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T1134 for Foreign Affiliates:

New Deadlines, New Form

Daniel Ling

Aaron Schechter

As the whirlwind of 2020 ends and 2021 starts, this publication serves as a reminder that there are new deadlines for Form T1134, *Information Return Relating to Controlled and Not-Controlled Foreign Affiliates*, which will apply to tax years beginning in 2020.

Form T1134 is to be completed when a Canadian individual, corporation, trust or, if applicable, partnership **(individually, a "Canadian entity")**, directly or indirectly, owns at least 10 per cent of any class of the shares of a foreign corporation **("foreign affiliate (FA)")**.

It is important to note that for Canadian tax purposes, a foreign entity may be considered a corporation despite not being considered as such for foreign tax purposes. For example, a U.S. Limited Liability Corporation is considered a corporation for Canadian tax purposes, even though it may not be treated as such for U.S. tax purposes.

When the combination of shares held by a Canadian entity, its related parties and up to four arm's length Canadian entities and their related parties results in control of a FA, the FA is considered a controlled foreign affiliate **("CFA")**. Additional disclosure and tax consequences apply to a Canadian entity from ownership of a CFA. One such tax consequence is the potential application of the Foreign Accrual Property Income **("FAPI")** rules, which can result in the immediate income inclusion and taxation of the CFA's income even if the funds have not been distributed.

New Deadlines and New Form

Prior to tax years beginning in 2020, the deadline for filing Form T1134 was 15 months after the end of the Canadian entity's tax year. For tax years that begin in 2020, the deadline has been reduced to 12 months after the end of the Canadian entity's tax year. For tax years that begin after 2020, Form T1134 will need to be filed within 10 months of the end of the Canadian entity's tax year.

For example, the Form T1134 due dates for a Canadian entity with a December 31 tax year would be:

Tax Year Ending	Months After Year End	Filing Due Date
December 31, 2019	15 months	March 31, 2021
December 31, 2020	12 months	December 31, 2021
December 31, 2021	10 months	October 31, 2022

There are also significant changes to Form T1134 for tax years after 2020. The new form has expanded from six to 12 pages and will require significantly more disclosures including:

- Gross revenues earned by type and further categorized by arm's-length and non-arm's length sources;
- Identification of lower-tier non-CFAs;
- Number of employees employed by the FA;
- A breakdown of and changes to the adjusted cost base of the FA's preferred and common shares directly owned;
- FAPI, foreign accrual property losses and foreign accrual capital losses;
- Whether the foreign affiliate dumping rules apply to the parties, including whether a pertinent loan or indebtedness ("PLOI") election has been made;

- Details on any upstream loans; and
- Details on any transactions of a CFA related to surplus accounts, reorganizations, and liquidations and dissolutions.

Consequences of Late Filing

There is a basic penalty of $25 per day up to 100 days with a minimum of $100 and maximum of $2,500 for each Form T1134 not filed. The penalties can rise to $1,000 per month to a maximum of $24,000 for each Form T1134 not filed where the Canada Revenue Agency **("CRA")** issues a demand to file and the Canadian entity knowingly or under circumstances amounting to gross negligence fails to comply with the demand. Additional penalties may also be levied depending on the circumstances.

Where there are substantial penalties and interest involved, participating in the CRA's Voluntary Disclosure Program **("VDP")** should be considered. Participation in the VDP allows for requests of leniency to potentially reduce the penalties and interest that would otherwise be levied.

Administrative Relief

The CRA provides administrative relief from filing a Form T1134 where the Canadian entity's total cost of the interest in all FAs was less than $100,000 (for years after 2020, the threshold will be $100,000 per FA) and the FA is dormant/inactive.

A dormant/inactive FA is one where in its most recent tax year it:

1. Had gross receipts of less than $25,000 (for years after 2020, the threshold will be $100,000); and
2. At no time had assets with a total fair market value of more than $1,000,000.

Gross receipts refer to any receipt received in the year and includes non-revenue receipts, such as loans. Essentially, there must be minimal activity in the FA.

Next Steps

The shorter deadlines for Form T1134 will make filing an already complicated form even more difficult. While the CRA offers some limited relief from the filing requirements for Form T1134, it is important to keep track of the revised deadlines to avoid potentially substantial penalties.

For specific tax advice regarding your situation, please contact one of the tax professionals at Crowe Soberman LLP to assist you.

This article has been prepared for the general information of our clients. Specific professional advice should be obtained prior to the implementation of any suggestion contained in this article. Please note that this publication should not be considered a substitute for personalized tax advice related to your particular situation.

Connect with the Authors

Daniel Ling, CPA, CA Manager, Tax

Daniel Ling is a Manager in the Tax Group at Crowe Soberman. He has extensive experience in the areas of personal and corporate income tax compliance, foreign affiliate reporting and surplus calculations, and advising on international tax obligations in Canada. Connect with Daniel at daniel.ling@crowesoberman.com.

Aaron Schechter, CPA, CA, TEP Aaron Schechter Professional Corporation, Partner, Tax

With over 20 years of experience in providing tax advice to privately owned and owner-managed clients, Aaron Schechter has demonstrated his dedication to ensuring his client's taxes are minimized and their capital is maximized. Connect with Aaron at aaron.schechter@crowesoberman.com.

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