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News

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***International Compliance and Reporting***
**Canada Says IRS Rejected FATCA Sept. 30 Deadline Extension**


*By Peter Menyasz*

Sept. 29 — The Canada Revenue Agency says it has no choice but to turn over bank account information of nearly 155,000 U.S. persons resident in Canada, even if a Canadian court issues an injunction directing the government to delay the

information transfer.

Sue Murray, director of CRA's Competent Authority Services Division, said in an affidavit that the U.S. Internal Revenue Service has indicated to Canadian officials that Canada isn't eligible for an extension of the Sept. 30 deadline to comply with its intergovernmental agreement on the Foreign Account Tax Compliance Act. The affidavit to the Federal Court of Canada, dated Sept. 25, was made available Sept. 29 to Bloomberg BNA.

According to Murray's affidavit, IRS Large Business and International Division Commissioner Douglas O'Donnell said in a Sept. 24 conference call with Canadian officials that the extension offered by the IRS to countries with Model 1 IGAs didn't apply to Canada, and the IRS expected Canada to comply with the Sept. 30 deadline.

"It was confirmed that the U.S. was not prepared to grant an extension because the Canadian situation is not covered by the notice criteria, as the legislation and systems are in place to be able to effect exchange. Given that the notice does not contemplate such an exception, this was the U.S. position even if Canada is subject to a court ordered injunction," the affidavit said.

Murray's affidavit was included with the government's response to an application for an injunction to block the data transfer by litigants in a lawsuit alleging Canada's compliance with FATCA violates constitutional rights and cedes Canadian sovereignty. The court Sept. 16 rejected the litigants' arguments that the IGA violates Canada's Income Tax Act and the Canada-U.S. income tax treaty.

**Reciprocal Transfer**

The affidavit continued that the IRS said an injunction was issued to prevent the CRA from transmitting the information to the IRS, and no extension of time is granted by the IRS, that "Canadian financial institutions will risk losing the benefit of the deemed FATCA compliance that they would otherwise obtain through the IG. In particular, as

**BNA Snapshot**
**Development:**

Canada official's affidavit says IRS would refuse to provide Canada extension on Sept. 30 deadline for exchanging FATCA information.

**What's Next:**

Federal Court expected to rule by Sept. 30 on injunction to block transmission of financial data.

of Oct. 1, 2015, if the information has not been received by the IRS and no extension of time has been granted, it is possible that Canadian financial institutions could be considered non-compliant."

The affidavit noted that the Sept. 24 call confirmed previous discussions on Sept. 18 and Sept. 21 with O'Donnell on the IRS's potential response to developments in the ongoing Canadian lawsuit. It also warned that an injunction preventing transmission of information to the IRS would also mean that the IRS wouldn't meet its commitment to make a reciprocal transfer of banking information of Canadian-born residents in the U.S. That would have a significant detrimental impact on the CRA's tax compliance work, it said.

### **'Kowtowing' to IRS Charged**

Toronto immigration lawyer John Richardson, co-chair of the Alliance for the Defence of Canadian Sovereignty group that is financing the anti-FATCA lawsuit, said Sept. 29 that he doesn't believe the IRS assertion that Canada isn't eligible for the extension of up to 12 months that has been offered to other countries with Model 1 IGAs.

Even if the injunction application proves unsuccessful, that shouldn't prevent the Canadian government from delaying the first transfer of information, as the IGA's provisions and the IRS's offer of a deadline extension are open to interpretation, Richardson told Bloomberg BNA in a telephone interview. "I think it's ambiguous," he said.

Many other countries with legislation in place to implement their IGAs and the systems in place to provide the required information to the IRS may also prefer to extend the deadline, so the CRA's approach seems to be based on a desire to complete the exchange, he said.

"They're just kowtowing to the IRS. They shouldn't be doing that as a matter of principle," he said. "There are all kinds of reasons to delay the turnover."

Richardson questioned the CRA's concern about not receiving reciprocal information from the IRS. There is no U.S. law in place to require banks, which are regulated at the state level, to provide the information, and there are ongoing lawsuits seeking to prevent the U.S. government from obtaining that information, he said. "The CRA will get nothing. Zero," he said.

### **Transmission Scheduled**

The affidavit also confirmed that the CRA's planned first transmission of information to the IRS will include about 155,000 "information slips." Each slip represents one account and one account holder, but a single person or entity could hold multiple accounts, so the number of individuals is less than 155,000, it said.

No information slips scheduled for exchange include either of the U.S.-born Canadian citizens who are the litigants in the anti-FATCA lawsuit, Ginny Hillis and Gwen Deegan, it said.

The affidavit also confirmed previous indications from the CRA that it plans to make the first exchange of information under the IGA on either Sept. 29 or 30. The transmission was originally scheduled for Sept. 15-30 to allow for technical difficulties, but that was later set for Sept. 23 and then delayed for technical reasons, it said.

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**For More Information**

The affidavit is included in the Canadian government's response to the injunction application, which is at [https://adcsovereignty.files.wordpress.com/2015/09/2015-09-25-respondents-motion-record\\_injunction\\_vol-1.pdf](https://adcsovereignty.files.wordpress.com/2015/09/2015-09-25-respondents-motion-record_injunction_vol-1.pdf).

**For More Information**

For a discussion of the FATCA withholding and reporting requirements in the Tax Management Portfolios, see 6565 T.M., FATCA — Information Reporting and Withholding Under Chapter 4, and in Tax Practice Series, see ¶7170, U.S. International Withholding and Reporting Requirements and FATCA.

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