

## **U.S. tax crackdown misses target**

### **By Jim Flaherty**

Canada and the United States are neighbours and have long been the closest of friends. We share a common border and we share many common values.

One of those values is fighting tax evasion. We believe in fair tax systems where everybody pays their share.

Many Canadians, however, have become concerned about the impact of a proposed piece of American tax legislation – the Foreign Account Tax Compliance Act, or FATCA.

I share their concern.

We appreciate efforts to combat tax evasion. In fact, our two jurisdictions co-operate to prevent it. But FATCA has far-reaching extraterritorial implications. It would turn Canadian banks into extensions of the IRS and would raise significant privacy concerns for Canadians.

To be clear, Canada respects the sovereign right of the United States to determine its own tax legislation and its efforts to combat tax evasion – the underlying objective of FATCA.

But put frankly, Canada is not a tax haven. People do not flock to Canada to avoid paying taxes. In addition, we have existing ways of addressing these issues with the United States through our Bilateral Tax Information Exchange Agreement. As I said, we share the same goal of fighting tax evasion and we already have a system that works.

To rigidly impose FATCA on our citizens and financial institutions would not accomplish anything except waste resources on all sides.

Another issue, this one affecting more directly the large numbers of dual U.S.- Canadian citizens and their relatives living in Canada, is the IRS's Foreign Bank Account Report (FBAR) filing requirements.

Most of these Canadian citizens, many with only distant links to the United States, have a very limited knowledge of their tax reporting obligations to the United States. These are honest and law-abiding people, including many senior citizens now caught in a nerve-wracking situation. Moreover, because they work and pay taxes in Canada, they generally do not owe any taxes in the United States in any event. Their only transgression is failing to file the IRS paperwork they were never aware they were required to file.

These people are not the targets of a crackdown on tax evasion. These are not high rollers with offshore bank accounts.

These people are typically hard-working citizens of our two great countries. These are people who have made innocent errors of omission that deserve to be looked upon with leniency

Faced with the knowledge that they do have an obligation to file U.S. tax returns (even if they most often do not actually owe any taxes) they want to do the right thing.

But the threat of prohibitive fines for simply failing to file a return they were unaware they had to file, is a frightening prospect that is causing unnecessary stress and fear among law abiding hardworking dual citizens.

We support efforts to crack down on legitimate tax evasion. These measures, however, do not achieve that goal.

*Jim Flaherty is the Finance Minister of Canada.*

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## **U.S. Tax and “FBAR” Filing Requirements for U.S. Citizens in Canada**

This fact sheet is intended for information purposes only and should not be construed as tax advice. It was not intended or written to be used and cannot be used by any taxpayer for the purpose of avoiding any tax or penalties that may be imposed on such taxpayer by the U.S. Internal Revenue Service or the Canada Revenue Agency. Taxpayers who think they may be affected by any of the measures discussed herein should seek advice based on their particular circumstances from an independent tax advisor with appropriate experience.

- **U.S. citizens in Canada have to file U.S. tax returns:** The U.S. government requires its citizens living abroad, including in Canada, to file income tax returns and associated tax forms - even if those U.S. citizens do not have to pay any U.S. income tax because they already pay Canadian income tax, and even if they have dual citizenship with Canada. This requirement has been in place since 1913.
- **They may also have to file another U.S. form – the FBAR:** Under the U.S. Bank Secrecy Act, U.S. citizens must file a particular form if they have a total of more than \$10,000 in accounts at non-U.S. financial institutions. This form is the Report of Foreign Bank and Financial Accounts, commonly known as the “Foreign Bank Account Report”, or “FBAR”. The FBAR filing requirements have been in place since 1972.
- **Failure to file FBARs can lead to large penalties:** The U.S. can levy significant financial penalties for failure to file an FBAR\*. There are potential criminal sanctions as well.
- **For more information (including penalties and consequences of non-compliance), please visit the IRS website:** The U.S. Internal Revenue Service has information on its website concerning the FBAR. Visit [www.irs.gov/businesses/small/article/0,,id=159757,00.html](http://www.irs.gov/businesses/small/article/0,,id=159757,00.html) for information on the FBAR.
  - **For more information regarding U.S. citizenship, please visit** [http://travel.state.gov/law/citizenship/citizenship\\_782.html](http://travel.state.gov/law/citizenship/citizenship_782.html)
- **For advice, please contact a tax advisor:** Canadians who think they may be affected by the U.S. filing requirements for tax returns or FBARs should contact a tax advisor with experience in U.S. taxation issues.
- **Please note FBAR is not related to the Foreign Account Tax Compliance Act (FATCA).** FATCA is proposed to come into force in January 1, 2014. The Canadian government has

and will continue to express its strong concerns relating to FATCA with the U.S. government. We are actively seeking a solution both countries will find agreeable.

**\* Penalties imposed under FBAR will not be collected by the Canada Revenue Agency (CRA):** *The Canada-United States Income Tax Convention contains a provision which allows for the collection by a country of taxes imposed by the other country, including civil penalties. This provision does not apply to penalties imposed under laws, such as the U.S. Bank Secrecy Act, that impose only a reporting requirement (as opposed to those that impose taxation along with reporting requirements). Also, CRA does not and will not collect the U.S. tax liability of a Canadian citizen if the individual was a Canadian citizen at the time the liability arose (whether or not the individual was also a U.S. citizen at that time).*