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FATCA: Canadian Rights vs. Foreign Demands

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SIMPLE QUESTION

On November 25, 2013, Maple Sandbox and Isaac Brock Society blogs wrote to Finance Minister Jim Flaherty. We asked a Simple Question. *Do all Canadian citizens and residents have the same rights under Canada's laws and Charter of Rights and Freedoms?*

Minister Flaherty and his successor never responded directly. However, on February 5, 2014, we received a clear answer. The answer was "No."

That was the day we thought we would never see happen in Canada. That was the day we learned our Canadian government would override all Canadian laws for the benefit of a foreign government. That was the day we learned our government thinks the rights of Canadian citizens are vulnerable to a foreign bully. That was the day we learned the Canadian Charter of Rights and Freedoms can be tossed aside because of a foreign government's demands.

SIMPLE SOLUTION

FATCA is a hugely complicated issue. Yet, at its root for one million Canadians is the simple question we asked the Minister of Finance.

The solution to FATCA is equally simple. On behalf of one million Canadians and their families affected by FATCA, I propose an amendment to the Implementation Act. This amendment is:

"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."

I also recommend the removal of the section that overrides all other Canadian laws.

CITIZENSHIP

We are Canadians first and foremost.

We are law-abiding, responsible, tax-paying Canadian citizens and residents, many of us here for decades or our entire lives. We live from Atlantic to Pacific to Arctic. We have studied, worked, retired, earned an income, owned homes, raised Canadian-born families, volunteered, voted, participated in our communities, donated to Canadian charities, saved, invested, planned for our children's education, their and our own disabilities and our retirement and diligently paid our federal, provincial and municipal taxes.

On February 5, 2014, our Canadian government showed us we are second class Canadians with far fewer rights than all other Canadians because of where we were born.

Secretary of State for Finance Kevin Sorenson in the House of Commons said we are "American citizens abiding here in Canada." Finance Committee members call us "American citizens."

It is offensive to be called "American citizens abiding in Canada." We are Canadians. Our government betrayed us by placing our country of birth above our country of choice.

If Canada had signed an agreement with governments of China, Iran, Mexico, India or Eritrea to provide private financial information on Canadians born in those countries, there would be outrage. I doubt it would ever happen. Canadians born in the United States should have the same rights to manage their finances with confidence and in privacy as all other Canadians.

Most of us do not consider ourselves dual citizens. However, even the US Department of State agrees we are first and foremost Canadians when in Canada.

From United States Department of State:

It is a generally recognized rule, often regarded as a rule of international law, that when a person who is a dual national is residing in either of the countries of nationality, the person owes paramount allegiance to that country, and that country has the right to assert its claim without interference from the other country.”

AND

U.S. Policy on Dual Nationality: When a U.S. citizen is in the other country of their dual nationality, that country has a predominant claim on the person.

Our paramount allegiance is to Canada. For many of us, it is our ONLY allegiance. We request that Canada assert its claim to us without interference from the United States.

Adopting the suggested amendment to the Act would ensure you are claiming and protecting honest, law-abiding Canadian citizens and residents.

WHAT FATCA MEANS TO CANADIANS

Canada and the United States have a long-standing effective tax treaty. That treaty could be a model for the world in combating offshore tax evasion.

Instead, Canada is preparing to allow a foreign government to seize private, legal financial records of Canadian citizens and residents. FATCA demands:

Total Assets.
Account Balances.
All Transactions.
Account Numbers.
Personal Identifying Information
Other Information Requested by IRS

Neither Canada nor the United States tax based on assets, account balances or transactions. So, this raises two very clear questions.

Why is the United States demanding this information?

Why is Canada so willing to collect and provide it?

PRIVACY

Canada's government claims the Intergovernmental Agreement and the Implementation Act will address privacy concerns by overriding existing privacy laws and by having information submitted to Canada Revenue Agency to pass on to the United States Internal Revenue Service.

This resolves nothing. Instead, it places Canadians born in United States in double jeopardy.

Canada Revenue Agency: Information to be submitted under FATCA goes far beyond that required of all other Canadian taxpayers. Now, only income is reported. The comprehensive list above shows how much more information will be provided.

In 2013, Canada's Privacy Commissioner reported:

The audit found weaknesses in key privacy and security practices that led to taxpayer information not being protected as it should, with thousands of files being accessed inappropriately for years without detection.

This was with far less information than will be submitted under FATCA.

Last month, 900 Social Insurance Numbers were stolen from CRA by a teenage hacker. CRA has not advised the public if any other information was stolen. One can only imagine the vulnerabilities Canadians could face with even more sensitive data at CRA.

Finally, to put it simply, information about Canadians' finances is private. It should be respected as such for that reason alone. I am certain elected officials would strenuously object to such information being shared about them. I am equally certain they would be deluged by complaints from any Canadians being required to share such information.

Internal Revenue Service: The IRS admits to an "epidemic" of identity theft with far less information than what is required for FATCA. Canadians don't trust the IRS.

The IRS also has horrendous penalties for failure to have reported assets that were entirely earned, saved, invested and taxed in Canada.

Other Uses: The Canadian government claims it attempted to ensure information won't be used for any other purposes than taxation. Yet, Investigations Committee of Congress demanded:

Although FATCA is structured to address offshore tax abuse, offshore account information has significance far beyond the tax context, affecting cases involving money laundering, drug trafficking, terrorist financing, acts of corruption, financial fraud, and many other legal violations and crimes. Given the importance of offshore account disclosures, FATCA guidance and implementing rule should create account FATCA forms that are not designated as tax return information but, like FBARs, may be provided to law enforcement, regulatory, and national security communities upon request. FFIs are not, after all, U.S. taxpayers, and will not be supplying tax information on behalf of their U.S. clients; they will instead be providing information about accounts opened by U.S. persons.

This demand should alarm anyone making decisions about transmitting information of law-abiding Canadians to a foreign government. In addition, recent revelations from the United States about National Security Agency and PRISM should be disturbing alarming to Canadian officials.

In summary, using CRA as an intermediary to a foreign government does not resolve privacy concerns. Instead, it intensifies alarm of Canadians about their private financial information.

ACCOUNTS

FATCA demands information on all accounts over which a “US person” has signing authority. This includes joint account held with Canadian-born spouses or with Canadian spouses born in other countries. This is a clear invasion of financial privacy of Canadian couples, partners and families.

In addition, FATCA demands information over accounts which a “US person” may have signing authority in a business, medical practice, employment, volunteer, charitable, faith or any other organization. This could affect the competitiveness of businesses owned or operated by Canadians born in the US. It could also affect the employment of Canadians born in the US and their involvement in volunteer activities or charitable agencies.

TERRORIZING CANADIANS

The IRS and US Treasury are terrorizing Canadians with threats of horrendous penalties for failure to report assets that were entirely earned, saved, invested and taxed in Canada. They are also threatening criminal prosecution and jail sentences.

Law-abiding honest Canadians have had many sleepless nights, serious health challenges, strained marriages and difficulties at work because of the FATCA nightmare. Some have even contemplated suicide.

Canadians feel violated by this planned invasion into their private lives. For people with other signing authority, the situation is even worse.

Canadian citizens born in the United States who are Treasurers, Comptrollers, CFOs or similar people who have simple signing authority over their company’s bank accounts will have their names turned over to the IRS by CRA. Lawyers who are partners in law firms with signing authority over client trust accounts will have their names turned over to the IRS. The IRS expects all of them – and the treasurer of the finance committee at your local church, mosque or synagogue who has signing authority over the parish bingo fund to provide full financial statements to the IRS. Their organizations will not stand for it and many could lose their jobs.

FATCA is about far more than information exchange. ***FATCA is data collection. Data is knowledge. Knowledge is power. Power is control.***

The Canadian government is allowing a foreign power to control and terrorize its citizens. Our Canadian government needs to stand up for Canadians.

HEAR OUR VOICES

Parliament must hear voices of Canadians. Finance Canada has over 400 pages of submissions made by Canadians on FATCA. Access to Information has advised those documents are not being provided to the Finance Committee or to Parliament.

This leaves Canadians with the question: ***What was the purpose of responding to the call for those submissions?***

On behalf of Canadians, I implore you to hear our voices. Please read those documents. Learn how Canadians being sacrificed to FATCA feel.

CANADIAN SOVEREIGNTY

“FATCA has far-reaching extraterritorial implications. It would turn Canadian banks into extensions of the IRS and would raise significant privacy concerns for Canadians.”

(Conservative Canadian Finance Minister Jim Flaherty, September 16, 2011)

“FATCA is the poster child for the problem of extra-territoriality...It threatens to erode Canadian sovereignty. (Terry Campbell, President Canadian Bankers Association, August 12, 2012)

Those statements are still true. Canada has surrendered its sovereignty, laws, and the rights and privacy of one million Canadians and their families to a foreign government.

“CONGRESS HAS SPOKEN.” PARLIAMENT MUST SPEAK.

On May 6, one Finance Committee member said “Congress has spoken.”

Yes, Congress unilaterally told Canada and countries around the world they must change their laws and violate their constitutions for an American law or face economic sanctions.

It is now time for Parliament to speak. Canada must refuse to be bullied by economic threats. Canada must assert its claim over its citizens and residents and protect us from foreign demands.

SUMMARY AND RECOMMENDATIONS

Parliament has an obligation to protect its citizens and residents from foreign demands.

Recommendations:

1. Parliament should adopt the following amendment to the *Canada–United States Enhanced Tax Information Exchange Agreement Implementation Act*,

“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.”

2. Parliament should remove the section in the Implementation Act that overrides all other Canadian laws
3. Parliament should assert Canada’s claim to its citizens and residents without interference from the United States by protecting them with Canada’s laws, Constitution and Charter of Rights and Freedoms.

Please assure Canadians we all have the same rights under our laws, Constitution and Charter of Rights and Freedoms.

Lynne Swanson

Co-Founder and Co-Administrator

Maple Sandbox *Maple Sandbox is a social networking site of Canadians and people around the world to fight the attempted invasion of the IRS into our honest lives.*