

My comments are written below.

Sincerely,

Julian Ross Hudson

**Now unto him that is able to keep you from falling, and to present you faultless before the presence of his glory with exceeding joy,
To the only wise God our Saviour, be glory and majesty, dominion and power, both now and ever. Amen.**

Jude 1:24-25

On Wednesday, December 5, 2012 2:25:00 PM, Julian Hudson wrote:
November 8, 2012

“To be clear, Canada respects the sovereign right of the U.S. to determine its own tax legislation and its efforts to combat tax evasion – the underlying objective of FATCA. In fact, our two jurisdictions cooperate to prevent tax evasion.” Letter from Canada’s Finance Minister Jim Flaherty, November 8, 2012

Where does one go from here with regards to FATCA? If Canada is willing to respect the right of the U.S. to determine its own tax legislation does the U.S. not owe the same deference to Canada and other nations? If it is true that the U.S. has a similar obligation then the question that must be asked is whether or not FATCA is a repudiation of the U.S.’s obligation to respect the taxing powers of other nations? I believe that FATCA is clearly a violation of that obligation which the U.S. has towards other sovereign countries because FATCA will deny to other nations their sole right to bring all their residents under their respective treasury and taxation authority. The means with which the U.S. commits this violation is through citizenship based taxation of which FATCA is a part.

Citizenship based taxation is at the core of FATCA. Under citizenship based taxation all U.S. residents and citizens have a perpetual income reporting obligation to the U.S. Treasury even if they are not resident in the U.S. The U.S. gets around the seeming injustice of this requirement by imposing on all none resident U.S. persons a “fictional” residence in Washington D.C. This forced residence is a clear violation of the mobility rights of U.S. persons and since it puts these U.S. persons under reporting obligations to a government whose treasury they do not use, it is a violation of the rights of the government under which they live and which represents them both at home and abroad and gives public benefits too. Basically it is a unilateral denial of the immigration powers of other sovereign nations since it means that U.S. citizens have only been conditionally accepted by another country.

The none resident U.S. person has absolutely no account with the U.S. Treasury. Having an account with a country's treasury is the necessary prerequisite to having taxing power privileges and the power to unilaterally impose tax payment obligations. Citizenship is neither a sufficient nor a necessary condition for a tax liability to exist, residency alone is.

Taxes are levies that a government charges those who use its currency. There are only two ways in which a person can open an account with a government's treasury which will result in making that person tax liable. One way is passive in which case the person receives benefits that are denominated in the currency of the country's treasury. The other way is active, where the person receives compensation in a country's currency for services rendered. Only country's Residents fit into either one or both of these categories.

People who are not resident in their country of citizenship cannot fit into these two categories. Even if a none resident citizen should have productive assets in his country of citizenship he is still only liable for taxes that are based on the income earned in the country where the assets are domiciled.

In other words what it all comes down to is that all taxation is based on either territorial or residency prerequisites. This would therefore make citizenship based taxation out right theft from another sovereign power and therefore an act that is more akin to colonialism.

Citizenship based taxation is also a violation of Canada's sovereignty because it makes both conditional and contingent the relationship between the treasury of the Canadian government and the U.S. person Canadian resident. There is no sovereign nation that can claim actual sovereignty when its relationship with its legal residents is not prima facie an exclusive and unmediated relationship. Through citizenship based taxation the U.S. Treasury gains a superior position with regards to the none resident U.S. person than is legally existent between the Canadian treasury and the none resident U.S. person. This is clearly shown by the fact that the U.S. treasury attempts and does exert power over the investment and financial activities of the none resident U.S. person even though those activities are being conducted strictly in accord with the laws of the Canadian Parliament and executed with the monetary issuances of the Canadian Treasury.

It should be noted that taxation power and fiscal planning go hand in hand. The government through its treasury uses its taxing power as a means to realize the fiscal goals of Parliament. When the U.S. uses citizenship based taxation to intrude itself into the lives of none resident U.S. citizens and prevents or heavily penalizes them for or forces them to file expensive reporting documents and use expensive international tax professionals just to participate in the various tax advantaged arrangements that Canada's parliament has established in order to promote the growth of Canada's economy, then that is a violation of Canadian taxation sovereignty.

The Canada/U.S. Tax Treaty is suppose to prevent double taxation but it really doesn't and the whole reason is because of U.S. citizenship based taxation and the Reserve Clause. Under citizenship based taxation the same income stream that has already been subject to tax in Canada is once again subjected to tax by the U.S. Although it is true that the FEIE does exclude from U.S. taxation the first 93000 in earned income the truth is that this exclusion limit works as a brake on the earning power of U.S. persons who are resident in Canada because of the double taxation disincentive for any money that is earned above that amount. It must also be pointed out that income which the U.S. classifies as passive income does not receive any kind of exclusion. This means that for people who receive a good portion of their income through capital gains, dividends, retirement, etc. that they are heavily taxed since all of their Canadian passive income is subjected to double taxation. This therefore interferes and negates the beneficial treatment and economic goals, that are to be derived, which such income receives under Canadian tax law. Also the fact that some income in Canada, such as half of all capital gains, is not taxed for purposes of encouraging investment in the Canadian economy. There is also Canada's lack of inheritance taxes.

In the U.S. mindset these exclusions are seen as leaving opportunities for the U.S. Treasury to subject Canadian income to U.S. taxation. However this is because the U.S. has a flawed view of international taxation that treats taxation more like an open fluctuating system of currency exchange. Taxation though is a closed system where the only referent is the nation's treasury. All nations are entitled to establish their own tax policies because ultimately tax policy is decided by the citizens who use its currency. Ultimately all tax obligations and benefits are settled in that nation's currency. Taxation is not an open system but a closed one.

Next I would like to address the well know privacy and Charter, Constitutional issues. I would like to start out by saying that I staunchly believe that adoption of FATCA would necessitate the rewriting of the rights and privacy provisions of the provinces along with those of the Canadian constitution and the Charter is clear evidence that this is a bad law. Canadians should only be re-writing any of these laws in response to Canadian need and not in order to align Canadian laws with the whimsical politics of another country. Canada is not a country that has banking privacy laws such as is found in Switzerland, Cayman Islands, Liechtenstein etc. The U.S. persons who have immigrated to Canada have not come with the purpose of evading taxes in the U.S. We have come with the goal of making a life for ourselves and our families in Canada. We have every expectation that we will be fully protected by the Canadian Constitution and Charter of Rights as they have historically been applied in this area.

It would not only be wrong but naïve for the Canadian Parliament to believe that if it carves out a special access for the U.S. to the financial information of U.S. persons resident in Canada that the U.S. will stop there. I believe that history has proven that the Americans never do stop when other countries accept U.S. legislation that impinges on their sovereignty but are rather emboldened to demand more. I am thinking about the U.S. driven KYC/AML laws. Also the members of Parliament must remember that FATCA will basically make every Canadian resident, not just resident U.S. persons, address a question about citizenship that is not currently placed on their financial institution's account applications. This question would be placed there purely for the needs of the U.S. Congress. A purely Canadian driven application would ask only about Canadian residency, as it does today.

When it comes to the benefit(s) that Canada is to derive from FATCA I can see none. A FATCA IGA with the U.S. is not going to give the Canadian government any banking information on its resident citizens with U.S. financial accounts, that it doesn't already receive under the existing Tax Treaty. This is because Canada practises a residency based system of taxation.

Currently around 1million U.S. persons or about 3% of the Canadian population, are residents of Canada. Given Canada's proximity to the U.S. and the relative ease with which the population groups of the two countries intermingle there is in theory no upper limit as to the percentage of the Canadian population that could over time eventually qualify as a U.S. person. Now since there are U.S. tax reporting obligations and investment restrictions that are associated with being a U.S. person who is not resident in the States that means the drain on the Canadian treasury, from this segment of the Canadian population, is equally without limit.

I say drain on the Canadian treasury because the U.S. tax obligations are not incurred in terms of the currency issuances of the U.S. Treasury but in terms of the currency issuances of the Canadian treasury. The only way for a none resident U.S. person who resides in Canada, to pay these fictional U.S. tax obligations is to convert Canadian treasury currency into U.S. treasury currency. This is an outright act of theft from the Canadian Treasury on the part of the U.S. treasury. The I.R.S. investment restrictions are also a drain on the productivity of the Canadian economy because they wrongfully prevent the efficient allocation of Canadian capital which constrains the ability of U.S. persons to build Canadian wealth and therefore to provide for themselves. Also U.S. person residents are disenfranchised vis-à-vis their none U.S. person Canadian resident neighbour. I for instance cannot invest in RDSP's for my disabled son because this investment isn't covered in the tax treaty. But my question is why should it be? This savings vehicle is of totally of no consequence to the U.S. Treasury. It seems to be more a case of meddling in affairs that are none of the U.S.'s business.

It is the singular obligation for the Canadian government to protect not just its geographical boundaries but also to protect its treasury and its constitution from attack by other nations. U.S. FATCA and citizenship based taxation are clear violations of Canadian sovereignty and as such must be rejected.

I believe that if Canada stands up to the U.S. on this that the U.S. will have to change its position. This is because a refusal by Canada to sign a FATCA, IGA would send a bad signal to the rest of the world since Canada is the U.S.'s biggest trading partner and closest ally. I believe that Canada should launch its attack on FATCA in concert with the 49 other nations the U.S. is currently in negotiations with and that Canada should take the lead in opposing FATCA. Canada needs to build its own coalition of the willing. All of the countries must coalesce around similar demands other wise the U.S. will pick each off one by one.

My own assessment of FATCA from a layman's point of view is that it is a terribly bad piece of legislation. FATCA was enacted on the eve of the financial crisis and, much like Dodd/Frank, the legislation was enacted out of puerile anger. The purpose of FATCA was that it would provide part of the funding for the HIRE ACT. This was a backwards way to fund a government expenditure because the funding depended upon singling out a specific group of people who would be deemed criminals, to serve as the source of the program's financing. Most government programs are funded out of a combination of general revenue and user fees. This is true with things like driving and the gas tax; building and property taxes; schools and mill rates; unemployment insurance and payroll premiums. In the case of the HIRE Act though the source of the funding it totally disconnected from the people who are to receive the benefits. This makes the FATCA funding legislation rife with abuse. The funding purpose of FATCA means that its maximum utility lies in finding transgressors in order to maximize revenue. The ultimate goal of FATCA is conflicted around tax compliance (fair share) and revenue generation. These are two incompatible goals that lead to legislative abuse of process. The way to generate the most revenue is the cast the widest net. This means that the list of tax sinners must grow. Since there are not enough actual tax evaders the FATCA net must be cast into the treasuries of other nations. The penalty assessments and the unilateral 30% withholding are both going to be revenue generators for the U.S. government and serve as a cheap way for the U.S. to bring in money from other countries. Basically the U.S. under FATCA is engaging in a world wide shakedown of the world's economies.

If the Americans are still reluctant to listen to this line of reasoning then my suggestion would be to inform them that Canada will no longer be accepting U.S. persons as immigrants. This may sound like spite on my part but that is far

from the case. To me it is just a matter of Canada doing what it can to protect its national sovereignty. Canada is not under obligation to accept U.S. immigrants unless they happen to be married to Canadian nationals. The U.S. may respond negatively to that but what does that matter to Canada when the U.S. doesn't seem to care about how Canada responds to its foolhardy requests. You can't have an equal relationship with a partner when one of the partners clearly believes in and has repeatedly stated that he/she is the superior party in all relationships.

Another alternative could be to have a fast track process to Canadian citizenship set up just for U.S. persons. A condition for entering into this track would be renunciation of U.S. citizenship.

I guess that for too long I have watched the U.S. kick Canada around and Canada has always just politely taken it. I feel that it is long since past time that Canada stood up for itself against the narcissist to the South.

Canada should also remember that it does have some allies in the U.S. Congress who are opposed to FATCA and who also support a U.S. move to territorial taxation. The Simpson/Bowles deficit fighting proposal calls for the U.S. to move to a territorial taxation. Unfortunately though many of the Democrats oppose such a change and both President Obama and Vice President Biden have come out against this recommendation.

The U.S. may indeed be able to determine its own tax policy but it is wrong for it to abuse that sovereign right by using it to infringe upon its fellow nations who also have that same sovereign power. In summation the U.S.'s ability to determine its own tax policy does not empower it to impose that tax policy on its citizens who are resident outside of its jurisdiction. To allow the U.S. to do so would be to relegate Canada, and other nations, to being nothing more than a colonial backwater of the U.S. Treasury.

Canada should not be in the position of having to go hat in hand to the U.S. in order to get Treasury clearance for resident U.S. citizens to be full participants in the Canadian economy. Nor should the U.S. be allowed to play fast in loose with the Tax Treaty via the "Last in Time Rule" which basically allows the U.S. to make unilateral changes to the Treaty by legalizing recent U.S. tax law over past tax treaty law. Canada does not do that with respect to Canadian residents in the U.S. and it is unfair that Canada should have to play supplicant to the U.S. Because of citizenship based taxation this is not an equal relationship but an asymmetrical one where the U.S. holds all the cards. This means that any IGA is going to be just as flawed as is the current U.S./Canada Tax Treaty only now, because of information sharing on none resident U.S. persons, things will be worse and not better. What Canada needs is a treaty that actually improves things rather than further entrenching and capitalizing on existing inequities.

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

Thank you for your time and I do hope that I have made my position clear.

Sincerely,

Julian Ross Hudson