

Bare Trusts: New Reporting Requirements

You will be required to file a tax return for bare trusts under the new trust reporting rules. These rules, which were included in Bill C-32, came into effect on December 15, 2022 when the bill received Royal Assent. The new trust reporting rules apply to trusts with tax years ending on December 31, 2023 and onward. Failure to comply with the new reporting rules may result in potentially significant penalties, including the new gross negligence penalty.

What is a bare trust?

A bare trust is a specific kind of trust in which the trustee has no obligation other than to deal with the trust property as instructed by the beneficiaries. The legal title of the trust property is held by the trustee, but the beneficiary has the beneficial ownership of the property. A bare trust is essentially a principal-agent relationship, which means the beneficiary of a bare trust has complete control over the trustee's actions as it relates to the trust property and the trustee has no independent power, discretion, or responsibility over the property.

Bare trusts are commonly used to:

- Ensure privacy and maintain the anonymity of the true owner of a property when the ownership information, such as land registration records, are public record
- Minimize provincial land transfer taxes or probate fees in transactions where the beneficial ownership of a property is being transferred between multiple parties, but there is no change to the legal title held by the trustee
- Gift property to a minor child or children who cannot hold a legal title

A few examples of a bare trust include:

- Having your name on someone else's bank account that holds more than \$50,000
- Having your name on someone else's investment account this is valued over \$50,000
- Having your name on the title of a property for your child to assist with financing, or having your name on the title of an elderly family member's property for estate purposes

How is a bare trust taxed in Canada?

A bare trust is generally disregarded for Canadian income tax purposes. This tax treatment allows the legal title of the property to be transferred in certain situations without triggering a taxable event when the beneficiary retains beneficial ownership of the property. Contrarily, a taxable event is triggered when beneficial ownership of a bare trust property changes, even if there is no change in legal title. All income and capital gains from the bare trust are reported on the beneficiaries' tax return(s) and the beneficiaries are taxed – not the trust. For this reason, bare trusts are traditionally

not required to file a trust return. However, this has changed with the new reporting requirements. It should be noted that the new reporting requirements only change the reporting obligation of bare trusts and not the tax treatment of bare trusts.

How do the new reporting requirements apply to bare trusts?

Under the new reporting requirements, the trustee of a bare trust must file an annual T3 trust return for tax years ending after December 30, 2023. This means that trusts with a calendar year-end will be subject to the new rules, starting with the December 31, 2023 year-end. Under the new rules, trusts will also be required to report additional information (i.e., name, address, date of birth, jurisdiction of tax residence, and tax information number) about their stakeholders on T3 Schedule 15 - *Beneficial ownership information of a trust*. Such stakeholders included trustees, beneficiaries, and settlors of the trust, and anyone who has the ability (through the trust or a related agreement) to exert control or override trustee decisions over the appointment of income or capital of the trust (i.e., a protector). The deadline for filing a trust return is 90 days after the taxation year-end.

What are the non-compliance penalties?

If a bare trust fails to file a trust return under the new legislation, the late-filing penalty would be \$25 a day (minimum penalty of \$100, maximum penalty of \$2,500). An additional penalty equal to the greater of \$2,500 or 5% of the maximum value of the property held during the taxation year by the trust would be applied where a failure to file was made knowingly or due to gross negligence.

These rules are part of a general expansion of CRA reporting requirements to comply with worldwide tax compliance rules. It is critical for trustees to familiarize themselves with the new rules due to the greater compliance requirements in comparison to prior years. The new requirements are complex, and the penalties are significant. Since a bare trust is a legal arrangement, please consult legal advice in order to determine if you are indeed in a bare trust arrangement and therefore required to file a trust return for 2023 and future years.

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