

This Month:

- Self-employed Contractors – both payer and payee beware!
 - New Trust Reporting Requirements

Self-employed Contractors – both payer and payee beware!

Whether a worker is considered self-employed, or an employee can be a grey area. However, the distinction is important. A self-employed person is in business for themselves and has a level of independence from the payer. They have a risk of profit or loss. These are only a few of the facts to be considered in determining employment or self-employment status. If a business engages a self-employed person to provide services and the CRA determines that the self-employed person is really an employee of the payer, then the self-employed person is denied certain business expenses they may have deducted on their personal tax return. This is because the employees are more limited in the types of expenses they can claim as a deduction in their personal tax return compared to self-employed persons. In addition, the payer will be liable for CPP and EI contributions that were not withheld from the payment for employment services. The payer will often protect themselves from this risk by requiring service providers to incorporate their business. Should the CRA conclude that the workers were, in fact, not independent contractors, the corporation cannot be considered an employee and the payer is protected from paying CPP and EI contributions on the payments. Sometimes the service provider wants to incorporate to benefit from a special lower corporate tax rate on small business income. However, this can be detrimental if the CRA determines the service provider is just an “incorporated employee”, called a “personal services business” in tax jargon. The payer is protected from any negative tax consequences in this situation. It is the incorporated service provider who will bear the negative tax consequences such as a punitive corporate tax rate compared to typical small businesses, and the denial of almost all business expenses. As several years can be reassessed by CRA at one time, with interest charges, this can be very costly.

CRA is in the process of running an “educational campaign” on this issue by sending out letters from June to December 2022 to taxpayers in certain industries, requesting information about their payer/payee relationships. Participation is voluntary. If you receive one of these letters, you are not under audit. However, in the past CRA has conducted audit projects to review payer/payee relationships in certain industries and issued tax assessments as a result. So, this may be an indication that CRA is going to undertake an audit project in the future. Or, the information obtained from some self-employed persons who wish to be considered employees, may be used by CRA to reassess the payer for EI and CPP withholdings. CRA does evaluate the facts of each case given specific criteria. **So, whether you are the payer or the payee, now is a good time to re-evaluate with your Padgett advisor if your current working relationships are properly categorized and documented.**

New Trust Reporting Requirements

New trust reporting requirements that the government intended to apply last year, will now apply for tax years ending as of December 31, 2022.

One of the more significant changes is that bare trusts will be subject to the new reporting requirements. Previously only trusts that had taxes payable, or disposed of an asset, were required to file a tax return. **Now, even if a trust has no income or did not make any distributions to beneficiaries, it may be required to file a return.** So, if you have a trust that previously was not required to file a return, you should consider whether you now have a filing requirement. There are penalties for filing late. There are exceptions to these rules, the most common being graduated rate estate returns, qualified disability trusts, or trusts that have been in existence for less than 3 months.

Other **significant changes** are the new **requirements to disclose the following information:**

- The names, address, date of birth, jurisdiction of residence, and taxpayer identification number (SIN, BN, foreign TIN) for each:
 - trustee
 - beneficiary
 - settlor
 - any person who can exert influence over trustee decisions

While these new and revised rules have not been finalized into law yet, it is expected to be finalized before year end. **Since it may take time to collect information for the additional disclosure requirements, you should consider these new changes well before the filing deadline of March 31, 2023.**



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