



FREQUENTLY ASKED QUESTIONS

Recent Changes in U.S. Tax Laws and Enforcement Practices:

Q. Am I subject to U.S. Tax Laws?

A. The U.S. imposes tax on “U.S. Persons”. “U.S. Persons” include U.S. citizens, U.S. residents, and green card holders. The U.S. laws on U.S. Persons and U.S. citizenship are complex, and reference needs to be made to a U.S. tax specialist for tax advice tailored to your specific circumstances. The U.S. imposes tax on U.S. Persons on their worldwide income regardless of where they live. As a result, U.S. persons have annual U.S. income tax filing and reporting requirements regardless of where they call home and how little time they have spent in the U.S. Please note that being a Canadian citizen or earning only Canadian source income or paying Canadian taxes does not diminish or eliminate the obligation to file U.S. tax reporting filing(s) and U.S. disclosure documentation.

Q. I’m a U.S. Person. What income tax filing and reporting requirements do I have?

A. A U.S. Person should be filing a U.S. individual income tax return to report worldwide income on an annual basis. In addition, there are a number of information reporting requirements for U.S. Persons. You have to file a “Report of Foreign Bank and Financial Account” (FBAR) if you have a financial interest or signature authority in one or more accounts outside the U.S. and the aggregate value of those accounts exceeds US\$10,000. As of the 2011 tax year, U.S. Persons who have accounts outside the U.S. and assets with an aggregate value exceeding US\$50,000 are required to disclose certain information about these accounts on an information return. In addition, U.S. Persons who have shares in a “passive foreign investment corporation” (PFIC) must disclose certain information regarding their investment in the PFIC on an annual basis. The new reporting obligation in respect of PFICs can arise solely from holding the PFIC even if it is held in a Canadian registered account.

Q. What is a PFIC?

A. A PFIC is a “passive foreign investment corporation”, which is basically a non-U.S. corporation that derives most of its gross income in the tax year as passive income (i.e., rental income or royalty income as well as interest, dividends, and capital gains) or at least half of its assets produce passive income (e.g. cash, bonds, stocks). All Canadian mutual funds, including Canadian Exchange Traded Funds, are now considered by the IRS to be PFICs for U.S. tax purposes. If you are a U.S. Person, you should seek advice from a U.S. tax specialist who can advise you on those investments that fall within the definition of “passive foreign investment corporation” under U.S. tax laws and those Canadian or non-U.S. securities that can be held (such as individual stocks and bonds) without triggering the PFIC rules.

Q. What is the U.S. PFIC tax rule?

A. The tax treatment of PFICs under U.S. tax rules is complex. Recent changes to these rules impose harsher U.S. taxes, penalties, and interest on U.S. Persons who hold PFICs. Examples include the taxation of distributions on PFICs (such as dividend or interest income) and the increase in value of the PFIC (such as capital gains) during the tax year (which will be treated under PFIC rules as ordinary income in the hands of the US Person, rather than as income earned

or generated by the fund). As a result, specific reference needs to be made to a U.S. tax specialist for tax advice tailored to your specific needs and circumstances.

Q. Can I avoid the PFIC tax rules if I hold my Canadian Mutual Funds inside a Registered Account like my RRSP?

A. At the present time, there is no clear guidance on this matter from the IRS. However, because of recent enforcement practices of the IRS, there is a possibility that investment income earned from Canadian Mutual Funds held within an RRSP will not be eligible for a tax deferral under U.S. tax laws. Instead, the IRS may treat the Canadian Mutual Fund in the Canadian registered account as a PFIC in the current tax year, and distributions and increases in value in respect of a PFIC held in the Canadian registered account will be reportable as income in the U.S. Person's U.S. tax return. This may be the tax treatment applied by the IRS despite the fact that, in Canada, the RRSP is designed to allow a tax deferral on any and all income earned within the registered account as long as the investment is held in the RRSP.

Q. What happens if I am a U.S. Person and don't comply with U.S. tax reporting and disclosure requirements?

A. There are significant penalties (in addition to possible criminal prosecution) associated with the failure to file individual income tax returns and complying with the FBAR and other reporting requirements. Beginning in 2013, under the new Foreign Account Tax Compliance Act (FATCA), non-U.S. financial institutions will be required to identify and report on accounts held for U.S. Persons. Therefore, if you don't comply with U.S. tax reporting and disclosure requirements, the IRS will likely find you and you may be subject to significant penalties.

Because of the complexity and the potential for significant penalties, consultation with a U.S. tax specialist is highly recommended.

Q. I don't know a U.S. tax specialist. Can you introduce me to someone who is a Qualified Tax Professional?

A. The following firms employ Qualified Tax Professionals who can provide tax advice tailored to your specific situation. You can contact any one of the following individuals who represent their firm in U.S. tax matters and can refer you to a tax professional within the firm:

1. Ray Kinoshita – Grant Thornton, Toronto – rkinoshita@grantthornton.ca
2. Kevyn Nightingale – Meyers, Norris, Penny - kevyn.nightingale@mnp.ca
3. Marla Waiss - Hodgson Russ, Buffalo & Toronto Offices – MWaiss@hodgsonruss.com
4. Ed Northwood - Ruchelman Law Firm, New York & Toronto Offices – ed@ednorthwood.com
5. Dean Smith – Cadesky & Associates, Toronto – dsmith@cadesky.com
6. Jim Yager – KPMG, Toronto – jvager@kpmg.ca
7. Marty Press – Gunster Law Firm, Ft. Lauderdale, Florida - mpress@gunster.com
8. Beth Webel –Price Waterhouse Coopers – Toronto/Hamilton - beth.webel@ca.pwc.com

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