



New Rules for Trust Reporting for 2023 Returns

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New Legislation Enacted

Bill C-32 received Royal Assent on December 15, 2022. Among its many parts, it included amendments to the *Income Tax Act* that will significantly increase the number of T3 Trust returns that will need to be filed, and the amount of information that will need to be provided in those returns.

The new filing and reporting requirements are effective **for trust years ending on or after December 31, 2023**. The current rules will continue to apply for trust years ending before that date.

Current Filing Requirements for Trusts

The current reporting 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, disposed of capital property or made distributions (whether on account of capital or income) to any of its beneficiaries in the current year.

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

With some exceptions, a trust's tax year is normally required to be a calendar year.

New Filing Requirements for Trusts

Bill C-32 included amendments to information reporting rules relating to trusts, and to require more trusts to file annual returns. These amendments 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 their beneficiaries.

Additional Disclosures

Effective for trust taxation years ending on or after December 31, 2023, the new law requires disclosure of the identity of the following "reportable entities":

- 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).

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Disclosure of the following information will be made with respect to each reportable entity on a yet to be released T3 Schedule 15 within the T3 return:

- name;
- type and classification of entity;
- address;
- date of birth (for individuals);
- country of residence; and
- taxpayer identification number (e.g. social insurance number, corporation business number, trust account number or taxpayer identification number used in a foreign jurisdiction).

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 filed as part of the annual T3 return and cannot be filed on its own.

Annual T3 Return Filing – Proposed

Bill C-32's amendments also specified that all express trusts that are resident in Canada, and non-resident trusts that are currently required to file a T3 return, are required to file an annual tax return. This means that the current rules relating to not filing trust tax returns for inactive trusts will no longer be generally available.

An "express trust" generally means a trust created intentionally by a settlor (usually made in writing).

Under Bill C-32 reporting requirements are expanded to include a "bare trust". A bare trust exists when an individual, a corporation or other entity is the registered owner of property but has no beneficial ownership interest in the property.

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 T3 filing requirements and additional disclosure requirements arising from Bill C-32 allow certain express trusts (including graduated rate estates) to be excepted from the new rules. Examples of express trusts that could be excepted from the additional reporting requirements are:

- trusts that have been in existence for less than three months at the end of the year
- express trusts that hold only certain assets (i.e. cash, debt obligations, listed securities and few other types of assets) with a total fair market value of less than \$50,000 throughout the year
- mutual fund trusts, segregated funds and master trusts
- trusts where all the units of which are listed on a designated stock exchange
- trusts governed by registered plans such as RRSPs, TFSAs, RESPs and the proposed first home savings accounts

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- graduated rate estates and qualified disability trusts
- lawyers' general trust accounts
- trusts that qualify as non-profit organizations or registered charities
- employer profit sharing plans
- employee life and health trusts
- cemetery care trusts and trusts governed by eligible funeral arrangements
- certain government-funded trusts

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

All the information described above must be collected for the first year of filing (2023 in most cases) and reported to the CRA. For following years, we understand that trusts will only need to report modifications to this information, such as a name change and a person becoming or ceasing to be a reportable entity. Although this will ease the process in future years, a significant amount of work may be needed for the first filing.

Additional Penalties

New penalties 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 relevant year by the trust may apply, with a minimum penalty of \$2,500. This penalty would also apply to false statements and omissions amounting to gross negligence as well as a failure to respond to a CRA demand to file.

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

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 2023 tax year (with a filing date in 2024). However, some additional 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 trusts that no longer serve any important purpose, consideration should be given to winding them up. Note that a trust that has had a tax year end of December 31 will be considered to have its 2023 year end on December 31, 2023 even if it is wound up during 2023.

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