



NEW TRUST REPORTING:

- Changes requiring more trusts (and estates) to file tax returns and more information to be disclosed, first proposed in the 2018 Federal Budget, were delayed several times in the legislative process. The final rules (that are now law) first apply for 2023, with a filing deadline of April 2, 2024. As such, many trusts and estates (including many arrangements not commonly considered "trusts") will be required to file for the first time in early 2024.
- Required reporting has been expanded to include situations where a trust acts as an agent for its beneficiaries (often referred to as a bare trust). This occurs when the person on title or holding the asset is not the true beneficial owner but rather holds the asset for the benefit of another party. There are many common situations that may constitute reportable bare trusts in which no lawyer or written agreement may have ever been involved or drafted. Many parties involved in a bare trust arrangement may not realize that they are, much less that there may be a filing requirement with CRA.
- In addition to bare trust arrangements, other trusts that have not had to file in the past may have a filing obligation under these expanded rules.
- Exceptions from filing a return for trusts and bare trust arrangements are available in limited cases. If filing is required, the identity and residency of all the trustees, beneficiaries, settlors, and anyone with the ability (through the terms of the trust or a related agreement) to exert influence over trustee decisions regarding the income or capital of the trust must be disclosed.
- Failure to make the required filings and disclosures on time attracts penalties of \$25 per day, to a maximum of \$2,500, as well as further penalties on any unpaid taxes. New gross negligence penalties may also apply, being the greater of \$2,500 and 5% of the highest total fair market value of the trust's property at any time in the year. These will apply to any person or partnership subject to the new regime.
- CRA has recently indicated that, for bare trusts only, the late filing penalty would be waived for the 2023 tax year in situations where the filing is made after the due date of April 2, 2024. As some bare trusts may be uncertain about the new requirements, the CRA is adopting an education-first approach to compliance and providing relief to bare trusts by waiving the penalty payable under subsection 162(7) of the Income Tax Act for the 2023 tax year in situations where the T3 Return and Schedule 15 are filed after the filing deadline for reasons other than gross negligence.
- As there is limited guidance as to who would qualify, it is recommended that disclosures should be made in a timely manner.

ACTION ITEM: Consider whether you may have a bare trust arrangement. If so, or if you are unsure, contact us to discuss.

Examples of bare trust arrangements

The following lists some examples of potential bare trust arrangements; CRA has not commented on several of the examples below. It is uncertain how they will interpret and enforce the law.

- a child on title of a parent's home (without the child having beneficial ownership) for probate or estate planning purposes only;
- a parent on title of a child's property (without the parent having beneficial ownership) to assist the child in obtaining a mortgage;
- one spouse being on title of a house or asset although the other spouse is at least a partial beneficial owner;
- a parent or grandparent holding an investment or bank account in trust for a child or grandchild;
- a corporate bank account opened by the shareholders with the corporation being the beneficial owner of the funds;
- a corporation being on title of an individual's real estate, vehicle, or other asset, and vice-versa;
- assets registered to one corporation but beneficially owned by a related corporation;
- use of a nominee corporation for real estate development purposes;
- a property management company holding operational bank accounts in trust for their clients or individuals managing properties for other corporations holding bank accounts for those other corporations;
- a lawyer's specific trust account (while a lawyer's general trust account would largely be carved out of the filing requirements, a specific trust account would not); and
- a partner of a partnership holding a bank account or asset for the benefit of all the other partners of a partnership.