

New Trust Reporting Obligations for 2023

In our continuing communication on the new requirement for Trust filings with the CRA, we are reminding you that for taxation years ending after 30 December 2023, all trusts unless otherwise exempted, will be required to file a T3 return on or before **30 March 2024**.

The enhanced reporting rules are intended to increase transparency and give authorities additional information to counter aggressive tax avoidance, tax evasion, money laundering, and other criminal activities. As the primary purpose of the enhanced rules is to gather information, rather than to collect tax, they have been designed to cast a very broad net both in terms of which arrangements must be reported, and what information must be collected. Many taxpayers and advisors have been, and will continue to be, surprised by the reach and scope of the requirements.

What is a trust?

Determining whether a particular arrangement will be subject to the new trust reporting rules requires consideration of whether a trust exists. The Income Tax Act (Canada) does not define what a trust is. Identifying whether a trust exists requires an understanding of what a trust is at common law. A trust is not an entity or legal person, a trust is a relationship. Accordingly, as a starting point, a trust should be presumed to exist wherever one encounters a person holding property which they hold not for their own benefit, but for the benefit of some other person(s) or purpose.

Bare trust arrangements

A bare trust is a specific kind of trust where the trustee has no rights other than to deal with the property as instructed by the beneficiaries. The trustee holds legal title, while the beneficiary has the beneficial ownership and complete control over the trustee's actions relating to the property. The trustee can also be a beneficiary of a bare trust. Historically, bare trusts were not required to file a trust return in Canada due to their tax treatment, allowing for property transfers without triggering taxable events unless the beneficial ownership changes. The new reporting requirements require trustees of bare trusts to file annual T3 trust returns for tax years ending after 30 December 2023.

Express trusts

The term "express trust" is only used in subsection 150(1.3) of the Tax Act, which provides that a Canadian resident trust that is an express trust, and not an excepted trust, must file a T3 return every year. At law, the term "express trust" is generally understood to mean trusts created by the expressed intent of the settlor of the trust, as distinct from trusts created by statute or imposed by the courts. Any trust created by a trust indenture, or by a will or other testamentary document, is an express trust. It is also possible for an express trust to arise orally, by clear words of intention expressed by the settlor and the trustee. Previously these express trusts were exempt from filing annual returns if there was no income or capital distributions to be reported. The new reporting requirements require trustees of express trusts to file annual T3 trust returns for tax years ending after 30 December 2023.

Partnership property as trust property

A partnership is a relationship between two or more persons carrying on business in common with a view to profit. Like a trust, a partnership is not a legal person and therefore generally is unable to hold property in its own name. Partnership property must be held by one or more of the partners, or by a nominee, on behalf of the partnership. The person who holds partnership property, whether they are a partner or not, holds it in trust for the partners. The fiduciary or trust nature of the relationship may or may not be specifically mentioned in the partnership agreement. In many situations the arrangements under a partnership agreement will constitute an “express trust” as discussed above and will be required to file annual T3 trust returns for tax years ending after 30 December 2023.

Other situations where a trust may exist

The following list outlines commonly encountered fact patterns and scenarios that may result in a trust being required to file annual T3 trust returns for tax years ending after 30 December 2023.

- Spousal transfers – with respect to property, such as a home, initially owned by one individual who then enters into a spousal relationship
- Parent-child transfer – a number of differing scenarios may result in a trust as it relates to parents helping adult children enter into home ownership
- Joint ownership for estate planning – bank accounts and homes, typically transferred to avoid the probate process or for administrative convenience
- “In trust for” arrangements – typically bank and/or investment accounts held in trust for children or grandchildren
- Limited partnership property – many BC limited partnerships hold title to property in the name of a separate nominee company, typically owned by the general partner company, under a bare trust and nominee agreement. Each such arrangement will constitute an express trust with a T3 filing requirement under the trust reporting rules.
- Law firm holding real estate deposits - Under s. 18 of the Real Estate Development Marketing Act (British Columbia), each deposit from purchasers is placed with a law firm as trustee in a separate trust account. The law firm holds each deposit for the purchaser and the development company. The law firm is required to file a T3 return with respect to each deposit trust unless held for less than 3 months in 2023.

Excepted trusts

The following list includes the more common trusts excepted from filing an annual T3 Trust return:

- a trust in existence for less than three months at the end of the year;
- a small trust, the value of which does not exceed \$50,000, at any time in the year, and which holds nothing other than “money”
- trust funds maintained by lawyers and other regulated professionals, provided they are not maintained as a separate trust for a particular client or clients;
- a registered charity, including internal trusts;
- a non-profit club, society or association described in paragraph 149(1)(l) of the Tax Act;
- registered plans including RRSP’s, TFSA’s, RESP’s and the like;
- a graduated rate estate (an estate within its first 36 months after date of death);
- a mutual fund trust;
- a qualified disability trust;

What must be filed and disclosed?

Mandatory filing of T3 return and Schedule 15

An express trust, that is not an excepted trust, is required to file a return of income in prescribed form containing prescribed information. The prescribed return for a trust is the T3 Trust Income Tax and Information Return and is required to be filed within 90 days from the end of each year.

The new reporting rules includes providing detailed disclosure about stakeholders, including:

- trustees;
- beneficiaries, including contingent beneficiaries;
- settlors; and
- anyone who can influence the trust. This would include a trust protector, who may exert control over the decisions of the trustee, including the distribution of income or capital of the trust under the trust deed or related instrument.

In many cases these reporting obligations could be burdensome.

We attach a pdf copy of Schedule 15, Beneficial ownership information of a trust, for reference. Some clients have previously provided this information to us. Please contact the partner or manager of your account to obtain a copy of previously completed information. We will need information up to and including 31 December 2023, as is applicable.

Penalty provisions

A trust that does not file the required reports will be subject to the failure to comply penalty of \$25 per day with a minimum of \$100 and a maximum of \$2,500.

A failure to file or false statement or omission which occurs knowingly or in circumstances amounting to gross negligence could attract penalties under new legislation:

1. A person or partnership is liable to a penalty if the person or partnership
 - (a) knowingly or under circumstances amounting to gross negligence
 - (i) makes — or participates in, assents to or acquiesces in, the making of — a false statement or omission in a return of income of a trust that is not subject to one of the exceptions listed for a taxation year, or
 - (ii) fails to file a return as required; or
 - (b) fails to comply with a demand to file a return.

The amount of the penalty is the greater of \$2,500 and 5% of the highest amount of the total fair market value of all the property held by the trust.

A concerning feature of the penalties under the new legislation is that it appears to impose the penalty on the “person or partnership” making the statement or omission in the trust’s return of income, as distinct from the trust itself. This raises questions as to whether penalties could be assessed against trustees in their personal capacities, and whether penalties could be imposed against multiple persons in respect of the same infraction.

We recommend that you reach out to us if you have any questions or concerns about your specific circumstances.

- Enter the applicable tax year in the box above.
- For information on completing this schedule, see Chapter 3 in Guide T4013, T3 Trust Guide.
- If the trust is required to provide beneficial ownership information, list all trustees, settlors, beneficiaries, and controlling persons (as these terms are defined in the T3 Trust Guide) for this trust (collectively referred to as reportable entities), including those who may have been a reportable entity for only part of the year.
- For purposes of completing part B, where some but not all of the units of a trust are listed on a designated stock exchange, see the T3 Trust Guide.
- The trust reporting requirements do not require the disclosure of information that is subject to solicitor-client privilege.
- **Include a completed copy of this schedule with the trust's return.**

Part A – Annual beneficial ownership information

Is this the first time the trust is reporting beneficial ownership information?

Yes No

If **yes**, fill out Part B and Part C (if applicable). If **no**, answer the next question.

Has the beneficial ownership information of the trust changed during the tax year? Previously reported entities will be carried forward to this tax year unless modified in Part B or Part C.

Yes No

If yes, fill out Part B and Part C (if applicable). If **no**, the schedule is complete.

Part B – Identification of reportable entities

You have to fill out Part B in full for each reportable entity added or modified in the tax year.
If a reportable entity is more than one entity type, Part B must be completed in full for each entity type.

Add reportable entity Modify reportable entity

Reportable entity type (refer to the T3 Trust Guide for entity type definitions)

Trustee Settlor Beneficiary Controlling person

Entity classification

Natural person Corporation Trust Other

Entity name (if not a natural person)

First name	Last name
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Date of birth (if natural person)
Year Month Day

Tax identification type <input type="checkbox"/> SIN <input type="checkbox"/> TTN <input type="checkbox"/> ITN <input type="checkbox"/> BN <input type="checkbox"/> TN <input type="checkbox"/> International	Country of residence <input type="checkbox"/> Canada <input type="checkbox"/> United States <input type="checkbox"/> Other
Tax Identification number <input type="text"/>	<input type="text"/>

Address	Country	
City	Province/Territory/State	Postal code / ZIP code <input type="text"/>

Did the entity cease to be a reportable entity in the current tax year?
If yes, the information in respect of the entity will not be carried forward to the next tax year.

Yes No

Part C – Beneficiaries unable to be listed

Provide the details of the terms of the trust that extends the class of beneficiaries to unknown entities.

Provide relevant information regarding any beneficiaries that cannot be listed by name (for example, unborn children and grandchildren, spouses) because they were unknown at the time of filing the trust return.

Where the beneficiaries of a trust are the members of an Indigenous group, community or people, see the T3 Trust Guide.

Any information provided below will replace, in its entirety, the information previously submitted. If amending previously submitted information, you must resubmit the full details of unknown beneficiaries including the changes.