

Form T1135 Filing Rules Have Changed

The 2013 Federal Budget included a number of measures to combat international tax evasion and aggressive tax avoidance including changes to the existing foreign reporting requirements. As part of these changes the Canada Revenue Agency (“CRA”) released a revised Form T1135, *Foreign Income Verification Form*. Taxpayers required to file this new Form T1135 will find they must now disclose significantly more information about their foreign investments to the CRA than previously required.

Who has to file Form T1135?

Canadian resident individuals, corporations, trusts and partnerships are required to file Form T1135 if they hold “specified foreign property” with a cumulative cost in excess of CAD \$100,000 **at any time in the year**.

Specified foreign property includes:

- Funds in foreign bank accounts;
- Shares of foreign corporations (even if held in Canadian brokerage accounts);
- Interests in foreign mutual funds;
- Shares of Canadian corporations on deposit with a foreign broker;
- Debts owed by non-residents (i.e. foreign bonds);
- Interests in a non-resident trust;
- Interests in a partnership that holds specified foreign property;
- Land and buildings located outside Canada (i.e. foreign rental property);
- Other tangible and intangible properties located outside Canada.

Specified foreign property does not include:

- Property used or held exclusively in the course of carrying on an active business;
- Personal-use property (i.e. vacation property);
- Foreign investments held in Canadian-registered mutual funds;
- Interests in a foreign registered pension fund investments (i.e. US IRA);
- Shares of a foreign affiliate;
- Interests in a non-resident trust that neither the taxpayer nor a person related to the taxpayer had to pay for in any way (i.e. Estate);
- Interests in or indebtedness of a non-resident trust that is a foreign affiliate;
- Interests in or a right to acquire any of the above-noted excluded foreign property.

For example, foreign investments held through mutual funds that are resident in Canada (i.e. BMO Diversified Fund), are not required to be reported on Form T1135. If those same foreign

investments were held directly in a Canadian brokerage account, they would have to be reported on the form T1135.

What must be reported?

For 2013 and subsequent years, the following information must be provided on Form T1135:

- Country where each property is located;
- Name of bank or other entity holding funds outside Canada;
- Name of non-resident corporations in which the taxpayer owns shares (other than foreign affiliates);
- Maximum cost of each property held during the year;
- Cost of each property at year-end;
- Any income (loss) earned by each property;
- Any gain (loss) recognized on a disposition of a property;
- Description of any indebtedness owed to taxpayer by a non-resident;
- Name of any non-resident trust in which the taxpayer holds an interest;
- Description of real property outside Canada (other than real estate held for personal use or used in an active business);
- Where the form is prepared by a partnership, the nature of the partners (i.e. individuals, corporations or trusts)
- Description of any other property held outside Canada.

It is the residence of the corporation that issued the shares that is relevant for purposes of this form. For example, if US shares are held in a UK brokerage account, these should be reported as US shares.

Exceptions where T3 or T5 issued

Where the taxpayer has received a T3 or T5 slip from a Canadian issuer in respect of a specified foreign property for a taxation year that specified foreign property is excluded from Form T1135 reporting requirements for that taxation year. If a taxpayer holds a portfolio of several foreign investments with the same Canadian broker, only some of which report income on a T3 or T5, they would still be required to report detailed information on those investments that did not report any income on a T3 or T5 slip. For example, a T3 slip issued by BMO would not necessarily exempt the taxpayer from reporting all foreign properties held with BMO.

The reporting exclusion should not be confused with the requirement to file Form T1135. The taxpayer is still required to consider the cost of every specified foreign property in determining

whether the cumulative cost of all properties exceeds \$100,000. The slip exception only exempts taxpayers from having to disclose details of such property.

Filing the form

Form T1135 must be filed with CRA by the filing due date of the income tax return for the particular year. Currently, this form cannot be electronically filed. A paper copy of Form T1135 must be filed at the following address:

Ottawa Technology Centre
Data Assessment and Evaluations Program
Foreign Reporting Unit
875 Heron Road
Ottawa ON K1A 1A2

While the initial announcement indicated that the new Form T1135 would be required for all 2013 and later filings, CRA has now indicated that they will accept the prior version¹ for taxation **years ended prior to July 1, 2013.**

Beginning in 2013, the CRA will include a reminder of the obligation to file Form T1135 in the following tax year in their notices of assessment to taxpayers who have checked the box “yes” on their income tax return indicating that they have specified foreign property of more than \$100,000. This reminder may prevent taxpayers who fail to file Form T1135 when required from later filing under the CRA’s voluntary disclosure program to avoid penalties.

Consequences of non-compliance

Failure to file Form T1135 by the due date results in a late-filing penalty of \$25 per day (subject to a minimum penalty of \$100) to a maximum of \$2,500 per year.

Failure to comply with the requirements of Form T1135 (i.e. form filed late, a specified foreign property is not identified or is incorrectly identified, taxpayer fails to report income from a specified foreign property) will result in a three-year extension to the normal assessment period, which will **apply to the entire tax return** and will not be limited to the reassessment of income from foreign property only. This means that the particular tax return will not be statute barred until six years after the date of the original notice of assessment.

¹ Tax software offers a check box at the top of Form T1135 to trigger the correct version of the form

Final thoughts

The CRA published a number of questions and answers on its website: http://www.cra-arc.gc.ca/tx/nnrstdnts/cmmn/frgn/1135_fq-eng.html. However, there are still many uncertainties related to the new filing obligations. For example, CRA has not provided any indication of how taxpayers with non-calendar year-ends are expected to apply the T3/T5 slip exception.

The amount of information required under the new reporting requirements is significant and in many cases detailed information is not readily available. Given that the re-assessment period could be extended by an additional three years (i.e. if Form T1135 is filed late or incorrectly) and the amount of time it will take to accumulate all the necessary information, it is imperative that taxpayers owning specified foreign property gather the required information from the appropriate parties in advance of tax return preparation time, in order to ensure that Form T1135 is filed accurately and on time.

Please contact any member of the ME Tax Department with questions and stay tuned for future developments in this area...

