

SUBJECT: U.S. FATCA IGA implementation in Canada via Bill C-31

TO: The House of Commons Standing Committee on Finance

ATTENTION: Christine Lafrance

DATE: April 30, 2014

Dear Finance Committee Members:

I am responding to the invitation to submit comments on the FATCA inter-governmental agreement (IGA) announced on February 5, 2014 and the enabling legislation for this IGA which was included in Bill C-31. Debate of this omnibus bill was severely limited before its first reading passage on April 8, 2014, nevertheless I hope that this Finance committee has some idea as to why 1 million Canadian residents, their families and associates would be completely dismayed by the Canadian government's capitulation to the USA's extraterritorial FATCA law. Even though I'm not sure there are any words from mere individuals which would convince Finance Canada or the Canadian government as a whole that this IGA is a huge mistake, a grave injustice, I will try my best to explain. The Canadian government has listened only to the voices of the financial institutions (notably the "Big Five Banks") but the voices of individuals who would be affected by FATCA do not appear to have been heard. The USA demanded FATCA and, under duress, under threat of sanctions (30% withholding penalty on financial institutions), the Canadian government capitulated and that was probably its intention from the beginning. A response to an access to Information request revealed the early intent of the Canadian IGA negotiators:

*MEMO from Michael Horgan
SUBJECT Meetings with Bank CEO's and the CBA
February 7, 2011*

Suggested Speaking Points

** I am supportive of efforts to have citizens meet their tax obligations, but concerned about the extensive reporting requirements and administrative burdens that Fatca would impose on Canadian banks.*

** I am worried that banks, while properly following Canadian law with respect to access to banking and the protection of privacy, may be deemed subject to FATCA's withholding tax.*

** I have written to U.S. Treasury Secretary Geithner expressing my concerns.*

** My officials are working with the U.S. Treasury and the IRS regarding FATCA implementation.*

The IGA is already being touted by Conservative politicians as a "good deal" for Canada when it is actually only a slight concession by the US negotiators to the concerns of Canadian financial institutions and essentially a coup by the US government. And so a US law is all set to become a Canadian law. The timing of the

IGA announcement was quite problematic for me. It was delayed until it could be buried in the Olympic news and to the point where people who will be taken completely by surprise by FATCA will not have any time to react or protest before that July 1, 2014 implementation date. For me, July 1st will never again be a celebration of the creation of the sovereign nation of Canada. It will be a day to mourn the loss of Canada's sovereignty.

There are reporting exemptions listed in the IGA for "registered accounts" but that does not exempt individuals from having to self-report these to the IRS and FinCEN, with all the cost and complexity involved in doing those annual filings. Only the financial institutions were helped by these reporting exemptions. Less paperwork for them; no less paperwork for US tax filers in Canada. There's also a danger that misinformed US tax filers will be encouraged to acquire some of these "registered accounts", thinking incorrectly that they do not have to self-report them to the IRS now. Then they will find themselves hit with huge penalties from the IRS for not filing the required forms. By the way, these reporting exemptions are not special to Canada because other IGA signing countries have negotiated the same or better deals with the USA.

The USA's offer of information "reciprocity" is not going to happen without US congressional approval and the US congress will not want to burden US financial institutions with reciprocal FATCA reporting or risk a flight of foreign deposits from the USA. The banking associations of Texas and Florida are challenging these reciprocal reporting requirements in the US courts right now. By the way, these reciprocal reporting requirements are not nearly as comprehensive and intrusive as what the USA is demanding from all the other nations in the world.

Here is what "reciprocity" meant to the US IGA negotiators:

"The Government of the United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with Canada. The Government of the United States is committed to further improve transparency and enhance the exchange relationship with Canada by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic information exchange."

That is not a "commitment" anyone could take seriously and furthermore SIFMA (The Securities Industry and Financial Markets Association) plus 4 major US banks have asked the IRS to extend the deadline for FATCA to January 1, 2015. A deadline extension might be granted to US financial institutions but the IRS has firmly stated that there will be no such deadline extension for foreign financial institutions. On Canada Day, July 1, 2014, all financial institutions in the world will be expected to begin FATCA reporting but the US financial institutions who hold more sway with the IRS may get a 6 month reprieve. That is typical of the double-dealing the USA has displayed throughout this whole sordid affair.

http://www.sifma.org/newsroom/2014/sifma_calls_for_targeted_relief_on_fatca/
<http://www.fsitaxposts.com/2014/04/24/major-u-s-banks-request-6-months/>

You might want to consider what Sen. Rand Paul who is working to have FATCA repealed in the USA has stated:

http://www.paul.senate.gov/?p=press_release&id=793

"FATCA is a textbook example of a bad law that doesn't achieve its stated purpose but does manage to unleash a host of unanticipated destructive consequences," Sen. Paul said. "FATCA's harmful impacts cover the spectrum. It is a violation of Americans' constitutional protections, oversteps the limits of Executive power, disregards the mutual respect of sovereignty among nations and drains money from the federal treasury under the guise of replenishing it, and discourages overseas investment in the United States."

"Tax evasion is a problem that should be addressed, but not in such an egregious way. FATCA violates important privacy protections, disregards the sovereign laws of other nations and will cost the U.S. economy hundreds of billions of dollars in compliance costs," he continued. "FATCA should be repealed, and Congress should consider less onerous means of enforcing tax laws."

I empathize with a person who wrote: **"I will be beaten with the stick of 'US personhood' all down the road to my decrepitude and death."** As the witch hunt for those with US indicia escalates, such as it did in Switzerland, it will be people nearing or in their retirement years who have earned, invested and saved everything they have in Canada and been fully taxed in Canada who will be hardest hit by the FATCA hammer. This IGA means they will never know any peace of mind and never have any financial certainty in their retirement years. They will have their financial privacy stripped away and be forced to kneel at the feet of two tax masters, no matter how tenuous their tie may be to the USA. Surely this Finance committee can recognize that Canada with its residence-based taxation (RBT) and the USA with its citizenship-based taxation (CBT) are playing different games on different playing fields. This situation is unworkable and places enormous stresses on dual taxpayers. It is not unusual for these people to have aging parents in the USA and now, as never before, they will have the fear of detainment when they cross the border into the USA to visit with or tend to the needs of their parents. With the rapid advances in the technology of data collection, transmission and storage they cannot be sure what information the border guard may have regarding their US tax filing status and never be sure what a capricious border guard might do with that information. Some will feel forced to renounce their US citizenship in order to remain in Canada but others will reluctantly return to the USA. Those who return will be taking all of their Canadian savings with them, less whatever exit tax Canada extracts from them.

I personally have never trusted the US government and since the IGA announcement I do not trust my own government either. It has left an entire subset of Canadian society

clinging to the hope that the CRA will indeed not collect US taxes and US penalties from those who are Canadian citizens, despite the fact that the IRS and the CRA have essentially merged into IRS/CRA or CRA/IRS when it comes to the latest meme of "information exchange". **So when does a Canadian citizen become an alien in Canada?** When he is treated first as a US person living outside the USA and second as a Canadian living in Canada. Some call that being a second class citizen but I call it being an alien.

Finally, I have a rhetorical question for you. **Why would anyone feel secure about their private financial data being sent by their bank to the CRA?** That's just the first of many agencies which will expose people with US indicia to having their data abused. The CRA then sends this data to the IRS and from there to any 3-letter US agency that wants it (NSA, TSA, DHS, FBI, CIA, etc.) and none of those agencies are any more secure than the CRA is. This data is not only subject to abuse by possible miscreants in all of those agencies, on both sides of the border, but at risk by any hacker who gains access to it. Let me remind you that this data is sensitive, private (or should be), financial information. The financial institutions will only be handing over FATCA reports on people who have US indicia. Those who escape the US indicia witch hunt will retain their financial privacy (unless a warrant is produced which includes good reason to believe that they have committed a Canadian criminal offense). So anyone with US indicia will be singled out for what amounts to an automatic, warrantless seizure of their financial records. This sounds discriminatory to me and I believe it is grounds for litigation as per the protections given by the Canadian Charter of Rights and Freedoms. A small (at the moment), yet determined, group in Canada is preparing to launch this very litigation based, in part, on the assessment of a leading constitutional expert, Prof. Peter Hogg, who wrote a letter to the Dept. of Finance in which he stated:

"In my opinion, the procedures mandated by the Model IGA are discriminatory in a way that would not withstand Charter scrutiny. These procedures effectively treat individuals differently, and adversely, based on an immutable personal characteristic, specifically citizenship (whether or not acknowledged or desired by the individual) or place of birth. If Parliament were to enact legislation authorizing and permitting this type of differential and adverse treatment, the legislation would contravene the equality protections in section 15 of the Charter. As I explained above, s. 15 prohibits discrimination based on "national or ethnic origin", and has been interpreted as prohibiting discrimination based on citizenship. To impose on financial institutions the duty to report to CRA (en route to the IRS), the names, addresses, place of birth and date of birth and details of the bank accounts of account-holders identified only by their place of birth in or citizenship of the United States, and all under the implicitly threat of taxes, penalties or prosecutions by the IRS, seems to me to be a clear case of discrimination in contravention of s. 15."

I'm just an ordinary person, a Canadian citizen, looking at an extraordinary situation which rings all kinds of alarm bells with me. Since the IGA announcement and its stealth inclusion in yet another omnibus bill I have become quite disillusioned and

disappointed in my government. And it appears that FATCA is just the beginning because the Canadian government is also discussing, in secret, an “automatic information exchange” with the OECD. I suppose it won’t be too long before we will be invited to make more comments AFTER a global version of FATCA (a GATCA) is announced and then implemented by yet another omnibus bill. Where did the Canadian government ever get the impression that the people of Canada would be okay with their privacy rights being summarily abrogated like this? Isn’t it about time to put the evil genie of “total information awareness” back in the bottle and cork it?

CONCLUSION: It is my opinion that FATCA equals EXTORTION and the IGA and its implementation in Canada equals CAPITULATION to EXTORTION. I hope members of this Finance committee will recognize the unconstitutionality and the disgrace of allowing FATCA to be implemented in Canada on July 1, 2014. Sir Isaac Brock in the War of 1812 prevented the occupation by the USA of the land which was to become Canada. What an insult it will be to his valour and his victory if 200 years later the government of Canada surrenders its sovereignty by making a US law a Canadian law and accomplishes this deed of betrayal on Canada Day of this year!

Sincerely,

Mrs. M. Frantz
(a very concerned Canadian citizen)
Resident of Alberta