

# TAX ALERT



**TAX ALERT** is a commentary on topics of current interest – usually topics relating to recent changes in tax law, new CRA administrative practices or current interpretations arising from tax cases. Professional advice should be obtained before acting on any of this information.

## TRUST RETURN REPORTING TO CRA

Many people have established family trusts for the benefit of children and other family members. Such trusts established during the lifetime of the donor are known as inter vivos trusts. The Income Tax Act requires that they have a December 31 taxation year end.

The entire area of trust reporting has expanded considerably in recent years – especially with new enforcement rules for trusts not resident in Canada or for trusts established by or for individuals living outside of Canada. To give you an idea of the new complexity, CCRA's T3 Trust Tax Guide still in draft form runs to 59 pages.

We obviously cannot cover all of the trust issues in this **TAX ALERT** but we do want to remind our clients and business associates of the necessity to file trust tax returns - in many cases where such obligation did not previously exist. This **TAX ALERT** deals primarily with the rules for inter vivos trusts but the same rules, with some exceptions, apply to trusts created in a person's will.

An inter vivos trust tax return must be filed 90 days after the trust tax year or by March 31. In some cases, due to inactivity or the size of trust assets, a trust tax return is not required. CCRA has set out a list of circumstances under which trust returns must be filed.

- ◆ The trust has tax payable
- ◆ The trust has either disposed of or is deemed to have disposed of a capital property or has taxable capital gains
- ◆ The trust is a non-resident but has a taxable capital gain or has disposed of taxable Canadian property
- ◆ The trust is deemed to be resident of Canada
- ◆ The trust holds property which the settlor of the trust can control or can control the distribution of trust income or assets
- ◆ The trust has provided a benefit of more than \$100 to a beneficiary for upkeep, maintenance, or taxes for property maintained for the beneficiary's use
- ◆ The trust receives any income, gain, or profit that is allocated to one or more beneficiaries and the trust has:
  - ◆ total income from all sources of more than \$500
  - ◆ income of more than \$100 allocated to any single beneficiary
  - ◆ allocated any portion of the income to a non-resident beneficiary

## Clearance Certificates

If a trustee distributes any property of the trust without a clearance certificate from CCRA and there are unpaid income taxes, trustees will be personally liable for the income taxes. This was always the case but is more heavily emphasized in the latest CCRA T3 trust guide.

## Inter Vivos and Testamentary Trusts

As noted above, trusts established during one's lifetime known as inter vivos trusts are taxed differently than trusts established on death through a will. Generally speaking, there is more planning opportunity for testamentary trusts. We see more and more will planning incorporating the use of trusts to create one or more additional taxpayers on the death of an individual. The main advantage of these testamentary trusts is that each trust is taxed as a separate tax payer and graduated tax rates apply to each trust.

On the other hand, inter vivos trusts are taxed at the maximum tax rate on any income retained in the trust. Depending upon the words of the trust document, income can be distributed to beneficiaries such as minor children in lower tax brackets to avoid the higher trust rates.

## The Filing Date is Close at Hand

If you or a member of your family have set up a family trust you are probably required to file an annual trust tax return and financial statement. It has been easier to avoid this in the past because it wasn't policed that well and no one seemed too concerned. With CCRA's new vigilance and changes in tax law the stakes have definitely gone up. Significant penalties apply if returns are not filed and on time. The deadline is March 31.

*J. E. Arbuckle Financial Services Inc.*  
205 - 30 Dupont St. E., Waterloo, Ontario N2J 2G9  
Phone: 519-884-7087 Fax: 519-884-5741  
Email: [jea@personalwealthstrategies.net](mailto:jea@personalwealthstrategies.net)  
[www.personalwealthstrategies.net](http://www.personalwealthstrategies.net)

