

Bare Trusts: Laying Bare Imminent T3 Filing Requirements

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Unless a specific exemption applies, a 2023 T3 Return is required to be filed for Canadian resident bare trusts on or before April 2, 2024, along with a completed T3 Schedule 15 to report beneficial ownership information. A bare trust is a trust arrangement under which the trustee can reasonably be considered to act as agent for all the beneficiaries with respect to the trust's property; the trustee's sole function is to hold legal title to the subject property. In our view, a nominee arrangement is generally a bare trust arrangement (under a different name) that would be subject to the same trust reporting requirements.

In general, the only bare trusts that will not be required to file a 2023 T3 Return are those that have been in existence for less than three months at the end of 2023 and those that held only certain assets^[1] if the aggregate value of those assets did not exceed \$50,000 at any time during the year.

On December 12, 2023, the CRA updated its guidance ("**CRA Guidance**") on the new trust reporting requirements applicable to all express trusts (a trust created with the settlor's express intent, as opposed to a resulting or constructive trust) with tax years ending on or after December 31, 2023. Generally, all trusts have a December 31 year-end. The CRA Guidance can be accessed [here](#).

Certain highlights of the CRA Guidance applicable to bare trusts are as follows:

- The CRA will waive failure to comply penalties for bare trusts with late-filed T3 Returns and Schedule 15 for the 2023 taxation year. However, a different penalty may apply if there is a failure to file the return or schedule where the failure is made knowingly or under circumstances amounting to gross negligence (notably, this penalty can be severe as it is the greater of \$2,500 and 5% of the highest amount at any time in the year of the fair market value of all the property held by the trust).
- Bare trusts filing for the first time will need to register for a trust account number.
- Bare trusts are to provide supporting documentation when registering for a trust account number or filing a trust return for the first time.
 - If the bare trust is not documented, a written summary of the nature of the trust arrangement is to be provided. The written summary is to include the title as "Summary of [Trust Name]", date of trust creation, and the names of the trustees, settlor, and beneficiaries.
- Bare trusts names should be chosen based on:
 - The trust's written trust deed or other governing agreement that identifies a name for the bare trust.
 - If there is no written trust deed or other governing agreement, use the legal name of the beneficial owner(s) with the word "Trust" at the end.
 - When using the CRA's online services, there is a 60-character limit for the trust's name; if the name exceeds the limit, ensure that "Trust" is included in the name (deleting/omitting immediately preceding/following characters).

Despite the absence of financial penalties for late-filing, trustees of bare trusts may wish to meet the April 2, 2024 deadline to lower the risk of drawing CRA eyes to the arrangement (even if there isn't much to see). As such, to the extent they have not done so

already, trustees may wish to collect the requisite information for the T3 Return and Schedule 15 (e.g., name, address, date of birth, country of residence, and taxpayer identification number of all beneficiaries, trustees, settlors, and controlling persons of the bare trust) and register for a trust account number to meet this deadline.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] In general, money, certain debt obligations listed on designated stock exchange or guaranteed by the Canadian or a municipal or provincial government, shares or rights listed on a designated stock exchange, units of a trust if all units of the trust are listed on a designated stock exchange, shares of a mutual fund corporation, units of a mutual fund trust, and interests in a related segregated fund trust.

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