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Marie-Josée Laporte, Director, High Net Worth Compliance Directorate
Paul Wilson, Director, Compliance Programs Branch
Canada Revenue Agency

RE: Bare Trust Reporting Rules

Via email: Marie-Josée.Laporte@cra-arc.gc.ca; Paul.Wilson@cra-arc.gc.ca

Dear Ms. Laporte and Mr. Wilson:

TEI appreciates the opportunity to highlight our concerns related to the new bare trust reporting rules with you in our call of July 30, 2023. As discussed during our call, TEI has significant concerns regarding the administrative and compliance burden associated with these new rules and we seek administrative relief from the Canada Revenue Agency (“CRA”) to allow TEI to consult with the Department of Finance on a potential amendment to the rules and for us to explore with CRA other avenues to provide the required information.

About TEI

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 56 chapters across North and South America, Europe, and Asia, including four chapters in Canada. Our over 6,000 members represent 2,800 of the world’s leading companies, many of which either are resident or do business in Canada. Over 15% of TEI’s membership comprises tax professionals who work for Canadian businesses in a variety of industries across the country. The following recommendations reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the mutual benefit of government and taxpayers. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the compliance issues discussed herein.

TEI Comments

Bill C-32, including new subsections 152(1.2) through (1.4) of the Income Tax Act (“ITA”), received Royal Assent on December 15, 2022. Subsections 152(1.2) through (1.4) contain new reporting requirements related to bare trusts. While we note that TEI did not make formal submissions to the Department of Finance when this legislation was in draft form, we share the views raised to the Department of Finance in the submissions of the Joint Committee on Taxation of the Canadian Bar Association & Chartered Professional Accountants of Canada dated April 5, 2022 (the “Joint Committee Submission”).

Government’s Stated Purpose for Increased Disclosure

In Budget 2017 and Budget 2018, the Government of Canada stated it is “committed to implementing strong standards for corporate and beneficial ownership transparency that provide safeguards against money laundering, terrorist financing, tax evasion and tax avoidance, while continuing to facilitate the ease of doing business in Canada” The Budgets further provided that the Government of Canada will also be “examining ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information. These actions will ensure that law enforcement and other authorities have timely access to the information needed to crack down on money laundering, terrorist financing and tax evasion and to combat tax avoidance.” The Budgets continued that “the Government proposes to introduce enhanced income tax reporting requirements for certain trusts to provide additional information on an annual basis, applicable for the 2021 and later taxation years.” The 2018 Budget provided additional details on new reporting requirements for “express trusts” and beneficial ownership information. The 2018 Budget did not state that bare trust arrangements would be subject to filing or reporting requirements.

The draft legislation released in February 2022 included a new reporting requirement under subsection 150(1.3) of the ITA requiring trust reporting for bare trust arrangements. TEI understands that the government’s stated intentions to increase tax reporting for trusts to “crack down on money laundering, terrorist financing and tax evasion and to combat tax avoidance” was not meant to include arrangements in which there is no change in the economic or beneficial owner of property. Requiring increased tax reporting in such a case would not meet the objectives stated in Budget 2017 and 2018 because the beneficial owner is already required to report income and ownership information in their tax filings. This provision requiring bare trust reporting therefore duplicates reporting already required under the ITA and creates uncertainty for taxpayers in determining that all tax filings are complete since bare trust arrangements can be difficult to identify and capture in a tax filing.

Types of Arrangements

TEI has identified a variety of common business relationships and arrangements that may constitute bare trusts across industries. These include, but are not limited to, the following:

1. *Joint Ventures*: Joint ventures are common in capital intensive industries with multiple participants developing a project. Joint ventures usually provide for one participant to

act on behalf of other participants as the one participant (the “operator”) may have expertise in certain types of developments. The operator typically holds legal title to the development property in trust for the other participants who beneficially own their proportionate interests in the joint venture property. In other words, the joint venture operator would likely be considered a bare trustee and may be required to file an annual T3 trust return. In these cases, income, expenses, and outlays are already reported by the beneficial owners of the property in their returns of income. There is no lack of transparency regarding ownership in these structures.

2. *Partnerships*: Both general and limited partnerships are common structures employed by TEI member companies. At law, a partnership is not considered a legal entity that is separate from its partners and generally cannot hold title or a registered interest in its name. As such, the general partner typically holds legal title to land in a bare trust arrangement. The income of the partners is already reported and beneficial owners (being the partners) are disclosed on the T5013 information return.
3. *Real Estate*: It is common in real estate investments for the legal title of the property to be held in trust for the beneficial owner for commercial reasons. The income from the property is reported by the beneficial owner in its tax filings. When the nominee is a corporation, which is typically the case, the corporation must file a T2 return.
4. *Operatorship of Resources*: Most provinces do not allow taxpayers to split legal ownership of resources between multiple parties. As such, many resource properties are legally owned by one party but beneficially owned by multiple other parties. The operator of such properties are typically the legal owners and would likely be required to report the bare trust relationship under the new reporting rules. The tax consequences of the interests in these properties, however, are already captured in the tax return of the beneficial owner.
5. *Shareholder Registries*: Shareholder registries may not always be accurate, as there may be a delay in obtaining up-to-date shareholder information. When dividends are paid, amounts not received by shareholders due to incorrect information are held in trust until such time that they can be corrected. Furthermore, corporations may be required to hold funds from dividends in trust for lengthy periods to the extent that the correct recipient cannot be readily identified.
6. *Internal Administrative Arrangements*: Many internal administrative arrangements may create bare trust relationships. For example, it is common for companies to centralize treasury and banking functions with one entity in a group. Funds may be received or disbursed on behalf of other entities in the group, with funds temporarily held in trust through this process. The tax consequences of the underlying transactions are reported on the tax returns (T2, T5013, etc.) of the relevant entity.

Compliance and Administrative Burden

As we discussed on our call, taxpayers anticipate compliance with the new reporting rules will be cumbersome, complex, and costly. There are many practical implications of the new rules, including:

1. *Identification of bare trust arrangements:* Taxpayers will need to identify all bare trust arrangements within their organizations to comply with the rules. Several TEI members estimate their companies may have upward of 1,000 distinct bare trust arrangements. While some arrangements may be active and readily identifiable, it is likely that many taxpayers will have inactive or unintentional bare trust relationships. This creates significant concerns regarding whether a taxpayer has reported all of its bare trusts.
2. *Determination of appropriate filing level:* Once a relationship is identified as a bare trust, a filer will also need to determine the appropriate level at which the bare trust is constituted. For example, a single joint venture agreement may cover the beneficial ownership and operation of several distinct assets. It will need to be determined whether the bare trust exists at the joint venture level or individual asset or property level within the joint venture. That is, can the joint venture file a single report for all of its distinct assets, or will it need to file a report for each individual asset?
3. *Determining the name of the trust:* If the arrangement has no specific identifiable name, a filer must determine a meaningful way to clearly identify the trust.
4. *Tracking and administration:* Taxpayers will need to develop a method to track all potential bare trust arrangements, determine if they are a trust, and if T3 filing is required. Companies will need to develop a system to ensure T3s are prepared, reviewed, and filed in a timely manner. In addition, companies will need to track when trust relationships commence and cease, or if there are changes in the party that is required to file (i.e., changes in operatorship are common in some industries). Filers will also need to track the receipt of Notices of Assessment and Reassessment, CRA audit status, and statute-barred dates.
5. *Third-party preparers:* Should a taxpayer engage a third party to prepare the returns, authorization and electronic filing forms will also be required for each trust.
6. *My Business Account:* Taxpayers will need to obtain and monitor access to My Business Account for each trust.

Overall, business taxpayers anticipate incurring significant cost and time to fulfill this reporting requirement. In common business relationships and arrangements (with the exception of shareholder registries) this results in additional compliance that does not provide meaningful information. Business taxpayers will yet again stretch already tapped compliance resources to meet this ever-increasing burden.

The new reporting requirements were implemented to assist in identifying all parties to an arrangement and to facilitate risk assessments of taxpayers with a beneficial interest in an arrangement who may not be reporting income in a tax return (T1, T2 or T5013). TEI believes that any tax outcomes associated with the beneficial ownership interests in common business relationships and arrangements are already reported by member companies in their tax returns. Further, business taxpayers are subject to additional Mandatory Disclosure reporting requirements and large corporations are generally under continuous audit by the CRA. We submit that information about bare trust arrangements can readily be obtained through the audit process. As such, TEI believes that additional bare trust reporting is not an efficient and effective use of either taxpayer or CRA resources.

TEI Recommendations

TEI respectfully requests that the CRA consider the following:

1. Provide T3 filing deadline relief for at least one year to allow us to discuss further our concerns over bare trust reporting with the CRA and engage with the Department of Finance.
2. Work with TEI and the Department of Finance on legislative amendments to remove this filing requirement as this provision would result in duplicative tax filings. As discussed above, the beneficial owner of property held in a bare trust arrangement is already required to include the ownership and income information in their tax filings. This filing requirement goes beyond the Government's stated objectives and reporting requirements as outlined in the 2017 and 2018 Budget documents. Alternatively, we request the CRA collaborate with TEI and the Department of Finance on legislative amendments narrowing the filing requirements to specific situations or arrangements with no current reporting requirements under the ITA.
3. Absent a legislative amendment, eliminate the reporting requirement and work with TEI to identify the information that taxpayers must retain and provide to CRA upon request or during the audit process.
4. Provide extensive question and answer examples of situations where the CRA expects or does not expect there to be a tax filing obligation, including the examples provided of bare trustee arrangements in the Joint Committee Submission.

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TEI appreciates the opportunity to contribute to the development of CRA initiatives in the effort to develop administrative processes that serve CRA's needs, while recognizing the challenges faced by large Canadian taxpayers. We look forward to further discussing our comments with you. Should you have any questions about TEI's submission, please do not hesitate to contact Steve Saunders, Chair of TEI's Canadian Income Tax Committee, at 403-801-4657 or steve.saunders@atco.com, Sandy Shanks,



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Member of the Canadian Income Tax Committee, at 403-478-4473 or sandy.shanks@conocophillips.com, or Benjamin R. Shreck of TEI's legal staff at bshreck@tei.org or 202.464.8353.

Respectfully submitted,

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