



# TaxNewsFlash

Canada

## Mandatory Reporting — CRA Posts Notifiable Transactions

November 3, 2023

No. 2023-41

Canadian individuals and businesses should review the CRA's new list of officially designated "notifiable transactions" under the expanded new mandatory disclosure rules. In particular, individuals, corporations, trusts and partnerships should consider this list and identify whether they have to disclose information about certain transactions generally within 90 days of either contracting to enter into, or entering into, the transaction. The requirement to report designated notifiable transactions to the CRA is a part of several recent revisions to the mandatory disclosure rules, which also expand taxpayer reporting obligations related to "reportable transactions" and introduce new disclosure requirements for certain corporations for "uncertain tax treatments" reflected in their audited financial statements.

The CRA's long-awaited list identifies the following "notifiable transactions", effective November 1, 2023:

- Straddle loss creation transactions using a partnership
- Transactions to avoid a deemed disposal of trust property
- Transactions that manipulate bankrupt status to reduce a forgiven amount in respect of a commercial obligation
- Transactions that avoid a deemed acquisition of control by relying on purpose tests in section 256.1
- Back-to-back arrangements.

Taxpayers who have entered into these or other substantially similar transactions must make the required disclosures or they may be subject to onerous penalties as well as extended reassessment periods. In addition, taxpayers should also be aware that the CRA, with Finance’s agreement, can expand the list of designated notifiable transactions at any time.

### **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” and “notifiable transactions”, to the CRA 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.

Although these rules were enacted on June 22, 2023, the CRA did not release a list of “notifiable transactions” that must be reported at that time. Instead, the CRA said that it would publish this list on its public website when available.

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](#)” and *TaxNewsFlash-Canada* 2023-27, “[Mandatory Reporting Rules — CRA Clarifies New Obligations](#)”.

### **Notifiable transactions**

Under new changes to the mandatory disclosure rules, taxpayers are now required to report certain information where they enter into certain transactions that the CRA has designated as “notifiable transactions”, as well as substantially similar transactions. Generally, these are transactions that the CRA has found to be abusive, as well as

transactions identified as transactions of interest (i.e., where the CRA requires more information to determine if a transaction is abusive). Affected taxpayers must notify the CRA of notifiable transactions on Form RC312, “Reportable Transaction and Notifiable Transaction Information Return”. Note that, a transaction that could be considered both a reportable transaction and a notifiable transaction would not require two separate disclosures.

According to the CRA’s new list of designated notifiable transactions, taxpayers are now required to report the following transactions, as well as substantially similar transactions:

- Certain “straddle-loss” transactions where they enter into two or more financial instrument positions concurrently that are expected to generate substantially equal and offsetting gains and losses, deferring the recognition of the gain through the use of partnerships
- Certain transactions in which they transfer trust property to capital beneficiaries on a tax-deferred basis before the 21-year deemed realization date, including an indirect transfer of property to another trust, and indirect transfer of trust property to a non-resident and a transfer of trust value using a dividend
- Certain transactions in which they are temporarily assigned into bankruptcy before settling or extinguishing a commercial debt obligation in order to reduce a forgiven amount of the obligation to nil under the debt forgiveness rules
- Certain transactions in which the taxpayer argues that there is no deemed acquisition of control under the corporate loss trading rules because certain purpose tests are not met
- Certain transactions involving indirect financing arrangements from arm’s-length non-residents where they file, or anticipate filing, their income tax return on the basis that the debt and related interest is not subject to the thin capitalization rules
- Certain transactions involving indirect financing arrangements from non-resident persons where their income tax reporting reflects, or is expected to reflect, the assumption that related interest is not subject to withholding tax or is subject to a lower rate of withholding tax than the rate that would otherwise apply (as well as similar arrangements for rents, royalties or other payments or to effect a substitution of the character of the payment).

#### **KPMG observations**

The list of designated notifiable transactions includes the same transactions previously proposed as sample notifiable transactions in February 2022, with one exception. Although the CRA previously proposed to designate transactions to avoid Canadian-controlled private corporation (CCPC) status as “notifiable transactions”, these transactions are not included on the CRA’s list. However, Finance also proposed new rules for “substantive CCPCs” in the 2022 federal budget to address transactions to

avoid CCPC status. For details of the budget announcement, see *TaxNewsFlash-Canada* 2022-24, “[2022 Federal Budget Highlights](#)”. Note that these substantive CCPC rules have not yet been included in a bill.

The CRA released updated guidance on November 2, 2023 that clarifies that reporting obligations will apply to notifiable transactions that “straddle” the effective date of designation. For example, the CRA notes that if a person contracted to enter into a notifiable transaction prior to November 1, 2023 (the date these notifiable transactions were designated), but did not enter into the relevant transaction until after this date, the reporting obligation applies. Specifically, the 90-day reporting period will begin on the date the taxpayer entered into the transaction. Similarly, if a taxpayer enters into a series of transactions that straddles the November 1, 2023 effective date, they will have to report within 90 days of the first transaction entered into after that date that is a part of a series of transactions that is the same as, or substantially similar, to the designated notifiable transaction.

### Take action now

Taxpayers will have to act fast to identify any planned transactions that may need to be reported under these rules and disclose the required information within 90 days of contracting to enter into, or entering into, these transactions. In addition, taxpayers should be aware that the CRA intends to periodically update its list with additional transactions that will have to be reported as required.

### KPMG observation

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 on your reporting obligations. 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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