

Canadian Retirement Plans: What Does Rev. Proc. 2014-55 Mean for U.S. Tax Deferral, Form 8891, Form 8938 and the FBAR?

By Hale E. Sheppard

I. Introduction

Determining the proper treatment for U.S. tax purposes of certain Canadian retirement plans has been nothing short of an odyssey. This journey, spanning several decades and featuring multiple positions by the IRS, has caused significant turmoil for taxpayers and their advisors. With the issuance of Rev. Proc. 2014-55¹ and a series of Frequently Asked Questions (FAQs) by the IRS in 2015, the rules regarding Canadian retirement plans have morphed yet again. The goal of the recent changes is simplification, and some will surely occur. However, as this article demonstrates, given the widespread misinformation about the proper reporting of Canadian retirement plans, exacerbated by frequent modifications of the rules, challenges for taxpayers (including penalties for inadvertent violations) will persist for years to come.²

II. Setting the Scene

How does one get into a mess with the IRS with respect to Canadian retirement plans? Here is a typical scenario.

Marty Mapleleaf, a Canadian by birth, decides to relocate to the United States. Marty becomes a U.S. resident for tax purposes by obtaining a “green card” or by satisfying the “substantial presence” test. Marty might become a U.S. citizen, too. While living and working in Canada, years before departing for the United States, Marty opened and made contributions to a Canadian registered retirement savings plan (RRSP), a Canadian registered retirement income fund (RRIF) or a similar Canadian retirement instrument. He made no further contributions after moving to the United States.

Marty was a complete foreigner to the U.S. tax system when he arrived, but he fully intended to meet his obligations. Accordingly, he diligently searched



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for a U.S. tax professional to prepare his annual Forms 1040 (*U.S. Individual Income Tax Return*) and to provide tax compliance advice. Marty identified Ace Accountant, whom he believed to be qualified. Marty retained Ace and then provided him with all his tax-related documents each year, including those related to the Canadian retirement plans.

Ace had an accounting degree and many years of practical experience, but he had little knowledge about international tax issues. Therefore, despite his awareness of Marty's Canadian retirement instruments, Ace did not identify any special U.S. requirements related to them. Believing that the Canadian retirement instruments should simply be treated like Code Sec. 401(k) plans ("Section 401(k) plans") in the United States, Ace did not report the accumulated-yet-undistributed income from the Canadian instruments on Marty's annual Forms 1040, and Marty thus paid no U.S. taxes on such income. Moreover, Ace never notified Marty that he might need to make a tax-deferral election or file any information returns with the IRS.

The progress achieved by the IRS with respect to Canadian retirement plans, though slow, should be commended.

Years pass in this manner. Marty was never audited by the IRS; therefore, he had no reason to know that he was not in full U.S. tax compliance. He was talking with some fellow expatriates one day. During the course of their conversation, somebody mentioned Canadian retirement instruments and all the dreaded U.S. tax requirements. A moment of sheer panic ensued. Marty quickly called Ace and conveyed what he had just heard about Canadian retirement instruments. Ace, equally panicked by the thought of a malpractice lawsuit, set to researching the issue.

Ace discovered several things, including that the IRS had started publishing guidance regarding Canadian retirement plans over 25 years ago, the U.S. filing requirements had frequently changed over the years, Canadian retirement plans trigger separate tax and information-reporting issues, violations could lead to severe penalties, the IRS had recently revamped the rules by issuing Rev. Proc. 2014-55 and the IRS discreetly announced months later how the new rules would impact taxpayers who participate in one of the current international voluntary disclosure programs. Outraged by Ace's ignorance and errors, Marty demanded that Ace identify all options available to rectify the situation.

III. Overview of U.S. Requirements

Grasping the significance of the options available to holders of certain Canadian retirement instruments requires an understanding of the applicable U.S. tax and information-reporting duties. Entire articles can be (and have been) written about each obligation related to having a reportable interest in a foreign financial account, such as a Canadian RRSP, RRIF or other retirement account. This article merely provides an overview of such obligations for purposes of helping readers appreciate the magnitude of the special rules.

A U.S. person ordinarily has several duties each year when he holds a financial interest in a foreign account whose balance surpasses the relevant thresholds: (i) report all income deposited into the account on Form 1040; (ii) report all passive income (*e.g.*, interest, dividends and capital gains) generated by the account on Form 1040; (iii) check the "yes" box in Part III (Foreign Accounts and Trusts) of Schedule B to Form 1040, disclosing both the existence and location of the foreign account; (iv) enclose a Form 8938 (*Statement of Specified Foreign Financial Assets*) with Form 1040; and (v) e-file a FinCEN Form 114 (FBAR) with the designated Treasury Department office. Depending on the circumstances, the U.S. person may also need to file a Form 8891 (*U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans*) or attach a particular Statement to his Form 1040.³

Failure to meet any of the preceding duties can lead to severe penalties for taxpayers. For instance, even in a relatively benign case, underreporting of income triggers back taxes, accuracy-related penalties and interest charges.⁴ Moreover, if the taxpayer fails to file Form 8938 in a timely manner, the IRS can assert a penalty of \$10,000⁵ and increase such penalty up to \$50,000 in situations where the taxpayer does not rectify the problem quickly after being contacted by the IRS.⁶ Finally, neglecting to file an FBAR can spark huge sanctions. In the case of "nonwillful" violations, the maximum penalty is \$10,000.⁷ The FBAR penalty increases significantly, though, where a taxpayer's inaction is deliberate; the IRS may assert a fine equal to \$100,000 or 50 percent of the balance in the account at the time of the violation, whichever amount is larger.⁸

IV. Special Rules for Certain Canadian Retirement Instruments

For nearly three decades, the IRS has been introducing special rules and procedures that apply only to U.S.

persons holding certain Canadian retirement instruments, including RRSPs and RRIFs. One must appreciate this history to grasp the significance of the recent changes contained in Rev. Proc. 2014-55.

A. U.S.–Canada Treaty

The tax treatment of Canadian RRSPs and RRIFs in Canada is similar to that afforded to Section 401(k) plans in the United States, that is, to encourage people to save for retirement, certain contributions to, and gains accumulated in, these types of plans generally are not taxed each year. Taxation ordinarily does not begin until the beneficiary reaches a certain age and/or begins withdrawing funds from the plan.⁹

Although beneficiaries of Canadian RRSPs, RRIFs and other retirement plans enjoy tax-deferral benefits in Canada, they have not always been so lucky in the United States. Indeed, until the recent issuance of Rev. Proc. 2014-55, U.S. tax law dictated that an individual who is a U.S. citizen or U.S. resident, as well as a beneficiary of the Canadian retirement plan, is generally subject to current U.S. taxation on income accrued in such plans, *even though* the income is not actually distributed to the individual.

The harshness of this traditional rule was mitigated by the U.S.–Canada Income Tax Convention (“Treaty”), which allowed an individual to opt-out of this inconsistent tax treatment.¹⁰ The Treaty provides that an individual who is a U.S. person and a beneficiary of a Canadian trust, company, organization or other arrangement that is generally exempt from income tax in Canada and that is operated exclusively to provide pension, retirement or employee benefits *may affirmatively elect* to defer U.S. tax on the accrued-yet-undistributed income from the plan until such income is actually distributed.¹¹ In other words, the Treaty essentially allows U.S. persons who are beneficiaries of certain Canadian retirement plans to unilaterally tell the IRS that they will be treating such plans like Section 401(k) plans.

B. Rev. Proc. 89-45

The IRS issued a series of documents over the years to provide guidance about Canadian retirement instruments and the Treaty, starting with Rev. Proc. 89-45. In order to make the tax-deferral election under this initial IRS pronouncement, the beneficiary had to attach a written statement to his timely Form 1040 for the election year.¹² The statement had to include the name of the trustee of the plan, the account number of the plan, the total amount of

earnings from the plan during the year, the total amount of contributions to the plan during the year and the balance of the plan at the end of the year. Rev. Proc. 89-45 further instructed the beneficiary to attach a similar statement to each of his subsequent Forms 1040, until the year in which a final distribution was made from the Canadian retirement instrument.

C. Rev. Proc. 2002-23

After more than a dozen years, Rev. Proc. 89-45 was superseded by Rev. Proc. 2002-23. This IRS pronouncement was designed to accommodate the expansion of the Treaty (by way of assorted protocols over the years) to cover not only RRSPs, but also RRIFs and other Canadian pension, retirement and employee-benefit plans.¹³ Like its predecessor, Rev. Proc. 2002-23 described a procedure whereby a beneficiary of a Canadian retirement instrument could elect to defer U.S. income tax on his share of the accrued-yet-undistributed income until it was actually distributed to him. The election procedure itself was essentially unchanged; the beneficiary was obligated to file a written statement containing details about the Canadian instruments with his timely Form 1040 for the election year and all subsequent years.¹⁴

D. Three IRS Notices About Reporting Foreign Trusts

1. Notice 2003-25¹⁵

Notice 2003-25 identified additional requirements related to RRSPs and RRIFs. This IRS pronouncement began by explaining that certain information-reporting requirements are applicable to “foreign trusts.”¹⁶ These include filing a Form 3520 (*Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*) and/or Form 3520-A (*Annual Information Return of Foreign Trust with a U.S. Owner*), as necessary. If a person fails to file either of these information returns, then the IRS may assert significant penalties.¹⁷ In Notice 2003-25, the IRS acknowledged that many beneficiaries and custodians of Canadian RRSPs and RRIFs were “unfamiliar” with the foreign trust reporting requirements and that many were equally unfamiliar that these Canadian retirement plans would be considered “trusts” for U.S. tax purposes. In light of the widespread ignorance of U.S. tax duties and definitions, the IRS decided to grant an automatic filing extension for Form 3520 and Form 3520-A for 2002 until August 15, 2003.

2. Notice 2003-57

Apparently, few taxpayers filed their Forms 3520 or 3520-A by the extended deadline of August 15, 2003, because the IRS issued its next release, Notice 2003-57, merely 10 days after such deadline. That IRS pronouncement contained “additional relief” with respect to the information-reporting requirements for 2002. Notably, Notice 2003-57 provided that if the beneficiary of a Canadian plan made a proper tax-deferral election pursuant to Rev. Proc. 2002-23 and received no actual distributions from the plan during 2002, then the beneficiary was not obligated to file a Form 3530 or 3520-A for 2002.¹⁸ In other words, the IRS conceded that making the tax-deferral election, without more, would suffice for 2002.

3. Notice 2003-75

Four months later, the IRS changed its tune when it issued Notice 2003-75, thereby introducing a “new simplified reporting regime.” Notice 2003-75 announced that the IRS was designing a new form to address Canadian retirement plans. Taxpayers were instructed to comply with some interim rules until the IRS published the promised form.¹⁹

One of the most interesting (and often overlooked) aspects of Notice 2003-75 was the IRS’s dramatic change of heart regarding Forms 3520 and 3520-A. Earlier in the year, the IRS indicated in Notice 2003-25 that Canadian RRSPs and RRIFs were “foreign trusts,” and as such, U.S. beneficiaries had to file annual Forms 3520 and 3520-A. This position was seconded by the IRS in Notice 2003-57. However, in Notice 2003-75, the IRS reversed course entirely, stating that the “new simplified reporting regime” provided all the information the IRS needed for tax compliance purposes.²⁰ To formalize this change, the IRS invoked a tax provision that authorizes the IRS to suspend or modify any filing requirements related to foreign trusts if the IRS determines that it does not have a significant interest in obtaining the information.²¹ Although the IRS repealed with Notice 2003-75 the need to file Form 3520 and Form 3520-A for Canadian retirement instruments, it warned that beneficiaries may still be subject to other requirements and penalties.²²

E. Form 8891

In 2004, the IRS issued Form 8891 (*U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans*). This form only applied to Canadian RRSPs and RRIFs; procedures regarding other types of Canadian retirement plans were still governed by Rev. Proc. 2002-23. Form 8891 could be used by U.S. persons to report (i)

contributions to an RRSP or RRIF, (ii) accumulated-yet-undistributed income in an RRSP or RRIF and (iii) actual distributions received from an RRSP or RRIF. It could also be used to make a tax-deferral election pursuant to the Treaty. Form 8891 had to be completed and attached to the U.S. beneficiary’s annual Form 1040, and a separate Form 8891 was required for each RRSP or RRIF.²³

V. Past Solutions with the IRS

There have been a number of methods, some better than others, that taxpayers have used in the past to resolve U.S. tax violations related to RRSPs, RRIFs and other Canadian retirement instruments. Some of these methods are discussed below.

A. First Prior Solution— Ignore the Past, Focus on the Future

Some taxpayers started doing things correctly going forward and simply hoped that the IRS would not discover transgressions of yesteryear. In other words, beginning the year that the taxpayer discovered the unintentional violations related to the Canadian retirement instruments, he checked the “yes” box on Part III of Schedule B of Form 1040 indicating that he had an interest in foreign financial accounts in Canada, enclosed a Form 8938 with the Form 1040, enclosed Forms 8891 with the Form 1040 to make the tax-deferral election and filed an FBAR disclosing the Canadian accounts.²⁴

The primary benefit of this approach was the reduced cost; there would be no professional fees to examine all the tax and financial data for previous years, review the Treaty and related IRS pronouncements, prepare Forms 1040X (*Amended U.S. Individual Income Tax Returns*), prepare delinquent international information returns for several years, etc.

The most glaring disadvantage with this tactic was that it left the taxpayer vulnerable to intense scrutiny by the IRS. As mentioned above, the failure to report on annual Forms 1040 the accumulated-yet-undistributed income generated by Canadian retirement instruments for which a tax-deferral election had been not filed could spur back taxes, penalties on tax underpayments and interest charges. It could also lead to large sanctions for failure to file information returns, such as the FBAR and Form 8938. To make matters worse, the assessment period was extended in these types of cases. For one thing, the IRS has six years (not the normal three years) from the time of an FBAR violation to assert the penalty.²⁵ For another, not filing a Form 8938 essentially serves to keep open indefinitely the

assessment period on the entire Form 1040 to which the Form 8938 should have been attached.²⁶

B. Second Prior Solution— Request a Private Letter Ruling

Another approach was to submit a request for a private letter ruling (LTR) from the IRS. The U.S. person would seek an extension under Reg. §301.9100-3 to make an election to defer U.S. tax on all accumulated-yet-undistributed income from the Canadian retirement instruments as of the first year that he became a U.S. person. The IRS issued dozens of LTRs to this effect over the years.²⁷

The receipt of the favorable LTR and the filing of the Forms 1040X in accordance with the LTR only solved one of the taxpayer's noncompliance problems, *i.e.*, the unreported income. He still needed to address the Form 8938 and/or FBAR issues, which, in theory, could prove much more costly. This was often handled by filing Forms 8938 and/or FBARs outside any official voluntary disclosure program offered by the IRS, advancing the legal position that the taxpayer was entitled to penalty-free treatment because the Canadian retirement instrument did not create a U.S. income tax problem and because, in all events, there was "reasonable cause" for the tax noncompliance.

The main advantage of this approach was that, if the IRS granted the requested LTR, the taxpayer essentially had the opportunity to go back to the beginning and correct everything with respect to the Canadian retirement plans.

The primary disadvantage to going this route was the cost to the taxpayer. It all took money—drafting the lengthy LTR request, paying the application/user fee to the IRS and preparing the necessary Forms 1040X, Forms 8938 and/or FBARs.²⁸ Another disadvantage to this approach was the risk that the IRS would assert penalties, notwithstanding the claims of "reasonable cause." Finally, some practitioners speculated that this method might be characterized as a "quiet disclosure" by the IRS, thereby triggering a full-blown civil audit and/or criminal investigation.²⁹

C. Third Prior Solution—2012 Streamline Filing Compliance Procedure

Given the perceived unfairness and large number of affected people, the IRS came under pressure from various groups to develop a reasonable settlement plan for those with RRSPs, RRIFs and other Canadian retirement instruments. The IRS did so in June 2012, when it issued

a news release announcing the start of the Streamline Filing Compliance Procedure (SFCP).³⁰ U.S. persons with Canadian retirement plans were encouraged because of the favorable language in the news release from the IRS:

[T]he new procedures [*i.e.*, 2012 SFCP] will allow resolution of certain issues related to certain foreign retirement plans (such as Canadian Registered Retirement Savings Plans). In some circumstances, tax treaties allow for income deferral under U.S. tax law, but only if an election is made on a timely basis. The streamlined procedures will be made available to resolve low compliance risk situations even though this election was not made on a timely basis.³¹

Consistent with the news release, the IRS's instructions to the 2012 SFCP carved out special rules for U.S. persons holding Canadian retirement instruments. They stated the following in this regard:

[R]etroactive relief for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by relevant treaty is available through this process. The proper deferral elections with respect to such arrangements must be made with the submission ... Amended returns submitted through this [SFCP] will be treated as high risk returns and subject to examination, except for those filed for the sole purpose of submitting late-filed Forms 8891 to seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty.

The limited value of the 2012 SFCP for holders of Canadian retirement instruments became clear rather quickly, at least for those with the patience to parse the ambiguities found in the IRS guidance. Two issues stood out. First, the 2012 SFCP was generally available only to taxpayers who were not U.S. residents, who had not filed annual Forms 1040 with the IRS over the years and who would be filing the "low-risk" Forms 1040 as part of the 2012 SFCP. Second, while a limited category of U.S. residents holding interests in Canadian retirement plans might be considered eligible for the 2012 SFCP, they could only participate if the violations pertained exclusively to the Canadian retirement plans. Thus, taxpayers with multiple aspects of noncompliance (*e.g.*, failure to report any amount of foreign-source income, foreign entities, foreign financial accounts other than Canadian retirement accounts, *etc.*) were forced to seek other avenues, outside the 2012 SFCP, to rectify matters with the IRS.

D. Fourth Prior Solution— 2012 Offshore Voluntary Disclosure Program and Frequently Asked Questions #54 and #54.1

At the same time that it announced the 2012 SFOP, the IRS also launched one of its much-anticipated remedies for U.S. persons with Canadian retirement instruments. It came in the form of new FAQs issued by the IRS in connection with its 2012 Offshore Voluntary Disclosure Program (OVDP). The new FAQs indicated that the IRS would allow taxpayers to make late tax-deferral elections concerning Canadian instruments as a routine part of the 2012 OVDP and earlier voluntary disclosure programs, thereby eliminating (i) the back taxes, accuracy-related penalties and interest charges; and (ii) the need to file a LTR request. The new guidance, in the form of FAQ #54, established the following rules:

FAQ #54—QUESTION. I have a Canadian registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or other similar Canadian plan. I did not make a timely election pursuant to Article XVIII(7) of the U.S.–Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed, but I would now like to make an election. What should I do?

FAQ #54—ANSWER. The answer depends upon whether you are participating in the [2012 OVDP or any earlier IRS voluntary disclosure program from 2009 or 2011] ... Taxpayers who are participating in the [2012 OVDP] should provide the following information ... A statement requesting an extension of time to make an election to defer income tax; Forms 8891 for each of the tax years and type of plan covered under the voluntary disclosure; A dated statement signed by the taxpayer under penalties of perjury describing events that led to the failure to make the election, events that led to the discovery of the failure, [and] if the taxpayer relied on a professional advisor, the nature of the advisor's engagement and responsibilities.

More critical from a financial standpoint, if the IRS granted the tax-deferral election based on the materials submitted by the taxpayer under FAQ #54, then the Canadian retirement accounts would *not* be subject to the normal “offshore” penalty in the 2012 OVDP. In this regard, the FAQ #54.1 provided the following relief:

FAQ #54.1—QUESTION. If my election is granted, will the RRSP or RRIF balance be included in the offshore penalty base?

FAQ #54.1—ANSWER. No.

Thanks to FAQ #54 and FAQ #54.1, many U.S. persons with Canadian retirement plans were able to get themselves into full U.S. tax compliance without incurring back taxes, penalties and interest charges.

E. Fifth Prior Solution— 2014 Streamline Programs

In June 2014, the IRS abruptly ended the 2012 OVDP and announced two new ways for taxpayers to proactively and voluntarily approach the IRS to resolve past U.S. tax noncompliance: the 2014 Streamline Foreign Offshore Procedure (SFOP) and the 2014 Streamline Domestic Offshore Procedure (SDOP). Below is a high-level summary of these two programs.

In order to be eligible to participate in the SFOP, a taxpayer (who is a U.S. citizen or green card holder) must meet the following criteria: (i) the taxpayer was physically outside the United States for at least 330 days in one or more of the past three years; (ii) the taxpayer did not have an “abode” in the United States during the relevant year or years; (iii) the taxpayer either failed to file annual Forms 1040 with the IRS or filed annual Forms 1040 that did not properly report all income from everywhere in the world; (iv) the taxpayer might have also failed to file with the IRS the proper international information returns, such as FBARs for foreign financial accounts, Forms 8938 for foreign financial assets, Forms 5471 for foreign corporations, Forms 8865 for foreign partnerships, Forms 3520 and Forms 3520-A for foreign trusts, Forms 8621 for passive foreign investment companies, *etc.*; (v) the failure to report all income to the IRS, as well as the failure to file all proper international information returns, was the result of “nonwillful” conduct by the taxpayer; (vi) neither the IRS nor the U.S. Department of Justice has initiated a civil examination or criminal investigation of the taxpayer or a related party; and (vii) the taxpayer is an individual (or the estate of an individual) because the SFOP is not open to business entities.

The eligibility requirements for the SDOP are quite similar, with the biggest differences being that the taxpayer must have been living in the United States during the past three years (*i.e.*, the taxpayer does not meet the foreign-residency requirement for the SFOP) and the taxpayer

previously filed timely, but inaccurate, Forms 1040 with the IRS for the past three years (*i.e.*, the SDOP is not available for serial nonfilers).

Under both the SFOP and the SDOP, taxpayers are only required to file U.S. tax returns for the past three years, U.S. international information returns (other than FBARs) for the past three years and FBARs for the past six years. The IRS does not impose any penalties whatsoever on those taxpayers who successfully participate in the SFOP. However, the IRS asserts an “offshore” penalty on SDOP participants in the amount of five percent of the highest aggregate balance of the noncompliant foreign financial assets during the past six years.

The guidance from the IRS for both the SFOP and SDOP contains special rules for RRSPs, RRIFs and similar Canadian retirement instruments. The IRS states the following on this topic:

For returns filed under these procedures, *retroactive relief will be provided for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by the applicable treaty.* The proper deferral elections with respect to such plans must be made with the submission. See the instructions below for the information required to be submitted with such requests.

If you seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by an applicable treaty, submit: (1) a statement requesting an extension of time to make an election to defer income tax and identifying the applicable treaty provision; (2) a dated statement signed by you under penalties of perjury describing the events that led to the failure to make the election, the events that led to the discovery of the failure, and if you relied on a professional advisor, the nature of the advisor’s engagement and responsibilities; and (3) for relevant Canadian plans, a Form 8891 for each tax year and each plan and a description of the type of plan covered by the submission.

The IRS waives all penalties for taxpayers who successfully resolve matters through the SFOP. Therefore, the issue of whether the value of RRSPs, RRIFs and similar Canadian instruments will be included in the “offshore” penalty under the SFOP is moot. This is a serious consideration, though, for taxpayers who must resolve matters through the SDOP instead of the SFOP. As discussed later in this article, until July 2015, the written guidance from

the IRS never addressed this specific issue. Consequently, taxpayers remained uncertain as to whether their Canadian retirement money would suffer a five-percent reduction as a result of their participation in the SDOP.

F. Sixth Prior Solution— 2014 Offshore Voluntary Disclosure Program and Frequently Asked Questions #54 and #54.1

If taxpayers fail to meet the long list of eligibility criteria described above for the SFOP or SDOP, they still have the option of resolving issues through the 2014 OVDP. Like the SFOP and SDOP, the 2014 OVDP was introduced by the IRS in June 2014.

Consistent with its predecessor, the 2012 OVDP, participants in the 2014 OVDP are able to achieve their goals of (i) obtaining approval from the IRS to make a late tax-deferral election with respect to RRSPs, RRIFs and similar Canadian instruments; and (ii) avoiding IRS sanctions for failing to file a timely election, FBAR and/or Form 8938. These results are derived from FAQ #54 and FAQ #54.1, as updated for purposes of the 2014 OVDP. This IRS guidance is set forth below.

FAQ #54—QUESTION. I have a Canadian registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or other similar Canadian plan. I did not make a timely election pursuant to Article XVIII(7) of the U.S.–Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed but I would now like to make an election. What should I do?

FAQ #54—ANSWER. Taxpayers should provide the following information A statement requesting an extension of time to make an election to defer income tax Forms 8891 for each of the tax years and type of plan covered under the voluntary disclosure; A dated statement signed by the taxpayer under penalties of perjury describing: events that led to the failure to make the election, events that led to the discovery of the failure, if the taxpayer relied on a professional advisor, the nature of the advisor’s engagement and responsibilities

FAQ #54.1—QUESTION. If my election is granted, will the RRSP or RRIF balance be included in the offshore penalty base?

FAQ #54.1—ANSWER. No.

VI. Rev. Proc. 2014-55—Panacea for Canadian Noncompliance?

Approximately 25 years after the IRS began issuing administrative pronouncements regarding U.S. tax treatment of Canadian retirement plans, and four months after introducing the SFOP, SDOP and 2014 OVDP, the IRS issued Rev. Proc. 2014-55 in October 2014. It essentially rendered obsolete all previous IRS guidance with respect to Canadian retirement plans.

A. Four Categories of Taxpayers with Canadian Issues

Rev. Proc. 2014-55, like most guidance from the IRS, is opaque. A close reading reveals that the IRS places taxpayers into four main categories.

1. First Category—“Eligible Individuals” a/k/a “Tax Underpayers”

For purposes of Rev. Proc. 2014-55, an “eligible individual” is one who (i) is or was a U.S. citizen or U.S. resident while he was also a beneficiary of a Canadian retirement plan, (ii) has filed Forms 1040 with the IRS, (iii) *has not reported* as gross income on his Forms 1040 the accumulated-yet-undistributed income in the Canadian retirement plan and (iv) has reported on his Forms 1040 all actual distributions that he received from the Canadian retirement plan.³² Thus, “eligible individuals” are those who have underpaid taxes to the IRS because they failed to make a tax-deferral election, and they also failed to report on their Forms 1040 the accumulated-yet-undistributed income in the Canadian retirement plans. A better name for this category of individuals might be “tax underpayers.”

According to Rev. Proc. 2014-55, an “eligible individual” who did not make a tax-deferral election under the Treaty “will be treated as having made the election in the first year in which the individual would have been entitled to elect the benefits under [the Treaty] with respect to the plan.”³³ As a result, the “eligible individual” will not be obligated to actually make the tax-deferral election for the first year or any later years on Form 8891 (in the case of Canadian RRSPs and Canadian RRIFs) or by attaching a statement to Form 1040 pursuant to Rev. Proc. 2002-23 (in the case of other Canadian retirement plans).³⁴ Once an “eligible individual” is deemed to have made this automatic, retroactive, tax-deferral election, it generally remains in effect for all subsequent years, until the year in which he receives the final distribution from the Canadian retirement plans.³⁵

2. Second Category—“Ineligible Individuals” a/k/a “Tax Overpayers”

Individuals who do not meet the criteria for “eligible individuals,” as described in the preceding paragraphs, and individuals *who have reported* as gross income on their Forms 1040 the accumulated-but-undistributed income from a Canadian retirement plan are considered “ineligible individuals” within the context of Rev. Proc. 2014-55.³⁶ Therefore, “ineligible individuals” are those who have overpaid the IRS because of their ignorance of the Treaty and the related guidance from the IRS. Individuals falling into this group might be better known as “tax overpayers.”

Rev. Proc. 2014-55 states that “ineligible individuals” normally will not benefit from the automatic tax-deferral election concerning Canadian retirement plans, which means continued yearly U.S. taxation on the accumulated-but-undistributed-gains.³⁷ If an “ineligible individual” wants to make a tax-deferral election, then he “must seek the consent of the Commissioner,” which we understand to mean that he must obtain a LTR from the IRS National Office.³⁸

3. Third Category—“Tax Compliers”

Individuals who got it right in the past by enclosing a Form 8891 with annual Forms 1040 (in the case of RRSPs and RRIFs) or by attaching a statement to annual Forms 1040 pursuant to Rev. Proc. 2002-23 (in the case of other Canadian retirement plans), are not required to continue to do so in the future. These taxpayers might be referred to as the “tax compliers,” as they would not owe money to the IRS (like “eligible individuals”) and would not be owed money from the IRS (like “ineligible individuals”). Rev. Proc. 2014-55 states that a beneficiary of a Canadian retirement plan who previously made a proper tax-deferral election has no need to continue making/confirming the election annually by enclosing a Form 8891 or statement with his Form 1040.³⁹

4. Fourth Category—“Prior Rectifiers”

A number of previous solutions were explained earlier in this article, including the practice of taxpayers obtaining a LTR from the IRS to make a late tax-deferral election pursuant to the special rules found in Reg. § 301.9100-1 *et seq.* When granting LTRs in the past, the IRS specifically cautioned the taxpayers to reaffirm the tax-deferral election every year by enclosing Form 8891 (in the case of RRSPs and RRIFs) or by enclosing a statement pursuant to Rev. Proc. 2002-23 (in the case of other Canadian retirement plans) with future Forms 1040. Rev. Proc.

2014-55 simplifies matters for these “prior rectifiers” by nullifying the ongoing-compliance obligation. Rev. Proc. 2014-55 states the following in this regard: “[A]ny letter ruling issued with respect to a late election for a Canadian retirement plan under [the Treaty] is hereby modified to eliminate the requirement to file Form 8891 with respect to such plan.”⁴⁰

B. Effect of Rev. Proc. 2014-55 on Information-Reporting Requirements

The preceding section explains that various categories of taxpayers will no longer be required to make or reaffirm tax-deferral elections with respect to Canadian retirement plans after 2014, depending on the facts of each case.⁴¹ This clarifies the federal income tax issues, but it does *not* address other important issues.

Rev. Proc. 2014-55 provides two main instructions with respect to international information reporting. First, consistent with its announcement in Notice 2003-75 over a decade ago, Rev. Proc. 2014-55 confirms that beneficiaries of Canadian retirement plans are not required to file annual Forms 3520 and that custodians of such plans are not obligated to file annual Forms 3520-A.⁴²

Second, Rev. Proc. 2014-55 emphasizes that, notwithstanding favorable U.S. income tax treatment, beneficiaries of Canadian retirement plans likely still need to file annual Forms 8938 and FBARs. Rev. Proc. 2014-55 states the following in this regard:

This revenue procedure does not, however, affect any reporting obligations that a beneficiary or annuitant of a Canadian retirement plan may have under Section 6038D or under any other provision of U.S. law, including the requirement to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), imposed by 31 U.S.C. §5314 and the regulations thereunder.⁴³

The IRS included a similar warning in its news release about Rev. Proc. 2014-55, cautioning that it “does not modify any other U.S. reporting requirements that may apply under the Bank Secrecy Act (BSA) and Section 6038D.”⁴⁴

C. Illustration of New Rules

Rev. Proc. 2014-55 contains just one example of how it might impact the future duties of those with an interest in a Canadian retirement plan. This example is set forth below:

Taxpayer is a U.S. citizen and a resident of Canada who established an RRSP in 2004 and filed Form 1040 (U.S. Individual Income Tax Return) for 2004 and all subsequent taxable years. Taxpayer did not attach to any Form 1040 a Form 8891 with respect to the RRSP and did not make an election under the procedures set forth in Revenue Procedure 2002-23. Taxpayer also did not include as gross income on any Form 1040 any earnings that accrued in the RRSP during 2004 and subsequent taxable years. Taxpayer has not received any distributions from the RRSP. Pursuant to section 4.01 of this revenue procedure, Taxpayer is an eligible individual and, pursuant to section 4.02 of this revenue procedure, will be treated as having made an election under [the Treaty] to defer current U.S. income taxation on the undistributed income for 2004 and all subsequent taxable years through the taxable year in which there is a final distribution from the RRSP. When Taxpayer receives [actual] distributions from the RRSP, the entire amount of each distribution will be subject to U.S. Federal income tax. In addition, Taxpayer is not required to report his interest in the RRSP on Form 8891, Form 3520, or Form 3520-A. However, Taxpayer may need to report his interest in the RRSP under section 6038D or under another provision of U.S. law, including the requirement to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), imposed by 31 U.S.C. §5314 and the regulations thereunder.⁴⁵

VII. Belated Impact of Rev. Proc. 2014-55 on Voluntary Disclosure Programs

The issuance of Rev. Proc. 2014-55 in October 2014 triggered joy for certain taxpayers, but it sparked confusion and frustration for others, particularly those with Canadian retirement plans who were already participating in the SFOP, SDOP or 2014 OVDP, or those who were contemplating doing so. This backlash resulted from the fact that Rev. Proc. 2014-55 was completely silent as to its impact on the three voluntary disclosure programs.

Over the course of next nine months, the IRS acknowledged the problem and promised clear guidance. For example, in November 2014, a month after Rev. Proc. 2014-55 was issued, an attorney from the IRS National Office of Chief Counsel announced at an international tax conference that he was working on revised FAQs for

the SFOP, SDOP and 2014 OVDP “right now.”⁴⁶ Then, seven months later, in June 2015, the same IRS attorney acknowledged that Rev. Proc. 2014-55 was a “fairly major change” for taxpayers with Canadian retirement plans and predicted that the new FAQs would be issued “in the very near future.”⁴⁷ Finally, in July 2015, the IRS issued three sets of new FAQs, each of which is set forth below.⁴⁸ Be forewarned, the FAQs appear similar at first glance, and some overlap exists. However, it is important to appreciate the nuances because, for holders of Canadian retirement plans, understanding how Rev. Proc. 2014-55 will impact resolution of matters with the IRS under existing voluntary disclosure programs is critical.

A. New FAQs Related to the SFOP

The IRS issued four new FAQs in connection with the SFOP. Please note that these FAQs have not simply been cut and pasted here from the IRS’s website. They have been paraphrased and otherwise altered, as necessary, to make them more comprehensible to, and usable by, the readers of this article.

- FAQ #2—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am an “eligible individual” within the context of Rev. Proc. 2014-55. I never made a tax-deferral election under the Treaty by enclosing a Form 8891 or a statement with my annual Forms 1040, as appropriate. How should I report the Canadian retirement plan as part of the SFOP?
- FAQ #2—ANSWER. Under Section 4.02 of Rev. Proc. 2014-55, you are treated as if you had made the tax-deferral election. In your statement of facts on the Form 14653 (*Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures*) that you will file as part of the SFOP, please state that you are an “eligible individual” under Rev. Proc. 2014-55. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”
- FAQ #3—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible individual” within the context of Rev. Proc. 2014-55 because I did not file annual Forms 1040. Since I did not file annual Forms 1040, I never made a tax-deferral election under the Treaty by enclosing a Form 8891 or a statement with my annual Forms 1040, as appropriate. How should I report the Canadian retirement plan as part of the SFOP?
- FAQ #3—ANSWER. If you file Forms 1040 through the SFOP, then you will be granted relief consistent with Rev. Proc. 2014-55 for the years covered by the SFOP (*i.e.*, the past three years). In your statement of facts on the Form 14653 (*Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures*) that you will file as part of the SFOP, please state you that meet all the requirements to be an “eligible individual” under Rev. Proc. 2014-55, except for not filing annual Forms 1040. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”
- FAQ #4—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible individual” within the context of Rev. Proc. 2014-55 because I reported as part of my gross income on annual Forms 1040 some or all of the accumulated-yet-undistributed income from the Canadian retirement plan. I now realize that I could have made a tax-deferral election. Also, I have noncompliance issues other than those related to the Canadian retirement plan that I need to resolve through the SFOP. How do I correct my reporting of the accumulated-yet-undistributed income on my earlier Forms 1040?
- FAQ #4—ANSWER. If you file Forms 1040X as part of the SFOP and meet the requirements set forth below, then you will be granted relief consistent with Rev. Proc. 2014-55 for the years covered by the 2014 SFOP (*i.e.*, the past three years). This procedure is not available if you reported as gross income on Forms 1040 accumulated-yet-undistributed income from a Canadian retirement plan for one or more years beyond the scope of the SFOP (*i.e.*, more than three years ago). Also, this procedure is not available if you failed to report all actual distributions received from the Canadian retirement plan. In these two cases, you must “seek the consent of the Commissioner,” presumably through requesting a LTR. In your statement of facts on the Form 14653 (*Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures*) that you will file as part of the SFOP, please state that you meet all the requirements to be an “eligible individual” under Rev. Proc. 2014-55, except for reporting as gross income on earlier Forms 1040 the accumulated-yet-undistributed income from the Canadian retirement plan. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”
- FAQ #5—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible

individual” within the context of Rev. Proc. 2014-55 because I reported as part of my gross income on annual Forms 1040 some or all of the accumulated-yet-undistributed income from the Canadian retirement plan. I now realize that I could have made a tax-deferral election. I do not have any noncompliance issues to rectify through the SFOP other than those related to the Canadian retirement plan. How do I correct my reporting of the accumulated-yet-undistributed income on my earlier Forms 1040?

- FAQ #5—ANSWER. You should not use the SFOP because you have no tax compliance issues other than reporting the accumulated-yet-undistributed income from the Canadian retirement plan. You should follow normal procedures for filing Forms 1040X or “seek the consent of the Commissioner,” presumably through requesting a LTR. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”

B. New FAQs Related to the SDOP

The IRS issued five new FAQs in connection with the SDOP. Please note that these FAQs have not simply been cut and pasted here from the IRS’s website. They have been paraphrased and otherwise altered, as necessary, to make them more comprehensible to, and usable by, the readers of this article.

- FAQ #8—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am an “eligible individual” within the context of Rev. Proc. 2014-55. I never made a tax-deferral election under the Treaty by enclosing a Form 8891 or statement with my annual Forms 1040, as appropriate. How should I report the Canadian retirement plan as part of the SDOP, and will the plan be counted in calculating the five-percent “offshore” penalty?
- FAQ #8—ANSWER. Under Section 4.02 of Rev. Proc. 2014-55, you are treated as if you had made the tax-deferral election. The Canadian retirement plan will not be included in calculating the five-percent “offshore” penalty. In your statement of facts on the Form 14654 (*Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures*) that you will file as part of the SDOP, please state that you are an “eligible individual” under Rev. Proc. 2014-55. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”

- FAQ #9—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am an “eligible individual” within the context of Rev. Proc. 2014-55. I never made a tax-deferral election under the Treaty by enclosing a Form 8891 or statement with my annual Forms 1040, as appropriate. The Canadian retirement plan is the only foreign asset that I own or control; therefore, after getting the benefit of Rev. Proc. 2014-55, I have no unreported income. Do I need to report the Canadian retirement plan under the SDOP?

- FAQ #9—ANSWER. No, you do not need to use the SDOP. Please file any required FBARs through the “Delinquent FBAR Submissions Procedure” and please file any required Forms 8938, along with a “reasonable cause” statement, through the “Delinquent International Information Return Submissions Procedure.”

- FAQ #10—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible individual” within the context of Rev. Proc. 2014-55 because I reported as part of my gross income on annual Forms 1040 some or all of the accumulated-yet-undistributed income from the Canadian retirement plan. I now realize that I could have made a tax-deferral election. Also, I have noncompliance issues other than those related to the Canadian retirement plan that I need to resolve through the SFOP. How do I correct my reporting of the accumulated-yet-undistributed income on my earlier Forms 1040, and will the Canadian retirement plan be counted in calculating the five-percent “offshore” penalty?

- FAQ #10—ANSWER. If you file Forms 1040X as part of the SDOP and meet the requirements set forth below, then you will be granted relief consistent with Rev. Proc. 2014-55 for the years covered by the SDOP (*i.e.*, the past three years). This procedure is not available if you reported as gross income on Forms 1040 accumulated-yet-undistributed income from a Canadian retirement plan for one or more years beyond the scope of the SDOP (*i.e.*, more than three years ago). Also, this procedure is not available if you failed to report all actual distributions received from the Canadian retirement plan. In these two cases, you must “seek the consent of the Commissioner,” presumably through requesting a LTR. If you qualify for this procedure, the Canadian retirement plan will not be counted in calculating the five-percent “offshore” penalty base. In your statement of facts on the Form 14654 (*Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore*

Procedures) that you will file as part of the SDOP, please state that (i) you meet all the requirements to be an “eligible individual” under Rev. Proc. 2014-55, except for reporting as gross income on earlier Forms 1040 the accumulated-yet-undistributed income from the Canadian retirement plan, and (ii) such income reporting was limited to the years covered by the SDOP. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”

- FAQ #11—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible individual” within the context of Rev. Proc. 2014-55 because I reported as part of my gross income on annual Forms 1040 some or all of the accumulated-yet-undistributed income from the Canadian retirement plan. I now realize that I could have made a tax-deferral election. I do not have any noncompliance issues to rectify through the SDOP other than those related to the Canadian retirement plan.
 - FAQ #11—ANSWER. You should not use the SDOP because you have no tax compliance issues other than reporting the accumulated-yet-undistributed income from the Canadian retirement plan. You should follow normal procedures for filing Forms 1040X or “seek the consent of the Commissioner,” presumably through requesting a LTR. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information.”
 - FAQ #12—QUESTION. I participated in the SDOP by providing Forms 1040X, Form 14564 (*Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures*), and payment of all taxes, penalties and interest. I recently realized that I counted the Canadian retirement plan in calculating the five-percent “offshore” penalty. I am an “eligible individual” under Rev. Proc. 2015-44. Can I seek a reconsideration/reduction of the penalty, and, if so, how?
 - FAQ #12—ANSWER. Yes, you can seek reconsideration/reduction of the penalty by completing Form 14708 (*Streamlined Domestic Penalty Reconsideration Request Related to Canadian Retirement Plans*) and mailing it to the following address: Internal Revenue Service, 3651 South I-H 35, Stop 4305 AUSC, Attn: Streamlined Unit, Austin, Texas 78741.
- that these FAQs have not simply been cut and pasted here from the IRS’s website. They have been paraphrased and otherwise altered, as necessary, to make them more comprehensible to, and usable by, the readers of this article.
- FAQ #54—This FAQ, which was first introduced as part of the 2012 OVDP and later modified as part of the 2014 OVDP, was deleted by the IRS in July 2015.
 - FAQ #54.1—This FAQ, which was first introduced as part of the 2012 OVDP and later modified as part of the 2014 OVDP, was deleted by the IRS in July 2015.
 - FAQ #54.2—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am an “eligible individual” within the context of Rev. Proc. 2014-55. I never made a tax-deferral election under the Treaty by enclosing a Form 8891 or a statement with my annual Forms 1040, as appropriate. How should I report the Canadian retirement plan as part of the 2014 OVDP, and will the plan be counted in calculating the “offshore” penalty of 27.5 percent or 50 percent?
 - FAQ #54.2—ANSWER. Under Section 4.02 of Rev. Proc. 2014-55, you are treated as if you had made the tax-deferral election. The highest value of your Canadian retirement plan will not be included in calculating the “offshore” penalty. In your submission under the 2014 OVDP, please state that you are an “eligible individual” under Rev. Proc. 2014-55. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information. See also the submission requirements in FAQ #25.”
 - FAQ #54.3—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible individual” within the context of Rev. Proc. 2014-55 because I did not file annual Forms 1040. Since I did not file annual Forms 1040, I never made a tax-deferral election under the Treaty by enclosing a Form 8891 or statement with my annual Forms 1040, as appropriate. How should I report the Canadian retirement plan as part of the 2014 OVDP, and will the plan be counted in calculating the “offshore” penalty of 27.5 percent or 50 percent?
 - FAQ #54.3—ANSWER. If you file Forms 1040 through the 2014 OVDP and resolve your case with a Closing Agreement, then (i) you will be granted relief consistent with Rev. Proc. 2014-55, and (ii) the Canadian retirement plan will not be counted in calculating the “offshore” penalty. If this applies to you, please refer to FAQ #54.3 in your 2014 OVDP submission. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more

C. New FAQs Related to 2014 OVDP

The IRS deleted two existing FAQs and added three new FAQs in connection with the 2014 OVDP. Please note

information. See also the submission requirements in FAQ #25.”

- FAQ #54.4—QUESTION. I have an RRSP, RRIF or similar Canadian retirement plan. I am *not* an “eligible individual” within the context of Rev. Proc. 2014-55 because I reported as part of my gross income on annual Forms 1040 some or all of the accumulated-yet-undistributed income from the Canadian retirement plan. I now realize that I could have made a tax-deferral election. How do I correct my previous reporting of accumulated-yet-undistributed income within the 2014 OVDP, and will my Canadian retirement plan be counted in determining the “offshore” penalty?
- FAQ #54.4—ANSWER. If you file Forms 1040 through the 2014 OVDP and resolve your case with a Closing Agreement, then (i) you will be granted relief consistent with Rev. Proc. 2014-55, and (ii) the Canadian retirement plan will not be counted in calculating the “offshore” penalty. If this applies to you, please refer to FAQ #54.4 in your 2014 OVDP submission. “You may need to report your Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information. See also the submission requirements in FAQ #25.”

VIII. Conclusion

The progress achieved by the IRS with respect to Canadian retirement plans, though slow, should be commended. Indeed, the recent issuance of Rev. Proc. 2014-15, followed by the belated release of FAQs to explain how Rev. Proc. 2014-55 will impact the SFOP, SDOP and 2014 OVDP, constitute positive steps toward resolving the U.S. income tax issues. However, danger still lurks for many taxpayers and their advisors for the following reasons: (i) a number of people will remain oblivious to Rev. Proc. 2014-55; (ii) even if they are cognizant of it, many will be perplexed by the four categories (*i.e.*, tax underpayers, tax overpayers, tax compliers and prior rectifiers) and the distinct obligations of each; (iii) many Canadian retirement plans still must be disclosed annually on Forms 8938 and FBARs, and fines for violations can be significant; (iv) the IRS now utilizes an automated/systematic program to identify and immediately penalize many types of late international information returns; and (v) the assessment period effectively stays open forever for the IRS under Code Sec. 6501(c)(8) when a taxpayer neglects to file a Form 8938. In light of these realities, focus will remain on Canadian retirement plans, despite the relaxation of the U.S. income tax rules, thanks to Rev. Proc. 2014-55.

ENDNOTES

- ¹ Rev. Proc. 2014-55, IRB 2014-44, 753.
- ² This article updates and supplements two earlier articles by the author, Hale E. Shepard, *When Bygones Aren't Bygones: Exploring Tax Solutions for U.S. Persons with Undeclared Canadian Retirement Plans and Accounts*, INT'L TAX J., July–Aug. 2008, at 25; and *IRS Introduces Two Unique Tax-Compliance Remedies for U.S. Persons with Canadian Retirement Plans and Accounts*, INT'L TAX J., Jan.–Feb. 2013, at 11.
- ³ As explained in detail later in this article, the IRS recently changed the tax and information-reporting requirements related to Canadian retirement plans with the issuance of Rev. Proc. 2014-55, IRB 2014-44, 753. The duties are different depending on the category into which the U.S. person falls.
- ⁴ Code Sec. 6662.
- ⁵ Code Sec. 6038D(d)(1); Reg. §1.6038D-8(a).
- ⁶ Code Sec. 6038D(d)(2); Reg. §1.6038D-8(c).
- ⁷ 31 USC §5321(a)(5)(B)(i) (as in effect after Oct. 22, 2004).
- ⁸ 31 USC §5321(a)(5)(C)(i), (D)(ii) (as in effect after Oct. 22, 2004).
- ⁹ For a more detailed explanation of the tax treatment of RRSPs and RRIFs under both Canadian and U.S. law, see R. Kent Weaver, *Pension Reform in Canada: Lessons for the United States*, 65 OHIO STATE LAW J. 45 (2004); Cynthia Blum, *U.S. Income Taxation*

of Cross-Border Pensions, 31 FLORIDA TAX REVIEW 259 (1996).

- ¹⁰ Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital signed on September 26, 1980, as amended by protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and September 21, 2007.
- ¹¹ Treaty, Article XVIII (Pensions and Annuities).
- ¹² Rev. Proc. 89-45, Section 3.01, 1989-2 CB 596.
- ¹³ Rev. Proc. 2002-23, Sections 1 and 3, 2002-1 CB 744; Notice 96-31, 1996-1 CB 378.
- ¹⁴ Rev. Proc. 2002-23, Section 4, 2002-1 CB 744.
- ¹⁵ Notice 2003-25, 2003-1 CB 855.
- ¹⁶ Code Sec. 6048.
- ¹⁷ Code Sec. 6677.
- ¹⁸ Notice 2003-57, Section 2, 2003-2 CB 397.
- ¹⁹ Notice 2003-75, Section 2, 2003-2 CB 1204.
- ²⁰ Notice 2003-75, Section 3, 2003-2 CB 1204. This change came in the wake of lobbying by various groups, including the American Institute of Certified Public Accountants. See *AICPA Comments on Foreign Trust Information Return Form*, 2003 TAX NOTES TODAY 124-55 (June 19, 2003).
- ²¹ Code Sec. 6048(d)(4).
- ²² Notice 2003-75, Section 3, 2003-2 CB 1204.
- ²³ Instructions to Form 8891 (Rev. Dec., 2006).
- ²⁴ Several tax practitioners suggested that it also might have been necessary in the past to file

- a Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)), but the IRS did not enforce such requirement. See Renea M. Glendinning, *Reporting Requirements for Canadian Registered Retirement Savings Plans and Registered Retirement Income Funds*, FLORIDA CPA TODAY, July–Aug. 2004, at 48–51.
- ²⁵ 31 USC §5321(b)(1).
- ²⁶ Code Sec. 6501(c)(8); U.S. Joint Committee on Taxation. Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, the “Hiring Incentives to Restore Employment Act.” Under Consideration by the Senate. JCX-4-10. Feb. 23, 2010, pg. 66.
- ²⁷ See, e.g., LTR 9311016 (Dec. 17, 1992), LTR 9507021 (Nov. 17, 1994), LTR 9517044 (Jan. 31, 1995), LTR 9519055 (Feb. 16, 1995), LTR 9621021 (Feb. 21, 1996), LTR 9833014 (May 18, 1998), LTR 199949029 (Sep. 14, 1999), LTR 200019040 (Feb. 17, 2000), LTR 200152038 (Oct. 2, 2001), LTR 200329038 (Apr. 15, 2003), LTR 200519036 (Feb. 1, 2005), LTR 200552006 (Sep. 29, 2005), LTR 200751012 (Sep. 19, 2007), LTR 201002030 (Sep. 28, 2009), LTR 201019013 (Jan. 26, 2010), LTR 201019015 (Jan. 25, 2010), LTR 201019016 (Jan. 25, 2010), LTR 201015027 (Jan. 6, 2010), LTR 201017032 (Jan. 22, 2010), LTR 201017033 (Jan. 22, 2010), LTR 201017034 (Jan. 21, 2010), LTR 201023049 (Mar. 12, 2010), LTR 201027016 (Mar. 22,

2010), LTR 201027017 (Mar. 31, 2010), LTR 201027019 (Mar. 22, 2010), LTR 201028014 (Apr. 9, 2010), LTR 201028015 (Apr. 7, 2010), LTR 201051018 (Sep. 21, 2010), LTR 201123024 (Mar. 7, 2011), LTR 201126013 (Mar. 23, 2011), LTR 201126018 (Mar. 24, 2011), LTR 201131017 (Apr. 26, 2011), LTR 201131020 (Apr. 21, 2011), LTR 201132007 (May 3, 2011), LTR 201138004 (Jun. 22, 2011), LTR 201138012 (Jun. 20, 2011), LTR 201213014 (Dec. 16, 2011), LTR 201219004 (Feb. 8, 2012), LTR 201219002 (Feb. 14, 2012), LTR 201220014 (Feb. 23, 2012), LTR 201222021 (Feb. 28, 2012), LTR 201224015 (Mar. 13, 2012), LTR 201226010 (Mar. 30, 2012), LTR 201230012 (Apr. 27, 2012), LTR 201232025 (May 16, 2012), LTR 201237011 (Jun. 14, 2012), LTR 201237002 (Jun. 15, 2012), LTR 201237004 (Jun. 15, 2012), LTR 201242004 (July 19, 2012), LTR 201244013 (July 26, 2012), LTR 201210009 (Nov. 29, 2011), LTR 201210013 (Dec. 8, 2011), LTR 201222019 (Mar. 1, 2012), LTR 201225002 (Mar. 26, 2012), LTR 201238005 (Jun. 14, 2012), LTR 201239005 (Jun. 28, 2012), LTR 201309001 (Nov. 26, 2012), LTR 201308006 (Nov. 16, 2012), LTR 201308003 (Oct. 19, 2012), LTR 201314027 (Dec. 31, 2012), LTR 201314019 (Jan. 2, 2013), LTR 201334010 (May 22, 2013), LTR 201335010 (May 17, 2013), LTR 201336009 (May 31, 2013), LTR 201336010 (May 31, 2013), LTR 201336011 (May 31, 2013), LTR 201337006 (May 29, 2013), LTR 201337008 (May 31, 2013), LTR 201337009 (May 29, 2013), LTR 201337005 (May 29, 2013), LTR 201338014 (May 31, 2013), LTR 201338036 (May 29, 2013), LTR

201338038 (May 31, 2013), LTR 201346008 (Aug. 21, 2013), LTR 201343014 (July 31, 2013), LTR 201343017 (Aug. 30, 2013) and LTR 201338027 (May 31, 2013).

²⁸ The onerous requirements for filing a LTR request are published in the first revenue procedure of each year. See, e.g., Rev. Proc. 2015-1, IRB 2015-1, 1.

²⁹ Robert B. Stack and Douglas M. Andres, *Expedited Opt-Out Needed for OVDI Participants Who Owe No Tax*, TAX NOTES TODAY, Jan. 30, 2012 (stating that "[b]ecause she is worried that requesting retroactive treaty relief through the letter ruling process could be deemed a quiet filing, [the taxpayer] decides to enter the OVDI."); See also Robert Goulder, *Quiet Disclosures Get No Love from IRS*, TAX NOTES TODAY, May 11, 2010; Marie Sapirie, *Charges Against HSBC Bank Bermuda Client Raise Quiet Disclosure Questions*, TAX NOTES TODAY, May 20, 2011.

³⁰ IRS News Release, IR-2012-65, June 26, 2012.

³¹ IRS News Release, IR-2012-65, June 26, 2012.

³² Rev. Proc. 2014-55, Section 4.01, IRB 2014-44, 753.

³³ Rev. Proc. 2014-55, Section 4.02, IRB 2014-44, 753.

³⁴ Rev. Proc. 2014-55, Section 4.02, IRB 2014-44, 753.

³⁵ Rev. Proc. 2014-55, Section 4.03, IRB 2014-44, 753.

³⁶ Rev. Proc. 2014-55, Section 4.04, IRB 2014-44, 753. Please note that the term "ineligible individual" is not found in Rev. Proc. 2014-55; it is used here for the sake of clarity and comparison.

³⁷ Rev. Proc. 2014-55, Section 4.04, IRB 2014-44,

753.

³⁸ Rev. Proc. 2014-55, Section 4.04, IRB 2014-44, 753.

³⁹ Rev. Proc. 2014-55, Section 4.05, IRB 2014-44, 753.

⁴⁰ Rev. Proc. 2014-55, Section 4.06, IRB 2014-44, 753.

⁴¹ Section 4.05 of Rev. Proc. 2014-55, IRB 2014-44, 753 states that certain taxpayers are not required to make or to reaffirm tax-deferral elections for tax years ending after December 31, 2012. However, from a practical standpoint, the effective date for many taxpayers was tax years ending after December 31, 2013. This is because the IRS did not issue Rev. Proc. 2014-55 until October 7, 2014, by which time most taxpayers had already prepared and/or filed their 2013 Forms 1040.

⁴² Rev. Proc. 2014-55, Section 5.01, IRB 2014-44, 753.

⁴³ Rev. Proc. 2014-55, Section 5.01, IRB 2014-44, 753.

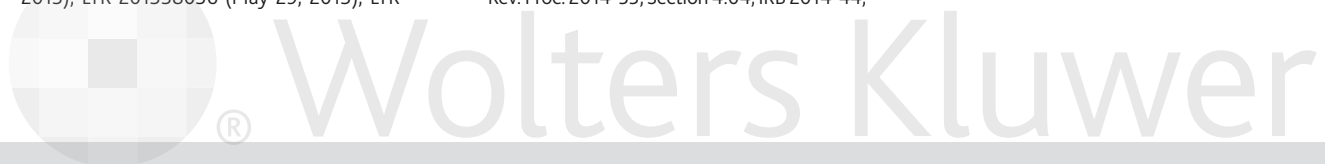
⁴⁴ IRS News Release, IR-2014-97, Oct. 7, 2014.

⁴⁵ Rev. Proc. 2014-55, Section 7, IRB 2014-44, 753.

⁴⁶ Amanda Athanasiou, *IRS Addresses Questions about OVDI and Streamlined Filing*, TAX NOTES TODAY, Nov. 3, 2014.

⁴⁷ Andrew Verde, *Official Highlights Problem Trends in Streamlined Submissions*, TAX NOTES TODAY, June 26, 2015.

⁴⁸ The relevant pages on the IRS's website indicate that the new FAQs were posted on July 15 and July 16, 2015.



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