Search
Home | My Network | Jobs | Messaging | Notifications | Me | For Business | Try Premium for CHF0
Edit article | View stats | View post

# The last country to not have beneficial owner register or local agent for trusts. Undeveloped Pacific shithole? Caribbean rebel? Nope. It's the UK.

Mark Morris
CRS and CARF expert. No, truly.

May 3, 2024

Comments
0
Like | Comment | Share
Add a comment...
No comments, yet.
Be the first to comment.
Start the conversation

## Meh, don't other jurisdictions also not have a beneficial owner register?

- Some other countries don't have a b.o. register such as BVI and Canada.
- Several Pacific Islands require the trustee or domestic representative agent to maintain the b.o. details
- But, but, but there is always a domestic presence like the licenced trustee or representative agent or licenced corporate service provider (CSP) or accountant where the b.o. info can be obtained at a drop of a hat.
- The non-UK trusts can have all non-resident trusts and no domestic representative agent, CSP, accountant, notary, etc

## UK tells the OECD, FATF and EU Commission to take their AML rules regarding b.o. registers, and...

## The UK has a category of trusts known as non-UK trusts.

HMRC is helpful in describing what it is

**What is a non-UK trust**

Also known as UK non-resident trust or UK international trust

- None of the trustees are resident in the UK for tax purposes, or
- At least one of the trustees are resident in the UK
  - and the settlor of the trust was not ***resident*** or ***normally resident*** in the UK when the trust was set up or funds added.

**Surprise 1: Settlor can be a UK resident after the trust is settled (note for non-doms becoming resident)**

**Surprise 2 : All the trustees can be UK resident except one non-resident**

## HMRC Trust Registration Service

- The Trust Registration Service (TRS) was introduced in by the UK government in 2017 with the aim of preventing the misuse of trusts for illegal purposes.
- The TRS records the beneficial ownership of assets held in trust.
- So, if the trustee legally owns an asset, there is a separate record of who benefits from the asset.
- **If registrable**, trustees must provide information to the TRS regarding:
  - Settlors, trustees, beneficiaries, protectors, **and**
  - Assets held, such as money, buildings and land, company shares, partnerships, yachts, cars, jewellery, art, etc.

## Non-UK trust should only register with TRS if:

- it acquires, directly or indirectly, UK land and buildings, unless it's a co-ownership express trust 🇬🇧 or
- is liable for taxes relating to UK assets or UK-sourced income (income, capital gains, inheritance, stamp duty reserve tax, stamp duty land tax) or
- at least one trustee is UK resident and trust enters a relationship a with UK relevant persons 🇬🇧

🇨🇭 Money Laundering and Terrorist Financing (Amendment) Regulation 2020 Part 8 Beneficial Ownership.

🇬🇧 Business, professional, or commercial relationship.

🇬🇧 Financial Institutions, Credit institutions, Auditors, Insolvency Practitioners, External Accountants, Tax Advisers, Legal Professionals, Trust or Company Service Providers, Estate Agents, High Value Dealers, Casinos, Art Market Participators, Cryptoasset Exchange Providers, Custodian Wallet Providers.

## Nor do non-UK trusts register with HMRC, unless they have nexus to UK assets and income

**Who should register with HMRC**

You must register your trust with HMRC:

- to make sure you and the trust comply with anti-money laundering regulations
- if you need to get a Unique Taxpayer Reference (UTR) — for example, for filling in a Self Assessment tax return for the trust, even if the trust is on the exemption list
- You must register a trust if it becomes liable for any of the following taxes:

1. Capital Gains Tax
2. Income Tax
3. Inheritance Tax
4. Stamp Duty Land Tax
5. Stamp Duty Reserve Tax
6. Land and Buildings Transaction Tax (in Scotland)
7. Land Transaction Tax (in Wales)

The following types of trusts must register even if they have no tax liability:

- all UK express trusts (**excluding non-UK trusts**) — unless they are specifically excluded (for example, a Schedule 3A trust)
- non-UK express trusts that:

  - **acquire land or property in the UK**

  - **have at least one trustee resident in the UK and enter into** a Business, professional, or commercial relationship **relationship with a UK relevant Person**. *(see above)*

- You must also register a non-UK resident trust if it becomes liable for tax on UK assets or on income coming from the UK.

```
Note: moots trusts are bare trusts and thus the trust is
fiscally transparent and hence won't be liable for UK tax
on income but may be caught because owns UK assets
```

## What makes a trust subject to UK jurisdiction law

- A trust shall be governed by the law chosen by the settlor*
- The jurisdiction choice must be expressed in the terms of the writing evidencing the trust**
- Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

  * Hague Conference on Private International Law (HCCH): 1985 Convention on the Law Applicable to Trusts and on their Recognition: Article 6

  ** HCCH 1985 Convention **Article 7**

## More secrecy: No UK person is required to be involved in forming or maintaining a UK trust

- Non-UK residents can be trustees of UK trusts and need not be licensed.
- UK Trust Deed need not be formed by UK persons, UK lawyer, UK notary, or UK corporate service provider.
- No UK representative agent needed.
- UK Deed of Trust need not be witnessed in UK

## Must a UK trust be notarized

**Requirements for a Deed of Trust to be valid in the UK:**

Law of Property Act 1989 requires a deed:

- use of appropriate wording; **and**
- be signed by each party in the presence of attesting witnesses.
- #No notarization needed for a UK Deed of Trust, domestically or foreign

## English law on attesting witnesses

- Only one individual witness per signature needed for a Deed of Trust.
- Where two or more people are executing a deed, the same witness may witness each signature, but each signature should be separately attested.
- A party to a deed cannot also act as a witness, i.e., they cannot be a beneficiary, settlor, or trustee or protector.
- A relative is not prohibited from acting as a witness but it is practice that this be avoided.
- Minors are allowed to witness, but it is recommended they be at least 18 years old, or at least of sufficient maturity.
- The witness is not required to vouch for the identity of the signatory or read and comprehend the document.

```
This is just the start to planning with non-UK trusts
```

## Del boy retiring to France upon learning no b.o. register for his trusts when he is non-UK resident

- A move out of the UK can happen at short notice with the individual intending their **non-residence** to have immediate effect.
- However, for tax purposes the date non-residence begins and ends is defined by the **statutory residence test** (SRT).

==========END==========

Mark Morris
CRS and CARF expert. No, truly.

More articles for you

China/India/Malaysia, etc isn't on list of 51 trusted Requestors to access to Beneficial Ownership information of Corporate...
Mark Morris

Ignorants try to circumvent the CRS by claiming Companies Limited by Guarantee have no Controlling Persons or are Active...
Mark Morris

The 6 categories of Netherlands foundations seen double Dutch to foreign planners. A Stichting is a tax efficient,...
Mark Morris
0

Messaging