

# TIFFIN AND COMPANY ACCOUNTANTS & CONSULTANTS Saskatoon, SK

## NEW AND EXPANDED TRUST REPORTING: It's Here!

New rules aimed at providing more transparency on beneficial ownership of assets now require that **more trusts** (and estates) **file tax returns**. These changes will **catch many individuals and businesses that may not be aware of** their trust-like relationships, exposing them to potential **penalties** and other consequences for non-compliance. The rules become effective in 2023, with a filing deadline of **April 2, 2024**.

### Unexpected exposure – bare trust arrangements

The rules have been **expanded** to **include** cases where a **trust acts as an agent** for its beneficiaries, commonly known as a **bare trust**. In such instances, the **person/entity listed as the owner** of an asset is **not the true beneficial owner**; instead, they hold the asset on behalf of another party.

## STEP 1: Does a bare trust arrangement exist?

To determine if a bare trust arrangement exists, the following question should be asked:

- **Is the person on title or holding the asset the true beneficial owner?** For example, do they get the benefits of the asset (such as sale proceeds) and bear the costs or risks of the asset (such as property taxes)?

There is likely a bare trust arrangement if there is a mismatch between legal and beneficial ownership, often requiring a trust return.

There are **several reasons** why an **individual, business or organization** may use a **bare trust arrangement**. Many parties involved in a bare trust arrangement may **not realize** that they are, much less that there may be a filing requirement with CRA. **No lawyer** may have ever been involved, and **no written agreement** may have ever been drafted.

While there are **countless possibilities of bare trust arrangements**, the following lists **some** common potential **examples**.

### Individual Reasons

- a parent is on **title of a child's home** (without the parent having beneficial ownership) to **assist** the child in **obtaining a mortgage**;
- a parent or grandparent holds an **investment or bank account in trust** for a child or grandchild;
- **one spouse** is on **title of a house** or asset although the other spouse is at least a **partial beneficial owner**;

### Estate Planning Reasons

- a child is on **title of a parent's home** (without the child having beneficial ownership) for probate or estate planning purposes only;
- a child is on **parent's financial accounts** (or other assets) to assist with administration after the parent's passing;

### Business Administration Reasons

- a **corporate bank account** is opened by the **shareholders** with the corporation being the beneficial owner of the funds;
- a **corporation** is on **title of an individual's real estate, vehicle or other asset**, and vice-versa;
- **assets registered to one corporation but beneficially owned by a related corporation**;
- use of a **nominee corporation** for real estate development purposes;
- a **partner of a partnership** holding a **bank account or asset** for the benefit of all the other partners of a partnership;
- a **joint venture** arrangement where the operator holds legal title to development property as an agent for the

benefit of other participants;

- a **cost-sharing arrangement** where a person holds a business bank account, or other assets, to facilitate the arrangement while having no, or only partial, beneficial interest in these shared assets;

#### Industry-specific Issues

- a **property management company** holding operational bank accounts in trust for their clients, or individuals managing properties for other corporations holding bank accounts for those other corporations; and
- a **lawyer's specific trust account** (while a lawyer's general trust account is largely carved out of the filing requirements, a specific trust account is not).

CRA has not commented on several of the examples; it is uncertain how they will interpret and enforce the law.

## STEP 2: Does a trust return need to be filed?

After determining that a bare trust arrangement exists, it is important to determine **whether an exception from filing a trust return is available**.

Some of the more **common exceptions** include the following:

- trusts in existence for **less than three months** at the end of the year;
- trusts holding **only assets within a prescribed listing** that is very restrictive (such items in the listing include **cash** and **publicly listed shares**) with a total fair market value that does **not exceed \$50,000 at any time in the year**;
- **trusts required by law** or under rules of professional conduct to **hold funds** related to the activity **regulated** thereunder, **excluding** any trust that is maintained as a separate **trust for a particular client** (this applies to a lawyer's general trust account, but not specific client accounts); and
- registered **charities** and **non-profit clubs**, societies or associations.

A trust return must be filed if one of the exceptions are not met. Even where one of the new exceptions is met, a trust would still have to file a return if they had to file under the prior rules, such as the trust having taxes payable or having disposed of capital property.

## STEP 3: What information must be disclosed?

Where a trust is required to file a tax return, the **identity** of all the **trustees** (who is on title or holds the asset), **beneficiaries** (who really owns the asset), **settlers** (who owned the asset originally) and anyone with the **ability** to exert **influence** over **trustee decisions** regarding the income or capital of the trust must be disclosed.

Such required information includes:

- **name**;
- **address**;
- **date of birth** (if applicable);
- **country of residence**; and
- **tax identification number** (e.g. **social insurance number**, business number, trust number).

Obtaining this information proactively is especially helpful, particularly if those involved are no longer in close contact.

### Traditional trusts

Under the **previous rules**, a trust was required to file a **trust return** if one of several conditions were met, such as the **trust** having **taxes payable** or **disposing of capital property**. Many trusts did not meet a condition and, therefore, were not required to file a trust return previously. For example, many trusts owning shares of a private corporation were historically not required to file in years when there were no share sales or dividends received. However, trusts that were exempted from filing under the old rules are **now required to file** unless one of a **new set of narrow exceptions**

is also met. See some of the more common exceptions in STEP 2 above.

Under the new rules, some of the more **common trusts** that may require disclosure include the following: **trust owning shares of a private corporation**, trust owning a **family cottage**, **spousal or common-law partner trust**, **alter-ego trust** and **testamentary trust**.

### **Failing to File... So what?**

**Failure** to make the required **filings and disclosures on time** attracts penalties of \$25/day, to a maximum of \$2,500, as well as further **penalties on any unpaid taxes**. New **gross negligence** penalties may also apply, being the greater of \$2,500 and **5%** of the highest total **fair market value** of the **trust's property** at any time in the year. These will apply to **any person or partnership** subject to the new regime.

CRA has recently indicated that, for **bare trusts only**, the **late filing penalty** would be **waived for the 2023 tax year** in situations where the **filing is made after** the due date of **April 2, 2024**. However, CRA noted that this **does not extend** to the penalty applicable where the **failure to file** is made **knowingly** or due to **gross negligence**. As there is limited guidance as to who would qualify, it is recommended that disclosures should be made in a timely manner.

In addition to penalties, failing to properly file trust returns may result in **negative tax** (such as possibly losing access to the principal residence exemption) **and non-tax** (such as inadvertently exposing assets to creditors inappropriately) **consequences**.

# Tiffin and Company

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**R.L. (Rob) TIFFIN** (Owner and Business Consultant)

Dear Valued Clients,

I hope this email finds you well. As your trusted accounting firm, we are committed to ensuring the safety and security of your financial information. With the rise in cyber threats, it has become increasingly important to remain vigilant and proactive in safeguarding your email accounts and financial transactions.

Recently, there have been reports of scammers impersonating legitimate individuals or organizations to gain unauthorized access to email accounts or redirect e-transfers. These fraudulent activities can lead to significant financial loss and disruption to your business operations.

To mitigate the risk of falling victim to such scams, we strongly recommend implementing the following security measures:

- **Use Strong Passwords:** Ensure that your email account passwords are complex and unique. Avoid using easily guessable passwords and consider using a password manager to securely store your credentials.
- **Enable Two-Factor Authentication (2FA):** Enable 2FA whenever possible to add an extra layer of security to your email accounts. This requires a second form of verification, such as a code sent to your mobile device, in addition to your password.
- **Exercise Caution with Email Attachments and Links:** Be wary of unsolicited emails, especially those containing attachments or links. Verify the sender's email address and exercise caution before clicking on any links or downloading attachments, even if they appear to be from familiar sources.
- **Verify Payment Requests:** If you receive an email requesting a change in payment details or redirecting e-transfers, always verify the authenticity of the request through a separate communication channel, such as a phone call or in-person confirmation.

At Tiffin and Company, we are committed to helping you navigate the complexities of financial management while prioritizing the security of your sensitive information. If you have any concerns or questions regarding email security or any other financial matter, please do not hesitate to contact us.

Thank you for your attention to this matter, and together, let's continue to protect your finances from cyber threats.

R.L. (ROB) Tiffin  
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