

Trust Enhanced Reporting Obligations

Effective as of the 2023 tax year, trusts that previously did not have to report, will now have to file tax returns for the first time. These filings are solely for information purposes and will not create a tax liability, however, there are penalties for late or missing tax filings. These penalties are not applicable for the 2023 tax year, however, will occur in subsequent years.

Please see below for more information to determine if these new trust reporting obligations apply to you. Since these reporting obligations are new this year and updates are still coming out, the information below is subject to change. Any future updates will be reflected on our website at <https://dusanjwirk.com/client-resources/> as “Trust Enhanced Reporting Obligations”.

These include:

Bare Trusts

A bare trust exists where one entity/person holds legal title to an asset on behalf of another individual or entity that receives the benefits of ownership from the asset. Benefits of ownership can be defined as controlling an asset, use of income from an asset and other factors. To determine if a bare trust exists, further analysis will be required by our firm.

Exceptions:

- Trust in existence for less than 3 months;
- Trust holding assets worth less than \$50,000;
- Graduated rate estate;
- Qualified Disability trust;
- Registered plan;
- Mutual fund trust;
- Registered charity;
- Lawyer trust account;
- Society/association.

Common Examples of Bare Trusts Requiring Reporting:

- A bank or investment account with greater than \$50,000 of holdings held in trust on behalf of a minor or an incapacitated individual.
- Shares held outside an investment account on behalf of another entity/individual.
- Property held in trust on behalf of a minor or an incapacitated individual.
- A parent is put on legal title to their child’s house to assist with financing but has no beneficial interest in the property.
- A child on legal title to their parent’s house for estate planning purposes but receives no benefits of ownership during the parent’s lifetime.
- An individual has transferred property into a company but remains on the legal title for the property.
- A holding company is on legal title to property, but the operating company reports the benefits of the property (e.g. rental revenue, property expenses, asset value).

- Beneficial ownership of property is held by alter-ego or joint partner trust, while the individual(s) retain legal ownership.
- A bare trust holds legal title to real property and a corporate bare trustee receives the benefits of ownership and reports the property as part of their annual tax filings.

Joint accounts and beneficiaries on accounts:

Given consideration of the criteria for creation of a trust, our firm has taken the stance that bank accounts and investment accounts that are set up as joint accounts or name a beneficiary for the sole intent of estate planning purposes, but do not provide any access to the accounts or beneficial ownership until triggered by death, are not considered reportable as bare trusts. Specific guidance on this has not been issued by the Canada Revenue Agency at this time.

Inactive Trusts

If you have an inactive trust that was never wound-up, you may be required to file a trust return this year under the new reporting obligations. Under the new reporting obligations, a trust return must still be filed even if the tax liability is nil, and/or no assets are held in the trust. Please inquire with our firm if you have an inactive trust that has not been wound-up and has not filed a trust return in the last 2 years.

Information Required for Trust Return

- Copy of trust agreement, trust deed, legal letter indicating existence of trust or other legal documentation (*where applicable*)
- Nature of trust relationship and description of trust property.
- Contact information for those involved in the trust:
 - Full legal name;
 - Address;
 - Date of birth (where applicable);
 - Jurisdiction of residence (province, country);
 - Tax number (SIN, business number, taxpayer identification number from country of residence).

Penalties

The late filing penalty is \$25 per day, with a minimum penalty of \$100 and a maximum of \$2,500. The additional failure to file penalty is the greater of \$2,500 or 5% of the maximum value of the property held during the tax year.

Filing Deadline

If any of the above situations may apply to you and have not already been discussed, please reach out to our office. The filing deadline for these trust returns is March 31, 2024.