

IRS to Announce Amnesty for Non-Compliant US Citizens Living in Canada

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- Canadian Finance Minister Jim Flaherty

An IRS spokesman recently indicated that the IRS intends to announce an amnesty whereby certain Americans living in Canada who have inadvertently failed to file US tax returns and comply with other US reporting rules will be able to come forward in exchange for a waiver of potentially severe penalties. According to US Ambassador to Canada David Jacobson, details of the prospective amnesty are expected within a couple of weeks. This announcement comes as welcome relief to the many non-compliant US taxpayers in Canada who otherwise might have faced draconian penalties. “It is a victory for Canadians and a testament to our positive working relationship with our American neighbours,” Canadian Finance Minister Jim Flaherty was quoted as saying.

There are more than 1 million US citizens living in Canada, the vast majority of whom are honest, hard-working and law-abiding citizens who pay their taxes every year ... to Canada. Unfortunately, many of those same people mistakenly fail to file their US tax returns with much the same regularity. Their rationale, flawed but honest, is that they owe no US tax as a result of a credit given for the generally higher taxes they pay in Canada. While it is true that in many cases there would be no additional tax to pay, this fact alone does not absolve them of their obligation to file US tax returns and other reporting forms, most importantly the Form TD F 90-22.1 - Report of Foreign Bank and Financial Accounts, or “FBAR.”

Previous efforts by the IRS to reach non-compliant US citizens living or working abroad have proved to be enormously successful. The IRS reported that the 2009 Offshore Voluntary Disclosure Program (“OVDP”) netted almost 15,000 taxpayers and thousands more came forward under the Offshore Voluntary Disclosure Initiative (“OVDI”) earlier this year. Both the OVDP and OVDI offered amnesty from criminal prosecution for taxpayers who voluntarily came forward but required payment of enormous penalties. The resulting media frenzy in Canada made non-compliant Americans aware of their obligations, but left them with little recourse. As both the OVDP and OVDI were designed to capture tax evaders, the programs generally offered unfavorable terms to those who actually paid taxes in their resident country. Faced with the alternatives of filing delinquent returns and paying severe penalties or not doing so and risking severe penalties, many Americans in Canada have done nothing. Their approach was finally validated when comments by Ambassador Jacobson were published in the *Globe and Mail* on October 18, urging Americans in Canada to “sit tight.”

While the terms of the amnesty have not been made public, an article in the *Globe and Mail* on December 2, indicates that the terms may include a waiver of penalties for failure to file tax returns for those who owed no tax, a waiver of penalties for failure to file FBARs with reasonable cause and a refund of certain penalties paid by those Americans in Canada who did participate in the OVDP or OVDI. Nonetheless, many important questions remain: how many years will be covered by the amnesty, how the amnesty will treat tax elections that generally require timely filed returns (most relevant of which is the election to defer taxation of certain Canadian retirement accounts), whether the amnesty will include a waiver of penalties for failing to file other informational forms, and whether the amnesty will be available to those who do owe some US tax.

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