

Rev. Proc. 2014–55

SECTION 1. PURPOSE

This revenue procedure provides guidance for applying paragraph 7 of Article XVIII (Pensions and Annuities) of the Convention between the United States and Canada with respect to Taxes on Income and on Capital, signed on September 26, 1980, as amended by Protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and September 21, 2007 (the “Convention”). This revenue procedure supersedes Revenue Procedure 2002–23, 2002–1 C.B. 744, and Notice 2003–75, 2003–2 C.B. 1204. This revenue procedure also provides guidance concerning information reporting with respect to interests in certain Canadian retirement plans.

SECTION 2. BACKGROUND

.01 *Domestic Rules.* In general, 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 U.S. 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 (“Code”) and the individual is not a highly compensated employee subject to the rule of section 402(b)(4)(A). The individual will not be subject to Canadian income taxation with respect to the accrued income, however, until it is actually distributed from the plan (or from another Canadian retirement plan to which it is transferred in a tax-free rollover), provided the plan satisfies certain criteria under the domestic law of Canada. Due to this mismatch between the timing of the U.S. tax and the Canadian tax, instances of double taxation may arise for which no relief is available under U.S. domestic law.

.02 *Paragraph 7 of Article XVIII of the Convention.* Article XVIII(7), which was added to the Convention by the Protocol signed on

March 17, 1995 (“1995 Protocol”), addressed this timing mismatch and provided that a natural person who is a citizen or resident of the United States and who is a beneficiary of a trust, company, organization or other arrangement that is a resident of Canada, generally exempt from income taxation in Canada and operated exclusively to provide pension, retirement or employee benefits, may elect to defer taxation in the United States, under rules established by the competent authority of the United States, 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. As amended by the Protocol signed on September 21, 2007 (“2007 Protocol”), Article XVIII(7) of the Convention continues to provide a rule with respect to the taxation of a natural person on income accrued in a pension or employee benefit plan in the other Contracting State. Under Article XVIII(7) of the Convention, as amended by the 2007 Protocol, a natural person who is a citizen or resident of the United States and who is a beneficiary of a trust, company, organization or other arrangement that is a resident of Canada, generally exempt from income taxation in Canada and operated exclusively to provide pension or employee benefits, may elect to defer taxation in the United States, subject to rules established by the competent authority of the United States, 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.

.03 *Revenue Procedure 2002–23*. Section 4 of Revenue Procedure 2002–23 sets forth the rules for making an election under Article XVIII(7) of the Convention. Pursuant to those rules, beneficiaries of certain Canadian retirement plans make the election by attaching to their timely filed (including extensions) U.S. Federal income tax return a statement that includes the following information: (i) a statement that the taxpayer is claiming

the benefit of Article XVIII(7) of the Convention; (ii) the name of the trustee of the plan and the plan account number; and (iii) the balance in the plan at the beginning of the taxable year in which the election is being made. Beneficiaries must attach a copy of this statement to their timely filed (including extensions) U.S. Federal income tax return for each subsequent taxable year through the taxable year in which a final distribution is made from the plan (or from any transferee plan within the meaning of section 4.03 of Rev. Proc. 2002-23). Revenue Procedure 2002-23 is effective for taxable years ending on or after December 31, 2001. Section 7 of Revenue Procedure 2002-23 provides that for taxable years ending before such date and beginning on or after January 1, 1996, taxpayers may elect to apply either Revenue Procedure 2002-23 or Revenue Procedure 89-45, 1989-2 C.B. 596 (which was superseded by Revenue Procedure 2002-23).

.04 *Section 6048*. Code section 6048 requires information reporting with respect to contributions to, distributions from, and ownership of certain foreign trusts. Section 6048(a)(3)(B)(ii)(I) provides an exception for contributions to certain foreign compensatory trusts, including a foreign trust that is described in section 402(b). Information reporting under section 6048 is generally required with respect to a U.S. citizen or resident's contributions to, distributions from, and ownership of a Canadian trust for which an election may be made under Article XVIII(7) of the Convention. Persons who are subject to the section 6048 reporting requirements must file Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Foreign Gifts*, or Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*.

.05 *Notices 2003-25 and 2003-57*. Notice 2003-25, 2003-1 C.B. 855, and Notice 2003-57, 2003-2 C.B. 397, addressed the application of section 6048 to certain Canadian retirement plans and stated that the Treasury Department and the Internal

Revenue Service (IRS) were considering the establishment of a simplified reporting regime that would be coordinated with the election procedure described in Revenue Procedure 2002–23.

.06 *Notice 2003–75*. Notice 2003–75, 2003–2 C.B. 1204, describes the simplified reporting regime that the Treasury Department and the IRS developed for U.S. citizens and residents who hold interests in Canadian registered retirement savings plans (“RRSPs”) and registered retirement income funds (“RRIFs”) and the custodians of such plans. Section 2.01 of Notice 2003–75 stated that Treasury and the IRS were designing a new form for beneficiaries to report their interests in an RRSP or an RRIF and that the new form would coordinate the reporting rules with the procedure set forth in section 4 of Revenue Procedure 2002–23 for making the election under Article XVIII (7) of the Convention. Sections 2.02 and 2.03 of Notice 2003–75 provided interim reporting rules to be followed until the new form was available. Section 3 of Notice 2003–75 provides that section 6048 reporting is no longer required with respect to RRSPs and RRIFs that have beneficiaries or annuitants who are subject to the new simplified reporting regime.

.07 *Form 8891*. In 2004, the IRS released Form 8891, *U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans*, for U.S. citizens or residents who hold an interest in an RRSP or an RRIF to report distributions received from their RRSP or RRIF, contributions to their RRSP or RRIF, and undistributed earnings of the RRSP or RRIF. U.S. citizens or residents who have not previously made an election pursuant to Revenue Procedure 2002–23 to defer U.S. income tax on income that has accrued in an RRSP or an RRIF, but that has not been distributed, may make the election to apply Article XVIII(7) on Form 8891.

.08 *Section 6038D and Form 8938*. Section 6038D requires a U.S. citizen or resident who holds any interest in a specified foreign financial asset to attach to that individual's federal income tax return certain information with respect to each such asset if the aggregate value of all such assets exceeds certain thresholds. An individual uses Form 8938, *Statement of Specified Foreign Financial Assets*, to report the required information. An individual who timely files Form 8891 with respect to an RRSP or an RRIF is currently exempt from the reporting obligations imposed by section 6038D with respect to that plan, provided the individual reports on Form 8938 the filing of the Form 8891 with respect to the RRSP or RRIF. See Treas. Reg. § 1.6038D-7T(a)(1).

SECTION 3. SCOPE

For purposes of this revenue procedure, the term "Canadian retirement plan" means any trust, company, organization, or other arrangement that is within the scope of Article XVIII(7) of the Convention. The term "beneficiary" means any individual who holds an interest in a Canadian retirement plan or plans and who would be subject to current U.S. income taxation under the domestic law of the United States on undistributed income accrued in such plan or plans. The term "annuitant" means an individual who is designated pursuant to a Canadian retirement plan as an annuitant and is not also a beneficiary as defined above.

This revenue procedure replaces the existing procedures under which a beneficiary may make an election under Article XVIII(7) of the Convention with respect to a Canadian retirement plan. Any election made pursuant to this revenue procedure is made on a plan-by-plan basis. This revenue procedure applies regardless of whether the beneficiary was a resident of Canada at the time contributions were made to the plan.

As described in section 4 of this revenue procedure, there are two different procedures for taxpayers to make an election to apply

Article XVIII(7) of the Convention. Under the first method, a taxpayer elects to apply Article XVIII(7) of the Convention by reporting on a U.S. federal income tax return income earned with respect to a Canadian retirement plan on a distribution basis – that is, by recognizing income with respect to a Canadian retirement plan only upon receiving distributions from the plan. This method is only available to certain eligible individuals described in section 4.01 of this revenue procedure. Under the second method, a taxpayer that is not described in section 4.01 of this revenue procedure (i.e., a taxpayer that has reported on a U.S. federal income tax return the undistributed income earned with respect to a Canadian retirement plan) must request consent of the Commissioner to make an election to apply Article XVIII(7) of the Convention. See section 4.04 of this revenue procedure. An election to apply Article XVIII(7) of the Convention may not be revoked except with the consent of the Commissioner.

Sections 5 and 6 of this revenue procedure apply to any beneficiary or annuitant of a Canadian retirement plan and address information reporting with respect to such a plan and taxation of distributions from such a plan, respectively. Section 7 of this revenue procedure provides an example of how an election described under section 4.02 of this revenue procedure is applied.

SECTION 4. PROCEDURES FOR MAKING THE ELECTION

.01 Eligible Individuals. This section applies only to eligible individuals and only to income accrued in a Canadian retirement plan and not to any contributions to the plan. An “eligible individual” is a beneficiary of a Canadian retirement plan who:

- A) Is or at any time was a U.S. citizen or resident (within the meaning of section 7701(b)(1)(A)) while a beneficiary of the plan;
- B) Has satisfied any requirement for filing a U.S. Federal income tax return for each taxable year during which the individual was a U.S. citizen or resident;

C) Has not reported as gross income on a U.S. Federal income tax return the earnings that accrued in, but were not distributed by, the plan during any taxable year in which the individual was a U.S. citizen or resident; and

D) Has reported any and all distributions received from the plan as if the individual had made an election under Article XVIII(7) of the Convention for all years during which the individual was a U.S. citizen or resident.

.02 Election Procedure for an Eligible Individual. An eligible individual who did not previously make an election under Article XVIII(7) of the Convention to defer current U.S. income taxation on the undistributed income of a Canadian retirement plan will be treated as having made the election in the first year in which the individual would have been entitled to elect the benefits under Article XVIII(7) with respect to the plan. Consequently, such eligible individual will not be required to make the election for that first year or for any subsequent years either on Form 8891 or under the procedures set forth in Revenue Procedure 2002–23. If an eligible individual has an interest in more than one Canadian retirement plan, this paragraph 4.02 applies separately to each such plan. In accordance with section 6 of this revenue procedure, eligible individuals must report on their U.S. Federal income tax return any income that has accrued in the plan when it is distributed.

.03 Effect of the Election. Once an election is made pursuant to section 4.02 of this revenue procedure with respect to a Canadian retirement plan, that election is in effect for all subsequent taxable years through the year in which a final distribution is made from the plan, unless the election is revoked with the consent of the Commissioner.

.04 Election Procedure for an Individual Other than an Eligible Individual. Beneficiaries who have reported on their U.S. Federal

income tax return undistributed income that has accrued in a Canadian retirement plan during a taxable year are not “eligible individuals” within the meaning of section 4.01 of this revenue procedure. Consequently, such beneficiaries are not eligible to apply section 4.02 of this revenue procedure to make an election under Article XVIII(7) of the Convention and will remain currently taxable on the undistributed income. If such a beneficiary desires to make an Article XVIII(7) election with respect to a Canadian retirement plan, the beneficiary must seek the consent of the Commissioner.

.05 Effect on Prior Elections. A beneficiary who has previously made an Article XVIII(7) election with respect to a Canadian plan on Form 8891 or under the procedures set forth in Revenue Procedure 2002–23 (or an eligible individual who is treated as having made the election pursuant to section 4.02 of this revenue procedure) is not required to file Form 8891 or a similar statement for taxable years ending after December 31, 2012. A beneficiary (or eligible individual) who wants to revoke a prior election must seek the consent of the Commissioner.

.06 Effect on Prior Letter Rulings. Pursuant to section 11.04 of Revenue Procedure 2014–1, 2014–1 I.R.B. 1, any letter ruling issued with respect to a late election for a Canadian retirement plan under Article XVIII(7) of the Convention is hereby modified to eliminate the requirement to file Form 8891 with respect to such plan.

SECTION 5. INFORMATION REPORTING WITH RESPECT TO CANADIAN RETIREMENT PLANS

.01 Reporting Rules for a Beneficiary or Annuitant of a Canadian Retirement Plan. Subject to any future guidance that may be issued by the Treasury Department and the IRS, beneficiaries (regardless of whether they are “eligible individuals” within the meaning of section 4.01 of this revenue procedure) and annuitants are not required to report contributions to, distributions

from, and ownership of a Canadian retirement plan under the simplified reporting regime established by Notice 2003–75 (Form 8891) or pursuant to the reporting obligations imposed by section 6048 (Form 3520). In addition, custodians are not required to file Form 3520–A with respect to a Canadian retirement plan. This revenue procedure does not, however, affect any reporting obligations that a beneficiary or annuitant of a Canadian retirement plan may have under section 6038D or under any other provision of U.S. law, including the requirement to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), imposed by 31 U.S.C. § 5314 and the regulations thereunder.

.02 Effect on Form 8891. This revenue procedure obsoletes Form 8891 as of December 31, 2014. Beneficiaries who have a valid extension in effect under section 6081 for taxable year 2013 and who have not filed a U.S. income tax return for taxable year 2013 by the date this revenue procedure is published in the Internal Revenue Bulletin may wish to attach Form 8891 to such return in order to satisfy the requirements of Treas. Reg. § 1.6038D–7T(a) (1). See section 2.08 above. Even though such beneficiaries are not required to file Form 8891 pursuant to the relief set forth in section 5.01, they may do so in order to report on Form 8938 that they have filed Form 8891 with respect to an RRSP or RRIF.

SECTION 6. DISTRIBUTIONS FROM CANADIAN RETIREMENT PLANS

Distributions received by any beneficiary or annuitant from a Canadian retirement plan, including the portion thereof that constitutes income that has accrued in the plan and has not previously been taxed in the United States, must be included in gross income by the beneficiary or annuitant in the manner provided under section 72, subject to any applicable provision of the Convention.

SECTION 7. EXAMPLE

Example: Taxpayer is a U.S. citizen and a resident of Canada who established an RRSP in 2004 and filed Form 1040, *U.S. Individual Income Tax Return*, for 2004 and all subsequent taxable years. Taxpayer did not attach to any Form 1040 a Form 8891 with respect to the RRSP and did not make an election under the procedures set forth in Revenue Procedure 2002–23. Taxpayer also did not include as gross income on any Form 1040 any earnings that accrued in the RRSP during 2004 and subsequent taxable years. Taxpayer has not received any distributions from the RRSP. Pursuant to section 4.01 of this revenue procedure, Taxpayer is an eligible individual and, pursuant to section 4.02 of this revenue procedure, will be treated as having made an election under Article XVIII(7) of the Convention to defer current U.S. income taxation on the undistributed income for 2004 and all subsequent taxable years through the taxable year in which there is a final distribution from the RRSP. When Taxpayer receives distributions from the RRSP, the entire amount of each distribution will be subject to U.S. Federal income tax. In addition, Taxpayer is not required to report his interest in the RRSP on Form 8891, Form 3520, or Form 3520–A. However, Taxpayer may need to report his interest in the RRSP under section 6038D or under another provision of U.S. law, including the requirement to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), imposed by 31 U.S.C. § 5314 and the regulations thereunder.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2002–23, 2002–1 C.B. 744, and Notice 2003–75, 2003–2 C.B. 1204, are superseded. Form 8891 is obsolete as of December 31, 2014.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning on or after January 1, 1996, except that section 5.01 is effective for taxable years beginning on or after January 1, 2003, and section 5.02 is effective as of the date this revenue procedure is

published in the Internal Revenue Bulletin. Form 8891 is obsolete as of December 31, 2014.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Gregory T. Armstrong, formerly of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Rosy Lor at (202) 317-6933 (not a toll free number).