To: The Honourable Members of the Finance Committee

Thank you for the opportunity to make a submission regarding the FATCA IGA implementation portion of Bill C-31 (budget implementation). I am writing to propose the following amendment to the FATCA enabling legislation and/or the IGA:

"Notwithstanding any other provision of this Act or the Agreement, for all purposes related to the implementation of this Act and the Agreement, 'U.S. Person' and 'Specified U.S. Person' shall not include any person who is a Canadian citizen or legal permanent resident."

By way of introduction, I am a dual citizen of Canada and the United States. I have been a Canadian citizen since birth and became a U.S. citizen in 2011. I love the USA—otherwise I would not have become a US citizen—but became a U.S. citizen with the clear understanding that the laws of both countries permitted me to retain Canadian citizenship. Moreover, I am registered to vote in Canadian federal elections and vote in the Toronto Centre electoral district. A precedent setting US Supreme Court ruling from the 1960's affirmed the rights of dual citizens to vote in foreign (such as Canadian) elections without jeopardizing their U.S. status. Much more recently, on May 2, 2014 the Superior Court of Ontario affirmed the rights of long term expatriate Canadians, including dual citizens, to vote in Canadian federal elections.

As someone who accepted US citizenship willingly, I accept my own obligations as a US citizen to pay US federal taxes—the so-called "Citizenship Based Taxation"—even though US procedure in this regard is nearly unique, shared only with Eritrea. However there are a number of reasons why this legislation is bad for both countries and therefore must be opposed:

It is a violation of the Canadian Charter of Rights and Freedoms. As you know, the Canadian Charter of Rights and Freedoms prohibits discrimination on the basis of national origin. This law is a clear violation of that provision as it clearly discriminates against Canadian citizens who happen to be "U.S. persons" of U.S. origin.

Not everyone who is a U.S. citizen holds that status voluntarily. Someone may be a U.S. citizen by virtue of birth in the U.S. despite having had little or no connection with the U.S. since early childhood. They may see themselves—and rightfully so—as Canadians and only Canadians—despite technically holding U.S. citizenship. Alternatively they may have been born in Canada to U.S. parents and conceivably have never even set foot in the U.S. Moreover, renouncing U.S. citizenship is a complex process, and is especially difficult for someone who may not have known they had any U.S. status or obligations. Holding such a person legally liable for U.S. taxes is clearly unfair and not something Canada should be getting involved in.

Penalties for violations are truly draconian. The penalties, if fully enforced, for violating FATCA and the related FBAR regulations in the U.S. start at $10,000 per violation even if not wilful—and escalate even further if the violations are deemed to be wilful. For a Canadian citizen who happens to hold dual status, these penalties can very quickly escalate to many times one's net worth. This is true even if—as is commonly the case—the Canadian citizen would not have actually owed any U.S. taxes. My understanding is that there is currently a U.S. court challenge affirming that this is a violation of the U.S. constitution's Eighth Amendment ban on excessive fines. With the status of these penalties unresolved in the U.S., Canada should clearly not be getting involved in enforcing U.S. law.

Costs of U.S. compliance are beyond the reach of Canadians of limited means. The costs of filing U.S. tax returns for U.S. expatriates can be $3,000 to $5,000 per year or more. If the expatriate has back taxes to file, this must be multiplied by the number of years the expatriate must go back. These costs represent the costs of hiring a U.S. accountant to sort through the complex cross-border tax issues involved—and are irrespective of any actual tax owed, which may often turn out to be zero.

Status as a U.S. person limits a Canadian's financial options. Many well known Canadian financial products, such as Registered Education Savings Plans (RESPs) and Registered Disability Savings Plans (RDSPs), are not recognized by U.S. tax law (although Registered Retirement Savings Plans are). If Canada enforces U.S. tax law against Canadian citizens who happen to be "U.S. persons" it limits those Canadians' financial options within Canada.

It limits cross border business opportunities. Canada and the U.S. share a long history of being amongst each other's biggest trading partners. This relationship is jeopardized by this legislation, and that is bad for both countries. Many Canadian-only businesspeople will be reluctant to accept U.S. business partners because that could trigger IRS reporting requirements that the Canadian-only side wishes to avoid. This will hurt the economies of both countries.

Canada is not a tax haven. The only possible legitimate goal of FATCA was to prevent U.S. citizens from transferring their assets out of the U.S. and hiding it in so-called "tax haven" countries. Although some countries do act as tax havens, Canada is not a tax haven. U.S. citizens or "persons" do not typically open Canadian bank accounts or move to Canada for the purpose of evading U.S. tax.

It has the potential to strain marriages. If one partner of a couple residing in Canada is a "U.S. person" and the other is Canadian-only, FATCA may require disclosure of the financial status of both partners to the IRS. This has the potential to damage a marriage if the Canadian-only partner resents this disclosure, as is completely understandable.

Long term Canadian expats retain important connections to Canada. No matter how long one remains outside Canada, and even if one never intends to return to Canada, expatriates retain important ties to Canada. Many of us still have family in Canada. My ability, for example, to step in and serve as power of attorney for a Canadian family member—should that ever be required—is jeopardized by this legislation. I will retain my status as an alumnus of the University of Waterloo—where Canada's governor general served as president before accepting his current role—for life. As such, I have frequently given to the University of Waterloo in the past. Although relatively small future gifts are unlikely to be affected by FATCA, this legislation is causing me to rethink whether I should make really large gifts in the future.

For all of the above reasons, I urge you to reconsider the FATCA/IGA portions of C-31, and especially to consider inserting the amendment proposed at the beginning of this letter.

Sincerely,

David W. Ash