

CRA Clarifies Penalty Relief for Bare Trusts

March 22, 2024

By Ryan Morris, Michael Ding

Bare trusts, unless specifically exempted, are required to file a 2023 T3 Return on or before April 2, 2024 with a completed T3 Schedule 15 to report beneficial ownership information. For more details, please see our prior publication on the subject accessible [here](#).

Earlier this month, the Canada Revenue Agency (“CRA”) updated its guidance (the “Guidance”) (accessible [here](#)) with respect to the waiver of late-filing penalties for bare trusts stating that such penalties will be waived for the 2023 tax year “in situations where the T3 Return and Schedule 15 are filed after the filing deadline for reasons other than gross negligence.”

The Guidance also states that gross negligence penalties will be subject to oversight and approval by Headquarters and will only be applied “in the most egregious cases where a bare trust fails to file” and “would only occur in the context of a compliance action, such as an audit, where all factors and circumstances of the taxpayer’s particular situation are considered together.” The gross negligence penalties can be severe being 5% of the highest amount at any time in the year of the fair market value of all properties held by the trust with a minimum penalty of \$2,500.

Although the CRA is not bound by law to follow its administrative positions, the Guidance provides comfort that the CRA will almost certainly not apply any late-filing penalties provided the return is filed prior to a “compliance action” such as an audit or demand to file. As the timing of a CRA compliance action is out of the control and unknown to taxpayers, taxpayers should file their returns by the deadline (or, failing that, as soon as possible thereafter).

Even if the returns are filed after a compliance action, taxpayers will be able to argue that their situation is not a “most egregious case” that warrants gross negligence penalties according to the Guidance. We suspect that relevant factors that the CRA will consider in making this determination will include, among other possible factors, the sophistication of the taxpayer (and/or its advisors), whether the taxpayer was aware of the filing requirement, and the role of the bare trust in a tax plan (e.g., whether the taxpayer may have been seeking a tactical or other advantage by avoiding or delaying disclosure of information to the CRA).

What is Gross Negligence

Gross negligence is not defined in the *Income Tax Act* (Canada). In general, gross negligence may attach to conduct, whether an act or a failure to act, that (a) is tantamount to intentional conduct, (b) shows an indifference as to whether the Act is complied with, or (c) shows a wilful, reckless or wanton disregard of the law.

Other Penalties

It is important to note that the CRA’s relief as provided for in the Guidance is limited to late-filing penalties and does not extend to other penalties such as those that are applicable where a taxpayer makes a false statement or omission in the T3 return and Schedule

15. Accordingly, trusts with reporting obligations should also ensure that all required information is reported correctly including for all beneficiaries, trustees, settlers, and protectors.

If you would like to learn more about the Tax services that WeirFoulds offers, please visit our [Tax Practice Group](#) page. If you have any questions about the the CRA's new guidance on bare trusts reporting obligations, please contact Ryan Morris at rmorris@weirfoulds.com.

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.

For more information or inquiries:



Ryan Morris

Toronto
416.947.5001

Email:
rmorris@weirfoulds.com

Ryan Morris is a tax partner and Chair of the firm's Tax Group. His legal practice focuses on various areas of domestic and international taxation, including advising on mergers and acquisitions, structured investment products, financings, estate plans, employment tax issues and a broad range of corporate tax matters. Ryan also represents clients with voluntary disclosures, audits and appeals, and he has been lead counsel at every level of court, including the Supreme Court of Canada.



Michael Ding

Toronto
416.619.2096

Email:
mding@weirfoulds.com

Michael Ding is an Associate in the Tax Group at WeirFoulds LLP with a practice that focuses on various areas of domestic and international taxation planning, advice, and dispute resolution.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035