

Advisors Beware – New Notifiable Transactions Released

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Effective November 1, 2023, the Minister of National Revenue has designated five notifiable transactions:

- Straddle loss creation transactions using a partnership;
- Avoidance of deemed disposal of trust property;
- Manipulation of bankrupt status to reduce a forgiven amount;
- Reliance on purpose tests in section 256.1 to avoid a deemed acquisition of control; and
- Back-to-back arrangements to avoid the thin capitalization rules or to reduce or avoid Part XIII tax.

The CRA has provided details of each of the designated notifiable transactions [here](#).

Advisors need to be aware of these transactions to fulfill their own reporting obligations and to be able to advise their clients (promoters, taxpayers and perhaps other advisors) of the clients' reporting obligations. "Advisor" captures any person who provides, directly or indirectly in any manner whatever, any assistance or advice with respect to creating, developing, planning, organizing or implementing the notifiable transaction. Subject to a due diligence defence, a failure to file an information return when required will cause the advisor to be liable to a penalty in excess of the fees charged by the advisor in respect of the notifiable transaction.

Overview of the Rules

A notifiable transaction is a transaction or series of transactions that is designated as such by the CRA with the concurrence of the Minister of Finance as well as transactions and series of transactions that are substantially similar to a designated notifiable transaction. A substantial similar transaction would include any transaction or series of transactions expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy.

In general, the following persons are required to file an information return (Form RC312) with respect to a notifiable transaction:

1. every person who will realize a tax benefit from the notifiable transaction or a series of transactions that includes the notifiable transaction;
2. every person who entered into the notifiable transaction for the benefit of a person who will realize the tax benefit;
3. every advisor or promoter in respect of the notifiable transaction; and
4. every person who does not deal at arm's length with an advisor or promoter (acting in that capacity with respect to the notifiable transaction) and who is, or could become, entitled to a fee that is in respect of the notifiable transaction.

The information return must be filed generally within 90 days of the taxpayer entering into, or becoming contractually obligated to

enter into, the notifiable transaction. Failure to file penalties for the taxpayer is either \$500 or \$2,000 per week to a maximum of the greater of (i) \$25,000 or \$100,000 and (ii) 25% of the tax benefit, with the higher penalty applying to corporate taxpayers with a carrying value of assets of at least \$50 million. Each promoter and advisor can be subject to penalties totalling 100% of the fees charged for the transaction or series of transactions plus \$10,000 plus \$1,000 per day of non-compliance to a maximum of \$100,000. Notably, the penalty of 100% of fees plus \$10,000 applies to any late filing (even if only one day late). Furthermore, there may be circumstances where “fees charged” exceed the “fees received”.

CRA Mailing List

The CRA recently released an electronic mailing list to notify subscribers when a new notifiable transaction has been designated by the Minister. The CRA indicates that subscribers to this new mailing list may also receive other related updates to the mandatory disclosure rules. To sign up, [click here](#).

The CRA warns that they do not assume any responsibility for the timely delivery of information updates through this service and that the use of this service is not a substitute for regularly checking a pending designated notifiable transaction webpage.

For a detailed overview of the notifiable transaction provisions and the mandatory disclosure rules [click here](#).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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