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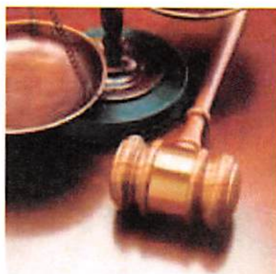
Canada-U.S. *Blog*
LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

Federal Court of Canada Does Not Grant Injunction To Stop Sharing of FACTA Information

By Cyndee Todgham Cherniak on September 18th, 2015

Posted in Canada's Federal Government, Constitutional Law, Legal Developments, Politics, Tax, U.S. Federal Government



On September 16, 2015 the Federal Court of Canada released the well written decision of the Honourable Luc Martineau in the case of Virginia Hillis and Gwendolyn Louise Deegan v. the Attorney General of Canada and the Minister of National Revenue (2015 FC 1082). This case was brought by two American-Canadian dual citizens living in Canada who are challenging the constitutionality of FACTA (Foreign Account Tax Compliance Act) information collection and sharing.

This decision relates only to a motion for summary judgement and the granting declaratory and injunctive relief in the form of preventing the Government of Canada from sharing FACTA information with the Government of the United States. It does not address the constitutionality claims or the merits of the law. The Court dismissed the motion of summary judgement and declined to grant declaratory and injunctive relief.

Under the intergovernmental agreement (IGA) implementing FATCA between Canada and the United States, the Canada Revenue Agency (CRA) will now be able to disclose to the US Internal Revenue Service (IRS) the personal bank account information of US citizens in Canada for 2014. It is expected that the information will be provided to the IRS next week on September 23, 2015.

The Honourable Luc Martineau wrote the following about judges upholding the rule of law;

> "True, a great number of Canadian taxpayers holding US reportable accounts are likely to be affected by a reporting system that in many quarters is considered unjust, costly and ineffective, considering that at the end of the day they are not likely to owe taxes to the US. In the absence of legislative provisions requiring all Canadian financial institutions (provincially and federally regulated) to automatically notify their account holders about reporting to the CRA under the IGAand Part XVIII of the ITA, these taxpayers may also be taken by surprise by any consequences that flow from such disclosure. The plaintiffs may find this deplorable, but apart from a constitutional invalidation of the impugned provisions or a change of heart by Parliament or Congress, or the governments of Canada or the US, there is nothing that this Court can judicially do today to change the situation. The impugned provisions have not been held to be *ultra vires* or inoperative. Judicial courage requires that judges uphold the Rule of Law."

There are many other read-worthy quotes in this well-considered decision. This quotation has significant meaning as it is true that a Canadian judge may want to stop such information sharing with the US IRS. This is a courageous decision based on principles.

The Federal Court of Canada did not order the plaintiffs to pay costs stating:

> "This is a case where, in view of the nature of the issues and the public interest involved in clarifying the scope of novel provisions affecting hundreds of thousands of Canadian citizens, no costs should be ordered against the losing parties."

Tags: Canada Revenue Agency, CRA, dual citizens, FACTA, Foreign Account Tax Compliance Act, Hillis, IGA, information sharing, IRS, rule of law

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