



# NAVIGATING THE MANDATORY DISCLOSURE RULES

## Mandatory disclosure rules

The mandatory disclosure regime is a set of reporting requirements intended to provide the Canada Revenue Agency (CRA) with additional information to identify potential aggressive tax planning strategies and those engaged in such planning. The following is a high-level introduction to these rules, which are comprised of reportable transactions, notifiable transactions and reportable uncertain tax treatment.

The rules apply to individuals, corporations, partnerships, and certain trusts and estates. There is no limitation period with respect to the CRA's ability to assess the penalties listed below.

### RSM services include:

- Determining potential reporting requirements
- Assisting with tax reporting compliance
- Structuring transactions and series of transactions to encompass mandatory disclosure reporting requirements

## Reportable transaction rules

The reportable transaction rules are engaged where there is an avoidance transaction and where one of three hallmarks is present. An avoidance transaction is any transaction or series of transactions where one of the main purposes is to obtain a tax benefit.

The three hallmarks are:

### ▪ Contingency fee hallmark:

An advisor or promotor charges a fee that is contingent on the tax benefit that results from the transaction or series excluding any fees in connection with preparation of Form T661—Scientific Research and Experimental Development.

### ▪ Confidential protection hallmark:

The transaction includes agreements not to disclose to any person or the CRA the tax treatment related to the transaction or series and the details or structure of a transaction or series where a tax benefit results.

### ▪ Contractual protection hallmark:

A tax-result protection in any form (other than standard professional liability insurance) under which a person is compensated or indemnified should the tax benefit from the transaction or series not be achieved or pays for any expense that may be incurred by a person in the course of a dispute in respect of a tax benefit from the transaction or series except, in certain circumstances, any form of insurance or other protection, including an indemnity, compensation or a guarantee, that is integral to an agreement between persons acting at arm's length for the sale or transfer of all or part of a business, directly or indirectly.

Filers	Deadline to file	Penalty	Applies to:
<p>Filer a) Every person for whom a tax benefit results or is expected to result</p> <p>Filer b) Person who enters into the transaction on behalf of Filer a)</p> <p>Filer c) Every advisor or promoter in respect of the transaction, or series entitled to a fee under the contingency fee or contractual protection hallmarks</p> <p>Filer d) A person not arm's length to Filer c) and is entitled to a fee under the contractual protection hallmark</p>	<p>90 days from the earlier of:</p> <ul style="list-style-type: none"> <li>▪ When the transaction is entered into</li> <li>▪ When the person is contractually obligated to enter the transaction</li> <li>▪ If both Filers a) and b) enter into the transaction, the day on which the transaction is entered into</li> </ul> <p>For Filers c) and d), the earliest of the above dates.</p>	<p>For Filers a) or b), the penalty accrues for each week there is a failure to file to a maximum of the greater of:</p> <ul style="list-style-type: none"> <li>▪ 25% of the tax benefit; and,</li> <li>▪ \$25,000 or \$100,000 (depending on the type and carrying value of assets of the taxpayer)</li> </ul> <p>For Filers c) or d), the total of:</p> <ul style="list-style-type: none"> <li>▪ The fees charged; plus,</li> <li>▪ \$10,000; plus,</li> <li>▪ \$1,000/day since filing deadline, up to a maximum of \$100,000</li> </ul>	<ul style="list-style-type: none"> <li>▪ All reportable transactions entered into after June 21, 2023</li> <li>▪ If a person contracted to enter a reportable transaction before June 21, 2023, but entered the transaction after June 21, 2023, the transaction should be reported 90 days from the latter day</li> <li>▪ If a series began prior to June 21, 2023, the filers must report by the first reportable transaction in the series entered into after June 21, 2023</li> </ul>

## Notifiable transaction rules

Notifiable transactions are designated transactions and transactions substantially similar to them, as well as the transactions that comprise the designated series of transactions and substantially similar series of transactions. These transactions are designated jointly by the Department of Finance and Minister of National Revenue.

Filers	Deadline to file	Penalty	Applies to:
<p>Filer a) Every person for whom a tax benefit results or is expected to result</p> <p>Filer b) Person who enters into the transaction on behalf of the person in a)</p> <p>Filer c) Every advisor or promoter in respect of the notifiable transaction*</p> <p>Filer d) A person not arm's length to the advisor or promoter and is entitled to a fee in respect of the notifiable transaction*</p>	<p>90 days from the earlier of:</p> <ul style="list-style-type: none"> <li>When the transaction is entered into</li> <li>When the person is contractually obligated to enter the transaction</li> <li>If both Filers a) and b) enter into the transaction, the day on which the transaction is entered into</li> </ul> <p>For Filers c) and d), the earliest of the above dates.</p>	<p>For Filers a) or b), the penalty accrues for each week there is a failure to file to a maximum of the greater of:</p> <ul style="list-style-type: none"> <li>25% of the tax benefit; and,</li> <li>\$25,000 or \$100,000 (depending on the type and carrying value of assets of the taxpayer)</li> </ul> <p>For Filers c) or d), the total of:</p> <ul style="list-style-type: none"> <li>The fees charged; plus,</li> <li>\$10,000; plus,</li> <li>\$1,000/day since filing deadline, up to a maximum of \$100,000</li> </ul>	<p>All notifiable transactions entered into after June 21, 2023</p>

\*Where the filer is an employer or partnership who makes the required filing, the employees and partners of the filer are deemed to have also reported the same transaction.

## Reportable uncertain tax treatment

A reporting corporation (defined below) is required to report where uncertainty related to income tax is reflected on its audited financial statements.

Filers	Deadline to file	Penalty	Applies to:
<p>A reporting corporation, which is defined as a corporation:</p> <ol style="list-style-type: none"> <li>Required to file a Canadian tax return;</li> <li>That has at least a \$50 million carrying value in assets at the end of the financial year coinciding with the tax year; and,</li> <li>That prepares audited financial statements for itself or its consolidated group in accordance with IFRS or another country-specific GAAP.</li> </ol>	<p>When the reporting corporation's income tax return is due</p>	<p>\$2,000 multiplied by the number of weeks during which the failure to report the uncertain tax treatment continues, up to a maximum of \$100,000</p>	<p>All tax years beginning after 2022</p>

Get in touch to learn more:  **855.420.8473 | [rsmcanada.com](https://rsmcanada.com)**



This document contains general information, may be based on authorities that are subject to change, and is not a substitute for professional advice or services. This document does not constitute audit, tax, consulting, business, financial, investment, legal or other professional advice, and you should consult a qualified professional advisor before taking any action based on the information herein. RSM Canada LLP, RSM Canada Consulting LP, and their affiliates and related entities are not responsible for any loss resulting from or relating to reliance on this document by any person. This communication is being sent to individuals who have subscribed to receive it or who we believe would have an interest in the topics discussed. RSM Canada LLP is a limited liability partnership that provides public accounting services and is the Canadian member firm of RSM International, a global network of independent audit, tax and consulting firms. RSM Canada Consulting LP is a limited partnership that provides consulting services and is an affiliate of RSM US LLP, a member firm of RSM International. The firms of RSM International collaborate to provide services to global clients, but are separate and distinct legal entities that cannot obligate each other. Each firm is responsible only for its own acts and omissions, and not those of any other party. Visit [rsmcanada.com/aboutus](https://rsmcanada.com/aboutus) for more information regarding RSM Canada and RSM International. RSM, the RSM logo and The power of being understood are registered trademarks of RSM International Association, used under licence.