U.K. Introduces Register of Beneficial Owners of Trusts

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While confusion has reigned over the suspension of new domestic tax measures because of the General Election, the U.K. continues to meet its EU obligations in relation to anti-money laundering and the fight against tax evasion. There is something of an irony in the fact that the new register of beneficial ownership of trusts (''RBOT''), instigated by the EU Fourth Money Laundering Directive, has become law in the U.K. just as the Government gears up for Brexit talks with the EU.

Of course, the money laundering arena goes way beyond the EU and there is no dispute between the U.K. and other EU states about the need to tighten the rules. So there is no further negotiation to be had.

The RBOT provisions became law in the U.K. on June 26, 2017, when The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2007 (''the Regulations'') were laid before Parliament. The Regulations stretch to over 100 pages and contain a package of measures of which the RBOT provisions form a small part.

The RBOT is a companion to the register of ''people with significant control'' of U.K. companies, the PSC register, which was introduced in the U.K. just over a year ago. There are, however, a number of differences. First, the PSC register is maintained by Companies House, which is logical since it is the body which maintains company registers and statutory information filed by companies. The RBOT, on the other hand, will be maintained by HM Revenue & Customs (''HMRC''), the U.K. tax authorities. Secondly, just as with other information filed at Companies House, the PSC register is public and may be inspected by anyone. With the RBOT, however, HMRC is bound to keep the information confidential, but they must disclose it to any U.K. law enforcement agency if required to do so and, in certain circumstances, to the U.K. financial regulator. The Regulations give HMRC the power to make public the names of trust service providers, but not other parties connected with trusts.

HMRC's involvement also has a certain logic to it. There is no equivalent of company registers in relation to trusts. The closest we have had in the U.K. to central gathering of information relating to trusts is in the tax compliance rules where trusts have for many years been required to file information with HMRC if the trustees anticipate a U.K. tax liability. The RBOT has a dual purpose; first, it enables HMRC to upgrade its information systems to deal with trustees' compliance on a digital basis. The hard copy notification process has gone. Of course, there is undoubtedly the second and wider purpose of increasing transparency of information in relation to ''beneficial owners'' of trusts.

Beneficial Owners

So, what does beneficial owner mean for these purposes? The definition is contained in Regulation 6, and is artificially wide: it has to be since beneficial ownership of a trust in pure legal terms is a curious concept except in the case of a bare trust where the trustees have no ability to control what an identified beneficiary gets, as that beneficiary has the unfettered entitlement to both income and capital of the trust.

The following are beneficial owners:

- the settlor;
- the trustees;
- the beneficiaries, or where the individuals benefiting from the trust have not been determined, the class of persons in whose main interest the trust is established; and
- any individual who has control over the trust.

''Control'' in the last category means the power of the individual, under the terms of the trust (or otherwise by law), to make various decisions including in relation to the application of trust property, the making of trust distributions, the appointment or removal of trustees, altering the class of beneficiaries and the resolution of disputes amongst the trustees.

It is clear that discretionary beneficiaries are included and they are beneficial owners whether or not they have received or been allocated distributions. This is a significant difference to reporting under the Common Reporting Standard where discretionary beneficiaries only have to be reported in periods where they have received distributions.

It will be appreciated, therefore, that ''beneficial owner'' goes much wider than just beneficiaries with fixed interests in express trusts and, indeed, extends to those who are not beneficiaries in the normal sense. Most importantly, the settlor of a trust is a beneficial owner, whether or not he has retained any benefit in the trust. In addition to beneficial owners, details of ''potential beneficiaries'' must also be provided. These are individuals named as potential beneficiaries by the settlor in a document outside the trust deed like a letter of wishes.

Territorial Limit

There is, however, a territorial limit to the scope of registration on the RBOT. That limit is tax-related, which again shows the logic behind putting the supervision of the RBOT in the hands of HMRC. The Regulations only apply to a ''relevant trust''; this is:

- a U.K. trust; or
- a non-U.K. trust which receives income from U.K. sources or has assets in the U.K.,

on which it is liable to pay specified taxes namely income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax or Scottish land and buildings transaction tax.

A U.K. trust is one where all the trustees are U.K. tax resident or where at least one trustee is U.K. resident and the settlor was resident or domiciled in the U.K. when the trust was established or when funds were added to the trust. The original U.K. connecting factors in the first draft of the regulations referred to where someone was ''established'', which is an EU concept, not a U.K. tax one. The change to U.K. tax factors like residence and domicile should be helpful in achieving clarity for trustees in determining if they are required to register.

A non-U.K. trust is simply a trust which is not a U.K. trust, but it must have the tax liability connection with the U.K. as stated above.

So, if a non-U.K. trust has no U.K. tax exposure, it is not required to register on the RBOT.

Information for the RBOT

The information required to be provided by trustees includes the following.

In relation to the trust:

- the full name of the trust;
- the date of establishment;
- a statement of accounts including trust assets and their values;
- the place of tax residence of the trust;
- the place of trust administration and the trustees' address; and
- full names of the trust's legal, financial and tax advisers.

In relation to beneficial owners and potential beneficiaries who are individuals:

- the individual's full name;
- the individual's national insurance or unique tax reference number; if neither exists e.g. because the individual is not resident in the U.K., then his usual residential address;
- in the case of a foreign address, the individual's identification such as a passport or identification card number;
- the individual's date of birth; and
- the nature of the individual's role in relation to the trust.

Where the person is a company or other legal entity:

- its name;
- its unique tax reference number, if any;
- its registered or principal office;
- its legal form and governing law;
- if applicable, the name of any corporate register where it is registered, and its registration number; and
- the nature of its role in relation to the trust.

If the trust's beneficiaries or potential beneficiaries form a class, then the trustees are required to provide a description of that class.

Time Limits

The information must be provided to HMRC on or before January 31, 2018 or January 31 after the tax year in which the trustees became liable to pay any of the relevant U.K. taxes. So, if the trustees first incur an income tax liability in the 2018–19 tax year, they must provide the information for the RBOT on or before January 31, 2010.

In addition, the trustees have a duty to monitor changes in relation to information provided (other than changes in trust asset values). Any change, including the date of the change, must be notified to HMRC on or before January 31 after the tax year in which it occurred or, if the trustees have no tax liability in the U.K. in that year, then January 31 after the year in which a tax liability arises.

There is also a ''nil return'' obligation. Trustees must confirm that no change has occurred on or before January 31 after the tax year in which they incur a U.K. tax liability.

Practical Implications

For trustees of trusts which already have a U.K. tax profile, the biggest change will be shifting to the new RBOT system and adapting to the new digital procedures. They will be required to provide greater information than before, but the main tasks will arise on first registration, with ongoing monitoring thereafter. New trusts will simply fall into the new system as and when established. One area of difficulty is for trusts whose trustees are not professionals, but ''lay'' trustees like family members. They will need to understand that there are greater obligations on them than before.

Secondly, offshore trusts with U.K. sources of income or assets will also need to register. In more complex multi-asset trusts, the trustees will need to identify existing or potential U.K. connecting factors in order to determine whether registration is required or not.

Until now, beneficiaries of trusts have not had to be disclosed except when they receive distributions and there is a U.K. tax exposure. It may come as a surprise to offshore beneficiaries in a discretionary class that their names could be disclosed to HMRC even if they have not received any trust benefits and even if they have no U.K. tax connections themselves.

But at the end of the day, the real issue is why anyone is concerned about confidentiality. Of course, there may be reasons other than suspicions reasons like tax evasion or money laundering: it is perfectly reasonable for an individual to wish to keep his affairs private as a personal preference, provided the law permits it. At least the RBOT information is not public so that gives a measure of comfort to someone in that category. Offshore trustees may need to consider if the registration procedure is too cumbersome if they have no other connection with the U.K. One solution for them would be to avoid investing trust funds in U.K. assets, although that may cause some friction with their fiduciary duties to beneficiaries.

Those with more nefarious reasons for maintaining confidentiality are of course precisely the targets of the Regulations, and the RBOT is a means to flushing them out. Anyone participating in tax evasion should take note that the lack of public disclosure for the RBOT only goes so far. If the tax evasion has occurred in an overseas jurisdiction, then the confidential nature of the RBOT will not prevent HMRC sharing information on the RBOT with offshore tax authorities in appropriate cases.

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