Draft
February 28, 2015
Update 1: March 10, 2015
Update 2: March 20, 2015
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Form T1135 Foreign Property Income Verification

Questions from Participants

Contents

Introduction

This document aims to provide answers to questions posed by participants during a webinar about the Form T1135, Foreign Income Property Verification filing requirements. The webinar was sponsored by Chartered Professional Accountants of Canada (CPA Canada) and held on November 18, 2014. Featured speakers were:

- **Gabe Hayos**, Vice President, Taxation, CPA Canada
- **Hugh Neilson**, Editorial Board Member – Video Tax News and Tax Director, Kingston Ross Pasnak LLP
- **Barbara Amsden**, Managing Director, Investment Industry Association of Canada.

Register here to replay the webinar and download the slides and other resources. You can also find a sample calculation worksheet for category 7 of Form T1135. The CRA has reviewed and concurred with the example figures, but has not reviewed the instructions on the worksheet.

The presenters are working with Canada Revenue Agency officials to provide guidance on each of the questions received. **Maureen Vance**, Tax and Training Consultant, Wolters Kluwer CCH, has also been instrumental in developing this guidance.

Given the high volume of questions, developing guidance has proven to be a lengthy process. But given the urgency of many of these questions for taxpayers, tax preparers and investment community members as the 2014 personal tax filing season approaches, it was decided that the full list of questions should be made publicly available, along with answers to as many of these questions as possible.

As a result, we caution readers to bear in mind that the following questions and currently available answers have been flagged as belonging to one of the following categories:

- **CRA reviewed** – Questions with answers that have been reviewed by the CRA and/or include CRA input.
- **CRA review not requested** – Questions with answers based on current CRA guidance that have been provided to CRA for any comments they may have but for which no specific CRA input is considered necessary.
- **CRA comments requested** – Questions with tentative answers for which CRA confirmation and/or input has been requested.
- **CRA response requested** – Questions for which an answer from CRA has been requested but not yet received.
- **CRA response provided** – Questions for which CRA has provided the entire response, included verbatim in this document unless otherwise noted.

Where the CRA has reviewed the answers, their comments have been incorporated into this document. We will update the document to incorporate additional CRA answers and input as and when we receive it. New and newly updated answers in the current draft were added as received**,** as noted for each of these answers below. Check in regularly to ensure you have the most current and complete version.

For more guidance on Form T1135 filing issues, see the CRA's Questions and Answers About Form T1135 on the CRA's website (referred to herein as "CRA's Q&A" for ease of reference).

Because these questions were renumbered in February 2015 when the electronic filing of Form T1135 was announced, specific CRA question numbers are not referenced below.

Ultimate responsibility for these responses rests with the seminar presenters. The responses are based on the best available information at the time of publication. The legislation and CRA's policies and practice may change over time. This information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions, a further review should be performed by a qualified professional before acting on any information contained herein.

Alternatively, you can direct questions about Form T1135 to the CRA through their general enquiries line:

- **1 (800) 959-5525** for businesses, self-employed individuals, and partnerships
- **1 (800) 959-8281** for individuals (other than self-employed individuals) and trusts

April 25, 2016 Update – What's New?

This update adds reference to CRA Technical Interpretation 2015-0610641C6,on how the $100,000 threshold applies with respect to jointly held property. In this interpretation, the CRA appears to indicate that legal ownership of the property should be used in respect of property held, even where the attribution rules may require income and/or gains be reported by someone other than the owner of the property. This interpretation is discussed in **Question 137**.

November 16, 2015 Update – What's New?

This update incorporates CRA Technical Interpretation 2015-0572771I7, in which the CRA indicates that a failure to file Form T1135 on time attracts a penalty under subsection 162(7), which is a provision in Part I of the Income Tax Act. As such, the CRA indicated, the penalty can only be assessed within the normal reassessment period for the related income tax return, as set out in subsection 152(3.1), unless one of the exceptions under subsection 152(4) applies.

As the tax return is generally barred from reassessment three years from the date of initial assessment for individuals and Canadian-controlled Private Corporations, and four years for mutual fund trusts and other corporations, once this period has elapsed, the CRA generally would not be permitted to reassess the return to impose a penalty for failure to file Form T1135 on time

Note that one exception in subsection 152(4) is the three-year extension where the taxpayer has failed to report income from a specified foreign property on their income tax return, and either failed to file Form T1135 as and when required or failed to provide the information required on the form. This extension is discussed in **Questions 35 and 40**.

Questions 28, 33 and **34** have been updated in light of these new comments from the Rulings Division.

May 13, 2015 Update – What's New?

This update features CRA answers for questions 1, 2 and 3, addressing the reasons for the expanded disclosure requirements.

April 8, 2015 Update – What's New?

This update features new or updated answers for the following questions:

- **Question 38** – Availability of voluntary disclosure for Form T1135 related to a tax return that CRA previously requested be filed
- **Question 63** – CRA comments on accounts with quarterly statements added
- **Question 66** – Valuation of investments of indeterminate value
- **Question 76** – Status of foreign subsidiaries of Canadian registered securities dealers
- **Question 83** – Investments whose country cannot be readily ascertained
- **Question 90** – Foreign exchange rates
- **Question 96** – Real estate in countries requiring a trust own the property
- **Question 100** – Multiple apartment units in the same building
- **Question 108** – Taxation issues related to foreign rental property
- **Question 111** – Vacation property held by Canadian corporation
- **Question 116** – Reporting derivatives and options
- **Question 117** – Country of American depositary receipts
- **Question 129** – Interests in foreign partnerships and their underlying assets
- **Question 139** – Foreign insurance policies
- **Question 143** – Extent of accountant's responsibility to verify income tax costs

March 20, 2015 Update – What's New?

This update features new or updated answers for the following questions:

- **Question 4** – CRA's history of assessing penalties for inaccurate information filed on Form T1135
- **Question 14** – Form T1135 filing requirement in year of ceasing Canadian residency
- **Question 15** – Properties owned prior to becoming resident in Canadian
- **Question 24** – Which version of Form T1135 to file
- **Question 42** – Whether mutual funds, publicly traded trusts and limited partnerships are specified foreign property
- **Question 48** – Non-negotiable guaranteed investment certificates and term deposits
- **Question 50** – Reporting requirement and value of foreign property with cost, income and gains/loss of nil (e.g., fully depreciated, nil unclaimed capital cost)
- **Question 61** – Acceptability of cost basis reporting where market value is not easily obtainable (e.g., foreign private corporation shares)
- **Question 63** – Maximum fair market value of foreign security bought and sold within the same month
- **Question 65** – Determining highest value for part-year resident of Canada

March 10, 2015 Update – What's New?

CRA's objectives, compliance burden and red tape

1. What does the CRA intend to use this information for? Please address both foreign property in general and securities held in Canadian brokerage accounts specifically.

CRA RESPONSE: The CRA considers aggressive tax planning as a significant threat to the Canadian tax base and therefore a key risk. Accordingly one of the top priorities of the CRA is to better address the compliance risk posed by high-risk taxpayers, including high net worth taxpayers. A number of new measures and legislative amendments were introduced in 2013 to help the CRA combat international tax evasion and aggressive tax avoidance. This included revising Form T1135 to require more detailed reporting, and in conjunction with information from many other sources, develop analytical tools to more precisely and rapidly identify high-risk taxpayers and aggressive tax planning schemes. This information will provide crucial and timely business intelligence and enrich our risk assessment and workload selection processes. The benefit to Canadians is a more targeted identification of the high-risk population and more directed compliance action. This will also help us achieve our obligation to ensure law is applied equally to all taxpayers.

(CRA response provided; added May 13, 2015)

2. Why, specifically, is reporting on a country-by-country basis for securities held through Canadian accounts required?

CRA RESPONSE: Revising Form T1135 to require more detailed reporting, and in conjunction with information from many other sources, will allow the CRA to develop analytical tools to more precisely and rapidly identify high-risk taxpayers and address aggressive tax planning schemes. In an attempt to reduce the reporting burden, the CRA engaged in consultations with external stakeholders and changed the reporting from detailed disclosures on individual securities to allow the country-by-country aggregate reporting method.

(CRA response provided; added May 13, 2015)

3. How has the CRA evaluated the expected benefits of obtaining this detailed information against the costs incurred by taxpayers and their advisors to provide it? Can the CRA provide its estimates of the compliance costs, and the revenue that the CRA expects to generate? We assume such an exercise was undertaken to ensure that Taxpayer Bill of Rights is respected (i.e., item 10: "You have the right to have the costs of compliance taken into account when administering tax legislation"). If not, please advise how that right was considered in setting these expanded disclosure requirements.

CRA RESPONSE: Revising Form T1135 to require more detailed reporting, and in conjunction with information from many other sources, will allow the CRA to develop analytical tools to more precisely and rapidly identify high-risk taxpayers and address aggressive tax planning schemes. The revisions to Form T1135 are one of several measures introduced in 2013, in addition to legislative amendments, aimed at identifying and addressing aggressive tax planning arrangements both domestically and internationally.

We have undertaken a number of measures to minimize the time, effort and costs that taxpayers have to incur to comply with the Form T1135 reporting requirements while balancing

our duty to protect Canada's tax base by ensuring the highest possible level of tax compliance. Some of these measures include:

- Providing individuals with the ability to efile Form T1135, which accounts for approximately 80 percent of all Form T1135 filers;
- Engaging in consultations with external stakeholders and being receptive and accommodating to suggested changes to ease the reporting burden;
- Allowing direct communication by industry associations to our subject matter experts; and
- Improving our internal systems that manage, review and input Form T1135 in addition to supporting our call centre agents by training and educating them on all issues arising from Form T1135.

Also note that the CRA implemented Category 7 in response to concerns from stakeholders that the requirements were overly onerous for securities held through Canadian registered securities dealers. One example of the benefits of the direct communication lines with stakeholders is this Q&A document, which required considerable efforts from the CRA.

Finally, we note the April 21, 2015 Budget announcement that a simplified reporting system will be introduced for taxpayers whose foreign property has a total cost of more than $100,000 but throughout the year was less than $250,000. This system will be implemented for taxation years commencing after 2014 in order to ease the reporting burden.

(CRA response provided; added May 13, 2015)

4. Has the CRA assessed any penalties related to inaccurate information filed on T1135 forms to date? If so, to what extent?

CRA RESPONSE: Yes, the CRA has assessed penalties related to the T1135. However, for a penalty to apply to inaccurate information on a filed Form T1135, it would only be assessed in circumstances where taxpayers have knowingly, or in circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in, making of a false statement. For additional information regarding penalties, please refer to the Table of Penalties on the CRA website.

(CRA response provided; added March 20, 2015)

5. Will the information collected be shared with other parties, such as tax authorities in Canada's tax treaty partner countries?

CRA RESPONSE: As with any other information it may be shared if requested or should the CRA determine it may be of interest to another jurisdiction.

(CRA response provided; added March 10, 2015)

Requirement to file

6. Are corporations required to file Form T1135? If so, where is the form mentioned in the T2 return?

ANSWER: All taxpayers, including individuals, corporations and trusts, as well as partnerships, have been required to file form T1135 since its introduction in the 1990s. The requirement is included in the questions on page 3 of the T2 return.

(CRA reviewed)

7. Consider a US resident trust that is a deemed resident trust for Canadian tax purposes and has over $500,000 in investments with a broker in US. Is such a deemed resident trust subject to filing T1135?

ANSWER: Trusts deemed to be resident in Canada pursuant to section 94 are required to file the Form T1135. Deemed Canadian residents are subject to the same filing requirements as any other Canadian resident.

(CRA reviewed)

8. My client passed away in April 2014 and held US securities with a cost of over $100,000. Should this client's Form T1135 be filed with the terminal tax return or in a T3 Trust return?

ANSWER: Both the individual and the estate meet the filing requirement, so they should both file Form T1135. As Technical Interpretation 2014-0527611E5 notes, an individual is deemed to dispose of all property immediately prior to the date of death, and their estate is deemed to acquire the property at the same time. As such, the cost amount and fair market value of the deceased's foreign property at the end of the tax year would be nil.

(CRA review not requested)

9. Does Form T1135 have to be filed where a Canadian resident becomes a beneficiary of a foreign testamentary or living trust arising on the death of a (foreign-resident) parent?

ANSWER: The definition of "specified foreign property" specifically excludes an interest in a non-resident trust that was not acquired for consideration by either the person or partnership or a person related to that person or partnership. As beneficiaries of estates, living trusts or similar trusts established for the benefit of family members are typically not issued for consideration, and so these interests are not specified foreign property.

Note that section 233.2 requires disclosure in respect of certain non-resident trusts where a Canadian resident is a contributor (as defined in subsection 94(1), generally a person who has loaned or transferred assets to the trust). Section 233.6 imposes disclosure requirements on a person receiving property from, or becoming indebted to, a non-resident trust (an exception to this requirement arises when the trust is an estate arising on the death of an individual). Finally, some foreign trusts can be deemed to be foreign affiliates, but this treatment generally requires the trust be a commercial trust, which would have characteristics very different from the typical estate or living trust. These complex issues related to foreign trusts are beyond the scope of the webinar.

(CRA review not requested)

10. Assume all of the taxable income of a revocable trust is attributed to the settlor. If the revocable trust owns foreign property in excess of $100,000, it files a Form T1135. Is there any filing requirement for the beneficiary?

ANSWER (CRA COMMENTS REQUESTED): Since the trust is filing a Form T1135, it is a Canadian-resident trust. An interest in a Canadian-resident trust is not specified foreign property and does not, in and of itself, create a filing requirement for the settlor or trust beneficiaries.

(CRA comments requested)

11. Does a registered charity and/or a non-profit corporation need to file Form T1135?

ANSWER: An entity whose taxable income for the year is entirely exempt from tax under Part I of the Income Tax Act is not required to file Form T1135. This includes registered charities (paragraph 149(1)(f)), registered Canadian amateur athletic associations (paragraph 149(1)(g) and non-profit organizations as defined in paragraph 149(1)(l).

Note, however, that subsection 149(5) subjects non-profit organizations whose main purpose is to provide dining, recreational or sporting facilities to its members to tax on their investment income, so such an organization may be required to file Form T1135.

(CRA reviewed)

12. Does a broker as a corporation need to file Form 1135?

ANSWER: This question addresses the much larger issue of the person holding legal ownership of specified foreign property where others are the beneficial owners, whether in whole or in part, of that property. Form T1135 should report property that is beneficially owned by the filer, regardless of the legal owner. So, for example, if specified foreign property is held in the name of Father, but is owned equally by Father, Mother and Son, they should each reflect one-third of the specified property on their own T1135. Father should not report 100 per cent of the property.

The broker holds legal title to his clients' specified foreign property, but has no portion of the beneficial ownership. As such, the broker would be required to file a Form T1135 based on only the specified foreign property it holds on its own account. Specified foreign property held for the broker's clients would not be included, as the broker was not, at any time, the beneficial owner of that property.

(CRA review not requested)

13. If you have a loan balance of $1 million that is reported on a T106 slip, do you have to report the same loan on Form T1135 if that is your only foreign property requiring reporting?

ANSWER: The loan would be indebtedness owed by a non-resident person, which is generally included in the definition of specified foreign property and so it should be reported on a Form T1135.

The possibility that the borrower is a foreign affiliate of the Canadian taxpayer should be reviewed, as shares and indebtedness of a foreign affiliate are not specified foreign property. If the borrower is a foreign affiliate, a Form T1134 may be required.

(CRA review not requested)

14. Peter, who has filed T1 return and Forms T1135 and T1134, loses his landed immigrant status because he has not lived in Canada for two years within five years. He has no family living in Canada. What should he do about filing his tax return in the following year? What procedure should he follow with the CRA?

ANSWER: If Peter were a resident for part of the year or earned income subject to Canadian taxation, he would be required to file a Canadian tax return. If he were a non-resident throughout the year, he would still be taxable on many types of income earned within Canada. However, as a non-resident throughout the year, he would not be subject to the Form T1135 filing requirement. In the year he ceases residency, he would still be required to file Form T1135.

Note that an individual's status as a landed immigrant does not generally influence the determination of residency for tax purposes. The CRA has noted that, if Peter were a resident for part of the year he would be required to file a Form T1135 if he met the reporting threshold during the period that he was resident in Canada. For Form T1135 reporting purposes, taxpayers who emigrate during the year can complete the form as if the year ended on the date of emigration.

(CRA reviewed; updated for CRA comments on March 20, 2015)

15. Is Form T1135 reporting required for properties owned prior to becoming a Canadian resident?

ANSWER: There is no exception for property owned when an individual becomes a Canadian resident. Section 233.7 exempts individuals (other than trusts) from filing Form T1135, among other disclosures, for the year in which they first become resident in Canada. However, former residents returning to Canada are required to file Form T1135 in the year of their return.

Regardless of whether this exception applies in the year of becoming a Canadian resident, the individual would be required to file Form T1135 for every subsequent year as long as they met the reporting threshold. All property, including property acquired prior to becoming a resident, would be subject to inclusion on Form T1135 if it was still owned by the taxpayer at some time during the year.

When a person becomes a Canadian resident, most of their property is deemed to be disposed and reacquired for its fair market value immediately prior to becoming resident in Canada. The cost of property held while non-resident is not relevant to this determination. Only assets held while a Canadian resident are reported.

(CRA comments reviewed; updated for CRA comments on March 20, 2015)

16. Is Form T1135 reporting required for a property in a foreign country used for a hotel, the income from which is reported on Form T2125? Should income from the property be considered investment income reportable on Form T1135 or business income?

ANSWER: Assuming the hotel is used in an active business**,** it would not be specified foreign property and therefore would not need to be reported on Form T1135. The definition of specified foreign property specifically excludes assets used exclusively in an active business.

(CRA reviewed)

Filing issues

Ability to attach brokers' statements

17. Are we allowed to attach broker reports with foreign security details to Form T1135 in a different format from the form?

ANSWER: No. Any statement attached to Form T1135 must follow a format identical to the form itself so data entry personnel can accurately enter the information into the CRA's systems. The CRA addresses this issue in Question 1 of its Q&A.

(CRA reviewed)

18. Could you confirm that a taxpayer's ability to disclose investments using a dealer-prepared summary only applies to Canadian brokers? If the investments are held by an American brokerage firm, should all investments be reported individually?

ANSWER: Both category 7 of Form T1135 (for 2014 onward) and the 2013 transitional reporting option under category 6 apply only to accounts held with Canadian registered securities dealers and Canadian trust companies. Presumably, an American firm would not meet either of these definitions, so detailed disclosure of each individual investment would be required.

(CRA reviewed)

19. What if you were to just mail all of your broker statements to the CRA and let them fill out the form?

ANSWER: Like all other income tax filings, the responsibility for completion of these forms rests on the taxpayer. Mailing the brokerage statements to the CRA, rather than completing Form T1135, would mean the taxpayer has not met the requirement to file the form. We would anticipate the CRA would assess the penalty for failure to file the return in timely fashion and also require the taxpayer file a completed Form T1135.

While the CRA has advised that they plan to be reasonable and lenient in respect of honest efforts to provide the required disclosure, we doubt they would consider this approach to constitute an honest effort.

(CRA reviewed)

Deadline

20. What is Form T1135 filing deadline for the 2014 tax year?

ANSWER: Form T1135 is due on the same date as the filer's income tax return or partnership information return. The extension for 2013 is restricted to filings for periods ended in that year, and Form T1135 is due on the same date as the filer's income tax return or partnership information return. The extension for 2013 was restricted to filings for periods ended in that calendar year. For those filings only, the CRA administratively extended the deadline to July 31, 2014.

Any unfiled T1135 forms for 2013 are now past their due date. No further filing extensions are expected for 2014 or later years.

(CRA review not requested)

21. Would the CRA consider changing the Form T1135 filing deadline to July?

ANSWER: The deadline is set by legislation, which falls within the purview of Finance. While the CRA permitted late filings for 2013 without penalty, its responsibility is ultimately to administer the legislation as written.

(CRA review not requested)

Electronic filing

22. What is the current status of the electronic filing of Form T1135? Has the CRA announced the timing or manner in which the forms will be filed electronically?

ANSWER: On February 11, 2015, the CRA announced the availability of electronic filing for individuals filing Form T1135, effective for the 2014 taxation year.

There is currently no targeted timetable for electronic filing of Form T1135 by taxpayers other than individuals.

Note that CRA-certified tax software is required to efile. See the CRA's EFILE Certified Software for the 2015 program (2014 tax return) webpage. Not all software for efiling personal tax returns has implemented T1135 efiling, including some broadly used professional software packages.

As well, the Form T1135 efile process is separate from the T1 efile process. Practitioners should confirm whether their software supports electronic filing of Form T1135 and, if so, that they understand the transmission process used by their software.

(CRA review not requested)

23. Form T1135 is always filed with the T1 personal tax return. Is it considered electronic filing? Will there be a separate e-filing system for Form T1135 from now or for the 2014 taxation year?

ANSWER: Form T1135 is not required to be filed with the related return (whether that be a T1, T2, T3, T5013 or any other filing), and the form and return are not always filed together. This is

contemplated in the Form T1135 instructions, which provide mailing instructions where the Form T1135 is submitted separately from the related return.

The system for individuals to file their Form T1135 electronically is separate from the system for electronic filing their related personal tax return. There is no requirement that both be filed in the same format (electronic or paper).

(CRA review not requested)

Which version of Form T1135 to file

24. Does the new version of Form T1135 need to be used if it is filed after July 31, 2014 or only if the year-end is after July 31, 2014?

ANSWER: The current version of Form T1135, released in July 2014, must be used for the 2014 and later tax years if filed after July 31, 2014. In the CRA's Q&A, the CRA encourages use of the current version of the form.

The CRA has advised that they will accept the pre-2013 "check the box" version of the form only for 2012 and earlier tax years or for any amended forms for those years.

(CRA comments reviewed; updated for CRA comments on March 20, 2015)

Receipt of Form T1135 – confirmation and follow-up

25. One area of concern for my clients has been the lack of confirmation from the CRA that Form T1135 has been received. Will the CRA acknowledge having received Form T1135 and if it was accepted as correctly filed?

CRA RESPONSE: As of February 9, 2015 individuals can electronically file their Form T1135. When electronically filed, a confirmation will be issued to indicate that Form T1135 has been received. The confirmation does not indicate whether Form T1135 has been filed correctly. Where the form is paper-filed no confirmation will be issued. Accordingly we encourage taxpayers to electronically file Form T1135.

(CRA response provided; added March 10, 2015)

26. What, if any, follow-up does the CRA conduct where:

- The CRA does not receive a Form T1135 from a taxpayer with a history of filing such documents
- A taxpayer has checked the box that a Form T1135 reporting requirement applies but has not filed one
- A taxpayer reports significant foreign income, suggesting that a Form T1135 reporting requirement may be applicable, but has not filed or checked the box?

CRA RESPONSE: The CRA has dedicated researchers that use the information on Form T1135 in conjunction with a multitude of other sources of information to identify taxpayers who may be at high risk of non-compliance. Instances like above will be used in this risk assessment.

(CRA response provided; added March 10, 2015)

Correcting errors

27. Please confirm the appropriate way to correct a prior-year Form T1135 is to submit an amended Form T1135 using the version of the form originally filed. If this is not correct, please advise how taxpayers should submit such an amendment.

CRA RESPONSE: The CRA will accept amended forms filed on the same version of the form as originally filed. However the CRA encourages taxpayers to use the 2014 version of Form T1135 for all tax years. If using the 2014 version, please ensure that the amended return box at the top of page 1 has been ticked.

All amended returns should be filed at the following address:

Ottawa Technology Centre
Data Assessment and Evaluations Program
Verification and Validation
Other Programs Unit
875 Heron Road
Ottawa ON K1A 1A2

(CRA response provided; added March 10, 2015)

28. Does the CRA consider the Form T1135 to become statute-barred at the same time as the related return, or to ever become statute-barred? In other words, if an error is discovered, are there years for which the CRA would not require an amended filing?

(CRA response requested)

While no direct response has been received by CPA Canada, CRA Technical Interpretation, 2015-0572771I7, dated September 15, 2015, noted as being in response to an internal enquiry of February 24, 2015, addresses this issue. The interpretation indicates that a failure to file Form T1135 on time attracts a penalty under subsection 162(7), which is a provision in Part I of the Income Tax Act. As such, the penalty can only be assessed within the normal reassessment period for the related income tax return, as set out in subsection 152(3.1), unless one of the exceptions under subsection 152(4) applies.

As the tax return is generally barred from reassessment three years from the date of initial assessment for an individual or Canadian-controlled Private Corporation, and four years for mutual fund trusts and other corporations, once this period has elapsed, CRA would not generally be permitted to reassess the return to impose a penalty for failure to file Form T1135.

(Addendum added November 16, 2015)

29. In the webinar, it was indicated that the CRA has informally advised that “immaterial” errors need not be corrected. What does the CRA consider to be a “material” versus an “immaterial” error?

CRA RESPONSE: Whether an error is material or immaterial is to be determined on a case-by-case basis and depends on the specific circumstances and amounts involved.

(CRA response provided; added March 10, 2015)

30. Under what circumstances, if any, would the CRA assess a penalty where a taxpayer files an amended Form T1135 outside of the voluntary disclosure program?

CRA RESPONSE: A penalty would be assessed where a taxpayer knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in, the making of a false statement or omission on Form T1135. We would encourage taxpayers to utilize the Voluntary Disclosure Program to these circumstances to avoid such penalties. For additional information regarding penalties, please refer to the Table of Penalties on the CRA website.

(CRA response provided; added March 10, 2015)

31. The use of the words "Income (Loss)" on Form T1135 seems to imply that net, rather than gross, income should be reported, and some filers have reported net, rather than gross, income on their Form T1135 filings as a result. Should these taxpayers amend their filings to show gross income? Can the CRA confirm that such an amendment would not attract a penalty?

CRA RESPONSE: The CRA has clarified this issue in question number 16 of the "Questions and answers about Form T1135" that taxpayers must report gross income from the specified foreign property on Form T1135.

As indicated in our response to question 29, an amendment is not required where the difference is immaterial. Furthermore, whether penalties would be assessed on amended returns has been addressed in question 30.

(CRA response provided; added March 10, 2015)

32. Where a taxpayer indicates on a return that they hold foreign property in excess of $100,000 but later discovers this is not the case (e.g., because they had included a personal-use vacation home), what steps should be taken to advise the CRA of the error and eliminate the CRA's expectation that a Form T1135 will be filed?

CRA RESPONSE: The taxpayer should file an amended Income Tax Return to correct the error following our normal procedures.

(CRA response provided; added March 10, 2015)

Late-filed T1135s

33. What steps should be taken where one or more prior Form T1135 filings have been missed.

ANSWER: Where prior T1135 filings have been missed, the taxpayer is exposed to penalties. Consideration should be given to undertaking a voluntary disclosure to correct the omissions. CRA's Q&A includes more information about the Voluntary Disclosures Program. The CRA encourages taxpayers to use of the latest version of Form T1135 for such filings.

(CRA reviewed)

See Question 28 addendum added November 16, 2015 for CRA commentary on the period in which a late filing penalty may be assessed.

Penalties

34. Does the CRA enforce the $2,500 penalty?

ANSWER: In CPA Canada's experience, penalties are being assessed where the Form T1135 has been filed after the due date. This is a strict liability penalty – in other words, it is automatic where the filing is not made by the required deadline. Consideration can be given to filing late returns under the voluntary disclosure program where the required conditions have been satisfied.

Alternatively, relief can be granted from penalties under the taxpayer relief provisions upon written request from the taxpayer. Each request is considered on its own merit and circumstances. See the Request for Taxpayer Relief on the CRA's website.

Note that relief of penalties under Voluntary Disclosure or Taxpayer Relief is subject to a ten year time limit.

Consideration could also be given to advancing a defense of due diligence. While there is no specific legislative provision for a due diligence defense regarding this specific penalty, the Courts have held that due diligence is a defense against all strict liability penalties. The CRA has not commented on the availability of this general defense and has advised that they do not have an administrative due diligence exception.

(CRA reviewed)

See Question 28 addendum added November 16, 2015 for CRA commentary on the period in which a late filing penalty may be assessed. This appears to alleviate the ten-year time limit concern where the related tax returns were filed and assessed in timely fashion.

35. Is the extended assessment period applied on all improperly or late-filed Form T1135s or only on those assessed with gross negligence?

ANSWER: Where a taxpayer has failed to file a timely and accurate T1135, *and* has failed to report income from a specified foreign property on their income tax return, the normal reassessment period is extended by three years. No form of negligence is required to extend the normal reassessment period under the legislation. The CRA's Q&A also discusses the normal reassessment period.

(CRA reviewed)

36. Will the CRA apply penalties where taxpayers' reporting of their brokerage accounts is complete but where the highest FMV figure is inaccurate?

CRA RESPONSE: A penalty would be assessed where a taxpayer knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in, the making of a false statement or omission on Form T1135. We would encourage taxpayers to utilize the Voluntary Disclosure Program in these circumstances to avoid such penalties. For additional information regarding penalties, please refer to the Table of Penalties on the CRA website

(CRA response provided; added March 10, 2015)

37. Is the maximum penalty for late filing $2,500, or $2,500 per year? If an item is missed on the form, is it subject to the max penalty and, if so, is the penalty applied per item or per return?

ANSWER: The penalty applies to each T1135 filing, and not to each item required to be included on Form T1135. Where a taxpayer fails to file Form T1135 for multiple taxation years, each one would be subject to penalty in the absence of the higher gross negligence penalty. Interest on these penalties also applies from each form's due date.

A submission accepted under the voluntary disclosure program would permit those penalties to be waived. Simply mailing in the forms would result in the penalty being assessed.

(CRA review not requested)

Voluntary disclosure

38. If a taxpayer has received a CRA request to file a T1 and has done so, will the voluntary disclosure program be available for any Form T1135 that should have been filed in relation to the T1?

ANSWER: All of the usual requirements for a voluntary disclosure must be met. If the T1s were filed and assessed without the CRA becoming aware of the outstanding Form T1135, voluntary disclosure would not be prevented solely by the past issuance of requests to file. However, where a request to file is received, it would not be possible to comply with the request and submit Form T1135 separately under the voluntary disclosure program.

CRA Comments: A taxpayer who has received a request to file a T1 return should ensure that their filing includes any Form T1135 required to be filed. The fact that a T1 return has been requested by the CRA and filed by a taxpayer may not preclude that taxpayer from making a submission under the Voluntary Disclosures Program (VDP). A disclosure submission must demonstrate how the four conditions under the VDP are met to allow the VDP to determine whether to accept or deny that submission.

(CRA response provided; added April 8, 2015)

39. What is your experience with the use of the CRA's voluntary disclosure program of the CRA to comply with all these rules regarding Form T1135 for client that just realized that

they should have filed the form? Was the voluntary disclosure application accepted? Were penalties applied?

ANSWER: Where submissions resulted from honest taxpayer error and not intentional noncompliance or evasion, and where the submission can state that the related income was reported and all taxes paid (that is, only Form T1135 filings were missed), they should be accepted and processed without penalty with very rapid turnaround. Neither Hugh nor CPA Canada have ever received a report from a practitioner that is inconsistent with this outcome.

However, the CRA relies on subsection 220(3.1) to waive penalties. That provision requires application for waiver to be made no later than 10 calendar years after the end of the tax year to which the penalty relates. As such, penalties related to tax years ended on or before December 31, 2004 cannot be waived where application for waiver is made on or after January 1, 2015. This is a legislated restriction and, as such, CRA cannot legally waive penalties outside this time limit.

Hugh also notes that he has personally found the voluntary disclosure program's administration to be reasonable and solution-focused throughout its existence. He cautions that all submissions he has been involved in resulted from honest taxpayer error, to the best of his knowledge, and not from intentional non-compliance or evasion.

Note: This answer reflects the opinions of the presenters and the CRA has not commented on this response.

(CRA reviewed)

40. Where a taxpayer files a voluntary disclosure submission for a Form T1135, what is the impact on the three-year extension for reassessment period?

CRA RESPONSE: For 2013 and later tax years, the period within which the CRA can reassess a taxpayer's tax return is extended by three years if both of the following conditions have been satisfied:

- The taxpayer has failed to report income from a specified foreign property on their income tax return, and;
- Form T1135 was not filed as and when required, or the taxpayer failed to provide the information required on the form.

If these two conditions have been satisfied the normal reassessment period will be extended by three years regardless of whether the taxpayer files a voluntary disclosure submission for Form T1135.

(CRA response provided; added March 10, 2015)

41. I filed a Form T1135 under voluntary disclosure for a client who owned a home in Great Britain and was attempting to sell it but started to rent it in 2012. The CRA called and told me she had to file T1135 for 2010 and 2011 even though it wasn't rented those years.

ANSWER: Assuming the property was held exclusively for personal use in 2010 and 2011, it would be a personal-use property for which disclosure is not required. In this case, it appears

that the CRA may not have understood all the facts, and it may be necessary to discuss the matter with the assessor's supervisor or file a notice of objection if penalties have been assessed. If the objection period has lapsed, a penalty relief application may be made to bring the matter to the CRA's attention.

(CRA reviewed; updated March 10, 2015)

Scope of reporting requirements

Specified foreign property definition

42. Are mutual funds, publicly traded trusts and limited partnerships included in specified foreign property?

ANSWER: An interest in a mutual fund trust or a mutual fund corporation that is not resident in Canada would be a specified foreign property. Conversely, a mutual fund trust or mutual fund corporation that is resident in Canada would not be a specified foreign property even if the trust or corporation itself holds specified foreign property. The CRA addresses Canadian mutual funds in their Q&A.

Generally a publicly traded trust is a specified foreign property if it is not resident in Canada.

An interest in a partnership is only a specified foreign property if the partnership is not a specified Canadian entity and it holds specified foreign property.

(CRA reviewed; updated March 20, 2015)

43. Does any security held in a US account fall within the definition of specified foreign property?

ANSWER: The reference to a US account in this question is unclear. All property held in a non-Canadian account (e.g., a brokerage account in the United States) is specified foreign property. This includes securities of a Canadian corporation, as the CRA notes on its website (shares of corporations resident in Canada held outside Canada), and is consistent with the definition of specified foreign property, which includes intangible property situated, deposited or held outside Canada (subsection 233.3(1)).

Canadian brokerage accounts often include foreign property, including Canadian mutual funds invested in foreign jurisdictions and accounts denominated in foreign currency. Interests in Canadian-resident entities (such as Canadian resident mutual fund trusts or Canadian corporations) that hold specified foreign properties are not themselves specified foreign property. Canadian mutual funds can be identified by searching on www.sedar.com.

The CRA provides considerable guidance on specified foreign property in Form T1135 form instructions and in their Q&A.

(CRA review not requested)

44. Is cash held in Canada but denominated in foreign currency considered specified foreign property?

ANSWER: Cash situated, deposited or held in Canada is not a specified foreign property, regardless of the denomination of the currency. However, cash situated, deposited or held outside Canada, even if denominated in Canadian dollars, is a specified foreign property. The currency in which the account is denominated is not relevant to the determination.

The CRA also addresses shares or indebtedness denominated in foreign currency but issued by a Canadian resident in its Q&A.

(CRA reviewed)

45. If a Canadian resident security is held in a Canadian brokerage account but is denominated in US dollars because the security is traded on the New York Stock Exchange, does the security need to be reported on Form T1135?

ANSWER: Assuming the issuer is Canadian resident, and the securities are held in Canada, the securities are not specified foreign property. The residence of the issuer is determinative, not the currency in which the security is denominated or the exchange on which it is acquired or traded. Note that this also applies to securities of foreign issuers that are traded on a Canadian exchange – if the issuer is non-resident, its securities are specified foreign property. This is also discussed in the CRA's Q&A.

(CRA reviewed)

46. Do you need to report inheritance property in a country where inheritance property is not taxed in that country?

ANSWER: Specified foreign property acquired through inheritance is still specified foreign property and required to be disclosed on Form T1135. The manner in which the property was acquired does not change its status as specified foreign property. Whether the property, or income thereon, is taxable in the foreign country is not relevant to the determination of whether disclosure is required for Canadian tax purposes.

(CRA reviewed)

47. Should accounts receivable from foreign parties be reported on Form T1135?

ANSWER: Accounts receivable owed by a non-resident meet the definition of specified foreign property and are subject to disclosure. However, property used or held exclusively in the course of carrying on an active business would be excluded.

While accounts receivable related to an active business would not require disclosure, rents receivable from an investment business would. The instructions to Form T1135 indicate that prepaid debit or credit cards and negotiable instruments, such as cheques and drafts, are also included in Category 1, Funds held outside Canada.

(CRA reviewed)

48. Are guaranteed investment certificates and term deposits considered funds on deposit if they are non-negotiable rather than indebtedness of a non-resident?

CRA RESPONSE: As stated in the instructions for the Category 3, indebtedness owed by non-resident, guaranteed investment certificates and term deposits should be reported under this category.

(CRA response provided; added March 20, 2015)

49. A taxpayer can have an unclaimed capital cost balance for an asset that no longer exists. Do you have to segregate UCC pool components?

ANSWER (CRA COMMENTS REQUESTED): The cost of each separate property must be disclosed. This cost is the combined cost of all assets making up each property (e.g., land ACB + UCC of building, appliances, fence, etc.). Where some assets are pooled, a reasonable allocation between the properties should be made. Any remaining UCC should be allocated between properties that continue to be owned by the taxpayer. Rental properties are most commonly reported as separate assets, and the CRA accepts that each property is a separate "rental business" with separate UCC pools for each asset class. In some cases of transfers between affiliated parties, stop-loss rules can result in a cost remaining to the transferor who no longer owns the property. This "phantom property" is not itself specified foreign property and should not be reported after the year of disposition of the underlying property.

(CRA comments requested)

50. Do you have to list assets (e.g., class 12 assets) that are fully depreciated and have no UCC? What value is to be used for foreign assets subject to paragraph 13(7)(e), which restricts the depreciable base relative to a non-arm's length capital gain.

ANSWER: All specified foreign property, even a property with cost, income and gains/losses of nil, is required to be reported if the total cost of specified foreign property results in a filing obligation. The CRA confirms that the cost amount of depreciable property is its UCC but is to be determined without reference to paragraph 13(7)(e).

(CRA reviewed; updated March 20, 2015)

51. If a taxpayer has a Canadian bank account holding US funds, does this meet the criteria of a foreign bank account if that bank operates in both Canada and United States?

ANSWER: An account held at a Canadian branch of the bank would not be specified foreign property. An account at a foreign branch of that bank would be specified foreign property. The currency in which the account is denominated is not relevant in this determination.

(CRA reviewed; updated March 10, 2015)

52. If no foreign investments are held within Canadian accounts / Canadian registered securities dealers or Canadian trust companies, is it necessary to disclose the investments/value of these accounts?

ANSWER: Only specified foreign property is required to be disclosed. Note that the value (or income or gains/losses) of Canadian securities should not be included in Form T1135 disclosure – only the value (or income or gains/losses) of specified foreign property should be disclosed.

(CRA reviewed)

53. If a company sold a foreign security during the year, should the foreign security still be reported on Form T1135? If the security that was sold reduced the total cost below the $100,000 limit, would Form T1135 reporting still be required?

ANSWER: The test is whether the total cost of specified foreign property exceeded $100,000 at any time in the year. Disclosure is required for all specified foreign property held in the year – even property sold at the start of the year or acquired at the end of the year. The CRA has explained this issue in its Q&A.

(CRA reviewed)

54. If a client has a foreign security with a cost greater than $100,000 but the security subsequently became virtually worthless, does the client still need to report this security on Form T1135?

ANSWER: The filing requirement is based on the cost only. Changes in value do not alter the filing obligation.

Note that if the taxpayer is eligible to, and does, elect that the security be disposed of pursuant to subsection 50(1), the security would be deemed reacquired for nil cost at the end of the taxation year. The security would still be required to be reported in the year of the election because the $100,000 threshold has been exceeded during the year. In a year where the $100,000 threshold is met due to other specified foreign property, this security would also require disclosure at its cost of nil.

(CRA reviewed)

55. Art has been a Canadian resident for the past 10 years. Art owned a foreign rental property with a tax cost exceeding $100,000, which he transferred to his child, Ben, two years ago. If Art became non-resident yesterday, would he still be required to report this property on Form T1135 for years 1 – 8 of his Canadian residency? Could penalties apply?

ANSWER: The property meets the requirements to file Form T1135 for each year in which Art owned it. He was required to file Form T1135 for each year of ownership, including the year of transfer to Ben. Ben would be required to file Form T1135 for the property for the year of transfer and each subsequent year. If these filings were not completed, penalties would apply. A voluntary disclosure merits consideration.

(CRA reviewed)

$100,000 reporting threshold

56. Does the $100,000 threshold apply to Form T1135 filing?

ANSWER: The threshold requiring filing of Form T1135 remains $100,000 of total cost amount of all specified foreign property (even for property qualifying for disclosure based on fair market value) at any time during the year. If that threshold is met, all specified foreign property must be disclosed on Form T1135. This is discussed in the CRA's Q&A.

(CRA reviewed)

57. When determining whether a trust or estate meets the $100,000 reporting threshold, do you consider the foreign properties owned by the individual trustee personally or just the trust's own foreign properties?

ANSWER: The Income Tax Act deems a trust a separate taxpayer from its trustee. As such, the property of the trust or estate would be relevant only for determining the trust or estate's Form T1135 filing requirement.

(CRA reviewed)

58. I have US$150,000 invested in S&P or Dow, some in Canadian resident companies and some in US resident companies. Because I trade frequently during the year, the value of my non-resident investment is more than $100,000 and sometimes not.

ANSWER: Form T1135 filing is required to be filed if the total cost (not the value) of specified foreign property at any time in the year exceeds $100,000 (Canadian). As long as you met the threshold requirement you must report all specified foreign properties held during the year, even if you sold any or all of the property before the end of the year. The CRA has explained this issue in its Q&A.

(CRA reviewed)

Value for T1135 reporting purposes

59. For purposes of determining specified foreign property, is it correct that the tax cost is considered and not fair market value?

ANSWER: Regardless of the reporting methodology selected, the cost of all specified foreign property determines whether the $100,000 threshold is met so that a Form T1135 filing is required. Where the taxpayer is using either the transitional method to report on an account-by-account basis in Category 6 (for 2013) or the country-by-country model for each Canadian account (in Category 7 for 2014 and later years), the fair market value of specified foreign property in those accounts is reported, rather than the cost. All other disclosures are based on the cost of the specified foreign property. Regardless of the reporting methodology, the cost of all specified foreign property determines whether the $100,000 threshold is met.

Fair market value is applicable only to disclosure of securities held in accounts held through Canadian registered securities dealers and Canadian trust companies. Fair market value must be used where the property-by-property method is chosen.

Technically, the legislation refers only to the cost of the specified foreign property. Fair market value is relevant only for the reduced disclosure the CRA has allowed as a concession to simplify filings for securities held within Canadian accounts. The main reason for permitting fair market value, rather than cost, disclosure on these accounts is that Canadian registered

securities dealers can provide fair market value information but cannot be confident the book values on their accounts consistently and accurately reflect the investment's cost. For example, financial institutions are not able to verify that the cost of securities transferred into the account by the account holder reflects the correct income tax cost. Investment advisors are also unable to determine if the cost would differ from book value due to application of the identical properties rules (perhaps because the same securities are also held through one or more additional accounts) or the superficial loss provisions.

(CRA review not requested)

60. Given that the cost of depreciable assets is their unclaimed capital cost (UCC), if the UCC goes below $100,000 over time, is Form T1135 disclosure is no longer required?

ANSWER: It is possible that the total cost of specified foreign property could decline below the $100,000 threshold due to capital cost allowance (CCA) claims over time. Because the highest cost at any time in the year determines the filing obligation, where current-year CCA reduces the total below $100,000, the cost would exceed that amount for part of the year and Form T1135 reporting would be required. Assuming no increase in costs in the following year, Form T1135 would not be required for that year. Note that this is unchanged from the pre-2013 version of Form T1135, as the cost amount of depreciable property has always been its UCC.

(CRA review not requested)

61. If you invest in a private corporation incorporated overseas and the market value is not easily known, is reporting on a cost basis acceptable?

CRA RESPONSE: Where a taxpayer holds specified foreign property that is reported in category 7 on Form T1135, the fair market value of the securities must be reported. Where the fair market value is not easily determinable, taxpayers should use their best efforts to determine the fair market value of the securities. In some cases, this could mean making a reasonable estimate.

(CRA response provided; added March 20, 2015)

62. When reporting foreign real property on Form T1135, are taxpayers required to report the cost at the end of the year on a fair market value basis?

ANSWER: As noted above, reporting on a fair market value basis is only permitted for Canadian securities accounts disclosed in Part 7 of the form. A foreign real property would always be reported based on cost, not on its fair market value. Fair market value disclosure for such assets would be overly onerous as fair market value of real estate is not as easily determinable as that of publicly traded securities.

(CRA review not requested)

63. If a security is bought and sold in the same month and is the only security held in a specific country, what amount is reported for the maximum fair market value?

ANSWER: Reports that may be available from Canadian registered securities dealers do not report on securities bought and sold in the same month, and so the transactions are not

captured on a statement at month-end. As there was no value at any month-end, the highest value should be reported as nil.

CRA COMMENTS: Although the maximum amount held at any time in the year is required to be reported, as stated in the Form T1135 instructions, the maximum cost during the year can be based on the maximum month end cost amount during the year. As a result, where a security is bought and sold in the same month, the property should still be identified but the CRA will accept a nil amount to be reported for the maximum and year-end cost amounts.

(CRA comments provided; updated March 20, 2015)

Note: The Investment Industry Association of Canada (IIAC) has also asked the CRA to address the following question: Can a taxpayer receiving only quarterly account statements use the highest quarter-end?

The CRA responded, “No. Please contact your investment advisor to see whether month-end reports can be obtained. If month-end reports are unavailable, taxpayers should use their best efforts to determine the fair market value of the securities. In some cases, this could mean making a reasonable estimate.” The CRA’s response to IIAC referred to this question and question 61 above.

(CRA comments provided; updated April 8, 2015)

64. We record investments on a fair market value monthly. Changes in fair market value recorded under fair market value change account. When an investment is sold, should we reverse all records in the fair market value change account when we record the gain/loss?

ANSWER: For income tax purposes, capital gains or losses are recorded only on disposition of the underlying property. Where investments are accounted for differently in the taxpayer’s accounting records, adjustments are required to report on the above basis for tax purposes.

(CRA review not requested)

65. How do you report the highest value for a part-year resident of Canada?

ANSWER: As discussed above, for the year in which an individual first became resident in Canada, Form T1135 is not required to be filed. However, an individual returning to Canadian residence, or ceasing residency in the year, would still be required to file Form T1135.

CRA Comments: For Form T1135 reporting purposes, taxpayers who emigrate during the year can complete the form as if the year ended on the date of emigration. There is a deemed disposition of certain property immediately prior to emigration. Where this applies, the cost amount at year-end (i.e. date of emigration) would be nil. The associated gain or loss on this deemed disposition should be reported on Form T1135.

There is also a deemed acquisition of certain property at the time of immigration for proceeds equal to the fair market value. This amount would represent the initial cost amount of the property for Form T1135.

(CRA comments reviewed; updated March 20, 2015)

66. Consider a taxpayer who has purchased a number of initial public offerings (IPO) for which no fair market value was available. Where the broker reflects an indeterminable fair market value, which is common for thinly traded or de-listed securities, what should be reported as fair market value where the taxpayer is using the aggregate reporting method?

ANSWER: Where the current fair market value is not determinable, the taxpayer should use best estimates. Depending on the facts, this may indicate a nil value (e.g., for a de-listed and insolvent entity) or the most recent value estimate received (for a thinly traded security). Ultimately, fair market value is an estimate. We would not expect the CRA to penalize a taxpayer who has made reasonable estimates (using original cost as a final option) based on the best available information.

CRA COMMENTS: The CRA indicated their agreement but requested reference to Information Circular (IC) 89-3 *Policy Statement on Business Equity Valuations.* CPA Canada has asked the CRA to clarify the purpose of this reference. The CRA advised that this is a relevant reference guide in assessing fair market value and confirmed there would be no general expectation of a business valuation of such securities.

(CRA response provided; added April 8, 2015)

67. Are accruals are also to be reported as income even if the policy is cash basis in some countries?

ANSWER: Canadian income tax rules must be followed in reporting all income, whether from Canadian or foreign sources.

(CRA review not requested)

68. Should taxpayers still report the highest balance of US bank accounts on a daily basis? Or can they use month-end values?

ANSWER: The highest cost amount at any time in the year is required for all specified foreign property not eligible for inclusion in Category 7 of the current form. Technically, this could be a balance in existence for only part of a day.

The current T1135 instructions indicate the CRA will accept the highest month-end value for funds held on account, determined in foreign currency and then translated at the average exchange rate for the year. The year-end balance is translated at the year-end exchange amount.

(CRA reviewed; updated March 10, 2015)

69. Is "highest fair market value" the value in the foreign currency or in Canadian currency after conversion to Canadian dollars at each month-end exchange rate?

ANSWER: As stated in the form, the highest fair market value should be first determined in the foreign currency and then translated into Canadian dollars. The month-end exchange rate for the highest month-end fair market value can be used to translate into Canadian funds. Alternatively, you may use the average annual exchange rate to convert the highest fair market value in the year to Canadian currency.

(CRA reviewed; updated March 10, 2015)

70. I became a resident in 2005. I inherited land before 2005 that was valued at less than $100,000 in 2005 but is worth more than $100,000 today. How should I report this property?

ANSWER: When a person becomes a Canadian resident, most of their property is deemed to be disposed and reacquired for its fair market value immediately prior to becoming resident in Canada. The cost of the land would have been set at its value on the date of immigration,

subject to any further adjustments to its cost (e.g., improvements). This is discussed in the CRA's Q&A.

The value of the property is never relevant to the filing obligation – the test is always cost, as defined for income tax purposes, of $100,000.

(CRA reviewed)

71. When disclosing an amount on Form T1135 (e.g., US account), is the amount recorded in US or Canadian dollars?

ANSWER: Generally, all amounts must be reported in Canadian currency. Note that the cost must be translated at the exchange rate(s) applicable on acquisition, for purposes of both Form T1135 and reporting any eventual disposal.

If the account statements already convert the foreign month-end amounts into Canadian dollars, then these are the amounts that should be used to determine the maximum amount to report on Form T1135. However, if the account statements show the foreign amounts in the foreign currency, then the maximum foreign amount may be converted into Canadian using the average exchange rate for the year. In other words, there is no need to convert the monthly foreign amounts into Canadian dollars at the month-end rate for each month of the year to determine the maximum Canadian amount, although that method is acceptable as well.

Certain corporations can elect to report in one of four functional currencies, including US dollars. A corporation that has filed a functional currency election would complete Form T1135 using the functional currency elected.

(CRA reviewed)

Foreign securities held in Canadian accounts

72. If US securities are held through a Canadian brokerage account and are reported on a Canadian T5 slip, do they need to be reported on Form T1135? These, including gains and losses, are already reported to the CRA.

ANSWER: Since Form T1135's introduction, all foreign securities, including those held through a Canadian brokerage accounts, have been included in the definition of specified foreign property. These investments were included in the $100,000 threshold, but they were not subject to detailed disclosure or requirements any different from specified foreign property that did not pay income reported on a T3 or T5 slip.

For 2013 only, the T3/T5 exception allowed taxpayers to avoid detailed disclosure for individual securities that paid income in 2013 that was reported on a T3 or T5. However, these securities were still foreign property that was required to be included in determining whether the $100,000 threshold was met.

For 2014 and later years, the T3/T5 exclusion has been eliminated. Aggregate reporting remains available for securities held in Canadian registered securities dealers and Canadian trust company accounts.

(CRA review not requested)

73. Are foreign-issued bonds (e.g., Bank of America bonds) considered specified foreign property if they are held within a Canadian broker?

ANSWER: A bond issued by a foreign entity is a debt due to a non-resident of Canada and therefore is specified foreign property. This has been the case since Form T1135 was introduced.

(CRA review not requested)

74. Many investment accounts have proprietary "pooled funds" that may hold foreign securities. Are these considered Canadian mutual funds and therefore not subject to Form T1135 reporting?

ANSWER: The legal form of the security holding would have to be determined in order to conclude whether a pooled fund requires reporting. Like mutual funds, if the pooled fund is itself a trust resident in Canada, it would not be specified foreign property.

However, if each investor in the pooled fund owns an undivided interest in each security held through the pooled fund, then each foreign security would be specified foreign property reportable on Form T1135. Aggregate reporting for such funds would be possible, assuming they are held through a Canadian registered securities dealer or Canadian trust company.

(CRA review not requested)

75. Before 2013, did investments with brokers (presumably Canadian) have to be declared on Form T1135?

ANSWER: Foreign securities held through Canadian brokers have been included in specified foreign property since Form T1135's introduction. Therefore, they have been required to be declared on Form T1135 since the form's inception, although not to the same level of detail.

(CRA review not requested)

76. Is a Canadian registered securities dealer's foreign subsidiary (e.g., a German subsidiary in Canada of RBC) also considered to be a Canadian dealer?

ANSWER: It would be necessary to confirm this with the individual investment advisor or by visiting the Canadian securities regulator's Dealers We Regulate webpage. However it seems unlikely that the foreign branch or subsidiary of a Canadian entity would be a Canadian registered securities dealer or Canadian trust company as both require maintaining status under Canadian law. The CRA has also addressed this issue in their Q&A.

(CRA received; added April 8, 2015)

77. Assume you have two investment accounts from different Canadian registered securities dealers. Each investment account has US stocks. Should you report the US stocks on two separate lines on Form T1135 or all in one line since the accounts are in the same country?

ANSWER: If the aggregate reporting method is used, two separate lines would be required in Category 7: one line for each account. If detailed reporting is selected, the same security in both accounts would be combined, but each individual security would require separate disclosure and Category 7 would not be used.

(CRA review not requested)

78. If you have foreign investments with a Canadian broker and have investments plus a cash account denominated in US dollars, do you report the cash holding as well as the investments or just the investment amount?

ANSWER: Cash held in a Canadian account is held through a Canadian entity. It is not specified foreign property, and so you do not have to report it.

(CRA review not requested)

79. In using the aggregate reporting method for reporting by country, if you have more than one investment in, for example, the US can you still present the investments separately rather than in aggregate?

ANSWER: You are not required to use the alternative disclosure permitted for certain Canadian accounts, as set out for Category 7 of the form. That approach is believed to be simpler for most taxpayers, but the taxpayer can certainly choose to provide detailed disclosure for each individual security in Categories 1 to 6 of the form, rather than choose the aggregate reporting provided for in Category 7.

(CRA review not requested)

80. If you have an investment account based in Canada with a Canadian financial institution and hold US dollar denominated mutual funds exceeding $100,000, do these investments need to be reported on the new Form T1135? Assume the taxpayer does not operate a business and is not self employed.

ANSWER: Self-employment is not relevant to determining the requirement to file a Form T1135. If the mutual funds themselves are Canadian, the fact they are denominated in foreign currency and/or invest in foreign securities does not result in their being specified foreign property. Canadian mutual funds are not required to be reported on Form T1135. If the funds were foreign funds (e.g., the fund itself is resident in the US), they would be specified foreign property and disclosure on Form T1135 would be required.

(CRA review not requested)

81. For 2014 securities account, do you report the market value as at December 31, 2014?

ANSWER: This value would be the value at year-end. You are also required to separately disclose the highest month-end value in the year.

(CRA review not requested)

82. Where a taxpayer has multiple accounts eligible for fair market value reporting (perhaps accounts with both full service brokerages and discount brokerages), can they use the aggregate reporting method for some accounts and the detailed reporting method for others? As the amount of information provided by each broker could differ, the efficiency of each method could vary considerably between accounts.

ANSWER: For 2013, the choice between aggregate reporting and detailed disclosure applied to all accounts eligible for aggregate reporting. For example, the taxpayer was not permitted to choose aggregate account reporting for an RBC Dominion account and detailed disclosure for a BMO Nesbitt Burns account, for example. Both accounts were required to be reported using the same methodology.

According to the current instructions for the aggregate reporting method on the CRA website and on Form T1135, a taxpayer who held specified foreign property with a Canadian registered securities dealer or Canadian trust company is permitted to report the aggregate amount of all such property in this category. It was unclear whether "all such property" is intended to mean all such property in that account or all such property in any account with a securities dealer or trust company. The CRA has provided clarifying comments below.

CRA COMMENTS: *For the 2014 and subsequent tax years, a taxpayer is permitted to use the aggregate reporting method for some accounts and the detailed reporting method for other accounts regardless of whether these accounts are with the same brokerage firm.*

(CRA reviewed; updated March 10, 2015)

Country reporting

83. What if the country of the investment cannot be readily ascertained (e.g., international mutual funds)?

ANSWER: The taxpayer is expected to make reasonable efforts to determine the country of the investment. Where this determination is inconclusive, the country reported would be "other". Where a client relies on a Canadian registered securities dealer that provides a country for the security or "other", the taxpayer may rely on that information.

Investments within a Canadian mutual fund are not relevant to Form T1135. The residency of the mutual fund or exchange traded fund itself is the country of the investment. For example, assume a group of funds is owned and operated in the United Kingdom. The taxpayer owns units of the Global Fund, the Emerging Markets Fund, the Asia Pacific Fund and the Canadian Toronto Stock Exchange fund. The funds themselves are resident in the U.K., so that is the country of the investment. The assets held by the fund are irrelevant in determining the fund's residency.

CRA COMMENTS: The CRA generally agreed with this answer but specified that these comments apply to Canadian registered securities dealers only and not to other investment advisers. CRA has indicated that reliance on investment advisors other than Canadian

registered securities dealers would be considered in assessing whether the taxpayer has made reasonable efforts, but would not necessarily be sufficient in all cases.

(CRA reviewed; updated April 8, 2015)

84. If an investment account denominated in Euros holds investments in several European countries, can the investment statement be used (i.e., one statement covering all countries using the euro)?

ANSWER: If the investment account is held through a Canadian registered securities dealer or Canadian trust company and the taxpayer chooses the special reporting permitted for such accounts, and then the investments must be segregated by country in Category 7 of the form. Several different countries cannot be presented in aggregate.

If the account is a foreign securities account, each individual investment must be reported separately, with detailed disclosure, in Categories 1 through 6 of the form. Aggregate reporting by account is not permitted for non-Canadian accounts.

In all cases, reporting in Canadian currency is required.

(CRA review not requested)

85. Does "country" mean the country of the broker or the country of investment? For example, consider a taxpayer who holds $200,000 Canadian shares with their UK broker.

ANSWER: The country of the investment is the determining factor. For example, if UK securities were held through a US brokerage account, they would be reported with a UK country code. The sole exception is for Canadian securities held through a foreign brokerage account. In this case, the securities are foreign property by virtue of being held in a foreign brokerage account and not by virtue of the residency of their issuer, and the country code would be the country of the brokerage.

(CRA review not requested)

T3/T5 exception

86. Is the T3/T5 exclusion available for 2014 T1135 filings?

ANSWER (CRA COMMENTS REQUESTED): No. This exclusion has been eliminated for filings after the 2013 year. However, where the Form T1135 for 2014 was filed before July 31, 2014, the CRA will allow the use of the T3/T5 exception, as the elimination of this exception was not implemented until the redesigned form was released in July 2014.

(CRA comments requested)

87. Do we still have to separate out a stock that has no dividend or interest reported on a T3/T5 slip?

ANSWER: For the limited period when the T3/T5 exception was available, the exception applied only to specific securities for which income was reported on a T3 or T5 slip. An investment that did not pay income in 2013 would not have been eligible for the exception from detailed disclosure. This is discussed in the CRA's Q&A.

(CRA reviewed)

88. For 2013 filings, if we elect to use the T3/T5 option, is there a requirement to file Form T1135? Would voluntary disclosure be needed if the cost were higher than $100,000?

ANSWER: The T3/T5 exception did not provide an exception to the requirement to file Form T1135. It only excepted the taxpayer from providing detailed disclosure of each specific investment for which a T3 or T5 was received for the year from a Canadian issuer. This is discussed in the CRA's Q&A.

A taxpayer who met the $100,000 cost threshold in 2013 and whose specified foreign properties all paid income reported on a 2013 T3 or T5 slip but who failed to file Form T1135 should consider correcting this omission with a voluntary disclosure.

(CRA reviewed)

Types of foreign property/income

Capital gains

89. Are capital gains considered to be income during the year?

ANSWER: Capital gains and losses are required to be reported in the year in which the security is disposed of. They would be reported separately and apart from any income received from the security in the year, as indicated by separate columns for income and gains/losses. Where the specified foreign property is an interest in a partnership, see the CRA's Q&A.

(CRA reviewed)

90. When converting capital gains reported on T slips (e.g. T3, T5013, K-1) to Canadian currency, can average exchange rates for the year be used?

ANSWER : The CRA generally accepts the use of an average rate for the year in which the income was earned rather than more accurate spot rates for each day on which income was received.

CRA Comments: The CRA generally accepts the use of an average rate for the year in which the income was earned. Please also see question #69.

(CRA comments provided; added April 8, 2015)

Foreign exchange gains/losses

91. Should the realized/unrealized foreign exchange gain in a foreign bank account denominated in a non-Canadian currency be reported as a gain on Form T1135?

ANSWER: The foreign exchange gain or loss realized in the year would be part of the gain/loss on the foreign property in question. Unrealized gains are not taxable and should not be disclosed.

(CRA reviewed)

92. In converting foreign currency for Form T1135 purposes, can you use the average rate for fair market value at year-end and fair market value during the year? Or should you use average for fair market value during the year and year-end rate for fair market value at year-end?

ANSWER: When converting fair market value at year-end, the exchange rate at the end of the year should be used.

The maximum fair market value during the year may be determined based on the highest month end foreign currency value. This amount can then be converted at either the month end rate that corresponds to the highest month end foreign currency value or, for simplicity, the average exchange rate for the year.

(CRA reviewed)

93. How should you recognize foreign exchange gain/loss on foreign investment? Say we buy investment at US$1 when the Canada-US exchange rate is at 1.00 and sell the investment at US$1 when the rate is at 1.10. Would the foreign exchange gain equal CDN$0.10?

ANSWER: The above computation is correct. Foreign exchange gains or losses will always be included in the gain or loss on the disposition of a foreign investment.

(CRA reviewed)

94. When calculating the maximum cost of an investment, sometimes the change in the foreign exchange rate from month to month would result in a different month for the selection of maximum cost. Can you provide guidance?

ANSWER: The cost of a property in Canadian dollars is determined using the exchange rate at the time that the property was purchased and therefore would not be subject to exchange rate fluctuation from month to month. If, for example, shares of a US corporation were acquired for US$10,000 at a time when the exchange rate was $1.48 US/$1 CDN, the cost would be $14,800. Future changes in exchange rates would not change this cost.

(CRA reviewed)

Dividends

95. For dividend income, would it be correct to report the actual dividend as a proxy for the taxable dividend?

ANSWER: Only dividends received from Canadian corporations are subject to gross-up and dividend tax credits, so such investments would rarely be specified foreign property. If held

through a foreign investment advisor, they could be specified foreign property, in which case the actual amount received by the taxpayer should be reported.

(CRA reviewed)

Foreign real estate and rental property

96. In some countries, real estate must be purchased through a form of trust in that country. Please confirm that the property's cost is under $100,000, it is only reported on Form T1135 if it is a rented property. Alternatively, should the property be reported on Form T1141 or T1142 regardless of the cost (i.e., with no de minimis threshold)?

CRA RESPONSE: Where a Canadian resident taxpayer acquires property through a non-resident trust structure, the interest in the trust may or may not be considered a specified foreign property. Where the interest in the non-resident trust is a specified foreign property, the taxpayer would be required to report the interest on Form T1135 but generally would not be required to file Form T1141 for any contribution to the trust. Conversely, if the interest in the non-resident trust is not a specified foreign property, the taxpayer would not be required to report the interest in the non-resident trust on Form T1135. Any contributions to the trust generally would be required to be reported on Form T1141.

In addition, if the non-resident trust is deemed to be resident in Canada, it would be required to report all specified foreign property on Form T1135. Most property located in a foreign jurisdiction would be considered specified foreign property unless it is personal use property or was used exclusively in an active business.

Form T1142 generally does have to be filed by the taxpayer where the taxpayer is required to file either Form T1141 or T1135 with respect to the non-resident trust.

(CRA response provided; added April 8, 2015)

97. Assume a taxpayer owns multiple ancestral properties, such as land and buildings, which have a very high fair market value. Should these properties be disclosed on Form T1135?

ANSWER: Assuming these properties are not personal use properties or properties used in an active business, they are specified foreign property like any other foreign real estate and they must be disclosed on Form T1135.

This reporting requires determining the properties' income tax cost. For immigrants, the starting point is the fair market value immediately before becoming Canadian residents. For inherited property, the cost would be the value at the time of death of the person who bequeathed the property. If the property were owned on December 31, 1971, the V-Day valuation rules would be applicable. The costs noted above could change due to later transactions (for example, an improvement to the property).

(CRA reviewed)

98. If a person owns foreign real estate valued at over $100,000 that is not used to earn active business income and there is no rental income from that property, do they still have to report it on Form T1135?

ANSWER: If reporting is required, it is the cost, not the value, of the real estate that would be reported. The nature of the real estate must be assessed. Personal-use property and land used in an active business is not required to be reported. Land held for resale is problematic – its sale would generate active business income, but it is debatable whether it is "used in an active business". The CRA has indicated this would be a question of fact.

(CRA reviewed; updated March 10, 2015)

99. Is land held for resale considered an active business asset automatically? If so, can the taxpayer report the expenses (business loss) on his or her tax return with regard to this piece of land?

ANSWER: Land held for resale generates ordinary income (not a capital gain), which meets the definition of active business income. It is debatable whether the land is "used in an active business". The CRA has indicated this is a question of fact.

The Form T1135 should reflect only gross income. Any revenues and expenses would also be reported on the taxpayer's return on a business schedule, as would income or losses on disposal of this land inventory. Note that most costs of vacant land held for resale (e.g., property taxes, interest) are required to be added to the cost of the land and cannot be deducted as current expenses. A partial exception exists for principal business corporations.

(CRA reviewed; updated March 10, 2015)

100. For foreign real estate, the address is not required on the form. If a taxpayer owns three apartment units in the same building, does he or she report the three units on one line or three lines?

CRA RESPONSE: Generally, each particular rental property should be reported separately. However, where a taxpayer owns multiple apartment units in the same building, the taxpayer is permitted to report the aggregate amount of all those units on one line.

(CRA response provided; added April 8, 2015)

101. If an individual owns vacant land (e.g., a failed investment property) that has a cost amount over $100,000, is the property specified foreign property for the purposes of Form T1135 since the vacant land has no reasonable expectation of a profit?

ANSWER: Unless the property is personal-use property or used in an active business, it is specified foreign property and is required to be disclosed. There is no reference to reasonable expectation of profit in the definition of specified foreign property.

(CRA reviewed)

102. For real properties in, for example, Germany, how should we report the fair market value on Form T1135? Is a property valuation required on a yearly basis?

ANSWER: Fair market value reporting is required only for securities held in a Canadian account as set out for category 7 of Form T1135. The property's cost amount is required for all other categories.

(CRA reviewed)

103. Confirming the example provided in the webinar, is the building reported separately from the land and the fence?

ANSWER: The CRA has indicated that all components of the property should be aggregated into a single line and reported as a single property.

For example, assume a taxpayer owns two properties: a house (UCC $25,000), land (ACB $50,000) and appliances (UCC $500) and land (ACB $25,000) with Class 17 surface improvements (UCC $5,000). In this case, the taxpayer would report the first property on one line (cost $75,500) and the second on a second line (cost $30,000). This example assumes no CCA claims were made in the year, so the cost never varies.

(CRA review not requested)

104. Where an individual owns rental property in the United States and files US income tax returns to report net rental income, does the individual need to file Form T1135, assuming the cost of the property exceeds $100,000?

ANSWER: A foreign rental property is considered to be specified foreign property. The Canadian tax cost would be required to be reported on Form T1135. The rental income would also be reported in Canada and subject to Canadian taxation, with a foreign tax credit for any US taxes payable on the income. Tax filings made in the US or another country do not affect the Canadian filing requirements.

(CRA reviewed)

105. How should taxpayers report the detailed information for foreign real property (e.g., type of property, address)?

CRA RESPONSE: A description of the type of property and address should be provided. For example: Multi-unit rental property, 123 Main St, NY, NY.

(CRA response provided; added March 10, 2015)

106. Gross income (not net) from foreign rental properties is required to be reported on Form T1135. Where should the costs associated with the foreign properties be reported?

ANSWER: The costs are not required to be reported on Form T1135. The form is not intended for reporting income subject to tax or claiming losses. The expenses would be reflected in the computation of net income and losses from the rental property in the related tax return.

(CRA reviewed)

107. What if you don't have any income and just losses for your investment property?

ANSWER: The income or losses from the property are not relevant in determining whether Form T1135 is required. The property would be disclosed, including the fact that no income was received from that property in the year in question. Note that gross, not net, income is to be disclosed on Form T1135, so property with a net loss for income tax purposes may well have reportable gross income. This would be common for rental real estate, for example.

(CRA reviewed)

108. Assume two couples who are retired have decided to acquire a rental property in the US How would the foreign rental income be taxed and would capital gains/loss arise once the couples have died or sold the property?

ANSWER: This question does not appear to relate to Form T1135. All income of a Canadian resident, whether from Canadian or foreign sources, is required to be reported on their Canadian tax return. This includes incidental rental profits from a personal-use property. Capital gains on all property, including personal-use property, must similarly be reported. However, losses on personal use property (excluding listed personal property) cannot be claimed.

In some cases, incidental rents are charged to cover some of the associated expenses, with no reasonable expectation of profit and therefore no income or loss. It is unclear whether the CRA expects such incidental rents to be reflected as “income” from the property and whether the property should be reported on Form T1135.

If the property were personal-use property, it would not be reported on Form T1135. This does not change the Canadian taxation of any income or gains. Given the significance of penalties for failure to file the Form, we would recommend the property be included where there is any doubt of its status as personal use property.

CRA Comments: The CRA noted only that this question does not relate to the filing of Form T1135. Note that the CRA’s comments to Question #111 confirm that a property on which rent is collected may still be personal-use property.

(CRA comments provided; added April 8, 2015)

109. Do you have to file Form T1135 for a US property you intend to use in retirement but rent now on a rental loss to pay taxes, strata (maintenance) fees and other costs?

ANSWER: If the property were rented with no reasonable expectation of profit solely to offset a portion of the costs, it would arguably be a personal-use property held primarily for the owner’s personal use. However, there is a significant risk that a property used only to generate rental income could have its personal-use status challenged, so it may be advisable to report such a

property anyway. The use of property can change, and a deemed disposition applies where property changes from an income-generating use to personal use or vice versa.

(CRA review not requested)

Personal use/vacation property

110. If a taxpayer owns a personal-use property outside of Canada, does that have to be reported on the new Form T1135 form?

ANSWER: The CRA notes there is no requirement to report personal-use property in their Q&A. This has not changed since the inception of the form.

Personal-use property is defined in section 54 to include:

- property used primarily for the personal use or enjoyment of one or more individuals including the taxpayer, a person related to the taxpayer and, where the owner is a trust, beneficiaries of the trust or persons related to the beneficiaries. A trust or a corporation could own personal-use property
- a debt owing to the taxpayer in respect of the disposition of personal-use property; and
- an option to acquire property that would be personal-use property of the taxpayer.

Personal-use property could include a vacation property, a residence for relatives living outside Canada or a time-share used primarily for personal use. Incidental income could be earned from personal-use property. The test is whether the property is used primarily for personal use; it need not be exclusively used personally.

This does not exempt income earned from, or gains realized on disposal of, personal-use property from taxation. However, the property is not relevant for Form T1135 filing purposes.

(CRA reviewed)

111. Assume that a Canadian controlled private corporation (CCPC) owns a vacation home in the United States that is used exclusively by the CCPC's shareholder. Does the CCPC have to report the property on Form T1135, or will the property be considered personal-use property and exempt from reporting?

ANSWER: A corporation can own personal-use property**,** which is exempt from T1135 disclosure. Note that issues of taxable benefits to the shareholder are relevant in Canada and may be relevant in the US or other foreign country where the property is located. If the shareholder pays rent to the company for use of the property, the property is still used exclusively for the benefit of related persons and so it appears to remain personal use property.

CRA Comments: A property owned by a corporation is a personal-use property where it is used primarily for the personal use or enjoyment of one or more individuals who are related to the corporation, and such a property is therefore exempt from Form T1135 disclosure. Note that issues of taxable benefits to the shareholder are relevant in Canada and may be relevant in the U.S. or other foreign country where the property is located. If the shareholder pays rent to the company for use of the property, the property is still used exclusively for the benefit of related persons and so it appears to remain personal-use property.

(CRA comments provided; added April 8, 2015)

112. Some individuals own their personal-use foreign use property in a corporation, so the assets they legally own are the shares. Do such shares qualify for the exception for personal-use property?

ANSWER: While it seems counter-intuitive that shares of any corporation, Canadian or foreign, can be held for the personal enjoyment of the shareholders, it seems like the argument could reasonably be made where the sole purpose of the corporation is to hold personal-use property. Of course, there may be taxable benefit issues to address.

It seems such corporations would almost always be closely held, such that a foreign corporation would be a foreign affiliate (FA). Interests in a FA are not specified foreign property and do not need to be reported on Form T1135, but they are generally subject to much more detailed disclosure on Form T1134. The requirements of that filing are beyond the scope of the webinar, but should be reviewed in detail for any taxpayer owning shares of a closely held foreign corporation. Form T1134 was introduced at the same time as the original Form T1135.

(CRA review not requested)

113. If a Canadian resident trust owns a US personal-use property, is the trust required to report the property on Form T1135?

ANSWER: A trust can also hold personal-use property, as discussed above.

(CRA reviewed)

114. Is there a deemed disposition for the personal-use property held outside Canada if an individual ceases to be a resident of Canada?

ANSWER: While this question does not appear to relate to Form T1135, most property is subject to a deemed disposition as a consequence of cessation of residency. Canadian real estate enjoys an exception, but foreign real estate does not. The specific nature of the property would have to be reviewed to determine whether deemed disposition applies.

(CRA reviewed)

115. Given that a vacation property used solely for personal use is not reportable on Form T1135, where a taxpayer starts renting such a property for casual rentals, at what point should they report it on Form T1135?

ANSWER: Provided the property is primarily used for personal use, it remains personal-use property. If the property's primary use shifts to generating income, it would cease to be personal-use property and become subject to Form T1135 reporting.

A change in use could also result in a deemed disposition at the time of the change. Regardless of the property's status as personal-use property, any income generated from the property, as well as any gains on its disposal, is subject to taxation. Losses from personal-use property, however, are generally not available to offset other income or gains.

(CRA reviewed)

Derivatives/put and call options

116. What does one do with open derivative and open option accounts for US stocks? How should put & call options be reported on Form T1135?

CRA RESPONSE: A right to acquire a specified foreign property is a specified foreign property. A right to dispose of specified foreign property is not a specified foreign property. The right should be reported in category 6 of Form T1135 "Other property outside Canada".

(CRA response provided; added April 8, 2015)

American depositary receipts and international aid organizations

117. American depositary receipts (ADR) trade on the US stock exchanges instead of the shares of a non-US corporation. Is an ADR to be reported as a US security or a security of the share of the corporation it relates to (which would be a non-US country)? What about international aid organizations?

ANSWER: Registered securities dealers advise that they can provide the country of the underlying security issuer when it comes to ADRs. Where a client relies on a Canadian registered securities dealer that provides a country for the security or "other", the client may rely on that information. If information is not available, and a taxpayer has searched for country of residence, then the use of "other" is permitted.

CRA RESPONSE: An ADR should be reported as a security of the underlying non-resident corporation in either category 2 or, if applicable, category 7. Where the residency of the underlying non-resident corporation cannot be determined after exhausting all reasonable efforts, it is acceptable to use "Other" as the country code.

CPA CANADA COMMENTS: Neither the CRA nor CPA Canada were clear on the request for information related to international aid organizations. Practically, an investment with such an organization (e.g., a loan advanced to it) would be reported under the appropriate category in the country of residence of the organization.

(CRA response provided; added April 8, 2015)

Foreign retirement plans and pension arrangements

118. Are foreign pension arrangements, such as US individual retirement accounts (IRA), 401K plans and foreign pension plans, exempt from Form T1135 filing?

ANSWER: Interests in certain trusts that are exempt from the trust disclosure requirements in section 233.2 are also excluded from the definition of specified foreign property. Such trusts include:

- Trusts governed by a foreign retirement arrangement (which includes US IRAs)

- Trusts resident in a country that imposes income taxes, where the trust is exempt from tax under that country's laws and established with the principal purpose of providing pension, retirement or employment benefits.

This definition is believed to cover most foreign retirement plans, including the common US plans noted above.

(CRA review not requested)

119. How do you report the country of an exchange traded fund (ETF) where, for example, an ETF from Brazil is listed on the NYSE?

ANSWER: The exchange on which the ETF is listed is not relevant. Many entities are listed on exchanges in multiple countries. The residency of the ETF itself must be determined. If it were a US resident fund investing in Brazil, it would be a US entity. If it is a Brazilian fund, it would be reported as Brazil, regardless of what countries it invests in.

(CRA review not requested)

Loans to foreign parties

120. Does a corporation that makes a loan to a foreign entity have to report the loan on Form T1135?

ANSWER: Debts due from non-residents are specified foreign property, so the loan would be relevant to Form T1135. This may include a non-interest bearing loan to a foreign family member. It does not include a loan to a foreign affiliate, although interests in foreign affiliates are subject to reporting on Form T1134. An article in the August 2014 *Canadian Tax Focus*, published by the Canadian Tax Foundation, describes a situation where Form T1135 disclosure could be required in respect of advances within a related corporate group.

(CRA review not required)

Foreign-listed Canadian resident corporations

121. Are shares of Canadian-resident corporations that are traded on foreign stock exchanges and held in the investment account with Canadian registered securities dealer considered to be specified foreign property?

ANSWER: The exchange on which the stock is traded is not relevant to the determination of whether a share is a specified foreign property. Shares of a Canadian-resident corporation would generally not be a specified foreign property unless they held outside Canada. Shares of any company, even Canadian-resident companies, are specified foreign property if held in a securities account outside Canada.

(CRA reviewed)

Non-portfolio holdings in foreign entities

122. Where a Canadian shareholder owns 100 per cent of the shares of an American company, does the holding have to be reported on Form T1135? If so, at what value?

ANSWER: The foreign company would be a foreign affiliate reported on Form T1134, and not specified foreign property. Considerable detail of the company is required on Form T1134.

(CRA reviewed)

123. Assume that a Canadian corporation has a multimillion dollar investment in a US subsidiary, which itself invests in limited liability companies (LLC) in the US? Is Form T1135 reporting required of the Canadian parent?

ANSWER: A US subsidiary would be a foreign affiliate and therefore does not have to be reported on Form T1135. The Canadian parent would be subject to Form T1134 filing requirements with respect to this investment. The holdings of the US subsidiary would not be subject to T1135 reporting unless the subsidiary is also resident in Canada. These entities could also be subject to T1134 filings if they also meet the definition of a foreign affiliate.

(CRA reviewed)

124. Are US LLCs subject to disclosure on Form T1135 or T1134?

ANSWER: Depending on whether the taxpayer's interest results in the LLC being a foreign affiliate, either a Form T1134 would be required or the interest in the LLC would be an investment in shares of a foreign corporation for Form T1135 purposes. Note that, for Canadian tax purposes, the CRA considers an LLC to be a corporation.

(CRA reviewed)

125. If a Canadian taxpayer incorporates a US limited company at little cost and subsequently has US accredited investors fund the limited company for more than $100,000 does the CDN taxpayer have a Form T1135 reporting obligation?

ANSWER: Only the taxpayer's own cost is relevant for Form T1135 purposes. However, the US limited company may be a foreign affiliate of the taxpayer, in which case a Form T1134 would likely be required.

(CRA reviewed)

126. For foreign affiliates, does Form T1134 only need to be filed only if the cost is over $100,000? If there were an equity cost (e.g., shares of $20,000) and a loan of $150,000 would the Canadian taxpayer file Form T1135 or T1134?

ANSWER: Form T1134 is not subject to a de minimis investment test. There is an administrative exception for dormant foreign affiliates. Otherwise, a Form T1134 filing would otherwise be required even if the interest in the foreign affiliate has no cost.

(CRA review not requested)

127. If an individual has an interest in a foreign affiliate that does not require reporting on Form T1134 due to its status as inactive, does it nevertheless need to be included on Form T1135?

ANSWER: Interests in foreign affiliates are excluded from the definition of specified foreign property and are not reported on Form T1135. This exception is not linked to the Form T1134 filing requirements.

(CRA reviewed)

Partnerships

128. Do partnerships have a Form T1135 filing requirement?

ANSWER: A partnership is required to file Form T1135 unless it meets one of the following criteria:

- All of the partners are exempt from Form T1135 filing requirements because they are not specified Canadian entities as defined in subsection 233.3(1) (generally, tax-exempt entities and mutual funds).
- Non-resident partners are entitled to 90 per cent or more of the partnership income (or loss) in the period.

Where the partnership is required to file Form T1135, interests in that partnership are excluded from the definition of specified foreign property. The CRA addresses this in its Q&A.

The CRA indicates that only gains or losses on disposal of the partnership interest should be reported as gains. Any capital gains or losses realized by the partnership and allocated to the partner should be reported as income.

(CRA reviewed)

129. Is an interest in a foreign partnership considered specified foreign property? What is your obligation to look through the partnership to its underlying assets?

ANSWER: The definition of specified foreign property includes both an interest in a partnership that owns or holds specified foreign property and an interest in, or a right with respect to, an entity that is non-resident. As noted above, this does not include an interest in a partnership that is itself required to file Form T1135. However, other partnership interests appear to be considered specified foreign property.

As the partnership interest is specified foreign property, the partnership interest is required to be reported. Reporting of the partnership's underlying assets is not required.

CRA Comments: An interest in a partnership would be a specified foreign property only where the partnership is not a specified Canadian entity and the partnership holds specified foreign property. A partnership is a specified Canadian entity where the total of all amounts, each of which is the income (or loss) attributable to non-resident partners, is less than 90% of the partnership's total income (or loss).

A taxpayer is never required to look through a partnership and report any underlying property held by the partnership. This property would only be reported by the partnership where the partnership is a specified Canadian entity.

(CRA comments provided; added April 8, 2015)

130. Should an interest in a foreign controlled active partnership be reported on Form 1135? If yes, what is considered the cost base?

ANSWER: Assuming the partnership interest is required to be reported, as discussed above, the cost of the partnership would be the adjusted cost base (ACB) of the partnership interest. Many adjustments apply in computing the ACB of a partnership interest. These adjustments need to be tracked so the ACB is known for eventual disposal of the partnership interest, although Form T1135 requirement may accelerate the need to compute the ACB.

(CRA review not requested)

131. Assume that a Canadian investor owns units of a Canadian limited partnership that owns private equity shares in a Barbados company. The Canadian limited partnership files Form T1135 on behalf of the partnership. Do the individual limited partners also need to file the form?

ANSWER: As noted above, if the partnership itself is subject to Form T1135 reporting, interests in the partnership would not be specified foreign property.

(CRA review not requested)

132. We have joint partnership with other family members in Germany. Assume we hold 10 per cent of the total property portfolio and we are entitled to 10 per cent rental income. Do we need to list each property separately on Form T1135 and report the 10 per cent property value on each line?

ANSWER: As 90 per cent of the partnership income is allocated to non-residents of Canada, the partnership itself is not required to file Form T1135. As the partnership owns specified foreign property, the partnership interest itself is specified foreign property and thus subject to Form T1135 reporting. The assets of the partnership are not assets of the partners, so they do not need to be separately reported.

(CRA review not requested)

133. Assume a Canadian resident taxpayer holds a 25 per cent interest in a US partnership and that the other partners are US residents. Is the US partnership is required to file Form T1135 even though the partnership is not a Canadian partnership? Is the Canadian partner liable for the penalty?

ANSWER: As discussed above, the partnership is required to file Form T1135, as less than 90% of its income is allocated to non-residents. Where a partnership is subject to a penalty, subsection 162(8.1) provides it is assessed as though the partnership were a corporation. Liability for a penalty payable by a partnership generally flows through to its partners, as do most of the partnership's filing obligations.

The CRA's Q&A states that where a partnership fails to file Form T1135, any partner failing to report income from specified foreign property is subject to the three-year extension to the normal reassessment period.

(CRA review not requested)

134. Form T1135 requires taxpayers to report the residency of partnerships. There is no such concept under Canadian law, so what is supposed to be reported?

ANSWER: Although the Income Tax Act does not address the residency of a partnership, it seems reasonable to use the jurisdiction under whose legislation the partnership was created and is governed. For publicly traded entities, this information is often a matter of public record and is disclosed on their websites.

(CRA review not requested)

Canadian-held tangible business assets located outside Canada

135. Would a Canadian company need to report equipment owned by the Canadian company and located at third-party contract manufacturing sites and used by those manufacturers to produce goods that are sold to the Canadian company?

ANSWER: Assets used in an active business are not specified foreign property. The definition of active business includes all businesses other than a specified investment business and a personal services business. A specified investment business excludes businesses generating rental revenues from assets other than real property. Together, these definitions result in equipment rental businesses being active businesses, so the assets are not required to be reported on Form T1135.

(CRA review not requested)

Jointly held investments

136. If spouses jointly own foreign investments with a cost exceeding $100,000, is Form T1135 reporting required where 50 per cent of the cost is less than $100,000?

ANSWER: Each taxpayer's obligation to file Form T1135 is determined independently. Only the portion of the property held by each joint owner would be their specified foreign property, so neither spouse in the above example would be required to file Form T1135 as neither meets the $100,000 threshold.

This is consistent with the CRA's position in respect of other joint ventures, as set out in their Q&A. Each joint owner is subject to Form T1135 filing based on the cost amount of their ownership interest in the joint property.

(CRA review not requested)

137. How should assets be reported where the attribution rules apply? For example, should assets transferred to a spouse be reported on Form T1135 by the spouse who actually owns the property, by the spouse required to report the income and capital gains, or

both? If the income were attributed, the income presumably would be reported on the transferor spouse, who may not be required to file the Form T1135 form.

ANSWER (CRA COMMENTS REQUESTED): Where attribution applies between spouses, all income and capital gains and losses attribute to the transferor spouse. In such a case, the reporting obligation should also attribute to the transferor spouse.

Where attribution applies between other taxpayers, such as attribution of income from a minor (grand)child to a (grand)parent, only income attributes, and capital gains do not. In this case, both parties should report the property for Form T1135 purposes. As the transferor will not report any capital gains or losses, their cost of the property should be considered to be nil.

(CRA comments requested)

Although the CRA has not provided comments on the above, in Technical Interpretation 2015-0610641C6, the CRA appears to indicate that legal ownership of the property should be used in respect of property held, even where the attribution rules may require income and/or gains be reported by someone other than the owner of the property. For further discussion, see Form T1135 – Jointly Held Property in the March 2016 edition of Video Tax News.[1]

(comments added April 25, 2016)

138. Does having signatory authority on bank accounts owned by relatives outside Canada qualify for Form T1135 reporting?

ANSWER (CRA COMMENTS REQUESTED): Form T1135 is intended to reflect property beneficially owned by the taxpayer filing the form, that is, property for which they are taxable on the income and/or gains realized from the property. An account on which the taxpayer has signing authority but does not beneficially own in whole or in part, is not specified foreign property and is not required to be disclosed by the taxpayer (it may have to be disclosed by the beneficial owner). Such accounts would have no cost to the taxpayer and so they would not contribute to the minimum cost threshold for Form T1135 reporting.

(CRA comments requested)

Foreign insurance policy

139. How should taxpayers report foreign insurance policies for Form T1135 purposes?

CRA Comments: Most foreign insurance policies should be reported on Form T1135 in category 6, “Other property outside Canada”.

(CRA response provided; added April 8, 2015)

[1] This link is provided courtesy of Video Tax News, which is not affiliated with CPA Canada.

Investment advisors/dealers

140. Do brokers have to provide Form T1135 to taxpayers?

ANSWER: Like the tax return itself, preparation and filing of Form T1135 is the responsibility of the taxpayer. While others may provide assistance, gratuitously or for a fee, the taxpayer cannot delegate responsibility for filing complete and accurate returns. Taxpayers may be able to get information on country of issue and other items needed to complete Form T1135 by asking their financial advisor.

Any introducing broker that may receive questions from clients about securities' "countries" should speak with their carrying broker or other vendors to determine what information may be available and how it will be provided.

(CRA review not requested)

141. Who is responsible for capital gain/loss determinations: the broker or the accountant?

***ANSWER*:** Taxpayers are responsible. They can engage a qualified person, such as an accountant or broker, to do the calculations. Taxpayers should be satisfied advisor has the expertise and that the terms of the engagement are clear, preferably in writing.

(CRA review not requested)

Tax preparers

142. Who can tax preparers contact at the CRA to determine whether a new client has filed Form T1135s in previous years?

CRA RESPONSE: All enquiries should be made to our general enquires line. Call agents will seek to obtain the information requested from the appropriate internal sources and get back to the tax preparer. Our general enquiries lines are:

- 1-800-959-5525 for businesses, self-employed individuals, and partnerships
- 1-800-959-8281 for individuals (other than self-employed individuals) and trusts

Please note that the general enquiries numbers are different for French service. Please refer to the CRA website or the instructions on Form T1135 for these numbers.

(CRA response provided; added March 10, 2015)

***PRESENTER'S COMMENT**: We are uncertain whether this information can now be obtained through the general enquiries line. The call centre representatives were unable to determine whether specific taxpayers had filed Form T1135 when contacted in the summer and autumn of 2014.*

143. How much responsibility does the accountant have to verify the adjusted cost base (ACB) of a taxpayer's property?

ANSWER: A professional accountant is bound by rules of professional conduct and by the terms of Canadian Assurance Standards. As a personal tax return is normally the subject of a compilation engagement, the standard is that the member may not associate with information they know, or should know, to be false or misleading.

In addition to our professional obligations, subsection 163.2 of the Income Tax Act imposes penalties on a tax preparer who makes, or acquiesces to, a statement on a tax return which they know, or would know but for culpable conduct, to be false. Culpable conduct is a defined term – it reflects conduct tantamount to intentional conduct, conduct showing indifference as to whether the Income Tax Act is complied with or conduct that shows a willful, reckless or wanton disregard for the law. The legislation explicitly states that reliance, in good faith, on information provided by the client, or by another person, does not constitute culpable conduct.

At their core, these standards seem very similar. Where the ACB information provided by the client is not obviously wrong, then it should be possible to proceed using the client's provided ACB, relying on this information in good faith. Where the information provided is clearly, or very likely, incorrect (e.g., the ACB of a partnership or trust investment has been set based on its purchase price many years previous), a professional accountant cannot associate themself with this clearly erroneous information. Similarly, reliance on such information is likely not in good faith, and third party civil penalties could apply.

If the client insists on proceeding with information that is clearly not correct, or highly likely to be incorrect, the tax preparer risks both professional discipline and civil penalties, and resignation from the engagement may be their only option.

CRA Comments: The CRA indicated that they have reviewed this question. However, because the question extends far beyond the scope of Form T1135 filing, the CRA did not feel it appropriate to add further comments.

(CRA comments provided; added April 8, 2015)