

Registration of owners of UK property, and privacy issues for trusts

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In its drive to obtain and make public information about the beneficial ownership of UK assets, the government has published legislation intended to force non-UK companies holding UK land to provide details of the beneficial ownership of the company, which will be included in a public register.

The legislation assumes that the beneficial owners of the company are the same as the beneficial owners of the property, which is not necessarily the case. There are some safeguards for particularly sensitive information, such as residential addresses and the day (but not month or year) of birth, which will not be public, but complete privacy will only be permitted in specific cases where there are strong reasons for maintaining confidentiality. The register comes into effect from 2021 and there will be criminal penalties for failing to comply or for providing false information.

There are also now concerns regarding whether the 'Trust Registration Service', under which trusts must provide extensive information to HMRC about their assets, trustees, settlors and beneficiaries, will be extended. To fully comply with the EU Fifth Anti-Money Laundering Directive, which came into force in July, it appears that all trusts of any kind, not only those where there is a tax liability, will have to provide information to HMRC. This will lead to situations where information regarding a trust which, for example, holds only an insurance policy for the benefit of the settlor's children, will have to be reported to HMRC despite there being no tax liability, and no conceivable public interest in such a structure. With hundreds of thousands of such trusts in the UK, such reporting will inundate HMRC.

Even more concerning however is the possibility that such information could become public. Under the Fifth Anti-Money Laundering Directive, persons who are able to demonstrate a 'legitimate interest' will be able to obtain access to information in the trusts register. It is envisaged that this will include, for example, journalists and possibly NGOs. Though it is expected that the UK will leave the EU in March 2019, and the Directive need not be implemented until January 2020, if there is a post-Brexit transitional period during which EU law will continue to apply, the Directive is likely to have to be implemented at that point. This may give rise to real concerns about security and reputational risks for family trusts, where to date information about the settlors, beneficiaries and trustees of the trust has been private.

As if this were not enough, trusts, as well as legal entities, are now required to have a 'legal entity identifier' (or 'LEI') in order to be able to deal with shares on the Stock Exchange, despite the fact that trusts are not legal entities. The LEI will need to be renewed annually and without it investment managers will be unable to provide investment services to the trustees. Trustees need to provide details of the trust deed to obtain the LEI.

The steady march of transparency is hard to avoid but we can help you to comply with all the new obligations.

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