THE NAVIGATOR

FOREIGN REPORTING REQUIREMENTS IN CANADA

Important changes to Form T1135 for 2014 and future tax years

If you held "specified foreign property" with a cost in excess of C$100,000 at any time during the taxation year, you are required to report to the Canada Revenue Agency (CRA), for the year, certain information related to your foreign property on Form T1135 – Foreign Income Verification Statement. These foreign reporting rules do not impose any additional taxes but require only the disclosure of information about the ownership of foreign property.

The CRA has implemented changes to Form T1135 for the 2014 and later tax years. The changes allow you to report aggregate amounts for specified foreign property held in accounts with registered securities dealers and Canadian trust companies rather than providing the details of each such property.

The cost of not doing the required reporting on time or making errors on your T1135 can be quite significant.

The content in this article is for information purposes only and is not intended to provide tax or legal advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax advisor before acting on any of the information in this article.

CONSEQUENCES OF FAILURE TO FILE ACCURATELY AND ON TIME

If you fail to file Form T1135 by the due date, you may face a penalty. The penalty is $25 per day, subject to a minimum penalty of $100 and a maximum of $2,500.

Further penalties may apply if the failure to file or if errors or omissions were made knowingly or resulted from gross negligence. These penalties can be significant.

In addition to the above penalties, failure to comply with the requirements of Form T1135 may result in other tax consequences if you also failed to report income from a specified foreign property on your income tax return. A three-year extension to the normal reassessment period may apply to your entire tax return. This means that your tax return will not be statute-barred until six years after the date of the original notice of assessment or reassessment. This allows the CRA to review your entire return for the particular year. More importantly, their review is not restricted to just the information related to your foreign property.

DUE DATE FOR FILING THE T1135

Your T1135 is due on or before the due date of your income tax return. For individuals the filing deadline is generally April 30 of the following year (June 15 for self-employed individuals). Corporations and some testamentary trusts may have an off-calendar year-end therefore different filing deadlines.

Wherever "year" is referred to in this

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article, it is referring to the taxation year of the taxpayer.

Who Has to Report?

Canadian resident taxpayers who own specified foreign property with a total cost amount of more than C$100,000 *at any time in the year* are required to file Form T1135. The reporting requirement applies to Canadian resident individuals, corporations and certain partnerships and trusts. Individuals are not required to file Form T1135 for the year in which they become a resident of Canada.

The threshold of C$100,000 applies to the cost of all specified foreign property you own at *any time in the year*. This means that you need to keep track of the total cost of all specified foreign property you own on a daily basis, not just at year-end or each month-end. The following example demonstrates this concept.

A Canadian resident individual owns shares of a U.S. public corporation in a non-registered Canadian investment account with a cost of C$75,000. They held this investment for the entire year. For 3 months during the year, they also had a bank account in the U.K. with C$35,000 on deposit. However, during the year they used the cash deposited in the U.K. bank account to travel. At the end of the year, the only foreign property held was the U.S. public company shares. As the total specified foreign property exceeded C$100,000 ($75,000 + $35,000 = $110,000) at one point during the year, this individual would be required to file Form T1135 for the tax year even though they only held C$75,000 of specified foreign property at the end of the year.

What Property do You Have to Report?

If you have to file Form T1135, then you are required to report all specified foreign property which generally includes (but is not limited to):

- funds deposited or held outside Canada, even Canadian dollar funds deposited outside of Canada;
- intangible and tangible property situated outside of Canada (e.g. land and buildings outside Canada);
- shares of foreign corporations, even if held in an investment account in Canada;
- an interest in a non-resident trust that was acquired for consideration (e.g. foreign mutual funds and exchange traded funds listed on a U.S. exchange);
- shares of a Canadian corporation if held outside Canada (e.g. if you hold RBC shares in an investment account in Jersey);
- an interest in a partnership that holds a specified foreign property unless the partnership is required to file Form T1135;
- an interest in, or right with respect to, an entity that is a non-resident (this could include an option to purchase shares of a foreign corporation);
- a property that is convertible into, exchangeable for, or confers a right to acquire a property that is specified foreign property;
- a debt owed by a non-resident, including government and corporate bonds, debentures, mortgages, and notes receivable;
- an interest in a foreign insurance policy; and
- precious metals, gold certificates, and futures contracts held outside Canada.

Specified foreign property **does not** include:

Canadian resident taxpayers who own specified foreign property with a total cost amount of more than C$100,000 *at any time in the year* are required to file Form T1135.

- foreign property held in registered accounts such as RPPs, RRSPs, RRIFs, RESPs, RDSPs, locked-in registered plans and TFSAs;
- units of Canadian mutual fund trusts or mutual fund corporations that invest in foreign securities (e.g., RBC U.S. Equity Fund) or are held in a foreign currency;
- personal-use property (such as vacation homes, vehicles, jewellery, artwork, etc.); and
- property used or held exclusively in carrying on an active business (e.g. foreign real estate where you operate your active business).

What Information Must be Reported?

Whereas the previous form made compliance with the foreign reporting rules relatively simple, the revised form for 2014 and subsequent years requires more extensive details. The new Form T1135 is divided into seven categories that correspond to the different types of specified foreign property:

1. Funds held outside Canada
2. Shares of non-resident corporations
3. Indebtedness owed by non-resident
4. Interests in non-resident trusts
5. Real property outside Canada (other than personal use and real estate used in an active business)
6. Other property outside Canada
7. Property held in an account with a Canadian registered securities dealer or a Canadian trust company

If you hold specified foreign property in any of the categories from 1 to 6, then you are required to list each such property in the appropriate category and provide the other related information requested on the T1135. We refer to this as detailed reporting, discussed later on in the article.

An exception to detailed reporting may be available to you if you hold specified foreign property with a Canadian registered securities dealer or Canadian trust company as defined in the Income Tax Act. If you hold all of your specified foreign property with a Canadian registered securities dealer or a Canadian trust company then you can choose to do aggregate reporting and only category 7 will apply to you.

Aggregate Reporting Method

Specified foreign property held with a Canadian registered securities dealer or Canadian trust company may be reported in category 7, "Property held in an account with a Canadian registered securities dealer or a Canadian trust company", on Form T1135. The advantage to aggregate reporting versus detailed reporting is that you do not have to provide information on every single specified foreign property held at one of these institutions. Instead, you may report all the specified foreign property you hold with a particular institution in aggregate as long as it is broken down and reported on a country-by-country basis. Alternatively, you may choose to report the aggregate totals for each account at a particular institution on a country-by-country basis.

For all specified foreign property held with a particular Canadian registered securities dealer or Canadian trust company, you will need to provide the following information on a country-by-country basis if you choose this method of reporting:

- the name of the registered security dealer/trust company;
- the country code for each country reported;
- the maximum fair market value during the year for each country reported – this may be based on the maximum month-end fair market value for each country;
- the fair market value at year-end for each country reported;
- the total income (loss) earned on the property during the year for each country; and
- the total gain (loss) realized on the disposition of the property during the year for each country reported.

If you choose to do aggregate reporting for your securities held at a Canadian registered securities dealer/trust company, you will first need to determine the country code for each foreign security held during the year, regardless of whether you held that security at the end of any month or at the end of the year. This determines all the countries that have to be reported in category 7 on Form T1135. From here, you will need to report the additional information that is required as discussed in the previous paragraph.

Determining country codes is not discussed in this article however; you can find a description of how to determine country codes in the instructions on Form T1135 (this Form can be found on CRA's website at www.cra-arc.gc.ca). If you are uncertain about the country code for a particular security then you should select a country code of "Other".

Detailed Reporting Method

If you have specified foreign property other than property held at a Canadian registered securities dealer or Canadian trust company, you will have to do detailed reporting for this property. The following information is required for each specified foreign property in categories 1 to 6:

- the name of the foreign entity holding the property, name of corporation issuing shares, Please contact us for more information about the topics discussed in this article.

description of debt/property or name of foreign trust;

- the country code for each property – this is the country of residence of the issuer or trust or the country where the property is located;
- the maximum cost amount of the property during the year;
- the cost amount at year-end; and
- the amount of any income/loss that the particular foreign property generated in the year, as well as any capital gain/loss realized during the year for each foreign property.

The cost amount is generally the acquisition cost of the property. You can use the month-end highest cost amount of a particular specified foreign property to determine the maximum cost amount during the year.

As an example, let's assume you purchased 1,000 XYZ shares for a cost of C$100 in March, then you purchased an additional 100 XYZ shares for C$10 in July. You purchased an additional 200 XYZ shares in November for C$20 but before the end of November, you sold all your XYZ shares. The highest cost amount would be based on July's month-end cost of C$110. Although the highest cost amount that you held was in November when you held 1,300 XYZ shares with a cost amount of C$130, you can report July's month-end cost amount as the maximum cost. This is possible because you are allowed to base the maximum cost amount during the year on the month-end maximum. In this example, the cost amount at year-end would be C$0.

Foreign Currency Conversion

All amounts reported on Form T1135 need to be in Canadian dollars (there are rare exceptions). Generally, when converting amounts from a foreign currency into Canadian dollars, you should use the exchange rate in effect at the time of the transaction (i.e. the time the income was received or when the property was purchased or sold). However, if you receive income throughout the year, it is also acceptable to use the average exchange rate for the year.

For category 1 on the T1135 – Funds held outside Canada: you should use the average exchange rate for the year to determine the maximum funds held during the year and should use the exchange rate at the end of the year to translate the funds held at year-end.

For category 7 on the T1135 – Property held in an account with a Canadian registered securities dealer or a Canadian trust company: you should use the average exchange rate for the year to convert the maximum fair market value during the year. You should use the exchange rate at the end of the year to determine the fair market value at year-end.

Next Steps

The revised foreign reporting rules require significantly more detailed information than before. In addition, the government increased the penalties and tax consequences for not filing on time or making errors on your T1135. For these reasons, consider gathering information to complete your T1135 as early as possible to ensure you can file Form T1135 accurately and on time.

For further information regarding filing Form T1135, contact your qualified tax advisor.

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