



Proposed Disclosure Requirements for Trust and Estate Beneficiary Information

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For Trusts

The current rules require that a trust (including a deemed resident trust) file an annual trust income tax and information return (“T3 return”) if the trust has taxes payable or made distributions (whether on account of capital or income) to any of its beneficiaries.

The current rules allowed inactive trusts, such as one that only holds shares of a private company that did not receive or pay any dividends and made no distributions to its beneficiaries, would generally be exempt from filing a T3 return.

New Filing Requirements For Trusts – Proposed

Federal Budget 2018 proposed amendments to income tax rules relating to trusts. These amendments would allow the Canada Revenue Agency (CRA) to collect additional beneficial ownership information with respect to trusts and to more accurately assess the tax liabilities of trusts and beneficiaries.

Additional Disclosures – Proposed

The proposed amendments require disclosure of the identity of the following persons on an annual basis:

- the trustee(s);
- the beneficiaries;
- the settlor of the trust, and
- any person who has the ability (through the terms or a related agreement) to exert control over decisions of the trustee(s) regarding the appointment of income or capital of the trust (i.e. a protector).

Such disclosure would be made on a yet to be released new schedule within the T3 return:

- name;
- address;
- date of birth (for individuals);
- jurisdiction of residence; and
- the person’s identification number (e.g. social insurance number [“SIN”], corporation business number, or account number issued to a trust by CRA).

The additional disclosures apply even if the above persons were a trustee or beneficiary for only a single day in the year. The new schedule will need to be attached to the T3 return and cannot be filed on its own.

Annual T3 Return Filing – Proposed

The proposed amendments also included that all express trusts that are resident in Canada, and non-resident trusts that are currently required to file a T3 return, would be required to file a tax return. This means that the current rules relating to not filing trust tax returns for inactive trusts would no longer be generally available.

An “express trust” generally means a trust created intentionally by a settlor (usually made in writing). Trusts would be required to file a T3 return unless it fits into one of the exceptions.

Exceptions to the T3 Filing and the Additional Disclosure Requirements

The proposed T3 filing requirements and additional disclosure requirements allow a non-express trusts (including graduated rate estates) to be excluded from the proposed rules. In addition, certain express trusts can be excluded from the proposed rules. Examples of express trusts that could be exempt are:

1. when the trust has been in existence for less than three months at the end of the year;
2. the trust holds only certain assets (i.e. cash, debt obligations, listed securities and few other types of assets) with a total fair market value that does not exceed \$50,000 throughout the year;
3. mutual fund trusts, segregated funds and master trusts;
4. governed by registered plans such as RRSPs, TFSAs, and RESPs;
5. qualified disability trusts;
6. lawyers’ general trust accounts; or
7. qualify as non-profit organizations or registered charities.

It appears that an express trust otherwise meeting the second exception above, but that were settled with a gold coin instead of a note, for example, would not meet the second exception criteria.

Additional Penalties – Proposed

New penalties were also proposed which include:

- Failure to file a T3 return, including the additional disclosure requirements, may result in a \$25 per day penalty (with a minimum penalty of \$100) up to a maximum of \$ 2,500.
- If the failure to file the return was done knowingly, or due to gross negligence, an additional penalty equal to 5% of the maximum value of property held during the year by the trust may apply with a minimum penalty of \$2,500.

The existing penalties for T3 returns will also continue to apply.

Application of Proposed Amendments

The proposed amendments if enacted as proposed, will apply to taxation years ending after December 30, 2021 and onwards.

What Actions Could Be Taken?

The earliest time for most trusts to file a T3 return under the proposed disclosure requirements will be for the 2021 tax year (with a filing date in 2022). However, several matters should be given consideration now:

- Trustees should consider how they can collect the information required. Copies of trust indentures and amendments or addendums may need to be located if not readily available; the current address and SIN of each beneficiary may need to be obtained from each beneficiary. In some cases, beneficiaries will only be made aware of their interest in the trust because of the need to ask for their SIN or address to comply; it may be necessary to develop a communication strategy in these cases.
- For trustees and beneficiaries who do not want their information reported to CRA in connection with the trust, it may be possible to remove them from the trust prior to December 31, 2020 to avoid disclosure by the trust or estate under the proposed rules.
- For trusts that no longer serve any important purpose, consideration should be given to winding them up prior to December 31, 2020.

If you have any questions, please feel free to contact us at (905) 549-8463