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# bulletin



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*For distribution to relevant parties within your firm*

**BULLETIN #3177**

July 23, 2003

## Industry Relations and Representation Update – Compliance with US Tax Laws with Respect to RRSPs' Beneficiaries

On May 26, 2003, the Association issued Bulletin 3158 that noted that:

The Canada-United States Income Tax Convention (the "Convention") allows, where a RRSP owner is either a U.S. citizen or a U.S. tax resident (a "U.S. Beneficiary"), that the US Beneficiary may elect to defer tax in the U.S. with respect to income accrued in a RRSP. If this election is made, the U.S. will not tax income accrued in the RRSP until such amounts are distributed to the U.S. Beneficiary." The Bulletin went on to detail how such election is to be made.

Historically, it was unclear to what extent a U.S. Beneficiary was required to file additional information with the Internal Revenue Service (the "IRS"). Specifically, it was ambiguous as to whether Form 3520 (Annual Return to Report Transactions with Foreign Trusts and Receipt of Foreign Gifts) or Form 3520-A (Annual Information Return of Foreign Trust with a U.S. Owner) were required to be filed with the IRS. The instructions for Form 3520 in previous tax years indicated that a U.S. Beneficiary of a RRSP generally was not required to file the Form 3520.

In April of 2003, the IRS clarified (and, at least to some extent, changed) its position regarding the requirement that U.S. Beneficiaries of RRSPs file Form 3520 and Form 3520-A. In Notice 2003-25, the IRS indicated that it had become aware that many U.S. Beneficiaries and custodians of RRSPs were "unfamiliar" with the requirement that these forms be filed. In that Notice, the IRS stated that the reporting requirements applicable to RRSPs were as follows:

- Form 3520 and Form 3520-A generally must be filed. Form 3520 generally must be filed for any tax year in which contributions are made to, or distributions are received from, a RRSP, and must be filed on or before the due date for the U.S. Beneficiary's U.S. federal income tax return. Form 3520-A generally must be filed by the fifteenth day of the third month after the end of the RRSP's tax year;

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- The IRS will not enforce the requirement that Form 3520 or Form 3520-A be filed (and will not enforce penalties for failure to file) for tax years before 2002;
- The filing date for Form 3520 and Form 3520-A for the 2002 tax year is extended to August 15, 2003;
- If a U.S. Beneficiary has elected to claim the benefit of Article XVIII(7) of the Convention under Revenue Procedure 2002-23 and complies with the information reporting required by Revenue Procedure 2002-23, then Form 3520-A need not be filed (but the U.S. Beneficiary must continue to file Form 3520); and
- The significant penalties set forth in Section 6677 of the Internal Revenue Code will apply if the Form 3520 or Form 3520-A is not filed by the relevant due date.

The IRS indicated that it is contemplating a simpler information reporting regime for U.S. Beneficiaries of RRSPs in future years, but gave no indication as to what such regime would be or when it would be instituted. The IDA continues to work with a consortium of interested parties that includes The American Chamber of Commerce in Canada to obtain a more simplified filing process for US beneficiaries of RRSPs.

**However, as the Internal Revenue Service has not yet made a ruling on this issue and the deadline for filing the requisite materials is 15 August 2003, the Association reminds Members and their clients to contact their tax advisors regarding the requirement that Form 3520 and Form 3520-A be filed, and the procedure for filing such forms.**

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*Association Secretary*