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TaxNewsFlash

Canada

Corporations — Report Uncertain Tax Treatments

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Some corporations that file a Canadian income tax return may soon also be required to disclose information about uncertain Canadian income tax treatments in their audited financial statements. Generally, a corporation must meet this new disclosure requirement where it has a minimum amount of assets at the end of the year, and it has audited financial statements, or is part of a group that has audited financial statements, that are prepared under IFRS Accounting Standards (or another country-specific GAAP relevant for public companies). Under this new requirement, which applies to taxation years that begin on or after January 1, 2023, affected corporations with a December 31, 2023 taxation year-end must file the disclosure on or before June 30, 2024. Note that Quebec has also enacted similar measures.

Affected corporations should take action now to gather all the information needed to meet this new obligation. It's important to note that the CRA has confirmed that affected corporations will only have to disclose uncertain tax treatments that relate to an amount under the *Income Tax Act* including, among other items, withholding taxes and investment tax credits. Corporations that do not meet these new obligations may face consequences including extended assessment and reassessment periods and significant penalties.

Background
Finance originally announced measures to expand Canada's existing mandatory disclosure rules in the 2021 federal budget, including new reporting requirements for uncertain tax treatments. Under these expanded rules, certain corporations must disclose information about uncertain tax treatments reflected in their audited financial statements for taxation years beginning on or after January 1, 2023. The disclosure must be submitted to the CRA on or before the day that is six months after the end of the

corporation's taxation year-end. As a result, affected corporations with a December 31, 2023 taxation year-end should be ready to comply with this new reporting obligation on or before June 30, 2024. The new rules were enacted on June 22, 2023.

Quebec also passed legislation that requires affected taxpayers to separately disclose uncertain tax treatments to Revenu Quebec on or before the day that is six months after the corporation's taxation year-end. These provincial measures, which generally follow the federal rules (except for certain province-specific penalties), were enacted on May 7, 2024 and also apply to taxation years beginning on or after January 1, 2023.

For details, see *TaxNewsFlash-Canada* 2023-27, "Mandatory Reporting Rules — CRA Clarifies New Obligations" and *TaxNewsFlash-Canada* 2023-21, "Get Ready for New Mandatory Reporting Obligations".

Reportable uncertain tax treatments

The new reporting requirements under the mandatory disclosure rules require certain corporations to report uncertain tax treatments reflected in their audited financial statements to the CRA. A corporation must report an uncertain tax treatment when all of the following apply:

- The corporation is required to file a Canadian return of income for the taxation year
- The corporation's assets have a carrying value of at least $50 million at the end of the financial year that ends within the taxation year
- The corporation has audited financial statements prepared in accordance with IFRS Accounting Standards or certain other country-specific GAAP relevant for domestic public companies (e.g., U.S. GAAP), or is a member of a group required to prepare audited consolidated financial statements under such accounting frameworks
- The corporation's audited financial statements reflect uncertainty in respect of the corporation's tax treatment of a transaction or series of transactions that the corporation uses (or plans to use) in a return of income or information return.

Affected corporations that are required to file an income tax return in Quebec will also be required to separately disclose uncertain tax treatments to Revenu Quebec.

KPMG observations

The CRA has released additional guidance on how affected corporations can comply with this new obligation, including the types of uncertain tax treatments that must be reported.

In particular, the CRA has clarified that affected corporations will only have to disclose uncertain tax treatments that relate to the *Income Tax Act* under these rules (e.g., amounts related to foreign taxes, provincial taxes and GST do not have to be disclosed).

The CRA has also advised that affected corporations that have a reportable uncertain tax treatment in their audited financial statements must still notify the CRA of that treatment even if they reported this uncertain tax position in a previous tax year. However, corporations are not required to report an amount if it is released from the audited financial statements in the year.

The CRA has also clarified that:

- Each corporation must separately disclose its reportable uncertain tax treatments (consolidated reporting is not permitted)
- A corporation that is included in multiple audited financial statements must disclose its reportable uncertain tax treatments that were recorded in any of those statements
- Reporting corporations must disclose reportable uncertain tax treatments that relate to their partnership interests according to their proportional share of those interests.

Filing

To report uncertain tax treatments for taxation years that begin on or after January 1, 2023, affected corporations must file Form RC3133, “Reportable Uncertain Tax Treatments”, with the CRA on or before the date that their Canadian income tax return for the particular year is due (i.e., June 30, 2024 for corporations with a December 31, 2023 taxation year-end). Note that Form RC3133 is filed separately from the corporation’s income tax return.

Affected corporations that also have to report uncertain tax treatments in Quebec must file a separate disclosure with Revenu Quebec on or before the day that their Quebec income tax return for the particular year is due.

Penalties and extended assessment period

Affected corporations that do not file Form RC3133 on or before the reporting deadline may be subject to certain penalties, including an extended assessment or reassessment period. Where an affected corporation does not file Form RC3133 for a particular taxation year as required, their assessment or reassessment period for that same year is indefinitely extended until it files. Once the disclosure is made, the CRA may issue a notice of assessment or reassessment up to three years from the RC3133 filing date for a Canadian-controlled private corporation (CCPC), or up to four years from the date of filing for all other corporations. Note that the CRA can only assess or reassess under this extension to the extent that the amount corresponds to a transaction or series of transactions related to the reportable uncertain tax treatment.

In addition, affected corporations that fail to disclose uncertain tax treatments as required for taxation years beginning on or after June 22, 2023 may be subject to a penalty of $2,000 per week for each uncertain tax treatment, up to a maximum of $100,000.

Quebec's penalty provisions include similar rules allowing for extended assessment and reassessment periods, and a separate provincial penalty for failure to disclose uncertain tax treatments as required equal to $100 per day for each uncertain tax treatment, up to a maximum of $5,000. The Quebec penalty applies for taxation years beginning after May 6, 2024.

We can help

Your KPMG adviser can help you assess whether your corporation has new compliance obligations under these rules, and if so, how you can effectively meet those obligations. For more details, contact your KPMG adviser.