****This document was made available by the CRA to CPA Canada in English only. CRA will be posting this, along with the French version, on their website.**

This information is provided for expediency given the rapidly approaching Dec 31, 2021, taxation year end filing deadlines. Please check the response posted on the CRA Q&A page for any variation in content.

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1. Following up on the 20% voting rights question (below), it appears the CRA takes the position that voting rights are determined based on the legal voting rights that the shares provide. Altering the prior example a little, assume Mr. A is the reporting entity owning 50% (the prior example was 60%) of a first tier FA (FA1) that owns 25% of a second tier FA (FA2). Based on what CRA had indicated, it would seem that since Mr. A does not control FA1, then Mr. A does not have indirectly 20% voting rights of FA2 and financial statements would not be required for FA2. Can CRA confirm if this is correct?

2. When examining voting rights, should we consider the impact of any shareholder's agreement (including both unanimous and non-unanimous agreements)?

CRA Response:

Please note that we have combined these two questions with slight modifications to give proper context for our response – see below.

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1. As explained in the instructions to Part II Section 2 (page 15 of the form in PDF format), a reporting entity is required to include the foreign affiliate's financial statements with their T1134 filing if it owns, directly or indirectly, shares representing at least 20% of the voting rights of that affiliate. Within this context, please provide CRA's position on the following:

   (a) Mr. A is the reporting entity owning 60% of a first tier FA (FA1) that owns 25% of a second tier FA (FA2). Is Mr. A required to provide the unconsolidated financial statements of FA2?
   (b) Mr. A is the reporting entity owning 50% of a first tier FA (FA1) that owns 25% of a second tier FA (FA2). Is Mr. A required to provide the unconsolidated financial statements of FA2?
   (c) In respect of the determination in Part (b), above, would the existence of a unanimous or non-unanimous shareholder's agreement be relevant?

CRA Response:

(a) In this scenario, CRA would require Mr. A to include FA2's unconsolidated financial statements when filing Form T1134. Through his direct ownership in the shares of FA1, Mr. A indirectly owns 25% of the shares in FA2. As such, the condition that the reporting entity (Mr. A) owns, directly or indirectly, shares representing at least 20% of the voting rights of the affiliate (FA2) is met.

(b) To have an appropriate basis for this determination, all facts and circumstances surrounding the ownership structure of FA1 must be examined. For example, who owns the remaining 50% of the FA1 shares? What is the relationship between Mr. A and the other shareholders in FA1? Are there any agreements or arrangements in place that would affect Mr. A's ability to direct or otherwise influence the decisions at FA1? And how can such agreements or arrangements in turn, affect Mr. A's ability to direct or otherwise influence the decisions at FA2? To the extent that Mr. A is in a position to exercise influence over FA2's decisions that are commensurate with what a shareholder can expect from holding at least 20% of the voting rights of that affiliate, Mr. A is expected to include the unconsolidated financial statements of FA2 when filing Form T1134. If Mr. A is uncertain about whether the threshold has been met, they should include the foreign affiliate's financial statements to ensure their filling obligations have been met.

(c) Consistent with our response to part (b) of this question above, specific terms and conditions set out in any unanimous or non-unanimous shareholder's agreement(s) can affect how decisions are made at the foreign affiliate level and, as a result, can be relevant to the 20% determination.

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3. Based on a resource from the OECD website (https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/), certain jurisdictions do not issue taxpayer identification numbers (e.g., Cayman Islands). How do we adequately disclose this information to the CRA so to avoid any penalties? Do we simply put "N/A" for the Taxpayer Identification Number under Part II Section 1A of the T1134 Supplement for the jurisdiction that does not provide TIN?

CRA response:

For foreign affiliates that reside in jurisdictions that do not issue taxpayer identification numbers, NA is an acceptable response. To ensure that no penalty will result, reporting entities should explain the reason for non-disclosure in Part IV of the form.

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4. If a reporting entity does not have a direct ownership in a dormant affiliate, does one leave the "Cost Amount" entry as zero when filling out Part I, Section 3D, Dormant affiliate?

CRA Response:

Yes.

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5. The term "transformation transactions" is used throughout the form. The only section that provides any form of description of the types of transformation transactions is Section 3B(1) of the T1134 supplement (Transformation transactions at the Canadian reporting entity level). Are these the only types of transformation transactions? There does not appear to be any other references to this term throughout the form nor references provided in the instructions. What

about the events disclosed in question 5 of the same section? Are these also considered to be transformation transactions?

CRA Response:

The term "transformation transactions" is not defined per se as referring to specific provisions in the Income Tax Act ("the Act"). The type of "transformation transactions" that are of interest to the CRA are provided within each question to which a reporting entity is required to respond.

These types of transactions can result in changes in the ownership structure of a multinational group. The types of transformation transactions that are of interest to the CRA include, but are not limited to, transactions that will have an impact on either a reporting entity's income as determined under Part I of the Act or the surplus and underlying tax accounts of its foreign affiliates. Within this context, question 5 in Part II Section 3. B. is intended to be a catch-all for any other types of share or "transformation" transactions that are not specifically identified in the questions before it.

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6. In Section 3B(2) of the T1134 Supplement, we are asked whether the reporting entity, or any member of the related Canadian group, or another foreign affiliate of the reporting entity (-ies) acquire or dispose of a share of the capital stock of the foreign affiliate? If the answer is yes, we are required to disclose the relevant reporting entity in a table. The reporting entity is typically the Canadian entity filing the form. Is this the correct disclosure required? What should be disclosed if the acquisition or disposition was carried out by another foreign affiliate of the reporting entity? Should the table be left blank?

CRA Response:

The table is intended to identify the specific reporting entity within a related Canadian group that has either acquired or disposed of foreign affiliate shares itself or whose foreign affiliate has acquired or disposed of foreign affiliate shares during the reporting period.

In a single-entity filing scenario, the reporting entity will be the one identified in this table if the answer to the leading question for Section 3.B.2 is "yes".

In a group filing scenario, the response will depend on which specific reporting entity within the related Canadian group has itself, or indirectly through a foreign affiliate, either acquired or disposed of the shares. As such, if it is "another foreign affiliate" of a reporting entity that has acquired or disposed of shares in a foreign affiliate, the identity of the reporting entity in respect of which that "another foreign affiliate" is a foreign affiliate should be provided in the table. The table should not be left blank if the response to the leading question is "yes".

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7. Part I Section 3 of the T1134 Summary requires disclosure of all the members within a Canadian related group that will be doing group reporting. It appears that the term related would be

determined by the rules set out in the Income Tax Act. Can CRA provide guidance on how to determine whether a partnership is related to another entity, given that a partnership is generally not considered to be related to anyone?

CRA Response:

For the purposes of Part I Section 3 of the T1134 Summary, whether a partnership is part of a related group can only be made after a careful examination of all relevant facts and circumstances. As such, this determination needs to be made on a case by case basis.

We trust that this is sufficient for your purpose. If you have any questions, please do not hesitate to contact the undersigned.

Regards,

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