Foreign assets under the microscope: Navigating today's T1135 audit push

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Many Canadians hold foreign investments, ranging from offshore bank accounts to international real estate and securities. In recent years, we have noticed that the Canada Revenue Agency (CRA) has significantly increased its scrutiny of these holdings, leading to a noticeable uptick in audits focused on foreign income and asset reporting. This trend underscores the importance for taxpayers to ensure full compliance with their disclosure and reporting obligations.

What is form T1135?

Form T1135 must be filed by Canadian resident individuals, corporations, and certain trusts that, at any time during the year, own specified foreign property (SFP) exceeding $100,000, and certain partnerships that own SFP valued at more than $100,000. It is worth noting that the $100,000 cutoff is based on the total cost amount and not the fair market value of the SFP, as is defined in s. 248(1) of the *Income Tax Act* (Tax Act).

The term "specified foreign property" is outlined in s. 233.3(1) of the Tax Act and includes assets such as funds or intangible property (in Québec civil law incorporeal property), situated, deposited or held outside of Canada, but excludes a property used or held exclusively in carrying an active business. Furthermore, personal-use property is not required to be reported, including vacation homes used primarily as a personal residence and listed personal property such as works of art and jewelry.

Foreign vacant land can be considered SFP and therefore must be reported on the T1135 if f its cost amount exceeds $100,000.

When do you need to comply with it?

Regarding Canadian resident individuals, corporations and trusts, Form T1135 is due on the same date as the income tax return. As for partnerships, the form is normally due on the same date as the partnership return under s. 229 of the *Income Tax Regulations*.

Significant penalties apply if Form T1135 is not completed accurately and filed by the deadline. There is an aggressive failure to file penalty of $25 per day up to 100 days (s. 162(7) of the Tax).

Moreover, where the failure to file is done knowingly or under circumstances amounting to gross negligence (or at least where the CRA alleges it is done knowingly or under circumstances amounting to gross negligence), special “gross negligence” penalties may be applied, we have seen the CRA invoke this penalty more and more.

It is also noteworthy that the CRA is prepared to invoke provisions allowing audits well beyond the normal reassessment period, and we have seen clients receive T1135 audits reaching back more than ten years.

How can BLG assist you?

We’ve observed a significant increase in these audits in the past year. Several factors may explain this trend, such as stronger international collaboration, larger transfers of wealth, and that Canadians now own more overseas investments than ever before.

When a foreign inheritance or the transfer of wealth occurs, strategic planning becomes essential to ensure compliance with T1135 obligations and optimization of the tax outcomes. BLG’s tax team can assist by providing tailored guidance on cross-border estate matters, helping clients navigate complex legal, tax, and regulatory considerations with confidence and clarity.

In addition to assisting with planning, BLG can also support clients in meeting their T1135 compliance obligations and responding effectively to CRA inquiries or audits. Our team regularly navigates complex information-gathering requests and evolving audit powers, helping clients prepare, organize, and present the necessary documentation while protecting their interests throughout the process.

By

Kevin Bianchini, Noah Weinstein

Expertise

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blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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