

Uncle Sam “Still” Wants Your Money [1]

By: Michael Goldberg

Minden Gross LLP, a member of MERITAS Law Firms Worldwide.

Last spring I wrote on the subject of U.S. filing obligations for U.S. persons in Canada (and elsewhere). At the time I noted that Uncle Sam was hunting for tax dollars wherever they could be found and that new U.S. foreign reporting and compliance initiatives, such as the “FATCA” rules,[2] were giving Uncle Sam a real leg up non-compliant U.S. taxpayers.

As I noted, the key to the new FATCA rules is that they will take the choice of whether or not a taxpayer reports out of the taxpayers hands 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. While the financial community and the Canadian government, among others, have expressed deep concerns about the scope of these U.S. initiatives, we understand that most financial institutions are well along the way to developing internal programs to ensure they will comply with the initiatives – meaning that they will track, monitor and report their U.S. account holders to the IRS.

In order to encourage compliance, an Offshore Voluntary Disclosure Initiative (Second OVDI)[3] had been offered to encourage compliance by providing a venue for taxpayers to avoid potentially crippling penalties or worse if they were eventually caught. Although that program expired on September 9, 2011, apparently it was so successful that on January 9, 2012, a Third OVDI was put in place with no set expiry date for the programme.

When I originally wrote about this topic a year ago it was fair to say that ignoring those who were intentionally failing to comply with their U.S. obligations, there were likely many U.S. persons in Canada who simply had no idea that they were failing to comply with any US laws. However, with the publicity that these initiatives have garnered in the popular press, as time goes by the ability for U.S. persons in Canada to take the position that they didn't know they had any U.S. filing obligations is becoming more tenuous and may eventually compromise their ability to take advantage of the current or any future OVDI programmes.

If you are or even think you might be a U.S. person living in Canada you are encouraged to speak to a qualified U.S. tax specialist knowledgeable about the Third OVDI.

Michael Goldberg, tax partner, Minden Gross LLP, a member of MERITAS law firms worldwide. Michael's practice focuses on tax and estate planning for entrepreneurs and their corporations (mgoldberg@mindengross.com).

[1] For a more detailed discussion of the issues please see the original article “Uncle Sam Wants Your Money”, published on the Minden Gross LLP website in May 2011.

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.

[2] Currently, these rules are partially in force with some elements deferred until at least January 1, 2014.

[3] The First OVDI was offered in 2009.