

Newsletter

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US FILING REQUIREMENTS

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Canadian Individuals Doing Business with the US:

Generally, the US business profits of a Canadian resident are exempt from US federal tax, unless the Canadian resident has a fixed base or permanent establishment in the US. However, under US domestic taxation legislation, the Canadian resident is “carrying on business” and has US filing obligations. In order to comply with these domestic requirements, Form 8833 (Treaty-Based Return Position Disclosure) should be filed with the Internal Revenue Service (“IRS”). Each failure to file a Form 8833 may result in a US\$10,000 penalty.

There may be state income tax, capital tax, and/or franchise taxes applicable, even when exempt from US federal taxes, and these should always be taken into consideration when reviewing your US filing requirements.



Canadian Individuals Owning US Rental Property:

Canadian residents who own US rental properties may also elect to treat the US rental income as US business income. As such, they are allowed to calculate the US tax on net rental

income instead of paying 30% of the gross rental receipts. However, if this alternative is undertaken, it will be necessary to file a non-resident return with the IRS and the related state tax department every year.

In order to comply with the US filing requirements, Canadian residents must obtain a US Individual Tax Identification Number (“ITIN”) from the IRS. A Form W-7 (Application for IRS ITIN) should be prepared, and a certified copy of their Canadian identification (generally their passport) must be attached to the application form. The IRS requires that a US acceptance agent certify the copy of the Canadian passport, so it is necessary to ensure that an appropriately recognized acceptance agent completes the certification.

In addition to the above, the US Department of Commerce requires all foreign investors who make direct investments in the US to report to the Bureau of Economic Analysis (“BEA”) within 45 days after the transaction date. Failure to report a transaction may lead to a penalty between US\$2,500 and US\$25,000. Canadian residents who have acquired US real properties are subject to the reporting requirements of the BEA, regardless of whether the property is used for rental purposes or for personal use.

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“If you want to be found, stand where the seeker seeks.”

Sidney Lanier
Poet & Musician

Special points of interest:

- **Maximum RRSP limits:**
2008 - \$20,000
2009 - \$21,000

Must have salary and/or net self-employed income of \$116,667 for 2008 to reach the maximum 2009 RRSP limit.

- **Tax-free savings accounts coming January 1, 2009**
- **Personal tax instalments:**
- December 15, 2008
- March 15, 2009
Consider paying online!

TAX-FREE SAVINGS ACCOUNTS – COMING JANUARY 1, 2009

Author: Tony Sauer, Consultant, BBA, MBA, MRSB Chartered Accountants and Management Consultants

Starting January 1, 2009, Canadian residents who are 18 years of age or older will be able to earn tax-free investment income within a tax-free savings account (TFSA) during their lifetime. In essence, a TFSA is the mirror image of the RRSP. Both let you accumulate savings tax-free. At contribution time, an RRSP gives you an up-front tax deduction that a TFSA does not. At withdrawal time, an RRSP (or registered retirement income fund) withdrawal is taxable, while withdrawals from TFSAs are tax free.

A TFSA is ideal if you have a non-registered investment portfolio. It allows you to turn taxable income into tax-free income for life and enables you to maximize your investment growth.

Here are some of the things you should know about TFSAs:

- Canadian residents aged 18 and older are eligible to open a TFSA.
- The TFSA dollar limit is \$5,000 in 2009, and will be indexed to inflation and rounded to the nearest \$500 in later years.
- Unused TFSA contribution room can be carried forward to later years.
- The total of TFSA withdrawals in a calendar year is added to the TFSA contribution room for the next calendar year.
- The income generated in a TFSA, such as investment income and capital gains, is tax-free when earned and even afterwards when it is withdrawn.
- Interest paid or owed on money borrowed to invest in a TFSA is not tax-deductible.
- Neither income earned in your TFSA, nor withdrawals, will affect your eligibility for federal income-tested benefits like the Canada Child Tax Benefit, the Guaranteed Income Supplement, employment insurance benefits, or the age credit, etc.
- Most of the investments eligible for RRSPs are TFSA-eligible as well, including GICs, mutual funds, stocks and bonds, among others.
- Similar to an RRSP, you will be charged by the Canada Revenue Agency (CRA) on over-contributions at a rate of 1% per month on any excess contribution amount.
- The CRA will track your TFSA contribution room. The CRA intends to report this amount to individuals on their Notice of Assessment and through the “My Account” function on their web site.
- You will be able to contribute to a spouse’s TFSA without affecting their contribution room, and the income attribution rules will not apply to income earned within that TFSA.
- TFSA assets can be used as security for a loan.
- TFSAs can only be opened by Canadian residents; however, if you open a TFSA and subsequently become a non-resident, you will be able to maintain your TFSA account and will not be taxed on any earnings or withdrawals in the account. However, you will not be allowed to contribute additional funds and no contribution room will accrue for the years in which you are a non-resident.
- Fees paid for the opening or maintenance of a TFSA are not deductible for income tax purposes.
- Upon your death, there is an option to have your TFSA assets transferred to your surviving spouse or common-law partner without any impact on their existing contribution room. The surviving spouse must designate the transferred amount as an exempt contribution by filing a prescribed form with the CRA within 30 days of the transfer. In addition, to be eligible for this rollover provision, the transfer must be made by the end of the year after the year of death of the deceased spouse.

PAYING YOUR CORPORATE TAXES ONLINE

Author: Erica Mongiat, CA, Ginsberg Gluzman Fage & Levitz, LLP

Paying your corporate taxes electronically using online banking will save you time and money, and will help the environment as well!

Why?

One of the biggest advantages of paying your taxes online is improved accuracy. When the Canada Revenue Agency (CRA) receives a cheque, it has to apply it to an account, and many times the payment is posted to the wrong account or the wrong year. The mistake is often not discovered until the following month (s) when you receive your statement, and then it may take considerable time to correct the error. The error can happen for many reasons: the cheque may not have included all of the necessary information, such as account number and year the payment was for; the information may not have been legible; or it could have been human error by a CRA employee.

It doesn't matter why the error occurred; the cost and time involved in correcting it is still the same. It requires a number of phone calls to find out where the payment went, have the payment reallocated, and also have any interest and/or penalties reversed. By paying your corporate taxes online, **you** are in **control**. You choose the CRA account and the year the payment applies to.

Time is not the only savings; electronic payments may be more economical than writing and cashing a cheque. Banks often have a package that includes online payments in their monthly service charges. Writing cheques is becoming more expensive, as banks, like everyone else, are trying to become paperless.

The CRA, in conjunction with all the major banks, has set up a system so that online payments for corporate taxes, GST/HST, and payroll liabilities can be processed easily. The CRA has taken security measures to ensure the security and confidentiality of your information and money. For more information on the specific security features offered, visit www.cra.gc.ca.

How?

The first step is to set up a CRA online banking account. The process may vary, depending on the bank; but, generally, you would log onto your bank account and select the option under "On-line Payments" to set up CRA payments. Once you have selected it, it will bring you to a website that the CRA has established to administer online payments. You will then be asked to fill in your CRA business number, the type of accounts (i.e., corporate, GST/HST and/or payroll) you may have, and the year-end date. You will only have to set this up once.

You are now ready to make payments. To make a payment, log onto online banking, just as you did above, choose "CRA Tax Payments and Filings" (this will bring you to the CRA website), then choose "Make a Payment" (this will open a screen where you will indicate the tax account to pay and the date/year the payment should be applied to).

Another advantage of online banking is that you can set up future payments so that they will occur automatically. This feature can be useful for making your corporate monthly/quarterly instalments. You won't have to remember to do it, since you can prearrange to have your taxes paid automatically on the dates you decide.

You can view the transaction history for each of your accounts, which will list all the payments you have made and the payment dates. Each transaction has a unique identification number that will allow you to trace any payment.

It's that simple.

CANADA REVENUE AGENCY PERSONAL ELECTRONIC PAYMENT OPTIONS

Author: Heidi Dawson, Tax Technician, Ginsberg Gluzman Fage & Levitz, LLP

There are a couple of better options to get your money to the CRA that can make life easier for you. No more writing out umpteen cheques, worrying if they got there on time, or getting charged late interest penalties.

1. On-line Banking:

You can pay amounts owing to the CRA online, just as you would pay any other bill. There are three options when paying the CRA from your online bank account (wording may differ, depending on the bank):

- CRA 2007 Personal Tax Return
- CRA 2008 Personal Instalment
- CRA Personal Past Amount Owing

2. CRA's My Account - Pre-authorized Payment Plan:

Visit the CRA's website: <http://www.cra-arc.gc.ca/esrvc-srvce/tx/ndvdl/myccnt/menu-eng.html> to register with CRA epass and set up a pre-authorized payment plan for instalments. You can also fill out the Pre-authorized Payment Plan form and mail it to the CRA. This form can be found at: <http://www.cra-arc.gc.ca/E/pbg/tf/t1162a-1/README.html>.

NEW AMENDMENTS TO THE BANKRUPTCY AND INSOLVENCY ACT

Author: Nathalie Rancourt, LL.B, CIRP, Trustee, Ginsberg Gingras & Associates Inc.

On July 7, 2008, provisions came into force regarding the exemption of registered retirement savings plans (RRSPs) from seizure when bankruptcy is declared.

In order to harmonize the processing of RRSPs under the various provincial laws and the *Bankruptcy and Insolvency Act*, RRSPs (or registered retirement income funds), as defined in the *Income Tax Act*, will be exempt from seizure, except for RRSP contributions made in the 12 months prior to the bankruptcy, or during a longer period as defined by the courts. Moreover, a provincial act that completely protects the RRSPs has precedence.

Please feel free to contact the author, or one of the many trustees at Ginsberg Gingras & Associates Inc., if you would like further information regarding these new amendments.

Click here for Insolvency and Bankruptcy Services with our affiliate firm Ginsberg Gingras & Associates Inc.

