

May 08, 2014

Brief to Finance Committee

Re: Bill C-31, concerning the FATCA Inter-Governmental Agreement with USA

Submitted By: Kathleen Power

Re: Bill C-31 pertaining to the implementation of a FATCA IGA with USA

In support of a FATCA inter-governmental agreement with the USA, some people have used the argument that USA has the right to determine its own taxation laws. Of course it does, so does Canada - but does USA have the right to impose US taxation laws on Canadian citizens living in Canada who have never earned a dime of US source income? Even if you think so, and I can't imagine why anyone would, *should the Canadian government act to enforce another country's tax laws that prevent Canadians who live and earn only in Canada, from effectively planning and saving for their retirement, for their children's education, and for the care-taking of their disabled children?* This is what FATCA in combination with USA's unique to the world citizenship-based taxation laws will do to Canadians and their families where one family member is deemed to have 'US person' status.

**Who is a 'US person' living in Canada?** Although you may be a Canadian citizen, FATCA considers you a 'US person' if you:

- were born in USA even if you left as a young child, and your parents are Canadian!
- were born in Canada to one or more American parents, even if you never lived in USA!
- regularly visit the USA and meet the substantial presence test
- hold a green card
- are an American citizen

**What Information will FATCA collect?**

FATCA requires all Canadian financial institutions to report annually to the IRS (to be done via the CRA as outlined in the recently signed IGA) on details of a variety of bank accounts with focus being on account balances.

**What happens if I am married to a 'US person'?**

If you have joint accounts with your 'US person' spouse, those accounts will be subject to FATCA reporting regardless who actually earned the money inside those accounts.

## **What will USA do with the bank account balances of Canadians who are ‘US persons’ or who share accounts with a ‘US person’?**

The vast majority of Canadians living in Canada with ‘US person’ status are unaware that USA law requires them to submit annual ‘Foreign Bank Account Reports’ (FBARs) detailing bank accounts held in Canada which are considered ‘foreign’ despite being held by a Canadian living in Canada. Financially devastating penalties are imposed for failure to file FBARs. The IRS will use the information it gets from the CRA to verify against FBAR reports, and will then assess penalties for non-reporting of these so-called ‘foreign’ accounts. Harsh penalty calculations were devised as punishment for homeland Americans hiding untaxed money offshore, and are applied with no consideration as to whether or not the ‘US person’ is a Canadian living in Canada or an American living in USA.

## **Besides, penalties for not reporting so-called ‘foreign’ accounts here in Canada, what are the taxation and retirement planning implications of being a Canadian living in Canada with ‘US person’ status?**

Although there is an exemption of approximately \$97,000 of earned income called the Foreign Earned Income Exclusion (FEIE) amount, which provides relief from double taxation of the first \$97,000 of Canadian earned income, the key is that it applies only to earned income. Non-earned sources of income are not subject to the FEIE. Thus Canadians with ‘US person’ status will be taxed by USA on many sources of Canadian income including: disability benefits, unemployment insurance benefits, pension income, and investment income. Thus *low-income individuals and retirees are double taxed on non-earned income sources, which for many of them is the bulk of their income.*

Most retirees count on the sale of their principal residence to help them in their retirement, and in Canada we do not tax capital gains from the sale of one’s principal residence. This is not the case in the USA. *Canadians with ‘US person’ status will be taxed by USA on the capital gains from the sale of their home in Canada, subject to a 250K exemption.* Canadians with ‘US person’ status, who have invested in *Canadian mutual funds, will be subject to the dreaded ‘passive foreign income corporation’ (PFICS) tax rules*, which will make their investments expensive liabilities.

In addition, *TFSAs, RESPs, and RDSPs do not have the tax exempt status afforded to RRSPs. Even RRSPs are not tax exempt unless a special form is filled out every year.* Don’t be fooled by those who say the FATCA IGA is a good

deal in that TFSA's, RESPs, RDSPs, RRSPs and certain other registered accounts are not FATCA reportable; this does NOT make them exempt from USA taxation and reporting requirements

**Why can't a Canadian with 'US person' status just renounce their US citizenship, and avoid FATCA reporting, FBAR penalties, double taxation, and restrictions on retirement planning and saving?**

Most Canadians with 'US person' status who have lived in Canada for decades have been unaware that USA considers them to be US taxpayers. This is not difficult to imagine, as citizenship-based taxation is counter to international norms, and not intuitive. *It just plain does not make sense, and is unfair to tax someone who neither lives, nor earns, in that country, just because they were born there or have some other tenuous connection. Many consider citizenship-based taxation a human rights violation and form of slavery. Only one other country in the world has citizenship-based taxation laws – Eritrea, a dictatorship in Africa.*

So, getting back to answering the above question, *a Canadian with 'US person' status cannot relieve themselves of their US tax obligations by simply renouncing US citizenship.* The renunciation process includes a promise that the 'US person' either is, or will become tax compliant for the prior 5 years. Getting up to date on past tax returns and FBARS is complex, expensive, and comes with risk of devastating financial penalties for prior non-filing of US tax returns and FBARS.

**SUMMARY:** FATCA is an American law which would be unenforceable in Canada, without the cooperation of the Canadian government. FATCA will be used to enforce American laws on Canadians, thus violating Canada's sovereign right as a country to govern its own citizens. FATCA will be used to enforce immoral citizenship based taxation laws that run counter to the international norm of residence based taxation. FATCA in combination with citizenship-based taxation will greatly harm the financial lives of Canadian families who have one family member with 'US person' status. US imposed citizenship-based taxation laws make it impossible for a Canadian living in Canada with 'US person' status to effectively save for their retirement, or for the education of their children, or for the care-taking of their disabled children. Should USA, actually collect on penalties assessed through the data gathered via FATCA reporting, this will cause Canadians who have saved and planned for their retirement to become reliant on Canadian government handouts, rather than their own hard earned savings.

Please carefully consider your view on FATCA and citizenship- based taxation enforced by USA on Canadians through FATCA. ***It is too simple just to say, “USA has the right to make its own taxation laws”.*** The picture is much more complicated than that. If USA had a law that prevented women from driving, would it be OK for USA to tell Canada that Canadian women with ‘US person’ status cannot drive in Canada?

Sincerely,

Kathleen Power