

# NEW I.R.S. PROCEDURES FOR CANADIAN RETIREMENT PLANS

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On October 7, 2014, the I.R.S. released Revenue Procedure 2014-55, which provides guidance for U.S. citizens or residents who own a Canadian Registered Retirement Savings Plan (“R.R.S.P.”). In short, U.S. citizens/Canadian residents, Canadian citizens/U.S. residents, and dual citizens will no longer need to file Form 8891 to defer the accrued R.R.S.P./R.R.I.F. income for U.S. tax purposes. The deferral will now occur automatically, assuming the individual is “eligible.” These new procedures will apply even if the contributions to the R.R.S.P./R.R.I.F. were made as a resident of Canada.

However, practitioners should note that this does not alleviate the need to file Form 8938 or FinCen Form 114 upon receiving a distribution from an R.R.R.P.

## **Original Treatment**

An individual who is both a U.S. citizen/resident and a beneficiary of a R.R.S.P. will be subject to current U.S. income taxation on income accrued in the plan even though the income is not currently distributed to the beneficiary.<sup>22</sup> In Canada, the individual is not subject to Canadian income taxation until the accrued income is actually distributed from the plan. This leads to a mismatch in the timing of the U.S. tax and the Canadian tax, resulting in possible double taxation.

Article XVIII, Paragraph 7 of the U.S.-Canada Income Tax Convention (the “Treaty”) provides that an individual may defer U.S. taxation on income accumulated in an R.R.S.P., but only if the individual makes an annual election to defer the taxation of income.

Pursuant to Revenue Procedure 2002-23, beneficiaries of Canadian R.R.S.P.’s made the election by attaching to their timely filed U.S. federal income tax return Form 8891, *U.S. Information Return For Beneficiaries of Certain Canadian Registered Retirement Plans*. In addition, U.S. persons who are beneficiaries of

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<sup>22</sup> Unless the plan is an employees’ trust within the meaning of Code §402(b) and the individual is not a highly compensated employee subject to the rule of Code §402(b)(4)(A).

R.R.S.P.'s must also file information reporting with respect to contributions to, distributions from, and ownership of certain foreign trusts.<sup>23</sup>

### Form 8938 Not Required When Form 8891 Was Filed

Code §6038(D) requires a U.S. citizen or resident who holds any interest in a specified foreign financial asset to report that information via Form 8938, *Statement of Specified Foreign Financial Assets*. However, an individual who timely files Form 8891 with respect to an R.R.S.P. or an R.R.I.F. is currently exempt from the reporting obligations imposed by Code §6038(D) with respect to that plan, provided the individual reports on Form 8938 that Form 8891 was filed with respect to the R.R.S.P. or R.R.I.F.<sup>24</sup>

### New Treatment

If the taxpayer is an “eligible individual,” the taxpayer will report income on his or her U.S. tax return only upon receiving a distribution from the Canadian retirement plan.<sup>25</sup>

If an individual is not an “eligible individual,” then he or she must request consent from the I.R.S. to make the election.

An “eligible individual” is a beneficiary of a Canadian retirement plan who:

- Is or at any time was a U.S. citizen or resident (within the meaning of Code §7701(b)(1)(A)) while a beneficiary of the plan;
- Has satisfied any requirement for filing a U.S. Federal income tax return for each taxable year during which the individual was a U.S. citizen or resident;
- Has not reported as gross income on a U.S. Federal income tax return the earnings that accrued in, but were not distributed by, the plan during any taxable year in which the individual was a U.S. citizen or resident; and
- Has reported any and all distributions received from the plan as if the individual had made an election under Article XVIII(7) of the Convention for all years during which the individual was a U.S. citizen or resident.

U.S. citizens in Canada (and Canadians residing in the U.S.) should note the ambiguity of the language, “satisfied any requirement for filing a U.S. return.” Presumably this does not mean “all requirements,” however, U.S. citizens who are Canadian residents and who have not been filing their U.S. tax returns regularly will not be considered eligible individuals who are permitted to defer accumulations in their R.R.S.P. and R.R.I.F. Additionally, retroactive relief is available for those Canadians who were not previously filing Form 8891. In other words, eligible individuals will be treated as having

*“In short, U.S. citizens/Canadian residents, Canadian citizens/U.S. residents, and dual citizens will no longer need to file Form 8891 to defer the accrued R.R.S.P./R.R.I.F income for U.S. tax purposes.”*

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<sup>23</sup> Revenue Procedure 2002-23  
<sup>24</sup> Treas. Reg. §1.6038D-7T(a)(1).  
<sup>25</sup> Rev. Proc. 2014-55, October 7, 2014.

made the election in the first year in which they would have been entitled to make the election under the treaty.<sup>26</sup>

### **Reporting Requirements**

Beneficiaries, regardless of whether they are “eligible individuals” or not, are not required to report contributions to, distributions from, and ownership of a Canadian retirement plan under the simplified reporting regime established by Notice 2003-75 (Form 8891) or pursuant to the reporting obligations imposed by Code §6048 (Form 3520).

In addition, custodians are not required to file Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*, with respect to a Canadian retirement plan. This revenue procedure does not, however, affect any reporting obligations that a beneficiary or annuitant of a Canadian retirement plan may have under Code §6038(D) or under any other provision of U.S. law, including the requirement to file *FinCEN Form 114, Report of Foreign Bank and Financial Accounts* (formerly known as F.B.A.R.'s).



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Rev. Proc. 2014-55, Section 7, IR 2014-97, October 4, 2014.