

## Special Report On Taxes 2021

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# Landmark transparency deadline looms for trustees

New rule changes will pierce the privacy enjoyed by trusts that hold family cottages and other assets

By: Michael McKiernan | Source : Investment Executive | November 1, 2021 | 00:03



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## Michael McKiernan

Trustees and beneficiaries are preparing for a historic dose of transparency as a landmark tax filing deadline approaches.

Any non-resident trust that files a T3 tax return and virtually all express trusts resident in this country will have to turn over beneficial ownership information to the Canada Revenue Agency (CRA) for taxation years ending on or after Dec. 31.

The changes, which appeared in the 2018 federal budget and were detailed in draft legislation later that year, force trusts to reveal the identity of all trustees, beneficiaries and settlors, as well as the name of any person who can control the trust's appointment of income or capital. While the changes have not been introduced in legislation, the government stated in both the 2019 and 2021 federal budgets that it intended to proceed with the measures. As a result, the tax and estate community is proceeding based on the 2018 draft legislation.

Although there are exemptions for certain specialized trusts or those holding assets worth \$50,000 or less, Susannah Roth, partner with O'Sullivan Estate Lawyers LLP in Toronto, said the changes will pierce the privacy enjoyed by many trusts before now, including those used to hold family cottages, foreign real estate and private-company shares.

Historically, these trusts often were excused from tax filing requirements because T3 returns were needed only when trusts owed taxes, earned income or distributed income or capital to beneficiaries, Roth said.

"Globally, we're seeing a push for more transparency from a tax policy perspective, and that is making its way to trust and corporate policy at home," Roth said. "These new filing requirements seem to be aimed at money laundering and tax liability issues. It's certainly possible trusts are being used for purposes like that, but it's difficult to say at this point if the concern is warranted or whether these new measures will assist in preventing them."

Either way, the federal government has given trustees good reason to take their reporting obligations seriously, with penalties for non-compliance of \$25 per day up to a maximum of \$2,500. However, the fine escalates to as much as 5% of the trust's total assets when failure to file was done knowingly or as a result of gross negligence.

"The penalty side is just obscene," said Jennifer Stebbing, an estate planning partner with Hamilton, Ont.-based law firm Ross & McBride LLP. "It will be interesting to see how forgiving or not the CRA is with people who can't or don't report."

Throughout 2020, Stebbing's firm dealt with a spate of windups as trustees of dormant or non-income-generating trusts rushed to shut down rather than comply with the upcoming reporting requirements.

"There are people who like trusts because of the privacy, which is being taken away," Stebbing said.

According to Roth, a second wave of windups may follow next year as trustees confront the reality of the new rules.

"For a lot of trustees, it's just a bit of a pain," Roth said. "In some situations, they might want to seek professional advice about whether it makes sense to wind up the trust so there are no ongoing filing requirements."

But the burden does not fall evenly across trustees, said Jade Renaud, who practices corporate law with Mann Lawyers LLP in Ottawa. "These disclosure requirements are likely to be onerous for certain trustees, such as those of trusts with broad classes of beneficiaries or many contingent

beneficiaries,” she said. “Challenges may also arise where beneficiaries cannot be located or where they are not co-operative.”

Renaud suggested trustees “engage in early communication with beneficiaries and settlors so that obligations are clear, and information can be gathered in a timely manner.”

Stebbing said the new reporting requirements have raised the hackles of her colleagues in the accounting and tax fields. “It’s a constant game of cat and mouse between the accountants and the CRA,” she said. “The CRA is now going to get the same information as the accountants, but it’s anyone’s guess what they’re going to do with it.”

In the meantime, the federal government unveiled another set of beneficial ownership transparency measures in the 2021 budget: \$2.1 million for the creation of a corporate beneficial registry, to go live in 2025.

“It’s a big step for Canada,” said Kevin Comeau, who practises corporate law in Toronto. “We’ve been a laggard for a very long time in terms of transparency, which is why we’re one of the top targets for international money launderers. Getting this registry up as soon as possible can do much to rectify that.”

To maximize the registry’s effectiveness, Comeau, who served as a member of Transparency International’s working group on beneficial ownership, said the identity information filed on it must be verified by staff. In addition, the registry must be open to the public and accessible free of charge.

“If you have a paywall, it dramatically reduces the number of searches people can do,” Comeau said. “We want information to flow in from around the world.”

*Editor’s note:* A Department of Finance official provided the following statement after *Investment Executive* went to press: “The government has been consulting with stakeholders on this measure and there is no new information that can be provided at this time. Taxpayers would not be required to file in accordance with the measure until enabling legislation receives Royal Assent.”

