



Wills, Taxes and Estate Planning Law

Issues in Law You Need To Know

U.S. Citizens and FATCA - starts on July 1st, 2014

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FATCA is coming into effect on July 1, 2014. For U.S. citizen living in Canada, the implementation of this American statute may have undesired consequences as their personal financial information may be transmitted to the IRS without their approval. The financial institutions, the IRS and the CRA are ready but are U.S. citizens living in Canada aware of the implications of this new statute?

In 2010, the United States enacted and passed The Foreign Account Tax Compliance Act ("FATCA") with the hope of detecting "U.S. persons" who are using financial accounts outside the United States to evade U.S. taxes.



FATCA aims to impose on all non-U.S. financial institutions an obligation to report specific information to the U.S. Internal Revenue Service (IRS) about all financial accounts held by U.S. persons. Should a non-U.S. financial institution refuse or fails to comply with FATCA, it would result in a 30% withholding tax on all U.S. source payments paid to the non-U.S. financial institution or its clients. Although Canadian financial institutions vigorously opposed FATCA, they indicated that they will nonetheless comply with its new compliance requirements.

Therefore, the implications and consequences of FATCA for U.S. persons are considerable. The days where U.S. citizens living outside the United States might claim ignorance of their U.S. fiscal obligations or chose to ignore those U.S. fiscal obligations may soon be over. Indeed, with the enactment of FATCA, the United States may gather all the necessary information on U.S. persons living outside the United States and hold those persons accountable for their failure to meet U.S. tax law.

FATCA applies to "U.S. person(s)" which is defined as (1) a citizen of the U.S. (including an individual born in the U.S. but resident in Canada or another country, who has not renounced U.S. citizenship), (2) a resident of the U.S. (including a U.S. green card holder), and (3) a person residing in the U.S. Although most snowbirds are aware, it is worth reminding them that one may also be considered a U.S. person if he or she spends a considerable amount of time in the U.S. on a yearly basis; that annual winter voyage south may prove more costly than originally planned.

CRA, the IRS and Meeting the Reporting Obligations

To its credit, the Canadian Government had major concerns with the implementation of FATCA; most notably privacy issues and the cost to financial institutions of implementing FATCA. Nonetheless, in February 2014, the Canadian government reached an intergovernmental agreement (“IGA”) with the U.S. government under the Canada-U.S. Tax Convention.

One can suggest that Canada has reached a “middle ground” agreement where the Income Tax Act (Canada) will be amended and financial institutions in Canada will be required to comply with the changes under Canadian law and will not have to follow FATCA requirements. Under the IGA, financial institutions in Canada will report relevant information on accounts of U.S. persons to the Canada Revenue Agency (CRA) rather than directly to the IRS. The CRA will then exchange the information with the IRS through the provisions in the existing Canada-U.S. Tax Convention. The 30% FATCA withholding tax will no longer apply to clients of Canadian financial institutions.

Canadian financial institutions will have to report accounts which include most bank accounts, mutual funds, brokerage accounts, and custodial accounts, annuity contracts (including segregated fund contracts), and some life insurance policies with a cash value. However, an account does not have to be reported if it falls within an exemption such as:

- registered retirement savings plans
- registered retirement income funds
- pooled registered pension plans
- registered pension plans
- tax-free savings accounts
- registered disability savings plans
- registered education savings plans
- deferred profit-sharing plans

Furthermore, the financial institutions may also not be obliged to identify and report on certain accounts the values of which are below certain thresholds.

Implications For a U.S. Person Living In Canada

For a U.S. person living in Canada, FATCA means that Canadian financial institutions have a legal responsibility to know where you reside for tax purposes and they are entitled to ask you for that information. Therefore, if a financial institution that is doing its due diligence in accordance with the IGA of the Agreement to its accounts discovers any records connected to the account that have an unambiguous indication of a U.S. place of birth, it may treat the account as a reportable account or follow up with the account holder to obtain documentation that shows the account holder is not a U.S. resident or U.S. citizen

For U.S. persons, financial institutions may be required to share information about the account and the

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account holder to the CRA. Certain information will be transmitted to the IRS such as:

- identifying information about the account holder (name and address)
- account number
- account balance or value at end of the year
- certain amounts paid or credited to the account

Conclusion

FATCA is coming into effect July 1, 2014, and, for some U.S. persons, this means that some of their personal financial information will be shared with the IRS and possibly examined for compliance with U.S. tax regulations. For those to whom FATCA may apply and whose fiscal records are not up to date or who are not familiar with their own holdings, they should review their assets now and seek professional advice, if required, to put their records in order and to familiarize themselves with the new regulations and how they will apply to their particular holdings. Further, a professional advisor may determine if one’s portfolio would benefit by moving some assets into one or more of the exempt accounts.



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CALL TO THE BAR
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PRACTICE SUMMARY:

Sébastien joined Tierney Stauffer LLP as an Associate in the Wills, Estates and Trusts practice group in 2009. Over the past few years, he has expanded his practice to include tax and wealth management. Currently, Sébastien’s practice focuses on estate planning and administration and personal and corporate taxation.

Sébastien specializes in tax planning, business succession, farm succession, tax appeals and trust law. He also specializes in drafting wills for more complex planning by employing various tools including dual wills and all varieties of trusts in order to achieve effective individual and corporate wealth management and to maximize preservation. Sébastien has experience with planning for persons with disabilities and their families including RDSPs, Henson trusts and all matters, including guardianship applications.

In addition to tax planning, Sébastien assists individuals and businesses with resolving their tax related issues and disputes with the Canada Revenue Agency (CRA), including filing voluntary disclosures and appeals. Sébastien also applies his expertise with respect to cross-border issues to all areas of his practice.

Sébastien is fully bilingual and practices in both French and English. He frequently speaks at seminars on a variety of topics including estates, trusts, corporate and tax matters. He has also appeared on radio and television discussing legal issues and before the Senate Committee on Banking Trade and Commerce regarding the RDSP. Sébastien is a tutor for the Law Society of Upper Canada for the Estate Practice section.

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