

# EXTENSIVE NEW REPORTING REQUIREMENTS HAVE BEEN IMPOSED ON TAXPAYERS OWNING FOREIGN PROPERTY OVER \$100,000

## Introduction

There is a question on page 2 of the T1 General 2013 Federal tax return: "Did you own or hold foreign property at any time in 2013 with a total cost of more than CAN\$100,000?".

If you answer "yes", the new version of Form T1135 must be completed and filed for the year 2013. It will have to be filed annually in future, so long as the answer continues to be "yes". The form has to be certified as "correct and complete" by the taxpayer. It notes that "It is a serious offence to file a false statement".

Form T1135 "Foreign Income Verification Statement" is a two-page form plus two (small print) pages of detailed and complex instructions. Many of the instructions refer the reader to the Income Tax Act (ITA), so you will need to have a copy of the Act available in order to understand the instructions!

This article provides only a general guide to the filing requirements, since they are very complex, as will be evident from what follows. The latest version of Form T1135 asks for much more detail than in earlier years. The changes result from a proposal in the 2013 Federal Budget to address tax avoidance in respect of foreign income.

Further assistance may be found on the website of the Canada Revenue Agency (CRA), an 8-page "Questions and Answers about Form T1135", at:

[www.cra.gc.ca/tx/nnrstdnts/cmmn/frgn/1135\\_fq-eng.html](http://www.cra.gc.ca/tx/nnrstdnts/cmmn/frgn/1135_fq-eng.html)

Another CRA website publication deals with penalties, failure to file and false statements and omissions. This lists the penalties, etc. for four different forms, one of which is T1135. Again, the explanations include references to the ITA.

While some intrepid taxpayers may decide to complete and file the form without professional help, most will need assistance.

Form T1135 has to be filed on paper; it cannot be e-filed this year (the CRA has promised to provide an electronic version at some point in the future). While, in general, the form must be filed by the due date of the T1 tax return, for the 2013 year the filing deadline has been extended to July 31, 2014.

Partnerships, corporations and trusts are also required to file Form T1135, but are not discussed here.

## What must be reported on Form T1135?

Almost all foreign investment property (including property which does not earn income) must be reported. Major items include:

- Foreign bank accounts.
- Shares in foreign corporations wherever they are physically held (except for shares of foreign affiliates, which have different reporting requirements, not dealt with here).
- Bonds or debentures issued by foreign governments or foreign corporations and loans to non-residents.
- Tangible property situated outside Canada, including precious metals and gold certificates.
- Foreign mutual funds.
- Interests in non-resident trusts.
- Real estate outside Canada, including vacant land.
- An interest in a foreign life insurance policy.

Note that foreign property, e.g., shares of a US corporation, must be reported (subject to the exceptions noted below), even if the shares are held by a Canadian securities dealer.

Exceptions (which do not have to be reported) include:

- Property used mainly for personal use and enjoyment. This will include foreign real estate which is used primarily by the individual. Occasional rental income does not mean that the property has to be reported.
- Assets used only in an active business.

These assets are not included in the \$100,000 reporting threshold.

## What information has to be reported for each foreign property?

Required information includes:

- Name of each institution holding funds outside Canada, maximum funds held during the year and balance at the year-end. Income earned (*here, and in what follows, "income" means gross income, ignoring any costs or expenses and before deducting foreign tax withheld at source*).
- Each foreign non-resident corporation's name, maximum cost of the investment during the year and year-end cost. Income earned and gain or loss on disposition.
- Indebtedness owed by non-residents. This will include bonds or debentures. Description, maximum cost during the year and year-end cost. Income earned and gain or loss on disposition.

- Interests in non-resident trusts, name of trust, maximum cost of the interest during the year, year-end cost, income and capital received from each trust and gain or loss on disposition.
- Foreign real property, description, maximum cost during the year, year-end cost, income or loss and gain or loss on disposition.
- Similar information for any other property outside Canada.
- Country code for each category of property listed above.

In the case of a gift or bequest, "cost" is its fair market value when received.

The income and capital gains/losses totals should obviously be reconcilable with the T1 tax return, to avoid CRA questions.

### Exceptions

A change made by a CRA announcement on February 26, 2014 is discussed in the next paragraph.

If foreign property is held by a Canadian registered securities dealer then, for tax year 2013, only the total amount held by the dealer needs to be reported. You must report in this way for every dealer holding your foreign property, you cannot report some in total and others in detail.

Form T1135 does not have to be filed for the year in which an individual first becomes a resident of Canada. "Cost" for an immigrant is the fair market value of the property at the immigration date.

Foreign securities held in registered plans, such as a Registered Retirement Saving Plan, Registered Retirement Income Fund, Registered Education Savings Plan or Tax-Free Savings Account do not have to be reported. We should be thankful for small mercies!

### Penalties, etc.

There are severe financial penalties for failure to complete or to file Form T1135 accurately and by the due date. For example, in the *absence of "gross negligence"*, the penalty for failure to file is \$25 per day, minimum \$100 and maximum \$2,500. When gross negligence is involved, the penalties are extremely high.

If Form T1135 is not filed on time, or all the required information is not provided, or if there are one or more errors in the form, *and* there is some unreported foreign income, the reassessment period for the related T1 return is extended from three years to six years from the date of the original Notice of Assessment issued after the T1 return is filed. This extension relates to the entire return, not just to foreign property aspects. It seems that a trivial error, such as a typo, may trigger this

extension, although you also have to have at least one cent of unreported income from your foreign property!

### Conclusion

As you can see, when a taxpayer has many foreign assets, completing Form T1135 will be quite a chore, especially because of the penalties for inaccuracies or incomplete information.

Since the filing deadline will not be extended in future years, it may be a good idea to give early consideration to problems that may arise next year in meeting the earlier filing deadline. Will all the required information be available early enough to file Form T1135 on time? Canada's brokerage industry is working to figure out what they can do to assist their clients by providing information, although many firms are reluctant because they do not want to be sued if they provide inaccurate information.

If foreign assets or income have not been reported in earlier years, the taxpayer should take professional advice about the possibility of making a voluntary disclosure in respect of earlier omissions. This possibility is noted in the form's instructions and in the "Questions and Answers" referred to above. Such a disclosure can avoid the risk of a criminal prosecution and penalties for non-reporting.

Taxpayers may attempt to reduce the cost of professional fees payable in respect of Form T1135 by putting together, and providing to the professional adviser, the detailed information which will permit the adviser to complete Form T1135.

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