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PUBLICATION

New Reporting Requirements for Trusts

Date: February 09, 2023
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Currently trusts are required to file an annual income tax (T3) return if a trust has tax payable or if it distributes all or part of its income or capital to its beneficiaries. This rule is set to change.

In a bid to improve the collection of beneficial ownership information with respect to trusts and to help the Canada Revenue Agency (the “CRA”) assess the tax liability for trusts and its beneficiaries, the federal government, in its Budget 2018, proposed new trust reporting rules. The Bill containing these new rules was given Royal Assent on December 15, 2022.

Under the new rules, all non-resident trusts and express trusts that are resident in Canada (subject to exceptions) will annually have to provide CRA with additional information such as the identity of all trustees, beneficiaries and settlors of the trust, along with the name(s) of each person who has the ability (through the trust terms or a related agreement) to exert control or override trustee decisions over the appointment of income or capital of the trust (i.e., a protector). As a result, after 2023, non-resident trusts and most Canadian resident trusts will have to file a T3 return where currently they do not have to; even if they have no income to report.

An express trust is generally a trust created with the settlor's express intent, usually made in writing (as opposed to a resulting or constructive trust, or certain trusts deemed to arise under the provision of a statute). Express trusts would include trusts created to hold private company shares as part of an estate freeze, trusts created to hold vacation or other personal property and bare/nominee trusts.

The inclusion of bare trusts as part of the new trust reporting regime is concerning since up to now, bare trusts are generally ignored for Canadian income tax purposes. Currently, all income and capital gains from a bare trust are reported on the beneficiaries’ tax return(s) and bare trusts are not required to file a trust return. This is set to change under the new trust reporting requirements. Though the tax treatment of bare trusts is not changing, the trustee(s) of a bare trust will be required to file an annual T3 return providing the information noted above. Generally, the Canada Revenue Agency will consider a bare trust to exist where a person (the trustee) is merely vested with the legal title to property and has no other duty to perform, responsibilities to carry out, or powers to exercise as trustee of the trust property. In the CRA's view, the beneficiary(ies) control(s) the property.

These new trust rules were scheduled to become applicable in 2023 but the implementation date has been delayed one year. The new trust reporting requirements are now set to come into effect for trust taxation years ending on or after December 2023. The one year delay is intended to give trustees more time to gather the information required to meet the new reporting requirements. Trustees should also use this time to consider and wind-up inactive trusts (including bare trust arrangements) before the end of 2023; trusts and bare trust arrangements that are wound up before the end of 2023 will not be subject to the new rules.

Failure to provide the required information could result in penalties equal to $25 for each day of delinquency, with a minimum penalty of $100 and a maximum penalty of $2,500. If a failure to file the return was made knowingly, or due to gross negligence, an additional penalty will apply. The additional penalty will be equal to 5% of the maximum value of property held during the relevant year by the trust, with a minimum penalty of $2,500. As well, existing penalties in respect of the T3 return will continue to apply.

If you are a trustee or beneficiary of an express trust, now is the time to consider the implications of the new rules and either begin to gather the information required to comply or consider winding up the trust prior to the end of 2023.

We are here to help should you wish to discuss a particular situation.