

The devil's in the details: The new form T1135 is released

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Earlier this week, the CRA released the revised [Foreign Income Verification Form \("T1135"\)](#) as had previously been announced by the Federal government in their 2013 Budget. Consistent with our [blog](#) posted on March 26, 2013, taxpayers are now required to report additional information which makes the T1135 more comparable to its US cousin – the FBAR.

Overall, the changes to the T1135 are not significant, but will serve to make its preparation more laborious. Taxpayers must provide the following additional information:

- whether the form is an amended return;
- whether the taxpayer or the taxpayer's spouse (or both) are self-employed;
- where the form is prepared by a partnership, the nature of the partners (individuals, trusts, or corporations) must be disclosed;
- whether foreign income received by the taxpayer is reported on a T3 or T5 from a Canadian issuer in respect of a specified foreign property;
- the name of the bank or other entity holding funds outside of Canada;
- if foreign shares are held by the taxpayer, the name of the corporation issuing the shares;
- a description of any indebtedness owed to the taxpayer by a non-resident;
- the name of any non-resident trust in which the taxpayer holds an interest;
- a description of all real property outside of Canada (except for personal use property and real estate used in an active business); and
- a description of all other property held outside of Canada.

Where a taxpayer fails to comply with the requirements of the T1135, [proposed legislation](#) (also announced in the 2013 Federal Budget) adds a three-year extension to the normal reassessment period which is generally three years from the date of the original notice of assessment pursuant to subsection 152(3.1) of the *Income Tax Act* (the "Act"). The proposed three-year extension will apply to the entire tax return rather than a particular transaction as subsection 152(4.01) of the Act does not provide relief by limiting the scope of a reassessment. Subsection 152(4.01) has not been amended to include reassessments issued pursuant to paragraph 152(4)(b.2) (i.e. due to T1135 reporting deficiencies). In other words, if a taxpayer fails to comply with the T1135 reporting requirements, the associated income tax return for the year will not be statute barred until six years after the date of the original notice of assessment. As of now, it remains unclear as to what circumstances will result in a taxpayer being found to be non-compliant with the T1135 requirements. Will small cosmetic errors in the preparation of a T1135 trigger this extended reassessment period?

One aspect of the new T1135 requires some clarification in light of the extended reassessment period for non-compliance noted above. A new exemption for taxpayers has appeared on the revised T1135, which applies to a reporting taxpayer who has received a T3 or T5 slip from a Canadian issuer in respect of a specified foreign property for that taxation year. According to the new form, that specified foreign property is "excluded" from the T1135 reporting requirements for the year. To be clear, this only

exempts taxpayers from providing details of such foreign property on the T1135 itself. Pursuant to section 233.3 of the Act, a reporting entity (including an individual) is required to disclose specified foreign property where the total cost of the properties exceeds \$100,000. There is no basis in law for exempting the disclosure of any specified foreign property from the reporting requirements when considering the \$100,000 cost threshold. However, the CRA appears to not want additional details of such properties.