Canada Market Tax Overview

Information as at April 2020

Confidence, Stability, Strength: Welcome to Canada

Abdul Sheikh, Vice President, Head of Pension and Custody Services, CIBC Mellon

Dear Valued Client,

As a leader in the asset servicing industry and a trusted sub-custodian in Canada, many of our clients rely on us for relevant, accurate and up-to-date information pertaining to the Canadian market. We understand that as a global investor into Canada, understanding our country's tax structure is critical to your decision-making process and to your overall success.

I am pleased to present you with CIBC Mellon's 2020 Canadian Tax Overview, a document designed to provide you with detailed insight into the Canadian tax landscape and to assist you as you develop your investment strategy. In this guide, you will find information on various tax rules and regulations that apply to global investors, such as withholding and exemption rules for various investment and income vehicles.

As a Canadian leader in asset servicing, CIBC Mellon is exclusively focused on Canada and holds more than C$2 trillion of assets under administration on behalf of Canadian institutional investors and global institutional investors into Canada as at December 31, 2019. I hope you will find this a valuable resource as you explore the many advantages of investing in the Canadian market. For further information, please contact me at any time.

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Canada

In the Canadian market, tax relief is available at source (and subject to the completion of proper documentation). As such, tax reclaims are normally unnecessary.

Non-resident institutional clients often have separate securities custody accounts for various treaty rates with their custodians. They must provide an IC76-12 certificate to their Canadian custodian to receive the reduced treaty rates. These documents need to be updated periodically or on request.

Canada does not provide for any refund of withholding tax, except in the event that the amount of tax withheld was in excess of the applicable amount. In these cases, a refund may be applied by completing the NR7-R (Application for Refund of Non-resident Part XIII Tax Withheld) form with the taxation office of the Canada Revenue Agency (CRA). Typically, the NR7-R claim must be submitted within two years from the end of the year in which the tax was remitted to CRA. Residents of the U.S. generally have six years instead of two years to apply for a refund.

1. Interest

Canada has eliminated withholding tax on arm's length interest payments, effective as of January 1, 2008. Withholding tax will continue to apply to interest on participating debt and interest on non-arm's length debt. Therefore, institutions that are tax-exempt in their own countries, such as pension funds or charities, no longer need to receive a certificate of exemption from the CRA to be exempt from withholding on arm's length interest or non-participating debt.

The general withholding rate is 25 per cent on participating debt interest and interest on non-arm's length debt. The rate may be reduced or eliminated if a bilateral tax treaty exists between Canada and the country in which the beneficial owner resides.

2. Dividends

A. Withholding tax

Dividend income paid by a Canadian resident to a non-resident is generally subject to withholding tax in Canada.

The general withholding rate is 25 per cent. The rate may be reduced or eliminated if a bilateral tax treaty exists between Canada and the country in which the beneficial owner resides.

Capital gains distributions from a mutual fund corporation to a non-resident are generally not subject to withholding tax. However, capital gains distributed by a mutual fund corporation to a non-resident will be subject to withholding tax if the capital gains are derived from the dispositions of Taxable Canadian Property (TCP) after March 22, 2004 and if more than 5 per cent of the distribution is paid to non-residents.

A special Part XIII.2 tax of 15 per cent will apply to "Amount Otherwise Tax-free Distributions" made after 2004 to non-resident shareholders of certain listed mutual fund corporations whose value is primarily attributable to Canadian real property, Canadian resource property or timber resource property. A non-resident shareholder may recover the withholding tax by applying a realized loss on disposition of mutual fund investments against these taxable distributions using Form T1262 – Part XIII.2 Tax Return for Non-resident's Investments in Canadian Mutual Funds.

B. Enhanced Dividend Tax Credit System

Canadian resident individuals and trusts who receive eligible dividends in 2014 are entitled to a federal dividend gross-up of 38 per cent, meaning that the shareholders include 138 per cent of the dividend amount in income. They are also entitled to a federal dividend tax credit of 15.0198 per cent. In simple terms, to qualify as an eligible dividend, the dividend must be sourced out of income of the dividend paying corporation that was taxed at the full corporate tax rates. When a corporation pays an eligible dividend, it has to designate the dividend as an eligible dividend by notifying its shareholders in writing at the time the dividend is paid. The CRA has released guidelines which discuss acceptable manners of notification.

For dividends paid in 2018, non-eligible dividends are required to be grossed up by 16 per cent and the dividend tax credit in respect of non-eligible dividends is 9.5 per cent of the grossed-up dividends.

Non-residents are not entitled to dividend gross-up and dividend tax credit. The enhanced dividend tax credit system does not affect the withholding tax that is required to be withheld on dividends paid or credited to non-residents.

3. Trust

A. Income trust

Income trusts are mutual fund trusts for tax purposes. Income distributions from a mutual fund trust to a non-resident are generally subject to withholding tax at 25 per cent, or the treaty rate for "trust income" if the beneficial owner resides in a treaty country. This withholding tax will apply even if such distributions are not paid in cash and are reinvested in additional units of the fund.

Capital gains distributions from a mutual fund trust to a non-resident are generally not subject to withholding tax. However, capital gains distributed by a mutual fund trust to a non-resident after March 22, 2004 will be treated as "trust income" and subject to withholding tax if the capital gains are derived from the dispositions of TCP and are more than 5 per cent of the distribution are paid to non-residents.
A special Part XIII.2 tax of 15 per cent will apply to "Amount Otherwise Tax-free Distributions made after 2004 to non-resident unit holders of certain listed mutual fund trusts whose value is primarily attributable to Canadian real property, Canadian resource property or timber resource property. A non-resident unit holder may recover the withholding tax by applying a realized loss on disposition of mutual fund investments against these taxable distributions using Form T1262 – Part XIII.2 Tax Return for Non-resident's Investments in Canadian Mutual Funds.

Effective March 3, 2010, a unit of a Canadian mutual fund trust will be TCP of a taxpayer only if 25 per cent or more of the issued units or shares were owned by the taxpayer or persons with whom the taxpayer did not deal with at arm's length, and if more than 50 per cent of the fair market value of the units or shares were derived directly or indirectly from Canadian real estate, Canadian resource properties, Canadian timber resource properties, or options/interest in respect of such property at any time in the 60 month period that ends at the time of redemption.

B. Unit trust

Canadian-resident unit trusts that are not mutual fund trusts are commonly known as pooled fund trusts. Distributions of income and the taxable portion of capital gains to non-resident unit holders from a Canadian-resident pooled fund trust are subject to withholding tax at 25 per cent or the treaty rate for "trust income" if the beneficiary owner resides in a treaty country. However, distributions from a pooled fund trust that are returns of capital or represent the untaxed portion of a taxable capital gain are generally not subject to withholding tax.

Effective March 3, 2010, a unit of a Canadian-resident unit trust that is not a mutual fund trust will only be TCP if more than 50 per cent of the fair market value of the unit is derived directly or indirectly from Canadian real estate; Canadian resource properties; Canadian timber resource properties; or options/interests in respect of such property at any time in the 60-month period that ends at the time of redemption.

Non-residents are subject to Canadian tax on the capital gains, less any allowable capital losses arising from the disposition of TCP. Canadian withholding tax under section 116 of the Income Tax Act will apply.

C. Specified Investment Flow-Through

Income trusts and limited partnerships are generally permitted to flow their income out to their unit holders so that they do not pay tax on their income. The Canadian government introduced the specified investment flow (SIFT) taxation regime in 2006.

Publicly traded income trusts and limited partnerships will be treated as SIFTs if they meet certain criteria. SIFTs are taxed in a manner similar to corporations when they distribute "non-portfolio earnings" to their unit holders. For a SIFT that is publicly traded after October 2006, the SIFT rules will apply to the later of the taxation year in which the SIFT begins to trade and to their 2007 taxation year. For SIFTs that were in existence on October 31, 2006 and do not exceed the "normal-growth guidelines," the SIFT rules will apply to their taxation years that end after 2010.

The "non-portfolio earnings" distributed by a SIFT will be taxed in the hands of the unit holders as a taxable dividend received from a taxable Canadian corporation. Non-resident taxable unit holders will be taxed on a SIFT distribution at the non-resident withholding tax of 25 per cent or on a tax treaty rate applicable for dividends. Non-resident tax exempt unit holders, such as non-resident pension funds, may be eligible for treaty exemptions where applicable.

Non-resident unit holders of income trusts can be subject to a special non-resident withholding tax of 15 per cent on certain distributions of capital. It appears that this special tax will continue to apply on distributions of capital made by a SIFT trust.

The SIFT rules do not impact trusts which derive their income from non-Canadian businesses. In December 2010, an energy trust completed its initial public offering (IPO) in Canada, which was the first of a new generation of cross-border trusts.

Subsequent to this, a number of other trusts also initiated their IPOs in 2011. These trusts own or will acquire an underlying energy business carried on in the U.S. These IPOs have re-introduced the income trust model to Canadian capital markets. As these trusts are not subject to the SIFT rules, investors who are interested in the energy section may want to invest in them.

D. In-Kind Distribution of Units

An income trust may deduct the amount of income (including taxable capital gains) paid or payable to its unit holders in calculating its taxable income. This amount may be paid to its unit holders by the issuance of additional trust units. The outstanding trust units will then be consolidated with the additional trust units so that each holder will have the same number of trust units as before the distribution.

An “in-kind” distribution to a non-resident unit holder is subject to Canadian withholding tax of up to 25 per cent, unless such rate is reduced under an applicable income tax treaty between Canada and the non-resident unit holder’s jurisdiction of residence.

E. Capital Trusts

Capital Trusts have been set up by some financial institutions, such as insurance companies and banks in Canada, to raise capital.

When a financial institution sets up a capital trust, a series of non-voting transferable trust units are issued and sold to its investors. The trust then invests the money from its unit holders into debentures issued by the financial institution. It also issues special trust units which have voting rights to the financial institution.

The trust will receive interest on the debentures from the financial institution, and distribute this cash to its capital trust securities unit holders.

A capital trust securities unit holder is required to include in computing its income for a taxation year all net income, including net realized taxable capital gains, if any, payable to it in such taxation year. All or substantially all of the amounts payable to holders of a capital trust security are generally expected to be treated as income from a trust, rather than capital gains, for income tax purposes.

Income distributions from a capital trust security to a non-resident unit holder are generally subject to withholding tax at 25 per cent or the treaty rate for “trust income” if the beneficial owner resides in a treaty country.

Some capital trusts now issue debt securities instead of trust units to investors because they are not exempted from the SIFT rules. Interest paid by these capital trusts is generally not subject to withholding tax.

4. Mortgage Investment Corporation

A mortgage investment corporation (MIC) is a unique type of investment vehicle, regulated under the Income Tax Act. MICs are required to pay 100 per cent of net income, which is earned as interest on the mortgage loans, out to their shareholders each year.

Taxable dividends, other than capital gains dividends, paid by MICs are treated as interest income for tax purposes. It has been the CRA's long-time position that taxable dividends paid by MICs to non-residents are considered participating debt interest and subject to Canadian withholding tax.

5. Canadian Limited Partnership

Many Canadian limited partnerships do not accept non-residents to be their partners, as having a non-resident partner will give adverse Canadian tax implications for the partnerships. It is not uncommon to see the following terms stated in the partnership agreement:

(i) No units may be owned by or transferred to a non-resident.
(ii) Non-residents are not entitled to their distributions.
(iii) The general partner will require a non-resident person to sell all of the units registered in such a person’s name.

Investment income such as interest, trust income and dividends distributed by a Canadian limited partnership to a non-resident is subject to withholding tax.

Canadian as well as non-resident partners of a partnership may be required to complete Canadian income tax returns to report their income from the partnership and when they dispose of their interest in the partnership. It is important for a non-resident investor to consult with their tax advisor when contemplating investing in such partnerships.

6. Treaty Rates

For information on treaty rates, please visit the Department of Finance Canada's website at:

www.fin.gc.ca/treaties-conventions/treatystatus_-eng.asp

A. Dividends and interest

(i) Withholding Tax on Canadian Source Dividend and Interest Payments

International Tax Treaties In Force	Interest*%	Dividends**%	Treaty Signed On (Last Amended On)
Algeria	15	15	February 28, 1999
Argentina	12.5	15	April 29, 1993
Armenia***	10	15	June 29, 2004
Australia	10	15	January 23, 2002
Austria	10	15	March 9, 2012
Azerbaijan	10	15	September 7, 2004
Bangladesh	15	15	February 15, 1982
Barbados	15	15	November 8, 2011
Belgium	10	15	May 23, 2002
Brazil	15	25	June 4, 1984
Bulgaria ***	10	15	March 3, 1999
Cameroon	15	15	May 26, 1982
Czech Republic	10	15	May 25, 2001
Chile	15	15	January 21, 1998
China, People's Republic	10	15	May 12, 1986
Columbia	10	15	November 21, 2008
Croatia	10	15	December 9, 1997
Cyprus***	15	15	May 2, 1984
Denmark	10	15	September 17, 1997
Dominican Republic	18	18	August 6, 1976
Ecuador	15	15	June 28, 2001
Egypt	15	15	May 30, 1983
Estonia	10	15	June 2, 1995
Finland	10	15	January 17, 2007
France	10	15	February 2, 2010
Gabonese Republic	10	15	November 14, 2002

International Tax Treaties In Force	Interest*%	Dividends**%	Treaty Signed On (Last Amended On)
Germany	10	15	April 19, 2001
Greece	10	15	June 29, 2009
Guyana	15	15	October 15, 1985
Hong Kong	10	15	November 11, 2012
Hungary	10	15	May 3, 1994
Iceland	10	15	June 19, 1997
India	15	25	January 11, 1996
Indonesia	10	15	April 1, 1998
Ireland ***	10	15	October 8, 2003
Israel	10	15	September 21, 2016
Italy	10	15	June 3, 2002
Ivory Coast	15	15	June 16, 1983
Jamaica	15	15	March 30, 1978
Japan	10	15	February 19, 1999
Jordan	10	15	September 6, 1999
Kazakhstan	10	15	September 25, 1996
Kenya	15	25	April 27, 1983
Korea, Republic of	10	15	January 9, 2007
Kuwait	10	15	January 28, 2002
Kyrgyzstan	15	15	June 4, 1998
Latvia	10	15	April 26, 1995
Lithuania	10	15	August 29, 1996
Luxembourg	10	15	May 8, 2012
Malaysia ***	15	15	October 15, 1976
Malta ***	15	15	July 25, 1986
Mexico	10	15	April 26, 2007
Moldova ***	10	15	July 4, 2002
Mongolia ***	10	15	May 27, 2002
Morocco	15	15	December 22, 1975
Netherlands	10	15	August 25, 1997
New Zealand	15	15	September 12, 2014
Nigeria	12.5	15	August 4, 1992
Norway	10	15	July 12, 2002
Oman	10	15	June 30, 2004
Pakistan	15	15	February 24, 1976
Papua New Guinea	10	15	October 16, 1987

International Tax Treaties In Force	Interest*%	Dividends**%	Treaty Signed On (Last Amended On)
Peru	15	15	July 20, 2001
Philippines	15	15	March 11, 1976
Poland	10	15	May 14, 2012
Portugal	10	15	June 14, 1999
Romania***	10	15	April 8, 2004
Russia	10	15	October 5, 1995
Senegal	15	15	August 2, 2001
Serbia	10	15	April 27, 2012
Singapore ***	15	15	March 6, 1976
Slovak Republic	10	15	May 22, 2001
Slovenia	10	15	September 15, 2000
South Africa	10	15	November 27, 1995
Spain	10	15	November 18, 2014
Sri Lanka	15	15	June 23, 1982
Sweden	10	15	August 27, 1996
Switzerland	10	15	May 5, 1997
Taiwan	10	15	January 15, 2016
Tanzania	15	25	December 15, 1995
Thailand	15	15	April 11, 1984
Trinidad & Tobago	10	15	September 11, 1995
Tunisia	15	15	February 10, 1982
Turkey	15	20	July 14, 2009
Ukraine	10	15	March 4, 1996
United Arab Emirates (UAE)	10	15	June 9, 2004
United Kingdom (U.K.) ***	10	15	May 7, 2003
United States (U.S.)	10	15	July 29, 1997
Uzbekistan	10	15	June 17, 1999
Venezuela	10	15	July 10, 2001
Vietnam	10	15	November 14, 1997
Zambia	15	15	February 16, 1984
Zimbabwe	15	15	April 16, 1992

* The rate may be further reduced or eliminated by virtue of the terms of the applicable tax treaty and/or the provisions of the Canada Income Tax Act.

** For residents of some treaty countries, the applicable rate may be lower where the recipient owns a certain percentage of the company paying the dividends.

*** Where pursuant to the provisions of the tax treaty (e.g. tax treaty with U.K), income from sources in Canada is either exempt from tax or taxed at a reduced rate in Canada, and in the other country (U.K) the same income is not subject to tax by reference to the full amount of income, but rather to the amount that is remitted to or received in that other country, then the exemption or reduction of tax to be allowed under the tax treaty in Canada will also be limited to the amount of the income remitted to or received (or taxed) in the other country (U.K).

Notes: These rates, as at January 30, 2020, are provided for general information purposes only. This information is not meant to be a comprehensive review of the applicable law and should not be used as a substitute for professional advice. The actual rate of tax applicable to income from a particular security can be ascertained only by reviewing the relevant facts and applying the applicable law. A professional tax advisor should be consulted before entering into a transaction.

For more information, please visit:

www.fin.gc.ca/treaties-conventions/treatystatus_-eng.asp

(ii) International Tax Treaty Developments

(a) Tax conventions or protocols

Canada's Department of Finance had announced the following tax agreement entered into force:

- Agreement Concerning the Application of the Arbitration Provisions of the Canada-United Kingdom Tax Convention (December 21, 2016)

International Tax Treaties Signed But Not Yet in Force	Interest %	Dividends %	Treaty Signed On
Belgium	10	15	April 1, 2014
Lebanon	10	15	December 29, 1998
Madagascar	10	15	November 24, 2016
Namibia	10	15	March 25, 2010

International Tax Treaties Under Negotiation/Re-negotiation	
Australia	Malaysia
Brazil	Netherlands
China (PRC)	San Marino
Germany	Switzerland

Note: Tax should be withheld at the rates set out by the CRA. A client may apply to reduce or eliminate the rate of withholding in certain circumstances by filing a form NR5 with CRA.

(b) The fifth Protocol (the Protocol) to the Canada-U.S. Income Tax Convention

The fifth Protocol (the Protocol) states that non-arm's length interest (other than participating interest in Canada or contingent interest in the U.S.) will be reduced to 0 per cent as of January 1, 2010.

However, if interest arising in Canada is paid to a beneficial owner who is a U.S. resident, it will be treated differently if it is determined with reference to receipts, sales, income, profits, or other cash flows of the debtor or a person related to the debtor. This also includes value changes to any property of the debtor or a person related to them or to dividends, partnership distribution or similar payment made by the debtor or a person related to them. The interest will be effectively treated as dividends, and will be subject to the withholding tax rate for dividends (generally 15 per cent).

The Protocol provides that U.S. residents earning income through a limited liability company (LLC) shall be entitled to treaty benefits where the U.S. treatment of income is identical to what would have been the treatment if the income had been earned directly. The Limitation On Benefits (LOB) provisions in the protocol became effective as of February 1, 2009. Since it is difficult for a custodian to identify the tax status of the members of a LLC at the time of payment, the CRA has recommended custodians like CIBC Mellon not to grant treaty benefits to LLCs at the time of payment and that any over-withholding will be dealt with through the NR7-R process.

On April 8, 2010, the Tax Court of Canada allowed the taxpayer's appeal in TD Securities (USA) LLC v. Her Majesty the Queen. Despite the fact that the tax payer, a U.S. LLC, is subject to branch tax on income earned in Canada, the CRA did not agree to the taxpayer's position that it was entitled to the reduced treaty rate. The taxation years under appeal pre-dated the Protocol

Amendments to the Canada-U.S. Tax Treaty. The Protocol extends treaty benefits to an LLC when its income is subject to tax in the hands of a member that is a qualifying U.S. resident.

The Tax Court of Canada allowed the LLC to entitle to have its Canadian source income that arose before the effective date of the Protocol amendments to be taxed at the treaty reduced branch tax rate if all of that income was taxed by the U.S. at the level of the U.S. resident LLC member. As a result, LLCs that had filed on the basis that there was no treaty benefits may wish to file refund applications or amended returns.

Beginning January 1, 2010, treaty benefits are no longer available to certain amounts paid by, or derived through, hybrid entities (i.e. entities that are treated as fiscally transparent in Canada or the U.S. but not in the other country). Canadian unlimited liability companies and U.S. limited liability companies are two examples of hybrid entities because they are treated as corporations for Canadian tax purposes but may be treated as fiscally transparent in the U.S. Income payments such as dividends and interest paid by a disregarded Unlimited Liability Corporation (ULC) to its sole U.S. shareholder will be subject to Canadian non-resident withholding tax at 25 per cent because treaty benefits are no longer available beginning January 1, 2010. Similarly, payments made by a U.S. hybrid partnership to a Canadian resident are subject to U.S. Non-resident Alien (NRA) withholding tax at 30 per cent.

Due to the complexity of the LOB provision in the Protocol, Canadian payers requested the CRA to provide guidance for the application of withholding tax on payments made to U.S. residents. The CRA responded to the request by introducing the new declaration process discussed in the next section.

(c) Forms NR301, NR302 and NR303

On 19 April 2011 the CRA announced stricter requirements in the amount and type of information non-Canadian-resident investors must provide in order to continue to receive Canadian-source income at tax treaty rates. Under the new CRA rules, Canadian payers and withholding agents will no longer be able to rely on clients to certify identities and addresses to withhold at treaty rates. Non-Canadian-resident investors are required to certify beneficial ownership, residency and eligibility for treaty benefits.

To assist with the collection of the necessary information, the CRA issued three new forms for the declaration of eligibility of treaty benefits for non-Canadian-resident investors, including fiscally transparent or hybrid entities (i.e. an entity that is treated as a corporation by one jurisdiction but is disregarded or treated as fiscally transparent by the other jurisdiction). Although the new forms themselves are not mandatory, the forms support non-Canadian-resident investors in providing all the required information in support of payments at the appropriate treaty rate. A transition period until December 31, 2011 allowed the payers to gather any additional information needed to comply with the new administrative requirements.

Subsequent to the announcement, industry groups, trade associations and financial institutions discussed their concerns and provided suggestions to the CRA. On December 22, 2011, the CRA decided to extend the transitional period by one year until December 31, 2012. This extension allowed payers time to gather the required additional information, and to perform procedural changes and system upgrades that were required to react to the increase in information. The new CRA rules became effective January 1, 2013.

On January 7, 2013, the CRA released an update on these new documentation requirements and stated that if a foreign government entity does not have a Letter of Exemption or if the withholding tax rate on the income type is not reduced under the Doctrine of Sovereign Immunity, then a tax treaty provision that is applicable to the income type and available to other residents of that country may reduce the withholding tax rate. In such situation, an NR301 is not applicable to the government entity. Instead, the CRA recommends that the payer accept a certification from the entity of:

a. Beneficial ownership.
b. Status as the government of a country or political subdivision or local authority thereof.
c. Entitlement to treaty benefits.
d. Having met any conditions specified under the particular provision or elsewhere in the treaty for a reduction of the tax on the income being paid.

For more Information about these forms, please visit the CRA website at:

www.canada.ca/en/revenue-agency/services/forms-publications/information-on-forms-nr301-nr302-nr303.html

B. Trust Income Distributions

(i) Estate or Trust Income Withholding Rate

Income distributions on trust units are reclassified by the trust after the end of each year. At this time, tax withholding for the year will be adjusted to reflect the change. An NR7-R tax form for a tax refund will be completed and processed on behalf of a client upon their request.

International Tax Treaties In Force	Estate or Trust Income %	Notes
Algeria	25	-
Argentina	15	1,2
Armenia****	15	1,2
Australia	15	2
Austria	15	-
Azerbaijan	15	1,2
Bangladesh	25	-
Barbados	15	2
Belgium	15	1,2
Brazil	25	-
Bulgaria****	15	1,2
Cameroon	25	-
Chile	15	1,2
China, People's Republic	25	-
Columbia	15	2
Croatia	15	1,2
Cyprus****	15	2
Czech Republic	15	1,2
Denmark	15	1,2
Dominican Republic	18	2
Ecuador	15	1,2
Egypt	15	2
Estonia	15	1,2
Finland	15	1,2
France	15	1,2
Gabonese Republic	25	-
Germany	25	-
Greece	15	1,2
Guyana	25	-
Hong Kong	25	-
Hungary	15	2
Iceland	15	1,2

International Tax Treaties In Force	Estate or Trust Income %	Notes
India	15	1,2
Indonesia	25	-
Ireland****	15	-
Israel	15	1,2
Italy	15	1,2
Ivory Coast	25	-
Jamaica	15	2
Japan	25	-
Jordan	25	-
Kazakhstan	25	-
Kenya	25	-
Korea, Republic of	25	-
Kuwait	25	-
Kyrgyzstan	15	1,2
Latvia	15	1,2
Lithuania	15	1,2
Luxembourg	15	1,2
Malaysia****	15	-
Malta****	15	2
Mexico	15	1,2
Moldova****	15	1,2
Mongolia****	15	1,2
Morocco	25	-
Netherlands	15	1,3
New Zealand	15	2
Nigeria	25	-
Norway	15	1,2
Oman	15	1,2
Pakistan	15	2
Papua New Guinea	25	-
Peru	15	1,2
Philippines	25	-
Poland	15	1,2
Portugal	15	1,2
Romania****	15	2
Russia	25	-

International Tax Treaties In Force	Estate or Trust Income %	Notes
Serbia	15	1,2
Senegal	25	-
Singapore****	15	2
Slovak Republic	15	1,2
Slovenia	15	1,2
South Africa	15	1,2
Spain	15	2
Sri Lanka	15	2
Sweden	15	1,2
Switzerland	15	-
Taiwan	15	1,2
Tanzania	25	-
Thailand	15	-
Trinidad & Tobago	25	-
Tunisia	15	2
Turkey	15	2
Ukraine	15	1,2
United Arab Emirates (UAE)	15	1,2
United Kingdom (U.K.) ****	15	1,2
United States (U.S.)	15	3
Uzbekistan	25	-
Venezuela	25	-
Vietnam	15	1,2
Zambia	15	2
Zimbabwe	15	4

Note: These rates are provided for general information purposes only. This information is not meant to be a comprehensive review of the applicable law and should not be used as a substitute for professional advice. The actual rate of tax applicable to income from a particular security can be ascertained only by reviewing the relevant facts and applying the applicable law. A professional tax advisor should be consulted before entering into a transaction.

**** Where, pursuant to the provisions of the tax treaty (e.g. tax treaty with U.K), income from sources in Canada is either exempt from tax or taxed at a reduced rate in Canada, and in the other country (U.K) the same income is not subject to tax by reference to the full amount of income but rather to the amount that is remitted to or received in that other country, then the exemption or reduction of tax to be allowed under the tax treaty.

(ii) International Tax Treaty Developments

International Tax Treaties Signed (not yet implemented)	Estate or Trust Income (%)	Notes
Belgium	15	1,2
Lebanon	25	-
Madagascar	15	1,2
Namibia	15	1,2

International Tax Treaties Under Negotiation/Re-negotiation	
Australia	Malaysia
Brazil	Netherlands
China (PRC)	San Marino
Germany	Switzerland

Notes:

1. For the purposes of the trust article or other income article in the income tax convention Canada has with this country, a trust does not include any arrangement whereby contributions made to the trust were deductible for the purposes of taxation in Canada.
2. This rate applies provided the payment is taxable in the country with which Canada has a tax convention; otherwise, the rate is 25 per cent.
3. Distributions of income from an estate or trust that is a resident of Canada may be exempt from tax in Canada on trust income from sources outside Canada. This exemption is provided in the Netherlands and U.S. conventions in respect of amounts paid, credited or required to be distributed to residents of the Netherlands and the U.S., respectively.
4. The rate of 15 per cent applies to the gross amount of the income from an estate or trust if it is derived from sources within Canada by a resident of Zimbabwe, provided that income is taxable in Zimbabwe; otherwise, the rate is 25 per cent.

C. Withholding Tax on Mutual Fund Distributions

Canadian Non-Resident Withholding Tax on Mutual Fund Distributions			
Mutual Fund Trusts			
	Type of Income	U.S. residents (including tax exempt U.S. entities such as pension funds, IRAs etc.)	Others
1	Trust income (including interest and other distributions of ordinary income).	Withholding tax at the rate of 15 per cent to be deducted from such amounts.*	Withholding tax at the rate of 25 per cent (possibly reduced, pursuant to a tax treaty or convention) from such amounts.*
2	Distributions designated as capital gains distributions which are derived from the dispositions of TCP and more 5 per cent of distributions are paid to non-resident investors.	Withholding tax at the rate of 15 per cent to be deducted from such amounts.*	Withholding tax at the rate of 25 per cent (possibly reduced, pursuant to a tax treaty or convention) to be deducted from such amounts.*
3	Distributions designated as capital gains distributions (not including TCP capital gains distributions mentioned in item 2 above).	No withholding.*	No withholding.*
4	Amounts otherwise tax-free distributions (such as Return of capital distributions) paid to non-resident investors of Canadian mutual funds that are listed on a prescribed Canadian or foreign stock exchange,	Withholding tax at the rate of 15 per cent to be deducted from such amounts.**	Withholding tax at the rate of 15 per cent to be deducted from such amounts.**

Canadian Non-Resident Withholding Tax on Mutual Fund Distributions			
	where more than 50 per cent of the fair market value of the units is attributable to real property in Canada, a Canadian resource property or a timber resource property.		
5	Distributions designated as dividends by a publicly listed income trust listed after October 30, 2006.	This is treated as dividend and a withholding tax at the rate of 15 per cent to be deducted.*	This is treated as dividend and a withholding tax at the rate of 25 per cent or a reduced treaty rate for dividends to be deducted.*

Canadian Non-Resident Withholding Tax on Mutual Fund Distributions			
Mutual Fund Corporations			
	Type of Income	U.S. residents	Others (including U.S. limited liability corporations not eligible for treaty benefits)
1	Dividends (including interest and other distributions of ordinary income).	Withholding tax at the rate of 15 per cent to be deducted from such amounts (tax exempt entities such as pension funds, IRAs etc. are subject to 0 per cent on dividends received).*	Withholding tax at the rate of 25 per cent (possibly reduced, pursuant to a tax treaty or convention) to be deducted from such amounts.*
2	Distributions designated as capital gains dividends which are derived from the dispositions of TCP and more than 5 per cent of dividends are paid to non-resident investors.	Withholding tax at the rate of 15 per cent to be deducted from such amounts (tax exempt U.S. entities such as Pension funds, IRAs etc. are subject to 0 per cent on dividends received).*	Withholding tax at the rate of 25 per cent (possibly reduced, pursuant to a tax treaty or convention) to be deducted from such amounts. *
3	Distributions designated as capital gains distributions (not including TCP capital gains distributions mentioned in item 2, above).	No withholding.*	No withholding.*
4	Amounts otherwise tax-free distributions (such as Return of capital distributions) paid to non-resident investors of Canadian mutual fund corporations that are listed on a prescribed Canadian or foreign stock exchange, where more than 50 per cent of the fair market value of the shares is attributable to real property in Canada, a Canadian resource property or a timber resource property.	Withholding tax at the rate of 15 per cent to be deducted from such amounts.**	Withholding tax at the rate of 15 per cent to be deducted from such amounts.**

* Part XIII withholding tax
** Part XIII.2 withholding tax

D. Prevent Base Erosion and Profit Sharing

On June 21, 2019, Canada's Department of Finance announced that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (also known as the Multilateral Instrument, or MLI) sponsored by the Organisation for Economic Co-operation and Development (OECD), has been enacted into law in Canada.

The MLI will allow Canada to modify its existing tax treaties to include measures developed under the OECD/G20 Base Erosion and Profit Shifting (BEPS) project without having to individually renegotiate those treaties, in turn permitting the measures to be implemented in a more synchronized and efficient manner. The MLI measures are intended to enhance Canada's ability to address treaty abuse and improve the dispute resolution process under tax treaties.

On August 29, 2019, the Department of Finance announced that Canada had ratified the MLI and deposited its instrument of notification with the Organisation for Economic Co-operation and Development (OECD). As a result, The MLI entered into effect on January 1, 2020 for withholding taxes, and requires that a treaty partner of Canada must also adopt the same MLI provision before it applies to a particular tax treaty. Non-residents of Canada are required to meet certain criteria in order to be eligible to treaty benefits under the MLI.

According to Canada's Department of Finance, the United States has not signed onto the MLI and, as such, the MLI will not affect the Canada-U.S. Treaty.

For more information on the MLI announcement, please visit the Department of Finance's website.

https://www.fin.gc.ca/treaties-conventions/notices/mli-im-eng.asp

E. Cross-Border Securities Lending Arrangements ("SLA")

The 2019 Federal budget proposes that all dividend compensation payments made under an SLA or a "specified SLA" by a Canadian resident borrower to a non-resident lender in respect of a share of a Canadian corporation are deemed to be dividends paid by the issuer of the borrowed shares, and thus subject to Canadian dividend withholding tax. In addition, a dividend compensation payment made by a Canadian resident borrower to a non-resident lender under an SLA is exempt from Canadian withholding tax if the SLA is "fully collateralized," and the loaned securities is a share in the capital stock of a non-resident corporation.

For more information on the 2019 Federal Budget, please visit the Department of Finance's website.

https://www.budget.gc.ca/2019/docs/plan/toc-tdm-en.html

7. Capital Gains

Canadian income tax on capital gains is not applicable to non-residents unless the assets are TCP. Shares of companies listed on most major stock exchanges, shares of mutual fund corporations and units of mutual fund trusts are generally not considered TCP. Unless exempted by an applicable tax treaty, non-residents are subject to Canadian income tax on 50 per cent of capital gains from the disposition of taxable Canadian property.

8. Taxable Canadian Property

A. Section 116 Withholding and Definition of TCP

Section 116 of the Income Tax Act states that where a non-resident disposes of a property that is TCP, the purchaser generally must withhold and remit 25 per cent of the proceeds to the CRA on account of the non-resident vendor.

Effective March 4, 2010:

(i) A share of a Canadian private corporation, an interest in a partnership or an interest in a trust (other than a unit of a mutual fund trust or an income interest in a trust resident in Canada) will no longer be a TCP if, at any particular time within the preceding 60-month period, it does not derive more than 50 per cent of their value from real or immovable property situated in Canada; Canadian resource property and timer resource property; and options in respect of such property.

(ii) Units of a mutual fund trust, shares of a Canadian mutual fund corporation or shares of a public corporation would only constitute TCP if, (a) the non-resident and/or persons with whom the non-resident did not deal at arm's length owned 25 per cent or more of the issued shares of any class of the capital stock of the corporation within the preceding 60-month period and (b) the shares they own derive more than 50 per cent of the fair market value from real or immovable property situated in Canada; Canadian resource property and timer resource property; and options in respect of such property.

(iii) The shares will maintain the deemed TCP status only for a period of 60 months following the tax-deferred exchange.

B. Clearance Certificate

Section 116 tax is no longer required for shares of private corporations or interests in partnerships and pooled fund trusts unless these shares or interest meet the new definition of TCP. If the shares or interest qualify as TCP, the purchaser will continue to withhold and remit 25 per cent of the proceeds to the CRA on account of the non-resident vendor unless the non-resident can provide a clearance certificate that they have received from the CRA to the purchaser.

In order to obtain a clearance certificate, a non-resident vendor must remit an amount to the CRA on account of the non-resident's potential tax liability, if any, or post security. Administratively, the CRA will generally issue a clearance certificate if they are satisfied that no tax will ultimately be due from the non-resident vendor (e.g. treaty-exempt or no gain). In many circumstances, for example with multiple investors in private equity funds, obtaining such certificates can be very timing-consuming and expensive.

The purchaser may seek a letter of comfort from the CRA by notifying the CRA of the transaction and holding 25 per cent of the proceeds in escrow. The comfort letter confirms that the purchaser may continue to retain the withheld funds beyond the remittance date. This allows any funds in excess of tax payable to be released directly to the vendor upon issuance of a Section 116 Certificate.

At the 62nd Annual Tax Conference of the Canadian Tax Foundation in November 2010, the CRA commented that they do not review or determine whether a property is TCP in the source of processing a Section 116 certificate request. A certificate may be issued under subsection 116(2) or 116(4) in respect of property that is not TCP. This does not influence the amount that must be paid or security provided by the non-resident vendor, in order to qualify under subsection 116(2) or subsection 116(4) to receive the certificate. It will also not influence the vender information required to be submitted.

The CRA released updated Information Circular IC72-17R6, dated September 29, 2011. The revised circular reflects legislative changes to Section 116 that have been enacted over the past few years. It addresses issues with respect to Section 116 compliance for fiscally transparent entities such as partnerships and hybrid entities.

It also explains how the recently introduced forms NR301, NR302 and NR303 are integrated into the Section 116 compliance process. For example, where a non-resident vendor requests for a clearance certificate and makes a claim under a tax treaty, the vendor should include forms NR301, NR302 and/or NR303 or equivalent information.

For IC72-17R6, please visit the CRA website at:

www.cra-arc.gc.ca/E/pub/tp/ic72-17r6/ic72-17r6-e.html

9. Exemption from withholding

A. Canada-U.S. Income Tax Convention

There is an exemption from withholding tax on certain amounts paid or credited to a U.S. organization to which a letter of exemption under Article XXI of the Canada-U.S. Tax Convention has been issued and remains in force at the time the amount is paid or credited.

(i) U.S. religious, scientific, literary, educational, or charitable entities

Paragraph 1 of Article XXI of the Canada-U.S. Tax Convention states that income derived by an organization resident in the U.S. that is religious, scientific, literary, educational or charitable in character may be exempt from Canadian taxation to the extent that such income is exempt from tax in the U.S.

A U.S. organization may make an application under Paragraph 1 of Article XXI by taking the following procedures:

Send a letter to the CRA, accompanied by a certified copy or a photocopy of:

1. The Charter, Articles of Incorporation or similar instrument setting out the purposes of the organization.
2. A letter of determination by the Internal Revenue Service of the U.S. Treasury Department as to the status of the organization under the Internal Revenue Code.

(ii) U.S. pension plans, retirement benefit plans or other employee benefits plans

Paragraph 2 of Article XXI of the Canada-U.S. Tax Convention states that a trust, company or other organization resident in the U.S., which is generally exempt in a taxation year from U.S. income tax and is constituted and operated exclusively to administer or provide pension, retirement or employee benefits may obtain exemption in that year from Canadian taxation on its dividend and interest income.

Paragraph 3 of Article XXI of the Canada-U.S. Tax Convention states that a trust, company or other organization resident in the U.S. which is generally exempt in a taxation year in the U.S. and operated exclusively to earn income for the benefit of an organization described in Paragraph 1; or a trust, company, organization or other arrangement referred to in Paragraph 2, may obtain exemption in that year from Canadian taxation on its dividend and interest income.

A U.S. organization may make an application under Paragraph 2 or Subparagraph 2(b) of Article XXI by taking the following procedures:

Send a letter to the CRA, accompanied by a certified copy or a photocopy of:

1. The Trust Indenture or similar instrument setting out the purposes of the organization.
2. A letter of determination by the Internal Revenue Service of the U.S. Treasury Department as to the status of the trust under the Internal Revenue Code.

The applications under Article XXI should be sent to:

Canada Revenue Agency
Taxation, Registration Directorate Non-Resident Unit, Program Services Section
Ottawa, Ontario K1A 0L8
Canada

A U.S. organization may make an application under Paragraph 3 by taking similar procedures as described above.

B. Sovereign Immunity

Under the Doctrine of Sovereign Immunity, the CRA may give a written authorization not to withhold tax on certain Canadian-source investment income paid or credited to a foreign government or central bank of a foreign country upon request after substantiation that such investment income (other than that already exempt under the Income Tax Act and Regulations) is the property of the government or central bank of a foreign country. The written authorization will have an expiry date at which time the foreign government or central bank would be required to re-apply for further authorization not to withhold.
A request for authorization not to withhold should be sent to:

Canada Revenue Agency
Taxation
875 Heron Road
Ottawa, Ontario K1A 0L8
Canada
Attention: Provincial and International Relations Division

Investment income of a foreign government or its agency is exempt only if all the following three conditions are met:

1. The other country would provide a reciprocal exemption to the Canadian Government or its agencies.
2. The income is derived by the foreign government or agency in the course of exercising a function of a governmental nature and is not income arising in the course of an industrial or commercial activity carried on by the foreign authority.
3. It is interest on an arm's length debt or portfolio dividends on listed company shares. Income such as trust income, rentals, royalties or direct dividends from a company in which the foreign government has a substantial or controlling equity interest does not qualify for exemption.

C. Entities not entitled to treaty benefits

It has been a long-standing position of the CRA that fonds commun de placement (FCP), société d'investissement à capital variable (SICAV) and société d'investissement à capital fixe (SICAF) in Luxembourg are not "liable to tax" and are therefore not considered residents of Luxembourg for purposes of the Canada-Luxembourg Tax Convention. Consequentially, FCP, SICAV and SICAF in Luxembourg are not entitled to treaty benefits.

Canada treats SICAVs, which have their place of effective management in France, as residents of France but only insofar as their shareholders are liable to French tax on the income of the SICAVs in respect of which the benefits of the Canada-France Tax Convention are granted. In practice, it is difficult to identify the tax status of their shareholders. The CRA has suggested that treaty benefits not be given to collective investments such as FCPs, SICAVs, SICAFs, Undertakings For The Collective Investment Of Transferable Securities (UCITs) at the time of payment. If the shareholders believe that they are eligible for treaty benefits, they can try to apply for a tax refund with the CRA.

10. Service and Sales Tax

A. Goods and Services Tax

Goods and Services Tax (GST) is levied by the Canadian federal government on most goods and services sold in Canada at a rate of 5 per cent. Non-residents of Canada and qualified government agencies are not required to pay GST.

B. Provincial Sales Tax

Provincial Sales Tax (PST) is levied on most goods and some services executed in each province. PST applies in British Columbia (7 per cent), Manitoba (8 per cent), Quebec (9.975 per cent) and Saskatchewan (6 per cent). There is no PST in Alberta, the Northwest Territories, the Yukon and Nunavut.

In New Brunswick, Newfoundland (including Labrador), Prince Edward Island, Nova Scotia and Ontario, Harmonized Sales Tax (HST) applies. The HST combines GST and PST and it is between 13 per cent and 15 per cent. In the province of Quebec, the PST is called TVQ and is 9.975 per cent, effective January 1, 2013.

Non-residents of Canada are not required to pay provincial sales taxes on custody fees.

11. Update from the CRA

A. Non-resident financial institutions who have Canadian resident beneficial owners

(i) Technical Interpretation Document

Canadian source income payments made to non-resident financial institutions who have Canadian resident beneficial owners.

In the past, withholding tax for non-resident financial institutions (FI) related to underlying Canadian resident beneficial owners was not withheld, provided that the Canadian payer received a certification from the FIs confirming that the annual Canadian tax reporting was provided for their Canadian resident clients (T5's and T5 summaries). For many years, this has been the industry practice.

The CRA has recently provided clarification on the application of withholding tax for Canadian source income, such as dividend and trust income paid to non-resident FIs for Canadian resident beneficial owners. CRA has advised that all such payments to non-resident FIs for underlying Canadian resident beneficial owners are subject to full Part XIII tax withholding at 25 per cent. The non-resident FIs are also required to issue Canadian tax reporting to their Canadian-resident clients and to the CRA.

Effective January 1, 2012, 25 per cent of tax will be withheld where applicable on Canadian source income payments to non-resident FIs for their underlying Canadian resident beneficial owners. These payments and the tax withheld will be reported to the non-resident FIs and to CRA on NR4 forms.
According to the CRA, in situations where the Canadian beneficial owner is a registered pension plan, administrative relief would be provided to exempt the withholding. To qualify for this exemption, the pension plan administrator must request a letter from the CRA stating that Part XIII tax need not be withheld and provide copies of this letter to the non-resident FI and CIBC Mellon.

FIs will still continue to issue their underlying clients Canadian tax slips (T5s), but the CRA has suggested that since withholding tax information is not included on T5s, that the FIs should also issue a statement to their Canadian resident beneficial owners clients informing them of the tax that has been withheld.

This statement will be useful when the non-resident FI or the underlying Canadian resident completes their NR7-R forms to obtain credit on their annual income tax returns for the tax withheld. Canadian residents are required to attach the completed and certified NR7-R form and necessary attachments to their Canadian income tax return to claim a credit for the tax withheld. Accordingly, the non-resident FI should complete the NR7-R forms and send them along with the required attachments to CIBC Mellon for certification of the forms. CIBC Mellon will return the certified forms to the FI's to forward to its client.

(ii) Further Guidance

On March 27, 2012, CIBC Mellon received a letter from the CRA providing further guidance on Canadian-source income payments made to non-resident financial intermediaries for their underlying Canadian-resident beneficial owners. The CRA's letter follows discussions between CIBC Mellon, the CRA and other market participants regarding the CRA position outlined in our Straight Talk communication on December 16, 2011.

The CRA has advised CIBC Mellon that non-resident withholding tax does not have to be withheld provided the following conditions are met:

- Complete information on the Canadian beneficial owner(s) such as the name, address and Canadian tax identification number is provided to the Canadian payer prior to income payment.
- The Canadian payer will issue Canadian tax slips such as T5's and T3's to the beneficial owner(s) and to the CRA for the amounts of Canadian source income on the assets held by the Canadian payer for the non-resident financial intermediary.
- The Canadian payer is required to issue an NR4 tax slip to the non-resident financial intermediary for the income paid or credited to non-resident FI but was not reported on the Canadian tax slips issued to the Canadian beneficial owner(s).

Going forward, CIBC Mellon will not withhold 25 per cent tax on Canadian-source income payments to non-resident FI's for their underlying Canadian resident beneficial owners provided that:

- All the conditions required by the CRA are met.
- Segregated account(s) are set up for disclosed resident beneficial owners.
- Certifications and proper documentation are provided to CIBC Mellon.

(iii) NR7-R

The CRA sent out a communication to financial institutions in October 2014 informing them that there was a change in procedures for filing Form NR7-R. When filing Form NR7-R for security payments, such as dividends or interest, the CRA now only requires one NR7-R application per year, per income type, per beneficial owner, per CUSIP number, per Canadian payer or agent's non-resident tax account number as opposed to separate NR7-R applications for the same year. However, the CRA still requires a certificate of tax withheld for each payable date. Form NR7-R has been updated to reflect this.

For the revised Form NR7-R and the details, please visit the CRA's website at:

www.canada.ca/en/revenue-agency/services/forms-publications/forms/nr7-r.html

B. Tax Information Exchange Agreement (TIEA)

The Government of Canada regards the ability to exchange tax information between countries as an important means of improving the ability of tax authorities to administer and enforce tax laws in order to prevent international tax evasion.

The Tax Information Exchange Agreement (TIEA) creates the legal framework to enable the exchange between tax authorities of tax information relevant for the administration and enforcement of the domestic tax laws of Canada and respectively, of the other treaty countries. In Canada, TIEAs are administered by the CRA.

The following 24 TIEAs are in force as of January 7, 2016:

Anguilla	Brunei	Guernsey	San Marino
Aruba	Cayman Islands	Isle of Man	Saint Lucia
Bahamas	Cook Islands	Jersey	St. Kitts and Nevis
Bahrain	Costa Rica	Liechtenstein	St. Vincent and the Grenadines
Bermuda	Dominica	Netherlands Antilles	Turks and Caicos Islands
British Virgin Islands	New Grenada	Panama	Uruguay

A TIEA with Antiqua and Barbuda and a TIEA with Grenada have been signed, but they are not in force as of January 30, 2020.

The following 5 TIEAs are under negotiation:

Belize	Liberia	Vanuatu
Gibraltar	Montserrat	

C. Competent Authority Agreement between Canada and the Netherlands

On November 19, 2013, the CRA announced that the competent authorities of Canada and the Netherlands have reached an agreement regarding the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with regard to Taxes on Income (Canada-Netherlands Convention). The agreement affects closed funds for mutual accounts (closed FGR) established in the Netherlands and constructed in accordance with its laws. It will be applicable to payments made on or after November 1, 2013.

Canada and the Netherlands have agreed that a closed FGR is not the beneficial owner of the income of the fund. Income is attributed to investors in proportion to their investment and accordingly, the fund should not have the benefit of the Canada/Netherlands tax treaty. Umbrella FGRs invested in other FGRs are also not entitled to benefit.

A closed FGR can only claim tax relief at source under a tax treaty on behalf of its investors if all direct investors of the closed FGR are “qualifying investors,” as defined in the Agreement, and it meets certain requirements. Where all investors in the closed FGR are not qualified investors, benefits of a tax treaty can only be claimed on behalf of their investors through refund claims. Closed FGRs (fund managers/depositories) should consult their tax advisors for applicability to their circumstances and for what steps may be taken by them in such respect.

For more information, please review the CRA news release at:

www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/canada-netherlands-income-tax-convention-agreement-between-competent-authorities.html

Further information is also available on Canada's tax treaties at:

www.fin.gc.ca/treaties-conventions/in_force--eng.asp

D. Memorandum of Understanding between the Competent Authorities of Canada and Switzerland

On June 28, 2013, the CRA released a Memorandum of Understanding between the Competent Authorities of Canada and Switzerland.

In accordance with clause 3(b)(v) of Article 10 of the Canada-Switzerland tax treaty, pensions will be exempt from withholding, provided that the competent authorities of the two countries agree that the pensions corresponds to those recognized for tax purposes.

The competent authorities have agreed that certain Swiss pension and retirement plans generally correspond to a pension or retirement plan recognized for tax purposes in Switzerland.

The CRA has advised us that in order to be eligible for exemption, a Swiss pension is required to provide us with a certification confirming that they are the particular pension plan, together with a copy of (i) the legal agreement for the plan; (ii) other official documents; or (iii) a certification from the Swiss government or tax authorities that the plan is one of the following.

The Federal Act on old age and survivors' insurance, of 20 December 1946:

1. The Federal Act on disabled persons' insurance of 19 June 1959.
2. The Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006.
3. The Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer occupational pension plans and the forms of individual recognized pension schemes comparable with the occupational pension plans.

Please click on the link below for the details of the announcement:

www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/agreement-between-canada-switzerland-on-refunding-swiss-tax-on-canadian-collective-investment-vehicle.html

E. Canada-Italy Tax Convention - Agreement between Competent Authorities regarding Article 11 (Interest)

On October 29, 2014, the CRA posted an update on its website that the Competent Authorities for Canada and Italy have agreed, effective January 1st, 1990, to add the following institutions for the purposes of exemption from withholding tax on interest under paragraph 3 of Article XI of the Canada-Italy Income Tax Agreement of 1989:

In the case of Canada:

- Export Development Canada formerly named "Export Development Corporation"

In the case of Italy:

- Special Section for Export Credit Assurance (SACE)

For the details of the update, please visit the CRA's website at:

www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/canada-italy-tax-convention-agreement-between-competent-authorities-regarding-article-11-interest.html

F. Canada-Norway Tax Convention – Agreement between Competent Authorities regarding Article 10 (Dividends)

On October 29, 2014, the CRA posted an update on its website that the Competent Authorities of Canada and Norway have agreed that:

1. Paragraph 3 of Article 10 of the Convention will apply to exempt dividends from source taxation where the dividends are received by a Contracting State or a political subdivision or local authority thereof, or to any wholly-owned agency or instrumentality of that State, political subdivision or local authority provided that the State, political subdivision, local authority, wholly-owned agency or instrumentality:

    - Owns less than 25 per cent of the payer of the dividends, and
    - The funds invested result from the performance of functions of a governmental nature.

2. For the purposes of this agreement, paragraph 3 of Article 10 shall apply to:

- In the case of Norway to:
  1. the Central Bank of Norway (Norges Bank);
  2. the Government Pension Fund - Global (Statens Pensjonsfond - Utland);
  3. the municipality of Bærum (Bærum Kommune); and
- In the case of Canada to:
  1. the Canada Pension Plan Investment Board; and
  2. the Canada Pension Plan.
  3. It is understood that this agreement shall apply to dividends paid beginning January 1, 2010.

For the details of the announcement, please visit the CRA's website at:

https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/canada-norway-tax-convention-agreement-between-competent-authorities-regarding-article-10-dividends.html

G. Canada-New Zealand Income Tax Convention – Mode of Application regarding Article 10 (Dividends)

As provided in paragraph 3, of Article 10 (Dividends) of the Canada-New Zealand Income Tax Convention, Competent Authorities of Canada and New Zealand have established the following Mode of Application:

1. Paragraph 3 of Article 10 of the Convention will apply to exempt dividends from source taxation where the dividends are paid to the other Contracting State or a political subdivision or local authority thereof or to any wholly-owned agency or instrumentality of that State, political subdivision or local authority that performs functions of a governmental nature, which has been approved by the competent authorities in accordance with Article 10 of the Convention, provided that the recipient together with any related entities own less than 10 per cent of the voting power or value of the payer of the dividend.

2. For the purposes of this Mode of Application, paragraph 3 of Article 10 will apply:

- in the case of New Zealand to:
  1. the New Zealand Superannuation Fund and its wholly-owned subsidiaries;
  2. the Guardians of New Zealand Superannuation and its wholly-owned subsidiaries;
  3. the Earthquake Commission and its wholly-owned subsidiaries;
  4. the Reserve Bank of New Zealand; and
- in the case of Canada to:
  1. the Canada Pension Plan;
  2. the Canada Pension Plan Investment Board and its wholly-owned subsidiaries;
  3. the Quebec Pension Plan;
  4. the Caisse de dépôt and its subsidiaries, where the dividends received are wholly for the benefit of the Quebec Pension Plan; and
  5. the Bank of Canada.

3. It is understood that this Mode of Application will apply to dividends paid on or after August 1, 2015.

For the details of the announcement, please visit the CRA's website at:

https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/canada-new-zealand-income-tax-convention-mode-application-regarding-article-10-dividends.html

H. Certain foreign pension arrangements

The CRA has added the following paragraphs to the tax guide, NR4 – Non-Resident Tax Withholding, Remitting and Reporting

(i) United Kingdom:

As long as certain conditions are met, dividends beneficially owned by an organization that was constituted and is operated in the United Kingdom only to administer or provide benefits under one or more recognized pension plans are exempt from withholding tax under Article 10 (Dividends) of the Canada-United Kingdom tax treaty. The treaty was amended by a protocol that came into effect for withholding tax for calendar years starting on or after January 1, 2015. Withholding agents should get a letter from the United Kingdom tax administration confirming that the recipient meets the criteria in Article 10.

The letter should be valid for the year in question and for no more than 3 years in total and:

- in the case of pension plans arranged through an insurance company, confirm that the insurance company administers or manages pension schemes registered under Part 4 of the Finance Act 2004 (United Kingdom) including the schemes listed by the insurance company to which the arrangement applies
- in all other cases, affirm that the pension plan is registered under Part 4 of the Finance Act 2004 (United Kingdom), including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are only pension schemes

The organization must attest that it is generally exempt from tax in the United Kingdom and does not directly or indirectly own more than 10% of the capital or more than 10% of the voting power of the company paying the dividends. In addition, the dividends received must only be for the benefits of recognized pension plans and the recognized pension plans must provide benefits to individuals, of which at least 90% must be residents of the United Kingdom.

(ii) Switzerland

As long as certain conditions are met, dividends beneficially owned by an organization that was constituted and is operated in Switzerland only to administer or provide benefits under one or more recognized pension plans are exempt from withholding tax under Article 10 (Dividends) of the Canada-Switzerland tax treaty. The treaty was amended by a protocol that came into effect for withholding tax for calendar years starting on or after January 1, 2012. Withholding agents should get a letter from the Switzerland tax administration confirming that the recipient meets the criteria in Article 10. The letter should say that the pension plan or plans match a pension or retirement plan in Switzerland that Canada recognizes for tax purposes and that is listed on the CRA's website at:

https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/memorandum-understanding-between-competent-authorities-canada-switzerland.html

The dividends cannot come from carrying on a trade or a business or from a related person.

12. OECD Common Reporting Standard (CRS)

Canada supports for G-8 and G-20 commitments to multilateral automatic exchange of information. In September 2013, G-20 Leaders committed to the automatic exchange of information as the new global standard and endorsed an OECD proposal to develop a global model for the automatic exchange of tax information. The early adopters will start new on-boarding in 2016 so information can be exchanged in 2017. Some G20 members will implement later.

In the 2015 federal budget, the Canadian government states that it is committed to working with its international partners to improve compliance and address cross-border tax evasion. Thus, Canada is one of more than 90 jurisdictions that intend to implement the OECD CRS for the automatic exchange of financial account information. It is proposed that the standard be implemented in Canada as of July 1, 2017, allowing for a first exchange of information in 2018.

The CRA posted its guidance pertaining the CRS in March 2017 and its revised guidance in July 2018. It made modifications to the information on the CRA's website pertaining to new guidance for the CRS on July 31, 2018. The CRA indicated that the information – aimed at Canadian financial institutions and their account holders – is intended to provide an understanding of the administrative aspects of the CRS.

In its revised guidance, the CRA clarifies that it has added to its list of excluded accounts the situation for when a financial account is held – by or on behalf of a group of owners or by the condominium company – for the purpose of paying expenses of a condominium or housing cooperative that meets certain conditions, and a depository account in the form of a reloadable payment card.

For guidance, please visit the CRA's website at:

www.canada.ca/en/revenue-agency/services/tax/international-non-residents/enhanced-financial-account-information-reporting/reporting-sharing-financial-account-information-other-jurisdictions/guidance-on-common-reporting-standard-part-income-tax-act.html

Field Code Changed

On Friday November 22, 2019, the CRA released a revised draft CRS guidance to industry associations and requested comments to be provided to them by December 20, 2019. The guidance was then distributed by the industry associations to a number of industry representatives to provide comments.

The revised draft guidance contains a number of changes including accounts opened without valid self-certifications for CRS on or after January 1, 2020, would be subject to a penalty of up to $2,500 per account per regime. It is expected that the CRA will release the final revised guidance in 2020.

The Department of Finance and the CRA have discussed a number of times with the financial industry associations and sought feedback on issues regarding the OECD Common Reporting Standard (CRS).

For more information on OECD CRS, please visit the Department of Finance Canada's website at:

www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/budget-2016-growing-middle-class/common-reporting-standard.html

United States (U.S.)

1. U.S. Withholding Tax Rates

Effective January 1, 2018, U.S. withholding rates are changed as a result of the new U.S. Tax Cuts and Jobs Act. Backup withholding on U.S. source income payments is reduced to 24 per cent from 28 per cent. For master limited partnership distributions, the withholding tax rate for non-corporate, foreign partners is reduced to 37 per cent from 39.6 per cent, and the withholding tax rate for corporate, foreign partners is reduced to 21 per cent from 35 per cent. With regards to real estate investment trust (REIT) capital gains dividends, the withholding tax rate for REIT capital gain dividends is reduced to 21 per cent from 35 per cent.

2. U.S. Withholding on Redemptions of Actively Traded Stock

Certain US-sourced distributions in redemption of actively traded stock may now be subject to the IRC 302 tax treatment which requires an automatic 30 per cent withholding at source or by a withholding tax agent. Security holders must provide required documentation certifying whether the income received is a capital gain or a dividend by IRC 302 standards in order to reclaim all or a portion of the taxes withheld.

3. U.S. REITs

Non-U.S. persons that hold U.S. Real Estate Investment Trusts (REIT)s are normally subject to withholding tax on their U.S. REIT capital gains earnings at a rate of 21 per cent. If the earnings are for ordinary dividends, the rate is then 30 per cent. The tax treaty between a country and the U.S. may further reduce the tax rate from 30 per cent to a reduced rate such as 15 per cent, if certain conditions are met.

A Treaty form and a Capital Gain form are required to be completed and returned to CIBC Mellon to claim treaty benefits. Failure to provide these forms to CIBC Mellon as requested will result in withholding tax of up to 30 per cent of your U.S. REIT earnings.

4. 871(m) Dividend Equivalent Withholding

Section 871(m) of the U.S. Internal Revenue Code imposes U.S. non-resident withholding tax on “dividend equivalent payments”; in particular specified notional principal contracts (NPCs) and equity-linked instruments (ELIs). Final regulations were released on September 17, 2015.

On December 7, 2015 the US Treasury Department and Internal Revenue Service (IRS) issued a correction which revises the effective date of the final regulations on the U.S. non-resident withholding tax requirements for dividend equivalent payments under Section 871(m).

For specified NPCs and specified ELIs the final regulations originally applied to “any payment made on or after January 1, 2017, with respect to any transaction issued on or after January 1, 2017, and to any payment made on or after January 1, 2018, with respect to any transaction issued on or after January 1, 2016, and before January 1, 2017.”

On December 2, 2016, the IRS released its transition guidance for section 871(m) during the phase-in period. IRS Notice 2016-76 offers transitional relief for the 871(m) regulations, providing taxpayers with guidance for complying with final and temporary regulations under section 871(m). According to the IRS notice, the 871(m) regulations will apply to transactions issued on or after January 1, 2017 that have a delta of one. This includes notional principal contracts (NPCs) and equity-linked instruments (ELIs) that are either simple contracts or complex contracts. Furthermore, the regulations will apply to transactions issued on or after January 1, 2018 that are non-delta-one transactions. The delta threshold of 0.8 will remain in effect.

On January 24, 2017, the IRS released final and temporary regulations, and another referring to the proposed regulations under section 871(m).

On September 20, 2018, the U.S. Internal Revenue Service (IRS) published Notice 2018-72 entitled, “Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m).” According to the IRS, its notice is intended to provide taxpayers with additional guidance for complying with the final and temporary regulations under sections 871(m), 1441, 1461, and 1473 of the Internal Revenue Code (collectively referred to as the “section 871(m) regulations”) in the tax years 2019, 2020, and 2021.

On December 17, 2019, the IRS published final regulations (TD9887) under Section 871(m) of the Internal Revenue Code and announced that it is extending the transition relief provided in IRS Notice 2018-72 for two additional years (to January 1, 2023) and that it plans to amend the Section 871(m) regulations to reflect the delayed effective dates. Some highlights from the IRS notice include: the IRS has revised the effective/applicability date of certain rules in those final regulations so that the section 871(m) requirements will not apply to any payment made with respect to any non-delta-one transaction issued before January 1, 2023; and the periods during which the “good faith effort” enforcement standards are extended, specifically for any delta-one transaction in 2017 through 2022 and any non-delta-one transaction that is a section 871(m) transaction in 2023. In addition, the notice further lengthens the period when withholding agents can apply a simplified standard for combining transactions to ascertain if they are section 871(m) transactions to include 2021 and 2022.

The IRS clarifies that its simplified standard applies only to withholding agents, and does not apply to taxpayers that are long parties to potential section 871(m) transactions. According to the IRS notice, it intends to revise the section 871(m) regulations to provide that a qualified derivatives dealer (QDD) will not be subject to tax on dividends and dividend equivalents received in 2021 and 2022 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends). Additionally, a QDD will be required to compute its section 871(m) amount using the net delta approach, beginning in 2023.

The links to the documents can be found on the U.S. Federal Register website at:

www.federalregister.gov/documents/2017/01/24/2017-01161/dividend-equivalents-from-sources-within-the-united-states

www.federalregister.gov/documents/2017/01/24/2017-01163/dividend-equivalents-from-sources-within-the-united-states

https://www.irs.gov/pub/irs-drop/n-18-72.pdf

https://www.irs.gov/pub/irs-drop/n-20-02.pdf

5. Non-Resident Alien Withholding Tax Under Section 305(c)

Internal Revenue Code (IRC) 305(c) requires withholding agents to identify, report and (if applicable) withhold on convertible securities that are deemed to have paid a dividend as a result of a change in conversion ratio, exercise price, or similar adjustment.

In March, 2016, BNY Mellon advised CIBC Mellon that it may be required to apply withholding tax on deemed dividend distributions made to non-U.S. resident clients resulting from conversion rate adjustments (“CRAs”) that occurred in 2015. BNY Mellon may also apply withholding to 2016 CRA events after receiving additional guidance from the U.S. Treasury. This change may impact non-U.S. clients who have invested in a U.S. convertible security (e.g. a convertible bond) that can be converted into another security (e.g. common stock). Certain events, including an increase in the conversion rate of the convertible security, are treated as taxable dividends to security holders. As a result, U.S. non-resident alien (NRA) tax may apply to such dividends received by non-U.S. clients.

In April 2016, the U.S. Treasury Department and IRS issued new proposed regulations on U.S. non-resident withholding tax requirements for deemed distributions payments under IRC Section 305(c).
Generally, the proposed regulations provide guidance for withholding agents to withhold on deemed distributions made on or after January 1, 2016. While the proposed regulations are subject to change, they do provide the withholding agent with some flexibility with respect to payments made in that year. The implementation of operational changes, including withholding, in response to these proposed regulations is ongoing as we work through the nuances in the proposed regulations

BNY Mellon has put processes in place to handle 305(c) transactions.

6. New Proposed U.S. Regulations for Withholding on Transfers of Certain Partnership Interests

On May 7, 2019, the U.S. Treasury Department (Treasury) and the U.S. Internal Revenue Service (IRS) issued proposed regulations with guidance on how to apply withholding tax under U.S. Internal Revenue Code (IRC) Section 1446(f) on a transfer by a non-U.S. person of an interest in a partnership that carries on a trade or business in the U.S. or otherwise realizes income effectively connected with such a trade or business (ECI). These proposed regulations are potentially relevant to any non-U.S. investor in such a partnership.

Partners in publicly traded partnerships (PTPs) would most likely hold their interests through nominees such as brokers and custodians. The proposed regulations would require a tax equal to 10 per cent of the gross proceeds on any transfer of interest in such a publicly traded partnership (PTP) by a non-U.S. person to be withheld. Here, a transfer involves a sale, exchange, or other disposition of interest in a partnership. The seller broker that receives the gross proceeds from the transfer and acts on behalf of such a transferor would be required to withhold the tax.

For more information, please refer to the proposed regulations posted on the U.S. federal register website.

https://www.federalregister.gov/documents/2019/05/13/2019-09515/withholding-of-tax-and-information-reporting-with-respect-to-interests-in-partnerships-engaged-in

7. Foreign Account Tax Compliance Act (FATCA)

The U.S. government has passed new tax rules that compel non-U.S. financial institutions and other entities to document and disclose information about their U.S. account holders to the U.S. Internal Revenue Service (IRS) or face a 30 per cent withholding tax. These new rules are intended to help the U.S. government better assess the income and value of U.S. persons' foreign holdings for the purposes of collecting income tax.

These new U.S. tax rules were passed under the Foreign Account Tax Compliance Act (FATCA), which was enacted into law on March 18, 2010 as part of the Hiring Incentives to Restore Employment Act (HIRE Act).

(i) New requirements under FATCA

FATCA requires non-U.S. financial institutions and non-financial entities to identify their U.S. accountholders or owners and disclose this information to the IRS. Organizations that refuse to participate in the program or disclose U.S. accountholder or owner information to the IRS will generally be subject to a 30 per cent withholding tax on:

- Certain U.S.-source income.
- The gross proceeds from the sales of securities that could pay U.S. source interest or dividend payments.

(ii) Final Regulations

On January 17, 2013, Treasury and the IRS issued final regulations that provide the key changes from the proposed regulations including:

- Extending the date for qualification as a grandfathered obligation (which is not subject to FATCA withholding) to obligations outstanding on January 1, 2014 and any associated collateral.
- Providing January 1, 2014 as the date for purposes of distinguishing between "pre-existing" and "new" accounts.
- Clarifying that for entities resident in Intergovernmental Agreement (IGA) countries, the IGA definitions of FFI and Non-Financial Foreign Entity (NFFE) will apply. However, the statutory and regulatory definitions will apply to entities that are resident in jurisdictions that do not enter into IGAs.
- A revenue procedure will be introduced to coordinate an FFI's obligations under an FFI agreement with its Chapter 3 obligations and with the provisions of any applicable IGA.
- Expanding the categories of FFIs that will be deemed to be in compliance with FATCA requirements.
- Narrowing the definition of financial institution to exclude passive, non-commercial investment vehicles that do not conduct trading, investment or portfolio management activities on behalf of customers; and the categories of account holders that will be considered exempt beneficial owners and not subject to withholding or information reporting.
- All FFIs registering through the IRS's FATCA Portal (starting July 15, 2013) will be assigned a Global Intermediary Identification Number (GIIN) starting no later than October 15, 2013.
- The United States Department of the Treasury and IRS later postponed FATCA implementation by six months to July 1, 2014 and registration portal was opened on August 19, 2013.

(iii) Intergovernmental Agreements
On November 8, 2012, the U.S. Treasury announced that it was actively engaged with over 50 countries and jurisdictions to enter into IGA for compliance with the FATCA tax provisions.

The Treasury has published five model IGAs. They intend to use these models as the basis for bilateral agreements with other countries. The IGAs are to provide partner countries relief from the burden of the full FATCA regulations and to promote tax reporting relationships between the IRS and the tax authority of the partner country. There are 112 countries that have either signed agreements or reached agreements in substance with the U.S.

On February 5, 2014, the Canadian government announced that Canada has signed an IGA with the United States. The Department of Finance also released legislative proposals to implement the IGA under Canadian law, related explanatory notes and a selection of FAQs with responses. For the details of the IGA and legislative proposals, please visit the Department of Finance websites below:

www.fin.gc.ca/n14/14-018-eng.asp
www.fin.gc.ca/drleg-apl/2014/can-us-eu-0214-eng.asp

The legislation to implement the IGA enters into force on June 27, 2014. The CRA released its guiding document on June 23, 2014 and modified it on December 22, 2014. The revised guidance was released on March 22, 2017. For the details of the CRA guiding document, please visit the CRA website below:

https://www.canada.ca/content/dam/cra-arc/migration/cra-arc/tx/nnrsdnts/nhncdrprtng/us-eu/gdnc-eng.pdf

(iv) Registration with the IRS

The IRS secure online portal for certain FFIs to register under FATCA opened in August 2013 to allow registrants to investigate and assess the tool. The portal now permits registration. If a FFI is required to register, FATCA registration can be accomplished most efficiently and effectively through the electronic online registration process. Registration is possible via paper forms.

The IRS intends to review each registration and then issue approvals; each approved FFI will receive a GIIN. The names and GIINs of approved FFIs – those not subject to 30 per cent withholding – are posted on the IRS website commencing July 1, 2014 and thereafter updated on a monthly basis. Certain Model 1 financial institutions were not be required to provide proof of registration prior to January 1, 2015.

(V) Certain important updates in 2015

On September 18, 2015, the IRS issued Notice 2015-66 to announce its intention to amend the FATCA regulations in order to extend the application of certain transitional rules and modify the rules for grandfathered obligations. The below summary is to provide an overview of some of the key changes set forth by the IRS in the notice:

Registration of Sponsored Entities and Sponsored Direct Reporting Non-Foreign Financial Entities

Sponsored entities that are Model 1 Financial Institutions (FIs) such as Canadian FIs must register by the later of December 31, 2016 or 90 days after a U.S. reportable account is identified. Formerly, Model 1 FIs needed to register by December 31, 2015 or 90 days after a U.S. reportable account was identified.

Withholding on Gross Proceeds

Withholding on gross proceeds will start January 1, 2019 instead of January 1, 2017. Reporting Canadian FIs that are custodial institutions such as CIBC Mellon are generally required to begin reporting on gross proceeds payments as of January 1, 2016 as the gross proceeds reporting requirements in the Canada IGA are not tied to the concept of withholdable payments in the FATCA regulations. Therefore, the delayed deadline for inclusion of gross proceeds in the definition of withholdable payments as proposed in the Notice does not appear to change the timing of the reporting requirements under Canada's IGA.

Withholding on Passthru Payments

Withholding on “passthru payments” will become effective the later of January 1, 2019 (instead of January 1, 2017) or the date of publication of the final regulations defining the term “passthru payment."

On December 13, 2018, the U.S. Treasury Department released proposed regulations that would amend regulations under Chapter 4 of the Internal Revenue Code, commonly referred as the FATCA, and Chapter 3. Notable provisions in the proposed regulations include:

- Elimination of FATCA withholding on both payments of gross proceeds and certain insurance payments
- Deferral of FATCA withholding on foreign passthru payments.

Exchange of Information Under Model 1 IGA

For a Model 1 IGA that is in effect such as Canada's IGA, the IRS will treat FIs as compliant even if the jurisdiction such as Canada does not exchange 2014 information by September 30, 2015, so long as the jurisdiction notifies the U.S. Competent Authority prior to that date and assures the U.S. Competent Authority that the jurisdiction is making good faith efforts to exchange the information as soon as possible.

The notice does not affect the timing of when Foreign Financial Institutions (FFIs) are required to report to their domestic governments as those deadlines are governed by domestic law. To read the full text of Notice 2015-66 on the IRS website:

www.irs.gov/irb/2015-41_IRB/ar09.html

The CRA released its revised "Guidance on the Canada-U.S. Enhanced Tax Information Exchange Agreement Part XVIII of the Income Tax Act" for Foreign Account Tax Compliance Act (FATCA) purposes in July 2018.

In its revised guidance, the CRA provides more clarity for when a financial account is opened by or on behalf of a child. When the child is considered to be the account holder, the parent or the legal guardian can complete and sign the self-certification form on behalf of the child.

Another key revision is regarding M&A, as noted in Chapter 11 of the guidance, "Where a financial institution [FI] with limited reporting obligation under the [IGA] ceases to be a deemed-compliant [foreign financial institution] FFI to become a reporting Canadian [FI] because it is merged into or is acquired by another [FI] and/or because it no longer meets the criteria to maintain its status [as a deemed-compliant FFI], it suffices that it undertake account identification procedures only with respect to new accounts open on or after the date of the merger or acquisition […] to identify accounts held by specified U.S. persons." The CRA confirms that an FI is not required to review pre-existing accounts maintained prior to the date of the merger or acquisition unless there is a subsequent change in circumstances associated with the account.

Moreover, regarding the U.S. TIN, it is noted by the CRA in Chapter 12 of its revised guidance that for the 2017, 2018 and 2019 calendar years, in connection with pre-existing accounts that are U.S. reportable accounts, a reporting Canadian FI that has not obtained the U.S. TIN is required to: review electronically searchable data for any missing U.S. TIN; request any missing required U.S. TIN from each account holder; and obtain and report the date of birth. According to the CRA, reporting Canadian FIs may include 9 "A" in the U.S. TIN field of the Part XVIII information return as opposed to 9 "0" where the U.S. TIN is not reported for the 2018 and 2019 calendar years. However, a Canadian FI is not required to include 9 "A" in the U.S. TIN field for the 2017 calendar year and is not required to advise the CRA on whether it has performed all of the new requirements, though it is required by the CRA to keep a record of its procedures..

For more information, refer to the revised FATCA posted on the CRA website:

https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/enhanced-financial-account-information-reporting/reporting-sharing-financial-account-information-united-states/guidance-on-canada-s-enhanced-tax-information-exchange-agreement.html

Field Code Changed

On Friday November 22, 2019, the CRA released a revised draft FATCA guidance to industry associations and requested comments to be provided to them by December 20, 2019. The guidance was then distributed by the industry associations to a number of industry representatives to provide comments.

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