
Please note this article was updated in January 2024. As of March 28, 2024, CRA has provided an administrative exemption for bare trusts from the trust reporting requirements for 2023. Further information will be provided by the CRA for future filing requirements.

NEW AND EXPANDED TRUST REPORTING: It's Here!

New rules aimed at providing more transparency on beneficial ownership of assets now require that more trusts (and estates) file tax returns. These changes will catch many individuals and businesses that may not be aware of their trust-like relationships, exposing them to potential penalties and other consequences for non-compliance. The rules become effective in 2023, with a filing deadline of **April 2, 2024**.

Unexpected exposure – bare trust arrangements

The rules have been expanded to include cases where a trust acts as an agent for its beneficiaries, commonly known as a bare trust. In such instances, the person/entity listed as the owner of an asset is not the true beneficial owner; instead, they hold the asset on behalf of another party.

Steps for Trust Filing Identification

STEP 1: Does a bare trust arrangement exist?

To determine if a bare trust arrangement exists, the following question should be asked:

- **Is the person on title or holding the asset the true beneficial owner?** For example, do they get the benefits of the asset (such as sale proceeds) and bear the costs or risks of the asset (such as property taxes)?

There is likely a bare trust arrangement if there is a mismatch between legal and beneficial ownership, often requiring a trust return.

There are several reasons why an individual, business or organization may use a bare trust arrangement. 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. No lawyer may have ever been involved, and no written agreement may have ever been drafted.

While there are countless possibilities of bare trust arrangements, the following lists some common potential examples.

Individual Reasons

- a parent is on title of a child's home (without the parent having beneficial ownership) to assist the child in obtaining a mortgage;
- a parent or grandparent holds an investment or bank account in trust for a child or grandchild;
- one spouse is on title of a house or asset although the other spouse is at least a partial beneficial owner;

Estate Planning Reasons

- a child is on title of a parent's home (without the child having beneficial ownership) for probate or estate planning purposes only;
- a child is on parent's financial accounts (or other assets) to assist with administration after the parent's passing;

Business Administration Reasons

- a corporate bank account is opened by the shareholders with the corporation being the beneficial owner of the funds;
- a corporation is 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 partner of a partnership holding a bank account or asset for the benefit of all the other partners of a partnership;
- a joint venture arrangement where the operator holds legal title to development property as an agent for the benefit of other participants;
- a cost-sharing arrangement where a person holds a business bank account, or other assets, to facilitate the arrangement while having no, or only partial, beneficial interest in these shared assets;

Industry-specific Issues

- 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; and
- a lawyer's specific trust account (while a lawyer's general trust account is largely carved out of the filing requirements, a specific trust account is not).

CRA has not commented on several of the examples; it is uncertain how they will interpret and enforce the law.

STEP 2: Does a trust return need to be filed?

After determining that a bare trust arrangement exists, it is important to determine whether an exception from filing a trust return is available.

Some of the more common exceptions include the following:

- trusts in existence for less than three months at the end of the year;
- trusts holding only assets within a prescribed listing that is very restrictive (such items in the listing include cash and publicly listed shares) with a total fair market value that does not exceed \$50,000 at any time in the year;
- trusts required by law or under rules of professional conduct to hold funds related to the activity regulated thereunder, excluding any trust that is maintained as a separate trust for a particular client (this applies to a lawyer's general trust account, but not specific client accounts); and
- registered charities and non-profit clubs, societies or associations.

A trust return must be filed if one of the exceptions are not met. Even where one of the new exceptions is met, a trust would still have to file a return if they had to file under the prior rules, such as the trust having taxes payable or having disposed of capital property.

STEP 3: What information must be disclosed?

Where a trust is required to file a tax return, the identity of all the trustees (who is on title or holds the asset), beneficiaries (who really owns the asset), settlors (who owned the asset originally) and anyone with the ability to exert influence over trustee decisions regarding the income or capital of the trust must be disclosed.

Such required information includes:

- name;
- address;
- date of birth (if applicable);
- country of residence; and
- tax identification number (e.g. social insurance number, business number, trust number).

Obtaining this information proactively is especially helpful, particularly if those involved are no longer in close contact.

Traditional trusts

Under the previous rules, a trust was required to file a trust return if one of several conditions were met, such as the trust having taxes payable or disposing of capital property. Many trusts did not meet a condition and, therefore, were not required to file a trust return previously. For example, many trusts owning shares of a private corporation were historically not required to file in years when there were no share sales or dividends received. However, trusts that were exempted from filing under the old rules are now required to file unless one of a new set of narrow exceptions is also met. See some of the more common exceptions in STEP 2 above.

Under the new rules, some of the more common trusts that may require disclosure include the following: trust owning shares of a private corporation, trust owning a family cottage, spousal or common-law partner trust, alter-ego trust and testamentary trust.

Failing to File... So what?

Failure to make the required filings and disclosures on time attracts penalties of \$25/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 April 2, 2024. However, CRA noted that this does not extend to the penalty applicable where the failure to file is 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.



In addition to penalties, failing to properly file trust returns may result in negative tax (such as possibly losing access to the principal residence exemption) and non-tax (such as inadvertently exposing assets to creditors inappropriately) consequences.

Let's Connect!

For a more detailed discussion about how these budget measures may impact you or your business, please don't hesitate to send us an email at info@jtscpa.ca.