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Tax Alert – Canada

New trust reporting requirements apply for the first time to the 2023 taxation year

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 will require certain express trusts to comply with additional reporting requirements in their annual income tax return for taxation years ending after 30 December 2023. The new requirements also apply to a trust that includes an arrangement where it can reasonably be considered to act as agent for its beneficiary(ies) with respect to all dealings in all the trust's property (bare trusts).

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 will have to include the new information required under these rules.

For more information on the history of these amendments, 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](#).

Since the 2023 taxation year is ending soon, and the new reporting requirements apply for the first time to this taxation year, a reminder about these requirements, including various exceptions, is provided below. We also note the administrative relief recently announced by the Canada Revenue Agency (CRA) with respect to registered charities.

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

Background

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. However, there have been a number of 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, including (but not limited to):

- ▶ 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 had realized a taxable capital gain;
- ▶ The trust was a deemed resident trust; or
- ▶ 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, or income of more than \$100 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 nonresident beneficiary).

Also, a trust that is nonresident 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 (as defined under subsection 248(1) of the Act), subject to certain exceptions.

Additional reporting requirements

Legislative amendments enacted in December 2022 provide for additional information reporting that is required on an annual basis for express trusts (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 under section 94 of the Act), subject to certain exceptions (see below), and for nonresident trusts that have already been required to file a T3 return, effective for taxation years ending after 30 December 2023. Therefore, these rules increase the compliance burden for existing trusts and create an annual T3 return filing requirement for certain trusts that were previously not required to file a T3 return due to statutory or administrative exceptions.

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.

Under new section 204.2 of the Income Tax Regulations, trusts subject to the additional reporting requirements have to report the identity of, and include certain prescribed information for, all trustees, beneficiaries and settlors² 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). The required information includes the name, address, date of birth (in the case of an individual other than a trust), jurisdiction of residence and taxpayer identification number in respect of these persons. 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. A new beneficial ownership schedule, [T3 Schedule 15, Beneficial Ownership Information of a Trust](#),³ has been added to the T3 return to report the required information.

The amendments do not require the disclosure of information that is subject to solicitor-client privilege, under new subsection 150(1.4) of the Act. The amendments also apply to a trust that includes an arrangement where it can reasonably be considered to act as agent for its beneficiary(ies) with respect to all dealings in all the trust's property (bare trusts), under new subsection 150(1.3) 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 a trust that:

- ▶ Has been in existence for less than three months at the end of the year;
- ▶ Holds only certain assets and those assets have a total fair market value that does not exceed \$50,000 throughout the year;
- ▶ Qualifies as a non-profit organization that is a club, society or association described in paragraph 149(1)(l) or a registered charity;
- ▶ Has all of its units listed on a designated stock exchange;
- ▶ Is a mutual fund trust or master trust or is a segregated fund;
- ▶ Is a GRE;
- ▶ Is a qualified disability trust;
- ▶ Is an employee life and health trust; or

² The definition of a settlor is broad and may include anyone that makes a transfer or loan to a trust.

³ The Québec version of T3 Schedule 15 is Part 6 and Schedule G of the TP-646-V Québec income tax return.

- ▶ Is under or governed by a deferred profit sharing plan, employee profit sharing plan, first home savings account, pooled registered pension plan, registered disability savings plan, registered education savings plan, registered supplementary unemployment benefit plan, registered pension plan, registered retirement income fund or registered retirement savings plan.

Certain other exceptions apply under subsection 150(1.2) of the Act.

Recently announced 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; and
- ▶ Holds that property as the trustee of the trust.

To date, the CRA has not announced any administrative relief for non-profit organizations that are not registered charities with respect to these additional reporting requirements for internal trusts.

Penalties

New penalties apply, under subsections 163(5) and (6), to any person or partnership that is subject to the additional reporting requirements in new section 204.2 of the Income Tax Regulations and who fails to file a T3 return (including the Schedule 15 beneficial ownership schedule) for the taxation year, effective for taxation years ending after 30 December 2023.

These penalties 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. This penalty also applies if a false statement or omission is knowingly made in the return or made under circumstances amounting to gross negligence. 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.

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 very soon 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.

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

Learn more

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