

Compliance With U.S. Personal Income Tax Filings

Unlike most other countries, including Canada, the United States requires U.S. citizens, dual citizens and green card holders, irrespective of their place of residence, to not only file an income tax return, but also to annually report holdings in “foreign financial accounts” and ownership of certain non-U.S. corporations, partnerships and other entities. For some, this requirement to file a return may have been unknown. For others, the filing requirement may have been known, but ignored—largely on the perception that no benefit would be achieved by filing a nil return. However, irrespective of whether or not any U.S. tax may have been due, there are penalties associated with the failure to file. This failure to comply, and the related penalties, has now become a huge issue due to the recent push by the IRS, under the *U.S. Foreign Account Tax Compliance Act (FATCA)*, to search out those individuals who are not complying. This could be potentially impacting as many as one million Americans and green card holders residing in Canada, this enforcement by the IRS could also have a significant impact for clients and employees of Canadian accountants. This article summarizes the annual filing requirements.

Annual Filing Requirements

The enforcement efforts by the IRS are not only directed to ensure filing compliance of the federal income tax returns, but also to ensure that non-resident U.S. citizens (including those with dual citizenship) and green card holders meet the following annual reporting requirements:

1) “Foreign financial accounts”: Where the cumulative balance in all foreign financial accounts held outside of the U.S. exceeds \$10,000 at any time of the year, a detailed listing of each account must be provided and reported on U.S. Department of Treasury Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts (FBAR)*. The definition of a financial account is far reaching and includes Canadian bank accounts—chequing and savings accounts—securities and brokerage accounts, RRSPs, RESPs, TFSAs, insurance and annuity policies with a cash surrender value, commodity futures or options accounts, mutual accounts, etc. The penalty for “non-willful failure” to report this information is significant (up to \$10,000 per account per year).

If the IRS deems the non-compliance to be a “willful failure”, the penalty is significantly higher. It can be as much as the greater of:

- a) \$100,000; and
 - b) 50% of the amount in the account at the time of violation.
- 2) If the U.S. citizen owns 10 percent or more of a Canadian or other non-U.S. corporation, partnership or other entity, this ownership must also be disclosed. Again, the penalties for failure to comply are harsh, up to \$10,000 per year for each entity.

The statute of limitations does not run for an unfiled return. Therefore, technically, a non-filer would be required to file for all years when the U.S. citizen had income exceeding a small threshold amount. For a brief period, under the U.S. 2011 Offshore Voluntary Disclosure Initiative, the IRS accepted returns for the period 2003 through to 2010 and did not look back further; however this expired on September 9, 2011. Neither the filing of a Canadian income tax return nor paying taxes in Canada during this time mitigates the obligation to file in the United States. Furthermore, renouncing one’s U.S. citizenship may alleviate obligations to file on a go-forward basis, but does not eliminate any past obligations owing to the IRS. As well, even renouncing one’s citizenship will not reduce the obligation to file in the future until one has filed for at least five years.

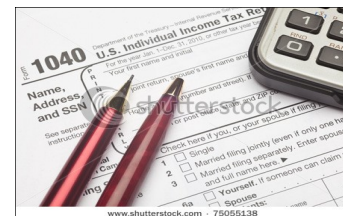
Since failing to file U.S. income tax returns could be a criminal offense, individuals who have questions regarding their obligations may want to seek guidance from a lawyer who has experience with such issues.

Unfortunately, this matter will not be going away and ignoring the situation is not a rational option—to ignore the reporting requirements may only result in significantly increasing the exposure of the individual to potential penalties. Such legal obligations may ultimately fall on executors or beneficiaries of estates of U.S. persons. If they fail to comply for the deceased, they may be liable for the U.S. tax obligation.

The above is an excerpt from an article by Sean Johnson, Director of Professional Services at the Institute of Chartered Accountants of Alberta (ICAA). This article has been reprinted with permission from the ICAA.

Logan Katz comments:

Please note that the above scenarios as noted by Mr. Johnson are not new. There have been voluntary disclosure initiatives in the past, with probably more in the future. However, it seems that the IRS has ramped up its efforts to ensure US citizens are aware of and comply with their US filing requirements. We strongly recommend you consult with an income tax advisor as soon as possible to determine the necessary strategy going forward.



This'n That at Logan Katz

Juvenile Diabetes Research Fund – Ride for Diabetes Research

Logan Katz has two teams fundraising for, and participating in the Ottawa JDRF Ride for Diabetes Research event to be held on October 26th. We are looking for sponsors to help us contribute to this important cause. Please visit <http://jdrfca.donordrive.com/index.cfm?> (search for “Logan Katz”) to make your donation. A very big THANK YOU to all that have supported us to date.

New at Our Reception

The next time you visit our office, you will have the pleasure of being greeted by our newest professional administrator/receptionist, Ms. Angelita Fernandez. We are proud to have Angelita be the first person you’ll meet when you walk into our office. Enjoy her company during your next visit! For most of you that have had the pleasure of getting to know Michelle over the years, we are pleased to announce that she will be moving to our Financial Reporting Services department.

September On-Line Poll

The Logan Katz September on-line poll asked what your voting intentions were for the Ontario election held on October 6th. Our non-scientific results were Liberals 46%, PC 29%, NDP 25%, Greens 0%. Actual results were Liberals 38%, PC 35%, NDP 23%, Greens 3%. Visit our website to participate in our monthly polls.

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