

Instructions for applying for a tax shelter identification number

General information

What is a tax shelter?

The *Income Tax Act* defines “tax shelter” and “gifting arrangement” in subsection 237.1(1).

Generally, a tax shelter is:

- an **investment in property** (other than a flow-through share or a prescribed property); or
- a **gifting arrangement** under which a person entering into the arrangement:
 - makes a gift to a qualified donee or makes a monetary contribution to a registered party, a provincial division of a registered party, a registered association, or a candidate as those terms are defined in the *Canada Elections Act*; or
 - incurs a limited-recourse debt that can reasonably be considered to relate to a gift to a qualified donee or to a monetary contribution.

For more information about limited-recourse debt in respect of a gift or monetary contribution, see the definition on page 11.

Note

Prescribed property in relation to a tax shelter is defined in the *Income Tax Regulations* subsection 231(7) and includes property that is:

- a registered pension plan;
- a registered retirement savings plan;
- a deferred profit-sharing plan;
- a registered retirement income fund;
- a registered education savings plan; or
- shares of:
 - prescribed venture capital corporations;
 - prescribed labour-sponsored venture capital corporations; or
 - taxable Canadian corporations held in a prescribed stock savings plan.

For more information on tax shelters or prescribed property, see Information Circular 89-4, *Tax Shelter Reporting*.

When do we consider an investment in property, or a gifting arrangement to be a tax shelter?

Generally, the **investment in property** or the **gifting arrangement** is a tax shelter:

- if it is promoted as offering income tax savings, and
- if it is reasonable to consider, based on statements or representations made or proposed to be made, that

within the first four years of buying an investment in the property or entering into the gifting arrangement, the buyer or donor will have losses, deductions, or credits.

Further, it has to be reasonable to consider that the losses, deduction, or credits would be **equal to or more than** the net cost of the original investment or of the property acquired under the gifting arrangement. “Net cost” is net of any prescribed benefits expected to be received or enjoyed, directly or indirectly, by the person or another person with whom the person does not deal at arm’s length.

Note

Prescribed benefits in respect of an interest in a tax shelter are defined in the *Income Tax Regulations* subsections 231(6) and (6.1), and include tax credits, revenue guarantees, contingent liabilities, limited-recourse amount, and rights of exchange or conversion.

Representations made in connection with the property

The definition of what constitutes a tax shelter depends entirely on the reasonable inferences that we can draw from representations made in connection with the property.

Representations include:

- written representations such as those contained in sales brochures or advertisements, and
- verbal representations such as those made in public or private information, or in sales meetings.

Gifting arrangements

The tax shelter rules concerning gifting arrangements generally apply to gifts, monetary contributions, and representations made and property acquired under the gifting arrangement after February 18, 2003.

As part of the overall gifting arrangement, documents such as purchase agreements, transfer agent agreements, deeds of gift, and other documents may be used at some future date. The promoter has to provide unsigned copies of such documents with their application to get a tax shelter identification number.

Appraisals for donations of gifts in kind

Generally, appraisals are central to the success of gifting arrangements, and may be produced after the tax shelter identification number has been issued.

We require that appraisals of gifts in kind be produced as they become available after we have issued the tax shelter identification number. The promoter has to include these reports when they file the *Tax Shelter Information Return* in the following year. If the number of appraisal reports is substantial (more than 10), we will accept a listing of the appraisers together with one completed and representative report from each appraiser. The list has to be prepared in the format provided on Form T5001, *Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records*.

The appraiser should **not** be associated with either the donor or the institution receiving the donation. A FMV evaluation should be obtained from a dealer or appraiser who is active in the marketplace for the object donated.

Note

If an appraisal is needed and you think the FMV of the gift is \$1,000 or less, a qualified staff member of the institution receiving the gift can appraise it.

If there is difficulty in finding an independent appraiser, or if it involves an unreasonable expense, qualified staff members of the institution accepting the gift can appraise it, even though the FMV might be more than \$1,000.

Who has to register a tax shelter?

Under subsection 237.1(2), **promoters** of tax shelters have to use prescribed Form T5001, *Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records*, to register a tax shelter with, and to apply for a tax shelter identification number from, the CRA.

Under subsection 237.1(3), the CRA will issue a tax shelter identification number when we receive an application, **if** the application includes:

- all the prescribed information, and
- an undertaking that is satisfactory to us for the custody of the tax shelter's books and records. We will usually accept an undertaking by the promoter responsible for the tax shelter's books and records to keep such documents at the promoter's usual place of business in Canada.

When should the promoter register a tax shelter?

Under subsection 237.1(4), promoters have to have a tax shelter identification number **before** selling, issuing, or accepting a contribution towards acquiring an interest in the tax shelter (including gifting arrangements). Preliminary promotions are not affected, as long as no actual sales are concluded or contributions received before we issue the identification number.

Who is a promoter?

You are a tax shelter promoter if, in the course of a business, you:

- sell, issue or promote the sale, issuance or acquisition of, the tax shelter;
- act as an **agent** or **advisor** for such activities; or
- accept consideration for the tax shelter, either as **principal** or **agent**.

There may be more than one promoter for the same tax shelter. In this case, there will be a **principal promoter**. You are a principal promoter if you have been involved in tax shelter sales, including this tax shelter, and you are the leader behind this promotion.

Note

Where there is more than one promoter of the same tax shelter, only one promoter has to apply for a tax shelter

identification number. An application by one of the promoters will discharge the others from the obligation to make an application.

When is an advisor a promoter?

The CRA considers that a promoter **includes** an advisor who establishes, organizes, or sponsors a tax shelter. We will view a person as being a promoter where in the course of providing tax advice, they are "responsible for and contribute to the design of any of the tax avoidance elements" of the arrangements or proposed arrangements. For example:

- An adviser who is consulted on the design and explains why the design does not work, or offers suggestions for changes to it **may** be a promoter.
- An accounting firm that is consulted for accounting **may** be a promoter if, in the course of carrying out its responsibilities, it provides tax advice for the design of any of the tax avoidance elements.
- A law firm (which has a relevant business that includes giving tax advice) that is consulted **may** be a promoter if, in the course of carrying out its responsibilities, it provides tax advice for the design of any of the tax avoidance elements.

The CRA will not view a person as being a promoter where in the course of providing tax advice, they are not responsible for, nor do they contribute to, the design of any of the tax avoidance elements. For example:

- An adviser who is consulted on the design and gives an opinion, without offering any suggestions for changes, that the design achieves its intended effect is **not** a promoter.
- An accounting firm that is consulted for accounting advice may give advice as to the design of the arrangements without becoming a promoter as long as it does not provide tax advice in the course of carrying out its responsibilities.
- A law firm (which has a relevant business that includes giving tax advice) may give advice as to the design of the arrangements without becoming a promoter as long as it does not provide tax advice in the course of carrying out its responsibilities.

Tax shelter identification number

The promoter of a tax shelter has to get a tax shelter identification number **before** selling, issuing, or accepting a contribution towards acquiring an interest in a tax shelter (including gifting arrangements). The tax shelter identification number consists of two alphabetic characters (TS) followed by six numeric characters.

The tax shelter identification number does **not** in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter.

The CRA uses the tax shelter identification number for administrative purposes, such as identifying tax shelters for audit. Under the *Income Tax Act*, we can get or verify information about any tax shelter that applies for an identification number, even if no taxpayer has filed an

income tax return claiming a loss or deduction, or a gift or monetary contribution tax credit, related to the tax shelter.

Applying for a tax shelter identification number

The tax shelter promoter must use Form T5001, *Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records*, to apply for a tax shelter identification number. Before we will issue a tax shelter identification number, the promoter has to provide us with prescribed information including a copy of an offering memorandum, and with a statement that the promoter will keep the books and records in Canada. For information about completing Form T5001, see the section called “How to complete Form T5001” later on this page.

Providing a tax shelter identification number

Under paragraph 237.1(5)(a) promoters of a tax shelter have to make reasonable efforts to ensure that the identification number assigned to a tax shelter is provided to every person who acquires an interest in the tax shelter:

- In the case of a sale or issuance of an interest by any promoter of a tax shelter, the promoter has to provide the identification number to the purchaser directly.
- For subsequent sales of interests in the tax shelter for which the promoter is not directly involved, the promoter's duty will normally be satisfied by clearly including the identification number on each certificate of ownership.

Mandatory statement

Further, under paragraph 237.1(5)(c) every promoter of a tax shelter has to include on every written statement that refers to the identification number of the tax shelter the following statement:

“The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter.”

Statement of earnings

Under paragraph 237.1(5)(b) each promoter who prepares a statement of earnings for a tax shelter shall prominently display the tax shelter identification number on the upper right-hand corner of the statement. If an identification number is not obtained in advance, no person may claim any deduction for the tax shelter until the number is obtained, and the promoter pays a penalty. Tax shelter investors have to provide the tax shelter identification number on their claim for tax benefits for any investment in a tax shelter.

Note

We will deny tax benefits claimed by tax shelter investors if they participate in a tax shelter arrangement that does **not** have a tax shelter identification number.

Identifying tax shelter participants

Any person who organizes or sells an interest in any tax shelter also has to keep a list showing the name, address, and identification number of each participant.

Form T5001, Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records

As a tax shelter promoter, you have to use this form to apply for a tax shelter identification number. If a tax shelter has more than one promoter, only one promoter has to apply. However, you have to give information about the principal promoter.

How to complete Form T5001

You have to complete **all** the sections on Form T5001. If there is not enough space for any section, attach a separate list or sheet. If you do not enter all the information we ask for in each section, or do not send all the documents we require, we may contact you to get the missing information. Missing information can delay our issuing a tax shelter identification number.

Note

Full disclosure is required of all documents relating to this application. All the information requested in this form and in the documents supporting your application is “prescribed information.” If the information you provide for any Section is insufficient, your application will be treated as invalid and the issuing of the tax shelter identification number may be delayed, or even refused.

The promoter has to provide us with prescribed information on the application, including:

- references to the **precise** location of each item of information (for example, responses such as “see prospectus” are incomplete—you have to provide the precise annex number, page number, and paragraph/clause reference);
- a copy of an offering memorandum; and
- a statement that the promoter will keep the books and records in Canada.

Section A – Identification information

Tax shelter

Tax shelter's name and address – Enter the name and complete address of the tax shelter entity in left block of Section A. If the tax shelter consists of activities and there is no tax shelter entity, enter the principal promoter's name and complete address instead.

Complete address – Wherever a complete address is requested on this application form, use the following codes:

- **Province or territory** – Use the two-letter code from “Appendix A – Province, territory, and jurisdiction codes” on page 57 in the T4068, *Guide for the T5013 Partnership Information Return*, for the name of the Canadian province or territory. For all other countries, leave this area blank.
- **Postal code** – Enter the Canadian postal code.
- **Country** – Enter “CAN” or the appropriate three-letter code from “Appendix B – Country codes” on pages 58 to 59 in the T4068, *Guide for the T5013 Partnership Information Return*, for any other country.
- **State** – Use the two-letter code from “Appendix A – Province, territory, and jurisdiction codes” on page 57 in the T4068, *Guide for the T5013 Partnership Information Return*, for the name of the U.S. state. For all other countries, use the two-letter code for your state or province if it has one.
- **U.S. zip code** – Enter the U.S. zip code. For all other countries (except Canada), use the postal code if that country has one. Otherwise, leave this area blank.

Contact person’s name and telephone number – Enter the name and daytime telephone number of the person we can contact if we need more information about the tax shelter. If the tax shelter consists of activities and there is no tax shelter entity, enter the principal promoter’s daytime telephone number.

Principal promoter

Principal promoter’s name, address, and telephone number – Enter the name, complete address, and daytime telephone number of the tax shelter’s principal promoter in right block of Section A. Follow the instructions in the section called “Complete address” at the top of this page.

Identification number – Enter the principal promoter’s identification number:

- For an **individual**, enter the Social insurance number (SIN).
- For a **partnership**, enter the partnership’s account number, or the Business Number (BN) for that partnership.
- For a **trust**, enter the trust account number for that trust.
- For a **corporation**, enter a “0” followed by the corporation’s BN.

If the promoter applying for the tax shelter number is not the principal promoter

Promoter’s name, address, and identification number – If you are not the principal promoter, enter your name, complete address, telephone number, and identification number in the bottom block of Section A. Follow the instructions in the section called “Complete address” at the top of this page.

If there are other promoters for this tax shelter, complete Section D – Other promoter information to provide the information about the other promoters.

Section B – Tax shelter information

1. The tax shelter property is:

Tick (✓) the appropriate box, and enter the information required about that selection in the space provided:

- If the tax shelter property is an interest in a partnership, and there are more than two activities relevant to the operation of the tax shelter, enter the description that best describes the **principal** operation of the tax shelter.

Enter the NAICS code in the space provided. Use the NAICS code from the T4002, *Business and Professional Income – Appendix, Industry Codes*, on page 50.

- If you check “Other,” specify the type of organization or structure in the space provided. If the tax shelter is a gifting arrangement, you can skip questions 2 to 6 in this section and go to Section C – Gifting arrangement information.

2. Details of tax shelter investment units:

Date to be offered for sale – Enter the date you propose to offer the tax shelter investment units for sale.

Tax shelter units and price – Enter the information for the proposed number of units, proposed price, and amount you expect to raise.

3. Is there a pre-arranged loan with this tax shelter?

Tick (✓) the appropriate box.

If you answer **yes**, you have to complete Section E – Financing **information**.

Note

We consider that a pre-arranged loan is one where the lender forms an integral part of the tax shelter arrangement whether or not the lender is viewed as arm’s length. Usually the lenders in these arrangements are those other than Canadian chartered banks or credit unions.

4. Expected life of the tax shelter:

Enter the intended life of the tax shelter in years.

5. Expected deductions in the first four years to the purchaser of a minimum investment unit in the tax shelter:

Code – Enter the code from the following list for the largest deduction (in dollar terms) represented as being potentially allowable to an investor in the tax shelter.

Code	Description
1.	Capital cost allowance
2.	Financing charges
3.	Interest expense
4.	Legal expenses
5.	Rental expenses
10.	Management fees
11.	Consulting fees
12.	Loan placement fees
Continued on next page	

Code	Description
13.	Marketing fees
19.	Fees – other
20.	Distribution of a renunciation – mining
21.	Distribution of a renunciation – oil and gas
22.	Distribution of a renunciation – Canadian resource and conservation expense
23.	Depletion – oil and gas
24.	Depletion – other
25.	Royalties – oil, gas, and mineral
26.	Royalties – other
27.	Mining development costs
28.	Intangible drilling costs
30.	Research and development expenditures
31.	Demolition expenses
32.	Guaranteed payments
33.	Loss from sale of an asset
34.	Rehabilitation expenses
35.	Soil and water conservation expenditures
36.	Feed expenses
99.	Other (see note)

Note

If you enter code 99, describe the expected deduction in Section L – Outstanding items.

Years 1 to 4, and Total – In the space for each of the first four years, enter the dollar amount of **gross** deductions to the purchaser of a minimum investment unit in the tax shelter. Enter the total amount of the gross deductions in the designated space.

6. Entitlements to amounts or benefits with respect to the investment in this tax shelter:

Tick (✓) the appropriate box.

If you answer **yes**, you have to complete Section M – Summary of arrangements to describe the nature of any amount or benefit listed, including the timing, the parties involved, and whether they deal at non-arm's length with the buyer or the promoter.

For more details about the amounts and benefits, see:

- subsection 96(2.2) for the partnership at-risk rules;
- section 143.2 for the limited-recourse and tax shelter at-risk rules;
- subsections 231(6) and (6.1) of the *Income Tax Regulations* for the definition of prescribed benefit; and
- Interpretation Bulletin IT-419, *Meaning of Arm's Length*.

Section C – Gifting arrangement information

1. Expected amount of cash payments from donors:

Enter the amount you expect to raise.

2. Expected amount of donation receipts to be issued to the purchaser of a minimum investment unit:

Code – Enter the code from the following list for the largest credit (in dollar terms) represented as being potentially allowable to a participant in the tax shelter.

Code	Description
40.	Gifting arrangement – art
41.	Gifting arrangement – education
42.	Gifting arrangement – health
43.	Gifting arrangement – software
44.	Gifting arrangement – timeshare
49.	Gifting arrangement – other

Note

If you enter code 49, describe the expected credit in Section L – Outstanding items.

Years 1 to 4, and Total – In the space for each of the first four years, enter the dollar amount of total credits potentially allowable to the purchaser of a minimum investment unit in the tax shelter. Enter the total amount of the gross deductions in the designated space.

3. The property is to be gifted by:

Tick (✓) the appropriate box.

4. Will the gifting arrangement involve a pre-arranged loan?

Tick (✓) the appropriate box.

If you answer **yes**, you have to complete Section E – Financing information.

Note

We consider that a pre-arranged loan is one where the lender forms an integral part of the tax shelter arrangement whether or not the lender is viewed as arm's length. Usually the lenders in these arrangements are those other than Canadian chartered banks or credit unions.

5. Will the gifting arrangement include a security deposit, investment, insurance policy, or other arrangement?

Tick (✓) the appropriate box.

If you answer **yes**, you have to complete Section G – Security deposit, investment, and insurance policy information.

6. Was a valuation or appraisal report used to support the value used on acquisition or donation?

Tick (✓) the appropriate box.

If you answer **yes**, you have to complete Section J – Valuation and appraisal information.

If you answer **no**, you have to complete Section L – Outstanding items, to explain how the value of the gift will be determined.

7. How will the donor acquire the property?

Tick (✓) the appropriate box, and complete whichever of the following sections that applies to your response:

- Section H – Trust information,
- Section I – Purchase and sale information, or
- Section L – Outstanding items.

Note

As part of the overall gifting arrangement, documents such as purchase agreements, transfer agent agreements, deeds of gift, and other documents may be used at some future date. You have to provide unsigned copies of such documents with this application.

8. Donee information:

Donee's name and identification number – Enter the donee's name and identification number for each of the organizations involved.

Name and telephone number of donee contact person – Enter the name and daytime telephone number of the person we can contact for more information for each of the organizations involved.

Agreements – For each donee, tick (✓) the appropriate column under "Agreements."

If you answer **yes**, attach to the application a copy of any agreements entered into or being contemplated.

If you answer **no**, you have to complete Section M – Summary of arrangements to describe how the recipients will be involved, and what responsibilities they will have in the arrangement. Include any documents that were presented to the recipients to explain the arrangement, or the involvement of the recipient in the arrangement.

If there is not enough space, attach a separate list using the same format as on the form.

Section D – Other promoter information

Promoter's name, identification number, address, and telephone number – Enter the name, identification number, complete address, and daytime telephone number for each promoter of this tax shelter, including any broker being used to promote/market the product. Follow the instructions in the section called "Complete address" at the top of page 4.

For more information about who we consider to be a promoter, see the section called "Who is a promoter?" on page 2.

Type of promoter – Enter the code in the last column to identify the type of promoter. Use the code:

- "1" for an individual, other than a trust;
- "2" for a trust;
- "3" for a corporation;
- "4" for a partnership; or
- "5" for a nominee or agent that holds an interest in the partnership as nominee or agent for another person.

If there is not enough space, attach a separate sheet using the same format as on the form.

If you enter code 2, 3, or 4 for any promoter, provide the additional information requested below.

Additional information required – Attach a separate sheet to provide the following information. If the promoter is:

- a trust, provide a list of the trustees and beneficiaries.
- a corporation, provide a list of the major shareholders and employees.
- a partnership, provide a list of the general partners.

Section E – Financing information

If you answered **yes** to question 3 in Section B, or to question 4 in Section C, you have to complete Section E and provide the additional information requested below.

Lender's name and address – Enter the name and complete address of each lender for this tax shelter. Follow the instructions in the section called "Complete address" at the top of page 4.

You have to list all the entities involved in providing finance to participants, starting with the one lending to the person acquiring the tax shelter. Include:

- the arrangement entities;
- any related or non-arm's length entities;
- "preferred financiers" (those promoted by any of the arrangement entities, or a promoter or any associated entity that will provide financing to participants); and
- any series of financing arrangements flowing through other persons or entities (include a flowchart showing the flow of funds).

Arm's length with the principal promoter? – For each lender, tick (✓) the appropriate column.

If there is not enough space, attach a separate sheet using the same format as on this form.

Additional information required – Attach to the application any draft agreement, note, or similar document that will be used in respect of the loan. If all agreements are the same, send one blank copy. If agreements vary from one participant to another, send one copy of **each** agreement that is different. Include financing arrangements between potential investors and third parties (where such financings are to be used to promote the sale of the tax shelter, or forms part of the arrangement).

If you need more information about non-arm's length, see Interpretation Bulletin, IT-419, *Meaning of Arm's Length*.

Section F – Entitlements to amounts or benefits

Entity's name and address – Enter the name and complete address of each entity providing an entitlement or benefit to a participant for this tax shelter. Follow the instructions in the section called "Complete address" at the top of page 4.

You have to list any of the arrangement entities that will be supplying the investment or insurance contracts to the person acquiring the tax shelter. Include:

- the arrangement entities;
- any related or non-arm's length entity;
- "preferred investment dealers" (those promoted by any of the arrangement entities, or a promoter or any associated entity to provide investments or insurance to participants);
- any series of arrangements flowing through other persons or entities (include a flowchart showing the flow of funds); and
- for **tax shelters other than gifting arrangement**, if there are investments or insurance contracts, you have to list any of the entities providing an entitlement to an amount or benefit that would have the effect of reducing in whole or in part, the impact of any loss on their investment in the tax shelter to participants. These amounts or benefits include:
 - contingent liabilities;
 - guarantees;
 - securities;
 - indemnification agreements;
 - limited-recourse amounts;
 - government assistance;
 - revenue guarantees; and
 - debt forgiveness.

Arm's length with the principal promoter? – For each entity, tick (✓) the appropriate column.

Additional information required – Attach to the application any draft agreement or similar document that will be offered to the participants. If all agreements are the same, send one blank copy of the agreement. If agreements vary from one participant to another, send one copy of **each** agreement that is different. Include arrangements between potential participants and third parties (where such arrangements are to be used to promote the sale of the tax shelter, or forms part of the arrangement).

If you need more information about non-arm's length, see Interpretation Bulletin, IT-419, *Meaning of Arm's Length*.

If there is not enough space, attach a separate sheet using the same format as on this form.

Section G – Security deposit, investment, and insurance policy information

If you answer **yes**, to question 5 in Section C, you have to complete Section G and provide the additional information requested below.

Entity's name and address – Enter the name and complete address of each entity holding a security deposit, supplying the investment, or issuing an insurance policy for this tax shelter, and provide the additional information requested below. Follow the instructions in the section called "Complete address" at the top of page 4.

Arm's length with the principal promoter? – For each entity, tick (✓) the appropriate column.

Additional information required – Attach to the application any draft agreements or similar document that will be offered to the participants. If all agreements are the same, send one blank copy of the agreement. If agreements vary from one participant to another, send one copy of **each** agreement that is different. Include arrangements between potential participants and third parties (where such arrangements are to be used to promote the sale of the tax shelter or forms part of the arrangement).

If you need more information about non-arm's length, see Interpretation Bulletin, IT-419, *Meaning of Arm's Length*.

If there is not enough space, attach a separate sheet using the same format as on this form.

Section H – Trust information

If you answer **Distribution from a trust** in question 7 in Section C, you have to complete Section H and provide the additional information requested below.

Trust's name, address, and trust account number – Enter the name and complete address, and the trust number for each trust that has a trust agreement with this tax shelter. Follow the instructions in the section called "Complete address" at the top of page 4.

Settlors' and Trustees' name – Enter the name of all settlors and trustees of each trust that has a trust agreement with this tax shelter.

Is there an application to become a beneficiary of trust? – For each trust, tick (✓) the appropriate column. If you answer **yes**, attach a copy of the application to become a beneficiary of the trust. If there is no application, complete Section M – Summary of arrangements to provide a description of how a person becomes a beneficiary and what the criteria is for accepting them.

If there is not enough space, attach a separate sheet using the same format as on this form.

Section I – Purchase and sale information

If you answer **Purchase** in question 7 in Section C, you have to complete Section I and provide the additional information requested below.

Vendor's name and address – Enter the vendor's name and complete address for each transaction concerning the purchase and sale of property in the tax shelter. Follow the instructions in the section called "Complete address" at the top of page 4. Include all entities involved in the purchase and sale of the property in the tax shelter.

Note

An entity is involved in the tax shelter if, by their absence, the tax shelter arrangement would not provide the benefits expected by the participant.

Description of property and Cost to Purchaser – Enter the description and cost to the purchaser of the property for each transaction concerning the purchase and sale of property in the tax shelter.

A transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

Valuation or appraisal to determine cost? – For each purchase, tick (✓) the appropriate column. If you answer **yes**, complete Section J – Valuation and appraisal information.

Additional information required – If the principal promoter or an entity not dealing at arm’s length with the principal promoter purchased the property, provide the information on the arm’s length vendors, and attach a copy of the purchase agreement. If property to be sold to the tax shelter investors is being held by arm’s length vendors, provide the information on the vendors and attach a draft purchase agreement.

If you need more information about arm’s length, see Interpretation Bulletin, IT-419, *Meaning of Arm’s Length*.

If there is not enough space, attach a separate sheet using the same format as on this form.

Section J – Valuation and appraisal information

If you answer **yes** in question 6 in Section C, or to the question “Valuation or appraisal to determine cost?” in Section I, you have to complete Section J and provide the additional information requested below.

Valuator’s name and address – Enter the name and complete address for each valuator involved, or that will be involved in the arrangement. Follow the instructions in the section called “Complete address” at the top of page 4. Include the valuers and appraisers who are expected to prepare reports if the reports have not been prepared yet.

If the arrangement is dependent on a valuation, but a valuation has **not** been made yet and you do not know who the valuator will be, complete Section L – Outstanding items providing an explanation.

Number of reports – Enter the number of valuation and appraisal reports prepared by each valuator. Attach a copy of each report, or a draft if final copies are not available, to this application. Send the final copies when they become available.

If no valuations have been made yet but the valuers are known, enter “nil” in this column, and when the reports become available, send a copy should to us.

Note

Fair market value generally means the highest price that a property would bring, expressed in dollars, in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

Fair market value does **not** include any amounts paid or payable to other parties, such as commissions to sales agents or sales taxes like the goods and services tax/ harmonized sales tax (GST/HST) or provincial sales taxes.

If there is not enough space, attach a separate sheet using the same format as on this form.

Section K – Promotional and other information

Material to be used to promote the sale of the tax shelter – For each item in the list, tick (✓) the appropriate box.

If you answer **yes** for any item, attach all documents (or a draft if final copies are not available) to the application, and send the final copies when they become available.

If you will be making presentations to potential participants in the tax shelter arrangement in which you will be using overhead, electronic or other presentation materials, send a paper copy of the presentation with this application.

If there is not enough space, attach a separate sheet using the same format as on this form.

Section L – Outstanding items

Complete this section to provide an explanation why **any** Section of this form was not completed, or why any documents we requested have not been provided. For example, if when you complete:

- Section B, you enter code **99** in question 5, *Expected deductions in the first four years to the purchaser of a minimum investment unit in the tax shelter*, describe the expected deduction.
- Section C, you enter code **49** in question 2, *Expected amount of donation receipts to be issued to the purchaser of a minimum investment unit*, describe the expected credit.
- Section C, you answer **no** in question 6, *Was a valuation or appraisal report used to support the value used on acquisition or donation?*, explain how the value of the gift will be determined.
- Section C, you answer **Other** in question 7, *How will the donor acquire the property?*, describe how the donor will acquire the property.
- Section J, you know that the arrangement is dependent on a valuation, but a valuation has not been made yet and you do not know who the valuator will be, provide an explanation.
- Section J, a valuation has not been made yet but the valuers **are known**, provide an explanation and send us a copy when the reports become available.
- Section M, you are unable to provide copies of each document, explain why you are unable to do so.

Note

If you do not enter all the information we ask for in **each** section, or do not send all the documents we require, and you do not complete Section L to provide an explanation, we may decline to issue a tax shelter identification number.

Section M – Summary of arrangements

Complete this section to provide an explanation for the following situations:

- If you answered **yes** to question 6 in Section B, describe the nature of any amount or benefit listed, including the timing, the parties involved, and whether they deal at non-arm's length with the buyer or the promoter.

- If you answered **no** in question 8 in Section C, describe how the recipients will be involved, and what responsibilities they will have in the arrangement. Include any documents that were presented to the recipients to explain the arrangement, or the involvement of the recipient in the arrangement.
- If you answered **yes** to the question “Is there an application to become a beneficiary of the trust?” in Section H, but there is no application, provide a description of how a person becomes a beneficiary and what the criteria is for accepting them.
- Provide a brief overview of the arrangement (1-2 pages) as described in the next section.

If there is not enough space, attach a separate sheet using the same format as on this form.

Overview of the arrangement

The information in the brief overview of the arrangement must be sufficient so we can reasonably expect an officer of the CRA to comprehend the manner in which the arrangements are intended to operate. This should be a straightforward description highlighting:

- the aim of the arrangements,
- the entities involved and the relationships, contractual or otherwise, between the entities,
- the steps involved and the tax law, if any, which the arrangements rely on.

Where complex transactions are involved, include a flowchart of the arrangements and parties involved. For example, any proposal for any promoter-preferred financing should be disclosed.

Include information explaining each “element” of the proposed arrangements from which the expected tax advantage obtained under those arrangements arises (including the way in which the arrangements are structured).

Provide references to the **precise** location of each item of information (for example, responses such as “see prospectus” are incomplete—you have to provide the precise annex number, page number, and paragraph/clause reference).

What is an element?

An element is “any element of the arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained arises.” An element includes, but is not limited to:

- a financial product;
- a way of combining that financial product with other elements of the arrangements;
- a way of interpreting the tax legislation in relation to the financial arrangements, i.e., the tax analysis which underlies the structuring of the arrangements;
- the responsibilities and duties of each person involved in the arrangement;
- the benefits to be obtained;
- the method for participation in the arrangement; and

- any agreements or proposed agreements between the arrangement entities and the applicant (or any entity associated with applicant) including loans, subcontracting arrangements, arrangements relating to the acquisition of assets and the distribution of profits arising from the arrangement.

You have to provide copies of each document with the application. If you are unable to provide a document, complete Section L – Outstanding items to explain why you are unable to do so. Where available, also provide copies of the following documents:

- management agreements;
- loan agreements and other finance documentation;
- marketing materials and any promotional material issued or to be issued to participants, financial planners or advisers or commission agents;
- any written information to be provided to participants regarding their investment;
- any other agreements or contracts including purchase agreements, rental agreements, franchise agreements;
- flow chart(s) detailing the flow of funds (as amounts per participant) between the participant, promoter, financier, trustee, manager and any other entity in receipt of the investment funds (including directors, officers, shareholders, partners and beneficiaries of these entities, as well as their residency status);
- working papers and any other materials used in setting the fees payable by a participant.

If not included in the documents, describe:

- the training or expertise of the persons involved with the activity,
- your plan to make the activity profitable, and
- the capability of the venture as capitalized to show a profit.

Section N – Undertaking to keep books and records

You have to complete the undertaking and sign it. If the promoter does not sign the undertaking, we will **not** issue a tax shelter identification number. The promoter’s (or authorized person’s) signature must be an original signature for us to process the application.

We will issue a tax shelter identification number **only when** we receive all the prescribed information, **and if** we are satisfied with the undertaking to keep the tax shelter's books and records.

Note

An undertaking by a person, who proposes to sell or issue interests in a tax shelter, to keep the requisite books and records at that person's normal place of business in Canada will normally be satisfactory.

An example of an unacceptable undertaking would be if the promoter's place of business is in Toronto, Ontario but the books and records are maintained in Whitehorse, Yukon Territory.

Section O – Certification

Form T5001 must be signed and dated by the tax shelter promoter.

Where to send completed Form T5001

Send the completed application, documents, and information to:

Canada Revenue Agency
Data Assessment and Evaluation Programs Division
875 Heron Road
Ottawa ON K1A 1A2

Penalties

False or misleading information

Under subsection 237.1(7.4), every person:

- who files false or misleading information in Form T5001 – *Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records*, or
- who as a principal or as an agent sells, issues or accepts consideration for an interest in a tax shelter before the Minister of National Revenue has issued an identification number,

is liable to a penalty that is the **greater** of a minimum \$500 penalty, and a penalty calculated at 25% of the total cost to each purchaser of interests sold before the correct information is filed with the Minister, or the identification number is issued.

Misrepresentation of a tax matter by a third party

The *Income Tax Act* provides for third-party civil penalties to deter third parties from making false statements or omissions in relation to income tax or GST/HST matters. The following penalties are directed at ensuring tax compliance and deterring inappropriate behaviour. For more information about why third-party civil penalties were introduced, see the section called "Third-party civil penalty" on page 11.

Penalties for misrepresentation in tax planning arrangements

Under subsection 163.2(2), every person:

- who makes or furnishes a statement, who participates in the making of a statement, or who causes another person to make or furnish a statement, and

in respect to the statement,

- who knows it is a false statement, or who would reasonably be expected to know it is a false statement but for circumstances amounting to culpable conduct, and another person could use the false statement for a purpose of this Act,

that person is liable to a penalty in respect of the false statement.

Under subsection 163.2(3), the penalty for the false statement is:

- if the statement was made in the course of a planning activity or a valuation activity, a minimum of \$1,000, to a maximum of the person's total gross entitlements at the time at which the notice of assessment of the penalty is sent to the person, and
- in any other case, \$1,000.

Penalties for participating in a misrepresentation

Under subsection 163.2(4), every person:

- who makes a statement, who participates in the making of a statement, who assents to the making of a statement, or who acquiesces in the making of a statement, and

the statement is made to another person, or by another person, or on behalf of another person, and in respect to the statement,

- the person knows it is a false statement, or would reasonably be expected to know it is a false statement but for circumstances amounting to culpable conduct, and another person could use the false statement for a purpose of this Act,

that person is liable to a penalty in respect of the false statement.

Under subsection 163.2(5), the penalty for the false statement is:

- a minimum of \$1000,

to a maximum of whichever of the following amounts is less:

- the penalty under subsection 163(2) that the other person would be liable for if the other person made the statement in a return filed for the purposes of the Act and the other person knew that the statement was false, or
- the total of \$100,000 plus the person's gross compensation at the time at which the notice of assessment of the penalty is sent to the person if the statement could be used by or on behalf of the other person.

Failing to provide the tax shelter identification number

We can assess a penalty of \$100 for each failure if the tax shelter identification number is missing on a form.

Providing an incorrect tax shelter identification number

If you give an incorrect tax shelter identification number, you may be guilty of an offence and, if convicted, liable to:

- a fine from 100% up to 200% of the cost of the tax shelter interest;
- imprisonment up to two years; or
- both a fine and imprisonment.

Appendix A – Definitions

Limited-recourse debt in respect of a gift or monetary contribution

This provision is meant to ensure that participants' deductions will be limited to funds that are actually at risk. These rules generally involve debts for which participants are not fully at risk. The unpaid principal of any financing associated with the purchase of a tax shelter will reduce the cost or expense related to that tax shelter.

Example

A taxpayer reports an investment of \$100,000 in a tax shelter. The investment is composed of \$10,000 in cash, and financing of \$90,000.

Where, for example, the only collateral for the debt is the tax shelter property itself, or potential income from that property, the \$90,000 would not be considered to be at risk for the participant.

There may be other ways for the rules to apply to the participant. The measure ensures that the tax benefits are limited to the funds at risk only. This will reduce the tax benefit available to the participant.

We consider the unpaid principal of a financing to be a limited recourse:

- where the rate of interest is equal to or greater than the prescribed rate of interest at the time the indebtedness arose or during its term, and interest is not paid within 60 days after the investor's taxation year; and
- where bona fide arrangements for repayment are **not** made.

We consider that bona fide arrangements exist when:

- there is a written agreement for repayment of the principal and interest within a reasonable period of not more than 10 years, and
- where interest is paid at least annually.

However, in some circumstances we may consider loans repayable within 10 years to be a limited-recourse debt. For example, the 10-year rule cannot be avoided through a series of loans and repayments.

Property

Property is defined in subsection 248(1) of the *Income Tax Act* and means property of any kind whatever, whether real or personal and whether tangible or intangible, including a right of any kind and a share or a chose in action (right to sue). Two types of properties excluded from the definition of a tax shelter are flow-through shares and prescribed property.

Third-party civil penalty

The objective of the third-party civil penalties is to deter third parties from making false statements or omissions in relation to income tax or GST/HST matters. These penalties are directed at ensuring tax compliance and deterring inappropriate behaviour.

In 1996, the Auditor General reported on the importance of making legislative changes as soon as possible after tax avoidance schemes are detected. One aspect raised in their 1996 audit was that Canadian law does not contain a penalty for promoting an abusive tax shelter. The CRA was in agreement with the Auditor General in this respect and recommended to the Department of Finance to come up with promoter-penalty provisions. The result was legislation that dealt not only with promoters of abusive tax shelters, but also with all tax professionals dealing with the *Income Tax Act*.

Information Circular IC 01-1, *Third-Party Civil Penalties* discusses the principals that the CRA will promote and gives many examples of unacceptable conduct. Professionals are expected to act in accordance with the code of ethics and rules of professional conduct of their governing bodies. The wording of the rules may differ but the professions generally require that their members not associate themselves with any information that they know, or should know, is false or misleading. The third-party civil penalty provisions do not impose a higher standard. Consequently, promoters may view this legislation as another tool that the CRA may use to help protect investors by increasing the promoter's cost of selling abusive tax shelters.