



Information for Clients on the Canada-U.S. Information Exchange Agreement to Improve Cross-Border Tax Compliance

Last Updated June 11, 2014

The following information is for clients of Canadian life insurance companies to help you understand how the Canada-U.S. Information Exchange Agreement (the "Agreement").¹ to improve cross-border tax compliance, which was signed on February 5, 2014, could affect you. If you have further questions, please contact your financial institution or tax advisor.

Also, the Canada Revenue Agency (CRA) has posted a Frequently Asked Questions (FAQ) document to explain how the Agreement may impact Canadians at:

<http://www.cra-arc.gc.ca/tx/nnrstdnts/nhncdrprtnng/menu-eng.html>

<i>Question</i>	<i>Response</i>
Q1 What is the purpose of the Agreement signed February 5, 2014?	<p>The Agreement between Canada and the U.S. is intended to improve tax compliance in both countries through enhanced information sharing between the two governments and to provide the U.S. government with information required under the U.S. legislation known as the Foreign Account Tax Compliance Act (FATCA).</p> <p>FATCA is U.S. legislation that was passed in 2010 to deter "U.S. Persons" from evading U.S. tax using "financial accounts" (including bank accounts, investment accounts, mutual funds and certain insurance contracts, such as annuity contracts, segregated fund contracts and cash value life insurance policies) held outside the United States. FATCA requires non-U.S. financial institutions to identify and report information to the Internal Revenue Service (IRS) on certain financial accounts held outside the U.S. by U.S. Persons.</p> <p>The Canadian agreement signed with the U.S. is similar to agreements signed by other countries and provides similar relief. Under this agreement, certain concessions were granted</p>

¹ The full name of the Agreement is "Agreement Between the Government of the United States of America and the Government of Canada to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital".

The above information is intended to provide general guidance only, and is not an exhaustive analysis of the impact of the Canada-U.S. Information Exchange Agreement. The above information should not be considered as legal or tax advice. We recommend you seek the advice of your financial or tax advisor to better understand if or how FATCA impacts you or your business. The above information is current as of June 11, 2014.



to ease the burden of administration:

- reporting is to the Canada Revenue Agency (CRA), rather than the IRS
- there is no requirement to withhold tax or close financial accounts held by U.S. Persons.

For more information about the Agreement, visit CRA's website at:

<http://www.cra-arc.gc.ca/tx/nnrstdnts/nhncdrprtng/menu-eng.html>

Q2 When do the requirements under the Agreement take effect?

Identification and reporting of accounts held by U.S. Persons will be required for some new accounts opened after June 30, 2014. In addition, there are some reporting requirements for accounts in existence as of June 30, 2014.

The first reporting is due in May 2015 for 2014 data.

Q3 Who is considered a "U.S. Person"?

A "U.S. Person" includes:

- 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 their U.S. citizenship]
- A permanent resident of the U.S.
- A U.S. green card holder.²
- U.S. corporations and U.S. estates and trusts.

You may also be considered a U.S. Person if you spend considerable time in the U.S. on a yearly basis. For example, some Canadian "snowbirds" may be considered a U.S. Person for U.S. tax purposes. Contact your tax advisor on how this may impact you.

For more information about your Canadian residency, visit the CRA website at:

<http://www.cra-arc.gc.ca/tx/nnrstdnts/cmmn/rsdncy-eng.html>

² A green card has a 10 year standard term (which requires renewal). A green card holder continues to be a U.S. Person until IRS form 8854 "Initial and Annual Expatriation Statement" has been filed.

For more information, visit the websites for U.S. Citizenship and Immigration Services and the IRS at:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=3f443a4107083210VgnVCM100000082ca60aRCRD&vgnnextchannel=3f443a4107083210VgnVCM100000082ca60aRCRD>
and
<http://www.irs.gov/Individuals/International-Taxpayers/Frequently-Asked-Questions-About-International-Individual-Tax-Matters>

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For more information, visit the IRS website at:

<http://www.irs.gov/Individuals/International-Taxpayers/Alien-Taxation---Certain-Essential-Concepts>

For more information on snowbirds, visit the IRS website at:

<http://www.irs.gov/businesses/small/international/article/0,,id=96352,00.html>

Your financial institution may request additional information from you or through your advisor to clarify and confirm your U.S. Person status.

If you are not sure if you are a U.S. Person, please contact your tax advisor or lawyer.

Q4 I am not a U.S. Person. How does this affect me?

When you purchase a new insurance policy or annuity contract that is potentially "reportable" (see Q5), your financial institution is required by Canadian law to ask you to certify that you are not a U.S. Person, or provide documentation to verify this.

If you have an existing policy, you may be required to provide your financial institution with additional information or documentation to validate whether or not you are a U.S. Person and subject to reporting to the CRA.

If you do not provide any required documentation in a timely manner, your financial institution will be required to report your account to the CRA who will provide this information to the IRS.

Q5 What types of financial accounts are subject to review and possible reporting?

Financial accounts that are subject to review and possible reporting include:

- most bank accounts and GICs
- mutual funds
- brokerage and custodial accounts
- annuity contracts (including segregated fund contracts)
- life insurance policies with a cash value.

Reporting is required if the accountholder / policy owner is a U.S. Person or if the accountholder has not provided requested information (see Q4 above).

Government registered retirement and savings plans (such as RRSPs, RRIAs, RPPs, PRPPs, RESPs, DPSPs, RDSPs, and TFSA) are exempt.

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Q6 Are all insurance and annuity products reportable?

No. Insurance and annuity products that may be reportable include non-registered:

- i) life insurance policies with "cash value" such as Universal and Whole Life (policies with a cash value below \$50,000 are not reportable, subject to aggregation rules if multiple policies are held by the same policyholder)
- ii) annuity contracts (including segregated fund contracts).

Reporting is not required for:

- i) insurance contracts that provide pure insurance protection and do not have any cash value (such as term life, disability, health, and property and casualty insurance)
- ii) government registered retirement and savings plans (such as RRSPs, RRIFs, RPPs, PRPPs, RESPs, DPSPs, RDSPs, and TFSAs).

Only financial accounts held by U.S. Persons or by someone who has not clarified their U.S. status when requested to do so will be reported to CRA.

Q7 If I am a Snowbird, am I considered a U.S. Person?

Snowbirds may become U.S. Persons if they have moved their principal residence to the U.S. or if the amount of time they spend in the U.S. on a yearly basis exceeds a certain time limit. They may be deemed to be a "resident alien" if they are a U.S. green card holder. Information on the "Substantial Presence Test" is posted on the IRS website at:

<http://www.irs.gov/businesses/small/international/article/0,,id=96352,00.html>

For general information, see the CRA webpage "Canadian residents going down south", which includes information on U.S. tax issues:

<http://www.cra-arc.gc.ca/tx/nrrsdnts/sth-eng.html>

Contact your tax advisor or lawyer for further advice on how this may impact you.

Your financial institution may ask you to certify that you are only a temporary visitor of the U.S. Any such certifications will need to be renewed at least every 7 years.

Q8 I am a Canadian resident but I was born in the U.S. Am I considered a U.S. Person?

Generally yes, unless you have renounced your U.S. citizenship. As noted in the response to question 3 above, you are considered a U.S. Person if you are a citizen of the U.S. (including an individual born in the U.S., but resident in

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Canada, or another country, who has not renounced their U.S. citizenship). Note, a person can be a tax resident of more than one country.

Q9 I am a Canadian resident but am also a resident of the U.S. for tax purposes*. Is there anything I can do to change my status from a U.S. Person to a non-U.S. Person?

If you wish to become a non-U.S. Person, you may be able to formally renounce your U.S. citizenship with the U.S. government. We recommend you consult a lawyer to review your options. Some information is available at:

http://travel.state.gov/law/citizenship/citizenship_776.html

<http://www.treasury.gov/resource-center/tax-policy/Documents/Income-Tax-Compliance-US-Citizens-and-Residents-Residing-Outside-US-5-1998.pdf>.

* Examples of individuals who are U.S. residents for U.S. tax purposes may include:

- i) Someone born in the U.S. who moved to Canada shortly after birth (who has not renounced their U.S. citizenship)
- ii) Canadian resident with U.S. citizenship rights due to U.S. parents or marriage
- iii) Canadian U.S. green card holder who has stopped working in the U.S. and, after leaving the U.S., has not yet filed IRS form 8854 "Initial and Annual Expatriation Statement" or has not declared themselves a "nonimmigrant" on their U.S. tax return..³

Q10 Are you providing any information about me to the Canadian or U.S. government under this Agreement?

Canadian financial institutions provide information to the CRA as required by Canadian tax law and regulations. The Income Tax Act requires financial institutions to provide certain additional information with respect to reportable accounts (including the name and tax identification number of the account holder and the value of the account). Under the Agreement, CRA is required to provide the information on reportable accounts to the IRS. If you have questions, visit the CRA's website at:

<http://www.cra-arc.gc.ca/tx/nrdsdnts/nhncdrprtng/menu-eng.html>

Q11 What if I refuse to cooperate and share information about myself?

Under Canadian law, your financial institution will be required to report your account to the CRA. You may also be subject to fines and penalties by CRA.

Q12 I am purchasing a joint policy. Are both joint owners required to provide additional documentation?

Yes, both owners must provide required information.

³ For more information, see IRS and U.S. Citizenship and Immigration Services websites listed in footnote 2.



- Q13 If a joint policy is held by a U.S. Person and a non-U.S. Person, is the policy considered 50% U.S. or 100% U.S.?
- Joint accounts with at least one U.S. Person as an owner are treated as a U.S. account and the entire account is treated as held by the U.S. Person and subject to the reporting requirements for accounts owned by U.S. Persons.
- Q14 I have requested that my annuity payments be credited to my account in Florida as I am a Snowbird. Will I be required to complete additional documentation?
- Generally additional documentation will be required. If there are standing instructions to credit payments to U.S. bank accounts, financial institutions will generally be required to obtain additional information from you to confirm if you are a U.S. citizen or U.S. resident for tax purposes. This may include a self-certification from you confirming your status as a snowbird. Any such self-certifications will need to be renewed at least every 7 years.

Questions for Entity⁴ Customers

- QE1 I am an owner of a business and would like to know how the Agreement will affect me and my business?
- If the account is opened for a corporation, there may be additional requirements to determine whether the corporation is a U.S. Person itself or whether it is considered to be a Financial Institution. If the corporation is a passive investment entity, information and supporting documentation will be required to determine any U.S. Persons who own or control 25% or more of the corporation. (Refer to QE4 below for more details on passive investment entities.)
- QE2 How will the Agreement affect trusts and estates?
- Accounts of deceased individuals are exempt if a copy of the deceased's will or death certificate has been received.
- Accounts held by trusts have additional requirements to determine whether the trust is a U.S. Person itself, or whether any of the trust's controlling persons (e.g., the settlor, the trustee or the beneficiaries) are U.S. Persons.
- QE3 What Canadian business entities are exempted under the Agreement?
- Financial Institutions*
- Financial institutions are required to comply with the new reporting requirements unless they qualify as "deemed compliant" (and comply with the procedures and conditions for this type of low-risk entity) or are an excluded insurer [selling only insurance without cash value (such as term life or P&C) or reinsurance].
- Non-Financial Entities*
- A business entity will generally be exempt under the

⁴ "Entity" includes corporations, partnerships and some trusts.



Agreement if it is not a Financial Institution and is actively carrying on a business that:

- i. generates 50% or more of its gross revenue from such activity and
- ii. not more than 50% of the assets of the entity are held in passive investments.

If an entity's income is primarily passive (such as rent, royalties, interest, or dividends - see QE4), it will generally be required to identify any U.S. Persons who own or control 25% or more of the entity, in which case information about the account will be reported to CRA.

Therefore, if the entity is not itself a U.S. Person and it carries on an active business, or is a passive investment entity but has no controlling person that is a U.S. Person, there will be no reporting required by that entity or in respect of accounts held by that entity.

QE4 How will I know if my entity is passive?

If entities are passive, information is required about any U.S. Persons owning or controlling 25% or more of the entity.

In general, passive entities do NOT engage in substantive business activities to produce a good or service, but rather derive the majority of their revenue from holding or buying and selling investments that produce income, usually in the form of interest, dividends or capital gains.

Under the Agreement, a passive entity is one which is not active.

An entity is considered active if it meets one of the following requirements:

- 50% or more of its gross proceeds are from an active business* AND 50% or more of its assets are used in an active business
- shares are publicly traded
- government entity
- holding company whose subsidiaries are not financial institutions
- in liquidation or reorganization (and was not a financial institution)
- start-up business (other than a financial institution) that is investing in active assets (24-month limit to become active)
- tax exempt religious, charitable, scientific, cultural, athletic or educational organization

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Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

- primarily engages in financing and hedging with or for related entities that are not financial institutions.

* Examples of an Active business are:

- manufacturing cars for sale
- providing legal services by a law firm.

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