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Marmer Penner Inc. Newsletter

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New Trust Reporting Rules

Since 1997, section 233.3 of *The Income Tax Act* required Canadians to report most types of foreign property on Form T1135 of their personal and corporate income tax returns. Family lawyers and valuers providing litigation support welcomed the advent of any measure that would help uncover assets hidden offshore. Sadly, in the 23 years since the introduction, we have seen far more well-meaning taxpayers charged penalties for omitting their Florida vacation properties or Apple shares (held at a Canadian institution!) than tax evaders with foreign accounts, corporations and trusts.

Canadian trusts will soon have to face new reporting requirements with these new trust reporting rules applicable to fiscal years ending after December 31, 2021. That means we will not start seeing the impact, if any, until the 2022 fiscal year for trusts with a December 31 year-end. An affected trust will have to provide information pertaining to its beneficiaries, trustees, settlors and protectors on its income tax return. A protector is a person who is given special rights and powers under a will or a trust instrument to participate in the administration of an estate or a trust. Protectors generally ensure that trustees are administering the trust in accordance with the settlor's intentions. The use of protectors was brought about by onshore settlors of trusts who did not want to transfer complete control over their assets to unknown offshore trustees while still pointing to the offshore trustees as evidence that mind and management of the trust resides outside of Canada.

Trusts that fail to report required information may face penalties of up to 5% of the value of its property. Canadian trusts operating outside Canada have always been required to report their income and foreign assets to CRA so pardon us if we are a little cynical that a new penalty will scare those who have successfully operated under CRA's radar until now. It appears that CRA hopes that "foreign" trusts with a Canadian protector will now reveal themselves.

Readers should temper their enthusiasm as we already noticed a particular large professional services firm making recommendations including the following actions in 2021:

- 1) Unwind trusts that are either unnecessary or no longer serve an intended purpose so that tax returns filings are no longer required or unwind trusts that create adverse tax consequences;
- 2) Remove redundant corporate beneficiaries when setting up a new trust to reduce the reporting obligations;
- 3) Review your organizational structure and trust deed to determine if a corporation in your structure is “beneficially interested” in the trust and therefore may have to be reported under the new trust reporting rules; and
- 4) Consider which trust beneficiaries to include when setting up a new trust so that reporting requirements won’t capture unintended parties as beneficiaries of the trust.

We have always been reluctant to get our hopes up that the foreign asset reporting rules would impact most tax evaders and those hiding assets and income from a spouse. According to recent reports, no Canadians were criminally charged for holding foreign accounts such as those in the Cook Islands that came to CRA’s attention in 2013 and the Panama Papers a few years later. In fact, in a report last year, it was revealed that CRA’s Offshore Tax Informant Program, set up in 2014 to gather tips from the public about Canadians engaging in offshore tax avoidance and evasion, has collected only \$19 million in unpaid taxes and penalties. Sadly, no criminal prosecution and a low risk of paying the actual taxes owed likely incentivizes tax cheats to continue their ways when the opportunity arises to pay a lower equalization and support.

We are happy to announce that Juliana Viegas has joined Marmer Penner. Juliana comes to our firm with experience in the valuation department of a national accounting firm and a valuation firm specializing in dental practices. Juliana qualifies to write the CBV final exam in 2021.

This newsletter is not intended to substitute for proper professional planning. It is intended to highlight areas where professional assistance may be required. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.