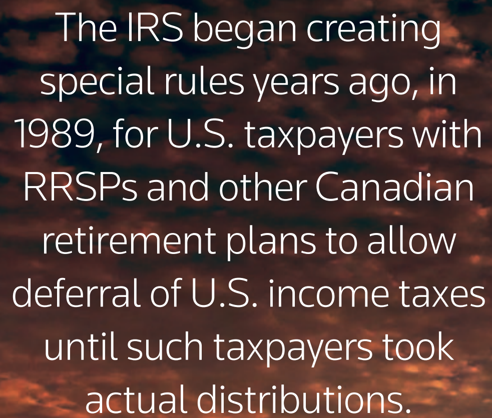

The IRS began creating special rules years ago, in 1989, for U.S. taxpayers with RRSPs and other Canadian retirement plans to allow deferral of U.S. income taxes until such taxpayers took actual distributions.

Retirement Plans and Accounts Evolving Special Rules and Enduring IRS Problems in

Canada

HALE E. SHEPPARD, ESQ.

Taxpayers with Canadian retirement plans have long faced tricky issues when it comes to U.S. income taxes and information-reporting duties. As the situation evolved over the years, the Internal Revenue Service ("IRS") issued several pieces of guidance, beginning in 1989 and ending in 2014. This guidance largely facilitated the tax-deferral election process and decreased disclosure obligations for Canadian registered retirement plans ("RRSPs") and similar instruments. The IRS ultimately announced that it would grant certain individuals automatic tax-deferral elections. Everything has been copacetic for U.S. taxpayers with Canadian retirement plans since that point, right? Wrong. The IRS continues to challenge taxpayers who unintentionally fall into non-compliance.

This article explains how taxpayers can find themselves in this mess, the normal tax and reporting requirements for taxpayers with worldwide reach, special rules applicable to RRSPs and other Canadian plans, the evolution of solutions offered by the IRS, and a recent case highlighting all the key issues, *Dengin v. Commissioner.*[1]

Setting the Scene

How do taxpayers get into a mess with the IRS with respect to RRSPs? Here are two typical scenarios.

Marty Mapleleaf, a Canadian by birth, decides to relocate to the United States. Marty becomes a U.S. resident for tax purposes, either by obtaining a "green card" or by satisfying the "substantial presence" test. While living and working in Canada, years before departing for the United States, Marty opened and made contributions to an RRSP. He maintained the RRSP after moving to the United States. Marty was a complete novice in terms of the U.S. tax system, but he fully intended to meet his obligations. Accordingly, he diligently searched for a U.S. tax professional to prepare his annual Forms 1040 (U.S. Individual Income Tax Return) and to provide tax-compliance advice. Marty retained Ace Accountant, whom he believed was qualified. Marty provided Ace with all his tax-related documents each year, including those related to the RRSP. Ace had an accounting degree and many years of practical experience, but he had little knowledge about international tax issues. Therefore, despite his awareness of the RRSP, Ace did not identify any special U.S. requirements related to it. Believing that the RRSP should simply be treated like a Section 401(k) retirement plan in the United States, Ace did not report the accrued-yet-undistributed income from the RRSP on Marty's annual Forms 1040, did not tell Marty that he needed to make a tax-deferral election, and did not analyze whether Marty was required to submit any international information returns with the IRS disclosing the RRSP.

Another common situation involves Eleanor Eagle, a U.S. citizen by birth, who moves to Canada at a young age, becomes a Canadian citizen, studies, works hard, prospers, and responsibly saves for her retirement in Canada by opening and contributing to an RRSP. Eleanor has had no contact with the United States since childhood, and she certainly has never worked or invested there. Consequently, she is oblivious to any U.S. tax or information-reporting duties that might pertain to her, such that she never raises the matter with her Canadian accountant. She maintains full tax compliance in her adopted country, Canada, and goes about her life unaware of potential perils with the IRS triggered solely by her being born in the United States.

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Worldwide Duties and Downfalls

Generally, U.S. persons, including U.S. citizens and U.S. residents, are subject to federal income tax on *all* income derived, regardless of where the income originates.[2] In other words, U.S. persons face a system of worldwide taxation, requiring them to declare to the IRS on Form 1040 all income, whether it was earned, obtained, received or accrued in the United States or a foreign country. Individual taxpayers with foreign involvement ordinarily have several information-reporting duties, too. A few of these are featured below.

- They must disclose on Schedule B (Interest and Ordinary Dividends) to

1 *Dengin v. Commissioner*, T.C. Memo 2023-31. This article augments three earlier articles by same author. *See* Hale E. Sheppard, "When Bygones Aren't Bygones: Exploring Tax Solutions for U.S. Persons with Undeclared Canadian Retirement Plans and Accounts," 34(4) *International Tax Journal* 35 (2008); Hale E. Sheppard, "IRS Introduces Two Unique Tax-Compliance Remedies for U.S. Persons with Canadian Retirement Plans and Accounts," 39(1) *International Tax Journal* 11 (2013); and Hale E. Sheppard, "Canadian Retirement Plans: What Does Revenue Procedure 2014-55 Mean for Tax Deferral, Form 8891, Form 8938, and the FBAR?" 41(6) *International Tax Journal* 25 (2016).

2 Section 7701(a)(30)(A); Treas. Reg. § 7701(b)-1; Section 61(a) and Treas. Reg. § 1.61-1(a) both provide that "gross income" generally means "all income from whatever source derived."

Form 1040 the existence and location of foreign accounts;
- They must electronically file a FinCEN Form 114 ("FBAR") to provide more details about foreign accounts;
- They must report foreign financial assets, as this term is broadly defined, on Form 8938 (Statement of Specified Foreign Financial Assets);
- They must file a Form 8833 (Treaty-Based Return Position Disclosure) if they are claiming that the application of a treaty between the United States and another country overrules or modifies normal treatment; and
- Where taxpayers are beneficiaries of RRSPs, they previously had to file a Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) to make a tax-deferral election and provide other relevant data.[3]

Special Rules for Canadian Retirement Instruments

The IRS has been introducing special rules and procedures for several decades that apply only to U.S. persons holding certain Canadian retirement instruments, including RRSPs. Below is an important history lesson for readers.

U.S.-Canada Treaty. The tax treatment of RRSPs *in Canada* is similar to that afforded Section 401(k) plans in the United States; that is, with the goal of encouraging people to save for retirement, certain contributions to, and gains accumulated in, these types of plans generally are not taxed each year. Taxation ordinarily is postponed until the beneficiary reaches a certain age and/or begins withdrawing funds from the plan.[4]

Although beneficiaries of Canadian RRSPs and other retirement plans enjoy tax-deferral benefits *in Canada*, they have not always been so lucky *in the United States.* Until recently, U.S. tax law dictated that an individual who is a U.S. citizen or U.S. resident, as well as a beneficiary of an RRSP, is generally subject to current U.S. taxation on income accrued in such plans, *even though* the income is not actually distributed to the individual.

The harshness of this traditional rule was mitigated by the United States-Canada Income Tax Convention ("Treaty"), which allowed an individual to opt-out of this inconsistent tax treatment.[5] The Treaty provides that an individual who is a U.S. person and a beneficiary of a Canadian trust, company, organization, or other arrangement that is generally exempt from income tax in Canada and that is operated exclusively to provide pension, retirement, or employee benefits *may affirmatively elect* to defer U.S. tax on the accrued-yet-undistributed income from the plan until such income is actually distributed.[6] In other words, the Treaty essentially allows U.S. persons who are beneficiaries of certain Canadian retirement plans, like RRSPs, to unilaterally tell the IRS that they will be treating such plans like Section 401(k) plans.

Revenue Procedure 89-45. The IRS issued a series of documents over the years to provide guidance about Canadian retirement instruments and the Treaty, starting with Rev. Proc. 89-45. In order to make the tax-deferral election under this initial IRS pronouncement, the beneficiary had to attach a "written statement" to his timely-filed Form 1040 for the election year.[7] The statement had to include the name of the trustee of the plan, the account number of the plan, the total amount of earnings from the plan during the year, the total amount of contributions to the plan during the year, and the balance of the plan at the end of the year. Rev. Proc. 89-45 further instructed the beneficiary to attach a similar statement to each of his subsequent Forms 1040, until the year in which a final distribution was made from the Canadian instrument.

Revenue Procedure 2002-23. Rev. Proc. 89-45 was superseded by Rev. Proc. 2002-23 about a dozen years later. This IRS pronouncement was designed to accommodate the expansion of the Treaty (by way of assorted protocols over the years) to cover not only RRSPs, but also other Canadian pension, retirement, and employee-benefit plans.[8] Like its predecessor, Rev. Proc. 2002-23 described a procedure whereby a beneficiary of a Canadian instrument could elect to defer U.S. income tax on his share of the accrued-yet-undistributed income until it was actually distributed to him. The election procedure

3 For a detailed discussion of common international filing requirements, *see* Hale E. Sheppard, "Specified Domestic Entities Must Now File Form 8938: Section 6038D, New Regulations in 2016, and Expanded Foreign Financial Asset Reporting," 42(3) *International Tax Journal* 5 (2016); Hale E. Sheppard, "Canadian Retirement Plans: What Does Revenue Procedure 2014-55 Mean for U.S. Tax Deferral, Form 8891, Form 8938, and the FBAR?" 41(6) *International Tax Journal* 25 (2016); Hale E. Sheppard, "Extended Assessment Periods and International Tax Enforcement: *Rafizadeh v. Commissioner*, Unreported Foreign Assets, and Use of FATCA Weapons," 44(5) *Journal of International Taxation* 25 (2018); Hale E. Sheppard, "IRS Issues New Form 14457 and Instructions regarding Its Comprehensive Voluntary Disclosure Program," 46(4) *International Tax Journal* 41 (2020); and Hale E. Sheppard, "Lessons from an International Tax Dispute: Three Interrelated Cases, in Three Different Proceedings, Generating Three Separate Liabilities, 46(5) *International Tax Journal* 43 (2020).

4 For a more detailed explanation of the tax treatment of RRSPs under both Canadian and U.S. law, *see* R. Kent Weaver, "Pension Reform in Canada: Lessons for the United States," 65 Ohio State Law Journal 45 (2004); Cynthia Blum, "U.S. Income Taxation of Cross-Border Pensions," 31 Florida Tax Review 259 (1996).

5 Convention between the United States of America 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.

6 Treaty, Article XVIII (Pensions and Annuities).

7 Rev. Proc. 89-45, Section 3.01.

8 Rev. Proc. 2002-23, Sections 1 and 3; IRS Notice 96-31.

itself was essentially unchanged; the beneficiary was obligated to file a "written statement" containing details about the Canadian instruments with his timely-filed Form 1040 for the election year and all subsequent years.[9]

Three Notices about Information-Reporting. Next came three IRS Notices describing information-reporting duties related to Canadian RRSPs and similar instruments.

Notice 2003-25 identified additional requirements related to RRSPs. It began by explaining that certain information-reporting duties are applicable to "foreign trusts."[10] These include filing Forms 3520 (Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts) or Forms 3520-A (Annual Information Return of Foreign Trust with a U.S. Owner), which carry large penalties for non-compliance.[11] The IRS acknowledged in Notice 2003-25 that many beneficiaries and custodians of Canadian RRSPs were "unfamiliar" with the foreign trust rules and that many were equally unaware that these Canadian retirement plans would be considered "trusts" for U.S. tax purposes. In light of the widespread ignorance of U.S. tax duties and definitions, the IRS granted an automatic filing extension for Forms 3520 and Forms 3520-A for 2002 until August 15, 2003.

Few taxpayers filed their Forms 3520 or 3520-A by the extended deadline, so the IRS issued Notice 2003-57 just 10 days thereafter. That IRS pronouncement contained "additional relief" for 2002. Notably, Notice 2003-57 provided that if the beneficiary of a Canadian plan made a proper tax-deferral election pursuant to the Treaty and Rev. Proc. 2002-23 and received no actual distributions from the plan during 2002, then he was not obligated to file a Form 3530 or Form 3520-A.[12] In other words, the IRS conceded that making the tax-deferral election, without more, would suffice for 2002.

The IRS changed its tune when it issued Notice 2003-75, introducing a "new simplified reporting regime." Notice 2003-75 announced that the IRS was designing a new form to address Canadian retirement plans. Taxpayers were instructed to comply with some interim rules until the IRS published the promised form.[13] One

of the most interesting aspects of Notice 2003-75 was the IRS's dramatic change of heart. The IRS previously indicated that RRSPs were "foreign trusts," and as such, U.S. beneficiaries had to file annual Forms 3520 and Forms 3520-A. However, in Notice 2003-75, the IRS reversed course entirely, stating that the "new simplified reporting regime" supplied all the information the IRS needed for tax-compliance purposes.[14] Although the IRS repealed the need to file Form 3520 and Form 3520-A for Canadian retirement instruments, it warned that beneficiaries of RRSPs might still be subject to other requirements and penalties.[15]

Form 8891. The IRS issued Form 8891 in 2004, as promised the year before. It could be used by U.S. persons to report contributions to an RRSP, accrued-yet-undistributed income within an RRSP, and actual distributions received from an RRSP. It could also be used to make a tax-deferral election pursuant to the Treaty. A separate Form 8891 for each RRSP had to be completed and attached to the beneficiary's annual Form 1040.[16]

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9 Rev. Proc. 2002-23, Section 4.

10 Section 6048.

11 Section 6677.

12 Notice 2003-57, Section 2.

13 Notice 2003-75, Section 2.

14 Notice 2003-75, Section 3. This change came in the wake of lobbying by various groups, including the American Institute of Certified Public Accountants. *See* "AICPA Comments on Foreign Trust Information Return Form," 2003 Tax Notes Today 124-55 (June 19, 2003).

15 Notice 2003-75, Section 3.

16 Instructions to Form 8891 (Rev. December 2006).

17 Several tax practitioners suggested that it also might have been necessary in the past to file a Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)), but the IRS did not enforce such requirement. *See* Renea M. Glendinning, "Reporting Requirements for Canadian Registered Retirement Savings Plans and Registered Retirement Income Funds," Florida CPA Today, Vol. 20, July/Aug. 2004, pgs. 48-51.

18 31 U.S.C. § 5321(b)(1); Section 6501(c)(8).

19 *See, e.g.*, PLR 9311016, PLR 9507021, PLR 9517044, PLR 9519055, and PLR 9621021.

20 The onerous requirements for filing a PLR request are published in the first revenue procedure of each year. *See, e.g.*, Rev. Proc. 2015-1.

21 Robert B. Stack and Douglas M. Andres, "Expedited Opt-Out Needed for OVDI Participants Who Owe No Tax," 2012 Tax Notes Today 21-12 (Jan. 30, 2012) (stating that "[b]ecause she is worried that requesting retroactive treaty relief through the letter ruling process could be deemed a quiet filing, [the taxpayer] decides to enter the OVDI."); *See also* Robert Goulder, "Quiet Disclosures Get No Love from IRS," 2010 Tax Notes Today 90-1 (May 11, 2010); Marie Sapirie, "Charges Against HSBC Bank Bermuda Client Raise Quiet Disclosure Questions," 201 Tax Notes Today 98-1 (May 20, 2011).

22 IR-2012-65 (June 26, 2012).

23 *Id.*

Evolution of Solutions with the IRS

Taxpayers have used numerous methods over the years to resolve U.S. violations related to RRSPs and other Canadian retirement instruments. Some of these are discussed below.

Ignore the Past, Focus on the Future. Some taxpayers started doing things correctly going forward and simply hoped that the IRS would not discover transgressions of yesteryear. In other words, beginning the year that the taxpayer discovered the unintentional violations related to a Canadian RRSP, he checked the "yes" box on Schedule B of Form 1040 indicating that he had an interest in foreign financial accounts in Canada, enclosed a Form 8938 with the Form 1040, enclosed Forms 8891 with the Form 1040 to make the tax-deferral election, and filed an FBAR.[17]

The primary benefit of this approach was the reduced cost; there would be no professional fees to examine all the tax and financial data for previous years, review the Treaty and related IRS pronouncements, prepare Forms 1040X (Amended U.S. Individual Income Tax Returns), prepare delinquent international information returns for several years, etc.

The most glaring disadvantage with this tactic was that it left the taxpayer vulnerable to intense scrutiny by the IRS. The failure to report on annual Forms 1040 the accrued-yet-undistributed income generated by RRSPs for which a tax-deferral election had not been filed could spur back taxes, penalties on tax underpayments, and interest charges. It could also lead to large sanctions for unfiled information returns, such as the FBAR and Form 8938. To make matters worse, the assessment period was extended in these types of cases.[18]

Request a Private Letter Ruling. Another approach was to have the taxpayer submit a request for a private letter ruling ("PLR") from the IRS. The U.S. person would seek an extension under Treas. Reg. § 301.9100-3 to make an election to defer U.S. tax on all accrued-yet-undistributed income from the Canadian retirement instruments as of the first year that he became a U.S. person. The IRS issued dozens of PLRs to this effect over the years.[19]

The main advantage of this approach was that, if the IRS granted the PLR, the taxpayer essentially had the opportunity to go back to the beginning and correct everything with respect to the Canadian retirement plans. The primary disadvantage to going this route was the cost to the taxpayer. It took significant money to prepare the necessary Forms 1040X and other returns, draft the lengthy PLR request, and pay the application/user fee to the IRS.[20] Another disadvantage was the risk that the IRS would assert penalties, notwithstanding the claims of "reasonable cause." Finally, some practitioners speculated that this method might be characterized as a "quiet disclosure" by the IRS, thereby triggering a full-blown civil audit and/or criminal investigation.[21]

2012 Streamline Filing Compliance Procedure. Given the perceived unfairness and large number of people affected, the IRS came under pressure from various groups to develop a reasonable settlement plan for those with RRSPs and other Canadian retirement instruments. The IRS did so in June 2012, when it issued a news release announcing the start of the Streamline Filing Compliance Procedure ("SFCP").[22] U.S. persons with Canadian retirement plans were encouraged because of the favorable language in the news release from the IRS.

The new procedures will allow resolution of certain issues related to certain foreign retirement plans (such as Canadian Registered Retirement Savings Plans). In some circumstances, tax treaties allow for income deferral under U.S. tax law, but only if an election is made on a timely basis. The streamlined procedures will be made available to resolve low compliance risk situations even though this election was not made on a timely basis.[23]

2012 Offshore Voluntary Disclosure Program. At the same time that it announced the 2012 SFCP, the IRS also launched one of its much-anticipated remedies for U.S. persons with Canadian retirement instruments. It came in the form of Frequently Asked Questions ("FAQs") issued by the IRS in connection with its 2012 Offshore Voluntary Disclosure Program ("OVDP"). FAQ #54 indicated that the IRS would allow taxpayers to make late tax-deferral elections concerning Canadian instruments as part of the 2012 OVDP, thereby eliminating the back taxes and the need to file a PLR request. In addition, FAQ #54.1 indicated that if the IRS granted the

tax-deferral election based on the materials submitted by the taxpayer, then the values of the RRSPs would *not* be subject to the normal "offshore" penalty. It explained penalty relief succinctly:

> QUESTION. If my election is granted, will the RRSP . . . balance be included in the offshore penalty base?
>
> ANSWER. No.

Streamline Programs. In June 2014, the IRS abruptly ended the 2012 OVDP and announced two new ways for taxpayers to pro-actively and voluntarily approach the IRS to resolve past non-compliance: The Streamline Foreign Offshore Procedure ("SFOP") and the Streamline Domestic Offshore Procedure ("SDOP"). The IRS guidance for the SFOP and SDOP contained special rules for RRSPs and similar Canadian retirement instruments. It stated the following on this topic:

> For returns filed under these procedures, *retroactive relief will be provided for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by the applicable treaty.* The proper deferral elections with respect to such plans must be made with the submission.

2014 Offshore Voluntary Disclosure Program. If taxpayers failed to meet the long list of eligibility criteria for the SFOP or SDOP, they still had the option of resolving issues through the 2014 Offshore Voluntary Disclosure Program ("2014 OVDP"). It was introduced by the IRS in June 2014. Consistent with its predecessor, participants in the 2014 OVDP were able to achieve their goals of (i) obtaining approval from the IRS to make a late tax-deferral election with respect to RRSPs and similar Canadian instruments, and (ii) avoiding IRS sanctions for failing to file timely elections, FBARs, and/or Forms 8938. These results derived from FAQ #54 and FAQ #54.1, as updated.

Revenue Procedure 2014-55. Approximately 25 years after the IRS began issuing administrative pronouncements regarding U.S. tax treatment of Canadian retirement plans, and four months after introducing the SFOP, SDOP, and 2014 OVDP, the IRS issued Rev. Proc. 2014-55 in October 2014. It essentially rendered obsolete *all* previous IRS guidance with respect to RRSPs and other Canadian plans.

Defining Taxpayers Who Can Benefit. Rev. Proc. 2014-55, like most guidance from the IRS, is opaque. A close reading reveals that the IRS placed taxpayers into several categories, the most relevant of which is discussed here. For purposes of Rev. Proc. 2014-55, an "eligible individual" is one who (i) is or was a U.S. citizen or U.S. resident while he was also a beneficiary of a Canadian retirement plan, (ii) has filed Forms 1040 with the IRS "for each taxable year during which [he] was a U.S. citizen or resident," (iii) has not reported as gross income on his Forms 1040 the accrued-yet-undistributed income in the Canadian retirement plan, and (iv) has reported on his Forms 1040 all actual distributions he received from the Canadian retirement plan.[24] Thus, "eligible individuals" are those who underpaid taxes to the IRS solely because they failed to make a tax-deferral election.

According to Rev. Proc. 2014-55, an "eligible individual" who did not make a tax-deferral election under the Treaty "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 [the Treaty] with respect to the plan."[25] The taxpayer, therefore, will *not* be obligated to actually make the tax-deferral election for the first year or any later years on Form 8891 (in the case of Canadian RRSPs) or by attaching a statement to Form 1040 pursuant to Rev. Proc. 2002-23 (in the case of other Canadian retirement plans).[26] Once an "eligible individual" is deemed to have made this automatic, retroactive, tax-deferral election, it generally remains in effect for all subsequent years, until the year in which he receives the final distribution from the Canadian retirement plans.[27]

Effect on Information-Reporting Requirements. The preceding section explains that certain taxpayers will no longer be required to make or reaffirm tax-deferral elections with respect to Canadian retirement plans after 2014, depending on the facts of each case.[28] This clarifies the federal income tax issues, but it does *not* address other important matters.

Rev. Proc. 2014-55 provides two main instructions with respect to international information-reporting. First, consistent with its announcement in Notice 2003-75 over a decade earlier, it confirms that beneficiaries of Canadian retirement plans are *not* required to file Forms 3520 and that custodians of such plans are not obligated to file Forms 3520-A.[29] Second, beneficiaries of Canadian retirement plans might still need to file FBARs and Forms 8938. Rev. Proc. 2014-55 states the following in this regard:

> 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 [FBARs].[30]

The IRS included a similar warning in its news release about Rev. Proc. 2014-55, cautioning that it "does not modify any other U.S. reporting requirements that may apply under the Bank Secrecy Act (BSA) and Section 6038D."[31]

Illustration of New Rules. Rev. Proc. 2014-55 contained one example of how it might impact prior and future duties of beneficiaries of Canadian retirement plans:

> 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 Rev. Proc. 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 [Rev. Proc. 2014-55], Taxpayer is an eligible individual and . . . will be treated as having made an election under [the Treaty] 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 [actual] 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 [FBARs].[32]

Recent Case about Canadian RRSPs

A recent case, *Dengin v. Commissioner*, focused on whether a dual U.S. and Canadian citizen made a proper election to defer U.S. income tax on the accrued-yet-undistributed income within various RRSPs.[33]

Summary of the Facts. The taxpayer, George, was born in the United States, but moved to Canada with his family in 1965 when he was approximately 10 years old. He became a Canadian citizen shortly thereafter. He has always lived, studied and worked in Canada since departing from the United States.

George was a successful stockbroker and investment advisor. He was also the owner and beneficiary of three RRSPs: (i) the First RRSP was open before 2006 and closed in 2006; (ii) the Second RRSP was both opened and closed in 2006; and (iii) the Third RRSP was opened in 2006 and closed in 2012. The value of all RRSPs increased significantly each year thanks to investment activities, yet George did not start taking distributions until 2011. Under Canadian law, the accrued-yet-undistributed income within the RRSPs were not taxable.

The IRS started an audit of George in 2012, which covered 2006 through 2011. George indicated that he was unaware of his U.S. filing duties, as a result of which he neither submitted Forms 1040 nor sought any advice on the matter from his Canadian accountant. In March 2013, as the process continued, George filed Forms 1040 for all years under audit, 2006 through 2011. He attached to each Form 1040 a Form 8891, indicating that he was making a tax-deferral election under the Treaty with respect to only the Third RRSP; he did not file Forms 8891 for the First RRSP or the Second RRSP. Notably, he reported as income on his Form 1040 for 2011 the distribution he received from the Third RRSP that year.

Dissatisfied with the problems caused by his lingering U.S. citizenship, George formally relinquished it in 2016. In other words, George expatriated.

That same year, the IRS concluded the audit and issued a Notice of Deficiency seeking significant amounts of

[24] Rev. Proc. 2014-55, Section 4.01.
[25] Rev. Proc. 2014-55, Section 4.02.
[26] *Id.*
[27] Rev. Proc. 2014-55, Section 4.03.
[28] Section 4.05 of Rev. Proc. 2014-55 states that certain taxpayers are not required to make or to reaffirm tax-deferral elections for tax years ending after December 31, 2012. However, from a practical standpoint, the effective date for many taxpayers was for tax years ending after December 31, 2013. This is because the IRS did not issue Rev. Proc. 2014-55 until October 7, 2014, after which most taxpayers had already prepared and/or filed their 2013 Forms 1040.
[29] Rev. Proc. 2014-55, Section 5.01.
[30] *Id.*
[31] IRS News Release IR-2014-97 (October 7, 2014).
[32] Rev. Proc. 2014-55, Section 7.
[33] *Dengin v. Commissioner*, T.C. Memo 2023-31; Michael Smith, "Tax Court Grants Partial Deferral for Canadian Retirement Accounts," 2023 Tax Notes Today Federal 50-7 (March 15, 2023).

taxes, accuracy-related penalties, and late-filing penalties for 2006 through 2011. The IRS proposed these liabilities based on its position that George failed to make a proper tax-deferral election for his three Canadian RRSPs, such that he could not postpone U.S. income taxes on the accrued-yet-undistributed income for any of them. George disputed the Notice of Deficiency by filing a Petition with the Tax Court.

The IRS later filed a Motion for Partial Summary Judgment, asking the Tax Court to determine, before conducting a trial, that the positions set forth in the Notice of Deficiency were correct. George, unsurprisingly, opposed this maneuver by the IRS.

Analysis by the Tax Court. The Tax Court began by analyzing the Treaty and all the related IRS guidance over the years. It then outlined the arguments raised by the IRS, the principal two being that (i) George supposedly was not entitled to make a late Treaty election pursuant to Rev. Proc. 2014-55 because he was not an "eligible individual," and (ii) even if he were, George did not "strictly comply" with the requirements of Rev. Proc. 2014-55 and mere "substantial compliance" would not suffice.

Strict Compliance with Standard? As explained above, an "eligible individual" for purposes of Rev. Proc. 2014-55 is one who meets four criteria, but the IRS only challenged one when it came to George. Specifically, the IRS maintained that George did not satisfy "any requirement for filing a U.S. federal income tax return for each taxable year during which [he] was a U.S. citizen or resident."[34]

The IRS divided its arguments into two parts. First, the IRS acknowledged that George filed Forms 1040 for all relevant years amid the audit in March 2013, but contended that such belated action does not count. The IRS, in essence, suggested that George could only meet the criteria if he filed "timely" Forms 1040 with the IRS. Second, the IRS underscored that George only filed Forms 1040 for 2006 through 2011, the specific years under audit. However, he had been a U.S. citizen since his birth around 1955, he had been earning income in Canada since at least 1980, and he had owned RRSPs since before 2006. George, consequently, failed to file Forms 1040 for "each taxable year during which [he] was a U.S. citizen or resident," as called for by Rev. Proc. 2014-55.

Is Timeliness Implied? With respect to the question of timeliness, the Tax Court explained that principles of statutory interpretation can apply to Revenue Procedures, the text of Rev. Proc. 2014-55 is silent as to whether Forms 1040 must be filed on a timely basis, and two of its predecessors (***i.e.***, Rev. Proc. 89-45 and Rev. Proc. 2002-23) specifically state that taxpayers must file timely Forms 1040 in order to make a tax-deferral election under the Treaty. The Tax Court then concluded that "[i]f the IRS wanted Rev. Proc. 2014-55 to include a timeliness requirement, it could have clearly stated it." The Tax Court also emphasized that its ruling found support in the IRS's own reasoning for issuing Rev. Proc. 2014-55 in the first place. Alluding to a News Release, the Tax Court underscored that the goal of the IRS in releasing Rev. Proc. 2014-55 was to facilitate, not hamper, compliance by taxpayers with the tax-deferral election requirements of the Treaty.

How Far Does "Each" Reach? The IRS fared better when it came to the meaning of filing a Form 1040 "for each taxable year during which [he] was a U.S. citizen or resident." The IRS clung to the literal approach, suggesting that George was a U.S. citizen who had been earning income since at least 1980. Accordingly, he should have filed Forms 1040 with the IRS from 1980 to 2011, not just 2006 to 2011, in order to meet the explicit language in Rev. Proc. 2014-55. George saw things differently, of course. He suggested that a reasonable interpretation of the phrase "each taxable year" would be every year for which he sought tax-deferral for a Canadian RRSP. In his case, that would be only

[34] Rev. Proc. 2014-55, Section 4.01.

[35] Although not stated in the opinion, the Tax Court has recently confirmed that there are "a variety of contexts" where "directives in regulations and other IRS guidance can be satisfied by substantial rather than strict compliance." *See Coca Cola Co. & Subsidiaries v. Commissioner*, 155 T.C. No. 10, *81 (2020).

[36] Section 877A generally applies to individuals who cease to be U.S. citizens or lawful permanent residents on or after June 17, 2008. *See* Notice 2009-85.

[37] 8 U.S.C. § 1481(a)(5).

[38] 8 U.S.C. § 1481(a)(1)-(4).

[39] Notice 2009-85, Section 2(A).

[40] *Id.*

as follows: (i) George did not substantially comply for the First RRSP because he opened it before 2006 and he failed to file a Form 1040 for each year he was a beneficiary; (ii) George substantially complied for the Second RRSP because he opened and closed it in 2006, and he filed a Form 1040 for that year, even though he did not enclose a Form 8891 for the Second RRSP; and (iii) George substantially complied for the Third RRSP because he opened it in 2006, he filed a Form 1040 for each year it remained open, and he enclosed Forms 8891 electing tax-deferral for the Third RRSP.

Unaddressed Issues

Dengin v. Commissioner, like many tax cases, might be more interesting for what the parties and the Tax Court did *not* address, as opposed to what they actually covered. A few noteworthy items are explored below.

2006 through 2011, and he filed Forms 1040 for that entire period.

The Tax Court analyzed this issue from several angles, ultimately relying heavily on the same logic it applied when addressing the issue of timeliness, above. The express language of Rev. Proc. 2014-55 demands that a taxpayer file Forms 1040 "for each taxable year during which [he] was a U.S. citizen or resident each relevant year." It did not limit the filing obligation to only those years in which a taxpayer owned an RRSP or sought tax-deferral thereon. For this reason and a few others, the Tax Court held that George did *not* "strictly comply" with the criteria to render himself an "eligible individual."

Substantial Compliance with Standard? Things did not end there, though. George maintained that, even if he did not strictly comply with the "eligible individual" standards of Rev. Proc. 2014-55, he "substantially complied" with them, which should be enough.

The Tax Court started by recognizing that it has previously applied the substantial compliance doctrine to regulations, as well as other IRS guidance, including Revenue Procedures. It went on to explain that the critical question is whether the requirements in question relate "to the substance or essence" of the governing law. If so, then strict compliance is mandatory. If the requirements are purely procedural or directory, however, they may be fulfilled by substantial compliance.[35]

The Tax Court refined the issue, explaining that the relevant requirement, found in Rev. Proc. 2014-55, is for a taxpayer to file Forms 1040 "for each taxable year during which [he] was a U.S. citizen or resident." Because this standard was issued to provide guidance in applying the tax-deferral election under the Treaty, the Tax Court insisted on exploring the "substance or essence" of both Rev. Proc. 2014-55 and the Treaty. After doing so, the Tax Court concluded that the expansive filing duty language was "merely procedural." It went on to explain that, regardless of which interpretation of "each taxable year" advanced by the IRS is applied, the language in Rev. Proc. 2014-55 "requires the taxpayer to file returns *for tax years that are not relevant* to informing the IRS whether income should have been reported from an RRSP account." As a result, substantial compliance, not strict compliance, is all that is needed.

The Tax Court ultimately determined outcomes on an account-by-account basis,

Expatriation Matters. George expatriated in 2016 during the throws of his dispute with the IRS, but the Opinion in *Dengin v. Commissioner* does not mention potential U.S. tax or information-reporting duties triggered by his departure. This might mean that the IRS never identified the issue because its audit only covered 2006 through 2011, or it was handled in a separate proceeding. Either way, the absence of expatriation talk provides an opportunity to shine some light on this situation.

Section 877A generally imposes a mark-to-market tax regime on certain taxpayers who decide to abandon the United States. They generally must pretend to sell all their property at fair market value the day *before* their "expatriation date" and pay the corresponding U.S. income taxes on any gains.[36]

Expatriation by a U.S. citizen occurs when (i) the individual renounces his U.S. nationality at a diplomatic or consular office,[37] (ii) the individual furnishes to the Department of State a signed statement of voluntary relinquishment of U.S. nationality,[38] (iii) the Department of State issues the individual a certificate of loss of U.S. nationality,[39] or (iv) a U.S. court cancels an individual's certificate of naturalization.[40] The "expatriation date" is

the day on which one of these four events takes place.[41]

The so-called "exit tax" applies only to "covered expatriates."[42] For purposes of Section 877A, this term means an expatriate who has an average annual U.S. income tax liability for the past five years over a particular amount ("Tax Liability Test"), *or* who has a net worth exceeding a certain threshold ("Net Worth Test"), *or* who cannot certify to the IRS that he maintained full U.S. tax compliance during the past five years ("Certification Test").[43] An individual failing just one of the preceding three tests normally is considered a "covered expatriate."

There are exceptions to classification as a "covered expatriate." An individual shall *not* be treated as a "covered expatriate," and thus shall *not* be subject to exit tax, if that individual became at birth both a U.S. citizen and a citizen of a foreign country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, the foreign country, and has not been a U.S. resident because of the "substantial presence" test for more than 10 taxable years during the 15-taxable year period ending the year during which expatriation occurs.[44] Additionally, an individual will not be classified as a "covered expatriate" if he relinquishes his U.S. citizenship before he is 18 and one-half years old and he has not been a U.S. resident for more than 10 taxable years before the date of relinquishment.[45]

U.S. citizens who relinquish their U.S. citizenship, and who are subject to the Section 877A rules (even if they are exempt from the exit tax), must file a Form 8854 (Initial and Annual Expatriation Statement) either as soon as possible after expatriation, or by the due date for filing their first Form 1040-NR as a nonresident alien.[46] Various sources contain details about filing Form 8854.[47]

According to the information in *Dengin v. Commissioner*, (i) George was solely a citizen of the United States at birth, (ii) he expatriated in 2016 when he was approximately 60 years old, (iii) he likely was considered a "covered expatriate" under the Tax Liability Test (based on the large size of the proposed liabilities in the Notice of Deficiency), the Net Worth Test (again based on the large size of the proposed liabilities in the Notice of Deficiency), *and* the Certification Test (because he was amid a battle with the IRS over whether he had maintained U.S. compliance during several of the relevant years), and (iv) he did not qualify for either of the two exemptions for "accidental Americans." If these assumptions are accurate, one would anticipate an expatriation skirmish, in some proceeding, at some point.

FBAR and Form 8938 Penalties. Rev. Proc. 2014-55 and its predecessors focused primarily on U.S. income taxes related to RRSPs and other Canadian retirement plans, namely, deferral of such taxes until the taxpayer takes actual distributions. True, the IRS guidance declared early on that U.S. taxpayers were not required to treat the plans like foreign trusts, thereby alleviating them of the duty to file Forms 3520 and Forms 3520-A. The clemency stopped there, though, with the IRS repeatedly warning taxpayers that they might still need to file annual FBARs and/or Forms 8938.[48]

What's the big deal, one might ask? Penalties. The relevant law requires the filing of an FBAR in situations where (i) a U.S. person, (ii) had a direct financial interest in, had an indirect financial interest in, had signature authority over, or had some other type of authority over (iii) one or more financial accounts (iv) located in a foreign country (v) whose aggregate value was more than $10,000 (vi) at any point during the relevant year.[49] In the case of non-willful violations, the maximum penalty is $10,000 per year.[50] Higher penalties apply where willfulness exists. Specifically, when a taxpayer willfully fails to file an FBAR, the IRS may assert a penalty equal to $100,000 or 50 percent of the balance in the undisclosed account at the time of the violation, whichever amount is larger.[51]

The scope of the Form 8938 filing duty has expanded considerably since inception. In its current form, the general rule can be broken down in the following manner: (i) Any specified person, which encompasses both U.S. individuals and certain domestic entities (ii) who/that hold an interest (iii) in certain foreign financial assets (iv) during any portion of a taxable year (v) must attach to their timely tax return (vi) a complete and accurate Form 8938, (vii) if the total value of all assets, (viii) exceeds the applicable filing threshold.[52] The regulations broadly define the concept of financial asset to cover tax-favored foreign retirement accounts.[53] If a

taxpayer fails to file a proper Form 8938, then the IRS generally will assert a penalty of $10,000 per violation.[54] The penalty increases to a maximum of $50,000 if the taxpayer does not rectify the problem quickly after contact by the IRS.[55]

The duty to file FBARs has existed since 1970, and U.S. individuals have been faced with Form 8938 obligations since 2011. The years in dispute in *Dengin v. Commissioner* were 2006 through 2011, but the case made no mention whatsoever of international information-reporting duties, submissions or sanctions. The Tax Court is not authorized to handle FBAR issues, of course, yet a Form 8938 penalty might have been at play in 2011. The case leaves readers wondering whether or how these matters were resolved.

Timeliness Issue Elsewhere. One major issue in *Dengin v. Commissioner* was whether George had to file "timely" Forms 1040 in order to be an "eligible individual" under Rev. Proc. 2014-55 and thus benefit from U.S. income tax deferral on the RRSPs. The Tax Court did not discuss precedent on this precise issue, so one must assume that neither the IRS nor the taxpayer raised it. However, as shown below, the timeliness question has been addressed before in different contexts, with judicial determinations favoring the taxpayers.

Overview of the Issue. When battling the IRS, knowledge is power. Nowhere is this more true than in worker-classification cases, where the IRS often insists on treating all workers as employees, regardless of the facts. One bright spot for taxpayers is an obscure provision, commonly known as Section 530, which grants taxpayers a brand of "civil immunity" if they meet three criteria. One requirement is that taxpayers file Forms 1099 (Miscellaneous Income) for all workers considered to be independent contractors ("Reporting Consistency").[56]

Neither the relevant statute nor the legislative history addresses when, exactly, a company must file the Forms 1099 with the IRS in order to take advantage of Section 530. For its part, the law simply states that "all federal tax returns (including information returns) . . . are filed on a basis consistent with the [company's] treatment of such individual as not being an employee."[57] The legislative history provides additional detail about the Form 1099 filing requirement, though it does not go so far as to specifically require timeliness. It says the following:

> To be entitled to relief under Section 530, the taxpayer must not have treated the worker as an employee for any period, and, for periods since 1978, all Federal tax returns, including information returns, must have been filed on a basis consistent with treating such worker as an independent contractor.[58]

41 Section 877A(g)(2)(B).

42 Section 877A(a)(1).

43 Section 877A(g)(1)(A); Notice 2009-85, Section 2(A); Section 877(a)(2)(A), (B) and (C).

44 Section 877A(g)(1)(B)(i)(I) and (II).

45 Section 877A(g)(1)(B)(ii)(I) and (II). According to relevant congressional reports, the two exceptions set forth above were created in order to relieve from the exit tax individuals whose principal purpose for expatriating was not tax avoidance and who were previously unaware of their status as U.S. citizens. *See* S. Rep. No. 1707, 89th Cong., 2d Sess. 28–29 (1966).

46 Section 6039G(a).

47 Section 6039G(b); Notice 2009-85, Section 8(C) – Filing and Reporting Requirements – Form 8854.

48 IRS News Release IR-2014-97 (October 7, 2014); *See also* Rev. Proc. 2014-55, Section 5.01.

49 31 U.S.C. § 5314; 31 CFR § 1010.350(a).

50 31 U.S.C. § 5321(a)(5)(B)(i). This penalty is inapplicable if the taxpayer was "non-willful" and there was "reasonable cause" for the violation. *See* 31 U.S.C. § 5321(a)(5)(B)(ii).

51 31 U.S.C. § 5321(a)(5)(C)(i).

52 Section 6038D(a). For a more comprehensive analysis for Form 8938 and its evolution, *see* Hale E. Sheppard, "The New Duty to Report Foreign Financial Assets on Form 8938: Demystifying the Complex Rules and Severe Consequences of Noncompliance," 38(3) *International Tax Journal*, 11 (2012); Hale E. Sheppard, "Form 8938 and Foreign Financial Assets: A Comprehensive Analysis of the Reporting Rules after IRS Issues Final Regulations," 41(2) *International Tax Journal* 25 (2015); Hale E. Sheppard, "Specified Domestic Entities Must Now File Form 8938: Section 6038D, New Regulations in 2016, and Expanded Foreign Financial Asset Reporting," 42(3) *International Tax Journal* 5 (2016); Hale E. Sheppard, "Children with Foreign Accounts: Unexpected Income, Schedule B, Form 8938, and FBAR Issues," 124(3) *Journal of Taxation* 134 (2016); Hale E. Sheppard, "Unlimited Assessment-Period for Form 8938 Violations: Ruling Shows IRS's Intent to Attack Multiple Tax Returns," 95(5) *Taxes* – The Tax Magazine 31 (2017).

53 Treas. Reg. § 1.1471-5(b)(2)(i)(A), (B) and (D); Treas. Reg. § 1.6038D-3(a)(7); Treas. Reg. § 1.1471-5(b)(2)(vi); Treas. Reg. § 1.6038D-1(a)(7); Preamble, 76 Fed. Reg. 73819-73820 (Dec. 12, 2014); Instructions to Form 8938 (October 2015), pg. 5.

54 Section 6038D(d)(1); Treas. Reg. § 1.6038D-8(a).

55 Section 6038D(d)(2); Treas. Reg. § 1.6038D-8(c).

56 Section 530(a)(1); Rev. Proc. 85-18.

57 Section 530(a)(1) (emphasis added).

58 S. Rep. 104-281, 104th Cong., 2nd Sess., 24 (1996)(emphasis added).

Congress left ambiguity regarding the timeliness issue, but the IRS has not. Indeed, the IRS has issued several pronouncements over the years stating, in no uncertain terms, that taxpayers must file timely Forms 1099 to be eligible for the benefits of Section 530. The first such pronouncement was Revenue Ruling 81-224, which involved a situation where a Revenue Agent conducting an employment tax audit questioned whether certain workers should have been treated as employees, and the taxpayer reacted by filing Forms 1099 for the workers.[59] The IRS ultimately concluded that the company under audit was ineligible for relief under Section 530 for tardiness. A few years later, the IRS issued Rev. Proc. 85-18, one in a series of pronouncements amplifying guidance concerning Section 530. It clarified the IRS's position that Section 530 will not apply "if the appropriate Form 1099 has not been *timely* filed with respect to the workers involved."[60] The IRS then issued at least a half-dozen Technical Advice Memos echoing the timeliness requirement.[61] Lest any doubt remain regarding the IRS's stance, the Internal Revenue Manual explains that "[t]axpayers that do not file *timely* Forms 1099-MISC consistent with their treatment of the worker as an independent contractor may not obtain relief under the provisions for section 530 for that worker in that year."[62]

Illustrative Case. For over three decades, the IRS has held that Section 530 relief is not available unless taxpayers file their Forms 1099 in a "timely" manner. One problem with the IRS's position is that it has been questioned or contradicted by several courts, including by the Tax Court in *Medical Emergency Care Associates v. Commissioner*.[63]

The taxpayer in that case was a medical-services company that maintained contracts with hospitals to provide doctors to staff emergency rooms. Relying on long-standing industry practice, the company classified the doctors as independent contractors for 1996. The deadline for filing Forms 1099 was February 1997. The taxpayer filed such information returns in May 1997 or December 1998, but they were late either way. The IRS subsequently began an audit and claimed that the doctors should have been classified as employees. The IRS issued its Notice of Determination of Worker Classification, which the taxpayer disputed by filing a Petition with the Tax Court.

The only issue at trial was whether the taxpayer had Reporting Consistency, which would dictate whether the taxpayer was eligible for the benefits of Section 530.[64] The Tax Court, applying time-honored principles of statutory construction, first explained that "there is nothing in the language of [Section 530] that requires timeliness along with consistent filing."[65]

Next, the Tax Court acknowledged that the IRS was correct in that timely filing of returns is required throughout the Internal Revenue Code. However, noted the Tax Court, the sanctions for late filing are already contained in Sections 6721 through 6724.[66] The Tax Court then made the following ruling about the interrelationship between Section 530 and the normal delinquent-return penalties: "Nothing in the language or legislative history of Section 530 leads us to the conclusion that denial of Section 530 relief was meant to be an additional penalty for the failure to timely file information returns, particularly under the circumstances in this case."[67]

Finally, the Tax Court addressed the IRS's contention that the Tax Court must defer to the IRS's interpretation of Section 530, as found in Revenue Ruling 81-224 and Rev. Proc. 85-18. The Tax Court acknowledged the Supreme Court precedent establishing that courts must give an administrative agency's interpretation of a statute a certain level of deference, but noted that the amount required depends on the thoroughness of the agency's consideration of the issues, the validity of its reasoning, etc.[68] The Tax Court then pointed out that the two pronouncements cited by the IRS provide absolutely no reasoning as to why timely filing of Forms 1099 is required to warrant Section 530 relief. Accordingly, the Tax Court was unable to ascertain the thoroughness or validity of the IRS's analysis, and it refused to follow the IRS pronouncements.[69]

Musings on Statutory Interpretation. The Tax Court engaged in a little statutory

construction in *Dengin v. Commissioner*. It analyzed Rev. Proc. 2014-55 with a nod to the long-standing rule that when a statute or other guidance is plain, clear, and unambiguous, it should be interpreted according to its plain meaning, rather than by referring to outside sources.[70]

Another tool arguably applies, but it was not addressed in the case. Contractual provisions generally are interpreted against the party who drafted the contract, the thought being that the drafting party had ample opportunity to ponder and say precisely what it meant. A similar notion exists in the tax arena. There are many cases, including several decided by the Supreme Court, which stand for the proposition that any statutory or regulatory ambiguity must be resolved in favor of the taxpayer, not the IRS.[71] The tone of these cases is illustrated by the following judicial observation:

> [Tax] statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer. Such acts, including provisions of limitation embodied therein, are to be construed liberally in favor of the taxpayer. There must be certainty as to the meaning and scope of language imposing any tax, and doubt in respect to its meaning is to be resolved in favor of the taxpayer.[72]

Applying this concept to *Dengin v. Commissioner*, the taxpayer might have argued that the IRS created the ambiguity by not expressly stating in Rev. Proc. 2014-55 that tax returns must be filed on time to meet the "eligible individual" standard; therefore, the Tax Court should resolve the timeliness issue in favor of George.

Conclusion

The IRS began creating special rules years ago, in 1989, for U.S. taxpayers with RRSPs and other Canadian retirement plans to allow deferral of U.S. income taxes until such taxpayers took actual distributions. The rules came in many shapes, as Revenue Procedures, Notices, Forms, Instructions, and more. The IRS also diminished information-reporting duties related to Canadian plans, announcing in 2003 that taxpayers were excused from filing annual Forms 3520 and Forms 3520-A. Next, the IRS introduced several voluntary disclosure programs starting in 2012, all of which permitted taxpayers to proactively resolve RRSP and similar issues on a tax-free, penalty-free basis. Finally, in 2014, the IRS took things a step further, indicating in Rev. Proc. 2014-55 that eligible individuals who had not previously made a tax-deferral election pursuant to the Treaty would be treated by the IRS as if they had from the outset. The IRS, in other words, granted individuals automatic, retroactive and prospective, tax-deferral elections.

In light of the objective of the Treaty, the easing of procedures and consequences for non-compliance over decades, the innocuous facts in George's case, and the tremendous costs (to the IRS, taxpayers, and the Tax Court) of a prolonged tax dispute, the IRS's insistence in litigating *Dengin v. Commissioner* might leave many readers scratching their heads. ●

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59 Section 6041; Treas. Reg. § 1.6041-1; Treas. Reg. § 1.6041-6.

60 Rev. Proc. 85-18.

61 *See* Technical Advice Memos 8251012 (1982), 8302008 (1982), 8322005 (1983), 8403002 (1983), 8424005 (1984), 8703002 (1986).

62 I.R.M. § 4.23.5.2.2.1 (11-03-2009).

63 *Medical Emergency Care Associates v. Commissioner*, 120 T.C. 436 (2003).

64 *Medical Emergency Care Associates, S.C. v. Commissioner*, 120 T.C. 436, 440 (2003).

65 *Medical Emergency Care Associates, S.C. v. Commissioner*, 120 T.C. 436, 443 (2003).

66 Section 6721(a).

67 *Medical Emergency Care Associates, S.C. v. Commissioner*, 120 T.C. 436, 444 (2003).

68 *Id.*

69 *Medical Emergency Care Associates, S.C. v. Commissioner*, 120 T.C. 436, 445 (2003).

70 *See Coggin Auto. Corp. v. Commissioner*, 292 F.3d 1326, 1332 (11th Cir. 2002); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837, 843-844 (1984); *Horton Homes, Inc. v. United States*, 357 F.3d 1209, 1211 (11th Cir. 2004); *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *United States v. Locke*, 471 U.S. 84 (1985); *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438 (2002).

71 *See, e.g., United States v, Merriam*, 263 U.S. 179, 187-188 (1923) ("But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer."); *Commissioner v. Bryson*, 79 F.2d 397, 402 (9th Cir. 1935) ("It is familiar doctrine that taxing acts, including provisions of limitation embodied therein, [are] to be construed liberally in favor of the taxpayer.")

72 *United States v. Maryland Casualty Co*., 49 F.2d 556, 558 (7th Cir. 1931) (citations omitted).