THE NATIONAL LAW REVIEW

Finally some compliance respite for UK pension plans!

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Compensation and Benefits: Global Insights
Financial Institutions & Banking
Global
Labor & Employment
Tax
European Union
United Kingdom

Wednesday, May 16, 2018

There's good news and not so good news about the impact of anti-money laundering (AML) requirements on pension plans.

Okay, so this is a slight exaggeration. There is definitely good news. The not so good news is only potentially not so good news and, given the new direction of travel of HMRC, it may even prove to be "fake" news. Whether this is the case remains to be seen but read on for the latest on the further evolution of the newest compliance burden facing pension plan trustees.

The Good News!

If you recall, HMRC has been adamant that trustees of pension plans are caught by all of the AML regulations applicable to trusts, including the requirement to register on HMRC's Trust Registration Service when any liability to one of six "trigger" taxes has been incurred. However, HMRC has now taken the somewhat revolutionary step of announcing that trustees of registered pension plans no longer need to register with its new Trust Registration Service (TRS). This will be welcome news for those trustees (and their advisers!) who have been grappling with the various "trigger" taxes, whether pension plan trustees need to register on the TRS and, if so, by what date.

Official guidance has yet to be published, but we understand that those trustees who have already registered on the TRS need take no further action and will not be required to update their details on the TRS. HRMC has also confirmed, for the avoidance of doubt, that trustees of registered pension plans who would otherwise be required to register under the TRS by virtue of the existing legislation will not be subject to penalties.

By contrast the trustees of unregistered pension plans (i.e. those that are not registered on either Pension Schemes Online or HMRC's new digital platform called "Manage and Register Pension Schemes") will still need to register with the TRS if they incur a liability to one of the "trigger" taxes (income tax, capital gains tax, stamp duty reserve tax, stamp duty land tax, land and buildings transaction tax and/or inheritance tax).

And the recordkeeping requirements in relation to beneficial ownership information (as opposed to the information trustees are required to report to HMRC via the TRS) will continue to apply to both registered and unregistered pension plans.

The (Potentially) Not So Good News!

In February, we blogged that AML had hit new heights with the advent of a **fifth** EU directive. The draft text of the directive was agreed by the European Parliament and Council of the EU in December. It has now been translated into all official languages and has been approved by both the European Parliament and the Council of the EU. The next step is for publication in the Official Journal of the EU. The directive will come into force 20 days after publication in the Official Journal and will need to be transposed into the national law of EU member states within 18 months of it coming into force. Whilst the UK will no longer be part of the EU by that point, it is likely that most, if not all, of the directive will be transposed into UK law, given its potential significance in helping to combat international crime.

So, what is the potentially bad news? Well, trustees of all express trusts will be required to register beneficial ownership information on a register established by the relevant body in each member state (in the case of the UK, this will be HMRC). HMRC might achieve this by extending the TRS. The requirement to register will be regardless of whether or not the express trust has incurred a liability to one of the “trigger” taxes. This means that the TRS may again need to come on the radar of pension plan trustees.

There is no exemption in the fifth AML directive for pension plan trustees. The only potential exceptions (which HMRC will consider on a case by case basis) are where a beneficiary might be at risk of violence, kidnap, extortion etc, or the beneficiary is a child or otherwise vulnerable person. The new register will be shared with other EU member states and any member of the public with a “legitimate interest”, such as investigative journalists, will be able to access the beneficial ownership information on the register.

I am hopeful that the new direction, which HMRC has taken in relation to the TRS, is indicative of the approach that will be taken if/when the fifth AML directive is transposed into UK law. HMRC is certainly aware that even the thought of registration on the TRS under the fourth AML directive has caused consternation for pension plan trustees!

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