

US Citizens in Canada

Taxation Requirements for US Citizens Living in
Canada.

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Non Compliant US Citizens

Where are we now and what does the future hold?

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Non Compliant US Citizens

- Offshore Voluntary Disclosure Program (OVDP) – 2009, 2010, 2011 and 2012
- [New Streamlined Tax Filing Program \(September 2012\)](#)
- Eligible criteria
 - Under **\$1,500** in tax in any year
 - Have not filed in the US **since 2009**
 - Other “**high risk**” factors may make the taxpayer ineligible
- Process for filing late US tax returns
 - **3 years** of 1040 returns (2009, 2010 and 2011) until April 15th, 2013
 - **6 years** of FBAR forms (TDF 90-22.1 foreign financial reporting)
 - [Streamlined filing checklist](#)

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Non Compliant US Citizens (cont'd)

- Other filing requirements
 - [Form 5471](#) – Ownership of private Canadian companies
 - [Form 8621](#) – PFICs and Canadian mutual funds
 - [Form 8938](#) – FATCA financial accounts reporting (2011 and later)
 - [Form 3520/3520-A](#) – Foreign trust reporting (TFSA and RESP)
 - Various Treaty elections
 - RRSP
 - Canadian pensions
 - CPP, OAS and Social Security

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FATCA

The current environment under FATCA

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FATCA and Canada

- Foreign Account Tax Compliance Act (2014-2015)
- Intent is to compile information on US Citizens and Green Card holders outside of the US, e.g. **Form 8938**
- **30% withholdings** on payments to foreign financial institutions that don't comply with FATCA
- Intergovernmental Agreement with Canada **not yet reached** (IGA)
 - Canadian financial institutions would report to CRA instead of the IRS (likely agreement)
- Significant sovereignty and privacy issues

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US Estate Tax for Canadians

Implications for US and non-US Citizens in Canada

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US Estate Tax for Canadians

US CITIZENS LIVING IN CANADA

- US Estate tax on estate assets in excess of **\$5,250,000** (2013)
- Tax rates = 18% to 40% (always **40%** on estates over exemption)
- **Foreign tax credit available** for Canadian taxes at death on US assets subject to US estate tax (rarely fully utilized)
- Gift tax rules also apply
 - \$14,000 gifting exemption per person
 - Non-US spouse gifting exemption = **\$143,000**
 - Gifts made before death included in gross estate calculation. **Gift and estate tax rules are integrated**
- Estate tax return due **9 months after date of death** (extension available)
- May be required to obtain a “**transfer certificate**” from the IRS before transferring assets

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US Estate Tax for Canadians

Canadian Citizens (non US)

- Canadians may be subject to US estate tax if they **own certain US properties** at time of death
- Will only be applicable to worldwide **estates over \$5.25M**
- Tax rates = 18% to 40%
- Calculation of estate tax
 - 2013 unified credit = **\$2,045,800** (tax on estate tax exemption)
 - US Estate tax for Canadians with US assets = **(Value of US assets / Worldwide assets) X Unified credit**
 - Can be further reduced by marital credit if assets pass to spouse. Calculated as the **lesser of the unified credit and the total estate tax.**

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US Estate Tax for Canadians

Canadian Citizens (non US)

- **Example:**

- Fred – Canadian resident
- \$1,000,000 in US stock portfolio
- \$10,000,000 worldwide estate
- 2013 Unified credit = \$2,045,800

US Estate Tax (website calculator TBA)

Gross Estate in the US	<u>\$1,000,000</u>
Gross Estate Outside the US	<u>\$9,000,000</u>
Estate tax on \$1M	\$345,800
Less: Unified credit (\$1M/\$10M * Unified credit)	<u>\$204,580</u>
Total US Estate Tax Payable before Marital Credit and Foreign Tax Credit	<u><u>\$141,220</u></u>

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US Citizens and Investing

Implications for certain types of investment income as it relates to US citizens resident in Canada

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US Citizens and Investing

Different types of income and their respective tax treatment

Income	Canadian Taxation	US Taxation (note 1)
Interest	Taxed in country of residence	Taxed in country of residence
Dividends	Canadian Dividend tax rates	15% max / 20% for higher income (note 2)
Capital Gains (not including real property and business assets)	Taxed in country of residence	Taxed in country of residence
Rental Income	Taxed at source / regular rates	Taxed at source / regular rates
Real Property and Business Assets	Taxed at source / Regular rates	ST gains at regular rates / LT gains at 15%/20% for higher income (note 2)

Notes:

1 – 3.8% additional investment tax (Obama care)

2 – new 20% long term capital gains rate (over \$400k MFS & \$450k MFJ)

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US Citizens and Investing

Tax planning and portfolio management considerations

- In most cases US citizens (with Canadian income) living in Canada will pay little US taxes. However in certain cases those taxpayers **may have US taxes owing** in addition to regular Canadian taxes when Canadian tax rates/income are lower:
 - Eligible dividends
 - Short-term capital gains
 - Foreign currency gains on dispositions (of non-US currency denominated stock)
 - TFSA and RESP income (taxable in the US)
 - Retirement allowances
 - Gains on Small Business Corporation Sales (taxable in the US)

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US Citizens and Investing

Tax planning and portfolio management considerations

- Certain Canadian investment structures are considered **Passive Foreign Investment Companies** (PFIC) for US purposes:
 - **Form 8621** may need to be filed
 - Complex calculations
 - Mark to market
 - QEF election – need all shareholders to elect
 - Investments considered PFICs (Investment Corporations)
 - Canadian mutual funds
 - Canadian REITs
 - Canadian ETFs
 - Canadian Segregated Funds

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US Citizens and Investing

Tax planning and portfolio management considerations

- Annual tax filing costs for US taxpayers in Canada vary depending on the complexity of their tax returns and related required schedules and forms:
- Security disposition transactions
 - Need to calculate exchange rate at the **time of purchase and time of sale**.
Purchase dates need to be obtained
 - Each transaction has to be converted. Can be time consuming and costly for high volume managed accounts
- Some taxpayers are receiving 1099 slips (US equivalent) as well as T5 and T3 slips
- Additional compliance
 - **TFSA** accounts
 - **RESP** accounts
 - **RRSP** accounts

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Canadians and US Real Estate

Tax issues and requirement for Canadian residents purchasing US real estate.

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Canadians and US Real Estate

- Net US rental income taxable in the US
- **Procedures**
 - Filing of **1040NR** – Non-resident tax return
 - Application for US ID Number (**form W7**)
 - State tax return if applicable
- **Considerations**
 - Sale of US property
 - **1040NR**
 - Foreign Investment in Real Property (**FIRPTA**) Withholdings (10% of gross)
 - State tax issues (possible withholding issues)

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Important Links

- [IRS Streamlined Tax Filing Procedures](http://www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers) - <http://www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers>
- [2012 OVDI Program](http://www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program) - <http://www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program>
- [IRS Forms and Publications](http://www.irs.gov/Forms-&-Pubs) - <http://www.irs.gov/Forms-&-Pubs>
- [FATCA Information](http://www.irs.gov/Businesses/Corporations/InformationforForeignFinancialInstitutions) - <http://www.irs.gov/Businesses/Corporations/InformationforForeignFinancialInstitutions>
- [Hutcheson and Co LLP](http://hutcheson.ca) - <http://hutcheson.ca>

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