

**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 SUBMISSION TO THE NEW ZEALAND SELECT COMMITTEE:**

**In the matter of the:**

**“Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill”.**

**Including the:**

**“Foreign Account Information-Sharing Agreement”.**

**BY:**

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**The New Zealand Select Committee is now accepting submissions on the:  
“Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill”.**

The specific section I am writing about is the:

**“Foreign Account Information-Sharing Agreement”.**

It appears that the New Zealand Government is close to signing an Intergovernmental Agreement (“IGA”) with the United States on the implementation of a the U.S. Extra-Territorial FATCA Account Tax Compliance Act (“FATCA”).

I am a Barrister and Solicitor in Toronto, Canada. I am very familiar with the details of FATCA and the huge costs of U.S. Citizenship-based taxation which would be enforced by FATCA in the event that your government participates in FATCA.

Although I am a Canadian I have spent time in New Zealand and know the country and people of New Zealand well.

I ask that the Government of New Zealand carefully consider all aspects of FATCA, including entering into a FATCA IGA with the United States. Any New Zealand participation in FATCA will have a devastating effect on the sovereignty and economy of New Zealand.

Although FATCA has its difficulties, the problems are exacerbated by the U.S. system of citizenship-based taxation. Citizenship-based taxation is incompatible with the reality of life in a global world. To it's credit, the U.S. Senate Finance Committee is currently considering the appropriateness of “citizenship-based taxation”. I am hopeful that once the full implications of citizenship-based taxation are understood, that the U.S. will adopt the international norm - “residence based taxation”. A move to residence-based taxation is essential to the interests of the United States and to its trading partners.

No country should participate in FATCA without understanding what U.S. citizenship-based taxation really is, how citizenship-based taxation and FATCA interact, and how this interaction affects the economies of countries who have “U.S. persons” resident in the country. I, along with others have prepared a detailed submission on citizenship-based taxation, which has been submitted for consideration by the U.S. Senate Finance Committee. The submission may be found here:

<http://citizenshipsolutions.ca/2014/01/24/submission-to-the-senate-finance-committee-on-citizenship-based-taxation/>

Given the current reality of U.S. citizenship-based taxation, it is impossible for New Zealand to participate in FATCA without ceding it's sovereignty to the United States.

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## Should The People Of New Zealand Pay Tribute To America?

### Two ships passing in the night

#### The Good Ship America

On January 16, 2014 President Obama's Press Secretary announced that:

*"The President has made it clear time and time again that:*

***In the United States the outcomes of your life should not be determined by the circumstances of your birth".***

Surely this must mean that a person born in America (and therefore a citizen by birth), should not be held in tax servitude to America, by virtue of birth in America.

#### The good ship outside America

McGill law professor Allison Christians in a recent blog post titled "Citizenship-Based Taxation and Taxpayer Rights Don't Mix" noted that:

*"Further in, I argued that the NTA Report illustrates that taxing people on the basis of their nationality or legal status rather than their actual residence poses a serious problem for tax administration and violates international norms.*

*As a practical matter, globally rounding people up based on one government's ideas about their legal status is quite obviously [unenforceable without assistance](#) from other governments. This assistance fundamentally conflicts with a universally recognized (and far more just) jurisdictional claim based on actual residence. It is one thing for the US to say to individuals: if you have status under our law you must follow all of our laws no matter where you are. It is another to say to other countries--and much less individuals in other countries--**if people who live in your country have US status as we define it**, you are harboring potential criminals and you must help us find them and enforce our claim over them even if your government also claims them and even if our claim conflicts with your government's own law.*

***Thus status-based taxation is no less a poaching of other countries' internationally recognized jurisdictional claims over taxpayers than the kind of poaching FATCA was ostensibly designed to attack (namely, that of the US tax base by other countries via bank secrecy). The basic unenforceability of status-based taxation coupled with its poaching of other jurisdictional claims would make it a total non-starter were nations to get together and discuss a multilateral adoption of status-based taxation as a policy everyone could get behind.***

*But FATCA is a big stick that is bypassing any such conversation, going straight to the technical problem of compliance and enforcement under the banner of stopping tax*

*evasion. There might be no remedy in international law for tax jurisdictional overreach but that only confirms that it must be challenged from both within and without the nation engaging in the bad behavior.”*

<http://taxpol.blogspot.ca/2014/01/citizenship-based-taxation-and-taxpayer.html>

I have bolded two parts from the above paragraphs of Professor Christian's post. Each part underscores a specific “Part” of the offensiveness of FATCA.

### **Part 1 – FATCA is an attack on the rights of individuals.**

**FATCA mandates that U.S. Persons residing outside the United States in another country, are not permitted some of the “human rights” enjoyed by “Non-U.S. Persons” residing in that country. Furthermore, it is the U.S that determines which people – by virtue of being deemed “U.S. Persons” - are denied these rights.**

**As Allison Christians notes the FATCA directive is determined by: “if people who live in your country have US status as we define it”**

FATCA mandates that it is the U.S., and the U.S. alone that defines “U.S. status”. Furthermore, the U.S. is free to redefine “U.S. status”. The U.S. regards “U.S. persons”, no matter where they live, to be part of its “tax and penalty base”. NOTHING prevents the U.S. from gradually expanding its definition of “U.S. person”. (Notably, under the current law the U.S. claims the right to tax Green Card Holders who are NOT resident in the U.S.)

### **To put it another way:**

FATCA allows the U.S to expand the definition of “U.S. person” and to tax those newly created “U.S. persons”, wherever in the world they may reside. To take an example (perhaps extreme by today's standards), the U.S. could define U.S. persons to NOT include U.S. citizens and specifically include the citizens and residents of all other nations. Sound far fetched? Consider the fact that, at the present time, the U.S. is requiring those citizen/residents of New Zealand, Canada (and all other nations) that it deems “U.S. Persons” to pay taxes to the U.S.

### **The rights of “U.S. persons” are violated because ...**

The application of FATCA means that New Zealand citizens who are deemed “U.S. persons” do NOT benefit from the privacy rights afforded other New Zealanders. They are deprived of these benefits because and only because of their “citizenship” and/or “national origin”. In short, the United States through the imposition of FATCA is attempting to **deprive it's own citizens** of the privacy rights afforded non-U.S. citizens.

## **Territorial vs. Extra-Territorial Jurisdiction**

All countries exercise “territorial jurisdiction” over those with a physical presence in the country. “Territorial jurisdiction” is premised on the idea that the country has a primary jurisdiction over its territory. Jurisdiction over the person exists because the person is in the territory. Most governments legislate according to the principles of “territorial jurisdiction”. They make laws that apply to their country and those laws apply to the people in the country. They respect the right of other countries to make laws for their jurisdictions. This is why when a person leaves that country, the person is in general, no longer subject to the laws of the country.

FATCA is a prime example of the U.S. attempting to exercise extra-territorial jurisdiction over **both countries and individuals**.

## **FATCA, Citizenship-based Taxation and Extra-Territorial Jurisdiction over individuals**

The United States claims the right to exercise jurisdiction over people who are not within the territorial jurisdiction of the United States. For example, FATCA is an attempt to locate persons outside the territorial jurisdiction of the United States and force them to pay taxes to the United States. To apply the FBAR rules to U.S. citizens abroad is an attempt to punish people for conduct that took place outside the United States. To deem children born to U.S. citizens abroad to be U.S. citizens is an attempt to impose citizenship on those born outside the territorial jurisdiction of the United States.

## **What is the philosophical or moral justification for the extra-territorial application of U.S. law to individuals in general and to U.S. citizens abroad in particular?**

Jurisdiction over an individual who is NOT in the country's territorial jurisdiction can be justified primarily on the basis that the individual is under the sole jurisdiction - (the property?) of the country. Does a country have an “ownership interest” in its citizens?

The notion that a government owns its citizens is offensive to human rights legislation the world over. Yet, the idea that U.S. citizens abroad are subject to U.S. tax jurisdiction is “accepted” by many governments and politicians including:

1. **The Government of New Zealand** which has said in its “Regulatory Impact Statement on FATCA that the persons affected by FATCA are:

*“U.S. persons that are also New Zealand residents” or “United States taxpayers that are resident in New Zealand”.*

Regulatory Impact Statement on FATCA (“RIS”):

<http://taxpolicy.ird.govt.nz/sites/default/files/2013-ris-arearm-bill-04.pdf>

2. **Canadian Liberal Leader Justin Trudeau** was reported to have said:

*“... the unfortunate consequence of FATCA is that **Americans who hold dual citizenship still fall under its authority**, and it requires access to their financial information through their banks. As a result of FATCA, there has been a surge in US citizenship renunciations over the past few years, and this trend continues to grow.”*

<http://isaacbrocksociety.ca/2014/01/29/jt-says-duals-fall-under-usa-authority/>

It is obvious that these people **deemed by the U.S.** to be “U.S. persons”, are in most cases, also citizens of their country of residence (New Zealand and Canada). In fact their “dominant/primary/master nationality” is their country of residence. Yet, some politicians in New Zealand, Canada and other “SOVEREIGN” nations are willing to accept the U.S. claim that these New Zealand and Canadian citizens are PRIMARILY “U.S. persons” (with all of the rights that U.S. ownership presumably entails).

The idea that an individual can be owned by a nation, is inconsistent with even the most basic principles of human rights.

Nor is it consistent with trends in international law. This principle was eloquently articulated by lawyer Andrew Grossman as follows:

*“... that American citizens abroad are being denied bank services and that some, nationals also of the country where they live, are demanding to be treated, as public international law provides, as solely the nationals of the country of dual nationality where they reside. I wonder how long it will be before countries, while willing to give up their banks to the USG, aren't willing to have their grannies threatened by a foreign country. I suspect we will see some countries at least take up their grannies' claims to be protected from cross-border bullying.”*

[http://www.forbes.com/sites/robertwood/2013/10/23/beware-global-irs-reach-very-long-memory/?commentId=comment\\_blogAndPostId/blog/comment/1057-23348-4648](http://www.forbes.com/sites/robertwood/2013/10/23/beware-global-irs-reach-very-long-memory/?commentId=comment_blogAndPostId/blog/comment/1057-23348-4648)

See also:

<http://isaacbrocksociety.ca/2014/01/17/us-citizenship-based-taxation-and-fatca-are-egregious-violations-of-the-master-nationality-rule/comment-page-1/>

The U.S. is the only major country in the world that forces payment of taxes to the U.S., on all world income, regardless of where one lives. This is justified on the basis that the person is a U.S. citizen. In most cases this means only that the person was born in the U.S. As many academics have noted, there is NO relevant correlation between citizenship and taxation.

<http://citizenshipsolutions.ca/2014/01/24/submission-to-the-senate-finance-committee-on-citizenship-based-taxation/>

Acceptance of FATCA means that New Zealand citizens who are also “U.S. persons” are NOT entitled to the full spectrum of human rights that are part of New Zealand citizenship. I respectfully suggest that this is a mistake. This is a mistake that will plant the seeds of the erosion of New Zealand sovereignty.

The willingness to participate in a “FATCA Round Up” and deliver “defenceless U.S. persons” to the IRS, will over time, have a devastating effect on both the sovereignty and economy of New Zealand.

**As President John F. Kennedy once said:**

*“If a free society cannot help the many who are poor, it cannot save the few who are rich”*

The failure to protect the rights of “some New Zealand citizens” (who are under attack from a foreign power) will ultimately weaken the rights of ALL New Zealanders. The attack on “some New Zealand citizens” is an attack on ALL New Zealand citizens.

**FATCA and Extra-Territorial Jurisdiction over countries**

**Part 2: FATCA is an attack on the territorial sovereignty of New Zealand.**

This attack will, in the long run, result in New Zealand losing control over its sovereignty and destiny.

As Allison Christians says: ***“Thus status-based taxation is no less a poaching of other countries’ internationally recognized jurisdictional claims over taxpayers”***

**To put it less abstractly**, it’s important to understand how:

**FATCA, as a tool for enforcing U.S. citizenship-based taxation will (at the direct expense of the taxpayers of New Zealand and other nations!!!):**

- 1. Put all countries under the jurisdiction of the United States Treasury in General, and the IRS commissioner in particular (this is EXACTLY what the FATCA statute (Title 26 S. 1471 says)**

<http://www.law.cornell.edu/uscode/text/26/1471>

- 2. Result in ALL countries who participate in FATCA paying a percentage of their Gross National Product to the United States in the form of an annual tribute FOREVER!**

## **It all begins with failure to protect the rights of ALL New Zealand citizens ...**

Acceptance of the principle that New Zealanders of U.S. origin are “US taxpayers resident in New Zealand”, will lead to the loss of New Zealand sovereignty and a permanent charge on the New Zealand economy. This is the inevitable result of the Government of New Zealand allowing (to use your words) U.S. taxpayers to be “resident in New Zealand” and accepting U.S. jurisdiction over them.

In the haste to protect financial institutions, governments around the world have failed to understand **how U.S. citizenship-based taxation will impose a permanent tax on their economies.**

## **How U.S. Citizenship-based taxation will result in a transfer of the wealth of New Zealand to the coffers of the U.S. Treasury**

### **This is how U.S. citizenship-based taxation actually works\***

### **The three broad categories of U.S. taxes: Income taxes, Social Security Taxes and Penalties**

1. All “U.S. persons” (however the U.S. chooses to define them) are subject to tax on ALL of their income, under the Internal Revenue Code “IRC” wherever they reside in the world.
2. All “U.S. persons” are subject to EXACTLY the same provisions of the “IRC” regardless of where they live. The law in its “majestic equality” treats U.S. Residents the same as U.S. citizens abroad.
3. The primary tax obligation of the “U.S. person” is to the United States. This means that U.S. persons must first pay tax to the United States according to U.S. and only to U.S. laws. This tax calculation is without consideration of the fact that “U.S. persons resident in Zealand” also pay taxes in New Zealand.
4. This application of U.S. law means that “U.S. persons resident in New Zealand” will be subjected to taxes on things that are **NOT taxable in New Zealand.** ONE example is the taxation of an ACTUAL capital gain in general and on the sale of a principal residence in particular. This is ONE example of the principle that “U.S. taxpayers resident in New Zealand” are subject to additional taxation from the U.S. I invite you to consider the following at:

<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

Speaking of capital gains, the U.S. also taxes “phantom capital gains” which result from currency fluctuations. Incredibly, the U.S. actually taxes the depreciation of its own currency. See the following discussion:  
<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

5. The U.S. will allow credits against tax actually paid to New Zealand in limited areas, for specific kinds of taxes. These tax credits apply generally to employment income and limited kinds of investment income. The credits do NOT apply to VAT and other consumption taxes. The “IRC” does NOT give credits for all U.S. taxes owing. The new 3.8% Obamacare surtax (on investment income) is one of many examples of taxes that are NOT creditable. Tax credits allowed under the “IRC” do NOT prevent double taxation. On the Obamacare surtax and the problem of lack of foreign tax credits in general, I invite you to see the following discussion from American Citizens Abroad:

<http://www.americansabroad.org/issues/healthcare/foreign-tax-credits-and-new-medicare-tax/>

The IRC does NOT allow U.S. tax credits for all taxes paid in New Zealand.

6. The “IRC” imposes special taxes, reporting requirements and penalties on anything “Foreign”. The lives of “U.S. persons resident in New Zealand” are completely “FOREIGN”. Therefore the lives of these “U.S. persons resident in New Zealand” are subject to special taxes and confiscatory penalties. I encourage you to read my submission to the U.S. Senate Finance Committee to better understand this principle.

<http://citizenshipsolutions.ca/2014/01/24/submission-to-the-senate-finance-committee-on-citizenship-based-taxation>

The most significant example of the principle of “Punishing Foreign”, is the “PFIC” (Passive Foreign Investment Company) rules. The effect of the PFIC rules is that Americans abroad are incapacitated from using non-U.S. financial products (including mutual funds, many tax deferred savings plans, and likely many non-U.S. pension plans) for retirement planning. (It is likely that “Kiwisaver Accounts” will be considered to be PFICs. Note also that even if “Kiwisaver Accounts” are exempt from FATCA reporting, they will NOT be exempt from the rules of U.S. taxation!)

It is essential that the Government of New Zealand investigate, consider and fully understand the effect of the “PFIC” rules on the taxation of New Zealand investment products. I encourage you to read my detailed analysis of the application of the PFIC rules to “U.S. persons resident in New Zealand” (and other countries), which is here:

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

Another very important example of the principle of “punishing things foreign” is the treatment of U.S. Citizens abroad who carry on business through small business corporations in their country of residence. The punishment includes expensive reporting requirements (5471 reporting) and the attribution of “investment income earned by the corporation” to the “U.S. Person” shareholder (Subpart F rules). By way of example, see:

<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

To be clear, these additional taxes when applied to the lives of “U.S. Persons resident in New Zealand” can and will result in the confiscation of the after tax savings and assets of “U.S. Persons resident in New Zealand”.

7. It gets worse. New Zealand does NOT have a “social security agreement with the United States. This means that any self-employed “U.S. person resident in New Zealand” will be subject to an additional 16.8% tax from which there is no exemption.

<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

8. It is clear that “U.S. citizens resident in New Zealand” are subject to heavy additional taxation. The effects of this additional taxation are two-fold:

- A. It incapacitates “U.S. residents in New Zealand” from retirement planning (making them an eventual burden to the economy of New Zealand); and
- B. It allows the U.S. to effectively “colonize” New Zealand by removing wealth from the New Zealand economy under the guise of taxation.

9. The effects of U.S. Extra-territorial have NOT been well understood until now. This is because U.S. Citizenship-based taxation has been neither well known nor enforced. FATCA, as “an enforcement tool for citizenship-based taxation” is certain to increase both the awareness and understanding of U.S. citizenship-based taxation. Along with awareness and understanding will come compliance. Compliance will result in “U.S. persons resident in New Zealand” being subjected to confiscatory U.S. taxation and significant penalties. The taxation of U.S. persons abroad provides a vehicle for the U.S. to extract wealth (earned in New Zealand with no economic connection to the United States) from New Zealand and transfer it to the United States. In effect, the U.S. will use the taxation of

“U.S. persons resident in New Zealand” to transfer a portion of the New Zealand economy to the United States every year. Allison Christians “diplomatically” calls this process “**poaching of other jurisdictional claims**”. I encourage the Government of New Zealand to see the process for what it really is – **the unjustifiable transfer of the wealth of New Zealand and fruits of the labour of New Zealand citizens – to the U.S. Treasury!**

10. As all economists know, the addition and subtraction of money to an economy has a multiplier effect. (Think “central bankers” and quantitative easing.) Just imagine how every dollar taken from the New Zealand economy under the guise of “citizenship-based taxation” will by, eroding the capital of the nation, accelerate the contraction of the New Zealand economy. The United States is actually using FATCA enforced citizenship-based taxation as a way to colonize the world.

11. Furthermore, it is New Zealand that is being asked to pay the financial costs to administer FATCA - the weapon to enforce U.S. citizenship-based taxation – and eventually erode the sovereignty of New Zealand!

12. This “charge on the New Zealand economy” will continue as long as the population of New Zealand includes “U.S. Persons resident in New Zealand”. (If New Zealand participates in FATCA, than it can no longer allow immigration from the United States. In addition, New Zealand may have to take steps to make the continued New Zealand residence of U.S persons conditional on renouncing U.S citizenship. **Even “renouncing U.S. citizenship” triggers the threat of the U.S. Exit Tax.** (Imagine how great a problem this is for Canada where AT LEAST 3% of the population are considered to be U.S. Persons.)

13. U.S. Citizenship-based taxation affects more than “U.S. Persons”. It affects the families and spouses of “U.S. persons”.

**Effect on the family:** Since the U.S. Person is disabled from financial planning he whole family will have great difficulty engaging in meaningful financial planning.

**Effect on non-U.S. spouse:** The IRC restricts the ability of the “U.S. person” spouse to transfer property to the non-U.S. spouse. Obviously the creates problems in Estate planning and exacerbates the many problems of divorce.

See the post at:

<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

(\*Critics may argue that certain “U.S. persons who live abroad” may be entitled to the “Foreign Earned Income Exclusion”. If applicable, this allows a U.S. person to exclude approximately \$95,000 of “foreign earned income” from taxation. Although this is a slight “administrative and compliance benefit”, it does NOT mitigate the punitive effects of extra-territorial taxation because:

- A. It is restricted to “earned income” and does not apply to investment income.
- B. It is of value ONLY in countries that have lower rates of taxation on income than does the U.S.
- C. Tax credits are almost always better than an exclusion from income.

<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

The point is that the Foreign Earned Income Exclusion and Foreign Tax Credits do NOT prevent double taxation or the U.S. taxation of things that are NOT taxed in other countries.)

### **Coming into U.S. tax compliance and the penalty question**

U.S. persons are required to file both “tax returns” and “information returns”. The failure to file information returns subjects one to “draconian penalties” (typically starting at \$10,000 per return. Examples of these returns include (but are certainly not limited to):

FBAR – Report of Foreign Bank Accounts with U.S. Treasury and NOT with the IRS  
FATCA Form 8938 – Report of Foreign financial assets  
5471 – Report of Foreign Corporation (this is a return in and of itself)  
3520 – Report of Foreign Trusts (which include Kiwisavers)

and more ...

<http://citizenshipsolutions.ca/u-s-tax-issues-for-canadian-citizens/some-us-tax-issues-of-particular-concern-to-us-persons-abroad/>

FATCA will identify large numbers of “U.S. persons resident in New Zealand” who did NOT know the full extent of their U.S. tax obligations. These people may be subject to massive penalties if and when they attempt to come into compliance.

These penalties, if levied, will erode the savings of “U.S. persons resident in New Zealand” and transfer the wealth of New Zealand to the U.S. Treasury.

## **How does one come into U.S. tax compliance?**

The question of how to come into compliance is important. The IRS has not issued a general amnesty to allow Americans abroad to come into compliance without fear of penalties. The IRS reserves the right to levy extreme penalties (in the case of FBAR penalties) equalling approximately 300% of the value of a bank account not reported.

### **To put it simply:**

There is no easy way for “U.S. persons resident in New Zealand” to come into U.S. tax compliance. For reasons that are completely inexplicable, the IRS has (at least to date) refused a general amnesty for those who were unaware of their U.S. tax obligations.

Most “U.S. persons resident in other countries”, once they learn of their U.S. tax obligations want to come into compliance.

Coming into compliance is very difficult in an environment of threats and penalties.

## **Some closing thoughts ...**

On January 16, 2014 President Obama's Press Secretary announced that:

*"The President has made it clear time and time again that:*

*In the United States the outcomes of your life should not be determined by the circumstances of your birth".*

Yet his administration is using the circumstance of having being born in the United States, as a reason to levy punitive taxes on people who do NOT live in the United States, may have never lived in the United States, have accumulated no wealth in or from the United States and have no economic connection to the United States. Furthermore, these same people ARE overwhelmingly citizens and residents of other countries and pay taxes to those countries. The only other country to impose this form of taxation is the African nation of Eritrea.

Because the U.S. is an "outlier nation" in imposing citizenship-based taxation it has created FATCA as a tool to enforce it's unusual taxation practices.

## **FATCA – The shot heard round the world ...**

The effect of citizenship-based taxation is that:

All countries are subjected to two FATCA threats.

**FATCA Threat 1:** If you do NOT, AT YOUR EXPENSE, identify "U.S. persons resident in \_\_\_\_\_" (AKA the "FATCA Roundup"), you will be subject to an economic sanction in the form of a 30% tax/penalty.

**FATCA Threat 2:** If you DO identify those "U.S. persons resident in New Zealand", those "U.S. persons" will (because of citizenship-based taxation) be used as the pretext to remove wealth from the economy of New Zealand. The wealth of New Zealand will be transferred to the United States.

**Citizenship-based taxation means that** countries must choose punishment under either FATCA threat 1 or FATCA threat 2.

There is NO way to avoid U.S. punishment.

As a proponent of FATCA once noted:

*"If you got em by the banks, their minds and hearts will follow."*

**The question for a country considering FATCA becomes ...**

How can a country participate in FATCA in an environment of U.S. citizenship-based taxation?

**To return to the wisdom of Professor Christians:**

*The basic unenforceability of status-based taxation **coupled with its poaching of other jurisdictional claims** would make it a total non-starter were nations to get together and discuss a multilateral adoption of status-based taxation as a policy everyone could get behind.*

*But FATCA is a big stick that is bypassing any such conversation, going straight to the technical problem of compliance and enforcement under the banner of stopping tax evasion. There might be no remedy in international law for tax jurisdictional overreach but that only confirms that **it must be challenged from both within and without the nation engaging in the bad behavior.***

Professor Christians is correct.

**To link her words:**

The time has come for “**nations to get together and discuss a multilateral adoption of status-based taxation as a policy everyone could get behind.**” FATCA “**must be challenged from both within and without the nation engaging in the bad behavior.**”

**To use my words:**

The U.S. practice of “citizenship-based taxation” requires the rejection of any FATCA IGA with the United States of America and any other participation in FATCA.

**It occurs to me that that these apply to the Government of Canada as well.**

## Appendix A:

### A closing perspective on FATCA – What FATCA really is ...

This submission has been limited to a discussion of FATCA as the enforcement mechanism of U.S. citizenship-based taxation. The U.S. government claims that FATCA is about “protecting the U.S. tax base” and about “catching rich Americans abroad who are evading tax”. Even the most cursory examination of FATCA reveals that it's implications are much wider.

To assist in understanding the broader implications of FATCA, I suggest the James Jatras site (Mr. Jatras is a U.S. based lawyer and FATCA educator) at:

<http://www.repealfatca.com>

Note the following comment from Mr. Jatras which appeared in Canada's National Post (one of Canada's two national newspapers) in February of 2014:

*“This is right on the money – literally! The pretense that FATCA is only about catching “tax cheats” is starting to wear thin down here in Washington, and nobody in Canada should fall for it either. This is about human rights, privacy, the rule of law, and Canada’s sovereignty. Remember, under US law, FATCA information given to the IRS would not be confidential tax return data and would be deliverable to the “intelligence community” (NSA, etc.) That means that maybe one-seventh of Canada’s population, most of them Canadian citizens (not Americans living in Canada) would have their private information handed over, under threat of what amounts to US economic sanctions. Canadian citizens and consumers must not let some of the big Canadian financial institutions – who would rather spend millions complying with FATCA than stand up and fight it – pressure Ottawa into capitulation.*

*The irony is that domestic US resistance to FATCA is now growing, and the biggest help we could get here would be a big, fat “NO!” from the True North Strong and Free!”*

<http://fullcomment.nationalpost.com/2014/02/03/theo-caldwell-say-no-to-washingtons-surveillance-state/#comment-1229470183>

## Appendix B:

### The growth of political opposition to FATCA in Canada ...

It is not surprising that political opposition to FATCA is growing. As the Green Party of Canada and the NDP have demonstrated, political opposition to FATCA is real and growing. Consider the Green Party statement in opposition to FATCA:

*“As Finance [Minister Jim Flaherty himself noted in 2011](#) “Frankly, Canada is not a tax haven. People do not flock to Canada to avoid paying taxes. We have existing ways of addressing these issues with the United States through our Bilateral Tax Information Exchange Agreement. We share the same goal of fighting tax evasion and we already have a system that works.”*

*The federal government must refuse to sign the Inter-Governmental Agreement to implement FATCA and instead advise their US counterparts that these policies are an unacceptable intrusion into Canadian sovereignty, and work to develop an arrangement that would mitigate the effects of current US tax laws that unjustly target honest Canadian citizens. These measures should be examined by the appropriate House of Commons committees, in consultation with the Privacy Commissioner of Canada.*

***We must not permit Canadian financial institutions to comply with FATCA in violation of our own privacy laws, and if the US attempts to enforce FATCA against them, we must vigorously respond and seek legal remedy as is our right.***

*If the US feels the existing Canada-United States Convention with Respect to Taxes is not working, they should provide specific details and suggestions on how to improve it through legislative amendment without sacrificing the rights of Canadians to foreign interests.”*

<http://www.greenparty.ca/backgrounder/2013-01-28/backgrounder-canada-and-fatca>

I suggest that these considerations may apply equally to the Government of New Zealand!

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**John Richardson – Toronto, Canada**

**February 4, 2014**