



**Assante**<sup>®</sup>  
WEALTH MANAGEMENT

*Be well-advised.*

# MONEY *matters*

## SNOWBIRDS BEWARE OF NEW CROSS BORDER RULES!

Starting June 30th 2014, both U.S. and Canadian border services will collect biographical data when visitors enter and exit all border crossings. This data will include name, date of birth, nationality and passport information and will be collected as part of the Entry-Exit Initiative, which began as a pilot project in 2012. This initiative is part of the larger Perimeter Security and Competitiveness Action Plan announced by Canada and the U.S. in 2011.

The sharing of information between U.S. and Canadian governments with regards to the length of time their citizens spend while visiting each country will have serious implications for Canadian snowbirds who visit the U.S. for long periods of time but do not keep track of the days they spend there.

Overextending your stay in the U.S. could result in you being considered a U.S. resident for tax purposes. It could also raise questions and cause delays when crossing the border and in some cases, could even result in you being prevented from entering the U.S. altogether.

Prior to this change, the biographical data was only gathered when you entered the U.S. or Canada. While the new initiative generally does not represent any change in existing U.S. tax rules, if you are a snowbird who spent significant periods of time in the U.S. then you have been exposing yourself to the risk of being subject to the rules



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of the U.S. tax regime. In the past you could have gotten away with overextending your visits because the governments of both countries relied on visitors to self-report. However, under the new initiative, the U.S. and Canada will now have definitive data regarding residency of visitors to their countries.

The U.S. has a “substantial presence” test (SPT) and the number of days spent in the U.S. is the key element in the SPT test. As a snowbird, if you meet the SPT requirements then you may be considered a U.S. resident and thus be liable for U.S. income and gift taxes.

To find out if you meet the requirements of the SPT formula you need to add the number of days you are planning to spend in the U.S. in the current year to one-third of the number of days you spent there in the previous year and to one-sixth of the number of days you spent there in the year before that. If the sum of these days is greater than 183, and you have spent at least 31 days in the U.S. in the current year, you will be considered a U.S. resident for tax purposes.

A few items such as days that you spend commuting to the U.S. for work from your residence in Canada, as well as a few other specific exceptions are not counted in calculating the SPT.

If you happen to meet the SPT you may be able to avoid the obligation to file a U.S. tax return if you file U.S. Internal Revenue Service (IRS) form 8840 to apply for a “closer connection” exemption and declare that you have a primary economic, tax and family connection to another tax jurisdiction. You need to do this by June 15 of the following year or April 15, if you earned employment income in the U.S.

It is important that you keep track of the days that you spend in the U.S. and the SPT, because if you stay in the U.S. for more than 183 days in one year, or do not file a Form 8840 before the deadline, you can no longer apply for the closer connection exemption.

In that case, you can apply for relief from double taxation under the Canada-U.S. tax treaty by filing IRS form 1040NR (the U.S. non-resident alien tax return) and IRS Form 8833 to disclose your return position based on the tax treaty. You need to take into account the fact that by applying under the tax treaty you will be opting for a more complicated process and will be subject to a higher risk of being audited.

The preferable and simpler option would be to file a Form 8840 before the deadline and avoid overstaying.

As a matter of fact, under the new Entry-Exit Initiative, overstaying can have dire consequences. As a Canadian snowbird who stays in the U.S. more than 180 days in any rolling 12 month period, you may be considered “unlawfully present”, and therefore could be barred from entry to the U.S. for three years. Overstaying and being considered unlawfully present in the U.S. for more than 365 day can result in being banned from entering the U.S. for 10 years.

The repercussions of overstaying in the U.S. go even further as

the Canadian government will now also have data on how many days Canadians spend in the U.S. under the new Entry-Exit Initiative.

Provincial healthcare benefits, as well as access to other social benefits in Canada are based on Canadian residency so if you do not meet the tests for Canadian residency, your access to these services could be jeopardized. In addition, you may be subject to a departure tax on the deemed disposition of your assets.

Going forward, as a Canadian resident, you need to be very vigilant about keeping close track of the number of days you spend in the U.S. and make sure that you file an IRS form 8833 if necessary and follow the U.S. Immigration rules closely when it comes to the time individuals are allowed to be in the U.S. You may have been able to get away with overstaying in the past but with the new era of information sharing across the borders you cannot rely on luck any longer. You should also seek advice from a qualified cross border tax advisor and immigration lawyer.

## **FUND FACTS – LIFE JUST GOT SIMPLER**

Until now every time you purchased a mutual fund, your financial advisor had to give you a prospectus - a lengthy document detailing all the features, risks, expenses and fees related to the mutual fund you were purchasing.

Many investors found reading the prospectus or even looking up the relevant information they needed in the prospectus a cumbersome task and wished for a simpler solution. Finally the Canadian Securities Administrators (CSA) has granted investors their wish by introducing the Fund Facts.

The Fund Facts is a document that is designed to give investors key information about a mutual fund, in language they can easily understand, at a time that is relevant to their investment decision. Effective January 1, 2011, fund managers have been required to prepare and file a Fund Facts for each class or series of each of their mutual funds and to post the Fund Facts to their website.

Effective June 13, 2014, dealers are required to deliver the Fund Facts within two days of buying a conventional mutual fund. The prospectus for a mutual fund will continue to be available to investors upon request.

The CSA is also working on the development of a CSA mutual fund risk classification methodology, which was published for comment on December 12, 2013 with a comment period that ended on March 12, 2014; and the development of a summary disclosure document for ETFs, similar to the Fund Facts, and a requirement to deliver the summary disclosure document within two days of an investor buying an ETF, which is anticipated to be published for comment in Winter 2014.

## **U.S. FOREIGN ACCOUNT TAX COMPLIANCE – FATCA**

Canada and the United States signed an intergovernmental agreement regarding U.S. Foreign Account Tax Compliance

(FATCA) on February 5, 2014. Effective July 1, 2014, there are disclosure requirements that Canadian financial institutions need to follow under FATCA.

FATCA requires that most Canadian financial institutions (excluding Credit Unions with less than \$75 million in assets) provide financial account information regarding U.S. citizens living in Canada to the Canada Revenue Agency (CRA). The CRA will in turn provide this information to the U.S. Internal Revenue Service (IRS) as per the Canada – U.S. Income Tax Treaty and privacy laws.

No information with respect to registered accounts (RRSPs, RRIFs, RESPs, TFSAs, RDSPs, LIRAs, etc.) will be relayed to the IRS by the CRA. However, U.S. persons (U.S. residents and citizens) are still required to disclose this information under US income tax reporting requirements.

Under FATCA, if a bank account balance exceeds US\$50,000, the financial institution is required to perform specific review procedures to determine if the account holder is a U.S. person. If the account balance exceeds US\$1,000,000, enhanced review procedures are required.

Once a reportable account is identified, the financial institution must provide the name, address, U.S. taxpayer identification number, account number, ending balance and the amount of any interest, dividends or other income earned in the account. This information must be disclosed no later than September 30, 2015, for calendar year 2014.

If you are a U.S. citizen living in Canada who has never filed U.S. income tax returns, you should consider filing under the IRS's Streamlined Voluntary Disclosure Program. Under this program, you need to file three years of income tax returns (2011, 2012 & 2013) and 6 years of Foreign Bank Accounts Reporting (FBAR) forms. Now that FATCA is in force and information is going to be shared by CRA and IRS, U.S. citizens living in Canada who have not filed their U.S. income tax returns and have not taken advantage of various Voluntary Disclosure Initiatives over the past few years, are at great risk of being detected by the IRS and if they fail to comply, they could be subject to severe civil and even criminal penalties imposed by the IRS.

## **UNINTENDED CONSEQUENCES OF BENEFICIARY DESIGNATIONS**

Naming your spouse as a beneficiary of your RRSPs, RRIFs, LIFs and LIRAs is usually a good idea as these assets can rollover on a tax deferred basis only to your spouse or common law partner. However, in cases where you may not be married, your spouse may have passed away or you may simply wish to name your children as beneficiaries of your registered assets, the choice is not as straightforward and you need to take tax and estate planning implications into account.

In such cases, you may opt (as most people do) to name your children as beneficiaries of both your estate and all of your registered plans. By doing this you can avoid probate tax on the

registered plan and keep it out of the reach of your creditors at death, speed up the release of the proceeds and possibly reduce estate administration costs.

While in most cases such beneficiary designations can result in an efficient estate transfer, sometimes, unexpected consequences can result. Let's consider an example.

Suppose Leo names his son, Michael and his daughter, Michelle, as contingent beneficiaries of both his estate and his RRIF. Leo's wife, Maria, who was the primary beneficiary of his estate and his RRIF, passed away last year and before Leo could get around to updating his beneficiary designations, his son, Michael was killed in a car accident and therefore predeceased his father. Michael had two daughters of his own. Leo does not have a will.

Since Leo did not file a detailed beneficiary designation with his financial institution, the full proceeds of the RRIF will likely go to his daughter, Michelle, after he dies. On the beneficiary form that Leo completed he had named his wife as his primary beneficiary and Michael and Michelle as his contingent beneficiaries, so to go beyond that designation would have required a third-stage designation and most financial institutions do not even have a form to provide for that.

If Leo had a will, it could have contained the common phrase used to pass inheritances down generations ("issue per stirpes") and accordingly his estate would have been split evenly between his daughter Michelle and Michael's two daughters. However, the RRIF proceeds would have been fully taxable as Leo's income in the year of his death (the proceeds of a RRIF can only be rolled over on a tax deferred basis to a spouse, minor child or disabled child). The taxes would have to be paid by the estate and would effectively be imposed half on Michelle and half on her two nieces. Since there was no will in this case, Michelle could choose to compensate her nieces for the disproportionate results, but is not legally required to do so. Having a will could ensure that Leo's wishes would be fully implemented after his death and his estate distribution would be fair and equitable to his children and their descendants.

This also goes to show that you should update your beneficiary designations as soon as possible to avoid unintended consequences.

## **OUR SERVICES**

At Assante Capital Management Ltd., we strive to create and preserve your wealth. We do it by creating a comprehensive integrated wealth management plan that encompasses every aspect of your financial affairs including:

### **Investment strategies and full range of investment products including**

- o Mutual funds
- o GICs and Canada Savings Bonds
- o Stocks and Bonds
- o Limited partnerships
- o Investment trusts

- o Customized wraps
- o Private client program

#### **Risk management and insurance**

- o Protecting your current income
- o Sheltering your investments from taxes
- o Supplementing your pension at retirement
- o Life, critical illness, disability and long term care insurance
- o Protecting your business against the loss of key personnel
- o Providing employees with group insurance and retirement plans
- o Planning your business succession
- o Making your healthcare costs tax deductible by setting up Health Spending Accounts

#### **Tax planning and tax smart strategies**

- o Taking advantage of the tax sheltering provided in registered plans
- o Optimizing tax-preferred income and use of capital losses in non-registered plans
- o Establishing trusts and endowments
- o Choosing tax-deferred and tax-exempt options
- o Splitting income among family members

#### **Estate preservation**

- o Minimizing capital gains taxes and probate fees
- o Maximizing tax-exempt legacy opportunities
- o Utilizing sheltered donations and endowments
- o Taking advantage of estate freezes

#### **Cash and credit management**

- o Debt consolidation
- o Mortgage pay down
- o Leveraging strategies

## **MAJOR EVENTS THAT IMPACT YOUR FINANCIAL PLANNING AND YOU SHOULD LET US KNOW ABOUT**

To ensure that your financial plan is kept up to date and you are utilizing the best and most appropriate financial planning strategies please ensure that you contact us to update your planning in the following circumstances:

- Contemplation of marriage or divorce
- Contemplation of purchase or sale of a property
- Contemplation of purchase or sale of a business
- Change of employment
- Substantial increase or decrease in your income
- Inheriting property
- Receiving a retirement or severance package
- Changing your planned retirement date
- Renewing your mortgage or negotiating the terms of your line of credit

## **Thank You For Your Referrals**

Your referrals and introductions are greatly appreciated and they allow me to spend more time managing your wealth and less time on building my business. In fact, the greatest compliment my clients can give me is the referral of their friends and family. Thank you for your trust and confidence.

An easy way that you can refer me to people you know is by forwarding my newsletter to them. I encourage you to pass this newsletter onto your family members and friends. You can never read enough about the financial markets and different strategies for saving taxes and growing your wealth. I trust you will find this information helpful, and if you know someone who could benefit from receiving my newsletter, just give us a call and we'll be happy to send one directly to them. As always, your referrals and introductions are greatly appreciated.

### **ABOUT THE EDITOR**

Tina Tehranchian MA, CFP, CLU, CHFC, is a Branch Manager and Senior Financial Planner with Assante Capital Management Ltd. is one of Canada's largest wealth management firms, offering integrated financial solutions to create wealth and prosperity for you and your family. Our 900 [www.assante.com](http://www.assante.com) advisors in 300 offices across Canada take pride in the exceptional service they offer to clients through trusted face-to-face relationships and a level of service excellence second to none. Money Matters is published as a special service for clients of Tina Tehranchian.

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