

New Trust Reporting Requirements: Now in Effect

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January 30, 2024



Topics to Discuss

1. Filing Requirements

- Old Rules & Exceptions
- New Filing Requirements & Exceptions

2. Additional Reporting Requirements

- Personal Information Disclosure
- Unknown Beneficiaries
- How to Report

3. Summary: Trusts or Arrangements Requiring a Return

4. Bare Trusts

5. Charities and Endowments

6. Penalties



New Reporting Requirements for Trusts

Legislation

- On December 15, 2022, Bill C-32, the *Fall Economic Statement Implementation Act, 2022*, S.C. 2022, c. 19) received Royal Assent.
- This bill amended the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “**Act**”), to expand trust filing requirements.
- Since all trusts affected by the new requirements have calendar year-ends (other than graduated rate estates), the new rules effectively apply for the 2023 and later tax years.



Filing Requirements



Filing Requirements for Trusts

Old Rules

- Under the Act, a trust is required to file an annual income tax return (i.e., the T3 Trust Income Tax and Information Return (T3 Return), **within 90 days** of the end of its tax year.

Filing Requirements for Trusts...con't

Exceptions

- Notwithstanding a number of statutory and administrative exceptions, a trust would only have to file a T3 Return for a tax year if any one of a number of criteria are met, including:
 - The trust had tax payable;
 - The trust was resident in Canada and had disposed of (or was deemed to have disposed of) a capital property or has realized a taxable capital gain;
 - The trust received from the trust property, any income, gain, or profit that was allocated to one or more beneficiaries (if the trust had total income from all sources of **more than \$500.00**, or **income exceeding \$100.00** allocated to any single beneficiary, had made a distribution of capital to one or more beneficiaries, or allocated any portion of the income to a non-resident beneficiary).

Filing Requirements for Trusts...con't

Exceptions

- A trust that is a non-resident throughout the year would have to file a T3 return if it had realized a taxable capital gain or had disposed of taxable Canadian property pursuant to subsection 248(1) of the Act.

Filing Requirements for Trusts...con't

New Filing Requirements

- A T3 return is now required for all Canadian resident (including those deemed resident) express trusts that do not meet the definition of a “listed trust” as described on the following slides.
- The new filing requirements also apply to a trust with an arrangement where it can reasonably be considered to act as an agent for its beneficiary(ies) with respect to all dealings in all the trust’s property (i.e., bare trusts).
- The new rules do not replace the old rules – they expand on them.
 - Trusts required to file under the old rules but are not caught by the new rules must still file.

Filing Requirements for Trusts...con't

Exceptions to the New Filing Requirements – “Listed Trusts”

- Certain types of trusts are excluded from these additional reporting requirements under subsection 150(1.2), including a trust that:
 - Has been in existence for less than three (3) months at the end of the year;
 - Lawyers' general trust account
 - This exception does not include trust accounts set up for specific clients, however it may be excepted due to solicitor-client privilege
 - Hold certain assets and those assets have a total fair market value that does not exceed \$50,000.00 throughout the year;
 - Qualifies as a nonprofit organization that is a club, society, or association described in paragraph 149(1)(l) or is registered as a charity;



Filing Requirements for Trusts...con't

Exceptions to the New Filing Requirements – “Listed Trusts”

- Is a mutual fund trust or master trust or is a segregated fund;
- Is a graduated rate estate (“**GRE**”);
- Is a qualified disability trust;
- Is an employee life and health trust;
- Is under or governed by a deferred profit-sharing plan, employee-sharing plan, first home savings account, pooled registered pension plan, registered education savings plan (RESP), registered supplementary unemployment benefit plan, registered pension plan, registered retirement income fund, or registered retirement savings plan (RESP).





Additional Reporting Requirements



Additional Reporting Requirements

Personal Information Disclosure

- Under new section 204.2 of the Income Tax Regulations, trusts subject to the “additional filing requirements” must report:
 - the identity of, and include certain prescribed information for, all trustees, beneficiaries, and settlors of the trust;
 - any person who may, under the trust terms or a related agreement, exert influence over trustee decisions regarding the allocation of trust income or capital in a year (e.g., a protector of a trust).



Additional Reporting Requirements...con't

How to Provide Additional Information – Part A

- Schedule 15 – a new beneficial ownership schedule has been added to the T3 return to report the required information.
 - All trusts filing a T3 must file a Schedule 15 other than listed trusts required to file.
- These amendments also apply to arrangements where it can be reasonably considered to act as agent for its beneficiary(ies) with respect to all dealings in all trust's property (i.e., bare trusts), pursuant to 150(1.3) of the Act.

Additional Reporting Requirements...con't

Personal Information Disclosure – Part B

- What personal information should be disclosed?
 - Name;
 - Date of birth (for individuals other than a trust);
 - Jurisdiction of residence;
 - Taxpayer identification number(s).

Additional Reporting Requirements...con't

Unknown Beneficiaries – Part C

- Information must be included regarding any beneficiaries that cannot be listed by name, such as:
 - Unborn children;
 - Grandchildren.
- Information must be provided using “reasonable effort”.
- This basic information must be included in the T3 Return.

Additional Reporting Requirements...con't

Exceptions to the Personal Information Disclosure Rules

- There are exceptions to the personal information disclosure rules, which are:
 - Solicitor-client privilege, under subsection 150(1.4) of the Act.



Which Trust or Arrangement Requires a Return?

Which Trust or Arrangement Requires a Return?

Affected Trusts

Description of Trust or Arrangement	Is a 2023 T3 Required?
Family trust established to own shares in a family business	Yes
Family trust owning a family cottage	Yes
Spousal or common-law trust	Yes
Alter-ego and Joint Partner trust	Yes
Testamentary Trust (that is not a graduated rate estate)	Yes
Bare Trust	Yes

Which Trust or Arrangement Requires a Return?...con't

Listed Trusts

Description of Trust or Arrangement	Is a 2023 T3 Required?
Testamentary Trust (that is a graduated rate estate)	No – BUT a GRE must be designated as such in a T3 return
Lawyers' General Trust Account	No
Qualified Disability Trust	No
Registered Education Savings Plan	No
Registered Retirement Savings Account	No
Tax-Free Savings Account	No
First Home Savings Account	No



Bare Trusts

Bare Trusts

New Filing Requirements Apply to Bare Trusts

- The term bare trust is not defined in the Act. However, it is generally considered to be an arrangement under which a trust can reasonably be considered to act as an agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property.
- The CRA states that a trustee can reasonably be considered to act as an agent for a beneficiary when the trustee has no significant powers or responsibilities, the trustee can take no action without instructions from that beneficiary and the trustee's only function is to hold legal title to the property.

Bare Trusts...con't

New Filing Requirements Apply to Bare Trusts

- Such trusts are specifically included in the new trust reporting rules, even though they do not have beneficial ownership of the property to which they have legal title.
- Bare trusts are commonly used in many types of personal and commercial arrangements, such as:
 - Joint ventures
 - Estate planning (i.e. real estate, bank accounts)
 - Nominee corporations
 - Lawyers' specific trust accounts
 - Corporate assets legally owned by shareholder
 - Partnerships

Bare Trusts...con't

New Filing Requirements Apply to Bare Trusts

- These arrangements can easily be overlooked because prior to the new reporting rules, tax filings for bare trusts were generally not required.
- Note that the new rules pertain only to trust reporting and do not change the income tax treatment of bare trusts.
 - Where a bare trust, or nominee, is a corporation, the corporation will be required to file both a T3 trust return and a T2 corporate income tax return.
- Must also file a Schedule 15 annually, unless it is a listed trust.



Charities and Endowments

Charities and Endowments

Administrative Relief

- On 10 November 2023, the CRA's Charities Directorate announced that it will provide administrative relief from the new reporting requirements to express internal trusts held by registered charities, by not requiring registered charities to file a T3 return for these trusts.
- An internal trust is created when a charity:
 - Receives property as a gift that is subject to certain legally enforceable terms and conditions
 - Holds that property as the trustee of the trust
- To date, the CRA has not announced any administrative relief for nonprofit organizations that are not registered charities with respect to these additional reporting requirements for internal trusts.



Charities and Endowments...con't

Administrative Relief

- The exemption only applies to internal trusts of charities.
- Not-for-profit organizations (“NPOs”) were not included in the CRA’s exemption statement for charities even though NPO’s may have similar internal trusts.
- To the extent there is an internal trust within the NPO, the NPO is not exempt from filing a T3 and the related enhanced reporting with respect to that internal trust.



Penalties

Penalties

- A T3 is a return of income (where taxes are owing by the trust) and is therefore subject to the late or failure to file penalty under subsection 162(1), which is 5% of the outstanding amount at the filing deadline plus 1% times the number of complete months late (maximum of 12 months).
 - If there is repeated failure to file, the rates could be doubled under subsection 162(2).
- A T3 is also an information return and is therefore also subject to the late or failure to file penalty under subsection 162(7), which is \$25/day for a maximum of 100 days – maximum of \$2,500 penalty.
 - This penalty can only apply if there was no return of income penalty assessed (i.e. late filed return but no taxes owing).

Penalties

- New gross negligence penalties apply under subsections 163(5) and (6), to any person or partnership that is subject to the additional reporting requirements
 - Applicable to trusts that fail to file a T3 return (including the Schedule 15 beneficial ownership schedule) for the tax year if a false statement or omission is knowingly made in the return or made under circumstances amounting to gross negligence, effective for tax years ending after December 30, 2023.
- These penalties are equal to the greater of **\$2,500.00 or 5%** of the highest total fair market value of all property held by the trust in the year.
- For Québec tax purposes, it is proposed that the amount of the penalty will be **equal to \$1,000.00 plus \$100.00** for each day that the failure to file continues, **up to \$5,000.00.**

Penalties

- Where the tax year of the trust ends on or after December 30, 2023, the filing deadline of March 30, 2024, is extended to April 2, 2024, the first business day after the deadline.
- The late filing penalty under subsection 162(7) could be waived for the 2023 tax year under certain circumstances.
 - This “proactive relief” is only for bare trusts and only for the 2023 tax year.
 - This does not apply to the gross negligence penalties under subsection 163(6).



Questions?



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