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Trusts — Prepare for Upcoming Reporting Requirements

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Trusts (including bare trusts) should prepare to meet significant new annual information reporting requirements that are set to apply to taxation years ending after December 30, 2023. Under these requirements, which will require more trusts to file a “T3 Trust Income Tax and Information Return” by April 2, 2024, affected trusts will now have to report specific information on each trustee, beneficiary, settlor and controlling person (e.g., a protector) of the trust in their 2023 T3 return, subject to limited exceptions. Trusts that do not meet these new requirements may be subject to significant penalties.

With the first reporting deadline under the new rules fast approaching, there is only a limited time to meet these new requirements. As a result, it's important for taxpayers to consider these changes and identify all their affected trust arrangements (including bare trusts) so they can start to collect the information to meet these new rules. Note that affected trusts that were wound-up in 2023 will still have to gather and report required trust information in a T3 return for its final year (as the end of its taxation year will still be December 31, 2023).

Background
Finance first announced enhanced trust reporting measures in the 2018 federal budget that would require more trusts to file an annual T3 return. These rules, which were enacted on December 15, 2022, apply to taxation years ending after December 30, 2023.

Under these broad rules, trusts are required to disclose certain information on each trustee, beneficiary, settlor and controlling person (e.g., a protector) of the trust, subject to limited exceptions. These rules apply to 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 a T3 return (i.e., deemed resident trusts). Bare trusts are also subject to the new reporting requirements. For details, see *TaxNewsNows*, “Federal budget bill #2 receives first reading” and “Federal budget bill #2 now law”, *TaxNewsFlash-Canada* 2022-51, "New Reporting Rules – Review Your Trust Structure Now".

Following concerns about how these rules apply to charities, the CRA recently announced that registered charities that are trustees of certain internal trusts will not have to separately report these arrangements under the new trust reporting requirements. According to the CRA, this relief applies to internal trusts that are 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. However, because this relief is limited to registered charities and does not extend to all internal trusts, certain registered charities and many other organizations (including non-profit organizations (NPOs)) may still have to file a T3 return for certain internal trust arrangements in accordance with the new trust reporting requirements. For details, see *TaxNewsFlash-Canada* 2023-44, “Charities — CRA Provides Relief for Some Trust Reporting”.

Who has to report?

Many trusts are affected by these new disclosure requirements, subject to a few limited exceptions. In particular, Canadian-resident express trusts (i.e., generally, trusts created with the settlor’s express intent) and certain civil law trusts will be required to provide this information as required. In addition, non-resident trusts that are currently required to file a T3 return will be subject to these rules, and bare trusts will also have to file a T3 return and report this additional information on an annual basis.

The following trusts are excluded from these additional beneficial ownership reporting requirements:

- Mutual fund trusts, related segregated fund trusts and master trusts
- Trusts governed by certain plans (e.g., 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, supplementary unemployment benefit plans, tax-free savings accounts, employee profit sharing plans or first home savings accounts)
- Employee life and health trusts
- Trusts that have all their units listed on a designated stock exchange

- Certain regulated trust accounts, such as lawyers' general trust accounts (but not accounts held on behalf of a specific client)
- Graduated rate estates and qualified disability trusts
- Trusts that qualify as non-profit organizations under paragraph 149(1)(l) of the Income Tax Act or registered charities
- Certain government funded trusts
- 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
- Certain internal trusts involving registered charities, such as endowment funds and donor-advised funds (DAFs).

Note that the draft technical amendments to the Income Tax Act released on August 4, 2023 propose that an "eligible trust" as defined in subsection 135.2(1) (i.e., generally, a trust formed on the continuation of the Canadian Wheat Board) is also not subject to the new trust reporting requirements.

KPMG observations
The new trust reporting requirements are broad and will now require certain trusts to file a T3 return beginning with the 2023 taxation year, even if that trust has not previously had to file a T3 return. Individuals, businesses and other organizations will need to identify all their affected trust arrangements (which may include bare trusts, in-trust accounts and specific client trust accounts held by lawyers, paralegals, law firms paralegal firms and property managers, among other trust arrangements) and gather the information required to file the return. Identifying whether a particular arrangement is an affected trust is not always straight-forward and will depend on the circumstances of the arrangement.

Reporting requirements

Starting with their 2023 taxation year, affected trusts must file an annual T3 return to report information on each trustee, beneficiary, settlor and controlling person of the trust. A controlling person is any person who has the ability (through the trust terms or a related agreement) to exert influence over trustee decisions regarding the appointment of income or capital of the trust (e.g., a protector). Affected 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 (e.g., social insurance number (SIN), business number (BN), temporary tax number (TTN), trust account number (TN), individual tax number (ITN) or a taxpayer identification number used in a foreign jurisdiction).

A trust will generally be considered to have met the reporting requirements for beneficiaries if they provide the specified information for each trust beneficiary whose identity is known or ascertainable with reasonable effort, at the time of filing the T3 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 T3 return to determine with certainty whether any particular person is a trust beneficiary. At this time no guidance has been provided by the CRA on what steps need to be taken to satisfy the “reasonable efforts” or “sufficiently detailed” criteria.

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
Where a partnership acts as a trustee for an affected trust (for example, where a law firm or paralegal firm that is a partnership operates specific client trust accounts), the trust may have to report the required beneficial ownership information for each partner of the partnership in the T3 return. Whether a particular partner of a partnership is considered a trustee of a trust will depend on the facts and circumstances of each situation.

We can help

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

For entities with a high volume of trusts that will now fall under these new trust reporting requirements, KPMG has developed automation tools to assist in the compliance process. Contact your KPMG adviser for more details.

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