



Enhanced trust reporting rules—updated!

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One of the ongoing requirements of operating a trust that is resident in Canada is the need to file a T3 trust income tax and information return (a “T3”) in many circumstances.¹ This has been the case for many years. A new rule, for tax years ending on December 31, 2023 (or later), requires some trusts to start filing T3 returns when they were previously exempt from such filing. In addition, the information required to be reported on a T3 for many trusts has expanded. The Canada Revenue Agency (the “CRA”) has indicated that these changes are “being made to improve the collection of beneficial ownership information with respect to trusts and to help the ...CRA assess the tax liability to trusts and its beneficiaries.”²

This report will review the previous T3 rules and the changes to these rules.

Previous trust reporting rules

Previously, a T3 was required to be filed by a trust within 90 days from the end of the year if income tax was payable by the trust for the year, or if the trust either had a capital gain or disposed of capital property in the year.

The definition of trust in the *Income Tax Act* generally excludes arrangements where a trust merely acts as an agent for the trust’s beneficiaries when dealing with the trust’s property. As such, a T3 was not required for these agency arrangements.

Revised trust reporting rules

Under the revised reporting rules, many trusts are now required to file a T3, even if they do not have any tax payable, capital gains or dispositions of capital property in a year.

Trusts subject to new reporting rules

Unless one of the exemptions set out below applies, all trusts with a taxation year ending on December 31, 2023 (or later) are now required to file a T3, even if the trust has neither tax payable, a capital gain nor a disposition of capital property in the year. This specifically includes trusts which act as an agent for the trust’s beneficiaries. Depending on the circumstances, an account opened by a parent or grandparent “in trust for” the benefit of a minor child could be considered an agency arrangement for purposes of these rules.

Bare trusts

Some agency arrangements are commonly referred to as “bare trusts.” The CRA has defined a bare trust for the new trust reporting rules as “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 of the trust’s property.”³

¹ Certain non-resident trusts are also required to file a Canadian tax return.

² See <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/budget-2018-equality-growth-strong-middle-class/reporting-requirements-trusts.html>.

³ See [New trust reporting requirements for T3 returns filed for tax years ending after December 30, 2023](#).

The CRA has also clarified that its position is that a trustee can reasonably be considered to act as agent for a beneficiary when the trustee has no significant powers or responsibilities, the trustee can take no action without instructions from that beneficiary and the trustee's only function is to hold legal title to the property.⁴ There was concern that, in addition to some "in-trust for" accounts, this could be applicable to certain arrangements where a relative went on title to a property in order to assist a borrower with obtaining mortgage financing, or an adult child was made a joint account holder with an elderly parent.

On March 28, 2024, the CRA announced that it "will not require bare trusts to file a T3 Income Tax and Information Return (T3 Return), including Schedule 15 (Beneficial Ownership Information of a Trust), for the 2023 tax year, unless the CRA makes a direct request for these filings." The CRA's new position was taken "In recognition that the new reporting requirements for bare trusts have had an unintended impact on Canadians." In addition, the CRA indicated that over the coming months, it will work with the Department of Finance to further clarify its guidance on this filing requirement, and that it will communicate with Canadians as further information becomes available. Note that trusts that do not fall under CRA's definition of a bare trust are required to comply with the new enhanced reporting rules.

Exemptions

Most non-taxable trusts, such as registered retirement savings plans, registered retirement income funds, tax-free savings accounts, first home savings accounts, registered education savings accounts and registered disability savings plans, are exempt from these rules.⁵

For personal trusts, the new rules do not apply to trusts that have been in existence for less than three months. Trusts are also exempt if the fair market value of the property in the trust is \$50,000 or less throughout the year, so long as the only property in the trust is money, mutual fund trust units, exchange traded funds, listed shares or debt, or certain government debt.

These exempt trusts will continue to be required to prepare a T3 if they have tax payable, a capital gain or have disposed of capital property in the year. They are not, however, required to provide the additional information (see below) that non-exempt trusts are required to provide on the T3.

Information required

Where a trust is subject to the revised reporting rules, that is, where it does not fall under one of the exemptions set out above, the T3 needs to include the name, address, date of birth, residency and number used by the CRA to identify an individual or entity such as a SIN, business number or trust account number⁶, for each person who is a trustee, beneficiary or settlor of the trust. In addition, this information is required for each person who has the ability to exert influence over trustee decisions concerning the appointment of income or capital of the trust.

A settlor is a person or a partnership who has loaned or transferred property to a trust. Where a loan is made at a reasonable rate of interest, or a transfer is made for fair market value consideration, and the party deals at arm's length with the trust, then they will not be considered a settlor.

The obligation for the trustee to provide information regarding trust beneficiaries will be met if the identity of a beneficiary is known or ascertainable with reasonable effort. Where this cannot be done, the trustee's obligation will be satisfied where sufficient information is provided to determine if a person is a beneficiary. For example, where a class of beneficiaries of a trust includes the settlor's current children and grandchildren, and any children or grandchildren that the settlor has in the future, the T3 must include information required for the current (grand)children, as well as include details from the trust terms that beneficiaries could also include future children and grandchildren.

Information that is subject to solicitor-client privilege is not required to be disclosed.

⁴ Supra note 3.

⁵ Some other trusts exempt from the new reporting rules are charities, graduated rate estates, qualified disability trusts, health and welfare trusts, registered pension plans, employee profit sharing plans, lawyer's general trust accounts (but not client specific trust accounts) and certain government funded trusts. Also exempt are some widely held trusts such as mutual fund trusts, ETFs and segregated funds.

⁶ For individuals or entities resident outside of Canada, this includes the taxpayer identification number used in that jurisdiction.

Penalties

If a T3 is not filed as required, or the required information is not included in a T3, penalties could be assessed by the CRA.⁷ The penalty is set at \$25 per day, with a minimum penalty of \$100 and a maximum penalty of \$2,500.

Generally, a T3 return must be filed no later than 90 days after the trust's tax year-end. For the 2023 tax year, this required that trusts had a filing deadline of March 30, 2024. As this occurred on a weekend, the filing deadline for all T3 returns was extended to April 2, 2024.

Steeper penalties could apply if the failure is done knowingly, or is as a result of gross negligence. In this case, an additional penalty of 5% of the maximum fair market value of the property held by the trust during the year could apply, with a minimum additional penalty of \$2,500.

Next steps

If you are a trustee responsible for filing a T3, you may wish to clarify whether you are required to prepare and file a T3 return under the new rules, even if you were not required to do so in the past. For instance, this could apply to trust arrangements where the trust has no tax payable, capital gains nor dispositions of capital property. You should take the necessary steps to gather any additional information that is now required. For bare trusts, filing of T3s is no longer required for the 2023 year unless specifically requested by CRA.

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⁷ These are separate from the penalty that could arise where tax is owing.

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