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# Unintended Consequences: Bare Trusts

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Office of the  
**TAXPAYERS'  
OMBUDSPERSON**

# UNINTENDED CONSEQUENCES

## BARE TRUSTS

Lessons learned from the Canada Revenue Agency's  
administration of burdensome tax legislation




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Lessons learned from the Canada Revenue Agency's administration  
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### Office of the Taxpayers' Ombudsperson

1000-171 Slater Street, Ottawa, Ontario K1P 5H7

Telephone: 613-221-3109 | Toll-free: 1-866-586-3839

Fax: 418-566-0321 | Toll-free fax: 1-866-586-3855

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# Executive Summary

The Office of the Taxpayers' Ombudsperson works independently from the Canada Revenue Agency (CRA). This report focuses on the service provided to taxpayers by the CRA, presents findings and makes recommendations to the Minister of National Revenue and the Chair of the CRA Board of Management.

## Background

The Government of Canada introduced new reporting requirements for all trusts as part of its international commitment to the transparency of beneficial ownership information as well as its continuous efforts to ensure the effectiveness and integrity of the Canadian tax system. For most trust types, including bare trusts, the deadline to file a T3 Income Tax and Information Return and Schedule 15 for 2023 was March 30, 2024.

On March 28, 2024, the last business day before the filing deadline, the CRA announced that it would not require bare trusts to file a T3 return, including Schedule 15, for the 2023 tax year, unless directly requested by the CRA.

## Concerns

Following the CRA announcement, several taxpayers and representatives, as well as members of Parliament, reached out to our Office to express their concerns, specifically related to:

- the lack of clear communication around the filing requirements for bare trusts

- the increased costs of compliance because of the filing requirements
- the exemption decision not being timely and the impact it had on taxpayers and tax professionals

However, the CRA's exemption decision was welcomed by some organizations that felt the last-minute exemption demonstrated the CRA's responsiveness and willingness to address the concerns that were raised.

## Examination

The public wanted answers, and we wanted to examine if the CRA's service-related processes could be improved. Therefore, with the principle of fairness in mind, we announced our systemic examination on July 10, 2024, based on the information we had received from various sources, including the CRA. The focus of the examination was on the bare trust filing requirements and whether the CRA had respected two rights in the Taxpayer Bill of Rights, specifically:

- Right 6 – the right to complete, accurate, clear, and timely information
- Right 10 – the right to have the costs of compliance taken into account when administering tax legislation

## Methodology

In the course of this examination, we took the time to listen to different perspectives, including those of the CRA, individuals, representatives and organizations. We collected and reviewed the relevant information to deepen our understanding so we could identify opportunities for the CRA to improve its service to Canadians.

# Findings

The feedback we received from organizations was mostly positive regarding the CRA's efforts. Guidance, penalty relief, and the filing exemption were viewed favourably. However, the discontent they expressed was based on the timeframe during which these items were announced. We heard from the vast majority of stakeholders that the exemption was the right decision—an extremely late decision, but the right one.

We found the main issue to be that the CRA was tasked with administering legislation that was burdensome. This led to the Department of Finance Canada announcing in August 2024 that it would consult with Canadians to clarify the bare trust reporting rules and ease the related administrative burden on taxpayers.

We also found that the CRA took steps in its administration of the new trust reporting legislation to communicate with taxpayers. However, the CRA's ability to provide individual guidance was limited, as it cannot provide legal advice to taxpayers, including about whether a bare trust does or does not exist. That said, there were still some cases, the CRA did not provide clear and timely information when it could have.

Similarly, while the CRA made efforts in terms of limiting the costs of compliance, overall it did not minimize the time, effort, and costs that taxpayers had to incur to comply with the new filing requirements. The CRA's administration of the new trust reporting legislation led to unintended consequences.

We acknowledge that the administration of the new trust reporting legislation was challenging for the CRA, mainly because of the complexity surrounding the concept of a bare trust itself. However, it is clear that

change is needed for the benefit of taxpayers and the CRA. Compliance should be as easy as possible, especially considering that Canada's tax system is based on self-assessment.

## Recommendations

Based on our findings during the examination, we provide in this report five recommendations to the CRA for it to improve its service to Canadians, specifically when there are changes in the tax legislation that could increase the costs to comply.

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## Taxpayers' Ombudsperson's Mandate

The mandate of the Taxpayers' Ombudsperson is to assist, advise and inform the Minister of National Revenue about any matter relating to services provided to a taxpayer by the Canada Revenue Agency (CRA). This mandate is set out in section 4 of the Order in Council P.C. 2020-0703.

### **Taxpayer:**

A person who is liable to pay a tax, eligible to receive a benefit, or provided with a service by the CRA. Under the various tax legislation, a taxpayer could be a Canadian, business, charity, non-profit or legal representative.

# What the Taxpayers' Ombudsperson Can Review

In carrying out this mandate, the Ombudsperson must review and deal with any request for a review made by a taxpayer or their representative about a service matter or a matter arising from the application of any of sections 5, 6, 9 to 11 and 13 to 15 of the Taxpayer Bill of Rights. The Ombudsperson must also review any matter within this mandate at the request of the Minister.

# What the Taxpayers' Ombudsperson Cannot Review

There are important limitations on the Taxpayers' Ombudsperson's authority. Specifically, the Ombudsperson must not review:

- a service issue that happened before May 24, 2006, unless the Minister requests that the Ombudsperson do so
- the administration or enforcement of the program legislation unless there view relates to a service issue
- Government of Canada legislation or policy or CRA policy, unless the legislation or policy relates to a service issue
- a review request relating to a right outlined in the Taxpayer Bill of Rights that is not one of the eight rights we uphold
- an administrative interpretation provided by the CRA
- a decision of or proceeding before a court
- legal advice provided to the Government of Canada
- confidences of the King's Privy Council for Canada

## Mission

Our mission is to help taxpayers experiencing service issues with the CRA. We do this by examining complaints and increasing awareness of the Taxpayer Bill of Rights. We also identify systemic issues and opportunities



for service improvement at the CRA.

## **Vision**

Our vision is that every Canadian knows their rights as a taxpayer and how we can help if they are having service issues with the CRA.

## **Principles**

### **Fairness**

We are impartial, independent, rigorous and evidence-focused when examining service issues.

### **Confidentiality**

We hold all communications with those seeking assistance in strict confidence and will only disclose information if permission is given or required by an Act of Parliament.

### **Responsive**

We respond to complaints and enquiries with empathy, attention and respect.

### **Credible**

We act with transparency, accountability and integrity.

## **How we Operate**

The Ombudsperson reports directly to the Minister and may, at any time, issue reports, with or without recommendations to the Minister or to the Minister and the Chair of the Board of Management, concerning any review

or other matter that is within the Ombudsperson's mandate. However, the Ombudsperson's recommendations are not binding.

While our Office works independently from the CRA, we are administratively linked, notably when managing financial and human resources. We do not have direct access to taxpayer information in CRA databases, but we do have processes in place, and with a taxpayer's consent, we can exchange their information with the CRA to resolve their service complaint.

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# Background

## Trust Reporting Requirements

For taxpayers in a trust relationship, including a bare trust relationship (more information about the definition of "bare trust" is at [What is a bare trust?](#)), the [new reporting requirements](#) to file a T3 Trust Income Tax and Information Return (T3 return) did not come out of nowhere.

### **What is a trust?**

A trust is a legal relationship in which one party (the settlor) transfers property to another (the trustee for the benefit of the beneficiaries). For most trusts, when the trust is created, the settlor provides the trustee with the terms or instructions on how to administer the trust, identifies the beneficiaries and then generally is no longer involved.

### **What happens when a trust is a bare trust?**

Where a trust is a bare trust, the trustee generally holds legal title to the property but is unable to take any action without the direction from all of the beneficiaries.

The Government of Canada introduced the new reporting requirements for all trusts, unless specific conditions are met, “as part of Canada’s international commitment to the transparency of beneficial ownership information as well as its continuous efforts to ensure the effectiveness and integrity of the Canadian tax system.” <sup>1</sup>

Under the new reporting requirements three main changes were implemented:

- All trusts, unless certain conditions are met, will be required to file an annual T3 return with the CRA.
- Trusts that are required to file a T3 return, other than listed trusts, generally need to complete Schedule 15 in their annual T3 return to report beneficial ownership information.
- Bare trusts are subject to the new reporting rules.

The specific conditions requiring trusts to file an annual T3 return were outlined in the FAQs and [Guide T4013, T3 Trust Guide](#).

The CRA says:

The new reporting requirements for trusts help the [CRA] verify that trusts, their fiduciaries, beneficiaries, and related parties have met their tax and filing obligations under the [Income Tax] Act. They also provide the CRA with beneficial ownership information in order to effectively counter aggressive tax avoidance and tax evasion.

Canada is a founding member of the Financial Action Task Force (FATF) on money laundering, established in 1989 by the G7. Canada has been chosen to serve for two years, effective July 2023, as Vice President of the FATF. The FATF sets international standards for combating money laundering, the financing of terrorism and the financing of illegal arms. The Department of Finance Canada (Finance Canada) is the lead agency representing Canada at the FATF and works in close cooperation with departments and agencies, including the CRA.

In an interconnected global financial system, Canada's anti-money laundry/anti-terrorist financing (AML/ATF) regime not only protects the integrity and stability of the Canadian financial system, but also contributes to protecting the global financial system.

Therefore, maintaining a strong AML/ATF regime helps Canada's financial system and economy to remain secure and trustworthy in the eyes of its international allies and trading partners and allows Canada to meet its international commitments.

The FATF ensures that all member countries' AML/ATF regimes are held to the same standards. In September 2016, it released its peer-reviewed Mutual Evaluation Report of Canada's AML/ATF regime. The report found that Canada's strong regime for anti-money laundering and combatting the financing of terrorism achieves good results in some areas but requires further improvements to be fully effective.

One area for improvement the FATF highlighted was the limited availability of accurate beneficial ownership information for use by competent authorities.<sup>2</sup> As a result, the FATF recommended that "Canada should: As a matter of priority, increase timeliness of access by for [sic] competent authorities to accurate and up-to-date beneficial ownership information - consider additional measures to supplement the current framework."<sup>3</sup>

Following this mutual evaluation, Canada reports back regularly about its progress in addressing the technical compliance deficiencies identified by the FATF. However, in the FATF's Follow-up Report 2021, the ratings for the CRA's technical compliance to the FATF recommendations showed the following:

- Transparency and beneficial ownership of legal persons: partially compliant
- Transparency and beneficial ownership of legal arrangements: non-compliant

Canada's next mutual evaluation by the FATF will be adopted in June 2026 and will consider improvements made up to October 2025. This next review will focus to a greater extent on Canada's ability to demonstrate the effectiveness of its AML/ATF regime.

Bill C-32, Fall Economic Statement Implementation Act, 2022, enacted a number of tax measures, including the new trust reporting rules. It received Royal Assent on December 15, 2022, and was to be one of the steps the Government of Canada is taking to meet its international commitments. The new trust reporting legislation requires all trusts that are resident or deemed to be resident in Canada and that are express trusts<sup>4</sup> to provide additional beneficial ownership information in a schedule to their annual income and information returns, starting in tax years ending after December 30, 2023. This change allows the CRA to collect the beneficial ownership information about most trusts and assess the tax liability for trusts and their beneficiaries.

## Chronology of key events

**2018:** The Government of Canada introduces new reporting requirements for trusts as part its international commitment. Budget 2018 proposes that certain trusts provide additional beneficial ownership information on an annual basis. As a result, certain trusts, excluding bare trusts, will be required to file an annual T3 return even where it was not required pursuant to the existing rules at that time. Finance Canada invites consultation on the legislative changes.

**February 2022:** A legislative proposal to include bare trusts is released for public consultation. The proposed legislation would require bare trusts to file an annual T3 return including beneficial ownership information (Schedule 15), unless specifically exempted. This legislative proposal would apply to trusts with tax years ending after December 30, 2022.

**August 2022:** Finance Canada releases legislative proposals for consultation. The proposed legislation is meant to be effective for tax years ending after December 30, 2022.

**December 15, 2022:** The new trust reporting legislation receives Royal Assent. The new trust reporting legislation specifies that the new trust reporting requirements would apply to tax years ending after December 30, 2023.

Important Note: This meant that the majority of trusts, including bare trusts, would be required to file a T3 return on time, or face penalties of \$25 a day for each day the return is late, from a minimum of \$100 to a maximum of \$2,500, even for those who do not have taxes owing.

**October 27, 2023:** The CRA issues a tax tip advising trusts of the new reporting requirements for trusts and reminding them to file their T3 returns by April 2, 2024, with no mention of bare trusts at the time it is released.

**November 27, 2023:** The CRA makes the administrative decision to waive late-filing penalties for bare trusts that submit their T3 returns for the 2023 tax year after the deadline.

**December 1, 2023:** The CRA announces its administrative decision to waive the late-filing penalties for bare trusts on its web page, along with answers to frequently asked questions.

**December 20, 2023:** The CRA issues a tax tip, Businesses: Here are the top changes this year that will affect business taxes in 2024, that contains information about the new reporting requirements.

**December 2023 to March 2024:** The CRA increases social media posts about the new trust filing requirements on its X, Facebook and LinkedIn accounts.

**March 12, 2024:** The CRA clarifies that bare trusts would only be subject to a gross negligence penalty in the most egregious cases.

**March 28, 2024:** The CRA announces through a tax tip that it will not require bare trusts to file a T3 return, including Schedule 15, for the 2023 tax year. In other words, bare trusts are now exempt from the new reporting requirements for the 2023 tax year unless directly requested by the CRA.

**July 10, 2024:** The Ombudsperson opened the systemic examination into whether the CRA respected taxpayers' rights in its administration of bare trust filing requirements for the 2023 tax year.

**August 12, 2024:** Finance Canada releases draft legislation for consultation with taxpayers on technical amendments clarifying the trust reporting rules.

**October 29, 2024:** The CRA announces through a tax tip that it will not require bare trusts to file a T3 return, including Schedule 15, for the 2024 tax year unless directly requested by the CRA.

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## Public response to the CRA's exemption decision

Following the announcement on March 28, 2024, that the CRA will not require bare trusts to file a T3 return for the 2023 tax year, several taxpayers and representatives, as well as members of Parliament, reached out to our Office to express their concerns, specifically related to:

- the lack of clear communication around the filing requirements for bare trusts
- increased costs of compliance because of the filing requirements
- the exemption decision not being timely and the impact it had on taxpayers and tax professionals

Nonetheless, the CRA's exemption decision was welcomed by some organizations that felt the last-minute exemption demonstrated the CRA's responsiveness and willingness to address the concerns that were raised.

## Why our Office got involved:

The public wanted answers, and we wanted to examine if the CRA's service-related processes could be improved. Therefore, we needed to see how the CRA was administering the bare trust filing requirements and the impact on service-related matters.

With the principle of fairness in mind, we launched this systemic examination on July 10, 2024, based on the information we had received from various sources, including the CRA. This examination would look into the clarity and timing of the CRA's communication and whether it had



taken into account the cost of compliance for taxpayers and their representatives when administering, then exempting bare trusts from, the new requirement.

We committed to carrying out this examination fairly and impartially, not to assert blame. We understand that the CRA is only one piece of the puzzle, as its role is only the administration and enforcement of the new trust reporting legislation and not creating legislation, which is the role of Finance Canada.

The purpose of this examination is to shed light on how the CRA provided guidance to and communicated with taxpayers when administering the new trust reporting legislation for bare trusts and to determine whether there are any areas of improvement related to service matters for the CRA.

## Bare Trusts

First, we must look at what is a bare trust, who are the parties to a bare trust arrangement, and whether they are required to file a T3 return. However, there are no clear answers.

We heard concerns from taxpayers and representatives about how difficult it was to find information that clarified what was a bare trust. Organizations we met with during the examination indicated that even professional tax preparers and legal counsel struggle to identify if specific circumstances may create a bare trust arrangement.

The CRA indicated in its tax tip, New – Bare trusts are exempt from trust reporting requirements for 2023, that “[w]hether or not an arrangement is a trust or a bare trust is dependent on the specific facts of each situation, as well as the applicable law.” The CRA advised taxpayers to seek legal counsel if they are unsure whether their arrangement is a trust and what type of trust they have.

This is why CRA contact centre agents also are advised not to comment on what could be considered a bare trust arrangement. The CRA's contact centre agents were instructed to refer callers to financial or legal professionals for that determination.

## The CRA's Definition

The *Income Tax Act* (ITA) does not specifically provide a definition of a bare trust and neither does the new trust reporting legislation; rather, subsection 150 (1.3) of the new trust reporting legislation adds the following to section 150 of the ITA:

(1.3) For the purposes of this section, a trust includes an arrangement under which a trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property.

This language is not new. For many years, substantially similar language has been included in subsection 104(1), providing that bare trusts are not trusts for income tax purposes. The new trust reporting rules included an amendment to subsection 104(1), specifying that a bare trust would be a trust only for the requirement to file a T3 return.

Online the CRA provided the following:

a bare trust for income tax purposes is a trust arrangement under which the trustee can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property.

The CRA continues to explain by describing the role of a trustee and a beneficiary in a bare trust arrangement:

A trustee can reasonably be considered to act as agent for a beneficiary when the trustee has no significant powers or responsibilities, the trustee can take no action without instructions from that beneficiary and the trustee's only function is to hold legal title to the property. In order for the trustee to be considered as the agent for all the beneficiaries of a trust, it would generally be necessary for the trust to consult and take instructions from each and every beneficiary with respect to all dealings with all of the trust property.

So what does this definition mean? The CRA thought that providing an example would help.

## Examples

The CRA states that:

[a] common example of a situation where a bare trust arrangement can exist is when, for privacy reasons, a property developer establishes a bare trust arrangement that will hold registered title to real property, while the developer retains beneficial ownership. <sup>5</sup>

Although the CRA says this is "a common example of a situation where a bare trust arrangement can exist," this example may not be helpful to some Canadians, as many affected taxpayers are not property developers.

This situation likely led taxpayers to rely on the media to inform them that arrangements such as co-signed mortgages and joint bank accounts could constitute a bare trust. <sup>6</sup>

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# Examination Approach

## Scope

The focus of the examination is on the bare trust filing requirements and whether the respected two rights in the Taxpayer Bill of Rights:

- Right 6 – the right to complete, accurate, clear, and timely information
- Right 10 – the right to have the costs of compliance taken into account when administering tax legislation

We specifically look at:

- communication efforts
- clarity, accessibility, timeliness and consistency of information
- issues related to how the CRA took costs of compliance into account
- the impact of the CRA's filing exemption on taxpayers
- if recourse is available to taxpayers who want compensation from the CRA

We do not look in depth at the activities that took place before the new trust reporting legislation passed. Those activities relate to draft legislation, which are Cabinet Confidences of the King's Privy Council for Canada. The Taxpayers' Ombudsperson is prohibited from reviewing Cabinet Confidences.

## Timeframe

The timeframe of this examination starts in February 2022, when Finance Canada released the legislative proposal that included bare trusts. It ends on October 29, 2024, when the CRA announced it was exempting bare trusts from filing a T3 return, including Schedule 15, for the 2024 tax year, unless it makes a direct request for these filings. The CRA announced this

exemption after Finance Canada's consultations to advance its measures to improve tax fairness by "Clarifying bare trust reporting rules to significantly reduce the number of Canadians with bare trusts who would have to file, and ease the related administrative burden."

If a bill is introduced and passed as detailed in Finance Canada's legislative proposal, it would significantly change the scope of the filing requirements for trusts, including bare trusts, for the tax years ending after December 30, 2024. It would also not require bare trusts to meet the 2024 filing requirements applicable to other trusts; rather, it would propose to require bare trusts to file for the 2025 and subsequent tax years with targeted and bare trust-specific exclusions.

## Methodology

### How the examination was carried out

The general principles underlying an ombudsperson's role are fairness, impartiality, independence, and accountability. With these principles in mind, we took the time to listen, to different perspectives, collect and review the relevant information, deepen our understanding and identify any potential opportunities for the CRA to improve its service to Canadians. To make our examination as comprehensive as possible, we:

- met with senior CRA officials directly involved in the administration of the bare trust filing requirements
- heard from individuals, representatives and organizations who responded to our requests for feedback regarding their experience with the bare trust filing requirements
- made comprehensive requests for documents and information to the CRA
- consulted with our Department of Justice Canada lawyers, who also represent the CRA

## What access we sought

To analyze if the CRA respected Rights 6 and 10 in its communication and administration of the new bare trust filing requirements, we sought details on why and how the CRA administered the reporting requirements the way it did. We asked the CRA for documents and information that would provide insight into its consultations process as well as what it took into consideration for the administration and communication of the bare trust reporting requirements.

When a response from the CRA lacked the information we needed, we relied on publicly available information.

In addition, based on the information received from the public, we decided to reach out to organizations that were knowledgeable about the bare trust reporting requirements and their effects on taxpayers. Many of these organizations had previously consulted with the CRA. We sent direct requests to chartered professional accountants, lawyers, and representatives of organizations asking for their feedback in writing on the CRA's administration of the reporting requirements and offering to meet with interested groups.

## Challenges

We knew the CRA was only one piece of this situation's puzzle. However, because of provisions in the *Privacy Act*, the *Excise Tax Act*, and the *Income Tax Act*, the CRA was unable to share third-party information with our Office.

As a result, we could not access information or documents related to how the CRA worked with other government departments, including Finance Canada. As well, the CRA redacted some information from the documents we received because it said it was required to do so under privacy and tax

legislation. These factors prevented us from accessing information that could have been helpful in better understanding what happened and why the CRA made certain decisions.

The redactions also affected some key documents that may have allowed us to have a more complete picture of the CRA's actions. In addition to the redactions, we were told some documents did not exist because they were not created, including a communication plan to prepare for the publishing of the tax tip of March 28, 2024.

### **What we could access**

Despite these challenges, there were many areas that we could access to gain valuable insights and draw conclusions from, and ultimately make recommendations.

Our access included:

- redacted documents, including internal memos and communications with stakeholders
- a list of stakeholders the CRA consulted
- a summary of the questions and comments from stakeholders
- a chronology of events
- its communication plan
- its media analyses
- the CRA's intranet site
- information found on Canada.ca
- publicly available information

### **Cooperation from the CRA**

The CRA made efforts to help us with our examination, and we had an open dialogue. In addition, the CRA responded to our information requests in a timely manner and provided a substantial amount of documents and

resources. We also had access to, and several meetings with, senior CRA executives and subject-matter experts.

For this examination, the CRA briefed our Office, went over the chronology of events and responded to additional questions. It also sought a better understanding of the scope of our examination and provided its feedback. Throughout, it asked for clarification about some of the information we were requesting and advised us about what information it could and could not provide.

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## Part 1: The Legislative Process

Canadians may know the overall role of Finance Canada in economic and fiscal matters, as well as the role of Parliament. However, it may not be clear to them what the role the CRA plays in the tax legislative process.

The legislative process is more complex than many may think. Therefore, we looked a little deeper into the main roles of the parties involved.



Better communication between the Government of Canada, Finance Canada and the Canada Revenue Agency would lead to the creation of better tax legislation resulting in better administration. This will only be successful if all three parties agree.

This communication should exist at all stages of legislative development: policy, drafting, implementation and administration.

— Stakeholder

## The role of Parliament in the legislative process

For a bill to become Canadian federal law, it must be approved in identical form by both houses of Parliament – the Senate and the House of Commons. All bills follow a process of debate, review and voting. After a bill is passed by both houses, the Governor General grants Royal Assent and the bill becomes a law.

Ideas for new laws often begin outside of Parliament. Parliamentarians bring Canadians' ideas into Parliament by writing them down in the form of bills, which are proposals for new laws. Bills can come from the government or from parliamentarians not part of the government. There are different types of bills. Government bills are debated in the order that the government chooses and take up most of Parliament's time.

After a bill is introduced in Parliament, it goes through a series of steps designed to ensure that its purpose and effects are carefully considered and that Canadians are consulted and informed:

- First Reading: Introducing the Bill
- Second Reading: Debating the Idea
- Committee Stage: Discussion and Hearing Witnesses
- Report Stage: Back to the Chamber
- Third Reading: Debate and Vote

- Sent to the Other Chamber: Sent to Senate/House of Commons for review
- Royal Assent: Becoming a Law (example of Bill C-32)

## Finance Canada's role in developing tax legislation

Finance Canada is the central agency responsible for the overall stewardship of the Canadian economy. This includes preparing the annual federal budget and advising the Government of Canada on economic and fiscal matters, tax and tariff policy, social measures, security issues, financial stability and Canada's international commitments. As such, Finance Canada plays an important role in helping the Government of Canada to develop and implement strong and sustainable economic, fiscal, tax, social, security, international and financial sector policies and programs.

Regarding tax legislation specifically, Finance Canada develops and evaluates federal tax policies and legislation in the areas of personal income tax, corporate income tax and sales and excise tax. In this role, Finance Canada oversees the development of tax law and is therefore involved in preparing many bills that come before Parliament. It is in this capacity that Finance Canada, in respect to the bare trust filing requirements, took the following steps:

- In April 2018, it made the initial proposal of the trust reporting requirements in Budget 2018 that certain trusts provide additional beneficial ownership information on an annual basis. As a result, certain trusts would be required to file an annual T3 return even where one was not required pursuant to the existing rules at that time.
- In February 2022, it made the legislative proposal to include bare trusts, which were not included in the scope of the initial trust reporting requirements. Bare trusts were added to the Budget 2018

proposed legislation for the new reporting rules. As a result of the new proposed legislation, bare trusts, unless specifically exempted, would be required to file an annual T3 return including beneficial ownership information (Schedule 15).

- In November 2022, the Deputy Prime Minister and Minister of Finance provided the Notice of Ways and Means Motion tabled in Parliament. Bill C-32 (the new trust reporting legislation), which included the new trust reporting rules, was introduced into Parliament. This bill provides that the new trust reporting requirements would apply to tax years ending after December 30, 2023.
- On December 15, 2022, the new trust reporting legislation received Royal Assent and introduced new tax return filing and information reporting requirements for trusts. These changes were made as part of Canada's continuous efforts to ensure the effectiveness and integrity of the Canadian tax system.

Of note, Finance Canada routinely publishes draft legislative and regulatory proposals for public comment in the course of developing new tax and similar laws and regulations, or modifying existing ones. Feedback received on these draft proposals should help to ensure that legislation and regulations are responsive to the views of stakeholders and professional tax practitioners before they are introduced in Parliament or submitted for approval. For example, in July 2018, Finance Canada released the draft legislative proposals to implement the new trust reporting rules for public consultation. Similarly, in February and August 2022, it released draft legislative proposals for public consultation. For trust reporting, the consultation did not result in significant changes between the draft for consultation and the final tabled legislation.

## CRA's role in tax legislation

The CRA's mandate is to support the administration and enforcement of the program legislation, which is composed of complex laws enacted by Parliament. It also implements agreements with:

- provincial and territorial legislatures
- other federal departments and agencies
- Indigenous governments

Some may wonder:

### **Can the CRA provide input on legislation it will administer?**

In short, the answer is yes. However, the CRA can only provide input and cannot force changes.

The CRA informed us that Finance Canada generally, but not always, consults with the CRA when drafting new legislation. Where appropriate, the CRA provides input regarding any potential concerns that there may be in interpreting or implementing the proposed legislation, especially as it relates to administration of the law. Further, the CRA understood that stakeholder groups had submitted comments about the draft of the new trust reporting rules to Finance Canada for consideration. The CRA is required under the law to administer the legislation as enacted.

The CRA indicated that it routinely answers questions and reviews draft legislation related to the administration of taxes and benefits in order to provide feedback to Finance Canada. As part of this process, the CRA considers administrative feasibility, taxpayer burden, and resources required to implement new legislation.

Beyond providing feedback on draft legislation, the CRA says that it has a well-established process to propose legislative amendments for consideration and will proactively reach out to Finance Canada when issues arise.

## **Can the CRA control the effective date of tax legislation?**

The CRA informed us that the coming into force date of any new legislation is set in the legislation itself. It is therefore not within the CRA's purview to determine when new legislation becomes effective.

However, we have been told it is not uncommon for Finance Canada to consult with the CRA concerning implementation and administration issues related to determining the coming into force date.

## **What action can the CRA take if it is having difficulty administering tax legislation or needs clarification on the legislation?**

The CRA advised us that it first considers whether any administrative options exist that will address the issue while complying with the existing legislation. For example, in some cases the CRA may have the authority within the legislation to adopt an administrative policy or the flexibility to publish additional guidance for the public.

However, if the CRA's legislative authority under new legislation does not permit it to adopt an administrative policy, the CRA would work with Finance Canada to seek clarification or identify any difficulties encountered in administering the new legislation. This work follows a robust process, which can include conducting working groups and meetings with program areas within the CRA as well as soliciting feedback from the public, including stakeholders.

If the CRA encounters difficulties with administration and believes that a legislative amendment may be required, it works with the affected program areas in the CRA to identify and fully describe any issues to effectively communicate them to Finance Canada.

In some cases, Finance Canada may propose a legislative amendment or publish a news release to address issues raised as a result of this process.

If the Minister of Finance decides to introduce a bill, Parliamentarians will vote to decide whether or not the draft legislation becomes law.

**Is the CRA only required to administer the legislation as the law is set out, or must it also consider the intentions of the law and the impact it has on taxpayers?**

The CRA told us that its mandate is to administer tax, benefits, and related programs and to ensure compliance on behalf of governments across Canada. This requires that the legislation be administered as set out in the law.

That said, it also indicated it considers the intentions of the legislation and the broader context in which it operates to ensure that its administration aligns with the intent. This involves considering the practical implications for taxpayers who have to comply with the new provisions of the law when administering the legislation.

**How well does the CRA work with Finance Canada?**

Finance Canada is the CRA's most important federal partnership, given its role in developing Government of Canada tax policy and legislation. The CRA indicates that it has a strong and meaningful relationship with Finance Canada. It explained that its relationship involves engaging in ongoing discussions where consideration is given to the administrative feasibility of new tax measures, any associated taxpayer burden, and the resources required to implement and administer new measures. The goal of these discussions is to ensure that Finance Canada is provided with the information it needs to consider regarding how the legislation could be administered and to help promote outcomes that are consistent with the policy intent of the legislation.

Finance Canada is responsible for proposing any changes to federal tax policy and legislation, but it will generally consult with the CRA when drafting new legislation. As such, the CRA indicates that it places great importance on maintaining open and reciprocal discussions with Finance Canada.

## To summarize

The CRA may provide input to Finance Canada.

Finance Canada advises the Minister of Finance.

The Government of Canada decides what to do with the advice it receives.

## Our takeaway

The CRA does not have control over legislation's wording or the ability to amend legislation to make it workable. However, as part of its strong and meaningful relationship with Finance Canada, the CRA provide recommendations in the legislative process, but not always.

Generally, the CRA is given an opportunity to provide input to Finance Canada during the drafting of the legislative provisions of an act (or a law) it will administer. Similarly, the CRA said it has a well-established process to develop proposals for legislative amendments to be considered by Finance Canada and will proactively reach out to the department when issues arise.

Although the CRA does not have the final say in the process of drafting tax legislation, it has the ability to take action, after the legislation is enacted, that could make complex tax legislation simpler to administer when it comes to service-related issues.

As for the bare trust filing requirements specifically, the core issue we heard from the organizations we met with relates to the legislation itself. They pointed out that the primary barriers the CRA faced in its administration of the bare trust filing requirements were not administrative but legislative, because the concept of bare trusts in the legislative wording was too broad.

As explained in the Challenges section of this report, we were unable to get a response about how the CRA worked with Finance Canada in administering the bare trust filing requirements. Therefore, it remains unclear to what extent the CRA was involved after the legislation passed and when issues arose.

The chronology of events provided by the CRA indicates that Finance Canada released a draft legislative proposal for public consultation regarding trust reporting in July 2018 and again in February 2022 and August 2022 with the inclusion of bare trusts. However, the chronology of events does not include any information on a consultation process between the CRA and Finance Canada regarding the bare trust filing requirements, as discussions between Finance Canada and the CRA are considered Cabinet Confidences, and the information cannot be disclosed to our Office. We only know the information the CRA provided on Canada.ca when it announced its exemption decision on March 28, 2024, including that it would work with the Finance Canada to further clarify its guidance on the filing requirement.

An effective end-to-end consultation process with Finance Canada should ensure that stakeholder concerns, as well as concerns the CRA shares about administration, are considered. The CRA indicates it “engages with key stakeholders to gather business intelligence and enlist support for [CRA] efforts to deliver its mandate. Working closely with stakeholders gives the CRA a more genuine understanding of their perspectives on key



strategic issues, which may have an impact on their organizations as well as on the CRA clients they serve. It also promotes openness and transparency in CRA decision making on policy and program development.”<sup>7</sup> With this in mind it is clear the CRA knows the importance of consultations, it merely has to improve how timely and effective they are.

The CRA should consult with stakeholders early on, even before legislation comes into force, to ensure it is aware of any feedback and concerns there may be so that it can develop an action plan to address them in a timely manner. There may be opportunities that have been missed and if the CRA were to conduct an internal review, it may be able to uncover ways it could improve its consultation process for future legislative changes.

### **Recommendation One<sup>8</sup>:**

The Taxpayers’ Ombudsperson recommends that the CRA conduct an internal review of how it collaborates with stakeholders when amendments to legislation have been enacted by Parliament. The review should be completed by March 31, 2026. The goal of the review should be for the CRA to improve its consultation process to ensure it understands the estimated number of Canadians who could be impacted, and, where possible, considers the perspectives of stakeholders on key strategic issues that affect them, their members, or their clients.

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## Part 2: Taxpayers' Rights

Canadians are entitled to many rights and freedoms, including:

- Fundamental freedoms
- Democratic rights
- Mobility rights
- Legal rights
- Equality rights
- Official Language rights
- Minority language educational rights

Most rights in Canada are protected by laws; however, some are not.

The Taxpayer Bill of Rights is a collection of 16 rights describing the treatment taxpayers should receive when dealing with the CRA. Some of these rights are legally protected, others derived from administrative law, while a few more are simply there to reinforce an engagement from the CRA to good service to Canadians.

### Rights in the spotlight

This examination focuses on key issues linked to two taxpayer rights, specifically:

**Taxpayer Right 6 – the right to complete, accurate, clear, and timely information from the CRA.**

This means that taxpayers can expect the CRA to provide complete, accurate, and timely information in plain language explaining the laws and policies that apply to them. This includes what the CRA publishes on its web pages and in print as well as information it provides over the phone.

**Taxpayer Right 10 – the right to have the costs of compliance taken into account when the CRA is administering tax legislation.**

This means that, where possible, the CRA recognizes the need to minimize the time, effort, and costs required by the public to comply with the tax and benefit legislation the CRA administers. To promote compliance, interactions with the CRA should be as convenient and easy to understand as possible while the CRA carries out its duty to protect Canada's tax base by ensuring the highest possible level of tax compliance.

## How are taxpayer rights protected?

Taxpayers are entitled to the rights outlined in the Taxpayer Bill of Rights. However, many have questioned why the CRA did not do more to respect their taxpayer rights regarding the services it provided when it was administering the new trust reporting legislation, specifically in relation to the way the CRA provided information and took the costs of compliance into account.

One reason may be that Taxpayer Rights 6 and 10 are non-binding rights. Some rights are legally binding, like Taxpayer Right 2, the right for a taxpayer to have service in both official languages. This right is binding under the *Official Languages Act* and requires all federal institutions to provide services in English or French on request.

However, there is no legislation that makes Rights 6 and 10 legally binding. This means that they are not enforceable by law; rather, they are commitments to taxpayers by the CRA. The Honourable David E. Graham indicated, in the Tax Court of Canada case *Johnson v The Queen* 2022 TCC 31:

[25] The Taxpayer Bill of Rights is an administrative document issued by the CRA. It is, in essence, a pledge to deliver a certain quality of service to Canadian taxpayers. It has no force of law. It neither overrides nor supplements the Income Tax Act.

[27] A taxpayer cannot sue or otherwise bring an action against the CRA in Tax Court for an alleged breach of the *Taxpayer Bill of Rights*. ...

Some taxpayers may question the purpose of non-binding taxpayer rights. However, they have some value. Specifically, they ground the CRA in guiding principles that it should respect when it is administering tax legislation. For example, when the CRA is looking at adding new services, train its employees, or modernize the services it offers, it can use these rights as a foundation when evaluating processes. This can help the CRA ensure the service it delivers to taxpayers meets their expectations.

## Redress for non-binding taxpayer rights

Redress can vary depending on what right is being challenged. However, for non-binding rights, taxpayers are unable to go to court to force the CRA to respect their right. Therefore, the CRA encourages taxpayers to submit their feedback to [CRA Service Feedback](#). After, if the taxpayer is still unsatisfied, they can request that our Office examine their complaint.

### CRA Service Feedback Review

Taxpayers can submit a service complaint, suggestion, or compliment about an experience they had with the CRA to CRA Service Feedback. This program reviews feedback and uses it to improve CRA service.

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## Taxpayers' Ombudsperson Examination

If a taxpayer has an unresolved service issue after CRA Service Feedback has finished its review, or if they are not satisfied with how the CRA addressed their complaint, they can submit a complaint to our Office so that an officer can examine it.

Upon completing an examination, our Office may be able to:

- resolve the complaint
- make a recommendation to the CRA to, for example:
  - issue an apology
  - process a request
  - provide additional training to an employee
  - contact the taxpayer to provide further explanations
  - correct an error
  - change or create a procedure to improve service
  - improve its communications
  - improve accessibility

Our Office cannot:

- direct the CRA to change a tax-related decision
- direct the CRA to give monetary compensation
- direct the CRA to stop collection action, reviews, or audits
- propose changes to legislation
- direct the CRA to reprimand an employee
- advocate for a taxpayer or the CRA

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## Part 3: Main Issue

The main issue was the CRA was tasked to administer legislation that was burdensome. This led to Finance Canada announcing in August 2024 that it would consult with Canadians to clarify the bare trust reporting rules and ease the related administrative burden on taxpayers.

## What we heard from stakeholders

It is the CRA's responsibility to explain complex legislation to the public. It should be the CRA who takes complex legislation and makes it understandable for the average taxpayer.

— Lawyer

The concept of bare trusts provided in the new trust reporting legislation was described by some as:

- unclear
- broad
- hard to understand
- confusing
- unworkable
- complicated
- poorly thought out

The CRA informs taxpayers that “[y]ou can expect us to provide you with complete, accurate, and timely information in plain language **explaining the laws and policies that apply to your situation** [emphasis added].” <sup>9</sup>

It also says that it “operates on the fundamental belief that [taxpayers] are more likely to comply with the law if [they] have the information and other services that [they] need to meet [their] obligations.” <sup>10</sup>

Therefore, it is up to the CRA, in its administration of tax legislation, to provide guidance about the legislation. That being said, it is ultimately the taxpayer's responsibility to understand or be informed of the law and to take reasonable steps to comply with it. However, it appears in this case there was additional complexity: Taxpayers had to first establish if the arrangement they were involved with was a trust and then determine if the reporting requirements applied.

## Legislation Issues

The CRA may face legislative barriers in its administration of tax legislation. It acknowledged that “tax legislation is often incredibly complex. In some cases, issues are not known until a provision is being actively administered.”

This appears to be the case with the CRA’s administration of the bare trust filing requirements. The broad and complex nature of the legislation on bare trusts made the requirements difficult to administer while ensuring compliance. As a result, the CRA had a limited ability to provide sufficient guidance to taxpayers. As well, bare trusts needed more time to become aware of their reporting obligations. The CRA also needed to prevent downstream impacts on its programs, such as the Taxpayer Relief Program, if a bare trust filed a T3 return without Schedule 15.

Wording of the legislation:

There were clear issues with the law. It was unworkable. This was made known to the CRA, Finance Canada, politicians, and the guidance provided by the CRA reinforced it was an unworkable law.

— Chartered Accountant

The new trust reporting legislation defines a bare trust through two provisions in the *Fall Economic Statement Implementation Act 2022*.

Specifically, it indicates the following:

150(1.3):

**Bare trusts and arrangements — inclusion (1.3)** For the purposes of this section, a trust includes an arrangement under which a trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust’s property.

104(1):

**Reference to trust or estate****104(1)** In this Act, a reference to a trust or estate (in this Subdivision referred to as a “trust”) shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of a succession, heir or other legal representative having ownership or control of the trust property, but, except for the purposes of this subsection, subsection (1.1), section 150, subparagraph (b)(v) of the definition disposition in subsection 248(1) and paragraph (k) of that definition, a trust is deemed not to include an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust’s property unless the trust is described in any of paragraphs (a) to (e.1) of the definition trust in subsection 108(1).

The broad nature of the wording of the provisions does not leave much room for a clear explanation. The CRA did provide additional text online, which included the same wording from the provisions, in its [Frequently Asked Questions](#). The definition in the FAQs also describes the legal relationship under which a bare trust arises. However, despite the provisions and their guidance, the CRA indicated that “the term ‘bare trust’ is not defined in the *Income Tax Act*.”

### **The CRA’s limited ability to provide individual guidance on the new requirements:**

Taxpayers, including tax professionals, expressed that they experienced difficulties in determining if a specific situation was a trust subject to the new reporting requirements. However, given the complex nature of bare trusts, the CRA was limited in the guidance it could provide because it had no legal authority to provide legal advice to taxpayers.



The CRA indicates that “it is the responsibility of the parties involved in an arrangement to determine the true nature of their legal relationships and whether they give rise to a bare trust or other trust which would be subject to the new trust reporting rules.” Whether or not a particular arrangement is a trust or a bare trust depends on the specific facts of each situation, as well as the applicable law. In addition, the legal principles applicable to trust relationships vary depending on the relevant province or territory.

The CRA also indicates:

Under the law of equity in common law provinces, in very general terms, a trust is a fiduciary relationship that arises when legal ownership of property is separated from beneficial ownership. Under the Civil Code of Quebec, trust relationships may have different characteristics. The existence of a trust relationship may be inferred from evidence about what the parties intended, what they actually agreed to and how they conducted themselves.

Therefore, the CRA advises taxpayers to seek legal counsel if they are unsure of whether their arrangement is a trust and of what type of trust they have because the CRA cannot make a legal determination.

Organizations we met with expressed how difficult it can be for many tax advisors, including accountants and lawyers, to assess arrangements and determine whether the arrangement is a trust and then if it is a bare trust. Authorized representatives do not always have legal training, which may make it harder for them to determine whether an arrangement is a trust, let alone a bare trust.

**The need for additional time:**

The CRA knew that an education-first approach to compliance was required. It needed to provide additional time for taxpayers to be educated on the new reporting requirements. Internally, the CRA indicated it was aware that bare trusts had less time to learn about their reporting obligations; many taxpayers may not know that a bare trust has been created by their arrangements, unless they consulted a tax professional or lawyer.

The CRA did not provide relatable examples because Canada's tax system is based on self-assessment, where the onus is on taxpayers, not the CRA, to determine whether they are in a legal relationship that is a trust, including a bare trust. However, while it is not the CRA's responsibility, it would be helpful to taxpayers if it were to provide common examples of what type of arrangement could be a bare trust beyond the example in FAQ 3.1.

The CRA should develop ways to ensure it has a flexible approach to informing taxpayers of new tax laws, including providing clear examples, so that taxpayers can comply fully with the new obligations.

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## Part 4: Were Rights 6 and 10 Respected?

In this examination, we look at whether the CRA respected Taxpayer Rights 6 and 10 and, if so, how. As indicated in What we could access, Cabinet confidences include draft legislation, such as draft bills. Further, the information in draft legislation remains in confidence even after the final version is introduced in the House of Commons or the Senate. Therefore, our focus is on what the CRA did after the new trust reporting legislation received Royal Assent.

One thing was clear. Even though the legislation was difficult to administer, the CRA had options to lessen the burden on taxpayers by:

- providing sufficient guidance under subsection 220(1) of the ITA
- providing penalty relief under subsection 220(3.1) of the ITA
- extending filing deadlines under subsection 220(3) of the ITA
- exempting some from reporting requirements under subsection 220(2.1) of the ITA

The CRA indicates that it is working hard to make sure that its People First approach is built into all aspects of how it interacts with the Canadian public. At the same time, the CRA is mandated to administer and enforce legislation enacted by Parliament. The new trust reporting rules did not create the concept of bare trusts; however, the rules created an obligation for taxpayers to disclose these opaque arrangements.

The CRA started administering the new trust reporting legislation without relief and only met with stakeholders six months after the new trust reporting legislation became law. The CRA did so to hear their thoughts and concerns during the process of drafting guidance to administer the legislation.

When the CRA began increasing its efforts to administer the new trust reporting legislation, it was aware of significant concerns related to the compliance burden. Many professional associations and industry organizations requested specific guidance from the CRA.

Aligning with its education-first approach to compliance, the CRA wanted to provide bare trusts with time to become properly informed about the new reporting requirements. Therefore, it provided penalty relief to reassure taxpayers and representatives that they did not need to file on time.

However, the CRA did not provide us with any information showing that it was considering to have the filing deadline extended. That said, the CRA eventually exempted all bare trusts from the 2023 filing requirement, unless it makes a request for them to file. The CRA has not made any of these requests since it announced the exemption in March 2024.

## The Attempt

The CRA is responsible for interpreting and administering the legislative provisions under the acts it administers. When carrying out its duties, the CRA says it aims to provide taxpayers with “information that is meaningful, easy to understand, and is right the first time.” <sup>11</sup> However, as reported by the public and stakeholders we met, nothing about bare trusts was easy to understand.

The five-page [T3 return \(PDF, 0.07 MB\)](#) and two-page [Schedule 15, Beneficial ownership information of a trust \(PDF, 0.03 MB\)](#), would be daunting for many who are not accountants or lawyers. Although the complexity of the T3 return was caused by legislative requirements, we heard that the CRA made it as simple as it could.

However, because of the nature of bare trusts, not all information requested on the T3 return may be relevant. Therefore, the CRA provided advice to not fill out certain parts of the T3 return. It may have been more helpful if the CRA were to have unique T3 returns for bare trusts that would only include the relevant fields.

### **Recommendation two:**

The Taxpayers’ Ombudsperson recommends that the CRA conduct an analysis to determine if it would be beneficial to introduce a unique form for bare trusts to meet the new reporting

requirements so they can easily submit the necessary information. The analysis should be completed by June 30, 2025.

Because of complexities around the legal determination of the existence of a bare trust, it was going to be difficult for taxpayers in a bare trust arrangement to know they were now required to file a T3 return. The new trust reporting legislation did not carve out exemptions for the majority of bare trusts, and as a result, the CRA estimated tens of thousands were on the hook to comply.

Many taxpayers likely did not comply with the new trust reporting legislation because they did not know they were even in a bare trust arrangement.

### **Unintended Consequences**

I considered the possibility of filing the returns myself. I downloaded the forms from the internet and followed the CRA's online instructions and guidelines, but found them too confusing. Looking at the T3 Trust Return made my head spin because it contained so many pages. I was left with too many questions to undertake the task myself. I would strongly urge the CRA to consult with taxpayers in the future. Not all of us are accountants and tax lawyers.

— Taxpayer

### **Communications Plan**

As part of the CRA's attempt to administer the new trust reporting legislation, it developed and approved a flexible communications plan. The CRA indicated that its communications plans, particularly for complex topics, are flexible in that if the messaging needs to evolve to reflect an operational update or an additional tactic needs to be added to better

reach the target audience, further approvals on the updated plan can be sought. Part of this plan informed CRA executives about the huge impact that the new trust reporting legislation would have on taxpayers and how the CRA planned to help taxpayers through its communications.

While the plan was very detailed, it lacked follow through, appropriate deadlines, sufficient updates, and learning opportunities that would lead to high compliance. For example, it planned to optimize the web pages about trusts; however, it had a targeted publishing date of Spring 2024. Planning to publish optimized web content just days before the filing deadline, or likely even after, is not timely. While we note the CRA had already published other trust reporting information online, including FAQ web pages on Dec 1, 2023, optimization should have been implemented sooner.

That said, it is not clear if the optimization was ever done, as the last update the CRA made to its plan had that task's "Status" as "In Development." As well, the copy of the plan that was provided to our Office on October 9, 2024, was last updated on February 7, 2024, well before the deadline for many deliverables.

The lack of follow through and timely updates to the plan could mean that key deliverables the CRA planned to carry out may not have been actioned. For example, in the CRA's plan, it sought to inform taxpayers through social media that its FAQs were now available. This did not happen.

The CRA should develop a way to ensure its communication plans are followed and updated at set intervals so that it can appropriately track the progress and achieve its communication goals.

## Information provided

### Updates

After the new trust reporting legislation received Royal Assent, the CRA released Guide T4013, [T3 Trust Guide 2022 \(PDF, 2.9 MB\)](#). The guide informed the reader:

The 2022 Fall Economic Statement confirmed the Government's intention to proceed with this previously announced tax measure, as modified to take into account consultations and deliberations since its release. These reporting requirements for trusts and related penalties will be effective for tax years ending after December 30, 2023.

While the T3 guide for 2022 mentioned bare trusts, it lacked detailed information. Yet, it did provide the following on bare trusts for the first time:

The term “bare trust” is not defined in the Act. A “trust” for the purposes of the Act is defined in subsection 104(1) of the Act. That subsection provides that, if the arrangement is one in which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust’s property and the trust is not a trust described in paragraphs (a) to (e.1) of the definition of “trust” in subsection 108(1) of the Act, the arrangement is deemed not to be a trust for the purposes of the Act. These arrangements are generally known as “bare trusts.”

A trustee can reasonably be considered to act as agent for a beneficiary when the trustee has no significant powers or responsibilities, the trustee can take no action without instructions from that beneficiary and the trustee’s only function is to hold legal title to the property. In order for the trustee to be considered as the agent for all the beneficiaries of a trust, it would generally be necessary for the trust to consult and take instructions from each and every beneficiary with respect to all dealings with all of the trust property.

The lack of sufficient information meant that taxpayers had to wait and see how the CRA would be administering the new trust reporting legislation. On October 27, 2023, the CRA issued a tax tip to inform trusts that a T3 return and Schedule 15 would need to be filed for all trusts with tax years ending after December 30, 2023, unless specific conditions were met. The filing deadline for T3 returns for the 2023 tax year was stated to be March 30, 2024. However, bare trusts were not specifically addressed in the body of the tax tip because it applied to all trusts.



To avoid confusion, the CRA also added an information alert to the top of a web page containing an information bulletin from 1993 relevant only to GST/HST for the purpose of directing visitors to its new trust reporting rules “Frequently Asked Questions” page.

## Frequently Asked Questions

### Timeliness

One thing that was evident during this examination was the lack of timely information. For example, even though the legislative proposal to include bare trusts was released for public consultation in February and August 2022 and the new trust reporting legislation received Royal Assent in December 2022, the CRA only released additional information by publishing its “Frequently Asked Questions” web page in December 2023.

**This did not respect certain aspects of Taxpayer Right 6—This was not timely.** However, this lack of timeliness did not go unnoticed within the CRA. In November 2023, when CRA officials briefed their senior management, they indicated that the “CRA[’s] communication has **never** [emphasis added] included information for bare trusts.”

The timing of the release of the additional information in December had a direct impact on bare trusts and their representatives. We heard that many tax professionals begin their tax-season preparations in the fall.

We also heard that accounting firms, many of which are small businesses, undertook significant financial costs to fully prepare to help their clients comply. This situation goes against the CRA’s commitment to administer the tax system in a way that minimizes the costs of compliance for small businesses.

We heard of small businesses that spent thousands of dollars on hiring new staff, training employees, and filing returns for clients. We heard that some tax preparers hired lawyers to support their team and help make sense of their clients' compliance obligations. **This situation did not respect certain aspects of Taxpayer Right 10—Tax preparers had to find out information themselves and were not provided with sufficient information from the CRA.**

It was not helpful that the CRA provided information after tax preparers had already completed preparations and training for the upcoming tax season. One thing we heard from many stakeholders was that the information the CRA eventually released had value, but that it came too late.

## Helpfulness

We found problems with the way the CRA was providing the information on bare trusts to taxpayers. The information the CRA initially gave to bare trusts was not laid out in a way that is helpful, but rather consisted of questions and answers.

It was surprising that the CRA used this outdated approach, because they previously told us that using 'frequently asked questions' in web pages does not inherently provide quick answers, and in many cases make it harder for people to find what they are looking for.

However, the CRA indicated it used the FAQ page because it was the fastest way to publish centralized guidance online in comparison to updating the regular trust web pages in advance of the T3 Guide publishing schedule. The CRA explained that much of the FAQ content was incorporated into the T3 Guide because both products were developed concurrently.

## Guidance

In an attempt to respect Taxpayer Right 10, the CRA incorporated the answers to its frequently asked questions in its T3 guide on December 22, 2023. **This respected certain aspects of Taxpayer Right 10—This showed that the CRA took the costs of compliance into account when it was administering the legislation.** Specifically, the CRA provided taxpayers with one resource that simplified the process for bare trusts. It also detailed instructions on what a bare trust would need to file and included information on what to include in specific sections of the forms, along with clarification on definitions and easily accessible excerpts from the applicable legislation to answer questions included in the forms.

However, while it seems problematic that the CRA did not release the updated T3 Guide until December 22, 2023, the guide was released based on the normal release schedule for the T3 Guide, and the changes to the guide were largely based on the information already published online as guidance on the trust reporting FAQ page. In this case, releasing information based on the CRA's normal release schedule was likely not timely, as the CRA released the FAQ guidance page in advance of this release schedule. **That did not respect certain aspects of Taxpayer Right 6—This did not provide timely information.**

Considering the CRA was aware that Finance Canada provided a legislative proposal to include bare trusts in February 2022 and the new trust reporting legislation received Royal Assent in December 2022, the CRA should have had guidance in place sooner.

## Unintended Consequences

I have concerns and frustrations regarding the process of bare trust filings with the Canada Revenue Agency (CRA). As a taxpayer navigating the complexities of tax regulations, I believe it is crucial to address the shortcomings in the current bare trust filings system to ensure clarity, efficiency, and fairness for all stakeholders involved. First and foremost, the process of filing for bare trusts with the CRA lacks transparency and consistency. The guidelines and requirements for submitting bare trust filings are often unclear and subject to interpretation, leading to confusion and delays for taxpayers attempting to comply with their tax obligations. Without clear and standardized procedures, taxpayers are left to navigate a maze of regulations without adequate guidance from the CRA.

— Taxpayer

Even after the guidance was released, questions remained. The CRA still had many taxpayers requesting clarification, mainly relating to whether they had a trust, including a bare trust. However, the CRA cannot make legal determinations for taxpayers. Therefore, it did not provide any further clarity publicly. That said, in its guidance and interpretations, the CRA did help taxpayers to determine the tax consequences of their identified legal relationships.

## T3 system modernization

The CRA informed us that to “prepare for the trust reporting changes and receipt of beneficial ownership information, the CRA began work to modernize systems and processes to assess T3 returns and capture the

beneficial ownership information. At the same time, to improve taxpayer service, the CRA began work on the online trust account registration service, T3 electronic filing (T3 EFILE), and My Trust Account.”

This T3 modernization led to the CRA launching My Trust Account on February 6, 2023, a secure portal for legal representatives and authorized representatives of trust accounts, accessible through Represent a Client.

My Trust Account provides legal representatives and authorized representatives with a convenient way to manage trust information online. The service allows representatives to view and update some account information (depending on their level of authorization), including addresses and direct deposit information, and authorize a representative. This service made filing for trusts easier, faster, and more secure. **This respected certain aspects of Taxpayer Right 10—This showed that the CRA took the costs of compliance into account by minimizing the time, effort, and costs to manage a trust.**

The CRA knew some still had concerns over the process to register for electronic filing; it as it was expecting an increase in the number of paper-filed returns, which would require more manual intervention. In the end, only 13,111 of the 54,030 bare trusts that did file, or 24%, filed by paper between January 2023 and July 2024.

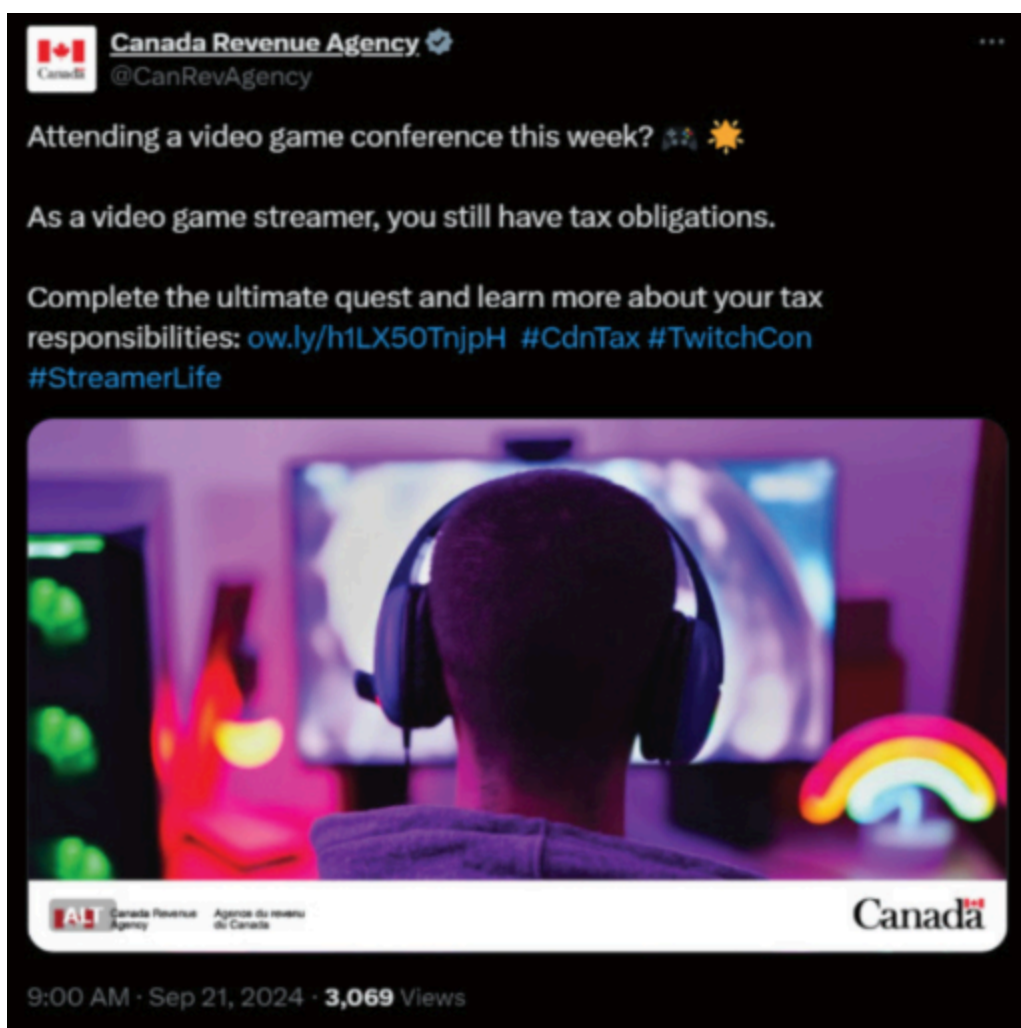
## Social media

The CRA indicated that social media was part of its proactive communication approach. However, we found the CRA posted fewer than 10 times each on X, Facebook, and LinkedIn regarding trust filing. The social media content was not targeted at bare trusts specifically.

In addition, when reviewing the CRA's social media posts about the new reporting requirements for trusts, we found they lacked information that would be helpful to the average taxpayer. The posts may have been useful for someone who knows they are in a trust arrangement or a tax professional who deals with T3 returns. However, they would not have been helpful for all the taxpayers unknowingly in a bare trust arrangement.

The CRA has the capacity to post engaging social media content. It should have done so for bare trusts.

When social media content is engaging, users may click on the link provided to find out more. For example, the following post makes the viewer think, "Do I have to pay taxes? I stream, so maybe I should click the link to find out more information."



### ▼ Image Description

### CRA social media post:

Attending a video game conference this week? (video game emoji, star emoji)

As a video game streamer, you still have tax obligations.

Complete the ultimate quest and learn more about your tax responsibilities: [ow.ly/h1LX50TnjpH](https://ow.ly/h1LX50TnjpH) #CdnTax #TwitchCon #StreamerLife

The back of a person's head wearing headphones and playing video games in front of a screen

By contrast, we found that the CRA's posts about T3 return reporting requirements, shown below, would not promote awareness for the average taxpayer. Furthermore, they did not mention bare trusts at all, except for when the CRA announce that bare trusts were exempt from the filing requirement for 2023. In addition, the post below likely did not cause taxpayers to ask themselves whether they are in a trust arrangement and think about the new tax obligations that would come with that.



### ▼ Image Description

CRA social media post:

(bell emoji) Reporting requirements are changing for trusts. Check if this affects you: [ow.ly/hnsV50PGYEB](https://ow.ly/hnsV50PGYEB) #CdnTax

Three people in an office. One sitting at a table pointing at her laptop, one standing in behind her and the other leaning in to look at the laptop.

The CRA's posts could have been improved. It could have done this through an awareness campaign making direct reference to bare trusts. Even if the CRA could not confirm whether an arrangement was a bare trust, it could have provided more useful information.



## The relief

On November 27, 2023, the CRA exercised its authority to administratively waive late-filing penalties for bare trusts that file their 2023 T3 returns, including Schedule 15, after the filing deadline. On December 1, 2023, the CRA announced it would be providing transitional relief to bare trusts by waiving the late-filing penalties for bare trusts for the 2023 tax year.

This announcement came four days after the decision was made and was announced through its release of Frequently Asked Questions.

CRA officials advised senior management that its

“decision to waive the late filing penalty aligned with CRA’s education-first approach to compliance and provided bare trusts with time to be properly informed about the new reporting requirements and file at any time over the year without penalty. Further, [it explained] relief was only provided to bare trusts as they were not included in the initial announcement of the new trust reporting requirements with Budget 2018.”

The CRA officials also elaborated that:

“[s]ince a communication plan for bare trusts will only start with the publication of the FAQs at the end of November 2023, bare trusts have had less time to become aware of their reporting obligations. Except through professional advice, **many taxpayers may not even know that a bare trust is created by their arrangements, such as putting a family member on title of their family home for the purpose of estate planning, and in-trust-for bank accounts.** [emphasis added] Without knowing a bare trust has been formed, taxpayers will not be aware or will be uncertain of the new reporting obligations until CRA’s education and communication efforts proceed. Thus penalty relief is being considered for bare trusts only, and to provide them with adequate time to be educated about the new requirements compared to other trusts who have known about these new reporting obligations since 2018.”

One thing we know is that the CRA provided examples internally to its officials and employees of what a bare trust is, but did not do so for taxpayers. The CRA indicated it did not publish examples for the public to avoid inappropriately appearing to provide legal advice to taxpayers.

## Relief with exceptions

The CRA indicated that it had good intentions in administering the new trust reporting rules by announcing that it would proactively waive penalties for late-filed bare trust returns, effectively granting a filing deadline extension for bare trusts. However, tax practitioners were concerned about the potential application of the gross negligence penalty in subsection 163(5). In response to these concerns, the CRA provided

clarification through a Stakeholder Desk Message and updates to the FAQ about how gross negligence penalties would only be applied as part of an audit, in which where all factors and circumstances are considered.

However, many organizations quickly noticed that it was not a broad-based penalty waiver. Specifically, a person or partnership that fails to file a return of income of a trust could be liable to pay a different penalty if they did not file “knowingly or due to gross negligence.”

The CRA intended for the penalty relief to reassure tax preparers and trustees. However, the wording the CRA used did not alleviate concerns. We heard that tax preparers and trustees were not sure what the CRA would consider to be knowingly or grossly negligent.

## Unintended Consequences

My wife and I are hard-working middle-class Canadians who have been caught in the Bare Trust T3 fiasco because we co-signed a mortgage for our daughter, her husband, and our granddaughter. We have also had to file the Underused Housing Tax (UHT) return which has been placed on pause for 2023 for reasons similar to the T3 exemption. These reporting rules were apparently spread out in a 'very wide net' in order to catch the 'big fish'. Meaning the CRA is really after the mega wealthy who always seem to have advisors who can work their way around the rules our representatives devise. As Canadians who trust in our government, we tend to follow the rules laid out and pay the taxes we feel we are obligated to. These poorly rolled out schemes would never have come to our attention if it had not been for the sharp eyes of our long time financial advisor and our very able accountant. When they alerted us to our obligation to file these returns, we approached our friends who were in similar positions as us and who told us that they were just going to ignore the process and plead ignorance if contacted about the requirement. This makes us feel rather gullible as they seem to have avoided the unnecessary costs which we have incurred.

— Taxpayer

## Taxpayer Relief Program

The CRA estimated that hundreds of thousands of taxpayers could be affected, and it anticipated that it could negatively impact the Taxpayer Relief Program. For example, the CRA noted that this program could face a drastic increase in workload, potentially reducing the quality and timeliness of services provided, if even 10% of bare trusts sought penalty relief. This

would have been highly likely, as one of the situations when relief may be possible is when there are “delays in providing information, resulting in [a taxpayer] not being able to meet [their] tax obligations on time.” <sup>12</sup>

One stakeholder we met with indicated that the CRA’s estimate may have been conservative, suggesting it is more likely in the millions. For example, if a bare trust is created when a parent co-signs a mortgage, then the number of taxpayers affected would likely be much higher. The Statistics Canada article Intergenerational housing outcomes in Canada: Parents’ housing wealth, adult children’s property values and parent-child co-ownership (PDF, 0.5 MB) was released in May 2024, and it established that “In 2021, around one in six residential properties owned by people born in the 1990s (17.3%) were co-owned with their parents.”

These considerations likely played a role in the CRA’s decision to proactively provide late-filing penalty relief for bare trusts. We also know the CRA considered the difficulties faced by the public in understanding their reporting obligations. Documents received from the CRA explicitly state relief would “provide taxpayers with additional time to become educated on the reporting requirements.” Likewise, these documents show the CRA considered feedback from professional associations, which suggested that the CRA look at penalty relief and “deferring implementation of rules.”

The CRA would have been well served if it had been informed of, or given the opportunity to estimate, how many taxpayers may be impacted. Before members of Parliament vote on new legislation, they should be aware of how many taxpayers could be affected.

The CRA should review how it interacts with its most important partner, Finance Canada during the latter’s legislation amendment consultation processes. This would include open communication, from consideration to enactment to administration, to ensure that the costs of compliance are

minimized and that any legislative proposals are as clear as possible so the CRA can effectively administer it and taxpayers know if they are affected, and therefore need to comply.

The review could detail the estimated number of taxpayers impacted, how it would increase the costs of compliance and what the CRA plans to do to alleviate these costs. This would allow the CRA to ensure, before any future tax legislation is passed, it is fully aware of the impact it will have on Canadians.

### **Recommendation Three:**

The Taxpayers' Ombudsperson recommends that the CRA review how it works with Finance Canada, particularly when it appears that the administration of a legislative proposal could increase the costs of compliance for taxpayers. The review should be completed by March 31, 2026.

## **Relief clarification**

On March 12, 2024, the CRA clarified its guidance with respect to relief, indicating that it would only apply a gross negligence penalty under subsection 163(5) in the most egregious cases where a bare trust fails to file the return. While this clarification did provide relief to some, 4,652 bare trusts had already filed. Therefore, we heard many were disappointed that it took the CRA three months to clarify its penalty relief position.

## Unintended Consequences

I am a Chartered Professional Accountant (CPA) and I own an accounting firm. The disrespect paid to accountants and their clients with the Underused Housing Tax (UHT) and Bare Trust rules being constantly changed has been difficult to take. Many clients no longer trust the CRA to actually even implement [Finance Canada's] rules at all with all of the waffling that has been done on these issues. We have been very clear with the CRA about the potential "unforeseen consequences" of these filing requirements well in advance of the due dates. The government should have listened to us, the tax preparers, well in advance of implementing these ridiculous rules rather than waiting until the very last minute to realize that this is the case. I personally have lost thousands of dollars trying to comply with these rules, only to lose the respect of my clients when the rules were changed. This needs to stop. The CRA should not implement anything without fully considering the consequences well in advance. It's unfair to taxpayers and tax preparers to put this useless burden on us.

— Accountant

## Stakeholder engagement at the CRA

We met with several organizations that indicated they had met with the CRA early on to make them aware of the issues that would arise as a result of difficulties in properly interpreting the legislation and guidance. The CRA advised us that stakeholder engagement started in June 2023 and continued onward. This was six months after the new trust reporting legislation passed. Six months is too long to wait before engaging with stakeholders, and this delay may be one of the reasons the CRA could not provide timely information to taxpayers. The CRA told us that stakeholders

expressed “concerns and challenges related to conflicting duties (including solicitor-client privilege), reporting burden, and questions regarding bare trusts arrangements.”

Engaging with stakeholders six months after the new trust reporting legislation received Royal Assent meant the CRA lost six months of crucial time that it could have used to address these concerns. Stakeholder engagement should be a priority at the CRA. We have heard that the CRA has recently created a new stakeholder engagement group at the senior executive level.

Early engagement is of great importance. It is crucial that the CRA hear initial concerns regarding the administration of legislation, then work through them. By understanding all the issues raised by stakeholders early on, the CRA will be better positioned to administer legislation more effectively.

The CRA heard from the tax community as early as June 2023 that the reporting requirements would create challenges for filers. Some organizations we met with spoke positively of the information the CRA provided on its web pages and the open channels of communication the CRA maintained with tax professionals. However, some indicated that it should have been clear to the CRA early on that the reporting requirements would be untenable and that it should have provided key guidance much earlier if it was to have any effect.

## **Responsibilities in making determinations on bare trust arrangements**

The CRA indicated that, in February 2024, its Income Tax Rulings Directorate issued an interpretation on the application of the new trust reporting rules. This interpretation noted that the question of whether a given arrangement is a trust or gives rise to the creation of a trust under the



applicable private law is a question of fact and law. It also noted that it is the responsibility of the parties involved in an arrangement to determine the nature of their true legal relationships and be able to clearly demonstrate such relationships.

When we questioned the CRA, they told us:

The CRA is responsible for interpreting, administering and enforcing the [Income Tax] Act based on existing legal relationships but not for advising taxpayers on the nature of those relationships. Our tax rules are based on a self-reporting system that relies on taxpayers to understand and be informed of the law and to take reasonable steps to comply with the Act (see, for example, *Ruiz v. Canada (Attorney General)*, 2022 FC 1617 at para. 12). The CRA is not in a position to advise taxpayers about the application of the relevant private law to their specific facts and circumstances or to provide legal interpretations of trust documentation. While CRA does provide interpretations of the Act to taxpayers on request, it does not confirm the income tax consequences of a particular situation involving specific taxpayers (other than in the context of an advance income tax ruling) and does not provide taxpayers with legal advice or legal services.

In contrast, legal counsel licensed in the relevant jurisdiction(s) can provide taxpayers with targeted legal and tax advice and assist their clients in understanding all the legal consequences of a particular trust or ownership arrangement, e.g., under the relevant trusts, succession, estates, substitute decisions maker, property, real property, agency, contract and/or family law as well as under the Act. Legal counsel will also be able to prepare, draft and/or update trust agreements, powers of attorney, wills, deeds of gift, marriage contracts, agency or nominee agreements, land registry registrations and any other necessary legal documentation as they are the professionals licensed to do so under provincial law. Although obtaining legal advice and services will require taxpayers to incur

legal fees, it will in many cases provide taxpayers with greater certainty about the nature and tax consequences of their legal arrangements and their reporting obligations.

For these reasons, it was appropriate to suggest that taxpayers consider whether legal counsel should be obtained in light of their particular circumstances.

In short, the CRA cannot assist taxpayers with these issues, as it would be a factual determination that does not involve an interpretation of the *Income Tax Act*. The CRA referred the public to seek legal counsel to remain compliant.

Despite this limitation, the CRA continued to receive questions through its general enquiries line and submissions to its Income Tax Rulings Directorate for guidance from both individual taxpayers and tax professionals alike.

## The exemption

On March 25, 2024, just days before the CRA exempted bare trusts from their filing requirement, program areas within the CRA met to discuss whether they could consider further administrative relief for the 2023 tax year as well as the need for improved guidance about bare trust filing obligations.

On March 28, 2024, the last business day before the 2023 T3 return filing deadline, the CRA exempted bare trusts from filing a T3 return for the 2023 tax year, unless it requested that they to do so.

One thing that remains unclear is why the CRA took so long to consider an exemption. Specifically, we do not know why the CRA did not provide an exemption in November 2023 instead of approving penalty relief. The

justification provided to senior CRA executives for the penalty relief did not appear to differ greatly from what was provided for the filing exemption.

The exemption announcement was met with more questions from taxpayers. Stakeholders expressed that they were surprised when the CRA announced an exemption immediately before the filing deadline. One of the most prominent questions was: Why is the CRA making another eleventh-hour decision?

This was not the first time in the recent months that the CRA had made a last-minute decision. Just five months earlier, on the last day to file a 2022 Underused Housing Tax (UHT) return without penalties or interest, the CRA announced that relief would be extended another six months.

That said, there was a marked difference between the bare trust announcement and the one that affected UHT filers. With the bare trust returns, the CRA exempted trustees from filing, unless the CRA made a direct request for these filings. With the UHT, there was no exemption; the 2022 return still had to be filed.

The rationale for the two measures was the same. Specifically, the Honourable Marie-Claude Bibeau, Minister of National Revenue, indicated:

We understand that many homeowners may not be aware that they are subject to this new law. This is why I want to ensure that every effort has been made to inform homeowners and help them meet their obligations. <sup>13</sup>

The same could be said about bare trusts. Many taxpayers may not have been aware that they were subject to this new law. Further, many taxpayers still likely do not know they are in a bare trust arrangement.

However, the bare trust exemption meant that all of the bare trusts who had already filed did so for no reason, and in many cases at great expense.

Most in the tax community knew that it had always been an unachievable goal to get all the affected bare trusts to file. After all, many taxpayers may not know they are in a bare trust arrangement. This could be a parent who controls their child's bank account or co-signing their child's mortgage, or a child who is helping their aging parents by helping them manage their bank account. These relationships could be a bare trust arrangement, or not, and as the CRA says "Taxpayers may wish to seek legal counsel if they are unsure whether their arrangement is a trust, and what type of trust they have." <sup>14</sup>

### **Impact on taxpayers**

One thing the CRA stressed when it provided the exemption was the unintended impact on Canadians. Some may question if the CRA, as the administrator, is responsible for evaluating the impact and, if it is too large or unintended, make a unilateral decision to stop legislation from being applied as set out in legislation. Many would argue that this provides too much power to the CRA.

However, it was important to understand what the CRA meant by "unintended impact on Canadians," as this statement was ambiguous. The CRA explained to us that the:

"unanticipated impact" could be described as the legislation requiring all taxpayers to evaluate their situation to determine if they were party to a trust relationship in order to determine their reporting requirements under the Act. Which over time and following discussions with stakeholders this imposed a significant burden on many taxpayers.

Regardless of whether the consequences were unintended or unanticipated, the CRA knew there would be an impact on taxpayers. After all, the CRA is the expert in Canada at administering tax legislation; it

administers tax laws for the Government of Canada and for most provinces and territories.

## Unintended Consequences

We have been seeing a decrease in compliance, primarily due to unworkable legislation and the inability of the CRA to administer it...The uncertainty and confusion surrounding the bare trust reporting requirements created an atmosphere of distrust between tax preparers, the government, and the public. When you seed distrust in a system that relies on self reporting, you see people telling their accountants to ignore certain filing obligations.

— Accountant

In Canada, each person does their own taxes every year or has an authorized representative do it on their behalf. This process involves reporting their income on an income tax and benefit return to determine if they have a balance owing or will receive a refund. This type of tax system is based on the **self-assessment principle**. The CRA operates on the fundamental belief that a taxpayer is more likely to comply with the law if they have the information and other services that they need to meet their obligations. For a self-assessment system to work, the CRA needs to provide better information more quickly.

## Communication approach

One thing that we found unusual when the CRA announced the bare trust exemption was the method it chose to share the information. The CRA issued a tax tip, as opposed to a news release.

There is a marked difference between these two. Only the news release is visible from the CRA's homepage, which has hundreds of thousands of visitors each day. This could have been a contributing factor that led to

9665 bare trust T3 returns being filed after the exemption was announced, as of August 1, 2024. This number accounted for approximately 18% of all bare trust T3 returns filed, of which 4614 were EFILED, meaning they were sent electronically to the CRA after the exemption announcement.

The CRA indicated:

Both news releases and tax tips are used to quickly publicize information that may impact and/or be of interest to a large number of Canadians. Both are posted on Canada.ca and broadcast to media.

News releases are primarily used to disseminate news (such as Ministerial announcements) from CRA to the public via the media and are therefore written with the intent of providing high-level details on a given topic to media outlets.

Tax tips provide key information about CRA services, programs, and policy changes to taxpayers and are generally tailored to the needs of impacted audiences.

By contrast, when the CRA announced the deadline extension for the UHT, it used a news release.

Many Canadians would consider the CRA's announcement of the bare trust filing exemption to be newsworthy; the media did, as many news agencies published articles on the subject. Considering all of these factors, the CRA should review its approach to communicating changes that impact taxpayers. It should be a priority for the CRA to have information readily available to taxpayers where they expect to find it.

### **Recommendation Four:**

The Taxpayers' Ombudsperson recommends that the CRA review how it communicates updates to Canadians, specifically through tax tips and news releases when tax or benefits requirements change. The review should be completed by March 31, 2026.

The goal of the review would be to determine whether improvements could be made through web optimization to ensure the CRA provides a consistent, efficient and timely organization-wide approach to publishing and disseminating information. This could help those impacted to easily find and understand the changes.

## Option not explored - Extend Filing Deadline

The CRA informed us that “extensions to filing and payment deadlines require the approval of the Minister or the Government of Canada, such as the relief measures put in place for the COVID-19 pandemic.” One organization we met with told us that they suggested during their consultations with the CRA that it explore this option. Instead, in November 2023, the CRA chose to waive late-filing penalties for bare trusts. The intention was to remove the financial penalty of filing late and thereby effectively extend the filing deadline.

## The Fallout

In this situation, many taxpayers tried to comply with new rules, incurred expenses by hiring experts to file their T3 returns, and filed their returns on time, only to be told by the CRA that it was exempting the requirement. It is very possible that this situation eroded trust in the CRA. This could have been prevented if the CRA had made the exemption announcement sooner.



We heard from organizations about their perception of the CRA after it released clarification on the penalty relief in mid-March and then announced an exemption at the end of the month. They told us that this situation highlights a fundamental lack of understanding by the CRA of how the tax community operates, and this misunderstanding does not allow tax professionals to serve their clients well.

Based on feedback from the organizations we met with and information we received from the CRA, it is unclear why information on the bare trust reporting requirements was not available to the public at an earlier date. While the penalty relief was well received by taxpayers, along with the clarified updates to the guidance that followed, this information came too late for many tax professionals to fully benefit from it.

We also heard from a stakeholder that a taxpayer's quick decision to file a T3 return based on what they thought, rather than fact, could have tax implications for them years down the road.

The CRA has to be more careful in what it does so that the trust it has built up with Canadians is not eroded by changing its position at the last minute. It informed taxpayers when it announced the exemption that it would work with Finance Canada to provide clarity in the coming months — taxpayers could be served better. Clarity should have been provided to taxpayers well in advance of the filing deadline.

This led to some tax professionals not being comfortable billing clients following the exemption. Taxpayers and representatives should not have been left to spend months trying to understand the legislation when the CRA ultimately exempted bare trusts from the filing requirements. All of this was wasted time and effort.

Taxpayers should have been able to rely on the tax administrator to provide clarity on how it would be handling the legislation. But the administrator could not provide this clarity, and this ultimately lead to the exemption.

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## Part 5: What Comes Next

Top of mind with many taxpayers and representatives is the question, what comes next for all those who filed 2023 T3 Returns. Is the CRA going to compensate them for the time, effort, and costs incurred to comply with filing requirements that everyone is now exempt from? Will bare trusts be able to get their data removed from CRA databases? Will the CRA provide information to all those who did file to address any questions they may have? Will bare trusts need to file in the future?

### Unintended Consequences

I paid my accountant \$765.00 to prepare and file a bare trust return on my behalf, only for the CRA to reverse the requirement at the last minute. I respectfully ask the CRA to reimburse me for this amount. It is expensive enough to live in Toronto and difficult for young people to afford a home. Parents should be able to assist their children without the government creating new requirements leading to further unnecessary expense.

— Taxpayer

While some knew getting the CRA to compensate them was unrealistic, many felt something should be done, especially considering how late in the process the CRA took action.

That said, the CRA can only work within the framework of the law, and the law does not allow it to compensate taxpayers in this regard. The CRA:

...is not able to provide financial compensation to taxpayers who filed their [T3 return] for bare trusts and incurred costs. [T3 returns] received for the 2023 taxation year, were filed and assessed in accordance with the provisions of the legislation. There is no provision of the Act that would apply to permit the CRA to reimburse taxpayers for legal and accounting fees incurred in preparing their tax returns.

Because the CRA did not provide compensation to taxpayers and representatives, many may have lost confidence in the tax system. Specifically, each taxpayer who complied with the legislation by filing a T3 return may have incurred costs to determine if they had a trust and whether to file a return. Conversely, all of those who disregarded the new legislation or did not know the legislation affected them incurred no additional costs.

According to your service feedback received on May 31, 2024, you are requesting a refund for the fees you incurred for professional accounting services. There is no provision of the Act that would apply to permit the CRA to reimburse taxpayers for legal and accounting fees incurred in preparing their tax returns.

— Response from CRA Service Feedback to Taxpayer

## Bare Trust Filing Data

The CRA now has bare trust information for all those who filed a 2023 T3 Return. This is information the CRA did not have before, but because the information was collected under a legislative filing requirement the CRA must not delete it from its databases. It has a legal obligation to retain the information under the ITA and the *Privacy Act*.

While we have the answers to some outstanding concerns because we reached out to the CRA, it needs to make it easier for taxpayers to find answers to questions. Specifically, for those who did file a 2023 T3 Return.

### **Recommendation Five:**

The Taxpayers' Ombudsperson recommends that the CRA create an adaptable guide to help it streamline how it administers changes to tax legislation. The guide should be active by March 31, 2027.

The goal of creating a guide would be to improve service to taxpayers. The guide should ensure changes to tax and benefit information are released in a timely manner and can be understood by the average taxpayer. Further, the guide should have an action plan to address challenges, if identified, followed by monitoring.

## **2024 and beyond**

On August 12, 2024, Finance Canada proposed technical amendments that would not require bare trusts to file for the 2024 tax year. This led to the CRA exercising its authority on October 29, 2024, to exempt bare trusts from their 2024 filing requirement, unless it makes a direct request.

Proactively waiving the 2024 filing requirement for bare trusts was the right decision because it was unlikely a bill reflecting the proposed amendments would receive royal assent before many tax preparation firms began

planning for the 2025 tax-filing season.

That said, because the CRA had been working with Finance Canada since March 28, 2024, it should have been ready to make the decision August 12, 2024, or soon after. This would have been ideal so that accountants who choose to attend early fall training sessions would have been aware that T3 returns for bare trusts would not be required for 2024 as well.

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## Conclusion

The feedback we received from organizations was mostly positive regarding the CRA's efforts. Guidance, penalty relief, and the filing exemption were viewed favourably. However, the discontent they expressed was based on the timeframe by which these items were announced.

We heard from the vast majority of stakeholders that the exemption was the right decision—an extremely late decision, but the right one.

The CRA states it is “always striving to make compliance easier and to build Canadians’ confidence in the fairness of the tax system.”<sup>15</sup> However, with what happened with the CRA’s administration of the new reporting requirements for bare trusts, questions remain:

- Was compliance made easier for taxpayers?
- Did the CRA’s administration of the new requirements build Canadians’ confidence in the fairness of the tax system?

- Was the CRA ready to start the administration of the new trust reporting legislation?

From what we heard from the public and stakeholders, along with our findings throughout the examination, it is hard to provide a positive answer to these questions.

We acknowledge that the administration of the new trust reporting legislation was challenging for the CRA mainly because of the complexity surrounding the concept of a bare trust itself. However, the complexity of tax legislation in Canada is not something new for the CRA, as it recognizes that the Canadian tax system is complex and confusing.

Over the years, the Canadian income tax system has undergone numerous changes to better adapt to the country's economic and social changes. From about 40 pages in 1917 when it was the *Income War Tax Act* (PDF, 21.8 MB), the *Income Tax Act* (PDF, 22.1 MB), now has around 3600 pages. It also represents only a small piece of all of the acts and regulations related to tax and benefits that the CRA administers.

The new reporting requirements for bare trusts were made as part of Canada's continuous efforts to ensure the effectiveness and integrity of the Canadian tax system. However, these changes were another expression of the complexity of the Canadian tax system and will not be the last.

Canada's tax system will continue to develop and grow, incorporating significant and complex changes. In its "culture of service excellence" and "vision to be a world-class tax and benefits administration that is trusted, fair, and helpful by putting people first," the CRA needs to be ready to face any challenges in its administration of new legislation in Canada's income tax system based on self-assessment.

As such, part of the CRA's mandate is to ensure that taxpayers comply with the requirements of tax legislation, regardless of whether it is simple or complex.

Multiple organizations we met with raised concerns about the impact on the administration of the tax system when filing requirements are unclear and when non-compliance becomes the best course of action for filers as they wait for the CRA to change course again.

Enforcing taxpayers' compliance requires that the CRA provide them with the support and information they need to understand and fulfill their tax obligations as set out in the Taxpayer Bill of Rights. Taxpayers should be able to expect to receive complete, accurate, clear and timely information in plain language explaining the laws and policies that apply to their situation (Taxpayer Right 6). In addition, taxpayers have the right to have the costs of compliance taken into account when the CRA administers tax legislation (Taxpayer Right 10).

We acknowledge the steps the CRA took in its administration of the new trust reporting legislation in terms of communication with taxpayers. We also acknowledge that the CRA's ability to provide individual guidance was limited, as it cannot provide legal advice to taxpayers on whether a bare trust does or does not exist. However, it is important to point out that in some cases the CRA did not provide clear and timely information.

Similarly, while we recognize the efforts the CRA made in terms of costs of compliance, overall it did not minimize the time, effort, and costs that taxpayers had to incur to comply with the new filing requirements. The CRA's administration of the new trust reporting legislation led to unintended or unanticipated consequences. The CRA informed us that

the “unanticipated impact” could be described as the legislation requiring all taxpayers to evaluate their situation to determine if they were party to a trust relationship in order to determine their reporting requirements under the Act. Which over time and following discussions with stakeholders this imposed a significant burden on many taxpayers.

It is true that the CRA is only one piece of the puzzle in the process of introducing new tax legislation in the Canadian tax system. However, the CRA’s piece may be the one that taxpayers see the most, as they may not be interested in knowing who brought the idea of the legislation up, who developed it and for what purpose and its intended impact. They may be more interested in knowing whether or not they are affected by the new requirements, what that means for them and the steps they need to take to comply. Therefore, while playing its role of ensuring that taxpayers comply with a new reporting requirements, the CRA should always use its People First approach.

The majority of Canadians comply with their tax obligations. For them to continue to comply within a self-assessment tax system, the impact of new tax legislation on taxpayers should be as predictable as possible to build taxpayers’ trust in the tax system. Similar to the “no surprises” approach put in place for Automated Speed Enforcement in certain municipalities <sup>16</sup>, the CRA should make sure that taxpayers know what to expect so they have a chance to adjust their behaviour to comply. According to the CRA, “[t]he ease of compliance, the CRA’s reputation for trustworthiness, and Canadians’ impressions of the fairness of the tax system can all impact compliance.” <sup>15</sup>



Acknowledging taxpayers' needs is a key factor of the CRA's People First approach. This approach signals its commitment to meet these needs and taxpayers' expectations, including information that is easier to understand, accurate and consistent and services that are more accessible and available through modern channels. Serving Canadians with a people-centric lens requires that the CRA use the time and takes the steps it needs to consult with all relevant parties and fully understand all implications for taxpayers and for itself before it administers new tax legislation.

As the CRA made it clear to us, tax legislation is often incredibly complex. In some cases, issues are not known until a provision is being actively administered. In these instances, making decisions in a timely manner may alleviate taxpayers' concerns.

It is clear that change is needed for the benefit of taxpayers. The CRA as part of the Government of Canada should make compliance easy. Taxpayers and representatives should not be left by themselves to figure things out. The CRA needs to communicate better, faster, and more effectively.

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## Recommendations

### **Recommendation One:**

The Taxpayers' Ombudsperson recommends that the CRA conduct an internal review of how it collaborates with stakeholders when amendments to legislation have been enacted by Parliament. The review should be completed by March 31, 2026.

The goal of the review should be for the CRA to improve its consultation process to ensure it understands the estimated number of Canadians who could be impacted, and, where possible, considers the perspectives of stakeholders on key strategic issues that affect them, their members, or their clients.

### **Recommendation Two:**

The Taxpayers' Ombudsperson recommends that the CRA conduct an analysis to determine if it would be beneficial to introduce a unique form for bare trusts to meet the new reporting requirements so they can easily submit the necessary information. The analysis should be completed by June 30, 2025.

### **Recommendation Three:**

The Taxpayers' Ombudsperson recommends that the CRA review how it works with Finance Canada, particularly when it appears that the administration of a legislative proposal could increase the costs of compliance for taxpayers. The review should be completed by March 31, 2026.

### **Recommendation Four:**

The Taxpayers' Ombudsperson recommends that the CRA review how it communicates updates to Canadians, specifically through tax tips and news releases when tax or benefits requirements change. The review should be completed by March 31, 2026.

The goal of the review would be to determine whether improvements could be made through web optimization to ensure the CRA provides a consistent, efficient and timely organization-wide approach to publishing and disseminating information. This could help those impacted to easily find and understand the changes.

## Recommendation Five:

The Taxpayers' Ombudsperson recommends that the CRA create an adaptable guide to help it streamline how it administers changes to tax legislation. The guide should be active by March 31, 2027.

The goal of creating a guide would be to improve service to taxpayers. The guide should ensure changes to tax and benefit information are released in a timely manner and can be understood by the average taxpayer. Further, the guide should have an action plan to address challenges, if identified, followed by monitoring.

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- 1 New reporting requirements for trusts as of December 31, 2023
  - 2 Anti-money laundering and counter-terrorist financial measures – Canada Mutual Evaluation Report (PDF, 2.4 MB), September 2016, p.7, par. 29.
  - 3 Anti-money laundering and counter-terrorist financial measures – Canada Mutual Evaluation Report (PDF, 2.4 MB), September 2016, p.101
  - 4 In Québec, trusts not established by law or judgment are subject to the new trust reporting legislation. This legislation does not apply to a trust that is described in one of the exceptions in paragraphs 150(1.2)(a) to (o) of the *Income Tax Act*
  - 5 New reporting requirements for trusts and bare trusts: T3 returns filed for tax years ending after December 30, 2023
  - 6 See e.g.: Naomi Barghiel, “Did you co-sign your kid’s mortgage? There are new tax reporting rules to know”, The Globe & Mail (16 March 2024), online: [globalnews.ca/news/10363565/new-bare-trust-reporting-requirements-tax-season-2024](https://globalnews.ca/news/10363565/new-bare-trust-reporting-requirements-tax-season-2024)

- 7      Briefing for the Minister of National Revenue — Partnerships and stakeholders
- 8      Recommendations in this report are made to the Minister of National Revenue and the Chair of the CRA Board of Management
- 9      Taxpayer Bill of Rights (Right 6)
- 10     Taxpayer Bill of Rights
- 11     Making information more helpful and easier to understand
- 12     Cancel or waive penalties and interest at the CRA — Situations when relief may be possible
- 13     Government of Canada extends deadline for homeowners to file their Underused Housing Tax return
- 14     New – Bare trusts are exempt from trust reporting requirements for 2023
- 15     Briefing for the Minister of National Revenue Compliance: Helping Canadians meet their tax obligations
- 16     Automated Speed Enforcement. While not every Community Safety Zone is equipped with an automated speed enforcement system, signs will be posted advising motorists when they are entering a zone where the enforcement system is active.  
“Coming Soon” warning signs are installed for at least 90 days prior to implementation of a new speed camera to alert motorists of the upcoming installation. Cameras will be active only when the “Municipal Speed Camera in Use” sign is posted.

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**Date modified:**

2025-03-05