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**UNITED STATES COMPLIANCE QUESTION AND ANSWER**

**June 14, 2011**

**Q: I am a United States citizen living in Canada. None of my income originates from the United States, do I have to file a United States income tax return?**

A: Yes. Because United States citizens are taxable on world wide income, every United States citizen regardless of residence must prepare and file a United States income tax return for any year in which gross income (taxable or non-taxable, cash or otherwise) exceeds certain minimum thresholds. In 2010 those thresholds were \$9,350 for single taxpayers, \$18,700 for taxpayers who are married filing joint returns, \$3,650 for taxpayers who are married filing separate returns, and \$12,050 for taxpayers filing as head of household.

**Q: If I paid taxes to Canada on all of my income, do I still have to file a United States income tax return?**

A: Yes. If your worldwide income exceeds the minimum United States income filing requirements you must file a United States income tax return even if you filed returns and paid tax in another country.

**Q: I paid income taxes to Canada on all the income that I earned, will I still have a United States income tax liability?**

A: Perhaps. It depends upon the character of the income and when and how it was earned. In many cases, taxes paid to Canada are allowed as a foreign tax credit which offsets the United States income tax liability.

**Q: Can I be a United States citizen if I never lived in the United States or applied for United States citizenship?**

A: Yes. If you were born in the United States, or were born outside the United States to parents one of whom was a citizen of the United States who had been physically present in the United States or one of its outlying possessions for periods totaling at least five years, at least two of which were prior to attaining age 14, you are a United States citizen.

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**Q: If I am a United States citizen living in Canada do I have other filing obligations in addition to United States income tax returns?**

A: Most likely yes. Any United States citizen who at any point in a calendar year has bank or investment accounts which total more than \$10,000 is also required to also to file Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts ("FBAR"). Any United States citizen who owns 10% or more of the stock of a foreign corporation has an obligation to file Form 5471 Information Return of United States Persons with Respects to Certain Foreign Corporations. Similarly, individuals with interest in foreign trusts, partnerships, and other entities have similar information return requirements.

**Q: I am a United States citizen, but have never filed a United States income tax return. How will the Internal Revenue Service find me?**

A: The Foreign Account Tax Compliance Act ("FATCA") requires foreign financial institutions to provide information to the Internal Revenue Service regarding depositors and investors who are United States citizens starting January 1, 2013.

**Q: What information will be provided to the Internal Revenue Service?**

A: Your name, social security number, account number, account balance, and annual withdrawals and deposits.

**Q: What will the Internal Revenue Service do with this information?**

A: The Internal Revenue Service will use the information to determine if you filed a United States income tax return or have disclosed income earned by your foreign accounts on your returns that have been filed.

**Q: If I file my United States income tax returns, but because of the tax credit arising from paying Canadian income taxes do not owe any United States taxes, do I have any exposure?**

A: Most likely yes. Penalties for failure to file United States information returns such as the FBAR form or Form 5471 are \$10,000 for each year the return was not filed or filed late. If the failure to file was willful, the penalty is the greater of \$100,000 or 50% of the account balance.

**Q: For how many years do I have to file?**

A: Traditional practice is to file back returns for six years. However, because of recent changes in Internal Revenue Service policy, it now appears it is necessary to file returns for any year for which return was required but remains unfiled.

**Q: Is there any opportunity for relief from these onerous penalties and filing obligations?**

A: Yes. In February 2011, the Internal Revenue Service announced an Offshore Voluntary Disclosure Initiative ("OVDI") which will allow taxpayers to file eight years of returns (2003-2010) and limits penalties for unfiled income tax and information returns and unreported income.

**Q: Can anyone take advantage of the Offshore Voluntary Disclosure Initiative?**

A: No. Only persons who have not been identified for criminal or civil investigation by the Internal Revenue Service or the United States Department of Justice are eligible to participate in the OVDI. In recent years, the Internal Revenue Service has aggressively stepped up its enforcement of offshore tax compliance.

**Q: How long do I have to take advantage of the Offshore Voluntary Disclosure Initiative?**

A: The OVDI closes on August 31, 2011.

**Q: Because I am a United States citizen with unfiled United States income tax returns and because information regarding my foreign bank and investment accounts will be turned over to the Internal Revenue Service starting in 2013, I am concerned. What should I do?**

A: It is imperative to find a capable United States tax professional, either a lawyer or accountant, who specializes in United States tax matters.

**Q: How can I find such a person?**

A: Consult the tax and financial professionals with whom you are currently working. These individuals receive similar questions from clients like you and have identified competent tax professionals who have been able to answer their clients' questions and address their United States tax compliance obligations.