BRUNTON'S

U.S. Taxletter

FOR CANADIANS

Covering U.S. Aspects of U.S. Citizens or U.S. Residents with Canadian Income or Assets, and Canadians with U.S. Income or Assets

4710 NW 2ND AVENUE, #101, BOCA RATON FL 33431 / TEL 561-241-9991 / FAX 561-241-6332 / RB@TAXINTL.COM / WWW.TAXINTL.COM

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Guidance for 2010 Estate Tax Still Unavailable

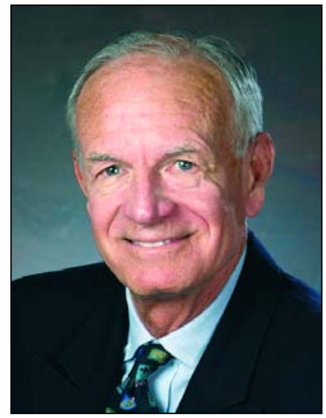
In the Winter/Spring 2011, Taxletter we described the two US estate tax filing options for the Estates of decedents dying in 2010. Those Estates have the option of applying the 2011 estate tax law, or applying the 2010 "no tax" law. However in order to use the 2010 "no tax" law the Estate must make an election (by a deadline) to apply that law. The deadline is September 17, 2011, unless the IRS extends it, which it has not done as we go to press. It appears IRS Form 8939 will be a component part of the election, but the IRS has not yet finalized Form 8939 or issued any other definitive guidance with respect to making the "no tax" election.

Decisions on FBAR Filings Create Worrisome Dilemmas

Many US citizens and residents who are subject to the US "FBAR" filing requirements (Form TD F 90-22.1), but have not filed for many years, have been presented with a difficult dilemma - to "<u>fess up</u>", make a <u>silent</u> disclosure, or do <u>nothing</u>. Of course the only legal option is the first one. <u>An important deadline by which you must decide is August 31, 2011</u>.

In past years, and especially prior to the confrontation between the IRS and UBS Bank/The Swiss Government, late filing or non-filing of the FBAR by individuals who were not "hiding" money offshore, and/or who did not have intentionally unreported income from non-US accounts, did not appear to be of high interest to the IRS.

However as a result of recent developments, even a US citizen or green card holder in Canada who failed to file FBARs for such accounts as RRSPs or TFSAs, may be subject to huge penalties. Also, recently, during a webinar on FBARS moderated by the American Bar Association Section of Tax-ation, an IRS official even suggested that regular pension plans must be reported. Please see the article **"AUGUST 31, 2011, DEADLINE FOR IRS FBAR AMNESTY".**



RICHARD BRUNTON HOLDS A MASTERS DEGREE IN TAXATION/ACCOUNTING, IN WHICH HIS PRIMARY INTEREST HAS BEEN INTERNATIONAL TAXATION. HE HAS BEEN A RESIDENT OF FLORIDA FOR THE PAST 40 YEARS.

US State "Nexus" Becoming Vital Consideration for Many Canadian Businesses

For many Canadian businesses with US customers, an evaluation of their US State tax obligations can become more complex than an evaluation of their US federal tax obligations.

Following are a few developments since the last Taxletter. An important issue in evaluating your State obligations can be the degree to which the activities of an <u>independent agent</u> in an individual State are attributed to an out-of-State "principal" such that the out-of-State "principal" is deemed to have "nexus" in the first State.

<u>Michigan</u>. One recent Michigan court case highlights the uncertainty that abounds. The relevant issue was whether the physical presence in Michigan of independent registered representatives doing business as agents on behalf of an out-of-State securities firm constituted sufficient "nexus" with

Michigan to impose Michigan corporate income tax on the out-of-State securities firm. The case first went up to a Michigan appeals court which ruled in favor of the State, and imposed corporate income tax. The case was appealed to the Michigan Supreme Court which reversed the appeals court and decided that nexus did not exist!

Iowa. The Iowa Department of Revenue has decided that an LLC which had all its property and employees in Idaho was subject to Iowa income tax. (Policy Letter 10240041). The LLC was a registered agent service, and subcontracted with an Iowa law firm to perform all its services in Iowa. Although the LLC had no physical presence in Iowa, the Iowa Department of Revenue determined that physical presence was not required to establish income tax nexus. (Recall also that West Virginia successfully claimed that a corporation's intentional exploitation of the State's market was sufficient to create nexus consistent with the Commerce Clause of the US constitution). (FIA Card Services Inc. v. Tax Commissioner, 640 S.E. 2nd 226 - West Virginia 2006).

"Click-Through Nexus" Law. We previously described the "Click-Through Nexus" laws recently imposed by many States. Such rules are now being proposed in many other States. They are creating difficulty for many US businesses and involve a looming threat for some Canadian businesses.

The rule generally involves an out-of-State business being deemed to have nexus in another State (the "other State") for the "other State's" tax purposes, if the out-of-State business derives business via a link on the website of a business located in the other State. Limitations may apply.

On May 31st, **Vermont** enacted several new tax provisions including a "Click-Through Nexus" law and, as we predicted, a requirement that remote sellers give their purchasers "Notice" that Vermont "use tax" is due on all non-exempt purchases. (See the article **"*South Dakota Starts Potential New Trend For States*"** in the Winter/Spring, 2011, Taxletter.

On May 4th, **Connecticut** enacted several new tax provisions including a "Click-Through Nexus law. (S. B. 1239 Laws 2011). On June 3rd the **California** Legislature passed a "Click-Through Nexus" law and became the latest State to commence the process to enact such legislation.

A trade association in **Illinois** has filed a lawsuit against the Illinois Department of Revenue to overturn that State's "Click-Through Nexus" law, on the basis it violates both the Commerce Clause of the US Constitution and the Internet Freedom Act.

Two for the Defense! The **Texas** Governor has vetoed "nexus" legislation. Under the bill, the following retailers would be deemed to be engaged in business in Texas for "use tax" collection":

1) A retailer that holds a substantial ownership interest in, or is owned in whole or in substantial part by, a person who maintains a business location in Texas (provided certain conditions are met), and

2) A retailer that holds a substantial ownership in, or is owned in whole or in substantial part by, a person who maintains a distribution center, warehouse, or similar location in Texas and who delivers property sold by the retailer to consumers.

Despite the veto, some commentators believe the rules will still be enacted as part of other legislation being considered.

Separately, an out-of State online bookseller owned by an out-of-State parent sold books online in **New Mexico**. The out-of-State parent also owned and operated retail book stores physically located in New Mexico. The New Mexico Taxation and Revenue Department determined that the online bookseller did not have sufficient contacts with New Mexico to establish substantial nexus for the gross receipts and compensating use tax, on the basis that the following activities alone did not create nexus:

1) Close corporate relationship and common ownership,

2) Cross marketing, including through use of common trademarks and logos,

3) The subsidiary's book return policy,

4) Participation in a multi-retailer gift card program,

5) Participation in a customer loyalty program,

6) Sharing of email addresses through a reader's advantage card program, and

7) A Bookmaster system, through which the subsidiary's local stores ordered books from the online bookseller for shipment to customers.

(In the Matter of the Protest of Barnesandnoble.com LLC, New Mexico Taxation and Revenue Department, No. 11-10, April 11, 2011).

(We are confused. We wonder if this result demonstrates the completely disparate results which may occur from State to State on identical facts).

Meanwhile, proceeding against the trend, South Carolina enacted legislation which establishes that the ownership or use of a distribution facility in South Carolina will not be considered evidence of a person's physical presence within South Carolina to impose nexus for sales and use tax purposes. (S. B. 36, Laws 2011).

(As we said, confusion abounds).

"Post-Mark" Rule Did Not Apply to Determine Timely Filing

We previously described the rule under which an income tax return may be considered "timely filed" for federal purposes if it is postmarked by the due date (IRC §7502). (But the FBAR - Form TD F 90-22.1 must be received by the Treasury on the due date - June 30th).

The IRS has decided in one case however that an amended income tax return did not get the benefit of §7502. The reason was that the statute did not require the amended return. (CCA Letter Ruling 01052003).

Loan Guarantee Fee Not US Source Income

A Mexican parent corporation guaranteed a loan incurred by its US subsidiary and charged the subsidiary guarantee fees. The Tax Court determined the guarantee fees paid by the US subsidiary to the Mexican parent were not US source income and therefore not subject to US tax by the Mexican parent. The fees were not US source income because the payments were analogous to payments for services and the guarantee was a service performed in Mexico. (134 TC No. 5; Container Corporation CA-5).

IRS Gives Online "Interactive" Help

The IRS has a relatively new service called the "Interactive Tax Law Assistant" which can provide direct and specific responses to questions by individual taxpayers. To get there you can go to the IRS home page www.irs.gov and search "Interactive Tax Law Assistant" or you can just Google "Interactive Tax Law Assistant".

Taxpayer Claims Fifth Amendment

An individual was able to avoid providing various financial documents by claiming the Fifth Amendment. (In re Sambrano Corp., BC-DC Tax, 2011-1)

AUGUST 31, 2011, DEADLINE FOR IRS FBAR AMNESTY

On February 8, 2011, the IRS introduced a new "amnesty" program for US persons that have not filed required FBARs (Foreign Bank Account Reports - Form TD F 90-22.1). An FBAR is generally required when a US person has an "interest in", or "signature or other authority over", foreign financial accounts, if the aggregate maximum balance of the accounts during the year exceeded $10,000. The penalties for late filing, if asserted, can be enormous. The years affected by the amnesty are 2003 through 2010.

The amnesty program (which in many cases will only reduce the penalty, not eliminate it), is referred to as the **"2011 OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE"**. ("2011 OVDI"). The rules are complex and the IRS has posted a lengthy series of very helpful questions and answers on its website to attempt to address most situations. Go to www.irs.gov, search for "2011 OVDI", and click "*2011 Offshore Voluntary Disclosure Initiative Frequently Asked Question and Answers*" (FAQs).

The deadline for applying for the "amnesty" is August 31, 2011. However on June 3rd the IRS announced it would allow certain taxpayers to request a 90 day extension. In order to apply for the extension you must have made a "good faith attempt" to comply with the terms of the 2011 OVDI. The "good faith attempt" to comply must be made in writing before August 31, 2011, and must include the properly completed and signed agreements to extend the period of time to assess tax, including tax penalties, (See IRS Form 872) and to assess FBAR penalties, (Contact Robert Blumenfeld, Esq. - please see contact information in the article **"ATHLETES AND ENTERTAINERS - IN THE CROSSHAIRS"**).

The request for the extension must include a statement of those items that are missing, the reason why they are not included, and the steps taken to secure them. The request must be sent to:

Internal Revenue Service,
3651 S. I H 35 Stop 4301 AUSC
Austin TX 78741
Attention: 2011 Offshore Voluntary Disclosure Initiative
(See FAQ #25).

Under the amnesty, the penalty is generally reduced to 25% of the amount in the foreign accounts in the year with the highest aggregate account balance covering the 2003-2010 period. However certain taxpayers may qualify for lower penalties of 12.5% and 5%. (See 2011 OVDI, FAQs #52 and #53). Of course if the 2010 FBAR was timely filed it may be excluded.

Following are selected circumstances and the method of complying.

You Reported all Income But did Not File FBAR

You are fortunate if you properly reported and paid tax on all your income and your only omission was failure to file the FBAR. In this case you are not required to enter the amnesty program. You simply file the delinquent reports by mail to:

Department of the Treasury
PO Box 32621
Detroit MI 48232-0621

Attach a statement explaining why the reports are late. The IRS says there will be no penalties if delinquent reports for the years through 2009 are filed by August 31, 2011. Of course the 2010 reports were due by June 30, 2011. (See FAQ #17).

IRS Forms 926, 5471, 5472, 8865, 8858, 3520, 3520-A, etc.

Interestingly, the IRS states that a taxpayer who failed to file tax information returns but who reported and paid all tax, is not required to take part in the 2011 OVDI. Mercifully, the taxpayer should simply file the delinquent information returns and attach a statement explaining why they are late. Where appropriate (such as Form 5471) the forms should be filed with an amended income tax return showing no change to the income tax liability. The IRS says there will be no penalty if all delinquent reports are filed by August 31, 2011. (See FAQs #5, and #18).

Passive Foreign Investment Companies (PFICS)

A significant benefit for some taxpayers will be the IRS position with respect to PFICSs, including Canadian mutual funds. The IRS is offering taxpayers an alternative to the PFIC computation required under the Internal Revenue Code which often results in horrifying tax and interest. We summarized this computation in prior Taxletters, including the Winter/Spring, 2011, Summer, 2010, and Winter/Spring, 2009, Taxletters.

If elected, the IRS alternative resolution will apply to all PFIC investments that are accepted into the 2011 OVDI initiative. The alternative involves making the "market to market" (MTM) election for 2003 (or the first year the investment was made) and every year thereafter, including all years after 2010 in which the investment continues to be owned. The cost base must be agreed between the taxpayer and the IRS. Under the alternative resolution, a tax rate of 20% will apply to the gain. Also a rate of 7% of the tax for the first year of the MTM election will apply instead of the onerous interest charge normally applicable. (FAQ #10).

You Have Signing Authority But No Financial Interest

As a completely separate issue, having no relationship to the 2011 OVDI, the IRS issued Notice 2011-54 stating that persons having signing authority over, but no financial interest in, financial accounts for the years 2009 and earlier would have until November 1, 2011, to comply with the FBAR filing requirement. However the general deadline for the 2010 FBAR year remained June 30, 2011.

SELLING US REALTY - THE STATUTE MAY BE EXTENDED TO 6 YEARS!

Under normal circumstances when you file an income tax return (say, for the sale of US real estate) the IRS has 3 years in which to challenge or otherwise question the return. After that time the IRS generally has no right to investigate you for that year. This is often referred to as the "statute of limitations" or "period of limitations".

However there are exceptions. In the case of fraud the statute may never commence. More commonly, the period of limitations for a tax return can be extended by the IRS from 3 years to 6 years if the taxpayer omits from the return an amount in excess of 25% of the gross income properly includable on the return.

There had been some uncertainty over whether an overstatement of cost basis in property that was sold results in an omission of gross income for this purpose. Recently, in Treasury Decision 9511, the Government confirmed that such an overstatement does constitute an understatement of gross income, and therefore can result in the imposition of the 6 year period of limitations. However an amount will not be considered omitted from gross income if the taxpayer provides on the return sufficient information to apprise the IRS of the nature and amount of the item, including any schedule or statement attached to the return.

CANADIAN TAX GUIDANCE ON E-COMMERCE

In the Winter/Spring, 2009, issue of the Taxletter we summarized some of the US rules with respect to the taxation of E-Commerce in the cross-border context. Of course the Canada Revenue Agency (CRA) has similarly issued guidance with respect to Canadian tax matters.

CRA generally considers a non-resident, who presents a website to Canadian customers, to be carrying on business in Canada through a "permanent establishment" ("PE") if all the following conditions are met:

1) The host server is located in Canada,

2) The business is carried on through the operation of the Web site on that server,

3) The host server is at the non-resident's disposal,

4) The host server is permanently linked to a geographic location in Canada, and

5) The Web site is not hosted by the server on a temporary basis.

Transactions involving digital goods and services often result in uncertainty as to the nature of the income, in which case CRA will examine the reason for the payment. A payment that is essentially for the right to use a copyright or intangible property constitutes a royalty. Article XII(4) of the Canada/US tax treaty defines "royalty" for purposes of Canada/US cross-border taxation.

The transmission of goods and services generally results in business profits when the payment is made essentially to acquire data transmitted digitally. (TI 2008-0279141ES).

US PERSONS WITH CANADIAN LIFE INSURANCE POLICIES

Many US citizens and green card holders have Canadian life insurance policies and assume there are no annual US tax consequences if there are no annual Canadian income tax consequences. However that may not be true.

US Excise Tax

Internal Revenue Code Section 4371 generally imposes an excise tax of 1% on premiums paid for non-US insurance polices (life, sickness, accident insurance, or annuity contract). The excise tax is 4% on casualty insurance.

The tax must be paid quarterly with IRS Form 720. Of course penalties apply for late filing.

Annual US Income Tax

In addition, a Canadian life insurance policy will not constitute a life insurance policy for US income tax purposes unless it meets the requirements of Internal Revenue Code Section 7702. The requirements of Section 7702 are quite onerous, and it requires a very rigorous analysis even to determine if the Canadian policy meets US requirements.

If the Canadian policy does not meet US requirements it is possible the income accruing inside the policy is taxable annually in the US to the policy owner, if the owner is a US person.

YOU MUST TIMELY CLAIM YOUR REFUND FOR OVERPAID US TAX

Just as the IRS has only a 3 (or 6) year limit to disagree with a taxpayer's tax return, (See "***SELLING US REALTY-THE STATUTE MAY BE EXTENDED TO 6 YEARS!***" above), - a taxpayer similarly has a time limit for claiming a refund.

A recent IRS ruling addressed a situation where the IRS "Automated Collection System" (ACS) had issued a continuous wage levy on a taxpayer's employer. When the wage levy requirement ended, the IRS failed to issue a release of levy, and hence the employer continued to make remittances to the IRS. The IRS applied the payments to subsequent tax years (not listed on the levy) for which the taxpayer had not filed a tax return. The last payment was made more than three years before the taxpayer finally contacted the IRS to claim a refund for overpayment of tax in those subsequent years.

The IRS determined that although the taxpayer made a claim for refund based on a valid overpayment of tax for the subsequent years (the years not listed on the levy) the IRS could not issue a refund because no amounts were remitted within the last three years - see IRC §6511(b)(2). (CCA 201049034).

US Persons Claiming Refunds Based on Foreign Tax Credits

The paragraphs above address the deadline for claiming a refund for US tax you have paid. The IRS also recently issued advice on the deadline for claiming a foreign tax credit for foreign tax you paid. Generally the limitations period is determined by reference to the year to which the tax relates. (Field Attorney Advice (FAA) 20105001F).

US CITIZENS IN CANADA WITH PRIVATE CORPORATIONS

Personal Service Contracts

Certain US citizens (and green card holders) with Canadian private corporations that are "controlled foreign corporations" (CFCs) must consider whether any income received by the corporation is received under a "personal service contract". Certain US shareholders of a CFC may be subject to US tax personally on "personal service contract" income received by their CFC, even if it is not paid to them.

This result may occur, for example, for entertainers, accountants, lawyers, doctors, and certain others.

A "personal service contract" is a contract (written or oral) in which a corporation agrees to provide personal services, if two conditions are met:

1) Some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or the contract designates the performer (by name or description), and

2) The designated performer or any performer who could be designated under the contract owns, directly, indirectly, or constructively, 25% or more of the value of the stock of the corporation at any time during the tax year in which the corporation receives the income.

However even if the above tests are met, if the contract also requires the performance of important and essential services by a person other than a 25% owner, only the portion of the contract price attributable to the personal services of the 25% owner is taken into consideration in determining the taxation of the shareholder.

Also, the contractual right to designate the performer must be explicit. The IRS cannot infer a contractual right just because the person who is to perform the services is the corporation's sole employee. (See PLR 8234077).

Personal Service Corporations

The IRS can potentially re-allocate income, etc., between a "personal service corporation" and its shareholders if:

1) Substantially all of the services of the corporation are performed for, (or on behalf of) one other entity, and

2) There is a principal purpose of avoiding tax. (IRC 269A).

For Section 269A, a personal service corporation means a corporation, the principal activity of which is the performance of services, and such services are substantially performed by employee-owners.

If some profit remains in the corporation after this re-allocation, it will be taxed federally at a flat 35% rate (rather than graduated rates) if it is a "qualified personal service corporation".

A "qualified personal service corporation" is any corporation:

i) Substantially all of the activities of which involve services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and

ii) Substantially all of the stock of which (by value) is held directly or indirectly by employees performing services for the corporation, or certain retired employees, estates, or estate beneficiaries.

Please see Exhibit 1.

Assignment of Income Principles

Under judicially established rules, the IRS can assert an individual is taxable on income earned from services rendered by the individual even if the individual directs payment be

EXHIBIT 1

"Personal Service Corporations"

Individual

↓

"Personal Service Corporation"
(A Corporation Whose Principal Activity Is The Performance Of Personal Services That Are Substantially Performed By The Employee-Owner(s)) (Code Section 269A(b)(1))

↓

Are Substantially All The Services Performed For 1 Other Entity
and,
Is The Principle Purpose Of The Structure Tax Avoidance?
(A Safe Harbor Rule Exists)
(Code Section 269A(a))

No → Is The Corporation A "*Qualified* Personal Service Corporation"?

Yes ↓

The IRS May Reallocate Income From The Corporation To The Shareholder(s)

↓

Is There Income Left In The Corporation After Reallocation By The IRS?

Yes → Is The Corporation A "*Qualified* Personal Service Corporation"?

No ↓

No Federal Income Tax For The Corporation

Is The Corporation A "*Qualified* Personal Service Corporation"? (See Code Section 448(d)(2))

No → Taxed At Gratuated Rates (Federally)

Yes ↓

The Corporation Is Taxed At A Flat Rate Of 35% (Federally) Rather Than Graduated Tax Rates. (Code Section 11(b)(2))

In Either Case,
The Exemption For Accumulated Earnings Tax Is Reduced To $150,000 If The Corporation Performs Services In The Field Of Health, Law, Engineering, Architecture, Accounting, Actuarial Science, Performing Arts, Or Counsulting.

Note: A Definition Of A PSC May Apply In Other Circumstances - e.g. The Selection Of A Tax Year And Many Exceptions Apply.

made to another person. Thus, unless the relevant documentation is drafted carefully, services income paid to an individual's corporation could be taxed to the individual. (Johnson v. Commissioner 78 TC 882).

Allocation by the IRS Under IRC §482

The IRS generally has the right to allocate income and expense between or among various taxpayers "owned or controlled directly or indirectly by the same interests" if it determines that such allocation is necessary to clearly reflect the income of the taxpayers. (IRC §482). (See also "***Assignment of Income Principles***" above).

Because the US corporate tax rate is relatively high, many small US businesses owned by US residents are "S" corporations or LLCs. Since these are flow-through entities, an allocation of income between the corporation and sole shareholder by the IRS is often irrelevant. However since the (generally lower) Canadian tax rate on small businesses encourages some residents of Canada to retain earnings in their Canadian corporations, US citizens resident in Canada may be of more interest to the IRS in this context.

Partially Relevant

Although not directly relevant, the IRS often re-characterizes "dividends" paid by a US "S" corporation as wages, and subject to social security tax, and the courts often agree. (See a recent case David E. Watson, P.C., DC Iowa).

SHARING INFORMATION AMONG US GOVERNMENT AGENCIES

Bank's Currency Reports

US financial institutions must file Form 4789 (Currency Transaction Report - "CTR") with the US Treasury Department for each deposit, withdrawal, exchange of currency, or other payment or transfer which involves a transaction in currency of more than $10,000.

A recent report by the US Treasury Inspector General for Tax Administration (TIGTA) recommends the IRS make more use of these reports to pursue for audit, persons who do not file income tax returns, or who under report their income.

In a sample of 100 CTRs for individuals it examined, TIGTA identified 17 individuals that had expenses that seemed too large for the gross income they reported earning.

Passport Renewals

Although the IRS may rarely be permitted to share information with other government agencies, (please see the article "***CAN THE IRS DISCLOSE INFORMATION ABOUT YOU?***", the Department of State routinely provides the IRS with the name, social security number, and other information on each individual that applies for a passport or passport renewal. (Code Section 6039E). This is one way the IRS hopes to expose non-filers. A similar procedure might apply for green card renewals.

CAN THE IRS DISCLOSE INFORMATION ABOUT YOU?

Section 6103(a) of the tax code generally provides that tax returns and return information may not be disclosed by government personnel and other specified persons to any other source including other government agencies. However, sections 6103(c) through 6103(o) contain exceptions to the general nondisclosure rule and permit the IRS in specified circumstances to disclose returns and return information to certain entities and persons for specific purposes.

Subject to rules and restrictions, the IRS can make disclosures to other governmental agencies (such as State tax officials) for tax administration purposes and other specified uses, including the investigation of, and response to, terrorist activities. (IRC§6103(d)-(o)).

In addition, the IRS is permitted to disclose return information to members of the public when required for tax administration purposes (such as investigations or tax collection activities). (IRC §6103(k)(6)). The IRS may also disclose tax returns and tax information to the taxpayer, the taxpayer's designee, (IRC §6103(c)), and to certain other persons having a "material interest". (IRC §6103(e)). The IRS may withhold documents when their disclosure would "seriously impair federal tax administration". (IRC §6103(c), last sentence).

Of course tax information can also be exchanged between countries under the provision of a tax treaty.

Individuals renouncing US citizenship may find this worrisome, but arguably the exceptions do not apply to such circumstances. Please see the article "***CAN YOU BE EXCLUDED FROM THE US IF YOU RENOUNCE US CITIZENSHIP?***"

CANADIAN PROFESSIONAL GOLFERS MAY OWE US TAX ON ENDORSEMENT INCOME

Under a recent US court case, a well known South African professional golfer had his worldwide endorsement income dissected by the IRS and the US Tax Court, which allocated his income into numerous categories. Please see Exhibit 2.

The golfer's worldwide endorsement income was allocated first into "off-course income" and "on-course" income.

The off-course income was all determined to be royalty income. Based on the facts involved, the court allocated the on-course income 50% to personal service income and 50% to royalty income.

Off-Course Income. The sourcing of the off-course income, (which was all considered royalty income), was determined with respect to the terms of the endorsement agreements. This resulted in 92% of the revenue from his image on playing cards being considered US source royalty income, and 72% of the revenue from electronic games being considered non-US source. All of the US source income was subject to US tax at the normal 30% flat withholding rate. (The individual was a resident of the UK - a Canadian resident golfer may, of course, have a reduced rate on royalties due to the application of Articles XII and/or XVI of the Canada/US tax treaty).

On-Course Income. As indicated, the court characterized the on-course endorsement income as 50% personal service income and 50% royalty income. The royalty portion was considered to be 50% US source (subject to 30% flat US withholding tax) and the personal service income was determined to be "effectively connected" with a US trade or business and thus taxed at graduated rates. (R. Goosen 136 TC 27).

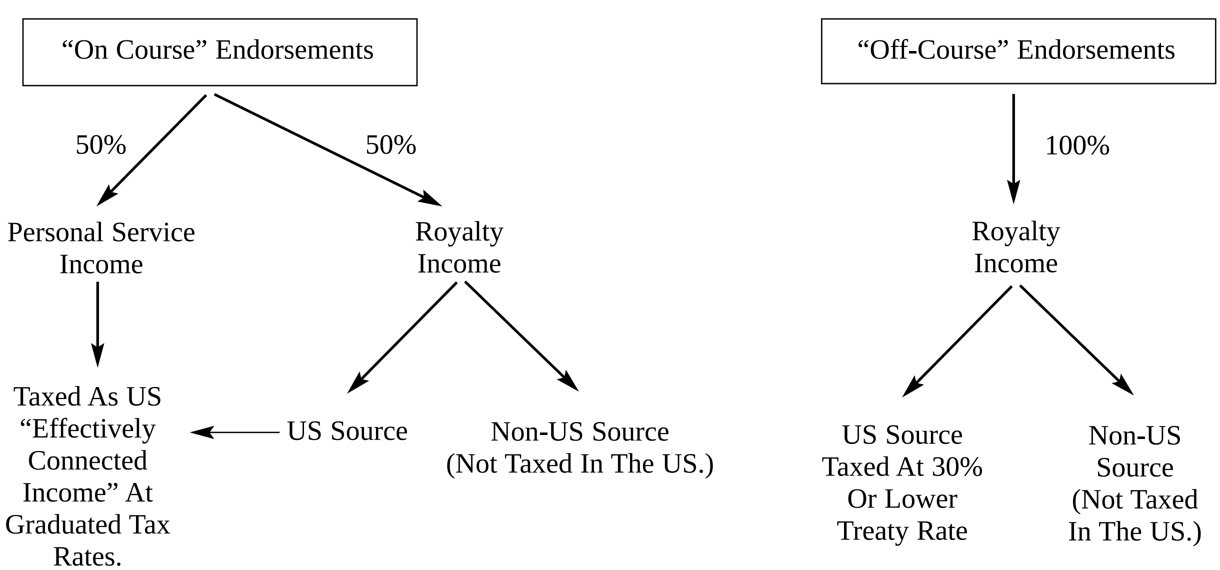
Also, please see the article "***ATHLETES AND ENTERTAINERS - IN THE CROSSHAIRS***".

CAN YOU BE EXCLUDED FROM THE US IF YOU RENOUNCE US CITIZENSHIP?

Under current procedures, if you proceed to renounce US citizenship you will be presented with a Form to sign from the US

EXHIBIT 2

Golfer's Income



Department of State entitled "*Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship*".

Paragraph 10 on the Form, which you are asked to sign states, in part, "*I understand that if my renunciation of United States citizenship is determined by the United States Attorney General to be motivated by tax avoidance purposes I will be found excludable from the United States under the Immigration and Nationality Act as amended*".

Would the US actually prevent you from entering the US? The validity of the relevant law (the so-called "Reed Amendment") is apparently in question and it appears there is no publicly disseminated evidence of the law actually being enforced.

The "Reed Amendment" was contained in the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996". (P.L. No. 104-208).

The above is immigration law, not tax law. The tax law does not contain any relevant provision connecting a tax avoidance purpose to the consequences of renunciation of citizenship for individuals who are now renouncing citizenship. However prior tax law did have such a connection. Therefore it appears the immigration law may not have caught up with the tax law on this issue.

If the Department of State ever attempted to exercise the "Reed Amendment" to exclude an individual from the US, presumably the Department of State would have to obtain information from the Internal Revenue Service to establish there was a tax avoidance motive. As indicated in the article ***"CAN THE IRS DISCLOSE INFORMATION ABOUT YOU?"***, it appears likely the IRS would not be permitted to disclose information to the Department of State for this purpose.

Interestingly, the Reed Amendment apparently does not apply to "long-term residents" (certain green card holders) who abandon their green card status. Thus for some green card holders who intend eventually to leave the US, (except for vacations, etc) is there an incentive for them to continue with their green card status rather than applying for US citizenship? Also please see the article ***"SOME CONFUSION OVER ABANDONING YOUR GREEN CARD"***.

SOME CONFUSION OVER ABANDONING YOUR GREEN CARD

"Long-term residents" of the US who abandon their green cards have an obligation to file IRS Form 8854. Many Canadians think they no longer have a green card, when in fact they do!

Each green card has an "expiry" date. The expiry date is only an expiry date for the physical card, not for your status as a green card holder and permanent resident of the United States. Until you surrender your card to the Department of Homeland Security and receive a receipt for it, you still have a green card and you may still be a resident of the United States for US income tax purposes!

Further, even if you were a green card holder and "long-term resident" (please see the Fall, 2009, and Summer, 2008, Taxletter for definitions) and you have a receipt for abandoning your green card ***you may still be a US resident for US income tax!***

A few scenarios and the procedures required for "long-term residents" who wish to abandon their green cards are described below. The law is confusing. Please consult your tax advisor before proceeding, to determine if your facts are covered in one of the scenarios described.

1) You Never Formally Abandoned Your Green Card & Never Filed Form 1040NR, Form 8833 & 8854

If you are a "long-term resident" and you have never formally abandoned your green card (never obtained a receipt for it) and you:

1) Never commenced to be taxed as a non-resident alien of the US under Article IV of the tax treaty, while failing to waive the benefits of the treaty, and

2) Never notified the IRS as such on IRS Forms 8833 and 8854,

then you are subject to the rules below entitled: ***3) Giving Up Your Green Card After June 17, 2008***.

2) You Gave Up Your Green Card After June 3, 2004, and before June 17, 2008

If you were a "long-term resident" and you formally abandoned your green card after June 3, 2004, and before June 17, 2008, you continue to be a US resident for US income tax purposes until you file IRS Form 8854. If you have already properly filed Form 8854 then you are a nonresident of the US for US income tax purposes, unless you met the "Substancial Presence Test" and fail to file a valad IRS Form 8840 by the due date.

How To File Form 8854. The instructions to the 2010 Form 8854 are confusing. The second paragraph on page 1 of the instructions to Form 8854 states "you are considered to have expatriated on the date you …… terminated your long-term residency status". This is slightly misleading because, notwithstanding that wording, you will continue to be considered a US resident until you file IRS Form 8854. Please see the conflicting wording in the middle of the right hand side of page 1 of the 2010 instructions to the 2010 Form 8854 under the heading "Date of Tax Expatriation". If you are such an individual you will not be considered a nonresident of the US for US income tax purposes until you file Form 8854.

The 2010 Form 8854 itself is also confusing. If you formally abandoned your green card after June 3, 2004, and before June 17, 2008, and you wish to terminate your US residency for income tax in 2011, then on page 1, Part I of Form 8854 you check off the box for a "June 4, 2004-June 16, 2008" expatriation. That line then tells you to complete Parts II and V. If you answer "No" to the first line on Part II you are told to complete Form 8854 for the year you expatriated for immigration purposes. However the IRS advises us you should not complete Form 8854 for the year you expatriated for immigration purposes. Instead you complete the 2010 version of Form 8854. You would answer "No" on line 1, Part II and then proceed to Part V.

It may be the IRS position that if you formally abandoned your green card after June 3, 2004, and before June 17, 2008, you must complete Form 8854 for the following 10 years regardless of whether you met either of the two tests described in prior Taxletters (the tax liability test and net worth test).

3) Giving Up Your Green Card After June 16, 2008

Please see "***Be Aware of the Post-June 16, 2008, Deemed Disposition Rules***", below.

A. You Already Gave It Up. If you were a "long term resident" and you formally abandoned your green card after June 16, 2008, you became a nonresident of the US for US income tax purposes on the day you obtained a receipt for your green card. (An exception would apply if, thereafter, you met the substantial presence test and failed to timely file a valid IRS Form 8840 (Closer Connection Exception Statement). However you must still file IRS Form 8854.

How To File Form 8854. If you formally abandoned your green card after June 16, 2008, and before January 1, 2010 and have not filed Form 8854 then you should file the 2010 version of Form 8854 at the address mentioned above. Technically there is a $10,000 penalty for not filing it by the due date of the tax return for the year you abandoned the green card. However perhaps you can be forgiven the penalty under the 2011 amnesty program if you comply by August 31, 2011 - see the article "***AUGUST 31, 2011, DEADLINE FOR IRS FBAR AMNESTY***".

If you formally abandoned your green card during 2010 you also file the 2010 version of Form 8854 by the due date of your 2010 US income tax return at the address mentioned above. If you have not done so, and have not filed an extension, perhaps you can be forgiven the $10,000 penalty under the 2011 amnesty program if you comply by August 31st.

B. You Want to Give It Up. If you are a "long term resident" and wish to abandon your green card in 2011 then you present the green card at a US Embassy, Consulate, or perhaps at a border crossing, and obtain a receipt. You will become a nonresident of the US for US income tax purposes the day you receive the receipt. (An exception would apply if, thereafter, you meet the substantial presence test and fail to timely file a valid IRS Form 8840 (Closer Connection Exception Statement).

You must then ensure you file the 2011 IRS Form 8854 by the due date of your 2011 US income tax return or a $10,000 penalty will apply.

How To File Form 8854. You should compete the 2011 version of Form 8854 once it is issued. It must be attached to your timely filed 2011 US income tax return. If you are not required to file a 2011 US income tax return you send Form 8854 to the IRS by the otherwise due date of your tax return.

Unless Form 8854 for 2011 is different than the Form for 2010 you will be required to complete Part IV, (showing your income tax liability for 5 years) and Part V (showing your assets and liabilities as of the end of the year for which you are filing the Form).

You Have Never Abandoned Your Green Card But You Filed Form 1040NR, Form 8833 & 8854

Although it is a very unlikely scenario, if you are a "long-term resident" and you have not abandoned your green card but, after June 16, 2008, you:

1) Commenced to be taxed as a nonresident alien of the US under Article IV of the tax treaty,

2) Did not waive the benefits of the treaty, and

3) Notified the IRS as such on IRS Forms 8833 and 8854,

then you became a nonresident of the US for US income tax purposes on the date you completed 1), 2), and 3), above.

Thus you apparently have the strange result where an individual could retain his/her green card while simultaneously being a nonresident of the US for income tax (provided that if the substantial presence test were met a valid Form 8840 was filed). Of course if such an individual does not live in the US the immigration authorities generally would consider the individual ineligible to have a green card.

Be Aware of the Post-June 16, 2008 Deemed Disposition Rules

We previously summarized the sometimes dramatic and complex US tax implications to abandoning your green card after June 16, 2008, if you met the tax liability or net worth test. Please see the Fall, 2009, Taxletter.

Don't Forget the Substantial Presence Test

Notwithstanding all the foregoing, please remember you will be considered a resident of the US for US income tax for each year you meet the "substantial presence test" and fail to file a valid IRS Form 8840 (Closer Connection Exception Statement) by the due date.

WHEN IS A CANADIAN TRUST A CORPORATION FOR US INCOME TAX PURPOSES?

The evaluation of whether any given Canadian trust is a corporation for US income tax purposes has become an important (and dangerous) issue in Canada/US cross-border taxation.

For example, if a US citizen or US resident contributes, owns, or receives a distribution from a Canadian trust, (that is considered a trust for US purposes), IRS Form 3520 may be required. There can be a minimum $10,000 penalty for failure to timely file a required Form 3520.

On the other hand, if the Canadian trust is considered a corporation for US tax purposes it might be a passive foreign investment company (PFIC) if it is not an operating entity and its income and assets are mainly passive. Readers are aware of the potentially drastic US tax consequences if a US person owns a PFIC.

However the determination of what a "trust" is, under US tax rules, can be difficult in many circumstances. Treasury Regulation §301.7701-1(a)(1) states that "the Internal Revenue Code prescribes the classification of various organizations for federal tax purposes". Reg. 301.7701-4 addresses/defines (among others):

1) Ordinary trusts,

2) Business trusts, and

3) Certain "investment trusts".

Ordinary Trusts

According to the regulations, "*the term "trust" refers to an arrangement…… whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries…….. Generally speaking, an arrangement will be treated as a trust… if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for the beneficiaries who cannot share in the discharge of this responsibility …..*".

Business Trusts

According to the regulations, "*there are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but which are not classified as trusts……………. because they are not simply arrangements to protect or conserve the property for the beneficiaries. These trusts……. which are generally a device to carry on a profit-making business….. are classified as corporations or partnerships under the Internal Revenue Code*".

Thus, if a Canadian income trust is a vehicle to carry on a profit-making business, it will likely not be treated as a trust for US income tax purposes. (Instead it will likely be treated as a corporation).

Certain "Investment Trusts"

According to the regulations, an "investment trust" will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. The regulations set out four examples attempting to clarify the definition of an "investment trust".

Therefore if a Canadian mutual fund trust contains a power under the trust agreement to vary the investment of the certificate holders it might be treated as a corporation rather than a trust, for US income tax.

A 1941 US court case ruled that "a power to vary the investment of the certificate holders exists if there is a managerial power under the trust instrument that enables a trust to take advantage of market variations to improve the investment of the investors". The court also held that a power to acquire new (bonds) upon the addition of new investors, where existing investors would acquire a pro-rata interest in the new (bonds) was a power to vary the investment of the existing investors. (Commissioner v. North American Bond Trust, 122 F.2d 545).

In Revenue Ruling 78-149, the IRS concluded that "the right to replace bonds called by the issuer prior to maturity with other similar bonds is a power to vary. For other guidance, please see PLRs 200752029, 200810002, and 200810010.

In the Winter/Spring, 2010, Taxletter we mentioned IRS CCA 201003013 in which the IRS decided a particular Canadian mutual fund which was organized as a Canadian trust was deemed to be a corporation for US purposes. It appears likely the IRS arrived at this conclusion as a result of the ability of the mutual fund manager to "vary" the investment, as mentioned above.

In a later Private Letter Ruling the IRS determined that a non-US trust which was organized to provide old age and/or death benefits, and disability benefits, for covered employees was a trust, not a corporation, for US purposes. The IRS apparently made its decision on the basis the purpose of the arrangement was to "vest in the trustees the responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility", as mentioned in "Ordinary Trusts" above. (PLR 201050011).

Thus it is possible the US tax status of Canadian Locked in RRSPs, Life Income Funds (LIFs), Locked in Retirement Accounts, (LIRAs), RESPS, TFSAs, ETFs, etc., must all be evaluated from the perspective of the IRS regulations describing the three types of trusts mentioned above.

Evaluating non-US **index** mutual fund trusts and (relative newcomer) actively managed non-US Exchange Traded Funds, (**ETFs**), that are trusts may create a conundrum until there is IRS guidance. Like index mutual funds, the original non-US ETFs mirrored various equity market indexes. Therefore under IRS regulations are they "ordinary trusts", as set out above, requiring IRS Form 3520? Recent years has seen the advent of actively managed ETFs. Under US rules are they actively managed "investment trusts" constituting corporations for US purposes, thus exposing US persons who are owners to the unpleasant US PFIC taxation regime?

Again, a correct determination of the US status of all these vehicles is important because of the potentially drastic results and penalties that may arise from an incorrect determination.

Please also see the article ***"CANADIAN RESPs AND TFSAs OWNED BY US CITIZENS AND US RESIDENTS"*** in the Fall, 2010, issue of the Taxletter.

NO LUCK FOR CANADIANS IN "DISCRIMINATE" APPLICATION OF FLORIDA REAL ESTATE TAX

Residents of Canada owning real estate in Florida are aware of the "two-tier" structure for levying Florida county real estate tax. Simplistically there is one (often lower) method of taxing residents of Florida and another method for taxing nonresidents of Florida. Individuals who are residents of Florida and who "homestead" their Florida property have the benefit of a 3% "cap" on the allowed annual increase in assessment of the property. There is no cap on the allowed annual increase in property assessment if the property is not homestead property. To "homestead" a property, it must be the owner's "permanent" home.

During the Florida real estate boom years of the early-mid 2000's, the appraisals increased so quickly there arose a substantial difference between the assessments to which homesteaders and non-homesteaders were subject. Thus two neighbors, side by side, with essentially identical properties could have substantially different real estate tax liabilities, with the non-homesteader (often a Canadian) having a substantially higher tax liability than his/her neighbor (a Florida resident). Of course this resulted in litigation based on alleged unconstitutional discrimination against nonresidents of Florida.

The litigation went up to the US Supreme Court which refused to hear the case. Hence the ruling of the Florida intermediate appellate court took effect, which was that there was no unconstitutional discrimination, because the Florida law was based on the use of the residence not the status of the owner as resident or nonresident. (A Florida resident who owns a second home in the State is not able to homestead that property if it is not his/her "permanent" home even if he/she prefers to homestead that residence rather than the "permanent" one). (Lanning v. Pilcher, US Supreme Court Dkt. 10-281).

ATHLETES AND ENTERTAINERS - IN THE CROSSHAIRS

By Robert S. Blumenfeld, Esq.,
(Tax Attorney) tel. 954-384-4060.

The Internal Revenue Service maintains specialized audit groups to examine specific areas where there are repeated opportunities for tax violations. One area in which there are specialty groups is that for athletes and entertainers.

Why? First of all, most athletes and entertainers (worthy of note) have very high levels of income, many in the eight digit bracket. Second, a few simply have bad tax advice. The high tax brackets in which these people fly give the IRS opportunities to make significant adjustments and create sizable liabilities via audits. I feel that some of my audit experience will give you insight about the world in which some of these people exist.

One area of controversy between athletes and the IRS is "what is income". Often companies that manufacture athletic goods gratuitously supply these athletes with shoes, shirts, golf clubs, tennis rackets, occasionally cars, and sometimes, much more. Are these items simply gifts to the athletes or is this taxable income? The defining line is fairly thin sometimes, and the IRS scrutinizes it closely. It is often critical to a result whether the athlete has a contract with the company and what do the terms of the contract provide.

Another area of controversy with the IRS is signing shows. There are many stores that sell athletic artifacts; signed football jerseys, autographed baseball cards and pictures, footballs, bats, you name it. To generate business, many of these stores have signing shows where they pay an athlete or athletes substantial amounts of money to spend time at the store autographing paraphernalia. This brings in a large number of clients who are interested in purchasing these types of athletic goods (e.g. a jersey autographed by a famous quarterback).

A famous athlete might receive $15,000 or $20,000 for appearing at such a show. Many of these athletes seem to "forget" to tell their accountants about the income they received from these shows. The IRS has attacked many professional athletes for this oversight. Often these are not small amounts of money as they relate to athletic artifacts. Last year, for example, a 1909 baseball card was sold for well in excess of $4 million.

Deductions and expenses are another area over which the IRS and entertainers battle. One example is the case of a well known flamboyant singer. On one of his tax returns, he deducted the cost of 100 pairs of glasses. The IRS disallowed the deduction and the case ended up in the United States Tax Court. Ultimately, the singer won. The Tax Court opined that glasses were part of the singer's "business persona" so they could be deducted on the tax return.

Robert Blumenfeld spent 32 years as a senior attorney with the Internal Revenue Service, most of it in Washington, DC. He can be reached at 954-384-4060 or rblumenf@aol.com.

US FORMS TO FILE TO REDUCE US WITHHOLDING AT SOURCE

Exhibit 3 sets out a range of circumstances under which Canadian residents receive income from US sources, and indicates an IRS Form which is potentially available to reduce or eliminate US withholding at source. The 5th and 6th columns in Exhibit 3 often cause

EXHIBIT 3

US Forms to File to Avoid US Withholdng at Source for a Nonresident Alien or Canadian Corporation, Resident in Canada Receiving US Source Income (1)

ECI = Income "Effectvely Connected" with a US Trade or Business
PE = US Permanent Establisment
ETB = Engaged in a US Trade or Business

You Are an Indiviual or Corporation and You:

If you	Then
Receive Interest, Dividends, Certain Pension or Annuities From a US Payer That is <u>Not</u> "ECI", (or "Effectvely Connected" Income From a Partneship See Reg. 1.1446-1 For Partneship (2))	File IRS Form W-8BEN with the Payer and Complete Part I, and Part II, lines 9a and 10. and Part II, lines 9c and 9d, as appropriate. (Except Part II is not Required for Bank Interest and Certain "Portfolio Interest") Form W-8BEN is Specifically not used for income effectively connected with US business unless it is allocable to you through a Partnership (See Form W-8BEN Instructions) The Instructions to Form W-8BEN State that you require a US taxpayer number if you are making a treaty claim
Receive"ECI" From a Partnership (2)	File IRS Form W-8ECI
Receive US Income That Is "ECI" And You <u>Have</u> a US ""PE"	File IRS Form W-8ECI
Receive "ECI" But You Do Not Have <u>a "PE"</u>	File IRS Form W-8BEN
Receive Business Income From a US Payer But You Are Not "ETB" Because You Perform Very <u>Limited Activity</u> In the US	The Proper Form to File Is W-8BEN. But The Payer May Be. Nervous About Not Withholding Because <u>The Payer Is Aware</u> You Have Been Present in The US. Thus The Payer May Insist On Form W-8ECI To Avoid Withholding. If you Provide Form W-8ECI You Should Consider Filing a US "Protective" Return.
Receive Business Income From US Payer But You Are Not "ETB" And you <u>Have Had No Presence</u> Whatsoever in the US.	No Withholding Is Required and No Form Is Required. But in Limited Cases The Payer May Be Nervous About <u>Not</u> Withholding. Thus The Payer May Require Form W-8ECI to Avoid Withholding If You Provide Form W-8EC You Should Consider Filing a US "Protective" Income Tax Return.
Sell US Real Estate	Withholding is 10% of the "Amount Realized". Exceptions May Apply if the Selling Price Does Not Exceed $300,000 and Other conditions are Met, <u>or you Apply For and</u> Receive a "Withholding Certificate" by Filing IRS Form 8288-B.

You are an Individual and You:

If you	Then
Receive Compensation for "Independent" or "Dependent" Personal Services Perfomed in the US But You Do Not Have an Office in the US Regularly Available to You	File IRS Form 8233
Are a Public Entertainer or a Certain Category of Athlete and You Perform in the US	Form 8233 Can Be Submitted. However the Tax Treaty (the Basis on Which the Withholding Would be Reduced via Form 8233) only exempts the first 15,000 The Entertainer or Athlete Can, However, Apply for reduced withholding at 30% of projected net income (See Rev Proc 89-47) The treaty and Form 8233 Do not Apply to Employees of a Team in a League with Regularly Scheduled Games.
Are a Director of a US Corporation	File Form 8233 If You do No Have a "Fixed Base" in the US

(1) This is a simplied version of the rules. Other Forms apply in other circumstances. Please contact your tax advisor for additional information.

(2) Apparently an overlap exists between the rules of Sections 1441/1442, on one hand, and the rules of Section 1446. Alhough the instructions to W-8ECI indicate it is appropriate to file that Form with a partnership, it is difficult to see how a Partnership Would Reduce the Withholding on "Effectively Connected" Income. Perhaps this would be Relevant when the "Effectively Connected" Income is so Minimal that the Section 1446 Rate would be less than the Standard 30% Withholding Rate.

the most problems because the US payer may be nervous about his/her US withholding obligations and may opt for the "safest' action from his/her standpoint even though it is not the correct action.

Of course Canada also has certain forms to permit a reduction or elimination of withholding at source. One factor in most withholding issues is the residence of the recipient of the income. In the Winter/Spring, 2009, Taxletter we set out some of the circumstances where Canada and the US would respect the operation of the tax treaty in cross-border transactions. Subsequently the Canada Revenue Agency (CRA) issued certain Forms to be used for Canadian purposes to obtain treaty benefits with regard to withholding at source. Please see the article "***REDUCED CANADIAN WITHHOLDING ON PAYMENTS TO UNITED STATES LLCS***".

REDUCED CANADIAN WITHHOLDING ON PAYMENTS TO UNITED STATES LLCS

Exhibit 3 and the article "***US FORMS TO FILE TO REDUCE US WITHHOLDING AT SOURCE***" set out many of the Forms to be used to reduce or eliminate US withholding on US payments being made to residents of Canada.

Three of the Canadian counterparts used by nonresidents of Canada to reduce or eliminate Canadian withholding at source under a treaty are Forms NR301, NR302, and NR303. The issuance of Form NR303 in particular appears to be have been triggered by the 5th Protocol to the tax treaty.

Form NR301 is used by a nonresident of Canada who is:

i) Receiving Part XIII income from Canada such as investment income or pensions, to reduce Canadian tax withheld at source,

ii) Completing Forms T2062 or T2062A, relating to the sale of certain Canadian property, and claiming a tax treaty benefit, or

iii) Deriving income through a partnership or hybrid entity which asks you to complete Form NR301 to support a tax treaty claim by the partnership or hybrid entity.

Form NR302 is used to claim a tax treaty benefit for reduced withholding by a partnership that is subject to Part XIII Canadian tax. If the partnership is subject to tax as a corporation on its worldwide income in a treaty country you can use either Form NR301 or NR302 whichever is more beneficial.

Form NR303 is used to claim a tax treaty benefit for reduced withholding by a hybrid entity that is subject to Part XIII Canadian tax. As indicated above, the hybrid entity may also request From NR301 from its owner(s) to justify issuing Form NR303 to the Canadian payer.

The payer must conduct due diligence by reviewing the information provided on Forms NR301, NR302, or NR303, or in another format, to ensure they have enough information to support the fact the recipient is entitled to treaty benefits.

SOME CANADIAN RESIDENTS ENJOY INCREASED EXEMPTION FROM TAX ON US SOCIAL SECURITY

For tax year 2010, if you have been a resident of Canada and have received US Social Security benefits continuously during the period starting before January 1, 1996, and ending in 2010, you can claim a deduction equal to 50% of the US Social Security benefits received in 2010, rather than the standard 15%.

The 50% deduction also applies if you are receiving benefits related to a deceased individual and if you meet all the following requirements:

1) The deceased person was your spouse or common-law partner immediately before their death,

2) The deceased person had, continuously during a period starting before 1996 and ending immediately before the person's death, been a resident of Canada and received benefits to which paragraph 5, of Article XVIII of the Canada-US Tax Treaty applied, and

3) You have, continuously during a period starting at the person's time of death and ending in 2010, been a resident of Canada and received such benefits.

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EDITED BY RICHARD BRUNTON • 4710 N.W. 2ND AVENUE, SUITE 101 • BOCA RATON, FLORIDA 33341, U.S.A.
TEL (561) 241-9991 • FAX (561) 241-6332 • E-MAIL RB@TAXINTL.COM • WWW.TAXINTL.COM