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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether the normal reassessment period for a T1135 return, required to be filed according to subsection 233.3(3), begins at the same date as the return of income under Part I.

POSITION: Yes.

REASONS: Penalties assessed for the failure to file a T1135 are assessed under Part I and are subject to the normal reassessment period and other limitations in section 152.

September 15, 2015

International and Large Business
Directorate
Aggressive Tax Planning Division
Attention: Steve Shalaby

HEADQUARTERS
Income Tax Rulings
Directorate
G. Godson

2015-057277

T1135 return – normal reassessment period

We are writing in reply to your email of February 24, 2015, requesting our views on the normal reassessment period with respect to the Form T1135, Foreign Income Verification Statement ("T1135").

In your inquiry you have asked for our comments on the view that the normal reassessment period with respect to the T1135 may be considered separate and distinct from the normal reassessment period of the return of income to which it relates. If this view is correct, you suggest that a late-filing penalty provided by subsection 162(7) of the Income Tax Act (the "Act") may be assessed for a T1135, filed after the required date, despite that the normal reassessment period for the return of income for that same taxation year may have ended.

As noted in your inquiry, in a previous document (2002-014662) we provided the view that subsection 216(1) of the Act contemplates the filing of a Part I return with respect to the taxpayer's income from sources referred to in paragraph 216(1)(b), that is separate and distinct from any Part I return in respect of income from other sources.

Our comments

Subsection 233.3(3) of the Act requires a reporting entity for a taxation year or fiscal period to file a T1135 for the year or period, in respect of the entity's specified foreign property. The filing deadline for the T1135 is the same deadline that applies for the purposes of filing the reporting entity's income tax return for the year under Part I of the Act.

Paragraph 216(1)(b) allows a taxpayer to calculate income as though Canadian-sourced rents and timber royalties were the taxpayer's only income. Furthermore, the filing deadline for the subsection 216(1) return, namely, 2 years after the end of the taxation year, differs from the filing deadline provided for under paragraph 150(1)(b) for other Part I income.

We have previously provided the view that an assessment under Part I of the Act for amounts assessable under subsection 216(1) is considered separate and distinct from an assessment of other sources of income taxable under Part I. We concluded there are two separate and distinct normal reassessment periods for these two returns of income. As a result, a taxpayer's subsection 216(1) return could have a different statute-barred date than the taxpayer's income tax return for other sources of income under Part I. This continues to be our view.

The T1135 return is an information return, which provides the details of a taxpayer's specified foreign property. Unlike section 216 of the Act, section 233.3 does not require the income associated with the foreign property to be reported in a separate return of income. Any income with respect to the taxpayer's specified foreign properties, reported in the taxpayer's T1135 return, is required to be included in the taxpayer's return of income.

The failure to file the Form T1135 return on time results in the assessment of penalties under subsection 162(7), which is in Part I of the Act. Therefore, if the taxpayer is liable to a penalty under subsection 162(7) for a late filed Form T1135, the assessment must be made within the normal reassessment period, pursuant to subsection 152(3.1), for Part I unless one of the exceptions provided in subsection 152(4) applies.

We trust these comments will be of assistance.

Yours truly,

Terry Young, CA, CPA
for Director
International Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch