

THE NAVIGATOR



U.S. FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) IN CANADA

This U.S. legislation aims to prevent offshore tax evasion by U.S. persons

FATCA, which was legislated in 2010, seeks to identify U.S. persons who may evade U.S. taxes by placing assets in foreign (non-U.S.) accounts -- either directly or indirectly through certain foreign entities such as corporations and trusts. The legislation requires non-U.S. financial institutions to report relevant information about financial accounts held by identified U.S. persons.

The information in this article is intended to provide an overview of FATCA for individuals and entities in Canada. The information is not intended to provide legal or tax advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax advisor before acting on any of the information in this article.

FATCA UPDATE IN CANADA

In its original form, FATCA required Canadian financial institutions to report relevant information directly to the Internal Revenue Service (IRS). However, on February 5, 2014 Canada and the United States announced the signing of an Inter-Governmental Agreement (IGA) under the existing Canada-U.S. Tax Treaty (Treaty). Under the agreement, Canadian financial institutions will report "U.S. Reportable Account" information to the Canada Revenue Agency (CRA) rather than directly to the IRS. CRA will exchange information with the IRS under the agreement and the Treaty

taking into consideration Canadian privacy laws.

The first phase of FATCA must be in place by July 1, 2014 and includes new account opening procedures for financial institutions to identify "U.S. Reportable Accounts". The second phase of FATCA includes the identification and reporting of certain pre-existing U.S. Reportable Accounts opened prior to July 1, 2014. This phase is to complete between 2014 and 2016.

Note: The term *U.S. Reportable Account* is an account owned by a U.S. individual (person), U.S. entity, or a non-U.S. entity that has U.S. owners

– regardless of the currency of the account itself.

I AM NOT A U.S. PERSON. WHAT DOES FATCA MEAN FOR ME?

In most cases, FATCA should have little impact. If you have an existing account and there is an indication that you may be a U.S. person, or if you are opening a new account, RBC may ask you to provide additional information or documentation to demonstrate that you are not a U.S. person. Examples of indicators that someone may be a U.S. person include U.S. identification used to open an account or a U.S. address associated with the account. If



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U.S. persons may be asked to complete IRS Form W-9 *Request for Taxpayer Identification Number and Certification* to keep on file.

you choose not provide the requested information, RBC may be required by Canadian law to report information about you and your account to the CRA.

I AM A U.S. PERSON. WHAT DOES FATCA MEAN FOR ME?

U.S. persons may be asked to complete IRS Form W-9 *Request for Taxpayer Identification Number and Certification* to keep on file. RBC will report information about you and your account to the CRA on an annual basis. If you have complied with all of your U.S. tax and information reporting obligations, reporting by RBC should not result in any increased U.S. tax liability. In its original form, FATCA required a 30 percent withholding tax on U.S. source payments made to persons who are not in compliance. Under the IGA this withholding is not a requirement (however, 30 percent withholding tax may apply for entities such as U.S. corporations, partnerships, trusts, and estates and non-U.S. entities with U.S. owners who are not in compliance).

FREQUENTLY ASKED QUESTIONS

WHO OR WHAT IS A U.S. PERSON FOR U.S. TAX PURPOSES?

Under U.S. tax law, you are considered a U.S. person if you are:

- A citizen of the U.S. (including an individual born in the U.S. but resident in another country, who has not renounced U.S. citizenship);
- A lawful resident of the U.S. (including a U.S. green card holder);
- A person who resides in the U.S.

You also may be considered a U.S. person if you spend a certain number of days each year in the U.S. On this basis, some Canadian “snowbirds” may be considered U.S. persons.

However, the Treaty may allow them to claim a closer connection to Canada and be treated as a Canadian resident rather than U.S. resident.

U.S. corporations, estates and trusts are also considered U.S. persons.

I AM A U.S. CITIZEN BUT HAVE NOT LIVED IN THE U.S. FOR YEARS AND DO NOT PAY U.S. TAXES. WHY DOES THIS APPLY TO ME?

A U.S. citizen who lives outside the U.S. falls within the definition of a U.S. person for U.S. tax purposes, and must file U.S. tax returns annually. U.S. persons may also have other U.S. reporting obligations. If you live in Canada, foreign (non-U.S.) financial institutions in Canada will be required to identify the accounts of U.S. persons and report them to the CRA annually. It is important that you consult with a tax advisor to understand your U.S. reporting obligations.

WHAT INFORMATION WILL BE REPORTED?

Financial accounts held in Canada that may be subject to reporting include bank, mutual fund, brokerage and custodial accounts, annuity contracts and some life insurance policies that have an investment or savings component.

The information that is required to be reported includes the following:

For the 2014 calendar year (reported in 2015):

- Name, address, and U.S. Taxpayer Identification Number (TIN) of the U.S. person. Or, in the case of a U.S.-owned foreign entity, the name, address and TIN (if any) of the entity, and the name, address and TIN of each substantial U.S. owner;
- Account number; and
- Account balance or value at the end

Financial accounts held in Canada that may be subject to reporting include bank, mutual fund, brokerage and custodial accounts.

of the year (or immediately prior to account closure).

For the 2015 calendar year (reported in 2016):

- Same information as reported in 2015, plus:
- For depository accounts: gross interest paid or credited to the account during the year; or
- For custodial accounts: gross dividends, gross interest and gross amount of all other income paid or credited to the account during the year (or to the date of transfer or closure if applicable); or
- For other accounts: gross amounts paid or credited to the account holder during the calendar year, including the total amount of redemption payments.

Also, additional information for transfers or closures of deposit, custodial, insurance or annuity financial accounts:

- Identification of the account as closed or transferred, and
- Account balance or value withdrawn or transferred from the account.

For 2016 and subsequent calendar years (reported in 2017 and beyond):

- Same information as reported in 2016, plus:
- For custodial accounts: gross

proceeds from the sale or redemption of property paid or credited to the account during the year.

WILL INFORMATION ABOUT REGISTERED PLANS BE REPORTED?

The following registered plans will be exempt from reporting under the IGA:

- Registered Retirement Savings Plans (RRSPs)
- Tax Free Savings Accounts (TFSA's)
- Registered Disability Savings Plans (RDSPs)
- Registered Pension Plans (RPPs)
- Registered Retirement Income Funds (RRIFs)
- Pooled Registered Pension Plans (PRPPs)
- Registered Education Savings Plans (RESPs)
- Deferred Profit-Sharing Plans (DPSPs)
- AgriInvest accounts

Please note that while these plans may be exempt from reporting under the IGA for FATCA purposes, this does not affect a U.S. person's obligation to report income earned in these plans on their U.S. income tax return and additional informational reporting requirements where required. Please consult with your tax advisor for more information.

DOES FATCA APPLY TO BUSINESS ACCOUNTS OR JUST PERSONAL ACCOUNTS?

FATCA applies to business accounts. For example, RBC will be required to identify certain account holders that are U.S. entities or non-U.S. entities in which U.S. residents or U.S. citizens have an interest, therefore business account holders may be required to provide additional information and documentation for FATCA purposes to certify or declare if there are any U.S. owners. Please consult your tax advisor for more information on how FATCA could affect your business.

DO FATCA AND RBC COMPLY WITH PRIVACY LEGISLATION?

RBC takes our clients' privacy seriously and complies with privacy rules in all jurisdictions. We are carefully reviewing FATCA regulations as well as the IGA to assess their implications for privacy. RBC will only disclose account information where you have provided your consent or where required by law, such as disclosure for tax purposes to the CRA.

Since each RBC business will need to undertake due diligence with its clients in respect of FATCA, each business must maintain FATCA documentation separately. Accordingly, each RBC business with which you have an account may contact you separately. RBC appreciates your patience.

Please contact us for more information.

Please contact us for more information about the topics discussed in this article.

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