

WHAT IS A 'FOREIGN PROPERTY'?

How many of us really pay attention to the following question when you file your personal tax return “Did you own or hold foreign property at any time in the year with a total cost of more than CAN\$100,000?” Perhaps, like many, you’ve always answered “No” for this question because you might have assumed it meant Swiss bank accounts or a foreign rental property.

It is important to define what is “specified foreign property”? Specified foreign property (SFP) includes: funds held on deposit outside of Canada, foreign real estate, other than personal residential real estate that isn’t income producing, and shares and debt of non-resident corporations, even if held in a Canadian non-registered brokerage account.

If the cumulative cost (not fair market value) of all SFP owned *at any time of the year* exceeds \$100,000, then a T1135 “Foreign Income Verification Statement” must be filed, reporting *all* SFPs held during the year, even if some or all of the property was sold before the end of the year. The form itself does not have an impact on taxable income but is used by CRA to gather information.

Property not included in SFP includes securities held in registered accounts like RRSPs, RRFs, RESPs, RDSPs

and TFSAs. The following are also exempted: foreign investments held in Canadian-registered mutual funds, any property used mainly for personal use and enjoyment, such as a vehicle, vacation property, jewelry, artwork, or any other such property.

In an effort to combat and prevent tax evasion, the Canada Revenue Agency (CRA) released a new version of Form T1135 in 2013. For each individual foreign asset, the taxpayer had to report details such as the name of the specific foreign institution at which the property was held, the country in which the asset was located, the income earned on the asset, and the maximum cost of the asset in the year. In 2014, again the form was revised to make it less cumbersome for the taxpayer to gather information.

It is important to ensure that the T1135 is filed as required, as the penalties are onerous. If you fail to file, you could be subject to late filing penalties of \$25 per day to a maximum of \$2,500 per year. If you knowingly or under circumstances amounting to “gross negligence” fail to file the form, the penalty jumps to \$500 for each month the form is not filed, to a maximum of 24 months. If you are using an accountant to do your taxes, make sure that this form is filed – it is ultimately the taxpayer’s responsibility to ensure that taxes are filed correctly, even when you are paying someone

else to do them for you.

The most recent federal budget included the streamlining of foreign asset reporting. The current reporting \$100,000 threshold will increase to \$250,000. Budget 2015 proposes that for 2015 and later taxation years, if the total cost of a taxpayer’s SFP is less than \$250,000 throughout the year, the taxpayer will be able to report these assets to the CRA under a new simplified foreign asset reporting system. The form is currently being developed by CRA. The current reporting requirements will continue to apply to taxpayers with SFP that has a total cost of \$250,000 or more at any time during the year.

It may still be unclear to the average taxpayer as to just what foreign property triggers the need to file the T1135 form. The CRA has published a number of questions and answers on its website (http://www.cra-arc.gc.ca/tx/nrsdnts/cmmn/frgn/1135_fq-eng.html) on the types of situations that would lead to a requirement to file Form T1135. If you have such SFP, it may also be prudent to have a tax accountant to help you.

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