TAX & ESTATE PLANNING

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Foreign Reporting

How have the rules changed?

Clients who own foreign investments must file Form T1135 "Foreign Income Verification Statement" annually if the total cost of all such investments, including foreign stocks (but not Canadian mutual funds or segregated funds with foreign holdings) held in non-registered accounts exceeds $100,000 at any point in the year.

On Form T1135, taxpayers are asked to report types of foreign investments owned and their cost, along with where those assets are located. Taxpayers are also asked about the income from these investments.

Individuals must file Form T1135 by the deadline for their T1 tax returns, which is April 30 for most taxpayers but extended to June 15 for some (such as those with business income). Penalties for late-filing Form T1135 are $25 for each day beyond the deadline, up to a maximum of $2,500. For taxpayers who knowingly or under circumstances amounting to "gross negligence" fail to file the form, the penalty jumps to $500 for each month the form is not filed, to a maximum of $12,000.

In the past, the Canada Revenue Agency (CRA) had a policy of waiving the penalties for first-time, non-filing offences. But the CRA has become less lenient in its ongoing efforts to combat international tax evasion. Penalties have been assessed even for first-time offences, raising the stakes for innocently failing to file the T1135. Until 2013, Form T1135 used a "check-the-box" approach whereby information was reported in broad categories, such as the type of asset (shares, debt, etc.), overall cost of assets (up to $100,000, $100,000 to $300,000, etc.) and asset location (U.S., U.K, Europe, Caribbean, Southeast Asia or other). The total income from all foreign assets was also reported.

2013 Reporting

In June 2013 the CRA introduced a "strengthened" Form T1135 asking for more detailed information about foreign property. For each individual foreign asset, the taxpayer had to report details such as the name of the specific foreign institution at which the property was held, the country in which the asset was located, the income earned on the asset, and the maximum cost of the asset in the year. These requirements caused a concerted lobbying effort to get some relief from the onerous, detailed reporting that was required for the new T1135 reporting. This led to two special provisions for the 2013 taxation year.

THE TAKE-AWAY

The CRA has become less lenient in its ongoing efforts to combat international tax evasion.

Under the "T3/T5 Reporting Exception" no details need to be reported for a particular property if all income from the property was reported on a T3 or T5 slip. Alternatively, the "Transitional Reporting Method" could be used by taxpayers who held specified foreign property in an account with a Canadian registered securities dealer or Canadian trust company. Under this method the combined fair market value (FMV) and income of all such property could be reported for each account, rather than reporting the details of each property.

A new version of the form, *T1135 (11/2013)*, was introduced to accommodate the special provisions. This version was to be used for the 2013 taxation year as well as for the 2014 taxation year if filed before July 31, 2014.

The special provisions, however, only provided relief in limited circumstances. For example, the T3/T5 Reporting Exception could not be used for foreign assets that had no income. Also, the Transitional Reporting Method was not available unless it was applied for all accounts with Canadian registered securities dealers or trust companies. This left taxpayers scrambling to identify the assets that needed to be reported individually and to find detailed information for them. The CRA extended the filing deadline for the 2013 tax year to July 31, 2014, "to provide further assistance in the transition to the new reporting requirements."

2014 Reporting

Under pressure from the financial community to further streamline the T1135 reporting process, the CRA recently announced additional changes for 2014.

For foreign property held in an account with a Canadian registered securities dealer or Canadian trust company in 2014, taxpayers will now have the option of reporting the total FMV and total income on a country-by-country basis instead of the account-by-account basis that was available under the 2013 Transitional Reporting Method. Also, the T3/T5 Reporting Exception was eliminated for 2014.

The newest version, *T1135 (14)*, was released in July 2014, and includes a separate category for property held with a Canadian registered securities dealer or Canadian trust company. This version must be used for the 2014 and later tax years if filed after July 31, 2014. However, the CRA is encouraging use of this version for all tax years.

Many financial institutions currently report information separately for Canadian assets and U.S. assets, but combine the information for all assets held in other countries. It is expected that financial institutions will seek ways to report information for the U.S. as well as other countries, so clients can best comply with the new 2014 reporting requirements. F

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