

Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5

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Mr. Robert Kroll  
rkroll@eastlink.ca

Dear Mr. Kroll:

Thank you for your correspondence of August 25, 2011 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 the history of U.S. tax and FBAR filing requirements for U.S. citizens no matter where they live in the world.)

We recognize – and have publicly told the U.S. – 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 IRS paperwork that they were unaware they were required to file. These are not high rollers with exclusive offshore bank accounts looking to evade paying their fair share of taxes.

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.

Please be aware, we have been clear that penalties imposed by the IRS under FBAR will not be collected by the Canada Revenue Agency (CRA) on their behalf. While the

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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 co-operate to prevent tax evasion.

But FATCA has far-reaching extraterritorial implications, as it would turn Canadian banks into extensions of the IRS and would raise significant privacy concerns for Canadians.

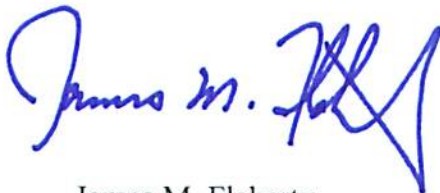
We strongly believe this is unwarranted. Canada is not a tax haven and people do not flock to Canada to avoid paying taxes. In addition, we have existing ways of addressing these issues with the U.S. through our bilateral Tax Information Exchange Agreement. We strongly believe that to rigidly impose FATCA on our citizens and financial institutions would not accomplish anything except waste resources on all sides.

As such, the Government of Canada has and will continue to express its strong concerns relating to FATCA with the U.S. government. We are actively seeking a solution that both countries will find agreeable.

Please consider the enclosed fact sheet, which may provide additional information on FBAR. This letter 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,



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 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:** The U.S. Internal Revenue Service has information on its website concerning the FBAR. Visit [www.irs.gov/businesses/small/article/0,,id=159757,00.html](http://www.irs.gov/businesses/small/article/0,,id=159757,00.html) for information on the FBAR.
  - **For more information regarding U.S. citizenship, please visit** [http://travel.state.gov/law/citizenship/citizenship\\_782.html](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).*