

 <p>CARTERS BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>Carters Annual <i>Charity & Not-for-Profit Law</i> Webinar November 9, 2023</p>		
<p>Alternative Minimum Tax and New Trust Reporting Rules for Charities (current as of Nov. 7, 2023)</p> <p>[Postscript – Slide 23 - One day after this presentation, the CRA announced on Nov. 10, 2023, providing relief from trust reporting for charities]</p> <p>By Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M. tman@carters.ca 1-877-942-0001</p> <p>© 2023 Carters Professional Corporation</p> <table border="0"><tr><td data-bbox="259 833 645 882">CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</td><td data-bbox="652 833 1209 882">Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca</td></tr></table>		CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001	Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca
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	<p>2</p> <p>\$\$\$\$\$\$\$ TAX TIME \$\$\$\$\$\$\$</p> <ul style="list-style-type: none">• Proposed Changes to Alternative Minimum Tax Affecting Charities• New Trust Reporting Rules for Charities
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PROPOSED CHANGES TO ALTERNATIVE MINIMUM TAX AFFECTING CHARITIES ³

What is this??

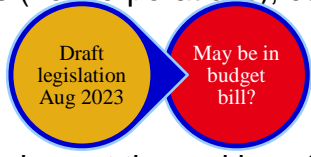
How does this
affect my
charity?

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Draft Changes to Alternative Minimum Tax Affecting Charities

What legislation contains changes to the Alternative Minimum Tax (AMT)?

- Draft Legislation proposed amendments to the *Income Tax Act* (ITA) on alternative minimum tax (“AMT”) for high-income individuals (not corporations), certain estates and trusts



- Changes will negatively impact the making of future transformational gifts by high net worth donors to charities
- AMT changes are effective for taxation years that begin after 2023

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What is AMT?

- AMT is not new
- This is to ensure that every individual pays at least a minimum amount of tax

Two ways to calculate tax liability

Taxpayers are required to calculate their tax liability under the “regular” method and under the AMT

If a taxpayer has claimed preferential tax deductions resulting in a lower tax liability under the regular method, then they will have to pay the higher AMT

Proposed changes to the AMT

- These changes will increase the income level required for taxpayers to be subject to the AMT but also cause those who are subject to the AMT to pay more taxes

Currently AMT applies a flat 15% tax rate on an adjusted taxable income in excess of a \$40,000 exemption

Proposed changes The \$40,000 income exemption is proposed to be raised to \$173,000, which will be indexed to inflation, and the tax rate of 15% will increase to 20.5%

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Other proposed changes to AMT affecting charitable gifting	<p>The basic minimum non-refundable tax credits will be reduced by 50% (which include donation tax credits)</p> <hr/> <p>Capital gains on gifts of publicly listed securities will be included at a 30% rate (instead of currently such donations being tax free)</p> <hr/> <p>Capital gains on gifts of other capital property to charities will be increased to 100% inclusion rate</p> <hr/> <p>The proposed changes will not apply to graduated rate estates</p> <hr/> <p>AMT does not apply to corporations</p>
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- If enacted, these changes will significantly reduce the tax benefits to donors who are subject to the AMT when they donate publicly listed securities and capital property to charities
- Imagine Canada and CAGP have both made submissions voicing concerns that the proposed amendments could deter high-value charitable donations and undermine the vital work of the charitable sector
- CAGP's submission was endorsed by 180 signatories and sent to Finance on Sept 25, 2023
- Donors may have to pursue alternate tax planning methods, which could negatively impact the resources available to charities to carry on their important work in Canada and around the world

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NOW WHAT?

Stay tuned whether the proposed changes to the AMT will be revised



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NEW TRUST REPORTING FOR CHARITIES

Really ?

Really ?

????????

[Postscript – Slide 23 - One day after this presentation, the CRA announced on Nov. 10, 2023, providing relief from trust reporting for charities

Internal Express Trust Reporting for Charities

What legislation contains this requirement?

- Bill C-32 –
 - Implemented certain provisions of the Fall Economic Statement and the April 2022 Federal Budget
 - Released in November 2022, Royal Assent on December 15, 2022
- Long history of draft legislation



What is the requirement affecting charities?

New trust reporting for express trusts

- New trust reporting required for internal express trusts held by charities – by filing T3 returns within 90 days from trust's year end

Information included in the reporting

- Reporting must include – the names, addresses, dates of birth, jurisdiction of residence and taxpayer identification numbers ("TINs" as defined in subsection 270(1)) of each person that is a trustee, beneficiary, or settlor of the trust

Failure to file

- Failure to file a T3 return could face serious penalties for each express trust, being the greater of \$2,500 or 5% of the value of the trust property

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Subsection 150(1) - Have to file

- Subsection 150(1) stipulates the tax return requirements and the filing dates for different categories of taxpayers
- Trusts are required under paragraph 150(1)(c) to file a return within 90 days from the trust's tax year end

Subsection 150(1.1) exceptions - Not have to file

- Subsection 150(1.1) sets out exceptions to subsection 150(1) – i.e., where the filing of a tax return is not required

Exception to exceptions - Have to file

- Subsection 150(1.1) amended to make it subject to new subsection 150(1.2)
- New subsection 150(1.2) provides that the exceptions under subsection 150(1.1) do not apply to an express trust that is resident in Canada, unless the trust meets one of the exceptions listed in new paragraphs 150(1.2)(a) to (o) – such as
 - Registered charities and non-profit organizations established as trusts
 - Trusts that hold less than \$50,000 in assets throughout the taxation year (provided that their holdings are confined to cash, government debt obligations and listed securities)
- However, do not apply to internal trusts held by registered charities where the trusts are set up as express trusts

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Why the new trust reporting requirement?

- To provide disclosure of beneficiaries of previously unreported express trusts, as required by the Organization for Economic Co-operation and Development (“OECD”) that Canada is a member of

What does the new reporting mean to charities?

- T3 returns must be filed within 90 days from trust’s year end for all express trusts, unless an exemption applies
- There are exemptions for express trusts set up as registered charities and non-profit organizations
- BUT - there is no exemption for internal express trusts held by charities

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What are express trusts?

- The term “express trust” is not defined in the ITA
- CRA accepts that an express trust is generally a trust created with the settlor’s express intent, usually made in writing
- CRA takes the view that an “express trust is generally described as one where the person creating it (the settlor) has expressed his or her intention to have property held by one or more persons (the trustees) for the benefit of one or more persons (the beneficiaries)”

How are internal express trusts of charities created?

Clear Restrictions imposed by donors

- Internal trusts that are created expressly by donors would meet the definition at law to be “express trusts”
- Internal express trusts in charities are often created expressly by donors as special purpose charitable trusts – i.e., when a donor gifts property to be held “in trust” for a specific charitable purpose rather than for the general charitable purposes of the charity
- Often also referred to as - “donor restricted trust fund”; “charitable trust property”; “special purpose fund”; “restricted fund”

Examples

- endowment funds, scholarship funds, building funds,
- Donor advised funds (DAF) where the donors impose express restrictions on the DAF that are over and above the general direction that the gift be held in the DAF

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Lack of meaningful purpose to require charities to file trust returns for express internal trusts

All express internal trust funds are already included in the financial statement of charities

All express internal trust funds are reported in annual T3010s filed by charities

For some charities (e.g., universities and foundations), they may potentially have thousands of internally held express trust funds - compliance with reporting would create significant challenge in examining and compiling an accurate list of express trusts

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Solution - Government response?

- Submissions have been made from the sector to Finance and CRA voicing concerns, including Imagine Canada, Philanthropic Foundations Canada, and Community Foundations of Canada
- No indication of ITA amendment or CRA administrative policy to clarify that the new trust reporting does not apply to internal express trusts held by charities
- August 4, 2023 ITA draft budget implementation legislation added an exemption for express trusts held by the Canadian Wheat Board – but not express trusts held by charities

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What should charities do to comply with the trust reporting? **[IF no solution from Finance or CRA]**

- Charities and their professional advisors in the coming months will have to commence significant due diligence steps in order to prepare T3s for express trusts that the charities hold after December 30, 2023 for filing T3s within 90 days thereafter
- Time is running out
- A lot of preparation may be required – depending on the nature and size of the charity

Considerable preparation time will be required by impacted charities to ensure compliance with the new trust reporting requirements, including

- ▶ Understand the details and application of the new rules
- ▶ Review records
- ▶ Determine whether any of the internal trust funds held are “express trusts”
- ▶ Ascertain necessary information for identified “express trusts” required to be set out in the new T3s - e.g., the names of all donors (settlers) for each express trust, and donors’ taxpayer identification numbers
- ▶ Consider what to do if they do not have the said information
- ▶ Consult accounting and legal professionals

Resources

- *Charity & NFP Law Bulletin No. 522*, June 29, 2023
<https://www.carters.ca/pub/bulletin/charity/2023/chylb522.pdf>
- *Charity & NFP Law Update – August 2023*
<https://www.carters.ca/pub/update/charity/23/aug23.pdf>
- *Charity & NFP Law Update – September 2023*
<https://www.carters.ca/pub/update/charity/23/sep23.pdf>
- *Charity & NFP Law Update – October 2023*
<https://www.carters.ca/pub/update/charity/23/oct23.pdf>
- Article by Tim Cestnick in *The Globe and Mail* on July 6, 2023
<https://www.theglobeandmail.com/investing/personal-finance/taxes/article-new-canadian-tax-changes-create-unmanageable-burden-for-charities/>

**WHAT
DO I
DO?**

Stayed tuned
whether relief
will be coming
from Finance
or CRA

Post Script - CRA Announcement on Nov. 10, 2023 Providing Relief from Filing

- One day after this presentation, CRA sent an email announcement on November 10, 2023, indicating that it will not require registered charities to file T3 returns for internal trusts
- The announcement reminded charities that the T3010 they file must include aggregate information about the charities' property, including internal trusts

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