

I am writing to express my strong opposition to any intergovernmental agreement (IGA) between Canada and the United States which would result in Canada's handing over private financial information about Canadian accounts held by Canadian citizens and residents, under the present terms of the US Foreign Account Tax Compliance Act (FATCA).

There are some specific considerations related to this issue that have recently come to light, of which you should be aware. Please bear with me; some of these considerations require a bit of explanation.

I can summarize my concerns under the following points.

1. FATCA and IGAs are intended to catch "offshore tax cheats." In the case of Canada, the vast majority of persons likely to be affected by a FATCA IGA are not tax cheats. At least in Canada's case, FATCA and IGAs are the wrong tool for a job already being performed by existing arrangements.
2. Canadian compliance with the US demands under FATCA, whether by individual banks or by the government of Canada, would violate Section 15 of the Charter of Rights and Freedoms, privacy legislation, banking legislation, and Canadian sovereignty. Such violations would set a precedent dangerous to the rights of ALL naturalized Canadians, no matter what their places of birth.
3. Inherent in FATCA and an IGA is a grotesque inequity between how the US and Canada treat their "accidental citizens," as highlighted by the recent story of Senator Ted Cruz of Texas (details and links below).
4. Contrary to promises by the US Treasury, no IGA is likely to be reciprocal unless it is a formal treaty approved by the US Senate. The "reciprocity" promised by US Treasury is sinking into quicksand; they won't be able to deliver on that promise, even if they want to. The IGAs are one-way deals benefiting only the US, and as such are a huge over-reach by the US into the sovereignty of any country signing such agreements.
5. Canadian banks are asking the government of Canada to sign an IGA so that the banks can avoid possible draconian US penalties against their US assets if the banks do not violate current Canadian law and the Charter by providing information to the IRS compliant with FATCA. Essentially, the banks are asking the government of Canada (and all taxpayers) to bail them out (via an IGA) of what seems to have been a bad business decision to invest in US operations. Such a "bail-out" would be a form of "socialism" for the banks and "capitalism" for their allegedly-US-person depositors, as well as an erosion of Canadian sovereignty, Section 15 of the Charter of Rights and Freedoms, and Canadian privacy and banking legislation.
6. I think I can guarantee you that any Canada-US IGA will become an election issue that may have surprising and significant impacts in the next by-elections and 2015 federal election. Hundreds of thousands of US-born or US-parented naturalized Canadians are very upset about these issues. Any political party that supports an IGA that "throws them under the bus" will pay a heavy price, especially in potentially marginal ridings. Many Canadian citizens, both US- and Canadian-born, are prepared to make this an election issue and will campaign actively against any politician who accedes to such an IGA. This has already become an issue in the NDP nomination contest for the coming by-election in Toronto Centre (see the link under elaboration 6 below).

I will elaborate on some of these points below, with appropriate web links. If you wish more information or clarification of the six points above, I urge you and your staff to study the points

(same numbering) in the following paragraphs.

To conclude: a Canada-US intergovernmental agreement on FATCA, unless it addresses all the foregoing issues properly, would be illegal, illogical, unfair, and politically very unwise.

Don't agree to it, and don't support it.

#### ELABORATIONS ON THE SIX POINTS:

1. *Most Canadian residents likely to be affected by a FATCA IGA are not "tax cheats."* FATCA assumes that any "US person" with financial accounts outside the US is a "tax cheat." This may be true of some US persons residing in the US and holding accounts outside the US. However, for a US person (however defined) residing in Canada, earning all his/her income in Canada, owning property only in Canada, and paying taxes in Canada (generally at a higher rate than they likely would if they resided in the US and paid taxes there on equivalent income), to claim such a person is a "tax cheat" is an absurdity.

As Finance Minister Flaherty has pointed out publicly, no sane American resident is going to "hide" income from the US tax authorities in Canadian accounts. Canada, with its tax rates, is not any sane person's idea of a "tax haven." And there have for the past ten years already been agreements in place either preventing Canadian banks from opening accounts for non-residents, or requiring that information on such accounts held by resident Americans be handed over the US authorities regularly.

Taxes are paid for government services and programs provided by the governments in the place of residence. Citizenship-based taxation is a feudal anachronism only practised by two nations on this planet: the US, and Eritrea. In the case of the US, it is a hypocritical contradiction of the principles on which the US declared independence from Great Britain in 1776.

By the way, Canadian bank and investment accounts held by Canadian residents are neither "foreign" nor "offshore," at least not to the residents who own them. For those residents, these are domestic accounts necessary to live their lives in Canada. They are "foreign" and "offshore" only to American politicians and bureaucrats blinkered by America's almost-unique (save Eritrea's) citizenship-based-taxation system.

2. *Violations of Charter rights, privacy laws and banking laws in Canada.* Section 15 of the Charter of Rights and Freedoms prohibits discrimination on the basis of national or ethnic origin. Canadian residents and naturalized citizens residing in Canada cannot be treated differently, with respect to their privacy and banking rights, than Canadian-born Canadian resident citizens. *Any Charter over-ride or other set-aside of that Charter protection would set a precedent potentially dangerous to all naturalized Canadians no matter what their national origin. That's a rather large number of voters to alienate. US-born Canadians are going to make those voters aware of the issue, if their Charter rights are ever violated.*
3. *There is a grotesque inequity between how the US and Canada treat their "accidental citizens."* An "accidental citizen" is a person born on US soil of Canadian parents, or on Canadian soil of US parents, but who has grown up in Canada (or the US, in the case of an "accidental Canadian") and as an adult has no financial, employment, property, educational or other significant ties to the US (or to Canada, in the case of an "accidental

Canadian”) beyond perhaps having siblings, cousins or more distant relations who live in the other country. Many of these “accidental citizens” were unaware of their “dual nationality” until very recently.

Consider the recent “accidental Canadian” example of Senator Ted Cruz (R-Texas). Sen. Cruz was born in Calgary of a US mother and a Cuban father; he and his parents moved to the US when Cruz was four years old. He never returned to Canada. Recently he discovered that he is still legally a Canadian citizen, which might be a political liability if he decides to run for the US presidency in 2016. So he wants to renounce his Canadian citizenship. Please see this news link:

[http://www.slate.com/blogs/the\\_slatest/2013/08/19/ted\\_cruz\\_canada\\_calgary\\_born\\_texas\\_republican\\_has\\_dual\\_us\\_canadian\\_citizenship.html](http://www.slate.com/blogs/the_slatest/2013/08/19/ted_cruz_canada_calgary_born_texas_republican_has_dual_us_canadian_citizenship.html)

US-born Canadians are justifiably outraged at the disparity between what will happen to Cruz when he renounces his Canadian citizenship, and what would happen to any US-born Canadian citizen who wishes to renounce US citizenship. Please see this news link on a Washington insider blog:

<http://thehill.com/blogs/congress-blog/foreign-policy/318061-nothing-against-the-united-states-until-now->

Cruz doesn’t have to file tax returns to Canada, since he doesn’t reside in Canada and has no Canadian-source income. He can renounce his Canadian citizenship at a cost of a \$100 fee. There will be no tax-filing or tax-liability implications for his renunciation.

Now, consider the hypothetical parallel “accidental American” case. John Doe was born in Dallas, Texas of Canadian parents, who moved back to Canada when John was four years old. John grew up in Canada, was educated entirely in Canada, has a Canadian job, home, family, and has always faithfully paid taxes in Canada. He is not any kind of “tax cheat.” But he has a birth certificate and a Canadian passport that proclaim to the world that he was born in the US and therefore under US law is a US citizen, whether he realizes this or not. He has never filed tax returns to the US. Why should he, as he doesn’t consider himself to be an American, makes no claims on US citizenship, never had a US passport, has no US income, and receives absolutely no tangible benefits from the US.

John has just discovered that under FATCA and an IGA, if he retains his US citizenship, all his banking information may be provided to the US by Canada, not only his information but also that of his all-Canadian wife in all joint accounts, plus all corporate or NGO Canadian accounts for which he has signing authority or controls more than (I think) 10% interest. This information will put him on the US “radar,” and he will be required by them to file tax returns.

If John retains his alleged US citizenship, because of US citizenship-based taxation (see elaboration point 1 above), the US will require John to file US tax returns in addition to his Canadian tax returns, for the rest of his life. To file US tax returns and become “compliant,” even without owing US taxes, because of the complexity of US tax law and differences from Canadian tax law, it will be difficult and expensive (current reports estimating \$5000 per year) for John to get qualified and reliable US tax advice. Unlike Canada Revenue Agency, the US Internal Revenue Service will not provide tax-filing advice to its citizens; IRS employees tell US citizens to hire an accountant if they need help in completing their US tax forms. It may be impossible for John to do his own US tax returns. Infamously, the previous IRS commissioner in the US admitted publicly that

even he has an accountant do his returns; he can't do them himself because they're too complicated! Because of draconian US late- or non-filing penalties (see the following paragraph) if John makes any filing mistakes, it is imperative that John get this filing exactly correct.

Suppose that John decides the only reasonable course for him is to renounce his US citizenship. This will require a lengthy procedure with the US State Department and a \$450 fee. Much worse, however, to avoid tax and possible criminal prosecution if he ever visits the US in future, he must file six years of "late" tax returns to the US (accountant fees totalling at least \$30,000), six years of FBAR reports on all his and his wife's financial wealth in Canada, and a "mark-to-market" assessment of everything he owns, as if he died on the date of his renunciation. Depending on the arbitrary judgment of IRS bureaucrats, John and his family could quite literally face bankruptcy and confiscation of all their assets, if the full "late-filing" penalties and "exit tax" were to apply to him, even if no actual tax liabilities are owing due to foreign-earned-income and foreign-tax credits (assuming those current provisions of US tax law aren't arbitrarily revoked by a vindictive and money-desperate Congress).

John is a lifetime loyal Canadian who has never thought of himself as an American. Suppose that John would prefer to avoid the horrors to which a renunciation of his unwanted and hitherto unknown US citizenship would subject him, and simply try to "stay under the US radar." But under a FATCA IGA, he would be subject to having his financial information handed over to the tax agency of a foreign government, due to an illegal and profoundly craven act of submission either by his Canadian bank or his Canadian federal government's signature on an ill-conceived and needless IGA with the US. Why should this happen to him? Especially when Senator Cruz, his exact US parallel, escapes his Canadian citizenship unscathed, except for a paltry \$100 service fee?

4. *The government of Canada is deluding itself if it thinks that under an IGA, the US is going to hand over US banking information on US bank accounts held by Canadian residents of the US to the government of Canada.* The US banks are lobbying furiously in the Congress and Senate to get legislation prohibiting this, IGA or not. Any IGA is of questionable enforceability in US courts, since it is effectively a treaty with a foreign country but is not approved by the US Senate and hence probably not constitutional. US Senators and Congresspersons are already saying they will pass legislation preventing US banks from providing any account information to foreign governments under any IGA that has not been approved by the US Senate as required under the US Constitution, something which the US Treasury and Obama administration are not seeking.

Moreover, even if that information exchange were to transpire, of what possible use would it be to the government of Canada? Unlike US citizens resident in Canada but subject to citizenship-based US federal taxation, very few Canadian citizens resident in the US are subject to Canada's residence-and-income-source-based taxation.

There is no real reciprocal benefit in FATCA or in any of the IGAs the US has announced to date with other governments. There is only massive over-reach and violation of sovereignty by the US, with no benefits to the other countries and substantial administrative and data-processing costs to be borne by those other countries' banks and governments (and hence taxpayers).

5. The IGAs are not reciprocal at all, and an IGA would be a very poor and unwise deal for Canada and Canadians. It would be no deal at all, in fact, other than for Canadian banks foolish enough to have established branches in the US. If Canada's banks do not provide information to the US under FATCA, and Canada does not sign an IGA, the US says the Canadian banks may have 30% of their US assets confiscated by the IRS as a penalty for obeying Canadian law and not providing account information to a foreign government. So, because of US law, the banks' decisions to invest in branches in the United States seems foolish in retrospect. (I leave for another discussion the question of why any Canadian bank should be establishing branches in other countries in the first place.)

Why should Canadian taxpayers and citizens bail out our banks' foolishness? To bail out Canadian banks for US penalties, would be to provide public welfare for Canadian bankers, at tax-filing costs and penalties for hundreds of thousands of Canadian citizens and long-term residents. Moreover, this bail-out would contravene and erode the Charter, privacy and banking rights of these citizens and residents under Canada law. To a proud Canadian such as myself, this would be simply unacceptable.

6. There are many US-born and US-parented Canadian citizens who vote in Canada. They will be furious at any sell-out and second-class-citizenship treatment by any government of Canada, no matter what its political party.

This will be an issue in the NDP nomination contest for the Toronto Centre by-election next month, and also in the by-election, if Linda McQuaig, a public fan of FATCA in her previous writings, gets the NDP nomination. Positions on FATCA and the IGA will likely overwhelm any past party loyalties in voting, both by Canadian citizens affected by FATCA and the IGA and by non-American Canadians such as myself, who are outraged at US overreach.

For further information on how some people are reacting to this issue, specifically (for now) in the Toronto Centre by-election, please see the following blog and comment thread:

[Www.maplesandbox.ca/2013/fatca-supporter-linda-mcquaig-wants-the-ndp-nomination-in-toronto-centre/](http://www.maplesandbox.ca/2013/fatca-supporter-linda-mcquaig-wants-the-ndp-nomination-in-toronto-centre/)