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For distribution to relevant parties within your firm

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Industry Relations and Representation Update – Compliance with US Tax Laws with Respect to RRSPs and RRIFs – IRS Issues a New Notice Which Provides Limited Relief

A Notice issued by the US Internal Revenue Service (IRS) during April 2003 subjected US citizens and residents to complex US filing requirements if they owned, contributed to, or made withdrawals from, Registered Retirement Savings Plans (RRSPs) or Registered Retirement Income Funds (RRIFs). Failure to file the forms could have resulted in severe penalties.

On August 1, the IRS issued a new notice (the August Notice) that provides some relief to those who at least attempt to comply. However, those who ignore the filing requirements may still be assessed severe penalties.

The August Notice acknowledges that, although Treasury and the IRS are working toward implementation of an alternative, simplified reporting regime for RRSPs and RRIFs for future taxable years, additional relief with respect to 2002 Form 3520 and Form 3520-A reporting requirements should be provided to RRSPs and RRIFs and their beneficiaries. Specifically, no Form 3520 or 3520-A is required to be filed for the 2002 tax year if the beneficiary of a RRSP or RRIF:

- makes or has made an appropriate election pursuant to the Canada/US Income Tax Treaty to defer the income in the plan, and
- received no distribution from the plan during the 2002 tax year.

The August Notice also provides that if an individual, RRSP, or RRIF has filed a Form 3520 or 3520-A, but has failed to provide all appropriate information, the IRS may request the individual or plan to provide the information. However, unless the IRS requests such information and the individual or plan fails to provide the IRS with the information requested, no individual or plan

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that files or has filed a Form 3520 or 3520-A will be subject to failure-to-file penalties. When filing Form 3520 or 3520-A, the individual or plan should write "CANADIAN RRSP" or "CANADIAN RRIF" (as appropriate) at the top of the first page of the form.

The August Notice also provides that where an individual has filed his or her 2002 return on a timely basis without making the election to defer tax pursuant to the Canada/US Income Tax Treaty with respect to a RRSP or RRIF, and that individual would like to make the election for the 2002 tax year, he or she may make the election by filing an amended 2002 return in the appropriate format up to October 15, 2003.

Implications

It appears that the IRS recognizes that US citizens and residents with RRSPs and RRIFs may not have all the required information to file complete and accurate information returns. Consequently, the August Notice appears to provide relief by protecting the filer from severe penalties if they make a reasonable effort to complete the returns. If they are unable to obtain certain information, such as statements from the custodian/trustee of their plans, no penalties will be assessed unless such information is not provided upon specific request from the IRS. However, the August Notice also seems to imply that the filer continues to be faced with significant penalties if he or she does not attempt to comply with the filing obligations.

Member firms interested in further information on this issue should refer to Bulletins 3158 and 3177.

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Association Secretary