REQUEST FOR CHANGES IN LEGISLATIVE PROPOSAL TO ESTABLISH IGA BETWEEN U.S. AND CANADA FOR THE ENHANCED EXCHANGE OF TAX INFORMATION:

A SUBMISSION TO CANADA DEPARTMENT OF FINANCE

By

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TORONTO, CANADA

MARCH 10, 2014

Brief Summary of FATCA and the Key Features of the IGA:

Here is a just one comment sent to Canada Finance regarding the February 5 2014 pending FATCA IGA legislation:

"Dear Canada Dept of Finance

You have recently signed an Intergovernmental Agreement (IGA) with the United States to implement their extra-territorial FATCA laws. You appear to be fully aware of the effects of this act on your own citizens and residents, and the subsequent erosion of your tax base due to immoral US Citizenship based taxation laws.

It is astonishing that a country with a proud history as Canada would yield to these extra-territorial demands from the United States. But what is most disappointing of all is the fact that Canada is uniquely positioned to repel this obnoxious law and send a statement to the United States that imperialistic actions taken against the rest of the world, under threat of economic sanctions, will not be tolerated.

You have the largest percentage of residents who are "US persons" of any nation on earth. **The costs to your country will be greater than to any other. You could have rejected this IGA, as it most clearly violates your Charter of Rights and Freedoms**, and informed the United States that your financial institutions are required to follow Canadian laws. You could have spent the millions of dollars you have already spent on FATCA compliance on efforts to repeal FATCA. You had many other options that you could have explored to persuade the United States to repeal this ridiculous law.

Instead, **you have acquiesced to US demands** and appeased the playground bully, betraying your own citizens in the process. "US persons" worldwide are appalled at the acts of their governments in bowing down to US demands to implement FATCA. **Many of us hoped that Canada would show some real leadership to the rest of the world** by rejecting this odious law and asserting their nation's right to sovereignty over their own people. Sadly, at this point, it seems that those hopes have been dashed.

It is not too late. On behalf of the citizens of every sovereign nation outside of the United States I urge you to reject this enabling legislation and do the right thing:

REJECT THE IMPOSITION OF FOREIGN LAWS IN YOUR OWN COUNTRY"

http://isaacbrocksociety.ca/2014/03/04/march-10th-deadline-for-submissions-to-canadian-finance-department-is-approaching/comment-page-1/#comment-1179776

Mr. Theo Caldwell, writing recently (February 11, 2014) for Canada's Financial Post, elaborates on the above comment, and summarizes the key features, relevant for this submission, of "U.S. person" based taxation, FATCA, and the proposed IGA between Canada and the U.S.:

*"As of this month, the **Canada Revenue Agency works for the Internal Revenue Service**.*

***The subordination of Canada's tax authority to its American counterpart came in the form of a euphemistically named "Intergovernmental Agreement"** pursuant to the U.S. Foreign Accounts Tax Compliance Act (FATCA).*

The result is that starting Canada Day (July 1), Canadian banks and other financial institutions will be required to comb through client accounts containing $50,000 or more to determine if they are "U.S. Reportable." They must then inform CRA, which will pass the information along to the United States.

***FATCA**, passed by the U.S. Congress in 2010, is **an extension of America's anomalous and larcenous practice of demanding taxes from people, regardless of where they reside in the world**. The United States is one of only two countries that engage in this disgraceful conduct (Eritrea being the other). Notwithstanding that Canada's leaders have subjected their citizens to the most rapacious and malevolent tax department in the world in the form of the IRS, **they have committed a craven surrender of national sovereignty**.*

Let us eliminate a deliberate misconception: This agreement is <u>not</u> about catching "tax cheats" as its proponents aver and journalists obediently repeat. It is about expanding America's oversight of global commerce, while increasing its ability to confiscate funds to which it has no legitimate claim.

Indeed, the only apparent cheating is that of the United States, which assumes the power to demand taxes from people who do not live in that country, do not use any of its public services, and in many cases have never been there.

***This is international theft**, effected by the threat of fines, prosecution and imprisonment.*

http://opinion.financialpost.com/2014/02/11/canadas-u-s-tax-capitulation/

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INTRODUCTION – The true "purpose and effect" of a FATCA IGA – Lies, damn lies, and FATCA lies

On February 5, 2014, the Government of Canada announced that it had entered into a FATCA IGA with the United States of America. The announcement was made to the public and included an interesting press release. The press release is here:

http://www.fin.gc.ca/n14/14-018-eng.asp

"Do you swear to tell the truth, the whole truth and nothing but the truth?"

Such is the question asked by a witness when he takes the stand. The nature of the question assumes that one can "lie by telling the truth". One would "lie by telling the truth" when one offers a partial or incomplete truth. Those who control the narrative control the perception of truth.

The press release was an example of Orwellian "Newspeak" at its finest.

The press release was deceptive in the way that it was able to "lie by telling a partial truth".

This "masterpiece of deception" was short, sweet and **irrelevant to the main point**.

The Government was able to "lie by telling the truth" in two key respects.

Respect 1: The Government of Canada was able to obscure the primary impact of FATCA by highlighting its impact on "U.S. citizens/residents" and NOT on Canadian citizens/residents.

What the press release actually says:

"FATCA has raised a number of concerns in Canada—among both dual Canada-U.S. citizens and Canadian financial institutions. ***One key concern was that the reporting obligations in respect of accounts in Canada would compel Canadian financial institutions to report information on account holders who are U.S. residents and U.S. citizens (including U.S. citizens who are residents or citizens of Canada) directly to the IRS, thus potentially violating Canadian privacy laws."***

The wording of this statement is to create the impressions that

1. FATCA is really about Canadian banks reporting on account holders *"who are U.S. residents AND U.S. citizens"*
2. By including in parentheses the words "(including U.S. citizens who are residents OR citizens of Canada"), the Press Release is designed to:

(A) create the impression that FATCA is aimed only at "U.S. citizens" (when it is aimed at anyone who the U.S. deems to be a "U.S. person"), including people who are Canadian citizens **who have lived their whole life in Canada;** and

(B) by referring to "U.S. citizens" who are "citizens of Canada", the press release suggests that if one holds both Canadian and U.S. citizenship and lives in Canada, that the **Canadian citizenship is somehow subordinate to the U.S. citizenship**. In other words, a Canadian citizen, who is also a U.S. citizen is not primarily a Canadian citizen.

I am certain that proud Canadian citizens would be quite offended to know that the Government of Canada believes that those Canadians, who are deemed by the U.S. to be "U.S. persons" (or property), are not really Canadian citizens. This is offensive in the extreme!

Respect 2: The Government of Canada, by minimizing the short run objectives of FATCA, did NOT address the long run purpose and true effects of FATCA

The press release included the following comment from the Minister of National Revenue:

"This is strictly a tax information-sharing agreement. This agreement will not impose any U.S. taxes or penalties on U.S. citizens or U.S. residents holding accounts in Canada. The CRA does not collect the U.S. tax liability of a Canadian citizen if the individual was a Canadian citizen at the time the liability arose. This includes dual Canada-U.S. citizens. That will not change under this agreement."

- *Kerry-Lynne D. Findlay, Minister of National Revenue*

This statement is matched by its deceptiveness and offensiveness only by the statement analyzed above.

1. **Note the focus on *"U.S. citizens or U.S. residents holding accounts in Canada".*** This statement has been deliberately worded to suggest that the impact of FATCA is on "U.S. residents" who hold accounts in Canada. The real impact of FATCA is on **Canadian citizens/residents**, who the U.S. deems to be "U.S. persons", and who use local bank accounts in Canada.

2. **Note the leading language *"This is strictly a tax information-sharing agreement".*** The following two thoughts come to mind:

   First, it is NOT "strictly" a "tax sharing" agreement. It is an agreement that mandates that financial information that does NOT necessarily disclose tax liabilities be turned over to the IRS.

Second, it is NOT "strictly a "tax sharing" agreement. A FATCA IGA is an agreement, pursuant to which Canada agrees to discriminate against a specific group of Canadian citizens/residents who the U.S. wants to claim as taxable U.S. property. In order to facilitate Canada's agreement to discriminate, Canada must change its existing laws so that what, in pre-FATCA days was clearly prohibited discrimination, is now clearly **required discrimination**.

Third, we agree that a FATCA IGA is in part, a "tax sharing" agreement. That said, the whole purpose of a "tax sharing" agreement is to assist in the identification of income and capital to subject to taxation. **The United States claims the right to tax <u>Canadian</u> citizens/residents on income earned <u>in Canada</u>.** Yes, that's right. Therefore, the true purpose of this so called "tax sharing" agreement is to identify certain Canadian citizens/residents who should be turned over to the IRS, for tax processing. Apparently, the Minister believes that the fact of their status of being Canadian citizens and residents is irrelevant.

Fourth, the Minister offers the Orwellian half-truth that: "*This agreement will not impose any U.S. taxes or penalties on U.S. citizens or U.S. residents holding accounts in Canada".* Once again the Minister keeps the focus on "U.S. citizens or residents" (and not on Canadian citizens/residents of Canada) and then makes the narrowly true claim that *"the agreement will not IMPOSE any taxes or penalties*". That's true. But the agreement is clearly designed to <u>facilitate</u> the identification of those Canadian citizens/residents who Canada is willing to offer to the United States. So yes, the FATCA IGA, doesn't impose new taxes on Canadians. **It just aids and abets the United States in its theft from the Canadian economy** under the guise of what it proudly calls "citizenship-based taxation" (a term that is another Orwellian "half truth").

3. Note the language "*The CRA does not collect the U.S. tax liability of a Canadian citizen if the individual was a Canadian citizen at the time the liability arose."* That's nice. But the purpose of the FATCA IGA is to assist the U.S. in identifying those Canadian citizens/residents, who by virtue of having been deemed "U.S. persons", become part of the U.S. tax and penalty base.

Do Canadian MPs understand what FATCA and a FATCA IGA are really about?

There exists strong evidence that (at least Conservative) MPs interpret the FATCA IGA to be good news. Given that MPs have little time to read anything, we suspect they have been influenced by the FATCA IGA press release. **Note the following reference to the comments of Conservative MP John Weston**:

http://isaacbrocksociety.ca/2014/03/06/a-letter-from-john-weston-regarding-the-iga-we-need-to-educate-the-mps/

*"I shared your concerns about the U.S. Foreign Accounts Tax Compliance Act (FATCA). **I am thrilled [!] to report** that on February 5, 2014, Canada and the United States signed an inter-governmental agreement under the longstanding Canada-U.S. Tax Convention. This agreement brings a series of lengthy negotiations to a conclusion which, I believe, will be of great benefit to dual citizens and Americans living in Canada.*

A number of constituents contacted me with their concerns during the negotiation-process. As a New York-licensed lawyer who practiced international law prior to entering public life, I took the initiative among Government Caucus members to contact and consolidate information from a circle of top US lawyers and accountants. I contacted them in an attempt to provide our Finance Minister, the Honourable Jim Flaherty, with their insights as people who advise Canadians with IRS reporting obligations. I believe – especially after this announcement – that Minister Flaherty took our concerns forward effectively.

Among other things, I also arranged for prominent U.S. tax attorney Mark Matthews to come to Ottawa on May 30, 2012 to brief Caucus members concerning these matters. Mr. Matthews not only works with Canadians who have U.S. tax problems, but he also served previously as Deputy Commissioner at the IRS.

As you know, the underlying objective of FATCA is to combat tax evasion. However, the Canadian Government was concerned that FATCA would impose significant compliance obligations on Canadian financial institutions, and raise significant privacy concerns for Canadians. Canada is not a tax [sic] this legislation are honest, hardworking and law-abiding citizens who have dutifully paid their Canadian taxes.

FATCA would require non-U.S. financial institutions to report to the U.S. Internal Revenue Service (IRS) accounts held by U.S. taxpayers. A key [sic] would compel Canadian financial institutions to report on account holders who are U.S. residents and U.S. citizens (including U.S. citizens who are residents or citizens of Canada) directly to the IRS – thus potentially violating Canadian privacy laws.

Under the agreement on February 5, financial institutions in Canada will not report any information directly to the IRS. Rather, relevant information on Canadian accounts held by U.S. residents and U.S. citizens (including U.S. citizens who are residents or citizens of Canada) will be reported to the Canada Revenue Agency (CRA). The CRA will then exchange the information with the IRS through existing provisions and safeguards of the Canada-U.S. Tax Convention. This is consistent with Canada's privacy laws.

There are a number of exemptions you should know about. Registered Retirement Savings Plans, Registered Retirement Income Funds, Registered Disability Savings Plans, and Tax-Free Savings Accounts will not be reported to the IRS. In addition, smaller deposit-taking institutions - such as credit unions – with assets of less than $175 million will be exempt from FATCA.

The 30 percent FATCA withholding tax will not apply to clients of Canadian financial institutions, and can apply to a Canadian financial institution only if the financial institution is in significant and long-term non-compliance with its obligations under the agreement.

I encourage you to seek advice on your specific circumstances from an independent tax advisory with appropriate experience.

With best regards,

John Weston, M.P.*"*

It is respectfully submitted that Mr. Weston, does NOT understand the impact of the FATCA IGA announced on February 5, 2014.

We fear that Mr. Weston's "understanding" of the FATCA IGA may be representative of the views of those MPs who have not had the time to fully grasp the complexity of this issue.

We understand that MPs are busy people and rely on information from their party to understand FATCA and the IGA.

We fear that MPs have not and will not receive accurate information from the Government of Canada. We offer this submission in the spirit of education and cooperation on this important issue.

The press release is an incredible example of obfuscation, subterfuge and distortions of reality.

The following submission by Toronto lawyer John Richardson and University of Toronto professor, Dr. Stephen Kish is designed to explain why Canada must not sign a FATCA IGA. As such it is offered in response to the invitation from the Department of Finance to hear from the general public.

In order that the contents of the press release are not lost, we include the press release here.

http://www.fin.gc.ca/n14/14-018-eng.asp

Canada and U.S. Reach Agreement on *Foreign Account Tax Compliance Act*

February 5, 2014 – Ottawa, Ontario – Department of Finance

Finance Minister Jim Flaherty and National Revenue Minister Kerry-Lynne D. Findlay today announced that, after lengthy negotiations, Canada and the United States have signed an intergovernmental agreement under the longstanding Canada-U.S. Tax Convention.

In March 2010, the U.S. enacted the *Foreign Account Tax Compliance Act* (FATCA). FATCA would require non-U.S. financial institutions to report to the U.S. Internal Revenue Service (IRS) accounts held by U.S. taxpayers. Failure to comply with FATCA could subject a financial institution or its account holders to certain sanctions including special U.S. withholding taxes on payments to them from the U.S.

FATCA has raised a number of concerns in Canada—among both dual Canada-U.S. citizens and Canadian financial institutions. One key concern was that the reporting obligations in respect of accounts in Canada would compel Canadian financial institutions to report information on account holders who are U.S. residents and U.S. citizens (including U.S. citizens who are residents or citizens of Canada) directly to the IRS, thus potentially violating Canadian privacy laws.

Without an agreement in place, obligations to comply with FATCA would have been unilaterally and automatically imposed on Canadian financial institutions and their clients as of July 1, 2014.

Today's agreement addresses these concerns, as well as others.

Quick Facts

- Under the agreement, financial institutions in Canada will not report any information directly to the IRS. Rather, relevant information on accounts held by U.S. residents and U.S. citizens (including U.S. citizens who are residents or citizens of Canada) will be reported to the Canada

Revenue Agency (CRA). The CRA will then exchange the information with the IRS through the existing provisions and safeguards of the Canada-U.S. Tax Convention. This is consistent with Canada's privacy laws.

- The IRS will provide the CRA with enhanced and increased information on certain accounts of Canadian residents held at U.S. financial institutions.
- Significant exemptions and relief have been obtained. For instance, certain accounts are exempt from FATCA and will not be reportable. These include Registered Retirement Savings Plans, Registered Retirement Income Funds, Registered Disability Savings Plans, Tax-Free Savings Accounts, and others. In addition, smaller deposit-taking institutions, such as credit unions, with assets of less than $175 million will be exempt.
- The 30 percent FATCA withholding tax will not apply to clients of Canadian financial institutions, and can apply to a Canadian financial institution only if the financial institution is in significant and long-term non-compliance with its obligations under the agreement.
- The agreement is consistent with Canada's support for recent G-8 and G-20 commitments intended to fight tax evasion globally and to improve tax fairness. In September 2013, G-20 Leaders committed to automatic exchange of tax information as the new global standard and endorsed a proposal by the Organisation for Economic Co-operation and Development to develop a global model for the automatic exchange of tax information. They also signaled an intention to begin exchanging information automatically on tax matters among G-20 members by the end of 2015.
- Draft legislation to implement the agreement will be released for comment shortly on the Department of Finance website.

Quotes

"Canada engaged in lengthy negotiations with the U.S. government to address our concerns and, as a result, significant exemptions and other relief were obtained."

- *Jim Flaherty, Minister of Finance*

"This is strictly a tax information-sharing agreement. This agreement will not impose any U.S. taxes or penalties on U.S. citizens or U.S. residents holding accounts in Canada. The CRA does not collect the U.S. tax liability of a Canadian citizen if the individual was a Canadian citizen at the time the liability arose. This includes dual Canada-U.S. citizens. That will not change under this agreement."

- *Kerry-Lynne D. Findlay, Minister of National Revenue*

Related Products

- Intergovernmental Agreement for the Enhanced Exchange of Tax Information under the Canada-U.S. Tax Convention [PDF 203 Kb]

To access a Portable Document Format (PDF) file you must have a PDF reader installed. If you do not already have such a reader, there are numerous PDF readers available for free download or for purchase on the Internet.

- Backgrounder: Intergovernmental Agreement for the Enhanced Exchange of Tax Information under the Canada-U.S. Tax Convention
- Frequently Asked Questions: *Foreign Account Tax Compliance Act* (FATCA) and the Intergovernmental Agreement for the Enhanced Exchange of Tax Information under the Canada-U.S. Tax Convention

Additional Links

- Canada Revenue Agency
- Negotiation of an Information Exchange Agreement with the United States
- Finance Minister Applauds U.S. Government Decision to Help Dual Citizens with Their Foreign Tax Obligations
- U.S. IRS Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers
- U.S. Treasury *Foreign Account Tax Compliance Act* homepage

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Section A - EXECUTIVE SUMMARY – What the proposed FATCA IGA really is, how it really works and recommendations

PURPOSE, CONTEXT AND RECOMMENDATION

PURPOSE

On February 5, 2014, the Government of Canada and the Government of the United States (U.S.) signed an Intergovernmental Agreement (IGA) "…for the enhanced exchange of tax information under the Canada – United States Tax Convention."

See:

http://www.fin.gc.ca/treaties-conventions/pdf/FATCA-eng.pdf

The objective of the IGA:

The overall objective of the IGA, from the perspective of the U.S., is for Canada to assist the U.S. in implementing (what it calls) "citizenship-based taxation" on those residents of Canada the U.S. deems to be "U.S. persons" (a shifting definition), by enforcing its FATCA (Foreign Account Tax Compliance Act) law.

This law will identify those individuals who the U.S. chooses to define as "U.S. persons" and their bank accounts in Canada. This information will then be forwarded to the U.S. Internal Revenue Service.

The expectation of the U.S. (and Canada) is that pursuant to an IGA, Canada will implement legislation that will override existing Canadian laws that protect privacy and prohibit discrimination.

The new Canadian "override laws" will (in relation to "U.S. persons") end financial privacy and **require that they be discriminated against** by the Government of Canada. The new Canadian laws will require that "U.S. persons":

- Be identified by Canadian financial institutions; and
- Once identified, be turned over to the Canada Revenue Agency which will then turn them over to the U.S. Internal Revenue Service ("IRS").

To put it simply:

Pursuant to an IGA, Canada will enact and implement laws that **require Canada, at its own expense, to "round up" anybody the U.S. wants "rounded up" and then turn those persons over to the IRS for processing.**

Legislation approved by the Canada Parliament is required to implement the IGA:

"The IGA will enter into force once Canada has notified the United States that the procedures required by Canadian law for the bringing into force of the IGA have been completed."

http://www.fin.gc.ca/treaties-conventions/notices/fatca-eng.asp

Canada's Department of Finance has asked for submissions on the proposed IGA legislation:

The Tax Policy Branch of Canada's Department of Finance has asked for comments on the legislative proposals in respect to the changes in the *Income Tax Act* to implement the IGA.

http://www.fin.gc.ca/treaties-conventions/notices/fatca-eng.asp

The undersigned, John Richardson and Stephen Kish (Toronto, Ontario) have prepared this submission as a response to this request from Canada Finance.

CONTEXT – FATCA is about forcing the world to "Pay Tribute To America"

U.S. CITIZENSHIP IS THE MOST TOXIC CITIZENSHIP WORLDWIDE AND HARMS CANADIANS WHO HAVE IT:

A fundamental purpose of all governments is the maintenance of the basic security of the person.

However, Canada Finance has confirmed that U.S. imposition of citizenship-based taxation on its U.S. citizens who are permanent residents in Canada, with many or most being citizens of Canada, can cause "significant" harm to these Canadians:

"Canada respects the sovereign right of the U.S. to use citizenship as a basis for taxation. At the same time, citizenship-based taxation is a departure from the residence based approach generally followed by Canada and most of the rest of the world, and creates unique challenges for U.S. citizens who reside in other countries.

***U.S taxation of its non-resident citizens on their worldwide income**, when these individuals are also subject to taxation on their worldwide income by their country of residence, **can result in significant compliance burden on these individuals, even when they owe no U.S. tax"**.*

http://www.fin.gc.ca/afc/faq/fatca-eng.asp

It is estimated that 90% of Canadian residents who the U.S. deems "U.S. persons" are not compliant with U.S. tax rules, primarily because they have always considered themselves to be Canadians. Most are not aware of the U.S. tax rules and many are not even aware that the U.S. considers them to be U.S. citizens.

Canada aims, by helping the U.S. implement the FATCA law with an IGA agreement, to turn over these Canadians to the mercies of the U.S. IRS and U.S. citizenship-based taxation. By doing so, Canada will cause significant, long-term harm to these Canadians which will result in a variety of problems including confiscation of assets and medical consequences of chronic stress.

The **extent of harm** caused by U.S.-imposed citizenship based taxation to U.S.-Canadian citizens residing in Canada is documented in part in a submission that we, together with co-author Willard Yates, have made to the U.S. Senate Finance Committee.

U.S citizenship and confiscation of assets – Our previous submissions:

Mr. Richardson and/or Dr. Kish have prepared four additional submissions to various government agencies on: "U.S. citizenship-based taxation", "FATCA", "Relinquishing U.S. Citizenship", and the relationship between "citizenship-based taxation" and FATCA.

We have drawn from our research in preparing these previous submissions to assist in our preparation for this submission to the Government of Canada. Please note that our arguments to the Government of New Zealand to assist with their "FATCA deliberations" apply just as much to the Government of Canada. Our "PFIC submission" to the U.S. Senate Finance Committee (in conjunction with their deliberations on U.S. tax reform) are a comprehensive analysis of how owning Canadian mutual funds affect those deemed "U.S. persons in Canada".

Therefore, we consider these four previous submissions to provide background for (and are therefore part of) this important submission.

These previous four submissions are:

First – January 2014: To the U.S. Senate Finance Committee on the desirability of the U.S. replacing "citizenship-based taxation" with the worldwide standard of "residence-based taxation"

http://citizenshipsolutions.ca/wp-content/uploads/2014/01/RichardsonYatesKishJan232014SFCSubmission.pdf

Second – January 2014 - The submission made by Richardson and Kish to the U.S. Senate Finance Committee detailing the punishing consequences to Canadian-U.S. citizens resident in Canada who are impacted, for example, by **a SINGLE U.S tax rule** (PFIC):

http://citizenshipsolutions.ca/wp-content/uploads/2014/02/PFICs-and-Americans-Abroad-Feb614.pdf

Third – February 2014 - **See also "Paying Tribute To America**" a submission by Richardson to the New Zealand Select Committee describing how the imposition of FATCA will impose a permanent tax on any country that participates in FATCA

http://citizenshipsolutions.ca/wp-content/uploads/2014/02/Paying-Tribute-to-America.pdf

Fourth February 2014 - Submission made by Richardson to the New Zealand Select Committee about the compliance costs of relinquishing U.S. citizenship and the confiscation of assets imposed by the U.S. Exit Tax

http://citizenshipsolutions.ca/wpcontent/uploads/2014/02/NewZealandandtheExitTax.pdf

Why Canada must protect itself from FATCA and U.S. extra-territorial taxation

Similarly, other legislative changes must be made to prevent the consequences of U.S. citizenship-based taxation on Canadians. These consequences include not only the financial and medical harm of such unreasonable taxation on Canadian income, enforced by the FATCA law, but also the loss of freedoms and rights to all Canadians should Parliament sign into law the IGA legislation.

We propose that this be accomplished in part by making changes to the present IGA legislation, and also to other related legislation aimed in part at decreasing the number of those permanent Canadian residents who are U.S “persons” in Canada and who would be impacted by the IGA legislation.

RECOMMENDATIONS

The Government of Canada should not assist the United States in general, and in any manner, with the facilitation and/or implementation of FATCA on Canadian soil. To be specific:

1) The Government of Canada should oppose implementation of FATCA in Canada. To facilitate this, the Government of Canada should pass a Canadian law prohibiting any person or entity from obeying FATCA in Canada.

2) In the event that the Government of Canada does not enact legislation prohibiting obeying FATCA, the Government of Canada should allow the banks to decide on a case-by-case basis whether and how to participate in FATCA.

3) The Government of Canada should not enter into any agreement with the United States concerning the implementation of FATCA in any form.

4) Under no circumstances should the Government of Canada enact any new law or amend any existing Canadian laws, pursuant to an IGA to facilitate Canadian compliance with FATCA.

   Should the Government of Canada enter into an FATCA IGA, for the dual purposes of discriminating against Canadian residents who are "U.S persons" and for the purpose of enforcing U.S. taxation against them, until such time as the U.S. switches to the worldwide standard of Residence-Based Taxation, the following are recommended:

5) The Immigration Act of Canada be amended to **ban all potential immigrants who are "U.S. persons", for their own protection, from immigrating to Canada.**

6) Because the enforcement of "U.S. taxation" against "U.S. persons" resident in Canada makes them unable to save and invest for retirement, we recommend that: Those "U.S. persons" in Canada, who wish to marry "non-U.S. persons" be required, **for the protection of their future spouse**, to disclose their "U.S. personhood" to that spouse, and be required to obtain a marriage license from the Government of Canada, the issuance of which is conditional on proof of that disclosure.

7) The U.S. Department of State be advised by Canada's Minister of Foreign Affairs that imposition of U.S. personhood on any person born in Canada is a violation of Canada's sovereignty and fundamental human rights and that, given the significant harm caused by U.S personhood to such persons, individuals born to U.S. parents in Canada will not be recognized as "U.S. persons" by the Government of Canada.

8) The Citizenship Act of Canada be amended so that all U.S citizens taking the Oath of Canadian Citizenship will be deemed by Government of Canada to be citizens of Canada from birth.

9) The Citizenship Act of Canada be amended so that **all U.S citizens taking the Oath of Canadian Citizenship** will have automatically **relinquished Citizenship of the United States at the time of taking the Oath.** Confirmation of relinquishment of U.S citizenship will be immediately forwarded by the Minister of Immigration and Citizenship to the U.S. Department of State.

10) That, in the interest of humanity and in protecting the fundamental right of expatriation, the proposed IGA legislation be amended to include an agreement between the Governments of Canada and that of the United States that all U.S citizens and other "U.S. persons" legally resident in Canada who have relinquished or renounced their U.S. citizenship or U.S. "personhood", or who wish in the future to abandon their U.S. citizenship or "personhood", **will have done so, and be free to do so, without penalty of any U.S. expatriation tax or requirement for past, present, or future compliance with U.S. expatriation tax rules or any other present or future penalty imposed by the United States whatsoever**.

Our specific recommendations are followed by detailed analysis:

Section B – FATCA puts the U.S. government in general and the IRS in particular, in charge of Canada's financial system and the purpose of the IGA is to implement FATCA and thereby facilitate U.S. control over Canada's financial system

FATCA is found in S. 1471 of Title 26 of the U.S. Internal Revenue Code. It reads as follows:

"26 U.S. Code § 1471 - Withholdable payments to foreign financial institutions

(a) ***In general***

In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(b) ***Reporting requirements, etc.***

(1) ***In general***

The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees—

(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

(C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,

(D) to deduct and withhold a tax equal to 30 percent of—

(i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and

(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,

(E) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and

(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution—

(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement."

The text and meaning of S. 1471 of the Internal Revenue Code have been eclipsed by the endless discussion of the FATCA regulations and IGAs ("Inter Governmental Agreements").

Canada's IGA is for the purpose of implementing FATCA S. 1471, a U.S. law which is intended to operate on Canadian soil. In its simplest terms through FATCA S. 1471, the United States is telling, Canadian Financial Institutions, carrying on business in Canada, that:

If you do NOT enter an agreement with the Treasury Secretary/IRS to identify and report to us on all persons who we, and we alone define as a "United States Person" **then we will confiscate 30% of all U.S. dollar payments going to your bank**.

Furthermore, we and we alone will define "U.S. persons" and we will change that definition when and as we see fit.

Furthermore, **we and we alone will decide what information that we want reported about these people and we will change or minds when we want**.

Finally, **we really don't care whether our demand violates any of your laws**. When it comes to how your banks run your businesses in Canada, you are required to run it according to U.S. law which is the only law that matters.

It is quite obvious that FATCA forces Canada's banks to obey NOT the laws of Canada, but U.S. laws, the administration of which has been delegated to the U.S. Internal Revenue Service ("IRS").

The Canada U.S. FATCA IGA is an agreement between Canada and the United States, pursuant to which, Canada will change its law, to bring Canadian law into compliance with U.S. law, to ensure that Canadian banks obeying Canadian law, are actually obeying U.S. law.

Therefore, a FATCA IGA, is a legislative surrender of Canada's sovereignty to the United States. One could jokingly say that with the FATCA IGA:

"Canada has just become the 51st U.S. State".

This is incorrect. U.S. states have legislative autonomy and are NOT subservient to the U.S. Federal Government. Since, **the purpose of the FATCA IGA is to make Canada subservient to the United States, once implemented, Canada will effectively become a U.S. territory subject to U.S. law and governed by the IRS Commissioner**.

This is the Harper legacy.

One wonders: why would the banks want a FATCA IGA? The answer is simple. They don't want the 30% confiscation. Who could blame them? That said, it's clear that:

The Canadian banks are quite willing to hurt Canada to help their bank.

The Government of Canada is willing to hurt Canada to help the Canadian banks.

Section C – FATCA enforces U.S. taxation on Canadian citizens and residents, including but not limited to U.S. citizens – FATCA is the mechanism to enforce U.S. taxation of certain Canadian citizens resident in Canada

The United States claims the right to levy taxes on persons who reside outside the U.S. on income earned outside the U.S.

The language of the Department of Finance reveals that the Department does NOT have a full understanding of who the U.S. claims the right to tax.

In the words of the Department:

"Canada respects the sovereign right of the U.S. to use citizenship as a basis for taxation. At the same time, citizenship-based taxation is a departure from the residence based approach generally followed by Canada and most of the rest of the world, and creates unique challenges for U.S. citizens who reside in other countries.

***U.S taxation of its non-resident citizens on their worldwide income**, when these individuals are also subject to taxation on their worldwide income by their country of residence, can result in significant compliance burden on these individuals, even when they owe no U.S. tax".*

http://www.fin.gc.ca/afc/faq/fatca-eng.asp

This description is at best a "partial truth" and at worst a "severe distortion" of reality.

Who does the U.S. claim the right to tax?

The United States is the only country in the world that claims the right to levy taxes on:

1. People who do NOT reside in the United States; and
2. To tax those who do NOT reside in the United States on income earned outside the United States and otherwise have no connection to the United States.

The U.S. Internal Revenue Code uses the term "U.S. person". The term U.S. person includes, but is NOT limited to U.S. citizens. It also includes "Green Card Holders" who no longer reside in the United States. It includes Canadian "snow birds" who spend more than a prescribed number of days in the United States. The term "U.S. person" is subject to change at any time.

Here is an example, taken from a blog comment, of an innocent Canadian, U.S. Congress wishes to tax as a "U.S. person" – The "Border Baby"

"SUMMARY of A CASE AGAINST CANADIAN FATCA IGA

My comments present a single argument based on the FATCA IGA's effect on a single Canadian citizen – "Border Baby" – *who due to medical necessity was born in Buffalo NY, and is considered a so-called "U.S. person under FATCA and thus will have their rights as a Canadian citizen abridged due solely to place of birth.*

1) The Egregious Example

"Border Baby" is Canadian citizen born in U.S. hospital <u>because their Canadian mother was referred there for high-risk pregnancy</u> during a nursing shortage in the 1970's.

"Border Baby", born in a Buffalo hospital to Canadian parents, is a Canadian citizen at birth under Canadian law.

The FATCA IGA victimizes this Canadian, even though they returned to Canada within days of being born, and have no U.S. economic activity or residential presence. This is because <u>under FATCA's foreign law criteria, "Border Baby" is also a so-called "U.S. person" and life-long "U.S. tax resident</u>."

In ultimate and net effect, the FATCA IGA subjects this Canadian citizen to harmful discrimination and loss of financial privacy because they were born in a U.S. hospital due to medical need. Moreover, if they were born in any other foreign country they would not be subject to FATCA.

Why should Canadian citizen "Border Baby" be exempt from equality of treatment under Canadian law because their medically necessary foreign birth occurred in one particular country?

2) FATCA IGA Violates "Border Baby's" Rights as a Canadian Citizen

The FATCA IGA requires banks and other Canadian financial institutions to seek "unambiguous indication of a U.S. place of birth." in account holders' records and documentation upon account on-boarding to determine if an account holder has a U.S. place of birth and thus is a so-called "U.S. person."

"Border Baby" cited above ***is a so-called "U.S. person" or "U.S. tax resident"*** *under the FATCA IGA and suffers a discriminatory and irreparable loss of privacy, even if they never left Canada since returning from their singular birth event abroad.*

The definition of so-called "U.S.-person" or "U.S. tax residency" based upon a U.S. place of birth is "fruit of a poisoned tree" under Section 15 of the Charter. ***And that poisoned tree is national origin discrimination****. It is remote and dubious to claim that a Canadian citizen who was born in the U.S. decades ago, and subsequently had no ties of residence or economic activity there, is somehow a "U.S. tax resident."*

This is a remote, unusual, dubious, and harmful claim, imposed solely by the laws of foreign state.

It is remote because the definition of so-called "U.S.' person" is based solely on foreign law and imposes a foreign state's discriminatory definition upon certain citizens of Canada;

It is unusual in that it deviates from the tax resident definition of Canada and every other nation excepting Eritrea;

It s dubious because the claim is discriminatory and based solely upon birthplace or ancestry, as opposed to actual economic activity or residency; and

The claim is harmful in that it degrades the privacy and dignity of thousands of Canadians affected who have not violated any Canadian law, solely due to their having a U.S. national origin or place of birth.

The legislation enabling the FATCA IGA will violate the fundamental equality rights of thousands of law-abiding Canadians and their families, causing irreparable harm and distress across the social fabric of Canadian society. The potential for harm is significant, the claims of the foreign law FATCA are unusual and dubious, and the violation of Charter equality protection is blatant. Any so-called reciprocal benefit to Canada is un-defined and far out-weighed by the potential for harm and violation of the fundamental right of all Canadians to equal treatment under law, regardless of national origin.

NB: ***Some may say "Well 'Border Baby' can renounce their US citizenship."*** *Let's add another factor to the argument: unfortunately "Border Baby" was born with a congenital mental disability that makes it impossible for them to comprehend the concept of renouncing US citizenship. Their parents cannot renounce on their behalf.*

So now, due to their place of birth AND mental disability, they cannot escape to harmful imposition of the FATCA IGA by ANY means, because they have a US place of birth AND cannot present their bank with a Certificate of Loss of (U.S.) Nationality."

http://isaacbrocksociety.ca/2014/03/08/you-can-send-in-your-comments-on-the-legal-opinion-and-we-will-forward-these-to-the-constitutional-lawyer/comment-page-2/#comment-1203226

The term "U.S. person" means:

Any person or entity, regardless of where it exists in the world, that the United States would like to tax. This includes the citizens and residents of other countries.

The above quote from the Canada's Department of Finance is incredibly offensive.

By using the term "citizenship-based taxation" it suggests that U.S. extra-territorial taxation is restricted to U.S. citizens.

Wrong.

It includes more than U.S. citizens. In fact, U.S. extra-territorial taxation is an attempt to tax the citizens of other countries who are resident in those other countries! This includes Canadian citizens resident in Canada.

By saying that "Canada respects the sovereign right of the U.S. to use citizenship as a basis for taxation", the Department is really saying that:

Canada respects the sovereign right of the United States to tax Canadian citizens, who are resident in Canada, on income earned in Canada!

We don't believe many Canadians would find this state of affairs to be acceptable.

Section D – FATCA is the mechanism to enforce Real and Actual U.S. taxation on certain Canadian citizens and residents who will be forced to send their money to the IRS

It is a mistake to think that Canadian citizens and residents, who are deemed "U.S. persons", will not have U.S. tax liability imposed on them.

The truth is that Canadian residents, by virtue of being outside the United States are particularly susceptible to both:

1. Taxes imposed under the Internal Revenue Code; and
2. Penalties imposed under the Internal Revenue Code.

The U.S. Internal Revenue Code, "in its majestic equality prohibits both the rich and the poor from sleeping on the park bench". In other words, both U.S. residents and non-residents are subject to exactly the same rules. The reality is that the Internal Revenue Code is particularly punitive, terms of BOTH taxes and penalties when it comes to its treatment of both:

- Tax deferral; and
- Anything foreign.

Before offering specific examples, we remind you that the primary vehicles of Canadian retirement planning are: tax deferred vehicles (RRSP, TFSA, CCPC, Principal Residence, etc.) and that they are, according to U.S. law "foreign" (because they are outside the U.S.). None of these is given special treatment under the Internal Revenue Code. Although this list is NOT exclusive, we offer comments on BOTH tax issues and information reporting requirements that bear on each. Furthermore, we emphasize that these examples are NOT exhaustive but representative of common examples of unfairness.

RRSP:

Tax issues – Although NOT given tax deferral status under the Internal Revenue Code, the RRSP is given special status under the Canada U.S. tax treaty. Under the treaty Canadian residents are permitted to treat their RRSPs as legitimate tax deferred retirement planning vehicle if and only if they comply with specific information reporting requirements.

Information Reporting – Form 8891 is required each year with the U.S. tax return. Although an RRSP also qualifies as a "foreign trust" under U.S. tax law, the Form 3520 is not required for RRSPs if Form 8891 is filed.

The general penalty for failure to file a Form 3520 is the greater of $10,000 or 35% of the value of the trust.

http://www.irs.gov/pub/irs-pdf/i3520.pdf

If a Form 3520 is required a 3520A is also required. The penalties for failure to file Form 3520A are the greater of $10,000 or 5% of the value of the foreign trust.

http://www.irs.gov/pub/irs-pdf/i3520a.pdf

TFSA, RESP, RDSP:

Tax Issues - None of these plans is recognized under the Internal Revenue Code. Therefore, under U.S. law, tax is payable on the earnings under these plans.

Information returns – Form 3520 and 3520A

The general penalty for failure to file a Form 3520 is the greater of $10,000 or 35% of the value of the trust.

http://www.irs.gov/pub/irs-pdf/i3520.pdf

If a Form 3520 is required a 3520A is also required. The penalties for failure to file Form 3520A are the greater of $10,000 or 5% of the value of the foreign trust.

http://www.irs.gov/pub/irs-pdf/i3520a.pdf

CCPC – Canadian Controlled Private Corporation:

It is common for Canadians to run their businesses through Canadian Controlled Private Corporations (CCPCs). There are at least two reasons for this.

First, it gives the owners the benefits of limited liability.

Second, because of the preferential Canadian corporate tax rates, shareholders are able to defer taxation on investment income.

Tax Issues - CCPCs

Canadians who own CCPCs must be aware of the SubPart F income rules under the U.S. Internal Revenue Code. The basic principle is that, investment income earned in the corporation, is deemed to be income to the shareholder, under the Internal Revenue Code. This deemed income is required to be included on the shareholder's U.S. tax return. Two further points must be understood:

First, the SubPart F investment income is taxable to the shareholder even though the income has not been received.

Second, SubPartF income, when attributed to the shareholder does NOT retain its original character, but is taxed as ordinary income. For example, capital gains earned by the corporation are:

-Taxed directly to the shareholder even if not distributed; and
-Taxed as ordinary income and NOT as capital gain.

Information Returns – CCPCs

Form 5471 is the required form. It is actually not a form, but a separate tax return reflecting the activities of the corporation. It comes with a number of different schedules and is therefore an expensive return to complete.

The penalty for failure to file the Form 5471 starts at $10,000.

http://www.irs.gov/Businesses/Corporations/Forms-5471---Automatic-Assessment-of-Penalties-under-IRC-Section-6038%28b%29%281%29

Principal Residence:

For many Canadians, **the principal residence is the cornerstone of their retirement plan**.

Under the Internal Revenue Code **the sale of the principal residence does NOT qualify for a "tax free capital gain"**.

The preceding are examples of common examples of taxation. The issue of PFICs ("Passive Foreign Investment Companies") and penalties for failure to report ("FBAR" and "Form 8938") assets are deserving of separate sections.

Section E – PFIC – Confiscation coming soon to a mutual fund near you!

In Section D, we discussed the basis instruments of Canadian retirement planning. We assumed that those investment vehicles are to assist Canadians in planning for retirement. We did NOT specifically discuss the form or content of the investments.

If one were to open a TFSA one could invest the content of a TFSA in a variety of investments. These investments range from a simple interest bearing account to individual stocks to mutual funds.

It is the consensus of the tax and legal community that Canadian mutual funds are deemed (under U.S. tax law) to be PFICs or "Passive Foreign Investment Corporations".

Why foreign? Remember the U.S. view of the world is that "foreign" is determined in relation to the U.S. and NOT in relation to the taxpayer. (The U.S. world view is such that people do NOT matter, only the U.S. matters.) This means that a Canadian resident who has bought a Royal Bank mutual fund is the proud owner of something that is "Foreign".

We wrote a lengthy submission to the U.S. Senate Finance Committee about:

- How PFICs work
- How they operate to confiscate assets
- How the PFIC rules, (which were virtually unknown until 2009) are being applied retrospectively to earlier years
- How brutally unfair they are
- Onerous PFIC reporting obligations (Form 8621) and costs

PFIC Taxation or should we say confiscation

The bottom line is that Canadians who invest in Canadian mutual funds could face "taxes" <u>that exceed 100% of the gains.</u>

The PFIC rules are among the most complex, most unfair, most punitive and most unjust in the Internal Revenue Code. Think of how many Canadian residents are deemed to be U.S. persons. Think of the carnage when these people are discovered via FATCA! Think of what will happen to those Canadians who own Canadian mutual funds!

PFIC – Heightened Information Reporting Mandated by FATCA

The FATCA legislation specifically requires “heightened reporting” of PFICs. The requirements mandate:

- That the existence of PFICs of greater than $25,000 in value be reported to the IRS;
- That certain distributions and all sales be reported to the IRS

This takes place on the Form 8621, which is a difficult and expensive form to complete.

These principles of PFIC confiscation along with a carefully explained example are described here:

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

Section F – FBAR, FATCA Form 8938, and individual reporting obligations – It's about the penalties stupid!

Taxes are the price we pay for civilization. Hence, it is necessary for governments to raise revenues through taxation. To be clear, the United States also views the penalties associated with taxation to be an important revenue raising measure.

Penalties are so important to the raising of U.S. government revenue that, even President Obama's proposed 2015 Budget, addresses the importance of **penalty revenue**. On page 237 of the Obama Revenue Proposals, the administration proposes to:

"Index All Penalties For Inflation" (p. 237) complains that "the amount of a penalty often declines for many years in real, inflation adjusted terms", without noting that the FBAR and Form 8938 asset threshold — which generates so many failure-to-file penalties — also declines in real terms at precisely the same rate.

In "people talk", President Obama believes that the amount of penalties must be adjusted to reflect the rate of inflation.

http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/budget.pdf

Speaking of FBAR* and FATCA Form 8938:

FBAR ("Foreign Bank Account Report") and FATCA Form 8938 (information returns for individuals imposed by FATCA) operate as:

1. Ways to force "U.S. persons" outside the United States to register their assets with the IRS; and
2. Impose draconian penalties (in excess of 300% for FBAR of the value of a Canadian or other foreign bank account) for the failure to disclose its existence to the U.S. Treasury.

Since 2011, the Obama Administration has served notice that the penalties will be crippling on those "U.S. persons" outside the U.S. who do NOT disclose their bank accounts and assets to the IRS.

Canada has the largest number of deemed "U.S. persons" of any country outside the U.S. Canada therefore has more "foreign bank accounts" than any other country outside the U.S. Therefore, **Canada is the largest potential penalty base of any country outside the U.S**.

FATCA and the Form 8938 Individual Reporting Requirements

Public discussion about FATCA has focused its impact on financial institutions including the Canadian banks.

It is important to recognize that FATCA also imposes additional "reporting requirements" on individuals. The specific "FATCA Reporting Requirement for Individuals" is the new Form 8938. Form 8938 requires "U.S. persons" outside the U.S. (subject to a small threshold) to report their world assets to the IRS. Failure to complete Form 8938, subjects the person to a penalty regime starting at $10,000.

It's obvious that by participating in FATCA, the Government of Canada is assisting the United States in identifying assets (including bank accounts, brokerage accounts, insurance policies and other financial assets) that:

- are located in Canada
- are the property of Canadian citizens
- were acquired with money earned in Canada
- have been legally taxed in Canada
- are part of Canada's tax and capital base

A **FATCA IGA** will assist the IRS in locating these accounts (all at the expense of Canada's banks). Once located, the U.S. will have the opportunity to levy penalties on this "pool of Canadian capital". **The U.S. will be given an opportunity for a "penalty bonanza"**.

Once again, FATCA in general and a FATCA IGA in particular will assist the United States in identifying Canadians who the U.S. deems to be "U.S. persons". Once the person is identified, then the capital assets will be identified. This will assist the U.S. imposing taxes on those Canadian persons and assets. It is wrong for the Government of Canada to assist the United States in "FATCA Hunt".

Section G – FATCA enforcement provides the framework to impose a permanent transfer of the capital of Canada to the Treasury of the United States

It is obvious that U.S. taxation of Canadians who are identified as ``deemed U.S. persons`` will provide a steady source of Canadian revenue to the U.S.

To put it simply, by imposing taxes on ``deemed U.S. persons", **the U.S. will be able to transfer Canadian income, wealth and capital to the U.S.**

Once that money is taken from Canada it is lost to the Canadian economy forever. It can no longer be used by Canadians for Canada. The U.S. will use its ability to deem certain Canadian residents as ``U.S. persons`` to take more and more of Canada`s capital. Capital is necessary to the health and (as Adam Smith wrote), ``The Wealth of Nations``.

The United States uses the fact of:

- The existence of deemed U.S. persons resident in Canada
- Their claim of right to impose taxes on residents in Canada
- The willingness of the Government of Canada to allow U.S. taxation of Canadian citizens resident in Canada

To transfer the wealth of *our* nation to the Treasury of *their* nation.

It is shocking that the Government of Canada would even consider facilitating this immoral practice through any participation in FATCA!

The mechanics of how the U.S. taxation of Canadian residents is used by the U.S. to transfer the wealth of our Canadian nation to the Treasury of the United States is detailed in:

``Paying Tribute To America`` - A submission to the New Zealand budget committee which is here.

http://citizenshipsolutions.ca/wp-content/uploads/2014/02/Paying-Tribute-to-America.pdf

Section H – FATCA enforces the rules of "U.S. extraterritorial taxation" on certain Canadians – Such enforcement disables certain Canadians from retirement planning making them a burden to other Canadians and to the Government of Canada

On March 29, 2012 the National Post reported the story of an American professor in British Columbia who was denied ``permanent resident`` status because of his autistic son.

http://news.nationalpost.com/2012/03/29/american-university-professor-in-b-c-denied-permanent-residence-in-canada-due-to-autistic-son/

The denial of ``permanent resident status`` was because of the cost of "autism treatment", to the taxpayers of Canada.

The general principle is that Canada, along with other countries (including the United States) will not admit immigrants who:

- cannot provide for themselves; and

- are therefore likely to be a drain on Canadian taxpayers.

This is also the reason why Canada encourages retirement planning, and uses RRSPs, TFSAs and the like to promote this goal.

Canadian retirement planning for Canadians resident in Canada who are ``deemed U.S. persons``

Canadians who are ``deemed U.S. persons`` are disabled from effective retirement planning.

It is simply not possible.

This has been explained in Sections D and E which explain how U.S. tax rules punish Canadian retirement planning vehicles. Those Canadians who are deemed "U.S. persons" are denied the same planning opportunities as other Canadians.

Not only the deemed "U.S. person", but the *family* of a deemed "U.S. person" must bear the consequence of one member of the family being tainted by "deemed U.S. personhood".

It is a serious public policy concern to have Canadian residents who are denied the opportunity to provide for their retirement years.

Principle 1 – Deemed ``U.S. persons" cannot provide for themselves

It is respectfully submitted that if people are not admitted to Canada because of the perceived costs of their health care, then people should not be admitted to Canada *if they are otherwise unable to provide for themselves*.

Principle 2 – Deemed ``U.S. persons`` are a guaranteed threat to Canada`s economy

Once one is deemed to be a "U.S. person" -- That person will be used (under the guise of taxation) by the U.S. government as a pretext to transfer the wealth and capital of Canada to the U.S. Treasury.

It is respectfully submitted that the Government of Canada should not admit any more ``U.S. persons`` to Canada for permanent residence.

This issue is more fully canvassed in:

http://citizenshipsolutions.ca/wpcontent/uploads/2014/01/RichardsonYatesKishJan232014SFCSubmission.pdf

Section I – FATCA is the enforcement mechanism for "U.S. extra-territorial taxation" which can cause emotional harm to Canadians

"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 <u>they have not lived in for decades if ever at all</u>.***

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 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."

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

U.S. citizenship and mental health disorders:

U.S citizenship for Canadians residing in Canada fulfills criteria for a "stressor" that can cause harm resulting from the constant fear, anxiety, depression and uncertainties associated with the overwhelming stress associated with FATCA enforcement of U.S citizenship-based taxation, as alluded to by Canada Finance:

"U.S taxation of its non-resident citizens on their worldwide income, when these individuals are also subject to taxation on their worldwide income by their country of residence, ***can result in significant compliance burden on these individuals, even when they owe no U.S. tax"****.*

http://www.fin.gc.ca/afc/faq/fatca-eng.asp

Here is one example of an emotional problem of a Canadian-U.S. dual citizen, resident in Canada, consequent to stress of U.S. citizenship and unreasonable IRS compliance:

"One of my doctors who wrote to the IRS requesting that more reasonable deadlines be given because of my health conditions and referred to the final outcome as financial rape.

Another doctor diagnosed me with a form of PTSD [Posttraumatic Stress Disorder, DSM-V, 2013] and told me that I would suffer with it for a long time to come.

I live now in fear *every year that I get older that I might make a tiny error and be faced with additional fines."*

See the details in:

http://waysandmeans.house.gov/uploadedfiles/patricia_anderson_daddario.pdf

Some Canadians waiting to be turned over to the IRS by FATCA, as a result of the proposed IGA, will develop a variety of medical illnesses such as an "Adjustment Disorder."

Adjustment Disorder is defined by the American Psychiatric Association" (DSM-V; the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, 2013) as **"the development of emotional or behavioural symptoms in response to an identifiable stressor" [e.g., U.S. citizenship.]**

These features will involve “significant impairment in social, occupational or other important areas of functioning.” and can be associated with depressed mood, anxiety, and disturbance of emotions and/or conduct.

“Adjustment disorders are associated with an increased risk of suicide attempts and completed suicide” (DSM-V, 2013).

A husband describes (February, 2014) the symptoms he observes in his wife, who is a U.S. citizen living in Canada:

"[This condition] is almost exactly what has happened to my wife. I am fighting for her to end this, but at this time, she sees no happiness. I don't know exactly what to do, but I try very hard to understand her and what she is thinking. Anxiety, anger, lashing out etc. have really been noticed.

I think, how can one person live a "normal" life with all of the effects of FATCA at the back of your mind?

I will never stop the fight and will work towards her happiness again. This is TERRIBLE and a lot of people don't know how to handle the incredible stress from it... "

One Canadian who recently renounced her U.S. citizenship describes (February 2014) an unappreciated feature caused by the U.S. Citizenship-stressor:

“Another aspect of this Adjustment Disorder is the shunning of your family and friends due to your concern and obsession and fear created by FATCA.

There is a loss of friendship, and even shut-out by family. Abandonment by those you once thought cared for you.”

A Canadian dual citizen who is <u>fully IRS tax compliant</u> explains (February 2014) consequences of U.S citizenship on his marriage and describes his disappointment that Canada will not protect his family:

"I just got married to [a] wonderful [ ] woman and had a lot of hope that the future looked bright. Now I read comments on the internet suggesting that Canadians should not marry Americans as it puts them at risk because of FATCA and citizen based taxation. I read of <u>threats from the IRS of fines that could bankrupt Canadians</u> who are considered US Persons. **Now we are both stressed and I can tell she is unhappy and perhaps wondering if marrying me was a good thing.** I feel low and worthless

now and extremely angry especially with the Government of Canada and their inability to protect about 4 million US persons inclusive of approx 1 million US citizens here.

I have lost interest in everything now and can't sleep because of worrying that the bullies to the south want to ruin as many lives as possible and take what isn't theirs. I am now taking sleeping pills along with pain killers which I take for a medical condition. I have had to seek counseling and have given up my business. **AM I NO LONGER ALLOWED TO LIVE AS OTHER CANADIANS DO?**

Now here is the real kicker: I am totally compliant, have filed taxes in the US and Canada every single year since I moved here and when I found out about those silly FBAR forms about 6 years ago filed them also... My new accountant says I have nothing to worry about as I'm fine. So, why am I so depressed and why have I lost interest in life in general and in Canada now as well? **It's because Canada stands for nothing anymore."**

An "Adjustment Disorder" is defined in DSM-V such that "once the stressor or its consequences has terminated, the symptoms do not persist for more than an additional 6 months." However, it can be expected that *chronic* psychiatric conditions (e.g., major depressive illness, generalized anxiety disorder, post-traumatic stress disorder) will be precipitated and persist in some vulnerable individuals (e.g., because of socioeconomic status, other life stressors) <u>well after removal</u> of the U.S. citizenship stressor -- because of the relentless burden associated with FATCA enforcement of U.S. citizenship-based taxation.

HOW TO SOLVE THE PROBLEM?

In principle, reduction of emotional harm caused by U.S citizenship on Canadians could be addressed in part by legislative changes, increased access to medical and psychiatric care, or by eliminating the stressor itself:

<u>1) Don't enact the IGA?:</u>

Mr. Theo Caldwell, writing for Canada's Financial Post, suggests that Parliament should not agree to enact any IGA legislation:

"As a dual citizen of Canada and the United States, I appreciate and have benefited from the unique trading relationship of these two countries. But in this case, the United States is being a bully and, like many bullies, needs a smack in the nose. ***Canada, meanwhile, needs a leader with the sand to deliver it.***

***A simple no would suffice**. Call America's bluff, if indeed that's what it is. If, however, the U.S. means what it says and really were to begin slapping a 30% withholding tax on Canadian investors, Canada should respond by granting an immediate tax credit in that amount to affected individuals and institutions. This may take a bite out of federal tax receipts, but right is right. If America's largest trading partner were willing to stand up against such preposterous demands, other countries would have the courage and blueprint to do the same.*

It also bears mentioning that such a move could make Canada more attractive to international investors. That is, those wanting access to North American markets, yet wary of U.S. tax overreach, would be pleased to see Canada will not go along with it.

*Every country has the right to craft and enforce its own laws within its borders. **But when a nation insists that its laws must apply in other countries – as the United States does in this and other instances – that's a problem."***

http://opinion.financialpost.com/2014/02/11/canadas-u-s-tax-capitulation/

2) Provide funding through new Canadian tax revenues for more medical care to help the increased number of Canadians who will suffer effects of U.S. citizenship when FATCA is implemented?:

Although we concur with Mr. Caldwell that the IGA should not be enacted -- even without the IGA, or even without FATCA, there still will remain the problem of Canadians resident in Canada, who the U.S. deems to be U.S persons, and who are still subject to IRS tax rules. Many of these will suffer financial harm and medical illnesses consequent to U.S citizenship whether the IGA does or does not occur.

There are a variety of therapeutic approaches to the treatment of psychiatric conditions such as Adjustment Disorder that will be caused by U.S. citizenship.

These include pharmacological and behavioural (e.g., cognitive behavioural therapy) approaches that have some, but often only limited extent of success. **Obviously, such treatments will be at most "band-aid" solutions, which will in addition increase demand for costly health care services in Canada -- even more should the IGA be enacted.**

3) A RATIONAL SOLUTION: Get rid of the stressor (U.S. citizenship in Canada):

We believe that **one solution for the problem of harm (stress-induced medical conditions) caused by U.S citizenship in Canada is to remove the stressor**.

All governments are committed in principle to protect its citizens from harm caused by foreign states.

However, the proposed legislation to implement an IGA "for the exchange of tax information between Canada and the U.S." is aimed, paradoxically, at *causing harm* by enforcing (punitive) U.S. citizenship-based taxation laws on some innocent Canadians, and further (we believe) by doing so contradict the fundamental rights and freedoms of all Canadians.

It follows therefore, that Canada's proposed IGA legislation, if enacted, must somehow be structured in a way to eliminate all possibility of such harm caused by the U.S. citizenship stressor.

Section J – FATCA enforces punitive tax rules on those “U.S. citizens” who marry “non-U.S. citizens” – The punitive case of the U.S. person married to the non-U.S. spouse

What the U.S. calls ``citizenship-based taxation`` is really a form of ``residence-based life control``. The U.S., under the guise of ``citizenship-based taxation`` claims the right to intrude into a marriage between a U.S. citizen and a non-U.S. citizen spouse.

It is common for those deemed to be ``U.S. persons`` to have spouses. It is also common for those spouses to not be ``U.S. persons``.

Examples of how the U.S. attempts to control the marriages of ``U.S. persons`` abroad include, but are not limited to the following categories:

Category 1 – Reporting requirements

It is common in a marriage for spouses to share financial accounts of all types. Under U.S. law the ``U.S. person`` is required under threat of draconian penalties to report all accounts that he owns and/or has signing authority over. (This problem also exists in other business relationships.)

To put it simply, **the U.S. spouse is required to deliver the financial information of the non-U.S. person to the IRS**.

Category 2 – Gifting Limitations

Under U.S. law, if both spouses are “U.S. citizens”, the spouses are free to transfer property back and forth to each other. This is true in life, but significantly also true at death. It is normal if one spouse dies, for the surviving spouse to receive the property of the decedent spouse.

Under U.S. law, “U.S. citizens” are NOT permitted to make unlimited transfers of property to a “non-U.S. citizen” spouse. These are clear limitations on the right of transfer. This is an obscene interference with the right of free people to marry. It is clear discrimination based on citizenship.

To put it simply: if you are married to a person who was born in the U.S., and you were not born in the U.S., **you will not have equal succession rights**.

Further analysis of this point is here:

http://hodgen.com/property-transfers-between-spouses-gift-tax/

Category 3 – Problems on Divorce

The problems of the transfer of property also exist in the context of divorce.

In other words, in a divorce between a "U.S. citizen" and a "non-U.S. citizen", the "U.S. citizen spouse is limited in his/her ability to transfer property tax free to the other spouse. This makes divorce particularly expensive for the U.S. citizen spouse and particularly unfair and difficult for the "non-U.S. citizen" spouse.

For more analysis on the problems of transfers of property see:

http://hodgen.com/income-taxation-of-property-transfers-between-spouses/

Thus, one can see that U.S. tax laws make marriage between a "U.S. citizen" and a "non-U.S. citizen" particularly problematic and risky.

It is unwise for a Canadian who is NOT a U.S. citizen to marry a U.S. citizen. This problem would be exacerbated by the enforcement of "U.S. person"-based taxation through FATCA. If a FATCA IGA is entered into, which will legislate mandatory discrimination against "U.S. persons", and exacerbate the problems of "U.S. personhood" abroad, as a matter of public policy:

A. Marriage licenses in Canada **should be conditional** on full disclosure of U.S. citizenship; and
B. "Non-U.S. citizens" contemplating marriage to U.S. citizens, **should be required to complete a special course** where they are provided awareness of the problems of:
   - Retirement planning with a U.S. citizen;
   - Sharing property with a U.S. citizen;
   - Divorcing a U.S. citizen;
   - Being the widow or widower of a U.S. citizen.

Important Information for all Canadians Who Have Adopted a Child from the USA

Interestingly, analogous problems have been recognized in the context of adopting babies born in the United States. As incredible as this may seem, U.S. tax policies have resulted in the adoption of U.S. babies to come with interesting restrictions. This is amazing but:

http://www.sunriseadoption.com/adoptive-parents/what-all-adopting-parents-in-canada-need-to-know/important-information-for-all-canadians-who-have-adopted-a-child-from-the-usa

"All children born in the USA and adopted by Canadians over the past number of years (of which there are several hundred) are US citizens. This, of course, brings a number of rights and responsibilities. For example, they would be subject to a military draft.

The USA is the only country in the world that requires its citizens to report on their world-wide income, file a tax return, and pay US taxes, no matter where they live and irrespective of what other citizenship they hold.

Now the USA has introduced a new and complicated law, which will affect every US adopted child in Canada. The name of the legislation is "The Foreign Account Tax Compliance Act" (FATCA).

Although the original intent of FATCA is to track down Americans who put money in tax havens off-shore, it applies to every US citizen anywhere. It applies to Canada even though it is not a tax haven.

All US citizens living in Canada must now do the following:

1. US citizens, residents and green-card holders who own financial accounts outside the US that exceed $10,000 in total at any time of the year must disclose them in the US Department of Treasury Form TD F90-22.1, Report of Foreign Bank and Financial Accounts, commonly called FBARs (this is in addition to filing an annual US Income Tax Return).

2 .A "foreign financial account" means Canadian bank accounts, checking and savings accounts, investments, securities and brokerage accounts, RRSPs, RESPs, TFSAs, insurance and annuity policies with a cash surrender value, commodity futures or options account, shares in a mutual fund, etc.

3. All Canadian financial institutions will be required to advise the IRS of any account holders who are US citizens.

Needless to say, these requirements have been controversial in Canada. Margaret Wente of the Globe and Mail has written an article outlining these controversies, and the Globe and Mail Web Page also links to several other articles outlining the concerns of the Canadian government, Canadian banks, and financial institutions, as well as those of US citizens living in Canada. While these rules apply to all US citizens living in Canada, the purpose of this article is to focus on adopted children.

Some children are not old enough to have bank accounts yet, while other children will have bank accounts in their names (and perhaps other financial instruments which may have been gifts from grandparents etc). Until the child reaches the age of majority the

parent is required to file the forms on the child's behalf on all qualifying accounts back to and including 2005.

Adopting parents face difficult decisions in the years ahead. The reasons for this are complex, but families basically have three options:

A. Parents and their adopted children can comply with the US legislation. This seems like the prudent approach, as explained further below.

B. Have the child renounce his or her US citizenship. Of course this is not a decision that should be taken lightly. The catch is that you cannot renounce your US citizenship unless all your tax returns are filed, all the financial asset disclosure statements (FBARs) have been filed, and all US taxes and penalties are paid to the IRS.

C. Parents and the adopted child could simply not comply. As the Globe and Mail articles point out, many US citizens living in Canada are confused as to what to do, and some have stated that they do not intend to comply because of the exposure to high rates of taxes and penalties. This reason does not make sense for an adopted child. The chances of them having complex or large assets at this stage in their life are small. It does not make sense for adopted children to choose this route.

Whether your child lives in Canada as an American citizen, or unless and until they eventually renounce their American citizenship, they must file tax returns every year (if they have income), and if they have any qualifying financial accounts must file FBARs every year.

As a result, I recommend that all parents of children adopted from the USA become familiar with these rules and, if applicable, file the necessary documents with the IRS every year.

For more information Google search for FATCA, and that will bring you to links to the IRS web page (which has a FAQ page), as well as many other articles and opinions on this new law.

Please disseminate this information widely to anyone you know who has adopted a child from the USA or intends to do so in the future.

Natasha Chalke
Executive Director
Sunrise Family Services Society
Vancouver, BC
www.sunriseadoption.com”

Category 4 – The General Penalty for Marriage to the non-U.S. Citizen Spouse

In order to understand the penalty for marriage to a non-U.S. citizen spouse, one must acknowledge the different U.S. tax filing categories.

U.S. citizens married to a "non-U.S. citizen spouse" could choose to file under the "married filing separately" category or under the "married filing jointly" category. How do the categories differ? A U.S. citizen in Canada who files under the "married filing separately" category includes only his or her income on the U.S. tax return. If one files in the "married filing jointly" category, one includes the combined income of both spouses. Why does this matter in the case of a "U.S. person" in Canada who is married to a "non-U.S. person"? The answer is that, if the "married filing jointly" category is used, the income and assets of the "non-U.S. spouse" are subjected to U.S. taxation AND reporting requirements. Since the U.S. has no right to tax a "non-U.S. person", it is obvious that majority of those who are "deemed U.S. persons" in Canada, would file in the "married filing separately" category.

There is a penalty for choosing the "married filing separately" category and not subjecting the "non-U.S. citizen" spouse to U.S. taxation. The penalty includes the following:

First: The reporting thresholds are much lower for those filing in the "married filing separately" category. For example, the **threshold for the FATCA form 8938** (disclosure of assets) is triggered at $200,000 if one uses the "married filing separately" category. The threshold is triggered at $400,000 for those used the "married filing jointly" category.

http://www.irs.gov/Businesses/Corporations/Do-I-need-to-file-Form-8938,-%E2%80%9CStatement-of-Specified-Foreign-Financial-Assets%E2%80%9D%3F

Second: The **threshold to be subject to the new 3.8% NIIT Tax** (Obamacare Investment Income surtax; **see Section K for discussion**) mandated by S. 1411 of the Internal Revenue Code is lower for those using the "married filing single" category ($125.000) than for those using the "married filing jointly" category ($250,000).

http://www.irs.gov/uac/Newsroom/Net-Investment-Income-Tax-FAQs

It is quite obvious that these rules are specifically designed to discriminate against those U.S. persons who choose to marry a "non-U.S." person spouse.

It is as though the U.S. government views <u>marriages to non-U.S. citizens as a presumptive form of tax evasion</u>.

This sentiment was explored in the following comment from a blog post, which speculates about the U.S. government rationale for the "marriage penalty":

"… which seems to be that by deliberate design, those filing 'separately from abroad' are to be penalized by having a much lower reporting and tax threshold than those filing as 'single persons' –deliberately punishing those who do not choose to subject their non-US non-resident spouse's 'foreign' income and assets to eternal US taxation – which the US would like to force on them from afar, within the borders of all other countries, even in the absence of any other US relationship other than having married someone deemed to be a 'US taxable person'.

The rationale is that this is because we are presumed to be avoiding paying tax to the US on the assets and earnings of the non-US non-resident spouse, which we are presumed to enjoy via our 'share' of 'community property'. Which of course is generated and located in another country, and already taxed by that other jurisdiction – where the true owner of the assets is a citizen.

This is a form of double taxation by proxy.

The ACA wonderfully skewers this US claim that the IRS should be able to extend US taxation assessment and powers to non-US, non-residents 'abroad', <u>merely because they married a US person</u>.

At issue also is that if we do not file 'married jointly', that is a decision that the non-US person has the right to decide on their own behalf – they have no obligation to the US – so why should they agree to take that burden on?

*Thus, the US uses the US taxable person spouse as a lever to get at the earnings and assets of non-US citizens, who do not live in the US, have no US taxable status, no US taxable income, no US citizenship, no US residency, enjoy no US services – based and rationalized only on some specious and fantastical claim that **by mere association with a US taxable person through marriage, the US has the right to tax even foreign nationals outside its borders**."*

Section K – FATCA enforces the new 3.8% Obamacare surtax (NIIT) – This is a separate tax on the sale of a principal residence in Canada, PFICs, and the investment earnings of Canadian Controlled Private Corporations

The 3.8% Obamacare surtax (NIIT tax) results in Canadian residents who are U.S. citizens paying for Obamacare for U.S. residents because …

"The NIIT tax is a U.S., imposed on the investment income of those Canadian residents deemed "U.S. citizens".

It is NOT subject to a tax credit for Canadian taxes paid on that same investment income.

Therefore, the investment income on which the U.S. NIIT is imposed, is subject to double taxation in both Canada and the U.S.

Furthermore, the U.S. NIIT is based on a U.S. definition of "Modified Adjusted Gross Income", which requires that income EXCLUDED from U.S. income under the Foreign Earned Income Exclusion or FEIE" be "added back in" to U.S. income for the purposes of determining “Modified Adjusted Gross Income” and the NIIT tax.

The practical impact is that any Canadian, who is a "deemed U.S. citizen", will have to pay U.S. tax on investment income.

The tax would be payable when:

1. When any "real estate" is sold; and

2. An additional 3.8% U.S. tax on the sale of any principal residence in Canada. This 3.8% tax is in addition to the capital gains taxes that are charged on the sale of a Canadian principal residence.

Finally, the cost of the compliance will certainly require "specialized U.S. tax services" which will add to the cost of transferring Canadian capital to the United States.

It is important to note that, this means that Canadians who are deemed to be "U.S. citizens" **will not be able to use their Canadian principal residence as a retirement planning vehicle in Canada**.

In fact, (as noted elsewhere) those Canadians who are "deemed U.S. persons" have NO effective way of retirement planning.

It is worthy of note that this is a U.S. tax which is levied to finance Obamacare for U.S. residents. Therefore, this is a clear and deliberate attempt on the part of the United

States to finance Obamacare on the backs of U.S. citizens living in countries outside the United States.

A simple explanation (to the extent it is possible) of the NIIT may be found here:

http://taxes.about.com/od/Types-of-Taxes/fl/Net-Investment-Income-Tax.htm

Commentary from American Citizens Abroad is here:

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

Commentary from U.S. tax lawyer, Virgina La Torre Jeker is here:

http://blogs.angloinfo.com/us-tax/2014/02/03/net-investment-income-tax-3-8-niit-nit-picking-nuances-for-the-american-overseas-or-with-offshore-investments/

(For purposes of this discussion, we have used only the example of the sale of real estate. Ms. La Torre Jeker notes that **the NIIT may be triggered by PFICs (aka mutual funds) and the investment earnings of CFCs (aka Canadian Controlled Private Corporations**).

Section L – FATCA operates to identify those Canadians who are deemed by the U.S. to be "U.S. persons". Once identified, as "U.S. persons, those Canadians will be held captive by the U.S. They are not permitted under U.S. law, to relinquish "U.S. personhood" in a simple and humane way. They may be required to "buy their freedom" in the form of an "Exit Tax" and they will certainly be required to pay crippling "compliance costs" as part of the "relinquishment inquisition"

This topic was the subject of a second submission, at the request of the New Zealand Budget Committee as part of its FATCA deliberations.

The analysis is here:

http://citizenshipsolutions.ca/wpcontent/uploads/2014/02/NewZealandandtheExitTax.pdf

U.S. Senator Ted Cruz, a Canadian citizen by birth, recently announced his intention to renounce Canadian citizenship. McGill Law Professor Allison Christians wrote an interesting blog post about this which included:

"It is not whether he's natural born and therefore eligible for the presidency. It is that Ted Cruz has suggested that he did not even realize he might be a Canadian citizen until the Dallas Morning News suggested it to him and asked a few experts on Canadian citizenship law to confirm that Canada, like the US, like many, many countries, confers birthright citizenship on people born in the territory whether they request it, or want it, or not.

This is interesting because this is all happening during America's ongoing roundup of every person on the planet who may be a US citizen because they were born in the US or by birthright through their lineage, for the purpose of imposing draconian penalties for failure to file tax returns and asset information reports under the US citizenship-based tax regime. This is the only tax regime in the world that treats lineage alone as a justification to impose worldwide taxation. Ted Cruz's expressed thoughtlessness about his own dual citizenship, coupled with his breezy intention to simply get rid of the unwanted extra citizenship, beautifully illustrates the major problem with citizenship-based taxation and why no other country on the planet would try to enforce such a system.

The US is right now imposing enormous penalties and unleashing general chaos on people living in other countries with US citizenship, both by newly enforcing long-ignored rules and by layering on top of these rules a new and more draconian layer of enforcement*. The chaos comes in the form of fear-inducing, devilishly complicated and duplicative paperwork, and penalties, most of all penalties, and it is being piled on to millions of people around the world, many of whom, like Cruz, are very possibly only beginning to understanding that citizenship status is mostly conferred upon rather than chosen by individuals.*

Ted Cruz should consider himself very lucky, because the citizenship he claims he didn't realize he had doesn't carry any punishment for his failure to recognize it. Moreover renouncing, if he really intends to follow through on that promise, will be relatively simple, cheap, and painless other than the cost to his US political career, if any.

Not so if he had lived his life in Canada with his current apparent dual status. US citizens abroad now understand that discovering ties to the US means discovering a world of obligations and consequences flowing from citizenship that you were expected to know and obey. ***Ignorance of the law being no excuse****,* ***the punishments range from the merely ridiculous****--many times any tax that would have ever been due--****to the infuriating****: life savings wiped out and many future tax savings sponsored by your home government, such as in education or health savings plans, treated as offshore trusts and therefore confiscated by the US.*

Moreover ***there is no ready escape hatch*** *for the newly discovered and unwanted US citizenship:* ***five years of full tax reporting compliance must be documented****, appointments must be made with officials, fees must be remitted, interviews must be conducted, and in some cases exit taxes must be paid. If some in Congress get their way, renunciation could even mean life-time banishment from the US someday soon.*

In the grand scheme of things Ted Cruz's citizenship is a non-story. But for what it illustrates about citizenship-based taxation, it could be the story of the century."

http://taxpol.blogspot.ca/2013/08/here-is-only-reason-why-ted-cruzs.html

The obvious solution would be for those "deemed U.S. persons" to renounce their U.S. citizenship or to formally return their Green Cards. As Allison Christians notes, **relinquishment of U.S. citizenship is not an easy thing to do.**

Ted Cruz can easily renounce his Canadian citizenship. U.S. citizens attempting to renounce U.S. citizenship are subjected to a "relinquishment inquisition".

"The Relinquishment Inquisition" – Form 8854, Tax Compliance Costs and the "Exit Tax"

Since 2004, the U.S. has made it impossible to expatriate without notifying the IRS and with the possibility of paying a tax on expatriation.

In other words, the simple act of "relinquishing U.S. citizenship" or ceasing to be (in certain circumstances) a Green Card Holder, will be a very costly exercise. The cost of expatriation includes both the costs of (1) The Exit Tax and (2) The Compliance Costs.

The Exit Tax – 877A of the Internal Revenue Code

Since, 2008, the "Expatriation Tax" has formally become an "Exit Tax". Those Canadians with a net worth exceeding 2 million dollars, or who cannot certify that they are U.S. tax compliant, in the five years preceding their relinquishment, are subject to the U.S. "Exit Tax". Those subject to the "Exit Tax" are required to give a share of their wealth to the IRS in the form of an "Exit Tax".

To put this in perspective, a "U.S. person" who owns a home in Toronto or Vancouver and who has a pension plan is likely to meet the 2 million dollar threshold. Furthermore, the 'Exit Tax" does not apply ONLY to the portion of assets that exceed the 2 million dollar threshold. The tax applies to the whole amount.

For all practical purposes, this means that one must choose between renouncing U.S. citizenship or keeping one's retirement assets.

Consider this: A deemed "U.S. person" works his whole life in Canada to pay off his house. He now learns that he has been deemed to be a "U.S. person". He has not lived in the U.S. since he was a toddler. He has never worked in the U.S. All of his income and wealth are from Canadian sources.

Yet, in order to be free of the U.S. he is required to pay the U.S. a percentage of his "after-tax" Canadian assets.

The Compliance Costs of Relinquishment

As a practical matter, those wishing to relinquish "U.S. citizenship" must have 5 years of U.S. tax compliance in the years leading up to relinquishment.

For one to achieve that 5 years of U.S. tax compliance, one must file, or have filed at least 5 years of U.S. tax and information returns. The costs to do this include:

- The compliance (legal and accounting fees);
- Any taxes owing;
- Any penalties owing

In our submission to the Government of New Zealand, we concluded that the minimum costs (without taxes, penalties or the Exit Tax) to relinquish U.S. citizenship would be $5,000. For most people the cost would be much more.

We submit, that in the modern world, **it is very unfair to have to pay such large fees just because one doesn't want to be a citizen of the United States of America**.

In fact, to apply these principles to Canadian citizens/residents who are deemed "U.S. persons" is unprincipled and immoral.

By signing a FATCA IGA, the Government of Canada has made itself complicit in this level of U.S. tax immorality.

Our suggestion: Don't embrace immorality by signing a FATCA IGA.

The details of the Exit Tax and the problems of 5 years of U.S. tax compliance are detailed in this second submission to the Government of New Zealand.

http://citizenshipsolutions.ca/wpcontent/uploads/2014/02/NewZealandandtheExitTax.pdf

Section M – By forcing the government of Canada to discriminate against "U.S. persons", FATCA interferes with Canadian immigration policy because FATCA makes it difficult (if not impossible) for Canada to accept immigrants who the U.S. considers to be "U.S. persons"

The analysis in sections A – Section L makes it clear that:

1. The laws of the Government of the United States constitute a threat to "U.S. persons" who wish to live outside the United States; and
2. **"U.S. persons" in Canada are a threat to the economy and stability of Canada**.

Therefore, Canada's Immigration Act should be amended to prohibit Canada from accepting "U.S. persons" as "permanent residents" in Canada.

This is necessary BOTH for the protection of the "U.S. person" and to protect the Canadian economy from U.S. tax claims which are based on the residence of the "U.S. person" in Canada.

Section N – FATCA and the Canadian Charter of Rights - One response to the Canada Finance request for comments on IGA: Canadians initiate first legal step to take Harper government to court over FATCA IGA

We must assume that Mr. Harper is convinced that its mandatory discrimination IGA legislation does NOT contradict sections 8 and 15 of Canada's Charter of Rights and Freedoms (unreasonable search and seizure, discrimination).

Other Canadians, perhaps even a few of the handful in the Conservative caucus who have taken the time to understand the FATCA IGA law, are not so sure.

See the next page for the response of one group of Canadians to the request of Canada Finance for our thoughts on the FATCA IGA.

This Press Release issued today, the day of our submission, is a response to Canada Finance's request for comments on the IGA and the concern Canadians have that Mr. Harper has decided to take away their rights. It is self-explanatory:

"CANADIANS TAKE FIRST LEGAL STEP TO PREVENT HARPER GOVERNMENT FROM IMPLEMENTING U.S. FATCA LAW – *March 10, 2014*

Today a small group of Canadians began the long legal process to prevent the Conservative government from helping the United States impose a bad law on Canada.

With the announcement of an Intergovernmental Agreement (IGA) for the U.S. Foreign Account Tax Compliance Act (FATCA) on February 5, 2014, Finance Minster Jim Flaherty makes discrimination against one million innocent Canadians and their families – those the U.S deems "U.S. persons" – mandatory.

Finance Canada has requested public input on the FATCA agreement, which will override federal laws to meet demands of a foreign power to seize private financial records of Canadians.

Canadian citizens Dr. Stephen Kish of Toronto and Lynne Swanson of London Ontario responded today to that request by retaining prominent constitutional lawyer Joseph Arvay of Vancouver to provide a legal opinion on whether this legislation violates Canada's Constitution including the Charter of Rights and Freedoms and if so how a constitutional challenge might be mounted.

"It's time for Canadians to get angry. FATCA is a threat to all Canadians and cannot be captive to party politics. ***MPs must NOT be required to vote along party lines --- They must vote their conscience in a free vote"*** says Dr. Kish.

In less than one week a funding initiative, organized by Dr. Kish and Ms. Swanson, raised the money required to pay for this legal opinion.

"It is despicable the Harper government thinks so little of Canadians that they are forced to raise money from those with limited means to retain counsel to ensure their fundamental rights are protected from foreign demands," says Ms. Swanson.

"As a Canadian citizen for 41 years, ***I never thought I would see the day when demands of a foreign government would take precedence over Canadian laws****. The implications of this for Canada and for all Canadians are chilling."*

http://maplesandbox.ca/wp-content/uploads/2014/03/News-Release-First-Legal-Step-To-Stop-FATCA.pdf

Here is a commentary on the Charter challenge development from a McGill law professor:

http://taxpol.blogspot.ca/2014/02/fatca-in-canada-constitutional.html

"FATCA in Canada-constitutional challenge mounting

A group of Canadians has put together a campaign to explore the constitutional violations posed by FATCA in Canada. Some of these issues were raised by pre-eminent constitutional scholar Peter Hogg, in this letter to Finance. Others arise because of the adoption of the intergovernmental agreement (IGA), which bypasses data protection laws and lacks even the minor anti-discrimination clause seen in other IGAs.

I've been asked if these issues are serious. I think they are.

The issue FATCA raises for me is not so much sovereignty--though I perfectly understand the instinct on that front--but rather it is the problem of serious mismatch between the goals targeted and what will be attained by FATCA when law on the books meets law in practice.

***The constitutional challenge is a signal that something is seriously awry with FATCA**.*

As with most activism, this effort demonstrates that a not-small number of people are experiencing some not-small violation of fundamental principles, and in light of government failure to respond, are forming grassroots responses in an effort to achieve a remedy.

Let's have a look at why this might be so.

The goals of FATCA are clear and the law writes a clear narrative that is palatable to the public: we must stop tax evasion. Who would possibly speak out against that goal? I don't know too many people that would.

However, the law in practice is a completely different story, with a normative dimension unique to the United States. This dimension has, as far as I can see, been completely ignored by lawmakers both in America and internationally. It involves the attempt by the United States to impose taxation of persons based on their legal status instead of their actual inclusion in American society.

I know that this is difficult to understand conceptually. An example might help. A was born in Illinois to a Swedish mother and an American father. The family moved to Sweden when A was 6 months old, and she spent her whole life in Sweden, working

there, paying taxes there, using the schools and the health care system there, and getting married to a fellow Swede. A is a US national, and therefore subject to US taxation as if A had done all of those things in America. A has always been subject to US taxation, and FATCA doesn't change that in the slightest. But A never paid any attention to US law or politics, decisions of the US Supreme Court, or Congressional hearings. Why would she? She is a resident of Sweden paying high taxes and living her life. A has bank accounts at her neighbourhood bank, and tax-deferred savings account sponsored by her government. In the eye of FATCA, A is an offshore tax evader.

Since she is an evader, she must be monitored to ensure she is caught and brought to justice, and further that she goes forward in full compliance with all US tax laws. Since she cannot be trusted to come forward, her bank must disclose her personal and financial information, and that of her spouse (guilty by association), to the IRS. Since the bank has no incentive to do that, it must be threatened with sanctions if it fails to do so. Since banks don't want to work under that threat, Sweden must be compelled to step in and facilitate the data transfer.

As I have said often, this is an extraterritorial jurisdictional claim that requires the help of other countries. Getting help is not a choice, it is a necessity. One country simply cannot assert its jurisdiction over people who live in another country, without that other country's help. American scholars know this, and they say America should ask for the help it needs.

The problem that we have seen FATCA reveal is that ***this help necessarily involves America's needs trumping domestic laws that apply to targeted persons in the country of their residence.***

I do not think America should be demanding help from other countries in taxing the residents of those countries. ***America needs to learn to tax <u>its own residents</u>, like every other country must do****.*

If the world's biggest economy cannot figure out how to make its own people pay for their own public goods, it is difficult to see why other countries should be enlisted to help it along.

This is why the mismatch between the law on the books and the law in practice is so troubling in the case of FATCA. Looking past the use of legal status instead of residence as a jurisdictional claim, a regime that requires financial institutions to report nonresident accounts to these account holder's home countries is absolutely necessary to protect the income tax base from widespread tax evasion facilitated by foreign bank secrecy laws. Of that there is simply no doubt. To the extent FATCA can do that, it is to

be applauded and most of all extended globally because this is a global issue. I explain and advance this argument here.

Most countries cannot act alone in instituting this necessary regulatory structure, since foreign financial institutions would simply shun a given market rather than comply. This is the potentially positive side of what makes the United States different from most, maybe all, other countries. This also explains why the OECD is very very quickly trying to ride the coattails of FATCA (before it is too late and the US changes its mind about being part of a global data exchange system, as it has before), by gearing up to create a global FATCA, or call it a GATCA.

GATCA is FATCA minus two key aspects: the normatively unjustifiable legal-status based tax, and most of the economic sanctions. The UK has done something similar with those same parameters with respect to a selected list of countries. (The OECD's GATCA is also fully reciprocal, but that deficiency in FATCA is another issue). These differences make a GATCA supportable exactly where FATCA is not (both systems have other major flaws but we can leave those aside for the big picture here).

***FATCA's enforcement of legal-status based taxation renders it normatively unjustifiable.** It violates the residence principle, which Reuven Avi-Yonah has gone so far as to call an international customary law. **It is also of course completely unworkable on a global scale**: imagine if other countries decided to learn from the US example and started smoking out their own diaspora to enforce their own FATCA regimes. It is unimaginable that if the OECD countries got together and seriously debated status-based taxation, they would agree on a global standard to enforce it for all countries.*

The common reporting standard GATCA they have devised, which is so obviously based fundamentally on the residence principle, shows that the OECD recognizes that enforcing status-based taxation is not and should not be a goal of any project to counter tax evasion.

Yet no conversation is being had about the outlier, whose demands will make enforcement of GATCA more extensive and more expensive for every other country.

Residence based taxation is not perfect by any means but it is the least worst alternative if governments want to continue to use personal income taxes in a world in which individuals are to be allowed the freedom to move. FATCA deserves to fail to the extent it ignores this reality. A constitutional challenge will at minimum open a desperately needed political conversation about why this is so."

Section O – Conclusion and Recommendations:

A. Why there should be NO Canadian participation in FATCA; and

B. Specific recommendations in the event that Canada does participate in FATCA

The Government of Canada should not assist the United States in general, and in any manner with the facilitation and/or implementation of FATCA on Canadian soil.

To be specific:

1) The Government of Canada should oppose implementation of FATCA in Canada. To facilitate this, the Government of Canada should pass a Canadian law prohibiting any person or entity from obeying FATCA in Canada.

2) In the event that the Government of Canada does not enact legislation prohibiting obeying FATCA, the Government of Canada should allow the banks to decide on a case-by-case basis whether and how to participate in FATCA.

3) The Government of Canada should not enter into any agreement with the United States concerning the implementation of FATCA in any form.

4) Under no circumstances should the Government of Canada enact any new law or amend any existing laws, pursuant to an IGA to facilitate Canadian compliance with FATCA.

   Should the Government of Canada enter into an FATCA IGA, for the dual purposes of discriminating against Canadian residents who are "U.S persons" and for the purpose of enforcing U.S. taxation against them, until such time as the U.S. switches to the worldwide standard of Residence-Based Taxation, then the following are recommended:

5) The Immigration Act of Canada be amended to **ban all potential immigrants who are "U.S. persons", for their own protection, from immigrating to Canada.**

6) Because the enforcement of "U.S. taxation" against "U.S. persons" resident in Canada makes them unable to save and invest for retirement, we recommend that: Those "U.S. persons" in Canada, who wish to marry "non-U.S. persons" be required, **for the protection of their future spouse**, to disclose their "U.S. personhood" to that spouse, and be required to obtain a marriage license from

the Government of Canada, the issuance of which is conditional on proof of that disclosure.

7) The U.S. Department of State be advised by Canada's Minister of Foreign Affairs that imposition of U.S. personhood on any person born in Canada is a violation of Canada's sovereignty and fundamental human rights and that, given the significant harm caused by U.S personhood to such persons, individuals born to U.S. parents in Canada will not be recognized as "U.S. persons" by the Government of Canada.

8) The Citizenship Act of Canada be amended so that all U.S citizens taking the Oath of Canadian Citizenship will be deemed by Government of Canada to be citizens of Canada from birth.

9) The Citizenship Act of Canada be amended so that **all U.S citizens taking the Oath of Canadian Citizenship** will have automatically **relinquished Citizenship of the United States at the time of taking the Oath.** Confirmation of relinquishment of U.S citizenship will be immediately forwarded by the Minister of Immigration and Citizenship to the U.S. Department of State.

10) That, in the interest of humanity and the fundamental right of expatriation, the proposed IGA legislation be amended to include agreement between the Governments of Canada and that of the United States that all U.S citizens and other "U.S. persons" legally resident in Canada who have relinquished or renounced their U.S. citizenship or U.S. "personhood", or who wish in the future to abandon their U.S. citizenship, **will have done so, and be free to do so, without penalty of any U.S. exit tax or requirement for past, present, or future compliance with U.S. expatriation tax rules or any other present or future penalty imposed by the United States whatsoever**.

Thank you for the opportunity of providing this input, which reflects the hard work of a large number of Canadians.

All of which is respectfully submitted,

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Barrister and Solicitor
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ADDENDUM:

Section P – A plea to the Government of Canada: Why a FATCA IGA must be subjected to a "free vote" in the House of Commons – MPs must not vote along "party lines"

It is clear that there is massive Canadian opposition to FATCA. Those who understand **FATCA oppose FATCA**. Canadian opposition to FATCA has come from:

- Canadian political parties (NDP, Green Party, Progressive Canadian Party)

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

http://maplesandbox.ca/2014/2013-taxpayers-advocate-report-to-u-s-congress-cites-maple-sandbox-and-murray-rankin-ndp-letter-on-fatca/

- individual MPs (including Liberal MP Ted Hsu)

http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=NoticeOrder&Mode=1&Language=E&Parl=41&Ses=2&File=11

http://isaacbrocksociety.ca/2013/10/26/liberal-mp-ted-hsu-question-121-parliament-of-canada-october-25-2013-fatca/

- at least two blogs of concerned citizens (Isaac Brock Society and Maple Sandbox)

http://www.issaacbrocksociety.ca

http://www.maplesandbox.ca

- former Osgoode Hall law dean Peter Hogg

http://www.greenparty.ca/sites/greenparty.ca/files/attachments/peter_hogg_fatca.pdf

- McGill Law Professor Allison Christians

http://taxpol.blogspot.ca/2014/02/fatca-in-canada-constitutional.html

and thousands of other Canadians from coast to coast, and in the form of reasoned arguments.

There is even opposition to FATCA coming from the United States.

An IGA must be passed by a vote of MPs in the House of Commons. Canada is a Westminster democracy which means that in Canada, the business of the public is carried by the elected representatives of the public. The public expresses its views through its elected representatives who may or may not be members of political parties.

In certain cases, the issues of the day are so important that they are subjected to a "free vote" in the House of Commons. **This means that MPs are free to vote their conscience and are NOT required to follow the directive of their political party**.

We respectfully submit that, given the extraordinary legal and social consequences of FATCA, **that a vote on the FATCA IGA should be a "free vote" in the House**. Individuals should be free to vote their conscience and should not be subject to party discipline for so doing.

Amazingly, this suggestion first arose, NOT from concerned Canadians, but from U.S. lawyer James Jatras who writes in the Toronto Star:

"To their credit, New Democrats Tom Mulcair and Murray Rankin, Liberals Ted Hsu and Scott Brison, and Green Party leader Elizabeth May have challenged the Harper government on FATCA. Conservatives have done all Canadians a disservice by finalizing the agreement in secret. The least they can do now is to give it a full airing in Parliament, followed by lifting party discipline to allow Conservative MPs to help vote it down."

The full article follows:

***"**By: James George Jatras Published on Mon Mar 03 2014*

Canadian visitors to Washington sometimes wonder why their embassy stands at the foot of Capitol Hill.

The answer? To be close to where Canada's laws are made.

Case in point: on Feb. 5 Jim Flaherty's Finance Ministry announced a so-called "intergovernmental agreement" to enforce FATCA, the U.S. Foreign Account Tax Compliance Act, in Canada.

Supposedly aimed at American tax cheats, FATCA was enacted in 2010 and is set to go into effect on July 1, 2014. But instead of singling out suspected tax evaders, FATCA creates an NSA-style information dragnet requiring every non-U.S. financial institution in the world (including banks, credit unions, and insurance companies) to report data on all specified U.S. accounts to the Internal Revenue Service (IRS).

How can foreign (including Canadian) institutions outside U.S. jurisdiction be forced to comply? Simple: economic sanctions. A Canadian bank deemed "recalcitrant" would be subjected to 30-per-cent "withholding" from all U.S.-sourced payments. Given America's weight in global finance, the risk of such extrajudicial reprisal has terrified banks and governments worldwide.

Still, even FATCA's advocates concede that direct enforcement is "wholly unachievable" due to privacy protection laws in many countries that don't allow personal data to be sent to unauthorized recipients. Thus, the Feb. 5 agreement not only permits Canadian institutions to comply with FATCA despite privacy laws, but will require them to collect the information demanded and report it to the Canada Revenue Agency for transfer to the IRS.

***The Harper government's defence of turning the CRA and Canadian banks into agents of the U.S. government runs as follows**:*

The government and Canadian banks tried lobbying the Americans against FATCA, but that didn't work. Threatened with 30-per-cent withholding sanctions, we negotiated the best deal obtainable to protect personal privacy, minimize costs and receive reciprocal reporting from the U.S.

The problem is, no part of this excuse is true:

***Lobbying**: By their own admission, the government's and the Canadian Bankers Association's "lobbying" consisted of a few meetings with U.S. officials and submitting a couple of commentaries to American newspapers, which rejected them. Nothing was undertaken remotely comparable to Ottawa's saturation "GoWithCanada.ca" campaign touting the importance of Canadian energy.*

***Negotiating the best deal**: The Canadian agreement replicates a uniform template finalized in all essentials in July 2012. **Ottawa "negotiated" nothing but <u>some minor exemptions that can be revoked by the U.S. at will</u>.** Even small concessions were vetoed, such as Canadian credit unions' request to exempt institutions with assets under $1 billion, not the $175-million cut-off the U.S. Treasury Department deigns to allow for other countries.*

***Privacy**: The primary purpose of the agreement is to nullify protections under the Bank Act, the Personal Information Protection and Electronics Documents Act (PIPEDA), the Canadian Human Rights Code, and especially the Charter of Rights and Freedoms. The people affected are not just resident Americans but at least a million Canadian citizens. Claims that Canadians' personal data would not be forwarded to the NSA and other intelligence agencies are laughable.*

Costs**: "Experts" reportedly estimate that FATCA could cost Canada $200 million. But the Bank of Nova Scotia already has spent $100 million; **the Big Five banks alone will spend at least $500 million. Canadian consumers will pour billions of dollars into the pockets of consulting, law, accounting and software firms.

***Reciprocity**: Ottawa already receives information on Canadian residents' interest from U.S. banks. Information equivalent to what Canada must report to the U.S. would require new legislation from Congress — which powerful members of the Republican-controlled House of Representatives already have ruled out.*

Canada's capitulation to this expensive, invasive and anti-sovereign demand is unnecessary. Canada has many tools to resist FATCA, from World Trade Organization and legal challenges to reciprocal, dollar-for-dollar withholding of payments to U.S. institutions. A "no" from Canada could itself doom FATCA in light of growing U.S. domestic opposition. A FATCA repeal bill has been introduced by Senator Rand Paul, a leading 2016 presidential prospect. The Republican Party, which recently approved a resolution advocating FATCA repeal, will continue to control the House and likely will capture the Senate this year.

To their credit, New Democrats Tom Mulcair and Murray Rankin, Liberals Ted Hsu and Scott Brison, and Green Party leader Elizabeth May have challenged the Harper government on FATCA. Conservatives have done all Canadians a disservice by finalizing the agreement in secret. The least they can do now is to give it a full airing in Parliament, followed by lifting party discipline to allow Conservative MPs to help vote it down."

***James George Jatras** is a former U.S. diplomat and U.S. Senate staffer. Now a Washington-based government and media relations specialist, he edits RepealFATCA.com.*

http://www.thestar.com/opinion/commentary/2014/03/03/enforce_canadian_law_not_fatca.html