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Canadian tax alert

Revised Form T1135 – Foreign Income Verification Statement

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Background

As part of the 2013 federal budget, the Government of Canada announced its intention to take steps to address tax non-compliance involving foreign property. One of these steps is the introduction of a revised Form T1135 – Foreign Income Verification Statement, which is applicable for taxation years ending after June 30, 2013. The Canada Revenue Agency (CRA) can impose penalties if a taxpayer fails to comply with the form filing requirements.

Form T1135 has been in existence for a number of years although for 2012 and previous taxation years, it was relatively straightforward to complete. However, beginning with the 2013 taxation year, the form has been revised and requires significantly more detailed information regarding foreign property owned by Canadian residents.

Who is required to file Form T1135?

The criteria for who must file Form T1135 have not changed. Any Canadian resident who, at any time during the year, owned specified foreign property with a total cost in excess of \$100,000 is required to file Form T1135. Individuals who immigrate to Canada are not required to file Form T1135 in the year that they first become a Canadian tax resident (unless they were previously resident in Canada). However, the form must be filed for all subsequent taxation years, including a taxpayer's year of departure from Canada. In addition to individuals resident in Canada, Form T1135 must also be filed by corporations and trusts resident in Canada.

Specified foreign property

The definition of specified foreign property is quite broad and includes most non-Canadian assets, such as funds held outside of Canada, shares in non-Canadian corporations, indebtedness owed by a non-resident, an interest in a non-resident trust that was acquired for consideration, as well as real property situated outside Canada. Specified foreign property excludes personal use property (such as a vacation home), as well as property used in an active business (as specifically defined in the Income Tax Act).

Specified foreign property also includes most non-Canadian investments held in a Canadian brokerage account. Thus, in certain cases, taxpayers whose assets are all physically located in Canada could still be required to file Form T1135.

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What is new about the revised form?

The revised form requires significantly more information regarding foreign property to be disclosed.

The earlier version of the form merely required disclosure of whether the cost of several different categories of assets fell within several numerical ranges. There was no need to specifically identify particular foreign assets, or to provide the precise cost.

For each foreign asset, the revised form requires the following information to be disclosed **on a per asset basis**:

- Name of the foreign entity holding the funds, name of the foreign corporation, name of the foreign trust or description of the foreign property;
- Country where the foreign asset is located;
- Maximum cost of the asset during the year;
- Cost of the asset at year end;
- Amount of income (or loss) related to the foreign asset; and
- Amount of any capital gain (or loss) realized on the disposition of the foreign asset.

The new form provides relief for reporting specified foreign property where the taxpayer has received a Canadian tax slip relating to the property (e.g., a T3 or T5 slip); no additional disclosure related to these assets is required. However, this property is still included in the \$100,000 threshold to determine whether a taxpayer is required to file Form T1135 for the taxation year.

While this relief may exclude specific reporting for foreign assets held in a Canadian brokerage account for which income has been reported on a T3 or T5 slip, it would likely not exclude foreign securities held in the same account for which there was no income to be reported on a Canadian slip.

Penalties

The Canadian tax authorities can generally impose a penalty of up to \$2,500 for a late-filed Form T1135. Additional penalties can be assessed if the taxpayer failed to comply knowingly or under circumstances amounting to gross negligence.

As well, proposed legislation would extend the normal reassessment period for a taxation year by three years if a taxpayer fails to report income from a specified foreign property on an annual income tax return and either the Form T1135 is filed late or income from a specified foreign property is reported incorrectly on the form. This extended limitation period would apply to the entire tax return, and is not limited to the omission relating to foreign property.

Deloitte's view

Like many other countries, Canada is actively seeking to uncover unreported foreign income, and the revised Form T1135 will certainly provide additional information regarding Canadian-owned foreign assets. The revised Form T1135 is somewhat similar to new US Form 8938 – Statement of Specified Foreign Financial Assets, which was introduced by the US tax authorities for the 2011 and subsequent taxation years.

Based on the instructions released by the CRA, it appears that each stock or bond held in a foreign investment portfolio is required to be reported separately on Form T1135. This will require a significant amount of additional information from taxpayers,

and will likely present a particular challenge for inbound expatriates to Canada. This revised Form is also likely to impact Canadian residents who receive certain stock-based compensation in a foreign entity. In many cases, these plans could result in a Form T1135 filing requirement for Canadian taxpayers.

The 2013 form must be filed by the taxpayer's tax return due date (generally, April 30, 2014), and there is no extension available. Taxpayers should begin collecting the necessary information in early 2014, rather than waiting until April 2014 when the form is due. Form T1135 currently cannot be filed electronically. Taxpayers who electronically file their tax returns, should forward a signed copy of Form T1135 to the Canadian tax authorities by the due date.

The significant volume of additional information now required to be reported on the revised Form T1135, along with the efforts by the Canadian tax authorities to uncover unreported foreign income, may be cause for increased concern for taxpayers who have not previously disclosed their ownership of foreign assets. The Canadian tax authorities have a long-standing voluntary disclosure program, and these taxpayers may wish to consider filing past due or amended T1135 Forms for previous years.

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