HARBR
ACCOUNTING SERVICES
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Under the new trust reporting rules introduced by Bill C-32, bare trusts are now required to file tax returns. These rules came into effect on December 15, 2022, upon receiving Royal Assent. The regulations apply to trusts with tax years ending on December 31, 2023, and thereafter. Failure to comply with these reporting rules can lead to substantial penalties, including a new gross negligence penalty.

What is a Bare Trust? What A bare trust, in the context of Canadian taxation, is a specific type of trust where the trustee's only obligation is to manage the trust property according to the instructions of the beneficiaries. The legal title of the property is held by the trustee, but the beneficiaries hold the beneficial ownership. Here's a summary of the key points regarding bare trusts and their taxation in Canada:

Characteristics of Bare Trusts:

- **Principal-Agent Relationship**: The trustee acts as an agent for the beneficiary, who has complete control over the trust property.
- **Beneficiary Control**: Beneficiaries dictate trustee actions regarding the trust property, and trustees have no independent power or discretion.
- **Privacy and Anonymity**: Often used to maintain privacy by keeping the true owner's identity confidential in public records.
- **Tax Efficiency**: Can be utilized to minimize land transfer taxes, probate fees, and facilitate property transfers in various transactions.

Tax Treatment of Bare Trusts:

- **Disregarded for Tax Purposes**: Generally, bare trusts are disregarded for Canadian income tax purposes.
- **Taxation of Income and Gains**: All income and capital gains from the trust are reported on the beneficiaries' tax returns, and they are taxed accordingly.
- **No Trust Tax Return Requirement**: Traditionally, bare trusts were not required to file trust returns as taxation was at the beneficiary level.

New Reporting Requirements:

- **Introduced by Bill C-32**: The new reporting rules came into effect on December 15, 2022, requiring bare trusts to file T3 trust returns for tax years ending after December 30, 2023.
- **Reporting Additional Information**: Trusts must report stakeholder information, including trustees, beneficiaries, settlors, and anyone with control over trust decisions.
- **Deadline for Filing**: Trust returns must be filed within 90 days after the taxation year-end.
- **Exemptions**: Bare trusts in existence for less than three months or holding less than $50,000 in specified assets may be exempt from reporting.

Non-Compliance Penalties:

- **Late-Filing Penalty**: A bare trust failing to file on time may incur a penalty of $25 per day, with a minimum of $100 and a maximum of $2,500.
- **Penalty for Knowingly or Gross Negligence**: An additional penalty equal to the greater of $2,500 or 5% of the maximum value of the trust's property held during the taxation year applies for deliberate or grossly negligent failures to file.

In summary, while bare trusts have traditionally not been subject to trust return filing requirements, the introduction of new reporting rules mandates such filing. Failure to comply with these rules can result in significant penalties, emphasizing the importance of adherence to the new regulations.