



AVR 05 2013

Dear [REDACTED]

Thank you for your correspondence of January 8, 2013, a copy of which was referred by the Office of the Prime Minister, the Right Honourable Stephen Harper, regarding U.S. government taxation policy, specifically the Foreign Bank Account Report (FBAR) and the Foreign Account Tax Compliance Act (FATCA). Please excuse the delay in replying.

Rest assured, the Government of Canada shares many of these concerns and has expressed them directly to the U.S. government.

While we all understand that Canada and the U.S. share many common values, including ensuring fair tax systems where everybody pays their share, we have concerns about the impact of FBAR and FATCA on Canadians.

For instance, many dual Canadian-American citizens captured under FBAR have complained they have only very remote links to the U.S. and a very limited knowledge of their tax reporting obligations to the U.S. (Note: please find enclosed a 'fact sheet' on U.S. tax and FBAR filing requirements for U.S. citizens no matter where they live in the world.)

We recognize that the vast majority of these dual citizens being targeted are honest, hardworking and law-abiding people – including many senior citizens – who have dutifully paid their Canadian taxes. Their only transgression has been failing to file Internal Revenue Service (IRS) paperwork that they were unaware they were required to file.

Now, faced with the knowledge they have an obligation to file U.S. tax returns (even if they most often do not actually owe any taxes), we appreciate that many dual citizens want to fulfill that obligation. But we also understand that the threat of prohibitive fines for simply failing to file a return they were never aware they had to file has become a frightening prospect causing unnecessary stress and fear among many honest, hardworking individuals.

As such, we have called on the U.S. government to look upon those individuals impacted in Canada with leniency.

I am happy to report that the U.S. government has listened to our concerns and the concerns of Canadians. Recent guidance by the IRS on December 7, 2011 and June 26, 2012 (which are referenced in the enclosed fact sheet) will help dual citizens residing in Canada deal with their U.S. tax filing obligations and provide assistance to people with Canadian retirement plan issues. Our Government applauds these actions.

The December 7, 2011 guidance states that U.S. taxpayers who owe no U.S. tax are not subject to any penalties for a failure to file a U.S. tax return, while other taxpayers may be eligible for reasonable cause relief. In the case of a failure to file an FBAR, where the IRS determines that a violation was due to reasonable cause, the guidance says that there is no penalty.

The June 26, 2012 guidance signals the intention of the U.S. to provide simplified procedures to allow taxpayers who pose low compliance risk to become compliant with their U.S. tax and FBAR filing requirements without facing penalties or additional enforcement action.

In addition, the IRS is streamlining the process for U.S. citizens and dual citizens who have contributed to Registered Retirement Savings Plans or Registered Retirement Income Funds in Canada to take advantage of the provision in the Canada-United States Income Tax Convention allowing deferral of taxation in the U.S. of income in those accounts, if they have not already done so.

The new streamlined filing procedures are accessible as of September 1, 2012. Instructions for the new procedures can be found by visiting the IRS website (the specific link is also referenced in the enclosed fact sheet).

I should also note that penalties imposed by the IRS under FBAR will not be collected by the Canada Revenue Agency (CRA) on the IRS' behalf. While the Canada-United States Income Tax Convention contains a provision that allows for the collection by a country of taxes imposed by the other country, this does not apply to penalties imposed under laws that impose only a reporting requirement. Furthermore, the 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).

A related piece of U.S. legislation causing similar concern is FATCA, which is proposed to come into force on January 1, 2014.

To be clear, Canada respects the sovereign right of the U.S. to determine its own tax legislation and its efforts to combat tax evasion – the underlying objective of FATCA. In fact, our two jurisdictions cooperate to prevent tax evasion.

However, we are concerned that FATCA would impose significant compliance obligations on Canadian financial institutions, and raise significant privacy concerns for Canadians.

Canada is not a tax haven and people do not flock to Canada to avoid paying taxes. But for those who would seek to evade taxes, we believe that there are ways of addressing these issues with the U.S. through our bilateral Income Tax Convention.

The Government of Canada will continue to express its strong concerns relating to FATCA with the U.S. government and advocate on behalf of Canadians on these issues.

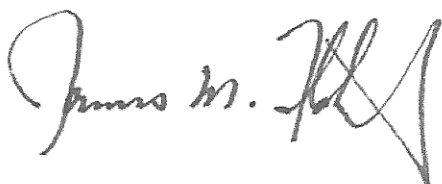
Talks are underway between Canadian and U.S. officials to develop an approach that both countries will find agreeable, with a view towards concluding an agreement in the near future.

The agreement under negotiation would recognize the principle our Government has consistently advanced, that in seeking to meet the objectives of FATCA, greater reliance can be placed on the procedures that already exist under our bilateral Income Tax Convention for the exchange of tax information. We are pleased that the U.S. has accepted this principle.

Please consider the enclosed fact sheet, which may provide additional information on FBAR, and which contains Internet links to the recent IRS guidance. This reply and the fact sheet are intended for information purposes only and should not be viewed as tax advice. Taxpayers who think they may be affected by any of the measures discussed in these documents should seek advice based on their particular circumstances from an independent tax advisor with appropriate experience.

Thank you for communicating your concerns about U.S. taxation policy.

Yours sincerely,

A handwritten signature in black ink, appearing to read "James M. Flaherty". The signature is stylized and cursive.

James M. Flaherty

Enclosure

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 is 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 (IRS) 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:**
 - For information concerning tax and FBAR filing requirements, please visit www.irs.gov/uac/Information-for-U.S.-Citizens-or-Dual-Citizens-Residing-Outside-the-U.S.
 - The IRS has announced simplified filing procedures for U.S. citizens living abroad who pose low compliance risk to become compliant with their tax and FBAR reporting requirements, available as of September, 2012. Visit www.irs.gov/uac/IRS-Announces-Efforts-to-Help-U.S.-Citizens-Overseas-Including-Dual-Citizens-and-Those-with-Foreign-Retirement-Plans.
 - Instructions for the new filing procedures can be found by visiting www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers.
 - For more information regarding U.S. citizenship, please visit 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.

** 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, the 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).*