New tax-filing obligations await many unsuspecting Canadians in 2024

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The Canada Revenue Agency national headquarters in Ottawa, on April 19.BLAIR

The new year holds new tax-reporting obligations for trusts that will likely result in paperwork and significant costs for many Canadians, some of whom may not even know they are part of a trust, accountants are warning.

The new rules require that trusts, with few exceptions, annually file what’s known as a T3 Trust Income Tax and Information Return and disclose beneficiaries, among other information. Some taxpayers who haven’t previously had to file will find they have to incur accounting and legal fees to meet those obligations, tax experts say.

The new measure comes as Canada increases efforts to crack down on[tax dodging](https://www.theglobeandmail.com/topics/tax-evasion/) and strengthen its anti-money-laundering regime amid domestic and international scrutiny of the way it combats financial crime.

But while the regulations are aimed at those who use trusts to skirt the rules, they threaten to trip up swathes of Canadians who may not even be aware that they are deemed to be part of a trust, said John Oakey, vice-president of taxation at Chartered Professional Accountants of Canada, which represents the profession at the national level.

A trust is a legal relationship that entails the separation of legal ownership and beneficial interest. It is created when property is transferred by a settlor, who owns it, to a trustee, who holds legal title to it for the benefit of another person or persons, known as the beneficiaries.

The concern with the new tax-filing requirements is that they would also apply to what’s known as “bare trusts,” in which the trustee can only act at the direction of the beneficiary, with no independent powers or responsibility over the property.

What’s tricky about bare trusts is that there is no requirement to sign paperwork to formally establish one or set out the parties’ intentions. As a result, many Canadians without access to sophisticated [tax](https://www.theglobeandmail.com/topics/tax/)advice are likely unaware that they are deemed to be part of a bare trust and thus required to file a T3 return, Mr. Oakey added.

In most cases these Canadians would have no tax owing related to the trust but will likely need the help of an accountant to file the T3 return, said Jeffrey Foreman, principal at Vancouver-based D&H Group LLP. That’s likely to cost at least $1,000 a year per return, he added.

Some may also need to consult a tax lawyer to clarify whether and how the new rules apply to their situation, amounting to another significant expense, Mr. Foreman said.

At CPA Canada, the most common scenarios Mr. Oakey worries about involve Canadians who had their names added to the title of a family member’s home. That includes adult children who hold title to their aging parents’ homes for the sole purpose of simplifying the eventual transfer of the property. Such a set-up is likely be deemed a bare trust, which would trigger a T3 filing requirement, according to Mr. Oakey.

The same holds for parents who hold title to their adult children’s home because they co-signed their mortgage. It’s an arrangement that’s becoming increasingly common as first-time home buyers struggle to qualify for a mortgage on their own amid high interest rates. If the parents have no say over the property other than at the child’s direction, that, too, would likely be considered a bare trust, Mr. Oakey said.

A bare trust entails a principal-agent relationship between the trustee, who holds legal title to the trust property, and the beneficiary, who enjoys the benefits of ownership. The trustee can only act as an agent of the beneficiary.

What’s tricky about bare trusts is that there is no requirement to sign paperwork to formally establish one or set out the parties’ intentions. As a result, Canadians who don’t have access to sophisticated tax advice might not realize their circumstances require them to file a T3 return, Mr. Oakey added.

Another common set-up that’s considered a bare trust and might entail a filing obligation in some cases involves Canadians who had their names added to their elderly parents’ bank or investment accounts to help them with bill-paying and other transactions at their direction, Mr. Foreman said.

Whether that arrangement would entail a filing obligation depends on the details of the situation. Trusts that hold assets whose value doesn’t surpass $50,000 throughout the year are exempt from filing. But the exemption applies only to certain types of assets, including deposits, government-debt obligations and listed securities.

Mr. Foreman believes many Canadians will still have to file despite those exemptions. For example, a bare trust holding shares in a private company would be subject to the filing requirement, he said.

The [Canada Revenue Agency](https://www.theglobeandmail.com/topics/canada-revenue-agency-cra/)announced Dec. 1 it will waive late-filing penalties for bare trusts that submit their T3 returns for the 2023 tax year after the deadline of March 30, 2024.

“The CRA is adopting an education-first approach to compliance,” spokesperson Sylvie Branch said via e-mail.

The penalty that’s being waived amounts to $25 a day for each day of delay, from a minimum of $100 to a maximum of $2,500.

But no relief applies in cases where the CRA deems taxpayers failed to file a return knowingly or because of gross negligence or if they made false statements or omitted information on a return. The penalty in those scenarios is the greater of $2,500 or 5 per cent of the highest fair market value of all assets held in the trust within a given year.

Mr. Foreman said he’s been sending out newsletters to his clients advising them of the new rules and urging them to think about whether they’re part of arrangements that may be deemed to be bare trusts.

He suspects many of them do, and that will result in an onslaught of work at a time of the year that is already very busy for accounting firms.

“We’re deeply worried that we simply do not have the capacity to do all these returns,” he said.