



Foreign Income

When to file the T1135

Ask your clients what the significance of April 30, 2013, is and chances are they will tell you that it's the tax filing deadline for submitting their 2012 personal tax returns. If they or their spouses or partners are self-employed, however, they may remind you that they actually have until June 17, 2013, to file their returns.

What they may not realize is that the tax filing deadline is also the deadline for filing the annual T1135 "Foreign Income Verification Statement." This form must be filed annually if the total cost of all your foreign investments, including foreign stocks (but not Canadian mutual funds or segregated funds with foreign holdings) held in non-registered Canadian brokerage accounts, was over \$100,000.

On the T1135 Form, you are asked to specifically state both the types of foreign investments you own and the total cost of each type of investment, and indicate where those assets are located. You are also asked how much income you reported on your tax return from these foreign investments.

While the form itself contains details about who must file, and which assets are included and exempted, here are a few examples to help you guide your clients as to when the form must be filed.

Example 1. In January 2012, Erez immigrated to Canada from Israel. He owned a small condo in Tel Aviv that he purchased in the 1980s for the equivalent of \$80,000 but was valued at \$350,000 at the beginning of 2012. He now rents out the property and reports his foreign rental income on his personal income tax return. He has no other foreign assets.

Erez must complete Form T1135 for 2012. Although the original cost amount of the condo was below \$100,000 (i.e., \$80,000), in determining the cost of foreign property acquired before becoming a resident of Canada, the tax rules require Erez to use the fair market value of the property at

the time he became a resident, which was \$350,000.

Example 2. Laurie's great aunt died in March 2012 and she inherited Microsoft shares that her great aunt had originally purchased for \$45,000 but were worth about \$150,000 at the time of her death. Laurie transferred the shares to her Canadian direct trading discount brokerage account.

THE TAKE-AWAY

Each day you are late filing Form T1135 costs you \$25, up to a maximum of \$2,500 for being 100 days late. If you knowingly or under circumstances amounting to "gross negligence" fail to file the form, the penalty jumps to \$500 for each month the form is not filed, to a maximum of \$12,000 for 24 months.

Laurie must file Form T1135 for 2012 since foreign property acquired by way of gift or inheritance is to be valued at the time the gift or inheritance is received. Since the FMV was over \$100,000 when Laurie inherited the shares, she must complete the form, despite the fact that these U.S. shares are held in a Canadian brokerage account.

Example 3. Morty has never rented out his \$80,000 vacation property in Florida. If this is Morty's only foreign property, he need not file the form since it is personal use property.

Example 4. In December Barbra sold her Florida condo, which she originally purchased for \$120,000, for only \$90,000. She

rented it out for most of 2012, and she owned no other foreign property in 2012. Barbra must still complete and file Form T1135 for 2012 since the requirement to file is based on owning property with a "cost amount" of more than \$100,000 at "any time during the year."

Example 5. Mark purchased \$90,000 of Facebook shares in his RRSP and \$10,000 of Dell shares in his TFSA. Mark also owns a Canadian equity mutual fund, which is invested entirely in foreign emerging market securities. These are his only "foreign" assets. Mark does not need to file Form T1135 since holdings in registered accounts and Canadian mutual funds are excluded when calculating the cost of foreign property.

PENALTIES

Finally, a quick word is warranted about the severe penalties for late filing. Each day you are late filing Form T1135 costs you \$25, up to a maximum of \$2,500 for being 100 days late. If you knowingly or under circumstances amounting to "gross negligence" fail to file the form, the penalty jumps to \$500 for each month the form is not filed, to a maximum of \$12,000 for 24 months.

In the past, the CRA had a policy of waiving the penalties for first time, non-filing offences; more recently, however, the CRA has been assessing them on first-time offences.

To date, 11 reported tax cases have reached the courts in which taxpayers were hit with penalties for late-filing the T1135 and tried to get out of paying. Of all these cases, only one taxpayer had his penalty vacated. **■**

JAMIE GOLOMBEK, CA, CPA, CFP, CLU, TEP, is the managing director, tax & estate planning, with CIBC Private Wealth Management in Toronto and can be reached at Jamie.Golombek@cibc.com.