Parks & Company
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Disclaimer: The information below is very general in nature; use with caution. Refer to the CRA website for full details.

Memo: Examples of BARE TRUSTS where reporting will most likely be required

The Federal Budget in 2018 hinted at tightening up tax avoidance and filing requirements for Trusts.

On December 15, 2022, Bill C-32 expanded on all Trust Reporting rules and received royal assent.

Since then, CRA has released a number of technical interpretations, question & answers and updates to their website to educate the public on how these new rules will be interpreted and implemented.

ALL TRUSTS (which will include arrangements of Bare Trusts), unless they are specifically considered a Listed Trust (which includes Trusts which are less than 3 months old at December 31st, have prescribed cash assets of less than $50,000, or are an Estate Graduated Rate Estate, Charities or Registered RRSP or LIF trust), OR if the Trust has taxable income of more than $500, has deemed dispositions or income tax payable, **MUST** file a T3 Trust Income Tax and Information Return for years ending December 31, 2023.

CRA has expanded their explanatory webpage to include the definition of Bare Trusts even though the term is not specifically defined in the Income Tax Act. **BARE TRUSTS include** ***"An arrangement where the Trustee can reasonably be considered to act as an agent for all Beneficiaries."*** **The Trustee,** ***has no significant powers or responsibilities, cannot take action without instructions or permission from the Beneficiary, and the only purpose of the Trustee is to hold legal title to the property*****.**

Some examples of Bare Trusts include:

Bank/Investment Accounts: where the Trustee holds legal ownership of the investments while the Beneficiary has the right to all the income and the capital in these accounts. Many taxpayers will add names or open accounts in order to facilitate ongoing financial eldercare or to facilitate transition and management upon death. Sometimes there are investment accounts held in trust for children or grandchildren without any formal trust deed or document; these are all examples of Bare Trusts;

Real Estate: quite often in estate planning situations, names of individuals will be added to title of real estate without the Beneficiary reporting a sale on their income tax returns (because no real sale ever took place; the adding of the name was only done to facilitate transition upon death). This is another example of a Bare Trust whereby a person's name is on legal title without any power or responsibility. Sometimes a Parent's name might be added to title of real property to facilitate financing requirements for the beneficiary (a child); failure to disclose on a T3 might possibly result in future capital gains tax.

Other Bare Trust situations can exist when only one spouse has their name on title of a property and is holding the other half of the property in trust for the other spouse, or when a Property Manager is holding a bank account for the property owner, or a Lawyer has a specific trust account for a particular client, or possibly even when a shareholder is holding a vehicle in trust for their own corporation. And there are many more possibilities; Go To: New Bare Trust Reporting Requirements on the CRA Website.

Late Filing Penalties under ITA Set 162(7) can be levied at $100/day up to a max of $2,500.00, and **Gross Negligence Penalties** (GNP) under ITA Sect 163(6) can be levied up to a maximum of $2,500.00. CRA has stated the late penalty ITA 162(7) may be waived for 2023, however the GNP may still apply.