

CANADA AND U.S. FINALLY REACH AGREEMENT ON FATCA

Hodgson Russ Alert
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The long awaited Foreign Account Tax Compliance Act United States – Canada Intergovernmental Agreement (IGA) was released on February 5, 2014, and as anticipated will expand the sharing of information between the two countries with the goal of reducing perceived offshore tax evasion by U.S. citizens holding assets through non-U.S. financial intermediaries.

In March 2010, the U.S. enacted the Foreign Account Tax Compliance Act (FATCA). Absent an IGA, FATCA would require non-U.S. financial institutions to report to the U.S. Internal Revenue Service (IRS) accounts held by U.S. taxpayers starting on July 1, 2014. Failure to comply with FATCA could subject a financial institution or its account holders to certain sanctions, including special U.S. withholding taxes on payments to them from the United States.

FATCA has raised a number of concerns in Canada – among both dual Canada-U.S. citizens and Canadian financial institutions. One key concern was that the reporting obligations in respect of accounts in Canada would compel Canadian financial institutions to report information on account holders who are U.S. citizens resident in Canada directly to the IRS, thus potentially violating Canadian privacy laws.

The IGA attempts to address those concerns by allowing Canadian foreign financial institutions (FFIs) to provide information on U.S. accounts to the Canada Revenue Agency (CRA), which will make the information available to the IRS under the exchange of information article of the Canada–U.S. Income Tax Treaty. In addition, under the IGA, the United States commits to provide the CRA with certain information about accounts held by Canadian residents in U.S. financial institutions.

A positive development is that the IGA has provided an exemption from FATCA for certain accounts. These exempt accounts include (among others):

- Registered Retirement Savings Plans (RRSPs)
- Registered Retirement Income Funds (RRIFs)
- Registered Pension Plans (RPPs)
- Tax-Free Savings Accounts (TFSA)
- Registered Education Savings Plans (RESPs)

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The IGA also exempts specified entities and financial products with a low potential for U.S. tax avoidance from FATCA's reporting and withholding regime. Among other entities, the Bank of Canada, certain international organizations operating in Canada and certain pension and retirement funds will be treated as "exempt beneficial owners" for FATCA purposes, and therefore will not be subject to FATCA withholding. In addition, smaller deposit-taking institutions, such as credit unions, with assets of less than \$175 million will be exempt.

The content of this article is intended to provide a general guide to the subject matter. Specific advice should be sought about your particular circumstances.

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