



Robert W. Wood

THE TAX LAWYER

TAXES 10/08/2014

IRS Gives Big Tax Break To Canadians-- Hallelujah!

The relationship between the IRS and Canadians is not great. Groups like the [Alliance for the Defense of Canadian Sovereignty](#) want relief from the horrendous double filing and higher taxes Ameri-Canadians often face. Add to that the Canadian suit to block Canada's FATCA deal with the U.S. It adds up to a distinctly Canadian style of borderlands unrest. But finally, the IRS has offered the northern variety of an olive branch.

The Internal Revenue Service just made it easier for people with ubiquitous Canadian retirement plans to get favorable U.S. tax treatment—*automatically*. That's a step in the right direction. The IRS is trying to make it *simple too*. What's more, the IRS even provided retroactive relief even for those who failed to make the requisite election in the past.

The IRS is eliminating a special annual reporting requirement that has long applied to taxpayers with the Canadian retirement plans known as RRSPs and RRIFs. These are registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs). They now *automatically* qualify for tax deferral akin to the tax deferral that the average American enjoys with an IRA or a 401(k) plan.



U.S. citizens and resident aliens qualify for automatic benefit as long as they filed and continue to file U.S. tax returns for any year in which they held an interest in an RRSP or RRIF. They just have to include on their U.S. tax returns the amount of any actual distributions. The [U.S.-Canada](#) tax treaty enables U.S. citizens and resident aliens to defer taxes on income accruing in their RRSP or RRIF until it is distributed.

But in the past, claiming it was a major hassle indeed. Many U.S.-Canadians just *assumed* that was the rule without any action on their part. Many found out the hard way that if they don't handle it just so, there *will* be U.S. tax due on the RRSP income each year, even if it is not distributed! Talk about a rude awakening!

Up until now, the only way Camericans (or if you prefer Ameri-Canadians) could avoid the tax on RRSPs was to attach an IRS [Form 8891](#) to their U.S. return to formally claim the tax treaty benefit. Many didn't know or flubbed it. And for many, that meant either hiring a tax lawyer to try to get a formal pass from the IRS in a private letter ruling, or going into the IRS Offshore Voluntary Disclosure Program (OVDP).

Both of those fixes could be time-consuming and expensive, not to mention nerve-wracking. And then there were the mechanical difficulties. Hey, just being a Camericans with an RRSP shouldn't require rocket science. But many ran into a filing Catch 22. You have to file Form 8891 each year reporting details about each RRSP and RRIF. And the required detail included the contributions made, income earned and distributions made.

This requirement applied *regardless* of whether the Camericans chose the special tax treatment. But are you ready for this? The IRS is *eliminating* Form 8891. Yup, taxpayers are no longer required to file this form for any year, past or present! Calm down, though. The IRS makes clear that it isn't eliminating FBARs. That's right, any other U.S. reporting requirements under the Bank Secrecy Act (BSA) and section 6038D apply. The FBAR form is now known as [FinCEN Form 114](#).

Remember, that beauty is due by June 30 of each year for the prior calendar year. Note that FBARs can trigger big penalties if you don't file. Recently, on [court upheld record FBAR penalties, exceeding the account balance](#). Then there's the FATCA form, [Form 8938](#), which is filed with your tax return. Different reporting thresholds and special rules apply to each of these forms, but you still may need to file them despite the newer and more liberal IRS rules for RRSPs and RRIFs.

Canadian-Americans (yes, and Ameri-Canadians) should check out the additional details in [Revenue Procedure 2014-55](#). This olive branch may not make Canadians drop their FATCA suit. It may not make them friend the IRS either. But it's a good and positive step, one small step for Canadians, one giant leap for the IRS.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.