

## FINANCE PROPOSES COMPLICATED AMENDMENTS TO TRUST REPORTING REQUIREMENTS

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### A. INTRODUCTION

As reported in earlier 2024 and 2023 editions of our *Charity & NFP Law Update*,<sup>1</sup> trust reporting requirements under the *Income Tax Act* (“ITA”) have been significantly expanded pursuant to detailed and complicated amendments introduced through Bill C-32, the *Fall Economic Statement Implementation Act, 2022* (“Bill C-32”). Following the introduction of Bill C-32, administrative exemptions were announced by the Canada Revenue Agency (the “CRA”) on November 10, 2023 and March 28, 2024, as referenced below. Further complicated amendments to the trust reporting rules have now been proposed pursuant to draft legislation published by the Department of Finance Canada (“Finance”) on August 12,

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<sup>1</sup> See Terrance S. Carter, Theresa L.M. Man and Jacqueline Demczur, *April 2024 Charity & NFP Law Update*, “Some Good News and Some Not So Good News About the Impact of Trust Reporting Requirements on Charities and NFPs”, April 1, 2024, Carters Professional Corporation, online: <[https://www.carters.ca/index.php?page\\_id=3398](https://www.carters.ca/index.php?page_id=3398)>; Terrance S. Carter, Theresa L.M. Man and Jacqueline Demczur, *February 2024 Charity & NFP Law Update*, “Reminder of Possible T3 Trust Reporting for Charities and NPOs Due April 2, 2024”, February 29, 2024, Carters Professional Corporation, online: <[https://www.carters.ca/index.php?page\\_id=3363](https://www.carters.ca/index.php?page_id=3363)>; Terrance S. Carter, Theresa L.M. Man and Jacqueline Demczur, *November 2023 Charity & NFP Law Update*, “More Clarity Needed on T3 Filing Requirements for Charities and NPOs”, November 30, 2023, Carters Professional Corporation, online: <[https://www.carters.ca/index.php?page\\_id=3242](https://www.carters.ca/index.php?page_id=3242)>; and Terrance S. Carter, Theresa L.M. Man, Jacqueline Demczur and Lynne M. Westerhof, *Charity & NFP Law Bulletin No. 522*, “Changes to trust Reporting Rules Will Seriously Affect Charities, Clarity Needed”, June 29, 2023, Carters Professional Corporation, online: <<https://www.carters.ca/pub/bulletin/charity/2023/chylb522.pdf>>.

2024 as [Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations \(Technical Amendments\)](#) (the “Draft Legislation”).<sup>2</sup>

This is an exceedingly complex area of the law. As a result, what follows constitutes only a very general overview of certain select aspects of the Draft Legislation that will be of interest to charities and not-for-profits (“NFPs”). For a more in-depth consideration of the Draft Legislation and its implications for charities and NFPs, readers are strongly encouraged to obtain advice from their legal and/or tax professionals.

## B. HISTORICAL CONTEXT

Under the trust reporting rules, as amended by Bill C-32, certain express trusts and bare trusts that were previously exempt from filing the T3, *Trust Income Tax and Information Return* (“T3”), are now required to file T3s for taxation years ending on or after December 31, 2023. Although the amended ITA did not specifically address internal trusts for charities (e.g. restricted charitable purpose trusts, such as an endowment, a scholarship or building fund), clarification was subsequently provided on November 10, 2023 by the CRA that it would not be requiring registered charities to file T3s for their internal trusts. Subsequently, the CRA announced on March 28, 2024 that it would also “not require bare trusts to file a T3 [...], including Schedule 15 (Beneficial Ownership Information of a Trust), for the 2023 tax year, unless the CRA makes a direct request for these filings.”<sup>3</sup>

The CRA’s March 28, 2024 announcement provided relief through a last-minute administrative exemption for many Canadian taxpayers, including charities and NFPs, who were concerned that certain trusts they may have been involved with would be subject to extensive filing requirements by the CRA for the 2023 taxation year. However, notwithstanding this good news on bare trusts, filing relief was not extended to express trusts, for which charities and NFPs, along with all other taxpayers, were still required to file a T3 for each express trust held by them, with failure to do so resulting in the risk of serious financial penalties.<sup>4</sup> This issue was further complicated by the fact that the distinction between bare trusts and express trusts is

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<sup>2</sup> Department of Finance Canada, *Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations*, August 12, 2024, Government of Canada: online: <<https://fin.canada.ca/drleg-apl/2024/ita-lir-0824-1-3-eng.html>>.

<sup>3</sup> For more information, please see Terrance S. Cater, Theresa L.M. Man and Jacqueline Demczur, *April 2024 Charity & NFP Law Update*, “Some Good News and Some Not So Good News About the Impact of Trust Reporting Requirements on Charities and NFPs”, April 1, 2024, Carters Professional Corporation, online: <[https://www.carters.ca/index.php?page\\_id=3398](https://www.carters.ca/index.php?page_id=3398)>

<sup>4</sup> For further details about penalties, see Canada Revenue Agency, “T3 Trust Guide – 2023”, Government of Canada, online: <[https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P430\\_52301](https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P430_52301)>.

not defined in the ITA and the definitions of these terms provided by the CRA is less than clear, with resulting potential overlap between the two.

All of this has resulted in many charities and NFPs having to incur additional professional fees in order to retain legal and tax professionals to assist them with determining whether or not they were subject to the March 28, 2024 administrative exemption, which, should be noted, is only applicable for the 2023 taxation year. Readers will be interested to know that on July 10, 2024, the Taxpayers' Ombudsperson, François Boileau, "[opened a systemic examination](#)" into whether the late administrative exemption on March 28, 2024 infringed on taxpayers' rights.

## C. OVERVIEW OF DRAFT LEGISLATION

While charities and NFPs had hoped for greater clarity and relief from trust reporting requirements, the administrative relief offered by the CRA in the March 28, 2024 announcement provided only a temporary reprieve and did not eliminate the confusion associated with the new trust reporting rules. While the Draft Legislation proposed by Finance provides some additional relief, which is welcome, it has also added to the complexity of trust reporting requirements. In very general terms, the Draft Legislation proposes to:

- (1) extend the exemption for reporting bare trusts for one additional year, being the 2024 taxation year;
- (2) exclude bare trusts from the definition of a trust or estate in subsection 104(1), except in limited circumstances;<sup>5</sup>
- (3) exempt trusts (including bare trusts) from filing when all trustees are individuals and are related to the beneficiaries, the total fair market value of the property of the trust does not exceed \$250,000 throughout the taxation year, and the only assets held by the trust are cash, GICs, certain debt obligations (including publicly listed securities), or various other assets listed in proposed subparagraph 150(1.2)(b.1)(iii) of the ITA;
- (4) provide a blanket filing exemption for trusts with a fair market value of \$50,000 or less; and

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<sup>5</sup> References to a "trust or estate" will continue to include bare trusts for the purposes of subsection 104(1) of the ITA, subsection 104(1.1), subparagraph (b)(v) of the definition disposition in subsection 248(1), and paragraph (k) of the same definition. As well, a trust will be deemed to include a bare trust where the trust is described in any of paragraphs (a) to (e.1) of the definition trust in subsection 108(1).

(5) identify certain trusts that are deemed to be express trusts (and therefore subject to filing requirements), together with exceptions to these “deemed trusts”, which are discussed further below;

#### **D. THE DEEMED TRUST REGIME**

The “deemed trusts” provisions and applicable exceptions will be of interest to charities and NFPs. These provisions are introduced through the revised subsection 150(1.3) of the ITA, with the current subsection 150(1.3) to be repealed for taxation years that end after December 30, 2024. More specifically, the new provisions set out in the revised subsection 150(1.3) will specify if a trust is required to report by effectively creating a regime in which “beneficial ownership arrangements” that are not otherwise treated as trusts under the ITA will be subject to reporting requirements if they are “deemed trusts”.

The explanatory notes to the Draft Legislation state that the new subsection 150(1.3) will provide further clarity on what constitutes a “bare trust” for the purpose of reporting requirements.<sup>6</sup> The new subsection will use the existing concept of the division of legal and beneficial ownership, and will purportedly capture arrangements that would otherwise constitute a bare trust. In combination with the exceptions in subsection 150(1.31), Finance claims that this will assist in determining which arrangements will be subject to reporting.

Under the proposed revisions to subsection 150(1.3), an express trust is deemed for the purposes of section 150 of the ITA (concerning returns and the filing thereof) and section 204.2 of the *Income Tax Regulations* (concerning additional reporting for trusts) to include arrangements in which:

- one or more persons (the legal owner) have legal ownership of property that is held for the use of, or benefit of, one or more persons or partnerships, and
- the legal owner can reasonably be considered to act as agent for the persons or partnerships who have the use of, or benefit of, the property;

As well, for purposes of section 150 of the ITA and section 204.2 of the *Income Tax Regulations*, each person that is a legal owner of an arrangement set out above is deemed to be a trustee, and each person or

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<sup>6</sup> Department of Finance Canada, “*Explanatory Notes to Legislative Proposals Relating to the Income Tax Act and Regulations*”, August 12, 2024, Government of Canada, online: <<https://fin.canada.ca/drleg-apl/2024/ita-lir-0824-n-3-eng.pdf>>.

partnership that has the use or benefit of property under an arrangement that is set out above is deemed to be a beneficiary.<sup>7</sup>

Any arrangement deemed to be a trust by subsection 150(1.3) of the ITA and that does not also qualify for the exceptions listed in subsection 150(1.2) will be subject to reporting requirements at the end of the taxation year. However, these reporting requirements will only come into effect for taxation years that end on December 31, 2025 or later.

Despite subsection 150(1.3) deeming certain arrangements to be express trusts, subsection 150(1.31) sets out certain exceptions to the list of deemed trusts. This means that any arrangements that meet any of the criteria set out in proposed paragraphs 150(1.31)(a)-(g) will not be deemed to be express trusts and, therefore, would be exempt from the trust reporting requirements. Of particular interest to charities and NFPs is paragraph 150(1.31)(a), which provides a reporting exception for arrangements where each legal owner is also deemed to be a beneficiary under paragraph 150(1.3)(c). This exception effectively provides a statutory basis for the CRA's administrative filing exemption for internal trusts of charities that was announced on November 10, 2023.<sup>8</sup>

As well, paragraph 150(1.31)(g) provides a reporting exception for trusts: (1) whose property consists solely of funds received from the Crown; (2) where such property is held exclusively for the use by, or benefit of, tax-exempt persons under subsection 149(1) of the ITA; and (3) where each legal owner is also tax-exempt pursuant to subsection 149(1). The explanatory note for the Draft Legislation explains this as “an arrangement where a non-profit organization holds funds it has received from the federal or provincial governments for the use or benefit of other non-profit organizations.”<sup>9</sup>

## E. CONCLUSION

The Draft Legislation provides some welcome relief in the form of an extension of the exemption for bare trusts from filing requirements for the 2024 taxation year, as well as more generous exceptions to the trust reporting requirements for both bare and express trusts. However, the complexities of the new trust reporting regime under the ITA continue to be daunting and, as such, will most likely be beyond the ability

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<sup>7</sup> *Ibid* at page 28.

<sup>8</sup> See Terrance S. Carter et al, “*More Clarity Needed on T3 Filing Requirements for Charities and NPOs*”, November 30, 2023, Carters Professional Corporation. Online: < [https://www.carters.ca/index.php?page\\_id=3242](https://www.carters.ca/index.php?page_id=3242)>.

<sup>9</sup> *Supra* note 6 at page 29.

of most charities and NFPs to be able to navigate on their own without the help of legal and/or tax professionals. These are expenses, though, that charities and NFPs should not have to incur.

As we have reported in previous articles, notwithstanding that charities are exempt from having to file T3 returns for internal trusts, NFPs are not currently similarly exempt.<sup>10</sup> As well, charities and NFPs remain subject to trust reporting requirements if they hold property in trust for a third party or a third party holds property in trust for a charity or NFP, subject to the exceptions set out in Bill C- 32 as amended by the Draft Legislation.

Given that there continues to be a significant degree of uncertainty about how trust reporting requirements will apply to charities and NFPs, particularly since there may be further amendments to the Draft Legislation released by Finance before it is expected to be enacted later this year, it will be important for charities and NFPs to continue to carefully monitor legislative developments as they occur and watch for any guidances that may be issued by the CRA. For those charities and NFPs, as well as their professional advisors, who are interested in providing feedback on the Draft Legislation, comments can be sent to Finance until September 11, 2024, via email to [consultation-legislation@fin.gc.ca](mailto:consultation-legislation@fin.gc.ca).

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<sup>10</sup> See Terrance S. Carter, Theresa L.M. Man and Jacqueline Demczur, *April 2024 Charity & NFP Law Update*, “Some Good News and Some Not So Good News About the Impact of Trust Reporting Requirements on Charities and NFPs”, April 1, 2024, Carters Professional Corporation, online: <[https://www.carters.ca/index.php?page\\_id=3398](https://www.carters.ca/index.php?page_id=3398)>; and Terrance S. Carter, Theresa L.M. Man and Jacqueline Demczur, *February 2024 Charity & NFP Law Update*, “Reminder of Possible T3 Trust Reporting for Charities and NPOs Due April 2, 2024”, February 29, 2024, Carters Professional Corporation, online: <[https://www.carters.ca/index.php?page\\_id=3363](https://www.carters.ca/index.php?page_id=3363)>.



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