

UK tax considerations for offshore trustees

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Agenda

5MLD and the Trust Register – the current position

Impact of the 2017 changes to domicile and trusts' taxation

HMRC areas of focus

5MLD and the Trust Register – the current position

Reminder of 4MLD

Trust registration requirements and access

The existing trust register was introduced in order to comply with the EU's Fourth Money Laundering Directive (4MLD).

Trusts are required to register with HMRC if they meet all of the below conditions:

The trust is an express trust

- Not defined, though HM Treasury have stated that they take this to mean *“a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust”*.

The trust is a UK trust or a non-UK trust with UK income and/or assets

- UK trusts: All trustees are UK resident, or at least one trustee is UK resident and the settlor was UK resident and domiciled when the trust was created and/or funds added.
- Non-UK trusts: All other trusts.

The trust has a UK tax consequence

- A liability to pay income tax, capital gains tax, inheritance tax, stamp duty reserve tax, stamp duty land tax, land and buildings transaction tax or land transaction tax.
- For non-UK trusts the liability must be on UK income or assets.

The 4MLD trust register is not publicly accessible. Access was limited to law enforcement authorities.

5MLD

Registration requirements

Registration is required by:

- UK express trusts, even where there is no tax consequence.
- Non-UK express trusts that receive UK source income and/or have UK assets on which the trustees must pay one of the aforementioned taxes.
- Non-taxable, non-UK express trusts where trustees:
 - Acquire an interest in UK land, or;
 - Enter into a business relationship with a relevant person, where at least one trustee is UK resident and provided the trust is not EEA registered.

Exemptions from registration for non-taxable trusts

- Non-taxable trusts do not need to register if they are 'excluded'.
- UK trusts and non-UK trusts with at least one UK resident trustee do not need to register if they are EEA registered.
- Non-UK trusts that do not have UK resident trustees do have to register if they are registered elsewhere in the EEA, unless the trust is excluded.

5MLD

Acquiring an interest in UK land

Jurisdiction	Interest in UK land where at least one trustee is registered
England and Wales	Registered title of a freehold estate or of a lease that had a term of more than 7 years at grant
Scotland	Proprietor or tenant under lease per the Land Registration etc. (Scotland) Act 2012
Northern Ireland	Registered title of a freehold estate or of a lease that had a term of more than 21 years at grant.

5MLD

Business relationships

Definition of 'business relationship'

- A “*business, professional or commercial relationship between a relevant person and a customer, which a) arises out of the business of the relevant person and b) is expected by the relevant person, at the time when contact is established, to have an element of duration*”. (SI 2017/692)

Element of duration

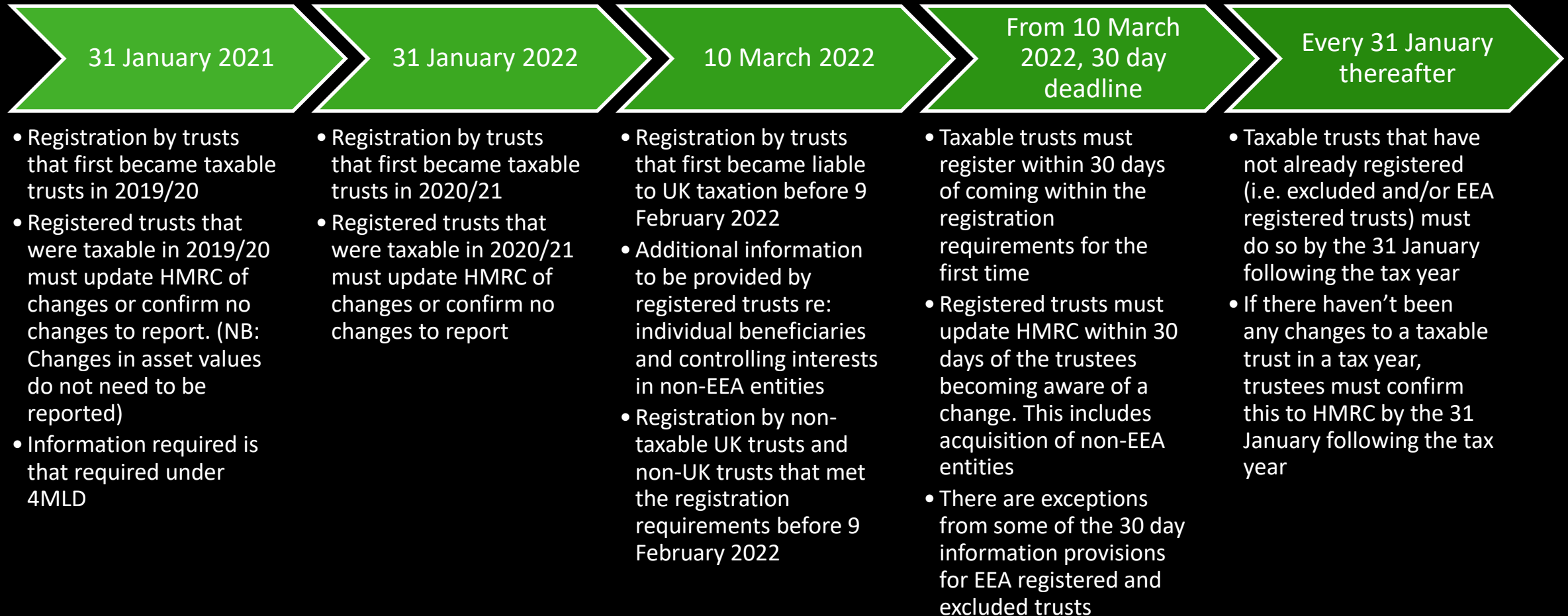
- The government view this to mean at least 12 months, per the consultation response published on 15 July 2020.

Relevant persons are, subject to limited exceptions:

- Credit and financial institutions
- Auditors, insolvency practitioners, external accountants, tax advisers and independent legal professionals
- Trust or company service providers
- Letting and estate agents (who are deemed to act for purchasers from the date an offer is accepted)
- High value dealers including auctioneers
- Casinos
- Art market participants
- Cryptoasset exchange and custodian wallet providers

5MLD

Trust registration deadlines



5MLD

Access to the register

Trusts about which HMRC may disclose beneficial ownership information

- From 10 March 2022 HMRC may disclose beneficial ownership details of trusts that are required to register with HMRC.

Trusts that do not control a non-EEA entity

- HMRC will make information available subject to the requester having a legitimate interest. HMRC will consider:
 - Whether the person is involved in a money laundering or terrorist financing investigation;
 - Whether the request is for furthering an investigation into a specified suspected instance of money laundering or terrorist financing;
 - Whether disclosure would be likely to prejudice specified investigations under the Proceeds of Crime Act 2002.
 - Whether, having regard to the information produced by the requester, it is reasonable for that person to suspect that the trust is being used for money laundering or terrorist financing.

Trusts that control non-EEA entities

- HMRC must make beneficial ownership information available (i.e. even in the absence of a legitimate interest) where a trust has a controlling interest in a non-EEA entity.
- This provision does not apply to non-UK trusts that only have non-UK resident trustees and which acquire UK land; in such cases information will only be provided if requesters have a legitimate interest in the information held.

Impact of the 2017 changes to domicile and trusts' taxation

Deemed UK Domicile (DD)

The five types of deemed UK domicile (DD)

Long-term UK residents

- DD for all tax purposes if UK resident in 15 out of previous 20 tax years (could be from year 16).
- Can only apply if UK resident in at least one tax year after 2016/17.

Formerly domiciled residents

- UK residents who were born in the UK and who have a UK domicile of origin are DD for all tax purposes...
-but for IHT purposes, only DD if UK resident in at least one of previous two tax years.

IHT - 3 year rule

Applies if legally UK domiciled within the previous 3 years.

IHT election

DD for IHT purposes only if a non-dom with a UK dom spouse/civil partner elects to be DD.

IHT - 17/20 rule

This no longer applies to individuals, but is relevant where trusts were settled by DD individuals. DD applies if UK resident in at least 17 out of 20 tax years.

Offshore trusts

Residence is a key factor in taxation. Non-UK residents, including non-UK trusts (offshore trusts), are only subject to UK taxation in specific areas.



As a result, there is a specific regime that applies to tax UK resident individuals when they benefit from offshore trusts.



The general income tax rules that tax settlors of settlor-interested trusts on income arising to trusts apply to offshore settlor-interested trusts.



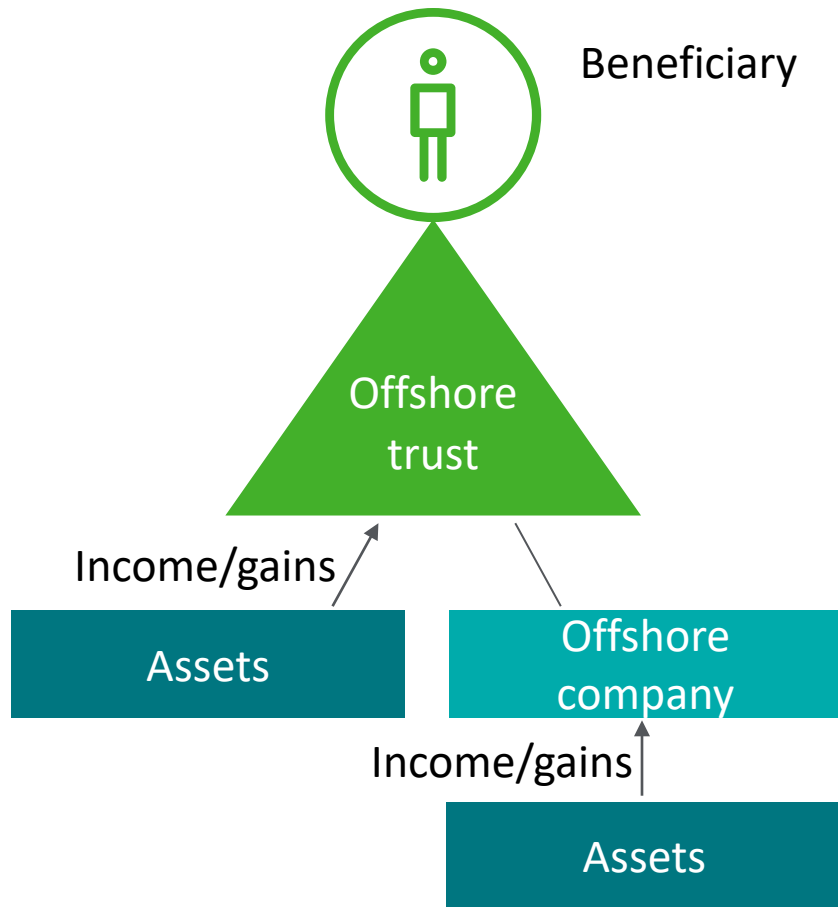
There are specific rules for capital gains tax, which can tax UK domiciled or deemed UK domiciled (DD) settlors of settlor-interested trusts on gains as they arise.



Further anti-avoidance rules apply to settlors/beneficiaries – ‘transfer of assets abroad’ and ‘s87’ gains



Non-settlor interested trusts



Trust level:

- Income received by a beneficiary as of right and income distributions are chargeable on the recipient.
- Non-UK resident beneficiaries are only chargeable on UK source income.
- UK resident beneficiaries may be chargeable when capital payments can be matched to relevant income or Protected Foreign Source Income (PFSI) or capital gains

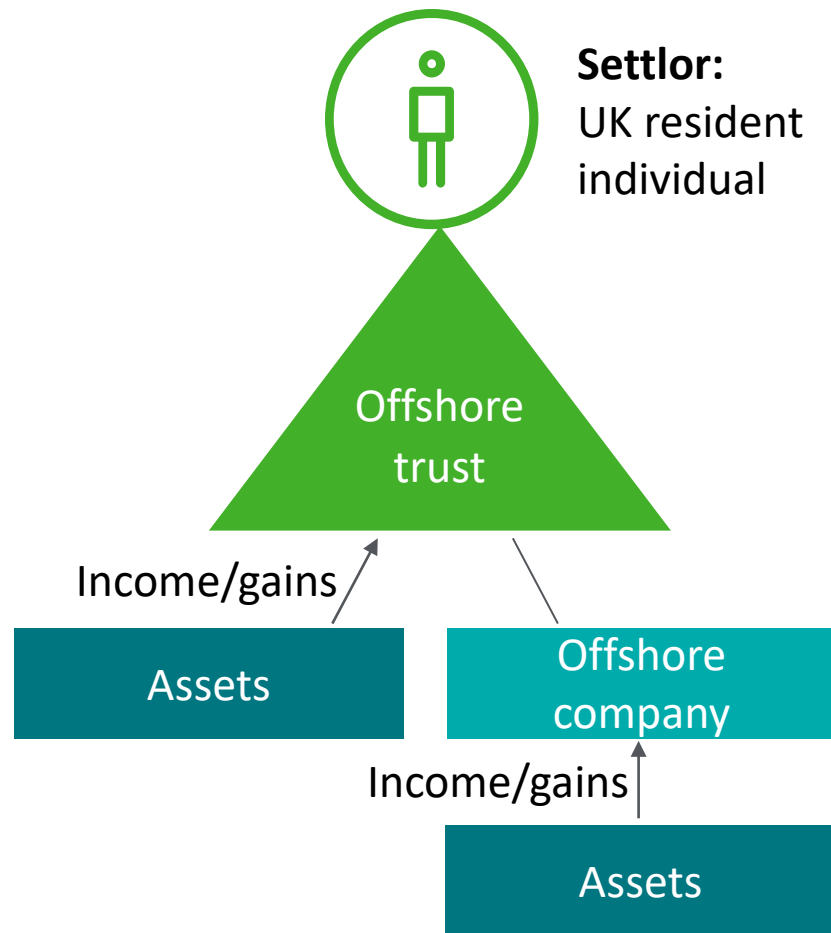
Company level:

Income taken into account as available relevant income for trust matching purposes.

Gains attributed up to the trust

NB: In some cases the settlor or onward gift recipients may be chargeable instead.

Settlors of settlor-interested non-Protected trusts



Trust level:

- Income received by trustees of settlor-interested trusts is normally chargeable on the settlor either because s/he has the right to receive the income as of right (e.g. IIP trust) or, if not, under the settlement provisions (s624).
- There is no motive or statutory EU defence from the settlement provisions.

Company level:

Income received by an underlying company is chargeable on the settlor as it arises under s720.

Domicile issues and the capital sum provisions may also need to be considered.

Settlor interested Protected trusts

New provisions for 'protected trusts' were introduced with effect from 6/4/17, which mean that settlors are no longer chargeable on PFSI as it arises.



Historically, settlors may have claimed the remittance basis to defer taxation of foreign income, but the remittance basis charge may have been payable. That is no longer the case under the protected trust rules.



PFSI is chargeable as and when it is matched to capital payments.



Undistributed income received before 2017/18 by protected trusts is taken into account when matching PFSI to trust benefits. Income on which tax has been paid is not taxed again. The transitional rules should be considered where relevant, including with regards to remittances.



Protected trusts – conditions that must be met

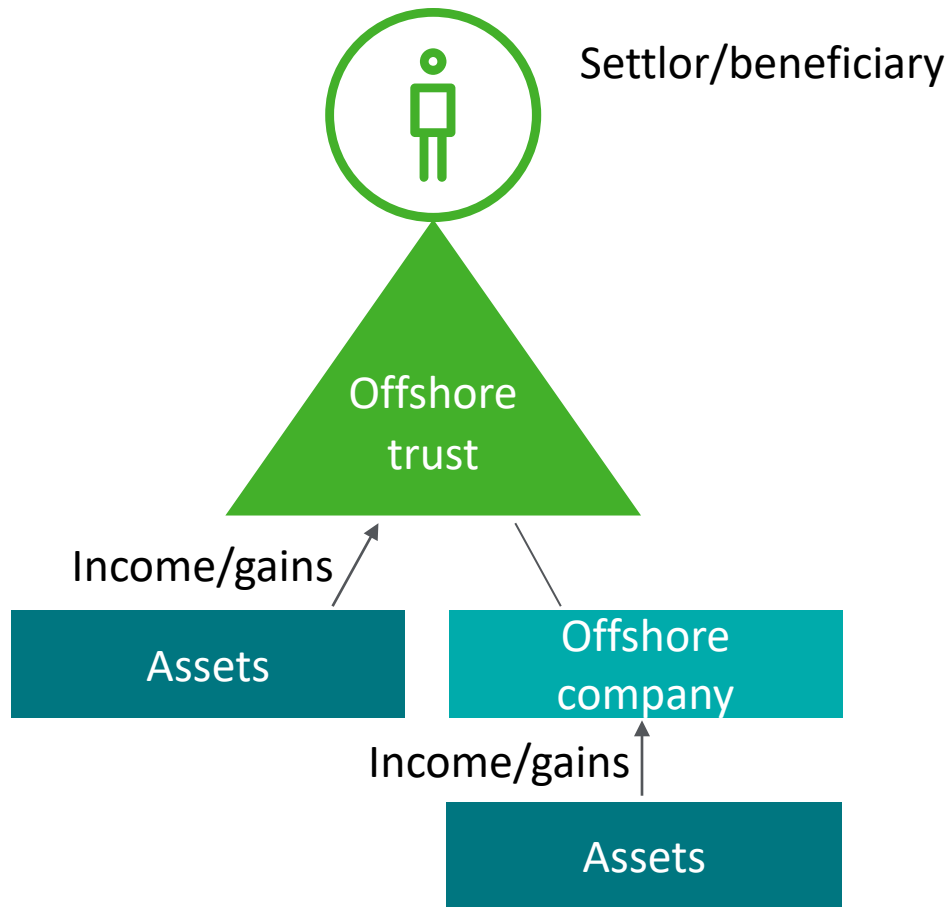
The settlor is legally non-UK domiciled.

The settlor is not a formerly domiciled resident.

The settlement was created at a time when the settlor was both legally non-domiciled, and not deemed UK domiciled.

No property or income is added to the trust, directly or indirectly, while the individual is Deemed Domiciled. This includes additions by the settlor, or by the trustees of any other settlement of which the settlor is a beneficiary or a settlor.

Protected trusts – settlor non-UK domiciled when assets added to the trust



Trust level:

- Protected Foreign Source Income (PFSI) is only chargeable if it can be matched to benefits received by a UK resident.
- This includes PFSI arising to settlor-interested trusts.
- PFSI excludes UK source income, offshore income gains and accrued income.

Company level:

PFSI and capital gains added to trust pools and can be matched to capital payments received by UK residents.

Protected trusts – additions which do not “taint” protected trusts

Property or income provided under an arm’s length transaction (loans are considered separately).

Property or income provided without any intention to confer a gratuitous benefit on any person (loans are considered separately).

Repayment to the trustees of the settlement of the principal of a loan made by them.

Property or income provided in pursuance of a liability incurred by any person before 6 April 2017.

Broadly, property or income provided to help meet the settlement’s tax and administration expenses for a tax year, to the extent the settlement’s expenditure exceeds its income for that tax year.

Protected trusts—loans

Specific rules

- No “addition” will be regarded as being made in respect of amounts lent to the trustees and payments made in respect of ‘arm’s length’ loans:
 - The ‘arm’s length’ interest rate is HMRC’s Official Rate of Interest (ORI).
 - For loans to trustees, interest must be paid annually, which is greater than or equal to the ORI.
 - For loans made by trustees, the maximum interest rate the trustees can charge is the ORI.

Settlors becoming DD

- Settlers who become DD are regarded as adding property to the trust on the date they become DD, if non-arm’s length loans made by the settlor or trustees of a connected settlement are outstanding when DD begins.

Grace period

- There was a grace period for settlors who became DD on 6/4/17.
- Broadly, the loan needed to be repaid or put on arm’s length terms with effect from 6/4/17 by 6/4/18.
- This applies both to loans from the settlor and loans from a connected trust, but does not apply to loans from the trust.

Consequences of “tainting” a trust

Property added to the trust on or after 6 April 2017 by a UK deemed domiciled settlor

Income tax

Non-UK income of the structure taxable on the settlor on the arising basis

CGT

Gains of the settlement become attributable to the settlor on the arising basis

IHT

No change to the IHT position for existing trust property. Added property will be ‘relevant property’

HMRC areas of focus

HMRC areas of focus

Domicile

- Tell me about your plans to leave the UK
- Where can you vote?
- Send details of your UK social ties

Trust tainting

- Have assets been added to the trust?
- Show me that the trust *hasn't* been tainted



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