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Global Reward Update

Canada - Proposed additional reporting requirements for non-resident trusts

In this issue:

Overview

In 2014, the Canadian government enacted legislation that requires certain non-resident trusts to file tax returns with the

Canada Revenue Agency (CRA) and pay taxes on at least a portion of the trust's taxable income.

In addition, the Canadian employer and certain employees could be required to file additional information returns.

In the most recent federal budget, tabled on February 27, 2018, the Minister of Finance announced additional information reporting requirements for non-resident trusts that are required to file an annual tax return in Canada. These trusts will now be required to report the identity of all trustees, beneficiaries, and settlors of the trust, as well as the identity of each person who has the ability (through the trust terms or a related agreement) to exert control over trustee decisions regarding the appointment of income or capital of the trust.

The new reporting requirements will apply to returns required to be filed for the 2021 and subsequent taxation years.

It was also announced that additional funds would be allocated to improve the CRA's audit and administration of trusts and trust returns.

Back to top

Deloitte's view

The proposed information requirements will increase the costs and administrative burden for a non-resident trust required to file a tax return in Canada. Further, the trustee may not have access to all the information required to satisfy the new reporting obligations.

Where a non-resident trust is currently filing a tax return in respect of a compensation program for Canadian resident employees and/or non-resident employees of Canadian businesses, the compensation program should be reviewed to determine whether the trust could be eliminated. In the right situation, existing programs could be restructured by replacing equity compensation with cash-settled programs or the issuance of shares from the treasury.

In the event that such restructuring is possible, the impact of the Canadian “departure tax” rules would require consideration. Under the departure tax rules, the trust will be deemed to have disposed of all or a portion of its assets in the year it ceases to have a Canadian tax reporting requirement. The taxable capital gains arising from the deemed disposition will be taxed in the hands of the trust unless offsetting deductions are available.

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