



# So, You Have U.S. Citizen as a Client Who Is a Resident of Canada, eh?

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# Roadmap of Session

- Part 1: Opening Remarks
- Part 2: U.S. Taxes On Citizenship Basis
- Part 3: Who is a U.S. Citizen?
- Part 4: Canadian Tax Obligations
- Part 5: Canadian Estate Planning Considerations
- Part 6: US Citizenship Renunciation/LPR Relinquishment
- Part 7: Travel to the U.S. Post-Renunciation



## Part 2: US Taxes On Citizenship Basis

### Income Tax Obligations of U.S. Persons Living Outside the U.S.

- U.S. income tax is imposed based on *both* residence and citizenship.
- All U.S. persons with yearly worldwide income above a low threshold (\$12,550 USD in 2021 for single filers) must annually file a U.S. income tax return, IRS Form 1040, regardless of country of residence.
- U.S. estate and gift tax also imposed on U.S. citizens regardless of country of residence.
- Much easier for the IRS to locate non-compliant individuals after 2010 *Foreign Account Tax Compliance Act* (“**FATCA**”).
- There may be relief available for noncompliant taxpayers through certain amnesty programs

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## Part 2: US Taxes On Citizenship Basis

### Who is a U.S. resident for tax purposes?

- U.S. Lawful Permanent Residents (even if card has expired or not formally relinquished).
- Those who meet the “substantial presence” test.
- Taxpayers who otherwise would be substantially present may claim a closer connection to another country if there were in the U.S. for fewer than 183 days in the current year.
- For taxpayers present in the U.S. for 183 days or more in the current year, they may take a treaty tie-breaker position to be non-resident for U.S. tax purposes.



## Part 2: U.S. Taxes On Citizenship Basis

### Information Reporting Obligations/U.S. Persons Living Outside the U.S.

- All US. persons with ownership of or signing authority for \$10,000+ USD held in any combination of non-U financial accounts must annually file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (“**FBAR**”).
  - Penalties for failure to file of \$10,000 USD per year
- Other commonly required U.S. information reporting forms, most with \$10,000 USD per year penalty, include: Forms 3520 and 3520-A, Form 8621, Form 8938, Form 5471, and Form 8865.



## Part 2: U.S. Taxes On Citizenship Basis

### Non-residents Getting Caught in the U.S. Tax Net

- Receiving U.S.-sourced income.
  - Wages.
  - Effectively Connected Income (“**ECI**”) – trade or business income.
  - Renting out US real estate.
    - A generally preferable election can be made by nonresidents to treat this rental income as ECI.
  - Sale of U.S. real property.
  - Certain types of income (FDAP) have U.S. tax withheld, but don’t typically create a filing obligation.



## Part 3: Who is a U.S. citizen?

### Non-residents Getting Caught in the U.S. Tax Net

- Born in the U.S. or obtained U.S. citizenship through naturalization.
- Born outside the U.S. to two U.S. citizen parents and one parent resided in U.S. at some time in his/her life.
- If born abroad to one U.S. citizen and one foreign citizen, may be considered a U.S. citizen if individual meets the following requirements:
  - One parent was a U.S. citizen when individual was born;
  - U.S. citizen parent lived at least five years in the U.S. before individual was born; and
  - U.S. citizen parent lived in the U.S. for at least two of those five years following his/her fourteenth birthday.





## Part 4: Canadian Tax Obligations

### Your U.S. clients living in Canada may want to think about:

- Confirming where they are actually resident.
  - Consider the so called “tie-breaker” rules under the Treaty.
  - If residency is ambiguous, consider how more certainty may be achieved.
- If they are a Canadian resident, they will pay tax on their worldwide income in Canada and need to file a Canadian return.
  - For individuals, generally foreign tax credits will apply to prevent any substantial double taxation, but there are some exceptions.
- Determination of when they departed the U.S. and become Canadian resident.



# Part 4: Canadian Tax Obligations

## Your U.S. clients living in Canada may want to think about:

- Canada – U.S. Treaty: Things to consider:
  - Designed to prevent double tax, but . . .
  - Article XXVI – not a panacea.
- Some U.S. investments travel well, some less so.
  - LLCs, LLPs and LLLPs.
  - Consider the PFIC, CFC and GILTI rules.
- Some common U.S. tax planning doesn't travel well:
  - Common concerns with Trusts.
  - Holding vacation properties in US corporations.
  - Some types of compensation travel well some don't (Options, RSUs, DSUs, etc.).
- Some U.S. pensions travel well, some less so.



## Part 5: Estate Planning Considerations

- Get expert U.S. advice.
- Issues:
  - Insurance/ILIT.
  - Minor U.S. beneficiaries of a Canadian Trust.
  - Treatment of Trusts.
  - U.S. assets to Canadian Beneficiaries or US0 Beneficiaries.
  - Estate Administration.
  - Distribution of assets to the U.S.



## Part 6: US Citizenship Renunciation/LPR Relinquishment

- Constitutional right to renounce citizenship, but renouncers are potentially subject to “exit tax” upon renunciation and tax on future gifts/bequests to other U.S. individuals.
- Exit tax is deemed disposition of renouncer’s worldwide assets (similar to Canada’s departure tax).
- Exit tax applies if an individual violates one of three tests and becomes a “covered expatriate”:
  - Net worth in excess of \$2 million USD at time of renunciation (not inflation-adjusted);
  - Average U.S. federal income tax paid for five years preceding renunciation of \$171,000 USD (2020 number); or
  - Failure to certify compliance with U.S. tax filing obligations for five years preceding renunciation.



## Part 6: U.S. Citizenship Renunciation/LPR Relinquishment

- Exemption from net worth and tax liability tests for individuals who were born dual citizens of the U.S. and current country or residence, assuming no significant U.S. presence in 10 of 15 years ending in renunciation.
- Renunciation requires interview at U.S. embassy or consulate.
- If not done properly, can result in individual being barred from entering the U.S.
- Previous potentially expatriating acts only effective for tax purposes on the date notice provided to the U.S. government
- Similar rules for “long-term” U.S. Lawful Permanent Residents (“Green Card holder”).

# Part 7: Travel to the U.S. Post-Renunciation

- Post-renunciation travel to the U.S. is like any other non-USC and traveler must meet all legal requirements for admission (admission in discretion of U.S. Customs and Border Protection).
- If entering as a visitor (B-1/B-2), traveler will need a B-1/B-2 visa unless can travel under Visa Waiver Program or hold Canadian citizenship.
- If entering the U.S. to oversee business interests or to perform “work,” traveler must obtain appropriate work-authorized visa or status.
- Any criminal background issues should be discussed with U.S. immigration lawyer prior to renunciation.





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