

CustomerCare, TD (TD.CustomerCare@td.com)

Ms. Singh,

Thank you for your reply earlier this month. I appreciate your having taken the time to review my mid-June comments thoroughly. Some of those points seem to have improved the TD FATCA page as it is now presented (www.td.com/fatca/index.jsp). Some of my points, however, remain. I will attempt to follow up here. Most importantly, please consider that FATCA does not only impact financial institutions but, perhaps even more profoundly, a broad base of the account holders of TD and other financial institutions.

Further, TD has to consider whether, within the laws and requirements of Canada, they want to present themselves (and want to be perceived) as allying themselves with their client base as co-effected and co-concerned, or legalistic co-workers and co-functionaries of the IRS (I could say the CRA also, but let's be honest - - it certainly was not the CRA which initiated this).

WHEN DOES FATCA TAKE EFFECT? Fine

WHO DOES FATCA IMPACT?: As described to you/TD in an earlier email, Financial institutions are not a "who"; FIs are a "what" or a "which", and to say "who" is not appropriate. The real "who" that are impacted by FATCA are the thousands and thousands of TD clients. Yes, the FIs are having to spend inordinate time and money to do this US-IRS work but it is, nonetheless, not a "who". "Who" refers to people, the inordinate number of Canadian bank clients who will be touched by this legislation that FIs are being required to implement. "How does FATCA impact TD" is a better question for the answer given.

AS A TD CUSTOMER, WHERE CAN I GO TO LEARN MORE ABOUT FATCA? May I suggest that to immediately direct your clients to a tax advisor is presumptuous and dismissive. Yes, refer to the CRA website. But why should clients be instructed to go pay an expensive tax advisor when they may not need to? And these are TD clients, not just folks in the street. Shouldn't TD provide the necessary information to their clients that they are working with/for and care about? It goes back to the question of who is impacted - - the FI or the client - - or both, (and does TD care about this relationship enough with the client to help him/her understand the impact of this difficult legislation rather than directing them to a costly outside professional?)

WHO IS CONSIDERED A U.S. PERSON? **CURRENT** citizen or **LAWFUL** resident of the US (including a **CURRENT OR NON-RENOUNCED** green card holder). Particularly, past green card holder TD clients (who may have returned to Canada many years ago) need to be cued that they need to have legally closed/discontinued this US status to no longer be considered a "US Person". In the sentence RE "considerable time in the US" the word "Snowbird" could be added as a useful TD client warning (or a link to the question "If I am a Snowbird....."). Also, it is mentioned further down in this document about spouses and children of US persons; it would be helpful to the client to provide a link on this issue at this point; however, for clarity, there should also be a link to the "If a joint account is held..." point.

WHY IS CANADA COMPLYING WITH US LAW? This answer is accurate except for the information that "Canada negotiated significant exemptions". In fact, Canada received no greater exemptions than a broad range of other countries, including very small nations with very few "US Persons", and these exemptions are in relation to 'what the FFIs have to report' (not 'what the US Person has to report'). Thus, the FFIs are relieved of certain reporting work. The way it is worded is self-comforting to the FFIs but in no way assists/supports/should comfort the client and, thus, is misinforming if this document is aimed at the client.

WHAT INFORMATION DO I NEED TO PROVIDE TO TD? The immediate reference is to a US tax form, after which you refer to government-issued identification. I am not certain why you might be asking for one/any of these Canadian ID documents, but reference to the US W-9 or W-8 Tax Forms once again suggests alliance with/being agents for the US IRS. First and foremost, let's focus on those

Canadian-government ID forms and then, if necessary, mention the US forms. The assumption should be that your clients are honest law-abiding citizens of Canada and, only if there is a concern, that TD will require (as required by them) the signing of other forms that may help determine their FATCA status. WHOSE SIDE ARE YOU ON?????

WHAT IS A REPORTABLE ACCOUNT UNDER THE IGA? As before, TD has provided no reference here to the fact that when there is a joint account with a US person that all the other accounts of the non-US signator are, by law, now to also be sent on to the CRA-IRS. By not mentioning this, TD is misinforming (by omission) a wide range of your customer base RE the unpleasant and highly intrusive realities of FATCA and the IGA. Further, "may" these accounts be reportable or "will" these accounts be reportable?

WHAT IS THE BENEFIT OF AN IGA? From the position on the client (to which this TD document is aimed) this IGA does very very little to "address privacy concerns"; extensive private financial information (much more than is expected of US Persons who live IN the US) is to be sent to a foreign government where that tax authority (IRS) can/may be required to share this information with all kinds of other foreign criminal-investigation agencies like the CIA and NSA and HomelandSecurity. Further, as noted above, from the position of the client the IGA DOES NOT "provide significant exemptions - - the exemptions are only related to what the FFIs need to report so reference here is TD-self-serving. RE "withholding tax" is a factor that is enshrined in the US-Cdn tax treaty that Canada will not collect taxes for the US and NOTE: while the Cdn parliament approved the signing of the IGA, this IGA DOES NOT have the legal status of a treaty.

IS EVERY FINANCIAL INSTITUTION (FI) IMPACTED BY FATCA? FATCA's wording is that FIs in non-IGA countries that do not comply with FATCA WILL be subject to a 30% withholding..... Be honest here. Tell your clients (including non-US Persons) what the US is demanding internationally through FATCA, and what the Cdn government has been faced with prior to signing this IGA. Would the Cdn government have signed this, and given up sovereignty to it's own bank privacy laws, without this level of extortion?????

HOW COULD FATCA IMPACT ME? This answer makes no reference to "US Person". Thus, it suggests that ALL TD-client "individuals (including sole proprietorships) or entities....." will be impacted. While this is true in terms of higher bank fees to cover the extensive infrastructure and ongoing-monitoring work involved in dealing with this extraterritorial imposition, such a statement without qualifications is egregiously misleading and frightening. Indicate the limits of which "individuals" and which "sole proprietoshops/entities.

WHAT FACTORS MAKE TD BELIEVE I AM A US PERSON? "Can" we provide these things to TD? Oh, yes, we will want to jump in and provide, as a "wonderful way" to be linked into the US Tax system???? Maybe what is meant here is "...information that you may have provided (or may be required to provide).....

IF I HAVE A US DOLLAR ACCOUNT.....? Well explained.

IF I HAVE DUAL CITIZENSHIP WITH THE US....? Ok.

IF I AM A SNOWBIRD.....? Yes, fine, but do make a link as suggested above.

IF A JOINT ACCOUNT IS HELD..... Do make a link as suggested above. Also, the full answer is that ALL accounts of this joint account holder ARE (according to FATCA) to also be sent on to the IRS (via the CRA). To not mention this unpalatable truth is to misinform your client base, to basically hedge/lie to them.

I WAS BORN IN THE US..... While, acknowledged, under the rule of the IGA legislation, if TD wants to show it's alignment/responsiveness with it's customer base (which includes "Border Babies" and "Accidental Americans" and folks who moved to Canada 50 years ago and were told, when they took on Canadian Citizenship in the mid-1970s that this act was an expatriating act but, now the US is

rescinding that position for it's own purposes) this statement could include the following: 'Generally, if you were born in the US, then you are considered a US person according to US law.' By including these few words, you demonstrate alignment with the customer who MAY NOT consider themselves in any way to be a US Person and it is only by the subtleties of US law that TD is imposing this definition.

WHAT INFORMATION ABOUT US PERSONS..... By saying "We may report the following....." suggests that TD has a choice -- that it "may" or 'may not". That, for some of it's clients TD may decide to report, for others it will decide it will not (suggesting potential in-house discrimination/preferential treatment between those who will and those who will not have this information reported). If this is not the case, then this response should be clear and stipulate that "We ARE REQUIRED BY LAW to report the following..... This phrasing, again, indicates that it is the law, not TD (who cares for it's customers) that is doing this. Further, it may be helpful to TD clients to have some indication as to the details of what "further financial data will be required in 2015/2016" so they know what is (by law) coming.

DOES THE CANADIAN GOVERNMENT CURRENTLY EXCHANGE INFORMATION PROVIDED BY FINANCIAL INSTITUTIONS? Ok

WILL MY INFORMATION BE SHARED? Ok

WHICH FINAICAL ACCOUNTS ARE IMPACTED? Ok

ARE CREDIT PRODUCTS IMPACTED? Ok

WHICH FINANCIAL ACCOUNTS ARE EXCLUDED? This phrasing is subtly misinforming to the less-knowlegable client and, thereby, contributing to confusion and - perhaps - wrong thinking/illegal action of your clients. I think what is meant here is "Which financial accounts does TD not have to report?" The RRSP and all other listed accounts here ARE NOT excluded from US Person reporting obligations; to even suggest (through such miswording) that they are is leading your customers into a false understanding (at great peril to these customers, their relationship with TD and the standing of TD in the entire community as being honest with it's customers).

I AM A BUSINESS OWNER.....? I cannot comment

AS AN INDIVIDUAL, WHAT SHOULD I DO IF MY CIRCUMSTANCES CHANGE AFTER I SUBMIT THE REQUESTED DOCUMENTATION? Ok

WHY DID I RECEIVE MULTIPLE REQUESTS FOR FATCA INFORMATION? Ok

DOES THE REQUIRED DOCUMENTATION HAVE TO BE PROVIDED IN ORIGINAL FORMAT OR CAN I SCAN/FAX IT IN? This phrasing is improved but, again, if multiple requests are made by TD (or another FI) for "original" documentation, a customer cannot provide the original everywhere -- and, indeed, they need to keep secure/in their own possession this very important and almost non-replaceable legal document. I suggest that you add "bring the original in to your local bank so that a copy with full authentication can be made to send to the FATCA office" or something similar.

WHAT IS ACCEPTABLE IDENTIFICATION TO COMPLY WITH FATCA (FOR INDIVIDUALS)? All of these are Canadian Government Identification papers; how do they relate to FATCA (a US law with which Canada has agreed to comply)? If a person can show TD, for example, a Canadian passport or driver's licence, does this exempt them from being identified as a "US Person"? If not, TD should know that this question/answer suggests that it does, and the phrasing of question or answer should be reworked.

WHAT IF I FAIL TO PROVIDE ADDITIONAL INFORMATION OR DOCUMENTATION THAT IS REQUESTED OF ME WITHIN THE SPECIFIED TIMEFRAME? TD "may" be required??????? Or, is it actually the fact that TD "WILL BE REQUIRED"??????? Let's be straight here with all your customers as to what this

“guilty-before-being-proved-innocent” law stipulates and let them know the threat they are under to comply and the full consequences if they do not.

WHAT HAPPENS IF I'M REPORTED TO THE IRS? Appropriately stated.

CAN A TD EMPLOYEE HELP ME COMPLETE THESE FORMS? In terms of tax forms, this answer is appropriate. However, in terms of any forms which TD requires (e.g. W-9 or it's equivalent, any form to go into TD related to US renunciation so that TD does not identify this customer as a “US Person”, I strongly urge you to reconsider this answer. If TD is requiring this form (whether because of some Canadian law or their own policy to follow that law), TD staff should be in a position to assist customers in this regard. Not all of your clients are above the 50th percentile in IQ , not all are well versed in this new FATCA expectation, not all are young and educated, not all are physically able to read small-print documents or have access to the internet to read this TD document. If TD requires the documentation, TD should help it's customers who need help.

MY ACCOUNT IS A JOINT ACCOUNT. DO WE BOTH HAVE TO FILL OUT THE DOCUMENTATION? Ok, but who should they speak to/what office should they contact to obtain an answer in their individual situation????? The reply says “TD will contact customers....” Is it possible to be more specific as to what this contact will entail (e.g. snail mail?) and when (e.g. within the next 6 months)?

ARE SPOUSES OR CHILDREN OF US PERSONS IMPACTED BY FATCA? Children of identified US persons may also may be seen by the US as “US Persons” (and children and spouses that hold joint accounts with “US Persons” will be impacted), but this statement that TD “will not assume that accounts held by.... are also US Persons” is comforting. Your customers will thank you for including it this time.

ALL OTHER POINTS IN THIS DOCUMENT: the answers here are reasonable.

Ms. Singh (and others in the Customer Care office), I look forward to hearing from you with your response to these issues and comments.

LM

RE: TD's FATCA document [U-650338/FQO63763]

CustomerCare, TD (TD.CustomerCare@td.com)
07/07/2014

Dear LM,

Please accept our sincere apologies for the delay in responding to your email. We strive to respond to all email received in a timely fashion and we wish to assure you that this delay is not typical of the level of service we aim to provide. We regret any inconvenience or frustration this delay may have caused.

As a Manager of Customer Relations, your feedback has been forwarded to me for review.

We really appreciate you taking the time to provide the detailed feedback on our external FATCA site. Please rest-assured that we have reviewed every suggestion and will make the necessary updates to the site, where possible, as we navigate this complex topic.

The intent of the FATCA site is to provide a general overview of the legislation and a lot of care and discussion went into presenting a Q&A for our customers that gave a solid overview. Given this is quite a complex topic that impacts our customers, we strongly recommend that each impacted customer speak to a tax advisor to get the personalized information and professional advice that they require, as we do with any tax change.

Please refer to our 'If you have a Problem or Concern'

<http://www.td.com/comments.jsp> brochure which outlines our Customer Problem Resolution Process. This brochure will also provide you with the next steps if you are not happy with the resolution we provide.

Again, we do appreciate you contacting us and providing feedback.

Sincerely,
Aliea Singh
Manager, Customer Relations
Representing the Office of the Vice President
TD Canada Trust

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