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Ms. Lisa Anawati
Director General
Canada Revenue Agency
344 Slater Street
Ottawa, Ontario K1A 0L5
Contact: lisa.anawati@cra-arc.gc.ca
Tel: 613-952-7425/Fax: 613-941-9673

Dear Ms. Anawati:

Re: IIROC-Regulated Investment Dealer Response with Proposed T1135 Requirements

The Investment Industry Association of Canada (IIAC) is pleased to present recommendations of registered securities dealer members regulated by the Investment Industry Regulatory Organization of Canada (IIRC) related to Canada Revenue Agency's (CRA's) Form T1135, Foreign Income Verification Statement. We had the benefit of working with a good number of Canada's leading tax organizations and professional services firms that are members of CPA Canada, tax software providers, as well as the Investment Funds Institute of Canada. We have read and are in general agreement with CPA Canada's letter, and urge consideration of their comments in areas outside the general scope of our members' expertise in representing the principles of fairness and other CRA commitments to taxpayers. In particular, taxpayers/investors should not be liable if a T-slip or foreign issuer makes a correction meaning an exception should not have applied or, for example, if a near-year-end purchaser buys after an ex-dividend date and does not record a specified foreign property on which others holding the same security received a T5.

Below, our suggestions focus solely on the contents of the T1135 – Foreign Income Verification – statement. They are based on our understanding that the CRA wishes to avoid changes to the T1135 form due to CRA systems development already underway, but can make changes to instructions and presumably titles/text on the form. They also are premised on what we believe that taxpayers/investors and their tax advisors can obtain in a straightforward way. We are aware that CPA Canada has recommended a Category 7, and assuming that CRA is in agreement, we believe that our proposals easily could be included in a separate section.

The comments, for convenience of review, follow the order in which the relevant text appears on the T1135 form.

(1) Checkbox option ("If the T3/T5 reporting exception is being utilized for any specified foreign property, check this box ☐")

We recommend that the exception should be extended to include T5013s and T5008s, at least where a position is fully disposed of, that reflect, respectively, income or proceeds of sale from specified foreign investments. The reason to exclude T5013s and T5008s (for full dispositions) is the same as that to exclude T3s and T5s: the income/loss or amounts allowing the calculation of capital gains/losses are reported to the CRA on Schedule 3 accompanying the taxpayer's/investor's tax return in the year of the disposition. To the extent that the CRA is concerned about securities that do not pay distributions and are held for years, these securities will be captured on T1135s in the years prior to the disposition since they will not fall under the T3/T5/T5013/T5008 exception.

The T1135 instructions could be amended by simply adding the two 'T' slips or at least along the lines of the following *(**Note**: We continue also to support adding an exclusion to the following text for taxpayers/investors invested with Canadian 'registered securities dealers' who buy specified foreign property in an ex-dividend period where other holders of that property received a T3/T5)*:

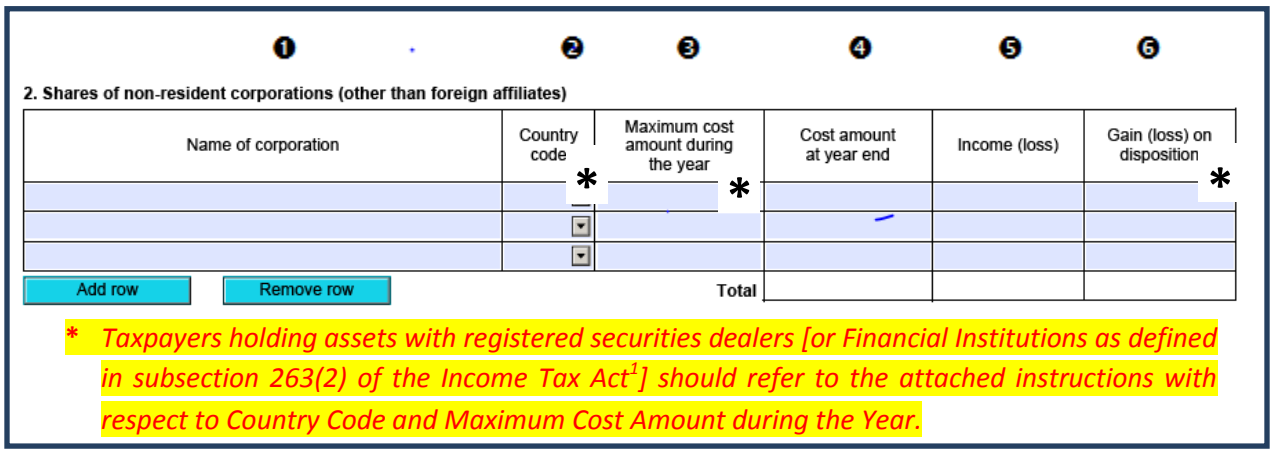
> "Where the taxpayer has received, or will receive, a T3, ~~or~~ T5 or T5013 from a Canadian issuer for all of the income earned in respect of a specified foreign property for the particular tax year, or a T5008 from a Canadian issuer for the proceeds of sale from of all the units of a specified foreign property, that specified foreign property may be excluded from the Form T1135 reporting requirement for that tax year."

Rationale: The 1998 June Report of the Auditor General of Canada: *Report to the House of Commons and to the Ministers of Finance and National Revenue—Examination of the Requirement to Report Specified Foreign Property Under Section 233.3 of the Income Tax Act* (the "AG Report"), said "For example, foreign assets that are held in Canadian financial institutions are already subject to third-party reporting and to scrutiny by Revenue Canada." This is even truer now, with the T1135 form's conversion to one that transmits data electronically. This will facilitate CRA analysis and identification of areas of concern. While the reporting on T5013s of specified foreign property is rare (our members are only aware of Brookfield Limited Partnership), excluding all investment-related 'T' forms, including T5013s and T5008s, will make the T1135 form easier for investors/taxpayers to understand and complete, and reduce the work of tax professionals and cost for taxpayers/investors.

The Auditor General's Report also highlights the effectiveness of penalties for failure to report. It noted: "Revenue Canada is able to apply these penalties to domestic third parties because it has the jurisdiction to do so and because the third parties usually have assets in Canada from which to pay the penalties." The certification, now including the wording "Sign here (It is a serious offence to file

a false statement.)", provides additional incentive for due diligence, and adding reference to the nature of the fines would have an even greater impact. The additional penalties announced last year will have the effect of incenting taxpayers to report completely or, likely, to over-report. If the concern is that the CRA will not be able to go back for as long as income may have been being received by using the General Anti-Avoidance Rule (GAAR), then legislative changes could be made to address this.

(2) With respect to the fields in the relevant sections for investments, we use the following extract from the T1135 form as the basis for our comments that follow.



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2. Shares of non-resident corporations (other than foreign affiliates)

Name of corporation	Country code *	Maximum cost amount during the year *	Cost amount at year end	Income (loss)	Gain (loss) on disposition *
Add row / Remove row		Total			

* *Taxpayers holding assets with registered securities dealers [or Financial Institutions as defined in subsection 263(2) of the Income Tax Act[1]] should refer to the attached instructions with respect to Country Code and Maximum Cost Amount during the Year.*

From left to right in the above table, and cross-referenced to the numbers 1 to 6 shown, with the example of a possible footnote highlighted in yellow:

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[1] Proposed subsection 263(2) of Part XVIII under *Legislative Proposals Relating to the Canada–United States Enhanced Tax Information Exchange Agreement* provides an alternative that might be used if 'registered securities dealer' is too narrow: **"**For the purposes of this Part, "Canadian financial institution" and "reporting Canadian financial institution" each have the meaning that would be assigned by the agreement, and the definition "non-reporting Canadian financial institution" in subsection (1) has the meaning that would be assigned by that subsection if the definition "Financial Institution" in subparagraph 1g) of Article 1 of the agreement were read as follows: g) The term "Financial Institution" means any Entity that is a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company, and that is

(1) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada, or a bank to which that Act applies;
(2) a cooperative credit society, a savings and credit union or a caisse populaire regulated by a provincial Act;
(3) an association regulated by the *Cooperative Credit Associations Act*;
(4) a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial Act other than one enacted by the legislature of Quebec;
(5) a financial services cooperative regulated by *An Act respecting financial services cooperatives*, R.S.Q., c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c. 77;
(6) a life company or a foreign life company to which the *Insurance Companies Act* applies or a life insurance company regulated by a provincial Act;
(7) a company to which the *Trust and Loan Companies Act* applies;
(8) a trust company regulated by a provincial Act;
(9) a loan company regulated by a provincial Act;
(10) a person or an entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services; or
(11) a department or an agent of Her Majesty in right of Canada or of a province that is
(12) engaged in the business of accepting deposit liabilities."

1. **Name of Corporation:** Unchanged: the taxpayer/investor writes the name of each non-Canadian corporation, trust or indebtedness (if the security does not fall under the T3/T5/T5013/T5008 exception) as it appears on an account statement.

2. **Country Code:** Specified foreign property held with Canadian financial institutions, such as 'registered securities dealers' as defined in subsection 248(1) of the *Income Tax Act (or as noted in footnote 1 above)*, should be permitted to write CAN, a straightforward addition to the current drop-down selection list. This has a double benefit. It will help the CRA triage which holdings are held outside of the country with third parties over which the CRA has no control, as described in the Auditor General's Report, and which are more rightly the subject of CRA concern, from those held with Canadian financial institutions that are subject to timely, automatic tax reporting. It also will facilitate reporting by, and reduce costs for, Canadian taxpayers keeping their financial assets in Canada, allowing the targeting of holdings that are more likely to be issues of concern for the CRA.

3. **Maximum Cost Amount during the Year *[Changed to 'Market Value at Year-End']*:** Requiring taxpayers/investors with financial assets held with registered Canadian securities dealers (or financial institutions as defined in proposed subsection 263(2) of the *Income Tax Act*) to report Market Value at Year-End will require a footnote and instructions change only, or a text field change, but not (we believe) a systems change for the CRA**.** We suggest market value at year-end, accompanying cost at year-end, to provide the CRA with additional information for analytical purposes and as the information is obtainable by taxpayers/investors and their tax advisors.

   With respect to 'Maximum Cost Amount during the Year', if the investment was sold, its cost should be reported as part of the gain/loss computations. If it was not, the year-end cost should be a reasonable representation of cost in the year. We provided information last fall explaining that securities dealers and their taxpayers/investors have no need for, and therefore there is no practical facility to track, a daily cost balance to identify maximum cost information. This search would add considerably to the work and costs of taxpayers/investors and/or their tax professionals. Even month-end cost information would require additional work (for example, no statements need currently be provided to taxpayers/investors by dealers in months where there is no trade activity). That is, it would require similar verification month by month, security by security, aggregated across holdings at different dealers by taxpayers or their tax advisors. We believe that this would yield less demonstrable value to the CRA in its tax-evasion-fighting efforts than the cost of the time and expense for taxpayers/investors and tax professionals to provide it.

   We continue to be persuaded that cost at tax year-end (December 31 for individuals) discussed below, will be the maximum cost during the year in the vast majority of cases, or there will have been a full or partial disposition, captured on a T3, T5, T5013 or by way of a T5008.

- If there were a full disposition (100% of position sold) – then the security will not need to be listed on the T1135 since it will be reported on a permitted exception assuming such 'T' slips are expanded to include T5008s.

- If there were a partial disposition during the year, then the investor would be required to report year-end cost on the T1135 (unless partial dispositions of specified foreign property are excepted from reporting).

4. **Cost Amount at Year-end:** Cost amount at year-end for all specified foreign property other than those that fall under one of the exemptions..

5. **Income (Loss):** May be $0 assuming the taxpayer/investor (as permitted under what we hope will be the T3/T5/T5013/T5008 exception) does not report those with respect to which a Canadian tax slip has been received and there were no partial dispositions.

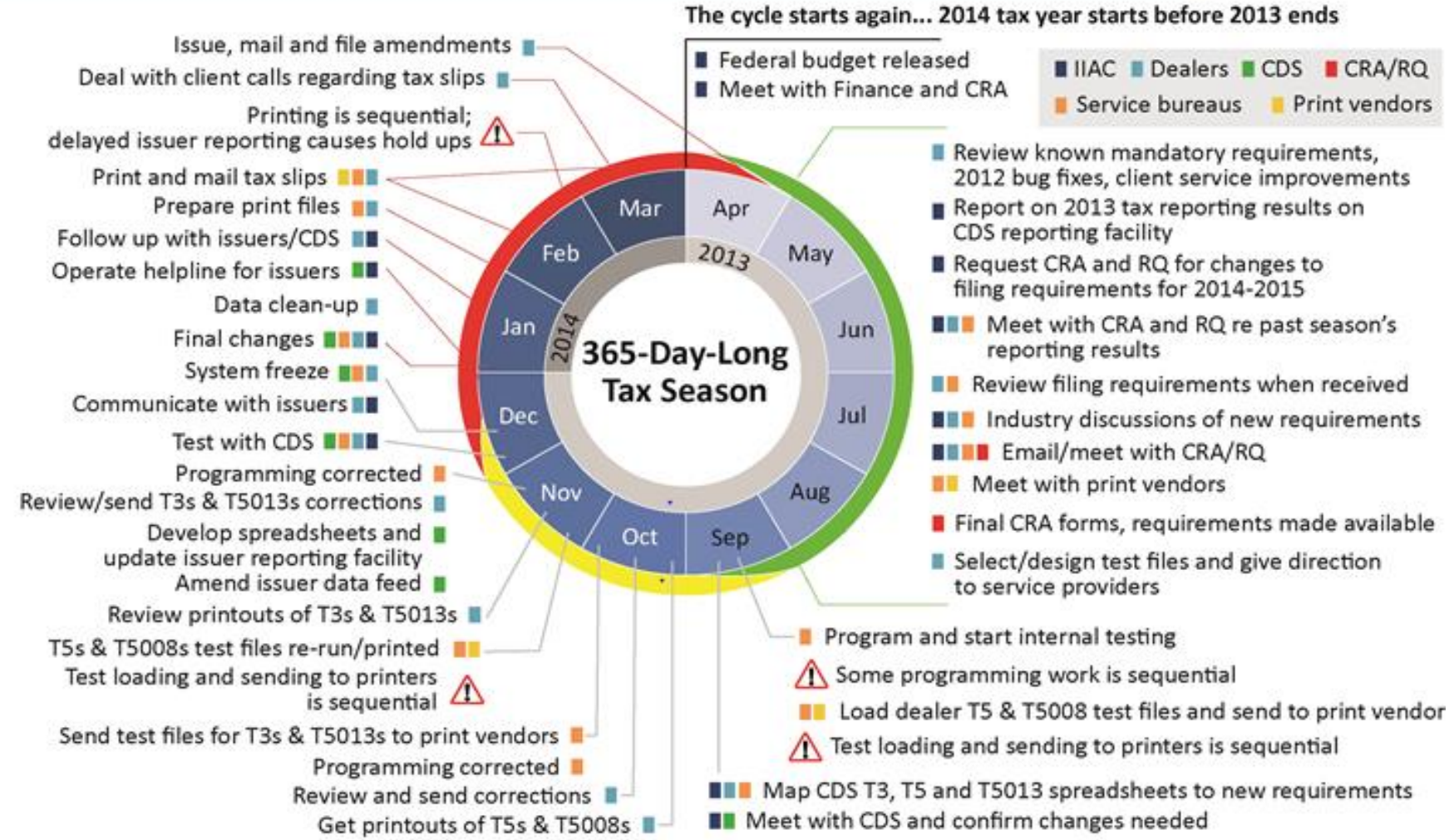
6. **Capital Gain (Loss):** Will be $0 or if all T5008 property is not excluded, capital gains (losses) only where there has been a partial (not 100%) disposition of a specified foreign property held with a Canadian registered securities dealer (or financial institution described in proposed subsection 263(2)of the *Income Tax Act*). Something along the lines of the asterisked wording highlighted in yellow in the diagram above could be added to cross-reference the instructions. These could note this T5008 exception is only provided when there has been a total disposition. This will at least avoid the taxpayer/investor and his/her tax advisor having to look for and total gains on any specified foreign property that does not appear on the year-end statement. The instructions, assuming the field is programmed only to accept a number and will not allow cross-referencing of the relevant detailed schedule, could simply read "if holding assets with a Canadian registered securities dealer, enter '0' if fully disposed of" (or, for example, CRA could decide to ask for a '3' to signify Schedule 3).

(3) Transition Issues: Should the final requirements be as suggested above, we believe no additional transition rules will be required. Should there be material differences, our members and their service providers will assess the implications for implementation time, and it may only be possible to use the new requirements on a go-forward basis if the data is not reasonably available. It is very important for specifications to be final before any systems development work is done; we are attaching a diagram previously shared with another part of the CRA shows that work involved in tax reporting is already a year-round affair. This past year, it became almost impossible to implement the T5013 changes due to late receipt of the form, Guide, XML and "backer" information and errors identified in what was received. We believe that the CRA is also familiar with the challenges of systems changes.

In conclusion, we echo CPA Canada's recommendation that the CRA should formalize a process for regularly engaging the tax, investment and other interested communities in consultations on complex new and revised tax forms within a reasonable amount of time prior to a new form's release. Under any scenario, we are pleased by the opportunity to work with you until this issue is resolved effectively for all parties.

Yours truly,

Cc: Guy Bigonnesse, CRA
Ken Anders, CRA
Gabe Hayos, CPA Canada
James Carman, Investment Funds Institute of Canada
Katie Walmsley/Julie Cordeiro, Portfolio Management Association of Canada



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