

Trust beneficiary reporting deferred for one year

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The CRA [announced on January 14, 2022](#) that it will not require trusts to comply with the proposed beneficial ownership and controlling person disclosure rules that were originally supposed to take effect for the 2021 taxation year. This announcement comes as welcome news, given the expectation that such reporting would be required by March 31, 2022 for the 2021 taxation year and that much of what had to be reported is information not previously collected (and potentially not even known), much less disclosed, by trustees. The CRA says that it will begin requiring such reporting once there is enacted legislation. Although Revenue Québec has not publicly responded to the CRA announcement, similar deferral ought to be available in Québec.

Proposed federal trust filing and reporting measures

The federal measures in question are part of a package of trust reporting changes. These were contained in draft amendments to the Income Tax Act (Canada) and its accompanying regulations released on July 27, 2018, which provide that:

1. trusts resident in Canada and non-resident trusts that are required to file a return will be required to list each person who at any time in the year was a trustee, beneficiary or settlor or had the ability to exert control over trustee decisions over the allocation of trust income or capital, and to provide certain personal information about those persons (name, address, date of birth (for individuals), jurisdiction of residence and social insurance number or other applicable taxpayer identification number) (Beneficial Ownership and Control Information),
2. trusts resident in Canada will be required to file a tax return every year regardless of whether the trust has tax payable or distributes a portion of its income, and
3. new penalties will be introduced for failure to file a return containing trust Beneficial Ownership and Control Information — including, notably, a penalty of no less than 5% of the highest fair market value of the trust property during the year where the failure to file was done knowingly, or due to gross negligence.

Under the 2018 draft amendments, certain types of trusts are exempted from the expanded

filing and reporting requirements, including mutual fund trusts, segregated funds, master trusts, and trusts governed by registered plans. Investment funds organized as trusts that do not qualify as “mutual fund trusts” are not exempt.

When is the new reporting required?

The 2018 draft amendments provided that the new trust filing and reporting measures were to take effect for taxation years of trusts that end after December 30, 2021. Since Canadian resident trusts (other than certain mutual fund trusts) generally must use December 31 as their taxation year end, this meant that trust Beneficial Ownership and Control Information reporting was supposed to commence for the 2021 taxation year. The CRA’s public and longstanding practice is to ask taxpayers to file on the basis of proposed legislation. It would therefore have been consistent with past administrative action for the 2021 T3 tax return form to have required trust Beneficial Ownership and Control Information. However, the CRA had not made any public announcements regarding this issue in recent months, and did not release the [2021 T3 tax return form](#) until January 12, 2022, and, so for much of 2021, trusts and trust administrators had been in considerable suspense over whether the CRA would indeed require trust Beneficial Ownership and Control Information for that year.

On January 14, 2022, the silence was broken with the release of this CRA statement:

The legislation to support this proposed measure is pending. The CRA will administer the new reporting and filing requirements once there is supporting legislation that receives Royal Assent. The CRA will continue to administer the existing rules for trusts, under enacted legislation. The proposed beneficial ownership reporting requirements will not be part of the published 2021 T3 income tax return.

One would expect Parliament to enact the trust filing and reporting measures in 2022, in which case the first T3 tax returns in which trust Beneficial Ownership and Control Information would have to be reported to the CRA are those to be filed in early 2023 for the 2022 taxation year. For now, trustees and others engaged in trust tax compliance have another year to collect the required personal information on beneficiaries and other required persons.

Timing for reporting in Québec

In addition to having to file a federal income tax return, trusts that are subject to Québec income tax must file a separate provincial tax return.

In the [Québec 2021-2022 provincial Budget \[PDF\]](#), the Québec government announced that it will harmonize the Québec tax system with the federal trust disclosure rules, in accordance with its general principles, with such measures to take effect when the federal rules receive royal assent. Toward the end of last year, Revenu Québec published the [2021 provincial Trust Income Tax Return TP-646-V](#). Unlike its federal counterpart, the Québec form does require taxpayers to provide trust Beneficial Ownership and Control Information for 2021. Although Revenu Québec has not publicly responded to the CRA announcement, based on the Québec Budget measures, a similar deferral of the disclosure rules should be available in Québec. It is hoped that Revenu Québec will clarify that disclosure of beneficial ownership and control information is not required in Québec for 2021.