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UPCOMING CHANGES TO TRUST FILING REQUIREMENTS

By: RBS

Are you the trustee of an express trust? Be prepared for significant changes to your CRA reporting requirements.

Changes to Trust Filing Requirements

As part of the 2018 federal budget, the Canadian government introduced new tax return and information reporting requirements for trusts. Previously, a trust that had no activity during the year or no income tax payable was not required to file a trust income tax and information return (also called a “T3 Return”). This meant that some trusts, such as those simply holding a vacation property or those created on an estate freeze which hold shares in a private company, may have never filed a T3 Return. However, for certain trusts with taxation years ending on or after December 31, 2021, these exemptions may no longer apply and these trusts will now be required to file a T3 Return as well as certain additional information.

Trustees should be mindful of these new reporting requirements as the penalties for non-compliance could be substantial.

New Information Required to be Filed

While the earliest a trust will have to file a T3 Return under the new rules will be 2022, it is important to get ahead of these changes and to begin to collect the information that will be required for these returns. These new rules will require express trusts, including those trusts created by a testator in his or her will, to report, along with the T3 Return, the:

- name;
- address;
- date of birth (for individuals);
- jurisdiction of residence; and
- taxpayer identification number (TIN)

for each of the following:





- the settlor;
- the trustee(s);
- the beneficiary(ies); and
- any person who has the ability to exert influence over trustee decisions regarding the distribution of income or capital from the trust (i.e. trust protector).

A TIN includes a social insurance number, a business number, and an account number issued to a trust. A schedule of the above information **MUST** be filed with the trust's T3 Return and **CANNOT** be filed on its own.

This information must be provided for any trustee or beneficiary in any given tax year even if that individual was only a trustee or beneficiary for a single day in that tax year. If any trustee or beneficiary does not want this information provided to the CRA then steps must be taken to remove that individual from the trust before December 31, 2020. Note that this may have unintended tax consequences especially if the trust owns a controlling interest in a company.

Penalties

Penalties for non-compliance with the new reporting requirements will include a \$25 per day fine (with a minimum fine of \$100) up to a maximum penalty of \$2,500. Where the party filing the return knowingly or negligently makes a false statement on the return, those penalties increase up to 5% of the fair market value of the trust property (with a minimum penalty of \$2,500).

It is important to note that while it may not always be possible to ascertain who a beneficiary of a trust is, much less collect that person's information, the trust's reporting requirements do not end there. Where the identity of a beneficiary is not ascertainable, steps must be taken to provide the CRA with detailed information in order to determine, with certainty, whether any particular person is a beneficiary of the trust.

Exemptions

Non-express trusts are excluded from these new filing requirements. In addition, certain express trusts will also be exempt, including:

- trusts governed by registered plans (i.e. RRSPs, TFSAs, and RESPs);
- graduated rate estates and qualified disability trusts;
- trusts that qualify as non-profit organizations or registered charities;
- trusts that have been in existence for less than three months; and
- trusts that hold less than \$50,000 in assets throughout the taxation year (provided that the trust holdings are confined to one or more of cash, certain debt obligations, listed securities, and a few





other types of assets).

Therefore, based on the wording of the proposed legislation, if there are two express trusts, one settled with a \$20 bill and one settled with a silver ingot, and neither trust holds any other asset, the trust holding the \$20 bill would appear to be exempt from the new reporting requirements while the trust holding the silver ingot will likely need to file the required information. For trusts caught by this anomaly, a simple solution would be to sell the ingot for cash and have the trust continue to hold the cash as the settlement property. Note however that this would need to be done before December 31, 2020, to fall within the exemption.

While many bare trusts would fall within the meaning of an “express trust” and are not specifically exempt by the wording of the proposed legislation, subsection 104(1) of the *Income Tax Act* would appear to continue to exclude bare trusts from the application of the proposed changes.

Considerations for Professionals and/or Trustees

Estate planners should be especially aware of these changes as these changes will likely affect recommendations for estate planning. For example, where the intention was to use a trust as a Will substitute, the client must be made aware of these additional information collection and reporting requirements which they would not have if the distributions are made under a Will. This could pose a potential problem where the client does not want the beneficiaries of their estate to be known prior to their death.

Trustees, and those acting in a fiduciary capacity, need to be especially mindful of these changes to the filing requirements as the new rules place the onus on such fiduciaries to collect and file this information. If there is any doubt, the settlement indenture should be reviewed by a lawyer to determine what, if any, obligation there may be to report.

Note that non-resident trusts which are already required to file a T3 Return must also file the additional information set out above with the trust’s annual return.

Next Steps

Trustees should begin to take steps to collect the required information.

Where a trust has sat dormant or for trusts which no longer serve a purpose, trustees should consider winding these trusts up before December 31, 2020.

If any trustees or beneficiaries need to be removed from the trust prior to December 31, 2020, the





RICHARDS
BUELL
SUTTON^{LLP}
Established in 1871

settlement indenture should be reviewed by a lawyer and advice sought on the possible consequences of removing such a person.

The proposed changes present many potential issues. The lawyers in our Wealth Preservation Group are available to assist and advise on these matters.



VANCOUVER OFFICE:
700 - 401 W GEORGIA STREET
VANCOUVER, BC CANADA V6B 5A1
TEL: 604.682.3664 FAX: 604.688.3830

SURREY OFFICE:
310 - 15117 101 AVENUE
SURREY, BC CANADA V3R 8P7
TEL: 604.582.7743 FAX: 604.582.7753

RBS.CA