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Pensions

New money laundering record-keeping and registration requirements

Briefing

January 2018

Introduction

New anti-money laundering legislation has recently come into force, as set out in our update for November 2017. This legislation applies to occupational pension schemes and the trustees of those schemes. Trustees may, therefore, need to take action to ensure the relevant requirements are being met.

Background

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations) introduced a number of compliance requirements for companies and individuals from *June 26, 2017*. However, HM Revenue and Customs (HMRC) has only recently provided guidance regarding the extent to which trustees of occupational pension schemes must comply with these requirements. Although some of the duties imposed by the Regulations will depend on the circumstances of a particular pension scheme, there are other duties that apply to all trustees and pension schemes. Trustees of occupational pension schemes should, therefore, be aware of these duties, as failure to comply could result in criminal liability and civil fines.

A summary of these duties is set out below.

Duty to register trustees with HMRC and conduct due diligence

Previous legislation included a requirement for individual trustees and trustee companies (and directors of trustee companies) to register themselves with HMRC and implement customer due diligence policies if they are acting in the course of business in the UK. This requirement has been replicated in the Regulations. This duty would potentially fall on any such individuals and trustee companies that receive remuneration for carrying out trustee business.

Despite this, HMRC's guidance states that such individuals and trustee companies are exempted from this requirement to the extent their business relates to occupational pension schemes, as these have been categorised as "low risk trusts". This indicates that such individuals and trustee companies are not obliged to comply with these requirements in this capacity, which is a welcome development. However, other duties, as set out below, will still apply in respect of their pension schemes.

Duty to maintain records

Trustees of all occupational pension schemes are required to keep records containing accurate and up-to-date details of all beneficial owners in relation to their scheme. This includes details of the participating employers and members, as well as potential beneficiaries such as a member's spouse, children or other dependants.

Whilst it is likely that many of these details will already be held by trustees, it is possible that other details required by the Regulations will need to be requested from members (for example, passport numbers of some overseas members). Trustees will need to check whether any of the details required by the Regulations are missing and take steps to ensure that all necessary information is held. Trustees should also update these details on a regular basis.

Broadly, trustees do not need to supply this information to HMRC or any other third party, except

- In the circumstances set out below.
- If it is requested by a law enforcement authority (including the Police, the National Crime Agency and HMRC) for the purpose of its investigations.

Duty to disclose beneficial ownership

Trustees of all occupational pension schemes are required to inform certain other parties to transactions or business relationships that they are acting as a trustee, even if it might be obvious to the other party that the trustees are so acting. If that party requests, trustees are required to provide information relating to the beneficial owners of the trust, although this need not necessarily include the same level of detail held by the trustees as part of their record-keeping duties. In the context of a business relationship, trustees must also notify the party of any change to this information after becoming aware of such change.

Duty to register schemes with HMRC and provide beneficiary information

If an occupational pension scheme has become liable for payment of one or more of the taxes specified in the Regulations (including income tax and capital gains tax), the trustees of that scheme are required to register the scheme with HMRC. This obligation is not the same as registering the scheme with HMRC for the purposes of the Finance Act 2004.

As part of this registration process, specified information about the scheme and its beneficiaries must be supplied. This information is similar (but not identical) to the information held by the trustees in compliance with their record-keeping duty set out above. The information must be provided within a set period following the year in which the relevant tax liability was incurred. If no such tax liability has been incurred, there is no requirement for trustees to register their scheme or supply this information.

Actions to be taken

Given the possibility of criminal liability and civil fines, we recommend that trustees act as soon as reasonably practicable to determine which of the above duties apply to them. In particular, trustees should review their records to verify whether they contain the necessary information. A separate record of this information should be created and maintained in the interests of being able to demonstrate compliance with the legislative requirements. In addition, trustees should check whether their schemes have incurred any of the taxes that would require their schemes to be registered with HMRC.

Please get in touch with your usual Norton Rose Fulbright contact to discuss the steps you need to take to comply with these requirements, including the creation of a separate record of the necessary information.

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