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New Reporting Rules — Review Your Trust Structure Now

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Trusts should determine whether it makes sense to restructure or wind-up before the end of 2022 in light of significant new upcoming information reporting requirements. Finance recently delayed the implementation of these proposed reporting rules to taxation years ending after December 30, 2023 (instead of after December 30, 2022), which gives trusts additional time to consider structural changes and weigh the benefits of the trust against the additional costs of compliance with the broad rules. Affected trusts will otherwise be required to report certain information on each trustee, beneficiary, settlor and protector of the trust in their 2023 tax return, subject to limited exceptions. As a result of this change, more trusts (including bare trusts) will also have to file an annual income tax return.

Affected trusts should take action now to consider whether it may make sense to either wind up a trust that no longer serves a purpose, close in-trust accounts or restructure an existing trust before the end of the year. An affected trust that is wound-up in 2023 will still have to gather and report required trust information in a tax return for its final year under the proposed rules (as it will still have a December 31, 2023 taxation year). These proposed rules, which carry significant penalties for non-compliance, are expected to be enacted soon.

Background
Finance originally announced measures in the 2018 federal budget to require certain trusts to provide additional information on an annual basis and released draft legislation shortly after for comment. Finance later released revised draft legislation addressing these requirements for further public consultation on February 4, 2022 alongside other corporate, personal and trust tax changes. Among other changes, this legislation delayed the implementation of these rules to apply to taxation years ending after

December 30, 2022 (instead of December 30, 2021) and specified that bare trusts are subject to the new rules. For details on the previous draft legislation, see *TaxNewsFlash-Canada* 2022-05, "Finance Issues Outstanding Interest Expense Rules & More".

Finance released revised draft legislation on August 9, 2022 that clarified reporting requirements in cases of certain trusts that have some (but not all) of their units publicly listed and excludes certain additional trusts from the rules, among other changes. Notably, the revised legislation did not include any changes related to bare trusts, which are still subject to the new rules. For details, see *TaxNewsFlash-Canada* 2022-44, "Trust Reporting — New Requirements Set to Start Soon".

These rules are broadly drafted and can apply to charities and non-profits (in addition to other organizations) with trust arrangements, in certain circumstances. See *TaxNewsFlash-Canada* 2022-46, "Charities and NPOs — New Trust Reporting Requirement".

The enhanced trust reporting rules were included in Bill C-32, which received first reading on November 4, 2022. Under this legislation, the rules were delayed by an additional year so that they will now apply to taxation years that end after December 30, 2023 (instead of after December 30, 2022). For details, see *TaxNewsNow*, "Federal Budget Bill #2 Receives First Reading".

Reporting requirements

These upcoming rules require Canadian-resident express trusts (i.e., generally, trusts created with the settlor's express intent) and certain civil law trusts, as well as non-resident trusts that are currently required to file an income tax return, and bare trusts to report additional information on an annual basis, subject to limited exceptions. Specifically, these trusts must file an income tax return and report information on each trustee, beneficiary and settlor of the trust, as well as each person who has the ability (through the trust terms or a related agreement) to exert control over trustee decisions regarding the appointment of income or capital of the trust (e.g., a protector). In particular, these trusts will have to report the following for each of those persons:

- Name
- Address
- Date of birth (if an individual, other than a trust)
- Jurisdiction of residence
- Taxpayer identification number.

A trust will generally be considered to have met the reporting requirements if the above information is provided for each trust beneficiary whose identity is known or ascertainable with reasonable effort, at the time of filing the return. For beneficiaries whose identities are not known or ascertainable, a trust will also have met the reporting requirements if it provides sufficiently detailed information on the return to determine with certainty whether any particular person is a trust beneficiary.

Where some (but not all) of a trust's units are listed on a designated stock exchange, the reporting requirement is met where the required information about the beneficiaries of those unlisted classes of units is reported. In addition, when reporting on beneficiaries that are all members of certain Indigenous groups, the reporting requirement will be met where the class of beneficiaries is sufficiently described to determine whether any particular person is a member of that class of beneficiaries.

KPMG observations
Many trusts, including bare trusts, will now be required to file a trust income tax and information return under these changes, including those that were not required to file in the past. Specifically, these trusts will have to meet these rules for the first time for their 2023 taxation year.

Excluded trusts

The proposed legislation excludes the following trusts from these additional reporting requirements:

- Mutual fund trusts, segregated funds and master trusts
- Trusts governed by certain plans (i.e., deferred profit sharing plans, pooled registered pension plans, registered disability savings plans, registered education savings plans, registered pension plans, registered retirement income funds, registered retirement savings plans, registered supplementary unemployment benefit plans, tax-free savings accounts, employee profit sharing plans or first home savings account plans)
- Employee life and health trusts
- Trusts that have all their units listed on a designated stock exchange
- Lawyers' general trust accounts (excluding accounts held on behalf of a specific client)
- Graduated rate estates and qualified disability trusts
- Trusts that qualify as non-profit organizations or registered charities
- Cemetery care trusts or trusts governed by an eligible funeral arrangement

- Trusts that have been in existence for less than three months
- Trusts that generally hold less than $50,000 in assets throughout the taxation year, if those assets meet certain conditions.

Penalties

Trusts that are subject to these new requirements and fail to file a trust income tax and information return (including a beneficial ownership schedule where required) will be subject to penalties equal to $25 for each day it fails to file, with a minimum penalty of $100 and a maximum penalty of $2,500. If the failure to file the return was made knowingly or due to gross negligence, an additional penalty equal to 5% of the maximum fair market value of property held during the relevant year by the trust will apply, with a minimum penalty of $2,500. These penalties will apply to returns required to be filed for taxation years ending after December 30, 2023.

KPMG observations
As a result of these upcoming requirements, taxpayers will need to identify all of their trust arrangements (including bare trusts) to determine whether they may be required to gather and report required trust information. In particular, trusts may want to look at whether the benefit of having a trust is outweighed by the cost of compliance under these rules, and consider whether it makes sense to wind-up or re-structure any affected arrangements before December 31, 2022.

Note that some aspects of these rules remain unclear. In particular, it’s hoped that the CRA will soon provide additional guidance to clarify certain issues with the definitions of “settlor” and “beneficiary” and to specify how bare trusts are affected by these rules.

We can help

Your KPMG adviser can help you assess the effect of the proposed trust reporting requirements on your trust. For more details on your obligations under these rules, contact your KPMG adviser.

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