

August 1st, 2024

The Hon. Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance
90 Elgin Street
Ottawa, Ontario K1A 0G5

Dear Hon. Minister Freeland,

I am writing to you on behalf of the 8,500 members of the Canadian Home Builders' Association (CHBA) regarding the T3 tax filing requirements and the information of the trust's beneficial owners that were required through the Schedule 15 form. CHBA supports measures that reduce tax evasion, crime, and money laundering. However, regulations aimed at combatting these activities must also minimize the burden on businesses that provide this information. Compliance comes at a cost which is passed directly onto the home buyer. The Department of Finance ("Finance") and Canada Revenue Agency ("CRA") should exert extreme caution that these measures do not work against the housing-supportive fiscal measures already put in place. As Finance reconsiders the filing requirements of bare trusts, CHBA wants to share the experience of members leading up to the filing deadline for the 2023 tax year.

Deposits play a fundamental role in new home construction but also implicate many home builders with the requirements to disclose the identity of the beneficial owners of a trust's assets. Most new homes in Canada, both ground oriented and multi-story, are sold at the pre-construction phase. Preconstruction deposits are needed as a source of cashflow and are often required for approval for additional construction financing. For buyer protection and insurance purposes, some provinces have legislative statutes regarding new condominium sales, such as Ontario's Condominium Act—which require deposits be held in trust with the builder's lawyer. This could mean the filing of thousands of beneficial owners within each trust, which is typically created for individual developments. Deposits for other types of housing could also constitute a bare trusts arrangement.

CHBA continues to call for an amendment to the listed/exempted trusts contained in the Income Tax Act (ITA) to include express or bare trusts used by builders and developers to hold preconstruction deposits for new home construction, provided these trusts have no taxable income to report. This new trust reporting informational return is largely duplicative of the intention behind the Financial Transactions and Reports Analysis Centre of Canada's (FINTRAC) compliance program and reporting requirements that active builders and developers must follow. There has been no justification provided around the shortcomings of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act that the new trust reporting requirements fills or enhances. Instead, these requirements are unnecessarily increasing the red-tape load on the home building industry, which in turn raises prices on homebuyers and further erodes affordability needlessly.

If Finance continues with duplicative information gathering, CHBA urges that there are several aspects that need to be improved to reduce the burden on filing trusts with many beneficial owners. With respect to condominiums, the onus of filing is placed on the builder's law firm, as they are the acting trustee of the express trust. Many law firms, and the providers of their tax software, were perplexed by the sole reporting method—a fillable PDF file. Critically, the tax software used by most real estate law firms requires the ability to connect directly with the CRA servers to export/file returns using an XML format. CRA ignored requests to provide any alternative submission method. This led to a significantly larger filing burden for the 2023 tax year than needed and a larger cost to builders, through billable hours. The cost will be paid by current and future homebuyers by way of higher selling prices, further eroding housing affordability.

CRA and Finance must show more willingness to work with industry in lowering the burden of filing hundreds or thousands of Part B sections within the Schedule 15 form. This should include filing options that better integrate with existing tax software or allowing the filer to submit a spreadsheet containing the required information.

An additional issue is that CRA did not adequately address privacy concerns regarding the tax identification number requirement. Even when submitting a report to Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), various FINTRAC guidelines state that while a Social Insurance Number (SIN) Card can be used to identify an entity, the number should never be included in a report. The client of the lawyer is the condominium developer or builder, not the purchasers of the preconstruction condominiums. Law firms expressed their apprehension with obtaining and reporting this critically sensitive piece of information. While CRA officials advised that the SIN number requirement supersedes any privacy concerns, real estate law firms were left to take the reputational harm of having to ask their developer clients for this information. Either Finance or CRA must justify the need to report a tax ID number, when FINTRAC guidelines state that SIN numbers should not be included in reports submitted to them. It is a large and uncompensated liability to file SIN numbers of purchasers that are not a client of the law firm.

CHBA was also disappointed with the inclusion and handling of bare trusts in beneficial ownership reporting. For many types of new homes not subject to provincial deposit trust statutes, a builder's acceptance of a deposit, the transfer of the property's title, and the agreement of constructing a dwelling could constitute a bare trust arrangement. This means that most new home transactions could now require filing of a T3 form, with no taxable income, and Schedule 15 form, depending on the structure of the sale. Bare trust arrangements are difficult to identify, as they require a level of judgement to determine if a filing is needed. The determination on if filing is required depends, in large part, on the opinion of the tax filer. This was due to the limited and insufficient guidance and examples from CRA on how it administratively determines the existence of a bare trust arrangement. It was also unacceptable to wait until the filing deadline to cancel bare trust filing requirements, when tax professionals voiced the reporting difficulties for months before the filing deadline.

CHBA welcomes an opportunity to provide suggestions for process improvement, to strike a better balance between information gathering and the cost incurred by businesses providing this information. Doing so will help the Federal Government get more value from the suite of housing-supportive policies it has introduced over the past year. Please reach out to Evan Andrade, CHBA Economist, at evan.andrade@chba.ca or (613) 230 3060 extension 223 to contact us on this issue.

Sincerely,



Kevin Lee, P.ENG., M.ARCH.
CEO, CHBA

Cc: The Hon. Marie-Claude Bibeau, P.C., M.P. Minister of National Revenue