



TaxNewsFlash

Canada

Mandatory Reporting Rules — CRA Clarifies New Obligations

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Canadian individuals and businesses should be prepared to report certain transactions under expanded new mandatory disclosure rules. These expanded rules generally require individuals, corporations, trusts and partnerships to promptly disclose certain “reportable transactions” to the CRA that are entered into as of June 23, 2023, among other new obligations related to “notifiable transactions” and “uncertain tax treatments”. The CRA recently provided additional guidance that seeks to clarify some aspects of these rules, including timing issues, certain hallmarks of reportable transactions, how the rules interact and other administrative concerns. Note that the CRA has not yet officially designated any notifiable transactions under these rules.

Taxpayers should review this new guidance to help determine whether they may have new reporting obligations under these rules. In light of the CRA’s clarifications, taxpayers should identify any transactions that may be affected by these rules and implement a process to identify and track all transactions and uncertain tax treatments that must be reported. Taxpayers who fail to make the proper disclosures may be subject to onerous penalties as well as extended reassessment periods. Taxpayers should also be aware of Quebec’s disclosure rules that may apply to their situation.

Background

Finance originally announced measures in the 2021 federal budget to expand Canada’s existing mandatory disclosure rules for reportable transactions and introduce new reporting requirements for notifiable transactions and uncertain tax treatments. Under these expanded rules, individuals, corporations, trusts and partnerships are generally required to file an information return to disclose certain “reportable transactions”, as well as “notifiable transactions” (which have not yet been officially announced) to the CRA.

These rules apply to transactions entered into as of June 23, 2023. As a result, a taxpayer must now inform the CRA of a reportable or notifiable transaction by filing an information return within 90 days of the earlier of:

- The day the taxpayer becomes contractually obligated to enter into the transaction, and
- The day the taxpayer enters into the transaction.

This requirement also applies to other persons who enter into these transactions for the taxpayer's benefit, as well as to promoters or advisors (and non-arm's length persons who are entitled to receive a fee with respect to the transaction) who offer such arrangements. Persons who fail to disclose reportable or notifiable transactions as required face penalties.

In addition, certain corporate taxpayers will also have to disclose information about uncertain tax treatments reflected in their financial statements for taxation years that begin on or after January 1, 2023. These rules include a separate reporting that is due at the same time the reporting corporation's income tax return is due, and is subject to separate penalties.

For details, *TaxNewsFlash-Canada* 2023-21, "[Get Ready for New Mandatory Reporting Obligations](#)".

Reportable and notifiable transactions

The CRA's new guidance on reportable and notifiable transactions may be helpful to taxpayers who are required to report under these rules. Affected taxpayers must notify the CRA of reportable and notifiable transactions on Form RC312, "Reportable Transaction and Notifiable Transaction Information Return", although the revised form that must be used under these new rules has not yet been released.

Application for reportable transactions that straddle June 22, 2023

In its guidance, the CRA clarifies that where a reportable transaction "straddles" June 22, 2023 (i.e., the date the rules received Royal Assent), the transaction is subject to these rules. For example, the CRA advises that if a person enters into a series of transactions that straddle June 22, 2023, the reporting requirement will be triggered with the first reportable transaction entered into subsequent to this date.

KPMG observation

The CRA previously commented that, in the context of the General Anti-Avoidance Rule, a designation or election under the *Income Tax Act* constitutes a transaction. If the CRA's interpretation also extends to the Mandatory Disclosure Rules, which is not yet

clear, taxpayers would have to also consider these actions and their timing to comply with the reporting deadlines.

Hallmarks for reportable transactions

The CRA also provides guidance on the fee hallmarks and the contractual protection hallmarks used to determine whether a transaction is subject to the reportable transaction rules. Specifically, the CRA provides further examples of common billing practices and fee arrangements that would generally not result in a reporting obligation under the fee hallmark (absent another hallmark being present), including:

- Certain standard fees generally available to the public under normal commercial terms and in comparable circumstances by a financial institution
- Advisor fees contingent on the number of returns or elections prepared and not the attainment of the tax benefit.

The CRA also notes that standard price adjustment clauses are not considered to meet the contractual protection hallmark.

The CRA provides further guidance on standard representations and warranties, as well as indemnities in arm's-length merger and acquisition transactions, and notes that such agreements would generally not constitute contractual protection.

KPMG observation

Although the CRA's comments that standard commercial agreements are generally not considered a contractual protection is helpful guidance, taxpayers should exercise caution and may want to limit their reliance on the guidance to the included specific safe harbour examples. The CRA's guidance includes caveats and implies that taxpayers will still be required to report in cases of aggressive tax planning. However, it is unclear what constitutes "aggressive tax planning" beyond the provided safe harbour examples.

Advance income tax rulings

In its guidance, the CRA specifies that a taxpayer that has received an advance income tax ruling regarding a transaction that is considered reportable may attach a copy of that ruling to Form RC312. In this case, the CRA says the taxpayer does not need to include detailed reporting other than the identity of the reporting person. However, any transaction not disclosed in the ruling that is otherwise subject to the reportable transaction regime would need to be reported.

Recurring tax benefit/transactions

The CRA clarifies that taxpayers only need to report a recurring tax benefit once, as long as the same tax benefit recurs and there are no new transactions. To report this recurring benefit for either a reportable or notifiable transaction, the relevant person can make a disclosure on Form RC312 at the time the initial transaction is reported.

Designated notifiable transactions

Note that although the CRA and Finance previously released a list of sample notifiable transactions for comment, the CRA has not yet officially designated any notifiable transactions. The guidance advises that a list of these transactions will be posted on the CRA's website.

KPMG observation

Taxpayers will have to act fast to meet their obligations once the CRA and Finance officially announce which transactions are considered notifiable transactions. In particular, these taxpayers will have to identify any planned transactions that may need to be reported under these rules and disclose the required information within 90 days of entering into these transactions.

Interaction of rules

The CRA also states that, where a transaction could be considered both a reportable transaction and a notifiable transaction, the relevant person would indicate this on Form RC312 and would not require two separate disclosures.

KPMG observation

The CRA's clarifications on recurring benefits and transactions that could be considered both reportable and notifiable should be welcome news for taxpayers who were concerned that certain transactions may have to be reported more than once.

Reportable uncertain tax treatments

The CRA's new guidance on uncertain tax treatments also includes some welcome clarifications on how taxpayers in special situations must disclose reportable uncertain tax treatments. In general, affected taxpayers must complete and submit new Form RC313, "Reportable Uncertain Tax Treatments", which has also not yet been released. This form is due at the same time that the reporting corporation's Canadian income tax return is due.

Reporting requirements

In its guidance, the CRA clarifies that a reportable uncertain tax treatment that is included on the balance sheet of the financial statements must be reported, even if the taxpayer

took and reported this uncertain tax position in a previous tax year. An amount is not required to be reported if it is released from the audited financial statements in the year.

The CRA also notes that each corporation must separately disclose its reportable uncertain tax treatments on Form RC313. In this case, consolidated reporting is not permitted. The CRA further states that, where a corporation is included in multiple audited financial statements, the corporation must disclose reportable uncertain tax treatments that were recorded in any of those statements.

Additionally, the CRA's guidance provides that reporting corporations must disclose reportable uncertain tax treatments that relate to their partnership interests according to their proportional share of those interests.

KPMG observation

Note that although the CRA has not yet published the revised Form RC312 or the new Form RC313, these forms are expected to be issued soon.

Quebec mandatory disclosure regimes — Reminder

In addition to the federal mandatory disclosure rules, taxpayers residing in or operating in Quebec may also have to disclose information about certain transactions, under similar provincial reporting requirements. Under these rules, taxpayers may be required to disclose:

- Transactions involving conditional remuneration
- Confidential transactions
- Transactions with contractual coverage
- Nominee agreements
- “Specified transactions” including:
 - Avoidance of the deemed disposal of trust property
 - Payment to a non-treaty country
 - Multiplication of capital gains deduction
 - Tax attribute trading.

We can help

Your KPMG adviser can help you assess the effect of the mandatory disclosure rules. KPMG has developed a global technology tool to assist organizations in assessing whether a particular arrangement meets the definition of a transaction which must be reported to tax authorities and to assist with the reporting process, if required. KPMG has developed a full-service approach in order to ensure organizations remain compliant under these complex

rules. For more details on these rules and how KPMG can help, see [Mandatory Disclosure Reporting \(MDR\)](#).

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