



eNews – September 4, 2024
STEP Canada Tax Technical Committee
RE: August 12, 2024 Proposed Technical Amendments

The package of proposed technical amendments released by the Department of Finance on August 12, 2024 contained several welcome changes that are of significant interest to trust and estate practitioners. The full set of legislative proposals can be viewed here ([link](#)). Details regarding changes in two important areas are spelled out below.

Trust Reporting Rules

Amendments to the trust reporting rules will alleviate some of the uncertainty and costs that trusts and bare trusts faced during 2023. A number of significant changes and their effective dates are highlighted below.

Effective for taxation years that end after December 30, 2024 (applicable for trusts and estates with taxation years ending December 31, 2024 or later):

- T3 reporting for bare trusts will not be required for 2024. As described below, bare trust reporting will start in 2025.
- The T3 reporting exemption in existing subsection 150(1.2) of the *Income Tax Act* (Canada) (the “Act”) for trusts with no Part I income tax payable and no disposition of capital property during the year is expanded. The following trusts will be exempted from reporting:
 - Trusts that hold assets with a total fair market value (FMV) that does not exceed \$50,000 at any time in the year, irrespective of the nature of the assets.
 - Trusts where (i) each trustee is an individual; (ii) each beneficiary is an individual and is related to each trustee; and (iii) the assets’ total FMV does not exceed \$250,000 at any time in the year, and the assets are limited to qualifying assets such as money, GICs, debts and shares of publicly listed entities, and the right to receive income on these properties. These conditions should exempt most in-trust accounts that parents set up for children even when bare trust reporting commences in 2025.
 - Trusts that hold funds pursuant to rules of professional conduct or the laws of Canada or a province, provided that the trust is not maintained as a separate trust for particular clients, or the only assets held throughout the year are money with a value not exceeding \$250,000.

- For information disclosure in T3 Schedule 15, the overly broad definition of “settlor” will be amended to refer only to persons who have directly or indirectly transferred property to the trust without receiving fair market value consideration.

Effective for taxation years that end after December 30, 2025 (applicable for trusts with taxation years ending December 31, 2025 or later):

- A bare trust will be deemed to be an express trust for T3 reporting purposes unless it meets a list of exceptions contained in new subsection 150(1.31). Note that even if these subsection 150(1.31) exceptions are not met, a bare trust still will not have to file T3 returns if it meets the reporting exemptions in amended subsection 150(1.2) (listed above).
- Examples of subsection 150(1.31) exceptions that will prevent a bare trust from being deemed an express trust:
 - Where the legal owners are individuals who are related persons, and the property would be a principal residence of one or more of the legal owners if those legal owners had, hypothetically, designated the property as their principal residence for the year. This exception would apply, for example, to the situation where a parent has added their child to the legal title of their personal residence, since one of the legal owners could hypothetically designate the property as their principal residence. Such an arrangement would not be deemed an express trust and thus would not be required to file T3 return.
 - Where the legal owner is an individual who holds property for the benefit of the legal owner’s spouse or common-law partner, and the property would be the legal owner’s principal residence if the legal owner had, hypothetically, designated the property as their principal residence for the year. This exception would apply, for example, to situations where spouses are jointly on title, but only one of them is a beneficial owner.
 - Arrangements where a general partner holds property as agent for the partnership, and the partnership is required to file a T5013 partnership return for the year.

Aligning Subsection 164(6) with the General Loss Carryback Rules and Other Estate-Related Provisions

The general scheme of the Act is to levy tax on income and capital gains and to avoid taxing the same income and gains twice. A technical amendment has been made to update subsection 164(6) of the Act to align it with the three-year loss carryback timeline permitted for losses realized by other taxpayers. The amendment also better aligns the provision with the 36-month time frames found in other estate-related provisions in the Act, such as the definition of “graduated rate estate” (GRE) and the rollover-on-death provisions in subsections 70(6), (9), (9.1), (9.2), and (9.3). It should be noted that the amendment refers to three taxation years, not 36 months, which, depending on the year end of the GRE, could be a shorter timeframe.

We are pleased to report that this legislative amendment was made in response to a lengthy and detailed STEP Canada submission sent to the Department of Finance on June 21, 2024.

This was an issue of longstanding concern to STEP and was the subject of questions posed to the Department of Finance at past roundtables. The recent submission discussed the mechanics, history, and purpose of subsection 164(6), and suggested changes to improve the administration of the Act. The change – effective for deaths occurring on or after August 12, 2024, – furnishes an estate that is a GRE with sufficient time to assess alternatives and undertake post mortem planning to avoid double taxation at death.

We are grateful to the Department of Finance for this long-overdue change, and we thank the members of the committee, Ian Lebane (chair), Kenneth Keung (co-chair), Florence Marino, and Ian Pryor, and contributors Jeannie Lim and Hemal Balsara, for their strong and effective advocacy.

Tax Technical Committee
STEP Canada

About STEP: The Society of Trust and Estate Practitioners is the leading international organization for trust and estates professionals. Headquartered in London, England, it has more than 22,000 members worldwide in over 100 countries.

STEP Canada, founded in 1998, has over 3,550 members with branches in the following cities and regions: Atlantic, Montreal, Ottawa, Toronto, Winnipeg, Calgary, Edmonton, and Vancouver, with chapters in Okanagan Valley, Saskatchewan, and Southwestern Ontario. STEP is a multidisciplinary organization with the most experienced and senior practitioners in the field, including lawyers, accountants, financial planners, insurance advisors, and trust professionals. They provide domestic and international advice on trust and estates, including planning, administration, and related taxes.