

## Uncle Sam Wants Your Money<sup>[1]</sup>

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U.S. persons in Canada (and elsewhere) need to be aware that the financial situation in the U.S. has caused Uncle Sam to hunt for tax dollars wherever they can be found. In this regard, one focus of U.S. lawmakers is reaching into the pockets of U.S. citizens and other persons who are not generally present in the United States. To this end, over the last few years a number of U.S. foreign reporting and compliance initiatives have been instituted, but if the most recent proposals referred to as the “FATCA” rules are implemented on foreign institutions, as is expected to take place beginning on January 1, 2013, non-compliant U.S. taxpayers may have no where left to hide.

The key to the new rules is that they will take the choice of whether or not a taxpayer reports out of the taxpayer's hands and they do this by imposing a 30% withholding tax on U.S. source income earned by foreign financial institutions (for example, any Canadian bank, credit union, etc.) unless the institution enters into an agreement with the IRS to disclose all of their U.S. accountholders. We understand that many banks are already in the process of developing internal programs to track, monitor and report their U.S. account holders – and this means that if you are considered to be a U.S. accountholder, your bank either will have to report you or will ask you to find another place to hold your money – and there may not be an institution willing to take the account.

Although there are, no doubt, many U.S. persons in Canada who are willfully non-compliant there are many others who simply have no idea that they are failing to comply. This is because unlike most tax systems, such as in Canada, where tax is based primarily on residency, the U.S. tax system taxes individuals who are U.S. citizens on their worldwide income regardless of their U.S. residency status. Furthermore, the U.S. citizenship rules are not intuitive and can be complex. For example, a person born outside of the U.S. can be a U.S. citizen simply because one of the person's parents is a U.S. citizen and a person born in the U.S. can be a U.S. citizen even if the person's parents were never U.S. citizens or residents.

Another potential trap for unwary persons is that “former” U.S. Green Card holders who did not renounce their Green Cards in the proper manner continue to be considered to be U.S. persons fully subject to U.S. taxation. Of course, there are many other traps that can trap a person in the U.S. tax system. Even if citizenship is not an issue, determining residency can sometimes be tricky – especially if a person has ties in both the U.S. and another jurisdiction such as Canada. If you think that you might have U.S. filing obligations that you may not be complying with, we strongly advise you to speak with a U.S. taxation specialist lawyer or accountant and to do so as soon as possible.

The reason time is of the essence is that the IRS has recently announced a new Voluntary Disclosure Offshore Initiative, which may provide you with the opportunity to become compliant. The cost of compliance will include tax, interest and possibly penalties but will help you to avoid crippling penalties or worse if you don't comply and are eventually caught. The program expires on August 31 of this year.

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<sup>[1]</sup> The rules imposed by IRS Circular 230 require us to state that, unless it is expressly stated any opinions expressed with respect to a significant tax issue are not intended or written by the practitioner to be used, and cannot be used for the purpose of avoiding penalties that may be imposed in connection with U.S. Federal tax matter.