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Tax Alert – Canada

New trust reporting requirements are broader than you think

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

Legislative amendments enacted in December 2022 require many trusts, including many agency and other commercial arrangements, to comply with additional reporting requirements in their annual income tax return for taxation years ending after 30 December 2023. The new rules, which include comprehensive disclosure requirements, also apply to bare trusts that are resident or deemed resident in Canada and other informal trust and agency relationships that were in existence at any time during the 2023 calendar year.

The new requirements have very broad application and will capture many common commercial arrangements even when no tax or income reporting is at stake.

Trusts that historically had to file an annual income tax return will now have additional disclosure obligations, and many trusts that were previously disregarded for income tax reporting purposes will now have a filing obligation. Significant uncapped penalties may apply for non-compliance.

Since all trusts affected by the new requirements have a calendar year-end, the new rules effectively apply for the 2023 and later taxation years. A trust with a calendar year-end must file its income tax return for the 2023 taxation year by 30 March 2024,¹ and this return has to include new information required under these rules.²

With the 2023 filing deadline fast approaching, taxpayers are advised to carefully review their trust arrangements to determine if the new reporting requirements apply to them.

¹ However, since 30 March 2024 occurs on a Saturday, the filing deadline is administratively deferred to the next business day, 2 April 2024.

² For more information on the history of the new requirements, see [EY Tax Alert 2022 Issue No. 4, Proposed trust additional reporting requirements](#), [EY Tax Alert 2022 Issue No. 37, Finance releases draft legislation for remaining 2022 budget measures](#) and [EY Tax Alert 2022 Issue No. 45, Bill C-32 to implement certain Budget 2022 and other previously announced measures receives Royal Assent](#). For information on the application of the new rules to nonresident trusts, see [EY Tax Alert 2024 Issue No. 2, New Canadian trust reporting requirements to impact many foreign trusts](#).

New filing and additional reporting requirements

Under the *Income Tax Act* (the Act), a trust is required to file an annual income tax return, the T3 *Trust Income Tax and Information Return* (T3 return), within 90 days of the end of its taxation year, being a calendar year in most cases. However, prior to the 2023 taxation year, there were several statutory and administrative exceptions to this filing requirement. Generally, a trust would only have to file a T3 return for a taxation year if any one of a number of criteria was met (e.g., the trust had tax payable, or it had realized a taxable capital gain).³

T3 return filing and additional information reporting are now required on an annual basis for express trusts (i.e., trusts that are created with the settlor's express written or verbal intent, as opposed to other trusts arising by operation of law) that are resident in Canada or deemed resident in Canada, subject to certain exceptions (see below), effective for taxation years ending on or after 31 December 2023.⁴ Therefore, the new rules increase the compliance burden for existing trusts and create an annual T3 return filing requirement for many trusts that were previously not required to file a T3 return.

Under the new rules, trusts subject to the additional reporting requirements must report and disclose the following information for each trustee, beneficiary and settlor of the trust, as well as any person who has the ability, as a result of the trust terms or a related agreement, to exert influence over trustee decisions regarding the allocation of trust income or capital in a year (e.g., a protector of the trust):

- ▶ Name
- ▶ Address
- ▶ Date of birth, in the case of an individual other than a trust
- ▶ Jurisdiction of residence
- ▶ Taxpayer identification number

In addition, information must be included regarding any beneficiaries that cannot be listed by name (e.g., unborn children and grandchildren) because they are unknown at the time of filing the T3 return.

³ For more information, see EY Tax Alert 2023 Issue No. 41, [New trust reporting requirements apply for the first time to the 2023 taxation year](#).

⁴ Additional information reporting does not apply to graduated rate estates (GREs), as defined under subsection 248(1) of the Act. Since all trusts except GREs are now required to have a calendar year-end, these rules effectively apply for the 2023 and later taxation years.

Notably, the definition of “settlor” for these purposes includes any person or partnership that has loaned or transferred property, directly or indirectly in any manner whatever, to or for the benefit of the trust. This definition may be broad enough to capture individuals who undertook common Canadian tax and estate planning strategies, such as an estate freeze, or those who loaned even a nominal amount of money to a trust with which they do not deal at arm’s length.

A new beneficial ownership schedule, [T3 Schedule 15, Beneficial Ownership Information of a Trust](#), has been added to the T3 return to report the required information. For Québec tax purposes, express trusts are also required to file an annual Québec TP-646-V, *Trust Income Tax Return*, for taxation years ending after 30 December 2023, subject to the same specified exceptions as under the federal requirements. The beneficial ownership information is, however, provided directly on the TP-646-V return rather than in a separate schedule.

The new rules do not require the disclosure of information that is subject to solicitor-client privilege; however, that does not absolve a trust of the requirement to file or disclose its arrangements (for example, the potential need to file using anonymized data).

Bare trusts

One of the most significant changes is that the new reporting requirements also apply to so-called “bare trusts”. A bare trust includes an arrangement where the trust can reasonably be considered to act as agent for its beneficiary(ies) with respect to all dealings in all the trust’s property. Prior to 31 December 2023, bare trusts were effectively excluded from the T3 return filing requirement; however, under the new rules, a bare trust will be required to file an annual T3 return unless an exemption applies. Under the expanded requirements, many other informal trust and agency relationships may now require an annual T3 return. The following includes examples of situations where a T3 return may now be required:

- ▶ A bare trustee corporation acts as the title holder to an asset for the benefit of someone else, such as holding the title to investments in a nominee corporation. This arrangement is often used in real estate development, oil and gas and resource exploration, or general estate and probate planning;
- ▶ An individual holds an “in trust” bank or investment account for a child or a parent;
- ▶ A parent corporation holds cash in trust for underlying subsidiaries (i.e., certain corporate “cash sweep” arrangements);
- ▶ A general partner, typically a corporation, in a limited partnership arrangement is the title holder to the underlying assets of the partnership. This arrangement is typically used in real estate investments, but may also include business operating partnerships;

- ▶ An individual has purchased a property “in trust”, but the actual owner is not clearly identified. This arrangement is commonly used with real estate purchases or certain pooling of private investments where the title holder or purchaser is not the true underlying economic or beneficial owner of the property; and
- ▶ An individual is registered on the title of any real estate that they do not beneficially own (e.g., a named interest on a child’s or parent’s home for estate planning purposes).

The above is not an exhaustive list and, therefore, legal counsel should be consulted to identify all informal trust arrangements and instances of bare trust or nominee/agency relationships that may now require a T3 return.

Penalties

New penalties have been introduced for failing to file a T3 return (including the Schedule 15 beneficial ownership schedule) or failing to provide required information on a T3 return if the failure was done knowingly or was due to gross negligence. These new penalties can be severe and are equal to the greater of \$2,500 and 5% of the highest total fair market value of all property held by the trust in the year, with no maximum penalty.

This new penalty may apply even if all the income of the arrangement has otherwise been appropriately reported. For Québec tax purposes, it is proposed that the amount of the penalty will be equal to \$1,000 plus \$100 for each day the failure to file continues, up to \$5,000. Existing penalties for late filing a T3 return continue to apply.⁵

On 1 December 2023, the Canada Revenue Agency (CRA) announced that it will temporarily waive the late-filing penalty for the 2023 taxation year for bare trusts (and bare trusts only) that file their T3 return and Schedule 15 after the 30 March 2024 filing deadline. The CRA noted that it is providing this administrative relief since this is the first taxation year in which bare trusts will have a T3 filing requirement as a result of the new reporting requirements. However, the CRA also stated that this relief only applies to the 2023 taxation year, and if the failure to file by the applicable deadline is made knowingly or due to gross negligence, the steeper penalty provisions noted above may still apply. Taxpayers are encouraged to file their T3 return on time given that the unrelieved penalties are based on the highest total fair market value of all property held by the trust in the year with no maximum penalty amount.

⁵ The late-filing penalty is imposed under subsection 162(7) of the Act.

Exceptions from the additional reporting

Certain types of trusts are excluded from these additional reporting requirements under new subsection 150(1.2), including trusts that:

- ▶ Have been in existence for less than three months at the end of the year (and due to the “year” referencing the calendar year, interpreted as being in existence for less than three months during the year);
- ▶ Hold only money and certain other designated financial assets that have a total fair market value that does not exceed \$50,000 throughout the year. Note, it is generally understood that guaranteed investment certificates (GICs) do not constitute “money” for purposes of the Act, and therefore investments in GICs would not otherwise qualify for the reporting exclusion;
- ▶ Have all of their units listed on a designated stock exchange;
- ▶ Are mutual fund trusts;
- ▶ Are themselves registered charities or not-for-profit organizations⁶ (NPOs); however, it is important to note that charities and NPOs may have certain bare trust arrangements that may themselves have to report and file. On 10 November 2023, the CRA announced that it will provide administrative relief from the requirement to file a T3 return for express internal trusts held by registered charities,⁷ but the CRA has not extended such relief to trusts associated with an NPO or generically for bare trust arrangements in which a registered charity may participate; or
- ▶ Are designated as GREs.

For details, and for a more comprehensive list of the exceptions from the new reporting requirements, see [EY Tax Alert 2023 Issue No. 41, New trust reporting requirements apply for the first time to the 2023 taxation year.](#)

Next steps

Since 2023 is the first taxation year that affected trusts need to comply with the new additional reporting requirements, and the additional information is required to be included in the 2023 T3 return that must be filed by 30 March 2024, steps should be taken now to gather the new required information with respect to settlors, trustees, beneficiaries and persons able to exert influence over trustee decisions over the allocation of trust income or capital.

⁶ Defined as a club, society or association as described in paragraph 149(1)(l) of the Act.

⁷ Internal trusts are those created when a charity receives property as a gift that is subject to certain legally enforceable terms and conditions, and the charity holds that property as the trustee of the trust.

Additionally, care and due diligence need to be exercised to identify those trusts and other informal trusts and agency relationships that were previously administratively exempt from filing a T3 return but now face a filing requirement under the new rules, such as bare trusts. In this case, all required information under the additional reporting requirements as well as other information relevant for the T3 return need to be compiled as soon as possible.

Learn more

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