

Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5

2013FIN398181; 2013FIN400017;
2013FIN401222; 2014FIN403230;
2014FIN404518

DEC - 4 2014

Ms. Carol Tapanila
[REDACTED]

Dear Ms. Tapanila:

Thank you for your correspondence to the former Minister of Finance regarding the Canada-U.S. intergovernmental agreement to enhance the exchange of tax information under the Canada-U.S. tax treaty. Please excuse the delay in replying.

In 2010, the U.S. Government unilaterally enacted and imposed the *Foreign Account Tax Compliance Act* (FATCA). FATCA would require non-U.S. financial institutions to report to the U.S. Internal Revenue Service (IRS) accounts held by U.S. taxpayers. The U.S. created FATCA in order to combat the use of offshore accounts to evade U.S. taxes. Failure to comply with FATCA could subject a financial institution, or its account holders, to certain sanctions including special withholding taxes on payments to them from the U.S.

Our Government recognizes that FATCA has raised a number of concerns in Canada – among both dual Canada-U.S. citizens and Canadian financial institutions. One key concern was that the reporting obligations would compel Canadian financial institutions to report information on account holders who are U.S. residents or citizens (including U.S. citizens who are residents or citizens of Canada) directly to the IRS, thus potentially violating Canadian privacy laws.

Without an agreement in place, obligations to comply with FATCA – including possibly being subject to a 30-percent FATCA withholding tax – would have been unilaterally and automatically imposed on Canadian financial institutions and their clients as of July 1, 2014.

On February 5, 2014, after lengthy negotiations, Canada signed an agreement with the U.S. that addressed these concerns, as well as others. Legislation to implement the agreement, including related amendments to the *Income Tax Act*, was passed by Parliament and received royal assent on June 19, 2014. The agreement entered into force on June 27, 2014 and its provisions generally took effect as of July 1, 2014.

Canada

What we achieved

Under the agreement, financial institutions in Canada will not report any information to the IRS. Rather, relevant information on accounts held by U.S. residents and U.S. citizens will be reported to the Canada Revenue Agency (CRA). The CRA will then exchange the information with the IRS through the existing provisions and safeguards of the Canada-U.S. tax treaty. This approach is consistent with Canada's privacy laws.

The agreement is reciprocal – the IRS will provide the CRA with enhanced and increased information on certain accounts of Canadian residents held at U.S. financial institutions.

Significant exemptions and relief have also been obtained. For instance, certain accounts, that would have been reportable under FATCA, are exempt under the agreement and will not be reportable. These include Registered Retirement Savings Plans, Registered Retirement Income Funds, Registered Pension Plans, Tax-Free Savings Accounts, and others. Also, smaller deposit-taking institutions, such as credit unions, with assets of less than \$175 million, will be exempt.

Importantly, the 30-percent FATCA withholding tax will not apply to clients of Canadian financial institutions. The FATCA requirement that financial institutions close accounts or refuse to offer services to clients in certain circumstances has also been eliminated.

Under the terms of the agreement, reciprocal information exchange between the CRA and the IRS will begin by the end of September 2015.

Implications for dual Canada-U.S. citizens

The agreement with the U.S. is strictly an information-sharing agreement. The agreement will not impose any new taxes or penalties on U.S. citizens or U.S. residents holding accounts in Canada. Furthermore, the CRA 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).

Our Government understands the separate, but important issue of the impact of U.S. citizenship-based taxation on dual Canada-U.S. citizens. Unlike Canada, the U.S. collects taxes based on citizenship as well as residency. The U.S. citizenship-based taxation regime has been in place since 1913, and is not altered by the enactment of FATCA or the signing of the agreement with Canada.

Canada respects the sovereign right of the U.S. to use citizenship as a basis for taxation. However, this creates unique challenges for U.S. citizens who reside in other countries. U.S. taxation of its non-resident citizens on their worldwide income, when these individuals are also subject to taxation on their worldwide income by their country of residence, can result in a significant compliance burden on these individuals, even when they owe no U.S. tax.

We advise all those who are concerned about their potential U.S. tax liabilities and reporting requirements, which are a result of the U.S.' citizenship-based taxation system, to speak to a qualified tax advisor to receive professional advice.

Further information regarding FATCA is available on the Department of Finance Canada website at www.fin.gc.ca/n14/14-018-eng.asp, and the CRA website at www.cra-arc.gc.ca/tx/nnrstdnts/nhncdrprtng/menu-eng.html.

Thank you for writing.

Yours sincerely,

A handwritten signature in black ink, appearing to be "J. Oliver", written in a cursive style.

The Honourable Joe Oliver, P.C., M.P.