

Individual retirement accounts—distributions—U.S.-Canada tax convention.

1. Purpose

This revenue procedure provides guidance for applying Article XVIII(7) of the United States-Canada Income Tax Convention, signed on September 26, 1980, as amended by Protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, and July 29, 1997 (the "Convention"). It supersedes Revenue Procedure 89-45, 1989-2 C.B. 596, which provided guidance for applying former Article XXIX(5) of the Convention. Article XVIII(7), which was added to the Convention by the Protocol that was signed on March 17, 1995, expanded and replaced Article XXIX(5).

2. Background

.01 Domestic Rules. Under the domestic law of the United States, an individual who is a citizen or resident of the United States and a beneficiary of a Canadian retirement plan will be subject to current United States income taxation on income accrued in the plan even though the income is not currently distributed to the beneficiary, unless the plan is an employees' trust within the meaning of section 402(b) of the Internal Revenue Code and the individual is not a highly compensated employee subject to the rule of section 402(b)(4)(A). However, if the plan satisfies certain requirements under the domestic law of Canada, the income accrued in the plan will not be subject to Canadian income taxation until it is actually distributed from the plan (or from another plan to which it is transferred in a tax-free rollover). Thus, there may be a mismatch between the timing of the United States tax and the Canadian tax, with the result that the individual may be subject to double taxation for which no relief is available under Article XXIV of the Convention.

.02 Former Article XXIX(5). Former Article XXIX(5) of the Convention addressed the timing mismatch in respect of a U.S. citizen who was a resident of Canada and a beneficiary of a Canadian registered retirement savings plan ("RRSP") by providing that such a U.S. citizen could elect, under rules established by the competent authority of the United States, to defer United States taxation with respect to any income accrued in the RRSP but not distributed by the RRSP, until such time as a distribution was made from such RRSP or any plan substituted therefor. The rules for making an election under former Article XXIX(5) were set forth in Revenue Procedure 89-45. Additional guidance was set forth in Revenue Ruling 89-95, 1989-2 C.B. 131, which provided that if the proceeds of a RRSP were rolled over to a Canadian registered retirement income fund ("RRIF"), the RRIF would be treated as a plan substituted for the RRSP, with the result that both the proceeds that were rolled over from the RRSP and the income subsequently accrued in the RRIF could qualify for deferral under former Article XXIX(5).

.03 Article XVIII(7). Article XVIII(7) of the Convention now provides, effective for taxable years beginning on or after January 1, 1996, that a natural person who is a citizen or resident of either the United States or Canada and a beneficiary of a trust, company, organization, or other arrangement that is a resident of the other country that is generally exempt from income taxation in the other country (a “plan”), and is operated exclusively to provide pension, retirement, or employee benefits, may elect to defer taxation in the person's country of citizenship or residence, under rules established by the competent authority of that country, with respect to any income accrued in the plan but not distributed by the plan, until such time as and to the extent that a distribution is made from the plan or any plan substituted therefor.

3. Scope

This revenue procedure applies to an individual who is a citizen or resident of the United States and a beneficiary of one of the following Canadian plans (an “eligible plan”): a RRSP, a RRIF, a registered pension plan, or a deferred profit sharing plan. This revenue procedure applies regardless of whether the individual was a resident of Canada at the time contributions were made to the eligible plan. For purposes of this revenue procedure, a “beneficiary” of an eligible plan is an individual who would, in the absence of an election under Article XVIII(7) of the Convention, be subject to current United States income taxation on income accrued in the plan. The revenue procedure applies only to income accrued in an eligible plan and not to any contributions to the plan.

4. Election Procedures

.01 In General. If income accruing in an eligible plan would otherwise be subject to current United States income taxation, a beneficiary of the eligible plan may elect for the beneficiary's taxable year (the “current year”) and all subsequent years to defer United States income tax on the beneficiary's share of income accrued in the plan until that income is distributed to the beneficiary. Beneficiaries shall make the election by attaching to their timely filed (including extensions) United States federal income tax return for the current year, a statement that includes the following information:

- (i) A statement that the taxpayer is claiming the benefit of Article XVIII(7) of the Convention under this revenue procedure;
- (ii) The name of the trustee of the plan and the plan account number, if any; and
- (iii) The balance in the plan at the beginning of the current year.

.02 Reporting. Beneficiaries shall attach a copy of the statement required in paragraph 4.01 to their timely filed (including extensions) United States federal income tax return for each year subsequent to the current year, until the tax year in which a final distribution is made from the plan (or from any transferee plan within the meaning of paragraph 4.03).

.03 Rollovers. If an eligible plan for which an election has been made pursuant to paragraph 4.01 (“transferor plan”) is rolled over to another eligible plan (“transferee

plan”) in a transfer that does not result in the current imposition of Canadian income tax (e.g., a transfer such as that described in Revenue Ruling 89-95), the previous election is deemed to carry over to the transferee plan.

.04 Transferee Plan Reporting. In the case of a transferee plan, in addition to a copy of the statement required for the transferor plan under paragraph 4.02, in the tax year of the transfer (“transfer year”), beneficiaries shall attach an additional statement that includes the following information:

- (i) A statement that the taxpayer is claiming the benefit of Article XVIII(7) of the Convention under this revenue procedure;
- (ii) The name of the trustee of the transferee plan and the plan account number, if any;
- (iii) The name of the trustee of the transferor plan and the plan account number, if any;
- (iv) The total amount of income accrued in the transferor plan on which United States income tax was deferred under either Article XVIII(7) or former Article XXIX(5); and
- (v) The initial balance in the transferee plan.

Beneficiaries of a transferee plan shall attach a copy of the statement required in paragraph 4.02 (transferor plan) and a copy of the statement required in this paragraph 4.04 (transferee plan) to their timely filed (including extensions) United States federal income tax return for each year subsequent to the transfer year, until the tax year in which a final distribution is made from the transferee plan.

.05 Multiple Plans. An individual who is a beneficiary of more than one eligible plan must make a separate election and file a separate statement for each eligible plan.

.06 Extension Of Time For Making Elections. An extension of time for making an election under paragraph 4.01 may be available under the procedures applicable under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

.07 Prospective Change of Election. An election once made cannot be revoked except with the consent of the Commissioner.

5. Distributions From An Eligible Plan

Distributions received by a beneficiary from an eligible plan shall be included in gross income by the beneficiary in the manner provided under section 72 of the Internal Revenue Code, subject to any other applicable provision of the Convention.

6. Effect On Other Documents

This revenue procedure supersedes Revenue Procedure 89-45, 1989-2 C.B. 596.

7. Effective Date

This revenue procedure is effective for taxable years ending on or after December 31, 2001. For taxable years ending before such date and beginning on or after January 1, 1996, taxpayers may elect to apply either this revenue procedure or Revenue Procedure 89-45.

8. Paperwork Reduction Act

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545 -1773.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 4. This information is required to enable taxpayers to claim a benefit under the Convention. This information will be used to compute and collect the right amount of tax. The likely respondents are individuals.

The estimated total annual reporting burden is 10,000 hours. The estimated annual burden per respondent varies from 0.1 hour to 1 hour, depending on individual circumstances, with an estimated average of 0.5. The estimated number of respondents is 20,000.

The estimated annual frequency of responses is once per respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Drafting Information

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