TAXTALK

NEW TRUST REPORTING RULES FOR 2023

The Government of Canada has introduced new reporting requirements for trusts with taxation years ending after December 30, 2023. Many trusts, including bare trusts, will need to file for the first time.

Trusts May Need to File for the First Time

The new filing requirements are far-reaching, they impact trusts you know about, but also situations where a trust may be considered to exist, such as "in trust" bank accounts. Moreover, subject to limited exceptions, all trusts that have a filing obligation must now report extensive information on all persons involved in the trust.

Prior to the new reporting requirements, a trust that did not earn income, dispose of capital property or make distributions of income or capital in a year, was not required to file a T3 return.

Trusts that would already have been subject to the obligation to file a tax return under the existing rules, such as trusts having tax payable or having allocated income or capital to beneficiaries during the year, remain subject to the annual filing requirements. The new filing requirement supplements the existing filing requirement.

Bare Trusts

The new reporting rules apply to bare trusts. A bare trust is a common law concept, and it generally means a trust arrangement under which the trustee can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all the trust's property. The trustee cannot act without instructions from the beneficiary and the trustee's only function is to hold legal title to the property.

All income and capital gains from the bare trust are reported on the beneficiaries' tax returns and the beneficiaries are taxed rather than the trust. Bare trusts were traditionally not required to file a trust return. However, bare trusts are now subject to the new trust reporting rules, therefore, bare trusts are required to complete the Schedule 15 along with filing a T3 return annually unless it is a listed trust.

Examples of where bare trusts may arise and be subject to the new trust reporting rules:

- In-Trust-For (ITF) Accounts
    - Parents may have ITF accounts set-up for the benefit of their minor children. To the extent cash and/or investments in the account are more than $50,000 throughout the year, then a trust filing may be required.
- Jointly Owned Assets
    - Parents may add their children to the title of their house to simplify estate administration and minimize probate fees, without transferring any beneficial interest, then a trust filing may now be required.
- Other
    - A trust may also be required to be filed for the first time where title to property held on behalf of an owner or a group of owners is in a bare trust corporation, joint venture or partnership.

Bare trusts that have been in existence for less than three months, or that hold less than $50,000 in assets throughout the year, may be exempt from the new reporting requirements.

New Information to be Disclosed (Schedule 15)

Subject to the exceptions described below, the new reporting rules require every trust which is required to file a tax return to provide the name, address, date of birth, country of residence, and taxpayer identification number for all of the following persons in relation to the trust:

- settlor
- all current trustees
- all beneficiaries (including contingent beneficiaries)
- any person who has the ability to exert control over the trustee decisions regarding the allocation of income or capital of the trust, such as a Protector
- country of residence
- Tax Identification Number (i.e., Social Insurance Number, Business Number, Trust Number, or, in the case of a non-resident trust, the identification number assigned by a foreign jurisdiction)

In addition, if the above information cannot be provided because the beneficiary is unknown at the time of filing the T3 return, (for example, unborn children and grandchildren, their spouses), additional information is required on the new Schedule 15 detailing the terms of the trust that extend the class of beneficiaries to unknown entities.

The new Schedule 15 forms part of T3 return and cannot be filed on its own. It must be filed every year along with the T3 return. This schedule is new under these updated reporting requirements.

Exceptions Under the New Reporting Requirements

The following trusts (the "Listed Trusts") are exempt from both the new requirements to file a T3 return and the additional reporting requirements:

- a trust that has been in existence for less than three months at the end of the year
- a trust that holds assets with a total fair market value that does not exceed $50,000 throughout the year, provided the only assets held by the trust are confined to cash deposits, certain government debt obligations and listed securities
- lawyers' general trust accounts
- graduated rate estates (GRE) and qualified disability trusts
- trusts governed by registered plans (i.e. deferred profit sharing plans, RPPs, RRSP's, RRIFs, RESPs, TFSAs)
- trusts that qualify as non-profit organizations or registered charities
- a mutual fund trust, segregated funds and master trusts
- employee life and health trusts

Non-Resident Trusts

Non-resident trusts are not affected by the new reporting rules, but a T3 return is required to file for taxation years in which the trust:

- has tax payable
- is requested to file
- is a deemed resident trust
- is resident in Canada and has either disposed of, or is deemed to have disposed of, a capital property or has a taxable capital gain (for example, a principal residence or shares in the capital stock of a corporation)
- is a non-resident throughout the year, and has a taxable capital gain or has disposed of taxable Canadian property
- holds property that is subject to attribution rule
- has provided a benefit of more than $100 to a beneficiary for upkeep, maintenance or taxes for property maintained for the beneficiary's use, or
- receives from the trust property any income, gain, or profit that is allocated to one or more beneficiaries, and the trust has:
  - total income from all sources of more than $500
  - income of more than $100 allocated to any single beneficiary
  - made a distribution of capital to one or more beneficiaries or allocated any portion of the income to a non-resident beneficiary

UHT Return and T2062 Certificate of Compliance

The new enhanced trust reporting requirements will not replace the Underused Housing Tax (UHT) returns and the T2062 certificate of compliance. If a trust holds residential property, each trustee must file a UHT tax return. When a non-resident trust or a non-resident beneficiary dispose of Canadian taxable property, a T2062 certificate of compliance must be filed.

Important Dates to Remember

The deadline for the T3 return and Schedule 15 is 90 days after the trust's tax year end.

The tax year end for most trusts is the end of the calendar year. Trusts with a December 31, 2023 tax year end will need to file their T3 return by March 30, 2024 (the return will be considered filed on time if the CRA receives it on or before April 2, 2024, since March 30, 2024 lands on a weekend).

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