

New trust reporting rules are now in effect

January 19, 2024

UPDATE: March 28 2024

On March 28, 2024, the [CRA announced](#) that it will not require bare trusts to file a T3 Tax Return (including information on the beneficial ownership of the bare trust) for the 2023 tax year, unless the CRA makes a direct request for these filings. This relief was provided by the CRA after it recognized that the new reporting requirements for bare trusts have had an unintended impact on many Canadians.

The remainder of this article was published on January 19, 2024. It has not been altered to reflect the March 28, 2024 CRA announcement.

What trustees need to know

Recent amendments to the *Income Tax Act* (Canada) have changed the income tax return filing obligations for trusts. In particular, the amendments expand:

- The instances in which a trust is required to file a *T3 Trust Income Tax and Information Return* (the T3 Tax Return), and
- The information that must be reported on a T3 Tax Return (particularly in respect of the trust's beneficial ownership).

These new trust reporting rules apply to a trust's taxation year ending on Dec. 31, 2023 or later. Accordingly, for a trust with a calendar year-end, these amendments apply beginning with the trust's 2023 taxation year.

Income tax filing obligations for express trusts

The income tax filing obligations that apply to trusts, as a result of the recent amendments, are summarized below.

Trusts required to file a T3 Tax Return

Subject to the exception described below, express trusts resident in Canada are required to file a T3 Tax Return. For greater certainty, the obligation to file a T3 Tax

Return applies even if such a trust has no taxes payable (in which case a “nil” T3 Tax Return is required to be filed).

Certain express trusts resident in Canada are excepted from the broad T3 Tax Return filing obligation described above. For the trusts that are subject to this exception, a T3 Tax Return is generally required to be filed in limited circumstances, such as if the trust has taxes payable. The trusts that are covered by the exception are described below (each referred to as an Excepted Trust):

- Trusts that have been in existence for less than 3 months;
- Trusts that hold assets with a total fair market value (FMV) that does not exceed \$50,000 throughout the year, if the only assets held by the trust throughout the year are one or more of
 - money,
 - certain government debt obligations,
 - a share, debt obligation or right listed on a designated stock exchange,
 - a share of the capital stock of a mutual fund corporation,
 - a unit of a mutual fund trust,
 - an interest in a related segregated fund trust, and
 - an interest, as a beneficiary under a trust, that is listed on a designated stock exchange;
- Trusts required by rules of professional conduct or by law to hold funds for the purposes of the activity that is regulated under those rules or laws, provided that the trust is not maintained as a separate trust for a particular client or clients;¹
- Trusts that qualify as non-profit organizations or registered charities;
- Mutual fund trusts, segregated fund trusts or prescribed master trusts;
- A trust, all of the units of which are listed on a designated stock exchange;
- Graduated rate estates;
- Qualified disability trusts;
- Employee life and health trusts;
- Certain government funded trusts;
- Trusts under or governed by a deferred profit sharing plan, pooled registered pension plan, registered disability savings plan, registered education savings plan, registered pension plan, registered retirement income fund, registered retirement savings plan, tax-free savings account, employee profit sharing plan, registered supplementary unemployment benefit plan or first home savings account; and
- Cemetery care trusts or trusts governed by eligible funeral arrangements.

Disclosure of Beneficial Ownership

If a trust is required to file a T3 Tax Return, it must also complete Schedule 15 of the T3 Tax Return pertaining to the beneficial ownership of the trust (the Beneficial Ownership Disclosure Obligation).

The exception to the Beneficial Ownership Disclosure Obligation applies to Excepted Trusts. In other words, Schedule 15 does not need to be completed for a T3 Tax Return that is filed by an Excepted Trust. For example, if an Excepted Trust has taxes payable, it will be required to file a T3 Tax Return, but it will not need to complete Schedule 15 of the T3 Tax Return.

For trusts that need to complete Schedule 15 of the T3 Tax Return, the name, address, date of birth, jurisdiction of residence and taxpayer identification number (social insurance number, business number, *etc.*) for *each* of the following persons must be disclosed:

- The trustees;
- The beneficiaries;²
- The settlors (which includes any person or partnership that made a loan or transfer of property in any manner to or for the benefit of the trust³); and
- Any person that has the ability, through the terms of the trust or a related agreement, to exert influence over trustee decisions regarding the appointment of income or capital of the trust (*e.g.*, a protector of the trust).

Reporting for Bare or Nominee Trusts

A bare trust is an arrangement where one person can reasonably be considered to act as agent for another person (the principal). Such an arrangement usually involves the trustee holding legal title to the trust property and dealing with the trust property in accordance with the principal's instructions. Prior to the recent amendments, a bare trust was disregarded and was not required to file a T3 Tax Return.

As a result of the recent legislative amendments, a bare trust that is an express trust resident in Canada will be required to file an annual T3 Tax Return and complete Schedule 15 to disclose details about its beneficial ownership, unless it otherwise qualifies as an Excepted Trust.

Penalty for non-compliance

Penalties for non-compliance may be assessed against any person or partnership that:

- Knowingly, or under circumstances amounting to gross negligence, makes a false statement or omission in a T3 Tax Return; or
- Fails to file the T3 Tax Return when required.

The amount of this new penalty is equal to the greater of:

- \$2,500; and
- 5 per cent of the highest total fair market value of all the property held by the trust at any point during the taxation year.

On March 12, 2024, in recognition that many bare trusts may be uncertain about the new requirements, the Canada Revenue Agency (CRA) [updated its guidance](#) to provide additional relief for bare trusts. The CRA had previously announced that it would take an "education first" approach in compliance and waive penalties for bare trusts unless the non-compliance was due to gross negligence. On March 12, the CRA announced that any potential gross negligence penalties would be subject to oversight and approval by Headquarters, following a mandatory referral.

BLG can help

For more information on how the new trust reporting rules may affect your particular trust, reach out to [BLG's Tax Group](#).

¹ For example, lawyers generally have two types of trust accounts: (i) general trust accounts (*i.e.*, a trust account where funds belonging to different clients are pooled together) and (ii) client specific trust accounts (*i.e.*, a separate trust account for a particular client's or clients' trust funds). A T3 Tax Return is required in respect of the latter but not the former. To the extent that a client specific trust account is required to file a T3 Tax Return, any information that is subject to solicitor-client privilege is not required to be disclosed – for more information on the application of solicitor-client privilege to the T3 Tax Return filing obligation, please see the BLG article [Solicitor Client Privilege and New Tax Reporting Requirements – The Costly Dilemma between Expedient Compliance and Waiver of Substantive Legal Rights](#).

² There are certain situations where information pertaining to the beneficiary does not need to be provided. For example, where the beneficiary is not known or ascertainable with reasonable effort, the information provided in Schedule 15 pertaining to those beneficiaries is limited to “sufficiently detailed information to determine with certainty whether any particular person is a beneficiary of the trust” (this can be satisfied by providing a copy of the relevant trust provisions).

³ The only exception is where (i) the person or partnership was arm's length with the trust at the time of the loan or transfer of property and (ii) either the loan was subject to a reasonable rate of interest or the transfer was for fair market value consideration.

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