

NEW REPORTING REQUIREMENTS FOR TRUSTS

On July 27, 2018, the Department of Finance released draft legislation for new trust reporting requirements commencing in 2021, and following an announcement in the 2018 Federal Budget. The Supplementary Information to the Federal Budget states that the new reporting requirements are intended to improve the collection of beneficial ownership information with respect to trusts, and to help the Canada Revenue Agency (CRA) assess the tax liability for trusts and their beneficiaries. Although the draft legislation has not yet been passed into law, we are advising clients to comply with the new trust reporting requirements on the assumption that the draft legislation will be passed into law.

Current Trust Reporting Rules for Taxation Years Ending Prior to December 31, 2021

For taxation years ending prior to December 31, 2021, the current rules require that a trust file a *T3 Trust Income Tax and Information Return* within 90 days after the end of its taxation year. However, the CRA's T3 Guide states that a trust is required to file a return for a year only in certain circumstances, including if the trust has any of:

- (a) 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 in the *Income Tax Act* (Canada);
- (f) has provided a benefit of more than \$100 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;
- (h) has allocated more than \$100 to a beneficiary;
- (i) makes a capital distribution to a beneficiary; or
- (j) allocates any portion of its income to a non-resident beneficiary.

For taxation years ending prior to December 31, 2021, there is no requirement that a trust report personal information about a trustee, beneficiary, settlor or individual who has the ability to exert influence over trustee decisions regarding income or capital distributions from the trust (a protector).

The penalty for failure to file a *T3 Trust Income Tax and Information Return* is equal to the total of 5% of the unpaid tax due on the filing deadline, plus 1% of the unpaid tax for each complete month that the return is late, up to a maximum of 12 months.

New Trust Reporting Rules for Taxation Years Ending on or After December 31, 2021

Application to Certain Express Trusts

The new reporting rules apply to certain "express trusts" resident in Canada (or that are deemed resident in Canada) for taxation years ending on or after December 31, 2021. An "express trust" is a trust created with the settlor's express instruction, as evidenced by a Trust Deed or Will. Resulting trusts and constructive trusts are not express trusts.

The new reporting rules **will not** apply to certain express trusts, including a trust which:



- (a) has been in existence for less than three months at the end of the year;
- (b) holds assets with a total fair market value that does not exceed \$50,000 throughout the year, if the only assets held by the trust throughout the year are one or more of:
 - (i) cash,
 - (ii) certain debts obligations,
 - (iii) a share, debt obligation or right listed on a designated stock exchange,
 - (iv) a share of the capital stock of a mutual fund corporation,
 - (v) a unit of a mutual fund trust, and
 - (vi) an interest in a related segregated fund;
- (c) is a lawyer's general trust account, provided the trust is not maintained as a separate trust for a particular client or clients;
- (d) is a registered charity;
- (e) is a club, society or association;
- (f) is a mutual fund trust, a related segregated fund trust, or a master trust;
- (g) is a graduated rate estate;
- (h) is a qualified disability trust;
- (i) is an employee life and health trust;
- (j) is a trust under or governed by a registered plan, including a registered education savings plan, a registered retirement income fund, a registered retirement savings plan, or a tax-free savings account; or
- (k) is a cemetery care trust or a trust governed by an eligible funeral arrangement.

Requirement to File T3 Trust Income Tax and Information Return

For taxation years ending on or after December 31, 2021, express trusts which do not fall under any of the above exceptions will be required to file a *T3 Trust Income Tax and Information Return* whether or not the trust has any income, capital gains, or tax payable, or allocates or distributes income or capital gains to a beneficiary.

Requirement to Report Certain Information With T3 Trust Income Tax and Information Return

For taxation years ending on or after December 31, 2021, express trusts which are required to file a *T3 Trust Income tax and Information Return* will also be required to file in a schedule to the return the name, address, date of birth (in the case of an individual), jurisdiction of residence, and taxpayer identification number (TIN) for each:

- (a) settlor;
- (b) trustee;
- (c) beneficiary; and
- (d) person who has the ability to exert influence over trustee decisions regarding appointment of income or capital of the trust (a protector), in the year.

A trust will be considered to have met the reporting requirements for beneficiaries if the above information is provided for each trust beneficiary whose identity is known or ascertainable with reasonable effort, at the time of filing the return. For beneficiaries whose identities are not known or ascertainable, a trust will have also met the reporting requirements if it provides sufficient detailed information on the return to determine with certainty whether any particular person is a trust beneficiary.

New Penalties

In addition to the existing penalty for failure to file a *T3 Trust Income Tax and Information Return*, under the new rules the CRA may apply an additional penalty of 5% of the highest total fair market value of all property held by a trust during the relevant year (with a minimum penalty of \$2,500) to trusts which:

- (a) fail to comply with a CRA demand to file a trust tax return; or
- (b) make a false statement or omission in the trust tax return, either knowingly or due to gross negligence.

Trustees of existing express trusts subject to the new reporting rules may wish to consider:

- (a) the possibility of winding up trusts that are either unnecessary or no longer serve an intended purpose, and in order to avoid future tax return filing and reporting requirements;
- (b) the possibility of removing redundant corporate beneficiaries when setting up new trusts to reduce reporting obligations; and
- (c) reviewing trust deeds and wills to determine if a corporation or trust is beneficially interested in the trust and is therefore a beneficiary required to be reported under the new rules.

If you have any questions about the above information, please contact a member of Gardiner Roberts LLP's experienced Tax and Estates Planning Group: <https://grllp.com/practice/Tax-and-Estate-Planning>