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Our Ref: W012240

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Trust Registration

You will have recently received a notification from us regarding the Trust Registration Service. The Trust Register was introduced in 2017 and at that time, no registration was required for those trusts which did not pay tax.

New rules

New rules were introduced on 6 October 2020, as part of the UK's implementation of the Fifth Anti Money Laundering Directive to ensure that the UK's anti money laundering and counter terrorism regime is current, proportionate and transparent. This extended the scope of the Register to all UK and some non-UK trusts, whether or not the trust has to pay any tax, but with some exclusions.

The deadline for registration is **1 September 2022** however, HMRC have only recently issued information on how this will apply. The situation is complex and HMRC are still clarifying some of their guidance which was last changed on 20th July hence the delay in writing to you.

There are financial and criminal penalties for failing to register on time for non-tax paying trusts which were in existence on 6 October 2020 and are not subject to an exclusion.

Any assets held in joint names where the legal owners and the beneficial owners are not the same are trusts for this purpose and need to register if they aren't covered by one of the exclusions. The three main examples for medical practices are as follows:

1. GP Surgery

The requirements to register a trust can apply to GP partnerships, owning surgery property. We would suggest that you liaise with your lawyers to check the Land Registry entries for the surgery.

Less than five surgery owning partners

The surgery Land Registry entry needs to include the names of all of the property-owning partners. If the Land Registry correctly shows the names of the partners, **no action needs to be taken** in respect of the surgery property. If the Land Registry entry was incorrect on 5 October 2020, but subsequently updated, you will still need to register a trust with HMRC and then deregister.

More than five surgery owning partners

In England and Wales, it is only possible for a maximum of four persons to be listed as the legal owners of the land with the Land Registry. Where land is held by more than four persons, section 34(2) of the Law of Property Act 1925 provides that the land is to be held in trust for the benefit of all the persons

who have a beneficial entitlement to the land. As the legislation prevents all the property owners being listed on the Land Registry, this trust is excluded from the requirement to register with HMRC.

Provided that the surgery Land Registry entry includes the names of four of the current property-owning partners, **no action needs to be taken** in respect of the surgery property. If the Land Registry entry was incorrect on 5 October 2020, but subsequently updated, you will still need to register a trust with HMRC and then deregister.

2. Shares held in a GP provider type company

A GP partnership is not able to hold shares, so any shareholding belonging to the partnership would be held by one GP partner on behalf of the whole partnership. This is a non-taxable bare trust i.e., the trust itself doesn't pay any tax on any dividend or income arising from the shareholding. It is taxed on all partners and not the partnership.

A non-taxable "express", bare trust needs to be registered. In this scenario the registration would require some basic data about the beneficiaries and trust to be reported to HMRC. There is no requirement to submit tax returns or list the assets to which the bare trust relates. However, we would recommend the details are updated if ownership changes.

Whether a GP partnership has "expressed" a trust will determine whether the trust needs to be registered in respect of such shareholdings.

If there has been a declaration (written or oral) that the shares are being held on trust for the partnership, then this creates an express trust that requires registration.

GP practices will need also need to consider shares held in PCN companies although if these have been created recently then the deadline for registration will be the later of 1st September 2022 or 90 days from when the trust was declared.

3. PCN bank accounts

A nominated practice could be holding funds on behalf of other PCN member practices, and we have been considering whether the nominated practice is holding such funds in a bank account on trust for other PCN practice members.

A PCN is a joint venture, and the nominated practice is holding the funds as part of the network contract and so the wording of your PCN network agreement is important in determining whether the practice is holding those funds on trust or perhaps as an agent. The type of bank account that is being used to hold the PCN funds may also suggest a trust has been expressed i.e., a trust has been knowingly and intentionally set up.

What's next?

The next steps for you to take are:

- If you would like us to review the trust arrangement for you, please let us know. If we think registration is required, we will write to you separately with our fee estimate and a list of the information we need from you.
- If registration is required and you would like us to do this for you, this would be for an additional fee, which we will quote in advance of carrying out any work but which will depend on the complexity of the trust arrangement, how many individuals have added assets to the trust (settlers), the number of trustees and the number of beneficiaries named in the trust deed or, if not specifically named, have received a distribution from the trust at any time.
- We can also deal with updates to the Register and complete your annual statement where required. This would be for an additional fee, which we will quote in advance of doing the work each year.
- In reviewing and registering the trust and making updates as required, we will be acting as the trustees' agent and using information supplied by you. The trustees will remain legally responsible for

ensuring that the trust's entry on the Register is correct and complete, for filing any amendments by the due dates and for confirming to HMRC on their annual tax return, where required, that they have done so.

As this is an additional service, a new letter of engagement will be required and will be issued as soon as you tell us you want to go ahead.



Best wishes.

Yours sincerely



Rachel Moyser
Manager

For and on behalf of Larking Gowen LLP