

Taxpayer Relief – T1135

September 12, 2019

Canadian residents² who own specified foreign property (SFP) that has a cost of over \$100,000 during the year must complete form T1135, “Foreign Income Verification Statement”. SFP includes foreign property including real estate, cash in bank accounts located outside Canada and intangible property such as foreign insurance policies, interests in offshore mutual funds, shares in non-resident corporations, or debt owed by a non-resident. Not included is property owned primarily for personal use or used to carry on an active business.

The Canada Revenue Agency (CRA) imposes penalties for late filing form T1135 of \$25 per day for a maximum of \$2,500 as well as additional penalties of \$500 or \$1,000 per month where the taxpayer knowingly, or through gross negligence, fails to comply.

Summary

The taxpayer worked at GE Capital Canada between 2010 and 2016 and acquired shares of the company’s U.S. parent, a non-resident corporation, through an employer-sponsored share purchase plan. In 2016, the taxpayer realized that since 2015 the cost of his shares exceeded \$100,000 and filing of form T1135 was required.

Additionally, the Taxpayer did not know about the CRA’s voluntary disclosure program. Instead, he wrote a letter to the CRA to inform them of his mistake, and then correctly filed the T1135 for 2015, 2016 tax years. The judgment notes that the Taxpayer has since regularly filed T1135 forms and that he reported income from the shares and “was not cavalier about his income tax obligations”. Despite the letter, the CRA charged the taxpayer with a \$2,500 penalty for late filing.

Decision

The CRA’s 2015 T1 (form used to file a tax return) directed taxpayers owning SFP with a cost in excess of \$100,000 to refer to an Income Tax Guide for 2015 for more information (the Guide). Accordingly the judgment notes that the Guide’s table of contents did not have a heading for “Specified Foreign Property” and although filing requirement of Form T1135 is not income-driven, nor does it matter if income is ever generated by it, information about specified foreign property can only be found under the

subheading for “Foreign Income”. The court further notes that a subheading titled “Shares of a Non-Resident Corporation” “literally says nothing about a T1135 form”.

Through looking into the Guide, Justice Patrick Boyle said he doubted that most reasonable Canadians could find the relevant information on foreign property under the **foreign income heading and that the section on specified foreign property was “clearly misplaced”**. The court allowed the taxpayer’s appeal under a due diligence defence. Referring to a precedent, the court stated that taxpayers could not be expected to know that the T1135 late filing penalties could only be released through a Voluntary Disclosure Program filing.

Takeaway

Taxpayers may mitigate late filing penalties by being diligent in complying with tax legislation. Although the courts rarely apply the due diligence defence, this case **suggests that unclear administrative guidance, coupled with a taxpayer’s diligent and otherwise compliant behaviour, are circumstances that could allow for a successful use of this defence.**

¹Moore v. The Queen, 2019 TCC 141

² Which include corporations, individuals, as well as certain partnerships or trusts

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