



US TAX ALERT

US TAX ALERT is a commentary on topics of current interest – usually topics relating to recent changes in tax law, new IRS administrative practices or current interpretations arising from tax cases. Professional advice should be obtained before acting on any of this information.

NEW US TAX AMNESTY PROGRAM

It's very important for US citizens living in Canada to start filing US personal tax returns if they haven't done so already. US citizens must file US personal tax returns no matter where they live in the world. The returns are usually required even if no US tax is payable. Most countries only tax you if you live there but the US taxes you both on the basis of residence in the United States and US citizenship.

CITIZENSHIP

US citizenship is a difficult concept. You will be a US citizen if you were born in the United States, and sometimes even if you were born outside the United States if one or both of your parents are US citizens. It depends! Your Canadian passport shows your place of birth so it will be a source of information to US border officials that you cannot hide.

TAX AMNESTY

The United States has had a number of amnesty programs before 2012 to allow US citizens to get their tax filings up to date with reduced penalties. Effective on September 1, 2012, there is now both a new *formal disclosure* program for those who intentionally were not reporting non US source income and an *informal disclosure* for US citizens living outside the United States who didn't understand their obligation to file US personal tax returns. Previously, there was no clear direction from the IRS on the *informal disclosure*. Both were usually done anyway and generally the informal disclosure was accepted without penalties by the IRS because Americans living in Canada have no US tax to pay because of credits for Canadian taxes and several exemptions.

RECENT IRS ANNOUNCEMENTS

On June 26 the IRS issued two *IRS Newswires* as follows:

- New Details on Voluntary Disclosure Program and Closing of Offshore Loophole (*formal disclosure*)
- Efforts to Help US Citizens Overseas, Including Dual Citizens and Those with Foreign Retirement Plans (*informal disclosure*)

A Globe and Mail article on June 27 provided a good summary of the informal amnesty program so you might want to check it out.

REQUIRED DISCLOSURE

For those American living in Canada who have not been filing US personal tax returns, they should do the following to bring themselves into compliance under the new *informal* disclosure option.

- File three years of personal tax returns (this will likely also include a number of information reporting forms beyond the tax return itself)
- File six years of the Report of Foreign Bank and Financial Accounts (FBAR – TDF 90-22.1)
- Enclose a letter with both filings for each year indicating why these returns have not been filed.

We routinely have prepared such letters for our clients in the past to help them catch up on their US filings. Explanations which will influence the acceptance of your disclosure by the IRS are as follows:

- Explanation for not meeting your filing obligation
- Indication that your Canadian filing compliance has always been met
- Indication that you filed as soon as you were aware of your obligation
- Indication that non filing was beyond your control
- Never been penalized by the IRS
- Recent changes to tax law or forms that you were not reasonably aware of
- US tax complexity is beyond your grasp
- Unaware of the filing law requirements but made a reasonable and good faith effort to do so when found out
- Could not be reasonably expected to know of filing obligations

The new US amnesty program is effective for returns filed on or after September 1, 2012 so you probably shouldn't file delinquent returns before that date. The IRS Newswire also indicates that new procedure will allow tax filers to get up to date with respect to certain foreign retirement plans (such as RRSPs) for which a special election to defer income and other annual information is required each year on Form 8891.

Other information forms that usually are applicable to complete the US filings are as follows:

- 3520/3520A – Foreign trust reporting (RESPs and TRSAs)
- 8938 – Statement of foreign (non US) banks and financial assets (2011 and later years)
- 8621 – Return for foreign investment companies (non US mutual funds)

All of these forms are very detailed and take a lot of time to prepare. Quite frankly, US citizens would be better off if they didn't own TFSAs, RESPs and Canadian mutual funds but this probably needs review on an individual basis.

In the past we have filed six years of the US tax returns and related information returns to get US taxpayers up to date so we are thankful it is now only three years. Taxpayers no doubt are pretty happy too. *This US Tax Alert first appeared in a newsletter for Castlemoore Inc.*

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