

NEW EXPANDED TRUST REPORTING RULES



THESE NEW FILING REQUIREMENTS MAY IMPACT YOU. The new rules provide more transparency on beneficial ownership of assets. This will now require that more trusts (and estates) file tax returns. These changes affect many individuals and businesses that may not be aware of their trust-like relationships. Failure to comply may result in potential penalties and other consequences for non-compliance. **The rules are effective for trusts with a December 31, 2023 year end, with a filing deadline of April 2, 2024.**

Bare trust arrangements commonly occur when a trust acts as an agent for its beneficiaries. 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.

Please note these new requirements change the **reporting obligations only**, not the tax treatment of bare trusts. Canada Revenue Agency (CRA) has noted that many trusts will be required to file for the first time, and highlighted the additional time it would take to obtain a trust number prior to filing the trust return.

STEP 1:

NEW Reporting requirements for trusts you need to be aware of

Does a bare trust arrangement exist?

Is the person on title (or holding the asset) the TRUE beneficial owner?

For example, does the person on title 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**.

Below are several reasons outlining 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 a bare trust, or that there may be a filing requirement with CRA. No lawyer may have ever been involved, and no written agreements may have ever been drafted. Bare trusts are often used: To ensure privacy, minimize taxes or probate fees, facilitate property transfer, gifting to minor children who cannot legally hold property, or hold property on behalf of a group of owners in a partnership or joint venture. **Please note, CRA has not commented on several of the examples. It is uncertain how CRA will interpret and enforce the law.** Listed below are some of the common potential examples of bare trust arrangements:

Estate Planning Reasons

- A **child is on title of a parent's home** for probate or estate planning purposes only (parents have beneficial ownership and their child does not live with them);
- A **child is on parent's financial accounts (or other assets)** to assist with administration after the parent's passing;

Individual Reasons

- A **parent is on title of a child's home** to assist the child in obtaining a mortgage (child has beneficial ownership and their parents do not live with them);
- 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**, while the other spouse is also a beneficial owner;

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 without having any, or 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).

STEP 2:

Once you've determined if a bare trust arrangement exists, review the list of exceptions

Does an exception apply to your trust?

A trust return is usually NOT required, if an exception applies. Some of the more common trust filing **EXCEPTIONS** include:

- Trusts in existence for less than three months at the end of the tax year;
- Trusts holding only assets within a **prescribed listing** that is very restrictive (including cash, mutual funds, publicly listed shares and debt obligations) with a **total fair market value** that does not exceed **\$50,000 at any time during 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 to specific client accounts);
- Registered trust accounts: RESP, RDSP, RRIF, RRSP, TFSA, FHSA, employee profit sharing plans, pooled registered pension plans;
- Mutual fund trusts, segregated fund trusts and trusts where all units are listed on a designated stock exchange;
- Registered charities and non-profit clubs, societies or associations.

Even where one of the new exceptions is met, most trusts must still file a return, if they had to file under previous rules, such as the trust having taxes payable, disposing of capital property or distributing income.

STEP 3:

Once you have determined IF you have a filing obligation, gather disclosure information required

What information must be disclosed?

The following information will now be a requirement for ALL trust returns filed:

- The identity of **all trustees** (who is on title or holds the asset);
- **Beneficiaries** (who really own the asset), as well as all known contingent beneficiaries;
- **Settlers** (who owned the asset originally) expanded to include some situations where a loan or transfer is made to the trust;
- Anyone with the ability to **exert influence over trustee decisions** regarding income or capital of the trust must be disclosed.

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 very helpful, particularly if those involved in the trust are no longer in close contact.

Traditional trusts

Under 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 not required to file in years when there were no share sales or dividends received. However, **trusts that were exempted from filing under previous 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: Trusts owning shares of a private corporation, trusts owning a family cottage, spousal or common-law partner trusts, alter-ego trusts and testamentary trusts. See **STEP 3** above for additional information requirements, which now must be disclosed in Schedule 15 of the trust return.

If you are unsure if these new rules apply to your individual situation, please contact us to discuss.

Failure to File

So what? **Failure to make the required filings and disclosures on time attracts penalties the greater of \$100 or \$25/day, to a maximum of \$2,500**, as well as further penalties on any unpaid taxes: 5% of the amount outstanding at the filing date, plus 1% times the number of months (not exceeding 12 months). 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. Penalties for repeated failure to file, may apply at double rates.

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.* 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 consequences (such as inadvertently exposing assets to creditors inappropriately).