the beneficial owners. In providing this information the trustees will be able to make use of the description of “class” in order to describe the scheme’s beneficiaries. Where, during the existence of the business relationship, changes are made to the beneficial owners (e.g. changes in individual trustees), the trustees must provide information on the change within fourteen days.

Comment

Trustees should take steps to ensure that they comply with the Regulations and can supply relevant information to those who are entitled to request it. This may include liaising with the pensions administration service provider.

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