

# ***Non-resident trust rules enacted: Transitional measures to consider***

August 26, 2013

## ***In brief***

Newly enacted rules for non-resident trusts (NRTs) include relief for NRTs that have property contributed by non-Canadian residents. If an NRT is eligible for this relief, an election must be made to obtain the benefit. Other transitional rules may also be available to an NRT. Now is the time to consider whether this election should be made and what transitional rules apply.

## ***In detail***

After almost 15 years in the making, legislation that transforms Canada's approach to taxing NRTs received royal assent on June 26, 2013, as part of Bill C-48, *Technical Amendments Act, 2012*.

This *Tax Insights* discusses some of the elective provisions included in the new legislation.

The new rules for the most part mirror draft legislation released on October 24, 2012. For an overview, see our *Tax memo* 'October 24, 2012 Notice of Ways and Means Motion: "Final" version of non-resident trust rules at [www.pwc.com/ca/taxmemo](http://www.pwc.com/ca/taxmemo).

## ***Relief for contributions by non-residents***

The general rule is that an NRT that is deemed resident in Canada under the new rules is subject to tax in Canada on its worldwide income and capital gains in respect of all of its property, whether contributed by Canadians or not.

However, relief is available if an NRT received contributions from both residents and non-residents. The relief results in no Canadian tax on income and capital gains from the properties contributed by non-residents (other than Canadian tax that otherwise applies to non-residents of Canada, such as Canadian withholding tax on

certain Canadian sourced income).

This relief was automatic when first proposed in August 2010, but changes introduced on October 24, 2012, require NRTs to file an election.

## ***Electing trusts***

An NRT must elect to be an 'electing trust' for the income and capital gains from properties contributed by non-residents to be exempt from Canadian tax.

If an election is not made, all of the NRT's worldwide income and capital gains will be subject to Canadian tax. This is shown in the example on the next page.

### Example

Contributions to the NRT were:

- 1% from Canadian residents
- 99% from non-residents

### Result:

|                                      |          | % of NRT's income and capital gains taxed in Canada |
|--------------------------------------|----------|---|
| Election to be an electing trust is: | made     | 1%*   |
|                                      | not made | 100%*   |

\* Assumes income is earned proportionately on the NRT's properties.

### Which NRTs should elect to be an electing trust?

NRTs that have property that was, or could have been, contributed by Canadian residents should consider whether to make the election to be an electing trust. To determine whether the NRT qualifies, past transactions and rules deeming a person to have contributed property to an NRT should be reviewed.

If the election is not made by the filing deadline, the opportunity to elect will be lost for all future years. Late-filed elections are not permitted.

### What is the deadline to elect to be an electing trust?

For NRTs in existence on June 26, 2014, the election must be made on or before June 26, 2014 (i.e. 365 days after Bill C-48 received royal assent).

### What happens if the election to be an electing trust is made?

An electing trust must track the properties that were contributed by Canadian residents (referred to as the 'resident portion').

Property not part of the resident portion is included in the non-resident portion. For income tax purposes, the assets included in the non-resident portion are deemed to be held by a separate NRT (the 'non-resident portion trust'), which will not be subject to Canadian tax.

The electing trust will be required to file a Canadian tax return in respect of the resident portion. We understand that the non-resident portion trust will be required to file a Canadian tax return only if it earns Canadian source income, such as income from a business carried on in Canada, or if it disposes of taxable Canadian property.

### Retroactive application of NRT rules

The new NRT rules generally apply for taxation years of a trust that end after 2006. However, an NRT can elect to have the new NRT rules apply to one or more taxation years ending after 2000 and before 2007. This election could be beneficial for any NRT that wants the new rules (rather than the old rules) to apply to earlier years.

### What is the deadline to elect retroactive application?

The election must be made on or before March 31, 2014 (the filing due date of the NRT for the taxation year in which Bill C-48 received royal assent), assuming a December 31 year end.

### What if the election for retroactive application is made?

If the election is made, the new rules will also apply to each taxation year of the beneficiaries under, and contributors to, the NRT in which the taxation years referred to in the election end.

### What other filing requirements apply?

The filing deadline is extended to June 26, 2014, for any:

- elections or forms referred to in the new rules, and
- income tax returns required to be filed by an NRT (except for an NRT that was deemed resident under the rules that applied before these new rules),

that would otherwise have to be filed before October 24, 2013 (i.e. before 120 days after June 26, 2013).

## ***Let's talk***

For a deeper discussion of what the new NRT rules mean for you, please contact:

- your PwC advisor
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