



## **MEMORANDUM**

**FROM:** Daphne Keevil Harrold, Policy Counsel

**TO:** Jonathan Herman, CEO

**DATE:** August 31, 2015

**SUBJECT:** Canada-United States Enhanced Tax Information Exchange Agreement –  
impact on Lawyers and Notaries

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### **Issue**

1. This memorandum addresses an issue raised by the Barreau du Québec arising from a demand for information from a financial institution about a lawyer's trust account. A copy of the letter received by the member of the Barreau is attached as Appendix "A". The memorandum provides an overview of guidance from the Canada Revenue Agency ("CRA") on the application of the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (the "Act") to trust accounts held by lawyers and Quebec notaries.

### **Background**

2. The Act, which came into force in April 2014, implements an agreement between Canada and the U.S. to exchange information for tax compliance purposes. It obliges financial institutions to collect and provide information to the CRA on accounts held by persons deemed to be "U.S. Persons" for tax purposes and on account holders that are U.S. entities or entities controlled by persons who are U.S. residents or citizens. Financial institutions are also required to send information to the CRA about account holders who do not cooperate with requests for information.
3. The information collected by financial institutions, including the name, address, and (in most circumstances) the U.S. taxpayer identification number, as well as certain financial information about the account is provided by the CRA to the U.S. Internal Revenue Service.

### **Application to Trust Accounts**

4. The CRA has published detailed guidelines to assist Canadian financial institutions in fulfilling their due diligence obligations under the Act. Section 6.7 of the Guidance on enhanced financial accounts information reporting, Part XVIII of

the Income Tax Act addresses financial accounts held by non-financial intermediaries, such as law firms and lawyers, in which the funds of more than one client are pooled. In the case of such accounts, where only a non-financial intermediary, such as a lawyer or law firm, is identified, and where "...the disclosure or passing by the non-financial intermediary of its underlying clients' information to the financial institution contravenes provincial/territorial law in Canada," the financial institution is required to collect and provide information in respect of the non-financial intermediary (i.e. the lawyer or law firm) only.

5. In the case of a client trust account held by a lawyer for a single client in connection with legal services, the financial institution is required to collect information only on the non-financial intermediary (i.e. the lawyer or law firm) provided the lawyer's actions in connection with the opening, use and management of the account are regulated by a law society in Canada, the only person listed or identified on the financial account with the financial institution is the non-financial intermediary, and "...the disclosure or passing by the non-financial intermediary of its underlying clients' information to the financial institution contravenes provincial/territorial law in Canada."
6. Although the identity and other information about the persons whose funds are in a trust account controlled by a lawyer or law firm may be protected by solicitor-client privilege neither the Act nor the CRA guidance makes specific reference to solicitor-client privilege.
7. Despite the guidance from the CRA, the request for information received by the member of the Barreau (see Appendix "A") suggests that financial institutions may not clearly indicate the limits of the information lawyers and notaries are required to provide. The letter demands that the lawyer complete a reporting form and cautions that in the event the lawyer fails to do so, his/her account will be treated as a reportable account.
8. From the guidance provided by the CRA it seems that while lawyers and notaries are required to advise their financial institution if they are U.S. Persons for tax purposes, they are not required to divulge the identity of the person or persons on whose behalf funds are held in a trust account in connection with the provision of legal services. The CRA guidance indicates that in such cases, the financial institution is entitled only to information about the lawyer or law firm whose name is on the trust account.

## Conclusion

9. Law societies may wish to bring the CRA's guidance on trust accounts to the attention of their members to assist them in responding to demands for information about their trust accounts.





June 10, 2015

**REMINDER: Your responsibilities under the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act**

Dear Sir/Madam,

Recently, we contacted you about your obligations to comply with this new Canadian law. It impacts all Canadian financial institutions including CIBC or an affiliated division of CIBC (including President's Choice Financial<sup>®</sup> services).

If you have already responded to us with your completed forms, please disregard this letter. If you have not, we remind you that compliance is mandatory and the deadline is approaching.

**Please complete the appropriate W-form as soon as possible**

In order to comply, please complete and return the appropriate W-form. Accounts of persons (including entities and entities with U.S. controlling persons) who self-certify as U.S. taxpayers (also referred to as U.S. Persons) will be reported to the CRA as U.S. reportable accounts. If you do not respond, your account will be treated as a US reportable account.

Use the pre-paid, self-addressed envelope provided in the initial package to return the completed form, with the necessary supporting documents stated in the instructions. Please read the instructions fully to ensure you select the appropriate W-form and complete it accurately. If you did not receive the original letter please contact CIBC at 1 844 379-4021. For specific questions regarding this law contact your tax advisor or the CRA.

Thank you,

CIBC

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