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# Trust and Estate

## Registration: what needs to be registered and why?

The trustees of certain kinds of trust have long been required to register their trusts with HMRC. This used to involve providing details through a paper-based system of forms. However, in 2017, the government launched a new online service to replace the old system.

This factsheet looks at the obligations trustees, and the personal representatives of certain estates, face under the new registration service.

If you are a trustee of a trust, or the personal representative of an estate, you may have to provide information to HMRC within certain timescales. You may also be personally liable for any penalties incurred if you do not meet your registration and reporting requirements.

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### Trusts

#### Which Trusts Have to be Registered?

Not all trusts have to be registered with HMRC. In general, only trusts which meet the following conditions must be registered through the online service:

- **The trust has been expressly created.** The trust must be deliberately set up by the person who made it. In other words, it has not arisen automatically through law (such as statutory, resulting, or constructive trusts); **and**
- **The trustees have incurred a tax liability.** This could be income tax, inheritance tax, capital gains tax, or stamp duty land tax. However, this condition will not be met if the liability in question is an income tax liability of less than £100 incurred through bank or building society interest.

Even if you have previously registered a trust under the old paper-based system, a trust must be registered through the new online system if it meets the above conditions.

*Examples of how different kinds of trust may meet these conditions:*

**Bare Trust**

The simplest form of trust is often referred to as a bare trust. This involves the beneficiary (or beneficiaries) having a complete entitlement to the trust property, and any income from that property. These kinds of trust do not require registration as, even though the trust property could generate a liability for income tax and/or capital gains tax, the liability will fall on the beneficiaries rather than the trustees.

**Discretionary Trust**

These trusts generally give the appointed trustees powers to decide how much trust income and property the beneficiaries will receive, if any. The trustees are responsible for any tax on the trust assets so, if those assets give rise to a tax liability, the trust will need to be registered.

**Interest in Possession Trust or Life Interest Trust**

These trusts often allow someone (referred to as the 'life tenant') to enjoy the benefits of the trust property for their lifetime. This might give the life tenant the ability to live in a house, for example, or the right to any income generated by the trust property. The beneficiaries of the trust will become absolutely entitled to the trust property upon the life tenant's death. The trustees are responsible for paying tax on the trust property, should any arise, so these trusts also have the potential to require registration.

### [How quickly do I have to register a Trust?](#)

Eligible trusts must be registered within certain deadlines. These depend on the type of tax which the trustees incur, and on whether the trust has been registered for self-assessment for income tax or capital gains tax.

If the trust *has not been* registered for this self-assessment *and* the trustees incur a liability for income tax and/or capital gains tax, the trust must be registered through the online service by 5<sup>th</sup> October following the tax year in which, either:

- The trust is set up; or
- The trust starts to make income/chargeable gains, if this is later.

For example, if a trust which is unregistered for self-assessment incurs a capital gains tax charge in September 2017 (i.e. in tax year 2017/2018) the deadline to register will be 5 October 2018.

In all other situations which trigger a requirement to register the trust using the online service, the deadline will be 31 January after the end of that tax year. This covers situations, for example, where:

- The trust has already been registered for self-assessment and incurs a UK tax liability, or;
- The trust has not been registered for self-assessment, or it does not need to be, and it incurs a liability to inheritance tax, stamp duty land tax, or stamp duty reserve tax (i.e. not income tax or capital gains tax)

For example, a trust which has been registered for self-assessment incurs an inheritance tax charge in December 2018 (i.e. in tax year 2018/2019), it must be registered through the online service by 31 January 2020.

### [What do I have to do?](#)

The first step is to determine whether the trust for which you are a trustee needs to be registered under the provisions. If so, you can then decide whether to conduct the registration yourself, nominate a fellow trustee to do this, or appoint an agent to do it for you.

If you are unsure about any part of your obligations, it is recommended that you seek professional advice, even if you go on to carry out the registration yourself.

### [The registration process](#)

Registering a trust through the online system involves gathering together relevant details to pass on to HMRC. This will include details about:

- The trust.
- The trust's beneficiaries or classes of beneficiaries.
- The trust's trustees and settlor.
- The money and assets contained within the trust.

### [What can happen if I don't register a trust?](#)

If you are a trustee of a trust which must be registered, but you do not do so in the relevant timescale, you may be personally liable to pay a penalty. Each matter is assessed on a case by case basis and penalties are not automatically applied.

The possible penalties are:

- £100 for registrations up to 3 months past deadline
- £200 for registrations between 3-6 months past the deadline
- £300 or 5% of total tax liability in relevant year (whichever is the higher amount) for more than 6 months past the deadline.

### [Updating HMRC on changes to the Trust](#)

[Besides the requirement to register the trust initially, you also have to inform HMRC](#)

of any changes to the trust. However, this is only the case where the eligibility conditions (described under **'Which trusts have to be registered?'**) are also met for the tax year. So, for example, if a registered trust does not incur a relevant tax liability in a certain tax year, you are not obliged to report any changes occurring in that tax year.

However, as soon as another tax liability is incurred which meets the registration requirements, you will be obliged to update HMRC with the new details of the trust.

Relevant changes include those to:

- The correspondence address of the trust
- The details of the trustees
- The details of the beneficiaries

However, there is no requirement to provide updates as to the trust's assets. These are only detailed once, at the time when the trust is first registered.

The deadline to update HMRC of changes will be 31 January after the end of the tax year in which the change took place.

#### *Penalties for failing to update*

At the time of writing, there are no penalties in place for failing to notify HMRC of changes to the trust. This is because the facility to update HMRC through the online service has not been implemented yet. However, it has been indicated that once this system is in place, the penalties will match those for failing to register a trust.

## Estates

Due to the changes brought in by this service, some estates must also be registered with HMRC.

### **Which estates must be registered?**

Only estates which are considered by HMRC to be 'complex' must be registered using the online service.

A complex estate is one which:

- Has a tax liability (for income tax and/or capital gains tax) of more than £10,000 over the entire administration period, **or**
- Has a value at the date of death in excess of £2.5m, **or**
- The proceeds of any assets sold by the personal representatives in any one tax year is greater than:
  - £250,000 (for deaths before 6 April 2016), **or**

- £500,000 (for deaths on or after 6 April 2016).

The penalties, registration process, and updating requirements are similar to those for trusts, although details must be provided about the estate, the person who has died, and the personal representatives instead.

The deadline to register a complex estate through the online service is 5 October after the tax year in which the person died.

### [How we can help](#)

You can appoint an agent to take care of registering a trust or estate for you. Roche Legal is more than willing to help you with this. The provisions around the online registration service are relatively new and can be confusing. Engaging the services of a professional helps to ensure you are registering what you need to and prevents you from incurring any penalties.

If you are in any way uncertain as to whether a trust or an estate needs to be registered, it is better to seek advice than risk incurring penalties for failing to register it.

Roche Legal can discuss your situation with you. If you wish to find out more about the government's trust and estate registration service, or if you would like our help with registering a trust or estate, please [contact us](#).

If you'd like more information call [01904 866139](tel:01904866139)  
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