

# CRA Relief And Proposed Amendments Mitigate Bare Trust Reporting Burden On Energy Companies



On October 29, 2024, the Canada Revenue Agency (CRA) [issued a release](#) stating that it will not require bare trusts to file trust returns for the 2024 tax year, continuing the administrative exemption that was [granted for the 2023 tax year](#). The CRA's recent announcement follows on the heels of [proposed amendments](#) to the *Income Tax Act* (Canada) (the Proposed Amendments) released in August that, among things, would provide targeted reporting relief for bare trusts meeting certain criteria.

The CRA's administrative relief and the Proposed Amendments should be welcomed by many oil and gas companies who would otherwise be faced with the daunting task of filing a considerable number of bare trusts returns for the first time. Care should, however, be taken in assessing on-going eligibility for such relief.

## Background

Canada's enhanced trust reporting regime was enacted into law in December 2022 with effect for trust tax years starting in 2023. The regime requires each Canadian resident express trust to file a T3 return and a comprehensive schedule disclosing

information about the trust's trustees, settlors, and beneficiaries. While the government had proposed enhanced trust reporting rules as early as 2018, it was not until 2022 that they proposed to [extend the rules to bare trusts](#).

Bare trusts are frequently used in Canada in variety of commercial and personal contexts and are prevalent in the energy industry. For example:

- In the context of joint operations or joint ventures, legal or registered title to resource properties, facilities, and assets may be held by an operator but beneficially owned by various joint venture participants. Depending on the rights and obligations of the operator vis-à-vis the other participants, a dissociation of ownership may give rise to a bare trust arrangement.
- Partnerships are frequently used to pool resources and diversify risks in developing properties. The general partner typically holds legal title to land for and on behalf of the partnership. Some commentators have expressed concerns that partnerships may, in certain circumstances, include bare trust arrangements.
- Leaseholders of resource properties may sell particular zones of the property to a purchaser. In these cases, the vendor of the zone remains the registered lessee of the entire resource property but holds the subject zones as agent for the purchaser, who becomes the beneficial owner of the subject zone. The dissociation of legal and beneficial ownership can, in certain circumstances, create a bare trust arrangement.

The energy industry, and other sectors of the economy that heavily use bare trusts, made extensive submissions to the CRA and the government in 2022 and 2023 requesting relief from the reporting requirements. The administrative burden on oil and gas companies is particularly significant, with large players facing hundreds, and in many cases, thousands, of potential

returns, and with a requirement to obtain information that is not readily available. The policy basis for the enhanced trust reporting rules (safeguarding against money laundering, terrorist financing, tax evasion and tax avoidance) also does not extend readily to bare trust reporting as existing tax rules already require beneficial owners under bare trusts to report their income and ownership information directly to the CRA.

By the first trust filing deadline on April 2, 2024, many participants in the energy industry had devoted significant resources (both time and money) attempting to comply with the new requirements. This included a detailed review of property ownership and contractual relationships to identify all possible trusts, an analysis of whether trust returns were required, and communicating with partners and counterparties to gather the required information to complete the filing.

On March 28, 2024, two business days before the return filing deadline and when most organizations had already completed their filings, the CRA announced that bare trusts would be administratively relieved from reporting for the 2023 tax year. The CRA's October 29, 2024, announcement extends the exemption for the 2024 tax year. Notably, the administrative relief is limited to bare trusts. The CRA's announcement clarifies that all other trusts effected by Canada's enhanced trust reporting regime must continue to file.

## **The August 2024 Proposed Amendments**

The CRA's blanket relief for bare trusts for the 2024 tax year is consistent with the Proposed Amendments which, if enacted, would legislatively defer the reporting requirements for bare trusts until the 2025 tax year.

While many had hoped that the government would opt to repeal the reporting requirements for bare trusts entirely, the Proposed Amendments instead provide only targeted relief for

certain categories of bare trusts. Of particular relevance to the energy industry:

1. The currently enacted rules do not contain a definition of “bare trust” beyond stating that the reporting requirements extend to 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”. In view of this language, some commentators had expressed concern that the reporting obligations could apply to a broad range of relationships that Parliament had not intended. The Proposed Amendments contain a more focused definition in amended subsection 150(1.3) that is intended to better define the beneficial ownership arrangements that are subject to reporting. While amended subsection 150(1.3) would remain broad in scope, it would be accompanied by specific relieving exemptions in proposed subsection 150(1.31).
2. Proposed subsection 150(1.31) contains two new exemptions for partnerships. The first exemption in proposed paragraph 150(1.31)(a) would apply where partnership property is held jointly by all the partners. The second exemption in proposed paragraph 150(1.31)(d) would apply where: (1) property is held throughout the year for the use, or for the benefit, of a partnership; (2) each legal owner of property is a general partner of the partnership; and (3) the partnership is required to file an annual information return.
3. Proposed paragraph 150(1.31)(f) would exempt arrangements where “Canadian resource property” is held for the use or benefit of one or more persons each of which is: (1) a publicly-listed company; (2) a controlled subsidiary of a publicly-listed company; (3) a partnership where the “majority-interest partner” (>50 percent owner) is a publicly-listed company or its

controlled subsidiary; or (4) a partnership where two or more partners owing >50 percent are publicly-listed companies or their controlled subsidiaries.

4. The Proposed Amendments also include minor changes to the existing filing exemptions in subsection 150(1.2), which apply to all express trusts. The current law contains a *de minimis* exemption for trusts that hold certain designated assets with a fair market value that does not exceed \$50,000. The Proposed Amendments would remove the designated asset restriction such that the *de minimis* exemption would apply if a trust's value does not exceed \$50,000, regardless of the type of assets held.

While the CRA's administrative relief and the Proposed Amendments are a welcomed improvement over the currently enacted law, it is unfortunate that the government did not extend broader relief for bare trusts used in the energy industry. In particular, while the exemption for arrangements involving "Canadian resource property" is welcome, the relief provided is quite narrow and will likely not be available in a variety of situations. For example, the involvement of a non-publicly controlled company in a joint operation or zonal bare trust involving Canadian resource property will prevent a bare trust from being eligible for the reporting exemption. Further, the proposed exemption seemingly does not extend to any related depreciable capital property (facilities, equipment, pipelines, etc.) and oil and gas inventory, that may also be subject to a bare trust arrangement.

Absent any further administrative relief from the CRA, bare trusts in these circumstances will be required to file a trust return beginning in the 2025 tax year.

The Proposed Amendments are subject to potential revision as the government invited Canadians to share their feedback by September 11, 2024.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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