

New Regulations Clarify How Non-US Banks Will Find And Report US Customers To The IRS

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On February 08, 2012 the IRS issued [IR 2012-15](#), which contains proposed regulations that clarify the manner in which non-US financial institutions will find and report US persons to the IRS, which is required by the Foreign Account Tax Compliance Act (FATCA), enacted by the US Congress in 2010. The new regulations set forth: a) the type of information the financial institution will search for; and b) the manner in which it will search for that information.

Information the Financial Institution Will Search For

In order to determine whether an account holder is a US person, the financial institution is required to search for the following specific items:

1. Identification of the account holder as a US person;
2. Whether the account holder was born in the US;
3. Whether the account holder has a US address or US telephone number;
4. Whether there are instructions to transfer funds to an account maintained in the US; and
5. Whether power of attorney or signatory authority has been granted to a person with a US address or telephone number.

If any of the foregoing are present, the institution must require the account holder to complete a US information report (form W-9) and that report will be submitted to the IRS. If the report is not completed, or the account holder refuses to comply, then the institution will be required to withhold 30% of any distributions to the account holder and remit that amount to the IRS.

Manner in Which the Financial Institution Will Search For This Information

The manner in which the institution must search for indications that an account holder is a US person depends on the balance of the account, whether the account is a new or existing, and whether the account holder is an individual or an entity.

Existing accounts held by individuals

1. The financial institution is not required to conduct a search provided the account had a balance of less than \$50,000. However, if the financial institution decides to make an inquiry, it must follow the methodology described below.
2. If the account balance is at least \$50,000 but less than \$1,000,000, the financial institution must review its electronically searchable data for the information listed above.
3. If the account balance is \$1,000,000 or more the financial institution must review its electronically searchable data for the same indications listed above. In addition, however, the institution is obligated to search all non-electronic files for the same information,

including interviewing any relationship manager associated with the account.

New accounts held by individuals

1. When an individual opens a new account, the financial institution will be required to review all information provided when opening the account under appropriate know-your-customer and anti-money laundering rules. Accordingly, the institution will generally not need to make significant changes to the information collected during the account opening process in order to identify US accounts, except to the extent that the above-referenced information is identified.

So what does this mean for the US citizen who is resident in Canada? First, if the individual meets the thresholds under a preexisting account he may or may not be asked by the financial institution if he is a US citizen. Second, when the individual opens a new financial account in the future he will most likely be asked for his place of birth, a copy of his passport, or asked about ties to the US.

As stated in our previous blogs on, [January 09, 2012](#), the IRS has extended the Offshore Voluntary Disclosure programs indefinitely for US citizens who live abroad and who are not current on their US tax obligations. The penalties for taxes and non-filing are draconian, and do not appear to be going away. Those who have not brought their filings current should act quickly before FATCA compliance becomes effective.

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