Wealth Management

the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC WEALTH MANAGEMENT SERVICES

Ryan Chieduch, CFP, CIM, FCSI
Vice-President, Portfolio Manager & Wealth Advisor
Tel: 905-895-5603
ryan.chieduch@rbc.com

The Chieduch Group
of RBC Dominion Securities
17120 Leslie Street, Suite 200
Newmarket, ON L3Y 8K7
Fax: 905-895-8781
Toll free: 1 855-437-8784
www.chieduchgroup.com

Trust reporting requirements

Understanding the proposed changes

Are you an executor or a trustee? If so, you should be aware that the reporting requirements for certain trusts may be changing. As part of the 2018 Federal budget the government proposed changes to reporting requirements for trusts. The draft legislative proposals were released in July 2018 for consultation, and these proposed reporting requirements will apply to certain trusts for taxation years that end after December 30, 2021. Since all trusts, except graduated rate estates, have December 31 taxation year ends, the trusts that are required to comply with these new requirements will need to do so for the 2021 tax year and onwards.

In accordance with these proposed measures, for 2021 and subsequent tax years, certain trusts will be required to file annual tax returns (where one's currently not required) and to provide additional beneficial ownership information.

Filing a trust tax return

Currently, a trust only needs to file a tax return (T3 Trust Income Tax and Information Return, also known as a T3 return) in certain circumstances. For example, a trust will be required to file a tax return in a tax year if the trust has tax payable, is requested to file or holds property that's subject to subsection 75(2) of the Income Tax Act (the "super attribution" rules). A trust will also be required to file a tax return in a year if it receives income or capital gains from the trust property that's allocated to one or more beneficiaries, and the trust has

- total income from all sources of more than $500;
- income of more than $100 allocated to any single beneficiary;
- made a distribution of capital to one or more beneficiaries; or
- allocated any portion of the income to a non-resident beneficiary.

Note that this is not an exhaustive list.

A T3 return is viewed by the Canada Revenue Agency (CRA) as both an income tax return (which calculates tax liability) and an information

PRIVATE INVESTMENT MANAGEMENT™

return (which reports amounts allocated and designated to trust beneficiaries).

Based on the proposed measures, beginning in 2021, certain trusts that currently don't have to file a tax return may be required to do so. Under the proposed measures, an "express trust" (or for civil law purposes, a trust other than a trust that's established by law or by judgment) that's resident in Canada (or deemed to be resident in Canada) will be required to file a tax return, unless it meets certain exceptions.

While the phrase "express trust" isn't defined in the draft legislation or anywhere else in the Income Tax Act, it's generally understood to be a trust that's deliberately created by a settlor or Will maker. A non-express trust is a trust that's imposed or created by courts, such as a resulting trust or a constructive trust.

An example of a trust that may not need to file a trust return under the current rules, but would need to file under the proposed measures is a properly structured trust whose only asset is a cottage used by the beneficiaries of the trust where no income is earned on the cottage. Another example is a properly structured trust that holds a deferred growth investment portfolio with a market value of more than $50,000 and where no income or capital gains have been realized in the year. This assumes that none of the exceptions that follow apply to these trusts.

What are the exceptions?

Under the proposed measures, certain trusts will be excluded from the new reporting requirements. Some of these trusts include the following:

- A trust that has been in existence for less than three months at the end of the year;
- A trust that holds assets with a total fair market value that doesn't exceed $50,000 throughout the year, if the only assets held by the trust throughout the year are one or more of cash; certain government debt obligations; a share, debt obligation or right listed on a designated stock exchange; mutual fund corporation shares or trust units; or an interest in a related segregated fund (and note that this list doesn't include private company shares or real estate);
- A trust that qualifies as a registered charity or non-profit organization;
- A mutual fund or segregated fund trust;
- A graduated rate estate;
- A qualified disability trust;
- An employee life and health trust; and
- Registered plans (e.g. RRSP, RRIF, RDSP, RESP, RPP, DPSP or TFSA).

> Under the current rules, only a limited amount of information has to be disclosed on the trust tax return. The draft legislation increases the amount of information that needs to be included when a trust tax return is filed.

Additional disclosure on trust tax return

Under the current rules, only a limited amount of information has to be disclosed on the trust tax return. This includes the name(s) of the trustee(s), name of the trust and the trust mailing address. If the trust makes a distribution of property to a beneficiary in satisfaction of their capital interest in the trust, the name and address of the beneficiary who received the property has to be listed in a statement attached to the return. If income is allocated to a beneficiary, a trustee may have to complete a T3 Statement of Trust Income Allocations and Designations and provide the beneficiary's name, address and recipient identification number.

The draft legislation increases the amount of information that needs to be included when a trust tax return is filed. When a trustee files a trust tax return, they'll need to include the name, address, date of birth (in the case of an individual other than a trust), jurisdiction of residence and taxpayer identification number for each person who, in the year,

- is a trustee, beneficiary or settlor of the trust; or
- has the ability through the terms of the trust or a related agreement to exert influence over trustee decisions regarding the appointment of income or capital of the trust (i.e. a protector of a trust).

Information requirements

A trustee will be considered to have fulfilled the requirement of providing information about the trust beneficiaries if they've made reasonable effort to obtain information about each beneficiary whose identity is known or ascertainable. For those trust beneficiaries whose identity is not known or ascertainable, a trustee will be considered to have met this requirement if they provide sufficiently detailed information so that it can be determined whether any particular person is a beneficiary of a trust.

An example of where a beneficiary of a trust may not be known or ascertainable is where the trust instrument provides for a class of beneficiaries that includes the

settlor's children or grandchildren or any future born children or grandchildren. In these circumstances, the trust reporting requirement will be met if the relevant information about all of the settlor's current children and grandchildren is included, as well as the details of the trust terms that extend the class of beneficiaries to any of the settlor's future children or grandchildren.

The proposed requirement to provide information about all beneficiaries, ascertained and unascertained, may make things more difficult for trustees to comply with their obligations.

Penalties for failing to file a return where required

Under the proposed measures, a trustee who fails to file a trust tax return or who makes a false statement or omission on the trust tax return knowingly or in circumstances that amount to gross negligence will be subject to a penalty. This penalty will also apply where a trustee fails to comply with a demand by the CRA to file a trust tax return.

The penalty will be equal to the greater of $2,500 or 5% of the highest total fair market value of all the property held by the trust for the year. With this in mind, this penalty may be quite substantial if the trust holds assets of significant value.

Conclusion

As a result of these proposed measures, executors and trustees may face more onerous reporting requirements, and the information gathering requirements may also be increased. If you're an executor or trustee, you may want to review the proposed measures with a qualified legal and tax advisor to determine how they might impact the estate or trust under your administration and to prepare for the potential implementation of these measures.

If you're an executor or trustee, you may want to review the proposed measures with a qualified legal and tax advisor to determine how they might impact the estate or trust under your administration and to prepare for the potential implementation of these measures.

This article may contain several strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal and/or insurance advisor before acting on any of the information in this article.

Wealth
Management

This document has been prepared for use by the RBC Wealth Management member companies, RBC Dominion Securities Inc. (RBC DS)*, RBC Phillips, Hager & North Investment Counsel Inc. (RBC PH&N IC), RBC Global Asset Management Inc. (RBC GAM), Royal Trust Corporation of Canada and The Royal Trust Company (collectively, the "Companies") and their affiliates, RBC Direct Investing Inc. (RBC DI) *, RBC Wealth Management Financial Services Inc. (RBC WMFS) and Royal Mutual Funds Inc. (RMFI). *Member-Canadian Investor Protection Fund. Each of the Companies, their affiliates and the Royal Bank of Canada are separate corporate entities which are affiliated. "RBC advisor" refers to Private Bankers who are employees of Royal Bank of Canada and mutual fund representatives of RMFI, Investment Counsellors who are employees of RBC PH&N IC, Senior Trust Advisors and Trust Officers who are employees of The Royal Trust Company or Royal Trust Corporation of Canada, or Investment Advisors who are employees of RBC DS. In Quebec, financial planning services are provided by RMFI or RBC WMFS and each is licensed as a financial services firm in that province. In the rest of Canada, financial planning services are available through RMFI, Royal Trust Corporation of Canada, The Royal Trust Company, or RBC DS. Estate and trust services are provided by Royal Trust Corporation of Canada and The Royal Trust Company. If specific products or services are not offered by one of the Companies or RMFI, clients may request a referral to another RBC partner. Insurance products are offered through RBC Wealth Management Financial Services Inc., a subsidiary of RBC Dominion Securities Inc. When providing life insurance products in all provinces except Quebec, Investment Advisors are acting as Insurance Representatives of RBC Wealth Management Financial Services Inc. In Quebec, Investment Advisors are acting as Financial Security Advisors of RBC Wealth Management Financial Services Inc. RBC Wealth Management Financial Services Inc. is licensed as a financial services firm in the province of Quebec. The strategies, advice and technical content in this publication are provided for the general guidance and benefit of our clients, based on information believed to be accurate and complete, but we cannot guarantee its accuracy or completeness. This publication is not intended as nor does it constitute tax or legal advice. Readers should consult a qualified legal, tax or other professional advisor when planning to implement a strategy. This will ensure that their individual circumstances have been considered properly and that action is taken on the latest available information. Interest rates, market conditions, tax rules, and other investment factors are subject to change. This information is not investmet advice and should only be used in conjunction with a discussion with your RBC advisor. None of the Companies, RMFI, RBC WMFS, RBC DI, Royal Bank of Canada or any of its affiliates or any other person accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or the information contained herein. ®/™ Registered trademarks of Royal Bank of Canada. Used under licence. © 2019 Royal Bank of Canada. All rights reserved. NAV0237 (06/19)