Focus IMMIGRATION

Do retirement accounts stop at the border?

Darren Coleman

The chief financial officer of a major U.S. pharmaceutical company took a five-year posting in Canada to manage the organization's interests north of the border. But he quickly found out that while it's relatively easy for an American to relocate to Canada, moving one's money is another, far more difficult matter.

He received a letter from his investment advisor saying that he had 90 days to move his IRA (Individual Retirement Account) to Canada or he would have to cash it out and pay the tax. This was a big surprise to him. Securities Exchange Commission legislation says that an advisor must be registered in the jurisdiction where the person resides. The bottom line is that his financial institution in the U.S. would no longer represent him because he was now a non-resident in that country. For over two months he looked for somebody in Canada to help him — financial institutions, wealth investment advisors — and he kept coming up empty.

Another American with US$3 million invested in an IRA-registered account, who was also taking a Canadian position, had the same problem. She had 90 days to move the account, or face a tax bill of US$230,000. But no one could help her.

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Similarly, a Canadian who took a lengthy posting in the U.S. —an executive who had accumulated over US$500,000 in her IRA account — was told that she had to move the account to Canada when she returned home. She promptly contacted a number of Canadian financial institutions to see who could handle her IRA. Nobody could help.

She, and the others, were each caught in a catch-22 situation which happens when investors and their money find themselves on opposite sides of the border. Compliance and regulatory regimes are such that an IRA can't be managed by a Canadian financial institution, and an RRSP can't be managed by an American financial institution.

There are about one million Americans living and working in Canada, and an even larger number of Canadians who live and work in the U.S. This means that over two million people could be in the same dilemma when they want to move back to their native country.

Lawyers who advise their clients on financial matters should be made aware of this situation. The question is: How does the money immigrate?

According to the *Securities Exchange Act of 1934*, Canadian salespersons are not allowed to deal with clients in the U.S. unless they are registered with a dealer who is registered in Canada and the U.S. Otherwise, they may be subject to charges. The initial intent of this act was to protect investors by having their advisors and financial institutions registered in the domicile where the client happened to reside.

On June 7, 2000, the SEC granted an exemption from broker-dealer registration for firms and salespersons dealing with U.S. residents who have Canadian, self-directed, tax-advantaged retirement plans such as RRSPs and RRIFs. The exemption is subject to certain conditions.

Another important thing worth knowing is that, effective June 23, 2000, the SEC adopted rule 237 and rule 7d-2. These rules permit U.S. residents who have Canadian, self-directed, tax-advantaged retirement plans to trade the securities of foreign issuers, including Canadian issuers and mutual funds, in those accounts even though those securities are not registered to trade in the U.S. Again, it is all subject to certain conditions.

Many lawyers and financial advisors are not aware of this, or that the North American Securities Administrators Association, which includes all state regulators south of the border, recommended changes in their legislation several years ago. The changes would grant Canadian firms and their salespersons regulatory relief when dealing with people — holders of Canadian, self-directed, tax-advantaged retirement plans — who are temporarily present in the U.S. Since that time, some U.S. states have granted blanket exemptions called exemptive relief, while other states require limited registration.

In some cases, the reverse is also true: American companies can seek exemptive relief on behalf of Americans with an IRA account who are residents in Canada.

If people find themselves in this dilemma, the best course of action is to contact a financial advisor or wealth-management consultant who is registered on both sides of the border. While they are relatively few and far between, it makes a lot more sense to have your whole retirement plan in a single set of hands that you trust, rather than splitting things up between various advisors and financial institutions on both sides of the 49th parallel.

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Abuse: Highest paid, high demand occupations will have priority processing

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permit is issued. Employers are told that compliance with this attestation will be monitored on a worksite basis, however there has been limited guidance with respect to how a worksite is to be defined.

The processing fee for a LMIA was also increased from $275 to $1,000 for each position an employer seeks to fill, significantly impacting cost and timing considerations. One positive change, however, is that impact assessments for the highest-demand occupations (skilled trades), highest-paid occupations (top 10 per cent of wages in the province/territory where the job is located), or short-duration work periods (120 days or less), will have priority processing and an assessment will be provided within 10 business days from the date processing is started (20 days).

The changes send a clear message to Canadian employers that the TFWP is not to be relied upon by employers as a labour model, and that employers must make a more concerted effort to recruit, hire and train Canadian citizens and permanent residents.

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The government's announcement also prioritized employer compliance with the program requirements. Under the Immigration and Refugee Protection Regulations, CIC and ESDC have been granted significant powers to monitor compliance and to implement penalties, fines and bans on employers abusing the TFWP. In addition to employer compliance reviews conducted as part of the LMIA application process, 25 per cent of employers using the TFWP can anticipate a random and unannounced inspection for compliance with any of the program's requirements. Increased communication between federal and provincial/territorial government branches, such as employment standards, will assist in identifying employers abusing the TFWP. Furthermore, a strengthened compliance system for employers of LMIA-exempt TFWs is expected to be introduced as early as the summer of 2015.

The one constant in the area of immigration law is change itself. The CIC and the ESDC continue to provide guidance to employers that clarify and redefine the recent changes, as well as directions internal to the ESDC that are typically inaccessible by the public. The changes are often provided without prior warning to be applicable immediately, and subject to further revisions at any time. As a result, this period of change can be extremely challenging for employers relying on the TFWP to fill labour shortages.

Lori Brienza and Erin Crosley are associates at McLennan Ross in the areas of labour and employment and immigration. They assist employers from a wide range of industries with visa, border and employment issues related to the recruitment and hiring of temporary foreign workers. Contact information for the McLennan Ross immigration practice group can be found at www.mross.com.