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Oh Canada! Hating FBARs And FATCA



[FATCA](#), the Foreign Account Tax Compliance Act, is no one's darling. But while European banks, governments and expats everywhere rail against it, it's easy to overlook our next door neighbors to the north. Many of them are just as miffed as Europeans with the long arm of the U.S. Congress passing FATCA and other legislation, not to mention the long arm of the IRS that is now in their front yard.

FATCA requires foreign banks to report U.S. account holders to the IRS starting in 2013. After identifying U.S. account holders, the institutions must impose a 30% tax on payments or transfers to account holders who refuse to identify themselves. To soften the blow, the IRS issued [Notice 2011-53](#) to phase in the law. Foreign financial institutions (FFIs) and U.S. withholding agents are given extra time to implement systems to comply.

To avoid withholding, an institution must enter into an agreement with the IRS to:

- Identify U.S. accounts;
- Report certain information to the IRS regarding U.S. accounts; and

- Withhold a 30% tax on certain payments to non-participating FFIs and account holders unwilling to provide the required information.

Foreign institutions that don't sign an IRS agreement will face withholding on U.S.-source interest and dividends, gross proceeds from the disposition of U.S. securities, and pass-through payments.

Canadian government ministers, banks, press and citizens have joined the chorus to drum FATCA out of town, doing their part to send it packing. Canadian Federal Minister of Finance [Jim Flaherty](#) wrote U.S. newspapers with Canada's concerns about both FATCA and FBAR compliance. He complained of the double whammy that Canadian banks and other financial institutions face with FATCA, and the even more broad-based reach of the [FBAR rules](#) that put many unsuspecting dual citizens of the U.S. and Canada in IRS crosshairs. See [Back off our taxpayers, Flaherty tells U.S.](#)

Minister Flaherty's [September 16, 2011 letter](#) complains that the long reach of these U.S. rules will cause Canadian banks to become "extensions" of the IRS. Flaherty also notes that the rules raise privacy concerns for Canadians who may not be aware that they needed to file U.S. tax returns. And beyond tax returns, the FBAR rules and their horrendous potential penalties are particularly draconian.

Flaherty complains that there are large numbers of dual U.S.-Canadian citizens and their relatives living in Canada. Many did not (or still do not) know they are required to file U.S. tax returns, let alone [FBARs](#). See [Canada steps up fight against U.S. tax evasion law](#). The FBAR filing requirements and penalty enforcement policies in many cases are heavy-handed and unfair.

Given the close proximity and historical ties between the U.S. and Canada, the dual citizen problem is very real. Many Canadians who also have U.S. tax filing obligations see themselves as pawns in a global game they should even have to play. According to Minister Flaherty, "Dual citizens are not high rollers with offshore bank accounts. These are people who have made innocent errors of omission that deserve to be looked upon with leniency."

For more, see:

[Expats Call For FATCA Repeal](#)

[Analysis: Critics say new law makes them tax agents](#)

[FBAR And FATCA Haters Unite](#)

[International Council of Securities Associations Letter Regarding Implications of FATCA](#)

[Beware Foreign Trust Reporting to IRS](#)

[Are You Getting Enough FBAR?](#)

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