

Proposed Amendments to Trust Reporting Requirements – August 2024 Edition

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Enhanced trust reporting requirements were enacted for trusts with a taxation year ending after December 30, 2023,^[1] and required certain trusts to file a T3 Trust Income Tax and Information Return (“**T3 Return**”) and Schedule 15 Beneficial Ownership Information of a Trust (“**Schedule 15**”). As such, where a trust is subject to the enhanced reporting requirements, the T3 Return needs to include the name, address, date of birth, residency and SIN, business number or trust account number of each trustee, beneficiary, settlor and person who has the ability to exert influence over the trustees’ decisions regarding the allocation of trust income or capital.^[2]

However, the implementation of these enhanced reporting requirements did not go smoothly. The requirements were delayed by two years, originally having been meant to apply to trusts with taxation years that ended after December 30, 2021. When the requirements finally came in force for this past reporting season, there was a scramble by tax preparers to gather the necessary information and a debacle related to bare trusts and whether or not filing and reporting was actually necessary.^[3]

In consideration of these events and their impacts on Canadians, the Department of Finance (“**Finance**”) released proposed legislative amendments to the enhanced trust reporting requirements on 12 August 2024 (the “**Proposed Amendments**”), which aim to clarify these enhanced requirements.^[4] As these are “proposed” amendments at the date of this article, they are subject to change.

Timeline of Reporting Requirements

Old Filing Requirements

Prior to the enhanced requirements, and for trusts with taxation year ends prior to December 31, 2023, a trust was only required to file a T3 Return if any one of the following criteria was met, including:

- a. The trust had tax payable;
- b. Is resident in Canada and realizes a taxable capital gain or disposes of capital property in the year;
- c. Is non-resident throughout the year and has a taxable capital gain or disposes of taxable Canadian property;
- d. Is a deemed resident trust;
- e. Holds property that is subject to the reversionary trust rule under the *Income Tax Act* (Canada) (the “**Act**”);
- f. Has provided a benefit of more than \$100.00 to a beneficiary for the upkeep, maintenance, or taxes for property maintained for the beneficiary’s use;
- g. Has total income of more than \$500.00;
- h. Has allocated more than \$100.00 to a beneficiary;
- i. Makes a capital distribution to a beneficiary; or
- j. Allocates any portion of its income to a non-resident beneficiary.

Enhanced Filing and Reporting Requirements – Prior to Proposed Legislative Amendments

A T3 Return, including Schedule 15, is now required for all Canadian resident (including deemed resident) express trusts that do not meet the criteria of one of the “listed trusts”. The enhanced filing requirements also apply to trusts with an arrangement where the trust can reasonably be considered to act as an agent for its beneficiary(ies) with respect to all dealings in all the trust’s property. Such arrangements are often referred to as “bare trusts” which have no tax payable. Instead, any income of the bare trust is included in the beneficiaries’ income for the year.

It should be noted that the enhanced filing requirements supplement the old requirements, they do not replace them. Where a trust is not caught by the enhanced requirements but would be required to file under the old requirements, the trust is still required to file a T3 Return (without a Schedule 15).

“Listed trusts” are excluded from the enhanced filing requirements. The definition of “listed trust” includes, but is not limited to, an express trust that:

- Has been in existence for less than three months at the end of the year;
- Qualifies as a nonprofit that is a club, society, or association described in paragraph 149(1)(l) of the Act or is a registered charity;
- Holds certain assets^[5] that do not exceed a fair market value (“FMV”) of \$50,000.00 throughout the year;
- Is a lawyer’s general trust account^[6];
- Is a registered charity or no-profit club, society or association;
- Is a graduated rate estate^[7];
- Is a mutual fund trust, master trust, segregated trust, graduated estate trust, qualified disability trust, employee life, or a health trust; or
- Is governed by a Deferred Profit Sharing Plan (DPSP), Employee Profit Sharing Plan (EPSP), First Home Savings Account (FHSA), Pooled Registered Pension Plan (PRPP), Registered Education Savings Plan (RESP), Registered Supplementary Unemployment Benefit (SUB) plan, Registered Pension Plan (RPP), Registered Retired Income Fund (RRIF), or a Registered Retirement Savings Plan (RESP).

Proposed Amendments

On 12 August 2024, Finance proposed a series of amendments to the enhanced reporting requirements, aiming to address some of the “unintended impact” that the enhanced requirements had on Canadians.

Listed Trusts

The Proposed Amendments expand the concept of “listed trusts” for taxation years that end after December 30, 2024, including trusts that satisfy the following conditions:

1. Trusts with assets of any type that have a total FMV that does not exceed \$50,000 throughout the year. Previously, the \$50,000 limit could only be made up of certain assets.^[8]
2. Lawyers’ and other professionals’ client-specific regulated trust accounts provided that:
 - a. The trust is not maintained as a separate trust for a particular client or clients, or
 - b. The only asset held by the trust throughout the year is money with a value not exceeding \$250,000^[9]
3. Trusts created by statute requiring a person to hold property as a trustee for a specific purpose (such as trustees in bankruptcy or provincial guardians)^[10] and
4. Trusts that meet all the following conditions:
 - All trustees and beneficiaries are individuals;
 - Each beneficiary is related to each trustee; and
 - The total FMV of the property of the trust does not exceed \$250,000 throughout the year and the only assets held by the trust throughout the year are one or more of:
 - a. Money;
 - b. A guaranteed investment certificate (GIC) issued by a Canadian bank or trust company;
 - c. A debt such as a bond or debenture issued by a government agency where the interest is fully exempt interest;
 - d. A debt obligation issued by:
 - A Canadian publicly traded corporation, mutual fund trust or partnership;
 - A foreign publicly traded corporation; or
 - A Canadian branch of a foreign bank;
 - e. A share or debt listed on a designated stock exchange;
 - f. A share of a mutual fund corporation;
 - g. A unit of a mutual fund trust;



- h. An interest in a related segregated fund trust;
- i. An interest as a beneficiary under a publicly traded trust;
- j. Personal-use property of the trust; or
- k. A right to receive income on property described above.^[11]

Bare/Deemed Trusts

The Proposed Amendments repeal existing subsection 150(1.3) of the Act, effectively exempting bare trusts from filing T3 Returns for the 2024 taxation year.

Deemed Trusts

The Proposed Amendments introduce the “deemed trust” which will be required to file T3 Returns for taxation years ending after December 30, 2025 if the Proposed Amendments are enacted. “Deemed trusts” include certain bare trust arrangements, and this concept functions to limit the number and types of bare trusts that would be subject to the filing requirements. Under the Proposed Amendments, a bare trust will only be subject to filing if it is a “deemed trust”.

Under the Proposed Amendments, an express trust is “deemed” to include an arrangement under which:

- a. One or more persons, referred to as the “legal owner,” have legal ownership of property that is held for the use of, or benefit of, one or more persons or partnerships, and
- b. The legal owner is reasonably considered to act as agent for the persons or partnerships who have the use of, or benefit of, the property.^[12]

Each of the legal owners is deemed to be a trustee of the trust, and each person or partnership that has the use or benefit of the property under the arrangement is deemed to be a beneficiary of the trust. Since an express trust is deemed to include a bare trust under the Proposed Amendments, the enhanced reporting requirements will also apply to “deemed trusts”.

However, the Proposed Amendments provide exceptions from this deeming rule for certain bare trust arrangements. An arrangement will not be deemed to be an express trust if any of the following conditions apply:

- a. Each legal owner is also a deemed beneficiary;
- b. The legal owners are individuals that are related persons and the property is real property that would be the principal residence of one or more of the legal owners for the year if those legal owners had designated the property as a principal residence for the year;
- c. The legal owner is an individual, who holds real property held for the use or benefit of their spouse or common-law partner, and that property could be designated as the owner’s principal residence for the year;
- d. Each legal owner is a partner (other than a limited partner) holding the property solely for the use of, or benefit of, a partnership, and at least one partner is required to file an information return for the partnership;
- e. The legal owner holds the property pursuant to a court order;
- f. The property is “Canadian resource property^[13]” and is held solely for the use of, or benefit of, one or more publicly listed corporations, a corporation controlled by one or more publicly listed corporations or a partnership where the majority-interest partner or group of partners is either of the aforementioned entities; or
- g. The property consists solely of funds received from the Crown, which is held exclusively for the use of, or benefit of, a tax-exempt person under ss. 149(1) of the Act^[14] and each legal owner is also a tax-exempt person under the aforesaid provision.

Note that if the Proposed Amendments are enacted, even if a bare trust does not meet the above exceptions, it will not have to file T3 Returns if it is a “listed trust”.

Narrowing of the definition of Settlor

As discussed above, each person who is a trustee, beneficiary, settlor, or person who has the ability to exert influence over trustee decisions regarding the appointment of income or capital of the trust must disclose their name, address, date of birth, jurisdiction of residence and tax identification number.^[15]

The term “settlor” generally means any person or partnership that has loaned or transfer of property, either directly or indirectly, in any manner whatever, to or for the benefit of the trust. An exception is provided for a person or partnership that deals at arm’s length with the trust, who made a loan to the trust at a reasonable rate of interest, or who made a transfer to the trust for FMV consideration.^[16]

For tax years ending after December 30, 2024, the Proposed Amendments narrow the definition of “settlor” for the purposes of Schedule 15. Under the Proposed Amendments, “settlor” means any person or partnership that has directly or indirectly, in any manner whatever, transferred property to the trust at or before that



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time, other than a transfer made by the person or partnership to the trust for FMV consideration or pursuant to a legal obligation to make the transfer.^[17]

This limited definition provides an exception for persons and partnerships that made transfers to the trust for FMV consideration or pursuant to a legal obligation to make the transfer. Such persons and partnerships will not be considered a “settlor” in this context so long as they receive FMV consideration for the transfer, regardless of whether or not they have an arm’s length relationship with the trust.

Next Steps

The Proposed Amendments, if enacted, will have significant impact on trusts and tax preparers and filers. If you are not sure whether a trust relationship requiring the filing of a T3 Return and Schedule 15 exists, please do not hesitate to seek professional advice. The penalties for non-compliance are burdensome but entirely preventable.

We suggest reaching out to a licensed accountant as soon as possible to avoid any potential non-compliance with these new requirements. A PDF of this blog is available for download [here](#).

If you have any questions about the above information, please contact a member of the Gardiner Roberts LLP’s experienced Tax and Estates Planning Group.

[1] Bill C-32, the *Fall Economic Statement Implementation Act, 2022*, S.C. 2022, c. 19, received Royal Assent on December 15, 2022.

[2] *Income Tax Act Regulations*, C.R.C., c. 945 at s. 204.2 [Regs].

[3] See previous blogs: [Trust Reporting Season is Here: Your Primer on the New Requirements for 2023](#); [Update: Bare Trusts No Longer Required To File T3 Returns For 2023](#); [Not-So-Cheap Thrills: The Bare Trust Reporting Rollercoaster](#).

[4] <https://fin.canada.ca/drlég-apl/2024/ita-lir-0824-l-3-eng.html>

[5] CRA Technical Interpretation 2023-0968091C6 provides greater details on the types of assets that can make up the \$50,000 limit. Generally the assets include:

- a. Money,
- b. A debt obligation described in paragraph (a) of the definition fully exempt interest in subsection 212(3),
- c. A share, debt obligation or right listed on a designated stock exchange,
- d. A share of the capital stock of a mutual fund corporation,
- e. A unit of a mutual fund trust,
- f. An interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)), and
- g. An interest as a beneficiary under a trust, all the units of which are listed on a designated stock exchange.

Additionally, the CRA noted (i) that “money” does not include a gold or silver coin often used as a trust settlement object; and (ii) that declared but unpaid dividends cannot be considered one of the assets listed above.

[6] This exception does not include trust accounts set up for specific clients, however specific trust accounts may be exempted due to solicitor-client privilege under subsection 150(1.4) of the Act.

[7] A graduated rate estate must designate itself as such in its first T3 Return, so at least one T3 Return must still be filed.

[8] Act, para. 150(1.2)(b) (proposed).

[9] Act, para. 150(1.2)(c) (proposed).

[10] Act, para. 150(1.2)(q) (proposed).

[11] Act, para. 150(1.2)(b.1) (proposed).

[12] Act, ss. 150(1.3) (proposed).



[13] Act, ss. 66(15). “Canadian resource property” includes any right, licence or privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons in Canada.

[14] Act, at ss. 149(1). Examples of tax-exempt persons under s.149(1) of the Act generally include: non-profit organizations, foreign government employees whose duties require that person to reside in Canada and their accompanying family members, municipal authorities, and Crown corporations.

[15] Supra, note 2. This is the Schedule 15 requirement.

[16] Act, at ss. 17(15).

[17] Regs, at ss. 204.2(3)

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