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Wills & Estates

December 4, 2020

NEW TRUST REPORTING OBLIGATIONS – WHAT TRUSTEES AND ADVISORS NEED TO KNOW

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For tax years ending on or after December 31, 2021, new reporting rules established by the Canada Revenue Agency (the "**CRA**") will require heightened disclosure and transparency for trusts. Trustees and advisors should be aware of the rules summarized below to ensure ongoing compliance.

Current Rules

Under the current rules, a trust is generally required to file a T3 return if the trust has tax payable or distributes all or part of its income or capital to its beneficiaries during the year. An inactive trust or one that has no income or tax payable during the year is generally not required to file a T3.

New Trust Reporting Obligations

For taxation years ending on or after December 31, 2021, an express trust (created through a Trust Deed or Will) that is resident or deemed resident in Canada will be required to file a T3 return even if the trust does not have any income to report.

All non-resident trusts which are required to file T3 returns and express trusts resident or deemed resident in Canada will be required to disclose additional information in a new schedule which is to be filed along with theT3 return.

The new schedule must report the (i) name; (ii) address; (iii) date of birth (for individuals); (iv) jurisdiction of residence; and (v) taxpayer number[1] for each of the following:

- the settlor or creator of the trust;
- each of the trustees;
- each of the beneficiaries (including contingent beneficiaries); and
- any person who has the ability to exert control or override trustee decisions regarding appointment of income or capital (such as a protector).

The form of the new schedule has not yet been released by the CRA.

Exceptions

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[1] The form of the taxpayer number will vary depending on the entity. For example, it is the Social Insurance Number for individuals; Business Number for corporations; CRA account number for Canadian resident trusts or similar account numbers for foreign trusts.

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

i. Trusts in existence for less than three (3) months as of December 31, 2021;

ii. Trusts that hold less than $50,000 in assets throughout the taxation year (where the assets are certain government debt obligations, deposits and listed securities);

iii. Graduated rate estates;

iv. Qualified disability trusts;

v. Trusts that qualify as non-profit organizations or registered charities;

vi. Trusts governed by registered plans such as RRSPs, RESPs, RRIFs etc.;

vii. certain regulated trust accounts such as a lawyer's general trust account; and

viii. Mutual fund trusts, segregated funds and master trusts.

Penalties for Non-compliance

The penalty for failing to file a T3 or the new schedule is $25 per day with a minimum penalty of $100 and a maximum of $2,500. If the failure is made knowingly or due to gross negligence, an additional penalty will apply which will be the greater of (i) $2,500 or (ii) 5% of the maximum value of the property held during the relevant year. It is important to note that existing late-filing and non-filing penalties with respect to the T3 return shall continue to apply which can include a fine, a penalty of up to $25,000 and imprisonment.

Going Forward

As fiduciaries of a trust, it is essential for trustees to understand the new reporting obligations established by the CRA and to ensure its ongoing compliance. Trustees should ensure proper safekeeping and documentation of trust information and activities including constating documents, annual resolutions, distributions, annual filings, trustee resolutions and a trustee register.

If you have any questions about the foregoing, please contact any member of the Tax and Wills and Estates Group.