

Part III - Administrative, Procedural, and Miscellaneous

RRSP and RRIF Information Reporting

Notice 2003-75

SECTION 1. BACKGROUND.

Notice 2003-25, 2003-18 I.R.B. 855, and Notice 2003-57, 2003-34 I.R.B. 397 provided guidance to taxpayers regarding their 2002 taxable year reporting obligations with respect to Canadian registered retirement savings plans ("RRSPs") and registered retirement income funds ("RRIFs"). These Notices stated that Treasury and IRS intended to develop an alternative, simplified reporting regime for these Canadian retirement plans for future taxable years.

This Notice describes the new simplified reporting regime that Treasury and IRS have developed for taxpayers that hold interests in RRSPs and RRIFs. The new reporting regime is effective for taxable years beginning after December 31, 2002 and is in lieu of the Form 3520 (Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts) and Form 3520-A (Annual Information Return of

Foreign Trust with a U.S. Owner) filing obligations that otherwise apply to U.S. citizens and resident aliens that hold interests in RRSPs and RRIFs and to the custodians of such plans. The new simplified reporting regime is designed to permit taxpayers to meet their reporting obligations by using information that is readily available to the owner of an RRSP or RRIF.

SECTION 2. NEW REPORTING REGIME.

.01. New Form. Under the authority of section 6001 of the Internal Revenue Code, Treasury and the IRS are designing a new form that a U.S. citizen or resident alien who is a beneficiary of an RRSP or RRIF must complete and attach to his or her Form 1040. For purposes of the new reporting requirements, a beneficiary of an RRSP or RRIF is an individual who is subject to current U.S. income taxation on income accrued in the plan or would be subject to such taxation had the individual not made the election under Article XVIII(7) of the U.S.-Canada income tax convention ("Convention") to defer U.S. income taxation of income accrued in the plan. The new form also will coordinate the reporting rules with the procedure set forth in section 4 of Revenue Procedure 2002-23, 2002-1 C.B. 744, for making the election under Article XVIII(7) of the Convention.

.02. Interim Reporting Rules for Taxpayers Making the Election to Defer U.S. Income Taxation on Income of an RRSP or RRIF. Until the form described in section 2.01 is available, any U.S. citizen or resident alien who is a beneficiary of an RRSP or RRIF and who has made, or is making, the election described in section 4 of Revenue

Procedure 2002-23 with respect to the RRSP or RRIF must (i) attach a copy of each such election to his or her Form 1040 [along with information showing the balance of the plan in the current year] and

(ii) comply with section 2.04 of this Notice if the taxpayer has received any distribution during the taxable year from such RRSP or RRIF.,

.03. Interim Reporting Rules for Taxpayers Not Making the Election to Defer U.S. Income Taxation on Income of an RRSP or RRIF. Until the form described in

section 2.01 is available, any U.S. citizen or resident alien who is a beneficiary of an RRSP or RRIF and who has not made, and is not making, the election described in section 4 of Revenue Procedure 2002-23 with respect to the RRSP or RRIF must attach a statement to his or her Form 1040 that includes the following information:

- (i) The caption "CANADIAN RRSP" or "CANADIAN RRIF," whichever is applicable.
- (ii) The taxpayer's name and taxpayer identification number.
- (iii) The taxpayer's address.
- (iv) The name and address of the custodian of the RRSP or RRIF and the plan account number, if any.
- (v) The amount of contributions to the RRSP or RRIF during the current year.
- (vi) The undistributed earnings of the RRSP or RRIF during the current year in each of the following categories: interest, dividends, capital gains, and other.

- (vii) The total amount of distributions received from the RRSP or RRIF during the current year.

The taxpayer must provide a separate statement for each RRSP or RRIF of which he or she is a beneficiary. In addition to attaching the statement described in this section 2.03 to his or her Form 1040, the taxpayer must report the undistributed earnings of all such RRSPs and RRIFs on Schedule B (Interest and Ordinary Dividends) or D (Capital Gains and Losses), if required, and on line 8a, 9, 13, or 21 of the Form 1040. The taxpayer must also comply with section 2.04 of this Notice if the taxpayer has received any distribution during the taxable year from such RRSP or RRIF.

.04 If the beneficiary of an RRSP or RRIF has received any distribution during the taxable year from the RRSP or RRIF, the beneficiary must report the total amount of distributions received during the taxable year from all such RRSPs and RRIFs on line 16a of the Form 1040 and the taxable amount of all such distributions (as determined under section 72) on line 16b of the Form 1040..

05. Record Retention. In all cases, taxpayers must retain supporting documentation relating to information required by the new reporting regime, including Canadian Forms T4RSP, T4RIF, or NR4, and monthly or annual statements issued by the custodian.

SECTION 3. SECTIONS 6048 AND 6677 ARE NOT APPLICABLE

As a result of the new reporting regime described in section 2 of this notice, Treasury and the IRS have determined that the United States no longer

has a significant tax interest in obtaining information under section 6048 with respect to RRSPs and RRIFs. Accordingly, under the authority of section 6048(d)(4), the notice and return requirements of section 6048 reporting no longer apply with respect to RRSPs and RRIFs and their beneficiaries, effective for taxable years beginning after 2002.

Because RRSPs and RRIFs are now excluded from the notice and return requirements of section 6048, RRSPs and RRIFs and their beneficiaries are not subject to the penalties described in section 6677. Beneficiaries of RRSPs and RRIFs may, however, be subject to other penalties, e.g., the penalty imposed by section 6651 for failure to file a tax return or to pay tax.

SECTION 4. EFFECT ON OTHER DOCUMENTS.

Notice 97-34, Notice 2003-25, and Notice 2003-57 are superseded to the extent inconsistent with this notice.

SECTION 5. EFFECTIVE DATE.

This notice is effective for taxable years beginning on or after January 1, 2003.

SECTION 6. PAPERWORK REDUCTION ACT.

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-_____.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB

control number.

The collection of information in this notice is in section 2. This information will be used to compute and collect the right amount of tax. The likely respondents are individuals.

The estimated total annual reporting burden is 1,500,000 hours. The estimated annual burden per respondent varies from 0.5 hour to 5 hours, depending on individual circumstances, with an estimated average of 2. The estimated number of respondents is 750,000.

The estimated annual frequency of responses is once per respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION.

The principal author of this notice is Willard W. Yates of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Willard W. Yates on (202) 622-3880 (not a toll-free call).

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in the heading for Code Sec. 6047, effective for obligations issued after 12/31/83.

Prior to deletion, subsec. (c) read as follows.

"(c) Employees under qualified bond purchase plans.

"Every individual in whose name a bond described in section 405(b)(1) is purchased by his employer under a qualified bond purchase plan described in section 401(a), or by a trust described in section 401(a) which is exempt from tax under section 501(a), shall furnish--

- "(1) to his employer or to such trust, and
 - "(2) to the Secretary (or to such person as the Secretary may by regulations prescribe),
- such information as the Secretary shall by forms or regulations prescribe."

In 1983, P.L. 97-448, Sec. 103(c)(12)(C), substituted "section 219" for "section 219(a)" in subsec. (d), effective for tax yrs. begu. after 12/31/81.

In 1982, P.L. 97-248, Sec. 334(b), redesignated subsec. (e) as subsec. (f) and added new subsec. (c), effective 1/1/83, except as provided in Sec. 334(e)(4) of this Act which reads as follows:

"(4) Periodic payments beginning before January 1, 1983 -- For purposes of section 3405(a) of the Internal Revenue Code of 1954, in the case of periodic payments beginning before January 1, 1983, the first periodic payment after December 31, 1982, shall be treated as the first such periodic payment."

In 1981, P.L. 97-34, Sec. 311(b)(8), substituted "section 219(a)" for "section 219(a) or 220(a)" in subsec. (d), effective for tax yrs. begin. after 12/31/81. For transitional rule see Sec. 311(i)(2) of this Act reproduced in note following Code Sec. 219.

In 1976, P.L. 94-455, Sec. 1501(b)(9), added "or 220(a)" after "219(a)" in subsec. (d), effective for tax yrs. begin. after 12/31/76.

— P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 6047, effective for tax yrs. begin. after 12/31/76.

In 1974, P.L. 93-406, Sec. 2002(g)(8), redesignated subsec. (d) as subsec. (e) and added new subsec. (d), effective 1/1/75.

— P.L. 93-406, Sec. 1031(c)(3), amended subsec. (e) (as redesignated), effective 9/2/74.

Prior to amendment, subsec. (e) read as follows:

"(d) Cross reference.

"For criminal penalty for furnishing fraudulent information, see section 7207."

In 1962, P.L. 87-792, Sec. 7, added Code Sec. 6047, effective for tax yrs. begin. after '62.

Sec. 6048. Information with respect to certain foreign trusts.

(a) Notice of certain events.

(1) **General rule.** On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall provide written notice of such event to the Secretary in accordance with paragraph (2).

(2) **Contents of notice.** The notice required by paragraph (1) shall contain such information as the Secretary may prescribe, including—

- (A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event, and
- (B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust.

(3) **Reportable event.** For purposes of this subsection—

- (A) In general. The term "reportable event" means—
 - (i) the creation of any foreign trust by a United States person,
 - (ii) the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, including a transfer by reason of death, and
 - (iii) the death of a citizen or resident of the United States if—
 - (I) the decedent was treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, or
 - (II) any portion of a foreign trust was included in the gross estate of the decedent.

(B) **Exceptions.**

(i) Fair market value sales. Subparagraph (A)(ii) shall not apply to any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value and the rules of section 679(a)(3) shall apply.

(ii) Deferred compensation and charitable trusts. Subparagraph (A) shall not apply with respect to a trust which is—

- (I) described in section 402(b), 404(a)(4), or 404A, or
- (II) determined by the Secretary to be described in section 501(c)(3).

(4) **Responsible party.** For purposes of this subsection, the term "responsible party" means—

- (A) the grantor in the case of the creation of an inter vivos trust,
- (B) the transferor in the case of a reportable event described in paragraph (3)(A)(ii) other than a transfer by reason of death, and
- (C) the executor of the decedent's estate in any other case.

(b) United States owner of foreign trust.

(1) **In general.** If, at any time during any taxable year of a United States person, such person is treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, such person shall be responsible to ensure that—

- (A) such trust makes a return for such year which sets forth a full and complete accounting of all trust activities and operations for the year, the name of the United States agent for such trust, and such other information as the Secretary may prescribe, and
- (B) such trust furnishes such information as the Secretary may prescribe to each United States person (i) who is treated as the owner of any portion of such trust or (ii) who receives (directly or indirectly) any distribution from the trust.

(2) Trusts not having United States agent.

(A) In general. If the rules of this paragraph apply to any foreign trust, the determination of amounts required to be taken into account with respect to such trust by a United States person under the rules of subpart E of part I of subchapter J of chapter 1 shall be determined by the Secretary.

(B) United States agent required. The rules of this paragraph shall apply to any foreign trust to which paragraph (1) applies unless such trust agrees (in such manner, subject to such conditions, and at such time as the Secretary shall prescribe) to authorize a United States person to act as such trust's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to—

- (i) any request by the Secretary to examine records or produce testimony related to the proper treatment of amounts required to be taken into account under the rules referred to in subparagraph (A), or
- (ii) any summons by the Secretary for such records or testimony.

The appearance of persons or production of records by reason of a United States person being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the amounts required to be taken into account under the rules referred to in subparagraph (A). A foreign trust which appoints an [sic] de-

scribed in this subparagraph shall not be considered to have an office or a permanent establishment in the United States, or to be engaged in a trade or business in the United States, solely because of the activities of such agent pursuant to this subsection.

(C) Other rules to apply. Rules similar to the rules of paragraphs (2) and (4) of section 6038A(e) shall apply for purposes of this paragraph.

(c) Reporting by United States beneficiaries of foreign trusts.

(1) **In general.** If any United States person receives (directly or indirectly) during any taxable year of such person any distribution from a foreign trust, such person shall make a return with respect to such trust for such year which includes—

- (A) the name of such trust,
- (B) the aggregate amount of the distributions so received from such trust during such taxable year, and
- (C) such other information as the Secretary may prescribe.

(2) Inclusion in income if records not provided.

(A) In general. If adequate records are not provided to the Secretary to determine the proper treatment of any distribution from a foreign trust, such distribution shall be treated as an accumulation distribution includible in the gross income of the distributee under chapter 1. To the extent provided in regulations, the preceding sentence shall not apply if the foreign trust elects to be subject to rules similar to the rules of subsection (b)(2)(B).

(B) Application of accumulation distribution rules. For purposes of applying section 668 in a case to which subparagraph (A) applies, the applicable number of years for purposes of section 668(a) shall be $\frac{1}{2}$ of the number of years the trust has been in existence.

(d) Special rules.

(1) **Determination of whether United States person makes transfer or receives distribution.** For purposes of this section, in determining whether a United States person makes a transfer to, or receives a distribution from, a foreign trust, the fact that a portion of such trust is treated as owned by another person under the rules of subpart E of part I of subchapter J of chapter 1 shall be disregarded.

(2) **Domestic trusts with foreign activities.** To the extent provided in regulations, a trust which is a United States person shall be treated as a foreign trust for purposes of this section and section 6677 if such trust has substantial activities, or holds substantial property, outside the United States.

(3) **Time and manner of filing information.** Any notice or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(4) **Modification of return requirements.** The Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information.

(5) **United States person's return must be consistent with trust return or Secretary notified of inconsistency.** Rules similar to the rules of section 6034A(c) shall apply to items reported by a trust under subsection (b)(1)(B) and to United States persons referred to in such subsection.

In 1997, P.L. 105-34, Sec. 1027(b), added para. (d)(5), effective for returns of beneficiaries and owners filed after 8/5/97.

—P.L. 105-34, Sec. 1601(g)(1) substituted "owner" for "grantor" in the heading of subsec. (b), effective as provided in Sec. 1901(d) of P.L. 104-188 [see below].

In 1996, P.L. 104-188, Sec. 1901(a), amended Code Sec. 6048, effective as provided in Sec. 1901(d) of this Act, which reads as follows:

"(d) Effective dates —

"(1) Reportable events — To the extent related to subsection (a) of section 6048 of the Internal Revenue Code of 1986, as amended by this section, the amendments made by this section shall apply to reportable events (as defined in such section 6048) occurring after the date of the enactment of this Act.

"(2) Grantor trust reporting. — To the extent related to subsection (b) of such section 6048, the amendments made by this section shall apply to taxable years of United States persons beginning after December 31, 1995.

"(3) Reporting by United States — To the extent related to subsection (c) of such section 6048, the amendments made by this section shall apply to distributions received after the date of the enactment of this Act."

Prior to amendment, Code Sec. 6048 read as follows:

"Sec. 6048. Returns as to certain foreign trusts.

"(a) General rule.

"On or before the 90th day (or on or before such later day as the Secretary may by regulations prescribe) after—

"(1) the creation of any foreign trust by a United States person,

or

"(2) the transfer of any money or property to a foreign trust by a United States person,

the grantor in the case of an inter vivos trust, the fiduciary of an estate in the case of a testamentary trust, or the transferor, as the case may be, shall make a return in compliance with the provisions of subsection (b).

"(b) Form and contents of returns

"The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign trust, such information as the Secretary prescribes by regulation as necessary for carrying out the provisions of the income tax laws.

"(c) Annual returns for foreign trusts having one or more United States beneficiaries.

"Each taxpayer subject to tax under section 679 (relating to foreign trusts having one or more United States beneficiaries) for his taxable year with respect to any trust shall make a return with respect to such trust for such year at such time and in such manner, and setting forth such information, as the Secretary may by regulations prescribe.

"(d) Cross reference.

"For provisions relating to penalties for violation of this section, see sections 6677 and 7203."

In 1982, P.L. 97-248, Sec. 341(b), added "(or on or before such later day as the Secretary may by regulations prescribe)" after "the 90th day" in subsec. (a), effective for returns filed after 9/3/82.

In 1976, P.L. 94-455, Sec. 1013(d)(1), redesignated subsec. (c) as subsec. (d) and added new subsec. (c) . . . Sec. 1013(e)(3), and (4), amended subsec. (b), as redesignated by Sec. 1013(d)(1) of the Act and amended the heading of Code Sec. 6048, effective for tax yrs. end. after 12/31/75, but only for foreign trusts created after 5/21/74 and transfers of property to foreign trusts after 5/21/74.

Prior to amendment, subsec. (d) read as follows:

"(d) Cross reference.

"(1) For provisions relating to penalties for violations of this section, see sections 6677 and 7203.

"(2) For definition of the term 'foreign trust created by a United States person', see section 643(d) . . ."

Prior to amendment, the heading of Code Sec. 6048 read as follows:

"6048. Returns as to creation of or transfers to certain foreign trusts."

—P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate", in Code Sec. 6048, effective 2/1/77.

In 1962, P.L. 87-834, Sec. 7, added Code Sec. 6048, effective 10/17/62.

Sec. 6049. Returns regarding payments of interest.

(a) Requirement of reporting.

Every person—

- (1) who makes payments of interest (as defined in subsection (b)) aggregating \$10 or more to any other person during any calendar year, or
- (2) who receives payments of interest (as so defined) as a nominee and who makes payments aggregating \$10 or

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(b) Interest defined.

(1) General rule.

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