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Armed With FATCA, IRS Hunts Offshore Tax Evaders, While Canada Eases Up

In a move tied to budgets, Canada's Revenue Agency is cutting its top staff focused on international tax evasion. Cuts to experienced personnel who ferret out aggressive tax planning appear to be deepest, despite comments by MP Gerald Keddy that "the CRA is not reducing the number of auditors, nor the number of tax evasion and tax avoidance experts." See [CRA to cut managers, fold tax-evasion units, memo shows](#).

The shake-up is raising concerns that the Canadian government's crackdown on offshore tax cheats may be all talk, or at least more talk than action. Yet Canada has gone to great pains to make clear that it is going after evaders. For example, Canada signed on to [FATCA](#), the Foreign Account Tax Compliance Act, America's global tax law.

FATCA is a key weapon in the American war on tax evasion. It requires foreign banks to reveal American accounts holding over \$50,000. Non-compliant institutions could be frozen out of U.S. markets, so everyone is complying, even China and Russia. The IRS has a searchable list of financial institutions. See [FFI List Search and Download Tool](#) and a [User Guide](#). Countries on board are at [FATCA – Archive](#).



America taxes its citizens and permanent residents on their [worldwide income](#) regardless of where they live. In 2009, the IRS and Department of Justice sliced through the Gordian knot of bank secrecy, netting account holder names and a \$780 million penalty from UBS. Many other Swiss banks have fallen into line. A few closed their doors, and the rest now say Swiss bank secrecy really didn't mean what you thought it meant.

Credit Suisse paid a [\\$2.6 billion fine, and avoided death in U.S.](#), copping to a U.S. felony tax charge, an astounding hit. Americans are particularly unable to hide anywhere for any reason. [FATCA](#) is America's global tax law. It requires foreign banks to reveal American accounts holding over \$50,000. The world has agreed, even Russia and China, and names are being revealed to the IRS.

The nature of private financial arrangements is also becoming less private. In administrative cases before the IRS and in tax prosecutions, the use of trusts and companies have come under fire. The IRS and DOJ underscores these common devices to enhance the willfulness that may be present, suggesting that efforts to be anonymous are suspect. In many ways, the cover-up is worse than the crime. In some cases, such layers can make innocent activity ['willful' triggering IRS penalties or jail](#).

All of this comes at a time when secrecy itself is under attack. The UK is moving to make company ownership entirely transparent. If current proposals pass into law, that may be replicated elsewhere. The topic of company ownership transparency is being discussed in Brussels too.

Nominee ownership used to be common. Nominees are straw-men listed as owners or directors of a company, but who are acting on behalf of someone else. As secrecy itself as come under attack, this once extremely common device is now more likely to be viewed as a problem that triggers others. Indeed, secrecy and willfulness may be linked like never before.

Although there is no doubt that America is still firmly on the scent of tax enforcement, Canada's position is more tenuous. For one, a lawsuit has been filed against the Canadian Attorney General challenging the constitutionality Canada's FATCA agreement with the United States. The legal [claim](#) is that the agreement violates provisions of the Canadian Charter of Rights and Freedoms. That document enumerates the right to life, liberty, security of person; security against unreasonable search and seizure; equal protection of law without discrimination.

That is a serious charge. So is the contention that Canada's FATCA agreement flies in the face of the "principle that Canada will not forfeit its sovereignty to a foreign state." And yet for now, given that [Canada signed FATCA, the IRS will get the data](#). How reciprocal the information will be, is another uncertainty. And with the controversy in Canada, perhaps that is of little moment.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.