



New Anti-Money Laundering requirements to impact Trustees

We would like to make you aware of new anti-money laundering requirements which may well apply to you if you are a trustee who receives payment for acting in that role.

We wrote to HMRC at the beginning of the year to seek clarification of the requirements in certain significant areas where their current application is, at best, opaque. We are still awaiting a response. However, because time is marching on, and you may need to take action in the near future, we believe you should consider the requirements now to see if they might affect you. In the usual way, if you have any questions please contact us.

Summary

The new money laundering requirements will apply to you if you are a “trust or company services provider” (“TCSP”). A TCSP is defined as a firm or sole practitioner who acts as a trustee (or a director of a trustee company) “by way of business”.

It seems clear that unpaid trustees and unpaid directors are not TCSPs - they are clearly not acting by way of business at all.

But many trustees and directors do receive some payment in recognition of their work. In some cases, a paid trustee clearly is acting by way of business and is a TCSP - for example if trusteeship is their full-time job and they earn their living from it. But it is not clear where you draw the line, say where someone is only a trustee of one pension scheme and is paid only a small amount. Unfortunately, HMRC (whose job it is to police the new rules about TCSPs) has produced virtually no helpful guidance on this point, despite our requests. It has done little more than say that, if you are a paid trustee or director but you are not sure whether you are a TCSP, you can write to HMRC to ask its views.

However, if you are a TCSP, among other things the new rules require you to register with HMRC by 1 April (see the fuller information below). Anyone who is clearly providing their services as a trustee or director “by way of business” should register before that deadline. Trustees and directors who are not sure if they are caught by the TCSP definition should consider writing to HMRC (we give the address below), and they might wish to apply for registration anyway, just in case. The registration forms and notes can be viewed at:

<http://www.hmrc.gov.uk/mlr/forms.htm>

Duties of TCSPs

If you are a TCSP, then your duties as regards registration and ongoing monitoring are as follows:

Registration:

There are two separate registration requirements. One involves filling in a 10 page form (MLR100) and paying a registration fee of £50, in exchange for which HMRC will decide whether you are “fit and proper” to be a TCSP. The other involves paying an annual fee - currently £95 a year - in relation to each set of premises from which you conduct your TCSP business. Registration must be done before 1 April 2008. Changes to relevant information must be notified to HMRC within 30 days.

Monitoring:

In the context of pension schemes, the duty seems to involve only limited customer due diligence. The TCSP needs to be (and remain) satisfied that the scheme is a pension scheme which doesn't allow assignment except where allowed under s91 PA 1995.

Are you a TCSP?

HMRC has indicated that it won't regard a paid trustee as a TCSP if that trustee is retired and is a trustee only of his/her own scheme and his/her payment is fixed by the employer and not negotiated by the trustee. Merely being on the payroll of the sponsoring employer does not seem to be enough. HMRC has, though, indicated that if you are a paid trustee who doesn't meet all those requirements, then you should ask HMRC's view on whether you are a TCSP.

HMRC has issued guidance which offers some assistance:

<http://www.HMRC.gov.uk/mlr/TCSP.htm>

If you are still not sure, and you would like to ask HMRC for a definite view, the address to write to is:

HMRC National Advice Service,
Written Enquiries Section,
Alexander House,
Victoria Avenue,
Southend,
Essex S99 1BD

Email : enquiries.estn@hmrc.gsi.gov.uk

Telephone number 0845 010 9000.

We have attached some draft wording which you may want to use if you choose to write to HMRC.

Failure to comply

The consequences of failing to comply with the anti-money laundering requirements are severe. For example, failure to apply for registration, or for the fit and proper person test, by 1 April 2008 means that the trustee business must stop acting as a trustee or arranging for others to do so.

There are also civil and criminal penalties for trustee businesses who fail to comply.

Exemptions

Exemptions from the requirement to register with HMRC may apply if the trustee business is already regulated by one of the supervisory authorities (such as the Financial Services Authority) or professional bodies listed in Appendix 2 to the guide below.

These exemptions do not mean that the business does not need to comply with any anti-money laundering requirements, merely that the supervisory authority or professional body already has its own relevant policies which its regulated members must follow.

<http://www.hmrc.gov.uk/mlr/mlr9.pdf>

General

HMRC plans to issue more guidance some time this month (originally promised by 15 December 2007), but we are not sure how useful it will be. We are hoping that HMRC's eventual response to our letter will be more helpful.

We will certainly let you know as and when we receive a response from HMRC. We would also be happy to assist you with the registration process. In the meantime, if you have any questions on this unfortunate issue, please do not hesitate to get in touch with your usual Mayer Brown contact. Alternatively, you may want to contact HMRC directly at the address above.

Suggested wording for a letter to HMRC concerning TCSP registration

HMRC National Advice Service,
Written Enquiries Section,
Alexander House,
Victoria Avenue,
Southend,
Essex SS99 1BD

Email : enquiries.estn@hmrc.gsi.gov.uk

Dear Sirs

Money Laundering Regulations 2007: TCSPs

I am a [trustee][director of ABC Ltd, which is the trustee of the [XYZ] [Pension Scheme]. [ABC Ltd is not a trading company; it exists simply to act as the unpaid trustee of the scheme.]

I am paid [£ a year/an hour] in recognition of the [extra responsibility and work this role involves. I would typically spend around [x] days a year for carrying out my duties in this role. The payment comes from [PQR Limited], which is [one of] the scheme's sponsoring employer[s]] [OR] [the assets of the scheme]. [Insert other relevant information e.g.:

*I was not involved in negotiating the payment;

*All the trustees of the scheme/directors of ABC Limited are paid the same amount [except for [.....] who is an independent trustee], and I was not involved in negotiating the payment;

*I have retired from work and have no other trustee roles;

*I am an active member/deferred member/pensioner member of the scheme;

*I was appointed to my position as a [trustee/director of [ABC Ltd], the trustee company,] under the member-nominated trustee/member-nominated director legislation in the Pensions Act 2004];

*I am an employee/former employee of [PQR Limited] [OR] [[UVW Ltd], a company in the same group as [PQR Limited] [and the payment I receive for my work as a trustee/director of ABC Limited is paid as part of my salary from [PQR Limited/UVW Limited]]];

*I do not hold any other trustee positions and I am not seeking other trustee appointments;

*The payments are taxed under Schedule E, as employment income, rather than under Schedule D as income from a trade or profession.]

[I am also a trustee of [.....] scheme, [but I am not paid for that role] [OR] [complete other relevant information along the lines above]].

[I am also a trustee of [other trust, e.g. a charity or family trust] [but I am not paid for that work OR and I am paid [complete other relevant information as above]].

[EITHER:] [In the circumstances, I would not see myself as a firm or sole trader who is offering trustee or company services “by way of business”, and I therefore believe that I am not a “trust or company services provider” for the purposes of the Money Laundering Regulations 2007. However, in light of the responsibilities that those Regulations place on trust or company services providers, I would be grateful for your confirmation that HMRC agrees with my view. If you do not agree, please let me know at the soonest opportunity, as I [will need to register with you under the Regulations/would have to consider resigning from my position as a [trustee/director of ABC Limited] before 1 April 2008 if you do disagree.]

[OR] [In the circumstances, I think it is likely that I would count as a trust or company services provider under the Money Laundering Regulations 2007. I have accordingly sent my cheque for [£145] and completed copies of forms [MLR100] and [MLR101] to HMRC.

However, if the facts I have outlined lead you to think that I am not a trust or company services provider, I would be grateful if you could let me know as soon as possible and also ensure that my cheque is returned.]

If you need any further information from me, please let me know.

Yours faithfully,

Mayer Brown offices

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