

Section 116 Notification Process

Common Issues and Best Practices

General overview of the Section 116 Process

Section 116ⁱ applies when non-residents of Canada dispose of certain types of property located in Canada.

The property must be taxable Canadian property (TCP) as defined in section 248. TCP includes:

- Real or immovable property situated in Canada
- Life insurance policies in Canada
- Property used or held in a business carried on in Canada
- Resource property situated in Canada
- Certain shares, interests in partnerships and trusts

Vendors Obligations:

Non-resident (NR) vendors disposing of TCP are required to notify the Canada Revenue Agency (CRA) either before they dispose of TCP, or no later than 10 days after the disposition. The CRA will issue a certificate of compliance to the NR vendor when:

- the required information is submitted and verified, and
- the appropriate payment of tax or security is received.

A copy of the certificate of compliance is sent to purchaser. The certificate protects purchaser from further tax liability.

What happens if the vendor does not comply with the Section 116 obligations?

Non-resident vendors who fail to comply with the notification requirements will be assessed a penalty equal to the greater of:

- \$100 (minimum penalty), or
- \$25 multiplied by the number of days, not exceeding 100 days, during which the failure continues (maximum penalty is \$2,500)

Purchaser Obligations:

If a certificate of compliance has not been issued, the purchaser should remit the withholding to the Receiver General within 30 days after the end of the month in which the property was acquired, unless CRA has issued a comfort letter advising the purchaser to hold the payment until our review is complete.

When can a Purchaser's Liability Assessment be raised?

A purchaser may become liable to pay tax, penalty and interest when:

- the vendor does not comply with notification requirements;
- the purchaser fails to remit the tax required within 30 days after the end of the month of acquisition, or as and when required by the CRA in the case where a comfort letter was issued;
- the purchaser fails to make "Reasonable Inquiry" of vendor's residency status.

- Purchaser liability under Subsections 116(5) and (5.3) does not extend to a case where, “after reasonable inquiry”, the purchaser had no reason to believe that the vendor was not resident in Canada.
- “Reasonable inquiry” is not defined under the ITA. The purchaser must take prudent measures to confirm the vendor’s residence status. Each case will be reviewed on an individual basis. See paragraph 58 in [Information Circular IC72-17, Procedures Concerning the Disposition of Taxable Canadian Property by Non-Residents of Canada - Section 116.](#)

Key elements that impact the issuance of a Certificate of Compliance

Identification Number

Vendor identification is crucial to:

- ensure the proper recording of the notification filed by the NR
- ensure the payment and/or security received is allocated to the NR
- facilitate the processing of income tax returns reporting the disposition
- ensure the correct information is entered on the Certificate of Compliance

A Certificate of Compliance requires an account number before the certificate can be issued. Account numbers include:

- Business Number (BN)
- Social Insurance Number (SIN)
- Individual Tax Number (ITN)

If the NR is a corporation, a business number is required – Form RC-1 and supporting documents ([RC1 Request for a business number and certain program accounts](#))

If NR individual vendor does not have an account number, an ITN must be obtained - [T1261 Application for a Canada Revenue Agency Individual Tax Number \(ITN\) for Non-Residents](#). The T1261 should not be submitted if vendor already has a SIN, ITN or TTN.

Common issues found in T1261 applications:

- the T1261 is not always signed - it must be signed by the applicant (the NR vendor)
- supporting documents are not complete or valid. Remember, the supporting documents must:
 - be current;
 - verify identity of the NR, including name and date of birth;
 - be original or certified or notarized copy;
 - include a photograph.

NOTE: At this time, the CRA cannot process applications for an ITN alongside a request for certificate of compliance. To speed up processing, please apply for an ITN separately, in advance if possible, by completing [Form T1261, Application for a Canada Revenue Agency Individual Tax Number \(ITN\) for Non-Residents](#) and follow the mailing instructions on the form. To ensure timely processing, tick the box indicating the reason you are asking for an ITN.

Rental Properties:

- Two notifications are required:
 - T2062 for capital gain or loss on the disposition of the land and on the depreciable property;
 - T2062A to report any recapture of CCA or terminal loss on the disposition of the depreciable property.
- A breakdown between land and building is required.

Personal-use property (PUP):

- One notification generally required for PUP (T2062).
- A breakdown between land and building is not required.
- If the PUP is a principal residence, include a Form T2091: [T2091\(IND\), Designation of a Property as a Principal Residence by an Individual \(Other Than a Personal Trust\)](#), signed by the NR vendor.

Submitting documents electronically

- Documents relating to T2062 notifications of non-resident dispositions can be submitted electronically through the CRA's secure portals, including My Account, My Business Account, and Represent a Client as well as by fax to 1-833-329-1161.
- For more information see "Where do I send my completed notification form?" available at canada.ca/cra-non-residents-dispositions.

Note: Due to potential restrictions on mail operations resulting from the COVID-19 pandemic, and until operations resume in full, the CRA may experience delays accessing any documents sent by mail. It is recommended, if possible, that you send your documents by fax or online through My Account, My Business Account or Represent a Client.

For all types of dispositions:

- When there is more than one vendor, a separate notification must be filed for each individual, based on their percentage of ownership in the property.
- If the vendor was formerly a resident of Canada the "date of departure" must be provided on the notification.
- Provide the complete address of the property including the postal code.
- Provide the vendor's non-Canadian address not just a Canadian "care of" address.
- Answer all questions on the form whether or not they apply (we cannot assume that the answer to an "unanswered" question is "NO" or "N/A").
- If the property was not rented, please indicate the use of the property - as requested in question #2 on the T2062 and the T2062A forms.
- Provide the actual sale price - not the "net" after deducting outlays and expenses (outlays and expenses cannot be claimed on the T2062/T2062A to reduce the gain subject to Section 116. These expenses can be claimed on the non-resident's tax return filed subsequently).
- Ensure the notification form(s) is/are signed.
- If you are using a cover letter, use the term "**Certificate of Compliance**"; using the term "*clearance certificate*" may cause the application to be distributed to another area, causing a delay.
- Include all requested supporting documents from the supporting documents List (found on the T2062 and related forms), such as:
 - the offer to purchase (proposed disposition);
 - the sales agreement (actual disposition);

- the purchase agreement (at the time the current NR vendor acquired the property);
- a list of any additions to the property and receipts/invoices to support the additions;
- if the property is a rental property, provide documents/explanation to support the allocation of the proceeds between land and building;
- details regarding any change of use (from income-producing to personal use or vice versa) in the property since the property was purchased;
- for transactions between non-arm's length parties, provide an appraisal report or letter of opinion from an appraiser or agent to support the fair market value at the time of the transaction.

Making a payment:

Payments can be sent by wire transfer or cheque. Please include "Section 116" and your account number (SIN, TTN, ITN, business number or trust account number) on any payment you send to the CRA. A misallocated payment may cause a delay in issuing the Certificate of Compliance. If mailing your payment, please send it to the following address:

Canada Revenue Agency
PO Box 3800 STN A
Sudbury ON P3A 0C3

Summary:

We have tried to provide you with some of the key issues that arise that can cause delays in processing the notifications received by the CRA. We have found over the last several years, that approximately 40% of T2062/T2062A notifications we receive are incomplete. An incomplete notification results in delays since the vendor or representative has to be contacted to request the missing information.

Variances in levels of inventory, available resources, and issues that are beyond control, impact the time it takes to process the notifications and issue certificates.

The T2062 notifications are processed on a first-in-first out basis in each of CRA's five Section 116 Centres of Expertise. The CRA strives to process these notifications as efficiently as possible as we do understand the hardship that can be caused by undue delays.

We hope the information provided here is helpful.

Should you require assistance completing the forms, or have other questions, you may call:

1-800-959-8281 (individuals)

1-800-959-5525 (businesses)

ⁱ Unless otherwise note, all legislative references are to the Income Tax Act (Revised Statutes of Canada, 1985, c. 1 (5th Supp.))