

April 30, 2014

Honourable Senators / Members of the National Revenue Committee,

Senators, you will have heard Mr. Ernewein mention that there may be up to one million Canadians whom the US considers may be citizens of the US. I think that you need to understand some basic facts that Mr. Ernewein glossed over:

1. Who are these 1 million Canadians?

- You heard about “accidental Americans” – those whose parents lived on the border and may have given birth in a US hospital because it was closer or because a specialist was available;
- Retirees who came here as students and married locally, worked, paid taxes and had children here;
- Canadians whose parents came here when they were children and have been raised ever since as Canadians;
- Canadian-born children with parents who were born in the United States;
- Canadians who acquired citizenship by naturalization years ago when the US took the view that they automatically lost US citizenship upon swearing allegiance to Canada only to find that the US has changed its rules retroactively and re-conferred citizenship on them that they may neither have wanted nor sought.
- In addition to potential dual citizens, others may find that their accounts become “US Reportable Accounts” because they are either in business with or married to a Canadian who was born in the US (or whose parents were born there). Joint accounts and business accounts where a “US Person” is a signatory are also potentially subject to disclosure without the consent of the affected person.
- The point is that they are Canadian citizens, not hyphenated Canadians. We don’t treat Canadians from China or North Korea differently, but apparently we are to treat Canadians from the United States differently? One million Canadians are feeling very, very threatened by this Bill and the actions of their government in betraying them to a foreign country. This is a very serious matter and goes to the heart of what it means to be a Canadian.

2. Can’t they just renounce if they don’t like the US rules?

- For some it is impossible. I am a 70 year old retiree with a developmentally disabled adult child who has found the US taxes Canada’s contribution and any gains to the registered disability savings plan (RDSP) for which I am the Holder, established to help care for my son when I pass away. I was able to renounce my citizenship at considerable personal financial cost for retirement savings, but I’ve been told that my disabled son can NEVER renounce because of his “mental incapacity” and a parent, a guardian or a trustee does not have the right to do so on behalf of such a person, even with a court order. He was born in Canada, never registered with the US, never lived in the US, never had any benefit from the US but has been claimed by the US solely because of the birth place of me, his mother, and father (now deceased).
- Most of the one million Canadians affected have simply never been in the US tax system. They don’t earn their living there, they haven’t lived there ever or in many, many years. Some have only recently learned of the US’s “unique” system of extraterritorial taxation and indeed some have only recently learned that the US considers them citizens.

- In order to renounce, the US will ask any “US Person” to become compliant with US tax and extensive "foreign" financial disclosure laws that they never knew applied to them. This may involve being opened up to non-filing penalties (in the discretion of the US tax authorities) that can easily exceed the net worth of an affected individual. Non-reporting and non-filing penalties can be 50% of the highest value in each account PER YEAR and without limit. While the IRS MAY agree to leniency in some cases, the only question is how big a penalty they will apply, not whether they will apply a penalty. All of that money leaves Canada and goes to a foreign government arising from earnings that are entirely in Canada. This is a one-way street that simply leaves Canada poorer since Canada does not tax in that way and could never ask for or receive reciprocity. The second reason is the US will demand “exit taxes” from some Canadians if their net worth is over a threshold. While there is no reporting of registered accounts under the Act, any Canadian who tries to renounce US claims to his citizenship has no such luxury: all of those accounts must be reported as part of the renunciation process and the US can AND WILL tax them. In short, renouncing does not save them from IRS demands, it precipitates them.
- The cost of staying “in compliance”, even where no tax is owing to the US, is often \$2,000 per year for life or more. And that assumes that there are US tax professionals in your home town. Many accounting firms in mid-size towns refuse to touch US returns.

3. What are they afraid of?

Mr. Ernewein is correct that the IGA does not create new obligations. Only two countries in the world attempt to tax based on citizenship – the US and Eritrea. This is NOT the global standard. The US is the global outlier. The obligations which the US is seeking Canada’s help in enforcing via the IGA are unlike ANY OTHER obligations imposed by ANY OTHER country. If fully enforced, these obligations could drain Canada of BILLIONS of dollars from ordinary, innocent Canadians.

- For a great many Canadians, indeed MOST of the one million, complying with the US tax regime, even for the purpose of renouncing, leaves them exposed to the threat of being bankrupted or financially ruined to pay taxes, fines and penalties to a foreign country that they may never have lived in for a day of their adult lives. At a minimum it exposes them to thousands of dollars in fees that they may not be able to afford to navigate a mine field of foreign law.
- There are Canadians who fear losing their jobs if their employer finds that the signing authority for their or their client bank accounts is born in the United States or is considered a “US Person”. Others fear that they may be expelled from a partnership or business if their business partners discover that they may have a “US Person” as a partner or shareholder, subjecting the entire business to US tax rules. There are Canadians who fear that even if Canada won’t help the IRS collect taxes or penalties from them, Canada may provide information that results in IRS threats that could put them at risk travelling to or even through the US in future. While Canada may say “this is just information sharing”, Canada would be very directly supplying the bullets put in the chamber of the gun pointed at them by the IRS. Their fear is real and they feel betrayed by their own country.
- Canada did not create this problem and neither did Canadians with US ancestry. However, Canada should not sacrifice its citizens on demand to a foreign country. Their laws are their problem, it is true. However, if we assist in enforcing unjust laws in our own country, we become party to that injustice. These laws are unjust and these Canadians deserve to be protected from the aggressive Inquisition of a foreign government.
- **There is a simple and elegant way out. Canada can amend the Act to exclude Canadian citizens from the definition of US Person – the amendment sent to you by Lynne Swanson:**

“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.”

- **If the US believes that a Canadian citizen owes them obligations, it continues to have the ability to make individual inquiries of the CRA under the existing Tax Treaty. Canada should not give the IRS a fishing license to look for Canadians.**

Respectfully,

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