In The Matter Of:

A REQUEST THAT NEW ZEALAND CAREFULLY CONSIDER THE EFFECTS OF ANY AND ALL PARTICIPATION IN THE U.S. FATCA ("FOREIGN ACCOUNT TAX COMPLIANCE ACT")

A FURTHER SUBMISSION TO THE NEW ZEALAND SELECT COMMITTEE (at the request of the Committee):

In the matter of the:

"Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill".

Including the:

"Foreign Account Information-Sharing Agreement".

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It's about FATCA, U.S. citizenship-based taxation and how they interact. As Canada's Finance Minister, The Honourable Jim Flaherty notes:

"Our Government fully understands the separate, but important, issue of U.S. citizenship-based taxation on dual Canada-U.S. citizens. The U.S. government's system of citizenship-based taxation is different from the residence-based approach generally followed most of the rest of the world.

This creates unique challenges for U.S. citizens who reside in other countries – especially Canada."

http://www.carp.ca/2014/02/22/federal-minister-finances-message-carp-members-canada-won-privacy-protection-exemptions-relief-fatca/

Outline and Table of Contents

Introduction

On February 12, 2014 I appeared by teleconference before your committee. At the end of my presentation, I was asked to summarize more information about the U.S. Exit Tax and the costs of renouncing U.S. citizenship. This summary is in response to that request.

This summary should be read in the context of:

1. My earlier formal submission to the Government of New Zealand: http://citizenshipsolutions.ca/2014/02/04/submission-to-new-zealand-finance-and-expenditure-committee-fatca/
2. Our earlier formal submission to the U.S. Senate Finance Committee: http://citizenshipsolutions.ca/2014/01/24/submission-to-the-senate-finance-committee-on-citizenship-based-taxation/
3. Our earlier submission to the U.S. Senate Finance Committee on PFICs http://citizenshipsolutions.ca/2014/02/06/pfic-taxation-and-americans-abroad/

Each of these previous submissions analyzes the problems of U.S. citizenship-based taxation and it's impact on both Americans abroad AND on the countries in which they reside. This is a further submission addressing (in its most simple terms):

The U.S. Exit Tax, U.S. Tax Compliance and Implications for a FATCA IGA

All “U.S. Persons” who expatriate by relinquishing U.S. citizenship after June 17, 2008 are potentially subject to an “Exit Tax”. The “Exit Tax” Provisions are complex and technical. The provisions apply to both U.S. citizens and those who hold a Green Card. In order to keep this simple, I will assume that we are dealing only with a U.S. citizen. (That said, the treatment of Green Card Holders is similar.)

The purpose of this submission is to explain, IN RELATION TO NEW ZEALAND CITIZENS, WHO ARE ALSO U.S. CITIZENS:

1. How one goes about relinquishing U.S. citizenship
2. That although relinquishment is complete for U.S. “citizenship purposes”, relinquishment is NOT complete for U.S. “tax purposes”. To complete the process one is required to notify the IRS and “settle up”. In fact the relinquisher continues to be liable for U.S. tax until this notification and settlement is complete. By imposing this requirement, **the U.S. is continuing to tax people who are no longer its citizens or permanent residents.**
3. That “covered expatriates” are subject to the Exit Tax and that one is a “covered expatriate” unless one can certify 5 years of tax compliance. (Note the narrow exception for those who were “born citizens of both New Zealand and the United States. But to take advantage of this exception, 5 years of U.S. tax compliance is still required.)
4. The financial and emotional costs of certifying 5 years of tax compliance.
5. The definition of “covered expatriate”.
6. How the Exit Tax is calculated (in very general terms). I make no attempt to explain the technical details.

The actual effect of FATCA and FATCA IGAs

Effect of FATCA IGAs – The Perspective Of The People Affected

The following comment appeared on a popular Canadian blog. It describes the eventual effect of FATCA on Canadian citizens who are cursed with U.S. indicia. It also reveals the "emotional trauma" suffered by Canadian citizens of U.S. origin.

> *"Minister of Finance,*
>
> *The IGA reached for implementation of the US FATCA rules in Canada is a disappointment to me, and thousands of other Canadians like me.*
>
> *I am a Canadian, born in the USA. I have resided in Canada without interruption since the age of 1. I have been a naturalized Canadian citizen since 1991. And yet because of my place of birth, the USA considers me a delinquent taxpayer: I have no SSN, I have never filed a tax return with the IRS, I have broken their laws.*
>
> *I would have hoped that, in return for the extraordinary benefit of applying US laws within Canadian territory under the IGA, Canada would at least have been able to extract some benefit for the thousands of Canadians that are subject to prosecution as "US persons" under US tax laws. Despite living a life as an ordinary Canadian, growing up, going to school, getting a job, paying my taxes to Canada every year, I am and remain a tax criminal: subject to the thread of life-altering penalties and potentially jail.*
>
> *We are doing the US a huge favour by enforcing their laws on our territory. They should do us a huge favour in return, and provide a real path for dual citizens to leave the US tax regime without threat of penalty.* ***The current system requires that I file, at great personal expense, five years of tax returns, and three years of reporting on all my financial holdings, and then HOPE that an IRS examiner approves it all WITHOUT deciding to apply the penalties and legal sanction THAT ARE THEIR RIGHT UNDER THEIR LAW.***
>
> *Would you willingly enter such a fraught process, at your own expense, not knowing what the outcome might be? Is so, you are a braver man than I.*
>
> ***My country should be working 24/7 to negotiate a clear path to freedom from IRS threat for me and the thousands of other Canadians like me.*** *I'm disappointed that this IGA gives away so much, for so little."*

http://isaacbrocksociety.ca/2014/02/22/march-10-2014-closing-date-for-your-my-our-opportunity-to-voice-concerns-propose-changes-for-the-signed-iga-between-canada-us/comment-page-1/#comment-1134038

FATCA IGAs – The Perspective Of A U.S. Tax Lawyer On The The Canada FATCA IGA

"The two nations inked a tax-information sharing agreement, just one of 22 intergovernmental agreements (IGAs) the U.S. has collected so far to crack down on tax evasion. There will be many more nations signing on, for FATCA requires banks everywhere to pony up information on Americans or face serious sanctions.

The sanctions are so bad that banks and governments are scrambling to appease U.S. taxing authorities in ways that are not too intrusive. In Canada's case, the broad agreement calls for Canadian tax authorities in between the IRS and Canadian banks. That is one of the shrewder features of FATCA. Rather than mandating that Canadian banks hand over account data directly to the IRS, the Canadian institutions will give the date to their own Canada Revenue Agency.

That would mean data on accounts held by U.S. depositors holding more than $50,000. Once the Canada Revenue Agency has the dirt it can hand it over under the existing treaties between the two nations. There are said to be over 1 million U.S. persons in Canada, many of whom may not realize they are still American. Moreover, even if they do, they may not be doing the dual tax filings the IRS expects.

It's no secret that many dual Canadian and U.S. citizens feel caught in the crosshairs of the IRS war on offshore accounts. Many Canadians don't exactly consider Canada offshore. And given Canada's high tax rates, many dual citizens don't ever worry about taxes in the U.S.

But they must still file. And that generally means filing FBARs too. Canadians who remain U.S. citizens are supposed to be doing dual filings and many now worry that their U.S. pedigree will come out in the wash. Canadian officials tread a delicate line between service to their citizens and concern for the financial health and burdens placed on Canada's financial institutions.

Inevitably, though, cooperating with the U.S. characterizes the world response to FATCA. In that sense, some may see the newly minted U.S.-Canada agreement as a small victory for Canada, exempting some small institutions. Certain registered savings vehicles, long a bone of contention for many dual citizens, are also exempted.

Starting July 1, 2014, Canadian banks are to collect information to begin handing it over to the IRS in 2015. It is even causing some dual citizens to say goodbye to the south. Still, leaving America can have a special tax cost. To exit, you generally must prove 5 years of tax compliance in the U.S. Plus, if you have a net worth greater than $2 million or have average annual net income tax for the 5 previous years of $155,000 or more (that's tax, not income), you pay an exit tax.

The theory of the exit tax is that is the last chance the U.S. has of taxing you. It is a capital gain tax as if you sold your property when you left. At least there's an exemption of $668,000. Citizens aren't the only ones to suffer. Long-term residents giving up a Green Card can be required to pay the tax too. See High Cost To Go Green: Giving Up A Green Card.

In some ways, it does make the days of competing for medals seem like a simpler and nobler time."

U.S. Tax Lawyer – Robert Wood

http://www.forbes.com/sites/robertwood/2014/02/24/canada-defeats-u-s-in-hockey-gold-tally-but-not-at-fatca/

Introducing "Mr. Middle Class" - How a New Zealand citizen purges his "U.S. taint"

Let's begin with a typical scenario. Imagine a 50 year old New Zealand citizen who lives a middle class life. He is active in his local church and community. He is a saver. He is a provider for his family. He has a wife and two children. He is a model citizen. He is a father, a husband, a small business owner, employer and a good friend to many. He carries on business through a small business corporation in New Zealand. Like most New Zealanders, he has a "Kiwisaver Account".

He was born in the United States on January 1, 1964 when his parents were students in California, USA. He therefore became a U.S. citizen by birth. His father was a U.S. citizen and his mother was a New Zealand citizen. According to New Zealand law, since he was born outside New Zealand prior to January 1, 1977 he did NOT automatically acquire New Zealand citizenship at birth.

He returned to live in Zealand when he was 20 years old. He then applied for and achieved "New Zealand citizenship by grant" (under S. 10 of the New Zealand citizenship Act). He continued to be a U.S. citizen and became a citizen of both the U.S. and New Zealand.

http://www.dia.govt.nz/Services-Citizenship-New-Zealand-Citizenship-by-Descent?OpenDocument

He left the United States with only the clothes on his back, with no assets and $200 (U.S.) cash. At the age of 22 he married his New Zealand born wife. His children were born when he was 25 and 30. **Let's call him: "Mr. Middle Class".**

The children are now 20 and 25 years old. The wife and two children were born in New Zealand. Every member of the family is a "proud citizen of New Zealand". Not a single one of these people is a "U.S. taxpayer habitually resident in New Zealand".

But, the United States of America views "U.S. persons" (wherever they may be in the world) as part of its tax and penalty base. The United States has come to New Zealand and "asked New Zealand" (at its expense) to:

- impose FATCA on New Zealand
- to identify those who the U.S. defines as "U.S. persons"
- to assist in forcing those U.S. persons, to pay taxes on money earned in New Zealand, to the United States.

  In other words, the United States (as explained in my previous submission) wants to transfer the wealth of New Zealand to the Treasury of the United States. That's what FATCA is!

http://citizenshipsolutions.ca/2014/02/04/submission-to-new-zealand-finance-and-expenditure-committee-fatca/

What happens when Uncle Sam comes knocking?

It's all very interesting. The result may depend on whether Mr. Middle Class can successfully argue that he was really a New Zealand citizen from his birth. The result will not be based on fairness, rationality or justice. The result will be largely based on the citizenship(s) that Mr. Middle Class acquired by the circumstances of his birth. One has no control over where one is born. Citizenship is an immutable characteristic. It's hard to imagine that this could happen in the modern world.

Let the analysis begin.

Question 1: Who (according to U.S. law) would be "U.S. Persons"?

1. Mr. Middle Class is considered to be a U.S. person because he was born in the United States.
2. Both children would be considered under U.S. law to be U.S. persons because they were fathered by a U.S. father outside the United States. (Mr. Middle Class lived in the United States long enough to transmit U.S. citizenship to the children.) This is true even though neither child has ever been to the United States and probably would not be allowed to vote in the United States.
3. Mrs. Middle Class is not a "U.S. person". That said, the U.S. inflicts special punishment on U.S. persons who marry what they call "aliens". U.S. tax law imposes special restrictions on U.S. citizens who marry non-citizen (aliens). (These restrictions may be relevant to preparing for expatriation, because they restrict the amount of property that Mr. Middle Class can transfer to Mrs. Middle Class because she is not a U.S. citizen.)

In any event, FATCA is coming and the "FATCA Roundup" is beginning. Mr. Middle Class and his two children are like "Deer In The Headlights". Furthermore, like the vast majority of "U.S. persons abroad" (and their governments), they have no knowledge of U.S. citizenship-based taxation. Therefore, neither Mr. Middle Class nor his children have ever filed a U.S. tax return.

Question 2: What is the ONLY rational response to U.S. citizenship abroad?

In my previous submission to your committee, I explained how the taxation of U.S. citizens abroad works. It's quite obvious that it is NOT possible for any U.S. person to live in New Zealand and be tax compliant in both New Zealand and the United States (that is if they want a home, the ability to save for retirement, the freedom to run businesses, not be a public charge, etc.).

Therefore, the only rational response is Expatriation – that is the relinquishment/renunciation of U.S. citizenship. Seems reasonable. After all, Mr. Middle Class never worked in the U.S., has no family or assets in the U.S. He has no desire to live there. Mr. Middle Class is NOT a "U.S. taxpayer habitually resident in New Zealand". He is a proud citizen of New Zealand.

Question 3: How does Mr. Middle Class relinquish his U.S. citizenship?

It's simple really. All he need do is schedule an appointment with the U.S. consulate or Embassy. He visits and renounces. All of this may be found in S. 349(A) of the Immigration and Nationality Act.

Unfortunately that's only the beginning of the journey to rid himself of the shackles of U.S. citizenship.

Question 4: Renunciation and Taxes – The good news and the bad news

The Good News – It is simple to renounce your U.S. citizenship

That's what S. 349 of the Immigration and Nationality Act says.

The Bad News – It's not simple to get free of the IRS

But, what's renunciation got to do with taxes anyway? Well nothing really, except that under U.S. tax law one is treated as a “U.S. taxpayer” until one gets a “certificate of good tax paying” from the IRS. Receiving this “certificate” may require paying an Exit Tax! Receiving this certificate will almost certainly require the expense of 5 years of U.S. tax compliance.

Rather than taking you through the torture of referencing and cross referencing the various statutory provisions, I will quote directly from the IRS. All of which may be found at:

http://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax

(I encourage you to read the whole thing.)

The question is whether the U.S. will punish Mr. Middle Class for ridding himself of his U.S. citizenship. Under U.S. law there are two kinds of renunciants:

Type 1 – Not covered and not worthy of punishment; and

Type 2 - “Covered expatriates”who are subject to special punishment.

Mr. Middle Class does NOT want to be a “covered expatriate”.

“To be” *covered or* ***“not to be”*** *covered, that is the question.*

Question 5: Is Mr. Middle Class a "Covered Expatriate?" How is this determined?

As described by the IRS:

"Expatriation on or after June 16, 2008

If you expatriated after June 16, 2008, the new IRC 877A expatriation rules apply to you if any of the following statements apply.

- *Your average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is more than a specified amount that is adjusted for inflation ($147,000 for 2011, $151,000 for 2012, and $155,000 for 2013).*
- *Your net worth is $2 million or more on the date of your expatriation or termination of residency.*
- ***You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.***

If any of these rules apply, you are a "covered expatriate."

Notice again: The failure to certify 5 years of tax compliance means you are a "covered expatriate".

Very few "U.S. persons abroad have been filing tax returns (they didn't know they had to). As a consequence, without coming into U.S. tax compliance for 5 years, any "U.S. citizen" who renounces U.S. citizenship will be a "covered expatriate" and subject to the Exit Tax.

Question 6: So, what's so bad about being a "covered expatriate"?

The answer is that **"covered expatriates" are subject to the U.S. Exit Tax** and are at risk of having their "after tax" assets in New Zealand c**onfiscated if they renounce U.S. citizenship**.

As described by the IRS:

"IRC 877A imposes a mark-to-market regime, which generally means that all property of a covered expatriate is deemed sold for its fair market value on the day before the expatriation date. Any gain arising from the deemed sale is taken into account for the tax year of the deemed sale notwithstanding any other provisions of the Code."

The U.S. imposes capital gains tax on the sale of property including a principal residence. Hence, the effect of the Exit Tax is to force "covered expatriates" to pay a percentage of their "pretend capital gains" to the IRS in order to be free of U.S. citizenship. My understanding is that capital gains are NOT subject to tax in New Zealand!

I encourage you to reflect on this before reading further. Every asset Mr. Middle Class has accumulated in New Zealand is caught by this provision.

An example of the Exit Tax in Action

Assume that Mr. Middle Class bought an investment property in1986 for $50,000. Assume further that the value of the property today is $750,000. It's the same property. It's just that there has been inflation. Under New Zealand law, there would be NO capital gains tax on he sale of the property.

http://www.newzealandnow.govt.nz/investing-in-nz/rules-law/taxes

If Mr. Middle Class renounces U.S. citizenship the house will be deemed to have been sold (no actual cash is received) for $750,000 giving a capital gain of $700,000. Under U.S. tax law, Mr. Middle Class would have to pay a capital gains tax on the sale of the property. I will assume a 15% tax on the $700,000 pretend gain.* This is a tax of $105,000. Where is the money to come from? This is the plight of being a “covered expatriate”. This process is repeated for all if his assets (assuming he is a “covered expatriate”).

*I am assuming a 15% gain. This assumption of 15% may be incorrect. See:

http://taxes.about.com/od/capitalgains/a/CapitalGainsTax.htm

“Kiwisaver” accounts and retirement planning – How U.S. tax will apply to them

A New Zealand resident sent me the following description of “Kiwisaver” accounts:

“Kiwisaver schemes are similar to ISAs in the UK, and I am sure one of the Canadian savings products will be the same. An individual joins a Kiwisaver fund offered by various scheme providers. You can only be a member of one at a time, but you can switch schemes whenever you want to another provider. At the highest level, each scheme is setup as a trust. Under the covers, they invest in other funds (generally unit trusts offered by the same provider). From the individuals perspective they appear to be invested in a single "fund" although there may be multiple under the covers.

Contributions to these funds are managed by a combination of the scheme providers and the government. The various components are as follows:

1. A one off $1000 "kickstart" fee provided by the government
2. Employee contributions of 3%,4% or 8% of salary (the employee can choose the level)
3. Employer matching contributions (minimum 3% of salary)
4. Annual government contributions called "Member Tax Credits" of 50% the employee contribution (maximum $521 per annum)

With a few exceptions the investment cannot be withdrawn until 65. If you want to have a look the government site is here:

http://www.kiwisaver.govt.nz/

If these funds are classified as companies under US law, they would be subject to PFIC rules, right? I'm still not quite sure why a unit trust should be classified that way, it is above my head. Anyway, assuming these are, the government and USPs in New Zealand have MAJOR problems.

Firstly, I would expect that the Government "kickstart payment", the employer contributions and annual government contributions would be US taxable to the individual as income in the year they are added to the fund (probably the case even if they weren't PFICs?). That's bad enough, but if they are PFICs, the investment growth will be punitively taxed on withdrawal many years later wouldn't it?

If this is the case, it means that some New Zealanders would be unable to participate in this program otherwise they would have their government and employer contributions taxed on

the way in, and most of their gains taxed on the way out !!!

Also, if they are PFICs, does this require Form 8621 to be filed on an annual basis even if there are no distributions? If so, that is another huge cost.

The government will get these schemes excluded from reporting in the IGA and no doubt claim a "victory" that they have managed to get Kiwisaver schemes exempted from FATCA. However, that won't absolve the USP the obligation to report and pay taxes on these.

Finally, of course, I would assume that these PFIC rules would also apply to all other standard unit trust/managed funds that USP invest in in New Zealand that WILL be subject to reporting."

As a reminder of the confiscatory effects of the PFIC rules see:

http://citizenshipsolutions.ca/2014/02/06/pfic-taxation-and-americans-abroad/

"Kiwisaver" accounts are assets subject to the Exit Tax"

"Kiwisaver" accounts would be subject to the "Exit Tax". As the above description indicates, employers and the taxpayers would be contributors to the "Kiwisaver" account. To put it simply:

Assuming Mr. Middle Class is a "covered expatriate", and "Kiwisaver accounts" are subject to the Exit Tax:

Mr. Middle Class and the taxpayers of New Zealand are required to pay the United States in order for Mr. Middle Class to be free of his "U.S. taint"!

Can you imagine anything more unfair?

Therefore, its essential that Mr. Middle Class NOT be a "covered expatriate".

Question 7: So how does Mr. Middle Class avoid being a "covered expatriate?"

Assuming that Mr. Middle Class does not have 2 million dollars (and assuming he is not paying Mega-tax to the U.S.), he can avoid being a "covered expatriate" by becoming U.S. tax compliant for 5 years.

One would think that this would be easy, but ...

Question 8: How does a non-compliant Mr. Middle Class come into U.S. Tax Compliance?

It's not as clear as one would think. How does one do it? How much might it cost?

The requirement of coming into U.S. tax compliance

Once again, we are fortunate to have guidance from the IRS:

"Individuals who have expatriated should file all tax returns that are due, regardless of whether or not full payment can be made with the return. Depending on an individual's circumstances, a taxpayer filing late may qualify for a payment plan. All payment plans require continued compliance with all filing and payment responsibilities after the plan is approved.

For more detailed information on what to do if you have not filed your required federal income tax returns, refer to Filing Past Due Tax Returns."

The mechanism for coming into U.S. tax compliance

Okay, but how does one come into U.S. tax compliance? Remember New Zealand residents are "foreign" to the United States. The local bank accounts and investments of New Zealand residents are "foreign" from a U.S. perspective. This raises the spectre of substantial penalties for past non-compliance.

To put it simply:

It is not a simple thing for non-compliant "U.S. persons", with "foreign assets" and "foreign bank accounts" to come into U.S. tax compliance.

The options for entering the U.S. tax system are numerous and carry degrees of risk. They carry a full spectrum of penalties and risk assessment. They range from the OVDP program (at the one extreme) to the simple act of filing returns (at the other extreme). The decision is fraught with anxiety.

Question 9: What is a U.S. "Tax Return" and will Mr. Middle Class owe U.S. tax?

A U.S. tax return is composed of two parts:

A. The Tax Return itself (calculating taxes); and

B. Information Returns (which carry draconian penalties for failure to file)

Tax Returns: As discussed in my previous submission, the U.S. tax return is completed according to U.S. laws and imposes taxes on things that are NOT subject to tax in New Zealand. I remind you of the U.S. taxability of:

- self-employment taxes (16.8%)
- taxation of capital gains
- ObamaCare Surtax
- PFIC penalties (**likely applying to the Kiwisaver account)**
- Let's not forget the penalties and interest for late payment)
- and more

Please remember that to pay these taxes is to participate in the outright transfer of wealth from New Zealand to the U.S. Treasury.

Information Returns: Speaking of penalties, Mr. Middle Class (based on my description) would likely be required to file the following information returns. Since he has not been filing his U.S. tax returns, he would be subject to penalties for failure to file these returns. The default penalty is $10,000 (which can possibly be (or not) abated on the basis of "reasonable cause").

FBAR – Foreign Bank Account Reports

3520 – Foreign Trust

3520A – Where there is a "Foreign Trust" the Form 3520A is sure to follow

5471 – Remember he has a small business corporation

and likely more.

My point is simple:

When the 5 years of U.S. tax returns are completed they will likely show U.S. tax liability and the possibility of severe penalties!

Oh, and lest I forget:

The two daughters (under U.S. law) will have to go through this process as well!

And to add to the absurdity, because the daughters were born with dual citizenship, if they are "covered expatriates" they are exempt from the U.S. Exit Tax!

Yet they must still meet the "5 years" compliance test even though they have never set foot in the United States.

(I'm sure this is hard for you to believe.)

Question 10: You must be joking! It couldn't be as complicated as all this?

Yes, it is this complicated and costly.

But it gets worse because:

Mr. Middle Class will need the assistance of professional tax assistance! Who knows how to do these kind of returns? Who knows how to complete these complex forms? Where are these people found? What do they charge?

Answer: For U.S. citizens abroad preparation of the most basic return starts at approximately $1,000. Mr. Middle Class will NOT have a basic return. He has a business. He has investments. He will pay significantly more. In other words, there is a tax on coming into compliance. By way of further elaboration consider:

http://citizenshipsolutions.ca/2014/02/22/thoughts-on-selecting-a-u-s-tax-preparer-suitability-vs-cost/

Question 11: Can one just renounce and not go through the compliance process?

The IRS advises ...

"Significant penalty imposed for not filing expatriation form

The Internal Revenue Service reminds practitioners that anyone who has expatriated or terminated his U.S. residency status must file Form 8854, Initial and Annual Expatriation Information Statement (PDF). Form 8854 must also be filed to comply with the annual information reporting requirements of IRC 6039G, if the person is subject to the alternative expatriation tax under IRC 877 or IRC 877A. A $10,000 penalty may be imposed for failure to file Form 8854 when required.

IRS is sending notices to expatriates who have not complied with the Form 8854 requirements, including the imposition of the $10,000 penalty where appropriate.

The Instructions for Form 8854 provide details about the filing requirements, related definitions and line-by-line instructions for completing the form. Failure to file or not including all the information required by the form or including incorrect information could lead to a penalty."

Conclusion:

Renouncing U.S. citizenship is a very costly thing to do! Even those non-compliant taxpayers who are "covered expatriates" because their net worth exceeds 2 million dollars will come into compliance for 5 years (fearing a costly audit).

To put it another way the costs of a New Zealand citizen to renounce U.S. citizenship will include **AT A MINIMUM** the following costs for 5 years:

1. The payment of all taxes due plus interest and penalties.
2. The costs of the preparation of the tax returns
3. The possible Exit Tax.

Put it this way:

Even the most simple renunciation of U.S. citizenship for a New Zealand citizen (assuming no taxes and penalties) will cost at least $5000. For the vast majority the cost will be significantly higher!

In summary to borrow and adopt the words of a proud Kiwi family ...

"We are a proud Kiwi family. Unfortunately, according to the United States we are also "US persons" and therefore collateral damage in the worldwide FATCA roundup of anyone with even the remotest US connection.

*The Revenue Minister, Todd McClay, cynically refers to us as "**US taxpayers habitually resident in New Zealand"**, implying that our primary responsibility is to a foreign government and effectively treating us as non-citizens. I disagree. We are New Zealand taxpayers, New Zealand citizens and our only allegiance is to New Zealand. We should have the same rights, in New Zealand, as every other New Zealander. **We are NOT second class citizens.***

It would certainly be interesting if former Deputy Prime Minister Wyatt Creech was still the Revenue Minister. Mr Creech is a "US person", having been born in California and came to live in New Zealand before he was a year old. I wonder if he would agree with Mr McClay's definition. I think not.

FATCA is very complex and the devil is in the detail. I would like to step back for a few moments and look at the big picture.

The United States is broke and has no way to repay its debts. It is seeking money from anywhere it can find it. At its essence, FATCA (with or without an IGA) is an attempt to enforce the US tax policy known as citizenship based taxation across the globe to increase the US tax base. It can only do this with the assistance of other governments. It requires that other countries act as US agents to identify their targets and pick up the tab for the privilege of turning in their own citizens for "processing". All this under the threat of sanctions if they do not comply with US demands. These policies are designed to reach out and extract wealth from the citizens and residents of other nations based on rules that are determined in the United States.

Put simply, every dollar that is extracted from families like mine, in the form of immoral taxation, huge penalties for innocent mistakes or the enormous fees paid to US tax preparers is a direct transfer of wealth from New Zealand to the United States. Countries, including New Zealand, must stop "respecting" the sovereign rights of the United States to confiscate a portion of their tax base in this manner.

At an individual level, the only way to stop this extortion is to renounce US Citizenship. As you have heard this is not straightforward and is a complex, intimidating process. If this legislation proceeds I urge you to negotiate with the United States to enable New Zealanders with these connections to complete this procedure without fear of having their assets seized due to so-called "non-compliance" with foreign laws they could not reasonably be expected to have known about.

*On the topic of negotiating, that brings me to the IGA, the apparent Holy Grail to avoid the wrath of FATCA. The IGA was **not** part of the original FATCA legislation and has **not** been approved by the US congress. Its primary purpose is to provide countries with a way to **override their domestic privacy and human rights laws**. The supposed significant cost*

reductions for our financial institutions are not quantifiable, just like every other FATCA cost.

It is not a treaty, nor is it a negotiation. It most certainly is not a reciprocal arrangement. The IGA requires New Zealand institutions to collect personal details, interest, dividends, account balances, proceeds of sales of property and the surrender value of insurance policies. It includes reporting on entities such as companies and trusts as well as on individuals.

What do we get in return?

They commit to provide details of the amount of interest paid on bank deposits to individuals. ***That's it****. There are also some weasel words about supporting future legislation to achieve equivalent levels of reciprocity. There are 18 pages of due diligence requirements that are required to be implemented by New Zealand institutions. There are none listed for the United States.*

I submit that the reciprocity clause was added to provide the appearance of a bi-lateral agreement when, in fact, ***both parties know it is nothing of the sort****. Put simply, the IGA is a bailout for the banks at the expense of the rights of New Zealanders.* ***The Bill of Rights may as well not exist if it can be overridden with such disdain****."*

http://isaacbrocksociety.ca/2014/01/26/a-plea-for-submission-against-fatca-iga-enabling-legislation-in-new-zealand/comment-page-3/#comment-1125183

Implications and recommendations for a FATCA IGA

I respectfully urge:

1. **For the reasons given in my previous submission, including the fact that FATCA will inevitably transfer the wealth of New Zealand to the United States:**

   That New Zealand NOT participate in FATCA in general. The Government of New Zealand should enact legislation prohibiting New Zealand banks from obeying FATCA, because FATCA is an attempt to impose U.S. law on New Zealand.
2. **In the event that New Zealand does NOT prohibit New Zealand banks from participating in FATCA, the Government of New Zealand must allow the banks to decide on a bank-by-bank basis how to respond to the demands of a foreign power.**
3. **Under no circumstances should the government of New Zealand, enter into any agreements (including an IGA) with the United States that will assist the United States to implement FATCA in New Zealand.**
4. **Under no circumstances should the Government of New Zealand assist the United States in implementing FATCA, by changing its domestic laws, pursuant to an IGA.**
5. **If New Zealand does enter into a FATCA IGA with the United States, it is essential that the agreement include a clause that would allow New Zealand residents and citizens, who must come into U.S. tax compliance, to come into compliance without the payment of any penalties.**
6. **If New Zealand does enter into a FATCA IGA with the United States it is essential that the IGA include a clause that would allow all New Zealand residents to renounce U.S. citizenship without the threat of the Exit Tax and the necessity of demonstrating 5 years of U.S. tax compliance!**
7. **If New Zealand does enter into a FATCA IGA with the United States, it is essential that New Zealand no longer accept U.S. citizens as immigrants to New Zealand.**

Afterthoughts – If anybody else is reading ...

I have tried to keep this simple. That said, I want to alert you to the following other possible complications and other “twists and turns”.

Afterthought 1 – To Whom Does The Exit Tax Apply?

The “dual citizen” at birth exemption for the Exit Tax

If Mr. Middle Class had been born a dual citizen of New Zealand and the United States and had met some other requirements, then he would be exempted from the “Exit Tax” (were he a “covered expatriate”). His daughters, because they were born dual citizens at birth would NOT (subject to meeting additional requirements) be subject to the Exit Tax.

The exemption depends on where one was born! Should the outcomes of a person's life be determined by the circumstances of their birth? It would seem so if you were born in the United States!

Afterthought 2 – Mechanisms for coming into compliance

For the “non-compliant” American abroad, the prospect of entering the U.S. tax system is frightening. Perhaps it is a function a culture, perhaps a reflection of reality, (but likely somewhere in between), the system is designed to cause maximum anxiety. Americans abroad suffer huge trauma and anxiety. Many believe (whether true or not) that their retirement assets will be confiscated. This makes them prey to (in addition ot the IRS) the “cross-border” professionals.

Coming into compliance with OVDP and Streamlined

My analysis assumed that the non-compliant New Zealander with a “U.S. taint” would simply file the late returns to satisfy the requirement of 5 years of tax compliance. The IRS has two specific programs for non-compliant Americans abroad to come into compliance. Here are some thoughts on each:

OVDP – Offshore Voluntary Disclosure Program – A Way To Guarantee Penalties

This is suitable only for those with a material risk of criminal prosecution. Do NOT enter it unless at least two experienced lawyers recommend it to you.

Streamlined Compliance Program – A Possible Way To Avoid Penalties

This has been available since September of 2012. Although it is designed to allow Americans abroad to reenter the U.S. tax system, it can also be used file the 5 years needed to avoid “covered expatriate” status. Again, this program should be used only subject to and under the direction of an experienced professional.

Neither the OVDP nor Streamlined Compliance program is a necessary condition for coming into U.S. tax compliance.

Filing Delinquent Tax Returns Outside the Parameters of an IRS Program

U.S. law requires taxpayers to file tax returns.

U.S. law also requires taxpayers to file the FBAR ("Foreign Bank Account Report"). (FBAR has been replaced by a new Fincen Form.

In other words, one does have the option of simply filing past returns without going through a formal IRS program.

Non-compliant taxpayers should, are advised to explore the best mechanism for coming into compliance.

Afterthought 3 – Psychological and Emotional Aspects Of Being The Target Of The "FATCA Hunt"

I urge you to consider the emotional impact that "FATCA Hunt" is having on New Zealand residents who have been born in the United States. The effects are severe. Those affected are overwhelming people who are completely tax compliant in New Zealand. They have saved responsibly for retirement. Their financial futures and years of savings are now at risk simply because of their country of birth. I emphasize, and the fact is, that the United States of America, prior to 2011, made NO attempt to inform those "U.S. persons abroad" of their tax responsibilities according to U.S. laws. Neither the Government of New Zealand nor financial planners in New Zealand offered any suggestion that certain financial products were dangerous to certain New Zealand residents because of their place of birth.

Finally, at no time did the Government of New Zealand ever suggest that New Zealand citizens, who happened to have been born in the United States, were NOT New Zealand citizens, but "U.S. taxpayers habitually resident in New Zealand"!

It is easy to understand why those affected by this feel a sense of betrayal, abandonment, worthless and sheer terror!

What follows are the words of a Toronto psychologist who describes the reality of U.S. citizenship abroad:

> *"For those U.S citizens who have elected to live abroad, be it in Canada or elsewhere, American tax policy can place such individuals in a position that engenders constant and severe emotional stress. The vindictiveness of the U.S. position, its unfairness and irrationality, the fact that neither the U.S. government nor tax and legal experts even know the rules and how to rationally proceed, and the constant threat of economic calamity are all factors that can be emotionally devastating. From my observations over the years in people ensnared in this situation, and I would count myself among us, it is common to experience substantial anxiety, depression, feelings of panic and foreboding, guilt over being branded a cheat and a criminal, fear, anger, resentment, and general feelings of helplessness and confusion. I have in fact seen some people who have become virtually suicidal at the prospect of losing everything for the "crime" of not paying taxes to a country they have not lived in for decades if ever at all.*
>
> *I am a clinical psychologist licensed to practice in Ontario with 35 years of experience. I have also been appointed an assistant professor in the Department of Psychiatry at the University of Toronto. In recent years I have had the opportunity to discuss and address these problems with many individuals who are are trapped in these tragic circumstances.*
>
> *Along with John I am happy to make myself available in any of the forums or meetings that will be forthcoming. There is always strength in numbers and sometimes much can be gained by discussing common problems together in a group. I am also happy to chat or work with people individually with these concerns."*
>
> Dr. Donald Young

http://citizenshipsolutions.ca/counseling-vs-counselliing/emotional-counselling-for-those-threatened-by-the-fatca-roundup/

In closing ...

All of which is respectfully offered for your consideration. Feel free to contact me with any questions or requests for additional information or analysis.

Please, please, please:

Respect the sovereignty of your great nation and respect the rights of the citizens of New Zealand!

John Richardson – Toronto, Canada

http://www.citizenshipsolutions.ca

February 21, 2014