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## So You Want to be an American A Layman's Guide to FATCA

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As if Canadian reporting requirements are not enough, Americans living in Canada also have to comply with the U.S. tax and reporting system and Canadian banks are there to make sure Americans are complying. This was made that much more complex after 2010 when the United States introduced the *Foreign Account Tax Compliance Act* or "FATCA" as it is known. FATCA imposed extensive and unprecedented information reporting obligations both on American citizens with foreign assets and foreign financial institutions that have accounts beneficially owned by U.S. persons.

Although the financial community outside the United States tended to deride the reporting obligations imposed by FATCA arguing that they were both unenforceable and/or that local jurisdictional law prevented compliance, the United States government plowed through these objections and began entering into agreements with various countries in order to provide the information required under FATCA.

The American government was inspired to implement FATCA as a result of the discovery of the number of U.S. persons that were evading tax by using foreign accounts. The intent of FATCA was to obtain information about foreign institutions that have U.S. account holders and to require U.S. owners of foreign accounts to report the existence of those accounts under the risk of severe penalties. The purpose of FATCA was not to collect tax from these individuals but to ensure their compliance. However, the U.S. government needed a 'stick' to force financial institutions to comply with the requirements to disclose U.S. account holders and that 'stick' was a form of withholding tax charged on all investments made in the United States by a foreign financial institution that refused to comply.

Recognizing the tremendous burden on these foreign financial institutions to comply with the requirements, foreign governments began negotiating Inter-governmental Agreements ("IGA's") with the United States to facilitate the collection and transmission of this information. Canada is one of the countries that have entered into an IGA with the United States that requires their financial institutions to provide information to the United States in respect of U.S. account holders.

You might have received a questionnaire or letter from your financial institution with respect to a bank account trying to confirm whether you are a U.S. person. You might have an account in the name of a company or a trust and, similarly, the financial institution needs to determine whether any of the signing authorities on those accounts or any of the beneficiaries of the trust are U.S. persons. Although the implementation of this law has been delayed several times in order to allow foreign financial institutions to properly record and transmit the information, at some point the delays will end and the implementation date will be firmly set. At that time, the U.S. government will begin receiving information with respect to accounts held by U.S. persons outside of the United States and the presumption is that they will use that information to ensure that those U.S. persons are complying with U.S. tax law.



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Some Americans living in Canada attempted to challenge the law and the obligations under the IGA but most recently the courts have denied those challenges, although it is our understanding that that decision will be appealed.

Although most people who live in Canada are already compliant with a complex series of Canadian tax rules with respect to the disclosure of assets outside of Canada as well as the reporting of income, the sweeping scope of *FATCA* captures US persons living in Canada. With the introduction and enforcement of the *FATCA* regime and the increased diligence on travel by Americans using non-American passports, one should suspect that the number of Americans that are not compliant with the U.S. system will continue to dwindle under the fear of penalties for failure to comply.

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