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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.

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 made **knowingly** or 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**.

If you have any questions, give us a call!

This information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a summary such as this, a further review should be done by a qualified professional. No individual or organization involved in either the preparation or distribution of this document accepts any contractual, tortuous, or any other form of liability for its contents or for any consequences arising from its use.

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