

## New Trust Reporting includes Bare Trusts

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A recent TDS article, **A Review of the Draft Federal Tax Legislation Released on August 9, 2022**, touched on the enhanced reporting requirements for trusts that were originally proposed in February of this year. On November 4, 2022, a bill including these enhanced reporting requirements, Bill C-32, was introduced into Parliament. Should this bill be passed into law, the enhanced reporting requirements would apply to taxation years ending after December 30, 2023.



### Current Trust Reporting Requirements

Under the current legislation, a trust resident in Canada is generally required to file an annual T3 income tax return if:

- tax is payable by the trust for the year;
- the trust disposes of capital property; or
- the trust distributes all or part of its income or capital to the trust beneficiaries.

Trusts that are inactive or have no income or tax payable are not required to file T3 returns under the current legislation.

### New Trust Reporting Requirements

In addition to the trusts required to file an annual T3 return for the reasons listed above, express trusts resident in Canada and bare trusts will now also be required to file an annual T3 return regardless of whether the trust has any income tax liability or made any distributions or allocations during the tax year.

An express trust is a trust created with the settlor's express intent for a trustee to manage the trust property on behalf of the beneficiaries. This intent is usually made in writing.

A bare trust is a trust where the trustee's only obligation is to deal with the trust property as directed by the beneficiaries. While the trustee holds legal title to the trust property, the beneficiaries retain beneficial ownership of the trust property. Bare trusts can be express or implied.

Trusts that have not been required to file T3 returns under the current legislation will need to have a trustee or authorized representative apply for a trust account number with Canada Revenue Agency in order to submit their T3 returns online.

In addition to filing a T3 return, affected trusts will be required to report the name, address, date of birth, jurisdiction of residence, and taxpayer identification numbers of all “reportable entities.” Reportable entities include all the trust’s trustees, beneficiaries, and settlors, as well as anyone who has the ability to exert control over the trustees and their decisions to distribute the trust’s income and/or capital.

As a reminder, T3 returns must be filed within 90 days of the end of the trust’s tax year. For trusts with year-end dates of December 31, 2023, this deadline is **March 30, 2024**.

### **Trusts Exempt from the New Reporting Requirements**

The following trusts will be exempt from the new reporting requirements:

- trusts that have been in existence for less than three months;
- trusts that hold less than \$50,000 in assets throughout the tax year, provided those assets are confined to cash, certain debt obligations and listed securities;
- mutual fund trusts, segregated funds and master trusts;
- trusts with all units listed on a designated stock exchange;
- registered savings plans, including proposed first home savings accounts;
- employer profit-sharing plans;
- lawyers’ general trust accounts;
- graduated rate estates and qualified disability trusts;
- trusts that qualify as non-profit organizations or registered charities;
- employee life and health trusts; and
- cemetery care trusts and trusts governed by eligible funeral arrangements.

### **Penalties for Non-Compliance**

The existing penalty for failing to file a T3 return will continue to apply under the new reporting requirements. The penalty is equal to \$25 per day that the return is not filed, with a minimum penalty of \$100 and a maximum penalty of \$2,500. This penalty will also now apply if the required additional information is not filed with the T3 return.

A gross negligence penalty will also now apply where a failure to file a T3 return is made knowingly or due to gross negligence. The amount of the penalty will be 5% of the maximum value of the trust property held during the relevant tax year, with a minimum penalty of \$2,500.

### **Next Steps**

Contact our **TDS tax lawyers** for more information on the proposed new reporting requirements and whether they will apply to you.

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