

U.S. Taxes

Grace period for U.S. citizens is over: Big Brother is watching

By **Veronika Chang**

Veronika Chang

(March 16, 2020, 8:45 AM EDT) -- Canadian banks operating in Canada have been facing a big headache because of a U.S. law called FATCA and that ache may just get much worse.

FATCA, the *Foreign Account Tax Compliance Act*, is a U.S. federal law that went into effect in 2010. It requires all foreign (non-U.S.) financial institutions to report the financial activities of their U.S. account holders — that means U.S. citizens, permanent residents, trusts, business entities — and anyone with a connection to the U.S.

In early 2014, Canada entered into an intergovernmental agreement with the U.S. Starting July 1, 2014, the Canada Revenue Agency (CRA) was required to collect and share information about Americans, and “American-likes,” which means permanent residents and those with suspected ties to the U.S. or living in Canada. FATCA has also been incorporated into Canadian law which requires Canadian financial institutions to report the financial activities of their U.S. clients to the CRA, so the CRA can turn them over to the IRS.

The banks have been flagging and reporting the activities of their U.S. clients since 2014, so why the big conundrum now?

Recognizing that financial institutions will be faced with a not-so trivial task, the IRS gave a grace period to fully comply with FATCA. During the grace period, financial institutions were allowed to send incomplete information on their U.S. account holders. The IRS did not assess penalties if the financial institutions did not include a U.S. tax identification number for their U.S. account holders.

In return for the penalty forgiveness, financial institutions were required to make an effort to obtain U.S. tax identification numbers from their U.S. clients. The end of that grace period was Dec. 31, 2019. This means Canadian banks must have been fully compliant with FATCA as of Jan. 1, 2020. It also means Canadian banks must have collected and are required to provide the U.S. tax identification number of all of their U.S. account holders. Or else they face monetary penalties from the IRS.

U.S. persons (citizens and green card holders) who have been complying with their U.S. tax and reporting obligations will already have a U.S. social security number and their banks have been sharing their information with the CRA. And that information would have been transmitted to the IRS. Thus, this would not cause concern for them other than invasion of privacy.

However, those who have not been compliant with their U.S. tax obligations should be wary. Rather than risk facing a monetary penalty, the banks may choose not to deal with persons whom they suspect to be a U.S. person. If they did not provide the bank with their U.S. tax identification number or a plausible explanation that they are not a U.S. person, this is what we can expect.

To comply with FATCA and Canadian law, Canadian financial institutions are required use due diligence to identify U.S. account holders and then report specified information about them to the CRA. To identify U.S. account holders, the financial institutions must look for “U.S. indicia,” which includes U.S. citizenship, place of birth, a mailing address, telephone number and standing

instructions to transfer funds to an account maintained in the U.S. Through this process, many “accidental Americans” — those who did not know they were U.S. citizens — are now facing that rude awakening.

The U.S. is unique in that it requires all its citizens, regardless where they reside, to file U.S. tax and information returns. So many of them in Canada are finding out that they are “accidental Americans” because of the due diligence of their banks. Some of these people may have been discovered as a U.S. citizen because their Canadian passport lists a city in the U.S. as their place of birth. Someone who had a U.S. address or phone number in the past may have realized that they are still a U.S. permanent resident.

“Are you or have you ever been considered a U.S. person?” is now a standard question asked of bank’s customers.

So, U.S. citizens and those still holding a valid U.S. green card have a choice to make: either comply with your U.S. tax obligations or risk having your Canadian bank accounts frozen and find yourself unable to open a new bank account.

Veronika Chang is a lawyer with Morris Kepes Winters LLP in Toronto. She is a tax specialist with extensive experience working in the United States and in Canada.

Photo credit / johan10 ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer’s Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.

© 2020, The Lawyer's Daily. All rights reserved.