



**Wood** LLP

# Tax Alert



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THE TAX LAWYER

TAXES 8/12/2014

### **Canadians File Suit To Block FATCA And Prohibit Handover Of U.S. Names To IRS**

A lawsuit has been filed by several Canadian citizens against the Canadian Attorney General in Federal Court in Canada. The legal [claim](#) challenges the constitutionality of the agreement the Canadian government struck with the United States. The controversial deal between nations was inked under [FATCA](#)—the Foreign Account Tax Compliance Act.

FATCA is America's global tax law. More than 80 nations have signed on to the U.S. law, so what's the big deal about Canada? Many Canadians are still hopping mad that their own government bowed to pressure from the south. The Canadian plaintiffs hope to stop the Government of Canada from turning over private bank account information from more than one million United States persons and their families, living in Canada.

The [FATCA](#) agreement between Canada and the U.S. calls for such data—a kind of public outing—to be handed over to the IRS. Joseph Arvay, QC, and David Gruber, both of Farris, Vaughan, Wills & Murphy LLP in Vancouver, are representing the plaintiffs. There's been talk of such a suit for years, but now the gloves have come off and the case is public.



*Supreme Court of Canada building, Ottawa, Ontario, Canada (Photo credit: Wikipedia)*

FATCA is controversial, though it was passed quietly in 2010. Now that it has finally taken effect, it requires foreign banks to reveal American accounts holding over \$50,000. Non-compliant institutions could be frozen out of U.S. markets entirely, so everyone is complying. [FATCA Is Everywhere — Even Russia & China](#). And that includes Canada.

So far, 77,000 financial institutions have registered and 80 countries have too. Countries must throw their agreement behind the law or face dire repercussions. Tax havens have joined up. Even China and Russia are getting on board. To see which financial institutions are participating, see [FFI List Search of and Download Tool](#) and a [User Guide](#). Countries on board are at [FATCA — Archive](#).

FATCA grew out of a controversial rule. Unlike Canada and virtually all other countries, America taxes its citizens—and even its permanent residents—on their [worldwide income](#) regardless of where they live. In 2009, the IRS struck a groundbreaking deal with UBS for \$780 million in penalties and American names. Yet today, that huge deal seems only a drop in the bucket of what has happened since.

Credit Suisse took a guilty plea and paid a record \$2.6 billion fine. Moreover, there are now over a hundred Swiss banks taking a DOJ deal that requires American depositor names. In short, banking is more transparent today than could ever have been imagined.

[FATCA](#) was enacted in 2010, when only *some* of those developments were beginning to unfold. The idea was to root out Americans. To do it, FATCA cuts off companies from access to critical U.S. financial markets if they don't play ball and pass along American data.

For some in Canada, this still doesn't sit well. There is some anger that the U.S. went so far, and some disappointment that the Canadian government didn't resist. The Plaintiffs in the Canadian lawsuit are Virginia Hillis, a retired lawyer from Windsor, Ontario, and Gwendolyn Louise Deegan a graphic designer in Toronto.

The legal [claim](#) is that the agreement to implement FATCA between Canada and the United States violates provisions of the Canadian Charter of Rights and Freedoms. That's the document enumerating the right to life, liberty, security of person; security against unreasonable search and seizure; equal protection of law without discrimination. That's a serious charge. So is the contention that the FATCA agreement flies in the face of the "principle that Canada will not forfeit its sovereignty to a foreign state."

The Canadian citizen plaintiffs claim to be entrapped in U.S. citizenship. They were both born in the U.S., but left the U.S. at age five to live in Canada. They never obtained a U.S. passport or developed meaningful ties with the U.S. Even so, the case says they are considered 'tax cheats' by the U.S. because they are not 'IRS compliant.'

"I am a proud Canadian. Why is my government branding me with being a potential U.S. tax evader merely because of my place of birth – and turning my personal information over to a foreign government's jurisdiction?" said Ms. Hillis. Ms. Deegan says "This was not the Canada our brave Fathers of Confederation envisioned. FATCA destroys our unity and we cannot permit the loss of our sovereignty."

This lawsuit is accompanied by a separate submission of a complaint to the United Nations, by concerned citizens worldwide, that the unique U.S. style 'place of birth taxation', for which FATCA is an enforcement tool, violates fundamental human rights. Who is funding this? The Alliance for the Defence of Canadian Sovereignty (ADCS), though it appears donations are coming from many.

According to that organization, "Many of our donors are pensioners who have little savings, and we need the support of those who can afford larger donations to fund this case, expected to go to the Supreme Court of Canada" said Dr. Stephen Kish, ADCS Chair."

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