

What the Agreement of the Canadian Government to Implement FATCA in Canada Could Cost the Canadian Economy PER YEAR

This presentation is constructed to demonstrate the amount of money destined to *leave* Canada ANNUALLY as a direct result of compliance with the United States Foreign Account Tax Compliance Act (FATCA) regime.¹ This money, instead of circulating in the Canadian economy, being invested to benefit Canadians or remaining in Canadian savings accounts for the future financial security of Canadians, will be paid directly to the United States Treasury where it will benefit THAT country's residents. Another scenario is that it will be paid into the US Treasury and disappear as a meaningless footnote in the attempt to pay down its impossible multi-trillion-dollar debt.

All figures are estimates based on available information and given here in US\$.

1. RENUNCIATIONS

The following calculation is based on the assumption of 8 renunciations per week at the Toronto consulate² plus a conservative estimate of 50% of that number at the US embassy in Ottawa and the other six consulates. This calculation is based on 50 working weeks per year, allowing for two weeks of consulate holiday closures.

1. $8 \times 50 = 400$ renunciations per year in Toronto

2. $4 \times 7 \times 50 = 1,400$ renunciations per year at the embassy & other consulates

TOTAL ESTIMATED RENUNCIATIONS IN CANADA PER YEAR: 1,800

¹ It should be noted that this calculation does not consider the cost to the Canadian government, or to Canada's banking and investment institutions, of implementing the *Agreement Between the Government of Canada and the Government of the United States of America to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital* (familiarily known as the "FATCA Agreement" or IGA). These costs possibly include purchases of goods and services within Canada. However, it should be noted that any amounts incurred by any business, organization or agency paid to a *foreign* business in the service of FATCA should be added to the Grand Total calculated here.

² Anecdotal information obtained by the Isaac Brock Society. The current wait time to obtain an appointment to take the oath of renunciation at the US Consulate in Toronto is 12 months. It is not clear why the US Consular Service is not increasing access to renunciation services given the substantial increased demand for these services.

2. CALCULATION OF ESTIMATED ANNUAL COST OF RENUNCIATIONS INDEPENDENT OF WHETHER THE US CITIZEN HAS BEEN TAX COMPLIANT OR NOT

The US State Department charges a fee of \$2,350.00 to process each and every petition to renounce one's US citizenship.

To complete the renunciation process, renouncers are required to show that they have filed tax returns for the 5 years prior to the date of their renunciation. The cost associated with complying with US tax-filing requirements is considered separately in the next section.

Renouncers with a net worth of \$2,000,000 or higher (including the current market value of all investments and tangible assets, plus the future value of any established pension) are at risk of having to pay an additional exit tax based on the value of these assets as if they were sold at the time of the renunciation.

Total Fees: $\$2,350 \times 1,800 =$ **\$4,230,000.00 per year**

Average Annual Exit Tax (assuming 6%³ of the total number of renouncers fall into the high-net-worth category and are not in a position to exercise mitigating tax-avoidance measures. Six percent of 1,800 = 108)

$\$144,627.00^4 \times 108 =$ **\$15,619,716.00**

TOTAL ESTIMATED ANNUAL COST of RENUNCIATIONS: \$19,849,716.00

³ On p. 15 of the GAO Report (op. cit.) it is noted that 6% of cases that passed through the 2009 OVDP program were "large penalty cases". In fact, the figure of 6% is probably conservative given the value of real estate in Canada's largest cities. It is likely that a far larger percentage of renouncers in Canada have owned homes in, for example, Vancouver or Toronto for many decades without realizing the developing tax situation they were in *vis a vis* the United States. Many of these individuals certainly will be subject to the exit tax upon renunciation should they decide to take this step. <http://www.cbc.ca/news/business/housing-crea-january-1.3449838>
<https://torontocondosblog.wordpress.com/2016/02/18/average-vancouver-and-toronto-home-price-surge-in-january/>

⁴ Based on an average of scenarios 1, 2 & 4 presented by lawyer John Richardson in this blog post: <http://www.citizenshipsolutions.ca/2015/04/05/part-5-the-exit-tax-in-action-five-actual-scenarios-with-5-actual-completed-u-s-tax-returns/>

3. ESTIMATED ANNUAL US TAX LIABILITY OF CANADIANS WHO RETAIN DUAL CITIZENSHIP

Canadians who retain dual citizenship with the United States or are permanent residents of Canada, including those who cannot yet renounce their US citizenship (for a variety of reasons including being refused timely access to the renunciation procedure at the US embassy or one of the consulates, the current wait time in Toronto being 12 months), continue to incur tax liability to the US.

The following are all subject to US tax:

- Earned income above US\$100,800⁵
- Pension income
- All investment income
- Capital gain on the sale of any real estate, including the sale of one's own principle residence (the first \$250,000 of gain on one's own principle residence is exempt, cumulative starting from one's first purchased residence)
- Earnings from most registered non-taxable or tax-deferral instruments (i.e. TFSAs, RDSPs, RESPs, etc.) [RRSP is exempt]

It should be noted here in the strongest possible terms that US law requires Canadians who are also US citizens, and US citizens who are permanent residents of Canada, to pay tax on the earnings of investment vehicles into which the Canadian government (i.e. all Canada's taxpayers) have deposited matching funds such as the RESP and RDSP. This could be described as nothing less than legally constituted theft by a foreign government from another nation's public treasury.

Most Canadians and permanent residents of Canada who were aware of their tax-filing "obligations" to the United States have likely arranged their financial affairs in such a way that they owe little or no tax to the United States. They have done this by voluntarily sacrificing their right, as citizens and residents of Canada, to participate in certain government-sponsored savings plans such as the TFSA, the RESP or RDSP as well as certain investment vehicles offered by Canada's banks and financial institutions. It is unlikely

⁵ <https://www.irs.gov/Individuals/International-Taxpayers/Foreign-Earned-Income-Exclusion>

that these particular Canadian residents will incur any costs beyond those that they have imposed upon themselves. These individuals will not be considered in this section's calculation.

The remaining Canadian citizens and permanent residents of US derivation (and very likely the majority) have been unaware of these filing "obligations". Until very recently, the IRS and US Treasury Department have done very little to publicize these "obligations" and their highly complex details. As a result, these remaining individuals are likely in possession of all the worst types of accounts to hold in their circumstances (these are assets whose Canadian income is not taxed in Canada but is taxed by the US and for which there is no offsetting Canadian tax credit for the taxes paid to the US). These individuals will be deemed by the US to owe tax on any earnings derived from these sources for every year they officially remain US citizens and hold such investments.

The number of Canadian citizen and non-citizen residents being targeted by the United States is most often estimated to be 1,000,000. For the purposes of this calculation it will be assumed – generously – that a full 50% of these (500,000) are already US-tax-compliant (i.e. they file all required tax forms every year to the US and submit any tax owing). It will also be assumed that half of these individuals (250,000) will eventually seek renunciation. As mentioned above, because their US tax filings are up to date the implementation of FATCA will have no additional expenditure impact on the individuals who were US-tax-compliant. These individuals will not be considered in this section.

The remaining 500,000 people will remain US-tax-liable. Assuming that 50% of these individuals (250,000) will have no intention of interacting with the United States government in any way, this leaves 250,000 people in Canada who we assume intend to become US-tax-compliant beginning in 2016. We also assume that these people will seek official renunciation of their US citizenship once they have successfully filed five years of income tax forms and money due. Beginning in 2021 they will begin to apply for appointments to renounce their US citizenship.

The cost to the Canadian economy of these 250,000 individuals' preparations for their eventual renunciations could be calculated using the following formula for 2016:

$$\text{Cost} = 250,000 \times (\text{estimated average tax owing annually to the US}) = \text{TOTAL 2016 tax payments to the United States}$$

We also assume that 50% of the 250,000 people who will become US-tax-compliant in 2016, with eventual plans to renounce their US citizenship, are going to become US-tax-compliant by altering the organization of their financial affairs and eliminating much, if not all, of their entire tax liability to the US. The remaining 125,000 people will become US-tax-compliant and pay some taxes to the US.

Those "US persons" able to make arrangements which will mitigate the extent of their US tax liability will achieve this through financial changes. These might include closing their RESP, RDSP and TFS accounts, removing themselves from joint financial

accounts and real estate titles with non-US persons, and placing all family investments in the name of a non-US spouse. Of course the dispossessed person will need to be able to cope with the financial insecurity introduced into their lives by such measures.

An estimate of the annual taxes paid by a US citizen living in Canada who becomes US-tax-compliant, but hasn't made all the above financial changes, is \$806.⁶ To represent the lower tax bill that will result from these mitigating efforts by half of the 250,000 people we are assuming will begin filing US tax returns, the average annual tax figure of \$403 will be used for this calculation (125,000 are assumed to pay nothing and 125,000 are assumed to pay an average of \$806).

POTENTIAL ANNUAL US TAX LIABILITY FOR DUAL CITIZENS IN 2016

$$250,000 \times \$403.00 = \mathbf{\$100,750,000.00}$$

As people from this group of 250,000 who become US-tax-compliant in 2016 actually renounce their US citizenship in the future, this number will decline. However, this annual reduction is rather small. Of the 1,800 people renouncing US citizenship each year, we estimate that 900 are from the 500,000 who were US-tax-compliant before 2016, 450 are from the 125,000 who became US-tax-compliant in 2016 but had no tax liability, and 450 are from the 125,000 who became US-tax-compliant in 2016 and had an average tax liability of \$806. The potential annual tax payment to the US by those becoming US-tax-compliant (probably because of the implementation of FATCA in Canada) will fall by \$362,700 each year (\$806 times 450 people). This is less than one-half of one percent of the 2016 total tax payment; by 2026 this will fall by only about three and a half percent of the 2016 tax payment.

It should be noted that if the number of US renunciations continues at the present level, it will take almost 278 years to process them all!

To simplify the estimate of the taxes paid by US citizens living in Canada to the US government, we have assumed that all people who renounce their US citizenship up through 2020 will come from the cohort of 500,000 people who have already been US-tax-compliant and, thus, will not owe any back taxes to the US when they renounce. Beginning in 2021, we have assumed that those who will renounce their US citizenship will come from both the group of 500,000 (who we have assumed were already US-tax-

⁶ Please see the attached document that provides an explanation for the arrival at this figure. References are to a chart in the Report to Congressional Requesters on "Offshore Tax Evasion", p. 13, released in April 2013: <http://www.gao.gov/products/GAO-13-318>.

compliant in 2015) and the group of 250,000 (who we have assumed become US-tax-compliant starting in 2016 and, thus, will be able to certify that they have fulfilled the required five years of tax filing prior to their renunciation).

4. CALCULATION OF ESTIMATED POTENTIAL TOTAL ANNUAL COST TO CANADA OF RENUNCIATIONS AND US TAX COMPLIANCE IN 2016

\$19,849,716.00 (renunciations) + **\$100,750,000.00** (tax liability) = \$120,599,716.00

GRAND TOTAL: \$120,599,716.00⁷

5. FOREIGN BANK ACCOUNT REPORT (FBAR)

The GRAND TOTAL given above would normally be considered the “bottom line” of this presentation. But there is one further financial exposure that Canada’s agreement to enforce US citizenship-based taxation allows.

Arguably the most unpalatable aspect of US “citizen-based taxation financial compliance” law is the requirement for any US citizen, regardless of where domiciled, to file a Foreign Bank Account Report (FBAR). This documentation is required annually for every account in his possession outside the United States if the aggregate of those holdings is over \$10,000. This annual report must list the *entire highest annual balance* of each “foreign” account and be filed with the Financial Crimes Enforcement Network (FinCEN⁸), an arm of the US Treasury Department. For Canadians with US citizenship this amounts to sending a tally of one’s entire asset portfolio every single year to a branch of the US government that, in advance, has labeled one a bad actor and probable criminal.

Furthermore, (and the most pointedly intrusive requirement of all), any account held jointly with a non-US individual or group *must be reported as though the entire holding in the account belonged to the “US Person”*. Thus the US Treasury Department claims jurisdiction over the “private” financial information of 100% Canadian spouses, family members, organizations and business associates when their assets are held jointly with “US Persons” (that is, when the “US Person” has signing authority).

⁷ Note that this number will fall by \$362,700 each year until the 125,000 people who are assumed to be paying an average of \$806 each year to the US have all renounced their US citizenship.

⁸ FinCEN’s mission is to safeguard the financial system from illicit use, combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

The penalty for not sending these reports, or for neglecting to send reports on all accounts, is ***\$10,000 per account per year***.

It has been reported that, thus far in the FATCA debacle, the Treasury Department has not filed penalties against anyone for failure to file FBARs. However, this does not preclude the fact that the law says that they ***can do so***. We are already labouring under the re-awakening of citizenship-based taxation, an old and musty law from the 19th century that was not actively enforced until FATCA was created in 2010. Who is to say that the US Treasury Department will not begin taking a hard line on FBAR filing in the not-so-distant future?

POTENTIAL ANNUAL FBAR PENALTIES

For this calculation, it is here assumed that (1) the 500,000 individuals who were US-tax-compliant prior to 2016 have also been dutifully filing their FBARs and (2) the 250,000 individuals who become US-tax-compliant in 2016 will also be filing their FBARs.

This leaves the 250,000 individuals who we have assumed will have no intention of responding to the implications of FATCA and who, according to the US Treasury Department, should be filing FBARs but are not doing so. For the purposes of this calculation, it is assumed that these individuals hold an average of 2 accounts that are eligible for FBAR reporting (probably an underestimation).

If just 50% of these non-reporting individuals are identified and become subjected to the full extent of the FBAR penalty clauses in this US legislation, the annual penalty that the US government could claim is:

$$125,000 \times 2 = 250,000 \text{ accounts} \times \$10,000 = \$2,500,000,000.00$$

TOTAL FBAR PENALTIES PER YEAR: \$2,500,000,000.00⁹

⁹ It is unlikely to expect that any of the 250,000 who initially refuse to become tax compliant out of “principle” would continue to maintain this position in the face of a continuing penalty of \$10,000 per account each year once the US began to enforce the FBAR penalties and the implementation of FATCA is completed in Canada. If these people became US-tax-compliant the estimated potential \$2.5 billion leaving Canada each year would be replaced by the income tax payments made by these 250,000 newly US-tax-compliant individuals. This would increase our annual estimate reported in section 4 from \$120 million to \$240 million.

7. FUTURE COSTS TO CANADA IF FATCA IS SUCCESSFULLY AND FULLY IMPLEMENTED

The following scenario is presented to illustrate the situation that would result if US citizenship-based taxation were to actually be fully implemented in Canada as a result of FATCA. The calculations assume the following:

- That all persons deemed US citizens by the United States, who are permanent residents and/or citizens of Canada, actually file US tax returns in each of the following (and subsequent) years
- That all new immigrants to Canada from the United States are fully informed as to their perpetual tax “obligations” to the country they are leaving and take steps to arrange their financial affairs accordingly
- That everyone who is required to do so is also filing FBARs, which, along with FATCA, are now being strictly enforced (no FBAR penalties will be included in this calculation)
- That 1800 of these persons will renounce their US citizenship in each of the following (and subsequent) years

2016

1800 people in Canada renounce US citizenship:	administrative fees \$4,230,000.00 (1800 x \$2,350)
108 people pay exit tax:	\$15,619,716.00 (108 x \$144,627)
500,000 people pay routine annual taxes to the US:	\$403,000,000.00 (500,000 x \$806)

TOTAL US\$ leaving Canada in 2016 if FATCA were fully implemented: \$422,849,716.00

2017

1800 people in Canada renounce US citizenship:	administrative fees \$4,230,000.00 (1800 x \$2,350)
108 people pay exit tax:	\$15,619,716.00 (108 x \$144,627)
498,200 (500,000 - 1800) people pay routine annual taxes to the US:	\$401,549,200.00 (498,200 x \$806)

TOTAL US\$ leaving Canada in 2017 if FATCA were fully implemented: \$421,398,916.00

2018

1800 people in Canada renounce US citizenship:	administrative fees \$4,230,000.00 (1800 x \$2,350)
108 people pay exit tax:	\$15,619,716.00 (108 x \$144,627)
496,400 (498,200 - 1800) people pay routine annual taxes to the US:	\$400,420,800.00 (496,400 x \$806)

TOTAL US\$ leaving Canada in 2018 if FATCA were fully implemented: \$420,250,516.00

2019 ...

Each year there is a reduction in cost to Canada of about 0.3% from the previous year. As time progresses, this percentage reduction will rise.

8. CONCLUSION

All the monies estimated in the above calculations indicate the amounts which could, conceivably, be extracted from the Canadian economy on an annual basis if the letter of US citizenship-based taxation law were to be followed. By upholding the agreement to enforce FATCA in Canada (the FATCA Intergovernmental Agreement) it is *this* law (the entire complexity of US citizenship-based taxation), to which the Canadian government has exposed not only its citizens individually, but also its own sovereign, national, economic structure.

It may be considered unlikely that all these monies will actually ever be demanded and collected. However, no one (except perhaps George Orwell) thought it likely that a law like FATCA would ever be enacted. FATCA is here. The impossible has already taken place. If a law is not intended to be enforced it should be scrapped rather than allowed to lie buried like a land-mine, out of sight and mind until some hapless soul is blown to smithereens.

Whatever annual bottom line one considers, from **\$120,000,00.00** on the low end through **\$400,000,000.00** in the middle on to **almost 2.6 billion** US dollars on the upper end, this is a great deal of money to be missing from the pockets of Canadians (and their communities) each and every year for the foreseeable future. Given the exchange rate, in Canadian currency the figure is, of course, even worse.

The figures may pale in comparison to the federal budget, but in the pockets of ordinary Canadians any of these amounts would generate a great deal of economic activity. The low figure would buy 120 average middle-class homes in Vancouver and would erase the budget shortfall of the Vancouver School Board five times. Four hundred million would pay for half the expenses of bringing the Syrian refugees to Canada.

Instead, this money will be paid into the coffers of the United States to benefit *their* residents, *their* economic engine, *their* interests and, at the very worst, to end up as a drop in the bucket of *their* attempts to pay down *their* appalling national debt.

This is why the community of US-tainted Canadians considers the Canadian government, in this instance, to be an appallingly poor protector of Canadian interests, Canadian sovereignty and the Canadian people.

As long as US citizenship-based taxation is supported by Canada (and other governments), the United States will continue to hold the world in financial bondage.

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9. SUPPORTING REFERENCES AND OTHER MATERIALS:

<http://www.citizenshipsolutions.ca/2015/04/05/part-5-the-exit-tax-in-action-five-actual-scenarios-with-5-actual-completed-u-s-tax-returns/>

Report to Congressional Requesters on “Offshore Tax Evasion”, released in April 2013: <http://www.gao.gov/products/GAO-13-318>

Information on the exit tax: <http://isaacbrocksociety.ca/2012/05/14/sooner-or-later-if-you-have-money-you-must-pay-the-u-s-you-can-pay-the-exit-tax-now-or-the-estate-tax-later/>

<http://isaacbrocksociety.ca/2016/02/12/fatca-the-loser-costs-the-world-100-billion-transparent-calculations/> [Estimates of costs to the world’s governments and financial institutions.]

“... as of 2013 Bank of Nova Scotia was publicly on the record as having spent 100 times that amount. [i.e. \$100,000,000 as opposed to the \$1,000,000 that had been referred to in the article about which he was commenting] <http://business.financialpost.com/news/fp-street/electronic-spying-a-big-issue-for-banks-scotia-ceo-waugh-says> (I keep citing that because the bank went public about it. Who

knows how much other banks spent, but it's likely to be comparable.) Actual costs worldwide could be \$1-2 TRILLION." [Jim Jatras, comment at IBS, Feb. 12, 2016]

"... since CRA is administering the collection of the data for their IRS bosses, the administrative costs are borne by the Canadian taxpayer, not the American taxpayer. (Has any one seen what that will cost in Canada? I recall seeing an official UK estimate of what it would cost HMRC, something in the neighborhood of half a billion pounds. Not chump change, especially since it's an outlay that yields the Exchequer exactly zero gain.) In any case, *all* Canadians pay twice, as consumers and as taxpayers. [Jim Jatras, comment at IBS, Feb. 12, 2016]

<http://isaacbrocksociety.ca/2013/04/27/gao-report-reveals-ovd-minnows-paid-up-to-129x-more-in-penalties-than-in-taxed/#more-17839>

<http://isaacbrocksociety.ca/2016/02/16/why-the-s-877ag1b-dual-citizen-exemption-encourages-dual-citizens-from-birth-to-remain-us-citizens-and-others-except-sentedcruz-to-renounce/#more-47698> [further Exit Tax Info]

<https://cafemoui.wordpress.com/2016/02/09/dear-michelle-obama/>

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> [Text of the United Nations "International Convention on the Elimination of All Forms of Racial Discrimination"]

From the preamble to the above document: "Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist," [The United States' CBT enforced by FATCA is clearly taking a "colonial" view of its citizens who live elsewhere. The Cook vs. Tate US Supreme Court decision of 1924 clearly upheld CBT in its assertion that the benefits accruing to assets held outside the United States by expatriate Americans were derived from the United States government. A similar argument was used by the British government to justify its taxation of the American colonists in the 18th century.]

Also, Article 1 clearly includes "national origin" in the Convention's broad definition of "race".

<http://blogs.angloinfo.com/us-tax/2016/02/17/streamlined-foreign-offshore-latest-scoop/>

"U.S. taxpayers have been given ample opportunity to come forward, disclose their secret foreign accounts, and come into compliance," said Acting Assistant Attorney General Ciralo. "Those individuals and entities who rolled the dice in the hope of remaining anonymous are facing the consequences. The Tax Division remains committed to investigating and prosecuting

individual taxpayers with undeclared foreign financial accounts, as well as the financial institutions, bankers, financial advisors and other professionals who facilitate the concealment of income and assets offshore.”

It seems that 2016 will be a year when enforcement may reach a peak as FATCA information comes in from foreign financial institutions and more and more information is obtained from the OVDP. The Department of Justice Tax Division had this to say:

“So what can you expect in 2016? Additional civil enforcement actions and ongoing and new criminal investigations and prosecutions. Taxpayers who have participated in the IRS voluntary disclosure programs may be contacted and interviewed by the IRS and the department as part of their ongoing cooperation. Taxpayers who filed returns and FBARs pursuant to the streamlined filing procedures or the Delinquent International Information Return or FBAR submission procedures should be very concerned if they falsely claimed to have engaged in non-willful conduct or acted with reasonable cause. And financial institutions and individuals who have facilitated the concealment of offshore accounts and the evasion of U.S. tax obligations would be well advised to anticipate an investigation and consider voluntarily disclosing any criminal activity to the department before they become the subject of an investigation.”

<http://www.theglobeandmail.com/report-on-business/video/video-carrick-talks-money-do-americans-living-in-canada-have-to-pay-tax-when-they-sell-a-house/article28925767/>

<http://www.cbc.ca/news/business/taxes/tax-time-2016-us-citizens-tax-shelters-1.3446226>

US-born Mary Blackhill is a 61-year-old retiree who has lived in Canada since the age of five. She has been a Canadian citizen for 43 years. She is directly affected by United States “citizenship-based (birthplace) taxation” and Canada’s support of it by signing the FATCA Agreement.

Stuart Mestelman is an Emeritus Professor of Economics, McMaster University. He has been a resident of Canada since 1969 when he moved from the United States to take up a position at McMaster University. He has been a Canadian citizen for 23 years.

Mary Blackhill and Stuart Mestelman are indebted to Laura Mestelman for her editorial skills.