Minister of Finance | Ministre des Finances

Ottawa, Canada K1A 0G5

2016FIN429053
2016FIN430942
2016FIN431686

APR 26 2016

Ms. [redacted]

Dear Ms. [redacted]

Thank you for your correspondence of January 27, 2016 regarding the Canada-U.S. intergovernmental agreement (IGA) to implement the U.S. *Foreign Account Tax Compliance Act* (FATCA) provisions. I am also in receipt of your correspondence of November 5 and 22, 2015, copies of which were referred by the Office of the Prime Minister, the Right Honourable Justin Trudeau, and the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould. Please excuse the delay in replying.

I would first like to mention that I am sympathetic to the concerns that many Canadians have expressed regarding the U.S. FATCA provisions. While the Canada-U.S. IGA is a far better outcome for Canadians than FATCA, I understand that concerns remain. As with all international tax agreements, however, the Canada-U.S. IGA will be subject to ongoing assessment to determine whether it is fulfilling its underlying policy objectives.

FATCA would have required Canadian banks and other financial institutions to enter into an agreement with the U.S. Internal Revenue Service (IRS) to undertake due diligence procedures to identify accounts held by U.S. persons (i.e., U.S. citizens and U.S. resident individuals and entities) and report these accounts to the IRS. A failure to do so would have resulted in the institution and its clients being subject to a punitive 30-percent withholding tax on certain U.S. source payments.

FATCA raised a number of serious concerns in Canada for both Canadian financial institutions and Canadian residents who, under U.S. law, hold U.S. citizenship. Among them is the fact that Canadian financial institutions would have been compelled to report information directly to the IRS, which would not have given certainty to individuals that the appropriate safeguards for the protection of private banking information would be in place. Also of concern was the fact that FATCA would have required financial institutions to close accounts or refuse to offer services to clients in certain circumstances.

The IGA was a positive step for Canada as it addressed these issues, as well as many others. Indeed, more than 110 countries have entered into IGAs with the U.S. or have reached agreement in substance to do so. Pursuant to the IGA, information on accounts held by U.S. persons is reported to the Canada Revenue Agency (CRA), which then exchanges 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, and ensures a high standard for the protection of the private banking information that is being exchanged.

To ensure privacy interests were respected, the Government of Canada consulted with the Office of the Privacy Commissioner in the course of the negotiations with the U.S. and the drafting of the implementing legislation. On May 13, 2014, the then interim Privacy Commissioner of Canada, Ms. Chantal Bernier, testified before the Senate Committee on National Finance to discuss Bill C-31, which included provisions to implement the IGA. Ms. Bernier's testimony raised no concerns regarding the proposed legislative IGA regime, which she described as "proportional" to the requirements imposed by the U.S. to protect the integrity of its tax system. She noted that she expected that the regime would be administered by the CRA and financial institutions in compliance with privacy laws.

Importantly, unlike FATCA, the IGA is a reciprocal agreement under which the IRS provides the CRA with enhanced information on certain accounts of Canadian residents held at U.S. financial institutions. This information assists the CRA in ensuring compliance with Canadian tax laws, and helps the Government ensure tax fairness among all Canadians.

More generally, the automatic exchange of financial account information has been recognized by the international community as an effective tool to help ensure that taxpayers report their income from all sources and to combat international tax evasion. In September 2013, G-20 Leaders committed to automatic exchange of information as the "new global standard," and endorsed the work undertaken at the Organisation for Economic Co-operation and Development (OECD) to develop a common reporting standard (CRS).

Under the CRS, a tax authority will provide information to foreign tax authorities relating to financial accounts in its jurisdiction held by residents of these foreign jurisdictions. On a reciprocal basis, the tax authority will receive corresponding information from the foreign tax authorities on financial accounts held by its residents in those foreign jurisdictions. A final version of the CRS was released by the OECD in July 2014 and has been endorsed by G-20 Leaders. Over 90 jurisdictions have publicly indicated their intention to implement the CRS. Canada plans to implement the CRS starting on July 1, 2017.

The Canada-U.S. IGA and the new global CRS fall within the new international consensus to enhance transparency around the investment income of individuals and corporations which may be subject to tax under foreign law. These arrangements are

essentially an extension to the international context of the longstanding domestic requirement for Canadian financial institutions to report financial account information to the CRA.

With respect to U.S. tax filing obligations of Canadian residents who, under U.S. law, hold U.S. citizenship, the IGA does not impose any new taxes, penalties or tax return filing obligations – it relates only to the sharing of information on financial accounts. The U.S. policy of taxing its citizens, even those who are not resident in the U.S., is a policy which has been in place since 1913. While this is different from the approach followed by Canada and most other countries, Canada respects the right of the U.S. to tax on this basis. It is an approach, however, that can create a significant compliance burden for individuals resident in other countries given their need to also comply with tax rules in their country of residence. Such individuals may want to contact the U.S. IRS and/or consult a professional who is qualified in U.S. tax matters to ensure that they receive appropriate advice.

Finally, under the Canada-U.S. Tax Treaty, Canada will not provide assistance in collection to the U.S. regarding taxes and penalties owing to the U.S. by an individual who was a Canadian citizen at the time the liability arose. In addition, the Canada-U.S. Tax Treaty allows the exchange of information, including information exchanged under the IGA, to be used only for tax purposes; it cannot be used for enforcement of non-tax statutes like the U.S. *Bank Secrecy Act*, which most notably requires the filing of the Report on Foreign Bank and Financial Accounts (commonly known as the "FBAR").

Further information regarding the Canada-U.S. IGA is available on the Department of Finance Canada website at www.fin.gc.ca/treaties-conventions/notices/unitedstates-etatsunis_1-eng.asp, and the CRA website at www.cra-arc.gc.ca/tx/nnrsdnts/nhncdrprtng/menu-eng.html.

Thank you for writing.

Yours sincerely,

The Honourable Bill Morneau, P.C., M.P.