

Important – New Trust Reporting: Unexpected Exposure

Changes requiring **more trusts** (and estates) to **file tax returns** and **more information** to be **disclosed**, first proposed in the 2018 Federal Budget, were delayed several times in the legislative process. The final rules (that are now law) first apply for 2023, with a filing deadline of **March 30, 2024**. As such, many trusts and estates (including many arrangements not commonly considered “trusts”) will be required to file for the first time in early 2024.

Required reporting has been **expanded** to **include** situations where a **trust acts as an agent** for its beneficiaries (often referred to as a **bare trust**). This occurs when the **person on title** or holding the asset is **not** the **true beneficial owner** but rather holds the asset for the benefit of another party. There are many **common situations** that may constitute reportable bare trusts in which **no lawyer** or **written agreement** may have ever been involved or drafted. Many parties involved in a bare trust arrangement may **not realize** that they are, much less that there may be a filing requirement with CRA.

The following lists some **examples of potential bare trust arrangements**; CRA has not commented on several of the examples below. It is uncertain how they will interpret and enforce the law.

- a child on **title of a parent’s home** (without the child having beneficial ownership) for probate or estate planning purposes only;
- a parent on **title of a child’s property** (without the parent having beneficial ownership) to assist the child in obtaining a mortgage;
- **one spouse** being on **title of a house** or asset although the other spouse is at least a partial beneficial owner;
- a parent or grandparent holding an **investment or bank account in trust for** a child or grandchild;
- a **corporate bank account opened by the shareholders** with the corporation being the beneficial owner of the funds;
- a **corporation being on title** of an **individual’s real estate, vehicle** or other asset, and vice-versa;
- assets **registered to one corporation** but beneficially **owned by a related corporation**
- use of a **nominee corporation** for real estate development purposes;
- a **property management company** holding operational bank accounts in trust for their clients, or individuals managing properties for other corporations holding bank accounts for those other corporations;

- a **lawyer's specific trust account** (while a lawyer's general trust account would largely be carved out of the filing requirements, a specific trust account would not); and
- a **partner of a partnership** holding a **bank account or asset** for the benefit of all the other partners of a partnership.

In addition to bare trust arrangements, other trusts that have not had to file in the past may have a filing obligation under these expanded rules.

Exceptions from filing a return for trusts and bare trust arrangements are available in limited cases. If filing is required, the **identity and residency** of all the **trustees, beneficiaries, settlors** and anyone with the **ability** (through the terms of the trust or a related agreement) to exert **influence** over trustee decisions regarding the income or capital of the trust must be disclosed.

Failure to make the required **filings and disclosures on time** attracts penalties of \$25 per day, to a maximum of \$2,500, as well as further penalties on any unpaid taxes. New **gross negligence** penalties may also apply, being the greater of \$2,500 and **5%** of the highest total **fair market value** of the **trust's property** at any time in the year. These will apply to **any person or partnership** subject to the new regime.

CRA has recently indicated that, for **bare trusts only**, the **late filing penalty** would be **waived** for the **2023 tax year** in situations where the **filing is made after** the due date of **March 30, 2024**. However, CRA noted that this **does not extend** to the penalty applicable where the **failure to file** is made **knowingly** or due to **gross negligence**. As there is limited guidance as to who would qualify, it is recommended that disclosures should be made in a timely manner.

ACTION: Consider whether you may have a bare trust arrangement. If so, or if you are unsure, contact us to discuss.