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Commentary

New Tax Reporting Obligations for Trusts

By Andrea Tratnik, Estate and Trust Lawyer, Beard Winter LLP

New reporting obligations for most family trusts are set to come into effect for tax years ending on December 31, 2021 and later.

These obligations will require most trusts to file a T3 Trust Income Tax and Information Return, even if they have no tax payable or activity during the year. Formerly, only trusts earning income or making distributions were required to make this filing. A trust with no activity (such as a trust passively holding personal use real estate like a cottage, or a trust holding shares of a company after an estate freeze and not receiving income) did not need to file a return.

These new rules also introduce expanded disclosure requirements. Additional information will need to be reported on the T3 Return, including:

(i.) name;

(ii.) address;

(iii.) date of birth;

(iv.) taxpayer ID number (i.e., SIN); and

(v.) jurisdiction of residence

for each and every trustee, beneficiary, settlor and protector. This is a fairly high level of disclosure and it raises some practical considerations of which to be mindful.

Consider the impact of having a broad class of beneficiaries or numerous contingent beneficiaries for whom there is a remote likelihood or intention to benefit. Or, particularly in the case of an alter ego or joint spousal trust, the effect of adding or removing beneficiaries as estate planning intentions change over time - if, for example, it is necessary to notify a person of their beneficial interest in your alter ego trust in order to obtain their SIN, and you later decide to remove such person as a beneficiary, then on your death you might be leaving behind a very surprised and unhappy person (aka potential litigation risk!)

Trustees will have the potentially onerous job of collecting information from beneficiaries. This job could prove more challenging where beneficiaries cannot be located or refuse to cooperate. Query what would happen in such a scenario, as removing an offending beneficiary from a trust might not be a possible or practical solution once the trust is settled: there could be negative tax consequences to a change in beneficiaries and/or the trust deed could contain terms prohibiting such a change.

The new reporting obligations will apply to most trusts, but will not apply to:

- graduated rate estates;
- qualified disability trusts;
- trusts governed by registered plans (such as RRSPs, RRIFs, TFSAs and RESPs);
- trusts that have been in existence for less than three months;
- trusts that hold less than $50,000 in assets throughout the taxation year (provided that their holdings are confined to deposits, government debt obligations and listed securities);
- trusts that qualify as non-profit organizations or registered charities;

- mutual fund trusts, segregated funds and master trusts; and
- lawyers' general trust accounts.

These new reporting rules were first introduced in the 2018 Federal Budget as an attempt to enhance CRA's collection of beneficial ownership information. According to the Budget, improved beneficial ownership information will help authorities with countering aggressive tax avoidance, tax evasion and money laundering.

There will of course be penalties for non-compliance. These reporting obligations should be considered when setting up or administering a trust.

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