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Tax Alert – Canada

Anticipated list of designated notifiable transactions published by the CRA

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 1 November 2023, the Canada Revenue Agency (CRA) published an initial list of notifiable transactions that are relevant to the application of new information reporting requirements.

The reporting requirements for notifiable transactions were introduced as part of Canada's enhanced mandatory disclosure rules, which became enacted on 22 June 2023, and are intended to provide the CRA with pertinent information relating to tax avoidance transactions that the CRA has found to be abusive and other transactions of interest on a timely basis. For more information on who is subject to the new filing requirements, see EY Tax Alert 2023 Issue No. 29, [New mandatory disclosure rules are now in effect](#).

For purposes of these reporting requirements, a notifiable transaction is defined as a transaction that is the same as, **or substantially similar to**, a transaction designated by the Minister of National Revenue with the concurrence of the Minister of Finance. Similarly, it also means a transaction in a series of transactions that is the same as, or substantially similar to, a series of transactions designated by the Minister of National Revenue with the concurrence of the Minister of Finance.

Effective 1 November 2023, the following transactions and series of transactions are designated as notifiable transactions for the purposes of section 237.4 of the *Income Tax Act* (Act):

- ▶ **NT-2023-01 - Straddle loss creation transactions using a partnership:** The series of transactions designated by the CRA uses a partnership to attempt to avoid the application of the specific anti-avoidance rules related to straddle transactions that were introduced in 2017 and are contained in subsections 18(17) to (23) of the Act.
- ▶ **NT-2023-02 - Avoidance of deemed disposal of trust property:** The designated transactions and series of transactions involve the use of indirect transfers of trust property to another trust, indirect transfers of trust property to a non-resident, and transfers of trust value using a dividend, to avoid or defer the application of the 21-year deemed realization rule under subsections 104(4) and 104(5) of the Act, or the application of the rules in subsections 107(5) and (2.1) of the Act that prevent a subsection 107(2) rollover of a trust's property.
- ▶ **NT-2023-03 - Manipulation of bankrupt status to reduce a forgiven amount in respect of a commercial obligation:** The designated series of transactions involves a taxpayer being temporarily assigned into bankruptcy prior to settling or extinguishing a commercial obligation in order to reduce the forgiven amount to nil and avoid a reduction in the taxpayer's tax attributes and any income inclusion, even though the bankruptcy is subsequently annulled.
- ▶ **NT-2023-04 - Reliance on purpose tests in section 256.1 to avoid a deemed acquisition of control:** The designated transactions and series of transactions involve situations where the taxpayers rely on the purpose tests (e.g., "one of the main reasons" test) in paragraph 256.1(2)(d), paragraph 256.1(4)(a), and subsection 256.1(6) of the Act to avoid a deemed acquisition of control under subsection 256.1(3) or 256.1(6) of the Act.
- ▶ **NT-2023-05 - Back-to-back arrangements:** The designated transactions and series of transactions are those that the CRA and the Department of Finance have identified as having the potential for tax avoidance or evasion, but for which there is a lack of sufficient information to make that determination; specifically, the designated arrangements pertain to the potential avoidance of either the thin capitalization rules or Part XIII tax.

The designated transactions (and series of transactions), which are specified and described in more detail on the CRA web page, [Notifiable transactions designated by the Minister of National Revenue](#), align with five (of the six) sample notifiable transactions identified in the [Department of Finance Backgrounder](#) that was released for consultation on 4 February 2022. The initial list of designated transactions (and series of transactions) released on 1 November 2023 does not include transactions and series of transactions pertaining to the manipulation of Canadian-controlled private corporation status to avoid anti-deferral rules applicable to investment income, which had been identified in the 4 February 2022 Backgrounder.

Substantially similar

As indicated above, the reporting requirements apply not only to the designated transactions (and series of transactions), but also to transactions (and series of transactions) that are substantially similar to a designated transaction (or series of transactions). Under an interpretive rule in subsection 237.4(2) of the Act, two transactions (or series of transactions) will be considered substantially similar if they are expected to obtain the same or similar types of tax consequences and are either factually similar or based on the same or similar tax strategy. The substantially similar test should be interpreted broadly in favour of disclosure so that the requirement to report is not frustrated by a slight variation in the tax consequences, facts or strategy.

Future updates to the list of notifiable transactions

To obtain automatic updates relating to the list of notifiable transactions, you can subscribe to a [new electronic mailing list](#) that the CRA has set up for notifiable transactions. Individuals can subscribe to the mailing list to receive notifications when a new notifiable transaction has been designated by the Minister of National Revenue with the concurrence of the Minister of Finance. Subscribers may also receive other related updates to the mandatory disclosure rules.

Learn more

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