

**Tax****Here come the new reporting requirements for trusts**By **Ian Spiegel**

Ian Spiegel

(February 8, 2022, 8:42 AM EST) --

On July 27, 2018, the Department of Finance released draft legislation for new trust reporting requirements that were to commence in 2021, and following an announcement in the 2018 federal budget. The Supplementary Information to the federal budget states that the new reporting requirements are intended to improve the collection of beneficial ownership information with respect to trusts, and to help the Canada Revenue Agency (CRA) assess the tax liability for trusts and

their beneficiaries.

Although the supporting legislation for these changes remains pending and has not yet received royal assent, we are advising clients to comply with the new trust reporting requirements on the assumption that the draft legislation will be passed into law.

**Current trust reporting rules**

The current reporting and filing rules require that a trust file a T3 Trust Income Tax and Information Return within 90 days after the end of its taxation year. However, the CRA's T3 Guide states that a trust is required to file a return for a year only in certain circumstances, including if the trust has any of:

- (a) tax payable;
- (b) is resident in Canada and realizes a taxable capital gain or disposes of

- capital property in the year;
- (c) is non-resident throughout the year and has a taxable capital gain or disposes of taxable Canadian property;
- (d) is a deemed resident trust;
- (e) holds property that is subject to the reversionary trust rule in the *Income Tax Act (Canada)*;
- (f) has provided a benefit of more than \$100 to a beneficiary for the upkeep, maintenance, or taxes for property maintained for the beneficiary's use;
- (g) has total income of more than \$500;
- (h) has allocated more than \$100 to a beneficiary;
- (i) makes a capital distribution to a beneficiary; or
- (j) allocates any portion of its income to a non-resident beneficiary.

There is currently no requirement that a trust report personal information about a trustee, beneficiary, settlor or individual who has the ability to exert influence over trustee decisions regarding income or capital distributions from the trust (a protector).

The penalty for failure to file a T3 Trust Income Tax and Information Return is equal to the total of five per cent of the unpaid tax due on the filing deadline, plus one per cent of the unpaid tax for each complete month that the return is late, up to a maximum of 12 months.

### **Timing for implementation of new rules**

The proposed new rules were to be implemented for trusts with taxation years ending on or after Dec. 31, 2021. The CRA has recently made the following announcement:

The legislation to support this proposed measure is pending. The CRA will administer the new reporting and filing requirements once there is supporting

legislation that receives royal assent. The CRA will continue to administer the existing rules for trusts, under enacted legislation. The proposed beneficial ownership reporting requirements will not be part of the published 2021 T3 income tax return. This note will be updated when more information is available. You should not delay filing your 2021 T3 tax return.

This announcement appears to delay the implementation of the proposed reporting and filing requirements until the supporting legislation has received royal assent. It is not currently known when the rules may apply. The current CRA administrative policy is still in effect.

### **Application to certain express trusts**

The new reporting rules will apply to certain "express trusts" resident in Canada (or that are deemed resident in Canada). An "express trust" is a trust created with the settlor's express instruction, as evidenced by a trust deed or will. Resulting trusts and constructive trusts are not express trusts.

The new reporting rules will not apply to certain express trusts, including a trust which:

- (a) has been in existence for less than three months at the end of the year;
- (b) holds assets with a total fair market value 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:
  - (i) cash,
  - (ii) certain debt obligations,
  - (iii) a share, debt obligation or right listed on a designated stock exchange,
  - (iv) a share of the capital stock of a mutual fund corporation,
  - (v) a unit of a mutual fund trust, and

- (vi) an interest in a related segregated fund;
- (c) is a lawyer's general trust account, provided the trust is not maintained as a separate trust for a particular client or clients;
- (d) is a registered charity;
- (e) is a club, society or association;
- (f) is a mutual fund trust, a related segregated fund trust, or a master trust;
- (g) is a graduated rate estate;
- (h) is a qualified disability trust;
- (i) is an employee life and health trust;
- (j) is a trust under or governed by a registered plan, including a registered education savings plan, a registered retirement income fund, a registered retirement savings plan, or a tax-free savings account; or
- (k) is a cemetery care trust or a trust governed by an eligible funeral arrangement.

### **Requirement to file T3 Trust Income Tax and Information Return**

Under the new rules, express trusts which do not fall under any of the above-noted exceptions will be required to file a T3 Trust Income Tax and Information Return whether or not the trust has any income, capital gains, or tax payable, or allocates or distributes income or capital gains to a beneficiary.

### **Requirement to report certain information with T3 Trust Income Tax and Information Return**

Under the new rules, express trusts which are required to file a T3 Trust Income tax and Information Return will also be required to file in a schedule to the return the name, address, date of birth (in the case of an individual), jurisdiction of residence and taxpayer identification number (TIN) for each:

- (a) settlor;
- (b) trustee;
- (c) beneficiary; and
- (d) person who has the ability to exert influence over trustee decisions regarding appointment of income or capital of the trust (a protector), in the year.

A trust will be considered to have met the reporting requirements for beneficiaries if the above information is provided for each trust beneficiary whose identity is known or ascertainable with reasonable effort, at the time of filing the return. For beneficiaries whose identities are not known or ascertainable, a trust will have also met the reporting requirements if it provides sufficient detailed information on the return to determine with certainty whether any particular person is a trust beneficiary.

### **New penalties**

In addition to the existing penalty for failure to file a T3 Trust Income Tax and Information Return, under the new rules the CRA may apply an additional penalty of five per cent of the highest total fair market value of all property held by a trust during the relevant year (with a minimum penalty of \$2,500) to trusts which:

- (a) fail to comply with a CRA demand to file a trust tax return; or
- (b) make a false statement or omission in the trust tax return, either knowingly or due to gross negligence.

### **Conclusion**

Despite not applying to trusts' taxation years ending on Dec. 31, 2021, it would be

prudent for trustees to prepare for the new rules coming into effect. Trustees of existing express trusts subject to the new reporting rules may wish to consider:

- (a) the possibility of winding up trusts that are either unnecessary or no longer serve an intended purpose, and in order to avoid future tax return filing and reporting requirements;
- (b) the possibility of removing redundant corporate beneficiaries when setting up new trusts to reduce reporting obligations; and
- (c) reviewing trust deeds and wills to determine if a corporation or trust is beneficially interested in the trust and is therefore a beneficiary required to be reported under the new rules.

Assuming that the supporting legislation receives royal assent in 2022, the new requirements will generally apply to the trusts' next taxation year end, even if the trusts are wound up or a change in beneficiaries occurs during the 2022 taxation year. However, by following our advice above, trustees can still limit the new reporting and filing requirements to a single year.

*Ian Spiegel is an associate at Gardiner Roberts LLP and practises in the areas of tax and estate planning and corporate commercial law. Ian advises on tax and estate planning and corporate reorganizations. His practice includes Canadian income tax for individuals, corporations and trusts. A special thank you to Greg Farano, Lindsay Ann Histrop and Lorne Saltman, partners of Gardiner Roberts LLP's tax and estates planning group, for co-authoring this article.*

*Photo credit / Ulf Wittrock ISTOCKPHOTO.COM*

*Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.*

© 2022, The Lawyer's Daily. All rights reserved.