



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.

US VOLUNTARY TAX DISCLOSURE US CITIZENS AND LONGTERM RESIDENTS

For Americans living in Canada who haven't been filing their US tax returns, the requirements to get up to date got a little easier recently but the penalties for not doing so are still substantial.

It shouldn't have to be said one more time, but Americans must file US personal tax returns no matter where they live in the world. Also, anyone who lived in the United States under a green card for eight or more years, no matter how long ago, must also file US tax returns unless they have properly surrendered their green card and filed form 8854. For tax purposes, they are known as US long term residents.

REPORTING BY CANADIAN BANKS

Starting about a year ago, Canadian financial institutions have been providing banking information to CRA and then on to the Internal Revenue Service (IRS) for their US use. So, if you think you can continue to hide from US tax filings, think again. If you make a voluntary disclosure through what is known as *streamlined filing* before the IRS finds you, penalties will not be levied. If you wait until you are found out, very severe penalties can be applied. The United States has penalties both for not filing and filing late. US penalties not only apply to personal tax returns but they also to the many other financial disclosure returns that Americans must file as part of their tax filings. In many cases, the penalties for non-compliance start at \$10,000. per form not filed. That's a heavy cost that you can avoid by a voluntary disclosure.

CROSSING THE BORDER

Most of us visit the United States on vacation or perhaps on business at least once every few years. Of course, at that time, we will need to show US customs and immigration a valid passport. Well guess what, it will say right on your passport where you were born and if it was in the United States the questions will start. Some people may even get an invitation to go inside for further discussions. By the way, if you are an American, it's illegal to enter the United States using a foreign passport so do not use your Canadian one. That makes matters even worse. Remember that customs, immigration and Homeland Security can all be at the border crossing with computer terminals and a massive data base waiting for your arrival. You may need to provide extensive personal identification and documentation and you could be turned back and even be barred from entry into the United States in the future if you cannot comply with their requests.

By now you should be getting the message. There are far more downsides to not getting up to date on your US filings than there are upsides. In fact, there are no upsides to delaying.

VOLUNTARY DISCLOSURE

The first official US voluntary disclosure program was effective September 1, 2012 and was followed by more changes on January 2, 2014 that better defined the financial risks to the US treasury and the criteria that applied to meet program eligibility. One of those criteria was that if you owed taxes of less than \$1,500 in any year, you would be rated as low risk and allowed to proceed as a streamlined filer.

In a 2014 memo issued by the IRS, the filing procedures were again amended and simplified. Under the new program, US citizens only need to show that they reside outside the United States and complete a somewhat detailed questionnaire. The \$1,500 tax threshold has disappeared. Although all of this is helpful, taxpayers must give some personal details about the source of their wealth and their financial skills. At least now, all law abiding US citizens and long term residents no matter where they live in the world or what their income or taxes are can join the program.

The IRS will accept three years of past due tax and related information returns and six years of the bank account reporting form (FBAR) and call it a day - no income restrictions, no penalties. However, the IRS is still be looking for people who intentionally evaded paying taxes in the past and they do not qualify for streamlined filing.

Most Americans will not owe any US taxes because a tax credit is allowed on the US return for Canadian taxes paid because Canadian tax is generally higher than US taxes. That may not be the case if you have a large mutual fund portfolio because US taxes apply to unrealized gains on these funds (PFIC income) without any foreign tax credit. PFIC will also create complex tax reporting.

PART TWO - SURRENDERING US CITIZENSHIP

The level of detail required on US tax and other returns is significant. When Americans living in Canada learn more about these US tax filing obligations they are usually flabbergasted - particularly about the intrusion of the US government into personal information. Americans must provide extensive information about non-US financial accounts, investment accounts, and RRSPs. In some cases, this has caused some Americans to give up their US citizenship. There has been a record number of people expatriating in the last year or so. For some Americans whose only connection to the United States was in their childhood or as an infant, expatriation is not a difficult decision. For others with deeper roots, it is an issue. Once you have done your voluntary disclosure having been fully tax compliant for five years, you can surrender your US citizenship. There will not be any special tax applied unless your assets, income or taxes exceed certain levels.

If you are an American or US long term resident, you need to face the music and get up to date on your US tax filings. I would start right away if I were you.

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