CHARTERED PROFESSIONAL ACCOUNTANTS CANADA
COMPTABLES PROFESSIONNELS AGRÉÉS CANADA

Chartered Professional Accountants of Canada
277 Wellington Street West Toronto ON CANADA M5V 3H2
T. 416 977.3222 F. 416 977.8585
www.cpacanada.ca

Comptables professionnels agréés du Canada
277, rue Wellington Ouest Toronto (ON) CANADA M5V 3H2
T. 416 977.3222 Téléc. 416 977.8585
www.cpacanada.ca

The Honourable Kerry-Lynne D. Findlay, P.C., Q.C., M.P.
Minister of National Revenue
7th Floor, 555 MacKenzie Avenue
Ottawa, Ontario
K1A 0L5

The Honourable Joe Oliver, P.C., M.P.
Minister of Finance
Department of Finance Canada
90 Elgin Street,
Ottawa, Ontario
K1A 0G5

December 15, 2014

Dear Ministers,

Re: Form T1135, Foreign Income Verification Statement

We are writing to emphasize and provide further support for the concerns raised by many in the tax community about the significant tax compliance difficulties being encountered by taxpayers, tax preparers and investment dealers attempting to comply with the above form. We also put forward three key recommendations that could alleviate these difficulties for many taxpayers, which the federal government could implement relatively easily, preferably for the upcoming 2014 personal tax filing season.

In my 36 years of tax practice, few tax developments have created as much confusion, complexity and compliance difficulty as the version of this form introduced in June 2012. Many other experienced tax practitioners across the country have expressed the same view to me in my activities with Chartered Professional Accountants of Canada (CPA Canada).

The high degree of concern and uncertainty among stakeholder groups is evidenced by the fact that over 8,300 individuals registered for a recent CPA Canada webinar on the topic. During the webinar, attendees – many of them tax preparers – submitted about 400 questions about the form and how to comply with its requirements. Similarly, in a separate informal poll, a high number of respondents said the current Form T1135 requirements are unclear except for in the simplest cases. In my experience, this reaction of the tax community is unprecedented. In a self-assessment tax system, these levels of anxiety and uncertainty are not in the best interest of compliance.

We have previously described the extent of the problems and the solutions discussed below (along with numerous other recommendations) in the submissions to the Canada Revenue Agency (CRA) and the Department of Finance Canada ("Finance") that are attached to this letter:

- A submission to the CRA, with a copy to Finance, dated March 14, 2014

- Two follow-up submissions from CPA Canada regarding 2014 filing issues and general issues, with copies to Finance, dated August 1, 2014
- A submission to Finance dated September 15, 2014, developed jointly by CPA Canada and the Investment industry Association of Canada, specifically regarding the current $100,000 threshold for foreign asset reporting under section 233.3 of the Income Tax Act.

Tax evasion is harmful to the economy, and CPA Canada welcomes the federal government's efforts to prevent it. We appreciate that the CRA requires information to review potentially abusive tax avoidance strategies. However, the federal government should take care to avoid any measure that could add undue complexity and increase the difficulty and cost for honest taxpayers who make every effort to comply with Canada's complex tax system.

We also appreciate the time and resources that the CRA has devoted to listening to stakeholders' concerns about the Form T1135 filing obligations and to making some improvements to ease the administrative burden. But more needs to be done.

Form T1135 requires taxpayers to report extensive information about their foreign investment income. The current requirements significantly increase the volume of filings for investments with low risk of non-compliance, but these disclosures are unlikely to produce any additional tax revenue. The sheer volume of these filings could potentially make it more difficult for CRA to spot disclosures of investments that may have a greater risk of non-compliance.

Further, taxpayers who bear significant costs and make diligent efforts to comply with their tax and reporting obligations may still make errors in meeting the filing requirement, and they may suffer penalties even when they have duly reported their income and paid the related tax – an undesirable outcome in a self-assessment tax system.

The filing burden could be eliminated for a large number of these low-risk taxpayers, and significantly alleviated for others, through three key changes:

- Restore and expand the exception from Form T1135 reporting for securities held in Canadian brokerage accounts.
- Eliminate Form T1135 reporting obligations for taxpayers with foreign property having a cost of up to at least $250,000.
- Extending the filing deadline for Form T1135 reporting to July 31 for individuals (including trusts).

These changes are discussed in brief below and in more detail in the attached submissions.

Restore and expand the exception for securities held in Canadian brokerage accounts

For most Canadians, Form T1135 filing obligations arise due to foreign securities held in their Canadian brokerage accounts (for example, shares of NYSE or NASDAQ companies). As a transitional measure, the CRA previously allowed an exception from Form T1135 reporting for foreign investment income already reported on

T3 and T5 income reporting slips, so taxpayers did not have to disclose investments for which some form of reporting is already required. This exception was limited in scope. It was eliminated for 2014 and later tax years.

There are additional instances where foreign investment income reported elsewhere must be reported on Forms T1135, including such income reported on T5013 Statement of Partnership Income and T5008 Statement of Securities Transactions. In some cases, taxpayers are asked to report information on Form T1135 that investment dealers/funds have already reported to CRA directly by XML through T3, T5, T5013 and T5008 reporting.

By eliminating the need for detailed reporting for foreign securities held with registered Canadian securities dealers, a significant portion of Canadians would no longer be required to file the form.

Recommendation:

The federal government should alleviate the tax filing burden and red tape by allowing an exception from Form T1135 reporting for property that is already subject to T3, T5, T5008 and T5013 reporting requirements.

Increase the Form T1135 filing threshold to at least $250,000

When Form T1135 was introduced 15 years ago, the Auditor General of Canada suggested that the $100,000 foreign property cost threshold was too low, but the threshold has not been raised. In the intervening years, the number of trades undertaken by the average investor has greatly increased, so tracking the information needed to complete Form T1135 has become more difficult.

Considering the amount of detail currently required, the cost of Form T1135 compliance, and the low non-compliance risk for taxpayers with foreign investment portfolios below at least $250,000, the threshold warrants reconsideration. Raising the threshold could eliminate the Form T1135 filing requirement for a significant portion of low-risk taxpayers, and also reduce red tape for many investment dealers and tax preparers. A higher threshold would also reduce the work involved for many taxpayers in determining whether the amount of their investments creates a Form T1135 filing obligation.

A $250,000 threshold is consistent with equivalent levels for additional information reporting in Canada and the U.S. For example, the “CRA's Guidance on Enhanced Financial Accounts Information Reporting” sets a $250,000 threshold (measured at June 30, 2014) for financial institutions to review a pre-existing entity account, and the same threshold (measured at June 30 2014) triggers a requirement to report a cash value insurance contract or an annuity contract. The $250,000 amount is also consistent with what Canadian registered securities dealers and others are building systems to support under U.S. requirements to implement the *Foreign Account Tax Compliance Act* (FATCA).

Recommendation: The federal government should raise the threshold for Form T1135 foreign income reporting to at least $250,000. In addition, the federal government should consider indexing the threshold to inflation, as it has done with other thresholds in the Income Tax Act (e.g., RRSP contributions).

Extend the Form T1135 filing deadline

Given the expanded information requirements and the amount of time required to gather information, an extended deadline would be helpful for individual taxpayers, Canadian financial institutions and tax preparers. This would give taxpayers more time to receive information from foreign financial institutions. It would also reduce the volume of amended and late Form T1135 filings that arise due to late-received information, reducing the burden on taxpayers and tax preparers while easing administration for the CRA

Similar challenges in receiving and compiling detailed foreign information are involved in preparing Form T1134, Information Return Relating to Controlled and Not-Controlled Foreign Affiliates. In recognition of these challenges, the deadline for Form T1134 is set at 15 months after the end of the reporting entity's tax year. The federal government should extend the Form T1135 filing deadline to allow time consistent with similarly complex filings.

Recommendation:

The federal government should extend the Form T1135 filing deadline to July 31 of the year following the taxation year for individuals (including trusts). For other reporting entities, the deadline for Form T1135 should be the same as the taxpayer's due date for filing the related tax returns.

We want to reiterate our thanks and applaud the CRA's collaborative spirit to date in working with CPA Canada and other stakeholders toward alleviating this filing burden and associated red tape. CPA Canada will continue working with the federal government, investment community and other stakeholders to determine how the CRA can address concerns regarding Canadians who do not pay their appropriate share of taxes on financial assets while further reducing the red tape created by the current Form T1135 filing requirements.

We have written to the two of you jointly because we believe that a combination of administrative and legislative solutions can address our recommendations to the immediate benefit of all taxpayers.

Yours truly,

Gabe Hayos
Vice President, Taxation
Chartered Professional Accountants of Canada

c.c.:

Brian Ernewein
General Director, Department of Finance Canada

Ted Gallivan
Deputy Assistant Commissioner, Compliance Programs Branch, Canada Revenue Agency

Lisa Anawati
Director General, Canada Revenue Agency

Guy Bigonesse
Director, Aggressive Tax Planning Division, International and Large Business Directorate, Canada Revenue Agency

Barbara Amsden
Managing Director, The Investment Industry Association of Canada

CHARTERED PROFESSIONAL ACCOUNTANTS CANADA
COMPTABLES PROFESSIONNELS AGRÉÉS CANADA

Chartered Professional Accountants of Canada
277 Wellington Street West Toronto ON CANADA M5V 3H2
T. 416 977.3222 F. 416 977.8585
www.cpacanada.ca

Comptables professionnels agréés du Canada
277, rue Wellington Ouest Toronto (ON) CANADA M5V 3H2
T. 416 204.3222 Téléc. 416 977.8585
www.cpacanada.ca

Lisa Anawati
Director General
Canada Revenue Agency
Director General's Office
344 Slater Street Ottawa, Ontario
K1A 0L5

March 14, 2014

Dear Ms. Anawati,

Re: Form T1135, Foreign Income Verification Statement

Chartered Professional Accountants of Canada (CPA Canada) is pleased to present its recommendations related to Canada Revenue Agency's (CRA) Form T1135, Foreign Income Verification Statement.

Tax evasion is harmful to the economy, and we welcome CRA's efforts to prevent it. We also appreciate that CRA requires information to review potentially abusive tax avoidance strategies. However, CRA and the Department of Finance Canada should take care to avoid any measure that could add undue complexity and increase the difficulty and cost for honest taxpayers who make every effort to comply with Canada's complex tax system.

Form T1135 requires taxpayers to report extensive information about their foreign investment income. This includes information about foreign securities held in Canadian accounts that are already subject to Canadian reporting requirements, greatly increasing the volume of filings for investments that appear to us to have a low non-compliance risk.

We believe that CRA and the Department of Finance could simplify the reporting requirements, ease the compliance burden, and streamline CRA's administration by implementing the following recommendations, discussed in the body of this letter:

- Clarify the intention of the T1135 reporting requirements
- Extend the exception for information reported on T3 and T5 slips to cover T5013 and T5008 reporting
- Address the potential impact on the normal reassessment period of late-filed and amended T1135s and of honest errors (legislative change required)
- Introduce a legislated due diligence exception (legislative change required)
- Streamline the process for first-time errors
- Change how marketable securities are valued for purposes of the reporting threshold (legislative change required)
- Adopt a standalone electronic filing system for Forms T1135 and provide taxpayers with the options of filing Form T1135 manually and filing the form separately from the related tax return
- Extend the filing deadline for Form T1135 to 15 months following the taxpayer's year-end
- Formalize a process for regularly engaging the tax, investment and other interested communities in consultations on complex new and revised tax forms.

We have sent a copy of this letter to Brian Ernewein, General Director of the Department of Finance, as we believe change to the Income Tax Act is warranted and will be needed to implement some of our recommendations (as noted above).

Our views were developed in consultation with members of some of CPA Canada`s Tax committees, who represent many of Canada's leading tax organizations and professional services firms. As you know, CPA Canada also conducted an informal round table forum to engage with a range of stakeholders, including the investment community and tax software providers, to discuss common concerns and practical solutions.

We thank you and your CRA colleagues for joining in a portion of this meeting and sharing your perspective on the extent of changes that can be made regarding the T1135 requirements at this time. We look forward to collaborating with CRA to try resolve taxpayer and tax preparer concerns while ensuring that CRA achieves its information gathering requirements.

Clarify intention of T1135 reporting

For most Canadians, T1135 filing obligations arise due to foreign securities held in their Canadian brokerage accounts (for example, shares of NYSE or NASDAQ companies). While CRA makes an exception for investments that produced income reported on a T3 and T5 income reporting slip for the year, this concession is restricted in many cases. Further, significant time and effort is needed to identify their foreign investments that meet the T3/T5 reporting exception. While this exception may reduce the amount of disclosure, filing of the form is still required.

Representatives of the tax and investment community believe that some explanation of why the information is needed would help taxpayers understand the reason for the added cost of compliance that will be incurred. Further, taxpayers who make diligent efforts to comply with their tax and reporting obligations may still make errors in meeting the filing requirement, and they may suffer penalties even when they have duly reported their income and paid the related tax. If taxpayers and tax intermediaries believe that the form is an onerous disclosure with no understood purpose, the likelihood of compliance would be reduced, impeding CRA's enforcement efforts.

By requiring disclosure of foreign securities held in Canadian accounts and subject to Canadian reporting requirements, it appears that the volume of filings is greatly increased for investments with low risk of non-compliance. This sheer volume could potentially make it more difficult for CRA to spot disclosures of investments that may have a greater risk of non-compliance.

Given that we have not been informed of the detailed risks that concern CRA, we continue to believe that the current requirements create a significant compliance burden for the large majority of taxpayers who are low risk and compliant while only a very small minority of taxpayers will be holding the specified foreign properties that concern CRA in terms of Canadian brokerage accounts. We firmly believe that addressing tax risk must be balanced with the compliance burden created for compliant taxpayers.

Further, if CRA is aware of particular tax schemes, for example, involving Canadian-held foreign securities, CRA has some obligation to inform taxpayers. Under point 14 of the Taxpayers Bill of Rights, taxpayers have the right to expect CRA to warn them about questionable tax schemes in a timely manner.

In light of the above, CRA may wish to provide more transparency regarding the perceived costs and benefits of this detailed T1135 reporting in terms of collection and enforcement. Accounting professionals and other stakeholders need to better understand what CRA aims to achieve so they can explain to their clients why the extra complexity and cost is needed. This will also help the tax preparer community in working with CRA to propose suggestions to reduce the administrative burden while being in line with CRA's objectives.

Recommendation: CRA should consider providing greater transparency regarding the intended collection and enforcement outcomes of the T1135 reporting requirements and narrow the disclosure to property associated with perceived high non-compliance potential.

Extend T3/T5 exception to Forms T5013 and T5008

CRA allows an exception from T1135 reporting for foreign investment income already reported on T3 and T5 income reporting slips, eliminating the need for taxpayers to report the same income twice. However, there are other instances where foreign investment income reported elsewhere is required to be reported on Forms T1135, including such income reported on T5013 Statement of Partnership Income and T5008 Statement of Securities Transactions. Additionally, in some cases, taxpayers are asked to report information on Form T1135 that investment dealers/funds have already reported to CRA directly by XML through T3, T5, T5013 (as of this year) and T5008 reporting.

Recommendations:

CRA should further alleviate multiple reporting by:

- extending the exception for income reported on T3 and T5 slips to cover income reported on T5013 Statement of Partnership Income and T5008 Statement of Securities Transactions
- not requiring taxpayers to transcribe and report information on Forms T1135 where that information has been reported to CRA directly through T3, T5, T5013 and T5008 reporting.

Address potential T1135 impact on the normal reassessment period

The adjustment to the normal reassessment period related to T1135 filings is set out in subparagraph 152(4)(b.2) of the Income Tax Act, which states:

> *(b.2) the assessment, reassessment or additional assessment is made before the day that is three years after the end of the normal reassessment period for the taxpayer in respect of the year and if*
>
> *(i) the taxpayer, or a partnership of which the taxpayer is a member, has failed to file for the year a prescribed form as and when required under subsection 233.3(3) or to report on the prescribed form the information required in respect of a specified foreign property (as defined in subsection 233.3(1)) held by the taxpayer at any time during the year, and*

(ii) the taxpayer has failed to report, in the return of income for the year, an amount in respect of a specified foreign property that is required to be included in computing the taxpayer's income for the year;

This wording raises a number of concerns regarding the impact on the normal assessment period of late-filed T1135s, T1135 amendments and honest errors.

Late-filed T1135s are not addressed – If a taxpayer fails to file Form T1135 on time, it appears that part (i) of the test will always be met even if the form is eventually filed. If this is combined with an income reporting error, then it appears to us that both parts of the test have been met, and the taxation year would be subject to an extended assessment period. The CRA refers to the voluntary disclose rules, but it is unclear to us that applying that process can override this rule. Normally, those rules apply to the assessment of interest and penalties.

Impact of T1135 amendment on subparagraph 152(4)(c)(b.2) – Form T1135 includes a box asking whether the form is an amended form. Based on the legislation, it appears to us that filing an amended form to correct an honest error may in fact be an admission that the original form was incorrect, and the conditions of clause 152(4)(c)(b.2)(i) have been met. Consequently, if an amended T1135 is filed along with a tax return amendment to report related income, it appears to us that this is an admission that the taxation year would have an extended assessment period.

Impact of honest errors – Other than from general due diligence rights created under case law, it appears that any immaterial error that included both not reporting a property and an amount of income will leave the taxation year open to extended reassessments. If someone has a high number of foreign properties and trades often, an error may be inevitable (as opposed to being possible). See the following section for our views on due diligence.

Recommendation:

The Department of Finance should revise the legislation to deal with situations where the taxpayer files late or wants to file an amended form and tax return to correct errors. The legislation should refer specifically to the receipt of late or amended information on a basis that is acceptable to the CRA.

Where the CRA concurs that an amendment arose from an honest error, the extended reassessment period could be limited to the undisclosed property only.

Introduce a due diligence exception

What is an acceptable amount of due diligence for tax compliance has been an issue of uncertainty over the years. Recent cases such as *Dunlop* and *Saunders* on subsection 163(1) have set a precedent that a due diligence defence is available even if not specifically articulated in a penalty provision. However, we believe that a specific due diligence rule is warranted because:

1. The T1135 penalties arise from a different rule.
2. There is also a rule that governs the reassessment period for the taxpayer as just discussed.
3. A specific due diligence rule for foreign reporting already exists.

In particular, we note that a due diligence rule is available in section 233.5. We assume that this rule was not extended to section 223.4 and therefore the previous version of the T1135, as that form was not difficult to complete. In particular, given that only ranges of amounts had to be reported, it was easy to over-report by adding an allowance for error to the amount of foreign properties reported.

We also note that the conditions of section 233.5 are appropriate in terms of the new T1135, as sufficient due diligence exists where:

- There is a reasonable disclosure in the return of the unavailability of information.
- Before that day, the person or partnership exercised due diligence in attempting to obtain the information.
- Information that subsequently becomes available to the person or partnership is filed with the Minister not more than 90 days after it becomes available.

For example, assume that a married couple is required to report the balance of a foreign interest bearing bank account because they both have specified foreign property that have a cost in excess of $100,000. Also assume that the couple have had the account for over 20 years, and both have transferred money to it from time to time. The couple has not maintained the information needed to compute foreign currency gains or losses on the funds in the foreign account, and earlier banking records are not available as they have been destroyed.

In this case, the only reasonable approach would be estimate the amount contributed by each spouse. However, based on the law and references to accuracy in the CRA commentary on the website, the use of an estimate does not appear to be possible (inherently, an estimate is always inaccurate, even if only immaterially).

Section 233.5 would be useful in this situation if the couple discloses the account balance based on estimated contributions. In particular, the conditions under section 233.5 would be met as follows:

- The couple would disclose that they are using an estimate due to unavailable information.
- They exercised due diligence in coming up with the best estimate they can.
- They will provide detailed information if it becomes available (but in this case, it will not).

Overall, with the introduction of the new form, a great deal of new information is being requested, and we believe that the new T1135 presents complexity at the same level as the other foreign reporting forms.

Recommendations:

Section 233.5 should be extended to apply to the Form T1135. In particular, both the penalty provision and the adjustment to the normal reassessment period should be linked to section 233.5.

CRA should reassure taxpayers that honest errors would not result in penalties and the extension of the reassessment period.

Streamlined process for first-time errors

Despite all of the checks and balances that tax advisors put into their tax compliance process, occasionally, a T1135 filing requirement for a taxpayer is not discovered immediately when that filing requirement arises. Our experience has been that the CRA generally applies relief when the voluntary disclosure process is used. However, a key limitation of that program is that one must wait until the transgression is at least one year old.

In the spirit of helping honest taxpayers who are trying to be compliant, we believe that it would make more sense for CRA to allow a taxpayer one mistake without penalty. For example, if the taxpayer is required to file a T1135 for the first time in 2013, that form could be late-filed before it is one year late without penalty. A similar rule should apply where a taxpayer corrects errors on a form prior to CRA's review.

Recommendation: CRA should streamline the process for first-time T1135 filing errors by allowing taxpayers to make one mistake without penalty outside of the existing voluntary disclosure process. Further, CRA should allow taxpayers to correct non-compliance immediately, without waiting for the one-year period under the voluntary disclosure rules to elapse.

Reporting threshold for marketable securities

The current form requires the value of marketable securities to be measured on the basis of their highest cost amount at any time of the year. However, we understand that it is not possible for investment community to capture and report this value without significantly changing their current information systems, which would be impractical. We also understand that a more accurate and easily derived value for these properties is the securities' fair market value at year-end. This change would not require a legislated amendment, and we understand that members of the investment community intend to make more detailed submissions in this regard.

This issue could be best accommodated by adding a new category of foreign income from marketable securities (i.e., new Category 7) to the existing Form T1135.

Recommendation: Form T1135 should be amended to introduce a new Category 7 for marketable securities held in Canadian brokerage accounts and to specify a more accurate and more easily derived value for these properties, namely, the securities' fair market value at year-end.

Efile requirements and use of third-party summaries

We understand that CRA intends to introduce electronic filing for Forms T1135 for 2014 filings to be submitted in 2015.

In developing the efile requirements, we encourage CRA to ensure the system accommodates the complex nature of the information required to be reported, the amount of time it may take for implementation if the investment community must make systems changes, and the amount of time it may take to prepare the forms themselves. In order to accommodate various T1- and T2-related T1135s and manual filings related to T3 and T5013 reporting, a standalone T1135 efiling system would offer the simplest, most efficient approach for

taxpayers and CRA alike. The tax software could transmit the T1135 at the same time as the tax return so that the transmission would appear seamless to the end user.

In some cases, the filing of the related tax return may be delayed pending the Form T1135's completion. Therefore, taxpayers should have the option to file the T1135 form separately from and later than their tax return so that the T1135 filing does not delay filing of the return. For tax preparers, this would have the added benefit of shifting T1135 preparation work out of personal tax season, which would ease the seasonal work surge, allow more time to gather data and prepare complex filings, and potentially reduce compliance costs for their clients.

Additionally, at some point, some foreign property information received on investments may be in a format similar to that required by the form, or taxpayers may create their own summary. To reduce compliance costs associated with preparing the form and reduce the potential for errors, CRA should maintain a manual filing option, including the ability to append summaries that contain the required foreign property information in the manner required by CRA (as opposed to transcribing this data onto the form).

Recommendations:

CRA should adopt a standalone electronic filing system for Forms T1135 related to T1 and T2 income tax returns.

CRA should provide taxpayers with the options of (i) filing Form T1135 manually; and (ii) filing the form separately from the related tax return.

Form T1135 filing deadline

Given the expanded information requirements and the amount of time required to gather information, an extended deadline would be helpful for the taxpayer, Canadian financial institutions and the tax preparers. This also would give taxpayers more time to receive information from foreign financial institutions. Additionally, moving this work out of the tax preparer's peak season should help reduce the compliance cost for taxpayers.

Similar challenges in receiving and compiling detailed foreign information are involved in preparing Form T1134, Information Return Relating to Controlled and Not-Controlled Foreign Affiliates. In recognition of these challenges, the deadline for Form T1134 is set at 15 months after the end of the reporting entity's tax year.

Recommendation:

CRA should extend the Form T1135 filing deadline to 15 months following the taxpayer's year-end, consistent with the filing deadline for Form T1134.

Formalize consultation process for new forms and filing requirements

Based on our discussions with various stakeholders, it is clear that many of them believe that Form T1135 imposes an unneeded burden on taxpayers and their advisers who are required to file it, a burden that may be disproportionate to the benefits that CRA expects to gain. If an exposure draft of the form had been available at an earlier date, some of the concerns raised in this submission could have been addressed by CRA more efficiently and the need for 2013 transitional reporting could have been avoided.

When CRA is designing new prescribed forms and filing procedures, open, timely consultation with practitioners, businesses and professional organizations would help ensure the form's requirements are properly targeted to meet their objectives and that the related compliance burden on taxpayers is minimized to the extent possible. This is especially important where the form requires the reporting of new information, as a main concern with the new Form T1135 is that some of the information that CRA requires is not readily available.

The United Kingdom adopted a formal tax consultation framework in March 2011. The framework encourages public engagement, allowing the U.K. government to explore, develop and test new ideas to improve the tax system, and to ensure that change is well targeted and its likely impacts are understood. The framework goes beyond formal written consultation and includes the wide range of ways in which the U.K. government can engage with interested parties, which vary depending on the nature of the proposal in question and the taxpayers that it will affect. In addition to tax legislation and administration, the tax consultation framework covers the design of new tax forms.

Recommendation: CRA should formalize a process for regularly engaging the taxpayers, tax preparers and other stakeholders in consultations on complex new and revised tax forms within a reasonable amount of time prior to a new form's release.

As noted earlier, we applaud CRA's efforts to protect Canada's tax base from illegal offshore tax evasion. We look forward to working with CRA and other stakeholders to ensure that these efforts are balanced and properly targeted, and do not put an inappropriate burden on taxpayers who seek to be compliant.

Yours truly,

Gabe Hayos
Vice President, Taxation
Chartered Professional Accountants of Canada

c.c.:

Brian Ernewein
General Director, Department of Finance Canada

Guy Bigonesse
Director, Aggressive Tax Planning Division, International and Large Business Directorate, CRA

Barbara Amsden
Managing Director, The Investment Industry Association of Canada

August 1, 2014

Foreign Property Tax Disclosure – Questions for Form T1135 Filings for 2014

Nature of investments

1. ***Foreign currency derivatives*** – *Do foreign currency derivatives constitute foreign property for foreign income disclosure purpose*s?

2. ***Portfolio investments –*** *Can the CRA provide guidance on how to disclose foreign investments where it is not obvious whether the investment is a trust or a corporation?* These are portfolio investments in many cases and not controlled or related entities. This is particularly problematic where the investment is a mutual fund. For foreign entities, the tax will normally be based on distributions. Further, some foreign business structures possess characteristics of trusts, corporations and/or partnerships, making their classification difficult. In addition, the form only includes sections for trusts and corporations but not partnerships, which may also be held as portfolio investments. Can you confirm that where there is some uncertainty as to how the foreign entity should be classified for Canadian tax purposes, or where the foreign entity takes the form of a partnership, that it would be acceptable to list these investments in Category 6 – "Other property outside Canada"?

Foreign cheques

3. ***Cheques and drafts*** – *Could the CRA confirm that a cheque written on a foreign bank does not itself constitute foreign property?* The instructions on Form T1135 for Category 1 – Funds Held Outside Canada state, "Prepaid debit or credit cards and negotiable instruments, such as cheques and drafts, are also included in this category." This reference to cheques and drafts is confusing as foreign income already being reported on Form T1135, such as dividends or rent, would often be distributed by way of a cheque written on a foreign bank. Presumably the cheque itself would not also constitute foreign property.

Effort and accuracy

4. ***Lack of guidance on errors and amended returns*** – *If a taxpayer discovers an error, can it be rectified? How significant of an error must be corrected? What if an error simply related to cost, etc., and the amount of income reported was correct?* The legislation is not clear on errors, and it could be construed that perfect compliance is required. In the absence of clear guidance from the CRA on this issue, this remains a concern. Further, the legislation does not address amended returns.

5. ***Use of estimates –*** *What is the CRA's perspective on the use of estimates where accurate cost base information is not available (i.e., information beyond what is needed for tax compliance in a given year)?* For example, on adjusted cost base calculations, significant work is often only done when a property is sold due to the cost of doing the work. Further, even where the preparation of cost information is not delayed until the sale of the investment, it is common to defer that

work until after the personal tax deadline has passed for workflow reasons. As the CRA is not prepared to introduce an extended deadline for Form T1135 reporting, this will be a serious issue for many practitioners going forward.

6. ***Late-received information*** – *Where details on some foreign property are not available in time for filing, how does the CRA recommend the taxpayer proceed?* On income tax in general, the CRA suggests making an estimate of income and correcting the return later. However, the new legislation and the CRA do not any provide guidance on this issue in terms of Form T1135. The legislation would say the taxpayer is non-compliant since either the form would be late or the information estimated would not be correct. In this context, the CRA should bear in mind that foreign property information may need to be requested and received in a foreign language, requiring translation and adding more time to the information-gathering process.

Practical issues

7. ***Joint bank accounts – level of disclosure detail*** – *From a practical perspective, how much work would the CRA expect of taxpayers to determine who actually deposited the money for a joint bank account that has been open for, say, 10 years?* Bank accounts by their nature can continuously have deposits and withdrawals, and trying to determine who exactly put in what on a net basis could be very complicated. Often, both spouses have significant financial resource, and while an exact determination of the source of funds for each deposit, and use for each withdrawal, is not practical, it is reasonable to conclude that their contributions to the account are more or less equal. It is often the case that both spouses are in the same tax bracket, such that any error in allocation of income or gains will not change total taxes paid. Similar to the use of estimates discussed above, what level of detail does CRA expect will be maintained for such joint property?

August 1, 2014

Foreign Property Tax Disclosure –

Suggestions and Comments re: Current Form T1135 Program

Requirement to file

1. *Red tape* – We believe that most of the work that will be done on this form will be done by taxpayers who are otherwise compliant. Those who are not compliant will likely not file the form, and their tax issues will likely never be statute barred anyway due to negligence or misrepresentation. The CRA may wish to consider this issue in the context of the Taxpayers Bill of Rights (item 10), which says that taxpayers have the right to have the costs of compliance taken into account when administering tax legislation. Is there another way to penalize non-compliance that could reduce the large amount of red tape for compliant taxpayers?

2. *Communication of requirements* – Given the significant compliance burden associated with foreign property disclosure, the Canada Revenue Agency (CRA) should consider increasing its communications to taxpayers and their advisers about the foreign property disclosure requirements and their specific objectives. Many taxpayers learn about their obligations through their tax and investment advisers, who are put in the unfair position of having to explain these onerous filing requirements without fully understanding their intent.

3. *Reconsider the $100,000 threshold* – The CRA should encourage the Department of Finance to review whether the $100,000 foreign property cost threshold is too low, as the Auditor General of Canada suggested when the Form T1135 was introduced 15 years ago. Considering the amount of detail now required, the cost of Form T1135 compliance and the degree of non-compliance risk, the threshold warrants reconsideration. At a minimum, the CRA should ask Finance to consider indexing the threshold to inflation, as it has done with other thresholds in the Income Tax Act (e.g., RRSP contributions). Even though the $100,000 cost threshold for filing a T1135 is legislated, the level of detail required in the disclosure is at the discretion of CRA. Thus, the CRA could set a higher de minimis amount (e.g., $500,000) below which less onerous disclosure could be required.

T1135 filing process

4. *Filing options* – We support the CRA's intention to introduce an electronic filing system for Forms T1135 (separate from the related income tax return). We have previously indicated that the best approach would be a standalone system (e.g., separate from T1/T2/T5013 efiling). The CRA should not impose mandatory electronic filing for Form T1135. However, taxpayers should retain the options of (i) filing the form manually; and (ii) filing it separately from the related tax returns. For example, separate filing of the Form T1135 would be preferred where:

    - The taxpayer engages a tax preparer to assist with their T1 tax return but prepares and files their own T1135 without that tax preparer's assistance; the tax preparer should not be linked to a T1135 they did not prepare.

- The tax return is completed and the taxpayer wishes to file it as soon as possible, but the Form T1135 information is still being gathered; the taxpayer should not be required to delay filing one form until the other is completed.
- The tax return cannot be filed electronically (e.g., because the return does not qualify for the CRA's exceptions or it cannot be filed electronically at all, such as a T3); allowing separate Form T1135 filing in these cases would help maximize the electronic filing of T1135s.

Further, we understand that efiling is only being contemplated for individuals at this time. We encourage the CRA to allow electronic filing of the T1135 for all taxpayers, not just individuals, as soon as it is feasible.

5. *Ability to attach statements* – We support the concession under which we understand the CRA will allow taxpayers to make their Form T1135 disclosures by attaching statements generated by the investment industry in a format that closely matches the format of the Form T1135. When the form can be efiled, the CRA should provide for a process to submit these reports.

6. *Confirmation of filed form* – The CRA does not issue any form of confirmation that a T1135 has been received, and recent contact with CRA representatives indicates such receipt is not tracked, at least not in a way that general enquiries line personnel can access. How can the taxpayer gain assurance that the form they filed was received and is reflected on CRA's records?

Nature of investments

7. *Making the T3/T5 exception permanent* – We believe that it will continue to be helpful to allow taxpayers to take advantage of the exception from disclosure of foreign property for which income is reported on the T3 or T5 slip. In particular, allowing for this option would significantly ease compliance for three groups of taxpayers:

   - Seniors who may have a small portfolio with relatively few dividend and interest paying (income) securities; it is relatively easy for these taxpayers to track/identify non-income paying ones
   - Taxpayers who have some non-financial property with a small convenience account (say, $5,000) in the U.S., which is again is relatively easy for these taxpayers to track/identify and the ability to use the T3/T5 exception would be preferred.
   - Customers of discount brokerages, who are do-it-yourselfers that have chosen low-cost, low-service, online accounts and may receive tax slips online, allowing individual reporting; since discount broker clients usually do not have advisors, use of the T3/T5 exception may be a more straightforward way for them to identify their income-paying holdings.

   Ideally, the taxpayer should be allowed to choose between T3/T5 exception method and fair market value reporting on an account-by-account basis.

8. *Fair market value reporting for all property* – For property held in the accounts of registered Canadian registered securities dealers and trustees/trust companies, the CRA will allow taxpayers to use total fair market value for all accounts. Extending the option to use fair market reporting to all property would significantly streamline the reporting requirements. For example, a portfolio of shares of public companies, an aggregate amount by broker should suffice, even for foreign brokers, because the assets' location would be known and additional details could be

examined on audit.

9. *Country-by-country reporting* – The requirement to report highest fair market values at month-end and fair market value at year-end is problematic for the investment industry as these amounts are not currently tracked and adjusting systems to do so would be difficult. The investment community has done considerable amount of work to enable the required disclosures to date, but a reasonable amount of time should be allowed for the development and implementation of new systems to satisfy the country-by-country requirements. To allow a reasonable amount of time, the CRA should consider deferring the requirement at least until fiscal years beginning after December 31, 2014. Moreover, the CRA should re-examine whether the value of this information warrants the considerable time, effort and red tape that will be involved in supplying it. Finally, given the difficulty in obtaining this information on time, the CRA should consider communicating its intention to be lenient in applying late filing penalties and allowing corrections to such information.

10. *Streamlined reporting for property held in foreign brokers' accounts* – Given U.S. disclosure rules and the Canada-U.S. agreement on automatic tax information exchange, there is a strong argument for extending the streamlined foreign to property held by Canadian residents in U.S. accounts from T1135 disclosure. The same is true for other countries with tax treaties and/or information exchange agreements with Canada. Among other things, this would greatly simplify reporting for U.S. employees who relocate to Canada and maintain their U.S. investments. The CRA should also consider allowing the reporting of foreign brokerage accounts at fair market value.

11. *Minor portfolio investments – need for disclosure* – The CRA needs to keep in mind that for relatively minor portfolio investments, some of the T1135 information (exact nature of entity, where the entity resides, etc.) is not always needed for accurate tax compliance – all that is needed is the income amount and the currency in which it was paid. Morever, under Canadian law, the classification of many foreign entities as a partnership, trust, corporation or some other legal form can be difficult even with full details available for a closely held investment; it is even more problematic for minor portfolio interests. Therefore, the T1135 form may ask for information from otherwise compliant taxpayers that is not needed for accurate income tax compliance. This aspect of the form should be reviewed with a view to reducing red tape.

Effort and accuracy

12. *Lack of due diligence exception* – Why is there no due diligence exception (under section 233.5) for the revised T1135? This was likely not needed in the past, but it is clearly needed now due to the greatly increased level of complexity and the possible negative implications of errors. The CRA should consider encouraging Finance to introduce a due diligence exception for Form T1135 filings. In the interim, the CRA may wish to provide some indication of their intention to be reasonable and to not penalize taxpayers who make bona fide efforts to properly report their income and complete the Form T1135. For example, the CRA could consider issuing guidance similar to the guidance on missing information on page 8 of the T1 Guide, which indicates a timely return with best estimates is preferable to a late-filed return.

Practical issues

13. *Investments held in Canadian brokerage accounts – disclosure objective* – What particular aspect of tax reporting (or non-reporting) of Canadian brokerage accounts is the CRA concerned with given income is presumably already on T3/T5s and dispositions are presumably on Form T5008? If particular avoidance schemes are being targeted, the CRA should consider its obligations under the Taxpayers Bill of Rights (item 14) to warn taxpayers about questionable tax schemes in a timely manner.

14. *Investments held in Canadian brokerage accounts – disclosure objective* – Although the streamlined rules have eased the reporting requirements, a better answer would be to get the information needed directly as part of the T3/T5/T5008 process to limit red tape.

September 15, 2014

Mr. Paul Rochon
Deputy Minister
Finance Canada
140 O'Connor St.
Ottawa, ON K1A 0G5
E-mail: paul.rochon@fin.gc.ca

Dear Mr. Rochon:

Re: Request for Amendment to Section 233.3 of the *Income Tax Act*

The Investment Industry Association of Canada (IIAC) and Chartered Professional Accountants of Canada (CPA Canada) are writing jointly to ask for an amendment to the *Income Tax Act* (the Act) to help alleviate what appears to us to be an impediment to achieving most effectively the appropriate intent of Section 233.3 of the Act – better identifying potential tax evaders – by way of Form T1135 (Foreign Income Verification). We believe that it is important to increase the threshold for foreign asset reporting under Section 233.3 to $250,000 to reflect the passage of time since the $100,000 threshold was introduced and, importantly, to be consistent with other rules discussed below.

Who We Are

The IIAC is the national organization advocating on securities regulatory, tax and other matters on behalf of 160 investment dealers holding 95% of the assets managed by firms regulated by the Investment Industry Regulatory Organization of Canada (IIROC). We work to ensure a smooth and efficient savings-to-investment process serving Canadians, Canada's businesses and governments, and the Canadian economy. The Chartered Professional Accountants of Canada (**CPA Canada)** is the national organization established on the recent unification of the Canadian Institute of Chartered Accountants and the Certified Management Accountants of Canada (CMAs). As of October 1, 2014, the Certified General Accountants of Canada (CGAs) will also merge with CPA Canada. Once unification is complete, CPA Canada will have more than 190,000 professional accountants as members.

Members of both the IIAC and professional accountants have experienced and continue to experience, in light of their efforts to serve their joint clients, significant problems with respect to Form T1135. While under the CRA's purview, the form is the result of a problem that arises due to provisions in the Act, which do not take into account the significant differentiating factor between foreign financial and non-financial assets – namely that the Government already receives considerable information on income and proceeds of foreign financial assets held within Canada. Both CPA Canada and the IIAC, individually and jointly, have been, and have every reason to continue, working closely with the CRA to address legitimate concerns regarding Canadians who do not pay their appropriate share of taxes on financial assets.

Background on Nature of Canadian Taxpayers' Foreign Financial Holdings

CPA Canada and the IIAC strongly agree with the 2014 Federal Budget statement that "Canada's tax rules must constantly be reviewed to ensure that they maintain an appropriate balance between the objectives of competitiveness, simplicity, fairness, efficiency and protection of the tax base", which has led the Government to take strong action to combat international tax evasion and aggressive tax avoidance, thereby improving incentives to work, save and invest in Canada.

Canadian securities dealers and trust companies play a key role in Canada's tax system by providing Canadians with tax slips and the CRA with XML reporting on income from and dispositions of specified foreign property. As well, Canada already enjoys the exchange of information with the U.S. on U.S.-domiciled securities, including American Depositary Receipts (ADRs), which are by far the main way Canadians hold issues of non-U.S. foreign securities. Once U.S. banks purchase large lots of foreign company shares and bundle them into groups that are re-issued on U.S. exchanges as what are known as ADRs, they become subject to the American tax regime. Some taxes are withheld on Canadians' income and other proceeds from outside the country, and information on investments where there is no withholding is reported by way of the longstanding automatic Canada-U.S. information-sharing agreement.

New Information Exchanges Should Effectively Address Major Concerns of Tax Evasion

As you know, this year the G20 Finance Ministers endorsed the *Common Reporting Standard for Automatic Exchange of Tax Information* (CRS); all 34 Organization for Economic Co-operation and Development (OECD) member countries – with some non-members – approved the OECD *Declaration on Automatic Exchange of Information in Tax Matters;* and, in July, the OECD released the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*. The CRS requires participating governments to obtain detailed financial account information (including account balances, interest, dividends, and sales proceeds) from their financial institutions and to transition to the annual and automatic exchange of specified data with other jurisdictions. Now 65 jurisdictions have committed to CRS implementation. Over 40 – including lower-tax and higher tax-risk jurisdictions, such as the Cayman Islands – have pledged to achieve automatic information exchanges in 2017. We believe that, while Canada is not one of the 40 early CRS adopters, CRS should provide Canada with the ability to obtain certain information now, such as which jurisdictions have legal and tax regimes that would permit masking of beneficiaries, structures falling within the ambit of *Income Tax Act* subsection 94.1(1) or other causes for concern that the CRA has identified.

Impact of New T1135 Form Requirements

While there are many factors to consider with respect to T1135s, the current financial asset reporting in the new Form T1135 will result in direct and indirect costs for Canadian taxpayers (including the most vulnerable elderly that rely on income-providing assets, the income from which will be reporting on T-slips), their accountants and their financial institutions that are being expected to help them, appear, to our respective members, disproportionate to the benefits that could be received by reporting only on the limited number of jurisdictions that seem to be the cause for concern. This is particularly the case for the small dealers and the small accounting firms that are asked to try to help these taxpayers provide information necessary to complete T1135s (note that making available the information in the manner required by the CRA in Form T1135 is not otherwise of any business value to dealers or accountants).

An estimated two-thirds of IIROC-regulated securities dealers are small businesses. While small businesses are recognized as the creator of 98% of our country's jobs, we believe that the small dealers serving junior resource and other companies on the cusp of growth, that are not yet of the size typically served by large dealers, have a particularly important role to play in Canada's economic development. Moreover, they are closing or being absorbed in alarming numbers, without new replacements, partly attributed to the growing fixed costs of doing business that also present barriers to entry and competition. These fixed costs comprise, among others, tax reporting expenses generally, including work arising from helping clients deal with Form T1135, which the dealers are not required by law to provide.

We have discussed simplifications because obtaining the now-required information leads to increases in time to complete tax returns for the average middle-income client by hours, with a corresponding increase in taxpayer accounting costs, for the approximately 70% who employ one.

The additional burden of T1135 reporting has had some, perhaps small, additional unintended negative result, that is, portfolio managers and investment advisors may reduce clients' foreign holdings, which we believe is not in Canadians' best interests of diversifying financial risk.

Recommendation

While not a full solution, increasing the T1135 cost reporting threshold from $100,000 to $250,000 under section 233.3 of the *Income Tax Act* would reduce the number of Canadian taxpayers that would have to report needlessly – people whose income and dispositions are already being reported by registered dealers and trust companies although not by country. As the measure would be relieving for those who most need it and not affect well-off taxpayers, we believe that the threshold increase could and should be included in tax amendments introduced August 29, 2014, on which the Department of Finance has requested comments by September 28,2014.

Additionally, the $250,000 threshold is consistent with equivalent levels for additional information reporting in Canada and the U.S. Paragraph 10.47 of the "CRA's Guidance on Enhanced Financial Accounts Information

Reporting" states that a financial institution does not have to review a pre-existing entity account with a balance or value equal to or less than USD250,000 on June 30, 2014. In addition, paragraph 8.7 of the CRA Guidance states that a pre-existing individual account that is a cash value insurance contract or an annuity contract with a balance or value of US$250,000 or less on June 30, 2014 is not required to be reported to the CRA. Finally, the amount of $250,000 is consistent with what Canadian registered dealers and others are building systems to support under American requirements to implement the *Foreign Account Tax Compliance Act* (FATCA).

Conclusion

In light of both the negative effects and complications described above, and the fact that, starting in 2017, information from a number of the low-tax countries of securities issuance that present concerns will be sharing information in an automated manner, allowing faster identification of areas of concern, we believe honest Canadian taxpayers will welcome raising the threshold to $250,000. By reducing the number of taxpayers affected, small dealers and accounting practices will avoid additional red tape that the Government has been striving to limit. Please call us if you gave any questions in the meantime and we hope to call shortly to discuss our proposal in more detail with you.

Yours truly,

Barbara Amsden
Managing Director
Investment Industry Association of Canada (IIAC)
416 687-5488/bamsden@iiac.ca

Gabe Hayos
Vice-President, Taxation
Chartered Professional Accountants of Canada
416-204-3404/ghayos@cpacanada.ca

Cc:
Andrew Marsland, Assistant Deputy Minister, Tax Policy Branch, Finance Canada
Brian Ernewein, General Director (Legislation), Tax Policy Branch, Finance Canada
Richard Montroy, Assistant Commissioner, CRA
Ted Gallivan, Assistant Deputy Commissioner, Compliance, CRA
Lisa Anawati, Director General, CRA
Guy Bigonesse, Director – Aggressive Tax Planning Division, CRA
Jennifer Smith, Senior Advisor – International and Large Business Directorate, Compliance Programs, CRA