



IMPORTANT INFORMATION
NEW TRUST REPORTING RULES
EFFECTIVE 2023 WITH A
FILING DEADLINE OF MARCH 30, 2024

The enclosed document provides a detailed summary of the new and expanded trust reporting rules.

Please carefully read the enclosed summary and if the new reporting rules apply to your situation or if you are uncertain whether the new reporting rules apply to you, please contact Cam, Stana or Leanne to discuss.

Thank you.

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Cam MacLean
Partner

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NEW AND EXPANDED TRUST REPORTING

New rules aimed at providing more transparency on beneficial ownership of assets now require that **more trusts** (and estates) **file tax returns**. The rules become effective in 2023, with a filing deadline of **April 2, 2024**.

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.

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).

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), **settlers** (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).

Failing to File

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.

If you have any questions, give us a call!